

Memorandum

To: All Parties, Walnut Creek AFC (05-AFC-2)
Docket Unit

Date : June 22, 2007

From : **California Energy Commission - Garret Shean, Hearing Officer**
1516 Ninth Street
Sacramento CA 95814-5512

Subject: Evidentiary Hearing

In anticipation of the Evidentiary Hearing, the Hearing Office has reviewed the analyses in the sections of the FSA for possible use in the PMPD. We have discovered potential deficiencies with some of the cumulative impact analyses as to pending and reasonably foreseeable projects, and we have questions regarding some of the proposed Conditions of Certification, all of which may affect the conduct of the Evidentiary Hearing next Wednesday afternoon, the 27th.

The Committee has directed that we advise the parties of these matters in advance of the Evidentiary Hearing so that the parties may address them.

Cumulative Impacts

CEQA requires that the environmental documentation consider not only the impact of the project upon the existing setting but also the potential for a cumulative effect due to pending or reasonably foreseeable future projects. We believe that the evidentiary record will be insufficient for a legally adequate PMPD in four FSA topic areas that neither state nor imply that pending and reasonably foreseeable future projects were considered. Further, there are three additional FSA sections with incomplete cumulative analysis. These sections rely for the most part on conclusory statements without supporting data and analyses. The attached table summarizes our review.

Since the totality of the evidentiary record is available to prepare a legally adequate PMPD, we have examined the AFC to determine whether its analysis of pending and reasonably foreseeable future projects is sufficient to support a finding that there are no potential cumulative impacts. The AFC does not cure the deficiencies in these FSA topics. To date, we have not examined the data responses from the Applicant for more cumulative impact discussion in each of the inadequate topics.

Conditions of Certification

A thorough review of the proposed Conditions of Certification reveals that there are some which (1) are unclear or internally not consistent, (2) lack a clear nexus between the breadth of the mitigation imposed and the scope of potential impact, or (3) have become unnecessarily burdensome compared to prior versions of the Condition as used by the Commission. We have prepared and attached a list of the particular Conditions.