

DOCKET

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STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:) Docket No. 09-AFC-3
)
) INTERVENOR’S COMMENTS
) ON ERRATA TO THE PRESIDING
) MEMBER’S PROPOSED DECISION
Mariposa Energy Project)

Pipeline Safety

Should the Commission approve the Presiding Member’s Proposed Decision with the suggested errata, the Commission will have ignored its own directive that all siting cases include review of pipeline safety and reliability. It would be imprudent of the Commission to approve the Presiding Member’s Proposed Decision without ruling on Mr. Simpson’s Motion for Reconsideration of the Committee’s March 28, 2011 decision to not subpoena PG&E for the purposes of obtaining evidence related to the safety and reliability of Line 02, the natural gas pipeline that would supply Mariposa Energy Project.

The Commission has failed to address the issues raised in Mr. Simpson’s Motion for Reconsideration, yet the errata adds conclusions about these very issues. “Intervenors Robert Sarvey, Rajesh Dighe and Rob Simpson filed written comments essentially claiming that the record contained insufficient analysis of the natural gas pipeline because no expert from PG&E testified. As stated above, expert testimony has established that the impact of MEP’s natural gas cycling is negligible. The Decision is based on substantial evidence and there was no showing that the addition of a witness from PG&E would have been anything other than needlessly cumulative.” Errata Page 6.

On April 8, 2011, Mr. Simpson filed a Motion for Reconsideration. The Commission has taken no action on this motion, in violation of 20 C.C.R. § 1720 “The commission shall hold a hearing for the presentation of arguments on a petition for reconsideration and shall act to grant

or deny the petition within 30 days of its filing. In the absence of an affirmative vote of three members of the commission to grant the petition for reconsideration, the petition shall be denied.”

During the March 7, 2011 evidentiary hearing, Mr. Simpson moved the Committee to exercise its right of subpoena over PG&E for the purposes of eliciting evidence on Line 02. The Committee declined to address the motion during the hearing. At the March 9, 2011 CEC Business Meeting, Chairman Weisenmiller directed staff to include consideration of pipeline safety and reliability issues in their review of current and future siting cases. Just a few weeks later, the Committee denied Mr. Simpson’s motion.

As Chairman Weisenmiller has himself confirmed, MEP and Line 002 safety, reliability, effect on the environment, and compliance with applicable law are interdependent and the Committee has been remiss in its duties in refusing to conduct a full analysis of Line 002 and its relationship with MEP.

In the April 12, 2011 Oakley Generating Station Presiding Members Proposed Decision, Vice Chair James D. Boy, Presiding Member of the Oakley Generating Station Committee, wrote:

However, in light of recent publicly noticed events pertaining to the PG&E gas transmission line rupture and fire in San Bruno, California on September 9, 2010, the Energy Commission determined on March 9, 2011, that pending and future AFC proceedings must include an enhanced assessment of natural gas pipeline supply/availability and safety that specifically addresses and known or anticipated risks of project interconnection with existing natural gas pipelines. The OGS AFC Committee subsequently directed the parties in this proceeding to address seven questions pertaining to PG&E lines 303 and 400 and the project’s interconnection to these lines.”

Oakley Generating Station Presiding Members Proposed Decision, Section E Hazardous Materials, page 11.

In denying Mr. Simpson’s Motion, the Committee’s decision to deny Mr. Simpson’s motion is based on conclusions in contradiction to the Chairman and Vice Chairman’s conclusions regarding the need to assess the safety and reliability of pipelines in siting cases. “As an initial matter, we confirm that our licensing jurisdiction over related facilities such as fuel lines extends up to the first point of interconnection (Tit. 20 Cal.Code Regs. § 1702(n)), and that our findings and conclusions with respect to the safety and reliability of the MEP include the site and related facilities up to that point. It is undisputed that Line 002, which is the subject of Mr. Simpson’s motion, is beyond that point.” MEP Committee Ruling on Motion to Subpoena PG&E, Page 2.

The Committee improperly placed the responsibility of providing evidence of pipeline safety and reliability on intervenors instead of on the applicant and staff: “We note from the outset that neither Mr. Simpson nor Mr. Singh called any witness to testify about the safety of Line 002. Instead, Mr. Simpson’s sole argument in support of his motion for a subpoena seems to be that the witnesses called by other parties lacked expertise to testify to the safety of Line 002 and the impact of the construction and operation of the MEP upon that line.” page 5

PG&E is needed to testify to the specific conditions of Line 002 and the Commission has a duty to gather this information as part of the siting process. At the very least, the Commission needs to respond to Mr. Simpson's Motion for Reconsideration before approving the PPMD.

Finally, as explained in Mr. Simpson's Motion for Reconsideration and Mr. Simpson's Declaration (Amended), Commissioner Karen Douglas engaged in ex parte communication with PG&E during the evidentiary hearing in violation of Government Code section 11430.10 et seq. and 20 CCR section 1216. Commissioner Douglas should have been removed from the proceeding and so it is improper to have Commissioner Douglas making further determination on this issue.

Williamson Act

The errata adds additional language that further misstates the Williamson Act law. The errata reads:

Government Code section 51201(e) provides that compatible uses are defined in either local rules or by the Williamson Act itself. In this case, the Williamson Act expressly recognizes electric facilities as a compatible use, and the evidentiary record establishes that Alameda County has never made a finding to the contrary."

Errata, page 19

As explained in Mr. Simpson's first comments on the PPMD, compatible uses on land covered by a Williamson Act contract are defined by the terms of the contract. If the contract allows generally for "compatible uses" then the Williamson Act definition of compatible uses may apply. But, the Williamson Act Contract at issue does not allow generally for "compatible uses." The applicable Williamson Act Contract defines in clear and unambiguous language compatible uses for the subject land. *"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."* Land Conservation Agreement No. C-89-1195, page 3, Exhibit Number 12, Appendix DR1-1.

The Williamson Act Contract does not allow for electric facilities and so the PPMD conclusion that LORS have been applied with is in error. Mr. Simpson objects to the approval of the PPMD with the inclusions of the current language or errata language with regards to the Williamson Act.

DATED: May 17, 2011.

By: April Rose Sommer
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PROOF OF SERVICE

I, April Rose Sommer declare that on May 17, 2011, I transmitted copies of the attached Intervenor’s Comments On Errata To The Presiding Member’s Proposed Decision by electronic mail to those identified on the Proof of Service list. Transmission via electronic 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.

DATED: May 17, 2011.

By: April Rose Sommer
 April Rose Sommer

Attorney for Rob Simpson