

SYSTEM AND TRANSPORTATION SAFETY

I. General Comments

1. Section 12.3.1, Page D.12-17, Fourth full Paragraph, Second Sentence

This DEIR states: “. . . CEQA Guidelines do not provide any recommended significance criteria for radioactive hazards or risk of upset, and federal government control limits the ability of the CPUC to mitigate impacts in this area.” This sentence appears to eliminate the need for this entire section. CEQA Guidelines are silent regarding this issue precisely because the State and local agencies are pre-empted from regulating operations at nuclear power plants involving radiological safety.

As described in greater detail in the cover letter accompanying these comments, the issues addressed in this section are within the sole jurisdiction of the United States, acting through the Nuclear Regulatory Commission. In order to comply with federal law and avoid confusion in the Final EIR, the document should clearly state that any mitigation measures related to these preempted areas are legally infeasible and unenforceable. In particular, Impacts S-3, S-4, S-5, S-6, S-7 and Mitigation S-7a should be removed from the document. The radiological impacts of the no project alternative should also be removed.

TRAFFIC AND CIRCULATION

I. General Comments

1. Entire Chapter

The DEIR proposes several trip reduction measures to address increased traffic during implementation of the SGRP. Although PG&E agrees that the impact of any increased traffic on the communities surrounding DCPD should be reduced below the level of significance during the Project, we have questions and concerns about the DEIR's traffic analysis and the mitigation measures proposed. These issues are summarized here and described in more detail in the Specific Comments found later in this section.

The DEIR Improperly Incorporates Baseline DCPD Traffic Into Project Impacts

Under CEQA, an environmental impact report must analyze impacts from a project when compared to the environmental baseline, which is "baseline physical conditions" at the time of the project. With respect to the SGRP, the "baseline physical conditions" include environmental conditions resulting from normal DCPD operations, including normal plant operations and operations during normal refueling outages. Under CEQA, the environmental baseline provides the benchmark against which project impacts are measured for purposes of assessing the significance of any changes to the environment caused by the Projects. See Discussion Notes, 14 Cal Code Regs. § 15125 ("CEQA Guidelines").

Because CEQA requires that the environmental setting be measured at the time that the environmental analysis commences, operations at DCPD must be considered as part of the existing baseline, not as a project impact. See *Save Our Peninsula Committee v. Monterey Bd. of Supervisors*, 87 Cal. App. 4th 99, 123 (2001) ("A baseline figure must represent an environmental condition existing on the property prior to the project."). This existing environmental baseline includes the impacts resulting from both normal DCPD operations as well as normal outage conditions. Only impacts above those associated with normal DCPD operations, either in regular DCPD operations or regular refueling outages, can be properly attributed as a project impact. See *Bloom v. McGurk*, 26 Cal. App. 4th 1307, 1314 (1994) (existing operations of a facility are not subject to further CEQA impact analysis).

In assessing Impact T-3, the DEIR does not make use of the proper baseline and so attributes traffic impacts from both normal, baseline outage conditions and project-related workers to the SGRP. This is inconsistent with CEQA.

Section D.13.3.4 states that the SGRP would require 900 to 950 additional workers and associated traffic trips. Nonetheless, the DEIR measures SGRP traffic impacts by those "2050 additional workers over non-outage conditions." DEIR at D.13-15. In determining

the number of 2050 additional workers, the DEIR combines the 950 project-related employees with the 1100 employees that the DEIR finds constitute the normal refueling outage condition. *See id.* The number of personnel employed during normal DCPD refueling outages constitute part of the environmental baseline for the DEIR and impacts associated with these workers cannot properly be considered a SGRP impact. Only impacts above baseline conditions, including normal DCPD outage conditions, may be considered a SGRP impact. The Final EIR should reflect the true baseline traffic conditions.

Proper Project Baseline for Normal Outage Conditions

In addition to improperly attributing the impacts of normal refueling outages to the SGRP, the DEIR also miscalculates the baseline amount of workers associated with normal refueling outages at DCPD. The DEIR assumes that “up to 1,100 outage support personnel” use the DCPD Access Road during the routine outage periods. This figure does not accurately assess the traffic baseline as required under CEQA.

The CEQA Guidelines provide that the physical environmental conditions existing at the time the notice of preparation is published “normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” 14 Cal. Code Regs. § 15125(a). California courts have recognized that an environmental baseline for purposes of CEQA should include future activities that have already been permitted and rights that have already vested. *See Benton v. Board of Supervisors*, 226 Cal. App. 3d 1467, 1476 (Cal. Ct. App., 1991).

In a case analogous to the present one, the Court of Appeal was asked to decide whether a baseline for traffic at a mining operation included the traffic allowed pursuant to the permits for the existing operations. *Fairview Neighbors v. County of Ventura*, 70 Cal. App. 4th 238, 242-243 (Cal. Ct. App., 1999). That court noted that using the “actual” traffic counts to determine the baseline would have been “misleading and illusory” because the “flow of traffic for a mining operation fluctuates considerably based on need, capacity and other factors.” *Id.* at 243. Similarly, in the present case, the actual flow of traffic to DCPD fluctuates depending on the need, and in particular, traffic levels normally increase during the planned, permitted refueling outages. The right to undertake these outages, which are part of the normal operation of the plant, is already vested and part of the existing environmental baseline. To resolve what traffic counts to use in such a fluctuating situation, the *Fairview Neighbors* court looked to the average number of trips that would be required to service the full-capacity level of mining activity under the vested permits. *Id.*

Under *Fairview Neighbors* and *Benton*, all activities associated with normal plant operations, including regular refueling outages and other necessary plant maintenance activities, such as the SGRP, should be considered as within the vested right to operate DCPD and therefore within the existing traffic baseline. Even under a more conservative reading of these two cases, the CPUC should calculate the traffic baseline for the SGRP based on the average

number of workers associated with DCPD operations during a normal outage condition by calculating the average number of vehicle trips for this permitted and vested right. The DEIR correctly assumes an average workforce for normal DCPD operations of 1400 personnel. With respect to personnel associated with normal refueling outages, the DEIR incorrectly assumes the average worker amount to be 1100 employees. In fact, the average number of outage support personnel at DCPD during refueling outages from 1994-2003 (the years for which such data is available) is 1285. See "Refueling Outage Peak Headcount" at Attachment 7.¹ This average should be used for the baseline number of additional personnel at the plant during the refueling outage, rather than the "peak" figure of 1,100 assumed by the DEIR. This sentence should therefore read as follows:

"During planned DCPD outage periods, which last an average of 3 months, an average of 1,285 outage support personnel also uses the DCPD Access Road to travel to DCPD."

The correct number of personnel for calculating the traffic baseline in the EIR is therefore 1,400 permanent employees and 1,285 outage support personnel, for a total of 2,685 employees.

Effectiveness Criteria For Traffic Mitigation Measures Are Infeasible

The traffic mitigation measures proposed in the DEIR address two types of impacts: traffic impacts during peak hours and overall traffic volumes during the refueling outage. Although PG&E agrees that these analyses represent the types of traffic impacts that characterize most CEQA projects, the mitigation measures proposed in the DEIR employ unnecessarily burdensome effectiveness criteria that are not linked to any measure of SGRP traffic impacts.

The effectiveness criteria employed in the traffic mitigation measures proposed in the DEIR would severely restrict project implementation such that they should be considered infeasible. CEQA guidelines require that an EIR describe "feasible measures which could minimize significant adverse impacts...." CEQA Guidelines, § 15126.4(a)(1). The effectiveness criteria applied to T-2a, T-2b, and T-3b – that fewer than 10 project-related vehicles pass through the Access Gate during any peak hour – would be next to impossible to meet, for the following reasons:

- (1) It would be nearly impossible to differentiate vehicles associated with the SGRP from vehicles associated with other DCPD activities. Attempting to do so would

¹ Prior to 1994 outage related personnel were even higher than the 1994-2003 average used here. Therefore, the use of this period to express the average DCPD outage condition results in a number lower than the overall average throughout DCPD's operating history, and so offers a conservative approach.

cause more traffic impacts associated with administrative delays at the DCPD gate while attempting to implement this measure; and

- (2) It is impractical to restrict project and worker activities in this manner. For example this requirement would not allow Project workers to leave DCPD during peak hours even in the event of family emergencies, the need to plan over-time work, the need to accommodate flexible work schedules, or other unanticipated and/unforeseen events.¹

As with the mitigation measures established for air quality impacts, this significance criteria is unnecessarily rigid. The DEIR does not describe why it is necessary to impose these strict measures in order to reduce a potentially significant impact below the designated level of significance. Moreover, as described in the portion of these comments addressing air quality impacts, the existing assumptions made by the DEIR with respect to number and timing of Project workers is overly conservative and will likely be reduced as Project implementation continues.

Modifications to Mitigation Measures

PG&E suggests the following revisions to the traffic mitigation measures to address peak traffic impacts and overall traffic volumes during the replacement outages.

- a. Mitigation For Traffic Impacts During Peak Hours

Impact T-2 of the DEIR concludes that there would be a potentially significant traffic impact during peak hour project trips during “the RSG staging and preparation periods” when “approximately 100 to 700 [additional] workers” will be needed at DCPD. DEIR at D.13-13. To mitigate this impact, measures T-2a (summer season) and T-2b (all year) propose limiting project trips to less than 10 per peak hour. Similarly Impact T-3 concludes that there would be a potentially significant traffic impacts due to peak hour traffic trips during the replacement outage period.² DEIR at D.13-15. To mitigate this impact, measures T-3b and T-2b propose limiting SGRP trips to less than 10 per peak hour. As described above, these measures do not link the required reduction to any significance threshold.

As an alternative, PG&E proposes to limit traffic impacts during both the “RSG staging and preparation period” described in Impact T-2 and the replacement outage period through a

¹ Under these measures, PG&E literally could not allow a Project worker to leave the plant to help an unexpectedly sick child or spouse if ten other Project workers had already left DCPD during a peak period.

² As described above, the DEIR improperly attributed to the SGRP, traffic impacts from baseline, refueling outage conditions. This error calls into question whether there would be a potentially significant SGRP impact in this case at all, given that removing normal outage-related impacts reducing the DEIR’s assessed impact by over 50%.

modified “peak hour” mitigation measure. Because the DEIR found that Impact T-2 was triggered by the additional “100-700 workers” required for these activities, PG&E will provide peak hour mitigation beginning when project-related personnel at DCPD reach this DEIR-identified threshold. Rather than distinguishing between RSG staging period and the refueling outage period, PG&E proposes that a single mitigation measure be applied to the SGRP once project-related personnel reach this 100-worker limit.

Once the 100-worker limit is reached, PG&E will set shift times to ensure that all project-related personnel above the 100-worker limit begin or end their shifts outside of the peak hours identified in DEIR Mitigation Measures T-2a, T-2b and T-3b. This requirement would be self-executing through these mandatory shift decisions, thus avoiding the need for a human monitor at the gate and avoiding the logistical infeasibility and potential adverse impacts caused by monitoring the different types of workers entering DCPD. This approach will provide a meaningful effectiveness standard (through mandatory shift changes), while avoiding the presented impact entirely (rather than partially as the existing measures would) and presenting a single mitigation measure for peak hour traffic impacts.

b. Mitigation For Traffic Impacts During The Replacement Outages

Impact T-3 concludes that total project-related traffic during the replacement outage would create a potentially significant impact. DEIR at D.13-15.¹ In order to address this impact, the DEIR recommended the imposition of a “trip reduction program” to minimize the number of project-related trips. This measure established an effectiveness criterion requiring that PG&E ensure that “50 percent of the project-related employees use the provided shuttle service on a regular basis.” DEIR at D.13-20. As discussed above, Impact T-3 assumes an incorrect existing traffic baseline.

PG&E agrees that a comprehensive traffic control plan is the best approach to address any impact related to overall traffic volume during the replacement outages. PG&E suggests modifications to the proposed trip reduction plan in Mitigation Measure T-3a in order to ensure that the proper CEQA baseline is followed to provide increased flexibility in devising traffic control measures, and to provide meaningful effectiveness criteria that allow for effective project implementation. These modifications include:

- *Plant-Wide Cap On Vehicle Trips*

As an alternative to Mitigation Measure T-3a, which is tied exclusively to ensuring at least 50% of SGRP workers use of a shuttle service, PG&E proposes setting a specific cap on the number of total DCPD personnel that could enter the plant each day during the replacement outages. This cap would be based on the baseline

¹ As discussed earlier in these comments, the extent of the impact was improperly based on the both project-related traffic and existing plant baseline conditions, also calling into question whether the project related traffic by itself would even create a potentially significant impact.

environmental conditions relating to DCPD operations during a normal refueling outage. This approach would provide PG&E the flexibility to reduce the number of trips across DCPD as a whole and would likely increase the effectiveness of the mitigation measure by widening the pool of workers available for trip reduction measures.

Any trip reduction plan must begin with the proper CEQA baseline. As described above, existing traffic conditions at DCPD include two primary components: normal non-outage personnel and normal refueling outage personnel. After setting this proper baseline amount, the trip reduction plan would require PG&E to limit any increase above this baseline amount to no more than 50% of the total expected project-related trips. This 50% reduction in project-related trips would provide the same level of protection as the existing mitigation measure, but allows PG&E the ability to reduce this number of trips on a plant-wide basis, using any number of methods, as outlined further below.

The plant-wide cap would be established as follows:

- (1) **Existing Traffic Baseline:** First, the existing traffic baseline would be set based on normal outage conditions. This baseline would be a sum of normal DCPD personnel related to non-outage plant operations and normal refueling outage personnel. The DEIR correctly designates personnel levels for normal DCPD operations at 1400 workers. As described above, the proper level for normal refueling outage personnel is 1285. Together then, the traffic baseline for normal DCPD during an outage is the total round trips for 1400 normal operations workers and 1285 refueling outage employees, resulting in a total of 2685 employee round trips. Because this is the amount CEQA designates as the vested baseline level for traffic at DCPD during a normal refueling outage, this would be the starting point of any trip reduction plan.
- (2) **50% Reduction in Project-Related Trips:** Starting with the Existing Traffic Baseline, the modified trip reduction plan would ensure that this baseline level would not increase by an amount greater than 50% of the project-related trips. The DEIR assumes 950 project workers. *See* DEIR at D.13-15.¹ Therefore, the trip reduction plan would have to reduce project round trips by 475. Adding the remaining 475 round trips to the Existing Traffic Baseline, the trip reduction plan would limit total plant round trips during the replacement outage to 3160. This total vehicle cap for DCPD could be measured easily and inexpensively through the use of an automated trip monitoring device at the DCPD gate off of Avila Beach Drive. This 50% reduction would ensure the

¹ The 50% reduction is consistent with existing Mitigation Measure T-3a's 50% reduction criterion and actually would result in a further reduction than

same level of reduction in project trips currently required by Mitigation Measure T-3a.

- *Flexible Implementation Methods:*

Unlike the trip reduction plan described in Mitigation Measure T-3a, PG&E proposes that its traffic control plan not be tied to a single method of reducing trips, such as use of a shuttle service. This measure should be revised to include all of the following elements:

- (1) **Feasible trip reduction measures:** such as moving some operational activities off-site, leasing offsite park-and-ride locations, employer-funded incentives for workers to travel to DCPD by van-pool or other high occupancy vehicle;
- (2) **Staggered work hours:** to avoid peak traffic periods to the extent necessary;
- (3) **Parking limitations in impacted communities:** to reduce congestion during project implementation activities;
- (4) **Road use restrictions;**
- (5) **Signage supporting traffic control measures:** to ensure the control plan is implemented effectively;
- (6) **Emergency response measures:** to ensure emergency access during Project transportation activities; and
- (7) **Public notification plan:** to ensure the community is aware of project-related traffic measures.
- (8) **Other measures:** The plan would also address other elements of the trip reduction program currently provided in Mitigation Measure T-3a.

- *Proven Approach With Greater Benefits:*

PG&E has developed similar traffic control plans in other contexts, including as part of the ISFSI project. The advantages of expanding and modifying Mitigation Measure T-3a to include such a traffic control plan are:

- (1) **Plant-Wide Approach:** This revised trip reduction plan would allow the PG&E to consider any reduction in DCPD existing traffic amounts due to the relocation of existing DCPD personnel off-site. It would also allow PG&E to consider any new parking plan or other plant-wide changes.
- (2) **Integrated Plan:** This approach will allow PG&E to develop an integrated plan for addressing traffic impacts through a single control plan. This approach would also allow PG&E to integrate the traffic control measures required under the Air Quality section of the EIR into a single plan.

Consistent with these recommendations, PG&E suggests the following modification to Mitigation Measure T-3a as a replacement for Measures T-2a, T-2b, T-3b:

Mitigation Measure T-2 a: Avoid Peak Hours for Project-Related Shifts. At any time when project-related personnel at DCPD exceed 100, PG&E shall ensure that no project employee shift for workers above the first 100 will begin or end during peak hours on California Highway 101 or on local surface roads in Avila Beach. Peak hours for California Highway 101 are 6 am – 8 am. Peak hours for Avila Beach are 4 pm to 7 pm, only during peak season (May through August).

Effectiveness Criteria: Demonstrating a requirement with the Installation Contractor that shift times for any project-related employees above the first 100 on site will not begin or end during any peak time for Highway 101 or Avila Beach surface roads.

Responsible Agency: CPUC

Mitigation Measure T-3a: Develop and Implement a Traffic Control Plan. PG&E shall develop and implement a traffic control plan in consultation with the San Luis Obispo County and the CPUC that will ensure that during each replacement outage total vehicle round trips (entering and leaving DCPD) will not exceed 3160. PG&E may ensure this level of trip reduction through any feasible trip reduction measures (including, but not limited to, moving some operational activities off-site, leasing offsite park-and-ride locations, employer-funded incentives for workers to travel to DCPD by van-pool or other high occupancy vehicle).

The Traffic Control Plan may also include other measures to reduce traffic related impacts including:

(1) Parking limitations in impacted communities to reduce congestion during project implementation activities; (2) Road use restrictions; (3) Signage supporting traffic control measures to ensure the control plan is implemented effectively; (4) Emergency response measures: to ensure emergency access during Project transportation activities; (5) Public notification plan to ensure the community is aware of project-related traffic measures; (8) Other measures required in the DEIR for Measure T-3a.

Effectiveness Criteria: Limiting total vehicle round trips during each replacement outage to 3160.

Responsible Agency: CPUC

II. Specific Comments

2. Section D.13

There appears to be a mixture of terms and analyses metrics. This section should be reviewed carefully in order to eliminate the mixing of terms. For example, it is unclear whether the volume to capacity criteria are related to the daily traffic condition or the peak hour conditions. Page D.13-2 states that "Table D.13-2 shows the screening traffic volume levels for determination of LOS on roadways". This table reflects a daily traffic metric. Yet the significance criteria table (Table D.13-5) simply refers to volume to capacity (V/C) ratios. Are these daily or peak hour V/C ratios?

This is potentially important because the first impact discussion Impact T-1 is based on an evaluation of 68 total DAILY trips associated with RSG transport. All the tables that show a V/C ratio (Tables 13-3, 13-4, 13-6 and 13-7) show it next to the daily traffic volume, making one think the V/C ratio is related to the daily capacity values given in Table D.13-2.

The analysis of impacts of staging (Impact T-2) and replacement (Impact T-3) discuss daily traffic, but use the peak hour conditions to compare conditions against the V/C ratio criteria. Impacts for T-2 and T-3 seem to be based on peak hour traffic conditions, which is different than the discussion of screening analysis and criteria and the impact assessment for T-1.

All impact analyses should use the same screening criteria, either daily or peak hour. The text should clearly let the reader understand what conditions will be analyzed and what calculation is used to determine potential impacts.

3. Section D.13.1.1, First Paragraph, First and Second Sentences

These sentences acknowledge that information used to assess the Proposed Project's potential impact on the existing street system was compiled from a range of existing sources, including the County of San Luis Obispo Traffic Volumes Table. This table includes traffic counts for the years 1993 through 2003.

The County of San Luis Obispo routinely requires the preparation of a Traffic Control Plan (TCP) which incorporates a range of measures, including trip reduction measures as recommended in the EIR, that specifically address the project in question. Such a plan is described above as a modification to the traffic mitigation measures in the DEIR.

4. Section D.13.1.2, Page D.13-3, Last Paragraph, Second Sentence

This sentence states that "up to 1,100 outage support personnel" use the DCP Access Road during the routine outage periods. As described above, this figure does not properly assess the project traffic baseline as required under CEQA. The average number of outage support personnel at DCP during refueling outages from 1994-2003 (the years for which such data is available) is 1284. See "Refueling Outage Peak Headcount" at Attachment 7. This sentence should therefore read as follows:

“During planned DCPD outage periods, which last an average of 3 months, an average of 1,284 outage support personnel also use the DCPD Access Road to travel to DCPD.”

The correct number of personnel for calculating the environmental baseline in the EIR is therefore 1,400 permanent employees and approximately 1,284 outage support personnel, for a total of 2,684 employees.

5. Section D.13.1.5, Page D.13-9 (Table D.13-3)

The future traffic volume along Diablo Canyon Access Road should not increase according to the statistics for SLO Census data (i.e., 1.4 percent per annum). Diablo Canyon Access Road traffic is under the sole discretion of the activities of DCPD. It could be argued that traffic will not grow under normal operating conditions along this road. This roadway segment should be eliminated from this table in that it is not a public road subject to community growth trends.

6. Section 13.3.3, Pages D.13-13 and -14, Second Paragraph, Fifth Paragraph and Table D.13-6, respectively

It is stated that the worst case scenario will result in 142 peak hour trips. However, these 142 trips are not evident on the following table.

Further, Table D.13-6 shows the Project ADT. Yet, the analysis seems to be conducted during the peak hour. What is the project peak hour contribution to all the study area locations?

If the impacts are determined based on a daily condition, as is implied in the initial text, then the mitigations of travel avoidance during peak times will not mitigate the impact. The full volume of daily traffic will occur during the scheduled project. By moving the traffic outside the peaks will not eliminate the traffic over a twenty four hour period. This is why it is important that the traffic section clarify which period is being analyzed for impacts.

7. Sections 13.3.3 and 13.3.4 (Mitigation Measures T-2a, T-2b, T-3a and T-3b)

These mitigation measures may reduce potential traffic impacts. As discussed above, the additional mitigation measure of preparing a TCP should be required to accomplish the same intent of Mitigation Measures T-2a, T-2b, T-3a and T-3b, in a quantifiable manner.

8. Section D.13.6, Table D.13.8 (Mitigation Measures T-2a and T-3a)

These mitigation measures describe peak hours for Avila Beach Drive during peak season (May – August). These peak hours are 4 pm to 7 pm and 10 am to 5 pm on weekends. DEIR at D.13-19 - D.13.20. It seems clear from the designation of a specific weekend period (10 am to 5 pm) that the evening peak hours of 4 pm to 7 pm are not intended to apply to weekends. Moreover, any application of the 4 pm to 7 pm period to weekends will create substantial feasibility problems with implementing twelve-hour project shifts during the replacement outage periods. The clarification that the 4 pm to 7 pm peak period applies only on weekdays should be made in the Final EIR.

VISUAL RESOURCES

I. General Comments

1. Section D.13

Although this is a CEQA document, the Visual Resources section incorporates a methodology and evaluation criteria reflective of a federal process with the use of terms such as “viewer exposure”, “visual sensitivity”, and “levels of concern” – one would find these terms in a Scenic Management System approach for a Forest Service project. Qualitative terms such as “moderate and high visual sensitivity” are not consistent with a CEQA analysis. This point is raised because using this methodology and then attempting to apply it to CEQA thresholds (Page D.14.3.1) introduces an inherent inconsistency and results in conclusions and mitigation measures that are neither substantiated or warranted.

For example, Mitigation Measure V-1a (Page D. 14-23) is intended to reduce a visual impact (V-1). However, it is clear that this impact does not relate to any of the CEQA threshold criteria. A change in the view does not automatically result in a visual impact pursuant to CEQA.

While the analysis provides a comprehensive background and context, the document’s analysis should focus on the thresholds established by CEQA Guidelines, Appendix G for Aesthetics, as follows:

Would the project . . .

Have a substantial adverse effect on a scenic vista?

Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?

Substantially degrade the existing visual character or quality of the site and its surroundings? Or

Create a new source of substantial light or glare which would adversely affect day of nighttime views in the area?

Any change in any potential public views would be limited to the unloading of the steam generators at Port San Luis, a licensed activity. Also, this activity would be temporary, occurring over several days, with no long term change in the existing visual context. The document’s analysis clearly shows that the Proposed Project does not reach or cross over any of these CEQA thresholds.

Using the proper CEQA criteria, then, there would be no significant Aesthetics or Visual Resources impacts, and therefore no need for any proposed mitigation measures. The following additional language, tracking the four CEQA significance criteria provided in the DEIR, could be added to the Final EIR making this conclusion clear:

- **The Project Would Not Have A Substantial Adverse Effect On A Scenic Vista:** The unloading activities associated with the Proposed Project at Port San Luis will not create a substantial change to a scenic vista. While this area is visible to recreational users visiting the area, the proposed offloading activities are completely consistent with other activities occurring within the area on a daily basis. Although the offloading involve large objects, the Port is obligated to accommodate these activities within their permitting and licensing parameters.

- **The Project Would Not Substantially Damage Scenic Resources:** The unloading activities associated with the Proposed Project will occur within a disturbed paved area designed to accommodate similar port activities, and therefore does not represent any potential damage to scenic resources in the area.

- **The Project Would Not Substantially Degrade The Existing Visual Character or Quality of the Site and Its Surroundings:** The existing visual character and quality of the area are characterized by similar port activities including but not limited to commercial facilities, parking areas, and the loading/unloading of boats. The unloading activity associated with the proposed project is completely consistent with existing ongoing activities similarly permitted and licensed by the port and therefore does not represent a change in the visual character and quality of the area.

- **The Project Will Not Create A New Source of Substantial Light or Glare:** It is possible that the unloading activities will require temporary security lighting for a short period of time. This lighting would be completely consistent in terms of illumination with other existing light sources in the immediate area (e.g. parking lot, pier lighting). This lighting would be adequately directed and shielded to reduce glare and will be removed immediately after transporting is completed. Therefore, this would not constitute a new source of substantial light or glare.

The unloading activities of the Proposed Project do approach any of these CEQA thresholds, and therefore no mitigation measures are required.

MITIGATION MONITORING AND REPORTING

I. General Comments

1. Environmental Monitor Requirements

Section H.3.1 provides that an environmental monitor assigned to each area must be onsite during project implementation to report and remediate any non-compliance. This project will be implemented over the course of several years with periods where there will not be any significant construction activities. This provision should be modified to only require onsite monitoring during periods of significant project activities.

2. Reporting Requirements Should Be Limited Outside of Outage and Offloading Periods

Section H.3.3. requires daily reports by an onsite CPUC environmental monitor and weekly written reports by PG&E on the status of the project. This project will be implemented over the course of several years with periods where there will not be any significant construction activities. This provision should be modified to only require reporting during periods of significant project activities.

3. Limitation Must Be Made On Posting Confidential Information

Section H.3.4. provides that the CPUC will make monitoring reports available on its website for public inspection. Any information posted on this website should be reviewed with PG&E prior to public disclosure to ensure that there no sensitive information is disclosed, including information related to security or proprietary financial information.

ATTACHMENT 2

FEDERALLY PREEMPTED ISSUES

As described in greater detail in the cover letter accompanying these comments, the DEIR addresses several areas and introduces multiple mitigation measures that are within the sole jurisdiction of the United States, acting through the Nuclear Regulatory Commission. In order to comply with federal law and avoid confusion in the Final EIR, the document should clearly state that any mitigation measures related to these preempted areas are legally infeasible and unenforceable. This attachment provides a summary of specific portions of the DEIR that improperly address preempted matters.

EXECUTIVE SUMMARY

1. Section 5, Page ES-58, Table ES-6, Summary of Impacts and Mitigation for the Proposed Project

Mitigation measures S-2 through S-6 address issues that are pre-empted from state and local review, and should be eliminated from this document. If the measures remain in the Final EIR, the document should make absolutely clear that these measures are unenforceable and legally infeasible under CEQA.

2. Section 4.2.4, Page ES-51, First sentence

The subject of this sentence is pre-empted from state and local review, and should not be a part of this analysis, nor set forth as a basis for selecting an environmentally superior alternative. This sentence should be removed.

PROJECT DESCRIPTION

10. Page B-40, 1st, 2nd and 4th bullet points (under Original Steam Generator Removal, Transport and Storage)

These items are pre-empted from state and local agency review, falling under the exclusive jurisdiction of the NRC.

11. Page B-41, 2nd, 3rd, 5th, 6th, 8th, 9th, 10th and 15th bullet items

These items are pre-empted from state and local agency review, falling under the exclusive jurisdiction of the NRC.

GEOLOGY, SOILS AND PALEONTOLOGY

1. Mitigation Measure G-3a, Revision of Long Term Seismic Plan, Is Preempted

The DEIR makes clear at the outset that the CPUC has no jurisdiction to regulate “[s]eismic safety of DCPD in its current design and certain permanent project components (e.g., the OSG Storage Facility).” DEIR at ES-24. Nonetheless, Impact G-3 purports to assess the seismic issues associated with the construction of the OSGSF, and Mitigation Measure G-3a requires that an NRC-required seismic program be “refined to incorporate new earthquake data.” In this way, under the umbrella of a CEQA impact analysis and associated mitigation, the DEIR attempts to require PG&E to modify an NRC seismic requirement or proceed with the Project in the absence of required mitigation.

The OSGSF will be designed using the provisions of 10 C.F.R. § 50.59, including its requirement that the building meet uniform building code requirements for seismic impacts. This NRC requirement pre-empts Mitigation Measure G-3a. If not deleted or modified, this requirement would impose mitigation measures related to a matter outside of the state’s jurisdiction, namely geologic issues related to radiological health and safety. The state is clearly preempted from imposing mitigation measures in those subject areas. *See Maine Yankee*, 107 F.Supp. 2d at 55.

Mitigation Measure G-3a should be removed or the Final EIR should make clear that this measure is unenforceable and therefore legally infeasible under CEQA.

6. Mitigation Measure G-4a Should Be Revised To Reflect Appropriate Scope of the Geotechnical Evaluation and Potential Engineering Solutions

Mitigation Measure G-4a requires the preparation of a geotechnical evaluation “similar to that done for ISFSI” and sets new seismic standards that would guide the construction of the OSGSF, requiring the use of the San Simeon earthquake. *See* DEIR at D.5-17. As described above, NRC regulations reflect the necessary design standard for the OSGSF and the required seismic criteria for the facility, namely uniform building code standards. As a practical matter, the NRC requirements for minimizing radiation exposure set forth at 40 C.F.R. Part 190 and 10 C.F.R. Part 20, will result in a structure that will be a large concrete, bunker that will be capable of handling large loads, including debris flows. As a legal matter, because NRC regulations drive the design and construction of the OSGSF facility, including the necessary seismic criteria, these issues are preempted from CPUC review and mitigation. Therefore, this mitigation measure is unenforceable and legally infeasible as written.

PG&E is willing to conduct a geotechnical evaluation of the area in the vicinity of the OSGSF locations and using that evaluation as a mechanism to help select the final location of the OSGSF. We suggest making minor modifications to Mitigation Measure G-4a in order to avoid these preemption issues and create an enforceable mitigation measure. We recommend deleting the reference to ISFSI and the deletion to the “most recent seismic acceleration values as derived since the 2003 San Simeon earthquake”, as these are areas that are pre-empted by federal regulations. In addition, we have added an additional option to perform an engineering analysis

of the structure to withstand the landslide loads to provide additional flexibility for the project while ensuring that these issues are adequately addressed.

These revisions are as follows:

G-4a: Evaluate slope stability in the vicinity of the OSG Storage Facility site. A geotechnical evaluation ~~similar to that done for the ISFSI~~ shall be undertaken by PG&E and/or the construction contractor to assess the stability of the north-facing slopes in the area of the proposed OSG Storage Facility, both above and below the level of the current “man camp.” This report should be reviewed and approved by PG&E and the CPUC at least 60 days prior to final approval of the OSG Storage Facility design. Such an evaluation shall include exploratory borings and surface mapping of the north-facing slope. Slope stability evaluation shall include analysis of the dip of layered rock, identification of clay beds, and presence and orientation of small faults and fractures with orientations parallel or subparallel to the slope. Static and dynamic stability analysis shall be performed ~~using the most recent seismic acceleration values as derived since the 2003 San Simeon earthquake~~ in accordance with all applicable building codes.

If the report indicates either the upper or lower portion of the slope could become unstable, remedial measures (e.g., construction of engineered retaining wall; improved slope drainage; remove excess colluvium; engineering design of the structure to withstand postulated landslide loads) shall be developed or a different location (already analyzed in this EIR) for the OSG Storage Facility shall be selected.

LAND USE, RECREATION AND AGRICULTURE

1. Section D.8, Recommended Insertion of County Land Use Ordinance Title 22 Requirements

The County’s Title 22 requires that the proposed OSGSF be “consistency with the public’s health, safety and welfare.” The DEIR analyzes in other Sections the potential for health, safety, or welfare impacts to the public, persons residing or working in the neighborhood, or injury to property or improvements in the vicinity of the OSGSF. See Sections D.11 and D.12. However, the state is preempted by federal law from considering any radiological safety aspect of the OSGSF. These other Sections establish that the OSGSF is consistent with the non-preempted aspects of public health, safety and welfare.

2. Section D.8.2, Page D.8-17, Second Paragraph from bottom of page

This paragraph states that no applicable federal regulations other than the CZMA have been identified. The paragraph should note that the Nuclear Regulatory Commission has issued regulations regarding site design and construction standards at nuclear power plants, and that