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Filer:	Grace Chang
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FFIERCE is primarily concerned with the negative impacts to identifiable, vulnerable low-income communities of color in Oxnard, and their inclusion (or lack thereof) in the decision-making process of the CEC, both in terms of access to accurate information and to participation in the process itself, including hearing and public comment periods.

The CEC correctly identifies Oxnard and the communities in close proximity to the proposed P3 plant as *environmental justice* communities, but to merely acknowledge these and identify them with this label is insufficient. This should not allow the CEC to sidestep taking corrective action and instead add to the long legacy of injustices suffered by these communities by approving yet another power plant to add to the environmental burdens already shouldered by these communities. The historic profile of Oxnard is a textbook case of environmental racism: Oxnard has been “home” to three landfills and the Halaco Superfund site, and those most heavily impacted by the existing and proposed power plants are primarily working class and immigrant communities of color. Within the environmentally overburdened communities in Oxnard, 85% are people of color, 29% live in “linguistic isolation,” 56% live below two times the federal poverty level, and 46% of those over 25 years of age have less than a high school education. Each day, thousands of farmer workers do stoop labor in fields less than half a mile from the plant site while nearby many of their children are the youth who are most likely in the country to be attending schools next to fields doused with toxic pesticides. One in five Oxnard residents have no health insurance and the asthma rates in the most impacted neighborhoods are above the 90th percentile across counties of California.

The FSA report states in the Environmental Justice section, at page 4.5-2, that “The California Natural Resources Agency recognizes that EJ communities are commonly identified as those...where residents have been excluded from the environmental policy setting or decisions-making process.” Yet the FSA states in the Land Use section, at page 1-10, that there is “not an EJ population residing within one mile of the project’s land use impact area.” These statements reflect a bias towards accounting for residents (and perhaps property owners as a subgroup specifically targeted for public notice), over others potentially affected daily by the presence of the existing and proposed plants.

Within the environmental justice movement, environmental racism¹ is understood to occur when environmental hazards are inequitably distributed or targeted to areas where poor people of color “live, work and play,” not just where property owning residents may live. Thus, FFIERCE raised the question at the January 10, 2017 workshop on the FSA: How does the CEC process address or account for those individuals not necessarily residing but working, going to and from school or recreating in the direct vicinity? This question is multi-pronged: a) Have all such affected individuals been identified and accounted for in analyses undertaken in the CEC process? b) Has accurate information been supplied, and has outreach and public notice been conducted, to facilitate the legitimate inclusion of the affected individuals and communities in the decision-making process? c) Have conditions allowed for these community members’ participation?

¹ Luke Cole and Sheila Foster, *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement*, New York University Press, 2001, p. 10.

a) Have all such affected individuals been identified and accounted for in the analyses undertaken in the CEC process?

Two large groups of vulnerable people were not adequately identified or accounted for in the analysis and documents in this proceeding: a) farm workers in the fields adjacent to the existing and proposed plant sites, and b) students attending two schools within a three mile radius. Indeed, these communities and/or sites were not even identified anywhere on Applicant NRG's map of Sensitive Receptors. ("Sensitive Receptors within 6 miles – Supplemental, Figure 4.9-2, April 2015 AFC) Yet approximately 3,000 students attend Oxnard High School, on West Gonzalez Road between Victoria and Vineyard, located in the same census tract as the project. It is the second largest school in the district, a Title I school (federal designation for schools with socioeconomically disadvantaged students) with an enrollment of over 2,800 students who spend 7-10 hours per day on campus five days per week. Its student body is 84% Latino, 91% students of color, 65% economically disadvantaged, 10% of its students have disabilities and 15% are English Learners. Nearby, even younger students attend Thurgood Marshall School (grades K-6), with an enrollment of 683 students, of whom 79% are Latino/a and 91% non-white, and 60% are on free and reduced lunch assistance, indicating higher than state average poverty levels. Thus, almost 4,000 disadvantaged students, majority non-white and low-income, are spending the bulk of their waking hours less than 3 miles from the proposed plant site. Yet these students were not identified or accounted for in NRG's application document of "Sensitive Receptors within 6 miles – Supplemental," Figure 4.9-2, April 2015, AFC.

In addition, Oxnard schools are known to be among the schools closest to pesticide-sprayed fields in the state of California. This calls attention to the approximately 3,000 farm workers toiling in stoop labor each day for long hours, directly adjacent to the plant, as close as less than half mile away. These farm workers and the fields where they toil also were not identified or included as "Sensitive Receptors" in NRG's application, even though they are some of the most vulnerable populations potentially impacted by the existing and proposed plants. They are easily among the most disenfranchised in our society. Their lack of power is often further compounded by their status as non-U.S. citizen or undocumented, migrant, and non-English speaking or, in some cases, as Mixteco/indigenous, non-Spanish speaking people as well. Often already disadvantaged by this linguistic isolation, whether monolingual Spanish or Mixteco language-speaking, their marginalization is often further compounded by lack of formal education and poverty.

As CEJA witness Strela Cervas testified, increased vulnerability to pollutants is correlated with certain socioeconomic factors for people of color, such as linguistic isolation and poverty: "Socioeconomic indicators, such as linguistic isolation and poverty, are modeled as well [in CES3.0]. These factors have been included because studies indicate a "heightened vulnerability of people of color and lower socioeconomic status to environmental pollutants."²

² Strela Cervas, Opening Written testimony, p. 5, citing CES 3.0 report, p. 12

Finally, the assumptions used to assess impacts of the project do not allow for an adequate measure of impacts of exposure. Staff witness Dr. Chu testified that in the analysis of potential hours of exposure for farm workers, the assumption used was that of 8-hour days, 5 days per week.³ Yet the actual typical hours of labor for farm workers and their presence at the work site or fields is not the federally regulated 40 hour work week.⁴ In other words, we need to account for all potentially affected populations in ways that reflect the actual conditions of their lives to assess the impacts of exposure accurately.

From an environmental justice perspective, the failure to include these populations (students and farm workers) and the actual conditions of their lives in the analysis of sensitive receptors and harmful exposures results in a failure to treat them as people with same rights as others, simply because of their marginalization in our society and a persistent “invisibility” in such analyses in comparison to those with resources such as, for example, citizen and resident property owners. NRG’s inattention to these two vulnerable populations, farm workers and students, in its analysis of “sensitive receptors” reflects a degree of lack of concern or accountability for two populations that should be protected and given deliberate, focused attention throughout the CEC process and deliberations. FFIERCE hopes that the CEC would be accountable to these populations.

b) Has accurate information been supplied, and has outreach and public notice been conducted, to facilitate the legitimate inclusion of the affected individuals and communities in the decision-making process?

The FSA, the primary document upon which the public might rely for information about the project, as represented by the applicant NRG and the Commission, was translated into Spanish for only two sections, including the Executive Summary and the Environmental Justice section. This had several consequences, including the omission of important information in other sections of the FSA in any language that might be accessible to mono-lingual Spanish speakers, and completely excluding Mixteco/indigenous language speakers from meaningful or viable access to information or discussions potentially disproportionately impacting them because of the proximity of their work and schooling to the project site.

Even in the instances where portions of the FSA were translated from English to Spanish, an unusual lack of consistency between the English and Spanish translation arises on the very first page of the substantive text regarding the Decommissioning versus the Removal of the existing units.

In the Introduction in the first paragraph of "FSA Executive Summary – Testimony of Shawn Pittard", the English and Spanish versions are not consistent, or were not accurately translated:

³ Testimony of Dr. Chu, Transcript of February 7, 2017 Evidentiary Hearings, pp. 135-6

⁴ Testimony of Raul Lopez, Id., p. 187

p.1-1 Introduction

If Puente is approved and developed, the existing MGS Units 1 and 2 would be decommissioned.

In the Spanish translation of the FSA Exec Summary of "If Puente is approved and developed, the existing MGS Units 1 and 2 would be decommissioned," it states:

Si el proyecto Puente es aprobado y desarrollado, las Unidades 1 y 2 de MGS existentes serían desmanteladas.

This is inconsistent, since “desmanteladas” translates to "dismantled."

This begs the question: which is an accurate representation of the conditions under which the units would be removed. Inconsistencies such as these are not acceptable when translation is intended to make the same information available to all parties, without prejudice or disadvantage based on language, particularly when this is one of only two documents translated to Spanish for the public.

c) Have conditions allowed for these community members' participation?

In the Environmental Justice section of the FSA, on Page 4.5-1, CEC staff authors state that the U.S. Environmental Protection Agency or EPA defines Environmental Justice as “The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations, and policies.” CEC Staff also relies on U.S. EPA guidance on meaningful public involvement, as defined as occurring when⁵:

- Those whose environment and/or health would be potentially affected by the decision on the proposed activity have an appropriate opportunity to participate in the decision;
- The population's contribution can influence the decision;
- Concerns of all participants involved would be considered in the decision-making process; and
- Involvement of the population potentially affected by the decision on proposed activity is sought.

The participation of people in two groups (students and their families, and farm workers) in what should be a public process is significantly compromised by language and cultural barriers, as well as long work hours and fear that undocumented, migrant and indigenous people often experience that could discourage or preclude attendance at public events.

⁵ Environmental Justice section of the FSA, pp. 4.5-7, 4.5-8.

While these were ostensibly “public” hearings, these groups’ access to this process has been severely limited by these vulnerabilities in an already intimidating process, and further chilled by the fact of immigration raids conducted in the region and throughout the country, concurrent with the evidentiary hearings of February 7, 8, 9 and 10, 2017. While the CEC has no control over, nor has any obligation by law to consider such factors as an environment that could be intimidating to potential participants in this process, FFIERCE respectfully submits that CEC might consider these factors in its deliberations of the environmental justice principles and consequences of this decision.

When the PUC approved the contract for the P3, instead of deferring their decision until the conclusion of CEC’s CEQA analysis, it concluded that CEC retains its authority to require mitigation and alternatives.⁶ In practical terms, this could be seen as the PUC effectively passing off responsibility for analysis of environmental justice concerns required to be considered under CEQA to the CEC. Thus, in effect, the CEC became the lead agency responsible for weighing environmental justice concerns in its deliberations. FFIERCE suggests that the balance of power remains in CEC’s hands to make a decision consistent with furthering environmental justice for an already over-burdened community.

⁶ CEJA/CBE comments on PSA, TN# 213682, September 15, 2016, p. 5