

DOCKET

09-AFC-4

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STATE OF CALIFORNIA

Energy Resources Conservation And Development Commission

In the Matter of:

Application for Certification
for the Oakley Generating Station

Docket No. 09-AFC-4

ENERGY COMMISSION STAFF'S ERRATA

Staff's testimony (Ex. 300) includes all of the necessary Conditions of Certification to reflect the conditions from the FDOC and ensure that the air quality impacts would be mitigated to less than significant. Additionally, Staff concludes that the proposed project would be consistent with the applicable laws, ordinances, regulations, and standards (LORS) pertaining to protection of biological resources and with implementation of staff's proposed conditions of certification would not result in any significant impacts addressed by the California Environmental Quality Act (CEQA).

Public comments during the March 15, 2011 evidentiary hearing raised the issue of fine particulate matter (PM2.5) concentrations identified in the Staff testimony. However, while high levels of PM2.5 were shown to occur inside the modeling domain of Staff's cumulative analysis, it must be noted that Staff has demonstrated that the high cumulative concentrations were caused by a neighboring, existing concrete batch plant and not the proposed project. Staff disclosed that in the areas where the batch plant causes impacts, the contribution caused by the proposed project would not be cumulatively considerable. (Ex. 300, p. 4.1-40.)

Staff has noted several non-substantive inconsistencies in the language originally proposed in the Conditions of Certification in these technical areas, and offers for consideration of the Committee minor changes to those affected Conditions as specified

below. Strikeout is used to indicate deleted language and underline and bold for new language.

Air Quality

1. Verification of AQ-17 (Ex. 300, p 4.1-57)

“**Verification:** The project owner shall notify both the District and CPM at least 7 days **24 hours** prior to the combustor tuning. . . .”

2. Text of AQ-25 (Ex. 300, p 4.1-60)

“**AQ-25** Within 90 days of the beginning of the start-up period (as defined in Regulation 2-1-210) of each of the OGS GE 7FA units or as otherwise approved by the APCO and, at a minimum, on an annual basis thereafter, the owner/operator shall conduct a District-approved source test on exhaust points P-1 and P-2 while each Gas Turbine is operating at maximum load to determine compliance with AQ-15(a), AQ-15(b), AQ-15(c), AQ-15(d), AQ-15(f), and to establish the emissions factors to be used to demonstrate compliance with ~~AQ-42(d) and AQ-42(e)~~ **AQ-43(d) and AQ-43(e)**; and while each Gas Turbine is operating at minimum load . . .”

3. Definition for Gas Turbine Combustor Tuning (Ex. 300, p 4.1-70)

“Gas Turbine Combustor Tuning: The period of time, not to exceed ~~6~~ **8** operating hours per tuning event, in which testing, adjustment, tuning, and calibration operations are performed . . .”

4. Definition for Commissioning Period (Ex. 300, p 4.1-70)

“Commissioning Period: The Commissioning Period shall commence when all mechanical, electrical, and control systems are installed and individual system start-up has been completed, or when a gas turbine is first fired, whichever occurs first. The Commissioning Period shall ~~terminate when the plant has completed performance and emissions testing~~ **for each gas turbine shall terminate when the activities identified in the Commissioning Plan (submitted under AQ-4) are complete and the gas turbine**

has reached safe and reliable steady-state operation as demonstrated by compliance with NOx and CO normal operating limits using the continuous emissions monitors.”

Biological Resources

1. Verification of BIO-6 (Ex. 300, p.4.2-66)

“Verification: The project owner shall provide the draft BRMIMP to the CPM at least 60 days prior to start of any site (or related facilities) mobilization. The CPM, in consultation with the East Contra Costa County Habitat Conservancy (Conservancy) (and USFWS and CDFG if they choose to comment), will determine the BRMIMP’s acceptability ~~within forty-five (45) days of receipt~~. If there are any permits that have not yet been received when the BRMIMP is first submitted, these permits shall be submitted to the CPM within five (5) days of their receipt, and the BRMIMP shall be revised or supplemented to reflect the permit condition within 10 days of their receipt by the project owner. Ten days prior to site and related facilities mobilization the revised BRMIMP shall be resubmitted to the CPM.”

2. BIO-8 editorial correction (Ex.300, p.4.2-68)

BIO-8 To comply with various protected tree ordinances, the project owner shall mitigate for loss of protected trees based on the results of the project owner’s arborist report. Mitigation shall include either mitigation fees and/or the purchase of replacement trees. A tree permit shall be obtained from the City of Oakley Community Development Department and one of the following mitigation options is required: three new trees of the same species shall be planted for each protected tree removed; or the total appraisal fee for the protected trees scheduled to be removed shall be paid to the Community **Development Department**; or a combination of replacement tree plantings and in lieu fee payments shall be made. Mitigation will be assessed by the CPM in coordination with City of Oakley based on review of the arborist report.

3. BIO-9 editorial correction (Ex.300, p.4.2-70)

- ~~3.~~ If active nests are detected during the survey, a no-disturbance buffer zone (protected area surrounding the nest, the size of which is to be determined by the Designated Biologist in consultation with the CPM (in coordination with CDFG, and USFWS) and monitoring plan shall be developed; Consultation with the CPM in coordination with CDFG shall be required for any construction that occurs within 1,000 feet of a

Swainson's hawk nest or 1/2 mile of an active golden eagle nest to ensure that no take of Swainson's hawk or golden eagle occurs during project construction. Nest locations shall be mapped using GPS technology and submitted, along with a weekly report stating the survey results, to the CPM, ~~in the Monthly Compliance Reports.~~

3. If Swainson's hawk young fledge prior to September 15, construction activities can proceed normally. If the active nest site is shielded from view and noise from the project site by other development, topography, or other features, the project applicant can apply to the Conservancy for a waiver of the no-disturbance buffer zone requirements. The waiver must also be approved by the CDFG and USFWS and the CPM must be notified of any request for a waiver.
4. The Designated Biologist shall monitor the nest until he or she determines that nestlings have fledged and dispersed. Activities that might, in the opinion of the Designated Biologist, disturb nesting activities (e.g., excessive noise above 60 dBA, especially during steam blowing), shall be **prohibited within the buffer zone until such a determination is made.**

4. BIO-10 editorial correction (Ex.300, p.4.2-71)

BIO-10 The project owner shall conduct a survey for roosting bats within 200 feet of project activities within ~~15~~ **30** days prior to any pre-construction site mobilization, including tree removal.. All trees and snags proposed for removal, topping, or pruning shall be marked in the field. A qualified bat biologist shall conduct a roost assessment of all the marked trees. The biologist shall be approved by the CPM. If no suitable roosting habitat is present, no further action is required.

If suitable roosting habitat is present, the project owner shall also conduct surveys for roosting bats during the maternity season (March 1 to August 31) within 200 feet of project activities. Trees and other appropriate structures shall be surveyed by a qualified bat biologist. Surveys shall include a minimum of one day and one evening survey. The biologist shall be approved by the CPM. If active maternity roosts or hibernacula are found, the trees occupied by the roost shall be avoided (i.e., not removed) by the project, if feasible. If avoidance of the maternity roost is not feasible, the bat biologist shall survey (through the use of radio telemetry or other CPM-approved methods, developed in consultation with CDFG) for nearby alternative maternity colony sites. If the bat biologist determines, in consultation with CDFG and with the approval of the CPM, that there are alternative roost sites used by the maternity colony and young are not present, then no further action is required and tree removal may occur.

However, if there are no alternative roosts sites used by the maternity colony, provision of substitute roosting bat habitat would be required. This measure would not apply to western red bat as they are solitary and primarily use trees as roosts. If western red bats are present during the breeding season, tree removal would not occur during the breeding season and Item 3 below would be implemented. If active maternity roosts are absent, but a hibernaculum (i.e., a non-maternity roost) is present, then exclusion of bats prior to tree removal is required.

1. Provision of substitute roosting bat habitat. If a maternity roost will be impacted by the project, and no alternative maternity roosts are in use near the site, substitute roosting habitat for the maternity colony shall be provided on, or in close proximity to, the project site no less than three months prior to the eviction of the colony. Alternative roost sites will be designed and constructed in accordance with the specific bats' requirements and in coordination with CDFG and the CPM. Alternative roost sites must be of comparable size and proximal in location to the impacted colony. The CDFG shall also be notified of any hibernacula or active nurseries within the construction zone.
2. Exclude bats prior to removal of trees with roosts. If non-breeding bat hibernacula are found in the trees to be removed within the construction footprint, the individuals shall be safely evicted, under the direction of the qualified bat biologist, by partial dismantling of roost sites (e.g. removal of tree limbs) to induce abandonment by bats, or other appropriate measures. Additionally, on the day of tree removal the tree cutters will inspect the trees prior to them felling the trees for bats in areas that the Designated Biologist is not able to observe from the ground.

If an active maternity roost is located in an area to be impacted by the project, and alternative roosting habitat is available, the demolition of the roost site must commence before maternity colonies form (i.e., prior to March 1) or after young are flying (i.e., after August 31) using the exclusion techniques described above.

3. Western red bat specific measures. If an active western bat maternity roost is found in the trees to be removed, tree removal will not occur during the breeding season to avoid disturbing females with non-volant (incapable of flying) young (March 1 through August 31). The leaf litter associated with the tree(s) will be removed during the warm season to prevent western red bats from roosting under the leaf litter during the winter when tree removal will occur. Prior to tree removal, outside of the breeding period, on the day immediately preceding tree removal, any tree to be removed will first be disturbed at the end of the day (after 5:00 pm) by removing the lowest branches that do not have dense clusters of leaves. Trees should be removed the day after the initial disturbance as bats disturbed under these circumstances are not likely to return to the same tree for day roosting the next day. Additionally, on the day of tree removal the tree

cutters will inspect the trees prior to them felling the trees for bats in areas that the Designated Biologist is not able to observe from the ground.

4. Bat maternity roosts in trees to remain on site. The Designated Biologist shall monitor the maternity roost until it is determined that young are volant (are capable of flying); activities that might, in the opinion of the Designated Biologist, disturb roosting activities (e.g., excessive noise above 60 dBA, especially during steam blowing), shall be prohibited within the buffer zone until such a determination is made.

Verification: All mitigation measures and their implementation methods shall be included in the BRMIMP and implemented. The resume of the proposed bat biologist will be submitted to the CPM for approval at least ~~30~~ **45** days prior to the start of any bat surveys. Implementation of the measures will be reported in the Monthly Compliance Reports by the Designated Biologist. ~~If active roost trees are to be removed, a~~ A written report summarizing the results of the pre-construction survey shall be sent to the CPM and CDFG no less than 15 days prior to the start of pre-construction site mobilization which will include documentation of any active roost trees to be removed. The report shall describe survey methods, including the time, date, and duration of the survey, identity and qualifications of the surveyor(s), and a list of species observed, a figure showing roost locations observed, and proposed mitigation and exclusion measures. Mitigation and exclusion measures must be developed in coordination with CDFG, and approved by the CPM prior to initiation of the measures or project activities that would disturb the roost site. Within 10 days of removal of trees with roost sites, the project owner shall submit a report describing the results of the exclusion, mitigation measures, and tree removal.

5. Verification of BIO-16 (Ex. 300, p.4.2-78)

Verification: All giant garter snake (GGS) impact avoidance and minimization measures shall be included in the BRMIMP and implemented. Implementation of the measures shall be reported in the Monthly Compliance Reports by the Designated Biologist. The Designated Biologist or a representative approved by the CPM, in consultation with the East Contra Costa County Habitat Conservancy (Conservancy), CDFG, and USFWS, must survey the construction area within potential GGS habitat no more than 24 hours prior to the initiation of **pre-construction site mobilization** ~~construction~~ in the vicinity the GGS habitat along East Antioch Creek. Another pre-construction survey must be conducted if construction activity ceases for a period of more than 2 weeks. The project owner shall submit a report to the Conservancy, USFWS, CDFG, and the CPM documenting results of pre-construction surveys within 24 hours of commencement of construction activities. The project owner shall submit a report to the Conservancy, USFWS, CDFG, and the CPM if any GGS are found within work areas no more than 24 hours after the sighting is made. Within 30 days after completion of construction the project owner shall provide to the CPM a written construction termination report identifying how impact minimization measures have been completed. Additional copies shall be provided to the Conservancy, CDFG, and USFWS.

6. Verification of BIO-21 (Ex. 300, p.4.2-83)

Verification: A copy of the receipt of payment issued to Conservancy, verifying the funds have been paid, shall be provided to the CPM within 30 days prior to ~~site or related facilities~~ **pre-construction site** mobilization.

7. Editorial correction to BIO-22 (Ex.300, p.4.2-83)

BIO-22 The project owner shall provide a copy of the final East Contra Costa County Habitat Conservation Plan /Natural Communities Conservation Plan (ECCC HCP/NCCP) Certificate of Inclusion (permit) **prior to pre-construction site mobilization**. The terms and conditions contained in the incidental take permit shall be incorporated into the project's BRMIMP and implemented.

DATED: April 1, 2011

Respectfully submitted,

/s/ Kevin Bell
KEVIN W. BELL
Senior Staff Counsel
California Energy Commission
1516 9th Street
Sacramento, CA 95817
Ph: (916) 654-3855
e-mail: kwbell@energy.state.ca.us



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

**APPLICATION FOR CERTIFICATION
FOR THE *OAKLEY GENERATING STATION***

**Docket No. 09-AFC-4
PROOF OF SERVICE
(Revised 3/21/2011)**

APPLICANT

Greg Lamberg, Sr. Vice President
RADBACK ENERGY
145 Town & Country Drive, #107
Danville, CA 94526
Greg.Lamberg@Radback.com

APPLICANT'S CONSULTANTS

Douglas Davy
CH2M HILL, Inc.
2485 Natomas Park Drive, Suite 600
Sacramento, CA 95833
ddavy@ch2m.com

COUNSEL FOR APPLICANT

Scott Galati
Marie Mills
Galati & Blek, LLP
455 Capitol Mall, Suite 350
Sacramento, CA 95814
sgalati@gb-llp.com
mmills@gb-llp.com

INTERESTED AGENCIES

California ISO
E-mail Preferred
e-recipient@caiso.com

Maifiny Vang
CA Dept. of Water Resources
State Water Project Power and
Risk Office
3310 El Camino Avenue,
RM. LL90
Sacramento, CA 95821
mvang@water.ca.gov

INTERVENORS

Robert Sarvey
501 W. Grantline Road
Tracy, CA 95376
Sarveybob@aol.com

ENERGY COMMISSION

JAMES D. BOYD
Vice Chair and Presiding Member
jboyd@energy.state.ca.us

*Sarah Michael
Adviser to Vice Chair Boyd
smichael@energy.state.ca.us

*CARLA PETERMAN
Commissioner and Associate
Member
cpeterma@energy.state.ca.us

*Jim Bartridge
Adviser to Commissioner Peterman
jbartrid@energy.state.ca.us

Kourtney Vaccaro
Hearing Officer
kvaccaro@energy.state.ca.us

Pierre Martinez
Siting Project Manager
pmartine@energy.state.ca.us

Kevin W. Bell
Staff Counsel
kwbell@energy.state.ca.us

Jennifer Jennings
Public Adviser
E-mail preferred
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Janet Preis, declare that on April 1, 2011, I served and filed copies of the attached Energy Commission Staff's Errata, dated April 1, 2011. The original document filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

<http://www.energy.ca.gov/sitingcases/oakley/index.html>].

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

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- ☒ sent electronically to all email addresses on the Proof of Service list;
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- ☒ by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

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CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 09-AFC-4
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

/s/ Janet Preis