California State Auditor

BUREAU OF STATE AUDITS

California Energy Commission:

Although External Factors Have Caused Delays in Its Approval of Sites, Its Application Process Is Reasonable

August 2001
2001-118

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CALIFORNIA STATE AUDITOR

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August 20, 2001 2001-118

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning our review of the California Energy Commission's (energy commission) process for siting new and repowered energy generation facilities.

This report concludes that the energy commission missed the 12-month standard for approving Applications for Certification (applications) by more than 30 days for 10 of the 23 applications it has approved since 1990. However, while the energy commission is responsible for coordinating the efforts of all parties involved in the application process, the delays were generally due to factors outside its control. For example, applicants and local, state, and federal agencies were major contributors to the delays we identified.

Additionally, while the energy commission did not always approve applications promptly, its process appears reasonable and is comparable to four of five states we surveyed. However, on average, the energy commission takes longer to approve applications than three of the states with comparable processes. This is due, in part, to the inclusion of three projects that required more than two years to approve.

Finally, the energy commission has implemented three expedited siting processes with the intent to accelerate the construction of power plants in the short term. In fact, the energy commission has approved 10 projects with a total generating capacity of 850 megawatts under its new 21-day process. We were unable to evaluate the other two expedited processes because only one application has been approved under either of these processes.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE
State Auditor

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SUMMARY

Audit Highlights . . .

Our review of the California Energy Commission's (energy commission) siting and approval process revealed that:

- ☑ *Although the energy commission has not always approved applications within the standard 12-month period, setbacks were due to a combination of factors.*
- ☑ *Of the four states with comparable processes, only Oregon, at 30 months, took longer than California to approve applications. Minnesota, Florida, and Connecticut took between 7 and 15 months to approve applications, while the energy commission averaged nearly 17 months.*
- ☑ *The energy commission is able to approve projects quicker than other permitting processes in California because it combines activities that are performed consecutively under other processes.*
- ☑ *Ten applications have been approved under the new 21-day expedited process, adding over 850 megawatts of electricity to the State's supply.*

RESULTS IN BRIEF

Concerns have been raised about the inability of the State Energy Resources Conservation and Development Commission (energy commission) to approve applications for the siting of power plants—known as Applications for Certification (applications)—in a timely manner. These concerns have intensified recently because of California's energy crisis. It is true that the energy commission has not always approved applications within the standard 12-month period. For 10 (43 percent) of the 23 applications approved since 1990, the energy commission missed the 12-month standard for approval by more than 30 days. Although the energy commission is ultimately responsible for the approval process, multiple factors contributed to the delays for most of these 10 projects and some of the delays were outside the energy commission's control. For all of the 10 applications that were approved late, applicants did not submit some of the required information in a timely manner. For 7 of these applications, other local, federal, and state agencies failed to process approvals promptly. In addition, outside parties raised objections to some of the proposed sites, thus delaying the approval of 3 applications. Finally, for 7 of the applications the energy commission held public workshops well beyond its 180-day standard. However, because the energy commission continued to attempt to resolve all outstanding issues while waiting for other agencies to issue their final decisions, the average approval time for applications over the past 11 years was 14 months, only 2 months beyond the 12-month standard.

In addition to the 23 applications it has approved since 1990, the energy commission has also performed various levels of review on 13 other power plant applications. However, the developers withdrew these applications before the energy commission completed its reviews. Although the staff resources devoted to reviewing these applications may have had some effect on the energy commission's ability to approve other projects within the required time frame, we do not believe the impact was significant on recent projects.

The energy commission's process for approving applications is comparable to those used by four of five states we surveyed. Our review of Minnesota, Texas, Florida, Connecticut, and Oregon suggested that, with the exception of Texas, the tasks performed by each state when approving applications were generally similar. Of the four comparable states, only Oregon took longer than California to approve applications. Minnesota, Florida, and Connecticut each averaged approval times of between 7 and 15 months, Oregon averaged 30 months, and the California energy commission averaged nearly 17 months—2.5 months to assess the adequacy of the application and more than 14 months to approve it. However, when we omit from these calculations three projects that involved serious emissions concerns, the energy commission's average approval time decreases to 15 months.

The energy commission's process is more efficient than other permitting processes in California. The California Environmental Quality Act and the Permit Streamlining Act allow up to 24 months for the approval of similar types of projects. The energy commission is able to approve projects more quickly because it combines activities that are performed consecutively under these other processes.

In addition to its standard 12-month siting process, the energy commission recently implemented three expedited siting processes of varying lengths: 6 months for thermal power plants with no adverse environmental impacts, 4 months for simple cycle facilities, and 21 days for plants that would produce extra electricity during peak times. The intent was to accelerate the construction of power plants in response to the threat of potentially serious electricity shortages over the next few years. It is too early to tell how effective the 6- and 4-month processes will be, as only 1 application has been approved under either of these processes. On the other hand, 11 applications have been approved under the 21-day process, and the energy commission expects that 10 of these projects—1 project has since been withdrawn—will add over 850 megawatts of electricity to the State's supply by the end of September 2001.

RECOMMENDATIONS

To encourage applicants to submit sufficient data in a timely manner, the energy commission should exercise its authority to terminate applications when the applicant does not appropriately respond to requests for data.

To assist the energy commission in its efforts to approve applications within a 12-month period, it should also more strictly enforce its standard that limits to 180 days the time allowed for parties to raise new issues and submit additional requests for data. Moreover, the Legislature should consider establishing a firm 180-day deadline for parties to raise issues and request data.

To ensure that the expedited 6- and 4-month processes are effective and to determine their long-term viability, the energy commission should evaluate the success of these new processes after a sufficient time.

AGENCY COMMENTS

The agency did not have any significant concerns with the audit report and believes it accurately portrays the issues that influence the time required to review applications for energy facilities. ■

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INTRODUCTION

CALIFORNIA'S CURRENT ENERGY CRISIS

In 1996 the Legislature passed Assembly Bill 1890, enacting many policies for deregulating the State's electricity industry. These policies had been proposed by the California Public Utilities Commission (CPUC) after a shift in federal energy policies. The newly restructured system allowed retail customers of all sizes to choose their electricity suppliers, although they could continue to maintain service with one of the three investor-owned utilities—Pacific Gas and Electric Company (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric Company (SDG&E)—if they desired. One purpose of deregulation was to allow other energy producers into the market, with the expectation that doing so would lower the price of electricity. However, a combination of factors, including a continued growth in the demand for electricity coupled with a lack of ample supply, resulted in the current energy shortage and high energy prices. Various state and federal agencies are still investigating the causes of these problems.

At the time the deregulation legislation was enacted, there was an excess supply of electricity in California as well as in the western region, which kept short-term energy prices low. However, population expansion and rapid economic growth during 1999 and 2000 contributed to a rising demand for electricity that was not met with a similar increase in supply. Apparently due to a combination of factors, including excess supply and uncertainty about the future of deregulation, investor-owned utilities built fewer new power plants in the early 1990s than they had in previous years. In fact, from 1991 to 1995, the investor-owned utilities submitted only one application to the State Energy Resources Conservation and Development Commission (energy commission) to site a new power plant. The proposed concepts of deregulation, which the CPUC was studying following a shift in federal energy policy, may have served as a disincentive to build additional power plants. For example, if the investor-owned utilities believed that after deregulation they would be required to sell their power plants to facilitate competition, they might have been uncertain of their ability to recoup their building costs. Even if they believed they would be allowed to keep their power plants after deregulation, they might have been unsure as

to whether the wholesale price of electricity in a newly deregulated market would be high enough to warrant their investment in new power plants. A November 1998 ballot initiative may have compounded these uncertainties. If it had passed, this initiative, Proposition 9, would have further modified deregulation in a way that, according to the Legislative Analyst's ballot analysis, would probably have been challenged in court. Therefore, the uncertainties surrounding deregulation may have contributed to the investor-owned utilities' reluctance to build new power plants.

Types of Power Plants

- Hydro: Produces electricity from falling water that turns a turbine generator.
- Wind: Produces electricity from wind that spins the blades on a turbine.
- Thermal: Produces electricity from sources of heat, including:
  - Natural gas
  - Oil
  - Nuclear
  - Solar thermal
  - Geothermal

Examples of thermal power plants include:

- Simple cycle: Uses gas to operate a turbine to generate electricity and does not recycle the waste heat generated by the process.
- Combined cycle: Uses gas to operate a turbine to generate electricity, and recycles its waste heat by using it to produce steam. It then uses the steam to operate conventional steam turbines, to produce even more electricity.
- Cogenerator: Uses the waste heat created by one process, for example, manufacturing, to produce steam that is used, in turn, to operate a turbine and generate electricity. It can also use gas to run a turbine, using the steam to generate more electricity.
- Peaker plant: A simple cycle power plant that is normally used to produce electricity during peak load times.

In recent years, applications to the energy commission to build new power plants have increased significantly. Developers submitted 19 applications between January 1997, shortly after deregulation was approved, and June 2000, when energy prices first spiked, and 18 applications were submitted between July 2000 and June 2001, at least partially in response to the shortage. The efficient siting of new power plants by the energy commission is rapidly becoming vital to the State's ability to avoid rolling blackouts and to deliver reliable power over the next several years.

THE RESPONSIBILITIES OF THE ENERGY COMMISSION

The Legislature established the energy commission in 1974 to address the energy challenges facing the State at that time. Created by the Warren-Alquist State Energy Resources Conservation and Development Commission Act (Warren-Alquist Act), the energy commission is composed of five commissioners appointed by the governor to staggered five-year terms. As the State's primary energy policy and planning agency, it is responsible for ensuring that a dependable supply of energy exists to meet California's needs and for monitoring power plants' compliance with environmental, safety, and land use goals. It is the energy commission's mission to assess, advocate for, and act to improve energy systems that promote a strong

economy and a healthy environment while providing Californians with energy choices that are affordable, reliable, diverse, safe, and environmentally acceptable.

The energy commission's specific responsibilities include the following:

- Processing applications for the licensing of thermal power plants that are 50 megawatts (MW) or larger. Plants smaller than 50 MW are licensed by city and county agencies.
- Encouraging measures to reduce wasteful and inefficient use of energy.
- Collecting and analyzing information regarding alternative ways to conserve, generate, and supply energy.
- Forecasting future energy needs and keeping historical data.
- Developing energy technologies and supporting renewable energy programs.
- Promoting energy efficiency through appliance and building standards.

THE SITING PROCESS

To ensure that a reliable supply of energy is maintained at the level necessary for public health and safety, the Legislature established a comprehensive energy forecasting and power plant siting process. This process requires that anyone proposing to construct a thermal power plant with a net generating capacity of 50 MW or larger must file a Notice of Intention (NOI), an Application for Certification (application), or a Small Power Plant Exemption (SPPE). The type of proposal that must be filed depends upon the size and nature of the project: for instance, an SPPE is optional for any thermal power plant with a net generating capacity of more than 50 MW but less than 100 MW and does not have any significant environmental effects.

Under current law, any developer proposing a large and complex project, such as a direct-fired coal or nuclear facility, must complete a 12-month NOI process before filing an application. Essentially, the objective of the NOI process is to determine the need for, acceptability of, and suitability of a proposed site and to evaluate whether any alternatives to the proposal would better

carry out the aims of the Warren-Alquist Act and the California Environmental Quality Act (CEQA). During the NOI process, the applicant must propose at least three alternative sites, and the energy commission must ultimately evaluate the suitability and approve at least one of these. To make its determination, the energy commission conducts hearings during which it considers the analyses of energy commission staff as well as the testimony of the applicant and any intervenors. SDG&E filed the last NOI in 1989 and then withdrew it in 1991. Prior to 1989, the last NOI filing occurred in 1984. All projects currently proposed in California are exempt from the NOI process.

Instead of an NOI, applicants proposing to construct a thermal power plant must submit an application. Figure 1 describes the various phases of the application process. During the application process, the energy commission examines the design, construction, and operation of the facility in relation to applicable laws

FIGURE 1

Seven Phases of the Energy Commission's Application Process

Determination of Completeness Phase	**Prefiling (Optional)**	The applicant, energy commission staff, and/or other agencies may meet to discuss the project, application process, filing requirements, specific issues, workshops, site visits, and the scheduling of public workshops. Energy commission staff may perform a preliminary review of the application before it is filed.
	Data Adequacy Up to 45 days	Energy commission staff review the application to determine if it complies with the information requirements per the siting regulations. The staff make a recommendation to the energy commission.
12-Month Application Approval Process	**Discovery Days 0 to 45**	Following acceptance of an application by the energy commission, there is a period of data gathering by the staff; intervenors (formal parties to the process); and local, state, and federal agencies. Also, staff prepares an Issue Identification Report and presents it at a public information hearing(s) conducted by the energy commission committee. Staff members may also hold public workshops.
	Analysis Days 45 to 220	Staff, agencies, and intervenors analyze the project and its various issues during this period. The staff prepares a *Preliminary Staff Assessment.* After a pre-hearing conference, the staff submits the *Final Staff Assessment*, which usually serves as the staff's testimony.
	Hearings Days 90 to 305	An energy commission committee consisting of two commissioners conducts a pre-hearing conference followed by hearings to hear the findings and conclusions of the applicant, staff, intervenors, and other agencies. The public also can present its comments.
	Decision Days 305 to 365	The energy commission committee prepares and issues a *Presiding Member's Proposed Decision (PMPD).* Subsequently, the committee holds a hearing. The full energy commission generally considers whether to approve or deny the PMPD at its regularly scheduled bi-monthly business meeting.
	Compliance Days 365+	The staff monitor a project's conformance with the conditions of the energy commission's decision regarding its design, construction, operation, and closure phases.

Source: Energy Commission Siting Program Manual.

and regulations. According to the energy commission, the application process is intended to ensure that proposed facilities are safe, reliable, and environmentally sound and that they comply with applicable laws, ordinances, regulations, and standards.

State law gives the energy commission broad authority to decide whether a power plant is in California's best interest, regardless of possible local government and public opposition, which may be based on a concern that a project could have significant adverse environmental impacts such as air pollution or water contamination. To ensure that environmental concerns are properly considered, the energy commission's guidelines require that it perform the same basic functions as those required under CEQA, the law that outlines the environmental review that the State or local agency must conduct for all new projects that might have a significant impact on the environment. The energy commission's application process does not have to follow CEQA guidelines precisely because the California Resources Agency has certified that the application process is essentially equal in function and purpose to the review required by CEQA.

REVIEWS BY OTHER AGENCIES

When a developer submits an application, the energy commission notifies the California Independent System Operator and other governmental agencies, such as local air and water boards, the California Air Resources Board, the United States Fish and Wildlife Service, and the Federal Environmental Protection Agency, to coordinate their reviews in the application process. These agencies review the application for compliance with the laws and regulations that apply to the proposed facility. They then either issue comments and recommendations or request that the applicant perform additional analyses or studies.

SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee (audit committee) requested the Bureau of State Audits to examine the application process used by the energy commission for approving new and repowered energy generation facilities. Specifically, the audit committee requested, among other things, a review of appropriate procedures and time limits of the site and permit approval process, the nature of all applications filed with the energy commission since 1990,

the viability of the energy commission's expedited permitting processes, and the appropriateness of certifying the application process as functionally equivalent to CEQA.

To gain an understanding of the energy commission and its application process, we reviewed relevant state laws and regulations, including CEQA and the Permit Streamlining Act (PSA). In addition, we studied the applicable sections of the protocols used by the energy commission. We also interviewed energy commission staff to understand its role in reviewing and certifying applications as well as its role in ensuring public participation in the approval process.

We reviewed all applications approved by the energy commission since 1990 to ascertain the overall success rate of the siting process, the reasons power plants were permitted but not constructed, and the reasons applications were withdrawn or otherwise failed in the process. To accomplish this, we acquired the energy commission's database of all power plant applications and reviewed in detail each siting case, including key dates, analyses, and correspondence. We also focused specifically on identifying the causes of delays in the completion of each of the phases of the process.

To identify possible ways to improve or streamline the energy commission's process for siting new power plants, we compared it to the application processes of five other states: Oregon, Texas, Minnesota, Connecticut, and Florida. We selected these states based on recent changes in their application process, the number of facilities sited since 1990, and a geographical representation. Consultants with expertise in the energy industry conducted extensive interviews with state siting commissions, utilities, and power plant developers in the five states. They analyzed data about power plants sited during the 1990s to determine what processes each state used and the amount of time each required to site facilities.

In examining the viability of the energy commission's recently developed expedited permitting processes, we identified the reasons each process was developed and analyzed the regulations that applied to that process. Also, the consultants talked to developers regarding their experiences with the new processes. Finally, using the energy commission's power plant project status sheets, we examined the applications that had been submitted under the new processes to determine whether the processes had been effective.

To determine how the approval of applications compared to the approval of projects under CEQA and PSA, we prepared side-by-side comparisons of the time and informational requirements of each process. In addition, we met with staff at the State Clearinghouse—a branch of the governor's Office of Planning and Research that provides technical assistance on CEQA matters—to solidify our understanding of the similarities and differences of each process. To evaluate the appropriateness of certifying the energy commission's application process as functionally equivalent to CEQA, we interviewed the general counsel of the California Resources Agency as well as the assistant chief counsel of the energy commission. We identified the mandated criteria used to certify the energy commission's application process as equivalent to CEQA, analyzed recent changes in the energy commission's regulations, and determined whether or not each regulation fulfilled the designated criteria.

We were also asked to examine the availability of dispute resolution mechanisms in the application process. Throughout our audit work, we determined that the energy commission is constantly involved in resolving disputes, largely during the various hearings and workshops that it holds. While reviewing case documentation, we read transcripts, agendas, and other correspondence supporting the fact that the energy commission takes on an active role in dispute resolution. ■

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CHAPTER 1

Delays in the Energy Commission's Approval of Applications Were Caused in Part by Factors Outside Its Control

CHAPTER SUMMARY

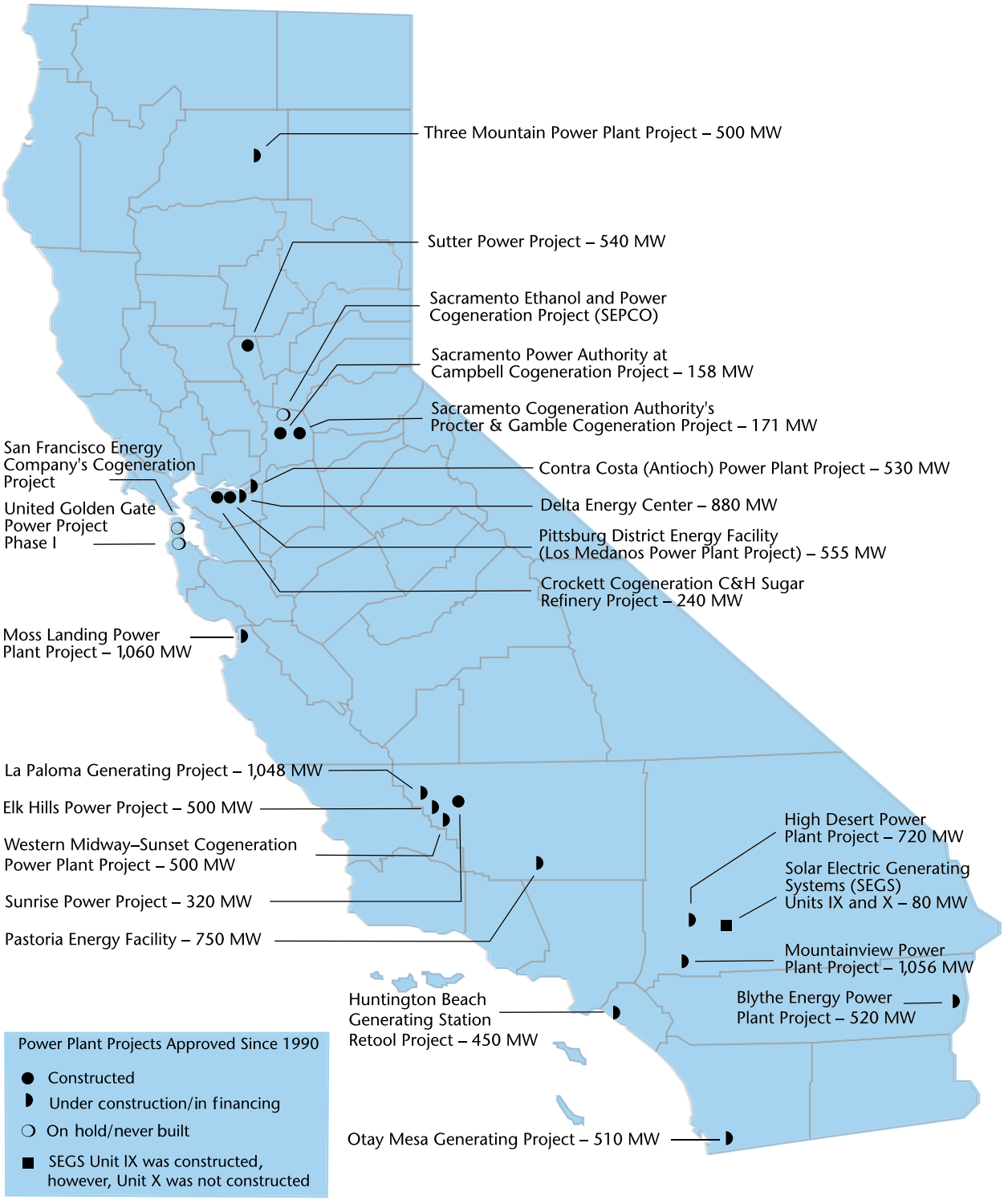
Since 1990 the State Energy Resources Conservation and Development Commission (energy commission) has approved 23 Applications for Certification (applications) for power plant projects. For 10 of these 23 applications, the energy commission missed the required 12-month standard for approval by more than 30 days. However, in many cases, the actions of other parties involved in the process contributed to these delays. Applicants did not always submit needed information on time; federal, state, and local agencies sometimes failed to process approvals promptly; and in some instances outside parties raised objections to proposed sites. Faced with these circumstances, the energy commission continued acting to resolve those issues within its control while waiting for the other parties to complete their responsibilities. As a result, the average approval time for applications over the past 11 years was 14 months, only 2 months beyond the deadline generally required by state law.[1] Figure 2 on the following page shows the location of these 23 projects.

In addition to the 23 applications approved since 1990, the energy commission also performed various levels of review on 13 other power plant applications that were eventually withdrawn by the applicants. Although the staff resources devoted to reviewing these applications may have had some effect on the energy commission's ability to approve other projects in a timely manner, the withdrawn applications do not appear to have affected the approval process for recent projects.

[1] State law provides that the deadline may be exceeded if agreed to by both the energy commission and the applicant.

FIGURE 2

Location of the 23 Power Plants the Energy Commission Approved Since 1990



Source: Energy Commission Power Plant Licensing Cases' Maps.

THE ENERGY COMMISSION'S APPROVAL PROCESS HAS GENERALLY TAKEN LONGER THAN 12 MONTHS

The energy commission has taken an average of more than 14 months to review applications approved since 1990, despite state law generally requiring it to issue its decisions within 12 months. As we discussed in the Introduction, siting process guidelines dictate that the energy commission complete the various phases of the application process within a specific number of days after an application is deemed adequate. From January 1990 through June 2001, the energy commission approved 23 power plant projects, for which approval times ranged from a low of 92 days to a high of 882 days, with the average approval taking 430 days. Table 1 on the following page lists the time for completing each phase for each project. The average times for completing the various phases of the process, with the exception of the discovery and decision phases, were longer than expected. For example, the analysis phase, which should take 175 days, took 254 days on average to complete.

Even relatively small delays in different phases of the application process can have a significant cumulative effect. For instance, delays in the discovery and analysis phases may make it difficult for the energy commission to issue its final decision within 12 months. Longer delays in the earlier phases can affect the timeline for the entire process. In 3 of the 23 applications approved since 1990, the analysis phase alone took more than 12 months to complete, thus making it impossible for approval to be granted within the required time frame. As Table 2 on page 17 shows, when the approval process was significantly delayed, several factors combined, rather than a single factor, caused the delays.

SOME APPLICANTS SUBMITTED INSUFFICIENT DATA, CAUSING ADDITIONAL DELAYS IN THE APPLICATION PROCESS

Applicants contributed to the delays in all 10 of the applications that exceeded the 12-month deadline by more than 30 days.

The energy commission's processing of applications was slowed at times by the actions of the applicants themselves. In most cases, applicants delayed the process by not responding to data requests or not performing required studies in a timely manner. In other instances, applicants filed amendments to applications months or years into the process, causing the energy commission staff to review and analyze the change. In addition, staff may have to issue new or revised staff reports or testimony as a result of these changes.

TABLE 1

On Average, the Total Application Processing Time Exceeded the 12-Month Standard by 65 Days for Applications for Certification Approved From January 1990 Through June 2001

Applicant and Project Name	Days Required to Complete Each Task				(e) Total Application Processing Time
	(a) Discovery Phase	(b) Analysis Phase	(c) Hearing Phase	(d) Decision Phase	
AES—Huntington Beach Generating Station Retool Project	8	29	13	42	92
El Paso Merchant Energy Company—United Golden Gate Power Project Phase I	22	56	22	33	133
Thermo Ecotek—Mountainview Power Plant Project	27	223	16	42	308
Southern Energy Delta, LLC—Contra Costa (Antioch) Power Plant Project	26	263	56	33	378
Western Midway-Sunset Cogeneration Company—Western Midway Sunset Cogeneration Power Plant Project	33	218	94	33	378
Blythe Energy, LLC—Blythe Energy Power Plant Project	43	193	99	29	364
Pastoria Power Project, LLC (Enron North America Corporation)—Pastoria Energy Facility	47	176	72	34	329
Otay Mesa Generating Company (PG&E National Energy Group)—Otay Mesa Generating Project	40	347	136	37	560
Duke Energy Moss Landing, LLC—Moss Landing Power Plant Project	27	267	90	57	441
Three Mountain Power, LLC (Ogden Pacific Power)—Three Mountain Power Plant Project	54	463	143	33	693
Elk Hills Power, LLC—Elk Hills Power Project	33	291	119	103	546
Sunrise Cogeneration & Power Project (Texaco, Inc.)—Sunrise Power Project	29	592	21	16	658
Calpine Corporation and Bechtel Enterprises, Inc.—Delta Energy Center	33	231	45	48	357
La Paloma Generating Company, LLC—La Paloma Generating Project	21	208	99	78	406
Pittsburg District Energy Facility, LLC—Pittsburg District Energy Facility (Los Medanos Power Plant Project)	36	223	77	48	384
Calpine Corporation—Sutter Power Project	41	259	64	84	448
High Desert Power Project, LLC—High Desert Power Plant Project	43	370	329	140	882
San Francisco Energy Company—San Francisco Energy Company's Cogeneration Project	34	254	124	132	544
Sacramento Power Authority at Campbell Cogeneration Project	19	248	50	47	364
Sacramento Cogeneration Authority—Sacramento Cogeneration Authority's Procter & Gamble Cogeneration Project	27	203	92	42	364
Sacramento Power, Inc.—Sacramento Ethanol and Power Cogeneration Project (SEPCO)	29	333	130	61	553
Crockett Cogeneration, LP—Crockett Cogeneration C&H Sugar Refinery Project	19	184	82	84	369
Luz Development and Finance Corporation—Solar Electric Generating Systems (SEGS) Units IX & X	44	214	59	19	336
Average Time Frames, All Projects	**32**	**254**	**88**	**55**	**430**
Expected Time Frames, All Projects	**45**	**175**	**85**	**60**	**365**

(a) Days between the date the application is deemed data adequate and the date the informational hearing and site visit are held.

(b) Days between the date the informational hearing and site visit are held and the date of the *Final Staff Assessment.*

(c) Days between the date the *Final Staff Assessment* is issued and the date the Presiding Member's Proposed Decision is issued.

(d) Days between the date the Proposed Decision is issued and the date the energy commission issues its Final Decision.

(e) Days between the date the application is deemed data adequate and the date the energy commission issues its Final Decision.

Source: Energy Commission Application Database and Docket Unit.

State regulations require applicants to respond to data requests made by the energy commission, public agencies, and interested parties within 30 days of receipt of the request. In 3 of the 10 applications that were approved late, applicants requested formal extensions to the process when they realized it would take them additional time to respond to the requests. In other cases, however, applicants ignored or objected to data requests or submitted inadequate responses, necessitating additional time for the energy commission to reissue the requests. Since 1990 all 10 of the applications that exceeded the 12-month deadline by more than 30 days were partially the result of applicant-caused delays. For example, according to an energy commission status report, the Elk Hills Power Project approval was delayed in part because the applicant did not submit required information to the local air district on time. In fact, the local air district did not issue its final decision until 338 days after the energy commission had deemed the application adequate.

TABLE 2

Factors Contributing to Delays in Approving Applications

Project Name	Days From Determination of Completeness to Final Decision	Applicant Submitted Insufficient Data or Amendments to Projects	Local, State, and/or Federal Agencies Issued Required Permits Late	Public Intervention Extended the Process	Public Workshops Held Well Past the 180-Day Deadline
High Desert Power Plant Project	882	x	x	x	x
Otay Mesa Generating Project	560	x	x	x	x
Three Mountain Power Plant Project	693	x	x		x
Sunrise Power Project	658	x	x		x
Elk Hills Power Project	546	x	x		
Sutter Power Project	448	x	x		
Moss Landing Power Plant Project	441	x	x		x
San Francisco Energy Company's Cogeneration Project	544	x		x	x
Sacramento Ethanol and Power Cogeneration Project	553	x			x
La Paloma Generating Project	406	x			

In six instances the California Air Resources Board, the Federal Environmental Protection Agency (EPA), or both had to step in to ensure that the applicant submitted adequate data indicating that air quality standards would be fully met. For example, the

High Desert Power Plant Project application was originally submitted in June 1997. In December 1997, when the application was deemed adequate, the applicant sent a letter to the energy commission stating that it had met with the local air district several times since 1994 and thus had a firm understanding of the requirements for an air permit; moreover, it assured the energy commission that it was fully prepared to meet all data requests and timetables. Despite this, the applicant continuously failed to submit required studies and information related to air quality. Finally, the EPA informed the local air district that unless the problems were corrected, it intended to take action if the applicant attempted to begin construction of the facility. It was not until February 2000, approximately 2.5 years after the application data was deemed adequate, that the applicant, the local air district, and the EPA finally resolved all issues for this application. Staff reports, local air district communications, and letters from the EPA confirm that this applicant continuously missed deadlines, failed to respond to data requests in a timely manner, and did not perform required studies.

The energy commission spent approximately 2.5 years processing one application because the applicant continuously failed to submit required data.

As the example above shows, the failure of applicants to submit sufficient information affects not only the energy commission but also the local, state, and federal agencies involved in the approval process. At a recent information gathering workshop held by the energy commission, the EPA stated that insufficient data from applicants was one factor delaying its reviews. The only remedy given to the energy commission by state regulations in these situations is the power to terminate the application if it determines that the applicant has failed to diligently pursue the application. We noted that the energy commission's staff worked to keep in constant communication with the applicant in an attempt to keep the application process on schedule. However, occasionally the energy commission had to wait until the applicant submitted the necessary studies and information or resolved all issues with outside agencies.

The time to approve an application is sometimes extended when applicants file amendments to their applications. Amendments are filed either to resolve concerns with the application or to modify the original project. Yet even when amendments are filed to correct deficiencies in applications, they add to the application processing time. For example, the Three Mountain Power Plant Project applicant submitted an amendment to its application 425 days, or more than a year, after the energy commission deemed the application adequate. The applicant submitted the amendment to address soil and water concerns.

Ultimately, the energy commission approved the application with the amendment; however, the revision necessitated additional reviews by energy commission staff, which contributed to the delay in the project's approval.

On a few occasions, applicants also filed amendments that substantially altered the nature of the projects. Such amendments generally caused delays. For example, 194 days after the High Desert Power Plant Project application was deemed adequate, the applicant notified the energy commission that it was amending the project to add a 32-mile natural gas pipeline. Because of the significance of this change and because the pipeline crossed land under the aegis of the Bureau of Land Management, additional reviews were required by state and federal agencies, one of which had not previously been involved with the project. In another example, the applicant for the Sunrise Power Project informed the energy commission 573 days into the process that, rather than constructing a cogeneration facility, it intended to construct a simple cycle facility in order to begin operations in time to deliver power during the peak summer demand of 2001. However, because the applicant did not submit the amendment until after the energy commission had already issued its proposed decision, the energy commission was required to prepare a revised staff assessment, hold additional evidentiary hearings, and issue a revised proposed decision. Despite this, the energy commission approved the revised application only 3 months after the applicant filed the amendment.

The Failure of Federal, State, and Local Agencies to Issue Timely Approvals Resulted in Delays in the Application Process

By submitting their decisions well past the 180-day deadline, local air districts contributed to delays in 7 of 10 applications that were approved more than 30 days late.

To complete its application process by the required deadlines, the energy commission must rely on timely responses from a number of outside parties. These include the federal, state, and local agencies responsible for issuing approvals for various portions of the project. Delays by those agencies in issuing required approvals or decisions contributed to delays in 7 of the 10 applications that were approved more than 30 days late. In particular, local air districts tended to submit their final decisions well past the 180-day deadline required by state law.

Currently, state law requires local air districts to submit a final decision on the potential impact of the power plant on air quality within 180 days from the date that the application is deemed adequate. However, until a January 2000 legislative amendment addressed the problem, the energy commission's

time requirements conflicted with the past joint policy agreement between the energy commission and the California Air Resources Board, which allowed local air districts 240 days to issue final decisions. Yet even using the 240-day deadline, our analysis revealed that in many cases local air districts did not reach final decisions within the allowed time. Since 1990 the average time for the energy commission to receive final decisions from local air districts has been 319 days, 139 days more than the 180-day deadline and 79 days more than the 240-day deadline.

According to energy commission staff, some of these delays may have occurred either because local air districts did not have sufficient resources to produce final decisions within the 180 days or because they gave other projects higher priority. To ensure that power plants were sited quickly to address public health, safety, and welfare threats posed by the energy supply emergency, the governor issued an Executive Order in February 2001 requiring all local, regional, and state agencies to expedite energy commission projects to the extent possible while continuing to protect the State's environmental interests and the health and safety of the public. Because the governor issued this order so recently, the local districts have not had sufficient time to complete their reviews of applications currently in progress; therefore, we cannot determine the effect of the governor's order. However, according to energy commission staff, local air districts are making more of an effort to meet deadlines.

Some delays occurred when the Federal Environmental Protection Agency objected to local air districts' decisions because of concerns with the air analyses.

Delays also occurred when the EPA objected to the local air districts' decisions because of its concerns with the air analyses. For example, the Three Mountain Power Plant Project's local air district took 475 days to issue its decision because of the need to negotiate with the applicant and the EPA. Similarly, the EPA informed the applicant of the Elk Hills Power Project that its permit under the Federal Clean Air Act was insufficient and that it needed to perform additional air analyses. The local air district did not issue its final decision in this instance until 338 days after the data adequacy determination had been made, while the EPA took 443 days to grant its approval. According to the energy commission, problems occur in part because federal agencies have no established review deadlines and some federal agencies lack sufficient staff to review applications in a timely manner. As we described earlier, the EPA can and does step in when it finds that state and local agencies have not met the federal requirements of the Federal Clean Air Act.

In order to further expedite the processing of applications, the energy commission organizes public workshops and meetings with federal, state, and local agencies when problems arise. Further, in December 2000, the energy commission also issued an order creating an informational proceeding committee. This committee has been conducting information-gathering workshops with other agencies, applicants, and public interest groups to discuss critical issues affecting the energy commission's ability to license power plants and related facilities in light of the State's increasing demand for electricity. It is also developing recommendations to improve the energy commission's application process. To date, the informational committee has held meetings on issues such as local agency participation, public participation, and timing of federal permits, among others. According to the energy commission, it will produce a report by the end of August 2001 with the results of these workshops.

In a Few Instances, Public Intervention Slowed the Energy Commission's Approval Process

Another party that plays a role in the approval of power plant applications is the public. As we discussed earlier, both the applicants and the agencies involved in the approval process at times contributed to delays. The public's responsibility for delays tends to be more indirect, although for three of the applications approved since 1990, public opposition was partially responsible for delays in the approval process. For example, the San Francisco Energy Company's Cogeneration Project experienced a delay of 179 days. Public opposition was only one of several causes of the delay, and it was not successful in blocking the application on the basis of environmental concerns. However, the project was not ultimately completed because the applicant was denied a required lease, a denial that was at least in part influenced by public outcry.

Although difficult to measure, public opposition has indirectly contributed to delays in approving applications.

The public's indirect influence on the timely approval of projects is more difficult to measure. While it is not possible to have complete public support for all projects, the energy commission attempts to ensure that interested parties are able to participate in the application process. To achieve this end, it holds public workshops in which it attempts to resolve issues such as air quality, biological, and visual concerns with the applications. These workshops take staff time and resources away from other projects. For example, the energy commission is required to notify by mail parties and agencies involved in the application review

at least 10 days in advance of a workshop, and it must also prepare agendas, organize presentations, and compile the issues to be discussed at the meeting. Moreover, energy commission staff must travel to and from the workshop site, which is generally held in the city or county in which the project is to be located.

Furthermore, state regulations allow any person to become an "intervenor," or formal party to the application process. Intervenor status allows individuals or groups to request data from the applicant, file motions, testify, and conduct cross examinations in formal hearings. Many intervenors are environmental interest groups or residents affected by the proposed power plant project. For example, California Unions for Reliable Energy (CURE) is a coalition of unions whose members construct, maintain, and operate power plants in California. According to CURE, it participates in the review of applications with the goal of ensuring that California citizens, including union members, receive the optimum environmental and economic benefits from proposed power plants. This means that although CURE seeks full compliance with environmental requirements, it also seeks employment for local union workers to build, maintain, and operate the power plants. One of the member agencies of CURE, the International Brotherhood of Electrical Workers Union 569, stated that it believes CURE's efforts contributed to postponing the High Desert Power Plant Project for almost two years until the applicant reached an agreement with the union.

According to one intervenor, its efforts contributed to postponing a project for almost two years.

In 1997, in response to a challenge by the applicant, the energy commission issued a decision in the High Desert Power Plant Project case stating that CURE's participation was "undeniably relevant" to the proceedings. According to the energy commission, its decision was based on CURE's goals of ensuring that future jobs are not jeopardized by approval of power plants that harm the environment. Since that time no one has challenged CURE's participation.

The Energy Commission Contributed to Delays by Conducting Workshops Well Beyond Its 180-Day Standard

Some of the delays caused by public intervention may be the result of the energy commission's failure to enforce its own standards for public workshops and requests for information. The energy commission's regulations generally allow 180 days from the date an application is deemed complete for groups to become intervenors and request additional information. Intervenors may request information beyond the 180 days if they can

The energy commission contributed to delays in 7 of the 10 applications approved late because it held workshops 220 days or more after it determined the application was complete.

demonstrate good cause. In addition, the energy commission's internal guidelines establish the same time frame for holding public workshops. However, in some cases since 1990, intervenors submitted data requests, and staff held public workshops, well past the 180-day standard. In fact, for 7 of the 10 applications that were approved late, workshops were held 220 days or more after the energy commission determined that the application was adequate. The energy commission holds public workshops and issues data requests during the discovery and analysis phases in an attempt to allow parties to solicit and exchange information and to analyze projects and its various issues.

Our consultants found two states, Connecticut and Oregon, that use a Notice of Intent or prefiling process to give the public, local governments, and any affected agencies an opportunity to raise issues early in their processes. According to our consultants, this early-warning phase, coupled with a hearing in which parties are required to raise issues, seems to efficiently address the conflicts and concerns of the affected parties. Once this hearing has occurred, outside parties can no longer raise additional issues unless they file appeals and are granted exceptions. An examination of this model suggests that the energy commission might benefit by more strictly enforcing its own 180-day standard. This would limit the ability of outside parties to raise new issues late in the application process, thus potentially freeing energy commission staff to focus on other concerns, such as air quality.

DESPITE DELAYS CAUSED BY EXTERNAL FACTORS, THE ENERGY COMMISSION WORKS TO MEET DEADLINES

To its credit, the energy commission did not wait for resolution of all issues before moving forward with the processing of applications. For example, it was able to issue its final decisions in less than 12 months for eight applications despite the fact that it did not receive decisions from the government agencies involved until 218 to 330 days after the applications had been deemed complete. Moreover, even though the local air district for the La Paloma Generating Project did not issue its final decision until 392 days after the application had been deemed adequate, the energy commission was able to issue its final decision only 14 days later.

For the eight cases just mentioned, the energy commission developed *Final Staff Assessments,* held hearings and public workshops, and worked to resolve all outstanding issues with

Energy commission staff have been diligent in keeping the commission aware of issues causing delays in the approval of applications.

the exception of air quality while waiting for the final decisions to be issued by the local air districts. As a result, once the local air districts made their decisions, the energy commission was able to complete the application process quickly and meet the 12-month standard. For applications approved since 1990, when delays occurred energy commission staff issued staff reports on a monthly basis, held update meetings periodically, and kept the energy commission aware not only of issues causing delays, but also of issues that had the potential to cause delays. We also found that the energy commission acted to keep projects on schedule by holding data resolution workshops, convening formal meetings, and issuing scheduling orders to the applicant.

THE WITHDRAWAL OF SOME APPLICATIONS HAS NOT SIGNIFICANTLY AFFECTED THE ENERGY COMMISSION'S TIMELY CONSIDERATION OF RECENT PROJECTS

Since 1990 the energy commission has devoted staff time to 13 projects that were ultimately withdrawn by the applicants, 3 projects that were never constructed, and 1 project that is currently stalled. Nonetheless, except for one application, these projects do not appear to have seriously affected the commission's ability to approve recent applications within the required time frame. Five of the projects were withdrawn prior to 1997 and thus had no effect on more recent applications. As shown in Table 3 on the following page, of the eight applications withdrawn after August 1999, six were withdrawn early in the siting process. A seventh application was ultimately refiled by the applicant.

The eighth application withdrawn after August 1999 did use some of the energy commission's time and resources for more than one year. When the applicant first submitted its application on March 8, 2000, the energy commission found the data to be sufficient in only 2 of the 20 technical areas and requested that the applicant submit supplemental information. However, the applicant did not submit this information until more than two months after the request. Eventually, on August 9, 2000, the energy commission found the application complete. Subsequently, the energy commission submitted to the applicant over 180 data requests in various areas including air quality, traffic, transportation, environmental justice, and public health. According to the energy commission, the applicant did not file adequate responses for the first set of data requests—it was up to six weeks late on some responses—and the applicant objected to some of the staff's second-round requests. Furthermore, the applicant did not

TABLE 3

The Energy Commission Generally Spent Minimal Time Processing Recently Withdrawn Applications

Applicant and Project Name	Application File Date	Date Application Deemed Adequate	Reason for Withdrawal	Date of Withdrawal	Months from File Date to Withdrawal	Months from Adequacy to Withdrawal
Duke Energy North America—Morro Bay Modernization and Replacement Project	8/31/99	N/A	Duke withdrew its application to accommodate the City of Morro Bay's request for additional time to conduct further analysis prior to the data adequacy hearing. Duke refiled a new application on October 23, 2000, which is currently under review.	10/27/99	1.9	N/A
Em-One Power Station, LLC—Nueva Azalea Power Plant Project	3/8/00	8/9/00	Em-One asked to suspend the project until September 2001 to consider other options for a successful siting of this project because South Gate residents voted against a measure to construct a power plant in their city.	3/12/01	12.3	7.2
Calpine c* Power—Silicon Valley Power Scott Substation	10/10/00	10/31/00	Calpine did not disclose why it decided not to pursue this project.	11/14/00	1.2	0.5
Calpine c* Power—San Mateo Substation Peaking Project	10/10/00	10/31/00	Calpine did not disclose why it decided not to pursue this project.	11/6/00	0.9	0.2
Calpine c* Power—Martin Substation Peaking Project	10/10/00	10/31/00	Calpine did not disclose why it decided not to pursue this project.	11/6/00	0.9	0.2
Calpine c* Power—Newark Substation Reliability Generation Project	10/10/00	10/31/00	Calpine did not disclose why it decided not to pursue this project.	11/6/00	0.9	0.2
Calpine c* Power—Eastshore Substation Reliability Generation Project	10/10/00	N/A	Calpine did not disclose why it decided not to pursue this project.	10/20/00	0.3	N/A
Calpine c* Power—Warnerville Substation Reliability Generation Project	10/10/00	10/31/00	According to the energy commission, Calpine proposed this power plant on private property and did not obtain permission from the site owner. In addition, Stanislaus County identified the property as protected under the California Land Conservation Act of 1965. Calpine decided not to pursue the issue.	12/5/00	1.9	1.2

Source: Energy Commission Application Database and Docket Unit.

N/A = Not applicable.

submit the necessary information promptly to the air quality management district to allow the air district to complete its review. This further delayed the energy commission's issuance of its preliminary assessment. Finally, on March 12, 2001, the applicant requested that the energy commission suspend its application for up to six months because residents near the proposed site had voted against the measure to build a power plant in their city. At that time, the energy commission still had some outstanding issues with the application and had not yet approved it. State regulations allow the energy commission to terminate an application if it finds the applicant has failed to pursue an application with due diligence. However, in this case the energy commission chose to continue to process the application for more than a year, even though the applicant seemed reluctant to respond appropriately to data requests.

Three additional projects were never constructed even though the energy commission approved them, and a fourth project is currently stalled. According to the energy commission, one project was not constructed because the city and county of San Francisco did not approve the company's lease due to public opposition. The city and county of San Francisco is also blocking the construction of a more recently approved project. In another instance, the company applying declared bankruptcy soon after the energy commission approved its application. Although the processing of these applications certainly required the energy commission's time and resources, three of the four were approved prior to April 1996. Therefore, they had little or no bearing on the commission's ability to review and approve applications submitted during the last four years.

RECOMMENDATIONS

To encourage applicants to submit sufficient data in a timely manner, the energy commission should exercise its authority to terminate applications when the applicant does not appropriately respond to requests for data.

The energy commission should also more strictly enforce its standards that limit the time allowed for intervenors and other agencies to raise new issues and submit data requests to 180 days from the date the energy commission accepts the application. Additionally, the Legislature should consider establishing a firm 180-day deadline for intervenors to raise issues and submit data requests. ■

CHAPTER 2

Although the Energy Commission's Process for Approving Applications Is Slower Than Those of Some States, Recent Changes May Improve the Process

CHAPTER SUMMARY

The process that the State Energy Resources Conservation and Development Commission (energy commission) uses to approve Applications for Certification (applications) for power-generating facilities has come under scrutiny recently because of the current energy crisis in California and the ensuing desire to quickly increase the number of such facilities throughout the State. The rolling blackouts that occurred during January and March of this year throughout much of California fueled the concern that delays in siting new plants under the energy commission's existing process may have contributed to the crisis. However, while the immediate need to approve and construct additional power plants focused attention on the energy commission's application process, we do not believe that the existing process is unreasonable or that it has played a significant role in California's current power shortage. Moreover, because the energy commission has approved 13 new power plants with a total generating capacity of 9,024 megawatts (MW), currently scheduled to go on-line between July 2001 and January 2004, minor delays in approving applications may be even less critical in the future.

Our consultants surveyed the process for approving applications in five other states and found that California's process is similar to those used in four of the five states. They also found that the energy commission takes longer to approve applications than three of these four states. However, if we exclude three projects that were delayed due to significant emissions concerns raised by the Federal Environmental Protection Agency (EPA), the average time for the energy commission to process an application

from receipt to approval decreases from nearly 17 months[2] to 15 months, only 1.5 months longer than the 13.5 months that state law generally allows. Additionally, a comparison of the energy commission's siting process to equivalent processes in California demonstrates that it is more efficient.

In response to the current crisis, the energy commission has also implemented three expedited siting processes aimed at providing new generating capacity in the short term until the larger power plants currently under construction come on-line. Although we were unable to evaluate the effectiveness of the 6- and 4-month processes because only one application has been approved under either of these, the energy commission has approved 11 projects under the emergency siting (21-day) process, which is used to approve power plants that produce electricity during peak load times and can be operational by September 30, 2001. Ten of these "peaker plants"—one project has since been withdrawn—are scheduled to be completed by the end of September, providing more than 850 additional megawatts, enough power to supply roughly 850,000 homes.

ALTHOUGH THE ENERGY COMMISSION MAY TAKE SLIGHTLY LONGER TO APPROVE APPLICATIONS, ITS PROCESS IS COMPARABLE TO THOSE OF OTHER STATES

Four comparable states required an average of between 7 and 30 months to review and approve applications.

In order to determine the reasonableness of the energy commission's process for approving applications, we hired consultants to study the procedures used in five other states: Texas, Oregon, Connecticut, Florida, and Minnesota. As shown in Table 4 on the following page, our consultants found that, with the exception of Texas, the processes these states follow are comparable to those employed by the California energy commission. The four comparable states required an average of between 7 and 30 months to review and approve applications, while the energy commission spent an average of nearly 17 months reviewing the 23 applications that it has approved since 1990. However, if we

[2] This 17-month average differs from the 14-month average discussed in Chapter 1 because it measures the application process from the moment an application was first submitted to the siting office until it was approved, including the time necessary to determine whether the application was complete. On average, the energy commission takes 2.5 months to deem an application complete, although the statutory limit is 45 days. This alternative average was necessary in order to perform a reasonable comparison to other states.

TABLE 4

The Energy Commission's Application Process Is Comparable to Some Other State's Processes

Activity	California	Oregon	Minnesota	Connecticut	Florida	Texas*
Comparable Statutory Timeline	12-month process	12-month process†	12-month process	6-month process†	14-month process	No statutory timeline
Prefiling/Notice of Intent Phase for Approving Applications	Prefiling review—Optional	Notice of Intent approximately 6 months‡	N/A	Prefiling review—60 days	Optional Notice of Intent approximately 6 months§	N/A
			Application Filing			
Determination of Completeness of Application	Reviews application for completeness.	No mandated time period for review.	Environmental Quality Board advises applicant of deficiencies.	Reviews application for completeness.	Reviews application for completeness.	No mandated time period for review.
Public Hearings, Siting, and Other Agency Reviews	Staff files data request, holds public meetings/ workshops, and conducts analysis focusing on environmental impacts and mitigation measures. Applicants respond to data requests. Staff files *Final Staff Assessment.*	Holds public hearings, issues draft proposed order, conducts reviews, and consults with other agencies on proposed site certificate conditions.	Holds public meetings and drafts environmental impact statement. Administrative law judge holds contested case hearings and issues report.	Holds at least one public hearing and can schedule additional hearings as needed. Council records must remain open for public comment for several weeks after first public hearing.	Agency files statements of issues and holds hearings. Staff issues written analysis. Administrative law judge holds hearing.	Issues public notices, conducts technical review, and responds to comments by executive director.
Proposed Decision	Energy commission committee (two members of the commission) holds hearings and files proposed decision.	Hearing officer issues proposed order and holds contested case hearing.		For remainder of the six months, the council deliberates in publicly announced meetings.	Department of Administrative Hearings issues recommended order.	If executive director recommends hearings, the administrative law judge presides and makes recommendations.
Final Decision	Energy commission renders decision.	Energy Facility Siting Council renders decision.	Environmental Quality Board renders decision.	Connecticut Siting Council renders decision.	Siting Board renders decision.	Texas Natural Resource Conservation Commission grants air quality permit.
Post-Decision Activity			Files decision with State Register within 30 days.	Any appeal must be filed within 15 days after decision.	Department of Environmental Protection must issue air permit within 30 days after certification.	

Sources: Energy Commission; National Conference of State Legislatures.

* The Texas Natural Resource Conservation Commission's authority is limited to reviewing applications for the purpose of granting air quality permits during the application process.

† Oregon and Connecticut do not include their Notice of Intent and prefiling periods within their respective 12- and 6-month processes.

‡ According to the Oregon Office of Energy, this is an estimate rather than a mandatory time frame.

§ According to Florida's siting office, no applicant has opted to use this step in the last 10 years.

N/A = Not applicable.

omit from this average three projects that involved significant emissions concerns raised by the EPA and the public, the energy commission's average time to approve applications would be reduced to 15 months.

In terms of the procedures followed, the energy commission's power plant siting process is generally equivalent to those used in four of the five states our consultants reviewed. As shown in Table 4, the siting procedures for nearly all of the states include, in varying forms, a review of applications to determine their completeness, analyses of the applications by agency staff, and hearings to certify the projects. Most of the states are committed to siting power plants quickly while minimizing their impact on the environment, and all require that their procedures create opportunity for public participation.

Despite these important similarities, some differences between the states do exist. For instance, unlike California, Oregon and Connecticut require a Notice of Intent or prefiling stage before applications are filed. According to the Oregon and Connecticut siting offices, this allows affected parties to resolve potential conflicts early in the siting process. In addition, the timing of the specific phases of the process differs in each state as does the length of time allotted for the various steps of the process.

Unlike the other states our consultants surveyed, the Texas Natural Resource Conservation Commission (TNRCC) plays a limited role in siting power plants. TNRCC, which receives its authority from the State Legislature, is responsible for reviewing power plant applications for the purpose of granting air quality and water rights permits. Like California, Texas holds public comment proceedings and conducts technical reviews focusing on industrial and scientific aspects of the project; however, Texas's review during the application period extends primarily to air quality, whereas California reviews 20 technical areas, including land use, biological resources, and traffic and transportation. According to TNRCC, other technical reviews beyond air quality and water rights may be covered by the Texas Public Utility Commission. As part of its air quality permit review, TNRCC evaluates the proposed facility design to ensure that the proposal does not exceed allowable emissions. TNRCC also performs limited reviews of public health concerns to demonstrate compliance with National Ambient Air Quality Standards. In addition it reviews whether hazardous materials are used in the project and, if used, it ensures that such materials are stored properly and that emissions are minimized.

Texas's review during the application period extends primarily to air quality, whereas California reviews 20 technical areas.

According to TNRCC, once a Texas developer obtains its air quality permit, it can begin construction; however, developers also need to obtain a water rights permit prior to operating. Obtaining this permit from TNRCC can take an additional four to six months, but power plant developers tend to contract water from existing water rights permits, which is usually faster, according to TNRCC. Additionally, Texas developers are responsible for obtaining all other necessary state and federal permits by the time the power plant has been constructed. Despite the obvious difficulties in comparing Texas's siting procedures to California's, we believed it was important to include Texas in our survey to show that it has very different laws and regulations governing the approval processes, which can drastically affect the time needed to approve power plants.

In comparing the efficiency of application processes, we found that California's average approval time was longer than that of any of the four comparable states surveyed except for Oregon's. As Table 5 shows, the average length of time necessary for the energy commission to approve a power plant is nearly 17 months.

TABLE 5

The Energy Commission Certifies Power Plants in an Average of Nearly 17 Months, Which Is Slower Than Three of the Four Comparable States Surveyed*

State	Number of Power Plants Sited Since 1990	In Months			
		Shortest Approval Time	Longest Approval Time	Average Approval Time	Median†
Minnesota	3	6	8	7	7
Connecticut‡	5	7	10	9	9
Florida	14	9	24	15	14
California§	23	5	35	17	15
Oregon‖	4	23	37	30	31

Sources: Energy Commission Application Database; National Conference of State Legislatures.

* Because the Texas Natural Resource Conservation Commission's power plant application process differs significantly compared to the other states surveyed, we did not include its application approval times.

† Median represents the middle number in the range of months.

‡ Includes prefiling phase.

§ The average shown here includes the time it took the energy commission to deem the application data adequate.

‖ Includes Notice of Intent phase.

However, it is important to note that three of the projects included in the average involved serious air emissions concerns. If we omit these three projects from the average, the energy commission's average approval time decreases to 15 months, which is only 1.5 months slower than its standard 13.5-month process. The three projects—High Desert, Three Mountain, and Sunrise power plants—took 35, 27, and 24 months, respectively, to certify.

As indicated in Table 5, Oregon requires the longest time to approve its applications, in part because its Notice of Intent process appears to lengthen its average approval time by 13 months. Oregon does not have a mandatory time frame for this phase, during which it serves notice to the public and agencies of the pending power plant development and begins its own review preparations, as discussed earlier. According to Oregon, the Notice of Intent phase, combined with limits on the time during which intervenors are allowed to raise issues, have enabled it to certify applications within mandated deadlines once they are filed. However, the energy commission manages to hold the same public information meetings while still having an approval process that is 13 months faster on average than Oregon's.

The energy commission's siting process is significantly faster than those processes used in California for other environmentally sensitive projects.

According to our consultants, Texas, Minnesota, Connecticut, and Florida have approved power plant applications more quickly than the energy commission. Although Texas approves applications in an average of nine months, its approval requirements are quite dissimilar to California's, as we mentioned previously. According to Minnesota's siting office, the three power plants it approved since 1990 were sited with relative ease and little public opposition because they were natural gas-fired, the plants created only a small footprint, and the last two were not located near any population centers. Florida's average application process is 15 months, which is only minimally faster than California's. Our consultants were unable to identify a specific overriding reason why Connecticut's process is faster than California's, but as we discussed in Chapter 1, the reasons for delays in California's process are complicated and often caused by entities other than the energy commission. Furthermore, although California approved applications slower than other states, the energy commission's siting process is significantly faster than those processes used in California for other environmentally sensitive projects, as we discuss in the next section.

THE ENERGY COMMISSION'S SITING PROCESS PROVIDES FOR A MORE TIMELY REVIEW OF APPLICATIONS THAN EQUIVALENT STATE PROCESSES

A comparison of the energy commission's approval process to equivalent processes in the State suggests that the energy commission's process is reasonable. Whereas state regulations generally require the energy commission to approve applications within 12 months after deeming them complete, the California Environmental Quality Act (CEQA) and Permit Streamlining Act (PSA) allow up to 24 months for the approval of other types of projects that have a similar environmental impact. CEQA requires California's public agencies to perform a review of all new projects that may have a physical impact on the environment in order to identify the significant environmental effects of their actions and either avoid those effects or mitigate them, depending upon what is most feasible. PSA—which is intertwined with CEQA—requires public agencies to follow standardized time limits and procedures for specified types of land use decisions. Because the California Government Code states that PSA does not apply to activities of the energy commission, the energy commission is exempt from these time limits. Moreover, because the Secretary of the Resources Agency approved the energy commission's standard application process as a certified regulatory program, its process is considered equivalent to CEQA's, and it is faster.

The energy commission is able to approve projects in 12 months instead of 24 because it combines many of the activities that are performed consecutively under CEQA and PSA, and its process reduces the number of

The Criteria Necessary to Be a "Certified Regulatory Program"

- The program must require an "interdisciplinary approach that will ensure the integrated use of the natural and social sciences in decision making."
- The program must include "protection of the environment among its principal purposes."
- The enabling legislation of the regulatory program must authorize the agency to "adopt rules and regulations for the protection of the environment, guided by standards set forth in the enabling legislation."
- The agency's regulations must require that "an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment."
- The regulations must include "guidelines for the orderly evaluation of proposed activities and the preparation of the plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program."
- The agency's regulations must require the agency to consult with "all public agencies which have jurisdiction, by law, with respect to the proposed activity."
- The agency's regulations must require that the final action include "written responses of the issuing authority to significant environmental points raised during the evaluation process."
- The agency's regulations must require filing a notice of the final decision with the Secretary of the Resources Agency.
- The agency's regulations must require notice of the agency's written documentation to the public and to any person who requests notification in writing.
- The written documentation must include a "description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse effects on the environment of the activity." Second, the agency's documentation must be "available for a reasonable time for review and comment by other public agencies and the general public."

Source: Public Resources Code.

documents prepared. As shown in Figure 3 on the following page, the energy commission's process includes the steps necessary to satisfy the intent of CEQA and PSA, including the performance of significant environmental reviews and independent analyses. However, the energy commission is not required to prepare environmental impact reports when reviewing applications as long as its process meets certain criteria, and it is allowed to combine certain analyses that in the CEQA process must be presented separately.

In July 2000, in response to a legislative mandate, the Secretary of the Resources Agency reviewed the energy commission's application process to ensure that it continued to meet the requirements necessary to qualify as a certified regulatory program. In December 2000 the Secretary of the Resources Agency concluded that it did meet these criteria and continued the original certification. Because the energy commission's siting process accomplishes the critical objectives of CEQA and PSA in less time, we believe that continued exemption from the specific requirements of CEQA and PSA is appropriate.

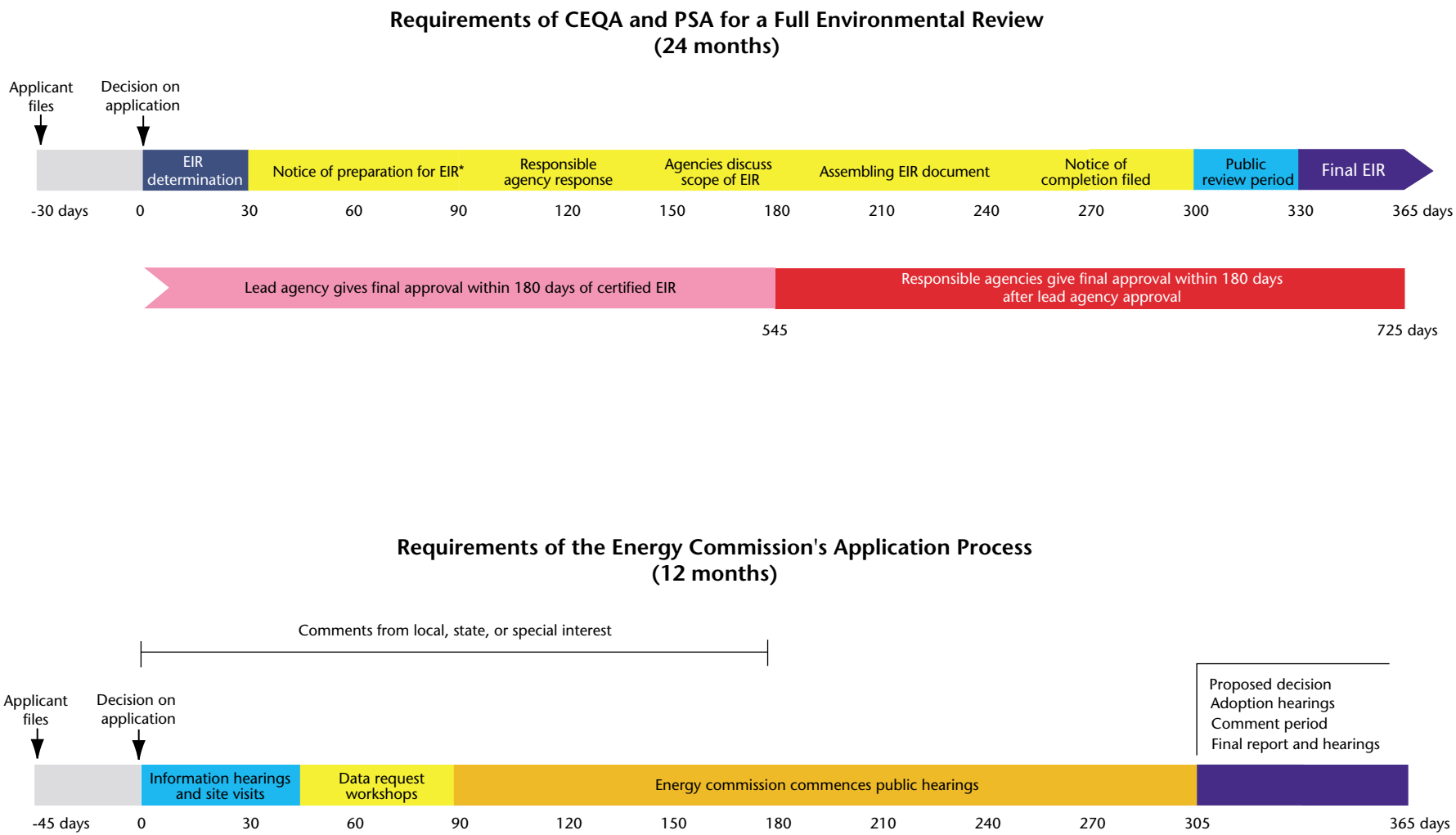
THE ENERGY COMMISSION'S DEVELOPMENT OF EXPEDITED SITING PROCEDURES MAY ALLOW FOR FASTER APPROVAL OF APPLICATIONS

The energy commission developed two new expedited siting processes with the expectation of adding to the State's electricity supply by the end of September 2001.

Responding to the fact that California faces potentially serious electricity shortages over the next few years, the energy commission recently implemented three expedited siting processes of varying lengths that it can use to quickly approve different sorts of projects. It developed new 4-month and 21-day expedited processes to bring more power on-line specifically for the summer of 2001. The 4-month process allows for the expedited approval of simple cycle facilities, and the 21-day process allows for the expedited approval of plants that will produce extra electricity during peak demand times. To address concerns that construction of new power plants has seriously lagged in the past decade, the energy commission also established a 6-month certification process for thermal plants that have no adverse environmental impact. It remains too early to determine whether the 6- and 4-month processes will be effective, but the commission has already approved 11 applications under the 21-day process, although one project has since been withdrawn. It expects that these projects will gradually add over 850 MW of electricity to the State's supply between July and the end of September 2001.

FIGURE 3

Comparison of the CEQA/PSA Environmental Review Process With the Energy Commission's Application Process



Sources: Public Resources Code; California Code of Regulations; Energy Commission Siting Program Manual.

* Environmental Impact Report.

The Energy Commission Has Yet to Approve Any Applications Under Its 6-Month Process

As of July 31, 2001, the energy commission had not approved any thermal power plant projects under its 6-month expedited process. As shown in Table 6 on the following page, developers have filed only four applications, one of which has made it past the first phase of the process—full completion of the application. This may be partially due to the fact that under the 6-month process a number of initial studies and preparations must be done prior to filing an application. These same studies are completed after an application is filed under the 12-month process, which many developers may prefer.

The energy commission developed its 6-month expedited process to comply with Assembly Bill 970 (AB 970), which was passed in response to concerns that efforts to construct new power plants have seriously lagged in the past decade. Taking effect in September 2000, the legislation directed the energy commission to establish a process to issue its final certification for any thermal power plant and related facilities within six months after it had deemed the application complete. To achieve this goal, the legislation directed that the certification should take place based on an initial review in which the applicant demonstrated substantial evidence that the project would not cause significant adverse impacts on the environment or the electrical system—including transmission lines—and would comply with all federal, state, and local laws and regulations.

The requirements of the new 6-month application process may be too cumbersome for developers, as evidenced by the limited number of applications filed.

The energy commission designed its current 6-month process in order to meet these directives. However, the terms of the new procedures may be acting as a deterrent to developers. Because an application filed under the 6-month process must demonstrate up front that the project will not cause significant adverse impacts, it must contain, among other things, a detailed analysis of the effects of pollutants, toxic substances, and hazardous materials specific to the project and how they can be mitigated; studies identifying impacts to the electrical system as well as to all interconnected facilities; and information concerning how the project will affect various populations. This is all information that is normally prepared during the course of the 12-month process.

According to energy commission staff, the preparation of these reports prior to the filing of an application is necessary in part to ensure that the information is available in time for other agencies to provide their comments, opinions, and determinations by the

TABLE 6

The Energy Commission Approved More Applications Under the 21-Day Expedited Process Than the 6- and 4-Month Processes Combined (As of July 31, 2001)

Project Name	Megawatts	Application Found Complete	Decision Date	On-line	Duration of Approval Process (Days)
6-Month Process					
Under Review					
Southern California Public Power Authority—Magnolia Power Project	250.0	*	†	Nov-2003	
Calpine/Bechtel Joint Development—Russell City Energy Center	600.0	07/11/01	†	Dec-2003	
United Golden Gate Power Company, LLC—Golden Gate Power Plant Phase II Project	570.0	*	†	Nov-2003	
Reliant Energy—Colusa Power Plant Project	600.0	*	†	Jul-2004	
Total Megawatts	**2,020.0**				
4-Month Process					
Approved					
El Paso Merchant Energy—United Golden Gate Power Project Phase I	51.0	10/25/00	03/07/01	‡	133
Under Review					
Ocotillo Energy, LP—Ocotillo Energy Project Phase I	456.0	06/22/01	†	Jun-2002	
Valero Refining Company—Valero Cogeneration Project	102.0	*	†	Apr-2002	
Calpine Corporation—Gilroy Energy Center Phase II	135.0	*	†	Jul-2004	
Total Megawatts	**744.0**				
21-Day Process					
Approved					
Wildflower Energy, LLP/InterGen—Larkspur Energy Facility	90.0	03/16/01	04/04/01	Jul-2001	19
Wildflower Energy, LLP/InterGen—Indigo Energy Facility	135.0	03/16/01	04/04/01	Jul-2001	19
RAMCO, Inc.—Chula Vista Power Project	62.4	05/21/01	06/13/01	§	23
Alliance Colton, LLC—Alliance Century	40.0	04/06/01	04/25/01	Aug-2001	19
Alliance Colton, LLC—Alliance Drews	40.0	04/06/01	04/25/01	Aug-2001	19
Calpine Corporation–King City Peaker Project	50.0	04/11/01	05/02/01	Sep-2001	21
GWF Power Systems Company, Inc—Hanford Energy Park Peaker	95.0	04/12/01	05/10/01	Aug-2001	28
Calpine Corporation—Calpine Gilroy Phase I	135.0	05/01/01	05/21/01	Sep-2001	20
Pegasus Power Partners, LLC—Pegasus Power Project, Chino	180.0	05/11/01	06/06/01	Sep-2001	26
CalPeak Power, LLC—CalPeak Escondido	49.5	05/17/01	06/06/01	Sep-2001	20
CalPeak Power, LLC—CalPeak Border	49.0	06/20/01	07/11/01	Sep-2001	21
Total Megawatts	**925.9**				
Filed, but Withdrawn					
Electricity Provider, Inc.—Lancaster Energy Facility	‖				
Evergreen Power Company—Evergreen Concord Peaking Facility	‖				
CENCO Electric Company—CENCO Electric	‖				

Source: Energy Commission Power Plant Status Worksheet as of July 2001.

* An application has been submitted but the energy commission has not yet deemed it complete.

† The energy commission has not yet made a decision on this application.

‡ Construction is currently stalled due to site control issues with the city and county of San Francisco.

§ This project has been suspended due to financial issues.

‖ Application has been withdrawn but applicant intends to file under the 4- or 6-month process.

required 100-day deadline. In fact, one developer expressed a preference for participating in the 12-month process rather than making the necessary investments required by the 6-month process. In any event, the limited number of applications filed under the 6-month process make it too early to determine whether these procedures will be effective in allowing the energy commission to approve new power plants in less time.

Due to Severe Time Constraints, the Energy Commission's 4-Month Expedited Siting Process Has Yielded Only One Approved Project

When the Legislature passed AB 970, which created the 6-month approval process, it also directed the energy commission to implement a 4-month process in an attempt to bring additional simple cycle thermal power plants on-line by August 1, 2001. Applications are eligible for the 4-month approval process if the proposed project is not a major stationary source or modification to a major source of power, it will be equipped with the best available control technology, and it will not have a significant adverse impact on the environment. However, the energy commission has received only a small handful of applications from developers who want to push their projects through the 4-month process.

The 4-month process originally applied only to those developers able to file complete applications or amendments to pending applications by the end of October 2000. Although developers managed to submit applications for seven projects by the October deadline, six of these seven applications were withdrawn. According to the deputy director of the energy siting division, the severe time constraints imposed by the deadline limited the success of these applications. The seventh application was determined to be complete on October 25, 2000, and was given final approval by the energy commission on March 7, 2001. The total approval time was 133 days, only 13 days longer than the required 4 months. However, according to the energy commission, unresolved issues with the city and county of San Francisco have stalled the construction of this plant, which has no expected on-line date.

Since the deadline to submit applications under the 4-month process was extended, the energy commission has received three additional applications with up to 26 other projects either announced or planned.

Senate Bill 28 of the 2001-2002 First Extraordinary Session—which became effective on May 22, 2001—extended the deadline for 4-month projects, requiring them to be put into service on or before December 31, 2002. As of July 2001 the energy commission

had received three additional applications for the 4-month process, with up to 26 more projects either announced or planned. Apparently, developers are seeing some advantages to the 4-month process, although it is still too early to tell how many projects will be approved. Until more 4-month applications are approved, it is difficult to determine the effectiveness of the 4-month process.

Peaker Plants Approved Under the Energy Commission's 21-Day Expedited Process Will Soon Boost the State's Electricity Supply

Ten peaker plants are expected to be on-line by September 30, 2001, adding over 850 MW to the State's electricity supply.

In response to rolling blackouts and numerous stage 3 energy alerts, Governor Davis declared an energy emergency in January 2001, allowing the energy commission to implement its emergency siting process and exempting projects from CEQA. This allowed for a quicker process to permit the construction of peaker plants that could be on-line by July 31, 2001, a deadline later extended to September 30, 2001. Peaker plants are used to produce extra electricity during peak load times. Many more power plant applications have been filed and approved under the energy commission's 21-day siting process than under the 6- and 4-month processes combined. Although these power plants are generally small, 10 are expected to add over 850 MW to the State's electricity supply by September 30, 2001.

The energy commission was able to implement the 21-day process by identifying project sites in advance, thus removing the need to determine site acceptability on a case-by-case basis. As requested by the governor, the energy commission issued a report in February 2001 detailing 33 potential sites throughout the State that would make appropriate peaker plant locations. The energy commission expects that some of these projects will be temporary, removed after three years. Others will remain as permanent peaking facilities or will be converted into combined cycle or cogeneration power plants. Permanent or converted facilities will need to be recertified by the energy commission or demonstrate that they meet certain criteria.

As shown in Table 6 on page 37, 8 of the 11 applications that have been approved under the new process were completed by the 21-day deadline, with 6 actually approved in less than 21 days. Of the three that exceeded the deadline, one project took 23 days, while the other two took 26 and 28 days. Thus, the majority of the approved projects have been successful at meeting the 21-day timeline, with only a few taking slightly longer.

Moreover, the energy commission has stated that all of the projects are on schedule to be completed by September 30, 2001, when they should add more than 850 MW to the State's electricity supply. Two of the projects, totaling 225 MW, became operational in July, and another three projects totaling 175 MW are due on-line by the end of August. As a result, the peaker plants recently approved by the energy commission—if brought on-line as planned—will add a needed boost to the State's electricity supply this summer.

RECOMMENDATION

To ensure that it is successful at approving new power plants in less time, the energy commission should evaluate the effectiveness of the expedited 6- and 4-month processes and determine their long-term viability after an appropriate amount of time has elapsed.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE
State Auditor

Date: August 20, 2001

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Agency's comments provided as text only.

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August 6, 2001

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State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

RE: AUDIT REPORT ON THE ENERGY COMMISSION'S SITING PROCESS

Dear Ms. Howle:

Thank you for the opportunity to review the report entitled "California Energy Commission: Although External Factors Have Caused Delays in Its Approval of Sites, Its Application Process Is Reasonable," resulting from your audit of the Energy Commission's siting process. We do not have any significant concerns with the report. We feel it accurately portrays the complex issues that influence the time required to review energy facilities under the Commission's jurisdiction. It also responds to the questions left unanswered by the previous audit.

I would also like to express my appreciation for the thorough work and professional behavior of your staff. They performed a complete review of the details associated with the siting cases, interviewed numerous members of the Energy Commission and other organizations, and attended several hearings and workshops to gain first-hand knowledge of how the process works.

Please let us know if you or your staff have any additional questions on the Commission's siting process.

Sincerely,

(Signed by: William J. Keese)

WILLIAM J. KEESE
Chairman

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press