

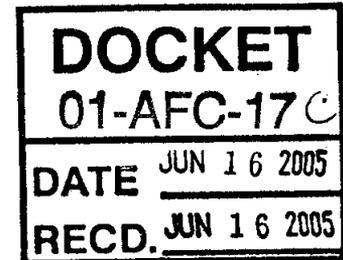
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June 16, 2005



Connie Bruins  
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Re: Inland Empire Energy Center Power Project (01-AFC-17C) Applicant's Response to the Staff Analysis Of Proposed Modifications To Change To GE 107H Combined-Cycle Systems, Increase Generation and Add Additional Laydown Areas

Dear Ms. Bruins:

On March 11, 2005, the Inland Empire Energy Center, LLC, (Applicant) submitted a petition to amend the Energy Commission Decision for the Inland Empire Energy Center Power Project (IEEC). The petition requests authority to change the previously-approved power generation configuration to use two GE 107H combined-cycle systems (H System). The H System represents GE's latest gas turbine technology providing superior fuel efficiency and environmental performance. In addition, the Applicant requests authority to add temporary areas near the project site for construction worker parking and secondary laydown.

On June 8, 2005, the Energy Commission Compliance Staff published its analysis and recommendations on the Amendment (Staff Analysis). The Applicant would like to thank the Commission and its Compliance Staff for its professional, timely and thorough consideration of our petition.

**Conditions of Certification**

Staff determined that no changes to conditions of certification are required for the technical areas of efficiency, geology, mineral resources and paleontology, reliability, traffic and transportation, and transmission line safety and nuisance. The Applicant concurs with this determination.

Staff has proposed revisions to the conditions of certification for air quality, biology, facility design, hazardous materials, noise, soil and water resources, transmission system engineering, and worker safety and fire protection. It is Staff's opinion that with the implementation of revised conditions for these technical areas, the project will remain in compliance with applicable laws, ordinances, regulations, and standards and that the proposed modifications will not result in a significant adverse direct or cumulative impact to the environment.

The Applicant has carefully reviewed the Staff's recommendations and we are pleased to report that, with four exceptions, we concur with all of Staff's proposed revisions to the conditions of certification. The four instances where the Applicant differs from the Staff are as follows:

#### **Air Quality**

1. The Staff proposes a new air quality condition, AQ-SC17 regarding the reporting of CO2 emissions. (Staff Analysis, p. 22)

In the Commission's recent decision for the Roseville Energy Center (01-AFC-3) decided on April 13, 2005, the Commission also adopted a condition (AQ-SC7) requiring the project owner to submit CO2 information to the Commission. The Applicant recommends that the Commission adopt the same condition for the IEEC. The Roseville condition reads as follows:

**"AQ-SC7** If the Project owner does not voluntarily participate in the California Climate Action Registry then the Project owner shall report to the CPM the CO2 emitted on an annual basis as a direct result of facility electricity production.  
**Verification:** Any CO2 emissions that are reported to the California Climate Action Registry or pursuant to this condition shall be reported to the CPM as part of the fourth Quarterly Air Quality Reports required by Condition of Certification AQ-SC6." (When adapted to IEEC, the reference to AQ-SC6 would be AQ-SC8.)

The Applicant prefers this language because we believe this language better reflects the Commission's intent that the Project Owner submit to the CPM the same information provided to the California Climate Action Registry (CCAR). Whether the Commission adopts the Roseville condition AQ-SC7 or the condition proposed by Staff in this proceeding, the Commission should make clear that this condition is intended solely to ensure that the CCAR data is also provided to the CPM, and that the condition is not intended to create a new or different reporting requirement.

In addition, we note that the Commission Staff intends to file comments with the South Coast AQMD seeking minor changes to the District's proposed permit. The Applicant will be making a similar request, also seeking minor changes. We anticipate that if the District accedes to these requests, the Applicant will file a request with the Commission, after the District's final permit has been issued, seeking minor, conforming amendments to the Commission's decision. Since the District cannot act until after the Commission has reached its decision, as the lead agency under CEQA, there is no mechanism through which the District can issue its final permit prior to Commission approval. We don't believe that the minor changes requested by the Staff and Applicant will affect the Staff's conclusion that the project's air quality impacts have been mitigated to a less-than-significant level.

### **Hazardous Materials**

2. Condition **HAZ-13**, at page 67 of the Staff Analysis, is proposed by Staff to address safety of the natural gas compressor building. The Applicant proposes two technical corrections to this condition. First, the Applicant suggests that item number 3 be revised to read "remotely operated gas compressor shut-off valves actuated by the plant operator from the control room". Gas sensors are not sufficiently reliable to allow automatic shutdown of the gas supply. An automatic shut off valve triggered by a malfunction of a gas sensor could cause the unnecessary loss of 790 MW from the grid. Because the IEEC control room will be staffed 24-hours per day, remote manual activation of the shutoff valve will be more appropriate and effective for the IEEC.

Second, the Applicant proposes that Item 5 be revised to read "CO2 fire suppression system for the compressor enclosures." The mere reference to "Fire suppression equipment" is vague. The plant will have hydrants which will meet this description, but, more importantly, the gas compressor enclosures will be provided with a CO2 fire suppression system

### **Soil and Water Resources**

3. Staff proposes Condition **SOIL AND WATER 7** to verify the project owner's participation in the ongoing flood-control planning undertaken by Riverside County. This proposed condition requires that "The property owner shall submit to the CPM any Letter of Map Revision (LOMR) issued from FEMA resulting in a change to the effective FIRM [Flood Insurance Rate Map]." (Staff Analysis, p. 95) Because there could be changes in the FIRM unrelated to the IEEC site, the Applicant proposes that this sentence be revised to read: "The property owner shall submit to the CPM any Letter of Map Revision (LOMR) issued from FEMA resulting in a change to the effective FIRM where FEMA has requested review by the project owner as a potentially affected owner."

### Worker Safety

4. Staff has proposed two new conditions, **Worker Safety 3 and 4** (Staff Analysis, pp. 119-121), that exceed the scope of this proceeding.

In the Commission Decision granting certification of the IEEC, the Commission found that "To protect workers from job-related injuries and illnesses, the project owner will implement comprehensive Safety and Health Programs for both the construction and operation phases of the project; each of the programs will include an Injury/Illness Prevention Program, a Personal Protective Equipment Program, an Exposure Monitoring Program, an Emergency Action Plan, a Fire Protection and Prevention Plan, and other general safety procedures." (IEEC Decision, p. 176) The Commission further found that "Implementation of the Conditions of Certification, below, and the mitigation measures described in the evidentiary record will ensure that the project conforms with all applicable laws, ordinances, regulations, and standards on industrial worker health and safety as identified in the pertinent portion of **Appendix A** of this Decision." (*Id* at 177.) Based on these findings, the Commission concluded "that implementation of the Conditions of Certification below will reduce potential adverse impacts on the health and safety of industrial workers to levels of insignificance." (*Id.*)

The instant petition (merely requesting a change to a more efficient power configuration and the addition of new laydown areas) does not impact worker safety and does not alter the Commission's prior Worker Safety findings and conclusions in any manner. Indeed, the Staff report confirms that there is no change in applicable laws, ordinances, regulations, and standards (LORS) and that "[t]he changes proposed to IEEC do not significantly alter the types of hazards workers are exposed to or the risk of fire and explosion, nor do they alter the fire protection services provided by the local fire department. The project owner stated that all workers will undergo proper training that will reduce or eliminate any impacts resulting from the design modifications that would be different than those analyzed by staff in the original proceedings (IEEC Amendment Section 3.14)." (Staff Analysis, p. 116)

Despite the fact that this is a limited proceeding on an Amendment to the license and despite the fact that the Staff, both in the original proceeding and the Staff Analysis for the Amendment, concede that there are no significant, unmitigated worker safety issues associated with *this* project, the Staff seeks to introduce, through Worker Safety 3 and 4, a major new regulatory monitoring and enforcement program entirely unrelated to the relief requested in the Applicant's Petition. The Staff asserts that the purpose of these additional measures is to ensure "that safety procedures and practices are fully implemented at *all* power plants certified by the Energy Commission." (Staff Analysis, p. 119, emphasis added)

The Applicant respectfully submits that a proceeding on a petition for modification is not the appropriate forum for a party to raise issues outside the scope of the petition. If a party, including Staff, wishes to propose additional changes to a license unrelated to the relief

requested in the petition, such party should file its own petition for modification and bear the burden of proof for such modifications. Moreover, where the stated purpose of the proposal is to impose procedures to be implemented at all power plants certified by the Energy Commission, the proposal should be evaluated in a general rulemaking where all licensees have notice and an opportunity to be heard. Moreover, due process mandates that the Commission provide other governmental entities, such as Cal-OSHA, notice and opportunity to be heard on issues that may be within those agencies' expertise.

The Applicant has strong reservations regarding the proposed new conditions Worker Safety 3 and 4. These reservations relate to very serious issues of responsibility, liability and the efficacy of Staff's proposal. However, rather than enumerate our extensive objections to this new program, the Applicant would like to suggest a resolution of this issue that will meet the Staff's declared need for having an "extra set of eyes" during construction and commissioning, while avoiding extensive adjudication of Staff's newly proposed conditions.

Notwithstanding these serious reservations, Applicant has proposed a compromise that will allow the IEEC project to move forward on schedule while preserving the Staff's interest in these issues. Specifically, on April 13, 2005, just two months ago, the Commission adopted a new Worker Safety Condition proposed by the Staff in the Commission Decision on the Roseville Energy Park (01-AFC-3). That condition, Worker Safety 3, is similar to the two conditions proposed by Staff in this proceeding. The Applicant would accept as a condition on the IEEC project, the Roseville Energy Park condition Worker Safety 3, with minor modifications.

While we do not believe that any further Worker Safety conditions are necessary, we would accept the Roseville condition, with minor modifications, because this condition was recently proposed by Staff, fully adjudicated by the Commission and adopted in the Roseville case (along with certain standard Safety Plan requirements) as sufficient to fully mitigate the impacts of that project. Moreover, if any additional safety procedures are to be implemented in this limited proceeding, the Applicant believes that those procedures should at least be consistent with the procedures most recently adopted for a similarly situated facility. If Staff proposes any deviation in the program and procedures recently adopted for the Roseville Energy Park, the Staff should bear the burden of demonstrating why the IEEC should be treated differently.

While the Roseville condition is generally acceptable to the Applicant, there are several slight revisions that will improve the clarity and effectiveness of the condition. The Roseville condition, Worker Safety 3, with the minor revisions proposed by Applicant, is set forth in Attachment 1. The minor modifications are as follows:

- 1) Worker Safety 3 (Roseville) gives the Safety Monitor the authority to temporarily stop construction or commissioning activities "after consultation with the CBO." Recognizing that certain emergency circumstances may require that construction be immediately stopped without

time for "consultation", we recommend deleting the phrase "after consultation with the CBO" to permit timely response to all emergency situations.

2) Worker Safety 3 (Roseville), in the third bullet, requires the Safety Monitor to consult with the CBO to determine when construction may begin (after a stop order) "unless the problem is corrected immediately and to the satisfaction of the Safety Monitor and/or CBO." To be consistent with this requirement, we recommend that the second bulleted item in Worker Safety 3 (Roseville) be revised to provide that the authority to temporarily stop construction extends until the "problem is resolved to the satisfaction of the Safety Monitor and/or CBO."

3) Consistent with accepted industry standards and OSHA regulations, we suggest that references to "incidents" expressly refer to "OSHA recordable and Lost Time" incidents.

The Applicant sincerely hopes that the foregoing proposal to adopt Roseville Worker Safety Condition 3, with minor modifications, will resolve the Staff's concern. In the event that Staff may not agree to a condition adopted by the Commission just two months ago, we would urge the Commission to defer the entire issue to a general rulemaking proceeding. In the event that the Commission may elect to consider the Staff's additional worker safety conditions, the Applicant reserves its right to submit additional comments on this subject.

#### **Minor Corrections to Text of Staff Analysis**

In addition to the foregoing conditions, the Applicant also proposes editorial changes and minor corrections to the text of the Staff Analysis. These suggested changes are summarized in Attachment 2.

#### **Need for Timely Approval**

In the 2004 Update to the Integrated Energy Policy Report the Commission reported that as "significant numbers of aging power plants continue to retire between now and 2008, reserve margins in the state could become dangerously thin, primarily in Southern California. Aging power plant owners may choose to retire these units because they are unable to recover fully their costs during the relatively few hours of the year that they can operate. Keeping this capacity available over the next few years will prove a daunting challenge...." (IEPR, 2004 Update, p. xiv)

The Inland Empire Energy Project will help the State to meet the daunting challenge of avoiding the danger of future energy shortages. The Project Owner is prepared to commence site mobilization and construction as soon as all necessary regulatory approvals have been completed. Timely approval of the instant Amendment, an Amendment to improve the efficiency and environmental benefits of the project, will allow construction to commence this summer. Conversely, any delay in the approval of this Amendment could jeopardize the goal of

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commencing construction this summer and could potentially delay the delivery of this needed power for a significant period of time.

For these reasons, the Applicant urges the Commission to approve this Amendment, with the revisions and corrections addressed in this letter, on June 22, 2005.

**Conclusion**

In conclusion, we wish to again thank the Commission and Staff for timely and professional consideration of this petition for modification. We look forward to approval of the petition as recommended by the Staff, with the revisions and corrections addressed in this letter.

Sincerely,

A handwritten signature in cursive script that reads "Gregg Wheatland". The signature is written in black ink and is positioned above the printed names of the signatories.

Greggory L. Wheatland  
Jeffery D. Harris

Attorneys for Inland Empire Energy Center LLC

cc: Commissioners

**ATTACHMENT 1**  
**PROPOSED WORKER SAFETY CONDITION**  
**(To replace Worker Safety 3 and 4, as proposed in the Staff Analysis)**

**WORKER SAFETY-3** The Project Owner shall ensure that a CPM-approved Safety Monitor(s) conducts an on-site safety inspection of the power plant at least once a week during construction of permanent structures and commissioning unless a lesser number of inspections is approved by the CPM. The CPM may also require a similar inspection and report concerning linear facilities.

The Safety Monitor shall keep the Chief Building Official (CBO) fully informed regarding safety-related matters and coordinate with the CBO concerning on-site safety inspections, and the final safety inspection prior to issuance of the Certificate of Occupancy by the CBO. The Safety Monitor will be retained until cessation of construction and commissioning activities, and issuance of the Certificate of Occupancy, unless otherwise approved by the CPM. The Safety Monitor(s) shall also:

- Correct any construction or commissioning problems that could pose a future danger to life or health, consulting with the CBO as necessary.
- ~~After consultation with the CBO,~~ Have the authority to temporarily stop construction or commissioning activities involving possible safety violations or unsafe conditions that may pose an immediate or future danger to life or health, until the problem is resolved to the satisfaction of the Safety Monitor and/or CBO.
- Consult with the CBO to determine when construction may resume unless the problem is corrected immediately, and to the satisfaction of the Safety Monitor and/or CBO.
- Inform the CPM within 24 hours of any temporary halt in construction or commissioning activities.
- Be available to inspect the site whenever necessary in addition to the minimum weekly basis during construction and commissioning as determined in consultation with the CBO and CPM.
- Develop a safety program for the Project that complies with Cal/OSHA & federal regulations related to power plant projects.
- Ensure that all federal and Cal/OSHA requirements are practiced during the construction and installation of all permanent structures (including safety aspects of electrical installations).
- Ensure that all construction and commissioning workers and supervisors receive adequate safety training.

- Conduct safety training (including fall protection, confined spaces, respiratory protection, hazard communication, etc.), or ensure that the Project owner, union hall, and/or contractors conduct adequate safety training.

- Maintain all Material Safety Data Sheets, storage of all hazardous materials and all other required documentation for Cal/OSHA.

- Complete all accident and incident investigations, emergency response reports for injuries and inform the CPM of OSHA Recordable and Lost Time incidents.

- Ensure that all the plans identified in WORKER SAFETY-1 are implemented. The Safety Monitor shall be qualified regarding the following:

- Safety issues related to equipment, pipelines, etc,
- LORS applicable to workplace safety and worker protection
- Workplace hazards typically associated with power production
- Lock out tag out and confined spaces control systems
- Site security practices and issues

**Verification:** The Project owner shall submit the Safety Monitor(s) resume(s) to the CPM for approval at least 30 days prior to site mobilization. One or more individuals may hold this position.

The Safety Monitor shall submit in the Monthly Compliance Report a monthly safety inspection report to include:

- Records of all employees trained for that month (all records shall be kept on site for the duration of the Project);
- A summary report of safety management actions that occurred during the month;
- A report of any continuing or unresolved situations and incidents that may pose danger to life or health;
- Reports of OSHA Recordable and Lost Time accidents and injuries that occurred during the month.

## Attachment 2

CEC Staff Analysis TOC	Reference	Issue	Fix
Biology	P. 54, para 2, final sentence	Incorrect statement. "The temporary impact is only considered adverse considering the availability..."	"The temporary impact is not considered adverse..."
Efficiency	p. 59, para 4, 1 <sup>st</sup> sentence	Editorial comment	Should read "test these initial Frame 7H machines" as there are two units.
	p. 60, para 3, 2 <sup>nd</sup> sentence	Editorial comment	Change to "Duct firing is not being provided," as saying that "Duct firing is not an option at this time" implies that it would be considered for addition at IEEC in the future, which is not true.
	p. 60, para 3, 3 <sup>rd</sup> sentence	Correct math error.	Efficiency should read "59.6" percent.
	p. 60, para 3, 4 <sup>th</sup> sentence	Correct math error.	Increases in fuel efficiency should read "5.5" and "12.0" percent.
	p. 60, last para, 1 <sup>st</sup> sentence	Correct math error.	Natural gas fuel consumption should read "108.6 billion Btu/day LHV".
Hazardous Materials Management	p. 66, para 3, 3 <sup>rd</sup> and 5 <sup>th</sup> sentences	No regulatory basis for new condition.	The text refers to additional specific measures that are to be implemented if compressor buildings are located within 1500 feet of certain facilities but does not cite the specific LORS that require these measures. Please cite LORS or delete this text.
Reliability	p. 81, para 4, 1 <sup>st</sup> sentence	Editorial comment	Should read "test these initial Frame 7H machines" as there are two units.

Attachment 2

CEC Staff Analysis TOC	Reference	Issue	Fix
Soil and Water Resources	P. 89, last sentence.	Incorrect statement "The project owner has not provided a map that shows the proximity of the effective FEMA floodplain to the site." AFC Figure 5.4-2 and response to DR 51 provide the maps.	Delete sentence