

DOCKET

09-AFC-3

DATE _____

RECD. May 13 2011

State of California
State Energy Resources Conservation and Development Commission

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

Alternatives

Comment Number 1) Finding of Fact number 2 States, “The evidentiary record contains an **adequate review of alternative project sites**, linears, fuels, technologies, and the “no project” alternative.” The record demonstrates that The applicant proposed only two alternative sites which were adjacent to the MEP parcel. The Gomes parcel (Alternative 2) is located immediately northeast of the Lee Parcel, across Kelso Road.¹ The Costanza parcel (Alternative 1) is located immediately west of the Lee Parcel, on the western side of Bruns Road.² Staff’s testimony is that, “they would all have roughly the same impact.”³

Staff failed to consider any alternative sites or any other sites besides the two sites provided by the applicant. Staff and Applicant failed to consider Brownfield sites or any sites that were not in Alameda County’s Agricultural Zoning district or in the area controlled by the ECAP. 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 CEQA-equivalent process must include a reasonable range of alternatives. The Applicant’s analysis fails to meet this standard. I propose finding of fact number 2 be modified to state:

2. The evidence of record shows that a reasonable range of alternative sites has not been considered. The failure to examine other potentially feasible alternative sites

¹ Exhibit 301 Page 6-7

² Exhibit 301 Page 6-7

³ RT 3-7-11 Page 201

does not meet the requirement to foster informed decision making and public participation.

Comment Number 2) The PMPD contains two findings of facts numbered 3 under alternatives on page 15. The finding of facts should be renumbered.

Comment Number 3) The second of finding of fact # 3 states, “Alternative fuels and technologies are not capable of meeting project objectives. This finding is based on the applicant and Staff’s testimony that natural gas is the only fuel to meet the projects objectives. The applicant’s testimony states that, “Technologies based on fuels other than natural gas were eliminated from consideration because they do not meet the project objective of providing operationally flexible, dispatchable, quick start, and reliable power. Staff analysis similarly eliminated other technologies other than natural gas based on the applicant’s project objectives.⁴ Staff testimony is, “The availability of the natural gas resource provided by PG&E, as well as the environmental and operational advantages of natural gas technologies, makes natural gas the preferred choice for the proposed project.”⁵ 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 conclusory. *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th pp. 1456, 1460.)

The PMPD completely ignores testimony in the record⁶ and argument⁷ that alternative technologies can provide fast start and fast ramping capability. The Mulquenny Ranch Pumped storage project can provide 280 MW of dispatchable energy. The Mulquenny Ranch Pumped Storage Project filed an application for review at the FERC on October 1, 2010.⁸ Even the applicant considers it reasonably foreseeable as it

⁴ Exhibit 4 page 112

⁵ Exhibit 301 Page 6-18

⁶ Exhibit 411

⁷ Intervenor Sarvey Opening Brief Page 17

⁸ Exhibit 411 Page 1

was included in its load and resource balance calculation as part of the Beck Study.⁹ Despite this the PMPD never mentions the technology or addresses the argument that it is a viable technology and the application is under review at the FERC. The applicant failed to consider it as the applicant limited its alternatives analysis to natural gas fired generation and the staff also failed to consider the option.¹⁰

I propose finding of Fact number 3 be changed to:

3) The evidence of record shows that the Applicant established as a project objective the use of natural gas fuel. The objective of using natural gas fuel artificially limited the range of alternative generation technologies evaluated.

Comment Number 4: Finding of fact number 4 should be deleted.

V Public Health and Safety

A. Greenhouse Gas (GHG) Emissions

Comment Number 5: Finding of fact number 18 states, “When it operates, the Mariposa Energy Project will displace generation from less-efficient (i.e., higher-heat-rate and therefore higher-GHG emitting) power plants in the San Joaquin Valley Area.

The evidence in the record is that the MEP will not displace any generation in the San Joaquin Valley area. The power plants in the San Joaquin Valley Area have better heat rates or are being converted to combined cycle.¹¹ (Exhibit 301 Greenhouse Gas Table 4 Page 4.1-82) Additionally the MEP is located in the Bay Area load Pocket according to the evidence not in the San Joaquin Valley Load Pocket. Greenhouse Gas finding Number 18 should be modified to state:

18 When it operates, the Mariposa Energy Project will displace generation from less-efficient (i.e., higher-heat-rate and therefore higher-GHG emitting) power plants ~~in the San Joaquin Valley Area~~ in the Bay Area Load Pocket.

Air Quality

⁹ Exhibit 1 Appendix 5.6 A Page 3

¹⁰ . SARVEY: In your analysis, did you consider the Mulqueeney ranch pump storage unit? MR. HOFFMAN: No. RT 307-11 Page 225

¹¹ Tracy Peaker <http://www.energy.ca.gov/2010publications/CEC-800-2010-002/CEC-800-2010-002-CMF.PDF>

Comment Number 6: Finding of Fact Number 14. The record contains an adequate analysis of the project's contributions to cumulative air quality impacts.

The PMPD and Staff and Applicants analyses do not address Exhibit 412.

Water Resources

Comment Number 7: Finding of Fact # 6 states. The project's freshwater supply offset by implementation of a water conservation program will result in no net increase in freshwater use in the region, and the project will not cause an impact on current or future users of the water supply.

Staff has concluded that the use of up to 187 acre feet of fresh water by the MEP is a significant impact. Staff has proposed a fee of \$1,000 an acre foot to mitigate any use of fresh water by the MEP. Staff has not provided any details of how that \$1,000 an acre foot would be used to conserve fresh water. Staff is not even sure which agency will be given the mitigation funding. As staff's testimony states, *"Alternatively, if BBID cannot develop a verifiable, cost effective water conservation program, the water conservation funding could be paid to local water agencies including the Contra Costa Water District or Alameda Zone 7. These agencies are currently developing and implementing plans to meet the water conservation goals of SBx7-7, a statewide 20 percent reduction in urban per capita water use by 2020. Contra Costa Water District has indicated that it has existing conservation programs in place that result in real water conservation through cash for grass programs and rebates for water efficient washers and toilet replacement. Contra Costa Water District water conservation program has been achieving water conservation at a rate of \$1,000 per acre-foot or less."*¹² A mitigation program provided to mitigate a significant impact under CEQA cannot be speculative. Staff has performed no analysis and Zone 7 has provided no information which would lead to the conclusion that the \$1,000 an acre foot could achieve an acre foot of water conservation. I propose Finding of Fact Number 6 be deleted.

Land Use

¹² Exhibit 301 Page 4.12-18

Comment Number 8 : Finding of Fact_ 22 States, “As a result of the MEP’s compliance with the above noted ECAP Policies, the MEP will comply with the East County Area Plan.”

*“In November 2000, the Alameda County electorate approved the Save Agriculture and Open Space Lands Initiative (Measure D, effective date December 22, 2000) (Initiative) which amended portions of the ECAP. The purpose of the Initiative is to preserve and enhance agriculture and agricultural lands, and to protect the natural qualities, the wildlife habitats, the watersheds and the beautiful open space of Alameda County from excessive, badly located and harmful development. . The ECAP presents the county’s intent concerning the future development and resource conservation within the East County. The ECAP provides the basis for County zoning and subdivision approvals (AC 2000.)”.*¹³ The project is completely inconsistent with the East County Area Plan (ECAP) as modified by Measure D. The purpose of Measure D is stated in the preface of the ECAP. *“The purposes of this Initiative are to preserve and enhance agriculture and agricultural lands, and to protect the natural qualities, the wildlife habitats, the watersheds and the beautiful open space of Alameda County from excessive, badly located and harmful development. The measure establishes a County Urban Growth Boundary which will focus urban-type development in and near existing cities where it will be efficiently served by public facilities, thereby avoiding high costs to taxpayers and users as well as to the environment. The ordinance is designed to remove the County government from urban development outside the Urban Growth Boundary.”*¹⁴

The MEP accomplishes none of these objectives. First the MEP does not preserve agricultural land it removes 10 acres of grazing land from agricultural production. The MEP does not protect wildlife habitat and as both Applicant and Staff admit. The project will destroy and displace sensitive species including the Red Legged Frog, the Tiger Salamander, Kit Fox, Burrowing Owl and other sensitive species. The MEP is not inside an urban the growth boundary and is not located near existing cities. The MEP does not remove the County government from urban development outside the Urban Growth Boundary. In short the MEP is exactly the type of land use the voters voted to prohibit

¹³ Exhibit 301 Page 4.12-18

¹⁴ Exhibit 414 Page ii

when they passed Measure D.¹⁵ A project *cannot* be found consistent with a general plan if it conflicts with a general plan policy that is “fundamental, mandatory, and clear,” regardless of whether it is consistent with other general plan policies. (*Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, 782-83; *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1341-42 (“*FUTURE*”).) Moreover, even in the absence of such a direct conflict, a particular development project may not be approved if it interferes with or frustrates the general plan’s policies and objectives. (*Napa Citizens, supra*, 91 Cal.App.4th at pp. 378-79; see also *Leshner, supra*, 52 Cal.3d at 544)

Summary of Proposed Changes

Alternatives

Finding of Fact number 2: The evidence of record shows that a reasonable range of alternative sites has not been considered. The failure to examine other potentially feasible alternative sites does not meet the requirement to foster informed decision making and public participation.

Finding of Fact number 3: The evidence of record shows that the Applicant established as a project objective the use of natural gas fuel. The objective of using natural gas fuel artificially limited the range of alternative generation technologies evaluated.

~~Finding of Fact number 4: No site alternative is capable of meeting the stated project objectives.~~ (Delete)

V Public Health and Safety

A. Greenhouse Gas (GHG) Emissions

Finding of Fact Number 18: When it operates, the Mariposa Energy Project will displace generation from less-efficient (i.e., higher-heat-rate and therefore higher-GHG emitting) power plants in the Bay Area Load Pocket.

¹⁵ Exhibit 402 Page 3