

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Business Meeting)
(Resumption of Item 16))
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 25, 2010
5:52 P.M.

Reported by:
John Cota

COMMISSIONERS PRESENT

Karen Douglas, Chairman

James D. Boyd, Vice Chair

Jeffrey D. Byron

Anthony Eggert

Robert Weisenmiller

STAFF and CONTRACTORS PRESENT

Michael Levy, Chief Counsel

Claudia Chandler, Deputy Executive Director

Heather Blair

Susanne Garfield

Paul Kramer, Hearing Officer

Matthew Layton

Mike Monasmith

Kerry Willis

PUBLIC ADVISER

Jennifer Jennings

ALSO PRESENT

Lisa Cottle

Winston & Strawn, LLP

Counsel to Applicant Mirant Marsh Landing

John Chillemi

Mirant Marsh Landing Power Project

Rob Simpson (via telephone)

Greg Feere (via telephone)

Contra Costa Building & Construction Trades Council

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| 16 Marsh Landing Generating Station (08-AFC-3) Possible adoption of the Presiding Member's Proposed Decision on the Marsh Landing Generating Station. The proposed project is a nominal 930 megawatt natural gas-fired combined cycle power plant. It will be located on a 27-acre site in Contra Costa County north of the city of Antioch. | 1 |
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P R O C E E D I N G S

5:52 P.m.

1
2
3 CHAIRMAN DOUGLAS: We are now reconvening the
4 Business Meeting that started this morning at 10:00
5 a.m. and that was recessed until this time to return to
6 Item 16 on the agenda. And somebody please correct me
7 right now if it's not 16, that's from memory, but I
8 believe it is.

9 The Marsh Landing Generating Station Project
10 that the Committee assigned to this project took in the
11 information that the entire Commission heard this
12 morning and has crafted errata that are before
13 everybody today to address and ensure that we covered
14 all of what we heard. We want to be sure that we hear
15 from the parties as to your comments on the errata.
16 Hearing Officer Kramer, perhaps you could take us
17 through that.

18 HEARING OFFICER KRAMER: Okay. I think most
19 of it speaks for itself.

20 CHAIRMAN DOUGLAS: Would it be easier if I
21 asked applicant or staff to volunteer to go first and
22 discuss issues that they see in the errata?

23 HEARING OFFICER KRAMER: Yes, otherwise I'm
24 just summarizing. Mr. Simpson, though, is on the line
25 and I think we need to point out to him that if he saw

1 his email recently he received a slightly earlier
2 version of this that I sent around when I thought it
3 was final and I have not had an opportunity to send
4 this version that we will be discussing.

5 So we may have to, if he needs quickly
6 explained what some of the differences are. I think
7 they are mostly about deletions so it won't be too hard
8 to do. And given that I was doing something else and
9 not the main actor in preparing the latest changes I
10 guess I would leave that perhaps to Mr. Levy to
11 explain. But we can see if we need to do that.

12 VICE CHAIRMAN BOYD: You know, you could have
13 said Calico and then you would have --

14 CHAIRMAN DOUGLAS: You could have said Calico
15 refers to something else.

16 VICE CHAIRMAN BOYD: -- confirmed the fact
17 that you're splitting yourself between two projects
18 concurrently here.

19 MR. LEVY: There's only two changes from the
20 version Mr. Simpson has from the current one, so I can
21 just tell you those if you like.

22 CHAIRMAN DOUGLAS: Please.

23 MR. LEVY: The first one is on page two under
24 the heading, Page 6, add a new fourth paragraph. And
25 there was a non-substantive change which is striking

1 the word "only," the only analysis. So it now reads,
2 "the analysis."

3 And the other change is on page 5, with
4 respect to page 50 and Finding of Fact 11. All of the
5 paragraph after the parenthetical has been deleted. So
6 it now reads:

7 "The cumulative impacts analysis
8 included the nearby proposed Oakley
9 Power Plant (CRSA PP 4.1-35, 4.2-18,
10 4.3-15-16, 4.6-14, 4.8-8-9, 4.13-18,
11 4.14-13.)"

12 Those are the only changes in the differences
13 between the two errata.

14 CHAIRMAN DOUGLAS: Thank you, Mr. Levy.

15 So that may have addressed the concerns the
16 applicant previewed for me prior to our starting here,
17 unless there are more.

18 MS. COTTLE: We still have a few comments on
19 the errata. (Turned microphone on.) There we go. Can
20 you hear me now? We do have a couple of comments on
21 the errata.

22 On page 2 in the new paragraph that would be
23 added. It says under the heading Project Description
24 on page 6. I wasn't quite sure where -- maybe it goes
25 in the bullets. I wasn't exactly sure where it goes on

1 this page.

2 HEARING OFFICER KRAMER: Can we come back to
3 that one?

4 MS. COTTLE: The second comment on the same
5 page two of the proposed errata. It's the last
6 sentence of the added paragraph that starts "In fact,".
7 It's six lines up from the bottom. We would propose
8 just to insert the word "likely" between "would" and
9 "require" so that it would read that the actual site
10 remediation would likely require the removal of only
11 250 to 300. That matches language that you've got in
12 Proposed New Finding of Fact 7 on the bottom of page 2
13 of the errata.

14 MR. LEVY: I'm sorry, could you say that
15 again, please.

16 MS. COTTLE: I'm in the new paragraph that
17 would be added in the project description.

18 MR. LEVY: I see.

19 MS. COTTLE: It's the very last sentence,
20 which starts:

21 "In fact, at the hearing at which
22 we adopted this decision it was stated
23 without contradiction that the actual
24 site remediation would ..."

25 At that point we would insert the word

1 "likely." And then it continues:

2 "... require the removal of only 250
3 to 300 cubic yards of soils, obviously a
4 much lower amount than the removal of
5 11,000 cubic yards. That would still
6 have no adverse impacts through the use
7 of typical remediation practices."

8 MR. LEVY: So you would like to add the word
9 "likely" in the paragraph under the heading Page 6, add
10 a new and fourth paragraph. The fifth line, I guess,
11 from the bottom, "remediation would." Add the word
12 "likely."

13 MS. COTTLE: That's correct.

14 And then on page 5 of the proposed errata in
15 the section that references page 44. Where it says:

16 "Insert the following paragraphs
17 immediately before the sentence
18 beginning 'Based on a Revised Staff
19 Assessment.'"

20 The sentence that is being proposed says that
21 the analysis did not include the adjacent Gateway Power
22 Plant as part of the emissions from Marsh Landing. But
23 the analysis in fact did include an analysis of the
24 potential cumulative impacts associated with adding
25 Marsh Landing in combination with emissions from the

1 existing Gateway Power Plant.

2 I think this change may have been a result of
3 a discussion we had at this morning's hearing where we
4 talked about the standard for determining whether a
5 prevention of significant deterioration permit is
6 required. That's the federal permit that this project
7 does not require. There we explained that if the Marsh
8 Landing Project were under common control with the
9 existing Contra Costa Power Plant Project, that's one
10 of the factors that EPA and the Bay Area Air Quality
11 Management District consider in evaluating whether or
12 not they are separate projects.

13 In this case the Air District, with guidance
14 from the EPA, concluded that even though there's common
15 upstream ownership because they share the two entities,
16 Mirant Delta and Mirant Marsh Landing share an ultimate
17 parent company, that's Mirant Corporation.
18 Notwithstanding that common ownership, the two projects
19 are separate because they meet applicable standards for
20 determining when projects are separate. But it is not
21 an issue of analyzing impacts. It's purely a threshold
22 analysis for determining whether that particular permit
23 is required.

24 In the staff analysis there was an evaluation
25 of whether or not adding Marsh Landing would cause a

1 cumulative adverse impact because of existing emissions
2 from Gateway as well as the existing Contra Costa Power
3 Plant Project. So both of those projects were included
4 in the cumulative air quality analysis.

5 There was some discussion this morning about
6 the extent to which the analysis included the Oakley
7 project, which is a proposed new project, not at the
8 immediate site but somewhat nearby. But it is clear in
9 the staff analysis, I don't think there has been any
10 assertion, that staff did not consider cumulative
11 impacts from Mirant -- the Marsh Landing Project, the
12 Gateway Generating Station which is owned by PG&E and
13 the Contra Costa Power Plant Project which is owned by
14 Mirant Delta.

15 If we were going to keep this sentence, I
16 think actually this whole addition on page 44. I think
17 the only part that would be accurate would be to say,
18 our air quality analysis did include -- our air quality
19 analysis did include the adjacent Gateway Power Plant
20 as part of the analysis of potential cumulative air
21 quality impacts for emissions from MLGS. And then the
22 rest of it really should come out. And then it would
23 continue, likewise, our analysis also considered the
24 Contra Costa Power Plant in the cumulative analysis. I
25 think that's probably the only part that's consistent

1 with the record.

2 CHAIRMAN DOUGLAS: So let me ask you to pause
3 and let me ask staff if you agree with that proposed
4 change.

5 MR. LAYTON: This is Matthew Layton. We
6 agree with those changes. We found the two paragraphs
7 to be confusing. The simplification that the applicant
8 is recommending I think would help the PMPD be clearer.

9 CHAIRMAN DOUGLAS: All right, thank you,
10 Mr. Layton.

11 VICE CHAIRMAN BOYD: Madam Chair, I think I
12 know what the attempt was here to do and now I think --
13 I mean, I think the attempt really was to say that
14 Marsh Landing was not coupled with Gateway, per the
15 assertion of some. The later part about it's not under
16 common control. And your fear is that somebody is
17 going to interpret this to say that a cumulative
18 analysis wasn't done.

19 And you suggested an assertion which I can't
20 write fast enough but I was kind of going along with
21 you. Then I went on in my mind and said, where it
22 picks up here in the second sentence "as part of." And
23 I said, ah, but not as part of the emissions from the
24 Marsh Landing Plant despite an assertion that because
25 da-da-da-da-da-da. Does that -- I mean, that's where

1 my mind was going.

2 But does that leave it equally confusing or
3 does that try to combine two different thoughts in one
4 paragraph? You're trying to say, you know, correctly
5 that a total air quality analysis, cumulative impact
6 analysis of air quality was done. And this, I think,
7 is an attempt to answer the assertion that Gateway and
8 Marsh Landing should have been considered as a single
9 unit because of the rule about common control. Which I
10 think has been totally -- I personally thought had been
11 totally taken care of as not being the case. Now I
12 have totally confused a lot of people I'll bet.

13 The question is, what was the intent, the
14 original intent of adding this section?

15 MR. LEVY: It's directed to the common
16 ownership, the PSD issue.

17 VICE CHAIRMAN BOYD: Yes, that's what I
18 think.

19 MR. LEVY: And so maybe it would be easier to
20 say "our PSD air quality analysis" and leave the rest
21 of it the same and not discuss cumulative impacts here.

22 MR. LAYTON: I think what the Committee is
23 trying to say here is that their air quality analysis
24 did not include the Gateway emissions in their air
25 quality analysis from Marsh Landing, despite an

1 assertion, two assertions really, that there's common
2 control and that the projects should have been analyzed
3 as a single source under the Clean Air Act and then to
4 go on to say Gateway was properly excluded.

5 I think if you wanted to leave the paragraph
6 in there you can wordsmith it and it gets to the point
7 that I think the Committee is trying to make. I'd be
8 happy to give my edits to the sentence, to this
9 paragraph, to see if it helps the Committee get that
10 point across.

11 CHAIRMAN DOUGLAS: I think that what we have,
12 what we have on the table, the applicant suggested and
13 that staff agreed with as factually true, is a
14 different point than what you were talking about and is
15 probably, I believe, a different point than what the
16 original paragraph was trying to say. But it was, I
17 think, a strong and accurate statement that may be the
18 way we want to go. Let's continue on through the list.

19 Let's turn it back to applicant and keep going through
20 the list.

21 MS. COTTLE: Okay. So our next comment is on
22 page 6 of the errata. Where it says -- proposes to
23 insert a paragraph on page 71. This is the paragraph
24 on the bottom of page 6 of the errata. There's a
25 statement about halfway through the paragraph stating

1 that the emissions would be far less than the 0.5 to
2 1.0 kilogram per hectare per year level at which
3 impacts are likely to occur.

4 The record in this proceeding cites a rate of
5 between 11 kilograms per hectare per year and 20
6 kilograms per hectare per year as the level at which
7 significant additional growth is likely. It says that
8 some minimal invasion occurs at levels of between 4
9 kilograms and 5 kilograms per hectare per year.

10 So our suggestion is that one of those values
11 should be used. And perhaps 5 kilograms per hectare
12 per year is the appropriate one because I think that's
13 the one that staff cited in the Revised Staff
14 Assessment as a number that has been used in other
15 siting analyses.

16 CHAIRMAN DOUGLAS: Let me ask staff for your
17 response to that comment.

18 MS. BLAIR: This is Heather Blair. I do
19 agree that 5 perhaps is more appropriate but I didn't
20 use the number five as my significance threshold.
21 Studies have suggested that vegetation community
22 changes happen in the range of 5 kilograms per hectare
23 per year, however, we see 6.39 at the dunes. And one
24 look out there and you can see that, you know, noxious
25 weed invasion is a primary threat to the species. So

1 additional nitrogen fertilization would exacerbate the
2 impact. Any additional nitrogen deposition would
3 constitute a significant effect. So I suppose that 5
4 could be used there.

5 But I guess I have issue with the entire
6 sentence that begins with this. Basically it's trying
7 to say that take would occur because this numerical
8 threshold is being met. I made the determination that
9 take would not occur based on a review of the
10 definition of take in the Endangered Species Act. Take
11 includes harm. Harm is further defined to include
12 significant habitat modification or degradation that
13 results in death or injury to listed species by
14 significantly impairing behavioral patterns such as
15 breeding, feeding or sheltering. And that would not
16 occur, in my opinion.

17 So I think that you could say, you know,
18 moreover, the project would not either individually or
19 cumulatively cause an impermissible take of a protected
20 species under Section 9. It should be 9 not 10 -- of
21 the Federal Endangered Species Act. And you could say,
22 you know, this is because. And as I stated in my RSA,
23 the definition of harm is not met. Is that clear?
24 It's not so much leaning on this numerical threshold
25 but instead it doesn't meet the definition of harm or

1 take under the Endangered Species Act.

2 CHAIRMAN DOUGLAS: Thank you for your
3 comments. I'm giving applicant a moment to respond.

4 COMMISSIONER EGGERT: Actually just a
5 clarifying question, maybe. So is it an interpretation
6 of the level of a 5 as a cumulative total versus an
7 incremental? Is that the -- I mean, that's sort of a
8 baseline.

9 MS. BLAIR: Yeah. I mean, it's been cited in
10 scientific studies, like I said. These community
11 effects occur at 5.

12 COMMISSIONER EGGERT: Okay.

13 MS. BLAIR: That has been a baseline used in
14 past siting cases as, you know, assessing effects. It
15 was used by the applicant in their analysis. The point
16 being that we're well above 5, you know, we're into the
17 6 range.

18 And I also wanted to clarify that it states
19 here, it suggests that staff's analysis was possibly
20 overly conservative because we did not include the NO_x
21 as offsets and we didn't include retirement of unit 6
22 and 7.

23 It is true that those components were not
24 integrated into the model used by the applicant that
25 provided that number that was 0.045. However, I did

1 consider it in my overall analysis by conferring with
2 air quality staff.

3 And based on those discussions I learned that
4 the NO_x offsets would not adequately mitigate
5 deposition at the refuge, site specific, in particular
6 because those offsets are both temporally and spatially
7 variable. They were realized, in some cases, in 1983
8 by the shutdowns of projects that occurred between 1983
9 and 1994. So that doesn't directly benefit the
10 refuge. In addition, NO_x offsets do not address
11 ammonia, NH₃, which is a direct contributor to nitrogen
12 deposition.

13 Also with regard to the retirement of Units 6
14 and 7. As you know, those are less efficient. They
15 are higher stacks that emit a hotter plume. I'm not an
16 air quality engineer but it is my understanding that
17 that plume is higher and travels further. So the
18 retirement of that would benefit probably the Central
19 Valley more than the refuge, which is quite close to
20 those stacks. So I wanted to let you know that I did,
21 in fact, consider that.

22 CHAIRMAN DOUGLAS: Thank you, that's a
23 helpful clarification.

24 Turning back to applicant. What is your
25 response to staff's suggestion of the language?

1 MS. COTTLE: I was going to repeat it to make
2 sure that I understand it. As I understand the
3 proposal, the third sentence of that paragraph would
4 now read:

5 "This is because the definition of
6 harm and the definition of take would
7 not be satisfied under regulations
8 implementing the Endangered Species
9 Act."

10 MS. BLAIR: I think that's accurate, yeah.

11 MS. COTTLE: Okay. With that change I think
12 we would be comfortable just deleting the whole
13 sentence. I think staff has identified an area where
14 the applicant and the staff didn't completely agree in
15 the analysis. We thought there should be some benefit
16 from the offsets.

17 We were less concerned about giving credit,
18 frankly, to the retirement of the Contra Costa units
19 because, you know, throughout the analysis in the staff
20 analysis and frankly, our analysis, we haven't really
21 given credit to those retirements because we're not
22 able to ever accept a permit limit requiring it. So I
23 do think this is one area where we had a little bit of
24 a difference of agreement.

25 But certainly I think the ultimate conclusion

1 we agree with, that it doesn't trigger the definition
2 of harm that's part of take under the applicable
3 regulations. So I think that change would be
4 acceptable.

5 CHAIRMAN DOUGLAS: Thank you. Hearing
6 Officer Kramer, do you have any comments on this? Do
7 you have that down?

8 HEARING OFFICER KRAMER: No. I was going to
9 crib from her during a moment.

10 CHAIRMAN DOUGLAS: All right, very well.

11 Applicant, do you have any other comments on
12 the errata?

13 MS. COTTLE: I have stated all of our
14 comments. And we do have a little bit of language that
15 we're working up to try and address the air quality
16 condition but I've identified all of our comments now.

17 HEARING OFFICER KRAMER: I can add one
18 clarification. Back on page 2 of the errata, the
19 insert to go on page 6. That should be under the
20 heading Project Construction instead of Project
21 Description. I think that will find a home for that.

22 MS. COTTLE: And I did find one more that I
23 missed.

24 CHAIRMAN DOUGLAS: Go ahead.

25 MS. COTTLE: On page 6 of the errata, the

1 very last sentence. Actually it's the parenthetical,
2 the last full sentence that says:

3 "We also note that Section 7 of the
4 ESA does not apply here because that
5 section applies only to activities
6 directly carried out by ..."

7 We think we need to insert the word "federal"
8 there.

9 "... federal agencies, but not to
10 activities simply approved by ..."
11 Insert "state agencies as we approve MLGS
12 here."

13 CHAIRMAN DOUGLAS: Thank you. Obviously
14 that's a good clarification. I'll turn to staff now.
15 But if you find that you have more comments you, of
16 course, will have another opportunity.

17 Staff, could you raise issues that you see in
18 the errata.

19 MS. WILLIS: I think the only changes that we
20 had were in that Air Quality section, so that was it.
21 And the additions that Heather just made.

22 CHAIRMAN DOUGLAS: In the Air Quality section
23 that we deleted or the Air Quality section we changed,
24 that was modified?

25 MS. WILLIS: The Air Quality section we

1 changed. The page 44.

2 CHAIRMAN DOUGLAS: Got it.

3 All right, we will go to public comment at
4 this point. Certainly after public comment if upon
5 reviewing the errata there are other issues you'd like
6 to raise you'll have an opportunity.

7 I have two blue cards indicating members of
8 the public who are on-line. The first one is from Greg
9 Feere, Building and Construction Council.

10 MR. FEERE: Can I speak?

11 CHAIRMAN DOUGLAS: Please, go ahead.

12 MR. FEERE: Good evening, members of the
13 Energy Commission. My name is Greg Feere, I'm the
14 Chief Executive Officer for the Contra Costa Building
15 and Construction Trades Council. We are made up of 30
16 construction trades and approximately 35,000 building
17 trades men and women, approximately 30 to 35 percent
18 unfortunately are unemployed. I actually live within a
19 mile and a half of the proposed facility of Marsh
20 Landing.

21 You know, we are overwhelmingly in support of
22 this project. I have attended numerous meetings in
23 regard to the project and everyone from our two
24 Congressional leaders, Congressman George Miller,
25 Congressman John Garamendi, State Senator Mark

1 DeSaulnier, Assemblyman Tom Torlakson, our Supervisor
2 Federal Glover, and the Mayor and the Council from the
3 Antioch City Council have overwhelmingly come out in
4 support for the project. I have never heard one voice
5 of opposition in all the meetings that I have attended.

6 I'm a little bit concerned that Mr. Simpson
7 has some concerns about the project. And quite frankly
8 I think he looks at it as just a power plant. And in
9 my view we look at it as really hope and opportunity
10 and economic well-being for the city of Antioch.

11 We have so many people unemployed right now.
12 We are in what you'd call not a recession, we're in a
13 construction depression. So this project, what it does
14 is it really means hope and opportunity for a lot of
15 local families. Hundreds of workers are going to be
16 able to be employed on this project.

17 And what it also means is that people that
18 are on the edge right now, you know, have an
19 opportunity to save their house from going into
20 foreclosure or having their car repossessed. Or being
21 able to, you know, simple things like affording, you
22 know, books and tuition for their kids to go to school.

23 That's the kind of hope and opportunity that this
24 project brings; and allowing it to go forward is
25 probably the best thing that could ever happen.

1 At one of the previous meetings that I spoke
2 at I said the best thing you could ever give a worker
3 before Christmas is a job. And it's the best present
4 that you could ever give anybody and they're struggling
5 right now.

6 And so, you know, to put it short and sweet,
7 hope and opportunity is really in your hands. And I
8 would hope that you would give this project your
9 blessing and give us an opportunity to go forward and
10 bring some economic stability back to our community.

11 The project, I think it has all the benefits,
12 the social and economic benefits, the community
13 benefits. Hopefully we won't lay off any police in the
14 Antioch City Council, but this also would be of
15 assistance.

16 So I would hope you'd give this opportunity
17 and allow the project to go forward in a timely manner
18 and give it your support. Thank you very much.

19 CHAIRMAN DOUGLAS: Thank you very much for
20 your comments.

21 The second card I have is Rob Simpson. Are
22 you on the line?

23 MR. SIMPSON: Can you hear me?

24 CHAIRMAN DOUGLAS: Yes we can, please go
25 ahead.

1 MR. SIMPSON: Oh good, thank you. A couple
2 of things that came up earlier. I appreciate the
3 comments of the last speaker and it is also my hope
4 that the community gets jobs.

5 I think there are some undisclosed additional
6 jobs in the health care industry that will be created
7 from this project. We already have the highest asthma
8 rate in the county in that, in that neighborhood, in
9 several counties in fact.

10 A lot more jobs could be created with
11 renewable resources in that community, long-term jobs
12 that create an opportunity for a redistribution of
13 wealth from the power plant developers to the affected
14 community.

15 So my opposition to this project is not
16 opposition to jobs. My opposition is to the health
17 effects of this plant and the effects on the biological
18 resources. This plant, according to Fish and Wildlife
19 and the California Department of Fish and Game, will
20 cause a negative effect on the adjacent biological
21 resources.

22 Staff contended that there's no provision in
23 the Warren-Alquist Act that a Final Staff Assessment is
24 required. 1747 of the Warren-Alquist Act requires a
25 Final Staff Assessment, that didn't occur here.

1 The applicant in their comments, their
2 petition against Mr. Sarvey's intervention, wrote that
3 Mr. Sarvey's appeal as an agenda item at this late date
4 would violate the notice requirements of the Bagley-
5 Keene Open Meeting Act of 2004, which requires the
6 Commission to provide 10 days notice of items it will
7 consider at a Business Meeting. Neither of the
8 exceptions to the ten day notice requirement provided
9 under the Government Code applies.

10 And the contention that, well, it's okay that
11 we provided notice of some other plant that was
12 previously planned here because it was bigger. It's
13 not the size of the plant, it's the impacts of the
14 plant that are important. The impacts of a simple-
15 cycle facility compared to a combined cycle facility
16 are higher. There are higher impacts to this plant
17 than the previously proposed plant in relation to
18 greenhouse gas effects, in relation to pollution
19 effects in the immediate communities. And those things
20 haven't been considered.

21 I received this errata at 5:27 for this 5:30
22 meeting. It's inadequate time for the public to review
23 and effectively comment on what's going on here.

24 To approve this plant it should include an
25 override of the California Department of Fish and Game

1 and the US Fish and Wildlife's opinions that this plant
2 will involve a take of protected species. And the idea
3 that you're going to give them another \$20,000, there's
4 no basis that \$2,000 or \$20,000 is going to, is going
5 to protect the species. There's no study that says,
6 okay, well, if \$2,000 is good \$20,000 is better.
7 There's nothing that says this is, this is going to be
8 okay.

9 So those are my and the Sierra Club's
10 comments for now. Thank you.

11 CHAIRMAN DOUGLAS: Thank you, Mr. Simpson.

12 Let me ask staff and applicant if either of
13 you have other additions or changes to the errata or
14 issues with the errata that you would like to raise?

15 MS. COTTLE: We have some proposed language
16 for the new insertion on page 44. And one, I guess one
17 additional -- it's not a change. On page 7 of the
18 errata where it references page 76, Conclusion of Law 4
19 and shows changes in bold and underline text to BIO-8.

20 The third paragraph, which is the last paragraph shown
21 on page 7. That's all new text so we think it should
22 just be in bold and underlined so it's delineated as
23 new text.

24 Other than that we just have our proposed
25 replacement language for the change on page 44, which

1 is on page 5 of the errata. The new language would
2 read:

3 "Our Air Quality analysis properly
4 determined that a Prevention of
5 Significant Deterioration permit was not
6 required. Despite assertions by
7 commenters that the Gateway facility
8 and/or the Contra Costa Power Plant are
9 under 'common control' with the MLGS,
10 both the Air District and staff
11 concluded that the MLGS is a separate
12 facility from both Gateway and the
13 Contra Costa Power Plant for the
14 purposes of PSD permitting. The Gateway
15 and the Contra Costa Power Plant
16 facilities were appropriately considered
17 in the cumulative Air Quality analysis."

18 CHAIRMAN DOUGLAS: I'm going to give staff a
19 moment to respond. Go ahead.

20 MS. WILLIS: We have already reviewed that
21 and we are fine with that change.

22 CHAIRMAN DOUGLAS: All right. Hearing
23 Officer Kramer, did you get that?

24 HEARING OFFICER KRAMER: I will get it from
25 her.

1 CHAIRMAN DOUGLAS: All right. Anything else?

2 HEARING OFFICER KRAMER: I'm a little bit
3 unclear about what's happening to the language at the
4 bottom of page 6 of the errata. Perhaps Ms. Cottle
5 could read her suggestion again if that's, if that's
6 where we're going.

7 MS. COTTLE: So in the inserted paragraph
8 that would be added to page 71. The third sentence of
9 that new paragraph would read -- I'm sorry, it's the
10 fourth paragraph, thank you. The fourth paragraph,
11 fourth sentence of the new paragraph would read, quote:

12 "This is because the definition of
13 'harm' under the regulations implementing
14 the Endangered Species Act is not met here."

15 HEARING OFFICER KRAMER: Thank you.

16 MS. COTTLE: We also would note that the
17 third sentence of that same paragraph, the reference to
18 Section 10 of the Endangered Species Act, should
19 actually refer to Section 9.

20 CHAIRMAN DOUGLAS: Right. We had already
21 noted that.

22 MR. LEVY: Is it the proposal to strike the
23 rest of the paragraph?

24 MS. COTTLE: The proposal is to use the
25 sentence I read instead of what appears here as the

1 fourth sentence in that paragraph. So strike the
2 entire fourth sentence and replace it with the sentence
3 I read.

4 HEARING OFFICER KRAMER: But keep the note
5 about Section 7?

6 MS. COTTLE: Yes, with the insertion that it
7 only applies to activities carried out by federal
8 agencies but not to activities simply approved by state
9 agencies.

10 MR. LEVY: So you're striking all the way to,
11 significant environmental impact, close paren, period?

12 MS. COTTLE: That is correct.

13 VICE CHAIRMAN BOYD: We have a trick question
14 for you but I'll let Commissioner Eggert --

15 COMMISSIONER EGGERT: I was just curious if
16 the hanging sentence off the end there was needed or
17 was intended to --

18 HEARING OFFICER KRAMER: I think it picks up
19 in the body of the original document, so the --

20 COMMISSIONER EGGERT: Dot-dot-dot.

21 VICE CHAIRMAN BOYD: At least give us the
22 dot-dot-dots.

23 MR. MONASMITH: That's correct.

24 HEARING OFFICER KRAMER: We could reproduce
25 it in the final so that we show more of the context if

1 that's helpful. But I think as a word problem this is
2 supposed to be, take this and drop it in to what's
3 described in the header there.

4 MR. LEVY: Essentially this replaces the
5 sentence:

6 "Given the parties' agreement on
7 Condition of Certification BIO-8, we do
8 not find it necessary to determine
9 whether or not a significant adverse
10 impact would exist absent staff's
11 proposed mitigation."

12 Strike the word "we" which is where you would
13 start here at the bottom of the insert.

14 "In sum, we find that the
15 conditions of certification recommended
16 by staff and accepted by Mirant Marsh
17 Landing will adequately mitigate ..." et
18 cetera, et cetera.

19 CHAIRMAN DOUGLAS: All right, thank you,
20 Mr. Levy. I think we're clear on how that sentence
21 would read. And I think Hearing Officer Kramer now has
22 reviewed all of the proposed changes with the parties.

23 This morning we had a very long discussion of
24 issues raised in this project by -- particularly some
25 of the late comments that came in, very late comments.

1 And so the Committee has drafted errata to address
2 what we felt we wanted to address based on the
3 comments. Commissioner Boyd is the Presiding Member of
4 the Committee. Would you like to make any comments of
5 where we are now?

6 VICE CHAIRMAN BOYD: Well I would. This has
7 been an interesting experience today and somewhat
8 reflective of the problems facing this organization and
9 the workload. Made particularly interesting by the
10 aforementioned very late entry of seemingly very
11 significant issues.

12 But as we determined throughout the course of
13 this lengthy discussion today the issues that were
14 raised indeed had been addressed by the staff, had been
15 addressed in various briefs from various parties and
16 had indeed been addressed in the PMPD that was issued
17 that gives rise to today's hearing.

18 I have throughout the course of the day
19 become extremely satisfied, sometimes earlier in some
20 cases, later in others, that the issues that have been
21 raised were indeed addressed, addressed properly and
22 have now been clarified. And let's just say emphasized
23 by the errata, which puts some additional emphasis in
24 substance to some of the meanings that some people were
25 having difficulty totally understanding or translating

1 into the fact that they were addressed in the staff's
2 analysis and in the PMPD.

3 So I thank everybody for the work you have
4 all put in on this. This has proven to be one of the
5 more interesting natural gas-fired power plant cases we
6 have seen in a while. We haven't seen many in a while.

7 But I won't take you through some of the history that
8 I've experienced of four and five year siting cases for
9 natural gas plants in the early years of my career
10 here.

11 I find myself now at this late hour very
12 pleased that the record was well established, now
13 strongly reaffirmed. And as the Presiding Member of
14 this Committee I'm prepared to recommend approval of
15 the project as reflected in the Presiding Member's
16 Proposed Decision as modified by the errata to that
17 proposed decision that we have just completed and
18 hopefully verified as now accurate.

19 And I thank my fellow Commissioners for their
20 indulgence. I know you'll get us back when you bring
21 forward one of your cases. But nonetheless, it has
22 been a long and trying day in the middle of multiple
23 cases and I appreciate patience, but it is going to
24 take this kind of work to move cases when we have so
25 many occurring together on a daily basis. You know, I

1 for one will say, I owe you one. Enough said.

2 COMMISSIONER BYRON: Commissioner, I think
3 it's unfortunate that these late comment letters become
4 the focus of all of our attention here and the staff's.

5 It detracts from all their work and the Committee's
6 work in bringing this forward to the Commission.

7 I too am satisfied with the way this has
8 closed out today and I would like to thank all of the
9 staff and parties that remained here this evening so
10 that we could get through this. Appreciate it very
11 much. Commissioner, I'm prepared to take this to a
12 vote.

13 VICE CHAIRMAN BOYD: Well I believe I made a
14 motion; we'll wait for a second.

15 COMMISSIONER BYRON: I will second it.

16 VICE CHAIRMAN BOYD: A few comments are
17 probably forthcoming from others.

18 CHAIRMAN DOUGLAS: We have a motion and a
19 second. Any comments before the vote? Commissioner
20 Eggert?

21 COMMISSIONER EGGERT: No, I just, I would say
22 that I'm satisfied with the discussion, knowing very
23 little about some of the issues that were brought up
24 this morning. Now I feel I have a fairly comprehensive
25 understanding of why they were raised and what's been

1 done to address them so I'm ready for a vote.

2 CHAIRMAN DOUGLAS: Thank you, Commissioner.
3 Commissioner Weisenmiller.

4 COMMISSIONER WEISENMILLER: I have a few
5 comments. First I want to really address the question
6 of the so-called rush to judgment. As you know the
7 application came in in May of 2008, it was amended in
8 September of 2009. Certainly this has not been a
9 quick, simple process but a very detailed, thorough
10 review.

11 I think certainly I support the project. The
12 basis for my support: First, obviously there's state
13 statute, the Nuñez bill, which really gives some
14 preference to repowers, re-modernizations using
15 brownfield projects like this one does. And again, I
16 think we want to be sending signals generally to
17 applicants to again be trying to use as we were saying
18 earlier -- it's sort of disturbed land. In here using
19 brownfield projects.

20 I think certainly to the extent that this is
21 moving towards eliminating once-through cooling in the
22 state that that's a very important staff.

23 I think also the flexibility of the project.
24 As we're going to get to 33 percent renewables and
25 that will require that the system be able to deal with

1 that on the integration level. I mean, just thinking
2 of the daily needs on the system as wind production is
3 falling off in the morning and loads are soaring up.
4 We really need this type of flexible resources to
5 enable us to get the renewables that we need to reduce
6 greenhouse gas emissions. So this is certainly part of
7 that package.

8 And finally, having the jobs. We need jobs
9 in California now. So certainly I think this is a very
10 good project and certainly applaud the Commission
11 Committee for its work on it.

12 CHAIRMAN DOUGLAS: Thank you, Commissioner
13 Weisenmiller.

14 We have a motion and a second. All in favor?
15 (Ayes.)

16 The project is approved. Thank you,
17 applicant, staff, the members of the public who
18 participated in this proceeding. And thank you to the
19 Commission for sitting through what at some times felt
20 like a workshop but we needed to move through.

21 VICE CHAIRMAN BOYD: Special thanks to the
22 Chairwoman who also was my associate member and has to
23 be associate member of a siting committee as well as
24 the responsibilities of being the chair of this entire
25 organization.

1 CHAIRMAN DOUGLAS: Thank you.

2 VICE CHAIRMAN BOYD: I know this was a real
3 stress.

4 CHAIRMAN DOUGLAS: Thank you, Commissioner
5 Boyd.

6 I was gong to say a special thanks to the
7 Calico Committee, which now gets the room back.

8 COMMISSIONER EGGERT: Thank you very much,
9 Madam Chair.

10 And for those of you here for Calico, we'll
11 reconvene in a couple of minutes.

12 (Whereupon, at 6:43 p.m., the Business Meeting was
13 adjourned.)

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CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing Reconvened California Energy Commission Business Meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, nor in any way interested in outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of August, 2010.

JOHN COTA

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

August 30, 2010

RAMONA COTA, CERT**478