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**01-AFC-21**

**DATE** DEC 1 2003

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State of California  
Energy Resources Conservation  
and Development Commission

In the matter of

## Tesla Power Project

Docket No. 01-AFC-21

## Inteviewer Sarvey's Reply Brief

12-1-03  
DATE

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## **Introduction**

The Tesla Power Plant is but one of three power plants located within six miles of the City of Tracy. The Tracy Peaker Plant a large 169 MW single cycle plant is now in operation. The East Altamont Energy Center an 1100 MW power project one of the largest Power Plants ever certified by the Energy Commission has now received final approval. The Tesla power Project an 1169 MW plant another of the States largest power plants will be located less than six miles from the enormous Eat Altamont Energy Center an unprecedented siting of 1100MW power projects within a six mile radius. The combined impact of these three plants on the northern cusp of the San Joaquin Valley a region with the worst ozone problems in the nation in combination with a mounting PM-10 problem is unfair and unjust to the residents of Tracy and the San Joaquin Valley. The Public deserves a complete fair and honest Assessment of the impacts of these three projects. The Governor has declared an end to the Energy Crisis and it is no longer necessary that these projects take precedent over the Laws, environmental concerns, and the health and welfare of the citizens of the State.

## **Air Quality**

### **Cumulative Impact Analysis**

Staff and applicant both failed to perform a complete Cumulative Air Quality Analysis. Both parties failed to include in their analyses the majority of the reasonably foreseeable development projects identified by CEC staff in the land use analysis. Staff testified that they had only included two projects in the list of reasonably foreseeable

projects (Rt 9-18-02 p. 371 Birdsall) and the applicant testified (9-18-03 P. 188 Stein that he failed to include the majority of projects listed in CEC Staff's reasonably foreseeable Development projects Land Use Table 1 below.

**Land Use Table 1  
Reasonably Foreseeable Development Projects**

Development	Size	Location	Jurisdiction	Status
<b>Old River Specific Plan</b>	1,000 acres	North of I-205 and northeast of the TPP site	San Joaquin County	The plan is under consideration as an amendment to the San Joaquin County General Plan. Community meetings have been held regarding what would be a commercial/industrial development.
<b>Auto Auction Facility</b>	200 acres	Patterson Pass Road Business Park	San Joaquin County	Under review by San Joaquin County.
<b>Mountain House Community Service District - "New Town" Development</b>	5,000 acres	Approx. 5 miles north of the TPP site, bounded to the west by the Alameda County Line, to the east by Mountain House Parkway and between I-205 to the south and the Old River to the north.	San Joaquin County	Phasing for the Specific Plan 1 has begun with construction of the Mountain House Community Service District's water treatment plant, site grading, and laying of infrastructure on the site. The project involves development of a new community with residential, commercial, and industrial development
<b>Catellus Project</b>	Unknown	Approx. 5 miles northeast of the TPP site, between I-205 and Grant Line Road, west of Lammers Road	City of Tracy	Application for annexation to the City of Tracy to be filed.
<b>Bright Development</b>	160 acres	Approx. 4.1 miles to the northeast of TPP, bounded by Lammers Road to the east, I-205 to the north, and 11 <sup>th</sup> Street to the south.	City of Tracy	Application for annexation to the City of Tracy filed.
<b>Tracy Gateway</b>	538 acres	Approx. 1.8 miles to the northeast of TPP, along I-205	City of Tracy	Application for annexation to the City of Tracy filed. Project currently in Draft EIR process.
<b>North Livermore Plan</b>	13,500 acres	Approx. 7 miles to the southwest of TPP, north of Livermore	City of Livermore	EIR was finalized and adopted by the City of Livermore in 2000. The plan has been delayed due to passage of Alameda County Citizen's Initiative Measure D.
<b>Califia community</b>	6,800 acres	Approx. 10 miles northeast of the TPP, near Lathrop in western San Joaquin County.	City of Lathrop	Lathrop has annexed the property. environmental review process is occurring. Groundbreaking is expected in 2004.
<b>Tracy Peaker Project</b>	10 acres	Approx. 4.4 miles east of the TPP site, in San Joaquin County, south of Schulte Road and west of Lammers Road	San Joaquin County	Project approved by the Energy Commission with construction pending.
<b>East Altamont Energy Center</b>	25 acres	Approx. 5.5 miles north of the TPP site, in Alameda County, just north of the Mountain House Rd/Kelsey Rd intersection	Alameda County	Project under the 12-month Cal. Energy Commission review and permitting process.
Source: TPP, 2001; San Joaquin County, 2000; San Joaquin County, 2001; EAEC, 2001; FPL Tesla, 2001; HDR, 2001; Lombardo, 2001; Stentz, 2002.				

## **CEQA REQUIRES A CUMULATIVE IMPACTS ANALYSIS**

CEQA provides that a proposed project may have a significant effect on the environment when the possible effects on the environment are individually limited but “cumulatively considerable.” (Pub. Resources Code, §21083(b); Cal. Code Regs., tit. 14, §15065.) “‘Cumulatively considerable’ means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” (Cal. Code Regs., tit. 14, §15065, emphasis added.) In addition to analyzing the direct impacts of a project, the CEQA Lead Agency must determine whether or not a project will result in a significant cumulative impact.

The analysis must include other past, present and probable future projects stationary and mobile sources causing related cumulative impacts regardless of whether such projects are within the control of the lead agency. (Cal. Code Regs., tit. 14, §15130, subds. (a)(1) & (b)(1). ) The focus is on other projects “causing related impacts”, not necessarily on projects identical to that proposed. For the Tesla analysis several current and probable future projects may cause impacts related, or similar, to the Tesla Project. These projects include the newly approved East Altamont Energy Center, The Tracy Peaker Plant, the new town of Mountain House (20,000 homes), The Tracy Hills development (5500 Homes) , The South Schulte Project undergoing a Supplemental EIR process for 5500 homes, The new Gateway Business park approved by the Tracy City Council in October with 22,000 jobs, The Addesa Auto Auction Site (23,000 vehicles) ,

The Catellus Project and Cordes Ranch with 22,000 jobs, and the 5,000 homes in the Plan C developments currently being constructed.

Many of these new projects are not power plants. But the guidelines, however, do not state that the cumulative impacts analysis must include only those projects that are similar in design to the proposed project. The focus is on the similarity of effect. These current projects will produce similar air quality impacts with both stationary and mobile emissions, and thus should have been included in the air quality cumulative impacts analysis to afford the Committee an accurate perspective of project impacts on which to base a decision

California courts have repeatedly emphasized that the rationale for the cumulative impact analysis is to provide the decision maker a broad perspective on the overall impact of a project. (See *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263; *Citizens Association v. County of Inyo* (1985) 172 Cal.App.3d 151.) In *Bozung*, the State Supreme Court termed the CEQA cumulative impact requirement a “vital provision” which “directs reference to projects, existent and planned, in the region so that the Cumulative impact of all projects in the region can be assessed.” (*Bozung v. Local Agency Formation Com.*, supra, 13 Cal.3d 263, 283, emphasis added.) Because these current reasonably foreseeable projects were excluded from the cumulative impacts analysis, the Committee is not able to see the full effect of the project on the air quality in the area. This goes against one of the basic tenets of CEQA, full disclosure of environmental impacts. As noted by the courts, “a cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decision maker’s perspective

concerning the environmental consequences of a project, the necessity for mitigation measures, and the appropriateness of project approval.” (*Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 431) By excluding these new projects stationary and mobile source emissions, Staff’s and the Applicant’s analyses understate the significance of cumulative impacts, thereby rendering the analysis incomplete and jeopardizing any decision based upon the analysis. The TPP is proposed to be located in the San Joaquin Valley, within the Bay Area Air Basin, which is regulated by the Bay Area Air Quality Management District. The project would also be on the cusp of the San Joaquin Valley Air Basin, which is regulated by the San Joaquin Valley Unified Air Pollution Control District. Both basins are classified as non-attainment areas for ozone. The San Joaquin Valley nonattainment area was recently downgraded to severe non-attainment for ozone, which means that the area is not making sufficient progress towards attaining the ozone standards, and more drastic measures must be taken. (66 Fed. Reg. 56,476 (2001).) The San Joaquin Valley will next year assume the mantle of the worst region in the nation for air quality as Federal Regulators elevate the 8 Hours Ozone standard as the key measure of air quality. The San Joaquin Valley is the clear and convincing leader of the 8 hour ozone violation which the Tesla project will further exacerbate.

Also of concern in the area surrounding the proposed project is PM-10. The San Joaquin Valley Air Basin is in non-attainment of both federal and state standards for PM-10. The Bay Area Air Basin is in non-attainment of the state standards. Combustion sources, including vehicles and power plants, emit PM-10.

The area is having trouble attaining ozone and PM-10 standards in part due to geography. The area suffers from persistent temperature inversion and contains mountain ranges that trap the air mass, inhibiting dispersion. Pollutants emitted in the area are less likely to disperse and, thus, contribute to a potentially significant cumulative impact. A cumulative impacts analysis of pollution sources in the area of the project both mobile and stationary would have provided important information regarding the significance of the proposed project's contribution to the area's problems involving ozone and PM-10. The non-attainment status evinces the seriousness of the problem and shows that a comprehensive cumulative impacts analysis should have been performed.

The CEC has required previous applicants to include in a cumulative Impact Analysis model, sources other than stationary power plant facilities. In the Metcalf Energy Center (MEC) CEC Staff required the applicant to model the full build-out of the Coyote Valley Research Park (CVRP), which involved the potential addition of 20,000 employees, and the proposed Coyote Urban Reserve Development (CURD), which involved the potential development of 25,000 dwellings on 170 acres. (MEC Final Staff Assessment p.44.) The applicant modeled the proposed project, emissions from on-site vehicles and stationary sources at CVRP, mobile emissions from CURD, and emissions from vehicles using the nearby highway. The pollutants modeled included nitrogen dioxide (NO<sub>2</sub>) and PM-10; the same pollutants at issue here. In the Tesla case the enormous developments include many large residential housing projects (45,000 homes) with accompanying mobile sources and two business parks that will generate stationary and mobile source impacts of 44,000 commuters to their jobs in the project area every

day. The Addressa Auto Auction facility stores and sells up to 23,000 vehicles within two miles of the project site and upwind from the Tracy area and the San Joaquin Valley.

The CEC has also looked at proposed residential and business developments in the Three Mountain, High Desert and Potrero licensing cases. Staff and Applicants failure to model these sources in the Tesla Project severely hampers any reasonable assessment of the Cumulative impacts in the project area on residents. Biological Impacts on sensitive species are hampered by an incomplete Cumulative Air Analysis. The Public Health analysis needs complete information on air quality impacts to quantify the cancer related and chronic health impacts of the Tesla Power project with the massive amount of development in the projects area. Possible violations of the Federal NO<sub>2</sub> standard and the Federal PM-10 Standard could result in a Complete Air Quality Analysis which includes all the reasonable foreseeable development projects which staff and applicant failed to analyze.

Intevenor has requested this analysis from CEC Staff (Exhibit 81). Tracy's State Representative Barbara Matthews has requested this analysis (Exhibit 83). Intervenor has even filed a formal request to the Committee to compel production of this analysis. (Exhibit 82).

A Complete and Comprehensive air Quality analysis and Mitigation Strategy is essential to insure that impacts to ambient air quality standards and their correlated impacts to Public Health (Exhibit 51 p. 4.7-170) and Biological Resources (Exhibit 51 p. 4.2-30) are fully assessed.



## Staff's Mitigation Strategy

Staff has recommended full project mitigation regardless of any additional projects that should have been included in their Cumulative Air Analysis. (Exhibit 57 p. 3) Staff now proposes only a seasonal mitigation of the projects emissions into San Joaquin Valley in the months when violations are occurring (RT 9-18-03 p. 256). Staff's strategy relies on the incorrect evaluation of the effectiveness of the BAAQMD Emission Reduction Credits and an incomplete understanding of the number of months that air quality violations in the San Joaquin Valley are occurring. Staff's air Quality table 19 illustrated below shows that staff has granted a 27% Effectiveness ratio to ERC's that are located East of the Altamont Pass and a 70% effectiveness to ERC's in Antioch and Crockett.

**AIR QUALITY Table 19**  
**Tesla Power Project, Effectiveness of BAAQMD ERC Acquisitions**

BAAQMD ERC Number, Original Applicant, and Location	SJVAPCD-Equivalent Ratio (1)	NOx (tpy)	PM <sub>10+2.5</sub> (tpy)	SOx (tpy)	VOC (tpy)
#710, Western Spray Painting, Santa Clara	0.27				1.39
#718, National Semiconductor, Santa Clara	0.27				12.15
#719, Fairchild Advanced Lab, Palo Alto	0.27				1.32
#720, C&H Sugar, Crockett	0.70	34.27			
#721, C & H Sugar, Crockett	0.70		0.07		1.65
#778, Crown, Cork, & Seal, Union City	0.27	0.42	0.03		0.02
#798, Crown, Cork, & Seal, Fremont	0.27	0.73			0.04
#767, Pacific Lithograph, San Francisco	0.27	0.35			1.53
#762, Roxam Beverage Can, San Leandro	0.27				10.53
#773, Hunt-Wesson Foods, Hayward	0.27	5.67			
#780, Maxim Medical, Los Gatos	0.27	1.34	0.11		0.78
#800, Phoenix Iron Works, Oakland	0.27		0.32		
#830, Gaylord Container, Antioch	0.70	119.70			
#831, Crown Zellerbach, Antioch	0.70		63.7		
Proposed at Altamont Landfill	1.00		14.7(2)		
<b>Total Effectiveness of ERCs Acquired</b>		<b>162.5</b>	<b>78.9</b>	<b>0</b>	<b>29.4</b>
<b>CEQA Offset Liability (3)</b>		<b>249.9</b>	<b>190.0</b>	<b>29.5</b>	<b>60.4</b>
<b>Residual Liability</b>		<b>87.4</b>	<b>111.1</b>	<b>29.5</b>	<b>31.0</b>
<b>Sufficient for CEQA Requirements?</b>		<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>

Source: Independent staff assessment of Acquired BAAQMD ERCs.

Notes:

1. The equivalent effectiveness of each BAAQMD ERC is reduced depending on it's proximity to the TPP site in the San Joaquin Valley.
2. See discussion below regarding status of road paving ERC for the Altamont Landfill. This ERC would provide PM<sub>10</sub> reductions but only a small fraction (approximately 15 percent) would qualify as PM<sub>2.5</sub>. PM<sub>2.5</sub> fraction of 98.91 tpy ERC is 14.7 tpy.
3. From AIR QUALITY Table 13, except PM<sub>2.5</sub> fraction of plant emissions is approximately 190 tpy.

Staff has relied on a CARB study and the SJVUAPCD Mitigation Agreement to establish a 27% effectiveness for ERC's East of the Altamont Pass and this number is accepted by CARB , CEC Staff and the SJVUAPCD . The Effectiveness ratio for ERC's from Antioch and Crockett was adopted from the CEC Staff analysis in the EAEC Siting Case. (Exhibit 51 p.4.1-39)

"Energy Commission staff in the East Altamont siting case estimated that 70 percent of the emissions from the Pittsburg/Antioch area (east of the Carquinez Strait) could contribute to ozone and PM<sub>10</sub> levels in the northern San Joaquin Valley." (Exhibit 51 p. 4.1-39)

Energy Commission Staff in the EAEC Case have testified that they established a 70% transport factor to give the Applicant a break and enable the project to be sited.

17 MR. NGO: Chairman, I have the same  
18 thought about this project as you all. The  
19 project, if we applying what we know within the  
20 state implementation plan for the San Joaquin and  
21 for the Bay Area based on the ARB transport study  
22 of 27 percent, the project will not going to be  
23 able to be site in this area.  
24 And so we are trying to do a much more  
25 lenient way by going through with my exercising of  
1 using the actual ambient data so we can reduce or  
2 we can increase, we can find out there were  
3 evidence to support the effectiveness of the  
4 emission reduction credit that are proposed by the  
5 applicant in the Bay Area; and therefore, we  
6 reduce the amount of liability of emission  
7 reduction credit that the applicant to be able to  
8 get to site the project, to license the project.  
9 And, anyway, I'm not complaining but  
10 somehow because what I did, all a sudden everybody  
11 is like on my case because they keep saying that  
12 my method were out of the ordinary, unorthodox or  
13 whatever you want to call it.  
14 And so far, but you know, I agree with  
15 you this, we try to site a project. We did not  
16 try to not to build, not to recommend not to  
17 build, but you know, we just want to make sure  
18 that benefit are due to where it's supposed to be  
19 due. And then the benefit to the area, to the

20 local area essentially meeting it.  
(EAEC p. 211 6-3-2003 RPMPD Conference CEC Staff Comments)

There is no technical justification for the 70% ERC's Effectiveness factor for ERC's from Pittsburg and Crockett. CARB has not established this transport phenomenon and the CEC Staff in the EAEC 01-AFC-04 have admitted they did so only to allow the project to be sited. The use of a 70% transport factor has overstated the effectiveness of the BAAQMD ERC's and leave the project short of NOx and PM-10 offsets. Staffs Air Quality Table 19 from the FSA needs to be adjusted to reflect that the ERC Effectiveness of the Antioch and Crockett ERC's that are overvalued.

Revised Air Quality Table 19  
Tesla Power Project, Effectiveness of BAAQMD ERC Acquisitions

BAAQMD ERC Number Applicant, Location	SJVUAPCD Equivalent Ratio	NOx (tpy)	PM10 (tpy)	SOx (tpy)	VOC (tpy)
#710 Western Spray Painting Santa Clara	.27				1.39
#718 National Semiconductor Santa Clara	.27				12.15
#719 Fairchild Lab Palo Alto	.27				1.32
#720 C&H Sugar Crockett	.27	13.21			
#721 C&H Sugar Crockett	.27		.02		.63
#778 Crown Cork & Seal Union City	.27	.42	.03		.02
#798 Crown Cork and Seal	.27	.73			.04
#767 Pacific Lithograph	.27	.35			1.53
# 762 Rexam Beverage Co. San Leandro	.27				10.53
#773 Hunt Wesson Foods Hayward	.27	5.67			
#780 Maxim Medical Los Gatos	.27	1.34	.11		.78
#800 Phoenix Iron Works Oakland	.27		.32		
#830 Gaylord Container Antioch	.27	46.17			
#831 Crown Zellerbach Antioch (1984)	.27		24.57		
Proposed Altamont Landfill	.15		14.70		
Total Effectiveness of ERC's Acquired		67.89	39.75	0	28.39
CEQA Offset Liability		249.9	190.00	29.5	60.4
Residual liability		182.01	150.25	29.5	32.01
Sufficient for CEQA Requirement		No	No	No	No
Difference from Original Air Quality Table 19 FSA		94.61	39.15	0	1.01

This change in the effectiveness ratio applied by staff for ERC's from Pittsburg and Crockett from 70% to 27% will increase the Applicants Residual Liability by 94.61 tpy of NOx, 29.15 tpy of PM10 and 1.01 tpy of VOC's. This will change the applicants Residual CEQA Liability for Seasonal Mitigation Exhibit 51 p. 4.1-46) presented below to the Revised Air Quality Table 20 following.

**AIR QUALITY Table 20**  
**Residual CEQA Liability for Seasonal Mitigation**

Seasonal Term	Quarter	NOx (ton)	PM <sub>10/2.5</sub> (ton)	SOx (ton)	VOC (ton)
Residual Liability after BAAQMD ERCs	Annually	87.4	111.1	29.5	31.0
Liability: January, February, March (1)	Q1	14.6	18.5	4.9	0.0
Liability: April, May, June (2)	Q2	7.3	0.0	0.0	2.6
Liability: July, August, September (3)	Q3	21.9	0.0	0.0	7.7
Liability: October, November, December (4)	Q4	7.3	27.8	2.5	0.0

Source: Independent staff assessment of annual residual liability from Table 19.

Notes:

1. PM<sub>10</sub> and precursors contribute to PM<sub>10</sub> violations during January and February.
2. NOx and VOC contribute to ozone violations during June.
3. NOx and VOC contribute to ozone violations during all three months.
4. PM<sub>10</sub> contributes to PM<sub>10</sub> violations during all three months, and precursors contribute to PM<sub>10</sub> violations during December.

**Revised Air Quality Table 20**  
**Residual CEQA Liability for Seasonal Mitigation**

Seasonal Term	Quarter	NOx (tpy)	PM10 (tpy)	SOx (tpy)	VOC (tpy)
Residual Liability after BAAQMD ERC's		182.01	150.25	29.5	32.01
Liability January, February, March	Q1	30.33	25.04	4.9	
Liability April, May, June	Q2	15.16			2.66
Liability July, August, September	Q3	45.05			8.00
Liability October, November, Dec	Q4	15.16	37.56	2.5	

Source: Independent staff assessment of annual residual liability from Table 19.

Notes:

1. PM<sub>10</sub> and precursors contribute to PM<sub>10</sub> violations during January and February.
2. NOx and VOC contribute to ozone violations during June.
3. NOx and VOC contribute to ozone violations during all three months.
4. PM<sub>10</sub> contributes to PM<sub>10</sub> violations during all three months, and precursors contribute to PM<sub>10</sub> violations during December.

Staff has also underestimated the severity of the San Joaquin Valleys violations of the Ozone and PM10 Standards and the number of months that these violations occur. If Staff's stated purpose of preventing the project from contributing to existing air quality

violations in months that they occur (RT 9-18-03 p.256) staff must include seasonal mitigation in all months that violations occur. Staff has provided no seasonal mitigation for ozone precursors in the month of October. Available data from CARB below indicates that October has numerous violations of the Federal 8 Hour Ozone standard and one hour ozone standard occurring every year.



**2002 Summary of Highest Maximum 8 Hour Average (Overlapping) Ozone  
for San Joaquin Valley Air Basin**  
Units: Parts Per Million

Day	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
01	0.031	0.046	0.051	0.088	0.070	0.087	0.099	0.099	0.106	0.051	0.060	0.045
02	0.039	0.051	0.057	0.092	0.074	0.081	0.097	0.079	0.107	0.052	0.067	0.043
03	0.041	0.055	0.065	0.080	0.077	0.095	0.099	0.068	0.093	0.065	0.071	0.041
04	0.038	0.048	0.067	0.066	0.077	0.107	0.089	0.081	0.080	0.076	0.074	0.042
05	0.036	0.057	0.068	0.055	0.086	0.107	0.089	0.086	0.069	0.083	0.078	0.036
06	0.031	0.054	0.047	0.062	0.072	0.108	0.095	0.088	0.073	0.093	0.063	0.036
07	0.034	0.057	0.051	0.066	0.073	0.094	0.084	0.092	0.074	0.090	0.045	0.043
08	0.036	0.051	0.053	0.070	0.076	0.085	0.079	0.105	0.073	0.096	0.038	0.049
09	0.036	0.048	0.052	0.065	0.083	0.069	0.114	0.120	0.085	0.103	0.053	0.040
10	0.039	0.058	0.052	0.060	0.072	0.080	0.128	0.117	0.103	0.086	0.051	0.039
11	0.039	0.049	0.050	0.065	0.084	0.096	0.128	0.115	0.109	0.071	0.043	0.038
12	0.039	0.048	0.055	0.070	0.099	0.107	0.114	0.118	0.113	0.079	0.046	0.041
13	0.039	0.042	0.059	0.085	0.095	0.102	0.105	0.119	0.105	0.094	0.040	0.041
14	0.040	0.050	0.047	0.082	0.077	0.096	0.088	0.125	0.132	0.091	0.040	0.044
15	0.045	0.047	0.053	0.065	0.091	0.098	0.085	0.110	0.099	0.097	0.043	0.041
16	0.043	0.049	0.054	0.068	0.088	0.096	0.093	0.110	0.059	0.073	0.044	0.046
17	0.046	0.057	0.052	0.063	0.091	0.088	0.098	0.117	0.083	0.069	0.046	0.046
18	0.045	0.058	0.051	0.060	0.085	0.080	0.100	0.104	0.079	0.074	0.044	0.045
19	0.046	0.054	0.054	0.059	0.058	0.087	0.096	0.103	0.097	0.079	0.041	0.045
20	0.043	0.046	0.061	0.072	0.056	0.089	0.098	0.108	0.108	0.086	0.038	0.049
21	0.044	0.047	0.065	0.078	0.069	0.071	0.084	0.077	0.109	0.090	0.043	0.044
22	0.052	0.049	0.053	0.086	0.074	0.081	0.090	0.088	0.116	0.071	0.048	0.039
23	0.038	0.066	0.048	0.098	0.075	0.094	0.101	0.094	0.112	0.064	0.044	0.043
24	0.040	0.053	0.051	0.079	0.093	0.090	0.107	0.099	0.109	0.053	0.042	0.044
25	0.042	0.055	0.051	0.070	0.101	0.098	0.106	0.090	0.090	0.063	0.041	0.044
26	0.040	0.059	0.051	0.057	0.086	0.101	0.091	0.094	0.097	0.069	0.046	0.043
27	0.046	0.062	0.058	0.058	0.063	0.099	0.098	0.101	0.075	0.070	0.042	0.038
28	0.046	0.067	0.070	0.072	0.064	0.086	0.093	0.101	0.054	0.078	0.045	0.050
29	0.043		0.075	0.065	0.087	0.089	0.090	0.092	0.064	0.076	0.049	0.048
30	0.044		0.083	0.066	0.103	0.089	0.106	0.108	0.065	0.078	0.041	0.048
31	0.046		0.084		0.101		0.107	0.108		0.063		0.049
Max	0.052	0.067	0.084	0.098	0.103	0.108	0.128	0.125	0.132	0.103	0.078	0.050

**Notes:** Blank values indicate data not available.  
To see site specific details for a date, click on the value for the date.

Cell color is yellow if national 8-hour standard level is exceeded.



**2002 Summary of Highest Daily Maximum Hourly Ozone  
for San Joaquin Valley Air Basin**  
Units: Parts Per Million

Day	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
01	0.040	0.056	0.055	0.101	0.073	0.101	0.120	0.113	0.125	0.063	0.066	0.060
02	0.047	0.056	0.066	0.107	0.081	0.087	0.108	0.092	0.124	0.059	0.081	0.056
03	0.049	0.064	0.072	0.090	0.082	0.103	0.114	0.076	0.114	0.081	0.086	0.051
04	0.040	0.055	0.075	0.077	0.083	0.120	0.094	0.089	0.095	0.087	0.088	0.053
05	0.038	0.065	0.073	0.060	0.090	0.137	0.108	0.096	0.089	0.097	0.087	0.041
06	0.031	0.065	0.062	0.066	0.076	0.126	0.102	0.095	0.081	0.102	0.075	0.044
07	0.034	0.073	0.057	0.078	0.080	0.100	0.094	0.107	0.077	0.102	0.048	0.054
08	0.036	0.054	0.060	0.080	0.088	0.093	0.094	0.128	0.082	0.110	0.041	0.064
09	0.038	0.057	0.057	0.070	0.090	0.073	0.134	0.150	0.110	0.113	0.058	0.049
10	0.045	0.061	0.060	0.066	0.077	0.087	0.164	0.158	0.129	0.096	0.055	0.050
11	0.042	0.058	0.056	0.069	0.093	0.114	0.155	0.138	0.131	0.075	0.049	0.044
12	0.041	0.059	0.061	0.074	0.110	0.128	0.136	0.151	0.149	0.100	0.053	0.045
13	0.042	0.054	0.062	0.099	0.102	0.112	0.127	0.147	0.136	0.112	0.047	0.046
14	0.041	0.058	0.051	0.099	0.083	0.111	0.112	0.144	0.157	0.106	0.048	0.049
15	0.048	0.059	0.057	0.067	0.096	0.112	0.092	0.128	0.114	0.108	0.049	0.047
16	0.049	0.062	0.058	0.074	0.099	0.107	0.117	0.130	0.077	0.083	0.049	0.050
17	0.053	0.059	0.054	0.066	0.102	0.100	0.116	0.133	0.096	0.088	0.057	0.049
18	0.047	0.063	0.054	0.063	0.094	0.094	0.118	0.114	0.098	0.091	0.054	0.052
19	0.057	0.059	0.061	0.064	0.064	0.103	0.113	0.115	0.107	0.090	0.052	0.049
20	0.053	0.051	0.066	0.077	0.059	0.093	0.118	0.121	0.135	0.098	0.050	0.055
21	0.057	0.052	0.073	0.085	0.072	0.078	0.097	0.091	0.134	0.100	0.058	0.049
22	0.056	0.058	0.063	0.093	0.079	0.090	0.104	0.098	0.142	0.077	0.060	0.041
23	0.040	0.069	0.052	0.108	0.083	0.104	0.118	0.104	0.135	0.070	0.053	0.044
24	0.048	0.108	0.053	0.085	0.103	0.100	0.119	0.112	0.122	0.060	0.050	0.045
25	0.051	0.063	0.058	0.078	0.115	0.115	0.125	0.102	0.121	0.083	0.049	0.046
26	0.043	0.065	0.057	0.061	0.106	0.122	0.103	0.108	0.118	0.081	0.054	0.045
27	0.052	0.072	0.066	0.062	0.070	0.109	0.108	0.112	0.083	0.081	0.055	0.044
28	0.059	0.078	0.074	0.077	0.077	0.094	0.103	0.109	0.085	0.087	0.060	0.054
29	0.046		0.081	0.069	0.104	0.095	0.099	0.109	0.069	0.089	0.062	0.053
30	0.048		0.095	0.071	0.130	0.097	0.120	0.126	0.072	0.084	0.045	0.051
31	0.051		0.097		0.121		0.116	0.124		0.071		0.052
Max	0.059	0.108	0.097	0.108	0.130	0.137	0.164	0.158	0.157	0.113	0.088	0.064

**Notes:** Blank values indicate data not available.  
To see site specific details for a date, click on the value for the date.

Cell color is yellow if state 1-hour standard level is exceeded.  
Cell color is red if national 1-hour standard level is exceeded.

Data Extracted 11/30/03 07:43AM (PST)

Staff has also failed to provide mitigation for all the months when violations of the State PM10 Standard occur. Available data from CARB presented below shows that violations

of the State PM10 Standard occur in every month of the year not just in the first and fourth quarters.



**2002 Summary of Highest Daily Average Particulate Matter 10 microns and less  
for San Joaquin Valley Air Basin**  
Units: Micrograms Per Cubic Meter (ug/m3)

Day	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
01		73.0				72.0	61.0				116.0	51.0
02	38.0			64.0	40.0				59.0	84.0		
03			65.0					51.0				
04		100.0				45.0	47.0				161.0	97.0
05	47.0	81.0			34.0				100.0	105.0		93.0
06								61.0				
07		86.0				55.0	43.0				59.0	86.0
08	53.0			46.0	56.0				39.0	135.0		
09			41.0									
10						51.0	58.0				23.0	65.0
11	43.0				44.0				86.0	82.0		
12			26.0					72.0				
13		87.0				55.0	49.0				55.0	44.0
14	67.0			84.0	52.0			69.0	80.0	132.0		
15	37.0	85.0	29.0			37.0		95.0				
16	49.0					33.0	48.0				61.0	53.0
17	65.0				42.0				65.0	110.0		
18								81.0				
19		26.0				40.0	56.0				49.0	27.0
20	92.0		35.0	30.0	189.0			31.0	97.0	98.0	87.0	
21		27.0	63.0		10.0			55.0			90.0	
22			19.0				46.0				94.0	25.0
23	33.0	9.0		42.0	29.0			68.0	100.0	85.0		
24								72.0				
25		48.0				62.0	68.0		56.0		58.0	33.0
26	87.0			32.0	37.0				49.0	108.0		
27		24.0	50.0					93.0				
28		40.0				66.0	43.0				116.0	38.0
29	25.0				36.0		28.0		44.0	168.0		
30				12.0				78.0	31.0			
31							67.0					25.0
Max	92.0	100.0	65.0	84.0	189.0	72.0	68.0	95.0	100.0	168.0	161.0	97.0

**Notes:** Blank values indicate data not available.  
To see site specific details for a date, click on the value for the date.

Cell color is yellow if state PM10 24-hour standard level is exceeded.  
Cell color is red if national 1-hour standard level is exceeded.

In order to provide mitigation for all months when PM10 and Ozone violations occur and compensate for the 70% ERC Effectiveness factor for offsets from Antioch and Crockett staff would have to revise Air Quality Table 20 as follows.

Revised Air Quality Table 20  
Residual CEQA Liability for Seasonal Mitigation

Seasonal Term	Quarter	NOx (tpy)	PM10 (tpy)	SOx (tpy)	VOC (tpy)
Residual Liability after BAAQMD ERC's		182.01	150.25	29.5	32.01
Liability January, February, March	Q1	30.33	37.56	4.9	
Liability April, May, June	Q2	15.16	37.56		2.66
Liability July, August, September	Q3	45.05	37.56		8.00
Liability October, November, Dec	Q4	30.33	37.56	2.5	2.66

Staff's promise of full mitigation of project impacts (RT 9-18-03 p. 359, Ex 51 p. 4.1-38, Ex 57 p. 3) has gone from full mitigation to seasonal mitigation to partial seasonal mitigation and it remains to be seen whether staff will provide mitigation for the life of the project as promised or whether it will require only a one time mitigation of project impacts and expect the public to provide the rest of the mitigation by funding the incentive programs beyond their estimated useful life of 7.7 years (RT 9-18-03 p.

177,178 SJVUAPCD Draft pm-10 plan p. 4-59) CEC Staff in the EAEC Siting testified as follows.

7 But then that amount would be spread out  
8 over the entire 7.7 lifetime of the mobile source  
9 of the equipment. And therefore, when you really  
10 look into it, even though the AQMA say 66.8 ton  
11 per year, when you really look into it, you have  
12 to divide it by 7.7. So the bottomline you are  
13 talking about less than 10 ton a year of emission  
14 reduction that will be resulted from the AQMA.  
15 And then after that 7.7 year life of the  
16 control measure on the equipment, you don't have



17 nothing.  
18 Now, when you look at that and you  
19 compare to the emission from the project, the  
20 project will last your 30 year, 40 years. And  
21 each year to put in the atmosphere 175 ton of NOx  
22 that is not mitigated.  
23 And in addition to that, another 50 ton  
24 per year of PM2.5 and PM10 that are not mitigated.  
25 So we have a problem here. We have inequity here.  
1 And then the applicant -- well, I want  
2 to go through this one, another one here in --  
(EAEC RT 6-3-2003 p. 216 RPMPD Conference CEC Staff Comments)

**The project provides no mitigation for the PM-10 precursors of 29.55 tons of SO2**

**Emissions and 186 tons of Ammonia Emissions**

The projects mitigation package provides no mitigation for the projects 29.55 tons of SO2 Emissions. Staff considers the precursor pollutant of SOx a contributor to secondary Pm-10 and the lack of SOx mitigation results in a remaining significant secondary particulate sulfate impact. (Exhibit 51 p. 4.1-43) The projects will also emit 186 tons per year of Ammonia which will form into an undetermined amount of Secondary PM-10. The applicant testified (Exhibit 48 p. 4 ) that the applicants voluntary acceptance of a 5 ppm ammonia slip will result in an unknown benefit due to the limited formation of secondary pm-10 that will result from a lower ammonia slip level. The San Joaquin Valley has an extreme particulate matter problem and it is important to provide mitigation for the impacts that 186 tons of Ammonia will trigger. Available research (Spicer C.W. Nitrogen Oxide Reactions in the Urban Plume Science 215 1095-1096 1982) indicates that the conversion of NOx to nitrate is approximately between 10 to 30 percent per hour in a polluted urban area where ozone and ammonia are present in

sufficient amounts to participate in the reaction. Other research (ARB, 2002) also shows that secondary ammonium nitrate (formed by NO<sub>x</sub> and ammonia) can account for over half of the wintertime PM<sub>2.5</sub> mass during the winter at most of the urban sites in California. Recent Research (Watson, J. G., Fujita, E. M., Chow J. C., Zelinska, B., Richards, L. W. Neff W., Dietrich, D. "Northern Front Range Air Quality Study Final Report" Desert Research Institute Document n. 6589-685-8750-IF2 (1998)) has shown that in an ammonia rich area, a reduction of 50 percent ammonia will reduce 15 percent of fine particulate matter, equivalent to a 30 percent conversion rate for ammonia. Accordingly the applicant should supply mitigation for the 186 tons of ammonia a year that the project will emit.

The other two projects sited in the Tracy area also have large amounts of Ammonia Emission that were not mitigated. The EAEC was allowed to have an ammonia slip of 10 ppm which will lead to an estimated 400 tons per year of ammonia emissions. The Tracy Peaker Plant also was allowed a 10 ppm ammonia slip limit which adds another estimated 120 tons per year of unmitigated ammonia emissions in the Tracy area. The combined ammonia emissions from these three plants will from unanalyzed secondary pm 10 impacts and increase Ammonia concentration in the project area with no mitigation. This Cumulative impact is un- analyzed and unmitigated although the project proponent acknowledges that the ammonia will form an undetermined amount of secondary PM<sub>10</sub> (Exhibit 48 p. 4) and Energy Commission Staff testified that it will form Secondary PM<sub>2.5</sub>. (Exhibit 51 4.1-45)

**The project will establish a new violation of the Federal Pm10 Standard if Direct Pm10 Emission and precursors are not fully mitigated including Ammonia and SO2.**

The background concentration for Pm10 in the project is 150ug/m3 recorded in October off 1999. Any additional unmitigated PM10 from the projects direct Pm10 emissions and the projects Pm10 precursors will trigger a new violation of the Federal PM10 standard when combined with the existing background level of 150 ug/m3 (Exhibit 1 volume 2 p. 4-4) in violation of the CEQA guidelines. All parties have admitted that the projects emissions will exacerbate existing violations of Ozone and Pm10 standards and without full mitigation will also violate CEAQ requirements.

**AIR QUALITY Table 15**  
**Tesla Power Project, Ambient Air Quality Impacts from Routine Operation ( $\mu\text{g}/\text{m}^3$ )**

Pollutant	Averaging Period	Project Impact	Back-ground	Total Impact	Limiting Standard	Type of Standard	Percent of Standard
PM <sub>10</sub>	24-hour (a)	5.1	150	155	50	CAAQS	310
	Annual	0.5	36.4	37	30	CAAQS	123
NO <sub>2</sub>	1-hour (b)	120.1	149	269	470	CAAQS	57
	Annual	0.23	28	28	100	NAAQS	28
CO	1-hour (b,c)	1,346	13,054	14,400	23,000	CAAQS	63
	3-hour	241.3	8,405	8,646	10,000	NAAQS	86
SO <sub>2</sub>	1-hour (b)	4.6	76	81	655	CAAQS	12
	3-hour (b)	2.4	76	78	1,300	NAAQS	6
	24-hour	0.72	24.6	25	105	CAAQS	24
	Annual	0.04	5.2	5	80	NAAQS	7

Source: Updated Modeling (URS 2001a); with independent staff assessment.

- (a) 24-hour PM<sub>10</sub> impacts based on Energy Commission staff review considering a full day of wintertime operation at 50% load.
- (b) Hourly and 3-hour impacts do not include fire water pump engine testing. With fire water pump testing, hourly project impacts would be NO<sub>2</sub>: 179  $\mu\text{g}/\text{m}^3$ , CO: 1,348  $\mu\text{g}/\text{m}^3$ , SO<sub>2</sub>: 68  $\mu\text{g}/\text{m}^3$ . All results do include gas turbine startups as part of routine operation. NO<sub>x</sub> impacts based on ISC3-CLM analysis with CTGs achieving 2.0 ppm on a 1-hour basis.
- (d) 1-hour CO impacts based on Energy Commission staff review of applicant's CD-R (URS 2001a).

## Condition of Certification for Exhibit 162

FPL has committed to make its \$600,000 Air Quality Agreement with the City of Tracy (Exhibit 162) a Condition of Certification. Since the other parties have failed to do so Intervenor supplies the following condition for the Committee.

2 BY INTERVENOR SARVEY:

3 Q Is the Applicant prepared to make this  
4 \$600,000 for air quality improvements in the City  
5 of Tracy a condition of certification?

6 APPLICANT COUNSEL GALATI: Ms. Gefter,  
7 may I have some latitude? I have an actual  
8 representative of the company who can answer that  
9 question.

10 HEARING OFFICER GEFTER: That's fine,  
11 and we're referring to Exhibit 162, which has been  
12 identified but not received yet.

13 Whereupon,

14 SCOTT BUSA

15 Was recalled as a witness herein and, having been  
16 previously sworn, was examined and testified  
17 further as follows:

18 DIRECT TESTIMONY

19 THE WITNESS: This is Scott Busa,  
20 project director for the Tesla Power Project.

21 Yes, we would be willing to take that as a  
22 condition of certification for the project.

(RT 9-18-03 p. 169,170)

**AQ-IC1** In order to enhance air quality in the Northern San Joaquin Valley Air Basin in general and near the project in particular, the project owner shall Fund a \$600,000 program with the City of Tracy designed to achieve reductions in emissions of ozone and Pm10 precursors. The Funds will be used to implement clean school bus programs within the Tracy Unified School District Boundaries or other programs acceptable to the parties. Emission reductions achieved under this program will be credited to the applicants Residual CEQA liability defined in AQSC-7. The SJVUAPCD and CEC Staff will participate in the programs implemented under this agreement to ensure the appropriate use of these funds.

**Verifications:**

3. At least 10 days prior to the commencement of construction, the project owner Shall submit to the CPM evidence of payment of the \$600,000 to the City of Tracy for air quality programs.

**Public Health**

CEC Staff in their Public health Assessment relied on Air Quality Staff finding that there were no significant impacts in air quality to conclude that there were no impacts in Public Health. CEC Staff must mitigate all the significant contributions to ambient air quality violations at any time during the year by the TPP to conclude that there is no significant impacts.

The proposed TPP is within a 6-mile radius of the proposed Tracy Peaker Project and the proposed East Altamont Energy Center, and thus cumulative impacts may occur as a result of all three power plants operating. Energy Commission air quality staff prepared a cumulative impact analysis and concluded there are no significant impacts on air quality (**with Staffs recommended mitigation**). Since the air dispersion modeling used by the CEC air quality staff also applies to health impacts due to toxic air contaminants (TACs), staff also concludes that the cumulative risk and hazard due to TACs would also be insignificant. (Exhibit 51 p. 4.7-17)

The Public health assessment and Cumulative Impacts Assessment are also hampered by the fact that no analysis covers the impacts when the Applicant (RT 9-18-03 p. 91) or any of the three power plants in the Region cannot meet their permit conditions a common occurrence with the project owner of the EAEC who has experienced 47 violations of permit conditions at one project in the BAAQMD alone (Delta Energy Center 98-AFC-3). The Tracy Peaker Plant which has operated only 160 hours has had a

violation of its permit conditions already with a NOx exceedance twice its permit limit on July 18,2003 . FPL owns two projects in the State of California the POSDEF Energy Facility which has experienced emission and reporting violations (Exhibit 107) and its SEGS generating facilities have been out of compliance 6 out of the last 8 reporting quarters. (Docket # 29929) Intervenor attempted to inform the Committee of the applicants Compliance Record and other operator' violations but was continually told that FPL Compliance record was irrelevant which is an abuse of discretion considering the serious public health consequences of non compliance with permit conditions and public safety requirements. Suppressing the information which this Intervenor attempted to supply to the Committee about the Applicant's and other power plant operators violations in the project area has put the public's health and safety at risk. (Exhibit 72 A,B,C,D,E, Exhibit 73 A, 73B) Part of the Commissions review is to determine if the Applicant can meet his permit conditions and comply with all health and safety requirements the Committee has abrogated its duty here.

## **Biology**

### **The projects Cumulative Air Impacts in conjunction with other reasonably foreseeable projects has not been assessed for impacts to sensitive species.**

Air pollution from the project has the potential to impact sensitive species such as the Red Legged Frog and the Tiger Salamander. Applicant's and Staff's failure to provide a complete Cumulative Air Analysis that includes Reasonably Foreseeable Development Projects inhibits an accurate assessment of the projects cumulative air impacts to sensitive species. Staff notes the uncertainty in the FSA as demonstrated below.

“ It is prudent to note that amphibians are sensitive to air pollution and those that inhabit the region may be impacted cumulatively by the air pollution produced by the TPP in addition to other regional sources (vehicular exhaust). Additive and synergistic impacts of air pollution may also be occurring. There are not enough data to rule it out, yet there are similarly no data indicating that it is likely to occur. In conclusion, while staff is concerned that there may be cumulative biological impacts due to general air pollution in this region, there are difficulties in identifying the baseline conditions and predicting the additional impacts of the proposed project. (FSA Exhibit 51 p. 4.2-30)

Staff in the FSA commented that they were concerned that the air quality mitigation identified by Staff be implemented to avoid deposition from criteria pollutants affecting sensitive species. (Exhibit 51 p. 4.2-30)

In conclusion, while staff is concerned that there may be cumulative biological impacts due to general air pollution in this region, there are difficulties in identifying the baseline conditions and predicting the additional impacts of the proposed project. Staff recommends avoidance of impacts when feasible via implementation of air pollution control measures. Incorporation of local and regional mitigation offsets recommended in the **Air Quality** Section of this Staff Assessment would benefit biological resources by eliminating sources of such pollution, thus decreasing impacts to acceptable levels. (FSA Exhibit 51 p. 4.2-30)

Biology Staff and the Applicant failed to quantify the impacts of noise (RT 9-11-03 p.180,181) to sensitive species in the nearby Harea Mitigation Bank and the proposed habitat conservation land proposed. The Applicant and Staff also failed to quantify the effects of effluent deposition on nearby sensitive species. The applicants and staff analysis only examine the impacts to plant species.

**The project is not compatible with the Existing Herrera Mitigation Bank and the proposed mitigation parcels.**

The project site was first analyzed in the Metcalf Energy Center Proceeding.

However, in the event kit fox are observed, the impacts may be significant and unmitigable due to rare occurrences in this portion of their range. Additionally, it would not be preferable to bring development to this relatively undeveloped site (Alternatives analysis Metcalf Energy Center FSA p. 721 )

The project site was listed as a poor location due to the rich diversity of Biological species that occur at the site. Susan Jones of the US Fish and Wildlife Service testified that she thought that its location next to the Herrera Conservation bank made it a poor location for a power plant.

6 BY INTERVENOR SARVEY:

7 Q The adjacent parcel there that's shaded  
8 in purple is the Herrera mitigation bank, an  
9 existing biological preserve. Do you feel that  
10 it's appropriate to set an 1160-megawatt power  
11 plant next to an existing biological preserve?  
12 A I think when this project first started,  
13 we wrote a letter and suggested that there might  
14 be better locations for the project. You know, we  
15 prefer projects to be set on areas that have  
16 already been industrialized -- you know, brown  
17 fields as opposed to green fields. So the Service  
18 is probably on the record saying that they would,  
19 you know, if we were building a power plant, which  
20 we're not, that we would prefer that it was in an  
21 industrial area, as opposed to next to this bank.  
(RT 9-18-03 p. 96 Susan Jones)

Dr Smallwood agreed with Susan Jones that this was a poor site for a power plant and would degrade the existing mitigation bank next door.

23 MR. BOYD: Okay, let's talk a little bit  
24 about mitigation banks. First, do you believe  
25 that a power plant is compatible with a wildlife  
1 preserve?

2 MR. SMALLWOOD: No, I don't think that's  
3 compatible. I mean, I don't think you need an  
4 expert up here to tell you that a power plant is  
5 going to be a problem for wildlife right next door  
6 to it.

(RT 9-11-03 p. 150)

Sue Orloff the top expert on the San Joaquin Kit Fox also agrees that the project will impact the Herrera Mitigation Bank and surrounding habitat. (Exhibit 80)



**The Power Plants impacts will affect the adjacent proposed mitigation lands.**

The power plant was considered a dispersal barrier to the San Joaquin Kit Fox and yet the mitigation lands surround the project. Dr Smallwood testified that this mitigation scheme was truly inadequate. (RT 9-11-03 p. 159) One of the top experts on the San Joaquin Kit Fox Sue Orloff agrees (Exhibit 80). Staffs Testimony (Exhibit 51 p. 4.2.32) states:

Wildlife may be impacted, harmed, or disturbed by anthropogenic noises. Available scientific literature indicates that levels above 60 dBA (especially above 80dbA) are known to cause acute disruption of behavior, physiological harm (deafness, altered immune state) and/or avoidance of the affected area (Manci et al. 1988). (Exhibit 51 p. 4.2-32)

Staff noted these impacts but failed to quantify them.

16 MR. SARVEY: And how far was that  
17 distance that that 60 DBA emanated from the plant?  
18 MS. ERICHSON: I don't have that  
19 information right here in front of me, but I  
20 believe it's in my testimony. Do you have it? I  
21 think you just read it to me.  
22 HEARING OFFICER GEFTER: If your  
23 testimony has that information --  
24 MR. SARVEY: It's not in there.  
25 MS. ERICHSON: It does contain that  
1 information.  
2 MR. SARVEY: Could you direct me to  
3 where that is please?  
4 MS. ERICHSON: Second paragraph, under  
5 the impacts of noise and lighting, on page 4.2-32.  
6 MR. SARVEY: It doesn't define how far  
7 the 65 DBA level emanates. Do you have an  
8 estimate of that?  
9 MS. ERICHSON: Well, it will be below 42  
10 DBA within a mile of the project facility.  
11 Perhaps immediately around the project facility it  
12 may be around 80 DBA.  
13 MR. SARVEY: So essentially you don't  
14 know how far that 60 DBA line emanates from the

15 project, basically? (RT 9-11-03 p. 180,181)

Dr Smallwood testified that the power plant will impact the Herrera Mitigation bank and the proposed adjacent mitigation parcels.

18 MR. BOYD: Do you agree with her  
19 statement that the value of the current and  
20 proposed mitigation sites in this area will be  
21 greatly devalued as a result of this development?  
22 MR. SMALLWOOD: I absolutely agree with  
23 her, yes. (RT 9-11-03 p. 151)

The power plants construction and operational noise levels can reach levels as high as 90 dBA. The sensitive species near the plant will be driven off by the noise and activity and lighting at the site making this a poor mitigation scheme.

## **Unfair Hearing**

The energy commission Staff in their opening brief on page 16 states that the Intervenor and the public had full access to the environmental documents necessary for a complete analysis of the projects mitigation. This is laughable considering that the interveners and their expert did not even have a copy of the mitigation proposal (Exhibit 14) before the hearings and until after their witness's testimony. (RT 9-11-03 p. 122, 178,) The most important document the mitigation lands proposal was withheld from the Intervenor due to alleged confidentiality until after their expert Dr. Shown Smallwood testified. Any claim that the Intervenor had full access to important documents is refuted by the record and in itself comprises an unfair hearing. The Intervenor went to great expense to bring Dr. Smallwood and could really not afford to have him there and to have critical information withheld till after their experts testimony constitutes an unfair hearing in itself.

Discussion of the applicants Compliance and safety record were excluded from the hearing and the important documents and discussion that reveal the applicant's poor safety and compliance record were excluded. The Energy Commission ignored important evidence that they are required to evaluate to determine if the Applicant can operate the project safely and meet his permit conditions in order to protect the public's health and welfare as required in *Laurel Heights v. Regents of the University of California* (1988) 47 Cal 3<sup>rd</sup>. 376,420)

- EXHIBIT 72A** Newspaper article from the Miami Herald "FPL Workers Put Out Transformer Fire, Dania Beach" dated April 9, 2000. Docketed August 29, 2003. Sponsored by Intervenor Sarvey. *Objection sustained and not received.*
- EXHIBIT 72B** Newspaper article "Leak Causes FPL Plant Blast", dated September 10, 2002. Docketed on August 29, 2003. Sponsored by Intervenor Sarvey. *Objection sustained and not received.*
- EXHIBIT 72C** Newspaper Articles, Palm Beach Post, "FPL Probe Obviously Didn't go Far Enough" dated March 4, 2002, and "FPL Fumbles Again," dated March 3, 2002. Docketed August 29, 2003. Sponsored by Intervenor Sarvey. *Objection sustained and not received.*
- EXHIBIT 72D** Newspaper Articles Sun Sentivile "Judges Order FPL to Pay \$10 Million in Lawsuit Related to Power Outage" dated May 23, 2002. Docketed August 29, 2003. Sponsored by Intervenor Sarvey. *Objection sustained and not received.*
- EXHIBIT 72E** Newspaper Article Sun Sentinel "U.S. Says Plotters Aimed at FPL" dated May 18,, 2002. Docketed August 29, 2003. Sponsored by Intervenor Sarvey. *Objection sustained and not received.*
- EXHIBIT 73A** Newspaper Article S.F. Chronicle "Gas Explosion Sends Up Fireball at Fairfield Plant" dated October 18,, 2002. Docketed August 29, 2003. Sponsored by Intervenor Sarvey. *Objection sustained and not received.*
- EXHIBIT 98** Massachusetts Dept. of Environmental Protection (DEP) News, article downloaded from the internet entitled "FPL Energy Systems Delayed

Notification to DEP,” dated March 1, 2001. Not docketed. Sponsored by Intervenor Sarvey. *Objection sustained and not received.*

**EXHIBIT 99** U. S. Environmental Protection Agency Enforcement & Compliance History Online downloaded from the internet entitled “Detailed Facility Report” re compliance history of FPL power plant facilities, downloaded September 8, 2003. Not docketed. *Objection sustained and not received.*

On September 23 Intervenor informed the Public Advisor that serious errors and omissions were contained in the Evidentiary Record for the Tesla Power Project. Intervenor requested that the Energy commission correct these errors and omissions to properly reflect the Evidentiary Proceedings. The Public Advisor informed Intervenor that the Hearing Officer requested that Intervenor provide a list of errors and omissions observed in the Recorded Transcript. Intervenor maintains that it is not his responsibility to correct the transcripts and reiterates his formal protest in his opening brief on the condition of the Evidentiary Record and intentional Omissions from the Evidentiary Record. On September 24 Intervenor placed a call to Peters Shorthand Recording Corporation requesting a recording of the Transcript of the Evidentiary Record to comply with Hearing Officers request for corrections to the record but was informed that audio tapes have been destroyed. Should legal challenge ensue in this proceeding it is necessary to correct errors and intentional omissions from the recorded transcript.

Additionally the Hearing Officer illegally censored public comment in the September 18, 2003 hearing at page 216 Line 22. (Official Protest Docket # 29996, 29981) The Exhibit List has also classified the Interveners expert testimony (Exhibit 102) on Air Quality and Worker Safety and Fire protection as comments of the Intervenor rather than expert testimony when all parties staff and applicant agreed that such testimony should be expert testimony (9-18-03 p. 36) and the qualifications and the

testimony of Intervenor went unchallenged in the hearings. (9-18-03 p. 26) The bias demonstrated in the hearings to this Intervenor's participation was so evident that Senior Representatives of the Alameda County Community Development Department commented that "In relation to Intervenor's participation in the Evidentiary Hearing that the Hearing Officer was conducting a "Kangaroo Court"

Even Exhibits that had been accepted in the EAEC Hearings related to Cumulative Impacts of other Reasonably Foreseeable Projects were excluded.

- EXHIBIT 84** Newspaper Article Tracy Press "Good, Bad News About Plant Emissions," quotes of Matt Haber, dated June 13, 2003. Docketed August 29, 2003. Sponsored by Intervenor Sarvey. *Objection sustained and not received.*
- EXHIBIT 85** Letter from the SJVUAPCD to City of Tracy, Tracy Hills Specific Plan Environmental Impact, dated March 24, 1997. Docketed August 29, 2003. Sponsored by Intervenor Sarvey. *Objection sustained and not received.*
- EXHIBIT 86** Letter from the SJVUAPCD to City of Tracy, Emission Summary, and Isopleth, dated June 5, 2002. Docketed August 29, 2003. Sponsored by Intervenor Sarvey. *Objection sustained and not received.*
- EXHIBIT 87** Letter from SJVUAPCD to City of Tracy, South Schulte Specific Plan Environmental Impact, dated May 14, 1997, and Isopleth. Docketed August 29, 2003. Sponsored by Intervenor Sarvey. *Objection sustained and not received.*
- EXHIBIT 88** Mountain House Emission Summary from Mountain House EIR, dated September 1, 1994, and Isopleth. Docketed August 29, 2003. Sponsored by Intervenor Sarvey. *Objection sustained and not received.*
- EXHIBIT 89** CEC Staff FSA on East Altamont Energy Center (01-AFC-4). Docketed August 29, 2003. Sponsored by Intervenor Sarvey. *Objection sustained and not received.*

**TENTATIVE EXHIBIT LIST<sup>1</sup>**

- Exhibit 6S: SJVAPCD letter to the City of Tracy (Department of Development and Engineering Services, dated May 14, 1997, regarding the South Schulte Specific Plan draft EIR. Sponsored by Intervenor Sarvey and admitted into evidence on October 21, 2002.
- Exhibit 6N: SJVAPCD letter to the City of Tracy (Department of Development and Engineering Services, dated June 5, 2002, regarding draft EIR (DEIR) for the Tracy Gateway Project. Sponsored by Intervenor Sarvey and admitted into evidence on October 21, 2002.
- Exhibit 6O: SJVAPCD letter to the City of Tracy (Department of Development and Engineering Services, dated March 24, 1997, regarding the Tracy Hills Specific Plan draft EIR. Sponsored by Intervenor Sarvey and admitted into evidence on October 21, 2002.
- Exhibit 6I: Excerpts of newspaper articles taken from the Internet, as follows. Sponsored by Intervenor Sarvey and admitted into evidence on October 16, 2002.
- Exhibit 6I (1): August 20, 2002 "Report: Man Threatens FPL Plant, White House" (1 page)
- Exhibit 6I (2): May 19, 2002 "Feds indict Pakistani teen in plot to blow up Port Everglad" (South Florida Sun-Sentinel; 1 page).
- Exhibit 6I (3): April 1, 2002 "Pakistani Plotted to Bomb Florida Power Plants, Officials Say" (The New York Times; 1 page).
- Exhibit 6I (4): March 28, 2002 "Terror suspect to be deported" (The Miami Herald; 1 page).

## **Land Use**

### **The project does not comply with Measure D.**

The voter approved initiative Measure D seeks to preserve the project area for agriculture and open space. Measure D is entitled “Save Agriculture and Open Space Lands.” Its overarching purpose is “to preserve and enhance agriculture and agricultural lands, and to protect the natural qualities, the wildlife habitats, the watersheds and the beautiful open spaces of Alameda County from excessive, badly located and harmful development.” (Decision *Shea Homes v. County of Alameda CA Alameda County Super. Ct. Nos. 8355102, 835646-0*)

The project is exactly the type of development that measure D was written to prohibit as testified by Dick Schneider the measures co-author (Exhibit 75B) and the Sierra Club Resolution (Exhibit 74A).

Measure D restricts the size of infrastructure to what is necessary to serve the needs of Eastern Alameda County. Policy 14A states “the County shall not provide or authorize public facilities or other infrastructure in excess of that needed for permissible development consistent with the initiative.” (Exhibit 75 A page 3) Clearly 1169 MW is far more electricity than is needed to service Eastern Alameda County which already has adequate service. Staff and Alameda County both agree on this point as staffs testimony evinces.

“They acknowledged (Alameda County) that given the 1120 MW size of the TPP, the project will provide electricity beyond that “needed” by the East County area residents and businesses.” (Exhibit 51 FSA p. 4.5-11)

Dick Schneider Co-author and Campaign Manager for Measure D testified that the proposed project was not allowed under Measure D because of the infrastructure size limitations. (Exhibit 75B) The Sierra Club who sponsored the initiative passed a resolution opposing the Tesla Power project because it is not compatible with Measure D and the Measures infrastructure limitations. . (Exhibit 74A) Courts are also obligated to resolve any reasonable doubts in favor of the exercise of the right of the initiative. (*Brosnahan v. Brown* (1982) 32 Cal.3d 236, 241.)

### **The Project Violates the Williamson Act.**

In order to qualify for Cancellation of the Williamson act the project must be compatible with all County Laws Ordinances and Regulations.

Measure D's Policy 86 states that the County shall not approve cancellation of Williamson Act contracts within or outside the Urban Growth Boundary except where the state mandated findings can be made, and that the cancellation is consistent with the initiative (i.e. the policy intent of Measure D). (Exhibit 51 p. 4.5-3)

There are other nearby parcels (Mountain House and Bruns Road site and EAEC Site) that are equally suitable for the power plant which to date have not been shown to be environmentally inferior that are not under Williamson Act Contract.. (Exhibit 51 p. 6.29) The project is not compatible with adjacent uses such as the Harea Mitigation Bank an existing biological reserve. (Exhibit 14A) The project cannot result in adjacent lands being removed from agriculture which it does. (Exhibit 14) The TPP requires the conversion of a portion of the existing Harea mitigation bank 27.3 acres to be converted to a non agricultural and conservation use which is part of the laydown area in violation of the Williamson Act. (RT 9-11-02 p, 81) Biology Staff expressed concern that agricultural management practices may not be compatible with the wildlife conservation



easement. (Exhibit 51 p. 4.2-46)

The TPP will result in a discontinuous and leapfrog pattern of urban use prohibited by Measure D increase air pollution and the demand for water. (The Decision in *Shea homes vs. Alameda County* notes the uneconomical scattered and far-flung public facilities that would result there from and the increased air pollution, traffic, and demand for water attendant thereto and seeks to avoid these types of Developments like the TPP. *Shea Homes v. County of Alameda CA Alameda County Super. Ct. Nos. 8355102, 835646-0*)

Alameda County's findings ignore that the TPP is not consistent with the current Haera Conservation Parcel or adjoining agricultural lands it only notes the existing Tesla Substation (Exhibit 16 p. 3)

Alameda County was required to make a finding that other public concerns must outweigh the objectives of the Williamson Act to rescind the Williamson Act Contract on parcel numbers 099A-7825-001-04. Part of Alameda Counties findings were that the State experiences blackouts due to lack of electrical generation. Alameda County did no need assessment to analyze if indeed this facility is needed for the public benefit. (RT 9-11-03 p. 45) Since Alameda County made their Williamson act findings several events have occurred The Governor has declared the Energy Crisis over. No longer do environmental concerns and LORS need to be violated to site power plants. No rolling Blackouts have occurred in two years and the energy crisis has proved to have been the result of gaming and manipulation of the energy market including actions by FPL and not due to an electricity shortage. Any potential energy shortages to Alameda County have been eliminated by the certification of the EAEC an 1100 MW power plant large enough

to serve all the needs of Eastern Alameda County and all of Alameda County. The combined emissions from the three power plants in the area now jeopardizes public health in the Tracy area and no older power plants have been retired in the project area which would reduce local emissions. To establish that the project is needed for the Public Benefit Alameda County would have to do a need assessment which they have not done. (RT 9-11-03 p. 45)

To defer to Alameda County and not examine the intent of Measure D and the ECAP will result in a factual error in the PMPD and put the Commission's license in jeopardy.

## **Worker Safety and Fire Protection**

The hearing officer has instructed Staff to create a condition of Certification to address the continuing burden placed on Tracy Fire and the Taxpayers in Tracy from the siting of three power plants.

19 HEARING OFFICER GEFTER: That's fine.  
20 If the Fire Department representatives could work  
21 with Staff and the Applicant to provide some  
22 language and a condition that reflects, to the  
23 extent you can, what this agreement is, it would  
24 be helpful. (RT 9-10-03 p. 205)

12 HEARING OFFICER GEFTER: Okay. And then  
13 we need some more information about the automatic  
14 aid agreement, and perhaps that can be included in  
15 language for condition that talks about the water  
16 tenderer truck and the arrangement that the  
17 Applicant has with Alameda County.  
(RT 9-10-03 p. 237)

### **WORKER SAFETY Intervenor -1**

Applicant will enter into an agreement with Tracy Fire Department for the purpose of ensuring that TFD will provide supplemental first response to TESLA

emergency incidents including fire, EMT and hazardous material response. In recognition of this service prior to the site mobilization the project owner shall supply the funds to Tracy Fire for the purchase of a 3,000 gallon water tender total purchase price \$267,130. (Exhibit Fire Water Tender) Upon operational startup of the Tesla Power Project the Applicant will supply funds to the Tracy Fire Department for the purchase of a Hazmat Truck total purchase price of \$333,482 (Exhibit Fire Hazmat Truck) to enable Tracy fire to provide Hazardous Materials Response to the Tesla Power Project.

**Verification:** At least thirty (30) days prior to the start of site preparation activities, the project owner shall submit to the CPM a copy of the final executed Agreement between Tracy Fire and the Project Owner. Project Owner shall present evidence to the CPM of the initial \$267,130 payment at that time. Prior to the operational startup of the Tesla Power Project the project owner will provide evidence to the CPM of the \$333,482 payment for the Hazmat vehicle to Tracy Fire



# We Build Confidence

## PROPOSAL FOR PIERCE® FIRE APPARATUS

June 3, 2003

TRACY CITY FIRE DEPARTMENT  
432 E 11th STREET  
TRACY, CA 95376-4025

The undersigned is prepared to manufacture for you, upon an order being placed by you, for final acceptance by Pierce Manufacturing Inc., at its home office in Appleton, Wisconsin, the apparatus and equipment herein named and for the following prices:

	Each	Extension
a) One ( 1 ) HAZMAT SABER ENCORE BODY	\$ 300,669.40	\$ 300,669.40
b) Factory Inspection Trips ( 2 trip(s) for 2 people)	\$ 5,662.00	\$ 5,662.00
c) Delivery	\$ 2,578.00	\$ 2,578.00
d) Performance Bond	\$ 586.93	\$ 586.93
e) APPARATUS COST	\$ 309,496.33	\$ 309,496.33
f) Sales Tax @ 7.750%	\$ 23,985.97	\$ 23,985.97
g) TOTAL PURCHASE PRICE	\$ 333,482.29	\$ 333,482.29

**PLEASE NOTE THE FOLLOWING ABOUT THIS QUOTATION:**

- 1) Quotation is valid for thirty (30) calendar days from the date shown above unless otherwise approved by Pierce Manufacturing, Inc.
- 2) Payment options are available and are included under separate cover. One of these options may save your department a significant amount of money!

Said apparatus and equipment are to be built and shipped in accordance with the specifications hereto attached, delays due to strikes, war or international conflict, failures to obtain chassis, materials, or other causes beyond our control not preventing, within about Q

CALENDAR DAYS after receipt of this order and the acceptance thereof at our office in Appleton, Wisconsin, and to be delivered to you at Q

The specifications herein contained shall form a part of the final contract and are subject to changes desired by the purchaser, provided such alterations are interlined prior to the acceptance by the company of the order to purchase, and provided such alterations do not materially affect the cost of the construction of the apparatus.

The proposal for fire apparatus conforms with all Federal Department of Transportation (DOT) rules and regulations in effect at the time of bid, and with all National Fire Protection Association (NFPA) guidelines for Automotive Fire Apparatus as published at time of bid, except as modified by customer specifications. Any increased costs incurred by the first party because of future changes in or additions to said DOT or NFPA standards will be passed along to the customer as an addition to the price set forth above. Unless accepted within 30 days from date, the right is reserved to withdraw this proposition.

Respectfully Submitted,

*[Signature]*

Q

Pierce Manufacturing Inc.



# We Build Confidence

## PROPOSAL FOR PIERCE® FIRE APPARATUS

June 4, 2003

TRACY FIRE DEPARTMENT  
432 E 11th STREET  
TRACY, CA 95376-4020

The undersigned is prepared to manufacture for you, upon an order being placed by you, for final acceptance by Pierce Manufacturing Inc., at its home office in Appleton, Wisconsin, the apparatus and equipment herein named and for the following prices:

	Each	Extension
a) One ( 1 ) 3000 GALS WATER TENDER	\$ 238,558.51	\$ 238,558.51
b) Factory inspection Trips ( 2 trip(s) for 2 people)	\$ 5,662.00	\$ 5,662.00
c) Delivery	\$ 3,226.00	\$ 3,226.00
d) Performance Bond	\$ 470.15	\$ 470.15
e) APPARATUS COST	\$ 247,916.66	\$ 247,916.66
f) Sales Tax @ 7.750%	\$ 19,213.54	\$ 19,213.54
g) TOTAL PURCHASE PRICE	\$ 267,130.20	\$ 267,130.20

### PLEASE NOTE THE FOLLOWING ABOUT THIS QUOTATION:

- 1) Quotation is valid for thirty (30) calendar days from the date shown above unless otherwise approved by Pierce Manufacturing, Inc.
- 2) Payment options are available and are included under separate cover. One of these options may save your department a significant amount of money!

Said apparatus and equipment are to be built and shipped in accordance with the specifications hereto attached, delays due to strikes, war or international conflict, failures to obtain chassis, materials, or other causes beyond our control not preventing, within about 0 **CALENDAR DAYS** after receipt of this order and the acceptance thereof at our office in Appleton, Wisconsin, and to be delivered to you at 0

The specifications herein contained shall form a part of the final contract and are subject to changes desired by the purchaser, provided such alterations are interlined prior to the acceptance by the company of the order to purchase, and provided such alterations do not materially affect the cost of the construction of the apparatus.

The proposal for fire apparatus conforms with all Federal Department of Transportation (DOT) rules and regulations in effect at the time of bid, and with all National Fire Protection Association (NFPA) guidelines for Automotive Fire Apparatus as published at time of bid, except as modified by customer specifications. Any increased costs incurred by the first party because of future changes in or additions to said DOT or NFPA standards will be passed along to the customer as an addition to the price set forth above. Unless accepted within 30 days from date, the right is reserved to withdraw this proposition.

Respectfully Submitted,

*David Murphy*

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Pierce Manufacturing Inc.

## Socioeconomics

The Cumulative impact of siting three power plants in the Tracy Area is a disproportionate impact to Residents near the three facilities. (Tracy peaker 01-AFC-16, EAEC 01-AFC-04, Tesla Power Project 01-AFC-21) Economically the benefits of the two large 1100MW plants accrue to Alameda County. The Expected Property tax Revenue alone approaches \$12,000,000 a year. Tracy and Mountain House Residents will be required to pay for the supplemental first fire response to these two massive facilities. Without direct appropriation of funds by the Energy Commission to the Tracy Fire Department mitigation may not occur. Alameda County has no obligation to transfer resources that they have been given by FPL and Calpine and should not be required to do so. Alameda County also has Fire Department Impacts and must move their existing Livermore Station 8 to accommodate the Energy Facilities. Tracy Fire to date has received no direct mitigation from any of the three power plants due to a poor evaluation of Emergency Impacts by Energy commission staff as noted in the EAEC Final Decision. . (01-AFC-04 p. 198,199) Chairman Keese noted in the decision on page 199.

“Applicant and Staff, in their analysis, have both emphasized the former (low risk) at the expense of the latter (response). The Committee feels that risks associated with the construction and operation of EAEC need to be acknowledged, managed, and properly mitigated. Power plants are inherently hazardous places. When these hazards are acknowledged and mitigated through measures, equipment and training, risk can be reduced to an acceptable level. Ignoring or inappropriately minimizing the risks, sows the seeds for accidents, injuries or even fatalities. It can also lead to complacency and under-preparedness for a response, which is unacceptable to this Committee and a potential disservice to the community at large” “Applicant, ACFD, and Staff agree on the estimate of response times. While we could agree that the response times are comparable for a rural area, the region is quickly becoming urbanized and is already impacted by urban traffic patterns. Hence, we believe that the agreed upon response times are optimistic.”

The Taxpayer of the Tracy Rural Fire Department will fund the first response to the Tesla Power Plant and the two other energy plants. The San Joaquin County taxpayers will also fund the first response for Law Enforcement to the two massive Energy Facilities because they must protect the citizens in San Joaquin County. As has been well documented in the EAEC Proceeding (01-AFC-04 Exhibit 6I-1, Exhibit 6I-2, Exhibit 6I-3, Exhibit 6I-4) but suppressed by the fearing officer in the Tesla Proceeding (Disallowed Exhibit 72E) these energy facilities are high priority terrorist targets. Failure to discuss these law enforcement and Emergency Service Issues and the Tesla and EAEC Applicants Safety Records and Procedures at other projects they own (Disallowed Exhibits 72A, 72B, 72c, 72D, 72E, 73A, 73B) leads to complacency and under-preparedness and is a disservice to the Citizens of Tracy and San Joaquin County. The Socioeconomic and Environmental Justice (Exhibit 82) issues remain unresolved due to suppression of analysis, discussion, and evidence in the hearings. One of the major requirements of the Commission is to determine if the TPP can be operated safely and whether it will comply with its conditions of certification. Any evidence that would help the Commission make that decision has been suppressed as irrelevant. The Tesla Power Plant and the EAEC will be located next to major electrical substations which supply large areas of the State and are major terrorist targets. To locate two such facilities within 6 miles of each other without adequate mitigation to the affected fire and police departments is unconscionable and an abuse of discretion. To not discuss these issues and suppress evidence related to them is **criminal** and an Abuse of Discretion.

Requiring the Residents of San Joaquin county to subsidize the applicants air quality mitigation with incentive payments in the SJVUAPCD incentive programs is also an

unfair burden on the residents of San Joaquin county. Any attempt to not require air quality reduction programs for the life of the project funded by the Applicant forces San Joaquin valley residents to continue to subsidize the applicant's air quality mitigation while Alameda County receives the majority of the economic benefits. The Applicant should be required to fund the entire mitigation in the SJVUAPCD and continue to do so through the life of the project and not just one time for a period of 7.7 years.

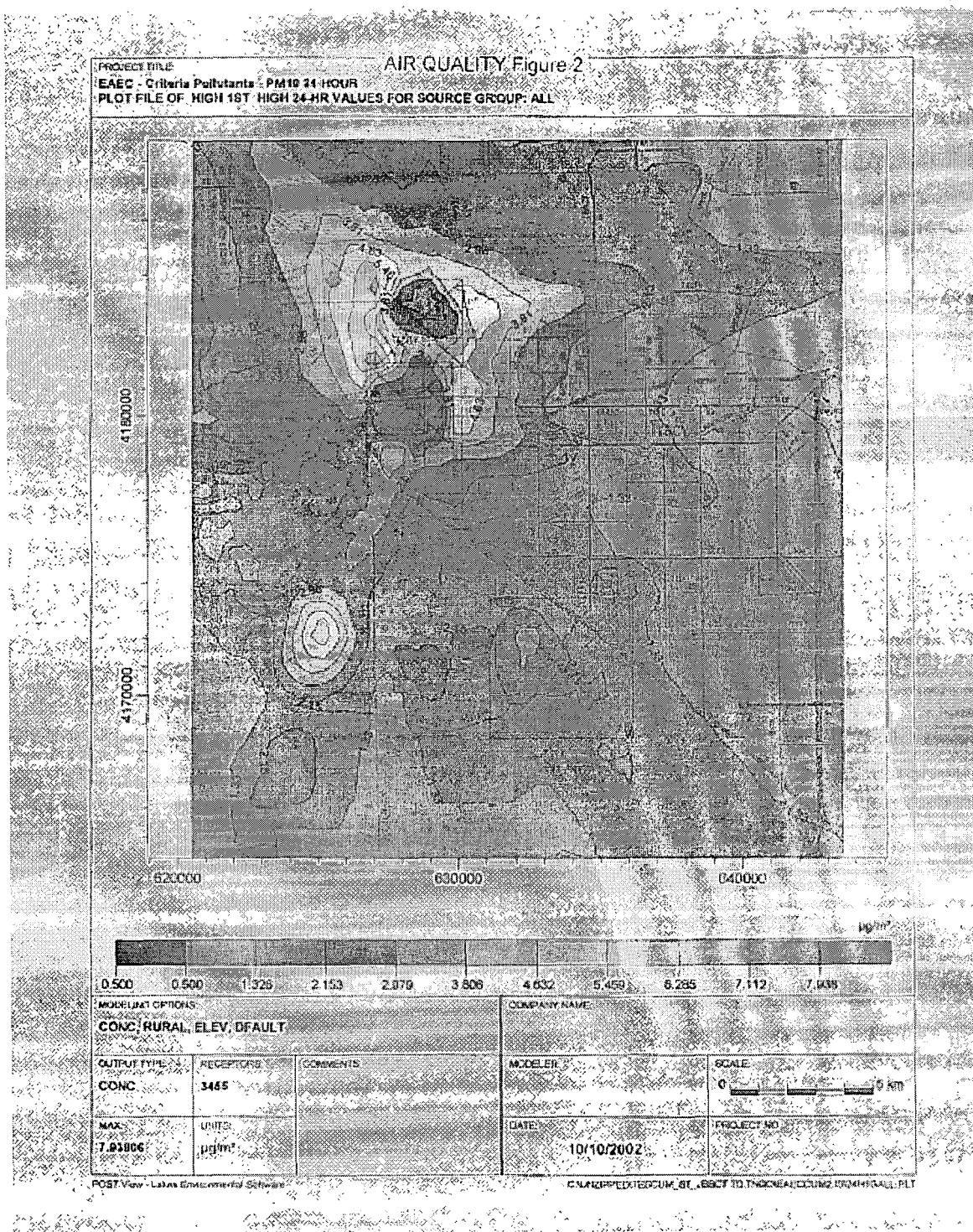
## **Environmental Justice**

Environmental Justice Guidelines require that disproportionate Cumulative impacts to Communities and Minority Communities be analyzed. (CARB, EPA Environmental Justice Guidelines) Lack of a proper Cumulative Air Analysis requested by Intervenor (Exhibit 81) and State Representative (Exhibit 82) and subject of Motion to Compel (Exhibit 83) has hampered any true evaluation of environmental impacts. The Staff and Applicants failure to include all Reasonably Foreseeable Development Projects in their analyses (Gateway Business Park EAEC Exhibit 6N same as suppressed TPP Exhibit 86, South Schulte Development Info EAEC Exhibit 6S same as suppressed TPP Exhibit 87, Tracy Hill EAEC Exhibit 6O same as suppressed TPP Exhibit 85, Cordes Ranch, Addesa Auto Auction facility, Bright Development) is fatal to a proper evaluation of the energy projects impacts in the rapidly developing community. The magnitude and the location of the impacts from these enormous business and residential developments are unanalyzed. Not knowing the magnitude and location of these impacts in relation to admitted minority population census blocks and the entire Community in general is a violation of Environmental Justice Guidelines. The most complete Cumulative Air



Analysis to date was submitted by the Energy Commission Staff in the EAEC. Isopleths of PM10 Cumulative impacts only were presented below along with the Isopleths presented in Exhibits 85,86,87,88. Figure 1 and Figure 2 were presented the day of the hearings for the EAEC and were also unanalyzed for environmental justice impacts and also failed to include the above Reasonably Foreseeable Developments Projects in Land Use Table 1. These isopleths presented below show operational impacts from the Cumulative Developments as high as 7.9 ug/m3 and construction impacts as high as 32.6 ug/m3 which occur in the Mountain House Community and to Minority Census blocks as depicted in TPP Exhibit 1 Figure 5.8-1. Not only did the analyses of Staff and Applicant fail to include most of the reasonably foreseeable projects in Land Use Table 1 (Exhibit 51) their analysis is void of any discussion of where these impacts occurred in relation to the minority census blocks. Even if this analysis of impacts to minority census blocks has occurred the impacts are extremely undervalued because of the lack of inclusion of the majority of reasonably foreseeable projects. I also note CEC Staff in the EAEC filed a motion to compel such a comprehensive study but were rebuffed by the Committee. (EAEC Energy Commission Staffs Brief on Cumulative Air Analysis December 3, 2001.)





EAEC Exhibit 01-AFC- Exhibit 1C

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

**APPLICATION FOR CERTIFICATION FOR THE  
TESLA POWER PROJECT**

**BY MIDWAY POWER LLC**

**DOCKET No. 01-AFC-21  
(DATA ADEQUATE 01/09/02)**

**PROOF OF SERVICE  
(Revised 10/09/03)**

I, Penny Simmons, declare that on **December 1, 2003**, I deposited copies of the attached **Intervener Robert Sarvey's Reply Brief**, in the United States mail at *Sacramento, CA* with first class postage thereon fully prepaid and addressed to the following:

**DOCKET UNIT**

*Send the original signed document plus  
the required 12 copies to the address  
below:*

**CALIFORNIA ENERGY COMMISSION  
DOCKET UNIT, MS-4  
Attn: Docket No. 00-AFC-21  
1516 Ninth Street  
Sacramento, CA 95814-5512  
docket@energy.state.ca.us**

\* \* \* \*

*In addition to the documents sent to the  
Commission Docket Unit, also send  
individual copies of any documents to:*

**APPLICANT**

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I declare under penalty of perjury that the foregoing is true and correct.

  
[signature]