EVIDENTIARY HEARING

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of: )
)
Application for Certification for ) Docket No.
the GWF Tracy Combined Cycle Power ) 08-AFC-7
Plant Project )

COUNCIL CHAMBERS
TRACY CITY HALL
333 CIVIC CENTER PLAZA
TRACY, CALIFORNIA

MONDAY, NOVEMBER 30, 2009
2:07 P.M.

Reported by: Peter Petty, CER**D-493
Transcribed by: Margo D. Hewitt, CET**00480
Contract No. 170-08-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
COMMITTEE MEMBERS PRESENT
Karen Douglas, Presiding Member

HEARING OFFICER AND ADVISORS
Raoul Renaud, Hearing Officer
Galen Lemei, Advisor
David Hungerford, Advisor
Kourtney Vaccaro, Hearing Officer

STAFF AND CONSULTANTS PRESENT
Kerry Willis, Senior Staff Counsel
Alan Solomon, Project Manager
Matthew Layton

APPLICANT
Michael J. Carroll, Attorney
Latham and Watkins, LLP
Doug Wheeler, Vice President
Hal Moore, Director of Engineering
GWF Power Systems
Jerry Salamy, Senior Project Manager
CH2MILL

INTERVENORS
Annette Tuso Elissagary
Charles Tuso
Steve Tuso

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proceedings</td>
<td>1</td>
</tr>
<tr>
<td>Opening Remarks</td>
<td>1</td>
</tr>
<tr>
<td>Introductions</td>
<td>1</td>
</tr>
<tr>
<td>Background and Procedure</td>
<td>3</td>
</tr>
<tr>
<td>Applicant Exhibits</td>
<td>6</td>
</tr>
<tr>
<td>Received in Evidence</td>
<td>8</td>
</tr>
<tr>
<td>CEC Staff Exhibits</td>
<td>8</td>
</tr>
<tr>
<td>Received in Evidence</td>
<td>9</td>
</tr>
<tr>
<td>Evidentiary Record Closed</td>
<td>10</td>
</tr>
<tr>
<td>Public Comment</td>
<td>10</td>
</tr>
<tr>
<td>Annette Tuso Elissagary</td>
<td>10</td>
</tr>
<tr>
<td>Evidentiary Record Reopened</td>
<td>20</td>
</tr>
<tr>
<td>CEC Staff Witness M. Layton</td>
<td>20</td>
</tr>
<tr>
<td>Direct Examination by Ms. Willis</td>
<td>21</td>
</tr>
<tr>
<td>Exhibits, FDOC and PDOC</td>
<td>21/21</td>
</tr>
<tr>
<td>Evidentiary Record Reclosed</td>
<td>22</td>
</tr>
<tr>
<td>Next Steps</td>
<td>23</td>
</tr>
<tr>
<td>Closing Remarks</td>
<td>25</td>
</tr>
<tr>
<td>Hearing Officer Renaud</td>
<td>25</td>
</tr>
<tr>
<td>Adjournment</td>
<td>25</td>
</tr>
<tr>
<td>Reporter/Transcriber Certificates</td>
<td>26</td>
</tr>
</tbody>
</table>
PROCEDINGS

2:07 p.m.

HEARING OFFICER RENAUD: Good afternoon, ladies and gentlemen. I'm calling to order the evidentiary hearing for the GWF Tracy Combined Cycle Power Plant Project, which has an application for certification before the California Energy Commission.

I am Raoul Renaud; I'm the Hearing Advisor assigned to this matter. I will introduce the people who are up here on the dais.

To my far right is Kourtney Vaccaro, a Hearing Advisor observing today. To my immediate right is David Hungerford, Advisor to Commissioner Art Rosenfeld. To my immediate left is Karen Douglas, Chair of the Energy Commission and Presiding Member of the Committee assigned to hear this matter. And to her left is Galen Lemei, her Advisor.

The Commission consists of five members, and in a power plant siting case the Commission assigns two Commissioners to form a Committee to oversee the proceedings and prepare a proposed decision. The Committee Members, as I mentioned, are Chairman Douglas, Presiding, and Arthur...
Rosenfeld, Associate Member. Commissioner Rosenfeld was unable to be present today.

Let me ask now that the members of the Commission Staff who are present introduce themselves.

MS. WILLIS: Good afternoon. My name is Kerry Willis; I'm Senior Staff Counsel. And with me is Project Manager Alan Solomon. Also in the audience we have Matt Layton for ghg if there's any questions. And Marie McLean that covered the visual testimony.

HEARING OFFICER RENAUD: Thank you. And. Did you introduce Mr. Solomon? You did, okay. I was thinking about something else.

And to their far right we have representatives of the applicant. Mr. Carroll, would you please make introductions.

MR. CARROLL: Yes. Good afternoon, I'm Mike Carroll, with Latham and Watkins, on behalf of the applicant. To my left are representatives of GWF Energy, the applicant. And I'll allow them to introduce themselves.

MR. WHEELER: Yes. Doug Wheeler, GWF, as the Project Manager.

MR. MOORE: Hal Moore, Director of
Engineering for GWF.

MR. SALAMY: Jerry Salamy, CH2MILL; an environmental consultant to GWF.

HEARING OFFICER RENAUD: Okay, thank you. We also have intervenors in this case. And they are the Tuso and Elissagary families, and Robert Sarvey. Any of you present and wish to indicate your presence?

All right, I see Janette, is it?

MS. ELISSAGARY: It's Annette --

HEARING OFFICER RENAUD: Annette Elissagary, thank you. And Mr. Tuso?

MR. TUSO: Yes.

HEARING OFFICER RENAUD: All right, thank you. And?

MS. ELISSAGARY: Mr. Tuso.

HEARING OFFICER RENAUD: And another Mr. Tuso. Thank you. All right, good.

Are there any elected officials present today? All right, very good.

The evidentiary hearing is the final step, next-to-final step in a long process involving the certification of applications to build thermal power plants in the State of California.
The parties, that is the applicant and
the staff, have labored for over a year gathering
information and exchanging information, and
preparing to submit all of their evidence into the
record. And today is the day we do that as a
formal matter.

The Commission will eventually issue a
final decision on this case. And the Commission
decision can only be based upon evidence that is
in the record. And that's why today is so
important, is because today is the day that all
the evidence that the Commission can consider will
go into the record.

It's considered an administrative legal
proceeding. We generally follow the technical
rules of evidence, but we can also consider other
evidence as long as it is the type of evidence
that responsible persons are accustomed to rely on
in the conduct of serious affairs.

All witnesses are sworn and testify
under oath. Each party has the right to present
and cross-examine witnesses, introduce exhibits
and rebut evidence by any other party.

In preparation for this hearing we held
a prehearing conference on November 17th in
Sacramento. And at that time each party, that is
the applicant and the staff, submitted their
exhibits and proposed testimony, and provided
copies to one another.

That gave them the opportunity to review
that evidence and submit any responsive comments
or corrections or additions or changes. And they
both did that on November 23rd and 25th
respectively.

The submissions of the parties, of the
applicant and the staff, indicate that they are in
agreement on all of the topic areas that are
considered under an application for certification.
And have stipulated that all evidence and
testimony may be submitted by written declaration.
And that they do not wish to cross-examine each
other's witnesses.

We have prepared an exhibit list. It is
actually labeled a tentative exhibit list in case
anybody wants to introduce anything further.
Copies were distributed to the parties and there
were some additional copies left on the table
outside for those in attendance today.

The exhibit list shows 98 exhibits
entered on behalf of the applicant. And one
exhibit entered on behalf of the staff. That one exhibit, however, is very large. It is the entire final staff assessment, which is this. So you can see it's not just one piece of paper, it's a very large document covering the entire analysis of this application.

Neither of the intervenors submitted any exhibits, nor did they submit any prehearing conference statement. And it is therefore assumed that they will not be introducing evidence, because they would have had to exchanged it with the other parties in fairness to be allowed to do that.

Let me proceed first then with the applicant. Mr. Carroll, we have before us the tentative exhibit list based upon your submission of your exhibit list containing 98 exhibits. Does that appear to be correct to you.

MR. CARROLL: It is correct, with one addition, which would be applicant's exhibit 99. And that would be the declaration of Doug Wheeler regarding power plant efficiency and greenhouse gas emissions, which is dated November 19, 2009. It was docketed on November 20, 2009.

HEARING OFFICER RENAUD: Thank you.
Yes. And we do have that. It was entered into
the Energy Commission Docket in this case on
November 20, 2009. The proof of service shows
also that it was distributed to all parties and
other persons on the proof of service.

And do you wish, at this time, to move
that into evidence?

MR. CARROLL: Yes.

HEARING OFFICER RENAUD: We'll mark that
as exhibit 99. Let me ask counsel for the staff
if you are familiar with this document?

MS. WILLIS: Yes, we are.

HEARING OFFICER RENAUD: And do you have
any objection to its admission into evidence in
this matter?

MS. WILLIS: No, we don't.

HEARING OFFICER RENAUD: That exhibit
then, exhibit 99, will be admitted into evidence.

Thank you.

Mr. Carroll, is there anything else you
wish to enter into the record, or testimony you
wish to offer at this time?

MR. CARROLL: We would just ask that the
other 98 exhibits sponsored by the applicant be
entered into the record. Beyond that we have no
additional testimony to offer today.

   HEARING OFFICER RENAUD: Very well,
   thank you. Does the staff have any objection to
   the admission into evidence of all 99 exhibits?

   MS. WILLIS: No, we don't.

   HEARING OFFICER RENAUD: Thank you.

   Those will be admitted, then.

   MR. CARROLL: Thank you.

   HEARING OFFICER RENAUD: All right,

   let's move to the staff testimony. The tentative
   exhibit list shows that your exhibit is exhibit
   200, the final staff assessment, dated October 30,
   2009. Do you have any further exhibits to offer
   into evidence today?

   MS. WILLIS: Yes, we do. We have two.

   The first would be staff's errata to the FSA, and
   that was dated November 23, 2009, as exhibit 201.

   HEARING OFFICER RENAUD: The staff
   errata will be 201. Any others?

   MS. WILLIS: And we have a further
   errata. It's air quality errata. And that was

   HEARING OFFICER RENAUD: All right,

   thank you. We'll mark those as exhibits 201 and
   202, respectively.
Mr. Carroll, is the applicant familiar with those two exhibits?

MR. CARROLL: Yes, we are.

HEARING OFFICER RENAUD: And do you have any objection to their being entered into the record and admitted into evidence?

MR. CARROLL: No, we do not.

HEARING OFFICER RENAUD: All right, thank you. Then I take it the staff would move to enter into the record and have admitted into evidence exhibits 200, 201 and 202?

MS. WILLIS: Yes, staff moves those three exhibits into the record.

HEARING OFFICER RENAUD: Thank you. Mr. Carroll, again, no objection by the applicant?

MR. CARROLL: No objections from applicant.

HEARING OFFICER RENAUD: Those will be admitted. Thank you.

I'll ask one final time before we close the evidentiary record if either party has any further evidence or testimony to offer at this time.

MS. WILLIS: We do not.

HEARING OFFICER RENAUD: All right.
MR. CARROLL: None from the applicant.

HEARING OFFICER RENAUD: Are there any questions from the Committee? All right, thank you. We will then close the evidentiary record.

We can now move into the public comment period. This is the time when we allow members of the public to address the Committee and make comments or statements for the record.

Now, public comments are not evidence in the technical sense. That is they are not part of the formal evidentiary record. But they are considered by the Committee, and we look forward to public comment and encourage it.

I have one paper submitted by Annette Tuso Elissagary seeking to submit public comment. And I invite you to come forward to the microphone.

MS. ELISSAGARY: Thank you. Over the past year and a half or so that this applicant has been in the works there's been a lot of emphasis put on mitigation and the concern for the plant and wildlife of the area that the plant is located. But not so much for the human aspect of it.

And I cannot stress enough the impact we
feel that this power plant, running 24 hours a
day, 365 days a year, could have on my family's
quality of life and property values.

I have read a statement to you before,
in July, regarding our concerns as a family. And
without it being redundant, I would like to have
them entered again in this hearing if you don't
mind.

HEARING OFFICER RENAUD: That's fine.

Please go ahead.

MS. ELISSAGARY: Thank you. Again, my
name is Annette Tuso Elissagary, and I'm here
today representing myself, my two brothers,
Charles Tuso, Steve Tuso and their families. We
feel we need to make our concerns heard and on
record.

In 2001 and in 2002 we, along with San
Joaquin County, the City of Tracy, St. Bernard's
Catholic Church, Surland Development, many of our
neighboring property owners and many concerned
citizens of Tracy voiced our concerns against the
placement of the Tracy peaker plant in our
community.

Contrary to all our hard work,
exorbitant expense, countless hours of time and
logical argument, our concerns fell on deaf ears,
and the CEC Commissioners approved the Tracy
peaker plant.

Never would we have imagined that a few
six and a half years later we would be here again,
backed into the corner, again fighting for our
property rights and quality of life against this
towering menace of our neighborhood.

For 60 years my family has owned, farmed
and lived on the property next to where the Tracy
peaker plant is located. We own 275 acres of
transitional farmland. And our four custom homes
are directly downwind and in direct view of the
plant.

We farm our land, we mow our laws, we
walk our dogs. Every morning we go for a run
around our property and farm. And our children
play and swim in their backyards. We love and
live to be outdoors.

We are now power plant developers. We
are farmers and business people. And I am sure we
are the very few people here today that are not
being paid to be here.

We don't have the time; we certainly
don't have the finances nor the expertise to fight
the big, powerful, experienced company such as
GWF, with all their high-priced expert consultants
and scientific reports. But we are neighbors who
live and work next door to this plant every day of
the year.

For over seven years my family has had a
totheory regarding the effects this plant would have
on our way of life. We feel and we know the Tracy
peaker plant has taken -- and I emphasize the word
taken -- many of our private property rights
without any compensation.

For one, they have taken and impacted
our view from every point on our land and our
homes. With their proposed expansion our view of
Mt. Diablo will be diminished to nothing.

On October 23rd of 2008 GWF conducted a
site tour of their facilities, explaining their
proposed expansion. Standing inside their fenced
grounds, it seemed that they were out in the
middle of nowhere. There doesn't seem to be much
to see or to impact.

We do invite you to view the power plant
from our property. We are sure you will have an
entirely different perspective of this visual
impact that it brings to our neighborhood.
They have taken our quiet use and
enjoyment of our land and our homes. How will it
be peaceful and tranquil with two massive 140
megawatt steam turbine generators roaring next
door 24 hours a day?

At the October '08 site tour the
generators were conveniently not running. We can
only assume the noise level would have been
deafening to have conducted the tour. We are
directly downwind from these turbines. And that
is the direction the sound travels, straight to
our homes.

The taking of number three is the
quality of our air. We have all heard your
studies regarding air credits purchased in
neighboring states and counties; how much less
pollutants will be generated and registered in
Visalia, 175 miles from the power plant. And how
clean and safe it seems to be.

But to us, we know the heaviest and most
cancer-causing pollutants will fall shortly after
leaving the power plant site, and fall directly on
the land we farm and in the homes we live in. We
are concerned with every breath we take what the
impact will be on our health and our well being.
This does create a stress and anxiety that is also health-damaging.

The taking of number four, the taking of the value of our homes. We don't know anyone who would consider an obstructive view, the loud noise and potentially deadly air an amenity to increase the value of their home.

These are all very negative disclosures that deteriorate the value and create huge liabilities for future sales.

Taking number five, the taking of our land value. Our property is in the City of Tracy's sphere of influence, meaning that it will transition from farmland to a higher and better use. Once again, the factors mentioned, view, noise, air quality will all be negative disclosures that will undermine the value of our land.

The sixth taking is the quality of our life. When you take away the person's quality of view, quality of peace and quiet, quality of the air they breathe, the value of their home, the value of their land, create daily stress and anxiety, you are robbing them of their quality of life.
If this project is for the public good and something has been taken from neighboring property owners, then compensation is due to those who suffer the impacts and loss. For us this could be in the hundreds of thousands to the millions of dollars. It's hard to put a price on the quality of life.

Our big question is how will all this taking and negative impacts be mitigated to satisfy our losses. We are firm believers in private property rights. And we know one thing, no one has the right to come into a neighborhood, create negative life-changing impacts, disturb the quality of life, make huge financial benefits for themselves at the expense, deterioration and well being of the surrounding property owners without drastic mitigation and fair compensation.

Any compromise less than fair is stealing. And stealing is a crime.

For anyone here to say our concerns are unfounded, we say, you do not live and work next to this plant as we do. To us, this is every-day, real life, not studies, graphs and models.

The high-priced consultants and fancy reports are nothing more than a smoke screen of...
abstract theory and twisted legal jargon to make
this project seem a benefit to the area.

Common sense tell us before GWF and the
Tracy peaker plant were our neighbors, we had a
zero view issue, a zero noise issue, a zero air
quality issue, a zero quality of life issue.
Anything above zero is a hundred times greater
than it was. And that is what our towering
neighbor has created to us, contrary to all the
high-priced studies.

I can assume that 95 to 100 percent of
you who are either applicants or applicants' paid
consultants, or are part of the decisionmaking
process, do not live in the Tracy area. Possibly
not even San Joaquin County. But your influence
here -- and your influence here will not
negatively impact your life.

So, please keep in mind, we are here and
we have been here for over 60 years, farming our
land, growing up, living here, raising our
families and minding our own business.

But once again we have been put into the
ring to fight a very experienced, well trained
professional and all of their well-paid
consultants. We get no public defense. We are
here left to battle on our own. It is not a fair
fight.

At the end of this process we need to be
made whole, compensated for our damages. And not
left any less than before GWF came into our lives.
After all, we are the ones left here to suffer the
burden of your decision and the impacts that come
with it for the rest of our lives.

And I do thank you for your time and
allowing me to read -- this is a true, heartfelt
sentiment of my family.

Thank you.

HEARING OFFICER RENAUD: Thank you very
much for your comment.

Are there any other persons in
attendance who wish to address the Committee?

Mr. Carroll.

MR. CARROLL: Hearing Officer Renaud,
there is one additional item that we realized that
we did not address. And that was the entry of the
final determination of compliance into the
evidentiary record.

Applicant did not identify that on its
exhibit list, and I don't believe CEC Staff did --

MS. WILLIS: No, we did not.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
MR. CARROLL: -- either. I believe there's a representative of the Air District available by phone. But I also think --

MS. WILLIS: You can move --

MR. CARROLL: -- staff witness or applicant's air quality witness is here, and would be happy to sponsor the FDOC, as well.

HEARING OFFICER RENAUD: Which phone are they available on? Because we've been having trouble with our phone here.

MR. CARROLL: Oh, I meant they were available on their phone. I don't know about here.

HEARING OFFICER RENAUD: To be called, all right. Okay. Well, availability is what we're looking for, and they're available.

Are there any concerns or questions or issues pertaining to the FDOC before we consider admitting it into the evidence?

MR. CARROLL: No.

HEARING OFFICER RENAUD: All right.

MS. WILLIS: No.

HEARING OFFICER RENAUD: The Chair would entertain a motion to reopen the evidentiary record for the purpose of entering the FDOC.
MR. CARROLL: I would move that we --

I'd make a motion that the Committee reopen the
evidentiary record for purposes of accepting the
FDOC.

HEARING OFFICER RENAUD: All right.

Counsel, any objection?

MS. WILLIS: No.

HEARING OFFICER RENAUD: All right, we

will reopen for that purpose. And who is the

sponsor of the document?

(Pause.)

MS. WILLIS: Staff calls Matt Layton.

HEARING OFFICER RENAUD: All right.

MS. WILLIS: Mr. Layton needs to be

sworn in.

HEARING OFFICER RENAUD: Yeah. Mr.

Layton, -- you do the swearing? Yes, go ahead.

Whereupon,

MATTHEW LAYTON

was called as a witness herein, and after first
having been duly sworn, was examined and testified
as follows:

THE REPORTER: Please state and spell
your name for the record.

THE WITNESS: Matthew Layton,
L-a-y-t-o-n.

DIRECT EXAMINATION

BY MS. WILLIS:

Q Mr. Layton, for the purposes of this entry could you please tell the Committee your position in this hearing?

A I'm the Office Manager of the Engineering Office. I oversaw the preparation of the staff assessment on air quality and reviewed the PDOC and FDOC as they were prepared by the District.

Q And are you sponsoring the FDOC and PDOC into the record at this time?

A I am.

MS. WILLIS: So I think we would like to mark them, I guess, as exhibit 203 and exhibit 204. That would be the preliminary determination of compliance is exhibit 203, and the final determination of compliance is exhibit 204.

HEARING OFFICER RENAUD: Very well, thank you. Any objection by the applicant to those being entered into the evidentiary record?

MR. CARROLL: No objection.

HEARING OFFICER RENAUD: All right.

They will be admitted then, thank you.
MS. WILLIS: Thank you.

HEARING OFFICER RENAUD: And we will then reclose the evidentiary record.

All right, we normally have a telephone line available in case anyone wanted to phone in or listen in. We had some technical difficulties which I understand have been solved.

And I think, if you will bear with us, we are going to attempt to open that line and see if anybody's there. I'll do it because I've tried before.

(Pause - Telephone contact established.)

HEARING OFFICER RENAUD: I hope that doesn't go on too long.

Tracy? All right, let me keep you for a moment. Are you stating that no one has phoned in to this line?

THE OPERATOR: You are the first person that has called in.

HEARING OFFICER RENAUD: All right. And I am the conference leader. I think that -- have you had anyone waiting to get in or anything like that? We just want to make sure we don't leave anyone out who wanted to speak.

THE OPERATOR: No, no one. You are the
first person that has called in.

HEARING OFFICER RENAUD: All right. And you'll notify us if someone else calls in?

THE OPERATOR: You'll hear a beep as the parties join in this phone-in conference. And do you want to have the parties announced or --

HEARING OFFICER RENAUD: No, we'll just wait for the beep.

THE OPERATOR: If you need assistance at anytime you can press star-zero.

HEARING OFFICER RENAUD: Thank you.

THE OPERATOR: Thank you.

HEARING OFFICER RENAUD: Okay, we now have the phone line open and I think we will just give a few minutes for anyone who was trying to get in to get in now while we go through the final steps in ending this hearing.

Let me ask again if there are any members of the audience who wish to address the Committee at this time. All right, I see none.

We have closed the evidentiary record.

Are there any remarks from the Committee before we close? All right, thank you.

And the next step in the process is that the Committee will take all the evidence back to
Sacramento; go through it and prepare a Presiding Member's Proposed Decision.

That is a document which considers all of the evidence and the ways it analyzes it and makes a determination concerning whether or not there are any significant impacts from the project.

That Presiding Member's Proposed Decision, which we call the PMPD, will be issued, we hope, in eight to ten weeks. Sometimes they can get done sooner, sometimes it takes longer. It just depends on the complexity of the matter and the number of other cases that are going on at the same time.

After that decision is -- that proposed decision is rendered, a hearing will be noticed where members of the public and the parties can come and comment about the proposed decision. The Committee will listen carefully to those comments, and ultimately issue a final decision, which would go to the Commission for adoption.

And the full Commission then would consider it at one of its regularly noticed business meetings. Again, at that meeting is another opportunity for the parties and members of
the public to comment concerning the proposed
decision.

We haven't heard any beeps indicating
anyone phoning in. And I think we've allowed
enough time if someone was trying to phone in that
they would have by now.

So, I think we've concluded our business
for the day, and I will call this meeting
adjourned. Thank you.

(Whereupon, at 2:40 p.m., the
evidentiary hearing was adjourned.)

--o0o--
CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of December, 2009.

PETER PETTY

AAERT CER**D-493

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

December 3, 2009

Margo D. Hewitt

AAERT CET**00480

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345