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State of California
State Energy Resources Conservation and Development Commission

In the Matter of:	)	Docket # 09-AFC-03
	)	
Mariposa Energy Project	)	Sierra Club's Response to the Applicants
	)	January 25th Motion to Strike
	)	
	)	

Introduction

On January 25, 2011 Mariposa Energy (applicant) submitted a motion to strike Sierra Club's Rebuttal Testimony and essentially all intervenor testimony submitted in this proceeding. The motion was tentatively granted on February 7, 2011. The Applicant's motion objects to Sierra Club's Testimony for two reasons. One is that the testimony should have been rebuttal testimony; the second reason provided is that Senate Bill 110 of 1999 bars the Commission from looking at the need for this project. In the following Sierra Club explains that the applicant is wrong on both counts and the rebuttal testimony related to need for the project is proper and timely and that the applicant misrepresents Senate Bill 110 and its requirements.

I. The Sierra Club Testimony is Timely and is Rebuttal Testimony

The applicant objects to the rebuttal testimony submitted by the Sierra Club. The applicant claims that the testimony should have been submitted as opening testimony. Since Sierra Club was not granted leave to intervene until January 19, nine days after the date for submission of opening testimony, the testimony could not have been submitted as opening testimony.

In addition, the Sierra Club's testimony is rebuttal testimony; it rebuts the Application and the Staff Assessment, which is the EIR. It challenges and rebuts the case for the project and assessment of its

environmental effects.

II. Senate Bill 110 does not remove the Commission's CEQA obligation to consider the need for the project in the no project alternative and the Sierra Club rebuttal testimony rebuts the assumptions in the no project alternative .

The applicant's motion to strike Sierra Club's rebuttal testimony relies on an argument that Senate Bill No. 110, which became Chapter 581, Statutes of 1999 precludes the Commission from hearing any testimony related to the need for the project. The applicant improperly characterizes Senate Bill 110 and its relation to Sierra Club Testimony. To understand how this argument and Senate Bill 110 are is irrelevant to the Sierra Clubs Testimony one must look at the legislative history and purpose of Senate Bill 110.

Prior to January 1, 2000, the Public Resources Code prohibited the Energy Commission from certifying a power plant unless the Commission made a finding that the facility was found to be in conformance with the Commission's integrated assessment of the need for new resource additions. (Pub. Resources Code §§\ 25523(f) and 25524(a).) The Public Resources Code directed the Commission to do an "integrated assessment of need," taking into account 5- and 12-year forecasts of electricity supply and demand, as well as various competing interests, and to adopt the assessment in a biennial electricity report.

On September 28, 1999, the Governor signed Senate Bill No. 110, which became Chapter 581, Statutes of 1999. This legislation repealed Public Resources Code sections 25523(f) and 25524(a) and amended other provisions relating to the assessment of need for new resources. It removed the requirement that the Commission make a specific finding that the proposed facility is in conformance with the adopted integrated assessment of need. Regarding need-determination, Senate Bill 110 states:

"Before the California electricity industry was restructured the regulated cost recovery framework for power plants justified requiring the commission to determine the need for new generation, and site only power plants for which need was established. Now that power plant owners are at risk to recover their investments, it is no longer appropriate to make this determination."

Senate Bill 110 removed the requirement that the Commission provide a need assessment in order to certify the plant. Senate Bill 110 did not alter CEQA or remove the Commission's requirement under CEQA to examine the need for the project in the "No Project Alternative." The applicant improperly relies on Senate Bill 110.

CEC Staff understands that they must support their reasoning that the no project alternative must by definition include an assessment of whether the project is needed. CEC Staff has provided rebuttal testimony to Ed Mainland's Argument which demonstrates that they understand the requirement.

Ed Mainland's testimony is proper rebuttal to the Staff Assessment No Project Alternative discussion, which simplistically states:

"If the project is not built, the region will not benefit from the relatively efficient source of 200 MW of new generation that this facility would provide. This new generation would increase the supply of energy and potentially serve load demands in the Bay Area of Northern California. It is thus difficult to determine whether the "no project" alternative would have serious, long-term consequences on air quality and the cost or reliability of electricity in the region.

If no new natural gas plants were constructed, reliance on older power plants may increase. These plants would consume more fuel and emit more air pollutants per kilowatt-hour generated than the proposed project. In the near term, the more likely result is that existing plants, many of which produce higher level of pollutants, would operate more than they do now. Thus, the "no project" alternative is not environmentally superior to the MEP project.'

Staff assumptions on the basic objectives of the project in the alternatives section is largely based on PG&E's Request for Offers on April 1, 2008, indicating that additional peak electric generation capacity is needed in the vicinity.[1]

Staff's testimony on the no project alternative is based on an unsupported assumption that there is more generation needed in the Bay Area Load Pocket. Mr. Mainland and Mr. Sarvey's rebuttal testimony effectively rebuts staff's assumptions on this basis for the need for the project in the no project alternative.

[1] SSA Alternative Section Page 6-4 and 6.5 "MEP's primary objective is to provide dispatchable, operationally flexible, and efficient generation to meet PG&E's need for new energy sources. PG&E issued a Request for Offers on April 1, 2008, indicating that additional peak electric generation capacity is needed in the vicinity (PG&E, 2008). Staff began by identifying an initial study region that consisted of the geographic area surrounding the PG&E Kelso Substation. Staff chose this region to determine whether alternative sites were close enough to PG&E's Kelso Substation to provide power to that substation, similar to the proposed project."

DECLARATION OF SERVICE

I, Alan Carlton, declare that on February 8, 2011, I served and filed copies of the attached Sierra Club's Response to the Applicant's January 25th Motion to Strike , Mariposa Energy Project (MEP) (09-AFC-3) . 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:
(C*heck all that Apply*)

For service to all other parties:
_ x_ 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:
x__ **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

Attn: Docket No. 09-AFC-3
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I declare under penalty of perjury that the foregoing is true and correct.

_____
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