State of California
State Energy Resources Conservation and Development Commission

In the Matter of:	)	Docket # 09-AFC-03
	)	Robert Sarvey's
	)	
	)	
Mariposa Energy Project	)	Reply Brief

Land Use

The MEP is not consistent with the Williamson Act.

The applicant states on page 11 of his opening brief that , "*The Williamson Act recognizes two types of compatible uses: (1) those established by statute; and (2) those established by the local agency, so long as the latter comply with the Act's "principles of compatibility." Uses expressly recognized by the Act as compatible include "the erection, construction, alteration, or maintenance of gas, electric . . . facilities." These statutorily-recognized uses are presumptively considered to be compatible with agriculture unless the local government has made a specific "finding to the contrary."* In the case of Alameda County the county has made a specific finding to the contrary in its established Objectives, Uniform Rules and Procedures for Williamson Act property. The County has defined compatible uses under the Williamson Act in Section (C) (3) (g) which outlines restricted uses under the uniform rules and procedures. Under Section (C) (3) (g) Uses permitted in preserves will be restricted under contracts to the following compatible uses: Section (C) (3) (g) 23 restricts "the erection and construction, alteration or maintenance of gas, electricity, water, communication, radio, television, or microwave antennas , transmitters, and related facilities **as accessory to other permitted uses."** Under Section (c) (3) (g) 23 the MEP would be restricted to an accessory to other permitted uses on the property. As the MEP is not an accessory to other permitted uses on the property it is not compatible with the Counties Objectives, Uniform Rules and Procedures for agricultural preserves. Hence the MEP is not compatible with the Williamson Act as the county's LORS deem otherwise.

Even without the county's restrictions in its Objectives, Uniform rules and Procedures for Williamson Act Property an electrical generating facility has not been deemed a compatible use on Williamson Act Property by the Act itself. If electrical generating facilities were automatically compatible uses we would not be currently engaged in the controversy of whether solar generating facilities are compatible uses under the Williamson Act. The issue of compatibility with the Williamson Act has already been determined with respect to other contract property in Eastern Alameda County. The County of Alameda's former development director Adolph Martenelli who is also currently the applicants land use witness[1] has already opined on this issue in the Tesla siting case stating that, "*The power plant use is not consistent with a Williamson Act contract; this inconsistency is determined not by the County, but by the Department of*

[1] Adolph Martenelli

Conservation and the State Legislature, which have made such determinations.[2]*"* Clearly the MEP is not compatible with Alameda County's Williamson Act requirements or the States compatibility requirements which require specific findings by the County.

Local rules (and the language contained in any specific contract at issue) play an important role in determining what is allowed under the local Williamson Act program. The County also has already taken action to limit uses on the MEP parcel with the current Williamson Act contract on the MEP parcel. While Staff and Applicant make claims that the MEP is consistent with the current Williamson Act contract on the property their claims are not supported by the record. Exhibit Number 12, Appendix DR1-1[3], contains a copy of the existing Williamson Act Contract that runs with the property. Page 3[4] of the contract provides the restrictions on the use of the property, "*During the term of this agreement, or any renewal thereof, the said property shall not be used for any purpose, other than agricultural uses for producing agricultural commodities for commercial purposes and compatible uses, which uses are set forth in Exhibit B attached hereto and incorporated by reference."* Exhibit "B" provides for two uses, "*1) Grazing, breeding or training of horses or cattle 2) Co-generation/waste water distillation facility as described by Conditional Use Permit C-5653."* [5] The MEP is not a co-generation/ waste water distillation facility and it is not grazing, breeding or training of horses or cattle hence the MEP is not compatible with the existing Williamson Act contact C-89-1195.

Alameda County Agricultural Preserves Objectives, Uniform Rules and Procedures (Williamson Act) Section 4(c)(3)(f) provides that, "*Division of Land: Property under contract in a Preserve shall not be divided into parcels of less area that the minimum area required by the A (Agricultural) Zoning district or in the alternative, the minimum parcel size required by the PD (Planned Development) District in which the property is located consistent with these Guidelines….**All provisions of the contract shall remain applicable to both the transferred property and the remainder after the division."***[6]

In order for the MEP to be consistent with the current Williamson Act Contract on the property the County would have to notify property owners, hold a public hearing and alter the existing contract. Since this is not proposed the MEP would is inconsistent with the current Williamson Act Contract. Energy Commission Staff had proposed to include a condition of certification requiring the landowner to "*amend the existing LCA to include the MEP as an approved compatible use under the Williamson Act contract. As part of staff's proposed condition, the project owner would provide a copy of the amended LCA identifying the MEP in Exhibit B as an approved compatible land use."*[7] But staff chose not to require the condition based on communication with Alameda County Development Department. Alameda County stated that no County action was required because electrical facilities are a compatible use under the Williamson Act.[8] As discussed above electrical production facilities are not automatic compatible uses under

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[2] Exhibit 45 Page 3 2002 letter form Alameda County
[3] Land Conservation Contract C-89-1195 and Board of Supervisors Resolution R-89-947
[4] Exhibit 12 Page 11 of 77
[5] Exhibit 12 Page 19 of 77
[6] Alameda County's Agricultural Preserves Objectives Uniform Rules and Procedures. http://www.acgov.org/cda/planning/landuseprojects/documents/Uniform_Rules-AgPres_051491.pdf Page 11,12
[7] Exhibit 42 Page 2
[8] Exhibit 42 Page 2

the Williamson Act nor are they a compatible use under Alameda County's Agricultural Preserves Objectives Uniform Rules and Procedures.

The MEP does not provide adequate mitigation for the loss of farmland.

The mitigation proposed for the loss of ten acres of farmland is the reseeding of 9.2 acres of land which is the construction laydown area with an improved seed mix and additional water supplies for livestock. There is no evidence in this record that the 9.2 acres of reseeding and provision of an additional water supply is adequate to offset the permanent loss of ten acres of grazing land. First of all the applicant will have to reseed the construction lay down area anyway since it will be rendered useless to agriculture after its use so this is not additional mitigation. This action is merely restoring the 9.2 acres of agricultural land rendered useless by the projects construction. In a record of conversation between Lisa Worral and Brian Leahy[9], ***"Mr Leahy confirmed that there is not a scientific way to calculate how much of the property would need to be seeded with the higher quality seed to mitigate the 10 acre loss of grazing land. He told me how he visited the project site and discussed with Mr. Bohdan "Bo" Buchynsky his wish to see more of the property managed better. He also suggested the applicant hire a range manager who could assess the property's food value (grazing quality) and make appropriate recommendations."*** According to the record the applicant has not hired a range manger or assessed the property's food grazing value as recommended by the Department of Conservation so there is no analysis that demonstrates that the reseeding of 9.2 acres of existing farmland and additional water supplies would mitigate the loss of ten acres of grazing land.[10] Beside the county's statements that were required by its cooperation agreement there is no evidence that the loss of ten acres of grazing land has been mitigated. The Tracy Peaker Plant several miles from this project was just required to donate funds to the American Farmland Trust to replace just 3.4 acres of grazing land.[11] This is the current standard in Energy Commission proceedings for agricultural mitigation. The applicant has not met his burden of proof that the project does mitigate the loss of ten acres of agricultural land.

Air Quality

The MEP does not comply with BACT for PM-10/2.5

The applicant states on page 3 of his brief that, "Sarvey disagrees with BAAQMD's conclusion that MEP uses BACT. The project as proposed has no hourly or daily limit on PM-10/2.5 emissions. As explained in my opening brief BACT for particulate matter in the BAAQMD, is and has been since 2002, 2.5 pounds per hour. The Los Esteros Critical Energy Facility was licensed by the CEC in 2002. The BAAQMD proposed a 2.5 pounds per hour PM-10 limit as BACT and that limit was adopted as BACT in the final Commission Decision on the LECEF.[12] The record reflects that the Los Esteros

[9] http://www.energy.ca.gov/sitingcases/mariposa/documents/2010-02-22_ROC_L_Worrall_B_Leahy_TN-55607.pdfReport of Conversation, with Brian Leahy from the Department of Conservation. Posted February 23, 2010

[10] RT 2-24-11 Page 191

[11] Tracy Combined Cycle Final Commissions Decision COC Land 1 Page 282 http://www.energy.ca.gov/2010publications/CEC-800-2010-002/CEC-800-2010-002-CMF.PDF

[12] Commission Final Decision Los Esteros Critical Energy Facility http://www.energy.ca.gov/sitingcases/losesteros/documents/2002-07-02_LOSESTEROS_FINAL.PDF Page 137 Condition AQ-19

Project has met this BACT limit and its highest PM-10 emissions during source tests has been 2.26 pounds per hour.[13] In 2006 the FDOC for the San Francisco Electrical Reliability Project proposed a 2.5 pound per hour PM-10 per turbine limit as BACT and the Commission adopted that BACT level in its final decision. [14] The Almond 2 Power Plant Project in the San Joaquin Valley the most recently licensed peaker project by this Commission on December 17, 2010 has a 2.5 pound per hour PM-10/2.5 limits [15] in Condition AQ-25.

The air district defends its lack of an hourly or daily limit on particulate matter emissions by stating that, "The district has concluded that imposing a numeral emissions limit in addition to requiring BACT technologies would not be warranted given that there are no add on control devices that the facility can use to control PM emissions."[16] The districts witness at the evidentiary hearing confirmed the districts position, "*There is no way to lower particulate other than the technology. And therefore a numerical limit doesn't" make any sense."*[17] **That is right after the district witness testified that with the use of dry low NOx combustors the turbines would emit .14 pounds per hour less per hour of particulate matter emissions.** For four turbines this would lower the projects particulate emissions by .56 pounds per hour.[18]

At the evidentiary hearing it was clear that CEC staff was unaware that there was no hourly or daily limit on PM-10/2.5 emissions.[19] Staff testified that they modeled the PM-10/2.5 concentrations based on a three pounds per hour per turbine emission limit.[20] The record reflects staff's witness is wrong and that Staff's air quality impact assessment was performed with a PM-10/2.5 emission rate of 2.5 pounds per hour.[21] Even with a 2.5 pound per hour emission rate the PM-2.5 impact was 3 µg/m3 which is 8% of the federal 24 hour standard.[22] Without an hourly or daily emission limit for PM-10/2.5 emissions the air quality impact from the MEP's PM-10/2.5 emissions cannot be properly assessed.

Significant Secondary particulate formation from ammonia emissions has not been mitigated.

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[13] Exhibit 302 Page 56

[14] http://www.energy.ca.gov/2006publications/CEC-800-2006-007/CEC-800-2006-007-CMF.PDF Page 127

[15] **ALMOND** 2 **P OWER PLANT PROJECT** 09-AFC-02 Final Commissions Decision Page 35 http://www.energy.ca.gov/2010publications/CEC-800-2010-018/CEC-800-2010-018-CMF.PDF **AQ-25** Except during startup and shutdown periods, emissions from the gas turbine system shall not exceed any of the following limits: NO_X (as NO_2) - 5.02 lb/hr and 2.5 ppmvd @ 15% O_2; CO - 4.89 lb/hr and 4.0 ppmvd @ 15% O_2; VOC (as methane) - 1.40 lb/hr and 2.0 ppmvd @ 15% O_2; PM10 - 2.50 lb/hr; or SO_X (as SO_2) - 1.56 lb/hr. NO_X (as NO_2) emission limits are based on 1-hour rolling average period. All other emission limits are based on 3-hour rolling average period. [District Rules 2201, 4001 and 4703]

[16] Exhibit 302 Page 19

[17] RT 2-24-11 Page

[18] RT 2-24-11 Page 380

[19] MR. LAYTON: I believe there are some conditions in the -- excuse us for a second. Offhand, I cannot find that we have placed a limit on PM2.5. RT 2-24-11 Page 391

[20] MR. SARVEY: Okay. "I asked you earlier did staff evaluate the project's PM2.5 concentrations based on a 2.5pound per hour limit? MR. LAYTON: I believe the modeling was done on three." RT 2-24-11 Page 390

[21] Exhibit 301 Page 4.1-20

[22] Exhibit 301 Page 4.1-27

The applicants brief on page 2 states, "*With the surrender of BAAQMD required ERC offsets and the SJVAPCD agreement, the Applicant will have provided sufficient mitigation for nonattainment pollutants (**and their precursors**) to reduce the project's air quality impacts to a less than significant level for all pollutants."* The project has the potential to emit 26 tons per year of ammonia through the projects ammonia slip. Staff's testimony states that, *because of the known relationships of NOx and VOC to ozone and of NOx, SOx, and **ammonia emissions** to secondary PM10 and PM2.5 formation, unmitigated emissions of these pollutants would likely contribute to higher ozone and PM10/PM2.5 levels in the region."*[23] Staff further states, *"Significant impacts of ozone and PM10/PM2.5 precursors would be mitigated with BAAQMD offsets and local SJVAPCD emission reductions that would be provided under a recommended condition of certification."* [24] The record reflects no offsets have been provided for the projects 26 tpy of ammonia emissions. The applicant argues that, *"The SSA includes a section titled "Secondary Pollutant Impacts" which concludes that limiting ammonia emissions to 5 parts per million, as required in Condition AQ-17, is sufficient to mitigate potential secondary pollutant impacts."*[25] The BAAQMD's testimony states that the District's Draft PM2.5 report concludes that ammonia emissions contribute more strongly to PM2.5 formation than other types of precursor emissions, including NOx in the BAAQMD.[26] Since staff requires that all precursor emissions be mitigated to prevent significant secondary formation of PM-10/ 2.5. The precursor emission with the most potential to form secondary particulate must be offset like the other precursor emissions such as NOx and SOx. Therefore the projects 26 tons per year of ammonia emissions the most significant precursor emission must be mitigated to prevent significant secondary particulate formation.

Alternatives

Site Alternatives

The applicant opines in the opening brief that, "*The SSA has presented a comprehensive analysis of Alternatives to MEP in compliance with CEQA. The SSA presents an analysis of the proposed project site and two alternative sites as possible locations for the proposed site, and utilized site screening criteria to eliminate alternative locations. Staff determined these alternative sites would not reduce or eliminate environmental effects, as the proposed site would be more advantageous over the alternative sites because of potential agricultural and biological impacts resulting from use of the alternative sites."* An EIR is required to consider a range of potentially feasible alternatives to a project, or to the location of a project, that would feasibly attain most of the project's basic objectives while avoiding or substantially lessening any of the project's significant environmental impacts. (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1456.) The applicant proposed only two alternative sites both which were adjacent to the MEP parcel. The Gomes parcel (Alternative 2) is

[23] Exhibit 301 Page 4-1.28
[24] Exhibit 300 page 4.1-28
[25] Applicants Opening Brief Page 3
[26] Exhibit 302, Appendix D, page 27

located immediately northeast of the Lee Parcel, across Kelso Road.[27] The Costanza parcel (Alternative 1) is located immediately west of the Lee Parcel, on the western side of Bruns Road.[28] Staff's testimony is that, "they would all have roughly the same impact."[29]

The applicant failed to consider any alternative sites besides the two sites which sat adjacent to the parcel. The applicant and staff failed to consider Brownfield sites or any sites that were not in Alameda County's Agricultural Zoning district. The Applicant has not met its duty to analyze a reasonable range of alternative sites. The applicant has limited his analysis to the two sites discussed above primarily based upon the project and site objectives which is impermissibly narrow. An alternative sites analysis that complies with CEQA and the CEC's CEQA-equivalent process must include a reasonable range of alternatives. The applicant has not met the burden of providing adequate site analysis so a reasonable range of alternative sites could be considered.

Alternative Technologies

According to the applicant, "*The SSA also presented alternative technologies to MEP. Staff concluded that alternative technologies such as solar, wind, geothermal, biomass, tidal, and wave do not present feasible alternatives to the proposed project. "**Power plants that are not natural gas-fired were eliminated from consideration** because they did not meet the project objectives for a dispatchable energy project*."[30] .[31] This is an example of a too-narrow project objective artificially limiting the range of potential alternatives. Requiring the use of natural gas as a project objective eliminates consideration of alternative fuel sources. The discussion of alternatives must be sufficiently detailed to foster informed decision-making and public participation, not simply vague and conclusionary. *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th pp. 1456, 1460.)

Staff dismissed Solar and Wind technologies in one conclusionary statement, "*Solar and wind are generally not dispatchable and, therefore, are not capable of providing fast-starting, flexible generating capacity and are not capable of producing ancillary services other than reactive power."*[32] Staff testified that they," dismissed solar and wind technologies as not meeting the requirements of the project."[33] Staff also testified that it discounted solar and battery storage technologies because that wasn't going to meet the peaking requirements of this project.[34] Staff expert testified that "**I could be honest with you; I don't know what a loading order is.**[35] Mr. Powers testified that existing solar programs are currently being implemented which will provide five times the nameplate capacity of the MEP with enough peak reliability to replace the MEP. *"The total solar PV capacity to be installed by 2016 under the three existing solar PV*

[27] Exhibit 301 Page 6-7
[28] Exhibit t 301 Page 6-7
[29] RT 3-7-11 Page 201
[30] Applicant Opening Brief Page 4
[31] Exhibit 4 page 112
[32] Exhibit 301 Page 6-17
[33] RT 3-7-11 Page 233
[34] RT 3-7-11 Page 230
[35]

programs in PG&E territory is 400 MWac + 340 MWac + 921 MWac = 1,661 MWac. The capacity factor at peak for tracking PV arrays is 77 percent.17 Fixed rooftop PV has a minimum peak capacity factor of 50 percent.18 Assuming two-thirds of this capacity is fixed PV and one-third is tracking PV, the availability of this combined PV resource at peak will be: (2/3 x 1,661 MW x 0.50) + (1/3 x 1,661 MW x 0.77) = 980 MWac. The peak reliability that PG&E will get from solar PV assets that will be built, at 980 MWac, is five times greater than the nameplate capacity of MEP. Nowhere in the SSA does the CEC acknowledge the peak reliability contribution of these solar PV resources."[36]

According to the latest CEC report, Comparative Costs of California Central Station Electricity Generation Technologies, the price of the IOU solar PV alternative is $278.71 a megawatt while a simple cycle generating unit like the MEP the cost is $655.59 a megawatt meaning that the solar alternative is around 42% of the cost of a megawatt produced.[37] Solar can easily replace the MEP at less than half he cost.

Another option that was not considered as an alternative technology is the pumped storage option powered by off peak wind. This is a viable option for peaking power in the project area and as the record reflects there is already a proposal for pumped storage.[38]

The applicant's and staff's alternative analysis does not produce adequate information regarding alternatives and 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. (Laurel Heights Improvement Assn. v. Regents of University of California, supra, 47 Cal.3d at p. 392.)" (Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692 , 733, 270 Cal.Rptr. 650.)

No Project Alternative

The applicant complains that, *"Need" is not a CEQA subject matter. There is no "Need" section of any Staff Assessment or CEC Decision. CEQA and the CEC's certified regulatory program require a review of "Alternatives," using the basic legal principles discussed immediately above."*[39] Perhaps the applicant missed the February 18th Notice of Evidentiary Hearing and Evidentiary Hearing Order which stated***, "However, evidence related to need may be relevant to the "no project alternative" in the Alternative analysis and a determination of public necessity in the Land Use analysis."***[40]

Indeed need is relevant to the no project alternative. Recent reports by CAL-ISO on the current planning reserve margins and current need assessments by the CEC demonstrate that there is no need for additional gas fired generation in PG&E's service

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[36] Exhibit 406 Page 8
[37] Klein, Joel. 2009. *Comparative Costs of California Central Station Electricity Generation Technologies*, California Energy Commission, CEC-200-2009-017-SD Page 3
http://www.energy.ca.gov/2009publications/CEC-200-2009-017/CEC-200-2009-017-SF.PDF
[38] Exhibit 411
[39] Applicant's Opening Brief page 4
[40] **NOTICE OF EVIDENTIARY HEARINGS AND EVIDENTIARY HEARING ORDER Page 2**
http://www.energy.ca.gov/sitingcases/mariposa/notices/2011-02-18_Hearing_Order.pdf

territory. Predicted reserve margins in PG&E's service territory continue to grow and reflect both the economic downturn and the success of the states energy efficiency policies. CAL-ISO's 2009 summer assessment predicted the reserve margin for PG&E's service territory would be 30.6%.[41] CAL-ISO's 2010 Summer Loads and Resources Operations Preparedness Assessment predicts a 38.6 % Planning Reserve Margin in PG&E's service territory.[42]

This 38.5 % Planning reserve margin does not include an additional 2,735 MW of approved projects some of which is currently under construction.[43]

Summer 2010 Supply & Demand Outlook

Resource Adequacy Planning Conventions	ISO	SP26	NP26
Existing Generation[1]	49,807	23,326	26,481
Retirements (known/expected)[2]	(6)	0	(6)
High Probability CA Additions	1,086	1,057	29
Hydro Derates	0	0	0
Net Interchange (Moderate)	10,100	9,200	2,050
Total Net Supply (MW)	60,988	33,583	28,555
Demand (1-in-2 Summer Temperature)	47,139	27,198	21,154
DR & Interruptible Programs[3]	2,403	1,668	734
Planning Reserve[4]	**34.5%**	**29.6%**	**38.5%**

1 as of 3/22/2010 (refer to Table 8)
2 as of 3/22/2010 (refer to Table 8)
3 (refer to Table 9)
4 Planning Reserve calculation (Total Net Supply + Demand Response + Interruptibles)/ Forecast Demand)-1.

In December of 2009 the California Energy Commission approved the California Energy Demand 2010-2020 forecast a revised demand and peak load forecast. "*The current forecast is markedly lower than the forecast in the 2007 California Energy Demand Forecast, primarily because of lower expected economic growth in both the near and long term as well as increased expectations of savings from energy efficiency.*"[44]

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[41] http://www.caiso.com/23ab/23abd69829524.pdf Exhibit 408 page 4
[42] http://www.caiso.com/2793/2793ae4d395f2.pdf Exhibit 408 Page 4
[43] Oakley, Colusa, Russell City, GWF Tracy Combined Cycle, Los Esteros Upgrade Exhibit 408 Page 4
[44] 2009 IEPR page 3 http://www.energy.ca.gov/2009publications/CEC-100-2009-003/CEC-100-2009-003-CMF.PDF , Exhibit 410 Page 6

Table 10: PG&E Planning Area Forecast Comparison

Consumption (GWH)					
	CED 2007 (Oct. 2007)	*CED 2009 Draft* mid-rate case (June 2009)	*CED 2009 Adopted* (Dec. 2009)	Percent Difference *CED 2009 Adopted* and *CED 2007*	Percent Difference, *CED 2009 Adopted* and *CED 2009 Draft*
1990	86,803	86,803	86,803	0.00%	0.00%
2000	101,331	101,331	101,333	0.00%	0.00%
2008	107,591	106,753	111,128	3.29%	4.10%
2010	110,503	106,240	108,344	-1.95%	1.98%
2015	117,806	110,878	115,828	-1.68%	4.46%
2018	121,873	112,959	119,814	-1.69%	6.07%
Average Annual Growth Rates					
1990-2000	1.56%	1.56%	1.56%		
2000-2008	0.75%	0.65%	1.16%		
2008-2010	1.34%	-0.24%	-1.26%		
2010-2018	1.23%	0.77%	1.27%		
Peak (MW)					
	CED 2007 (Oct. 2007)	*CED 2009 Draft* mid-rate case (June 2009)	*CED 2009 Adopted* (Dec. 2009)	Percent Difference, *CED 2009 Adopted* and *CED 2007*	Percent Difference, *CED 2009 Adopted* and *CED 2009 Draft*
1990	17,055	17,013	17,250	1.14%	1.39%
2000	20,716	20,665	20,628	-0.42%	-0.18%
2008	23,413	23,405	23,805	1.67%	1.71%
2010	24,050	23,240	23,479	-2.37%	1.03%
2015	25,760	24,606	25,163	-2.32%	2.26%
2018	26,754	25,341	26,125	-2.35%	3.09%
Average Annual Growth Rates					
1990-2000	1.96%	1.96%	1.80%		
2000-2008	1.54%	1.57%	1.81%		
2008-2010	1.35%	-0.35%	-0.69%		
2010-2018	1.34%	1.09%	1.34%		

Source: California Energy Commission, 2009

As can be seen in the table above the CEC's 2010-2020 Adopted Forecast predicts that peak demand in PG&E's service territory in 2010 will be 810 MW less than the demand for 2010 predicted in the 2007 CEC demand forecast.[45]

The CEC's latest Revised Short Term Peak Demand Forecast for the 2011-2012 period predicts that demand in the PG&E service territory for 2012 is 851 MW less than the 2009 IEPR.[46] The difference between the CEC's most recent demand forecast for PG&E's service territory for the year 2012 is 1,661 MW less than the demand forecast for PG&E's service territory in 2007.

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[45] **CALIFORNIA ENERGY DEMAND 2010-2020 ADOPTED FORECAST**
Page 55 http://www.energy.ca.gov/2009publications/CEC-200-2009-012/CEC-200-2009-012-CMF.PDF

[46] Table 5 Page 13 http://www.energy.ca.gov/2011publications/CEC-200-2011-002/CEC-200-2011-002-CTF.PDF **Table 5: Revised and *2009 IEPR* Weather-Adjusted Peak Demand (MW) Forecast by TAC/Load Pocket, 2011 and 2012** 1-in-2 Difference Exhibit 408 Page 3

Table 5: Revised and *2009 IEPR* Weather-Adjusted Peak Demand (MW) Forecast by TAC/Load Pocket, 2011 and 2012

TAC Area/Load Pocket	Year	Revised 1-in-2 Peak Demand	2009 IEPR 1-in-2 Peak Demand	1-in-2 Difference	Revised 1-in-10 Peak Demand	2009 IEPR 1-in-10 Peak Demand	1-in-10 Difference
PG&E	2011	21,174	21,988	-814	22,716	23,594	-878
	2012	21,478	22,329	-851	23,033	23,959	-926
PG&E Bay Area	2011	8,870	8,768	102	9,226	9,131	95
	2012	8,995	8,880	115	9,355	9,247	108
PG&E non-Bay	2011	12,304	13,220	-916	13,490	14,463	-973
	2012	12,483	13,449	-966	13,678	14,711	-1,033
SCE	2011	23,077	23,785	-708	25,107	25,878	-771
	2012	23,453	24,142	-689	25,517	26,266	-749
SDG&E	2011	4,365	4,578	-213	4,801	5,036	-235
	2012	4,438	4,658	-220	4,882	5,124	-242
California ISO Total Coincident	2011	47,449	49,143	-1,694	51,361	53,200	-1,839
	2012	48,184	49,902	-1,718	52,150	54,021	-1,871

Source: California Energy Commission, 2011.

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The reserve margins in PG&E's service territory are at historical highs at 38.5% which is twice as large as any planning reserve margin required. Currently under construction is 2,735 MW of additional generation in PG&E's service territory. Recent CEC forecasts predict a reduction in demand for the current period and the 2010-2020 period even under the best of economic conditions. The record reflects that an additional 184 MW of natural gas fired generation does not benefit the region and siphons off several hundred million dollars in scarce resources that should be used for projects which are higher in the loading order.

Next the applicant states that, "Staff concluded that the "no project" alternative is not superior to the proposed project. The "no project" scenario could lead to increased operation of existing plants, reliance on older, more polluting technologies, or development of new plants on other undeveloped land.

First of all the issue of development of new plants on undeveloped land supports the no project alternative for the MEP. The MEP is on agricultural land and the Staff and Applicant failed to even include any Brownfield sites in their alternative site analysis. One of the states priorities is building projects on Brownfield sites and the Mariposa Project violates that priority. If another project is proposed it should be developed on a Brownfield site which reinforces the fact that the no project alternative is environmentally superior for the MEP

Secondly stating that the no project alternative would lead to the increased operation of existing plants ignores the growing reserve margins reported by ISO, the decrease in demand reported by the CEC's latest reports referenced above and also the current construction of another 2,735 MW in PG&E's service territory which all have a lower

[47] Exhibit 400 Page 3 Oakley, Colusa, Russell City, GWF Tracy Combined Cycle, Los Esteros Upgrade

heat rate than the MEP and lower criteria pollutant emissions per MW hour. Further evidence in the record is that, "data from 2001 to 2008 and found that in the average year, the average peaking unit operated about 300 hours."[48] The closest peaking plant the Tracy Peaker several miles away from the MEP ran an average of 74 hours per year over the last five years. If new projects were proposed they would have to gain Commission approval which would ensure that the new proposed projects meet the States Environmental Goals.

The applicant further opines that, conservation and demand side management programs would likely not meet the state's growing electricity needs that will be served by MEP. The evidence in the record is that the states energy demand is shrinking due to energy conservation and the economic downturn.[49] The CAL-ISO load forecast for summer 2011 went down in Northern California by about 250 MW which is 50 MW more than the highest output of the MEP.[50] Conservation can also replace the need for the MEP. Staff's testimony is, "that as much as 18,000 GWH of additional savings due to uncommitted energy efficiency programs may be forthcoming."[51]

Hazardous Materials

Staff's witness stated that, **"I analyzed the pipeline going from the project to line 002 and analyzed and only analyzed the consequences to 1002 within the context of the potential impacts of the proposed (inaudible) for the project on that pipeline that would be caused by that pipeline. There were no modifications to the pipeline and therefore there are no significant changes and I relied on the existing regulatory program, which is something we typically do."[52]** There are many indications that the current regulatory requirements are not being properly enforced and that the prudent maintenance and operating procedures required by the federal regulations are not being followed. In this record there is concurrence among the witnesses that California lacks the adequate resources to enforce the integrity management program and that this situation has existed for decades. The applicant has provided testimony from a purported pipeline safety expert Mr. Caesar de Leon and he at least publicly appears to agree. Mr. de Leon is quoted as stating,

"Cesar de Leon, who ran the U.S. Pipeline and Hazardous Materials Safety Administration's predecessor agency for five years before retiring in 1997, said California has shortchanged enforcement for decades "They never had enough inspectors," said de Leon, now a private consultant on pipeline safety. "They didn't think they needed that much. ... They said that their regulated companies followed the rules without having to be forced to." De Leon said he was heartened that federal

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[48] Exhibit 301 Page 4.1-21
[49] Exhibit 408 Page 3
[50] http://www.caiso.com/2788/2788ab565da00.pdf Page 24 **2011 LOCAL CAPACITY TECHNICAL ANALYSIS FINAL REPORT AND STUDY RESULTS**
[51] Exhibit 301 Page 4.1-83 See Incremental Impacts of Energy Efficiency Policy Initiatives Relative to the 2009 Integrated Energy Policy Report Adopted Demand Forecast (CEC-200-2010-001-D, January, 2010), page 2.
[52] RT 3-7-11 Page 313,314

officials had recently pressed California's regulators. "A good enforcement program requires inspection," he said. "Not having enough inspectors is not a good way to run a program."[53] When staff's witness was asked whether he thought that California has had enough regulators in the past few decades for natural gas pipelines he replied ,"**Basically, I have never evaluated the adequacy of the CPUC as inspection program. And I'm not an expert in evaluating the program. I can say that my observations of the NTSB hearings which I observe personally indicate that the CPUC believes they have resource limitations and that is not inconsistent with what's being said here**."[54]

Despite the concurrence between the parties that the CPUC does not and has mot had enough inspectors to enforce the integrity management program, staff's witness Mr. Tyler again stated that he relied on the current regulatory program and he had not analyzed the adequacy of the CPUC's inspection program.[55] Mr. Tyler admitted that he didn't even know that Line 002 had never been pigged beyond the Bethany compressor station.[56] Mr. Tyler admitted that he had never seen any information related to pressure fluctuations on Line 002.[57] ***Mr. Tyler wasn't aware that the Bethany compressor Station had issues with it pressure relief valves.[58]***

When asked whether Line 002 had modern automatic the shutoff valves staff's witness stated he didn't know.[59] Staff's witness didn't even know where the shut off valves were located.[60] Staff's witness was unaware that the pipeline pressure on Line 002 had been lowered because of corrosion which created wall loss of 62%.[61] Staff's witness testified that he asked had PG&E for maintenance records and the current condition of Line 002 but PG&E refused to supply them.[62] MR. TYLER was again asked whether he had done a specific analysis on Line 002 and he answered, "I haven't done specific analysis on line 002. I looked at the adequacy of the regulatory program, which I relied upon. And I believe it is adequate."[63]

The applicant has provided the testimony of Ceaser de Leon a witness with a long list of credentials. Because of the rushed nature of these proceedings the committee offered no opportunity to question Mr. de Leon on his credentials, **"Well, we're just going to assume he's an expert. We will rely on his resume. Let's move on because we need to get to it."[64]** But as staff's attorney stated to me in the hallway during Mr. de Leons testimony, "**well I guess he looked good on paper."** Mr. de Leon testimony like staffs

[53] Exhibit 415
[54] Rt 3-7-11 Page 342
[55] RT 3-7-11 Page 348
[56] RT 3-7-11 Page 361
[57] RT 3-7-11 Page 353
[58] RT 3-7-11 Page 354
[59] Rt 3-7-11 Page 316
[60] RT 3-7-11 Page 316
[61] RT 3-7-11 Page 363
[62] RT 3-7-11 Page 373
[63] RT 3-7-11 Page 377
[64] RT 2-25-11 Page 245

testimony related only to the safety of the interconnection between the MEP proposed pipeline and this Line 002.[65]

Mr. de Leon confirmed that the tape coating on line 002 was not the current industry standard.[66] When Mr. de Leon was asked if he had done a risk analysis on Line 002 he answered that he had not.[67] When asked if had reviewed he maintenance records of Line 002 Mr. de Leon admitted he hadn't. [68] When asked if he had examined any PG&E records on Line 002 he replied that he had not.[69] When Mr. de Leon was asked if he reviewed the pigging results on Line 002 Mr. de Leon replied, "No, I did not, I did not review the pigging."[70]

Mr. de Leon pre-filed testimony about a study that purportedly concludes that pressure cycling has no affect on pipeline integrity. When asked about whether the study examines the effect of pressure cycling on corroded pipelines Mr. de Leon admitted that the study examines only seam defects after hydrotesting.[71] The study referenced by Mr. de Leon doesn't examine the effects of pressure cycling on pipelines degraded from external or internal corrosion or other causes of pipeline failure which encompass the majority of pipeline failures.

The applicants witness's pre-filed testimony cited a letter from the Pipeline and Hazardous Material Safety Administration (PHMSA) to the National Transportation Safety Board, dated August 10, 2009. The letter addresses the risk of failure from the pressure cycle- induced growth of original manufacturing-related or transportation related defects. Defects in pipelines damaged in transportation are not at issue here. When asked about the study Mr. de Leon admitted the study only examined seam defects from transportation of pipelines and not pressure cylcing.[72]

Both the applicant and the staff witnesses rely on the States pipeline integrity management program. Neither witness has examined the maintenance records, physically inspected the pipeline facilities, or has performed a risk analysis on line 002. Neither witness has evaluated PG&E's integrity management program.[73]

Under the current circumstances reliance on PG&E and its integrity management program is questionable at best. California's per-mile pipeline safety record in the past decade ranks it just 32nd among the 48 states that do enforcement for the federal

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[65] RT 2-25-11 Page 246 HEARING OFFICER CELLI: So his testimony relates to the safety of the interconnection between the MEP proposed pipeline and this Line 002? MR. HARRIS: Correct.
[66] RT 2-25-11 Page 248 And what is the current industry standard for protective coating on natural gas pipelines? MR. de LEON: The current one? MR. SARVEY: Yes. MR. de LEON: The current one is to use a sprayed-on epoxy.
[67] RT 2-25-11 Page 259
[68] RT 2-25-11 Page 265
[69] RT 2-25-11 Page 271, 272
[70] RT 2-25-11 Page 250
[71] RT 2-25-11 Page 251 MR. SARVEY: In your testimony on page 5 you cite a study by John Kiefner and Michael Rosenfeld about pressure cycles on natural gas pipelines. The study examines the effects of cycling on seam defects but does not examine the effects of cycling on corroded pipeline materials, damaged pipelines, or pipelines with wrinkle bends. Is that not correct? MR. de LEON: That's correct.
[72] Rt 2-25-11 Page
[73] RT 3-7-11 Page 342

government, according to records compiled by the U.S. Pipeline and Hazardous Materials Safety Administration. From 2000 to 2009, California averaged 11 "significant" incidents a year - about 1 per 10,000 miles of pipeline. A significant incident is defined as one involving a death or losses exceeding $50,000. From 1997 to 2006 California had 23 significant incidents for an incident rate of 1.9 in 10,000. The injury rate for the same period was 3.3 in 100,000 and the death rate was 1.6 in 100,000. All of these rates are above the CEQA significance rate that staff normally considerers a significant impact. The current death rate with the San Bruno incident not including any other deaths over a ten year period would be would be 4.8 in 100,000. The annual leak rate on Line 002 is 4.7 in 10,000.

The evidence in the record is that Line 002 which is 118 miles long[74] only had 36.6 miles pigged in 2006.[75] In the year 2000, 75 miles of Line 002 were selected for pigging but the smart pig malfunctioned after only 22 miles.[76] A smart pig examination of 75 miles of Line 002 was performed in 2001 which indicated that the line had wall loss of up to 78%. Subsequent examination by PG&E revealed that actual wall loss was 61%. PG&E realized that the area found was unacceptable and **lowered the operating pressure to 530 psig** and performed repairs on the pipeline.[77] The entire length of Line 002 has not been pigged. Line 002 has never been pigged beyond the Bethany Compressor Station where the interconnection of the MEP will occur. The coating on L-002 is a double tape wrapped coating which no longer meets Federal standards because it is prone to corrosion.[78]

Relying on blind faith in a regulatory program that is clearly broken with the facts in this record does not ensure the reliability and the safety of Line 002. Relying on smart pig results of only a partial segment of Line 002 is unwise. PG&E's safety practices have prompted the NTSB to warn the utility, "It is possible that there are other discrepancies between installed pipe and as-built drawings in PG&E's gas transmission system. It is critical to know all the characteristics of a pipeline in order to establish a valid MAOP below which the pipeline can be safely operated. The NTSB is concerned that these inaccurate records may lead to incorrect MAOPs." PG&E's recent March 15th filing failed to include any information on Line 002 indicating there records are missing on Line 002.[79] The most compelling evidence on PG&E's safety management of Line 002 is contained in exhibit 405 on page 5. PG&E was required to provide a safety plan for the Tracy Sports Park construction[80] to prevent damage from third party impacts from the construction of the sports park. PG&E agreed to fence off Line 001 and Line 401 to prevent third party damage form large earthmovers which were utilized to grade the property. The picture below shows that PG&E's protective fencing had fallen and was ineffective. A closer look at the picture you can see the tread marks of the heavy construction equipment directly over Line-002. PG&E's safety culture and planning is

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[74] Exhibit 71 Page 13
[75] Exhibit 71 Pages 15,16
[76] Exhibit 413
[77] Exhibit 405 Page 1
[78] Exhibit 495 Page 1
[79] http://www.cpuc.ca.gov/NR/rdonlyres/98DC029C-6A77-4AB4-9E3B-3721A004F28F/0/01MAOPValidationReport_final_March152011.pdf
[80] Exhibit 71 Page 1

clearly demonstrated in this picture and the integrity of Line 002 may have been compromised.

The applicant has introduced into the record the Tetra Tech Report attempting to convince the Committee than Line 002 is safe. The Tetra Tech report was presented to the Tracy City Council along with other testimony some of which was submitted to the Committee at the March 7, 2011 hearing. The City council took its time in weighing the evidence it was not in a hurry when it came to public safety. Unlike this Committee it didn't exclude anything. After hearing that evidence along with the Tetra Tech report and the picture above the City Council was not convinced that the lines were safe and after spending several million dollars on planning and preparation for the sports park they abandoned the project.[81] I also presented the same evidence to PG&E. After reviewing my evidence PG&E agreed to abandon the only pipeline waiver ever requested in the State of California two years after the waiver had been granted. The history of Line 002 is compelling evidence that this line has corrosion and third party impact safety issues. The committee is not willing to examine the evidence that I have provided because PG&E was not at the hearing to authenticate the evidence. Since I was a witness and the person who acquired this evidence in a public records request my testimony should have been adequate to validate the authenticity of the documents.

[81] RT 3-7-11 Page 400

Under these circumstances **without the courage to subpoena PG&E we will never have the information to conclude that Line 002 is safe and reliable.** Instead the committee must rely on two witnesses who have no knowledge of the current condition of Line 002.[82] Two witnesses who have testified that they have not examined PG&E's maintenance records on Line 002.[83] Two witnesses who have both admitted they "haven't done any specific analysis or any risk analysis on line 002.[84] These witnesses admit that their evaluation of the hazards was limited to the safety of the interconnection between the MEP proposed pipeline and this Line 002.[85] Mr. de Leon confirmed that the tape coating on line 002 was not the current industry standard.[86] Neither witness has reviewed the pigging results on Line 002 as Mr. de Leon testified, "No, I did not, I did not review the pigging."[87] These two witnesses relied on the current pipeline regulations and PG&E's integrity management program. The events of the last six months have demonstrated that the current regulatory program is inadequate due to lack of inspectors and PG&E's failure to perform its duties under that program. **Without that information the applicant has not met the burden of proof that the MEP can be operated safely and reliably.**

Environmental Justice

The applicant on page 15 of his brief claims that, *"substantial evidence in this proceeding establishes that, with mitigation, MEP will not cause any significant adverse human health or environmental impacts." Because there are no significant adverse environmental impacts from MEP, there are no disproportionate impacts on any of the minority populations identified in the screening analysis."* "Staff's environmental justice analysis does not even meet the threshold requirements for Expedited Applications Under Public Resources Code Section 25550 much less the requirements of a complete AFC review. Staff's analysis does not provide a discussion of the potential for disproportionate impacts from the project on minority or low-income people." Staff just states there are no significant impacts so no EJ analysis is required. [88] Staff's analysis does not utilize "*demographic information by census tract, based on the most recent census data available, showing the number and percentage of minority populations and people living below the poverty level within six miles of the proposed site.*[89] Staff uses 10 year old census data instead.[90] Staff does not provide, **"***one or more maps at a scale of 1:24,000 showing the distribution of minority populations and low-income populations and significant pollution sources within six miles of the proposed site, such as those permitted by the U.S. Environmental Protection Agency (Toxic Release Inventory sites), the local air quality management district, or the California Department of Toxic*

[82] RT 2-25-11 Page 272
[83] RT 3-7-11 Page 373, RT 2-25-11 Page 271, 272
[84] RT 3-7-11 Page 377, [84] RT 2-25-11 Page 259
[85] RT 2-25-11 Page 246 HEARING OFFICER CELLI: So his testimony relates to the safety of the interconnection between the MEP proposed pipeline and this Line 002? MR. HARRIS: Correct.
[86] RT 2-25-11 Page 248 And what is the current industry standard for protective coating on natural gas pipelines? MR. de LEON: The current one? MR. SARVEY: Yes. MR. de LEON: The current one is to use a sprayed-on epoxy.
[87] RT 2-25-11 Page 250
[88] **§ 2022 (4) Information Requirements**
[89] **§ 2022 (4) (a) Information Requirements**
[90] RT 3-7-11 Page 77

Substances Control."[91] Staff provides no cumulative health risk assessment or even lists toxic sources in the project area. Staff's EJ analysis does not include, "*identification of available health studies concerning the potentially affected population(s) within a six-mile radius of the proposed power plant site*."[92] The applicant did not analyze the health studies of the minority population in the project area.[93] Staff has provided no assessment of the health issues of the minority community around the project area.[94] Despite overwhelming evidence of a minority community in the project area provided by the intervenors staff still denies the minority communities existence.[95] Staff and applicant did no outreach to the minority community.[96] Staff provided community meetings at the BBID headquarters a remote location out of town with no bus service.[97] Translators and project materials in different languages were requested by the minority community but no translators and no project documents were provided in any other language.

Staff's air quality analysis fails to examine the cumulative criteria pollutant impacts on the minority community.[98] Staff's analysis of the air quality impact from the MEP does not provide any information on the air quality impacts on the minority community from the MEP.[99] Staff's and Applicants Public health analyses fails to provide a cumulative impact analysis from the toxic air contaminants form the MEP. Staffs public health analysis fails to even examine the health impacts from the projects particulate matter emissions. At the evidentiary hearings the BAAQMD's witness confirmed that no health risk assessment had been performed for the projects particulate matter impacts.[100] Staff also testified that they had done no health risk assessment for the projects particulate matter emissions. *"We typically do not address the (inaudible) of criteria pollutants in our public health* [101]*analysis. That is done in our air quality analysis."* As the evidence in the record shows the project area already has significant particulate matter concentrations and the maximum modeled 24-hour average PM10 increment consumption was 140 µg/m3, and annual average PM10 increment consumption was 30 µg/m3 for another recently approved project near the MEP.[102]

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[91] **§ 2022 (4) (b) Information Requirements**

[92] **§ 2022 (4) (c) Information Requirements**

[93] 12 MR. SIMPSON: Is there a chance that an environmental justice community would have different stressors or different level of impact from the same source?
DR. YUSUF: I wouldn't know. I'm sorry. RT 3-7-11 Page 42

[94] MR. SARVEY: Has staff examined the existing health statistics for the minority population, including hospital admission data and other relevant health data?
MS. STENNICK: That would be in the public health section, not the socioeconomic section. MR. SARVEY: Has the staff in the public health section done so?
MS. STENNICK: I can't answer that question. 3-7-11 Page 83

[95] MR. SIMPSON: So you didn't find an environmental justice community; is that cor rect?
MS. STENNICK: That's correct. I would agree that Mountain House is a racially diverse community, but I would not stipulate it is an environmental justice nor is it a minority.
3-7-11 Page 131

[96] MR. SARVEY: Did you outreach specifically to the minority community leaders about this project? It's a simple question, a yes or no. That's all I ask. MR. HOFFMAN: No, I did not.

[97] MR. HOFFMAN: There were workshops, they were held at BBID office. That location is close to where the project is to be sited if it is licensed. Staff did take a look after about I think the second workshop we held there were questions about holding workshops actually in the Mountain House community. And one of the questions came up could we hold a workshop that the Mountain House Community Service District. And based upon the type of volume that we were receiving, the amount of from and the amount of people (inaudible) did not look to show up, staff determined that the Mountain House Community Services District facilities would be too small.

[98] Exhibit 301 Page 4.1-38

[99] Exhibit 301 Page 4.1-27

[100] RT 2-24-11 Page 328

[101] RT 2-24-11 Page 376

[102] Exhibit 412 - PSD Increment Consumption Status Report April 16, 2008 BAAQMD Page 4"The maximum modeled 24-hour average PM10 increment consumption
is 140 µg/m3, and annual average PM10 increment consumption is 30 µg/m3. Although these values exceed the allowed Class II increments for PM10, the location of the exceedance is in SJAPCD, which is non-attainment for PM10."

The State Lands Commission under the guidance of OPR has developed a framework for environmental justice that represents what the State of California considers a proper environmental justice analysis for its departments. The analysis should include:

1. Identifying relevant populations that might be adversely affected by Commission programs or by projects submitted by outside parties for its consideration.

2. Seeking out community groups and leaders to encourage communication and collaboration with the Commission and its staff.

3. Distributing public information as broadly as possible and in multiple languages, as needed, to encourage participation in the Commission's public processes.

4. Incorporating consultations with affected community groups and leaders while preparing environmental analyses of projects submitted to the Commission for its consideration.

5. Ensuring that public documents and notices relating to human health or environmental issues are concise, understandable, and readily accessible to the public, in multiple languages, as needed.

6. Holding public meetings, public hearings, and public workshops at times and in locations that encourage meaningful public involvement by members of the affected communities.

7. Educating present and future generations in all walks of life about public access to lands and resources managed by the Commission.

8. Ensuring that a range of reasonable alternatives is identified when siting facilities that may adversely affect relevant populations and identifying, for the Commission's consideration, those that would minimize or eliminate environmental impacts affecting such populations.

9. Working in conjunction with federal, state, regional, and local agencies to ensure consideration of disproportionate impacts on relevant populations, by instant or cumulative environmental pollution or degradation.

10. Fostering research and data collection to better define cumulative sources of pollution, exposures, risks, and impacts.

11. Providing appropriate training on environmental justice issues to staff and the Commission so that recognition and consideration of such issues are incorporated into its daily activities.

12. Reporting periodically to the Commission on how environmental justice is a part of the programs, processes, and activities conducted by the Commission and proposing modifications as necessary.[103]

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As a State Agency the CEC is required to evaluate Environmental Justice Issues in accordance with State law. The record reflects a proper environmental justice analysis has not been conducted.

Conclusions

The applicant has not met the burden of proof that this facility can be operated in compliance with all Federal and State LORS and in compliance with the California Environmental Quality Act. The project's compliance with the 24 hour Federal PM 2.5 standard and the Federal 1 hour NO2 standard has not been demonstrated. Ammonia emissions the primary precursor to secondary particulate formation have not been mitigated. The project does not comply with the primary purpose of the ECAP as modified by measure D and also does not comply with the Williamson Act and the current Williamson Act contract on the property. There is no credible evidence in the record that the reseeding of the lay down area damaged by the applicant and additional water supplies will mitigate the loss of 10 acres of agricultural land. The Tracy Peaker Plant several miles from this project was just required to donate funds to the American Farmland Trust to replace 3.4 acres of grazing land.[104] No water supply assessment has been conducted and the evidence in the record is that water may not be available for the project and the rest of BBID's customers. The alternatives analysis is impermissibly narrow due to the restriction of natural gas as the only fuel source. The site alternatives analysis includes examination of only two alternative sites which are adjacent to the proposed site. Alternative technology in the form of dry low NOx combustors can reduce the projects water consumption,, particulate emissions and Greenhouse Gas emissions. The enviromentla justice analysis is inadequate as staff has applied an improper baseline in its demographic analysis and has failed to perform the required steps of an environmental Justice Analysis as required in the State of California. The applicant has failed to provide a credible witness on the pipeline safety issues and the record demonstrates that the applicant has not provided the evidence necessary to conclude that the project can be operated safely and reliably. For all of these reasons the Committee cannot certify the MEP as proposed.

[103] California Lands Commission Environmental Justice Policy http://www.slc.ca.gov/policy_statements/Env_Justice/Environmental%20Justice%20Policy%20Final%20Web.pdf

[104] Tracy Combined Cycle Final Commissions Decision COC Land 1 Page 282 http://www.energy.ca.gov/2010publications/CEC-800-2010-002/CEC-800-2010-002-CMF.PDF

DECLARATION OF SERVICE

I, Robert Sarvey declare that on April 6 , 2011 I served copies of Robert Sarveys Reply Brief. 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:
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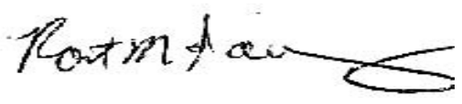
I declare under penalty of perjury that the foregoing is true and correct.



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