

MEMORANDUM

NOVEMBER 3, 1997

970000

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (PAUGH) JJP
RE: UNDOCKETED - FLORIDA ELECTRICAL POWER PLANT SITING ACT
AND MERCHANT PLANTS

Please insert the attached document from Constellation Power Development, Inc. into the record of the above matter.

LJP/js
Attachment
cc: Division of Electric and Gas (Haff)
I:tyspmm2.ljp

ACK _____
AFA _____
APP _____
CAF _____
CMU _____
CTR _____
EAG _____
LEG _____
LIN _____
OPC _____
RCH _____
SEC 1 _____
WAS _____
OTH _____

DOCUMENT NUMBER-DATE

11278 NOV-35

FPSC-RECORDS/REPORTING

**Constellation Power
Development, Inc.**
250 West Pratt Street
Baltimore, Maryland 21042

Fax Cover Sheet

DATE: October 22, 1997 TIME: 2:59 PM
TO: Leslie J. Paugh PHONE:
 FPSC FAX: 904-413-0014 *6184*
FROM: R. L. (Rick) Wolfinger PHONE: (410) 783-2889
 FAX: (410) 783-3610
RE: November 7, 1997 Workshop
CC:

Number of pages including cover sheet: *4* ||

Message:

Constellation Power Development, Inc.
250 West Pratt Street
Baltimore, Maryland 21201-2423
410 783 2800



Constellation Power Development

October 22, 1997

Ms. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RE: Florida Electric Power Plant Siting
Act and Merchant Plants
Undocketed Workshop - November 7, 1997

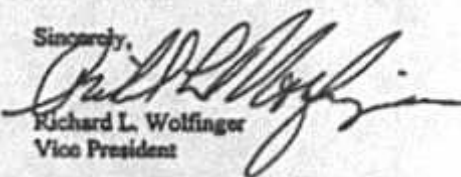
Dear Ms. Bayo:

Constellation Power Development, Inc. is an independent power producer with 26 plants in the United States and an active development program. We have been active in the Florida market for several years and have located several potential merchant power plant sites in Florida.

Our company is actively permitting a 700 MW merchant plant in California and has received a Notice of Intent waiver (in essence, waiving a "need" determination) from the California Energy Commission. The project, called the High Desert Power Project, has submitted an Application for Certification with the California Commission under a statutory scheme that is similar to the requirements of the Power Plant Siting Act. Information on this project is available by contacting www.HighDesertPower.com and, through a link to the CEC, you may access the regulations required for siting a California power plant.

Constellation Power Development, Inc. is well versed in the merchant power plant market and the deregulation of electric power. We believe that allowing merchant plants to proceed through the Power Plant Siting Act need determination process without proffering signed PPA's (because signed PPA's are incompatible with the early stages of merchant plant development) will promote lower cost electricity and is in the best interest of the electric consumer and the State as a whole. We request that we be added to the Commission Workshop and be provided time to address the Commission on November 7, 1997.

Sincerely,


Richard L. Wolfinger
Vice President

cc: Joseph Jenkins - FPSC
Leslie J. Paugh, Esq. - FPSC
Scheff Wright - Landers & Parsons

97-SIT-1
CALIF. ENERGY COMMISSION
JAN 24 1997
RECEIVED IN DOCKETS

In the Matter of)
High Desert Power Project LLC)
Request for Jurisdictional)
Determination)
_____)

Docket No. 97-SIT-1

PETITION TO GENERAL COUNSEL OF THE
CALIFORNIA ENERGY COMMISSION

For Interpretation and Clarification

of

California Public Resources Code, Section 25540.6

Pursuant to 20 CCR 1231

January 24, 1996

Counsel for
High Desert Power Project LLC

Allan J. Thompson
4 Embarcadero Center, Fl 17
San Francisco, CA 94111
(415) 774-2928

TO THE GENERAL COUNSEL
CALIFORNIA ENERGY COMMISSION:

Petition for Jurisdictional Determination

High Desert Power Partners, LLC ("HDPP") hereby petitions that the California Energy Commission ("Commission") make a jurisdictional determination regarding an exemption from the requirement to file a Notice of Intention ("NOI") for construction of a powerplant in California. This Petition is filed pursuant to the provisions of 20 California Code of Regulations, Section 1231.

HDPP, by this request, seeks clarification of the applicability of certain NOI exemptions contained in California Public Resources Code, Section 25540.6. HDPP believes this code section offers an exemption to the proposed High Desert Powerplant to be constructed on the abandoned George Air Force base, located near the city of Victorville, in San Bernardino County, as the powerplant resulted from negotiations demonstrating its need.

L

PETITIONER

Petitioner is a Limited Liability Corporation

Correspondence should be directed to the following:

Inland Energy, Inc.
3501 Jamboree Road, South Tower
South Tower, Suite 606
Newport Beach, California 92660

II

STATEMENT OF FACTS

A. Initial Negotiations.

Inland Energy, Inc. commenced the development of the High Desert Power Project, a natural gas fired powerplant, approximately three years ago when it determined that there was a growing need for peaking capacity to serve various municipal cities in Southern California. This perception was confirmed through negotiations with various Southern California cities. Inland, together with a previous partner, was in the process of determining the optimum powerplant size and exact location for the facility, when utility deregulation and restructuring of the utility industry in California clouded the purchasing environment for the output from the proposed facility.

B. 1994 Electricity Report

This Commission evaluated the requirements for investor and public owned utilities in the state in the 1994 Electricity Report. Although this Commission will soon issue its 1996 Electricity Report, and update utility resources and requirements, HDPP believes that the requirements forecast in the 1994 Electricity Report have not changed appreciably over the past two years, and the requirements may have increased due to the cancellation of some of the Biennial Resource Plan Update capacity. In the 1994 report, the Commission evaluated the requirements of small public power utilities and concluded that a reasonable level of public power additions would be 1,788 MW in 1998 and 2,647 MW in 2001 (ER 94, Table 9-5, p. 128). Although these requirements are for all public power utilities across the state, the conclusions confirmed Inland's decision to develop the High Desert Power Project to serve municipal electric generating requirements.

C. Deregulation.

On May 20, 1994 the California Public utilities Commission ("CPUC") launched California toward an increasingly competitive electric energy environment with the issuance of a proposed plan for deregulation. Since that time the CPUC, this Commission, the state legislature and various stakeholders have worked diligently toward

achieving a plan for deregulation. Recently, the State of California enacted AB 1890, Chapter 854, which would further commit the state to the opening of the electric industry to competition. A Power Exchange will be created to act as a clearinghouse for sales and purchases by the state's investor-owned utilities, and possibly the municipal utilities.

One of the implications of this arrangement is that, for the most part, powerplants are no longer service area specific; plants can be constructed at an optimum location with the power produced by that plant being sold into the Power Exchange for distribution throughout California. However, the High Desert facility will be constructed in California, thereby decreasing the state's dependence on out-of-state energy and easing transmission constraints into California. While deregulation offers a wider market for sale of power plant output, a greater uncertainty exists due to the availability of power from the western U.S. grid to satisfy the California customer requirements.

D. Coordination With Local Interests

During the development process for this facility it became apparent to the local communities that the High Desert Power Project could act as an aid to local redevelopment efforts. The City of Victorville requested that the facility be located on George Air Force Base, one of the military bases scheduled for closure under the Base Closure Act. The project developers have agreed to this change and continue to work closely with the local communities to make sure that the project meets local land use desires.

E. Current Negotiations

In order to advance the High Desert Power Project, and gain expertise in utility purchase requirements, Inland associated Constellation Energy, an affiliate of Baltimore Gas & Electric Company.

HDPP continues to have negotiations with various municipal utilities that continue to have electric generation requirements. Additionally, HDPP anticipates offering energy to all California utilities through the Power Exchange, once that purchasing entity is in existence. While the municipal utilities that require electric generation have not yet declared that they will purchase their requirements through the Power Exchange, HDPP believes that the proposed High Desert Power Project can fulfill these requirements in a competitive environment. The powerplant, as originally conceived during negotiations with the Southern California cities, has been refined through these later negotiations and the recognition of the broader market for sales.

III

THE HIGH DESERT POWERPLANT

In response to the negotiations with the municipal cities, Inland developed the concept for a low-price, natural gas-fired powerplant that could offer electric energy at competitive prices (See attached affidavit of Andrew C. Welch). With deregulation and the introduction of the Power Exchange to purchase energy for all investor-owned (and possibly municipal) utilities, Inland, together with Constellation, refined the powerplant concept to be a 700 MW, natural gas-fired facility, to be located on the abandoned George Air Force base in San Bernardino County. If the Commission approves the jurisdictional determination herein sought, HDPP will finalize the development of information required for an Application for Certification ("AFC").

IV

§STATUTE TO BE INTERPRETED

Public Resources Code, Section 25540.6. Proposals not requiring notice of intent.

- "(a) Notwithstanding any other provision of law, no notice of intent is required...for any of the following:
- (1) A thermal powerplant which is the result of a competitive solicitation or negotiation...and will employ natural-gas fired technology."

V.

INTERPRETATION DESIRED

Prior to the continuation of efforts to develop the information required for an AFC, HDP would like assurances that its interpretation of Public Resources Code 25540.6 (a) (1) is consistent with this Commission's interpretation, given the facts of the High Desert Power Project. HDPP seeks assurances that the High Desert Power Project will qualify for an exemption, and not require an NOI to be filed prior to an AFC.

The High Desert Power Project is the direct result of negotiations with various municipal utilities in Southern California, the City of Victorville and the anticipated needs of the Power Exchange. The plant concept was developed to meet this particular need, and while deregulation may offer a wider market, current negotiations confirm the continuing need for the power to be produced by this facility.

VI

ACTION DESIRED

HDPP requests the Commission make a determination that the High Desert Power Project is a result of negotiation, and that no NOI will be required prior to the consideration of an AFC for this project.

VII

COMMISSION'S AUTHORITY

The Commission's authority to make the ruling requested herein is found at 20 California Code of Regulations, Section 1231. This provision gives the Commission the power to make a jurisdictional determination regarding a proposed site and related facility. As the High Desert Power Project is a proposed facility at a proposed site, the Commission has the authority to make the ruling requested.

VII

INTERESTED PARTIES

1. San Diego Gas & Electric Company
101 Ash Street
San Diego, CA 92112
2. Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, CA 91770
3. Pacific Gas & Electric Company
77 Beale Street
San Francisco, CA 94106

Jan 23 '97 15:19 P.02/02

4. City of Riverside . .
3900 Main Street
Riverside, CA 92522
5. City of Banning
P.O. Box 998
Banning, CA 92220
6. City of Colton
650 N. In Cadena Drive
Colton, CA 92324
7. City of Glendale
141 North Glendale Ave.
4th level
Glendale, CA 91206-4496
8. City of Amasa
777 North Alameda Avenue
P. O. Box 9500
Amasa, CA 91702-9500
9. City of Anaheim
P. O. Box 3222
Anaheim, CA 92803

Under penalty of perjury, the undersigned hereby declare that the contents of this petition are true and correct to the best of our knowledge.

Dated: 1/24/97



Wm. Buck Johns
High Desert Power Project LLC

Dated: 1/24/97



Alan J. Thompson
Contractor to High Desert Power Project LLC

Affidavit of

Andrew C. Welch

The undersigned, Andrew C. Welch, hereby attests that I have been associated with the development of the High Desert Power Project for over two years, first as an employee of Diamond Energy, Inc. and currently as an independent contractor to the project. In my duties and responsibilities during that time I have first hand knowledge of the development of the High Desert Power Project, and hereby attest to the following:

The development of the High Desert Power Project was begun in 1994. It was initially conceived to sell wholesale power to the Southern California Public Power Authorities (known collectively as "SCPPA"), and would benefit the member cities by lessening the cost of purchased electric energy. To fulfill this purpose, the project needed to be located in a place that would allow delivery of power through the Southern California Edison (SCE) transmission system to the municipal utilities. The site also had to have access to acceptable natural gas transportation, and located outside the South Coast Air Basin. These factors all led to the selection of the Victor Valley.

Starting in 1994, the project proponents initiated discussions with the municipal utilities in the Southern California, with the goal of arriving at a mutually acceptable power purchase arrangements for the plant's output. The plant was initially conceived as a combined cycle that would operate in a base load mode. This plan was altered after discussions with the utilities revealed that they had a need for peaking power rather, than base load power. This need exists primarily due to purchase obligations entered into previously by those utilities, as well as the high cost of peaking power. The cost of power during those peak periods was so high that it was apparent the market required additional resources to fulfill this need.

While negotiations were in progress, it became clear that the State of California was going to restructure the way that the electrical utility business is regulated. None of the potential purchasers were prepared to act while that restructuring debate was occurring. The project proponents continued to keep the discussions going and worked on other aspects of project development, such as local government acceptance and water issues.

During this time Victor Valley Economic Development Agency (VEEDA), the redevelopment agency for the former George Ah Force Base, contacted the proponents to suggest that the power plant be located on the base. It was felt that the project will offer the local communities greater benefits by locating on the base. The base location fits in with the planned uses of the base, will be isolated from any residential areas, and make use of the treated wastewater from the nearby treatment facility. Final negotiations are currently underway for the site.

Now that the state has set the course for restructuring the electric energy industry, it is clear that the opportunities for sales out of the project have increased. We believe that in addition to municipal utility requirements for low cost peaking, base, and intermediate power, a whole new market of aggregators, direct access retail customers, and others are now available to the project. Also, the planned Power Exchange offers sales opportunities for low cost suppliers, such as the High Desert Power Project. This development has become a critical evaluation benchmark for the project. The ability to sell power below projected Power Exchange prices ensures the economic viability of the project. The project proponents have used both the publicly available analyses, such as the one generated by the CEC, and proprietary analyses commissioned for this effort.

The purpose of the restructuring, and specifically the deregulation of the electric generating business, was to lower costs. For this to occur, either existing generating plants must lower costs or new low cost suppliers must be found. Our market analysis is that the older inefficient plants cannot lower costs, therefore, there appears to be opportunities for construction of large, low cost plants. These opportunities are for both peaking and base loaded facilities.

Many factors will go into the decision of whether to build a peaker or a base loaded plant. Transmission loading, availability of out of state suppliers, and risk profiles of purchasers will all be determined as the deregulated market matures. However, we currently believe that the High Desert Power Project will be able to serve a market of 700 MW as a peaker, base loaded plant, or a combination of the two.

Signed:


Andrew C. Walsh

Project Director - High Desert Power Project, L.L.C.

State of California

County of Orange

On January 22, 1997 before me, Jose Tomas Tolentino, Notary Public, personally appeared Andrew C. Walsh, personally known to me to be

the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacities, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal




Signature of Notary