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STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	Docket No. 09-AFC-3
	)	
	)	INTERVENOR'S COMMENTS
	)	ON PRESIDING MEMBER'S
	)	PROPOSED DECISION
Mariposa Energy Project	)	

Pipeline Safety

The CEC has ignored its own directive that all siting cases include review of pipeline safety and reliability and must reopen the evidentiary hearing to consider evidence from PG&E on this issue. At the March 9, 2011 CEC Business Meeting, Chairman Weisenmiller directed staff to include consideration of pipeline safety and reliability issues in their review of current and future siting cases. Just a few weeks later, the CEC denied Mr. Simpson's motion requesting that the Commission subpoena PG&E, the owner and operator of the natural gas pipeline Line 002 that will supply MEP, to give testimony on pipeline safety and reliability issue in this siting case. As Chairman Weisenmiller has himself confirmed, MEP and Line 002 safety, reliability, effect on the environment, and compliance with applicable law are interdependent and the Committee has been remiss in its duties in refusing to conduct a full analysis of Line 002 and its relationship with MEP.

"The purpose of an application proceeding is to ensure that any sites and related facilities certified provide a reliable supply of electrical energy at a level consistent with the need for such energy, and in a manner consistent with public health and safety, promotion of the general welfare, and protection of environmental quality." 20 C.C.R. § 1741. To this end, in evaluating applications for certification, the Commission is tasked with considering potential environmental effects (Pub. Res. Code 25523 ; 20 C.C.R. 1742) safety and reliability (Pub. Res. Code 25511; 20 C.C.R. 1743) and compliance with applicable law (20 C.C.R. 1744). This requires the

Commission compile the necessary evidence by requesting and securing such information as is relevant and necessary in carrying out the purposes of the proceeding and issuing subpoenas and subpoenas duces tecum on its own authority or upon application of any party. 20 C.C.R. 1203.

The proposed decision claims, "We are convinced that that effect of the interconnection is negligible and find that the any potential impact the MEP may have on Line 002 is below the level of significance." In reaching this conclusion, the CEC has relied solely on witness testimony from applicant's "experts" who lacked personal knowledge of Line 002 and a five year old inspection

How can such a sweeping conclusion be reached without any evidence from the pipeline owner and operator? The proposed decision impunes Mr. Bob Sarvey's testimony regarding Line 002, concluding that he is not an expert but the CEC has made no effect to procure testimony from any expert that has actually analyzed Line 002. The witnesses that testified regarding pipeline safety demonstrated their ignorance of basic facts regarding Line 002, thus showing themselves incompetent to testify as to the safety of Line 002.

Mr. Tyler admitted that he did not know: whether line 002 has automatic shut-off valves, where the shut-off valves are for line 002, how many power plants and large natural gas users are connected to line 002, if emergency personnel are aware of the location of the shutoff valves and how to operate these valves for line 002 (3/7/11 RT 316:4 – 21). Mr. Tyler also testified that he had not seen any information related to pressure fluctuations on line 002. (3/7/11 RT 354:19-21).

Mr. de Leon testified that he had not: done a risk analysis specifically for Line 002 (2/25/11 RT 259:17-19), physically inspected the pipeline where it's going to connect or any part of Line 02, looked at any records for Line 02, (2/25/11 RT 272:16 – 273:1), reviewed the pigging results on Line 002 (provided to the applicant by Robert Sarvey)(2/25/11 RT 250:15-25), or reviewed the maintenance records of Line 02 (2/25/11 RT 265:14-18).

Clearly, PG&E is needed to testify to the specific conditions of Line 002 and the Commission has a duty to gather this information.

Williamson act

If MEP is built as proposed, it will be in violation of a Williamson Act contract thus
The Williamson Act allows from Counties to contract with landowners to determine exactly what uses will be permitted. "Any city or county may by contract limit the use of agricultural land for the purpose of preserving such land pursuant and subject to the conditions set forth in the contract and in this chapter. A contract may provide for restrictions, terms, and conditions, including payments and fees, more restrictive than or in addition to those required by this chapter." Cal Gov Code § 51240.

Williamson Law contracts must "Provide for the exclusion of uses other than agricultural, and other than those compatible with agricultural uses, for the duration of the contract" and are "binding upon, and inure to the benefit of, all successors in interest of the owner." Cal Gov Code § 51243

On December 12, 1989, the County Board of Supervisors adopted Resolution No. 89-947, which amended the February 4, 1971 Williamson Act contract, Land Conservation Agreement No. 5635. The amendment approved change of ownership and added the Byron power company wastewater facility as a compatible use. On that same day, the landowner and the County entered into the amended Williamson Act contract, Land Conservation Agreement No. C-89-1195 (the "Contract").

Exhibit Number 12, Appendix DR1-1, contains a copy of the Contract and the Alameda County Board of Supervisors Resolution R-89-947 approving the contract. Page 3 of the contract provides the restrictions on the use of the property, "*During the term of this agreement, or any renewal thereof, the said property shall not be used for any purpose, other than agricultural uses for producing agricultural commodities for commercial purposes and compatible uses, which uses are set forth in Exhibit B attached hereto and incorporated by reference.*" Exhibit "B" provides for two uses, "*1) Grazing, breeding or training of horses or cattle 2) Co-generation/waste water distillation facility as described by Conditional Use Permit C-5653.*"

In violation of Cal Gov Code § 51240, 51243, and 51238.1, the County has based its analysis entirely on the general principles of compatibility instead of looking to the terms of the contracts. The terms of the contract govern what uses the land can be put to. In this case, the Contract enumerates the only permitted uses – "*1) Grazing, breeding or training of horses or cattle 2) Co-generation/waste water distillation facility as described by Conditional Use Permit C-5653.*" MEP does not meet either of these uses and so, cannot be permitted on the land without violating the binding Contract.

The County and MEP's arguments that Cal Gov Code § 51238 allows that a power plant is a compatible use is of no moment because the land is covered by the Contract and Cal Gov Code § 51238 only applies to land that is not covered by a contract: "Sections 51230 and 51238 relate[s] to noncontracted lands within agricultural preserves." Cal Gov Code § 51238.1

The landowner is subject to court action to enforce the contract by any owner of land whose exterior boundary is within one mile of his land, or any owner of land in Alameda County under a Williamson Act contract. Cal Gov Code § 51251.

CEQA

The proposed project has not complied with CEQA in countless aspects; the CEC has wrongly conclude that this project will not result in signifigant adverse land use impacts. MEP conflicts with a Williamson Act contract and so, by definition, will result in a signifigant adverse land use impact. 14 C.C.R. Title 14 section 15000 et seq.

Due Process and Procedure

The notice of the proposed decision and hearing announces a that the "30-day public comment period on the PMPD ends on May 13, 2011." The notice then declares "In order to assure that your written comments are considered, your e-mail must be received by the Docket Unit by 3:00 p.m. on April 28, 2011 or your mailed comment physically delivered on or before that time (postmarks do not count)."

The Commission has control over its schedule and is not only capable, but duty bound to schedule the hearing on this matter after the 30 day comment period has closed. This attempt to limit the actual comment period of a "30-day" comment period to 14 days is yet another in a long line of examples of the CEC's deliberative effort to limit public participation in this process. The hearing needs to be rescheduled to allow the public the full 30 days to be heard.

ESA

The CEC has illegally attempted to usurp the exclusive authority of the United States Fish and Wildlife Service in making conclusions regarding the application of the Endangered Species Act the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531-15.

The CEC has no authority and most certainly no expertise to make "conclusions of fact" such as "Condition of Certifications **BIO-5, BIO-7, BIO-10, BIO-16** and **BIO-17** ensure that significant impacts to special status amphibians including the California red-legged frog are reduced below significance." The CEC does not have authority to make any such such conclusions regarding special status species including but not limited to the San Joaquin Kit Fox, American Badger, California Tiger Salamander, Western Pond Turtle, Western Burrowing Owl, and Swainson' Hawk.

The CEC cannot move forward in this process until it has procured an incidental take permit or section 7 consultation has been concluded.