

STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION AND
DEVELOPMENT COMISSION

In the Matter of the) Docket No. 01-AFC-21C
)
Tesla Power Plant Extension) Robert Sarvey's Rebuttal Testimony
) Resume, Declaration and Exhibit List

REBUTTAL TESTIMONY TO PG&E RESPONSE TO QUESTION 3(a)

The Tesla Project is not "Shovel Ready"

PG&E states on page 4 of its testimony that the Tesla Project is a benefit since it is a shovel ready project that can be constructed quickly. Assuming a reliability need was identified PG&E would have to go to the CPUC to obtain a Certificate of Public Convenience and Necessity (CPCN). In PG&E's recent application for approval of the Tesla Project CPUC proceeding No. 08-07-018, PG&E requested an expedited decision that would have provided a fast track approval at the CPUC of 6 months. It would likely take much more time considering the number of parties who protested the PG&E application in 08-07-018. Once that approval is granted PG&E would then need to amend its license with the CEC assuming they decided to build an 1169 MW project. PG&E's current testimony by Jeremy Salamy states on page 11 that the estimated time to renew the permit with an amendment would be 6 to 12 months. PG&E will need 12 to 24 months just to amend the license and obtain the CPUC approval. A shovel ready project would be a project that had all the necessary material government approvals to begin construction immediately when a reliability need is identified. Since PG&E does not intend to build an 1169 MW project they should file a new AFC for the size project they intend to build as it would take about the same amount of time.

PG&E is already asking the ratepayers to support 4.9 million dollars in expenditures it made in its failed attempt to receive a CPCN.

PG&E states in its testimony on page 4 that the project can remain in a shovel ready state at a low cost. PG&E has recently filed for recovery of \$4.9 million dollars from the ratepayers for expenses from the Tesla Project as “**abandoned project**” cost. PG&E’s application states:

“In D.08-11-004, the Commission dismissed PG&E’s Application 08-07-018 for approval of the proposed Tesla Generating Station, a 560-megawatt natural gas fired combined-cycle power plant to be located in Eastern Alameda County. The Commission stated that “PG&E has appropriate proceedings in which to present its case for [abandoned project] cost recovery.” (D.08-11-004, p. 22). In this Application, PG&E is requesting the recovery of \$4.9 million dollars of expense as “abandoned project” cost.”¹

REBUTTAL TESTIMONY TO PG&E RESPONSE TO QUESTION 3 (b)

Extending the construction date for the Tesla Project damages current attempts to develop a competitive market and harms ratepayers and the general public.

Because of the current method of procurement at the CPUC PG&E has access to all of the confidential offers. PG&E performs the analysis to determine the market value and choose which projects should be selected for long term contracts. Other market participants are not allowed access to PG&E’s information which demonstrates the cost effectiveness of the projects. PG&E can evaluate its own projects over a useful life of 30 years. The other offers submitted by independent generators are limited to contracts of 10 years in duration. Allowing PG&E to determine who gets a contract to construct a power plant is already skewed without PG&E having a project it owns or can sell to another developer and easily demonstrate that their offer is better than the other offers in the long term procurement. As long as PG&E is in possession of a license for 1169 MW it is a disincentive for other independent energy producers to make the substantial investment in participating in the procurement process

¹ <http://docs.cpuc.ca.gov/efile/A/101809.pdf> page 5

and licensing the project with the CEC knowing that PG&E has a license which if approved would eliminate all other competitors from the process.

Allowing PG&E to hold the Tesla License by extending the construction deadline at the CEC will allow PG&E to continue to assert emergency situations and unique circumstances to gain approval to build the Tesla Power Plant. This will damage the current attempts to establish a competitive market. As The California Energy Commission stated in their comments in CPUC proceeding 08-07-018 :

“The Energy Commission has serious concerns that PG&E's CPCN application for the Tesla Power Project is the most recent example of generating resources acquisitions being characterized by CPUC-jurisdictional utilities as "unique circumstances" in order to justify acquisition outside of the competitive RFO process. Each of the utilities over the years has acquired power plants outside of the formal solicitation process:

- *Southern California Edison (SCE) signed a power purchase agreement with an affiliate company for the 1,054MW Mountain View Project in a one-on-one negotiated agreement approved by the CPUC.*
- *San Diego Gas & Electric (SDG&E) acquired two turn-key projects, the 550-MW Palomar Project and the 45-MW Ramco Project.*
- *PG&E acquired the rights to construct the partially-completed 530 MW Contra Costa 8 Project as part of the Mirant settlement of claims from the 2000-2001 energy crisis.*
- *PG&E received approval for a Purchase and Sale Agreement for the Colusa Project that was to be developed by a power plant developer and purchased and operated by PG&E.*

*As the Energy Commission stated in the 2005 Integrated Energy Policy Report (IEPR), "...requiring the state's utilities to engage in long-term procurement now is the highest priority for California to ensure an affordable, reliable, safe, and environmentally sound electricity system." In order to maintain an efficient and viable competitive process necessary to support long-term procurement, it is critical that market participants have faith in that process, and that it not be circumvented unnecessarily. A white paper commissioned by the National Association of Regulatory Utility Commissioners stressed that the fairness and integrity of a procurement process is affected not only by the actions of the utility, but also by regulatory oversight of the procurement process: "...regulators should align their own procedures and actions to support the development of a competitive response. Regulators' own actions can positively - and in some cases negatively - affect the integrity and outcomes of a procurement process. Positive signals can arise, for example, by... enforcing elements of the procurement design that enhance the overall fairness and objectivity of the process and the integrity of the procurement results."*²

² <http://docs.cpuc.ca.gov/efile/RESP/87068.pdf> Exhibit 201

There is ample evidence that PG&E is seeking preemptive actions guised as reliability needs or “unique circumstances. If the CPUC had approved the first power train of 1169 MW Tesla project, then 1910 MW, or around 66% of PG&E’s completed or pending projects, would have been Utility Owned Generation. Of that total, between 1090 MW and 1747 MW was acquired through preemptive actions. Approving the construction extension for Tesla gives PG&E two chances to create unique circumstance and fill that void with the two 560 MW Tesla power trains.

Extending the construction deadline will put ratepayers at risk for existing project termination costs of 4.9 million dollars.

The competitive market and the ratepayers are also harmed by PG&E’s ability to ask the CPUC for ratepayer money to cover project development costs. As mentioned above PG&E is requesting 4.9 million dollars of ratepayer money for the Tesla Project as an **abandoned project cost**. This money has not been approved by the CPUC yet. PG&E in the current market structure should not be allowed to recover costs for a project which did not come to fruition. The other market participants such as Tierra Energy who sponsored the failed Eastshore Project were not allowed to ask the ratepayers for reimbursement for their costs. In the new competitive market environment PG&E should not be allowed a competitive advantage over other market participants. Extending the construction license for Tesla will allow PG&E to continue to request ratepayer funding for the Tesla Power Project.

Extending the construction deadline will put ratepayers at risk for 59 million dollars in Tesla Acquisition costs.

PG&E’s in its application 08-07-018 for a CPCN requested an interim decision granting project termination costs of 59 million dollars that it would incur should the Commission decline to grant a CPCN for the Tesla Generating Station. The commission stated in its decision:

“Typically the Commission does not consider interlocutory appeals or reexamine rulings issued in a proceeding. However, PG&E’s request for an interim decision granting recovery of any project termination costs that it may incur should the Commission decline to grant a CPCN for the Tesla Generating Station would, if approved, place ratepayers at risk of approximately \$59 million in termination costs before the issue of the reasonableness of the project came before the full Commission.⁷⁶ In light of this fact, it is reasonable for the Commission to examine on its own motion whether to reverse the ACR that denied the motions to dismiss.”³

According to PG&E’s testimony on page 6 “PG&E’s current plan is to have the project classified as “Plant Held for Future Use” in its 2011 CPUC General Rate Case. This will authorize PG&E to recover in rates the carrying costs associated with the asset until a decision is made about its development or disposition.” Denying the construction extension will prevent PG&E from classifying the project as plant held for future use and provide the CPUC with a reason to make PG&E shareholders responsible for acquisition and carrying costs rather than the ratepayers. If the construction extension is granted by the Commission additional costs will be incurred by PG&E which may be passed on to the ratepayers.

When independent power producers develop a new generating plant, they have to incur costs and make financial commitments. If the project is later cancelled, Independent power producers have no claim on ratepayer funds for reimbursement of the costs of the abandoned plant; the unrecovered costs are borne by the company’s shareholders.

PG&E’s has opposed other power producer’s efforts to construct projects creating unique circumstances.

The City and County of San Francisco alleged that PG&E actively opposed their two power projects.

³ <http://docs.cpuc.ca.gov/efile/PD/91226.pdf> page 16

PG&E should not be able to claim as an emergency justifying expedited treatment, a reliability situation it played a substantial role in creating. The Tesla application and supporting PG&E testimony portrays the reliability situation in PG&E's service area as approaching a crisis with impending catastrophic generation shortages beginning in 2012. PG&E actually includes as a factor supporting this outcome, the fact that two small power plants under development by the City are currently pending before, but have not yet been acted upon, by the San Francisco Board of Supervisors.

These representations are startling considering that PG&E undertook a concerted campaign to oppose development of two small City power plants, the San Francisco Electric Reliability Project, a 145 MW plant and a 48 MW plant at the San Francisco International Airport. Several of the almost weekly fliers distributed by PG&E at the time the City Board of Supervisors was actively considering the proposed City power plants are attached to this protest. They aver that additional fossil generation is not needed and that reliability needs can be met with energy efficiency and renewable resources. The City projects were slated for commercial operation by 2010, well before the 2012 deadline by which PG&E claims a critical reliability need for more generation will materialize. PG&E should not be allowed to actively and aggressively seek to defeat necessary projects proposed by other parties, and then use the resulting generation shortfalls to justify extraordinary procedures for approval of PG&E owned projects.⁴

PG&E engaged in marketing efforts to suppress the San Joaquin Valley Power Authority's attempt to build a combined cycle project in Parlier.

The San Joaquin Valley Power Authority attempted to build a combined cycle project in Parlier. PG&E used ratepayer money to oppose the project.⁵ PG&E's marketing efforts led the San Joaquin Valley Power authority to file a complaint with the state Public Utilities Commission in 2007, claiming PG&E broke state rules. "We probably somewhat naively felt neutral meant neutral and expected something far different from them," Orth said of PG&E. In a settlement of the PUC complaint, PG&E agreed to reveal the costs of its marketing efforts to oppose the authority's program: about \$2.5 million from May 2007 to January 2009.

PG&E failed to support projects as needed for reliability from the 2004 procurement process

⁴ <http://docs.cpuc.ca.gov/efile/P/86907.pdf> CCSF Protest Exhibit 202

⁵ <http://www.fresnobee.com/local/story/1515804.html>

In the Eastshore proceeding the applicant's attorney raised some significant issues with PG&E's request to approve the Tesla application:

13 And then the last issue that was raised
14 by Mr. Sarvey about the power purchase agreement.
15 That's right. We begged and pleaded to get a
16 decision out of you before those decisions had to
17 be made. Before millions of dollars were at stake
18 in agreeing to a power purchase agreement with
19 PG&E.

20 And we find it extremely troubling that
21 PG&E, who would never stand up in this proceeding
22 and say that this project was needed or necessary
23 to support the load, has now turned around and
24 filed an application to purchase the Tesla power
25 plant because there is such a need for energy in
the PG&E system by 2012.

2 We find that to be incredibly, you
3 know, double-sided on behalf of PG&E to say those
4 things. To make that claim in its filing with the
5 PUC that the power is absolutely necessary, it's
6 needed. That they are not going to make their
7 planning reserve margins or their planning reserve
8 margins are insufficient. Therefore they must
9 immediately receive approval to purchase and build
10 the Tesla power plant. When in this proceeding
11 they would never stand up, not once, and say that
12 this power was necessary. We find that incredibly
13 frustrating.⁶

A PG&E amendment would consume Commission Resources and Taxpayer Money.

The cost to file an AFC for an 1169 MW power plant is \$462,426 to cover the extensive Commission review of the project. If an amendment is filed for the Tesla Project the new analysis performed by Commission Staff and funded by the public would presumably be subject only to the annual compliance fee of \$15,000. As staff council stated on June 3 about an amendment, "It would be a rather substantial undertaking I think particularly in the area of air quality where we are especially constrained in terms of staff resources."⁷

⁶ http://www.energy.ca.gov/sitingcases/eastshore/documents/2008-07-21_TRANSCRIPT.PDF 97-99
http://www.energy.ca.gov/sitingcases/eastshore/documents/2007-11-26_TRANSCRIPT.PDF page 73 Galati

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REBUTTAL TESTIMONY TO PG&E RESPONSE TO QUESTION 3 (g)

Baseline conditions and regulations for the project have changed dramatically since the project was certified in 2004 making the project's environmental review stale.

Air Quality

The applicant's consultant has stated that he is not aware of any changes in the environmental baseline. Since 2001 the City of Tracy population has increased by 25%. This has led to a large increase in mobile and area source emissions. In FPL's amendment request to the CEC which is in this compliance docket FPL performed a PSD analysis of the project area.⁸ Over 31 major sources and 26 minor sources were identified for the PSD increment analysis. The maximum modeled 24-hour average PM10 increment consumption was 140 µg/m³, and the annual average PM10 increment consumption was 30 µg/m³.⁹ That analysis did not include two projects currently undergoing CEC review the expansion of the Tracy Peaker Plant¹⁰ and the construction of the Mariposa Energy Center.¹¹

Green house gas issues have emerged as an immediate concern of State Regulators. In 2004 when this project was analyzed no green house gas regulations had been approved.

Nitrogen deposition on native plants has become an important biological concern. This project's NOx and ammonia emissions must now be evaluated on the sensitive species in the project area.

On April 8, 2004 EPA's Regional Administrator signed a final rule that grants the State of California's request to reclassify the San Joaquin Valley from severe

⁸http://www.energy.ca.gov/sitingcases/tesla/compliance/amendment/TPP_Petition_for_Post_Cert_Amendments_Nov_2006.pdf page 10.

⁹http://www.energy.ca.gov/sitingcases/tesla/compliance/amendment/TPP_Petition_for_Post_Cert_Amendments_Nov_2006.pdf page 10.

¹⁰<http://www.energy.ca.gov/sitingcases/tracyexpansion/index.html>

¹¹<http://www.energy.ca.gov/sitingcases/mariposa/index.html>

to extreme for the national 1-hour ozone standard. EPA proposed the rule in February 2004 with a 30-day public comment period.¹²

In 2006, EPA revised the 24-hour PM 2.5 standard to 35 ug/u₃. Both the BAAQMD and the SJVUAPCD are in non compliance with the new standard. SJVUAPCD is in non compliance with the annual standard. The EPA finalized its regulations to implement the New Source Review (NSR) program for fine particulate matter on July 15, 2008. The project would need to be analyzed under the new standards.

The applicants AQMA with the SJVUAPCD was based on the location of the projects ERC's which the project owner no longer owns. A new AQMA analysis must be conducted and the costs to mitigate a ton of NO_x has increased from \$5,000 a ton to \$51,373 a ton. If the projects ERC's were in the same location as previously the project owner would owe \$3,282,734.¹³

Water supply

The applicant has had five years to secure a wastewater agreement with the City of Tracy. The applicant has failed to do so. The City of Tracy is currently negotiating with two power projects to supply treated wastewater.¹⁴ The City also has committed to supply wastewater for the Gateway Project in February of 2009.¹⁵ The City of Tracy has plans to establish a wetlands using their recycled water.

Soil and water condition 9 requires the project owner to negotiate a backup water supply form the City of Tracy. The city is currently experiencing cutbacks of their freshwater supplies and maybe unable to provide a backup water supply.¹⁶ Tracy will also have to perform an analysis pursuant to SB 610. A

¹² <http://www.epa.gov/region/air/sjvalley/#0404>

¹³ <http://www.energy.ca.gov/sitingcases/tracyexpansion/documents/applicant/2009-04>

[22 RESPONSE%20 TO PDOC TN-51290.PDF](#) page 7

¹³ http://www.ci.tracy.ca.us/uploads/fckeditor/File/city_council/agendas/2009/02/17/01d.pdf

¹⁵ http://www.ci.tracy.ca.us/uploads/smartsection/105_Full_Notice.pdf

¹⁶ http://www.ci.tracy.ca.us/uploads/fckeditor/File/city_council/agendas/2009/02/17/01b.pdf

large majority of the analysis that was conducted for this project revolved around the water supply. The project currently does not have one and a new water supply and a lengthy CEQA analysis may be needed.

The Environmental Analysis is Stale

Jeremy Salamy's testimony on page 10 states that he believes that the environmental analysis is not stale. Most of the analysis for this project was completed in April of 2003 over six years ago. Background conditions at the site have changed dramatically since the project was evaluated as evinced by the PSD increment analysis performed in November of 2006 which is in this compliance docket.¹⁷

The applicant is requesting a five year extension which if granted could lead to this project commencing construction 11 years after the initial analysis. Granting this construction extension will lead to some of the project being analyzed under the LORS of 2003 and the rest of the analysis being conducted under LORS in existence in 2014. This would certainly be the definition of a piecemeal analysis.

Conclusion

PG&E is asking the Commission to extend a license for an 1169 MW project that they have no intention of building. What they do intend to build is unclear. The applicant's attorney made it clear that they don't even know what the project size will be.¹⁸ PG&E estimates that the time to get approval for the amendment, the ATC, and the authority to construct will be about 6 to 12 months. It will also take PG&E about 6 to 12 months to get a CPCN to build the project once they decide exactly what it is they want to build. Their CPUC and CEC approval process will take 12 to 24 months. Clearly in this case a new AFC

¹⁷ http://www.energy.ca.gov/sitingcases/tesla/compliance/amendment/TPP_Petition_for_Post_Cert_Amendments_Nov_2006.pdf

¹⁸ Business Meeting RT 6/3/09 pages 26,27 lines 23-14

could be filed in this time frame which would accurately reflect the project description and the impacts from the project.

Resume of Robert Sarvey

Academic Background

BA Business Administration California State University Hayward 1975
MBA California State University Hayward 1985

Experience

San Joaquin Valley Air Pollution Control District Citizens Advisory Board Industry Representative: Analyzed proposed air quality regulations and made recommendations to the Governing Board for approval.

GWF Peaker Plant 01-AFC-16: Participated as an Intervenor in the project and helped negotiate and implement a 1.3 million dollar community benefits program. Successfully negotiated for the use of local emission reduction credits with GWF to offset local air quality impacts.

East Altamont Energy Center 01-AFC-14: Participated as an Intervenor and helped develop the conditions of certification for hazardous materials transportation, air quality, and worker safety and fire protection. Provided testimony for emergency response and air quality issues.

Tesla Power Project 01- AFC-04: Participated as an Intervenor and provided air quality testimony on local land use and air quality impacts. Participated in the development of the air quality mitigation for the project.

Modesto Irrigation District 03-SPEE-01: Participated as Intervenor and helped negotiate a \$300,000 air quality mitigation agreement between MID and the City of Ripon.

Los Esteros : 03-AFC-2 Participated as an Intervenor and also participated in air quality permitting with the BAAQMD. Responsible for lowering the projects permit limit for PM-10 emissions by 20%.

SFERP 4-AFC-01: Participated as an Intervenor and also participated in the FDOC evaluation. My comments to the BAAQM D resulted in the projects PM - 10 emission rate to be reduced from 3.0 pounds per hour to 2.5 pounds per hour by the District. Provided testimony on the air quality impacts of the project.

Long Beach Project: Provided the air quality analysis which was the basis for a settlement agreement reducing the projects NOx emissions from 3.5ppm to 2.5ppm.

ATC Explosive Testing at Site 300: Filed challenge to Authority to Construct for a permit to increase explosive testing at Site 300 a DOE facility above Tracy. The permit was to allow the DOE to increase outdoor explosions at the site from 100 pounds per charge to 300 pounds per charge and also grant an increased annual limit on explosions from 1,000 pounds of explosive to 8,000 pounds of explosives per year. Succeeded in getting the ATC revoked.

CPUC Proceeding C. 07-03-006: Intervened in proceeding and negotiated a settlement with PG&E to voluntarily revoke Resolution SU-58 which was the first pipeline safety waiver of GO 112-E granted in the State of California.

East shore Energy Center: 06-AFC-06 Intervened and provided air quality testimony and evidence of cancellation of Eastshore's power purchase agreement with PG&E.

Colusa Generating Station: 06-AFC-9 Participated as air quality consultant for Emerald Farms. Filed challenge to the PSD Permit.

CPUC Proceeding 08-07-018: Tesla Generating Station CPCN participated in proceeding which was dismissed due to motion by IEP. Reviewed all filings, filed protest, signed confidentiality agreement and reviewed all confidential testimony.

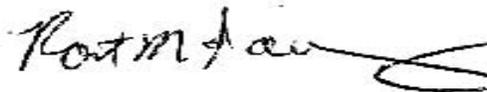
GWF Tracy Combined Cycle 08-AFC-07: Participated in negotiation of the Air Quality Mitigation Agreement with the San Joaquin Valley Air Pollution Control District and GWF.

**DECLARATION OF
Robert Sarvey, MBA, BS**

I Robert Sarvey declare as follows

- 1) I prepared the rebuttal testimony of Robert Sarvey on PG&E's Request for Extension of the Tesla Power Plant Certification.**
- 2) It is my professional opinion that the prepared testimony is valid and accurate with respect to the issues addressed therein.**
- 3) I am personally familiar with the facts and conclusions related in the testimony and if called as a witness could testify competently thereto.**
- 4) A copy of my professional qualifications is attached.**

I declare under penalty of perjury , under the laws of the State of California, that the forgoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on July 13, 2009 in Tracy, California.



Signed 7/13/09

Tesla Extension Exhibit List Sarvey

Exhibit 200 Rebuttal Testimony of Robert Sarvey

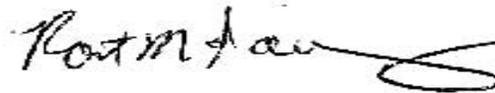
Exhibit 201 RESPONSE OF THE CALIFORNIA ENERGY COMMISSION TO THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY FOR EXPEDITED APPROVAL OF THE TESLA GENERATING STATION AND ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND REQUEST FOR INTERIM ORDER AUTHORIZING EARLY PROJECT COMMITMENT TO STABILIZE COSTS Application 08-07-018
(Filed July 18, 2008) <http://docs.cpuc.ca.gov/efile/RESP/87068.pdf>

Exhibit 202 PROTEST OF THE CITY AND COUNTY OF SAN FRANCISCO OF PACIFIC GAS AND ELECTRIC COMPANY'S APPLICATION FOR EXPEDITED APPROVAL OF THE TESLA GENERATING STATION Application No. 08-07-018 Filed 8-18-08 <http://docs.cpuc.ca.gov/efile/P/86907.pdf>

DECLARATION OF SERVICE

I, Robert Sarvey , declare that on July 13 , 2009, I served electronic copies of the attached, **Robert Sarvey's Rebuttal Testimony, Resume, Declaration and Exhibit List** , dated July 13 , 2009 to all parties on the proof of service list.. 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: [www.energy.ca.gov/sitingcases/tesla].

I declare under penalty of perjury that the foregoing is true and correct.



Robert Sarvey