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STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

Application for Certification of the)	Docket No.
Project in Alameda County) DIRECT TESTIMONY OF
) Dick Schneider
Calpine Energy Company) Land Use
_____)
)
)

BOB SARVEY, accepted by the California Energy Commission as an Intervenor on December 12, 2001, submits the attached direct testimony of Dick Schneider.

Dated : September 27, 2002

9-30-02

Robert M. Sarvey

PROOF OF SERVICE (REVISED) 9/25/02 FILED WITH
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Introduction

On November 7, 2000, Alameda County voters decisively passed Measure D, the Save Agriculture and Open Space Lands Initiative. This comprehensive voter initiative amended the Alameda County General Plan 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.”¹

Measure D was drafted in consultation with numerous community groups and individuals throughout Alameda County and placed on the ballot by the signatures of more than 63,000 Alameda County residents. It was endorsed by over forty elected and appointed officials, including the mayors of two of the County’s three most populous cities, over two dozen environmental and community groups, and two property owner associations. At the behest of Measure D opponents, the Board of Supervisors put a competing proposal, Measure C, on the ballot that would have left the existing General Plan largely intact. Measure D’s supporters had to distinguish their initiative in the voters’ minds from this confusing countermeasure. A combined total of over three million dollars was spent by both sides to educate the citizenry about the pros and cons of Measure D, the largest expenditure for a local land use ballot measure in state history.

Measure D was approved in the November 2000 election by 243,094 voters, approximately 57% of the votes cast, and received a majority of the votes cast in eastern Alameda County, the area it primarily affects. Measure C failed, receiving about 43% of the vote in its favor, showing that voters were clearly able to distinguish the two measures. This capsule history of the drafting and passage of Measure D shows that Alameda County voters knew what

they were voting for in passing Measure D and made a conscious, deliberate and unambiguous choice to protect the remaining open space, agricultural lands, and high quality of life in Alameda County for current residents and future generations.

Measure D's Policies

Measure D relocated and completed an Urban Growth Boundary (UGB) in eastern Alameda County. Urban type development can only be approved inside the UGB. Outside the UGB large minimum parcel sizes are required and with few exceptions only those uses directly supporting agriculture and natural resource protection are permitted. The site of the proposed East Altamont Energy Center is located far outside the UGB established by the initiative.

Large Parcel Agriculture land use designation

The East County Area Plan (ECAP) of the Alameda County General Plan contains land use designations that regulate land use densities, intensities, and permitted uses in the East County area. The Large Parcel Agriculture designation applies to the site of the proposed East Altamont Energy Center. Subject to Measure D, the Large Parcel Agriculture designation permits:

agricultural uses, agricultural processing facilities (for example, wineries, olive presses), limited agricultural support service uses (for example, animal feed facilities, silos, stables, and feed stores), secondary residential units, visitor serving commercial facilities, (by way of illustration, tasting rooms, fruit stands, bed and breakfast inns), recreational uses, public and quasi-public uses, solid waste landfills and related waste management facilities, quarries, windfarms and related facilities, utility corridors, and similar uses compatible with agriculture.²

¹ Measure D, Section 1, Purposes.

² Measure D, Section 8, Description of Land Use Designations.

Of direct relevance to this proceeding, the voters specifically deleted a provision that previously permitted “other industrial uses appropriate for remote areas and determined to be compatible with agriculture.”³

The proposed East Altamont Energy Center is a large, fossil-fueled, privately owned central-station power plant. It cannot reasonably be considered to fall within any of the uses permitted under the Large Parcel Agriculture land use designation. Very obviously it is not an agricultural use, an agricultural processing facility, a limited agricultural support service use, or a visitor serving commercial facility that supports agriculture. Nor is the proposed power plant a residential unit, a recreational use, a solid waste landfill or related facility, a quarry, windfarm or windfarm related facility. The power station is not a public or quasi-public use. As described in ECAP Policy 54, public facilities include “limited infrastructure, hospitals, research facilities, landfill sites, jails, etc.”⁴ None of these examples comes close to describing a privately-owned, 1100 MW central station power plant. Clearly the East Altamont Energy Center is a huge industrial facility that is not related to agriculture. It is a private, commercial project, not a public or quasi-public use.

As mentioned above, and as properly recognized in the Preliminary Staff Assessment,⁵ the voters specifically deleted that provision of ECAP which previously allowed “other industrial uses appropriate for remote areas and determined to be compatible with agriculture.” This is precisely the type of use now being proposed and which was prohibited by the voters of Alameda County. In revising the Large Parcel Agriculture designation to delete the above language, the

³ The complete changes made to the Large Parcel Agriculture designation are set forth in Appendix 1 to this testimony.

⁴ ECAP policies were renumbered when the Measure-D revised East County Area Plan was published in July 2002. Policy 54 was previously numbered Policy 58.

⁵ California Energy Commission, Preliminary Staff Assessment, East Altamont Energy Center, December 2001, P. 5.4-26.

drafters of Measure D were very deliberate. Several hours were spent during three meetings open to the public discussing this revision. At first the participants attempted to comprehensively list all uses that should be allowed outside the UGB. The list of potentially allowable uses ran to several pages. It did not include commercial electric power plants. Ultimately the drafters decided that such a listing was not practical: no matter how thorough we would try to be, we might very well overlook an important use that should be permitted. If that use were not listed, then Measure D could reasonably be interpreted as not permitting it. The drafters did not want to make such an error, so the revisions that were enacted were deliberately selected. We chose to retain the provision that permits “public and quasi-public uses” and to delete the provision permitting “other industrial uses appropriate for remote areas and [that could be] determined to be compatible with agriculture.” Our goal was to provide reasonable latitude in permitting public facilities (schools, hospitals, recreation uses, etc.) that truly serve the needs of East County residents, but also to prevent those uses clearly not related to agriculture, open space protection, natural resource use, or waste management. When adopting this revision to the Large Parcel Agriculture designation, the voters specifically intended to eliminate a category of use that conflicts with the overall purpose of Measure D to protect agriculture and open space land in eastern Alameda County.

The Alameda County Community Development Agency (CDA) in its argument that the East Altamont Energy Center is allowable under Measure D does not rely heavily on this stricken provision, preferring instead to justify the power plant as permissible infrastructure. However, the CDA does state that this massive power plant is compatible with agriculture.⁶ Clearly this argument is faulty since the power plant would permanently convert agricultural

⁶ Letter from Mr. Adolf Martinelli, Alameda County Community Development Director, to Mr. Bob Haussler, CEC Environmental Office Manager, dated April 26, 2002, P. 2.

land to a non-agricultural use. Unfortunately the CDA has ignored an important voter directive in advancing a claim of compatibility. Section 20 of Measure D states “The Board of Supervisors and other officials and employees of Alameda County shall carry out and enforce the provisions of this ordinance and generally the provisions of the East County Plan diligently and effectually. They are mandated to use the most effective means available to prevent, abate, and remedy violations” (emphasis supplied). In passing Measure D, the voters deliberately chose to protect agriculture and open space outside the UGB. In reaching a conclusion that contradicts the voters’ intention, the CDA has failed to use the most effective means available to protect the public interest.

Permissible Infrastructure

Measure D prohibits County approval of infrastructure in excess of that needed to serve development permitted by the Initiative. Measure D, Policy 14A, provides:

The County shall not provide nor authorize public facilities or other infrastructure in excess of that needed for permissible development consistent with the Initiative. This Policy shall not bar 1) new, expanded or replacement infrastructure necessary to create adequate service for the East County, 2) maintenance, repair or improvements of public facilities which do not increase capacity, and 3) infrastructure such as pipelines, canals, and power transmission lines which have no excessive growth-inducing effect on the East County area and have permit conditions to ensure that no service can be provided beyond that consistent with development allowed by the Initiative. “Infrastructure” shall include public facilities, community facilities, and all structures and development necessary to the provision of public services and utilities.⁷

Even if a merchant power plant could be considered a public facility or infrastructure rather than a private industrial use—a debatable proposition at best—the proposed East Altamont Energy Center is much larger than that permitted by the Initiative. An 1100 MW power plant is

⁷ Measure D, Section 8, Policy 14A

typically thought to provide enough electricity to serve 750,000 people. The current population of eastern Alameda County is approximately 170,000; the projected population in 2025 is approximately 250,000.⁸ Even if all 250,000 projected residents were to be served entirely by the proposed East Altamont power plant, it would be three times larger than necessary for this purpose. However, all existing residents currently are served with electrical power, so the relevant determination is whether the proposed power plant is needed to serve the incremental growth projected for East County (leaving aside the question of whether ABAG's growth projection itself will materialize given passage of Measure D). In this analysis, a power station would only need to supply electricity for 80,000 new residents. The proposed East Altamont facility is nearly 10 times larger than necessary for this purpose. The power plant is therefore not permissible infrastructure under Policy 14A because it is not necessary to provide adequate service for the East County. Even if one were to argue that infrastructure allowed in the East County could be sized to supply all of Alameda County's projected growth (not just East County growth), the power plant is too large to be permitted. Alameda County is projected to add 275,000 people by 2025.⁸ The proposed power plant is nearly three times larger than what would be needed to serve all of Alameda County's projected growth should it in fact occur. There is simply no interpretation of Policy 14A that permits infrastructure of this size to be built without violating the clearly expressed will of the citizens of Alameda County.

Other ECAP Policies

A number of other East County Area Plan policies that were not amended by Measure D are designed to promote and protect agriculture and other open space in eastern Alameda County. The CEC staff very appropriately asked questions about these other policies in its

⁸ Association of Bay Area Governments, Projections 2002.

correspondence with the Alameda County Community Development Agency.⁹ Unfortunately the CDA's answers¹⁰ were not protective of agriculture and open space. If these interpretations of County policy are allowed to stand, no part of Alameda County's open landscape is safe from inappropriate and harmful industrial development.

CEC staff asked if a power plant located outside the urban growth boundary would be considered an "urban" use. The CDA replied that if the power plant were located in an urban area it would be an urban use, but if located outside an urban area it would not be an urban use.¹⁰ This answer defies common sense. We are talking about one and the same type of industrial facility; its purpose is to supply commercial power primarily to urban users. Under the County's reasoning, any facility in a rural area, no matter how industrial in nature or destructive of existing use of the land, would not be considered urban and could be permitted simply by defining it as non-urban and therefore not subject to the voter-approved UGB. If permitted to stand, this interpretation will lead to private industrial facilities littering the landscape of rural Alameda County thereby contravening the will of the people to preserve that land for agriculture and open space uses.

CEC staff asked if the proposed power plant would be inconsistent with ECAP Policy 52 (formerly Policy 56) which states that the County "shall preserve open space areas for the protection of public health and safety, provision of recreational opportunities, production of natural resources (e.g., agriculture, windpower, and mineral extraction), protection of sensitive viewsheds, preservation of biological resources, and the physical separation between neighboring communities." In its reply, the CDA simply asserts that these objectives will be protected

⁹ Letter from Mr. Bob Haussler, CEC Environmental Office Manager, to Mr. Adolf Martinelli, Alameda County Community Development Director, dated March 7, 2002.

¹⁰ Letter from Mr. Adolf Martinelli, Alameda County Community Development Director, to Mr. Bob Haussler, CEC Environmental Office Manager, dated April 26, 2002, P. 1.

without offering any analysis.¹¹ Quite clearly, the irreversible conversion of agricultural land to industrial use accomplishes none of the above goals. The proposed power plant does not protect public health and safety; in fact, its air emissions are likely to impair public health. It does not provide recreational opportunities; in fact, it will remove the possibility of recreation ever taking place on the site. The proposed power plant does not enhance production of natural resources; in fact, it takes agricultural resources permanently out of production. It does not protect sensitive viewsheds; in fact, it blocks views. It does not protect biological resources; in fact, it permanently eliminates plant and animal habitat. The notion that some mitigation funds can compensate for these permanent losses is hubris and should not be accepted by the Energy Commission. Open space and agricultural lands are finite. They are vanishing at an alarming rate. That fact is what prompts citizens to place open space initiatives on the ballot all over the state. Measure D was the result of Alameda County government not hearing what its citizens were saying and forcing them to enact policy by initiative. We trust the Energy Commission will not turn a deaf ear to the voters of Alameda County.

ECAP Policy 72 (formerly Policy 76) states that the County “shall preserve the Mountain House area for intensive agriculture.” The proposed power plant will take agricultural land out of production in the Mountain House area. Once developed it will never be used for intensive agriculture. This violates the directive language of Policy 72 that the County shall preserve the area for intensive agriculture. The CDA asserts that mitigation funds will compensate for this loss, but no amount of money can replace land lost to development. Land in the Mountain House area is supposed to be protected for the long-term future by Measure D, assuming the County follows its own policies. Mitigation funds are therefore not needed to preserve Mountain House

land for intensive agriculture. Those funds will be used elsewhere not to protect land in the area, which does not need further protection. Permitting a power plant in this location is a clear violation of Policy 72. It is thereby also a breach of Measure D, Section 20, which mandates the most effective means available to prevent violations of the East County Area Plan.

Other Relevant Public Policy Considerations

Over-development of Green Field Sites

In its ongoing analyses of California's energy sector, the CEC has identified a disturbing trend in the siting of new power plants, an over-reliance on new green field sites rather than reuse of already developed locations. This trend has important environmental implications that the Commission should consider when making individual siting decisions. The Commission has found:

The siting trends observed since the electricity system was restructured raise concerns about the future environmental performance of the electricity system. First, developers appear to favor new green field sites rather than clean up and reuse of existing power plant sites. Reuse of existing sites would be expected to improve system efficiency, reduce air emissions, water supply and quality impacts, and improve visual aesthetics. Second, power plant developers favor natural gas-fired generation capacity, which raises concerns regarding lack of fuel diversity, system reliability, and the cost of electricity (emphasis supplied).¹²

Each licensing decision is an opportunity to improve the overall efficiency of the California electricity supply system as well as its air emissions, water impacts, and visual aesthetics. The Commission is in much the same position as a local land use decision-maker who is confronted with a development decision. You can choose to approve a new sprawl or leapfrog development on a green field and destroy natural resources in the process. Or you can choose to redevelop an

¹¹ Letter from Mr. Adolf Martinelli, Alameda County Community Development Director, to Mr. Bob Haussler, CEC Environmental Office Manager, dated April 26, 2002, P. 2.

area already impacted by development and make it better everyone as your own studies point out. If the Commission ignores this cumulative effect of individual decisions, the current trend towards a degraded environment will never be arrested but instead will be reinforced.

Among the advantages of repowering older power plants are (1) reducing air emissions in more populated areas which can be expected to improve the health of nearby residents who are often members of poor or minority communities, (2) reducing transmission losses because older plants are often found closer to load centers than new green field locations, and (3) reduced water consumption because newer plants are more efficient than older plants delivering more energy output per unit of natural resource input (both fuel and cooling water). Unless older plants are actually replaced with newer facilities, however, these benefits are not certain since the more polluting, inefficient plants may never actually be removed from service.

Repeated public opinion polls demonstrate that Californians care deeply about the quality of their environment. A recent poll by the Public Policy Institute of California, for example, found that two-thirds of Californians say the environment should be given priority even at the risk of limiting energy production and supplies.¹³ No such trade-off is necessary, however, if the Commission chooses to reuse existing developed footprints for new capacity additions. The environment is improved as new capacity is approved. The Commission can begin solving the problems it has identified knowing that it will simultaneously be putting the public's desires into effect.

Over-reliance on Natural Gas

¹² California Energy Commission, "2002-2012 Electricity Outlook Report," February 2002, P700-01-004F, P. III-5-7.

¹³ Public Policy Institute of California, Special Survey on Californians and the Environment, June 2002, available at www.ppic.org.

The Energy Commission already recognizes that increasing dependence on natural gas presents risks to California. These risks include lack of fuel diversity, system reliability, and cost of electricity.¹² California now depends on imports for 84% of its natural gas consumption.¹⁴ This level of dependency is problematic as events of recent years have made plain. Just days ago Federal Energy Regulatory Commission Judge Curtis Wagner Jr. found that natural gas supplies to California were intentionally withheld, presumably to extract increased prices from California consumers and electricity producers.¹⁵ Reducing natural gas dependency requires multiple approaches including increased conservation, improved energy efficiency, and greater use of renewable energy sources. What clearly does not reduce natural gas dependency is approval of new, massive natural gas fired power plants far from load centers.

Conclusion

If approved, the East Altamont Energy Center would violate voter-approved Measure D. It is a large, industrial facility located far outside the Urban Growth Boundary established by the voters. Considered as infrastructure the project is much larger than required to provide adequate service either for East County residents or for all projected Alameda County growth. As infrastructure it is not permitted under Policy 14A of Measure D because of its size. The project is incompatible with a host of other General Plan policies to preserve agriculture and protect open space in rural Alameda County. In particular it violates the policy to preserve the Mountain House area for intensive agriculture. Other public policy considerations provide compelling reasons for the Energy Commission to approve alternative facilities that do not further Californians' dependence on natural gas or that reuse sites in existing developed areas. For all of

¹⁴ California Energy Commission, "California's Major Sources of Energy," <http://www.energy.ca.gov/html/energysources.html>

¹⁵ "Judge rules firm kept gas from state," San Francisco Chronicle, Tuesday, September 24, 2002, P. A1.

these reasons, the Energy Commission should deny the license for the East Altamont Energy Center.

Appendix 1
Measure D revisions to the Alameda County East County Area Plan
Large Parcel Agriculture land use designation

(Material deleted is struck out; material added is underlined.)

Large Parcel Agriculture ~~requires~~ allows for a minimum parcel size of 100 acres, ~~except as provided in Programs 39A and 40. and a,~~ The maximum building intensity for non-residential buildings shall be .01 FAR (floor area ratio), but not less than 20,000 square feet. Where permitted, greenhouses shall have a maximum intensity of .025. except in areas supporting greenhouses where a maximum building intensity of .1 is allowed. One single family home per parcel is allowed provided that all other County standards are met for adequate road access, sewer and water facilities, building envelope location, visual protection ~~compatibility~~, and public services. Residential and residential accessory buildings shall have a maximum floor space of 12,000 square feet. Additional residential units may be allowed if they are occupied by farm employees required to reside on-site. Apart from infrastructure under Policy 14A, all buildings shall be located on a contiguous development envelope not to exceed 2 acres, except they may be located outside the envelope if necessary for security reasons or, if structures for agricultural use, necessary for agricultural use. Subject to the provisions of the Initiative, this designation ~~permits~~ provides for ~~low intensity agriculture (such as alfalfa, cattle and horse grazing), high intensity agricultural uses (such as row crops and vineyards), agricultural processing facilities (for example wineries, olive presses), limited agricultural support service uses (such as for example, barns, animal feed facilities, silos, stables, fruit stands, and feed stores), secondary residential units, visitor-serving commercial facilities (such as wineries by way of illustration, tasting rooms, fruit stands, bed and breakfast inns), recreational uses, public and quasi-public uses, solid waste landfills and related waste management facilities, quarries, windfarms and related facilities, utility corridors, other industrial uses appropriate for remote areas and determined to be compatible with agriculture, and similar and compatible uses compatible with agriculture.~~ Special Uses may apply in South Livermore as defined in "South Livermore Policies" at the end of this plan. Different provisions may apply in the South Livermore Valley Plan Area, or in the North Livermore Intensive Agriculture Area.

My name is Richard A. Schneider. I reside at 6867 Wilton Drive, Oakland, CA 94611. I am a free-lance writer and environmental policy analyst. I received a Bachelors degree from the University of California Berkeley in Anatomy/Physiology in 1978 and a Master of Science degree in Energy and Resources from the University of California Berkeley in 1980. I am co-author of *Toxics A to Z: A Guide to Everyday Pollution Hazards* (University of California Press, 1991). I am a member of the American Association for the Advancement of Science.

I was a co-author of Alameda County Measure D, the Save Agriculture and Open Space Lands Initiative, passed by the Alameda County electorate on November 7, 2000. I was one of four legal proponents of Measure D and co-chaired Citizens for Open Space in Alameda County, the campaign committee established to pass Measure D.

Currently I serve as Conservation Chair of the Sierra Club San Francisco Bay Chapter. The Bay Chapter encompasses Alameda, Contra Costa, Marin, and San Francisco counties. It has approximately 40,000 members. I sit on the Sierra Club Bay Chapter Energy Committee. Previously I chaired the Sierra Club Northern California-Nevada Regional Energy Committee. The Sierra Club is currently in the process of taking a position with respect to the proposed East Altamont Energy Center.

My previous testimonies to the California Energy Commission are:

Richard A. Schneider, Richard Sextro, Anthony Usibelli, "Sierra Club Testimony in the Matter of the California Energy Commission Position on Need for the Harry Allen-Warner Valley Energy System," on behalf of the Sierra Club Northern California Regional Conservation Committee, 5 May 1980.

Richard A. Schneider and Michael R. Eaton, "Managing Nuclear Wastes: California Policy and the Federal Program, A discussion of the status of nuclear waste reprocessing and storage in the context of Sections 25524.1 and 25524.3 of the California Resources Code," (Sierra Club, San Francisco, 1978), 110 pp.

Richard Schneider, "Sierra Club Testimony before the State of California Energy Resources Conservation and Development Commission regarding the Policy Overview Section of the Biennial Report," on behalf of the Sierra Club California Energy Task Force, 10 December 1976.

STATE OF CALIFORNIA
Energy Resources
Conservation and Development Commission

In the Matter of:

Docket No. 01-AFC-4

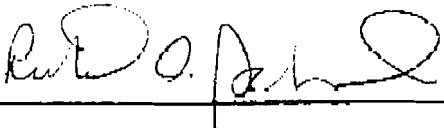
Application for
East Altamont Energy Center

**DECLARATION OF
Richard A. Schneider**

I, Richard A Schneider, declare as follows:

1. I am a resident of Alameda County, California.
2. My professional qualifications and experience are included with my testimony.
3. I prepared the attached testimony on September 29, 2002 for the East Altamont Energy Center Project (California Energy Commission Docket No. 01-AFC-4).
4. It is my professional opinion that the attached prepared testimony is valid and accurate with respect to the issues that it addresses.
5. I am personally familiar with the facts and conclusions related in the attached prepared testimony and if called as a witness could testify competently thereto.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct to the best of my knowledge and that this declaration was executed at Oakland, California on September 29, 2002.



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

APPLICATION FOR CERTIFICATION FOR THE
EAST ALTAMONT ENERGY CENTER
(EAST ALTAMONT)

DOCKET No. 01-AFC-4
(AFC ACCEPTED 06/27/01)

PROOF OF SERVICE
(*Revised 09/25/02)

I, **SUE DIURNI**, declare that on **October 1, 2002**, I deposited copies of:

1. Provisional Pre-hearing Conference Statement
2. Direct Testimony of Dick Schneider re. Land Use
3. Direct Testimony of Eric Parfrey re. Land Use
4. Direct Testimony of Eric Parfrey re. Water Resources
5. Direct Testimony of Dr Shawn Smallwood re. Biological Resources
6. Direct Testimony of Terrel Estes re. Fire Protection
7. Copies of Exhibit 14-30 of Tentative Exhibit List

on behalf of **Intervenor Robert Sarvey** 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-4**
1516 Ninth Street
Sacramento, CA 95814-5512
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* * * *

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

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



[signature]