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October 28, 2010

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DOCKET	
08-AFC-9	
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VIA FEDEX

File No. 039610-0003

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 08-AFC-9
1516 Ninth Street, MS-4
Sacramento, California 95814-5512

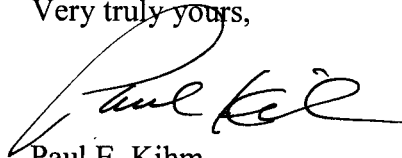
Re: City of Palmdale Hybrid Power Plant Project: Docket No. 08-AFC-9

Dear Sir/Madam:

Pursuant to California Code of Regulations, title 20, Sections 1209, 1209.5, and 1210, enclosed herewith for filing please find Applicant's Comments to Staff Response to Additional Committee Questions Concerning Staff's Proposed Alternative T-Line Analysis.

Please note that the enclosed submittal was filed today via electronic mail to your attention and to all parties on the attached proof of service list.

Very truly yours,



Paul E. Kihm
Senior Paralegal

Enclosure

cc: 08-AFC-9 Proof of Service List (w/encl., via e-mail and U.S. Mail)
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Marc T. Campopiano, Esq. (w/encl.)

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STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:) DOCKET NO. 08-AFC-9
)
APPLICATION FOR CERTIFICATION,) APPLICANT’S COMMENTS TO STAFF
FOR THE PALMDALE HYBRID POWER) RESPONSE TO ADDITIONAL
PROJECT BY THE CITY OF PALMDALE) COMMITTEE QUESTIONS
) CONCERNING STAFF’S PROPOSED
) ALTERNATIVE T-LINE ANALYSIS

On behalf of the City of Palmdale (“Applicant”) for the Palmdale Hybrid Power Plant Project (08-AFC-9) (“PHPP”), we hereby provide comments to the California Energy Commission (“CEC”) Staff’s “Response to Additional Committee Questions Concerning Staff’s Proposed Alternative T-line Analysis,” issued on October 21, 2010.

As Applicant explained in detail at the Committee Conference held on October 18, 2010, the PHPP’s proposed transmission line route, and various alternatives thereto, have been exhaustively analyzed in the Application for Certification (AFC), responses to data requests, and the Preliminary Staff Assessment (PSA). Further analysis of alternative transmission line routes is unwarranted for the following reasons: 1) all legal requirements related to the analysis of project alternatives have been fully satisfied; 2) Staff’s proposed analysis is meaningless since the alternative routes identified by Staff are not technically, economically or practically feasible; and 3) undertaking additional analysis that is neither legally required or meaningful at this late stage of these long delayed proceedings places an unreasonable burden on the municipal Applicant and squanders limited Staff resources.

I. ALL LEGAL REQUIREMENTS RELATED TO THE ANALYSIS OF PROJECT ALTERNATIVES HAVE BEEN SATISFIED

A. THE REQUIREMENTS OF THE WARREN-ALQUIST ACT AND CEQA HAVE BEEN SATISFIED

The Energy Commission’s regulations require the analysis of a reasonable range of alternatives. (See Title 20, California Code of Regulations, § 1765, Appendix B(f)(1); *see also* Title 14, California Code of Regulations (“CEQA Guidelines”) §15126.6(a); *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553, 566 (1990); *Save San Francisco Bay Ass’n v. San*

Francisco Bay Conserv. & Dev. Comm'n, 10 Cal. App. 4th 908, 919 (1992).) The lead agency determines the reasonable range of alternatives based on the nature of the project under review. (*Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553, 566 (1990).) As stated in the PSA, the “range of alternatives is governed by the ‘rule of reason’ ” to allow informed decision-making (PSA, p. 6-4) and it is not necessary to consider every potentially feasible alternative. (*See Mira Mar Mobile Community v. City of Oceanside*, 119 Cal. App. 4th 477 (2004).)

CEQA does not require consideration of additional alternatives that do not lessen significant environmental effects of a project. (*See Save San Francisco Bay, supra*, 10 Cal. App. 4th 908; *Mann v Community Redev. Agency*, 233 Cal. App. 3d 1143 (1991) (proposed alternative that varied configuration of project components need not be studied because it was not shown to be environmentally superior).) An EIR need not include multiple variations of the alternatives it does consider. (*In Village Laguna of Laguna Beach, Inc. v. Board of Supervisors*, 134 Cal. App. 3d 1022, 1028 (1982).)

For the PHPP, the PSA analyzed a reasonable range of project alternatives¹. (*See Save San Francisco Bay, supra*, 10 Cal. App. 4th at 922 (it is sufficient for an EIR to identify a set of prototypical alternatives that bracket the range of possibilities).) The PSA determined that the PHPP’s proposed transmission line would not result in any unmitigated significant environmental impacts. When a project does not result in significant impacts, no supplemental alternatives analysis is required under CEQA. Even if a member of the public were to suggest a variation to an alternative analyzed in the PSA (which has not occurred), CEQA only requires a consideration of a reasonable range of alternatives, and not an exhaustive analysis of all possible alternatives. (*See CEQA Guidelines* § 15126.6(a), (c); *Sierra Club v. City of Orange*, 163 Cal. App. 4th 523, 546 (2008).)

Nor does the Los Angeles County comment letter warrant the response proposed by Staff. The Los Angeles County comment letter merely expresses its support for “Alternative Route 3” instead of the proposed transmission line route. Alternate Route 3 was originally investigated by the Applicant in the AFC and rejected as technically infeasible and likely to result in more extensive environmental impacts than the proposed route. (*See AFC*, § 4.2.2.3.) Staff also provided a detailed analysis of Alternative Route 3 in the PSA and found it to be an inferior alternative because of potential environmental impacts and feasibility concerns. (*See PSA*, p. 6-15 – 6-18.) Furthermore, Air Force Plant 42 has indicated that Alternative Route 3 poses the greatest risk of all of the transmission line alternatives analyzed (*See AFP42 letter dated May 21, 2010*). Los Angeles County does not provide any new information or analysis that would materially change the analysis provided by the AFC or the PSA; thus, an expanded new analysis is not warranted to address the County’s comments. (*See CEQA Guidelines* § 15204(a); *see City of Long Beach v. Los Angeles Unified Sch. Dist.*, 176 Cal. App. 4th 889, 901 (2009) (“The level of detail required in a response to a comment depends on...the extent to which the matter is already addressed in the DEIR”).)

¹ Specifically, the PSA analyzed 3 alternative transmission line routes, Alternative Route 1 along 10th Street W, Alternative Route 2 along Division Street and Alternative Route 3, underground along Sierra Highway (all of which were also discussed and rejected in the AFC), as well as 3 alternative sites, 8 alternative generation technologies and the “No Project” alternative.

B. GARAMENDI PRINCIPLES SUPPORT THE PROPOSED TRANSMISSION LINE ROUTE AND DO NOT MANDATE SUPPLEMENTAL ALTERNATIVES ANALYSIS

Staff references the “Garamendi Principles” from Senate Bill 2431 (SB 2431, Stats. 1988, Ch. 1457) as a possible basis for needing to supplement the alternatives analysis. The Garamendi Principles are findings in the 1988 SB 2431. For perspective, SB 2431 was intended to establish studies needed for the Energy Commission’s 1990 Electricity Report and not to establish mandatory guidelines for individual siting projects. Nonetheless, the proposed PHPP transmission line route is consistent with the Garamendi Principles. In fact, the proposed route appears more consistent with the Garamendi Principles than the alternatives proposed by Staff.

The Garamendi Principles derive from the following general finding in SB 2431:

The Legislature further finds and declares that the construction of new high-voltage transmission lines within new rights-of-way may impose financial hardships and adverse environmental impacts on the state and its residents, so that it is in the interests of the state, through existing licensing processes, to accomplish all of the following:

1. Encourage the use of existing rights-of-way by upgrading existing transmission facilities where technically and economically justifiable.
2. When construction of new transmission lines is required, encourage expansion of existing right-of-way, when technically and economically feasible.
3. Provide for the creation of new rights-of-way when justified by environmental, technical, or economic reasons as determined by the appropriate licensing agency.
4. Where there is a need to construct additional transmission capacity, seek agreement among all interested utilities on the efficient use of that capacity.

The PHPP proposed transmission line avoids the primary concern of these findings because it will neither impose a financial hardship on the state or its residents, nor result in any significant environmental impacts. The proposed transmission line route is also fully consistent with the Garamendi Principles by: (1) making use of existing rights-of-way and transmission line corridors where feasible²; (2) providing for the creation of new rights-of-way only where environmentally, economically or technically justified; and (3) coordinating planning with Southern California Edison (SCE). In contrast, Staff’s proposed alternatives may: (1) have a more adverse socioeconomic impact on local residents than the proposed route by placing the

² There are existing transmission lines along E Avenue M, 30th Street E and parts of E Avenue L, as well as along Segment 2 between the Pearblossom and Vincent substations, such that about half of the proposed 35.6 mile PHPP route is within existing transmission line corridors and almost all of the remainder of the route (not within a transmission line corridor) is within planned roadway ROW.

line in populated areas; (2) be more disruptive to USAF Plant 42 based on its determination that Alternative 3 poses the greatest risk of all of the transmission line alternatives (*see* AFP42 letter dated May 21, 2010); and (3) be inconsistent with statements from SCE about the feasibility of undergrounding the transmission line within existing underground corridors (*see* Applicant's Data Response No. 120, dated May 1, 2009). Thus, the Garamendi Principles do not justify the need for a supplemental alternatives analysis in this matter. To the contrary, the Garamendi Principles support the PHPP's proposed route.

II. ALTERNATIVES PROPOSED BY STAFF ARE NOT TECHNICALLY OR ECONOMICALLY FEASIBLE

The AFC investigated alternative routes identical or very similar to those proposed for further analysis by Staff. In preparing the AFC, and in responding to data requests 120 to 124 submitted on May 1, 2009, Applicant determined the following constraints which were among the primary reasons for rejecting these alternatives:

1. Undergrounding high voltage lines (PHPP's line will be three-phase AC 230 kV) is both technically and economically problematic:
 - a. From a cost perspective, undergrounding through an urban environment, as proposed by Staff, is on average approximately eight and one half times as expensive as overhead lines in a rural environment, such as the route currently proposed by Applicant, and could be more than 150 times more costly (\$150,000/mile vs. \$23 mil/mile -- see the attached Exhibit 1).
 - b. The primary reason for this large cost differential is that 230 kV lines require construction of a deep underground concrete vault, with sufficient capacity for all three phases which need to be contained in steel conduits, cooled by high pressure oil or gas; this cooling requirement necessitates the inclusion of above-ground compression stations along with sufficient right-of-way (ROW) capacity to accommodate the extra space for the vaults, including manhole access points at regular intervals for maintenance.
 - c. Good Engineering Practice will not allow the inclusion of high voltage lines in the same trench as natural gas pipeline or water pipelines. Construction could conceivably be undertaken at the same time (assuming the difficulties of scheduling could be surmounted), but an extremely wide ROW would be required – far wider than the ROW typically associated with public roads.
 - d. Maintenance is considerably more difficult and expensive for an underground line due to accessibility issues, and hence reliability can be compromised. SCE has indicated that it is opposed to interconnecting underground lines with its system due to cost, maintenance and reliability concerns.

- e. Coordination with Union Pacific/Burlington Northern for crossing under its rights-of-way will likely be more difficult than securing permission to string lines overhead. Applicant is not aware of any entity, including the state, that would have eminent domain authority over the railroads in order to work around the railroad's interminable approval process, and coordination with them for approval to construct a 230Kv underground vault along or across their right-of-way may be impossible.
2. Constructing overhead high voltage lines in certain locations is problematic for technical, economic and legal reasons:
 - a. For reasons of engineering prudence and minimizing visual impacts, it is preferable to place transmission lines in existing utility corridors. Unfortunately, the existing utility corridors in the vicinity of the alternative routes analyzed by Applicant two years ago, and now proposed by Staff, currently contain low-voltage, distribution (66 kV or less) level lines, which are incompatible with high voltage lines. SCE, which owns the ROW and poles for the existing low voltage lines in these alternative routes, will not allow the combining of high and low voltage lines on one pole, nor will they allow separate poles in the same ROW when one of the poles is privately owned.
 - b. Erecting electrical transmission lines on both sides of a street through a densely populated area of the City would result in visual impacts that greatly exceed those of the proposed transmission line, which Staff has already determined in the PSA can be mitigated below the level of significance.
 - c. The route along Division Street will pass directly in front of Ana Verde Elementary School. Pursuant to Title 5, California Code of Regulations, Section 14010 (c)(2), new school sites should not be located within 150 feet of the edge of an easement for 230kv overhead lines. The school district would likely have concerns whether the lines were above or below ground. Similarly, the 10th Street West alignment passes next to a new hospital. There is no indication that Staff has engaged these or other affected stakeholders in its analysis, and, of course, to do so will result in yet additional delay in the review of the project.
 3. Assessment of a new transmission line route would require formal modifications to the System Impact Study/Facility Study (SIS/FS) CAISO process:
 - a. Due to the reasons provided above related to uncertainty in the feasibility, economics, and acceptability to SCE of the proposed alternatives, the transmission line studies provided to date would require review and modification, a process that would take months to complete and require the City to pay tens of thousands of dollars to initiate and complete.

- b. Although the alternative routes are shorter, the City expects that obtaining sufficient ROW for a transmission line through the developed portions of the City would take longer, and be considerably more expensive and more contentious, than obtaining the narrower ROW that would be needed for the PHPP proposed route that has already been determined to be technically feasible by SCE.

III. UNDERTAKING UNNECESSARY ANALYSIS IN THE CURRENT CONTEXT IS BAD PUBLIC POLICY

Given that the additional analysis proposed by the Staff is not legally required, the question then becomes whether or not it is warranted as a matter of public policy. In this case, it clearly is not. Since the alternative lines that the staff is analyzing cannot be implemented due to technical, economic and practical considerations, the results of the analysis will be meaningless and will not further inform the decision-making process.

Furthermore, the question of whether or not to undertake additional analysis, and incur the additional delay associated therewith, cannot be divorced from the context of this particular project. The AFC in this matter was deemed complete over two years ago – on October 8, 2008. Staff has readily admitted that it was unable to process this AFC in a timely fashion. The result has been uncertainty and expense for the Applicant, which in this case is a municipality investing taxpayer funds. The Staff has also readily admitted that the workload issues that prevented it from processing this AFC on a timely basis in the first place continue to exist. In the context of a history of delay, and ongoing limitations on staff resources, undertaking additional analysis that is not required and will not enhance the review and decision-making process amounts to folly.

IV. CONCLUSION

The PSA analyzed a reasonable range of project alternatives. The PSA determined that the project as proposed would not result in any significant environmental impacts, and that the alternatives analyzed were not environmentally superior. Neither CEQA or the Garamendi Principles warrant further analysis. In addition, further analysis will not inform the decision-making process since the alternatives that staff is analyzing are not technically, economically or practically feasible, and therefore cannot be implemented in any event. Under these circumstances, further deployment of Staff resources, and further delay and expense to the Applicant, are completely unjustified. Applicant strongly requests that the Committee deny Staff's request to extend its analysis and direct it to produce a complete FSA with all due haste.

DATED: October 28, 2010

Respectfully submitted,

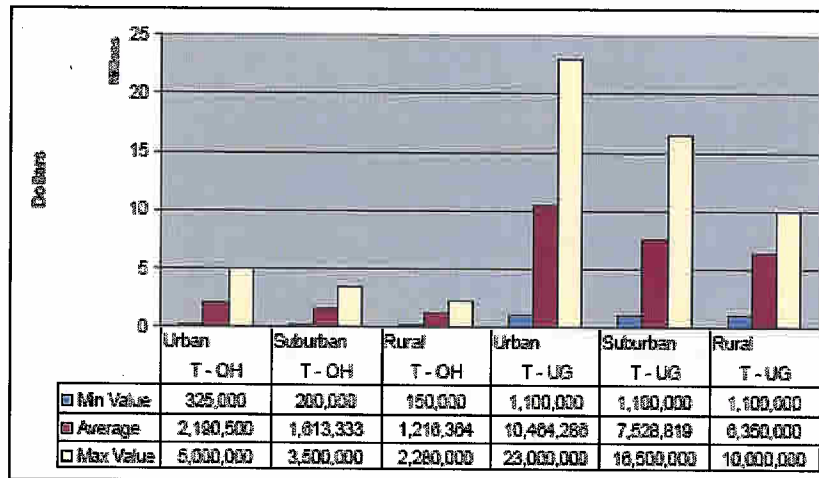
/S/ MICHAEL J. CARROLL

Michael J. Carroll
LATHAM & WATKINS LLP
Counsel to Applicant

EXHIBIT 1 Comparison of Transmission Line Construction Costs

Figure 6.1 Cost Per Mile: New Construction Transmission² – This chart presents a range of costs for new construction of transmission. Overhead costs range from \$150,000 per mile (for rural construction) to \$5,000,000 per mile (for urban construction). Likewise, underground costs range from \$1,100,000 per mile (for rural construction) to \$23,000,000 per mile (for urban construction). When drawing conclusions from the data provided for transmission construction, remember that the construction requirements associated with different voltage levels contribute greatly to the cost variations. Higher voltage transmission lines require larger poles/towers and greater insulation levels in order to transmit electricity. The cost for new underground construction may range from five to ten times the cost for comparable overhead construction. For example, in the survey, the utility that provided the minimum cost of \$325,000 per mile for overhead urban transmission construction also provided a cost of \$3,000,000 per mile for similar underground construction.

Figure 6.1 Cost Per Mile: New Construction Transmission



² Excerpted from “Out of Sight, Out of Mind Revisited, Edison Electric Institute, December 2009, available at:
<http://www.eei.org/ourissues/electricitydistribution/Documents/UndergroundReport.pdf>.

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

In the Matter of:)	Docket No. 08-AFC-9
)	
Application for Certification,)	PROOF OF SERVICE
for the CITY OF PALMDALE HYBRID)	
POWER PLANT PROJECT)	(Revised October 6, 2010)
)	
_____)	

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PALMDALE HYBRID POWER PROJECT
CEC Docket No. 08-AFC-09

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PALMDALE HYBRID POWER PROJECT
CEC Docket No. 08-AFC-09

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PALMDALE HYBRID POWER PROJECT

CEC Docket No. 08-AFC-09

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DECLARATION OF SERVICE

I, Paul Kihm, declare that on October 28, 2010, I served and filed copies of the attached:

**APPLICANT'S COMMENTS TO STAFF RESPONSE TO ADDITIONAL COMMITTEE
QUESTIONS CONCERNING STAFF'S PROPOSED ALTERNATIVE T-LINE
ANALYSIS**

to all parties identified on the Proof of Service List above in the following manner:

California Energy Commission Docket Unit

- Transmission via electronic mail and by depositing a copy with FedEx overnight mail delivery service at Costa Mesa, California, with delivery fees thereon fully prepaid and addressed to the following:

CALIFORNIA ENERGY COMMISSION

Attn: DOCKET NO. 08-AFC-09
1516 Ninth Street, MS-4
Sacramento, California 95814-5512
docket@energy.state.ca.us

For Service to All Other Parties

- Transmission via electronic mail to all email addresses on the Proof of Service list; and
- by depositing one paper copy with the United States Postal Service via first-class mail at Costa Mesa, California, with postage fees thereon fully prepaid and addressed as provided on the Proof of Service list to those addresses **NOT** marked "email preferred."

I further declare that transmission via electronic mail and U.S. Mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 28, 2010, at Costa Mesa, California.



Paul Kihm