Memorandum

To: Committee for the Colusa Generating Station Project
(06-AFC-9)
Commissioner Boyd
Raoul Renaud, Hearing Advisor

Date: February 25, 2008

From: California Energy Commission – Richard Ratliff
1516 Ninth Street
Sacramento CA 95814-5512

Subject: Applicant's Post-FSA Changes to the Colusa Generating Station Biological Resources Analysis

The U.S. Fish and Wildlife Service (USFWS) e-mailed the Colusa applicant on February 12, 2008, stating that the applicant had misapplied mitigation ratios in the USFWS (1997) programmatic mitigation guidance for the federal and state listed (as an "endangered species") giant garter snake. Soon thereafter, the applicant e-mailed Staff stating that its GIS staff discovered a miscalculation in the impact acreages originally calculated, reported to the Commission, and set forth in the FSA. This means the habitat compensation and impact acreages for giant garter snake are incorrect in the FSA. The attached table from the FSA reflects the changes that would need to be made, both to the acreages affected and to the mitigation ratio for habitat purchase.

The USFWS and applicant agree to the corrected acreage numbers, and Staff has requested that the USFWS review this memo and confirm its agreement.

The Committee will need to decide how to re-open the evidentiary record to admit this evidence. I propose that we address the problem by a written stipulation (regarding the mistake and the corrected number) between Staff and the applicant, attaching a declaration from the Staff witness. Please advise me if this approach is acceptable to the Committee.

cc: Jack Caswell
Brian McCollough
Misa Ward
Rick York
Michelle Tovar (USFWS)
POS list (06-AFC-9)
In addition to changes in this table, Condition of Certification BIO-16 would also have to be changed, as follows.

**Giant Garter Snake Mitigation**

**BIO-16** To mitigate impacts to the giant garter snake and its habitat, the project owner shall implement the USFWS avoidance and minimization measures for construction activities in giant garter snake habitat. For each acre (or portion of an acre) of giant garter snake habitat permanently impacted, the project owner shall purchase three (3) acres of giant garter snake credit at a USFWS and CDFG-approved conservation bank. Additionally, the project owner shall purchase two (2) acres of upland giant garter snake habitat for each acre of aquatic replacement habitat. The project owner shall purchase credits for a minimum of 2.05 acres of giant garter snake aquatic habitat and 4.40 acres of giant garter snake upland habitat. Temporary impact areas shall be restored within one season, or if restored within two seasons then an additional 5.40 acres of credit at a USFWS and CDFG-approved conservation bank shall be purchased by the project owner.

**Verification:** Within 15 days of site or related facilities mobilization the project owner shall provide written evidence of purchase of giant garter snake credits to the CPM.

**References**

USFWS 2008. Personal Communication between Melissa Newman, URS and Michelle Tovar, USFWS regarding applicant’s misinterpretation of USFWS programmatic mitigation guidance on giant garter snake and miscalculated impact acres. Emails dated 2/12/08, 2/19/08, and 2/20/08.

INSTRUCTIONS: All parties shall 1) send an original signed document plus 12 copies OR 2) mail one original signed copy AND e-mail the document to the web address below, AND 3) all parties shall also send a printed OR electronic copy of the documents that shall include a proof of service declaration to each of the individuals on the proof of service:

California Energy Commission
Attn: Docket No. 06-AFC-9
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

Applicant
Andrew Welch, Vice President
Competitive Power Ventures
8403 Colesville Rd, Suite 915
Silver Spring, MD 20910
awelch@cpv.com

Applicant’s Consultants
Dale Shileikis – URS
Vice President
221 Main Street, Suite 600
San Francisco, CA 94105-1917
dale_shileikis@urscorp.com

Mark Strehlow – URS
Senior Project Manager
1333 Broadway, Suite 800
Oakland, CA 94612
mark_strehlow@URSCorp.com

Counsel for Applicant
Mike Carroll – Latham & Watkins
Attorneys at Law
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626-1925
michael.carroll@lw.com

Interested Agencies
Larry Tobias
Ca. Independent System Operator
151 Blue Ravine Road
Folsom, CA 95630
LTobias@caiso.com

Electricity Oversight Board
770 L Street, Suite 1250
Sacramento, CA 95814
esalmarsh@eob.ca.gov

Stephen M. Hackney, Director
Colusa County
Department of Planning and Building
220 12th Street
Colusa, CA 95932
shackney@countyofcolusa.org

Harry Krug, APCO
Colusa County APCD
100 Sunrise Blvd. #F
Colusa, CA 95932-3246
hak@countyofcolusa.org

Steve Tuggle
Environmental Manager
Sierra Nevada Region
Western Area Power Administration
114 Parkshore Drive
Folsom, CA 95630
tuggle@wapa.gov
INTERVENORS

Emerald Farms
C/O Allen L. Etchepare
P.O. Box 658
4599 McDermott Road
Maxwell, CA 95955
ime@efarmsmail.com
ale@efarmsmail.com

Pacific Gas and Electric Company
GalatIBlek LLP
555 Capitol Mall, Suite 600
Sacramento, CA 95814
scalati@gb-llp.com
dwiseman@gb-llp.com

Pacific Gas and Electricity Company
C/O Andrea Grenier
Grenier & Associates, Inc.
1420 East Roseville Parkway, Suite 140-377
Roseville, CA 95661
andrea@agrenier.com

ENERGY COMMISSION

JOHN L. GEESMAN
Presiding Member
jgeesman@energy.state.ca.us

JAMES D. BOYD
Associate Member
jboyd@energy.state.ca.us

Susan Brown
Adviser to Commissioner Boyd
sbrown@energy.state.ca.us

Raoul Renaud
Hearing Officer
trenaud@energy.state.ca.us

Jack Caswell
Project Manager
jcaswell@energy.state.ca.us

Dick Ratliff
Staff Counsel
dratliff@energy.state.ca.us

Public Advisor
pao@energy.state.ca.us

DECLARATION OF SERVICE

I, Lynn Tien-Tran, declare that on 2/25/08, I deposited copies of the attached Application's Post-FSA Changes to the Colusa Generating Station Biological Resources Analysis in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

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

[Signature]
Lynn Tien-Tran

2