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May 4, 2005

File Refs: SCH# 2004101001,
PRC 4307, PRC 4449 and G 13-01

Ms. Nadell Gayou
The Resources Agency
901 P Street
Sacramento, CA 95814

Mr. Andrew Barnsdale
California Public Utilities Commission
c/o Aspen Environmental Group
235 Montgomery Street, #935
San Francisco, California 94104

Dear Ms. Gayou and Mr. Barnsdale:

Subject: Pacific Gas and Electric Company's (PG&E) Proposed Diablo Canyon Power Plant (DCPP) Steam Generator Replacement Project, San Luis Obispo County

Staff of the California State Lands Commission (CSLC) has reviewed the Draft Environmental Impact Report (DEIR) for the above-proposed project. Under the California Environmental Quality Act (CEQA), the California Public Utilities Commission (CPUC) is the Lead Agency and the CSLC is a Responsible and/or Trustee Agency for any and all projects that could directly or indirectly affect sovereign lands, their accompanying Public Trust resources or uses, and the public easement in navigable waters.

As general background, the CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable rivers, sloughs, lakes, etc. The CSLC has certain residual and review authority for tide and submerged lands legislatively granted in trust to local jurisdictions (Public Resources Code §6301 and §6306). All tide and submerged lands, granted or ungranted, as well as navigable rivers, sloughs, etc., are impressed with the Common Law Public Trust.

The Public Trust is a sovereign public property right held by the State or its delegated trustee for the benefit of all the people. This right limits the uses of these lands to waterborne commerce, navigation, fisheries, open space, recreation, or other recognized Public Trust purposes. A lease from the CSLC is required for any portion of a project extending onto State-owned lands that are under its exclusive jurisdiction.

As outlined in the DEIR, the Proposed Project would replace the original steam generators at DCPD Units 1 and 2. Each DCPD unit consists of four steam generators, for a total of eight steam generators at the site, all of which would be replaced as part of the Proposed Project. The four major phases of PG&E's Diablo Canyon Power Plant Steam Generator Replacement Project are as follows: 1) replacement steam generator (RSG) transport, 2) replacement steam generator staging and preparation, 3) original steam generator removal, transport and storage, and 4) RSG installation and testing of the RSGs.

The RSG Transport is one phase that involves the Fabrication and Transport to Port San Luis as outlined in Section B.3.1.1 of the DEIR. The RSGs will be transported from an overseas manufacturer to a southern California port via heavy-load ship and will be offloaded to a barge for travel to Port San Luis, and final transport with a ground transporter along Avila Beach Drive and the DCPD Access Road to a temporary staging area within the DCPD site. This component involves entering the Port during high-tide conditions using an established transport route. This portion of the project will occupy sovereign lands legislatively granted, with minerals reserved to the State, to the Port San Luis Harbor District, pursuant to Chapter 647, Statutes of 1955, as amended. Therefore, CSLC authorization will not be required for the proposed project. However, all necessary approvals and permits should be obtained from the Port San Luis Harbor District. This does not constitute, nor shall it be construed as a waiver of any right, title or interest by the State of California or any grantee of the State, in any lands under their respective jurisdiction.

Additionally, the DEIR describes a RSG Offloading Alternative (C.4.2). This alternative involves the delivery of the RSG's by barge from a southern California port directly to the Intake Cove offshore at Diablo Canyon. Once inside the Cove, the barge would anchor just west of the boat dock, and the RSG's would be offloaded and transported along existing roads. For your information, the CSLC has issued two leases (PRC 4307 and PRC 4449) to PG&E for water intake structures, a breakwater and for a cooling water discharge channel. Since the analysis for this alternative does not contain a plan view similar to Figure B-8 in the DEIR, we are unable to determine whether or not the existing boat dock is located within the CSLC's leasing jurisdiction. Since it appears that the alternative offloading is preferred over the proposed project offloading, a plan view of the Intake Cove offloading needs to be included in the DEIR. Once staff has reviewed the plan, we will advise whether or not a lease will be required. If so, Table A-2 and related text on page A-14 of the DEIR will need to be revised to reflect this information.

Further, the DEIR is unclear as to vessel (tug) anchoring needs. A vessel(s) anchoring plan should be included in the DEIR. The plan should provide a map of the proposed anchor spread and anchor locations or offshore temporary mooring locations

for each work vessel, and a narrative description of the anchor setting and retrieval procedures to be employed that will result in minimal impacts on the ocean bottom. The ocean bottom should then be characterized and described in the DEIR as to sandy or hard-bottom habitat, existing biological conditions, and any potential impact and mitigation that may be necessary.

The first and second paragraphs in Section D.1.2.1 Environmental Baseline on page D.1-1 of the DEIR indicate that the environmental setting used to determine the impacts associated with the Proposed Project are those that existed in October 2004. The second paragraph indicates that this baseline includes an operating power plant. Then, the third paragraph on page D.1-2 of the DEIR indicates that the existence of the operating power plant and its ongoing effects on the environment are not a consequence of the Proposed Project. This reasoning, and the analyses contained in the DEIR, are flawed for the following reasons and supplemental information and analyses will be necessary prior to any required CSLC action.

1. There is no information or discussion in the DEIR to explain the potential net differential impacts that may result due to the operational characteristics of the new versus the old generators. Are the new generators more "efficient"? Will they require a different (greater or smaller) volume of cooling water? Will the new thermal load, volume, size, spatial characteristics of the thermal plume be different (greater or smaller) or impact a different area than the existing operations of the power plant? What are these potential differential impacts, and what mitigation may be necessary? This information and analysis must be provided for public review and comment, not just as a response to comment in the FEIR.
2. Items 1 through 4 in Section D.3.1.5.1 Cooling Water Thermal Discharge Plume on pages D.3-17 and D.3-18 of the DEIR (and the subsequent paragraphs conclude that the environmental impact of the thermal plume from the existing power plant and generators is greater than originally anticipated (and greater than previously analyzed in a CEQA document or by the CSLC when the original lease was issued for the power plant). As a result, greater impacts to public Trust resources have occurred which are not quantified as part of the environmental setting baseline upon which impacts are based in the DEIR.

While the third paragraph concludes that a negotiated settlement / Consent Judgement was entered into, neither the Consent Judgement, nor an analysis of the net increased impact, lost habitat values or equivalence between those lost values and the habitat values resulting from permanent protection of 5.7 miles of near-shore marine habitat (which presumably are part of the existing environmental setting anyway) are included in the DEIR as part of the environmental setting for the Proposed Project. The only way that the permanent protection of the 5.7 miles can be considered to "mitigate" for the impacts to Public Trust resources described in Items 1-4 mentioned above is if existing habitat values are actually increased to offset the greater loss that resulted from the greater than anticipated original impacts. This information and analyses needs to be included in the DEIR.

Ms. Nadell Gayou
Mr. Andrew Barnsdale
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This letter is not intended, nor shall it be construed as, a waiver or limitation of any right, title, or interest of the State in any lands under the jurisdiction of the State Lands Commission. If there are any questions concerning the CSLC's jurisdiction, please contact Barbara Dugal, Public Land Manager, at (916) 574-1833. Questions concerning comments on the DEIR should be directed to Stephen L. Jenkins at (916) 574-1814 or jenkins@slc.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Stephen L. Jenkins". The signature is written in a cursive style with a large, prominent "S" and "J".

Stephen L. Jenkins, Asst. Chief
Division of Environmental Planning
and Management

cc: Port San Luis Harbor District
Harbor Manager
P.O. Box 249
Avila Beach, CA 93424

Barbara Dugal