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05-AFC-2	
DATE	SEP 14 2007
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**BEFORE THE CALIFORNIA ENERGY COMMISSION
STATE OF CALIFORNIA**

In the Matter of:) DOCKET No. 05-AFC-2
)
 Application for Certification)
 for the Walnut Creek Energy Park)
 _____)

**ENERGY COMMISSION STAFF'S COMMENTS ON TWO ISSUES RAISED AT THE
SEPTEMBER 12, 2007 PMPD HEARING**

On September 12, 2007, the Committee assigned to this proceeding held a hearing on the Presiding Member's Proposed Decision (PMPD) and an evidentiary hearing to complete the evidentiary record. At this hearing the Committee requested clarification from staff on Cultural Resources condition of certification CUL-7 and staff requested leave to file additional comments on applicant's proposed condition of certification NOISE-7. Staff submits the following comments on these two topics.

In CUL-7, staff intends the condition to require monitoring in all the phases of construction listed only where ground disturbance exceeds three feet. Staff suggests the following changes to the condition to clarify this intent:

CUL-7 A Native American monitor or monitors shall be obtained to monitor in areas where ground disturbance exceeds three feet and where Native American artifacts may be discovered during the following phases of construction: preconstruction site mobilization, construction ground disturbance, construction grading, boring, and trenching and construction; (including landscaping) ~~in areas where Native American artifacts may be discovered.~~

At the hearing, the Committee indicated that, because the anticipated operating profile had been reduced, it no longer believed the project was likely to operate frequently during the quietest nighttime hours and, thus, the Committee wished to restore Condition of Certification NOISE-4 to the form presented in staff's Final Staff Assessment. In addition to reverting back to the originally proposed NOISE-4, the applicant had proposed NOISE-7 to offer additional off-site noise reduction measures in response to specific noise complaints. Staff requested leave to provide written comments on this proposed condition. The Committee further instructed staff to describe at what point a power plant's potential to operate during the quietest nighttime hours would constitute a significant impact.

Because the Committee's initial determination that a 9 dBA increase in noise was dependent on a projection that the project would likely have a capacity factor as high as 65%, which has since proven to be inaccurate, staff recommends that Condition of

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Certification NOISE-4 on pages 129-130 of the PMPD be replaced with the following Condition of Certification NOISE-4 from pages 4.6-16 and 4.6-17 of the FSA.

NOISE-4 The project design and implementation shall include appropriate noise mitigation measures adequate to ensure that operation of the project will not cause noise levels attributable to plant operation, during the four quietest consecutive hours of the nighttime, to exceed an average of 52 dBA measured both near the intersection of Fieldgate Avenue and Folger Street (monitoring location M2) ~~or~~ and near the intersection of Inyo Street and Roxham Avenue (monitoring location M4).

The measurement of power plant noise for the purposes of demonstrating compliance with this condition of certification may alternatively be made at a location, acceptable to the CPM, closer to the plant (e.g., 400 feet from the plant boundary) and this measured level then mathematically extrapolated to determine the plant noise contribution at the affected residence. However, notwithstanding the use of this alternative method for determining the noise level, the character of the plant noise shall be evaluated at the affected residential locations (M2 and M4) to determine the presence of pure tones or other dominant sources of plant noise.

No new pure-tone components may be introduced. No single piece of equipment shall be allowed to stand out as a source of noise that draws legitimate complaints.

- A. When the project first achieves a sustained output of 90 percent or greater of rated capacity, the project owner shall conduct a 25-hour community noise survey at monitoring sites M2 and M4, or at a closer location acceptable to the CPM. This survey during power plant full load operation shall also include measurement of one-third octave band sound pressure levels to ensure that no new pure-tone noise components have been introduced.
- B. If the results from the noise survey indicate that the power plant average noise level at the affected receptor sites exceeds the above value during the four quietest consecutive hours of the nighttime, mitigation measures shall be implemented to reduce noise to a level of compliance with this limit.
- C. If the results from the noise survey indicate that pure tones are present, mitigation measures shall be implemented to eliminate the pure tones.

Verification: The survey shall take place within 30 days of the project first achieving a sustained output of 90 percent or greater of rated capacity. Within 15 days after completing the survey, the project owner shall submit a summary report of the survey to the CPM.

Included in the survey report will be a description of any additional mitigation measures necessary to achieve compliance with the above listed noise limit, and a schedule, subject to CPM approval, for implementing these measures. When these measures are in place, the project owner shall repeat the noise survey.

Within 15 days of completion of the new survey, the project owner shall submit to the CPM a summary report of the new noise survey, performed as described above and showing compliance with this condition.

Staff's rationale behind this condition was expressed in the FSA, and is summarized here. Staff normally considers an increase in noise levels between 5 and 10 dBA at sensitive receptors as potentially significant, depending on the specific situation. The residential neighborhoods that may be affected by the WCEP are relatively noisy; nighttime background (L_{90}) noise levels drop only to 44 dBA (average of the four quietest consecutive hours). A quiet residential neighborhood would see levels half this loud (around 34 dBA); an extremely quiet rural environment would see levels one-fourth as loud (around 24 dBA). In such circumstances, an increase of 9 dBA would likely constitute a significant annoyance, and a significant adverse impact. However, given its urban setting and the noisy environment surrounding the WCEP, staff believes an increase in noise levels of 9 dBA, as would be permissible under Condition of Certification NOISE-4 below, would not constitute a significant adverse impact.

Further, as was brought out at the hearing, the plant is not expected to operate late at night except on very rare occasions. Staff's calculations, based on information in the AFC, identified the quietest nighttime hours as 1 to 5 a.m. at M2, and midnight to 4 a.m. at M4. Were the plant to operate during these quietest hours once or twice in a year's time, staff does not believe that this would constitute a significant impact. Were it to occur on a more regular basis than anticipated, this could certainly be construed as a significant adverse impact. If such were the case, complaints would be lodged under Condition of Certification NOISE-2, and brought to the attention of the CPM. The condition requires the project owner to take reasonable measures to reduce the noise at its source.

Staff recommends that Condition of Certification NOISE-7 suggested by the applicant not be incorporated into the PMPD. Conditions similar to this have been proposed in previous siting cases where the number of sensitive receptors potentially affected by the project was very small (from one to ten or so). In the case of the WCEP, the number of residences potentially affected could exceed 1,500. In such a case, significant noise impacts can only be mitigated by reducing plant noise at the source, as discussed above. Because the Committee has determined that the project would not have a significant adverse noise impact due to the reduction in the project's projected capacity factor, *NOISE-7* is not necessary to mitigate a project impact.

Further, Condition of Certification NOISE-7 as proposed is unworkable. Several problems with this condition were discussed at the hearing, but staff's chief objection is

that the Compliance Project Manager would have no way to determine whether the project had exceeded the noise limit at a complainant's property without having installed a continuous noise monitoring station to provide historical noise measurements. For these reasons, staff believes that the original NOISE-4, as reproduced above, is sufficient to mitigate the project's potential noise impacts, and the applicant's recommended NOISE-7 should not be adopted.

DATED: September 14, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L. M. Decarlo', written in a cursive style. The signature is positioned above a horizontal line.

LISA M. DECARLO
Senior Staff Counsel

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION
FOR THE WALNUT CREEK ENERGY PARK
(WCEP)

DOCKET No. 05-AFC-2

(Revised 6/6/07)

INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

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DECLARATION OF SERVICE

I, Julie Mumme, declare that on September 14, 2007, I deposited copies of the attached Energy Commission Staff's Comments on Two Issues Raised at the September 12, 2007 PMPD Hearing in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

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I declare under penalty of perjury that the foregoing is true and correct.



[signature]