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

APPLICATION FOR CERTIFICATION OF THE **PEGASUS PROJECT** **PEGASUS POWER PARTNERS, LLC**	**DOCKET NO. 01-EP-9** APPLICATION COMPLETED MAY 11, 2001

PROPOSED DECISION

The Pegasus Project proposed by Pegasus Power Partners, LLC has been the subject of a Committee hearing and subsequent analysis by the Energy Commission staff. The proposal meets criteria developed by Energy Commission staff to implement the Governor's Executive Orders expediting the permit process for peaking and renewable energy generating plants. This Proposed Decision has been completed in an expedited timeframe as called out in the Executive Orders and is submitted for approval by the full Commission. As the Presiding Commissioner assigned to review this proposal, I hereby recommend certification of the project under the limitations presented as conditions contained in this Proposed Decision and the Staff Assessment incorporated herein by reference.

Executive Orders

On January 17, 2001, the Governor proclaimed a State of Emergency due to constraints on electricity supplies in California. As a result, the Governor issued Executive Orders D-22-01, D-24-01, D-25-01, D-26-01, and D-28-01 to expedite the permitting of peaking and renewable power plants that can be on-line by September 30, 2001. Additionally, projects below 50 megawatts (MW) that have power purchase agreements with the California Independent System Operator (Cal-ISO) may also apply to be permitted by the Energy Commission under the emergency siting process. These emergency projects are exempt from the

California Environmental Quality Act pursuant to Public Resources Code section 21080(b)(4). Since the Governor has declared a state of emergency, the Energy Commission may authorize the construction and use of generating facilities under terms and conditions designed to protect the public interest. (Pub. Resources Code,／25705.)

Project Description

Pegasus Power Partners, LLC (Applicant), a subsidiary of Delta Power Company, LLC, proposes to develop the Pegasus Project (Pegasus), a nominally rated 180 megawatt (MW), simple-cycle, natural gas-fired power plant to be located on the grounds of the California Institution for Men (CIM) in the City of Chino in San Bernardino County.

Pegasus will occupy approximately 11 acres and will consist of modular components. The power plant will be located on vacant land previously utilized as farming land by CIM which contains non-native grasses, weedy species, and a single row of ornamental trees. The project site is immediately north and east of the existing 26 MW OLS Energy — Chino cogeneration facility. Also located on the CIM property near the site is a closed steam generation plant. Other existing land uses in the project vicinity include the Prado Conservation Camp, the Ruben S. Ayala Community Park, a YMCA facility, and a driving range. The site faces Eucalyptus Avenue, which intersects approximately 1,000 feet to the west with a major local thoroughfare, Central Avenue.

The State of California owns the parcel in question as well as others in the area. The Department of General Services (DGS) is responsible for management of the property for the state. Applicant expects to sign a contract with DGS to lease the site for 35 years.

Pegasus will have four 110-foot exhaust stacks and turbine compressor vents; no other structure taller than 55 feet is planned. The closed power plant has a stack that measures approximately 180 feet in height. The existing cogeneration plant has exhaust stacks of approximately 55 feet. Pegasus will have four GE LM6000 aeroderivative combustion turbine-generators, each nominally rated at 45 MW. Although initially utilizing a water injection system, Pegasus will utilize a Selective

Catalytic Reduction (SCR) catalyst system to reduce emissions of oxides of nitrogen (NOx). This conversion is anticipated as the SCR units become available in shortly after September 30, 2001. The plant will also use a carbon monoxide (CO) oxidation catalyst system to reduce CO emissions. The only hazardous material to be used or stored at the facility, aqueous ammonia, is necessary for the SCR system. It will be stored on-site in one 15,000-gallon tank with a secondary concrete containment unit.

The Pegasus site is located approximately 3,000 feet southwest of Southern California Edison s (SCE) Chino substation. A 230-kilovolt (kV) transmission line is planned to connect the project to the substation. The line will run underground to a point across the street from the substation. At such point, a single steel pole will be used to complete the connection above ground.

Pegasus is expected to include a new 10-inch natural gas supply line in order to connect to existing Southern California Gas Company (SoCalGas) facilities in the City of Chino. The underground gas pipeline will proceed for approximately 1,000 feet from a point near the intersection of Central Avenue and Eucalyptus Avenue along existing OLS Energy-Chino cogeneration facility right-of-way to the project site.

Pegasus will use approximately 360 gallons per minute (gpm) of reclaimed water at peak usage, which will be used to reduce NOx emissions and to increase generating power. Applicant has a will-serve letter from the City of Chino to purchase reclaimed water. A new reclaimed water supply line will run west from the project site to an interconnection point near the intersection of Eucalyptus and Central Avenues. Applicant will store the water in an approximately 500,000 gallon above ground service water tank that will also serve as an alternate source of water in the event of a fire. Applicant is negotiating with the City of Chino for 550 gallons per day of potable water required by the project via existing lines that connect to the cogeneration facility.

Demineralized water will be provided via a portable ion exchange system and used to treat water supplied from the service water tank. The demineralized water will be stored in an above ground tank. Recharging of ion exchangers used to treat the service water will be done offsite; alternatively, a combination of

reverse osmosis (RO) and ion exchange may be utilized. If the ion exchange system is used to treat the reclaimed water for operations, no liquid discharge will occur and the solids will be transported offsite and legally disposed of via trailers. However, if the RO system is selected, approximately 150 gpm of wastewater will be produced from this process. Applicant proposes to route the water from this process to the existing cogeneration facility cooling towers. If the cooling towers cannot accept this water, it may be routed to the Inland Empire Industrial Wastewater System industrial wastewater line that is currently servicing the adjacent cogeneration facility.

In addition, wastewater will be produced from the oil/water separators and possibly discharged to the wastewater system. In the event that wastewater from oil/water separators or the RO treatment is routed to the Inland Empire Industrial Wastewater System the applicant shall provide a proof of service letter from the wastewater district to the Commission staff. Condition SOIL&WATER 3 includes this requirement. Household waste (sewage) will be discharged to the OLS Energy-Chino cogeneration facility sewer lines.

Pegasus is a simple-cycle project that will operate during periods of high demand. In order to have maximum flexibility, Applicant s air permit application requests approval to operate up to 7,500 hours per year. Three of the power-generating units are expected to be in operation by September 30, 2001, and the fourth one by March 31, 2002.[1] Construction will begin upon issuance of the Permit to Construct by the South Coast Air Quality Management District (Air District) or sooner if permission is obtained from the United States Environmental Protection Agency (USEPA).

Pegasus is currently negotiating with the California Department of Water Resources (DWR) for a contract to provide electricity to California. Under the terms of its lease with DGS, Applicant is required to offer its generated electricity to DWR. Under the lease, if DWR refuses the offer the applicant may not sell the electricity elsewhere for less than the terms initially offered to DWR.

[1] Applicant has ordered four turbines, only three can be delivered by September 30, 2001. The fourth will be delivered before March 31, 2002. The project will be constructed to accommodate a fourth turbine. All linears will be in place to accommodate the fourth turbine.

Public Hearing

On May 16, 2001, in the City of Chino, Robert Pernell, the Energy Commissioner designated to conduct proceedings on this proposal, held a site visit and public informational hearing to discuss the project with governmental agencies, community organizations, and members of the public. At the hearing, Applicant described the project and Energy Commission staff explained the Energy Commission s expedited review process. Local residents and other members of the public presented comments and asked questions about the project.

The following representatives of local agencies attended and participated at the hearing: Charles E. Coe, Director of Community Development Director, and Pat Glover, Director of Public Works, City of Chino; Pat Hegler, Public Facilities and Operations Director, and Susan Cole, City Planner, City of Chino Hills; Mohsen Nazemi, Assistant Deputy Executive Officer SCAQMD, Kaut Beruldsen and John Yee, also for the Air District.

Issues of Concern

The following issues were identified at the hearing and during the review and consideration period that followed. At the conclusion of the hearing, Applicant was asked to provide additional information regarding issues identified at the hearing directly to Energy Commission Staff on or before May 21, 2001.

1. Land Use Consistency.

As set forth in this section and in the Public Comment section of this Decision, the City of Chino raised a number of concerns. The concerns are also detailed in a letter from the City that was submitted at the hearing. (Exhibit 1: Letter dated May 16, 2001, from City Manager Glen Rojas to Kevin Kennedy, Commission staff.) With respect to land use, the City of Chino notes that an amendment to the City s General Plan would be required for Pegasus.

The General Plan land use designation for the entire CIM facility, including the Pegasus project site, is Open Space (OS) — Urban Reserve. According to the

Land Use Element of Chino s General Plan, the purpose of the Open Space — Urban Reserve is to hold an area for future urban development in the event of a change of use. At the time of such a change into an urban use, the City notes, a specific plan should be developed for the entire area outlining detailed land uses, circulation standards, and design standards. Further, the General Plan Land Use Element states that if and when the CIM property changes to a non-institutional use, a specific plan would be prepared allocating land for no more than 8,000 residential units along with accompanying commercial facilities, parks, and other public facilities.

DGS recently designated approximately 758 acres of the northern CIM site as surplus land that would not be used by the CIM facility in the future. Approximately 170 acres of this surplus land had been leased to the City of Chino in 1994 to create Ruben Ayala Park. The Pegasus project site is partially located on a portion of this surplus land, but DGS plans to remove the surplus designation from the land leased to Pegasus for this project.

As noted above, the project site is classified as Open Space in the Zoning Ordinance. Utility stations and equipment buildings are allowed in this zone with a Special Conditional Use Permit. The City of Chino provided a list of recommended conditions of approval and mitigation measures that the city would likely apply in granting such a permit. Energy Commission staff reviewed these proposed conditions and incorporated them as appropriate protocols in Condition of Certification LAND-1.

DGS is in the process of preparing a specific plan that will direct the future development of this surplus land. Planned features include a golf course, business/professional areas, and future residences. DGS will work with the City of Chino to ensure that planned future development in the vicinity of the Pegasus project will be consistent with the presence of the power plant. The City has recommended that Applicant prepare a specific plan that will be reviewed in conjunction with the DGS specific plan for the surplus lands. Condition of Certification LAND-1 requires Applicant to submit a specific plan in accordance with the City s recommendation.

Applicant asserts that it will undertake all steps necessary to obtain compliance with land use requirements.

2. Chino Airport Overflight Path.

The Chino Airport is located directly east of the CIM facility across Euclid Avenue. City of Chino raised a concern that the project s stacks might interfere with flights in or out of the airport.

Energy Commission staff contacted CalTrans Division of Aeronautics (Caltrans) and the Federal Aviation Administration (FAA) regarding the potential impact of Pegasus on flight operations of Chino Airport. The FAA had not replied as of the time the Staff Assessment was prepared. However, CalTrans indicated that the location of the proposed exhaust stacks, approximately 11,200 feet northwest of the runway approach, will be outside key areas of overflight safety (the Runway Protection Zone, Approach Surface, and Transistion Surface). Also, a larger stack (180 feet) located within the CIM boundaries immediately south of the proposed project site is not known to have posed safety issues for aircraft in flight in the past.

3. Air Quality and Status of the Air District permit application.

The City of Chino expressed concerns regarding plant air emissions and urged full disclosure of potential impacts.

Applicant filed its Permit to Construct Application on April 20, 2001, and revised it on April 27, 2001. Air District deemed the application complete on May 11, 2001.

Because the SCRs, which constitute best available control technology (BACT), will not be available by September 30, 2001, the Air District plans to issue a Stipulated Order of Abatement to permit operation for a few months until the arrival of the catalysts.

The project will exceed emissions standards established by the Air District and Applicant is required to obtain the necessary emission reduction credits (ERCs) to offset such emissions. At the hearing, Air District Representative Mohsen

Nazemi stated that the Air District has preliminarily approved the application. The Air District issued its Notice of Intent to Issue Permit on May 23, 2001. The Air District notes in its Notice that emission offsets are required for CO, NOx, particulate matter less than 10 microns (PM10), ROG, and SOx. The Notice triggers a 30-day public review and comment period before any final action on the application is taken by the Air District.

Applicant is working with the USEPA to obtain the Administrative Order of Consent that would be allow construction to begin before the expiration of the 30-day public comment period.

Applicant expects to have the necessary emission reduction credits to offset the emissions in question, by utilizing temporary offsets held in the statewide Emission Reduction Credit Bank established by the California Air Resources Board (CARB), by utilizing credits that may be available from the Air District, or by purchasing offsets in the open market, before the SCAQMD issues the permit.

4. Noise

City of Chino expressed concern about the noise level for users of nearby Ayala Park and for future residents of the CIM property recently declared surplus. The park is located approximately 1,000 feet from the project site. The nearest sensitive receptors to the project are CIM staff and inmates, the closest of which are housed in barracks roughly 900 feet south of the site. The nearest residential locations are approximately 3/4 northeast of the site.

The City of Chino Noise Ordinance sets the permissible noise level for areas adjacent to residential areas at 55 decibels (dBA) from 7 a.m. to 10 p.m. and at 50 dBA from 10 p.m. to 7 a.m. City of Chino Noise Ordinance D95-10 provides that noise limits may be increased to reflect existing maximum ambient noise levels.

Applicant has proposed to house the combustion turbine equipment in acoustic enclosures, and to equip the turbine inlet and exhaust with silencers. With this mitigation in place, the sound level at the nearest residence is projected to be 46 dBA, satisfying the City of Chino Noise Ordinance criteria. Estimated project

sound levels would be 60 dBA along the southern boundary of the golf driving range and 57 dBA at the southeastern corner of Ayala Park north and northwest of the project site, which levels are within ambient noise levels. The ambient noise levels range between 51 dBA at 3 a.m. to 61 dBA during the day.

Applicant proposes to erect barrier walls where needed and Condition NOISE-1 ensures continued adherence to community noise standards and development consistent with existing uses.

5. Presence of a species of special concern

During a site visit on May 8, 2001, Energy Commission staff observed a single burrowing owl and numerous burrows in the proposed transmission line corridor. Burrowing owls, a California state Species of Special Concern, prefer dry, open, treeless grasslands, often in areas with little or no vegetation.

Energy Commission Staff informed the applicant of the burrowing owls and recommended additional surveys be performed. Campbell BioConsulting, Inc. was utilized to do a focused burrowing owl survey, which was conducted from May 17 to May 21, 2001. In addition, Sapphos Environmental Inc. conducted further surveys in accordance with the Burrowing Owl Survey Protocol and Mitigation (California Burrowing Owl Consortium (CBOC) 1997) on May 24 and 25, 2001. Biologists from both survey teams confirmed the presence of burrowing owls within the proposed transmission line corridor.

California Department of Fish and Game (CDFG), and United States Fish and Wildlife Service (USFWS) recommend that Applicant adhere to the specific recommendations ensure the protection of sensitive species. Energy Commission staff agreed with CDFG and USFWS and recommended appropriate conditions. In addition, a biologist will survey the facility site and proposed linear rights of way prior to site qualified mobilization and will remain onsite from the start of site mobilization to the completion of construction. Prior to trenching the transmission line corridor, the applicant must submit a contingency plan for CPM approval that has been reviewed by USFWS and CDFG to address any burrowing owls discovered during trenching operations. The project site was moved approximately 600 feet northeast of the original

proposed location in order to mitigate potential impacts on species of special concern.Condition BIO-8 ensures that the project will comply with the mitigation measures identified in the record.

6. Timely completion of the transmission interconnection.

Applicant stated at the hearing that a meeting was scheduled the following day with representatives of the Department of General Services to finalize the underground route of the transmission line. A final route was submitted to Energy Commission staff on May 24, 2001. The route may be subject to change due to biological concerns along the route, as discussed above, but Energy Commission staff oversight will continue regarding any new routes.

At the time of the hearing, Applicant had entered into a preliminary agreement with SCE for the impact study that would precede the start of construction. Applicant expects to have the interconnection work completed by September 1, 2001.

7. Timely completion of the natural gas interconnection.

At the hearing, Dr. Roland stated that Applicant expected to sign an agreement with SoCalGas for completion of the natural gas interconnection. Construction is expected to begin in early July 2001 and to be completed in less than two months.

Public Comment

The City of Chino, through its Community Development Director, Charles Coe, stated that it did not oppose the project, but raised concerns regarding the project. A letter received at the hearing raises concerns in the following areas: land use regulations; general plan consistency; zoning; stack height; Chino Airport overflight restrictions; noise; visual impact; air quality; hazardous material storage; and city review of landscape and construction drawings. Director Coe summarized the City s view on these issues, which have been addressed in the Issues of Concern and Project Description sections of this Decision.

Bill Stern submitted a written statement suggesting the following conditions for approval of the project: lease payments tied to the cost of producing power; a requirement that power produced at the facility be sold to California; a cap on the price of the electricity sold in the state; and State ownership of the plant after an unspecified number of years.

David Dobbins, Chief Executive Officer of local company Genlabs, sent an e-mail message supporting the project.

Applicant stated at the hearing that it is working with the City of Chino and with Energy Commission Staff to address any problems.

Staff Assessment

On June 2, 2001, Energy Commission staff issued its Staff Assessment, which is attached hereto and incorporated herein by reference. Staff conducted a fatal flaw analysis and found no areas of major concern related to the project. The conditions contained in the Staff Assessment are hereby adopted as the Conditions of Certification for the Pegasus project.

Permit to Construct

As noted above, on April 20, 2001, Applicant filed an application with the Air District for a Permit to Construct (PTC). The Permit to Construct is a requirement of the USEPA. The application is subject to a 30-day notice and public review and comment period that commenced on May 23, 2001. The PTC permit shall become effective on the date designated by the Air District, including any modifications approved during the comment period. The conditions and any modifications thereto contained in the PTC shall be incorporated herein by reference on the effective date of the PTC.

TERMS OF CERTIFICATION AND PERMIT VERIFICATION

Pegasus is a simple-cycle project that will operate during periods of high demand. Applicant requests certification for the life of the project. Construction will begin upon certification by the Energy Commission and issuance of the PTC permit by the Air District. Construction may begin prior to the issuance of the PTC permit if the USEPA issues an Administrative Order of Consent. Project construction will take approximately ten months. Pegasus is expected to begin commercial operation September 30, 2001.

The project shall be certified for three years or for the length of Applicant s power purchase agreement with the DWR. If, at the end of its power purchase agreement with DWR, the project owner can verify that the project complies with the following continuation conditions the Energy Commission shall extend the certification:

Permit Verification: At least six months prior to the expiration of its power purchase agreement with the DWR, the project owner shall provide verification that the project will meet the following criteria:

1. The project is permanently mounted on a foundation, rather than temporary or mobile in nature.

2. The project owner demonstrates site control.

3. The project owner has secured permanent ERCs approved by the Air District and CARB. The ERCs must be adequate to fully offset project emissions for its projected run hours and must have been in place prior to the expiration of the temporary ERCs obtained from CARB if temporary ERCs were used for the initial operation of the project.

4. The project is in current compliance with all Energy Commission permit conditions specified in this Decision.

5. The project is in current compliance with all conditions contained in the ATC permit from the Air District.

6. The project meets all BACT requirements under Air District rules, as established in the ATC permit, and all CARB requirements.

The certification shall expire if the project cannot meet the continuation criteria.

FINDINGS AND CONCLUSIONS

1. There is an energy supply emergency in California.

2. All reasonable conservation, allocation, and service restriction measures may not alleviate the energy supply emergency.

3. Public Resource Code section 21080(b)(4) exempts emergency projects from the requirements of the California Environmental Quality Act.

4. Executive Order D-28-01 states that [a]ll proposals processed pursuant to Public Resources Code section 25705 and Executive Order D-26-01 or this order [D-28-01] shall be considered emergency projects under Public Resources Code section 21080(b)(4).

5. Pegasus is a simple-cycle facility that will operate during periods of high demand.

6. The Application for Certification for Pegasus has been processed pursuant to Public Resource Code section 25705 and Executive Orders D-26-01 and D-28-01.

7. Pursuant to the Executive Orders cited above, Pegasus must be on line no later than September 30, 2001, in order to help reduce blackouts and other adverse consequences of the energy supply emergency in the state.

8. In order for Pegasus to be on line by no later than September 30, 2001, it is necessary to substantially reduce the time available to analyze the project.

9. To the greatest extent feasible under the circumstances, the terms and conditions specified in this Decision (1) provide for construction and operation that does not threaten the public health and safety, (2) provide

for reliable operation, and (3) reduce and eliminate significant adverse environmental impacts.

RECOMMENDATION

Having heard the presentations and reviewed the record in this proceeding, I believe that, with the mitigation identified in (1) the Application as amended, (2) the Conditions of Certification identified in the Staff Assessment, (3) the Authority to Construct permit, and (4) as otherwise described in the record, the proposed facility will be designed, sited, and operated in a safe and reliable manner to protect the public interest. Therefore, I recommend that the Energy Commission adopt this Proposed Decision and certify the Pegasus Project as described in this proceeding.

Monitoring Conditions

The project owner shall comply with the following monitoring conditions in addition to the Permit Verification process contained in this Decision and in addition to the General Compliance Conditions delineated in the Staff Assessment and incorporated herein by reference:

Start of Operations: The Pegasus Project shall be on line by ***no later*** than September 30, 2001. If the Pegasus Project is not operational by September 30, 2001, the Energy Commission will conduct a hearing to determine the cause of the delay and consider what sanctions, if any, are appropriate. If the Energy Commission finds that the project owner failed to proceed with due diligence to have the Pegasus Project in operation by September 30, 2001, the Applicant shall forfeit its certification.

BACT Standards: Operation of the Pegasus Project shall be in compliance with all BACT standards imposed by the Air District in its Authority to Construct permit. Failure to meet these standards will result in a finding that the Pegasus Project is out of compliance with the certification.

Three-Year Review: No later than 15 days after completion of the first three years in operation, the owner of Pegasus shall submit to the Energy Commission a report of operations that includes a review of Pegasus

compliance with the terms and conditions of certification, the number of hours in operation, and the demand for power from the facility during the three-year period.

Dated June 5, 2001, at Sacramento, California.

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Robert Pernell, Presiding Commissioner
Emergency Siting Committee
Pegasus Project