

STATE OF CALIFORNIA
Energy Resources Conservation
And Development Commission

DOCKET

09-AFC-4

DATE	APR 06 2011
RECD.	APR 06 2011

In the Matter of:

Application for Certification
For the Oakley Generating Station

Docket No. 09-AFC-4

Staff's Reply Brief

I. INTRODUCTION

Staff responds to Mr. Sarvey's Opening Brief to clarify our environmental justice methodology. Because the 2010 U.S. Census data was not available to Staff at the time this analysis was done, Staff used the 2000 data. If there was any indication that Staff's conclusion might be altered by using the latest data, Staff could provide an updated analysis. However, because Staff concludes that there are no significant impacts on the community, there will be no significant impacts on any environmental justice population. With respect to Mr. Sarvey's comments addressing other technical areas, there is substantial evidence in the record to support Staff's conclusion in each of those technical areas that the Oakley Generating Station (OGS) should be certified by the Energy Commission. Therefore, with respect to Mr. Sarvey's arguments to the contrary, we respectfully disagree.

II. STAFF'S ENVIRONMENTAL JUSTICE ANALYSIS IS CORRECT

Intervener Sarvey claims that Staff did not perform an adequate Environmental Justice analysis and, therefore, the OGS project cannot be approved. Staff disagrees.

The Natural Resources Agency, the umbrella agency over the California Energy Commission, describes environmental justice as follows:

The concept behind the term "environmental justice" is that all people – regardless of their race, color, nation or origin or income – are able to enjoy equally high levels of environmental protection. Environmental justice

communities are commonly identified as those where residents are predominantly minorities or low-income; where residents have been excluded from the environmental policy setting or decision-making process; where they are subject to a disproportionate impact from one or more environmental hazards; and where residents experience disparate implementation of environmental regulations, requirements, practices and activities in their communities. Environmental justice efforts attempt to address the inequities of environmental protection in these communities. (*Environmental Justice in State Government*, OPR. October , 2003, Appendix)

At the Energy Commission, Staff uses a three prong screening approach to determine if there is a significant impact to an environmental justice community based on the Environmental Protection Agency 1998 Guidance and the Council on Environmental Quality. First, Staff identifies the area of potential impact. The area measured is a 6-miles radius around the proposed project site. Second, Staff determines if there is a significant low-income or minority population around the project site. Finally, Staff determines whether there might be a significant adverse impact on a low-income and/or minority population caused by the project. In addition, Staff and the Public Advisor conducted outreach to the population surrounding the proposed site.

a. Staff appropriately relied on 2000 US Census Data.

Mr. Sarvey objects to Staff's analysis because Staff relied on the 2000 U.S. Census to determine that total population within the six-mile radius of the proposed site was 138,443 persons, with a minority population of 57,477 persons, or about 42% of the total population. In fact, as discussed in workshops and testified to during the Evidentiary Hearings, since the 2010 U.S. Census was not available at the time of Staff's analysis, Staff used the most reliable, comprehensive data found in the 2000 U.S. Census.

b. Substantial evidence supports the conclusion that OGS would not have a significant adverse impact.

Staff's testimony, in accordance with California Code of regulations, sections 1742 and 1742.5, analyzes and concludes that the project, with mitigation, either proposed by the Applicant and/or in the form of Conditions for Certification, would not cause a significant impact on the environment, and also there will be no disproportionate or significant impact on an environmental justice population. Staff would have made a detailed examination of the distribution impacts on segments of the population if the analysis showed there was a significant impact.

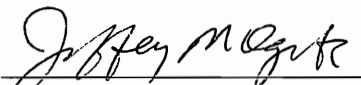
The testimony of the Applicant's witnesses fully supported Staff's conclusions. Mr. Sarvey has not offered substantial evidence into the record that would support a contention that the project, with Staff's recommended mitigation, would cause a significant adverse impact on the environment or the surrounding minority or low-income population.

III. CONCLUSION

By law, the Commission is required to make its findings and conclusions on whether the proposed Oakley Generating Station will cause a significant adverse impact on the environment or public health and safety based on substantial evidence offered into the hearing record by the parties. Staff and the Applicant offered substantial evidence in their written testimonies and orally during the evidentiary hearings, clearly demonstrating that the proposed project, with the recommended mitigation, would not cause a significant adverse impact on the environment, public health, or safety, and the project would be in compliance with all LORS. Intervener Sarvey, on the other hand, has not provided substantial evidence to support his claims that the Oakley Generating Station should not be permitted, offering on the primary issues of contention only argument, speculation, and unqualified and unsubstantiated opinion. Therefore, Staff recommends that the Commission approve the Oakley Generating Station's Application of Certification.

DATED: April 6, 2011

Respectfully submitted,


JEFFERY M. OGATA
Assistant Chief Counsel

KEVIN W. BELL
Senior Staff Counsel
California Energy Commission
1516 9th Street
Sacramento, CA 95814
Ph: (916) 653-1151
e-mail: jogata@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 4/5/2011)**

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

***Kathleen McDonnell**
Executive Assistant to
Commissioner Peterman
Kmcdonne@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, Lynn Tien-Tran, declare that on April 6, 2011, I served and filed copies of the attached California Energy Commission **Staff's Reply Brief**, dated April 6, 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)

FOR SERVICE TO ALL OTHER PARTIES:

- X sent electronically to all email addresses on the Proof of Service list;
- by personal delivery;
- X 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."

AND

FOR FILING WITH THE ENERGY COMMISSION:

- X sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (***preferred method***);

OR

- depositing in the mail an original and 12 paper copies, as follows:

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.

