

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov



November 25, 2009

Ken Strello, Senior Planner
City of Oakley
Community Development Department
Planning Division
3231 Main Street
Oakley, CA 94561

DOCKET**09-AFC-4**

DATE 11/25/09

RECD. 11/30/09

**RE: Request for City Of Oakley Comments and Recommendations on the
Oakley Generating Station Project (09-AFC-4)**

Dear Mr. Strello:

The purpose of this letter is to request the city of Oakley's comments on an Application for Certification (AFC) recently filed at the California Energy Commission. In accordance with California Code of Regulations, title 20, section 1714 *et seq.*, the Energy Commission staff requests that the city of Oakley provide a letter **by December 30, 2009**, containing its analyses, comments, and recommendations on the land use, traffic/transportation, and visual resources issues identified in this letter and contained in the AFC.

On June 30, 2009, the California Energy Commission received an AFC from Contra Costa Generating Station, LLC proposing to construct and operate the Oakley Generating Station (OGS or Project), in the City of Oakley, in Contra Costa County. The OGS would be a natural gas-fired, combined-cycle electrical generating facility rated at a nominal generating capacity of 624 megawatts (MW). On August 5, 2009, copies of the AFC and Supplement were mailed to Alison Thornberry and Rebecca Willis of the City of Oakley Community Development Department. Additionally, the AFC and other Project information can be found at the following web link:
<http://www.energy.ca.gov/sitingcases/contracosta/index.html>.

The Energy Commission has the exclusive authority to license all new power plants and additions, 50 MW or greater in the state (Pub. Resources Code, §§ 25110, 25120, and 25500). The Energy Commission's license takes the place of other state, regional, and local permits (e.g., conditional use permit and variance), and other entitlements that would otherwise be required. The Energy Commission's facility certification process carefully examines public health and safety, environmental impacts, and engineering aspects of proposed power plants, and all related facilities such as electric transmission lines and natural gas and water pipelines that would serve the project. The Energy Commission is the lead agency under the California Environmental Quality Act (CEQA) for all AFCs and has a certified regulatory program under CEQA.

As part of the licensing process, the Energy Commission must determine whether a proposed facility complies with all applicable state, regional, and local laws, ordinances,

PROOF OF SERVICE (REVISED 10/8/09) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 11/30/09

MS

regulations, and standards (LORS) (Pub. Resources Code, § 25523(d)(1)). The Energy Commission must either find that a project conforms to all applicable LORS or make specific findings that a project is needed for public convenience and necessity even where the project is not in conformity with all applicable LORS (Pub. Resources Code §25525). For the Energy Commission to determine whether a proposed power plant project would comply with applicable LORS, we seek out and welcome input from affected state, regional, and local agencies.

Energy Commission staff have begun an assessment of the Project (a summary of our licensing process for this project can be found on the project web site). As part of our assessment, we are interested in the city of Oakley's position related to land use, traffic/transportation, visual resources, and any other aspects of the Project that may be of concern to your agency (Title 20, California Code of Regulations section 1714.5). We would like to incorporate the city's input and address any concerns in our Preliminary Staff Assessment (PSA).

Land Use

According to the AFC, the OGS is proposed to be located on a 21.95-acre parcel (the Project site) that is currently part of a larger 210-acre parcel owned by DuPont. The Project site is designated by the Oakley General Plan as Utility Energy (UE), which allows for power plant uses involved in the clean production of electricity utilizing the best available combustion turbine technology (Oakley 2020 General Plan, Land Use Element, p. 2-17). The Project site is on land that is zoned Heavy Industrial (Contra Costa County zone designation). According to the OGS AFC, the city of Oakley (incorporated in 1999) General Plan designates the entire DuPont property a redevelopment zone, but the city has not formally rezoned the DuPont property from the previous Contra Costa County Heavy Industrial (HI) zoning designation.

The city of Oakley initially adopted the zoning districts of Contra Costa County at the time of incorporation in 1999. In December 2002, the city adopted its own general plan and followed with the Oakley Municipal Code. Oakley did update the zoning districts; however, certain properties were not rezoned at that time. According to the AFC, the DuPont property, which includes the Project site, was one of the sites that was not rezoned and retains the zoning district from Contra Costa County.

Because the Project site is within a city of Oakley redevelopment area, there is a pending specific plan with the proposed zoning for the entire DuPont property. According to the AFC (on page 5.6-16), "...the DuPont Specific Plan..., including the project site, is under preliminary review by the City of Oakley." In addition, AFC Section 5.6.1.5.1, states,

The plan calls for more than 200 acres of open space that includes wetlands along the San Joaquin River and trails to allow public access. To support new development, the plan also requires a complete upgrade of all site infrastructure including all utilities and roads. DuPont intends to select a master developer to

build out a phased master plan for the property. The Western Development Area [where the proposed OGS is located] is Phase 1 of the master plan.

Because of the redevelopment designation and pending specific plan, the current applicable (yet pending) zoning district for the Project site is (P-1 RA) Redevelopment Agency Planned Development (AFC page 5.6-13). The city of Oakley intends to bring a citywide rezone to the City Council that would ultimately rezone the project site "SP-3" Specific Plan-3 (third specific plan within the city). Future development on the project site would require a specific plan once the zoning is modified (AFC page 5.6-21). In addition, AFC page 5.6-23 states,

The city would require a rezone to a compatible Oakley zone district if an application for development was submitted prior to the citywide rezone. Based on a review of the Oakley zoning ordinance, the most compatible zone district for a power plant would be a UE district. The purpose and intent of the UE district is to allow clean production of electricity using combustion turbine technology, compatible with adjacent uses. A Conditional Use Permit is required for a power plant within this zone district. This district is, of course, consistent within the UE General Plan land use designation that currently applies to the project.

According to the city of Oakley Municipal Code 9.1.604, Utility Energy District, all uses in the UE zoning district are conditioned uses, including "Gas-electric Power Plant (full scale).

But for the Energy Commission's exclusive authority to license the Project, siting the OGS at the proposed location would require the following land use actions by the city of Oakley:

- The Project site to be rezoned to UE (Utility Energy);
- A CUP to allow development of a power plant within the UE zoning district; and
- A revision of the DuPont Specific Plan to show the rezone of the site from SP-3 to UE.

Staff is currently in the discovery phase and is researching land use issues related to the Project. For the Land Use Staff Assessment, Energy Commission staff would appreciate input from the city regarding the city of Oakley's interpretation of its own policy guidance documents, including the DuPont Specific Plan and the Municipal Code. Prior to making findings for its license, the Energy Commission staff would like the city to indicate the CUP findings it would make regarding the OGS and what conditions the city would attach to the Project, were it the permitting agency. Any conditions recommended by the city as part of a CUP will be considered by Energy Commission staff for inclusion in the conditions of certification for the Project. In addition, Energy Commission staff would like the city to confirm the need for a site rezone and revision to the DuPont Specific Plan to reflect the rezone for the Project site, and when the city would expect to process and complete these land use actions.

Traffic and Transportation

The Traffic and Transportation section of the AFC (Section 5.12) presents the applicant's assessment of the proposed project's consistency with the city's traffic and transportation plan, policies and regulations. Energy Commission staff would like to know whether the applicant's traffic/transportation information is complete and accurate and what traffic/transportation conditions, if any, would be required.

Visual Resources

The Visual Resources section of the AFC (Section 5.13) outlines the applicant's assessment of the proposed project's consistency with the city's aesthetic/visual regulations. Energy Commission staff would like to know whether the applicant's visual information is complete and accurate and what aesthetic/visual conditions, if any, would be required.

Request for City Analysis, Comments, and Recommendations

We request that the city of Oakley provide a letter by December 30, 2009, addressing the land use, traffic/transportation, and visual resources issues noted above.

In your review of the AFC, if you have any other issues or concerns, or need additional time to respond, please let us know. Please contact Joseph Douglas, Siting Project Manager, by phone at (916) 653-4677 or by email at jdouglas@energy.state.ca.us should you have any questions or need additional time.

Sincerely,



Amanda Stennick, Supervisor
Community Resources Unit
Environmental Protection Office
Siting, Transmission, and Environmental
Protection Division

cc: Docket (09-AFC-4)
Proof of Service List



**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
(Established 10/8/2009)**

APPLICANT

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INTERVENORS

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DECLARATION OF SERVICE

I, Maria Santourdjian, declare that on November 30, 2009, I served and filed copies of the attached, Request for City of Oakley Comments and Recommendations on the Oakley Generating Station Project (09-AFC-4) dated November 25, 2009. 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: [\[http://www.energy.ca.gov/sitingcases/contracosta/index.html\]](http://www.energy.ca.gov/sitingcases/contracosta/index.html). The document has 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;

 x by personal delivery or by depositing in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above 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.

Original Signature in Dockets
Maria Santourdjian