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Additional submitted attachment is included below.

BEFORE THE STATE OF CALIFORNIA
STATE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF: Delta Energy Center, LLC	**Docket No. 98-AFC-03C**

HELPING HAND TOOLS' AND ROBERT SIMPSON'S MOTION FOR RECONSIDERATION OF COMMISSION'S MARCH 8, 2017 ORDER APPROVING PETITION TO AMEND

Pursuant to Public Resources Code § 25530 and 20 CCR 1720, Helping Hand Tools hereby moves for reconsideration of the Commission's March 8, 2017 order granting Delta Energy Center, LLC's Petition for Temporary Safety Modifications.

BACKGROUND

In January 2000, the Commission certified the Delta Energy Center. The Center was touted as a "highly efficient" combined cycle power plant that would provide base energy. The certification decision stated:

> The project is configured as a compound-train combined cycle power plant. Electricity will be generated by the three gas turbines and a shared steam turbine that uses heat energy recuperated from the gas turbines exhaust. (Ex. 20, p. 337.) By recovering this heat, which would otherwise be lost in the exhaust stacks, the efficiency of any combined cycle power plant is significantly increased in comparison to that of either gas turbines or steam turbines operating alone. (*Ibid*.) The project objectives include generation of baseload or load following electricity. (Ex. 2,/2.4.1.) Staff concluded that the proposed project configuration is well suited to meet project objectives. (Ex. 20, p. 337.)
> . . .
> The Commission therefore concludes that DEC will not cause any significant adverse impacts to energy supplies or energy resources. The project will conform with all applicable laws, ordinances, regulations, and standards relating to power

> plant efficiency as identified in the pertinent portions of APPENDIX A of this Decision. No Conditions of Certification are required for this topic.
>
> (Commision Decision, February 2000, p. 80-82.)

Today, even as a combined cycle facility DEC is the second most polluting power plant in the state.[1]

On January 29, a fire broke out at the Delta Energy Center. Reported by multiple news agencies as an "explosion."[2] .

On February 21, 2017, Delta Energy Center, LLC applied for a petition to amend its certification. The petition contained little to no analysis of potential impacts of the amendment or how the circumstances—such as the local community—had changed since the facility was certified over sixteen years ago. DEC's proposed amendment would convert Delta Power Plant into a far less efficient (fewer MW per tons of pollutants emitted) simple cycle power plant for an indefinite amount of time. The application stated only that the proposed modification would be "temporary." Furthermore, the amendment would involve like-kind repairs – no reference to modifying the design so that fires like the one that occurred on January 29 would not occur again in the future.

> Project Owner expects that once steam turbine repairs are completed and combined cycle operations restored, the temporary isolating plate, rupture disk and pressure relief vent will be removed. All repairs are intended to be made with like-kind replacements and post-repairs, there will be no changes in the "project design, operation, or performance requirements" (20 CCR 1769(a)(1)).
>
> (Petition, p. 2-1.)

The petition for amendment made no reference to the facilities nearby environmental justice community. It made no analysis of the cumulative air quality impacts of drawing local capacity from other power plant to make up for lost generation at Delta. It did not mention changes in emission standards for criteria pollutants at the federal, state, and local levels since this power plant's emission limits were established sixteen years ago.

On February 24, Commission staff issued a lightning quick, and equally thin, analysis of the proposed amendment. In its analysis, staff agreed with Delta that the changed would have insignificant or no impact, and would meet all of the requirements of 1769(a)(2). Nevertheless, staff drew conclusions based on 1769(a)(3) and gave the public twelve days, until 10:00am on March 8, 2017, to comment on the analysis.[3]

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[1] America's Dirtiest Power Plants, Environmental California's report found at http://environmentamericacenter.org/sites/environment/files/reports/Dirty%20Power%20Plants.pdf

[2] "Explosion shuts down Pittsburg power plant" East Bay Times http://www.eastbaytimes.com/2017/01/30/explosion-shuts-down-pittsburg-power-plant/

[3] TN 216227 at (p. 5)

On February 28, 2017, Mr. Simpson submitted comments.

On March 6, CAISO submitted a letter stating, "The Delta Energy Center is needed for reliability for Summer 2017 and the ISO supports approval of an order granting the Petition to Amend to make temporary modifications to the steam turbine condenser to run the Delta Energy Center facility in simple-cycle mode."

On March 7, 2017, Mr. Simpson requested that the Commission take the petition to amend off the Commission's schedule to allow additional time for responses to data requests and his complaint that Calpine was not complying with its conditions of certification.

On March 8, 2017, Mr. Sarvey submitted comments

On March 8, 2017—twelve days after Commission Staff docketed its analysis—the Commission held a business meeting at which it voted to approve the amendment petition. The amendment was approved under 20 CCR 1769(a)(3)

Commission's order contains no time limit or deadline for DEC's modifications and repairs. The only limit provided was a vague promise by a member of the Commission Compliance Staff:

> COMMISSIONER McALLISTER: So is there a time frame for this? I mean, is this a permanent amendment that could just go on?
>
> MS. ROOT: No. This is not a permanent amendment. You know, because the investigation is ongoing and we don't know the root cause, right now our best guess is possibly a year. But we will revisit this when the investigation's further along. And if this is becoming a permanent situation we will insist that an amendment be filed.

MS. Root cites no authority to "insist" on an amendment as none exists. This is the amendment in which authority exists to contemplate the time period for this amendment. The order retains no authority to revisit this issue

As of the filing of this motion for reconsideration, key questions remain relevant to whether DEC's certification should be amended, including Mr. Simpson's complaint and request for information about the cause of the fire, as well as Mr. Sarvey's request to CAISO for more information relevant to its pithy statement that DEC would be needed during the summer of 2017, even if only in an inefficient simple-cycle configuration.

STANDARD OF REVIEW

This motion derives its authority from Public Resources Code § 25530 and 20 CCR § 1720**,** § 1720 that states:

> "A petition for reconsideration must specifically set forth either: 1) new evidence that despite the diligence of the moving party could not have been produced during evidentiary hearings on the case; or 2) an error in fact or change or error of law. The petition must

fully explain why the matters set forth could not have been considered during the evidentiary hearings, and their effects upon a substantive element of the decision."

This petition puts fourth multiple arguments pleading for this commission to reconsider a mistake it made. 2HT considers all of the arguments it makes in this motion to be "new evidence that despite the diligence of the moving party could not have been produced during evidentiary hearings on the case" because, as was explained in 2HT's earlier comment, the public comment period for this project was woefully inadequate. Despite 2HT's diligence in submitting public comment it was an impossible task to fully analyze the amendment especially because both the application and staff analysis was conclusory and bare. 2HT also finds numerous errors of both law and fact that they were unable to fully explain or analyze because of the unusually fast amendment process. Therefore, these arguments "could not have been considered during the evidentiary process" because despite 2HT's "diligence" they could not be produced in time nor "considered during the evidentiary hearing." Their effects on the "substantive element" of the decision are clear – the decision must be stayed until adequate analysis and public comment is afforded.

Lastly, the decision to perform a substantial modification process, as is being done in Huntington Beach Energy Project[4] versus what was done here, is both confusing and arbitrary. 2HT pleads for the Commission to realize that there is a right and wrong way to process an amendment and this clearly the wrong way. Public participation and transparency are the backbone of the Energy Commission and circumventing them only harms the citizens this commission was created to protect.

ARGUMENT

I. Energy Commission Failed to Proceed in the Manner Required Under 20 CCR 1769 by Approving DEC's Petition to Amend Only 12 Days After Commission Staff Issued Their Analysis of the Petition to Amend

The Energy Commission erred as a matter of law by interpreting 20 CCR section 1769 as allowing the Commission to grant a petition to amend only 12 days after Commission staff issued its analysis of the petition.

Section 1769, Title 20 of the California Code of Regulations, titled "Post Certification Amendments and Changes," offers two ways the Commission may approve an amendment to a certified project's "project design, operation, or performance requirements".

First, under Section 1769(a)(2), the Commission's staff may (assuming the petition also contains all information required under 1769(a)) approve the amendment if "staff determines that there is no possibility that the modifications may have a significant effect on the environment, and if the modifications will not result in a change or deletion of a condition adopted by the commission in the final decision or make changes that would cause the project not to comply with any applicable Laws ordinances, regulations, or standards." 1769(a)(2). In this case, the

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staff's decision is final unless any person "file[s] an objection to staff's determination within 14 days of service on the grounds that the modification does not meet the criteria in this subsection."

But "if a person objects to a staff determination that a modification does meet the criteria in subsection (a)(2)," or if "staff determines that a modification does not meet the criteria in subsection (a)(2)," then under (a)(3) "the petition must be processed as a formal amendment to the decision and must be approved by the full commission at a noticed business meeting or hearing." 1769(a)(3). Although 1769(a)(3) does not contain the words "14 days," it clearly incorporates the objection period of 1769(a)(2), specifically referring to it and stating that the section is triggered "if a person objections to a staff determination" as provided under 1769(a)(2).

In its report, Commission staff determined that DEC's proposed amendments would not have a significant effect on the environment, will not result in a change or deletion of a condition adopted by the commission in its final decision, and would not cause DEC to fail to comply with applicable laws, ordinances, regulations, or standards—thus meeting the criteria in subsection (a)(2). [TN#216227] Nevertheless, the staff recommended approving, and the Commission approved, the amendment under 1769(a)(3).

But Instead of 14 days, members of the public had only 12 days between when the Commission staff docketed its analysis on February 24, 2017, and when the Commission voted to approve the amendment on March 8, 2017.

Mr. Sarvey highlighted this inconsistency at the Commission Meeting. In response Commission's Staff Counsel erroneously stated:

> MS. DeCARLO: Lisa DeCarlo, Energy Commission Staff Counsel. With regard to the 14-day requirement mentioned by Mr. Sarvey, that's actually not applicable in this instance. That's under section 1769(a)(2) of our Regulations, and we are not proceeding the amendment through that section.
>
> We're processing it through section 1769(a)(3), which is why we're here before you asking for approval. So the 14-day requirement does not apply in this instance.
>
> COMMISSIONER DOUGLAS: And to be more specific, Ms. DeCarlo, maybe you could explain the difference between these two sections.
>
> MS. DeCARLO: Sure. 1769(a)(2) is where staff is allowed to make its determination, sua sponte, on its own after its own investigation, its own analysis, without going to the Commission for approval. So then that's why a 14-day notice is required to allow parties sufficient time, interested public, to review staff's analysis and file an objection to a full if they so chose, in which case it would bump it to a full Commission decision.
>
> Whereas, 1769(a)(3) just goes straight to a Commission decision, either on staff's own determination that this is warranted, or as a result of an objection under 1769(a)(2). SEP
>
> (Transcript of 03/08/2017 Business Meeting, 17-BUSMTG-01, TN#: 216643, 18:5 – 19:3)

This is an unreasonable interpretation of section 1769, and error of law.

Under Staff Counsel's interpretation, members of the public could potentially be afforded *no opportunity to object or event comment on* a petition to amend if the petition is decided by the Commission, as opposed to if decided by staff. The Commission could entirely circumvent a public comment by opting to approve a proposed modification under (a)(3) instead of (a)(2), even if the requirements for (a)(2) are met.

Contrary to Staff Counsel's interpretation, nothing in 1769(a)(3) states that a petition to amend "goes straight to a Commission decision." Rather, it states that the petition must undergo a "formal amendment process." Staff Counsel omitted mention of the "formal amendment process," and omitted mention that (a)(3) incorporates the 14-day comment period of (a)(2).

Regardless of whether amendments are approved under 1769(a)(2) or (a)(3), members of the public must be afforded at least 14 days to object after service of the staff's analysis of a petition to amend. As a matter of statutory interpretation, It would make no sense to provide members of the public *less* time to comment under 1769(a)(3) than under 1769(a)(2). Section 1769(a)(3) is triggered when there is a dispute (or potential dispute) over whether the amendment would cause unmitigated significant environmental impacts, impact LORS compliance, but beneficial to the public, applicant or intervenors, and whether there has been substantial change in circumstances justifying the amendment, or the amendment is based in information not known and could not have been know prior to certification. (*See* Section 1769(a)(3)(A)-(D).) That is a lot of information to review within 14 days. If anything the (a)(3) public comment period should be *longer* than the (a)(2) period, not shorter.

Statutes and regulations governing power plant siting and certification consistently require adequate opportunities for public participation. It would be entirely inconsistent with this CEQA-equivalent scheme for petitions to amend to evade this basic requirement. "The commission hearings shall provide a reasonable opportunity for the public and all parties to the [AFC] proceeding to comment upon the application and the commission staff assessment and shall provide the equivalent opportunity for comment as required pursuant to Division 13 (commencing with Section 21000)." Cal. Pub. Res. Code § 25521. *See also* Pub. Res. Code § 25543 (legislature intends for "public participation in the siting process"); Pub. Res. Code § 25540.5 (input and review by members of the public required); Cal. Code Regs. tit. 20, § 1742(c) ("Staff's preliminary environmental assessment shall be subject to at least a 30 day public comment period or such additional time as required by the presiding member."); Cal. Code Regs. tit. 20, § 1770 ("If a licensee or any other person objects to the modification, he or she shall be entitled to a public hearing on the matter before the Commission.").

Calpine and the Commission may respond that the 12-day comment/objection period was sufficient in this case because Mr. Simpson and Mr. Sarvey commented within that time. But requiring Mr. Simpson and Sarvey to prove a negative—that other people also would have objected, if afforded the full 14 days—is unfair. Nevertheless, to address this objection, 2HT is aware of, and can submit declarations if necessary, of two prior intervenors that did not comment because of the unnecessarily short comment period.

Section 1769(b)(3) requires a "formal amendment process." Although not defined, at a minimum this should mean adequate opportunity for the public to comment after all relevant information is available—such as how future accidents will be prevented, and what is the basis for CAISO's recommendation that there is need for DEC in simple cycle through the summer of 2017. Considering this, and in light of the incomplete record in this amendment proceeding, the Commission's decision approving modification should be withdrawn and a full opportunity (at least 14 day) afforded for public comment.

II. There Is No Evidence To Support The Finding That Delta Energy Center Is Needed For Reliability In 2017.

In the Energy Commission's "Order Approving Petition to Amend, the Commission findings state "The modifications will be beneficial because the changes will allow the facility to return to service to support the California Independent System Operator in resource planning for summer 2017."[5] This is an error in fact, there is no benefit from unneeded energy.

Both the amendment application and the staffs comments on the application fail to support a finding that the Delta Energy Center (DEC) is necessary to support the California System Operator for resource planning in 2017. Neither the Staff nor the applicant provides any analysis concerning resource adequacy needs or system needs for 2017. Instead the Commission is relying on a 1 page letter from Keith Casey the CAISO director of marketing which contains 1 paragraph supporting the Delta modification which states, [6] "*The Delta Energy Center is needed for reliability for Summer 2017 and the ISO supports approval of an order granting the Petition to Amend to make temporary modifications to the steam turbine condenser to run the Delta Energy Center facility in simple-cycle mode."* CAISO has provided no analysis with its recommendation that supports a finding that **"*The Delta Energy Center is needed for reliability for Summer 2017."***[7] In any regulatory proceeding before the CPUC or any other regulatory agency CAISO would have to provide an analysis and a witness available for questioning for its opinion to be considered substantial evidence. Here CAISO has not even provided a letter from the ISO governing board supporting the Delta Energy Centers operation in simple cycle mode. Mr. Casey's March 6 2017 letter submitted two days before the Commission approval of this amendment is nothing more than hearsay and is not sufficient to support a finding that, "The modifications will be beneficial because the changes will allow the facility to return to service to support the California Independent System Operator in resource planning for Summer 2017."

CAISO's 2016 Summer Load and Resource Analysis is the only analysis of need in the docket of this compliance proceeding. The 2016 analysis, "projects a 1-in-2 annual minimum operating reserve margin (ORM) for the CAISO system in 2016 of 24.4 percent."[8] The 2016 CAISO analysis projects a 1-in-2 operating reserve margin of 21.3 % in the NP-26 zone which is

[5] TN 216644
[6] TN 216398
[7] Bob Sarvey, a member of 2HT, currently has a public records request outstanding with CAISO requesting any analysis or documentation that provides evidence of the need for the Delta Energy Center to support the 2017 summer loads.
[8] TN 216427 CAISO 2016 Summer Resources and Load Assessment Page 3 of 49 www.caiso.com/Documents/2016SummerAssessment.pdf

well over the required 15 % operating reserve margin for NP26 zone.[9] Therefore, it is an error as the Order Approving Petition to Amend to state "the modifications will be beneficial because the changes will allow the facility to return to service to support the California Independent System Operator in resource planning for summer 2017" because there is no benefit in unnecessary energy.

III. The Order Approving Petition To Amend Was An Error Of Fact, Because The Modification Will Change The Findings In The Energy Commission's Final Decision From 2000

The order approving the modification states "The modification will not change the findings in the Energy Commission's Final Decision, pursuant to Title 20, section 1755, of the California Code of Regulations." That statement is an error of fact because the modification includes changes to the projects description, the projects objectives, and several of the findings and conclusions from the original 2000 decision. These significant changes are not explained or analyzed by the staff report and that statement is blatantly incorrect.

First, the project description in the 2000 final Decision states that the, "DEC is a merchant plant that is conceived as a **baseload facility** to sell power in the competitive electricity marketplace through bilateral contracts and via the California Power Exchange.[10] Obviously the amendment will allow the project to operate only in simple cycle mode and the project will not be operating in a baseload capacity.

The amendment also conflicts with the project objectives a defined in the February 2000 Commission Final Decision on the DEC. The 2000 Commission Final decision states that one of the major project objectives is to**, "**To employ economical and efficient technology with **baseload** and load following capacity to respond to the California electricity marketplace."[11] As staff testified at the March8, 2017 *business meeting* ***the DEC is simple cycle mode is not even, "the most efficient peaker that we will have in the fleet"***[12] much less an "*economical and efficient baseload resource*" as the project was described in the February 2000 Final commission Decision.

The project as amended also conflicts with several of the Findings and Conclusions of the Energy Commission 2000 decision on the DEC. Power Plant Efficiency Finding and Conclusion number 6 on Page 82 of the Final Commission Decision states, "As a highly efficient, state-of-the-art natural gas-fired power plant, DEC is significantly more efficient than older power plants in the utility system."[13] The project operating in simple cycle mode would not be consistent with Finding and Conclusion number 6. As staff testified at the March 8 business meeting operating in

[9] TN 216427 CAISO 2016 Summer Resources and Load Assessment Page 3 of 49 www.caiso.com/Documents/2016SummerAssessment.pdf

[10] CEC Final Decision Delta Energy Center Page 12 www.energy.ca.gov/sitingcases/delta/documents/2000-02-09_DELTA_DECISION.PDF

[11] CEC Final Decision Delta Energy Center Page 23 www.energy.ca.gov/sitingcases/delta/documents/2000-02-09_DELTA_DECISION.PDF

[12] CEC March 8, 2017 Business Recorded transcript page 20 Lines 14-18

[13] CEC Final Decision Delta Energy Center Page 82 www.energy.ca.gov/sitingcases/delta/documents/2000-02-09_DELTA_DECISION.PDF

simple cycle the DEC would, *"**probably be a mechanism of last resort because it is not the most flexible peaker that we will have in the fleet; nor is it the most efficient peaker that we will have in the fleet**."*[14] Commissioner Douglas agreed and stated***, "****As Mr. Layton said, it will not be either the most agile or the most efficient peaking plant out there and far from it.*"[15] The projects efficiency will be much lower with the project operating without the steam turbine so this change would conflict with Power Plant Efficiency Finding and Conclusion number 6 of the 2000 CEC Final Decision on the DEC.

Similarly Power Plant Efficiency Finding and Conclusion number 4 on Page 82 of the Final Commission Decision states, "The project will employ modern F-class gas turbines (Westinghouse 501F) nominally rated at 55.8 percent lower heating value (LHV) efficiency, which compares favorably to other available F-class turbine generators.[16] As staff testified at the March 8, 2017 business meeting operating in simple cycle the DEC is, *"not the most flexible peaker that we will have in the fleet; nor is it the most efficient peaker that we will have in the fleet."*[17] The projects efficiency will be much lower with the project operating without the steam turbine and as amended the DEC would not be consistent with Power Plant Efficiency Finding and Conclusion number 4. Both of the power plant efficiency findings and conclusions rely on the DEC operating in combined cycle mode. But the amendment provides no time limit on operation of the project as a peaker. The evidence in the record indicates that there is no certainty that the project will ever operate in combined cycle mode again. As the applicant stated at the March 8, 2017 business meeting, *"So we don't have a good sense of exactly when we'll have some good information on what occurred, but once we have that information at that point we'll be at a decision point of whether we would proceed with the repairs. And if we didn't proceed with the repairs we would be back before you with an amendment."*[18]
The 2000 Final Commission Decision Power Plant Reliability Finding and Conclusion number 1 states the, "DEC will ensure equipment availability by implementing quality assurance/quality control programs and by providing adequate redundancy of auxiliary equipment to prevent unplanned off-line events."[19] Obviously the current operational status of the DEC makes this finding in the 2000 Decision erroneous.

The 2000 Final Commission Decisions Power Plant Reliability Finding and Conclusion number 2. States that the, *"DEC s three parallel trains of gas turbine generators/HRSGs, as well as the double circuit 230-kV transmission lines provide inherent reliability."*[20] Obviously the Final Commission did not consider that the failure of the steam turbine would render the parallel trains of the DEC inoperable and the finding is no longer valid.

Power Plant Reliability Finding and Conclusion number 7 from the 2000 Final decision on the DEC states that the, "*DEC will perform reliably in baseload and load following duty and*

[14] CEC March 8, 2017 Business Recorded transcript page 20 Lines 14-18
[15] CEC March 8, 2017 Business Recorded transcript page 24 Line 25 and Page 25 Lines 1-4
[16] CEC March 8, 2017 Business Recorded transcript page 26 Lines 25 and Page 25 Lines 1-5
[17] CEC March 8, 2017 Business Recorded transcript page 20 Lines 14-18
[18] CEC March 8, 2017 Business Recorded transcript page 26 Lines 1-6
[19] CEC Final Decision Delta Energy Center Page 86 www.energy.ca.gov/sitingcases/delta/documents/2000-02-09_DELTA_DECISION.PDF
[20] CEC Final Decision Delta Energy Center Page 86 www.energy.ca.gov/sitingcases/delta/documents/2000-02-09_DELTA_DECISION.PDF

cause no significant impacts to electric system reliability."[21] With approval of the amendment the project no longer will perform reliably in baseload operation and this Finding and Conclusion is no longer valid with approval of this amendment.

Hazardous Materials Management finding and conclusion number 2 of the CEC 2000 Final Decision states that, *The hazardous materials that pose the greatest risk to public health and safety include anhydrous ammonia, sulfuric acid, and natural gas.*[22] The evidence in the record of this compliance proceeding is that hydrogen appears to "*pose the greatest risk to public health and safety*." Finding and Conclusion HAZ 2 should be modified to state "The hazardous materials that pose the greatest risk to public health and safety include anhydrous ammonia, sulfuric acid, and natural gas and hydrogen."

Socioeconomics Finding and Conclusion Number 13 of the 2000 Decision states that, *"The affected population within the five-mile radius and within the footprint of the highest concentrations of air contaminants (which are below levels of significance) is not predominately minority or low-income."* This is no longer true as the population around the power plant is now considered an EJ population even by CEC Staff.[23]

IV. The Order Approving Petition to Amend Does Not Comply with all Laws, Ordinances, Regulations, and Standards("LORS")

The Order Approving Petition to Amend states "The facility will remain in compliance with all applicable laws, ordinances, regulations and standards." This is an error of both fact and law, because it will not comply with all LORS.

First, the Commission has failed to consult the responsible agency the Bay Area Air Quality Management District (BAAQMD) during this abbreviated amendment period. The district has not even been notified of the accident much less performed an analysis of compliance with BAAQMD rules and regulations with the project operating as a peaker plant.[24] The amendment changes the method of operation of the DEC converting it to a simple cycle unit from a combined cycle unit. BAAQMD Regulation 2-2-604 provides an Emission Increase/Decrease Calculation Procedures for New Sources and Changes at Existing Sources. As provided in Regulation 2-2-604**,**

> **"**The amount of any emissions increase (or decrease) associated with a new source, or with a physical change, change in the method of operation, change in throughput or production, or other similar change at an existing source, shall be calculated according to the [BAAQMD Regulation 604.2]."

Regulation 604.2 states that,

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[21] CEC Final Decision Delta Energy Center Page 86 www.energy.ca.gov/sitingcases/delta/documents/2000-02-09_DELTA_DECISION.PDF

[22] CEC Final Decision Delta Energy Center Page 185 www.energy.ca.gov/sitingcases/delta/documents/2000-02-09_DELTA_DECISION.PDF

[23] TN 216227 Page 4,5

[24] See, Bob's Sarvey's Public Information Request.

> "The emissions increase (or decrease) associated with a physical change, change in the method of operation, change in throughput or production, or other similar change at an existing source (including a permanent shutdown of the source) shall be calculated as the difference between: (i) the source's potential to emit after the change; and (ii) the source's adjusted baseline emissions before the change, calculated in accordance with Section 2-2-603."

The Delta Energy Center three year baseline emissions are calculated pursuant to BAAQMD regulation 603-2, The DEC emitted 136.5 tons of NOx in 2015,[25] 143.1 tons of NOx in 2014[26] and 154.3 tons of NOx in 2013 for an average of 144.6 tons per NOx over the last three years. Since the amendment does not change the potential to emit as provided for in the 2000 FDOC the DEC's potential to emit in simple cycle mode for the DEC is 298.7 tons per year of NOx leading to an emission increase of over 150 tons per year of NOx which triggers BAAQMD ATC, BACT, and PSD requirements. All of the BACT determinations imposed by the 2000 FDOC were based on assumption that facility would be operating in combined cycle mode.[27] Now that the facility is amended to operate in simple cycle mode, new BACT determinations must be imposed. Simple cycle units in the BAAQMD now utilize 1 ppm VOC limit as BACT, a 2ppm CO limit as BACT, and an ammonia slip limit of 5 ppm.

The modification would also be a violation of the projects Title V permit since the existing Title V permit does not allow any alternative operating scenarios.[28] An Alternative operating scenario is defined in 40 CFR 70.2. as:

> "a scenario authorized in a [Title V] permit that involves a change at the ... source for a particular emissions unit, and that either results in the unit being subject to one or more applicable requirements which differ from those applicable to the emissions unit prior to implementation of the change or renders inapplicable one or more requirements previously applicable to the emissions unit prior to implementation of the change."

The Title V permit authorizes no alternative operating scenario.[29] The operating scenario provided in the FDOC for the DEC calculates emissions based on the 6,844 hours of baseload (100% load) operation per year for each CTG @ 30oF, 1,500 hours of duct burner firing per HRSG per year with steam injection power augmentation at CTG combustors, 156 one-hour hot start-ups per CTG per year and 52 three-hour cold start-ups per CTG per year[30]

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[25]https://www.arb.ca.gov/app/emsinv/facinfo/facdet.php?co_=7&ab_=SF&facid_=12095&dis_=BA&dbyr=2013&dd=[25]https://www.arb.ca.gov/app/emsinv/facinfo/facdet.php?co_=7&ab_=SF&facid_=12095&dis_=BA&dbyr=2015&dd=

[26]https://www.arb.ca.gov/app/emsinv/facinfo/facdet.php?co_=7&ab_=SF&facid_=12095&dis_=BA&dbyr=2014&dd=

[27] FDOC page 11,12 http://www.energy.ca.gov/sitingcases/delta/documents/intervenors/1999-10-21_FDOC.PDF

[28] Permit Evaluation and Statement of Basis for MAJOR FACILITY REVIEW PERMIT RENEWAL for Delta Energy Center, LLC Facility #B2095 Page 26 www.baaqmd.gov/~/media/files/engineering/title-v-permits/b2095/b2095_2011-4_renewal-sob_03.pdf?la=en

[29] Permit Evaluation and Statement of Basis for MAJOR FACILITY REVIEW PERMIT RENEWAL for Delta Energy Center, LLC Facility #B2095 Page 26 www.baaqmd.gov/~/media/files/engineering/title-v-permits/b2095/b2095_2011-4_renewal-sob_03.pdf?la=en

[30] FDOC page 4 http://www.energy.ca.gov/sitingcases/delta/documents/intervenors/1999-10-21_FDOC.PDF

The project must provide a new health risk assessment to comply with BAAQMD Regulation 2-5-101 which provides that**,**

> **"***The purpose of this rule is to provide for the review of new and* ***modified*** *sources of toxic air contaminant (TAC) emissions in order to evaluate potential public exposure and health risk, to mitigate potentially significant health risks resulting from these exposures, and to provide net health risk benefits by improving the level of control when existing sources are modified or replaced. The rule applies to a new or modified source of toxic air contaminants that is required to have an authority to construct or permit to operate pursuant to Regulation 2, Rule 1*."

Since the emission profile for the DEC has changed the projects health risk assessment must be revaluated for operation in simple cycle mode to identify and prevent potential impacts to the environmental justice community.

The modification as proposed does not comply with BAAQMD Rule **2**-1-305 Conformance with Authority to Construct that requires**,**

> *"A person shall not put in place, build, erect, install, modify***,** *modernize****, alter or replace any article, machine, equipment, or other contrivance for which an authority to construct has been issued except in a manner substantially in conformance with the authority to construct****. If the APCO finds, prior to the issuance of a permit to operate, that the subject of the application was not built substantially in conformance with the authority to construct, the APCO shall deny the permit to operate."*

The permit to operate authorizes operation of the project in combined cycle mode only not simple cycle mode.

V. The Staff Analysis Did Not Correctly Assess The Health Risk Of The Proposed Modification Or The Culminate Impacts From The DEC

A health risk assessment should be conducted for the projects emissions based on its proposed operation in simple cycle mode. While CEC staff and the Commission believe the project will operate sporadically the permit for the project still allows the project to operate indefinitely for 8,760hours per year. How the environmental justice community will be impacted by the TAC emissions from the project in simple cycle mode has not been analyzed.

The projects criteria pollutant air quality impacts have also not been analyzed for this project operating in simple cycle mode so potential violations of ambient air quality standards have not been assessed. For example in the original FDOC the commission analyzed N02 and the results showed that the project would now violate both State and Federal NO2 standards. The following table E-6 as produced from the FDOC for the Delta Energy Center reveals:

Table E-6
California and National Ambient Air Quality Standards and Ambient Air Quality Levels from the Proposed Project ($\mu g/m^3$)

Pollutant	Averaging Time	Maximum Background	Maximum Project impact	Maximum Project impact plus maximum background	California Standards	National Standards
NO_2	1-hour	169	267	436	470	---

Operating the project in simple cycle mode will lead to a cumulative increase in GHG emissions on a local and regional basis. In 2015, the DEC operated in combined cycle mode and had a heat rate of 7.4508 MMBtu/MW.[31] The project produced 4,632, 636 MW and consumed 34,516,967 MMBTU.[32] In 2015 The Delta Energy Center emitted 1,812,158 metric tons of CO2E according to the ARB GHG database.[33] Potential GHG emissions would increase by as much as approximately 630,000 metric tons per year[34] which represents a substantial increase in GHG emissions should the DEC again be called on to produce 4,632,636 MW in 2017. Likely other natural gas projects will be called on to meet any system or LCR need that has been previously supplied by the DEC. The heat rates for most of the available replacement generation in the local area are fairly high. In 2015 the heat rate for the little used Pittsburg generating station was 12.5434 MMBtu/MW.[35] The Marsh Landing Generation Station had a less than 1% utilization rate in 2015[36] and had a 2015 heat rate of 12.8052 MMBtu/MW. The Los Medanos Energy Center has a slightly higher heat rate than Delta at 7.5910 MMBtu/MW but its availability to replace DEC generation is limited by its high annual capacity factor. The Gateway Generating Station has a heat rate of 7.17219 MMBtu/MW but would likely not be available to replace DEC output since it already has a high annual utilization factor. There will likely be a substantial increase in GHG emissions from natural gas fired power plants in the Pittsburg/Antioch area. No analysis is presented in the application or staff assessment which would lead to the conclusions that GHG emissions will not increase as the result of operation of the DEC in simple cycle mode. In fact the amendment application and the staff analysis do not even provide an expected heat rate for the DEC in simple cycle mode.

VI. Energy Commission Should Require a CEQA-Equivalent Formal Amendment Process Similar to a Subsequent, Supplement or Addendum to EIR

The Energy Commission process was certified by the Secretary for Resources as a CEQA certified regulatory program meeting the requirements of Pub. Res. Code § 21080.5. This process exempts the Commission from procedural requirements for Environmental Impact Reports and certain other provision of CEQA contain in Pub. Res. Code § 2100-21189.3, but it

[31]http://www.energy.ca.gov/almanac/electricity_data/web_qfer/Heat_Rates.php?goSort=annual.expr1&year=2015
[32]http://www.energy.ca.gov/almanac/electricity_data/web_qfer/Heat_Rates.php?goSort=annual.expr1&year=2015
[33] https://www.arb.ca.gov/cc/reporting/ghg-rep/reported-data/ghg-reports.htm
[34] 75,000 metric tons per year is considered significant by most agencies.
[35] http://www.energy.ca.gov/almanac/electricity_data/web_qfer/Heat_Rates.php
[36] https://www.google.com/url?q=http://www.energy.ca.gov/2016publications/CEC-200-2016-002/CEC-200-2016-002.pdf&sa=U&ved=0ahUKEwjGtderwJDTAhULzGMKHRrvDn4QFggSMAY&client=internal-uds-cse&usg=AFQjCNHuYlfCTugPO4wZvMB86iu5K1sDSg Page 3

does not exempt the Commission from CEQA's substantive requirements. Under the Commission's certified regulatory program, the Staff report for an Application for Certification for power plant siting fills the role of an EIR under CEQA. Any amendments to an AFC therefore trigger the same procedures as an amendment to an EIR under CEQA, because the amendment proceeding was a discretionary approval of the project.

Under CEQA the Energy Commission is therefore mandated to create a CEQA equivalent -- Subsequent, Supplemental or Addendum to an EIR depending upon the impacts of the project. 14 CCR § 15160 et al. Therefore, it was an error of law not to create a CEQA-equivalent supplemental EIR because "new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR" occurred here and the project contains "new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR" and "significant effects previously examined will be substantially more severe than shown in the previous EIR" 14 CCR § 15162. As shown in the sections above, this project was never analyzed as a simple cycle unit under the CEQA-equivalent document and because of those never analyzed significant effects, such as air quality, impacts on environmental justice, the cumulative effects of the projects, and others cited above were not adequately studied.

At a minimum, this project should be considered an addendum to an EIR and there should have been "a brief explanation of the decision not to prepare a subsequent EIR pursuant . . .[in] the lead agency's findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence."[37] Or in terms of the Energy Commission, the Staff Analysis should have included a reason *why* a more formal amendment process did not occur and that decision must be supported by substantial evidence.

Conclusion

2HT pleads the Commission to reconsider its decision and allow for proper analysis and public participation.

[37] Title 14 CCR 15164