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DOCKET

09-AFC-4

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California Energy Commission
Docket Unit
1516 Ninth Street
Sacramento, CA 95814-5512

Subject: **CCGS LLC's OPENING BRIEF – BIOLOGICAL RESOURCES AND
HAZARDOUS MATERIALS
OAKLEY GENERATING STATION
DOCKET NO. (09-AFC-4)**

Enclosed for filing with the California Energy Commission is the original of **CCGS LLC's
OPENING BRIEF – BIOLOGICAL RESOURCES AND HAZARDOUS MATERIALS**, for
the Oakley Generating Station (09-AFC-4).

Sincerely,

A handwritten signature in blue ink that reads "Marie Mills".

Marie Mills

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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

Application for Certification for the
OAKLEY GENERATING STATION

DOCKET NO: 09-AFC-4

**CCGS LLC'S OPENING BRIEF –
BIOLOGICAL RESOURCES AND
HAZARDOUS MATERIALS**

INTRODUCTION

Contra Costa Generating Station LLC (CCGS LLC), a wholly owned subsidiary of Radback Energy Inc., hereby files its Opening Brief on the topics of Biological Resources and Hazardous Materials as it relates to Pipeline Safety for the Oakley Generating Station (OGS). CCGS LLC reserves the right to reply to the issues raised in other parties' Opening Briefs. Therefore, CCGS LLC's Reply Brief may also include the topics of Soil & Water Resources and Land Use if Intervener Sarvey includes them in his Opening Brief.

BIOLOGICAL RESOURCES

The only dispute relating to the topic of Biological Resources is between Intervener Sarvey and CCGS LLC. Staff and CCGS LLC agree that the analysis contained in the Final Staff Assessment (FSA)¹, along with the minor modifications of Condition of Certification BIO-19 contained in the CCGS LLC and Staff Joint Stipulation², demonstrates that the OGS will comply with all applicable laws, ordinances, regulations and standards (LORS) and that all direct, indirect and cumulative impacts will be mitigated to less than significant levels. The only dispute relates to the Lange's metalmark butterfly.

¹ Exhibit 300

² Exhibit 62

Intervener Sarvey Contentions

Intervener Sarvey submitted the testimony of Dr. Stuart Weiss which was admitted as Exhibit 404. Dr. Weiss's sole contention is that the mitigation proposed by Staff and agreed to by CCGS LLC in Condition of Certification BIO-20 is insufficient.

Dr. Weiss testifies:

The Oakley power plant will emit NO_x and NH₃ that will lead to increased deposition on the Refuge. This has been established by the applicant studies, and reported by the Staff testimony. It is important to realize and consider the cumulative impacts of the other power plants and developments in the area that result in increased NO_x and NH₃ emissions.³

Dr. Weiss does not dispute the Nitrogen impact modeled by CCGS LLC and accepted by Staff. Therefore, the only evidence in the record upon which the Committee can and should legally rely is the estimate of 0.083 kg/ha/yr.⁴ This impact is the entire contribution under the worst case operating scenario for the OGS and is therefore extremely conservative. Staff also uses a modeled background level to determine the baseline conditions at the Antioch Dunes. This is conservative and Staff uses this information to determine that any amount of nitrogen deposited at the Antioch Dunes is an impact.

An Energy Commission Public Interest Energy Research study modeled total nitrogen deposition throughout California (Tonneson et. al. 2007); results showed that most of California experiences elevated rates of annual nitrogen deposition, especially near urban areas. In the area encompassing the Antioch Dunes NWR, the baseline nitrogen deposition rate is estimated to be approximately 6.39 kg/ha/yr (Tonneson et. al. 2007). Although this estimate was produced using 2002 data, it is believed to be the most comprehensive and accurate data set available. Advances in emission control technology and offsets for stationary sources have likely resulted in a decrease of NO_x emissions (BAAQMD 2010a). However, given the increase in vehicle transportation emissions and use of synthetic fertilizers, NH₃ could be increasing, although it is difficult to determine because the reactive nature of NH₃ does not allow for a comprehensive inventory or prediction of long-terms trends (BAAQMD 2009).⁵

Staff rejected CCGS LLC's proposed background level of 2.42 kg/ha/yr as not being conservative enough.⁶

³ Exhibit 404, page 1

⁴⁴ Exhibit 15, Data Response 69; Exhibit 300, page 4.2-45

⁵ Exhibit 300, page 4.2-45

⁶ Exhibit 300, page 4.2-44, Footnote 1

Because Staff uses a background nitrogen level that is over its conservative significance threshold (5 kg/ha/yr), Staff then assumes that **ALL** of the OGS predicted contribution will be a significant impact and then requires OGS to mitigate that total impact.

According to the applicant's response to data request #69 (CH2MHILL 2010g), modeled nitrogen deposition rates from OGS at the Antioch Dunes NWR would average 0.083 kg/ha/yr. Considering OGS in combination with background levels, the nitrogen deposition rate at Antioch Dunes NWR would be approximately 6.47 kg/ha/yr. Given that threats to the endangered species at the Antioch Dunes from noxious weeds are exacerbated by nitrogen fertilization, the proposed project's deposition of additional nitrogen at this already stressed ecosystem would be a significant impact.

For perspective, 0.083 kg/ha/yr is an **extremely** and almost immeasurable amount. This is equivalent to 0.183 pounds/ha/yr or 0.074 pounds per acre per year.⁷ A 50-pound bag of Scott's Turf Builder® WinterGuard Fall Lawn Fertilizer (32-0-10) (Scott's Fertilizer) would contain 16 lbs of nitrogen.⁸ An application rate of 0.074 pounds/acre/year of nitrogen would be equivalent to 0.231 pounds/acre/year of Scott's Fertilizer or the equivalent of little less than 1/200th of the 50 pound bag per acre per year. The Antioch Dunes encompasses 14.35 acres. This would be the equivalent of spreading approximately 3.32 pounds of Scott's Fertilizer over the **entire** Antioch Dunes every year. It would take nearly 15 years to empty just one bag over the **entire** Antioch Dunes. However, Staff treated this as a significant impact and CCGS LLC agreed to the Staff proposed mitigation.

It is important to note that Staff acknowledges that OGS's contribution is very small but by requiring mitigation of all of its potential direct effects on the system, the OGS will be mitigating its entire contribution to any cumulative effect.

The proposed OGS project would contribute to nitrogen deposition at Antioch Dunes NWR. In consideration of the cumulative nitrogen deposition baseline from applicable regional sources, the project's contribution is relatively small (approximately 1 percent). However, it is the culmination of nitrogen emission sources from similarly small past, present, and reasonably foreseeable future projects that evidently contribute to the current proliferation of noxious weeds at Antioch Dunes NWR. Given the severity of the existing environmental problems at Antioch Dunes NWR, especially related to nitrogen deposition, OGS emissions and the resulting incremental effect to federally endangered Lange's metalmark butterfly, federally and state endangered Antioch Dunes evening primrose, and federally and state endangered Contra Costa wallflower are cumulatively considerable in the absence of

⁷ 1 Kilogram = 2.20462262 Pounds; 1 Hectare = 2.471 Acres

⁸The following link provides the fertilizer label under the item fertilizer analysis - <http://www.scotts.com/smg/catalog/productTemplate.jsp?prodId=prod100052&itemId=cat50048&tabs=usage>. A fertilizer label (32-0-10) lists the percentage of nitrogen as the first number, in this case 32 percent. See also <http://www.wikihow.com/Read-a-Fertilizer-Label>. 32 percent of 50 pounds = 16 pounds of nitrogen for a 50 pound bag.

mitigation. To this end, staff recommends Condition of Certification **BIO-20** to reduce the project's contribution to cumulative impacts. Per Condition of Certification **BIO-20**, the applicant would provide funding proportional to the proposed project's contribution to nitrogen deposition occurring at Antioch Dunes NWR in order to implement management activities targeting weed removal and propagation/transplantation of listed species. With implementation of this condition, the project's incremental contribution to nitrogen deposition at Antioch Dunes NWR and the resultant indirect impacts would be less than cumulatively considerable.⁹

Additionally, Dr. Weiss criticizes the amount of mitigation and the fact that the mitigation requires a monetary contribution to the Antioch Dunes.

The proposed \$5,000/year is inadequate for effective habitat management on the scale needed, even if supplemented by resources from other projects. The mitigation should be a series of specific projects, as proposed by USFWS including captive breeding, buckwheat and other endangered plant propagation, and weed control, rather than a set amount of money, so that real actions are accountable.¹⁰

However, it appears that Dr. Weiss believes the OGS Project should be responsible for the entire program and not its minor contribution. The California Environmental Quality Act (CEQA) limits an agency to requiring mitigation for the "**effects of the project**" which requires finding of a nexus between the project and the effect. The OGS is not responsible, nor can the California Energy Commission (Commission) require the OGS to mitigate, for the effects caused by existing sources that are contributing to the existing high background level of nitrogen at the Antioch Dunes. CEQA Guidelines make it clear that a project is not responsible for mitigating the cumulative effects of other projects and is only responsible for mitigation of its contribution to a cumulative impact¹¹.

Staff explains its mitigation approach as follows:

Staff's proposed mitigation approach requires the applicant to remit annual payment towards the operation and maintenance budget of the Antioch Dunes NWR. The annual operating budget is approximately \$385,000 and includes money for non-native plant removal/fire prevention, sand acquisition, grazing management, butterfly propagation, and rare plant propagation (Picco 2009). Contributing payment would be used to directly

⁹ Exhibit 300, page 4.2-47 and 48

¹⁰ Exhibit 15, page 1

¹¹ CEQA Guidelines Section 15064 (h)(4) "The mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable."; 15126.4 (a) (4) "(4) Mitigation measures must be consistent with all applicable constitutional requirements, including the following:

(A) There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); and

(B) The mitigation measure must be "roughly proportional" to the impacts of the project. *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Where the mitigation measure is an ad hoc exaction, it must be "roughly proportional" to the impacts of the project. *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854.

implement management activities required to address impacts to the Antioch Dunes NWR from the effects of noxious weed proliferation resulting from nitrogen deposition attributable to OGS.

It is understood that emissions from the proposed OGS project would not be the only source of nitrogen deposition at Antioch Dunes NWR. There are existing industrial stationary sources as well as mobile sources (i.e., transportation) in the San Francisco Bay area that collectively contribute to elevated local and regional nitrogen deposition. Accordingly, staff proposes that the applicant's payment toward the operating budget of Antioch Dunes NWR be proportional to the proposed project's contribution toward total nitrogen deposition at Antioch Dunes NWR.

It is staff's conclusion that implementation of the management activities funded by annual payment toward the operating budget of Antioch Dunes NWR (as calculated using the above equation and described in **BIO-20**) would mitigate adverse impacts to Antioch Dunes NWR and the Antioch Dunes evening primrose, Contra Costa wallflower, and Lange's metalmark butterfly from noxious weed proliferation exacerbated by OGS's contribution to nitrogen deposition. Impacts would be less than significant with the proposed mitigation.¹²

Therefore, the mitigation imposed by Staff will mitigate OGS's contribution to a cumulative impact and the funds will be directly applied by those managing the Antioch Dunes NWR directly to the operating budget. Those managing the Antioch Dunes NWR would know which management activities towards which to direct the funds. Staff's approach is extremely conservative and is consistent with this Commission's recent Decision in the Marsh Landing Project.¹³

USFWS Contentions

On October 13, 2010 the United States Fish and Wildlife Service (USFWS) wrote a letter to the California Energy Commission (Commission) recommending that the applicant:

1. "ensure the proposed Oakley Generating Station does not jeopardize Lange's metalmark butterfly, Contra Costa wallflower and Antioch Dunes evening primrose, or result in adverse modification or destruction of critical habitat for these two endangered plants; and
2. obtain authorization for incidental take from the Service for the endangered Lange's metalmark butterfly prior to any earthmoving at the proposed project site."

The letter alleges impacts from the operation of the OGS related to nitrogen emissions that the USFWS asserts would, through deposition at the Antioch Dunes, cause the growth of

¹² Exhibit 300, page 4.2-45

¹³ See Marsh Landing Final Decision (08-AFC-3), August 25, 2010, page 76, Findings 14 and 15.

non-native species. The USFWS further contends that such growth would outcompete the plant species listed above which support the Lange's metalmark butterfly. The USFWS conclusions are not supported and the USFWS inappropriately mixes concepts of "impacts" under the California Environmental Quality Act (CEQA) and "take" under the Endangered Species Act (ESA).

As an initial matter, there are two ways to obtain authorization for incidental take under the ESA. Section 7 of the Act allows for a federal agency to consult directly with the USFWS when it is considering issuing a federal permit or engaging in some other federal action that may "jeopardize" species or cause "adverse modification" to critical habitat. Since the OGS is not obtaining a permit from any agency, a Section 7 consultation is not required and the legal standards of "jeopardize" and "adverse modification" are not applicable.

Section 10 of the Act allows a private party without a federal nexus to obtain incidental take authorization. This process is voluntary and provides authorization for a "take" that is defined by Section 9 of the ESA. Take is defined under Section 9 of the ESA as "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct". The USFWS regulations define harm as "significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding or sheltering."

CEQA, on the other hand, addresses principles of direct and cumulative impacts. CEQA allows a lead agency to establish a threshold of significance above which an impact is significant. CEQA also addresses the cumulative contribution of several projects to a cumulative effect. This concept is distinctly different than the legal standards requiring take authorization under the ESA.

The only effect alleged by the USFWS is that the OGS contributes to the existing high nitrogen deposition rate that currently exists at the Antioch Dunes. The USFWS then claims that the OGS contribution to this condition would require ESA take authorization. In effect, the USFWS is applying the CEQA standard of potential contribution to a cumulative impact which cannot be used to require incidental take authorization under the ESA.

As outlined above, the USFWS regulations define harm as "significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding or sheltering." The United States Supreme Court has interpreted USFWS regulatory framework and has held that "every term in the regulation's definition of 'harm' is subservient to the phrase 'an act which actually kills or injures wildlife.'"¹⁴ Therefore, in order for a take to occur through habitat modification, as is alleged by the USFWS for the OGS, the USFWS must prove that the nitrogen emissions from the OGS are the actual and proximate cause of the significant habitat modification. Further, this significant habitat modification must then be the actual and proximate cause of "actual death or injury" to a listed species. For the OGS, the nitrogen emissions must react in the atmosphere in such a way as to precipitate nitrogen that is bio-available and deposited on the ground at the Antioch Dunes. This nitrogen deposition must then act as a fertilizer allowing non-native species to flourish. These non-native species must then

¹⁴ *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 US 687, 697 (1995)

out-compete the native species relied upon by the Lange's metalmark butterfly and this must degrade its breeding and feeding habitat in a way that "prevents, or possibly retards, recovery of the species."¹⁵ For habitat modification to constitute the type of harm that would amount to a "take" under Section 9 of the ESA, it also must have a population-level effect that amounts to extinction. With respect to causation, courts have held that a take cannot be shown when the impact to habitat alleged to be attributable to one act or actor, cannot be distinguishable from the effects of other acts or actors with similar effects on the habitat.¹⁶

The Commission adjudicated this very issue in the Marsh Landing (08-AFC-3) Proceeding. On the exact same set of facts, the Commission correctly concluded:

Moreover, the project would not (either individually or cumulatively) cause an impermissible "take" of a protected species under section 9 of the federal Endangered Species Act "ESA"). This is because the definition of "harm" under the regulations implementing the ESA is not met here. (We also note that section 7 of the ESA does not apply here, because that section applies only to activities directly carried out by federal agencies, but not to activities simply approved by state agencies, as we approve MLGS here.)¹⁷

Therefore, USFWS contentions that Endangered Species Act Authorization is required for the OGS should be rejected.

The Commission should similarly reject USFWS representative Mr. Chris Nagano's contentions that the OGS should be required to contribute 150 butterflies. Mr. Nagano provided no analysis or basis for this request. In fact, Mr. Nagano still contends that the OGS needs Endangered Species Act Authorization, which is incorrect. Condition of Certification **BIO-20**, which requires mitigation funds to be paid directly to those managing the Antioch Dunes NWR does not restrict nor prohibit the USFWS from using the funds provided for a variety of measures including the raising of butterflies. The only quantifiable impact and mitigation approach is provided by **BIO-20**. The impact is not measurable and the OGS should not be required to mitigate for all the existing sources that are currently contributing far greater amounts of nitrogen. Mitigation above that required by **BIO-20** is not supported by any analysis or evidence in this record.

HAZARDOUS MATERIALS

Staff and CCGS LLC produced the only expert witnesses qualified to provide an opinion about pipeline safety. Both experts agree that the OGS will not cause adverse impacts to Lines 303 or 400 of the Pacific Gas & Electric (PG&E) System. Not only should Mr. Sarvey's testimony be given no weight, it should be excluded from this evidentiary record as violating one of the basic tenets that tribunals have for ensuring that testimony and

¹⁵ *National Wildlife Federation v. Burlington Northern Railroad Inc.* 23 F. 3rd. 1508, 1512-1513 (Ninth Circuit 1994)

¹⁶ *Pyramid Lake Paiute Tribe v. U.S. Department of Navy*, 898 F. 2d. 1410 (Ninth Circuit 1990)

¹⁷ Marsh Landing Generating Station Final Decision (08-AFC-3), Page 71

evidence is credible. In order for any witness to offer an opinion, such witness must have expertise directly related and beyond that of a normal layperson. Mr. Sarvey does not.

Mr. Sarvey has no engineering related education.¹⁸

Mr. Sarvey has never worked for a pipeline company.¹⁹

Mr. Sarvey has never worked for a pipeline regulating agency.²⁰

Mr. Sarvey has never developed an integrity management program.²¹

Mr. Sarvey has never performed any aspect of an integrity management program.²²

Mr. Sarvey has never taken any class related to pipeline safety.²³

Mr. Sarvey simply refers to himself as a “shoe repairman”.²⁴

Mr. Sarvey contends his expertise stems from his participation in public proceedings before the California Public Utilities Commission (CPUC) related to pipelines. If the purpose of this proceeding were to encompass a review of the CPUC or even if Mr. Sarvey had special knowledge of Lines 303 or 400, his experience might be helpful, but it does not. The Committee asked questions of each party. Each party has the opportunity to present credible evidence to answer those questions. Staff and CCGS LLC sought expert opinions. Mr. Sarvey did not.

The Committee erroneously admitted Exhibit 408, which is Mr. Sarvey’s expert testimony. Mr. Sarvey provides an opinion in Response to Question 2. In Response to Question 2, Mr. Sarvey offers an unqualified opinion with no basis. Mr. Sarvey contends:

Because of the age of Line 400 and Line 303 it is unlikely that they were hydro tested but they may have been. MAOP was probably established by historical operating pressure.²⁵

There is no basis for this speculation and, in fact, Mr. Haines testified that Lines 303 and 400 were pressure tested because they were installed after General Order 112 was created and that Line 303’s pressure test result was well above 1.25 times the Maximum Allowable Operating Pressure (MAOP).²⁶

Mr. Sarvey also provides an opinion with no basis in response to Question 6. Mr. Sarvey opines what information he would need to determine whether Lines 303 or 400 were safe, but he would have no expertise for conducting such an evaluation even if the information he requested were available. Moreover, the Committee should take note that Mr. Sarvey does not contend that the OGS will affect either line.

¹⁸ Exhibit 408, Mr. Sarvey’s Resume; 3/25/11 RT 64

¹⁹ 3/25/2011 RT 62

²⁰ 3/25/2011 RT 62

²¹ 3/25/2011 RT 62

²² 3/25/2011 RT 62

²³ 3/25/2011 RT 64

²⁴ 3/25/2011 RT 62

²⁵ Exhibit 408, Page 6.

²⁶ 3/25/11 RT 52

Lastly, in response to Question 7, Mr. Sarvey opines regarding how natural gas pipelines operate and summarizes what the codes allow. Mr. Sarvey has no expertise in this technical arena, there is no basis for this opinion in any case, and it should be given no weight. Mr. Sarvey then attempts to draw inferences based on correlations to Line 401, including an unreferenced graph with no explanation. This response should be given no weight and is certainly not responsive to or evidence upon which the Committee could rely in determining the answer to the Committee's question regarding whether the environmentally superior fast-start capability of the OGS could negatively affect Lines 303 or 400.

Notwithstanding the desire for the Commission to become involved in those issues surrounding the state of regulation of the natural gas pipelines within the State, an individual siting case is not the place for such involvement. An AFC Proceeding does, and should continue, to focus on the potential effects of a specific project. Therefore, all of the evidence provided by Mr. Sarvey which pertains to matters of a general nature and within the sole jurisdiction of the CPUC and the federal agencies concerning the natural gas pipeline regulatory structure are irrelevant to this AFC Proceeding. Notwithstanding the Committee's determination to admit this evidence, none of it should be given any weight. There simply is no evidence that the OGS will negatively affect the PG&E system, nor is there any evidence that the PG&E system, particularly Lines 303 or 400, cannot safely accommodate the interconnection of the OGS. In fact, the only qualified experts in the proceeding believe and have testified that OGS can safely interconnect to Lines 303 and 400.²⁷ The Commission's inquiry should end there.

CONCLUSION

CCGS LLC thanks the Committee for the opportunity to file this brief and appreciates the Committee's commitment to reaching a Decision by May 18, 2011. We sincerely hope the Committee takes into account the overwhelming City and public support for the OGS. The OGS has been sited correctly and CCGS LLC has made a commitment to cooperation that is unparalleled in recent Commission history. CCGS LLC and Staff have resolved all issues without the need for adjudication. CCGS LLC has voluntarily agreed to using dry cooling technology and also to switching to recycled water when it is truly available. CCGS LLC has demonstrated its commitment to the City of Oakley and the community. Notwithstanding the remaining limited disagreements with Intervener Sarvey, CCGS LLC has worked with Mr. Sarvey, voluntarily giving up the flexibility of having an option to use Emission Reduction Credits (ERCs) for some of its offsets as allowed by Staff, thereby satisfying Mr. Sarvey's issues relating to environmental justice and public health. In summary, the Committee has all it needs in the record to find that, with the Conditions of Certification as agreed to by Staff and CCGS LLC, the OGS will comply with all applicable LORS and will not result in significant environmental impacts while injecting significant economic stimulus the City of Oakley needs and deserves.

²⁷ Exhibits 60 and 304

Dated: April 4, 2011

/ original signed /

Scott A. Galati
Counsel to Contra Costa Generating Station, LLC



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
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**APPLICATION FOR CERTIFICATION
FOR THE *OAKLEY GENERATING STATION***

**Docket No. 09-AFC-4
PROOF OF SERVICE
(Revised 3/21/2011)**

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DECLARATION OF SERVICE

I, Marie Mills, declare that on April 4, 2011, I served and filed copies of the attached **CCGS, LLC'S OPENING BRIEF – BIOLOGICAL RESOURCES AND HAZARDOUS MATERIALS**, dated April 4, 2011.

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/contracosta/index.html>. The documents have 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;
- ☒ by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

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

OR

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

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 09-AFC-4
1516 Ninth Street, MS-4
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I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.



Marie Mills