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November 14, 2003

California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Steve Munro, Compliance Project Manager: (99-AFC-3C)

This is written objection to staff's determination that Metcalf Energy Center modification to Add Parking/Storage Area does not meet the criteria of Section 1769(a)(2). It is a net increase of substantial proportion in size and intensity of construction beyond any approval of the City of San Jose Project and thus violates LORS, and rather than temporary are disguised, in effect, permanent expansion for future plant upgrades. If these additional parking and storage areas are necessary for construction they should have been incorporated within the previous Notice of Decision by the CEC. They do have a significant effect on the environment because they result in a net loss of agricultural land and disturbs the surface soil. No cultural resources reconnaissance specifically has been made on the depicted area. Visual impacts with screening and fencing are in addition to the *Visuals* that have not been completed on the original project. A final determination has never been presented as to the final color and materials used for screening the elevated structure of the power plant and is still pending before a joint committee. Major changes have been made to the cooling and routing of recycled (crap) water lines and use of public monies instead of Calpine contributions, violate the CEC decision of record. Modifications to the Metcalf Energy Center project have been accumulative and have significant effect on the environment. Changes made previously have been modifications previously discussed in public hearing testimony, but the CEC has dismissed these same changes as impractical in the public record previously established (These questions have been asked and answered). Further hearings on the original CEC decision is requested entertaining the entire record of project change description as an ***Amendment in a CEQA equivalent process, extended as to all previous and allowing new parties to the record.***

The published decision of the CEC regarding Metcalf Energy Center Decision has not been allowed review by the court of original jurisdiction. Exparte communication between the CEC chief counsel and Chief Justice detailed conditions of review (Rule 28c) different than the procedure detailed in the CEC decision. Legislative intent has been frustrated by the CEC communications outside the record. Different parties attempted all the various paths for CEQA review. Justice delayed is justice denied. Since no review has been entertained by rejecting petitions forthwith, a federal cause of action exists because no quick and speedy relief exists within one year under state law.

Respectfully,

William J. Garbett, Agent
for THE PUBLIC

By FAX