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A. GREENHOUSE GASES

The applicant's contention that Green House Gas (GHG) impacts of a 200 MW natural gas plant will be "not significant" is not factual or reasonable. The quite significant GHG emissions that Applicant stipulates over the plant's lifetime (433,000 metric tons per year, SSA p. 4.1-79) cannot reasonably be held to be "mitigated" by measures or conditions Applicant cites. Given the range of alternatives existing or in prospect (Sarvey, MEP Opening Brief, p10ff, SCC Opening Brief, p12ff), MEP is not needed to provide "local reliability" or to back up renewable sources. Applicant has not shown that MEP would displace other existing power plants elsewhere, higher heat rates or not, so it is irrelevant whether MEP is more or less efficient or will emit fewer or more GHG than other plants. Older plants are being phased out regardless of whether MEP is built, and that phase-out is taken account of in CPUC's official reckoning of a huge generation surplus extending to 2020 (SCC Opening Brief, p. 14ff.) SSA's conclusion that MEP would likely displace other existing power plants within the Greater Bay Area with higher heat rates and thus reduce net GHG emissions in the area is pure, unfounded speculation.

Although County staff denies that the MEP should be counted as a county emission source for purposes of the CAP, it is not clear why they reach that conclusion other than to justify accepting the facility. But even if one accepts the County's premise, the fact is the MEP by itself will release 1.8 times all the GHG savings that the County proposes to accomplish by 2020, completely canceling (and then some) all the actions residents of the unincorporated areas of Alameda County will take to head off destabilizing climate change. This shows the scale of greenhouse gas releases by the MEP and provides yet another reason why the MEP should not be approved by the CEC.

The central fact remains that there will likely be a net increase in GHGs as a result of this plant's unnecessary operation over many decades, and the County, state, nation and planet can no longer safely tolerate this and comparable fossil-fueled projects when viable alternatives arguably already exist and will be increasing exponentially over MEP's projected service lifetime.

B. LAND USE

Applicant claims that due deference must be given to local government's determination on land use. However, there is neither statutory nor regulatory authority for such deference. The statute provides that the CEC must determine whether MEP conforms to the Alameda County zoning. (PubResCode §25523(d)(1).) Even if the county is generally granted deference in interpreting its own

plans and policies, such deference is far less appropriate where, as here, the policies were enacted by a voter initiative and as a reaction against prior County policies. (SCC Opening Brief, p. 14ff.)

Applicant relies on Policy 13 for its claim that MEP is permissible under ECAP. It must be emphasized that Policy 13 is a limitation on the general ECAP provision: It provides in full:

“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.”

MEP is not a "public facility:" it is not owned or used by the public. It is not "new, expanded or replacement infrastructure necessary to create adequate service for the East County." There is no evidence that the adequate supply of electricity to East County is dependent on the construction of MEP, which would be a peaker plant that only runs during peak demand times. In fact, much of Eastern Alameda County is not served by PG&E, who would buy the MEP power. (Sarvey Opening Brief, p 2.) If "necessary" is to have any meaning, it means that without the construction of the MEP, there would not be adequate electricity in East County, which is not true.

Applicant's claim that MEP is "necessary to meet current levels of demand in Eastern Alameda County" is not true. Eastern Alameda County's demand is currently being met without MEP. There is no evidence that the demand has not been met or cannot be met at peak use. The fact that local generation only produces a portion of the peak demand in Eastern Alameda County is irrelevant; much of Alameda County's electricity comes from out of the County, and there are few if any counties in the state that generate more power than they use. Is there sufficient power generation in San Francisco to meet its peak demand requirements?

Alameda County in effect conceded that the MEP was not necessary to meet Eastern Alameda County Power demands. Its May 10, 2010 letter (Ex. 41) states on page 2: "The overall power generation capability of the plant would potentially exceed the specific service demands considered adequate for the East County designated area." This conclusion is bolstered by PUC's latest forecasts showing a generation surplus. (“Standardized Planning Assumptions (Part 1) for System Resource

Plans.” (CPUC document, "Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans". Rulemaking 10-05-006, dated 12/03/2010 set forth at <http://docs.cpuc.ca.gov/EFILE/RULC/127542.htm>. and its Attachments 1 and 2 (LTPP); see further discussion at pp.8-9 hereof.)

Nor would MEP be "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." It would not be similar to "pipelines, canals, and power transmission lines," and there are no relevant permit conditions.

C. ALTERNATIVES

1. Feasibility of No Project Alternative

Applicant's citation of 14 CalCodeRegs 15126(e)(3)(B) failed to include its opening phrase "However, where failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis should identify the practical result of the project's non-approval and not create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment."

Failure to proceed with MEP will result in preservation of the existing environmental conditions; the parcel will not be developed and will continue to serve agricultural purposes, grazing cattle. The "no project alternative" will protect the existing environment and it is not infeasible; to the contrary, it is entirely feasible with simple project denial. It is also environmentally superior to any form of the project, which will involve detrimental environmental impacts from both construction and operation of a power plant. And as demonstrated on pages 8-9 below, there is no need for the project.

An alternative analysis, if it is to comply with CEQA and the Commission's CEQA-equivalent process, must include a reasonable range of alternatives, chosen because they have the potential to avoid impacts caused by the proposed MEP. SSA, like an EIR, must produce adequate information regarding alternatives. If it doesn't, it cannot achieve the dual purpose served by the EIR, which is to enable the reviewing agency to make an informed decision and to make the decision maker's reasoning accessible to the public, thereby protecting informed self-government. (Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692 , 733, 270 Cal.Rptr. 650.)

SSA's three paragraph no project alternative discussion does not meet this test.

2. Alternative Technologies Not Adequately Assessed

SSA and Applicant have not conducted a thorough analysis of existing and expected dispatchable and renewable generation and their proper location enough to justify their conclusion that MEP will be needed to integrate renewable energy within the greater Bay Area Load Pocket. This analysis has been recommended in such cases by CEC itself. (Sarvey Opening Brief, p. 11 and SCC Opening Brief, p. 16.) This failure itself disqualifies SSA from being the CEQA-level analysis required. Intervenors have pointed to a combination of existing and newly approved facilities and technologies for dispatchable generation to meet integration needs, but SSA has ignored or dismissed all of them. (SCC and Sarvey, Opening Briefs, p.16 and p.10ff, respectively.) Applicant states that SSA presented a “comprehensive analysis of alternatives to MEP,” but SSA’s three perfunctory paragraphs of “analysis” fall far short of being “comprehensive” and meeting CEQA’s standard of analysis. (SCC Opening Brief, p.12ff.) Applicant and SSA refer to one of MEP’s primary project objectives as supplying “back-up generation when the local wind turbines decrease output due to decreased wind”. Their generalizations fail to show why cited locally existing and projected dispatchable generation will not be adequate for this purpose. SCC and Intervenor Sarvey have sought to point out countervailing evidence that Applicant and SSA have failed to take into account. (MEP Opening Briefs, SCC, p. 16 and Sarvey, p.10ff.) Staff’s analysis of the no project alternative ignores current conditions in PG&E’s service territory that eliminate the need for the MEP. (Sarvey Opening Brief, p. 17.)

3. No Project Alternative is Superior

MEP’s no project alternative is environmentally superior because the MEP is not required for grid reliability and cheaper and less environmentally harmful generation technologies are currently being developed or can be developed which eliminate the need for the MEP now and over its lifetime. SSA’s assertion that a “no project alternative” could lead to “increased operation” of older, existing plants is refuted by CPUC’s most recent load forecast tables (based on CEC’s official findings) which themselves already include a substantial planned retirement schedule of older plants and still foresee a huge 69 percent surplus of generation in PG&E’s service area continuing through 2020 (LTPP, SCC Opening Brief, p. 4.) SSA asserts that alternatives “would likely not meet the state’s growing electricity needs”. Evidence shows this to be invalid at least for PG&E’s service territory (and probably for others). (SCC Opening Brief, p. 12 ff, SCC Exhibit 900, p. 5ff, Sarvey Opening Brief, p. 10ff.)

4. Need is Questionable or Non-Existent

Applicant claims that the CEC need not consider the "need" for the project. However, PubRes

Code §25500.5 provides:

"The commission shall certify sufficient sites and related facilities which are required to provide a supply of electric power sufficient to accommodate the demand projected in the most recent forecast of statewide and service area electric power demands adopted pursuant to subdivision (b) of Section 25309."

Applicant states that Senate Bill 110 removed the requirement that the Commission make a finding of "need" conformance in a certification decision. Formerly, it is alleged, the Commission was obliged to make a specific finding that any proposed facility is in conformance with the adopted Integrated Assessment of Need. In fact, the finding of "need conformance" does not arise and is not being requested. What is being discussed and objected to in this proceeding is circumvention of CEQA Guidelines: "...the purpose of describing and analyzing the No Project Alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project." (14 CalCodeRegs §15126.6(e)(1).) Toward that end, the "no project" analysis considers "existing conditions" and "what would be reasonably expected to occur in the foreseeable future if the project were not approved..." (14 CalCodeRegs §15126.6(e)(2)).

It is true that PubResCode §25309 has been repealed but its effective substitute is PubResCode §25301(a):

"At least every two years, the commission shall conduct assessments and forecasts of all aspects of energy industry supply, production, transportation, delivery and distribution, demand, and prices. The commission shall use these assessments and forecasts to develop energy policies that conserve resources, protect the environment, ensure energy reliability, enhance the state's economy, and protect public health and safety."

The latest such CEC assessments and forecasts are the basis for CPUC's load forecast tables in "Standardized Planning Assumptions (Part 1) for System Resource Plans." (CPUC document, "Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans". Rulemaking 10-05-006, dated 12/03/2010 set forth at <http://docs.cpuc.ca.gov/EFILE/RULC/127542.htm>. and its Attachments 1 and 2 (LTPP); SCC Opening Brief, p. 4.) which utilities are officially required by CPUC to use in procurement decisions. These tables, as of December 3, 2010, show a large and growing electricity generation surplus through 2020 in PG&E's service area and MEP territory. CPUC officially requires investor-owned utilities to follow these tables in procurement decisions. They are the most up-to-date CPUC official findings available, filed December 3, 2010. CEC should use CPUC's and CEC's own recent, official, operative forecasting tables and findings. CEC will otherwise find itself in the questionable position of

permitting a facility that CPUC and CEC data now clearly show is grossly unneeded to perform the functions Applicant claims for it.

Selection of the MEP in PG&E's 2008 LTRFO does not in itself provide any basis that MEP will meet the "public need" asserted by Applicant and staff, given PG&E's violation of its Mariposa Settlement Agreement and subsequent Petition for Modification. The Agreement, referred to by Applicant (Applicant's MEP Opening Brief, page 5), is currently being adjudicated in CPUC. PG&E's violation amounted to such an abrogation of stipulated "need" that the CPUC's Division of Ratepayer Advocacy urged (in comments filed January 28, 2011 in CPUC Proceeding A.09.04-001) that "the Commission impose severe sanctions against PG&E for violating the Mariposa Settlement Agreement including staying or suspending approval of the Mariposa PPA as CARE recommended in its PFM. In any case, a more timely, realistic guide to "need" is found in the CPUC's LTPP proceeding (SCC Opening Brief, p. 4) based on CEC's own official load forecast tables, which CPUC orders utilities to follow in all procurement actions.

D. CONCLUSION

Certifying MEP will be hard to explain to local ratepayers who will be burdened for coming decades with a huge surplus of fossil-fuel generation. That will deter more investment in clean renewables and efficiency which are sorely needed to avoid the worst consequences of global climate heating and disruption.

The Commission has been given sufficient grounds to reject MEP's certification. But beyond discounting selective legalistic pleading, there remains the deeper obligation of CEC to ratepayers and citizens – don't let more redundant fossil fuel facilities waste ratepayers dollars that could be better spent on zero-carbon solutions, as CEC's loading order guidelines mandate and oblige.

DECLARATION OF SERVICE

I, Alan Carlton, declare that on April 6, 2011, I served and filed copies of the attached Mariposa Energy Project (MEP) (09-AFC-3) Opening Brief of Sierra Club California. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

[<http://www.energy.ca.gov/sitingcases/mariposa/index.html>].

The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

For service to all other parties:

sent electronically to all email addresses on the Proof of Service list;

by personal delivery or by depositing in the United States mail at Sacramento, California, with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

For filing with the Energy Commission:

sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (preferred method);

OR

depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

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

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