

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION

In the Matter of:)	Docket No. 99-AFC-3
)	
Application for Certification for the Metcalf Energy Center by Calpine Corporation and Bechtel Enterprises)))))	Petition for Reconsideration of Santa Teresa Citizen Action Group, City of Morgan Hill, Great Oaks Water Company, Demand Clean Air and Californians for Renewable Energy

On behalf of the Santa Teresa Citizen Action Group (“STCAG”), City of Morgan Hill, Great Oaks Water Company, Demand Clean Air and Californians for Renewable Energy (“petitioners”), and pursuant to Public Resources Code section 25530, we petition this Commission for reconsideration of its Adoption Order, Findings and Order (collectively, “Decision”) approving the Application for Certification (“AFC”) for the Metcalf Energy Center dated September 24, 2001.

The grounds for this petition are two fold. First, this Commission’s purported determination of compliance with the California Environmental Quality Act, Public Resources Code section 21000 *et seq.* (“CEQA”), is not supported by the evidence and the Commission’s findings in that (i) the Decision does not provide an adequate description of the proposed activity, contrary to 14 C.C.R. (CEQA Guidelines) section 15252(a), (ii) the Decision does not consider all alternatives that could avoid the need for this project and

thus avoid or reduce its significant environmental effects, (iii) the Decision's assertion that the MEC Project would not have any significant effects on the environment is erroneous, and (iv) the Decision's conclusion that the benefits of this project outweigh its environmental risk is erroneous, contrary to CEQA Guidelines sections 15092(b)(2)(B) and 15093(a) and (b).

Second, the Decision is contrary to the Warren-Alquist Act in that the MEC Project is not required for the public convenience and necessity, and there are more prudent and feasible means of achieving such public convenience and necessity. Contrary to Public Resources Code section 25525, the Decision fails to address numerous alternative sources of energy that will come on line before the MEC Project and would pose fewer or no conflicts with state and local laws, ordinances, regulations and standards ("LORS"). In the absence of record support for the Decision's failure to address these alternative sources, and to consider the recent, dramatic decline in projected energy demand, the Decision's contrary findings do not withstand scrutiny.

Most of these defects stem from the Decision's failure to address the profound improvement in the energy demand and supply context that has occurred during the last six months. While projected energy demand in the vicinity of the MEC Project has fallen over 10 percent, viable alternative supplies of energy to this area have advanced rapidly through this Commission's approval process, and will provide approximately 768 Mw of new power before the MEC Project could come on line in the summer of 2003. This sea change in the energy

demand/supply picture has sharply reduced, if not eliminated altogether, the need for the MEC Project.

These compelling grounds for reconsideration of the Decision are explicated more fully in the following discussion.

I. INTRODUCTION AND SUMMARY OF PETITION

The Decision fails to address many of the objections and requests for additional information submitted by petitioners in the past. Consequently, it suffers from many of the deficiencies of its predecessor, the Presiding Member's Proposed Decision ("PMPD") issued June 15, 2001. Our primary unanswered concerns include the following:

1. LORS-BAAQMB RULES.

The full extent and precise nature of the MEC Project's conflicts with Local Ordinances, Regulations and Standards have not been identified and assessed, undermining the grounds advanced in the Decision for overriding the MEC Project's violation of LORS. In particular, the Decision fails to acknowledge and address numerous conflicts between the MEC Project and the Bay Area Air Quality Management District's ("BAAQMD's") Rules. For example, the MEC Project violates the Bay Area Air Quality Management District's ("BAAQMD's") Rule 2-2-307, which forbids approval of new major air emission facilities unless the applicant provides a current certification that all of its major facilities within California are either in compliance, or on a schedule of compliance, with all applicable state and federal emission limitations and standards. The MEC Project also violates

BAAQMD Rules 2-2-101, 2-2-314 and 2-3-315, which direct that Prevention of Significant Deterioration (“PSD”) permits required under the federal Clean Air Act regulations codified in 40 C.F.R. §51.166 must be preceded by a public hearing. And, the MEC Project violates BAAQMD Rule 2-2-407.1, which directs that the Air Pollution Control Officer (“APCO”) shall not take final action on any project for which an environmental impact report (“EIR”) has been prepared until a Final EIR for that project—or, as here, its functional equivalent—has been certified and considered by the APCO.

2. LORS–CITY OF SAN JOSE STANDARDS.

The MEC Project violates the City of San Jose’s ordinances, regulations, and standards governing land use, riparian protection, noise and visual air quality. In particular, the MEC Project would generate noise levels in excess of the San Jose General Plan’s acceptable noise level objective of 55 DNL as measured at the property line of affected residential properties. The MEC Project is not consistent with the San Jose General Plan’s designation of this site for Campus Industrial uses, prompting the San Jose City Council to vote 11-0 to deny the Applicant’s proposal to amend this General Plan designation.

The Project would also be inconsistent with a host of General Plan Policies protecting riparian areas, scenic trail corridors and other rural amenities. The MEC Project would also violate Title 20 of the San Jose Municipal Code, which zones this site for A-Agriculture, a zone which does not permit power plants and restricts building and

structure heights to 35 feet.

3. OVERRIDES OF LORS AND CEQA.

The Decision’s asserted grounds for overriding LORS and CEQA’s prohibition against significant environmental impacts are contrary to applicable law and to the record evidence in this proceeding.

In particular, the Decision’s purported override of CEQA erroneously assumes that the MEC Project “will not create any significant adverse environmental effects.” To the contrary, this project will cause significant impacts on noise, air quality, visual amenities, wildlife habitat, and public health.

Second, the Decision’s LORS override purports to find, in attempted compliance with Public Resources Code section 25525, that the MEC Project “is required for public convenience and necessity and that there are not more prudent and feasible means of achieving such public convenience and necessity.” In fact, contrary to this purported finding, the MEC Project is not required for public convenience and necessity, and in any event, there are more prudent and feasible means of providing electrical power in the San Jose area. The Decision is based on an outdated evidentiary record which the Commission should have reopened as repeatedly requested by petitioners. Since the close of the record, the State’s energy supply and demand context has improved dramatically, providing better alternative locations and sources of power for the San Jose area at far less environmental cost, thus eliminating any need for the MEC Project.

4. NOISE.

The Decision understates this project's adverse effects on noise. In particular, the Decision understates the MEC Project's violation of the San Jose General Plan's noise standards, which forbid facilities that generate more than 55 DNL exterior noise levels at their property lines. The Decision's proposal to allow the Applicant to expose the nearest residence to a noise level of 49 dBA instead of the nighttime average noise level of 39 dBA (Hrg. Exh. at p. 283) and the 44 dBA level previously recommended by the CEC staff is the product of improper political pressure that not only manipulated the CEC's position, but also resulted in the reassignment of the staff scientist, Mr. Kisabuli, who had opposed this political manipulation of the licensing process. The Decision also overlooks this project's violation of the San Jose General Plan's prohibition against projects that cause harmful noise levels within riparian wildlife habitat.

5. VISUAL IMPACTS.

The Decision dismisses the MEC Project's substantial adverse visual impacts on the Northern Coyote Valley and adjacent residential areas as "insignificant" despite overwhelming contrary evidence, including the CEC Staff's contrary expert opinion that the project would substantially harm the visual character and quality of views of the site and its surroundings because of the power plant's mass, scale, height, and industrial character. In view of the fact that all objective reviewers, including the City of San Jose, concurred in this assessment, the Decision's contrary conclusion is simply devoid of evidentiary support. The Decision also ignores the impact of the MEC Project's

visible steam plume, again contrary to overwhelming evidence from objective sources.

6. AIR QUALITY.

The proposed site for the MEC Project is the “worst possible location” within the Bay Area for a power plant because of the probable accumulation of air pollutants in this area due to the low air inversions that commonly occur within the North Coyote Valley “bowl.” (See Hrg. Exh. 139) Despite the fact that the Applicant’s witness conceded that its modeling failed to address the likely concentration of air pollutants in the vicinity of the project due to local atmospheric conditions, the Decision nonetheless concludes that the MEC Project will not have a significant impact on air quality. The Applicant’s modeling also failed to address the fact that the PM10 emission rate has increased by 16.7 additional tons per year due to the Decision’s requirement for the use of oxidation catalyst mitigation. Because the Applicant’s modeling is deficient, the Decision’s conclusions based thereon are scientifically indefensible.

7. PUBLIC HEALTH.

The Decision ignores the MEC Project’s adverse effects on public health. Petitioners proved, through cross-examination of the Applicant’s air quality witness, that the Applicant’s proposed emission offsets are located 15 or 20 miles to the north of the project site and will not mitigate the adverse air quality impacts of emissions from this project *at the project site*. Petitioners also demonstrated that the BAAQMD has not adopted a program for attaining California’s health-

based PM10 standard to mitigate the MEC Project's PM10 impacts on human health. Yet the Decision assumes that the impact of this project's air emissions on public health will be mitigated to insignificance.

8. UNFAIR HEARING.

The Decision fails to acknowledge, much less rectify, this Commission's bias, conflicts of interest, improper political influence and improper *ex parte* contacts that have rendered this Commission's approval process a travesty and deprived petitioners and the public of their right to a fair hearing.

9. REOPENING OF EVIDENTIARY HEARING.

This Commission erred in refusing petitioners' repeated requests that it reopen its evidentiary hearing under Public Resources Code section 25513 to consider evidence documenting the dramatic improvement in this State's energy supply and demand context during the last six months. The Decision relies on a demand forecast more than 10 percent higher than current demand projections and fails to reflect the substantial increase in the supply of electricity that has occurred during the past six months due to the development of additional sources of energy as well as increased conservation by consumers. Because this significant change in the energy supply and demand picture occurred only recently, petitioners were unable to present evidence documenting this change prior to the close of the evidentiary hearing over six months ago.

The foregoing points are explicated more fully in the following

discussion.

- II. THE DECISION OVERLOOKS THE MEC PROJECT'S VIOLATION OF LORS ADOPTED BY THE BAAQMD.
- A. CEQA Applies to the APCO's Issuance of a PSD Permit under Authority Delegated from EPA, and Based upon the Record as Submitted, the APCO Improperly Issued the Final PSD Permit in Advance of the CEC Project License.

Requirement: The APCO shall not issue a PSD permit until it has read and

considered the information in the project's certified EIR.

Authorities: BAAQMD Rules 2-2-401, 2-2-407.1, 2-3-404; Pub. Res. Code §§ 20061, 21151; 14 CCR §§ 15252(b)(1) and 15252(c).

Section 20061¹ of the Public Resources Code requires every public entity that proposes to approve a discretionary activity or "project"² to read and consider the project's environmental impact report. An EIR is required to be prepared, or caused to be prepared, and certified by any state or local agency for any project they intend to carry out or approve which may have a significant effect on the environment.³ Only one EIR need be prepared and where a project

¹ ". . . An environmental impact report is an informational document which, when its preparation is required by this division, shall be considered by every public agency prior to its approval or disapproval of a project."

² "Project" is defined in part as ". . . an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: . . . (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." Pub. Res. Code § 21065.

³ Pub. Res. Code §§ 21100, 21151.

requires multiple approvals by various state and local agencies, one agency becomes the project "lead"⁴ agency and the other agencies are "responsible"⁵ agencies. The EIR is prepared by the "lead" agency, and reviewed and considered by the other "responsible" agencies approving the project. In issuing pre-construction permits, the APCO is expressly enjoined by District rules to read and consider the *certified* EIR before taking any action to approve the project application:

Rule 2-2-407.1 provides that:

Notwithstanding the requirement of this Section 2-2-407 that the APCO shall act within 180 days after the application is accepted as Complete, the APCO shall not take final action on the application for any project for which an Environmental Impact Report or a Negative Declaration has been prepared pursuant to the requirements of CEQA until a Final EIR for that project has been *certified* and the APCO has considered the information contained in that Final EIR, or a Negative Declaration for that project has been approved. If the specified 180 day period has elapsed prior to the certification of the Final EIR or the approval of the Negative Declaration, the APCO shall take final action on the application within 30 days after the certification of the Final EIR or approval of the Negative Declaration. [Emphasis added.]

⁴ "Lead Agency" is "the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment." Pub. Res. Code § 21067."

⁵ "Responsible Agency" is "a public agency, other than the lead agency, which has responsibility for carrying out or approving a project." Pub. Res. Code § 21069.

This rule is made applicable to CEC proceedings by the BAAQMD's Rule 2-3-404.⁶ The entire CEC licensing process is the functional equivalent to the CEQA environmental impact report.⁷ CEQA compliance is not complete until the issuance of the CEC license. The action taken by the APCO in issuing the PSD permit is considered by the APCO as a final action.⁸

Both District Rule 2-2-407.1 and CEQA prohibit the APCO from issuing a PSD permit for a project until after it has read and considered the certified project EIR. Subsection (b)(1) of section 15253 of the CEQA Guidelines allows for use of a substitute EIR prepared under a certified program such as the CEC power plant licensing program, if the certified agency "is the first agency to grant a discretionary approval for the project." Subsection (c) of section 15253 prohibits the APCO from issuing a PSD permit based upon a substitute document if the CEC is not the first agency to grant a discretionary approval for the project.

The APCO acted in an arbitrary and capricious manner in violation of District Rule 2-2-407.1, CEQA, CEQA Guidelines section

⁶ "Public Notice, Comment and Public Inspection: The preliminary decision made pursuant to Section 2-3-403 shall be subject to the public notice, public comment and public inspection requirements contained in Section 2-2-405 and 407 of Rule 2."

⁷ 14 CCR §15251(k).

⁸ The relevant sections of CEQA have been incorporated into the State Implementation Plan ("SIP"). 40 CFR §52.220(c)(63).

15253, and the SIP

in issuing the PSD permit for the MEC Project. The Decision ignores this violation of the BAAQMD's LORS, contrary to Public Resources Code section 25525.

- B. Based upon the Record as Submitted, in Issuing the PSD Permit, the APCO Improperly Managed the Public Comment Process by Failing to Hold a Public Hearing on the PSD Application and Failed to Consider the Public Comments in Making a Final Decision on the Application.

Requirement: The APCO was required to hold a public hearing on the PSD

application and to consider written and oral public comments on the

application in making a final decision on the application.

Authorities: BAAQMD Rules 2-2-101, 2-2-314, 2-2-315; 40 CFR §51.166(q)(2)(v) [and (vi).]

Federal regulations incorporated into the BAAQMD PSD permitting requirements⁹ require the APCO to hold a public hearing in connection with the PSD application in order to receive written and oral comments "on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations."¹⁰

Following the public hearing, the APCO is required to "consider all written comments submitted within a time specified in the notice of

⁹ The federal Prevention of Significant Deterioration provisions of 40 CFR § 51.166 are incorporated by reference into the BAAQMD permitting rules and thereby constitute a LORS requirement. BAAQMD Rules 2-2-101, 2-2-314, 2-2-315.

¹⁰ 40 CFR § 51.166(q)(2)(v).

public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application."¹¹

According to the permit record filed by the APCO in the BAAQMD proceedings, no public hearings on the PSD application were held. The Decision ignores the violation of the BAAQMD's LORS contrary to Public Resources Code section 25525.

C. The APCO Failed to Require and Verify a Current Certification of Compliance of Other Calpine/Bechtel Enterprises Major Facilities in California.

Requirement: The APCO shall not issue a PSD permit unless the applicant provides a list, certified under penalty of perjury, of all major facilities within the State of California owned or operated by the applicant or by an entity controlling, controlled by, or under common control with the applicant and demonstrates by certifying under penalty of perjury that they are either in compliance, or on a schedule of compliance, with all applicable state and federal emission limitations and standards.

Authorities: BAAQMD Rules 2-2-307.

There is no evidence in the record for the PSD permit that the APCO received a *current* certification of compliance as required by Rule 2-2-307, despite the fact that the PSD application lists this as a LORS requirement. Absent this certification, the APCO was required to deny the PSD permit.

¹¹ 40 CFR § 51.166(q)(2)(vi); see also BAAQMD Rule 2-2-407 ("If the application . . . requires a PSD analysis, . . . the APCO shall . . . take final action on the application after considering all public comments.").

It thus appears from the permitting record submitted in the parallel BAAQMD proceedings that the MEC Project PSD permit (Application Number 27215) was not properly issued under the requirements of CEQA, the BAAQMD SIP and District Rules and Regulations. But the Decision ignores these significant violations of LORS, contrary to Public Resources Code section 25525.

III. THE DECISION UNDERSTATES THE MEC PROJECT'S VIOLATION OF LORS ADOPTED BY THE CITY OF SAN JOSE

The MEC Project violates the City of San Jose's ordinances, regulations and standards governing land use, noise, riparian protection, recreational resources, and visual air quality. Most fundamentally, the project violates the San Jose General Plan's Land Use/Transportation Diagram, which designates this site for Campus Industrial uses such as research and development, administration, marketing, assembly and manufacturing. The proposed gas-fired power plant use is *not* allowed within this land use designation. The MEC Project would exceed the allowable height limits for both Campus Industrial (120 feet) and Public/Quasi-public (95 feet) uses, and thus violates the San Jose General Plan's Urban Design Policy No. 11. The project would also violate Urban Design Policy No. 22 because the project does not meet the design guidelines of the North Coyote Valley Campus Industrial Master Development Plan.

Because the MEC Project would detract from the scenic and aesthetic qualities of the planned Fisher Creek trail corridor, the project also violates the San Jose General Plan's Trails and Pathways Policy

No. 1. Because the MEC Project is not consistent with all provisions of the City of San Jose's Riparian Corridor Policy Study, the project would violate as well the General Plan's Riparian Corridor Policy No. 2.

The MEC Project would also violate Title 20 of the San Jose Municipal Code, which zones this site for A-Agriculture, a zone which does not permit powerplants and restricts building and structure heights to 35 feet.

The MEC Project violates San Jose's North Coyote Valley Campus Industrial Area Master Development Plan for several reasons. First, contrary to this plan, the MEC project is not a "high technology" use. Second, the project exceeds the height limitations applicable to this site. Third, the project violates the 50-foot landscaped set back required along the Union Pacific railroad right of way. Fourth, the project violates the plan because it fails to provide a set back of at least 100 feet between the project's structures and the MEC property line.

The MEC Project violates San Jose's Riparian Corridor Development Guidelines for two reasons. First, contrary to Guideline 1A, the MEC Project would locate noise-generating equipment along the riparian edges of the property, impacting wildlife use of the adjacent riparian area. Second, the project would generate noise exceeding the ambient nighttime noise level in the adjacent riparian area, which the CEC staff has estimated at 39 dBA. Consequently, the project violates San Jose's Riparian Corridor Development Guideline 2F, which directs that noise-producing stationary equipment must be located as far as

necessary from riparian corridors to avoid exceeding the ambient noise level in such corridors.

Finally, the MEC Project would also violate land use controls within the Santa Clara County General Plan. The project would violate Policy R-LU 74, in that the project would locate a major gas pipeline within a public recreation area. Second, the project would violate Policy R-LU 75, because the project would locate a metering station along a heavily traveled highway, U.S. Highway 101.

IV. THE DECISION IMPROPERLY ATTEMPTS TO OVERRIDE LORS AND CEQA.

The Decision attempts to override LORS and CEQA without fully identifying all of the LORS that the MEC Project would violate, without fairly disclosing all of the significant environmental effects that the project would create, and most importantly, without considering the sea change in electrical demand and supply that completely eliminated the need for the MEC Project at this time. The numerous LORS that this project would violate are summarized in Parts II and III of this Petition. The MEC Project's most significant adverse effects on noise, visual amenities, air quality, public health and wildlife habitat are described in Parts V-VII of this Petition.

The Decision's LORS override purports to find, in attempted compliance with Public Resources Code section 25525, that the MEC Project "is required for public convenience and necessity and that there are not more prudent and feasible means of achieving such public convenience and necessity." To the contrary, recent evidence confirms that this project is no longer needed, and in any event, there are more

prudent and feasible means of providing electrical power in the San Jose area. The latter point is addressed in Part X of this Petition.

V. THE DECISION UNDERSTATES THE MEC PROJECT'S ADVERSE EFFECTS ON NOISE.

The Decision understates the MEC Project's violation of the San Jose General Plan noise standards in several respects. First, it arbitrarily dismisses as insignificant any project-related increases in noise of less than 5 dBA. (Decision at p. 396.) There is no basis in CEQA, its regulations, or science for this assumption, which inherently biases the Decision's analysis in favor of the Applicant. This improper evasion of both CEQA and the Warren-Alquist Act by the CEC staff allowed the Applicant to generate up to 44 dBA during the night at the nearest residential receptor, "M1," 5 dBA greater than the applicable ambient noise standard. (Decision at p. 397, fn. 136.)

Second, after it became apparent that the Applicant could not satisfy even this relaxed standard, the CEC pressured its noise expert, M. Kisabuli, to agree that instead of insulating the MEC *Project* to make it quieter, the Applicant would insulate the residential *receptor* by installing new windows and air conditioning. When Mr. Kisabuli refused, he was reassigned, and a more malleable outside consultant was installed in his place to ensure that the Final Staff Assessment ("FSA") agreed with the Applicant's position that this significant noise impact would be ignored by insulating the affected resident. Mr. Kisabuli's letter documenting the improper political pressure to which he was subjected was annexed as Exhibit 1 to STCAG's Comments on the Revised Presiding Member's Proposed Decision ("RPMPD"), filed

on September 7, 2001 in this proceeding.

Third, the Decision improperly allowed the Applicant yet *another* 5 dBA adjustment, to 49 dBA, as measured at residential receptor M1, on the unsupportable grounds that greater noise reduction was infeasible. (Decision at p. 401.) These successive, arbitrary adjustments to accommodate the Applicant thus turn a blind eye to a 10 dBA increase in ambient noise levels, clearly a significant impact even under the CEC Staff's unauthorized "5 dBA" definition of "significant."

Fourth, the Decision purports to allow the MEC project to generate noise at a level of 70 dBA DNL at its southern property line, 15 dBA above the City of San Jose's General Plan standard of 55 dBA at the nearest property boundary of a noise generating facility such as this project. (Decision at p. 401; Decision at Appendix E, p. 3; San Jose General Plan Noise Policy No. 11 (when located adjacent to existing or planned noise-sensitive residential and public/quasi-public land uses, non-residential land uses should mitigate noise generation to meet the 55 DNL guideline at the property line).)

VI. THE DECISION OVERLOOKS THE MEC PROJECT'S SUBSTANTIAL ADVERSE VISUAL IMPACTS.

The Decision discounts the MEC Project's substantial adverse visual impacts on Northern Coyote Valley and adjacent residential areas as "insignificant". (Decision at p. 366.) This conclusion is bereft of evidentiary support. The City of San Jose, local residents, and even the CEC's staff all agreed that the project would substantially reduce

the visual character and quality of views of the site and of its surroundings because of the power plant's massive size, scale, height and industrial character. The Decision's contrary conclusion smacks of gross political favoritism, and suggests strongly that this Commission has been coopted by political pressures from outside the hearing record.

The Decision also understates the impact of the MEC Project's visible steam plume. See, eg., San Jose's Comment letter dated 9/7/01 (CEC Docket No. 22241) at p. 1. Even though the Applicant has conceded that the project would "potentially produce visible plumes for up to 240 hours per year," the Decision improperly strives to downplay the significance of this heretofore undisclosed and unstudied significant visual impact on the implausible grounds that 235 of these 240 hours of visible plumes would occur at night or during rain or fog. (Decision at p. 367.) But applicable law requires full and fair disclosure and assessment of this project's impacts, rather than the whitewash provided in the Decision.

VII. THE DECISION UNDERSTATES THE MEC PROJECT'S ADVERSE IMPACTS ON AIR QUALITY.

According to the only independent experts who conducted an assessment of this project's adverse impacts on air quality, this project's proposed site is perhaps the "worst possible location" within the Bay Area because of the probable accumulation of air pollutants due to the low air inversions that commonly occur within the North Coyote Valley "bowl." (Hrg. Exh. 139 (Drs. Chang, Haney and Wang

of the United States Naval Postgraduate School, Monterey).) Despite the fact that the Applicant's witness conceded that its modeling failed to address the likely concentration of air pollutants in the vicinity of the project due to these local atmospheric conditions, the Decision nonetheless claims that the MEC Project will not have a significant impact on air quality. Furthermore, the Applicant's modeling does not address the fact that the PM10 emission rate from this project has increased by 16.7 additional tons due to the use of oxidation catalyst mitigation under this Commission's proposed terms of approval. (CEC staff comments dated 7/19/01 (CEC Docket No. 21553) at p. 2; 2/28/01 Hrg. Tr. at p. 262; 7/30/01 Hrg. Tr. at p. 110.)

Because the Applicant's modeling fails to consider the site's low air inversions, and understates the quantity of PM10 emissions that this project will generate under its proposed conditions of approval, it is woefully deficient. Accordingly, the Decision's conclusions of "no significant impact" based on the Applicant's inadequate modeling are scientifically indefensible as well.

VIII. THE DECISION UNDERSTATES THE MEC PROJECT'S ADVERSE EFFECTS ON PUBLIC HEALTH.

The Decision concludes that the MEC Project will not have any significant impacts on public health, based on the health risk assessment conducted by the Applicant. But the Applicant's methodology has been discredited by numerous witnesses, most prominently Dr. Fox, a witness for Coyote Valley Research Park, who identified numerous errors and omissions in the Applicant's analysis. In any event, the Applicant's air quality witness conceded that the

Applicant's proposed emission offsets are located 15 or 20 miles to the north of the project, and will not mitigate the adverse air quality impacts of project emissions at the project site. Additionally, because the BAAQMD has not adopted a program for attaining California's health-based PM10 standard, its review will not adequately mitigate the MEC Project's PM10 impacts on human health. For these reasons, the RPMPD's assumption that the impact of this project's air emissions on public health will be mitigated to insignificance, is mistaken.

IX. PETITIONERS AND THE PUBLIC HAVE BEEN DENIED A FAIR HEARING.

The Decision fails to address the numerous well documented examples of bias in this Commission's deliberations that petitioners and others have repeatedly brought to the Commission's attention throughout these proceedings. As documented in the foregoing discussion and the independent assessment by Public Employees for Environmental Responsibility (CEC Docket No. 22370), this Commission's staff has been subjected to inappropriate political pressure and manipulation, resulting in an incomplete and biased assessment of the MEC Project that is unacceptable under any reasonable definition of "fair procedure." Petitioners' representatives have been treated rudely, or ignored altogether, by certain representatives of this Commission through much of these proceedings. The Commission's members' advisors have engaged in improper *ex parte* contacts with CEC staff. This Commission's chairman, William J. Keese, has owned, in the past year, substantial investments in energy companies regulated by this Commission. These improper influences

on this Commission's deliberative processes have resulted in a biased assessment of alternatives and mitigation measures, and an incomplete and understated evaluation of this project's adverse environmental impacts. Additionally, the need for this project has been exaggerated.

The cumulative effect of these improprieties and deficiencies is a gross miscarriage of justice. Accordingly, the Decision should be reconsidered and vacated, and these proceedings reopened and discovery permitted to correct the errors, omissions, and unsupportable assumptions and conclusions that have resulted from these improper political and economic pressures.

X. THIS COMMISSION SHOULD REOPEN ITS EVIDENTIARY HEARING IN THIS PROCEEDING.

This Commission should reopen the evidentiary hearing in this matter to consider evidence documenting the dramatic change in this State's energy supply and demand picture during the last six months. As the following discussion demonstrates, there is no longer a need for the MEC Project at its proposed site. Consequently, the Decision's purported override findings, in attempted compliance with Public Resources Code sections 25525 and 21002 and CEQA Guidelines sections 15092(b)(2)(B) and 15093(a), that this project is required for public convenience and necessity, that there are not more prudent and feasible means of achieving such public convenience and necessity, and that there no feasible alternatives or feasible mitigation measures that would substantially lessen or avoid the environmental effects of the MEC project, is mistaken and should be set aside.

The Decision alleges that there is a statewide need for electricity

(Decision, p. 465) and asserts that the CEC should exercise its override authority to approve the MEC project because there are no "more prudent and feasible" means to solve alleged reliability problems in the San Jose area (Decision, pp. 467-68). The Decision is based on an evidentiary record which closed over six months ago. Since that time there have been major changes in the local and statewide supply and demand situation.

San Jose area reliability problems are overstated by the Decision. The Decision relies on a demand forecast more than 10 percent higher than current demand forecasts that account for increased prices and conservation initiatives in the last year. The Decision fails to reflect reductions in the load-serving capability of the local grid which would be caused by operating MEC.

The Decision's assertion of a statewide need for new generation is incorrect. By the summer of 2003, when MEC could first be operational, there will not be a need for additional powerplants to provide statewide electric reliability.

The Decision's claim that there are no "more prudent and feasible" local alternatives is also false. In the San Jose area, there are at least 768 Mw of powerplants under construction, in licensing, or expected to file AFCs in the near future. All of this capacity is planned to begin operating in 2001 or 2002, well before MEC could operate. Most of it is being developed by affiliates of the MEC Applicant.

The Decision should be revised to reflect the fact that it overstates the future level of electricity demand in the Bay Area and thereby

overstates local reliability concerns. The Decision should also be revised to reflect the fact that the 11,000+ Mw of new generation already licensed by the CEC will solve statewide reliability problems by the summer of 2003. The Decision should be revised further to acknowledge that there are realistic generation alternatives already being built, licensed, and developed in the San Jose area which will address local reliability concerns, while MEC would worsen local reliability in some ways.

We provide below further, specific comments on the Decision's purported need assessment.

A. Decision p. 88.

The Decision describes the Local System Effects (LSE) analysis performed by the Staff. The LSE analysis is critical to the Decision's conclusions that there are local reliability problems which MEC will ameliorate, and to the Decision's policy conclusion that MEC's reliability contributions are a basis for overriding local LORS. If the local problems do not exist, then resolving them cannot be a basis for an override.

The Decision correctly reports that "Staff modified PG&E's forecasted loads for the Greater Bay Area. The Bay Area loads were scaled up to a forecasted peak of 10,000 Mw in 2002." (Decision, p. 88.)

More recent data show that the staff's "scaleup" was incorrect. In preparing its recommendations to the ISO Board for Reliability Must-Run ("RMR") contracts in 2002, the ISO staff re-examined Bay Area

load forecasts. The ISO staff reported on August 17, 2001, that PG&E has reduced its previous Bay Area load forecast for the year 2002 from 9500 Mw to 9000 Mw, a reduction of just over 5 percent. This reduction reflects "price elasticity effects of higher prices and overall conservation efforts."¹² p. 11. *Thus, the Decision is based on a demand forecast 1000 Mw, or over 11 percent, higher than PG&E's current forecast for 2002.* The Decision "suggests" that higher loads create "the potential for even more problems than shown in the existing analysis." (Decision, p. 88, fn. 13.) But the reverse is equally true. Reducing the Bay Area load forecast from 10,000 Mw to 9,000 Mw strongly suggests that there will be fewer reliability problems than suggested in the analysis relied upon in the Decision.

¹² ISO staff, 8/17/01 RMR analysis for the year 2002, <http://www.caiso.com/docs/2001/08/17/2001081714063211527.pdf>

The ISO has also looked at load growth for Silicon Valley Power (SVP), the City of Santa Clara's electric utility which is located in the South Bay. In testimony submitted to the CPUC on August 27, 2001, the ISO reported that "In the base cases for PG&E's 2001 Annual Transmission Expansion Plan, the SVP loads increased to 700+ Mw to account for anticipated new loads from server farms. The actual peak loads encountered thus far in 2001 amount to just under 450 Mw for SVP."¹³ This indicates that, for SVP as well as for the Bay Area in general, past forecasts have *overstated* loads.

The Decision should be revised at p. 88 to indicate that the record with regard to local system effects is based on outdated and inaccurate load forecasts, which overstate future demand in the Bay Area and the South Bay and the associated reliability risks faced by those areas. The Decision should also be revised at pp. 99-100 to remove Findings of Fact 3, 7-10, and 13, since they are all based on analysis using inflated demand forecasts.

B. Decision p. 91.

¹³ ISO, "Testimony of Irina Green on Behalf of the California ISO," CPUC case A.99-09-029, 8/27/01, pp. 3-4.
<http://www.caiso.com/documents/2001/08/28/200108281321237243.pdf>

The Decision cites testimony from Staff and the Applicant that "MEC will relieve the potential for overloads of the transmission lines serving the local area." However, the Decision ignores the impact of MEC on transformers. The ISO has testified that MEC, by virtue of its location on the 230 KV grid in San Jose, will *exacerbate* loadings on the Metcalf substation 230/115 KV transformers. Specifically, "The addition of the 600 Mw Metcalf Energy Center will decrease the system load serving capability if no transmission reinforcements are implemented because it will increase loading of the Metcalf 230/115KV transformers and may cause their overload." ISO, "Testimony of Irina Green on Behalf of the California ISO," CPUC case A.99-09-029, 8/27/01, p. 7.¹⁴ Operating MEC would reduce the load-serving capability of the 115 KV electrical grid between PG&E and Newark, under normal conditions, from 1886 Mw to 1838 Mw.¹⁵ For comparison, actual loads in June 2000 reached 1870 Mw on this section of the grid. Thus, if MEC had been operating in June 2000 it would have caused overloads on the San Jose area transmission grid.

The Staff and the Applicant assumed in their LSE analyses that, by the time MEC is operating, PG&E's proposed Northeast San Jose transmission project would also be online. This project, whose centerpiece is a new double-circuit 230 KV transmission line from

¹⁴ ISO, "Testimony of Irina Green on Behalf of the California ISO," CPUC case A.99-09-029, 8/27/01, p. 5.
<http://www.caiso.com/docs/2001/08/28/200108281321237243.pdf>

¹⁵ ISO, "Testimony of Irina Green on Behalf of the California ISO," CPUC case A.99-09-029, 8/27/01, Attachment C, Table 1, column 2.
<http://www.caiso.com/documents/2001/08/28/200108281329087868.pdf>

Newark to a new 230/115 KV substation at Los Esteros, has recently been proposed for suspension by the CPUC after its estimated costs more than doubled.¹⁶ The Decision already describes the Los Esteros substation as "a necessary precondition" for Alternatives 1 and 2 (Decision, p. 451). It does not say, but should, that MEC would cause normal overloads of the transmission network in the absence of Los Esteros.¹⁷

Even with Los Esteros, MEC would degrade the reliability of the San Jose area transmission network. The ISO's August 2001 analysis shows that with Los Esteros in service, MEC would reduce load-carrying capacity by an amount between 175 Mw and 448 Mw. In particular, it would reduce the load that could be served between San Jose and Newark from 2290 Mw to 2112 Mw under normal conditions, from 2088 Mw to 1640 Mw under "L-1" conditions with the FMC generator on, from 2170 Mw to 1994 Mw under L-1 conditions with

¹⁶ CPUC, 8/8/01, http://www.cpuc.ca.gov/PUBLISHED/COMMENT_DECISION/8974.htm Draft Decision of ALJ Thomas, Opinion Staying Decision 01-05-059.

¹⁷ To the extent that Los Esteros is a necessary precondition for MEC as well as for Alternatives 1 and 2, the Decision should also be revised at p. 451 to say so.

FMC off, from 1886 to 1711 Mw under T-1 conditions.¹⁸

The Decision should be revised at p. 91 to indicate that MEC will indeed have some negative impacts on local reliability. It should be revised at p. 95, where it says "MEC can be connected to the Cal-ISO-controlled grid with no major additions," to indicate that doing so absent Los Esteros would create normal overloads under year 2000 peak load levels. It should be revised at p. 99, Finding of Fact 10, to indicate that MEC will increase transformer loadings and will reduce the load-carrying capability of the SVP and PG&E electrical network between San Jose and Newark. It should be revised at p. 100, Finding of Fact 11, to indicate that with the "planned system improvement" at Los Esteros, adding MEC would reduce the load carrying capability of the electrical network between San Jose and Newark by at least 175 Mw.

C. Decision pp. 445-459.

The Decision cites Staff to the effect that the purposes of MEC are "being online as soon as possible; providing Bay Area electric grid reliability benefits; and mitigating transmission line congestion in the

¹⁸ ISO, "Testimony of Irina Green on Behalf of the California ISO," CPUC case A.99-09-029, 8/27/01, Attachment C, comparison of "Add Los Esteros Project No Peaking Generation, FMC on" and "Add Los Esteros and Metcalf Energy Center (600 Mw), FMC on" lines. "L-1" refers to the contingency of having one transmission line out (Los Esteros-Nortech), "T-1" refers to one transformer out (Metcalf 230/115 KV #3).

<http://www.caiso.com/documents/2001/08/28/200108281329087868.pdf>

area." (Decision, p. 445). In a footnote, the Decision rejects the notion that these purposes could be met by smaller plants such as "peakers," by a combination of alternatives, or by generation at Gilroy. (Decision, p. 445, fn. 151). The stated grounds are that smaller plants would be less efficient, would run less, and "could likely create more impacts than the MEC. (Decision, pp. 445 and 98). However, no actual projects were analyzed by any party.

Since the end of testimony in the MEC proceeding, the CEC has received and licensed a 135 Mw generation project at Gilroy, which is now under construction.¹⁹ A second 135 Mw generation project at Gilroy is now pending before the Commission, with a planned operation date within a year.²⁰ Both of these are projects of the Calpine corporation, one of the two partners in the MEC application. The Applicant, at least, does not believe there is a transmission problem in delivering 270 Mw from Gilroy.

Since the publication of the original PMPD in the MEC proceeding, but after the closing date for comments on the PMPD, the CEC has received license applications for a 180 Mw project at the US Dataport facility (the "Los Esteros Critical Energy Facility," referred to below as the "Los Esteros" project) adjacent to the Los Esteros substation site and for the 96 Mw Spartan I project in San Jose.²¹ The

¹⁹ 01-EP-8, filed 4/30/01, approved 5/21/01, under construction for operation in September 2001. See CEC. <http://www.energy.ca.gov/sitingcases/approved.html>

²⁰ 01-AFC-9, filed 6/15/01, with expected license approval in January 2002 and expected commercial operation in August 2002. See CEC. <http://www.energy.ca.gov/sitingcases/gilroyphase2/index.html> and http://www.energy.ca.gov/sitingcases/status_all_projects.html

²¹ 01-AFC-12 and 01-AFC-13, both filed August 2001, and both expecting CEC

former of these is a project of a Calpine subsidiary. The CEC expects both of these projects to be converted to combined cycle projects via the license amendment approach, as already used for the Sunrise project, increasing their respective capacities to 250 Mw and 124 Mw by the end of 2002.²²

approval in January 2002 and commercial operation in July 2002. See CEC, <http://www.energy.ca.gov/sitingcases/current.html> and http://www.energy.ca.gov/sitingcases/status_all_projects.html#anticipated

²² The conversion of Sunrise from the CEC-licensed peaker project to a combined cycle project, using a license amendment rather than a new application, is on the CEC agenda for final approval on September 12, 2001. See CEC, http://www.energy.ca.gov/business_meetings/2001_agendas/agenda_2001-09-12.html, item 1. The CEC's expectation for similar combined cycle amendments for the Los Esteros and Spartan I projects are shown in CEC, http://www.energy.ca.gov/sitingcases/status_all_projects.html#anticipated.

Finally, both the CEC and ISO have identified a proposed second Spartan project. The ISO identifies it as a 200 Mw project in Milpitas, while the CEC describes it as Spartan II, to be operational by the end of 2002 as a 124 Mw combined cycle project.²³

These are all Santa Clara County projects, and are all proposed to be on line sooner than MEC. They would supply more capacity than MEC, and are all CEC jurisdictional (hence not subject to project denial from any other state or local agency). *None of them are considered in the MEC alternatives analysis.*

²³ ISO, "Testimony of Irina Green on Behalf of the California ISO," CPUC case A.99-09-029, 8/27/01, Attachment C, Table 1 (<http://www.caiso.com/docs/2001/08/28/200108281329087868.pdf>); CEC, http://www.energy.ca.gov/sitingcases/status_all_projects.html#anticipated.

All of them would meet the project criteria of "being online as soon as possible; providing Bay Area electric grid reliability benefits; and mitigating transmission line congestion in the area." (Decision, p. 445). Specifically, their planned 2001-02 operation dates are sooner than MEC's mid-2003 planned operation date, and the ISO has quantified the contributions they would make to providing grid reliability benefits and reducing transmission line congestion in the San Jose area. The ISO has concluded that the Calpine Gilroy 1 project now under construction "would increase the system load-serving capability by approximately 70-80 Mw" and "may defer or eliminate the need for a fourth Metcalf 230/115 KV transformer bank."²⁴ The Calpine Los Esteros project "would add 152 Mw to the system capacity and the Milpitas plant would add 120 Mw."²⁵ The Spartan I project would increase system capacity by 64 Mw under normal conditions and 90 Mw "with a single transformer outage."²⁶

The Decision should be revised and reconsidered in light the existence of these projects (Los Esteros, Gilroy 1-2, Spartan I-II) and the fact that they represent almost 500 Mw of near-term combined cycle capacity (Spartan I and II, plus Los Esteros), as well as an additional

²⁴ ISO, "Testimony of Irina Green on Behalf of the California ISO," CPUC case A.99-09-029, 8/27/01, p. 7.

(<http://www.caiso.com/documents/2001/08/28/200108281321237243.pdf>)

²⁵ ISO, "Testimony of Irina Green on Behalf of the California ISO," CPUC case A.99-09-029, 8/27/01, p. 8.

(<http://www.caiso.com/documents/2001/08/28/200108281321237243.pdf>)

²⁶ ISO, "Testimony of Irina Green on Behalf of the California ISO," CPUC case A.99-09-029, 8/27/01, pp. 6-7.

(<http://www.caiso.com/documents/2001/08/28/200108281321237243.pdf>)

270 Mw (Gilroy 1-2) of simple cycle capacity. The Decision should indicate, and be reconsidered in light of the fact that, these projects (or even a subset of them) represent a viable alternative to MEC which would increase San Jose-area load serving capacity rather than decreasing it, and would be on-line sooner than MEC.

The Decision's "Summary and Discussion of the Evidence" on page 445 should be reconsidered, and its key supporting footnote 151 should be deleted, since the Los Esteros, Gilroy, and Spartan projects are not "theoretical alternatives," would not "typically run 500 or fewer hours per year," are designed to be as efficient as a baseload plant after conversion to combined cycle operation at the end of 2002, are "viable alternatives" and do not suffer from "insufficient transmission capacity."²⁷

Finding #1 on page 458 of the Decision should be deleted, because its assertion that the record "contains an analysis of a reasonable range of alternatives to the proposed project, including smaller generating capacities," is contradicted by the lack of any analysis of the various CEC-jurisdictional projects discussed above.

²⁷ All quotations in this sentence are from the Decision, pp. 445-446, fn. 151. In terms of impacts on load-serving capability, it is MEC which would have *negative* impacts and the smaller projects which would all have *positive* impacts. See ISO, "Testimony of Irina Green on Behalf of the California ISO," CPUC case A.99-09-029, 8/27/01, pp. 6-8 and Attachment C, Table 1. (<http://www.aiso.com/documents/2001/08/28/200108281321237243.pdf> and <http://www.aiso.com/documents/2001/08/28/200108281329087868.pdf>).

D. Decision p. 457:

The Decision asserts that "We have, however, only the Metcalf project before us, and it is only that project which currently appears reasonably likely of being online in the near-term future." *This statement is directly contradicted by the Commission's own website and siting caseload.* The Commission has already had before it and has approved 135 Mw of generation at Gilroy. The Commission currently has before it another 411 Mw at Gilroy, Spartan and Los Esteros.²⁸ The projects already approved or currently before the Commission total 546 Mw, virtually the same as the 580 Mw which are the maximum the Applicant expects to actually generate at the MEC project.²⁹ In addition, the Commission expects another 222 Mw of applications and license amendments in the next few months for projects in San Jose or Milpitas. All of these projects are within the "south Bay Area" (Decision, p. 88), the "Santa Clara County area" (Decision, p. 87), and the "San Jose area" (Decision, p. 87). All of the 768 Mw of approved, pending, or anticipated San Jose area projects "appear reasonably likely of being online in the near-term future" (Decision, p. 457), particularly

²⁸ Petitioners anticipate that the Applicant or Staff may argue that projects pending before the Commission may not be considered as alternatives to the MEC, but rather as separate projects in addition to MEC. Such an argument, if made, would create an impossible standard for alternatives. The Applicant has already argued (and the Decision appears to accept), that if a project is not before the Commission, then it can be rejected as not being a timely alternative. But in that case Applicants should not be able to argue, nor should the Commission agree if they do, that if a project is before the Commission it no longer counts as an alternative to another project. To reject projects as alternatives both *before* AFC filing and *after* would mean that no project could ever be considered a viable alternative.

²⁹ Decision, p. 10, fn. 2.

if "the near-term future" is defined to extend to the mid-2003 date when MEC itself would, at the soonest, begin operating.

The Decision should be revised to delete the assertion that only MEC is before the CEC, and to acknowledge that there are viable, timely alternatives to MEC which are already in licensing at sites which are electrically preferable. The Decision should be reconsidered in light of these facts.

E. Decision p. 459, Findings 14-15.

The Decision states that alternative sites would not be online "in the near-term future"; and that "MEC is the only project identified and reasonably likely to be online in the near-term future which will provide 600 Mw of local area generation and attendant electrical system benefits." Neither statement is true. The set of CEC-jurisdictional Santa Clara County projects with on-line dates in 2001 and 2002 would collectively provide more than "600 megawatts of local area generation and attendant electrical system benefits." As discussed above, use of the Gilroy, Los Esteros and Spartan sites would both meet the "objective of being online in the near-term future" and would provide well over "600 megawatts of local area generation and attendant electrical system benefits." Both findings should be rewritten or deleted, and the Decision should be reconsidered in light of these significant corrections to its erroneous assumptions..

F. Decision p. 465.

The Decision states that "the focus [of Public Resources Code section 25525] is on electricity's essential nature to the welfare of the

state as a whole" (emphasis added), goes on to cite "recent proclamations, legislative actions, and gubernatorial Executive Orders" which "all emphasize the need for increased supplies of electrical energy throughout the state" (emphasis added), and concludes that since MEC "will provide a portion of the electrical energy supply we conclude that this project is required for "public convenience and necessity" within the meaning of section 25525." (Decision, p. 465) The language on Decision page 465 would apply equally well to *any* generating unit anywhere in California. *The Decision's interpretation would make it impossible for a generation project not to be required for the public convenience and necessity.* Such a view ignores the history of "public convenience and necessity" analyses in the past, and ignores the Commission's own statewide analyses of California's electrical system.

In the past, the CPUC was responsible for reviewing utility resource addition proposals to determine if they were required for the public convenience and necessity. Those analyses focused on supply and demand, and endeavored to avoid the risks of overbuilding capacity as well as those of underbuilding. As the Decision itself states, "it is the responsibility of state government to ensure that the state is provided with an adequate and reliable supply of electrical energy." (Decision, p. 464; emphasis added). It is not the responsibility of state government to ensure that the state has a *glut* of electrical resources. The record in this case contains nothing quantitative about the statewide adequacy or reliability of electrical energy with or without

MEC in the years when MEC would actually be operable.

While the MEC case contains no analysis of statewide resource adequacy, the Commission staff has performed such an analysis pursuant to AB970 and has presented it to the Commission for the Commission's review and approval.³⁰ The California Energy Outlook report clearly shows that by 2003 the state will be well on its way to an electricity *glut* rather than an electricity *shortage*. The California Energy Outlook report shows that by the summer of 2003, California can expect to have generation resources sufficient to meet peak load under 1 day-in-10-year weather conditions, plus a 7 percent operating reserve, plus another 7000+ Mw to spare.³¹ In addition, in 2001 through 2003, out-of-state power plant additions in the Southwest are expected to run over 7000 Mw in excess of Southwest load growth.³² Those extra 7000 Mw consist overwhelmingly of generators which are already operational or under construction.³³ Many of the Southwest

³⁰ CEC staff, "California Energy Outlook, Electricity and Natural Gas Trends Report," staff draft, 8/22/01; CEC publication #200-01-002. (http://www.energy.ca.gov/reports/2001-08-22_200-01-002_STAFF.PDF), on the Commission agenda for full Commission "consideration and possible adoption" on September 5, 2001 (http://www.energy.ca.gov/business_meetings/2001_agendas/agenda_2001-09-05.html), item 5).

³¹ CEC Staff, "California Energy Outlook, Electricity and Natural Gas Trends Report," Staff draft, 8/22/01; CEC publication #200-01-002. (http://www.energy.ca.gov/reports/2001-08-22_200-01-002_STAFF.PDF), p. 43.

³² CEC Staff, "California Energy Outlook, Electricity and Natural Gas Trends Report," staff draft, 8/22/01; CEC publication #200-01-002. (http://www.energy.ca.gov/reports/2001-08-22_200-01-002_STAFF.PDF), p. 47, Table 4-5, showing 2008 Mw of load growth and 10,030 Mw of resource additions in the Southwest through 2003.

³³ See CEC listing of projects and their location and construction status, showing 9141 Mw of Southwest generation currently under construction and another 2256

generators have either indicated their intention to sell into California markets or are already under contract to do so.³⁴ Thus, by 2003 California will have between 7,000 and 14,000 Mw of capacity available to it *in excess* of 1-in-10 year loads *plus* a 7 percent operating reserve. Whether or not MEC's 580 Mw is running is clearly not relevant to keeping the lights on for the state as a whole.

Mw already licensed (http://www.energy.ca.gov/electricity/wscg_proposed_generation.html).

³⁴ See the DWR contracts signed in 2001, at www.sco.ca.gov. The Sempra contract alone lists over 1500 Mw of Southwest generation online by 2003 from which sales to DWR will be made. (http://www.sco.ca.gov/power_page/contracts/sempra/table_full.htm).

As another way of looking at the statewide situation, the CEC alone has licensed over 11,000 Mw of new generation since deregulation,³⁵ while ISO peak demand has gone from 45,676 Mw in 1998 to 45,494 Mw in 2000 to 41,155 Mw in 2001 to date.³⁶ Forecasted ISO area load growth has been about 1000 Mw per year. At that rate it will take until 2004 just to return to the 1998 load level, by which time the 11,000 Mw of already licensed generation will provide more than ample reserve margins. There is simply no need to license another 600 Mw for operation in 2003 based on statewide reliability requirements. The Decision should be reconsidered and revised to indicate that there is no record in the MEC proceeding showing that MEC is needed to meet statewide reliability concerns in 2003, and there is ample recent evidence that by 2003 there will no longer be a statewide need for new resources for reliability.

G. Decision pp. 467-8.

The Decision states that the relevant question for an override determination is whether there are "more prudent and feasible means,

³⁵ CEC, <http://www.energy.ca.gov/sitingcases/approved.html>. The 11,000+ Mw figure does not include approved projects which were subsequently cancelled.

³⁶ CEC Staff, "California Energy Outlook, Electricity and Natural Gas Trends Report," staff draft, 8/22/01; CEC publication #200-01-002. (http://www.energy.ca.gov/reports/2001-08-22_200-01-002_STAFF.PDF), p. 37, Table 3-1 shows 1998-2000 peak demands; ISO, <http://oasis.caiso.com/>, shows a peak ISO area load for 2001, through 9/3/01, of 41,155 Mw on 8/7/01 at 4 p.m.

when compared with the MEC" (p. 468) to "allow more power to flow from the Moss Landing generator into the local area, reduce San Jose's vulnerability to catastrophic outages by providing real and reactive power, and reduce the occurrence of voltage collapse problems." (p. 467). The Commission answers this question negatively based on the analysis in the Alternatives and Local System Effects sections.

However, the alternatives analysis does not deal with the 768 Mw of Santa Clara County generation (all discussed above) which is actually before the CEC, or expected to soon be before it, nor does the LSE analysis. The LSE analysis is overwhelmingly focused on reliability problems during peak loads, when all of the 768 Mw of new generation would be capable of running. The LSE analysis also overstates the scale of reliability problems by using a load forecast more than 10 percent higher than current load forecasts which take into account the conservation measures implemented in the last year. There is no analysis in the record which uses a realistic load forecast, and there is no analysis in the record which analyzes whether 768 Mw from the Calpine Gilroy, Calpine Los Esteros, and Spartan generation projects would be a "more prudent and feasible means" of maintaining reliable electrical service in the south Bay.

The Decision should be reconsidered and revised to indicate that 768 Mw of Santa Clara County projects which are in part already under construction, and which are all planned for operation sooner than MEC, may well be a "more prudent and feasible means, when compared with the MEC, of achieving similar public convenience and necessity."

(Decision, p. 468). The RPMPD should also be revised to indicate that there has been no analysis to date of whether the 768 Mw of Santa Clara County projects are environmentally as well as electrically superior to MEC, in large part because none of those projects were publicly announced prior to the close of MEC hearings in March 2001.³⁷

XI. CONCLUSION

For the foregoing reasons, petitioners respectfully request that this Commission: (1) reconsider its Decision; (2) reopen the evidentiary hearing in this matter to consider evidence documenting the dramatic improvement in this State's energy supply and demand context during the last six months; and (3) on reconsideration, vacate the Decision and reject the Applicant's AFC for the MEC Project.

October 24, 2001

Respectfully submitted,

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³⁷ A separate question is when the Applicant, ISO and Staff were first aware of the planned Calpine developments (which now total of 520 Mw) at Gilroy and Los Esteros, and whether any of the LSE or Alternatives witnesses from the Applicant, Staff, and ISO chose not to disclose or analyze those projects *despite being aware of them*.

Attorneys for Petitioners Santa Teresa
Citizen Action Group, City of Morgan
Hill, Great Oaks Water Company,
Demand Clean Air and Californians for
Renewable Energy

STATE OF CALIFORNIA
Energy Resources Conservation and Development Commission

In the Matter of:)	Docket No. 99-AFC-3
)	
Application for Certification for the)	Proof of Service
Metcalf Energy Center by Calpine)	
Corporation and Bechtel)	
Enterprises)	

I, Shehla Hartman, declare that on October 24, 2001, I emailed copies of the Petition for Reconsideration of Santa Teresa Citizen Action Group, City of Morgan Hill, Great Oaks Water Company, Demand Clean Air and Californians for Renewable Energy to those parties on the attached Service List with email addresses, and mailed said document in Oakland California, by first class mail to those parties on the attached Service List lacking email addresses.

Please see attached Service/E-Mail Listing

I declare under penalty of perjury that the foregoing is true and correct and this declaration was executed on October 24, 2001 at Oakland, California.

Shehla Hartman

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