

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**DOCKET**
79-AFC-2CDATE MAY 05 2010RECD. MAY 11 2010

In the Matter of:) Docket No. 79-AFC-2C
)
)
) Order No. 10-0505-f
)
 NCPA-2 POWER PLANT) ORDER APPROVING
) Termination of MOU
) Between the Energy Commission
) and the United States Geological Survey
) and
) Amendment of the Final Decision

BACKGROUND

The NCPA-2 Power Plant (Project) is a geothermal power plant located in Sonoma County and is owned and operated by the Northern California Power Agency (NCPA). The Final Decision was approved on March 12, 1980 and the plant became operational on February 1, 1982. In the Project's Final Decision, the U.S. Geological Survey (USGS) was identified as the primary compliance agency and the Energy Commission was the secondary compliance agency. A Memorandum of Understanding [Attachment A] was signed by both agencies memorializing the compliance duties of USGS with respect to the Project.

In February 2010, the Energy Commission Compliance Project Manager (CPM) received a letter from USGS requesting that the MOU be terminated effective February 1, 2010. [Attachment B] In the letter, USGS also requested that the Energy Commission's Final Decision be amended to remove that agency as the primary compliance agency for the Project.

This matter was heard at the regularly scheduled Business Meeting held on May 5, 2010.

DISCUSSION

The Energy Commission has the authority to conduct compliance oversight of the energy generating facilities that it licenses. California Code of Regulations, Title 20, § 1770(a) provides that "[t]he Commission shall provide adequate monitoring of all conditions and measures set forth in the final decision required to mitigate potential impacts and to assure that the facility is constructed and operated in compliance with all applicable laws including, but not limited to, air quality, water quality, and public health and safety laws, ordinances, regulations, and standards for all projects certified." The Commission may, as in the current matter, delegate its authority for compliance oversight and verification to state and local entities. Cal. Code Regs., tit. 20, § 1770(b). However, § 1770(c) provides that "[i]f a delegate agency is unwilling or unable to

participate in this program, the Commission staff shall establish an alternate method of verification.”

The final decision in this matter contemplated that compliance oversight and verification would be delegated to the USGS. The final decision memorialized this agreement, as did the MOU dated November 16, 1978.

In its letter to staff dated February 1, 2010, the USGS notes that it no longer oversees or manages federal land or resources, including the location of the Project. USGS has requested that the MOU be terminated, and that the final decision be amended to remove USGS as the primary compliance agency. USGS is therefore unwilling or unable to continue its oversight of the facility.

STAFF RECOMMENDATION

Staff has reviewed the letter submitted by USGS for compliance with the requirements of Title 20 of the California Code of Regulations, Section 1770(c). Staff recommends that the Commission grant the USGS’ request to terminate the MOU in this matter, removing the USGS as the agency with primary compliance responsibilities. Staff further recommends that the Commission’s Final Decision be amended to remove reference to the USGS as the agency with primary compliance oversight and verification.

CONCLUSION AND ORDER

The Energy Commission hereby adopts the staff’s recommendation and approves the USGS’ request to terminate the MOU. The Commission’s Final Decision is hereby amended to remove the USGS as the agency having primary compliance oversight and verification for the NCPA-2 Power Plant. Commission staff will henceforth provide adequate monitoring of all conditions and measures set forth in the final decision required to mitigate potential impacts and to assure that the facility has been constructed and is operated in compliance with the conditions of certification as set forth in the Commission’s Final Decision.

IT IS SO ORDERED.

Date: May 5, 2010

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

KAREN DOUGLAS, Chairman

MEMORANDUM OF UNDERSTANDING BETWEEN CEC AND USGS
WITH RESPECT TO POST-LICENSING DUTIES AND
RESPONSIBILITIES FOR THE NCPA GEOTHERMAL PROJECT NO. 2

I. INTRODUCTION

Pursuant to the Memorandum of Understanding dated November 16, 1978, the California Energy Commission (CEC), United States Geologic Survey (USGS), Bureau of Land Management (BLM), and Department of Energy (DOE) undertook a cooperative effort to compile the environmental documentation necessary to comply with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) and to issue necessary permits, licenses, and loan guarantees for Northern California Power Agency's (NCPA) proposed Geothermal Project No. 2.

The purpose of this agreement is to set forth the duties and responsibilities of the CEC and the USGS following the issuance of licenses and approvals for the NCPA Geothermal Project No. 2. This agreement also includes provisions for post-certification supervision of the project to insure that the project is constructed and operated pursuant to the terms and conditions of certification and licenses, and in compliance with applicable laws, standards, and ordinances. These provisions are attached to this agreement as Appendix B.

II. GENERAL PROVISIONS

A. The CEC recognizes that the proposed project is located on federally-owned lands and will utilize geothermal resources owned by the United States and managed by the USGS

pursuant to the Geothermal Steam Act of 1970 (P.L. 91-501). Accordingly, the CEC acknowledges that the ultimate decision-making authority for all issues pertaining to the design, construction, and operation of the proposed facility which may arise pursuant to the implementation and execution of this agreement resides with the BLM and the USGS.

B. The USGS recognizes that the proposed project is located within the territorial confines of the State of California. Accordingly, USGS agrees to consider the interests of the State in making post-certification decisions pursuant to this agreement, and shall give great weight to the comments and recommendations of the CEC with respect to such decisions.

C. The USGS and the CEC agree that the Northern Sonoma County Air Pollution Control District shall have all of the rights, duties, and responsibilities specified in the "Approved ARB-CEC Joint Policy Statement of Compliance with Air Quality Laws by New Power Plants" executed by the CEC and the California Air Resources Board on January 23, 1979, to the extent the Statement is consistent with applicable federal laws. A copy of the agreement is attached hereto as Appendix C.

D. The USGS shall insure compliance with applicable local standards in conducting its post-certification duties and responsibilities in all technical areas in which the CEC is secondarily involved.

E. The CEC may recommend the use of state or local agencies in performing one or more monitoring functions as outlined in Appendix B. If the USGS does not utilize such an agency as recommended, it shall provide for such mitigation functions.

F. The USGS and the CEC agree that the terms of this agreement supersede any differing or inconsistent terms which may appear in Appendix B and that the provisions of Appendix B shall be implemented consistently with the terms of this agreement.

G. Decisions of the Area Geothermal Supervisor may be appealed under the provisions of 30 CFR Part 290.

H. The USGS agrees to maintain possession of all proprietary information which may be submitted by the Applicant pursuant to the provisions of Appendix B. The CEC may review such proprietary information at the offices of the USGS.

III. PRIMARY CEC INVOLVEMENT

Subsequent to CEC certification of the NCPA Geothermal Project No. 2, the Commission shall be primarily involved in the review of final seismic design criteria, structural design criteria for critical structures and components, conceptual and final design of air pollution control equipment, and in the evaluation and selection of mitigation measures for significant adverse geologic conditions encountered during site preparation.

Primary CEC involvement shall be carried out as follows:

(1) All required design drawings, reports, analyses, and similar documents shall be submitted by the Applicant concurrently to the USGS and the CEC.

(2) The USGS shall not approve the design criteria, designs, mitigation measures for the power plant and related

critical structures and components until it has expressly solicited the advice and recommendations of the CEC. If the decision of the USGS does not adopt the recommendations of the CEC, the USGS shall provide written explanation of its reasons for not adopting such recommendations.

As used in this agreement, critical structures include the turbine generator building, the cooling tower structure, the turbine generator structure, and the switchyard structure. Critical components include: the turbine generator, the surface condenser, the gas removal equipment, the overhead bridge crane, the main transformers, the H₂S abatement facility, the circulating water pumps, and the switchyard equipment.

(3) The USGS shall not approve mitigation measures for significant adverse geologic conditions until it has solicited the advice and recommendations of the CEC.

As used in this agreement, a significant adverse geologic condition is a condition which requires an alteration of the project's design concept and the preparation of new design calculations.

IV. SECONDARY CEC INVOLVEMENT

A. The CEC shall be secondarily involved in the execution and evaluation of all mitigation measures specified in the Final Joint Environmental Study. The Commission's secondary involvement shall be carried out as follows:

(1) All required Plans of Operation, Applications for Permits, reports, designs, and similar documents shall be submitted by the Applicant to the USGS. The USGS shall immedi-

ately forward copies of such documents to the CEC for its review and recommendations within the time frame established by the Supervisor, USGS.

(2) The CEC may submit advice and recommendations for consideration by USGS.

B. With respect to the mitigation measures specified in the Final JES; and unless the subject matter is covered in Appendix B:

(1) The USGS in accordance with 30 CFR 270.34-1 shall require the Applicant to prepare for USGS approval a detailed Plan of Utilization describing the manner in which each mitigation measure will be implemented;

(2) The USGS shall require the Applicant to submit Annual Reports of Compliance under 30 CFR 270.76;

(3) The USGS Construction Permit shall include provisions for CEC inspection of the site and related facilities.

Dated:

DAVID K. BICKMORE
Acting Area Geothermal Supervisor
United States Geologic Survey

Dated:

RUSSELL L. SCHWEICKART
Chairman
California Energy Commission



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February 1, 2010

Angelique Juarez-Garcia
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Siting, Transmission and Environmental Protection Division
California Energy Commission
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DOCKET
79-AFC-2C

DATE	FEB 01 2010
RECD.	FEB 04 2010

Dear Ms. Juarez-Garcia,

Thank you for contacting the United States Geological Survey (USGS) regarding the attached Memorandum of Understanding (MOU) dated November 16, 1978, between the California Energy Commission (CEC) and USGS, concerning oversight of the NCPA-2 Geothermal Power Plant.

The USGS no longer oversees or manages federal land or resources, and, therefore, the NCPA-2 Geothermal Power Plant that is the subject of the MOU. Consequently, we request that the MOU between our two organizations be terminated effective February 1, 2010.

In addition, we request that the CEC Final Decision for the NCPA-2 Power Plant be amended to remove the USGS as the primary compliance agency.

Respectfully,

Michael V. Shulters
Regional Executive, Pacific Southwest Area

cc:
Anne Kinsinger
Suzette Kimball
Linda Gundersen
Brenda Pierce