STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of: Application for Certification for the Mariposa Energy Project	Docket No. 09-AFC-03

APPLICANT'S ISSUES STATEMENT

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STATE OF CALIFORNIA

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Pursuant to the Committee's Notice Of Mandatory Status Conference And Order, Dated September 13, 2010, the Applicant, Mariposa Energy, LLC ("Mariposa"), hereby submits this Issues Statement. The Applicant's Issues Statement (1) recommends a proposed schedule for conducting the certification process up to and including the business meeting, and (2) explains the Applicant's position that the Committee should dispense with the Preliminary Staff Assessment and Final Staff Assessment, and, instead, proceed by way of a single Staff Assessment.

I. Background

As the California Energy Commission stated in the 2007 Integrated Energy Policy Report, "Reliable electricity service requires that the state must have enough electricity generation capacity to cover load and reserves during peak demand periods."[1] To meet the needs for adequate generation capacity identified by the California Energy Commission's 2007 Demand Forecast, in D.07-12-052 the California Public Utilities Commission authorized PG&E to procure 800 to 1,200 MWs of new capacity by 2015 and authorized PG&E to issue requests for offers (RFOs) so as to obtain and execute long-term PPAs for this new capacity.[2] From the resources bid into the LTRFO, PG&E selected five projects, one of which is the Mariposa Energy Project.

[1] 2007 IEPR, p. 40.
[2] D.07-12-052

In D.09-10-017, the CPUC approved the Power Purchase Agreement ("PPA") for the Mariposa Energy Project. The CPUC concluded that the Mariposa Energy Project will contribute toward the range of need previously authorized in D.07-12-052. The CPUC concluded that because the Mariposa Energy Project is a dispatchable peaking power plant with quick start and spinning reserve capabilities, it would therefore provide operational flexibility to provide "firming" for intermittent renewable resources. Thus, while the Mariposa Energy Project is a gas-fired project, it is most certainly an integral link in PG&E's overall renewable resource goals, as established by this Commission and the CPUC, safeguarding system reliability by providing generating capacity identified in the CEC's 2007 Demand Forecast.

There is also an urgency for Mariposa. The commercial operations date for the Mariposa Energy Project under the PPA is July 1, 2012, requiring the Applicant to order the major equipment and commence detailed engineering by December 2010.

Mariposa has acted consistent with this urgency. Specifically, concurrent with the CPUC's review of the Mariposa Energy Project Power Purchase Agreement, Mariposa filed an Application for Certification with this Commission on June 16, 2009. The Application was deemed data adequate on August 26, 2009.

Mariposa has also proceeded diligently to complete arrangements for interconnection to the PG&E system. The Project's Phase 2 interconnection study is complete, and Mariposa is finalizing the terms of the LGIA.

After the Mariposa Energy Project Application was deemed data adequate, the Applicant proceeded diligently to ensure that the Commission Staff and other interested agencies received all of the information they needed to review this Project. The Applicant filed a complete Application with the Bay Area Air Quality Management District ("BAAQMD"), concurrent with

the filing of the AFC. As of June 18, 2010, the Staff had all of the information it required to prepare the Preliminary Staff Assessment, except for the Preliminary Determination of Compliance ("PDOC"). Unfortunately, despite the best efforts of the Applicant, the BAAQMD took an unusually long time to issue the PDOC for the Mariposa Project. The PDOC was finally released on August 18, 2010, one year after the application was deemed complete by the BAAQMD.[3] Due to the delay in issuance of the PDOC, the Staff has not yet issued the Preliminary Staff Assessment. However, having now received the PDOC, which finds compliance with applicable LORS and affects only one or two disciplines in the Staff's analyses, the Staff nevertheless estimates the issuance of the Preliminary Staff Assessment on October 20, 2010, some eight weeks after receipt of the PDOC.

Although the PDOC was not issued in accordance with the Commission's timeline for processing an AFC or the District's regulations,[4] the Applicant has worked very hard to use the time-period of the BAAQMD's delay to identify and resolve any outstanding issues of potential controversy relating to the AFC. The Applicant has addressed and resolved potential concerns that may have been raised by the San Joaquin Valley Air Pollution Control District,[5] Alameda County and Contra Costa County. As a result, the Project is supported by a wide range of affected public agencies and public officials.

II. <u>The Need for Timely Approval</u>

The Mariposa Energy Project is one of a very select number of new energy projects that PG&E is relying upon to meet its resource needs. Because of PG&E's critical need to bring new

[3] The MEP air permit application was deemed complete on July 9, 2009.
[4] Bay Area Air Quality Management District Regulation 2, Rule 3, Section 403 stipulates that a PDOC be issued within 180 days of accepting an AFC as complete.
[5] Mariposa Energy LLC Peaking Power Plant Project Air Quality Mitigation Agreement with the San Joaquin Valley Air Pollution Control District, December 17, 2009.[5]

dispatchable resources on line by the summer of 2012, the Mariposa Power Purchase Agreement imposes a commercial operation date of July 1, 2012. To meet this date, the Applicant must order major equipment and commence detailed engineering by December 2010.

When the Applicant entered into the PPA, the Applicant and PG&E prudently assumed that the Commission might not complete processing of this AFC within the 12 month period required by Statute. Instead, PG&E and the Applicant assumed that the Commission might take up to 18 months between the filing of the AFC and a final decision in December 2010. Due to circumstances outside of the control of the Applicant, the BAAQMD's delay in issuing the PDOC now puts a decision by December 2010 in jeopardy.

The consequence of the CEC not issuing timely approval of the Mariposa Energy Project's AFC is that PG&E may not have sufficient resources in the summer of 2012 to meet its planning reserve margins in support of its Renewable Portfolio Standard ("RPS") and Greenhouse gas ("GHG") goals. As we explained at the informational hearing and site visit, four of PG&E's long-term RFO projects representing 1,093 megawatts have been delayed or terminated. Without these projects the 2012 planning reserve margin will drop from 20.6 percent to 16.3 percent which is below PG&E's 17 percent target. Without the Mariposa Energy Project on line by July 1, 2012, this planning reserve margin will drop even further.

The Commission knows from the experience of overseeing the construction of many gas-fired plants that the typical construction schedule is 18 months. While the Applicant can at some considerable expense improve this schedule slightly, the Applicant will need to order major equipment and commence detailed engineering no later than December 2010, in order to meet the commercial operation date of July 1, 2012.

Approximately a year ago, the Commission committed to licensing as many renewable energy projects as possible by the fall of 2010, in order for these projects to qualify for special federal funding incentives that expire at the end of 2010. The Commission has met this commitment by the hard work and dedication of its staff, by working efficiently and creatively to find faster ways of processing applications without sacrificing the quality of review and by cutting through bureaucratic constraints and needless red tape.

The need of the Mariposa Energy Project for a Commission decision by the end of 2010 is as real and as vital as the deadlines faced by the renewable projects. As PG&E stated in its application for approval of the Mariposa PPA, "The MEP is a critical element in PG&E's efforts to acquire dispatchable and operationally flexible resources to meet load variations and to integrate increasing amounts of intermittent resources in PG&E's portfolio." Given the reliability benefits of fast-starting resources like the Mariposa Project and the system-wide need for more such fast-starting units to balance intermittent resources in real time, the Mariposa Energy Project and the Commission's continuing efforts to certify renewable resources are inextricably linked.

Given this clear linkage, the Applicant respectfully requests that the Commission give the timely completion of this licensing proceeding the same priority as the currently pending renewable projects. The Applicant also requests that the Committee approach the schedule for this Application with the same creativity and efficiency that it has applied to other recently completed renewable and non-renewable projects such as the Marsh Landing Generating Station ("Marsh Landing").

III. <u>The Benefits of a Single Staff Assessment</u>

The Applicant is very pleased to see that the Staff has proposed the issuance of a single Staff Assessment. The Commission's rules of Practice and Procedure require the issuance of a

Staff Assessment. The rules do not require a Preliminary Staff Assessment prior to the publication of the Staff Assessment. Over the 35 years of processing applications, a custom has developed whereby in many cases the Staff publishes a Preliminary Staff Assessment, receives comment on the Preliminary draft, and then issues its Final Staff Assessment.

However, in a significant number of cases since 2000, the Staff has not issued a Preliminary Staff Assessment, but has instead issued a single Staff Assessment. This single Staff Assessment is often supplemented by a Supplemental Staff Assessment, an Addendum to the Staff Assessment or a Revised Staff Assessment.

A single Staff Assessment has been issued in at least 13 siting cases since 2000. (Please see Table 3). While the circumstances of each case are slightly different, it is clear that the single Staff Assessment is most commonly issued where (1) there is a need to issue a Commission decision expeditiously,[6] and (2) where there are few, if any, substantive issues that are likely to be disputed between the Applicant and Staff.

The Applicant respectfully suggests that the Mariposa Energy Project meets both of these criteria. First, there is a need to issue a decision on this application as expeditiously as possible, as we explain in Section II, above. The Marsh Landing Staff Assessment was issued in order to ensure that the deadlines in that Project's PPA would be met. As the Marsh Landing Staff Assessment stated, "to adhere to agreed upon timelines for this project, staff will prepare a Staff Assessment only." The Mariposa Energy Project has similar "agreed-upon timelines" with PG&E and approved by the CPUC that will be facilitated by a single Staff Assessment.

The second criterion for a single Staff Assessment is whether there are likely to be any seriously contested substantive issues between Applicant and Staff. The Applicant is not aware of

[6] For example, in the case of Marsh Landing, the SA states that whiles a PSA and FSA are typically issued, "However, to adhere to agreed upon timelines for this project, staff will prepare a SA only."

any such issues. There are approximately 14 topic areas in the AFC. The Applicant expects to reach agreement with the Staff on all topic areas. The Applicant has worked very hard over the past year to take any potential conflicts off the table.

IV. The Applicant's Recommended Schedule

The Applicant's Recommended Schedule is set forth in Table 1.

The Applicant's Recommended Schedule assumes the preparation of a Single Staff Assessment, issued on October 20, 2010. The Applicant's reasons for proposing a Single Staff Assessment are set forth in Section III of this Issues Statement, above.

The Applicant notes that the Commission recently approved the Application of the Marsh Landing project. Despite the fact that the Commission was concurrently processing a number of renewable energy projects, the Marsh Landing project was processed in an expeditious manner. The Applicant's Recommended Schedule set forth in Table 1 assumes that the Mariposa Energy Project be processed in the same time period as the Marsh Landing Project, with the same approximate time periods between the various steps of the licensing process.

As can be seen from Table 1, even if the Mariposa Energy Project is processed as expeditiously as the Marsh Landing Project, it will not be possible for the Commission to issue a final decision in this matter until January 2011. However, if the PMPD is issued by December 15, 2010 and if the Final Decision is issued in January 2011, the Applicant believes that the Project can still meet the July 1, 2012 guaranteed on line date.

The Applicant's Proposed Schedule assumes the issuance of a Staff Assessment, followed by a Supplemental Staff Assessment. A Supplemental Staff Assessment does not republish the

entire Staff Assessment, but is instead "a limited document representing revisions and additions rather than a document including each technical section."[7]

The Applicant respectfully requests that the Committee adopt the Applicant's Recommended Schedule as set forth in Table 1.

V. <u>The Staff's Proposed Schedule</u>

In the preceding discussion we have set forth the Applicant's Recommended Schedule and we have described the necessity, benefits and feasibility of this Schedule.

The Staff has proposed a Schedule that would result in a Final Decision approximately 2 and ½ months later than the Final Decision in the Applicant's Recommended Schedule. If the Committee finds that it cannot adopt the Applicant's Recommended Schedule, the Applicant is willing to work with the Staff's Proposed Schedule, if this schedule can be slightly revised.

If the Staff's Proposed Schedule is considered, we need to propose two changes in this Schedule. First, we strongly request that the Supplemental Staff Assessment be issued on December 10, 2010 (rather than December 20). To meet the July 1, 2012 online date required by the PPA, the Applicant must make a commitment for major equipment purchases no later than December 15, 2010. Therefore, it is extremely important that the Supplemental Staff Assessment is issued by December 10, 2010, so that the Applicant can fully assess the status of the proceeding, the scope of outstanding issues (if any) and the risks of moving forward with substantial and irrevocable financial commitments on December 15, 2010.

Second, we request that the PMPD be released January 26, 2011 (rather than February 16, 2011). January 26, 2011 is 14 days after the close of the evidentiary hearings on contested issues and approximately 57 days after the close of hearings on uncontested issues. We believe that this

[7] Marsh Landing SA, p. 2-2.

time period is feasible, since all uncontested issues will have been submitted in November 2010, and those portions of the PMPD can be drafted earlier. Significantly, if the PMPD is issued by January 26, 2011, the Final Decision could be issued on March 2, 2011.

We show the Applicant's proposed revisions to the Staff's Proposed Schedule in Table 2.

We appreciate the effort the Staff has made to propose a schedule which incorporates a Staff Assessment and a Supplemental Staff Assessment. With the revisions noted above, the Schedule would be acceptable to the Applicant.

VI. Conclusion

The Applicant respectfully requests that the Committee adopt the Applicant's Recommended Schedule (Table 1). The schedule is ambitious, but feasible, especially if the Staff issues a single Staff Assessment and a Supplemental Staff Assessment. If the Committee cannot adopt the Applicant's Recommended Schedule, the Staff's Proposed Schedule with some slight revisions noted above, would be acceptable. The Mariposa Energy Project is a vital planned resource in PG&E's generation system. It has a Power Purchase Agreement that has been fully vetted and approved by the CPUC, based on the reports of this Commission. It has the support of Alameda County in which it is located and neighboring Contra Costa County. The project has a PDOC from BAAQMD and the support of the SJVAPCD.

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The only remaining hurdle for this Project is timely approval by the California Energy Commission.

Dated: September 23, 2010

ELLISON, SCHNEIDER & HARRIS L.L.P.

By _____

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Table 1
Applicant's Recommended Schedule

	Mariposa Energy Project		**Marsh Landing (for comparison)**	
	MEP Schedule with same intervals as Marsh Landing, assuming SA and SSA	**Interval**	**Marsh Landing**	**Interval (days) From previous event**
Staff Assessment	10-20-10		4-26-10	
Workshop on Staff Assessment (if necessary)	10/27/10		None	
Committee Status Conference	11-1-10	10 days from SA	5-12-10	14 days from SA
FDOC	11-1-10		6-25-10	
Revised Staff Assessment			6-10-10	45 days from SA
Applicant's testimony filed	11-4-10	15 days from SA	6-16-10	6 days from Revised SA
Other parties testimony filed	11-11-10	22 days from SA	6-21-10	11 days from Revised SA
Supplemental Staff Assessment	11/18/10	29 days from SA		
PHC Statements filed	11-17-10	7 days from other parties' testimony	6-28-10	7 days from other parties' testimony
PHC and Evidentiary Hearing	11-22-10	3 days from PHC Statements	7-1-10	3 days from PHC Statements
PMPD	12-15-10	23	7-23-10	23
Decision	1-19-11	35	8-25-10	33

Table 2
Staff's Proposed Schedule with Applicant's Suggested Revisions

	Staff	**Staff – as revised**
Staff Assessment	10-20-10	10-20-10
Workshop on Staff Assessment	11-3-10	11-3-10
PHC	11-16-10	11-16-10
EH - Uncontested	11-30-10	11-30-10
Supplemental Staff Assessment	12-20-10	12-10-10[8]
Evidentiary Hearings	1-11/12-2011	1-11/12-2011
PMPD	2-16-11	1-26-11
PMPD Hearing	3-8-11	2-10-11
PMPD Close of public comments	3-18-11	2-25-11
Addendum/Revised PMPD	3-30-11	3-1-11
Decision	4-6-11	3-2-11[9]

[8] The Applicant must make a commitment for major equipment purchases no later than December 15, 2010. Therefore, if the Supplemental Staff Assessment is issued by December 10, 2010, the Applicant will be in a much better position to assess the overall status of the proceeding before having to make very substantial funding commitments.

[9] The Applicant must begin construction as early as possible in 2011 to meet a July 1, 2012 COD date. The Applicant needs a Final Commission decision before it can commence construction.

Table 3

Power Plant Projects Since 2000 With A Staff Assessment

Proceeding	
TID Almond	SA with Revised SA
Genesis Solar Project	SA with Revised SA
Imperial Valley Solar	SA with Supplemental SA Part 1, Supplemental SA Part 2
Palen Power Plant	SA with Revised SA Part 1, Revised SA Part 2
Ridgecrest Solar	SA
Marsh Landing	SA with Revised SA
Blythe Power Plant	SA with Revised SA, Part 2 of RSA, Supplemental SA: SSA Part 2
Abengoa	SA SSA Part A SSA Part B SSA Part C
Lodi Energy Center	SA Addendum to SA
Mountain View Project	SA RSA Addendum to RSA
Malburg Generating	SA, Addendum to SA, Final Addendum
PICO Power Plant	SA Part 1 with Addendum to Part 1: SA Phase 2, Corrections to SA Phase 2, Final Revisions
Tracy Peaker Project	SA with Supplement to SA

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

Application for Certification for the MARIPOSA ENERGY PROJECT (MEP)	))))	Docket No. 09-AFC-3

PROOF OF SERVICE

I, Karen A. Mitchell, declare that on September 23, 2010, I served the attached *Applicant's Issues Statement* via electronic and U.S. mail to all parties on the attached service list.

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

Karen A. Mitchell

Karen A. Mitchell

SERVICE LIST
09-AFC-3

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