

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

In the Matter of:) Docket No. 05-AFC-1
)
Application for Certification for the Pastoria)
Energy Facility 160 MW Expansion)
By Calpine Corporation)
_____)

**APPLICANT'S COMMENTS
ON
PRESIDING MEMBER'S PROPOSED DECISION**

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**APPLICANT'S COMMENTS
ON
PRESIDING MEMBER'S PROPOSED DECISION**

Calpine Corporation ("Applicant") submits these comments on the Presiding Member's Proposed Decision ("PMPD") on the Pastoria Energy Facility Expansion ("PEFE").

With one exception, the Applicant supports the PMPD. Except for the topic of Power Plant Efficiency, the Committee's proposed decision accurately and fairly summarizes the evidence presented in this proceeding.

Calpine Corporation supports the Commission's goal to achieve greater energy efficiency. Calpine Corporation owns thousands of megawatts of geothermal generation and highly efficient combined cycle technologies. Calpine Corporation, in partnership with GE, is currently constructing two GE 107H combined-cycle systems (H System) at the Inland Empire Energy Center, representing the latest gas turbine technology providing superior fuel economy and environmental performance. At the same time, Calpine also supports the Commission's goal of ensuring a reliable energy system. This reliability, as the Commission itself has recognized, requires the construction of additional peaking capacity.

Despite the many virtues of the PEFE, the PMPD proposes to reach outside the record and outside the law to impose an arbitrary condition on the operation of the PEFE. This condition, if adopted by the Commission, could prevent the project from being constructed. As we explain below, in the absence of efficiency standards that apply equally to all facilities operating in California or laws which allow the Commission to override the procurement policies of the investor-owned utilities, EFFIC-1 will burden the PEFE with a condition that could render the project incapable of being financed and ineligible for long-term procurement.

In addition to the substantive comments on Power Plant Efficiency, the Applicant presents comments on Public Health-1 below, offered so that the Condition will be consistent with recent Commission decisions on this issue.

I. The Pastoria Energy Facility Expansion Is The Type Of Project That The Commission And The State Should Encourage.

By all measures, the PEFE is an outstanding project. PEFE involves the addition of one natural gas fired, F-class combustion turbine to three existing combined cycle units. The PEFE is a “brownfield” project, within the fenceline of an existing facility. PEFE will utilize existing fuel, water and transmission lines. The site is remote, about 30 miles south of Bakersfield, distant from any sensitive receptors. As confirmed in each Section of the PMPD, there is a complete absence of any significant adverse effects, no unmitigated impacts, no opposition by any party and no disputes with the Commission staff. The project is designed to enhance the operational performance of an existing combined cycle facility by providing peaking capacity to Southern California in conjunction with CAISO requirements. Thus, the PEFE is specifically designed to meet needs identified by the Commission, the CPUC and the CAISO for additional peaking capacity in SCE’s service territory.

As the Commission recognized in the 2005 Integrated Energy Policy Report (“IEPR”):

One problem with meeting peak demand is that most new gas-fired power plants are combined-cycle units designed to run at high load factors where they are most efficient and can generate enough revenue to recoup investments. Combined-cycle plants also have less capability to ramp up and down to meet peak demand than the older steam boiler units, which make up the majority of California’s fleet of power plants. While some utilities have invested in simple-cycle peaking plants that run just a few hours each year, most of the state’s new power plants are combined-cycle and are not well matched with swings in system demand. California must quickly and *thoughtfully* craft solutions for meeting this increasingly “peaky” demand.

(IEPR, p. 50; emphasis added)

The thoughtful solution offered by PEFE is to add peaking capacity to an existing combined cycle facility. Unfortunately, the PMPD does not embrace this solution. Instead, the PMPD proposes a condition that would potentially require that this badly needed peaking capacity be converted to a combined-cycle unit.

II. If Condition EFFIC-1 Is Adopted, The Pastoria Energy Facility Expansion May Not Be Constructed.

Condition EFFIC-1 as proposed by the PMPD prohibits the PEFE from generating more than 525,000 MWhrs over two consecutive calendar quarters.¹ In the event that the facility operates above this level, the Commission will hold a hearing. If the Commission determines that the facility is “likely to continue operating at high capacity”, the Commission may require the unit to be converted to combined cycle, or prohibit the project from operating at more than a 50% capacity factor over two consecutive quarters, or both of these sanctions. As we explain below, this proposed condition, if adopted, could prevent the PEF Expansion from being financed, constructed and eligible for procurement.

It is also important to note at the outset that the potential requirement of EFFIC-1 to convert the simple cycle unit to a combined cycle facility may not be feasible. As the PMPD explains at page 19:

Staff also analyzed the feasibility of a more efficient combined cycle plant as an alternative to the proposed simple cycle plant. While a combined cycled plant would use the existing infrastructure, it would require construction of four additional cooling tower cells, greatly increasing water consumption, additional transmission line and equipment upgrades, removal and replacement of an existing steam turbine generator with a larger one, and expansion of the existing site with increased

¹ The condition also refers to a limitation of six consecutive months, so it is not clear which time period is applicable.

environmental impacts. Although a combined cycle unit would use natural gas more efficiently, this alternative would not achieve the major Project objectives, such as avoidance of significant environmental impacts, installation of peaking capacity, and the cost-effectiveness of using existing on-site infrastructure to the extent feasible.

(PMPD, p. 190) There is, therefore, no basis in the hearing record for finding that the requirement in EFFIC-1 to convert the peaking unit to a combined cycle facility is feasible consistent with the terms and conditions suggested in EFFIC-1.

A. Condition EFFIC-1 Is Not Supported By The Record.

The PMPD states at page 7 that “Evidence submitted at the hearings provides the basis for the Committee’s analysis and recommendations to the full Commission.”

Condition EFFIC-1, however, finds no basis in the record. The only testimony offered in this proceeding regarding the efficiency of the PEF Expansion is that the PEFE will not constitute a wasteful or inefficient use of natural gas. The PMPD itself cites this evidence:

Staff believes that operation of the PEFE would replace less efficient, older steam boiler plants that are called upon for peaking power and thus, the PEFE would not result in the wasteful or inefficient use of natural gas or contribute cumulatively to the amount of natural gas consumed for power generation.

(Ex. 100, p. 5.3-5; 3/30/06 RT, p. 39: 24-25, p. 40:1-7, pp. 44-45)

Both Calpine and Staff contend that high fuel costs and the energy market work to limit peaking generation to the period of time when it is most needed and that economics would restrain the Project Owner from operating the PEFE in a full time mode. (Ex. 21; Ex. 101.) Calpine also asserts that the environmental impacts associated with operation of the PEFE for up to 8,760 hrs/yr will be mitigated to less than significant levels. Regarding air quality, Calpine claims the PEFE’s emission offsets will mitigate the impacts of operating the CTG unit at full load for 8,760 hrs/yr for the entire life of the facility. The San Joaquin Valley Air Pollution Control District (SJVAPCD) requires full offsets for each calendar quarter. Thus, the PEFE must provide offsets for operation up to 2,190 hours per quarter for each calendar quarter of the year.

Calpine notes that even if the Commission restricted annual operations of the PEFE to ensure efficient use of fuel, the SJVAPCD would still require full offsets per calendar quarter.

(Ex. 21, p. 6)

Calpine opposes any restriction on its operating hours since limiting the ability of the PEFE to respond to demand would advance its economic competitors and result in the dispatch of less efficient generators with higher emissions per megawatt hour. (Ex. 21, p. 5.) According to Calpine, there are few times when the PEFE may be called upon to operate 8,760 hrs/yr, such as an energy crisis, a natural disaster, or an extended unplanned outage on a transmission system.

(PMPD, p. 72)

Based on this uncontroverted testimony, the PMPD correctly concludes that:

The evidence establishes that the Project's fuel consumption will not adversely affect existing natural gas supplies and that additional supply capacity over the life of the Project will not be needed.

(PMPD, pp. 72-73)

Rather than relying on the evidentiary record, the PMPD characterizes the record as speculative on the issue of whether the unrestricted operation of PEFE would result in wasteful or inefficient fuel consumption. Yet there is nothing speculative in the testimony of the Staff's and Applicant's experts on this issue. The FSA states clearly:

Energy Commission staff believes that unrestricted output from a simple cycle gas turbine power plant such as the PEFE is, in general, acceptable. A simple cycle peaker offers operational flexibility, in the form of short start-up and shutdown times and fast ramping capability, that less flexible combined cycle plants cannot offer. Further, the deregulated power market into which Calpine proposes to sell the output of the PEFE should act to prevent wasteful use of the plant, as its fuel costs would drive up its cost of operation compared to more efficient combined cycle plants. Such more efficient plants would be expected to underbid the PEFE and sell power when the PEFE is uneconomical to operate."

(Ex. 100, 5.3-4)

The Applicant similarly testified:

The Commission Staff has concluded that the simple cycle turbine proposed for PEFE “if constructed and operated as proposed, would generate a nominal 160 MW of peaking and load following electric power, at a fuel efficiency of 35.1 percent LHV at full load. While it would consume substantial amounts of energy, it would do so in the most efficient manner practicable. It would not create significant adverse effects on energy supplies or resources, would not require additional sources of energy supply, and would not consume energy in a wasteful or inefficient manner.”

Applicant agrees with this statement without reservation. Thus, both Applicant and Staff agree that the proposed project would not create a significant adverse effect on energy supplies and resources.

(Ex. 21, Power Plant Efficiency Testimony, p. 2)

Without citation to the record, the PMPD states that there is no method other than conditioning the project to ensure that economics will deter the PEFE from operating year-round. (PMPD, p. 73) Yet, the Commission itself has often emphasized that fuel costs represent up to 70% of the life-cycle costs of new power plants, and these costs are rising. (IEPR, p.63) Therefore, as explained in the IEPR, plants with higher heat rates will be dispatched less. (Id.) The Commission cannot dismiss these economic principles as “speculative” without also dismissing the findings of the IEPR.

The Commission does not need a crystal ball to find that competitive markets will ensure that PEFE will have no significant adverse impacts on energy resources. The Commission only needs to look to its decision on the Tracy Peaker Project, where it made this very finding: “Although more efficient alternatives exist, the forces of the competitive markets for electricity and natural gas, combined with the relatively small size (169 MW) of the project, ensure that no

significant adverse impacts on energy resources will result from use of the GE Frame 7(EA) generators.” (Tracy Decision, p. 62)²

B. Condition EFFIC-1 Is Not Required By Any Applicable LORS.

As the PMPD clearly states, there is no standard that defines the efficiency of a simple-cycle gas fired generating facility: “No existing energy standards apply to the efficiency of the PEFE or other non-cogeneration projects. (Ex. 100, p. 5.3-3.) *See* Public Resources Code section 25134.” (PMPD, p. 67, footnote 8.)

However, issues involving the relative efficiency of facilities—particularly facilities supported through contracting by the major public utility electrical corporations—will likely arise in the context of the performance standards on greenhouse gas (“GHG”) emissions.³ The CPUC is currently pursuing a rulemaking that would impose a GHG emissions standard on public utility procurement decisions approved by the CPUC.⁴ The Legislature is currently contemplating codifying such a requirement.⁵ And the Commission has addressed GHG issues in its IEPR and would have a major role in the development of the GHG performance standard.

The Commission may choose in an appropriate rulemaking proceeding to investigate the feasibility of an efficiency standard. But, until such time as a standard is developed, there is no legal basis for imposing such a standard on an ad hoc and inconsistent basis.

² In the Tracy case, the Commission Staff offered testimony identical to the testimony offered here. In the Tracy case, “Staff also noted that the economics of the deregulated electricity and natural gas markets will prevent the project from wasting significant amounts of fuel.” (Tracy Decision, p. 61) In Tracy, the Commission adopted the staff testimony as its finding. (Id. at 62.) In this case, the same testimony is dismissed as “speculative.” While the Tracy decision may not be precedential, such a disparity in the treatment of the record evidence is inconsistent with both fundamental due process considerations and the Commission’s history of consistent treatment for similarly situated projects.

³ GHG emissions are directly correlated to the heat rate of a facility as well as the fuel for the prime mover.

⁴ See, *Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies*, available at http://www.cpuc.ca.gov/cyberdocs/WebQuickstart.asp?DOC_ID=230426&docType=LEGAL_PROCEED. Workshops on the development of a potential interim procurement GHG standard were conducted on June 21-23, 2006.

⁵ See, e.g., SB 1368 (Perata), amended June 22, 2006. http://www.leginfo.ca.gov/pub/bill/sen/sb_1351-1400/sb_1368_bill_20060622_amended_asm.pdf.

C. Condition EFFIC-1 Is Not Consistent With The Conditions Imposed On Other Peaking Facilities.

Over the past six years the Commission has licensed numerous peaking facilities. In all but one of these cases, the Commission has consistently held that a peaking facility will not consume energy in a wasteful or inefficient manner.

In the Commission's most recent decision involving a peaking facility, a December 2004 decision approving a Small Power Plant Exemption for the Riverside Energy Resource Center, the Commission held that this 96 MW simple cycle power plant "will not create significant adverse effects on energy supplies or resources, will not require additional sources of energy supply, and will not consume energy in a wasteful or inefficient manner." (Riverside Energy Resource Center Small Power Plant Exemption Decision and Mitigated Negative Declaration, p. 19)

Similarly, the Commission's March 2002 Decision approving the 96 MW Henrietta Peaking Project found that "the peaking Facility will generate at a full load efficiency of 39.2 percent." This can be compared to the average fuel efficiency of a typical 1960s-era utility company baseload power plant, commonly used for peaking power, at approximately 35 percent. The project's fuel efficiency compares favorably to other possible peaking technologies." (Henrietta Final Decision, p. 187) Therefore, the Commission concluded that "Without Conditions of Certification, the project conforms to applicable laws related to efficiency, and all potential adverse impacts regarding the efficient consumption of energy will be mitigated to insignificance by other Conditions of Certification of this Decision." (Henrietta Final Decision, p. 189)

The sole instance in which the Commission has not held that a peaking facility will not use energy in a wasteful or inefficient manner, the Commission's Small Power Plant Exemption

Decision and Mitigated Negative Declaration for the Modesto Irrigation District Electric Generation Station at Ripon, cannot be squared with the facts in this situation.⁶

In the Ripon decision, the Commission adopted a Condition proposed by the Applicant. That condition provided that in the event the project operates 760,000 MW hours per year for 2 consecutive years (a 91% annual capacity factor):

The project owner will, at its option, do one or more of the following to ensure that the project will not continue to operate at that level of energy production:

- a. File an application with the CEC to convert the project to a combined cycle plant;
- b. File an application with the CEC to construct a new combined-cycle plant; or
- c. Establish to the satisfaction of the Commission that MID has sufficient baseload available to allow the MEGS to return to service as a peaking project.

If an application under items 1 or 2, or evidence under item 3, is not filed within 6 months after the end of the second consecutive year, the project is prohibited from operating at more than 30 percent of its maximum annual energy production until this condition is satisfied.

(Decision, pp. 34-35) In marked contrast, the Condition that the PMPD proposes for the PEFE is considerably more onerous and burdensome than the Condition adopted for the Ripon peaker in several important respects. These differences make the two cases distinguishable:

(1) The Ripon peaker is allowed to operate at a high load factor for 2 years, before triggering the condition. PEFE is proposed to be allowed just six months. The PMPD states that “two years of year-round operation exceeds the ability of the Commission to successfully monitor the efficient use of non-renewable fuel.” (PMPD, p. 72)⁷ Yet, in the Commission’s

⁶ While the Applicant expresses no opinion on whether the Ripon decision was supported by substantial evidence in the record, the Applicant respectfully submits that the factual circumstances of the two projects are substantially dissimilar.

⁷ We note the reference to monitoring in this statement in the PMPD. Of course, if the Commission intends only to “monitor” use of natural gas, no restrictions are required. Restrictions are necessary only where the Commission intends to “regulate” the consumption of natural gas. The PMPD does not cite the Commission’s authority for such regulation.

decision on the Ripon peaking facility, issued in February 2004, the Commission authorized up to two-years of operation.

(2) The Ripon peaker is prohibited from operating above a 91% capacity on an annual basis. PEFE is prohibited from operating above a 75% capacity factor for two consecutive quarters. No evidence in the record supports this disparity.

(3) The Ripon project is allowed up to 6 months after the second consecutive year to elect a remedy or file evidence that the project will return to service as a peaking project. PEFE is allowed just 60 days or less. Again, the record does not support such a distinction.

(4) In the event that Ripon has not provided satisfactory evidence to the Commission of a remedy, the penalty is that the project is prohibited from operating at more than 30 percent of its maximum annual energy production until the condition is satisfied. For PEFE, the penalty for not satisfying the condition would be to limit the operations to less than a 50% capacity factor over two consecutive quarters. While the allowed capacity factor during the penalty period is higher for PEFE than Ripon, the fact that the PEFE operation is limited to two consecutive quarters is a far more severe limitation and would prevent the project from meeting seasonal needs for peak energy.

(5) For the Ripon facility, the Commission “recognize[d] that the MEGS project is part of a broader resources plan, and will contribute to increasing overall system efficiency...[and recognized] the needs of the Applicant and operation of the project as part of MID’s overall system and as part of an integrated resources plan.” For the PEFE, the Applicant asked the Commission to recognize that the facility is likely to be dispatched by an IOU or by the CAISO as part of a broader resource plan and that these operators, not the project owner, will be responsible for deciding when to dispatch this facility as part of their overall system.

Given that the Applicant cannot unilaterally control dispatch of the PEFE facility, we asked the Committee to exclude from any condition limiting the overall operation of the facility the hours in which the facility is dispatched by a third party. The PMPD did not adopt this recommendation, essentially holding the Applicant responsible for circumstances completely outside the Applicant's control.

The Applicant believes that neither the Ripon condition nor the PEFE condition is legally or factually justified for PEFE. The proposed condition is not supported by substantial evidence in the record; in fact, the record is to the contrary. Moreover, the Findings for the Tracy Peaker project, cited above, and nearly every other peaking project approved by the Commission, are equally applicable to PEFE. Because the Commission's decision must be based on the evidentiary record, EFFIC-1 should be deleted.

D. Condition EFFIC-1 Will Render This Project Infeasible.

The construction of new merchant powerplants requires financing, and financing, in turn, requires a power purchase agreement of sufficient duration and revenues to support project development, or other market structures that can provide revenue sufficiency of maturity and stability to satisfy financing needs.

Condition EFFIC-1, if adopted, would seriously threaten the Applicant's ability to finance the power plant or to obtain a power purchase agreement.⁸ Recognizing these fiscal realities, the Commission, to its credit has announced workshops to examine "California Credit Policies" and means to "Lowering The Effective Cost Of Capital For Generation Projects."⁹ Unfortunately, EFFIC-1 as currently proposed, will render the project commercially infeasible.

⁸ "[A] Commission decision to deny certification to, or restrict operation of, the proposed PEFE project would place the Applicant at a severe disadvantage when responding to the clear requests of the state's largest utilities for new generating resources." (Ex. 21, Energy Power Plant Efficiency Testimony, p. 3)

⁹ Docket No. 06-IEP-1, 2007 IEPR; see http://www.energy.ca.gov/lowering_capital_costs/

Lenders will be unwilling to underwrite a project that could be shut down before the term of the loan has run. Therefore, lenders will carefully evaluate a project to identify the operational or regulatory risks of closure. In this context, Condition EFFIC-1 would pose a very substantial regulatory risk because the condition would permit the Commission to find that unrestricted simple cycle operation would not be allowed. Moreover, Condition EFFIC-1 allows the Commission to require the project owner to convert the facility to a combined-cycle facility, a financial burden that many lenders may not choose to assume.¹⁰

In project financing, uncertainty translates into either higher costs (without any associated benefits) or, in the extreme, inability to secure financing. Lenders will also take pause at the fact that the three criteria to be applied by the Commission are vague and undefined: whether the use of the simple cycle unit is “justified” based on unusual circumstances, whether continued operation of the simple cycle unit would result in “inefficient use” of natural gas, or whether the project is likely to continue to operate at “high” capacity. Lenders will note that the Commission has not defined any of these critical terms and the lack of any generally accepted standards. What constitutes “unusual circumstances”? What constitutes “inefficient” use of natural gas? What is “high capacity”? Where, as here, the Commission’s discretion to restrict or terminate operation of a facility is unfettered and undefined, it will be extremely difficult, if not impossible, to find a prudent lender willing to accept this risk. Moreover, increased transactional costs result in absolutely no electrical reliability or environmental benefits. They simply weigh down project financing.

Condition EFFIC-1 would also impair the ability of the project to pursue and secure a power purchase agreement. Under CPUC procurement rules for the approval of utilities’ long-

¹⁰ These circumstances stand in marked contrast to facilities like the MID Ripon facility, which as a vertically integrated utility, does not need third party contracts to facilitate municipal financing.

term procurement plans, long-term contracts are awarded based on competitive solicitations. Typically the utilities seek the greatest flexibility with respect to their rights to dispatch peaking resources in their RFO specifications, including numerous start-up rights and broad dispatch capabilities.¹¹ Given their physical capabilities and the role of peakers in assuring system reliability, such specifications are hardly unusual and should be expected. The regulatory limitation proposed by EFFIC-1 will undermine the ability of the project to compete with other resources, including other peaking capacity that may be relatively less efficient, by precluding its ability to provide broad availability. Therefore, regulatory restrictions like EFFIC-1 will deny the project's ability to compete and thereby render the project infeasible.

E. Condition EFFIC-1 Will Impair The Reliability Of California's Electrical System.

Limiting peaking capacity through operational restrictions, as EFFIC-1 proposes, means that such facilities may not be available precisely when they are needed: during peak demand or system emergencies.

Except where local system reliability requires special reliability measures, the electrical system is set up to dispatch the most efficient and economic resources first. That is, where system reliability is assured, given a choice between more efficient combined cycle units and a simple cycle facility, the combined cycle facility will be dispatched first based upon variable operating costs. There is no dispute on this point. Accordingly, the potential for frequent dispatch and extended operation of peaking facilities is not a sign of problems with the facility or any LSE's procurement portfolio; but is instead a sign of problems with local reliability caused by transmission constraints or resource insufficiency. Calpine respectfully submits that due to

¹¹ See Application of Pacific Gas and Electric Company for Approval of Long-term Request for Offer Results and for Adoption of Cost Recovery and Ratemaking Mechanisms found at https://www.pge.com/regulation/LongTermRFO-Solicitation/Testimony/PGE/2006/LongTermRFO-Solicitation_Test_PGE_20060411-01.pdf

capacity sufficiency concerns in Southern California, a simple-cycle facility like this project may need to operate at a high capacity factor for a prolonged period of time as dispatched by the CAISO. Should extensive reliance on peaking facilities be required by CAISO to serve the baseload demand and maintain system reliability, this is an ominous sign that the State's electrical system is in very serious trouble. This is also precisely the time when critical reliability capacity should not be removed from service by a regulatory requirement concerned with fuel efficiency.

Imposing a regulatory requirement that precludes operation of fast-ramping resources from the market after that resource has been extensively used to maintain reliability makes little sense. Under such dire electrical system conditions, it would be the worst possible time to terminate or restrict the operation of the simple-cycle unit that has been called upon to meet a critical reliability need. System disturbances have occurred in November and December, and can be triggered by unexpected events such as fire or earthquakes. Imagine the scenario where such unforeseen events occur and a new, otherwise physically available peaking facility is prohibited from operating due to a discretionary regulatory requirement.

For these reasons, Condition EFFIC-1, which would require the PEFE to be shut down and converted to a combined cycle unit or to operate at a restricted capacity factor, could seriously endanger the reliability of the electrical system by denying the purchaser or the CAISO access to the capacity when needed most. Rather than limiting the operation of peaking facilities when dispatched to meet reliability needs, the Commission should focus on thoughtful, long term solutions to the State's reliability needs.

III. Condition Public Health-1 Should Be Revised to Be Consistent with Recent Commission Decisions.

The Applicant has reviewed Condition Public Health-1. To ensure consistency with other recently approved projects, the Applicant respectfully suggests that Public Health-1 in the PMPD be replaced in whole with the same language recently approved by the Commission in the Turlock Irrigation District's Walnut Energy Center Case (02-AFC-04):

Public Health-1 The project owner shall develop and implement a cooling tower Biocide Use, Bio-film Prevention, and Legionella Control Program to ensure that cooling tower bacterial growth is controlled. The Program shall be consistent with Staff's guidelines or the Cooling Technology Institute's "Best Practices for Control of Legionella" guidelines.

Verification: At least 30 days prior to the commencement of cooling tower operations, the Biocide Use, Biofilm Prevention, and Legionella Control Program shall be provided to the CPM for review and approval.

As the Commission found in the Turlock case, "PUBLIC HEALTH-1 ensures that normal maintenance of the cooling system includes measures to control bacterial growth to reduce to insignificance the opportunity for growth and dispersion of Legionella. (Ex. 11, p. 6-2.)" (Turlock Final Decision, p. 135.) The language of Public Health-1 in the Commission's recent decision in the Inland Empire Energy Center Case is nearly identical to that in the Turlock case, and the language in the Commission decision for the Roseville project is also substantially similar to that in the Turlock case.¹² Moreover, the use of this same condition will allow the

¹² **IEEC**

Public Health-1 The project owner shall develop and implement a cooling tower Biocide Use, Biofilm Prevention, and Legionella Control Program to ensure that cooling tower bacterial growth is controlled. The program shall be consistent with CEC guidelines or the Cooling Technology Institute guidelines.

Verification: At least 30 days prior to the commencement of cooling tower operations, the project owner shall provide the Biocide Use, Biofilm Prevention, and Legionella Control Program to the CPM for review and approval.

Applicant to avail itself to the detailed implementation programs developed by projects that are already subject to this language, further assuring consistency across projects.

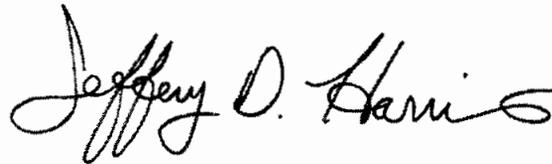
IV. Conclusion

For the reasons set forth above, Condition EFFIC-1 should be deleted and Condition Public Health-1 should be revised as suggested.

Dated: June 29, 2006

Respectfully submitted,

ELLISON, SCHNEIDER & HARRIS L.L.P.



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Public Health-1 The Project owner shall develop and implement a Cooling Water Management Plan to ensure that the potential for bacterial growth in cooling water is controlled according to industry standards. The Plan shall be consistent with either Staff's "Cooling Water Management Program Guidelines" or with the Cooling Technology Institute's Guidelines on "Best Practices for Control of Legionella."

VERIFICATION: At least 30 days prior to the commencement of cooling tower operations, the Cooling Water Management Plan shall be provided to the CPM for review and approval.

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Facility (PEF) 160 MW Expansion by Calpine)
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PROOF OF SERVICE

I, Ron O'Connor, declare that on June 29, 2006, I deposited copies of the attached *Applicant's Comments on Presiding Member's Proposed Decision*, in the United States mail in Sacramento, California, with first-class postage thereon fully prepaid and addressed to all parties on the attached service list.

I declare under the penalty of perjury that the foregoing is true and correct.



Ron O'Connor

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05-AFC-1

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