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State of California
 State Energy Resources Conservation and Development Commission

In the Matter of:)	Docket # 09-AFC-03
)	Intervenor Sarvey's
Mariposa Energy Project)	Brief on CEC Jurisdiction over Line 002
)	
)	
_____)	

Introduction

At the February 7, 2011 Prehearing Conference Hearing Officer Celli directed the parties to brief the issue of whether the Energy Commission has any jurisdiction beyond the first point of interconnection to the natural gas pipeline Line 002 for the MEP.

Argument

The California Energy Commission is the CEQA lead agency for the Mariposa Energy Project (MEP). CEQA requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. In the instant case the CEC has authorized the interconnection of two natural gas fired power plants to PG&E Line 002. If the CEC identifies any significant environmental impact related to their authorization of the interconnection it is their duty to avoid or mitigate that impact.

It is common for the CEC to apply additional conditions to the transportation of hazardous materials above and beyond the current regulatory structure to ensure the safe transportation of hazardous materials. For example in the East Altamont Energy Center (EAEC) the applicant proposed the use of anhydrous ammonia. Staff concluded that it is

appropriate to rely on the extensive regulatory program that applies to shipment of hazardous materials on California highways, and driver competence, to ensure adequate safety and handling in transporting hazard materials¹ but Staff also included additional conditions above and beyond the requirements of the existing regulatory program. These regulations are administered by the Department of Transportation a federal agency.

Staff analyzed the potential effect of dense fog on the accident rate, a concern that was not adequately addressed in the available accident literature. Staff found that dense fog frequently occurs in the EAEC project area, and it has been associated with very serious accidents.² Accordingly the Commission imposed condition of certification HAZ-8 which was above and beyond the DOT Regulations.

HAZ-8 The project owner shall direct all vendors delivering ammonia to the site during the months of November through April to verify that fog conditions do not exist along state roads used for the delivery by calling the CALTRANS Highway Information Network prior to commencing delivery. If fog conditions exist, then delivery of anhydrous ammonia to the site shall be postponed until such time that the fog conditions have abated

Verification: At least sixty (60) days prior to receipt of ammonia on-site, the project owner shall submit to the CPM for review and approval, a copy of the letter to be mailed to the vendors. The letter shall state the required policy for verification of road conditions.

Further, in response to the Intervenor and the public Staff evaluated the relative risk of transporting aqueous ammonia and anhydrous ammonia in light of the proposed development along Byron Bethany Road. Staff then proposed and the Commission adopted condition of certification Haz-10:

HAZ-10 The project owner shall direct all vendors delivering any hazardous material to, or hazardous wastes away from, the site to use only the routes approved by the CPM (Interstate 205 to Mountain House Parkway or I-205 to Grant Line Road, and then to the Byron Bethany road to Mountain House Road to the facility). An alternate route may be used following approval by the CPM.

¹ East Altamont Energy Center Final Decision Page 211
http://www.energy.ca.gov/sitingcases/eastaltamont/documents/2003-08-20_FINAL_DECISION.PDF

² East Altamont Energy Center Final Decision Page 212
http://www.energy.ca.gov/sitingcases/eastaltamont/documents/2003-08-20_FINAL_DECISION.PDF

Verification: At least sixty (60) days prior to receipt of any hazardous materials on site, the project owner shall submit to the CPM for review and approval, a copy of the letter to be mailed to the vendors. The letter shall state the required transportation route limitation.

Additionally, the project owner was required to instruct vendors that only the CEC approved transportation routes are allowed and transportation of ammonia was not allowed to follow the route next to Mountain House School. This requirement also applied to the transportation of hazardous wastes for disposal.³

In addition to the additional conditions related to the transportation of anhydrous ammonia the final decision also opined on the issue of natural gas pipeline safety and the Commissions jurisdiction:

*“Staff has concluded that any potential adverse impacts from the transport of hazardous materials will be reduced to a level of insignificance through Applicant’s conformance with applicable LORS, reinforced by Staff’s proposed mitigation. In addition, Staff believes that existing regulatory requirements are sufficient to reduce the risk of accidental release from the natural gas pipeline to insignificant levels. **We disagree with this statement, but would agree that “existing regulatory requirements are sufficient to reduce the risk of accidental release from the natural gas pipeline to insignificant levels” providing that these regulatory requirements and prudent maintenance and operating procedures are followed. (Emp. added).”**”⁴*

Staff’s position at the workshop and in its testimony, is that the current regulatory program is adequate to protect the public safety and no further analysis is needed. 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. The applicant has provided testimony from a 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

³ East Altamont Final Decision page 215
http://www.energy.ca.gov/sitingcases/eastaltamont/documents/2003-08-20_FINAL_DECISION.PDF

⁴ East Altamont Final Decision Page 216
http://www.energy.ca.gov/sitingcases/eastaltamont/documents/2003-08-20_FINAL_DECISION.PDF

*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 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."*⁵

Mr. de Leon's view appears to be common among federal regulators and pipeline safety experts. In 2004, California had just seven inspectors - prompting a sternly worded letter from the federal pipeline agency to Public Utilities Commission Chairman Michael Peevey about California's "very programmatic deficiencies." The state's gas safety efforts "continue to be negatively impacted by the low number of on-site audits," Western administrator Chris Hoidal warned in the January 2006 letter. He said the state's deficient inspection regimen "not only reduces public safety, but lowers the amount of federal funds allocated to your pipeline safety program." Carl Weimer, head of a pipeline watchdog group, the Pipeline Safety Trust, agreed that federal officials have not been doing enough to make sure states such as California enforce safety rules. The federal pipeline safety agency "not only needs to make sure the regulators are looking over the industry's shoulder, it needs to look over the other regulators' shoulder to make sure that they are doing their job," Weimer said. "But they just all want to get along." 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 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

⁵ Mr. Ceaser de Leon Applicants pipeline witness State's gas pipeline inspections found to lag Page http://articles.sfgate.com/2010-11-14/news/24831406_1_pipeline-safety-gas-pipeline-inspection/4

rate that staff normally considers 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.

CALIFORNIA NATURAL GAS TRANSMISSION LINE SIGNIFICANT INCIDENT RATES¹		
Incident Description	Number	Annual Rate (incidents/mile/yr)
All Significant Incidents	23	1.9 x 10 ⁻⁴ (1.9 in 10,000)
Injuries	4	3.3 x 10 ⁻⁵ (3.3 in 100,000)
Deaths	2	1.6 x 10 ⁻⁵ (1.6 in 100,000)
Significant incidents related to corrosion	1	8.2 x 10 ⁻⁶ (8.2 in 1,000,000)
Deaths or injuries due to corrosion	0	0

Notes:

1 For 12,271 miles of transmission lines operated from 1997 through 2006 (10 years)

The applicant’s expert witness Mr. de Leon has provided testimony about a study that purportedly concludes that pressure cycling has no affect on pipeline integrity. The study that is cited by the applicant’s witness is a study of the “significant risk of failure from the pressure-cycle induced growth of seam defects that may exist after a hydrostatic test.” Seam defects are responsible a very small amount of pipeline incidents and the study 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. It is not apparent that the applicants witness has ever read the study that he cites as his testimony merely cites word for word the summary of the study presented on the internet.⁶

Next the applicants witness cites a letter that has even less value as it is 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

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The applicants witness testimony cirtes word for word from this summary form the inetenet. The objective of this study was to establish whether or not gas pipelines have a significant degree of exposure to failure from seam defects that could become enlarged by pressure-cycle-induced fatigue. Pressure-cycle histories of three typical gas pipelines were compared to the pressure-cycle history of a liquid pipeline known to have aggressive pressure cycles. Times to failure were computed for worst-case hypothetical seam defects that would have barely survived a hydrostatic test to 100 percent of the specified minimum yield strength (SMYS) and were subsequently subjected to the pressure-cycle histories of typical gas pipelines. The predicted times to failure ranged from 170 years to more than 400 years, indicating that, in most circumstances, gas pipelines are not at significant risk of failure from the pressure-cycle-induced growth of seam defects that may exist after a hydrostatic test. The times to failure for this mode of crack growth are much longer than the expected useful life of a typical gas pipeline. Therefore, there is no need, in general, to conduct periodic integrity assessments of gas pipelines from the standpoint of pressure-cycle-induced fatigue in seams. A one-time hydrostatic test to a reasonably high level would be sufficient to assure that a natural gas pipeline would not be susceptible to the effects of pressure cycle fatigue on flaws in longitudinal seams”
<http://www.gastechnology.org/webroot/app/xn/xd.aspx?it=enweb&xd=10abstractpage%5C040178.xml>

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.

As for the workshop results staff is still confused about Exhibit 413 which describes wall loss of 61% on Line 002 subsequent to a smart pig evaluation in 2001. Staff somehow believes that the information contained in Exhibit 413 pertains to Line 400 not Line 002. A simple reading of the subject line of the PG&E email by staff would easily clear up all confusion as the subject line states, **“Results of excavations and pipe inspection on Line 002.”**

Staff requested that I bring the 2006 pigging tapes of Line 002 to the workshop to provide them more evidence of the condition of Line 002. Surprisingly staff refused to take the tapes after I offered them three times. The applicant requested custody of the tapes and is reviewing them.

Conclusion

The CEC as the CEQA lead agency can and will impose additional conditions of certifications above and beyond an established regulatory program if the Commission believes the public’s safety is at risk. The Commission has ruled previously that ***“existing regulatory requirements are sufficient to reduce the risk of accidental release from the natural gas pipeline to insignificant levels” providing that these regulatory requirements and prudent maintenance and operating procedures are followed.*** From the recent events and the daily coverage by the media it is reasonable to conclude that the pipeline regulatory process is not being enforced and that pipeline operators are not following maintenance and operating procedures. The applicants’ own expert witness has been publicly quoted stating, ***“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 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."⁷

The incident rates for pipeline accidents in the State of California are above the normal rates that the Commission considers significant under CEQA. The leak rate for Line 002 alone is 4.7 in 10,000.

While there are many other examples of the Commission exercising its authority and requiring additional mitigation measures for safety issues the East Altamont Energy Center is a very good example. The EAEC is only two miles away from the MEP and is proposing to utilize Line 401 which runs in the same pipeline corridor in parallel to Line 002.

⁷ Mr. Ceaser de Leon Applicants pipeline witness State's gas pipeline inspections found to lag
Page http://articles.sfgate.com/2010-11-14/news/24831406_1_pipeline-safety-gas-pipeline-inspection/4

DECLARATION OF SERVICE

I, Robert Sarvey, declare that on February 18 , 2011, I served and filed copies of the attached Intervenor Sarvey's Brief on CEC Jurisdiction over Line 002. 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: [\[http://www.energy.ca.gov/sitingcases/mariposa/index.html\]](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, CA. 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."

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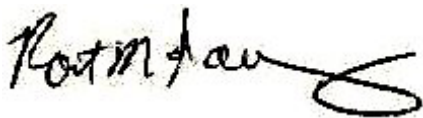
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depositing in the mail an original and 12 paper copies, as follows:

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.



Robert Sarvey