

III. WRITTEN COMMENTS ON THE MITIGATED NEGATIVE DECLARATION/ INITIAL STUDY AND RESPONSES TO COMMENTS

Section III contains copies of all written comments received. Each comment has been labeled with an identification number for reference to its response. Immediately following each comment letter are the responses to the written comments.

AMBAG - Association of Monterey Bay Area Governments
445 Reservation Road, Suite G, Marina
P.O. Box 809, Marina, CA 93933-0809

September 12, 1997

Mr. Bruce Kaneshiro
c/o Environmental Science Associates
225 Bush Street, Ste. 1700
San Francisco, CA 94104

Re: **MCH # 909707** - Negative Declaration for Pacific Gas & Electric Company's Proposal for Divestiture

Dear Mr. Kaneshiro:

AMBAG's Regional Clearinghouse circulated a summary notice of your environmental document to our member agencies and interested parties for review and comment.

[Begin ABMAG-1]

The AMBAG Board of Directors considered the project on **September 10, 1997** and has no comments at this time. However, we are forwarding the enclosed comments on this project that we have received from other agencies or interested parties.

[End AMBAG-1]

Thank you for complying with the Clearinghouse process.

Sincerely,

/s/

Nicolas Papadakis
Executive Director

NP:dh

Enclosure

Monterey Bay Unified Air Pollution Control District
24580 Silver Cloud Court
Monterey, CA 93940

September 4, 1997

Bruce Kaneshiro, Project Manager
c/o Environmental Science Associates
225 Bush Street, Ste. 1700
San Francisco, CA 94104

SUBJECT: NEGATIVE DECLARATION AND INITIAL STUDY FOR PG&E's
APPLICATION 96-11-020

Dear Mr. Kaneshiro:

Staff has reviewed the Initial Study and Negative Declaration for the proposed project and has the following comments:

1. Mitigation Measures - Section 4.5.a.2 of the Negative Declaration states, "PG&E agrees that the transfer of title for Morro Bay Power Plant will not occur until either Rule 431 or the plant is permit to operate has been modified." This section should reference the Moss Landing Power Plant rather than Morro Bay Power Plant and correct the typo, i.e., "plant is permit".
2. Nonattainment Status - Table 4.5.2 should be revised to reflect the following attainment status of the NCCAB:

| Pollutant | Federal | State |
|------------------|-----------------------------|---|
| Ozone | Attainment | Nonattainment |
| Carbon Monoxide | Unclassified/ attainment | Monterey-Attainment San Benito-Unclassified Santa Cruz-Unclassified |
| Nitrogen Dioxide | Unclassified/ attainment | Attainment |
| Sulfur Dioxide | Unclassified | Attainment |
| PM ₁₀ | Unclassified | Nonattainment |

3. 1991 AQMP - Page 4.5.12 should be revised to indicate that the 1991 AQMP was updated in 1994, that the 1994 AQMP addresses attainment of the State ozone standard only, and includes a revised design value which reduced emission reductions needed to achieve the State ozone standard from 30% to 20%. With the revised design value, no additional control measures were needed beyond those adopted between 1991 and 1994.
4. Predominant Winds - Page 4.5.19 states that the predominant winds at Moss landing are from the NNW with speeds averaging 4-8 mph. Based on wind frequency data from the Moss West site, obtained during our Moss Landing Air Monitoring study, prevailing winds were from the W, as a result of the day time sea breeze. An important secondary component from the ESE was also evident, largely due to the reverse land breeze or drainage flow which occurs primarily at night. This pattern is consistent with a classical

sea breeze/land breeze situation. There was very little occurrence of winds from the NNW. In addition, annual average winds averaged about 8 mph with substantially higher winds during the afternoon when the sea breeze is strongest.

5. Capacitance - Page 4.5.19 indicates that in 1993 Units 6 and 7 were utilized together approximately 54.4% of the time. It is not clear how to interpret this statement. In particular, it would be useful to clarify if this figure represents how often the two units operated simultaneously or if it represents simple operational service hours irrespective of load or if it is the combined capacitance factor of the two units, which is related to the plant's capacity to generate steam. The capacitance factor is more useful because it indicates how close to generating capacity the units were actually operating during a given period of time.
6. County Level Comparisons - In Table 4.5.5, emissions from the Moss Landing Power Plant (MLPP) are compared to those of Monterey County alone. For air basin planning purposes, emissions for important categories are generally compared to the totals for the entire air basin, which in the case of the North Central Coast Air Basin, also includes Santa Cruz and San Benito Counties.
7. Mobile Source Inventory - In Table 4.5.5, annual criteria emissions for mobile sources in Monterey County are presented and are then compared with 1993 emissions from the MLPP. In comparing these figures with Monterey county mobile source emissions presented in the 1993 Emission Inventory, published by the Air Resources Board in June of 1995, it appears that the emission figures for on-road motor vehicles were based on an older version of the on-road vehicle emission estimation model. The model that was current in June of 1995 was known as EMFAC7F1.1. Emission estimates from the current model (MVEI7G) are significantly higher which could affect the comparisons, particularly for NO_x.
8. Natural Emissions - Emissions estimates for natural sources presented in Table 4.5.5 appear to be significantly underestimated. Again in comparing these figures with ARB's published 1993 Emission Inventory, it appears that the natural source figures are based on an incomplete total which only includes wildfires. Had the other sub-categories been included, particularly biogenic wildfires. Had the other sub-categories been included, particularly biogenic ROG emissions from vegetation, the totals would be substantially higher. Since this category appears to be incomplete, it would probably be best to completely omit it from the table.

Thank you for the opportunity to review the document. Please do not hesitate to call if you have any questions.

Sincerely,

/s/

Janet Brennan
Supervising Air Quality Planner
Planning and Air Monitoring Division

c: Nicolas Papadakis, AMBAG
Fred Thoits, MBUAPCD
Bob Nunes, MBUAPCD

AMBAG - ASSOCIATION OF MONTEREY BAY AREA GOVERNMENTS

AMBAG-1.

Comment noted, no response necessary. The attached letter by the Monterey Bay Unified Air Pollution Control District was received under separate cover and is addressed in the MBUAPCD comment letter.

September 25, 1997

Mr. Bruce Kaneshiro, Project Manager
CPUC

Dear Mr. Kaneshiro:

[\[Begin BAAQMD-1\]](#)

On page 4.5.5 of the subject study dated August 25, 1997, there is the following incorrect statement:

"As of August 21, 1997, the San Francisco Bay Basin has been redesignated from a maintenance area to a non-attainment area."

The statement should be corrected to:

"On August 21, 1997, the U.S.E.P.A. proposed to redesignate the San Francisco Bay Area Air Basin from an attainment area to a non-attainment area. However, to date, the proposal has not yet been formally published in the Federal Register."

[\[End BAAQMD-1\]](#)

Thank you for the opportunity to comment.

Sincerely,

Kenneth Lim
Bay Area Air Quality Management District

BAAQMD - BAY AREA AIR QUALITY MANAGEMENT DISTRICT

BAAQMD-1.

On page 4.5.5 of the Initial Study, the National Ozone attainment status for the San Francisco Bay Area Air Basin is revised as follows:

~~Non~~ Attainment /a/

Also on page 4.5.5, footnote /a/ is revised as follows:

/a/ ~~As of August 21, 1997, the San Francisco Bay Area Air Basin has been redesignated from a maintenance area to a non-attainment area. On August 21, 1997, the U.S.E.P.A. proposed to redesignate the San Francisco Air Basin from an attainment area to a moderate non-attainment area. However, to date, the proposal has not been formally published in the Federal Register.~~

September 25, 1997

Bruce Kaneshiro, Project Manager
Environmental Science Associates
225 Bush Street, Suite 1700
San Francisco, California 94101
By Facsimile: (415) 896-0332

Regarding: Mitigated Negative Declaration/Power Plant Divestitures

Dear Mr. Kaneshiro:

[\[Begin CCC-1\]](#)

As a responsible agency under the California Environmental Quality act, we write to express our disappointment that an Environmental Impact Report is not being prepared for this project. We have commented previously that we do not believe an adequate project description has yet been prepared and that there appear to be potentially significant environmental impacts associated with the proposed divestitures that cannot be mitigated to less than significant levels.

[\[End CCC-1\]](#)

[\[Begin CCC-2\]](#)

To date, we find no evidence that the implications for eventual abandonment of these plants has been addressed. The cessation of CPUC-regulation of the abandonment process raises questions of eventual financial responsibility and the imposition of adequate cleanup standards. The divestiture implies that the useful lives of these plants will be extended beyond the horizon that would likely have been considered (or possibly allowed) under present ownership and, unfortunately, we find that the Mitigated Negative Declaration begs to question of the implications of delayed remediation of highly contaminated power plant sites.

[\[End CCC-2\]](#)

[\[Begin CCC-3\]](#)

Similarly, we believe the air quality impacts of prolonged use of aging plants qualify as Class 1 impacts under CEQA. Therefore, the baseline comparison should weigh the air emissions produced by continued use of these plants after the expiration of their planned useful lives, against the elimination of these emissions that would otherwise occur. We believe or previously submitted comments about retrofitting plants as a condition of sale, and particularly the question of whether the existing stacks could be removed and replaced by other pollution control technology, has not been evaluated. We are concerned that these issues, and other raised in our July 15, 1997 letter, will not be addressed in the Mitigated Negative Declaration.

[\[End CCC-3\]](#)

Please feel free to contact me at (415) 904-5247 if you have questions about this letter.

Sincerely,

Melanie Hale
Coastal Program Analyst

CCC - CALIFORNIA COASTAL COMMISSION

CCC-1.

The Initial Study systematically analyzed potential impacts from the proposed divestiture of each power plant on the environment. The project description includes all reasonably foreseeable actions attributed to divestiture. Actions associated with the restructuring of the electric industry in the state were not considered because, as noted on page 3.1 of the Initial Study, actions taken by the California Legislature rendered an EIR on restructuring unnecessary. The language on page 3.1 of the Initial Study was derived from CPUC Decision No. 96-12-075, which stated, “In this order we halt preparation of the Environmental Impact Report (EIR) studying our preferred policy for electric restructuring. We find that Assembly Bill (AB) 1890 (Stats. 1996, ch. 854.) resolves to move from traditional electric utility regulation to a more competitive scheme, and outlines a new competitive market structure. The EIR's purpose was to study the environmental effects of moving to the market structure outlined in the preferred policy so we could consider those effects in a final decision. However, we now have no discretion to make a decision on moving to a competitive market or to frame the basic structure of that market. In such a situation an EIR is neither appropriate nor necessary...We also will continue to consider CEQA issues in individual electric restructuring proceedings, if appropriate.”

The Initial Study used the environmental checklist provided in Appendix I of the *CEQA Guidelines*. All reasonably foreseeable effects of the divestiture were analyzed and, where environmental effects were found to be potentially significant, mitigation measures were incorporated. No significant impacts were identified that could not be mitigated to a less-than-significant level.

CCC-2.

The divestiture project has necessitated the identification of site contamination as part of due diligence and, as noted on pages 4.9.10, the Initial Study determined that, “...Environmental Site Investigations have been conducted for each plant site. These reports document known site conditions, and would be provided to prospective new owners as part of the due diligence process and to appropriate regulatory agencies as part of the remediation process.” On the same page, the Initial Study continues, “under terms of the Purchase and Sale Agreement, PG&E has agreed to be responsible for any legally required remediation of existing contaminated soil and ground water at the divested plants and therefore will be responsible for remediation activities that are part of the ownership transition.” The Initial Study clearly indicates both that PG&E will be responsible for existing contamination at each power plant site and that the proposed remediation is ongoing, not being “delayed,” as is implied by the commentor. Finally, on the same page, the Initial Study concludes, “To the extent that the transfer of ownership and associated due

diligence will identify site contamination and lead to its remediation, a beneficial impact on the environment might result.”

Public Utilities Code Section 377 removes much of the CPUC’s regulatory authority over utility generation plants after these plants are market valued—an event mandated by AB 1890 even if divestiture does not occur. While it is true that local agencies would become the “lead agencies” for CEQA review of most future site improvements, most of the “permitting activities related to site planning, site improvements, building construction, and hazardous materials handling” are already handled by other agencies at the local level. The CPUC is not currently involved with such permitting activities. Thus, divestiture would not have a significant impact on the economics of local permitting agencies.

CCC-3.

As discussed in response to SLOCDPB-11, divestiture does not affect the decision whether or when to close power plants. Market forces will determine the viability of each of the power plants.

The commentor states that its previous comment on the possibility of existing stacks being replaced by other unspecified technology, was not evaluated. The comments provided in the commentor's July 15, 1997 letter was concerned with the issue that there would be an impact to coastal viewsheds by these stacks as a result of the project. These concerns were considered and evaluated in the Initial Study as part of the aesthetics analysis discussed in Section 4.13. As discussed on pages 4.13.4 and 4.13.5, no future modifications of the power plants are reasonably foreseeable as a result of the project. Since the stacks are already in existence, and expected to remain with or without divestiture, visual impacts were found to be less than significant, and therefore, no mitigation is required.

As a point of information, we know of no such technology to replace one of the primary functions of power plant stacks, which is emission of exhaust gases above the atmospheric building wake immediately downwind of the power plant buildings.

Jim Turner
Los Padres National Forest

[\[Begin LPNF-1\]](#)

The Los Padres National Forest could find no indication that the proposed divestiture would affect transmission lines crossing the Forest. That being the case, we have no further comment concerning the proposal. Thank you for the opportunity to review the project.

[\[End LPNF-1\]](#)

Jim Turner
NEPA Coordinator
Los Padres National Forest

LPNF - LOS PADRES NATIONAL FOREST

LPNF-1.

Comment noted.

Monterey Bay Unified Air Pollution Control District
24580 Silver Cloud Court
Monterey, CA 93940

September 4, 1997

Bruce Kaneshiro, Project Manager
c/o Environmental Science Associates
225 Bush Street, Ste. 1700
San Francisco, CA 94104

SUBJECT: NEGATIVE DECLARATION AND INITIAL STUDY FOR PG&E'S
APPLICATION 96-11-020

Dear Mr. Kaneshiro:

Staff has reviewed the Initial Study and Negative Declaration for the proposed project and has the following comments:

[\[Begin MBUAPCD-1\]](#)

1. Mitigation Measures - Section 4.5.a.2 of the Negative Declaration states, "PG&E agrees that the transfer of title for Morro Bay Power Plant will not occur until either Rule 431 or the plant is permit to operate has been modified." This section should reference the Moss Landing Power Plant rather than Morro Bay Power Plant and correct the typo, i.e., "plant is permit".

[\[End MBUAPCD-1\]](#)

[\[Begin MBUAPCD-2\]](#)

2. Nonattainment Status - Table 4.5.2 should be revised to reflect the following attainment status of the NCCAB:

| Pollutant | Federal | State |
|------------------|-----------------------------|---|
| Ozone | Attainment | Nonattainment |
| Carbon Monoxide | Unclassified/ attainment | Monterey-Attainment San Benito-Unclassified Santa Cruz-Unclassified |
| Nitrogen Dioxide | Unclassified/ attainment | Attainment |
| Sulfur Dioxide | Unclassified | Attainment |
| PM10 | Unclassified | Nonattainment |

[\[End MBUAPCD-2\]](#)

[\[Begin MBUAPCD-3\]](#)

3. 1991 AQMP - Page 4.5.12 should be revised to indicate that the 1991 AQMP was updated in 1994, that the 1994 AQMP addresses attainment of the State ozone standard only, and includes a revised design value which reduced emission reductions needed to achieve the State ozone standard from 30% to 20%. With the revised design value, no additional control measures were needed beyond those adopted between 1991 and 1994.

[\[End MBUAPCD-3\]](#)

[\[Begin MBUAPCD-4\]](#)

4. Predominant Winds - Page 4.5.19 states that the predominant winds at Moss landing are from the NNW with speeds averaging 4-8 mph. Based on wind frequency data from the Moss West site, obtained during our Moss Landing Air Monitoring study, prevailing winds were from the W, as a result of the day time sea breeze. An important secondary component from the ESE was also evident, largely due to the reverse land breeze or drainage flow which occurs primarily at night. This pattern is consistent with a classical sea breeze/land breeze situation. There was very little occurrence of winds from the NNW. In addition, annual average winds averaged about 8 mph with substantially higher winds during the afternoon when the sea breeze is strongest.

[\[End MBUAPCD-4\]](#)

[\[Begin MBUAPCD-5\]](#)

5. Capacitance - Page 4.5.19 indicates that in 1993 Units 6 and 7 were utilized together approximately 54.4% of the time. It is not clear how to interpret this statement. In particular, it would be useful to clarify if this figure represents how often the two units operated simultaneously or if it represents simple operational service hours irrespective of load or if it is the combined capacitance factor of the two units, which is related to the plant's capacity to generate steam. The capacitance factor is more useful because it indicates how close to generating capacity the units were actually operating during a given period of time.

[\[End MBUAPCD-5\]](#)

[\[Begin MBUAPCD-6\]](#)

6. County Level Comparisons - In Table 4.5.5, emissions from the Moss Landing Power Plant (MLPP) are compared to those of Monterey County alone. For air basin planning purposes, emissions for important categories are generally compared to the totals for the entire air basin, which in the case of the North Central Coast Air Basin, also includes Santa Cruz and San Benito Counties.

[\[End MBUAPCD-6\]](#)

[\[Begin MBUAPCD-7\]](#)

7. Mobile Source Inventory - In Table 4.5.5, annual criteria emissions for mobile sources in

Monterey County are presented and are then compared with 1993 emissions from the MLPP. In comparing these figures with Monterey county mobile source emissions presented in the 1993 Emission Inventory, published by the Air Resources Board in June of 1995, it appears that the emission figures for on-road motor vehicles were based on an older version of the on-road vehicle emission estimation model. The model that was current in June of 1995 was known as EMFAC7F1.1. Emission estimates from the current model (MVEI7G) are significantly higher which could affect the comparisons, particularly for NOx.

[\[End MBUAPCD-7\]](#)

[\[Begin MBUAPCD-8\]](#)

8. Natural Emissions - Emissions estimates for natural sources presented in Table 4.5.5 appear to be significantly underestimated. Again in comparing these figures with ARB's published 1993 Emission Inventory, it appears that the natural source figures are based on an incomplete total which only includes wildfires. Had the other sub-categories been included, particularly biogenic wildfires. Had the other sub-categories been included, particularly biogenic ROG emissions from vegetation, the totals would be substantially higher. Since this category appears to be incomplete, it would probably be best to completely omit it from the table.

[\[End MBUAPCD-8\]](#)

Thank you for the opportunity to review the document. Please do not hesitate to call if you have any questions.

Sincerely,

/s/

Janet Brennan
Supervising Air Quality Planner
Planning and Air Monitoring Division

c: Nicolas Papadakis, AMBAG
Fred Thoits, MBUAPCD
Bob Nunes, MBUAPCD

MBUAPCD - MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT

MBUAPCD-1.

On page 4 of the Mitigated Negative Declaration, the first sentence of the third paragraph of mitigation measure 4.5.a.2 is revised as follows:

PG&E agrees that the transfer of title for ~~Morro Bay~~ Moss Landing Power Plant will not occur until either Rule 431 or the plant's is-permit to operate has been so modified.

MBUAPCD-2.

No changes are needed to the table for ozone, sulfur dioxide, and PM10. To reflect the information provided by the MBUAPCD, Table 4.5.2 for the North Central Coast is revised for carbon monoxide and nitrogen dioxide as follows:

North Central Coast Air Basin

| <u>Pollutant</u> | <u>National</u> | <u>State</u> |
|---------------------------|--------------------------------|--|
| Ozone | Attainment | Nonattainment |
| Carbon Monoxide | <u>Unclassified/attainment</u> | <u>Monterey-Attainment</u> <u>San Benito-Unclassified</u> <u>Santa Cruz-Unclassified</u> |
| Nitrogen Dioxide | <u>Unclassified/attainment</u> | Attainment |
| Sulfur Dioxide | Unclassified | Attainment |
| Particulate Matter (PM10) | Unclassified | Nonattainment |

MBUAPCD-3.

On page 4.5.12 of the Initial Study, the first two paragraphs of the Regulations, Plans and Policies Section are revised as follows:

Regulations, Plans, and Policies

The 1991 Air Quality Management Plan (AQMP) for the Monterey Bay Region addresses attainment of air quality standards for ozone and inhalable particulate matter (PM10) within Monterey, San Benito, and Santa Cruz counties. The AQMP addresses state planning requirements and establishes the basis for meeting federal requirements. CARB determined that a 30% reduction of those emissions leading to the formation of ozone is required to achieve the standard in the North Central Coast Air Basin. The 1991 AQMP was updated in 1994, and the 1994 AQMP addresses attainment of the State ozone standard only. The 1994 AQMP includes a revised design value which reduced emission reductions needed to achieve the State ozone standard from 30% to 20%. With

the revised design value, no additional control measures were needed beyond those adopted between 1991 and 1994 (Brennan, 1997).

MBUAPCD-4.

The wind speed and direction data cited on page 4.5.19 of the Initial Study were taken verbatim from PG&E's *Proponent's Environmental Assessment (PEA)*. Further review of the PEA data show the wind direction data referenced was taken from Monterey and Salinas. Regardless of which data set is more suitable, the result will not change the conclusions with respect to the Moss Landing Plant under divestiture. The Moss West site data mentioned appears more representative and will be used. Use of the Moss West site data does not change the conclusion that air quality impacts of the project would still be less than significant.

The last two sentences of the first full paragraph on page 4.5.19 is revised as follows:

The predominant wind direction at the site is from the west north-northwest, with and an average windspeeds range from 4 to 8 miles per hour. An important secondary wind flow component is also observed from the east-southeast which is typically observed at night as a nocturnal drainage flow. Daily and seasonal variations are small.

MBUAPCD-5.

To provide clarification the second sentence of the fifth paragraph on page 4.5.19 is revised as follows:

In 1993, units 6 and 7 together had a capacity factor of 54.4% were utilized approximately 54.4% of the time.

MBUAPCD-6.

As noted on page 4.5.20 of the Initial Study, the source of Table 4.5.5 was PG&E's *Proponent's Environmental Assessment: Pacific Gas and Electric Company's Proposed Sale of Four Generating Plants*, with minor modifications by Environmental Science Associates. The District suggests potential problems with the underlying data and analytical approach in this comment and in Comments MBUAPCD-7 and MBUAPCD-8. Each of the suggested changes in these three comments would decrease the percentage contribution of the Moss Landing Power Plant in comparison to county-wide emissions or, as this comment suggests, total air basin-wide emissions. A decrease in the relative contribution of the Moss Landing Power Plant emissions to other sources would not change the conclusion of the Initial Study that air quality impacts of the project would be less than significant.

MBUAPCD-7.

Please refer to response to MBUAPCD-6. The described changes would increase mobile source emissions shown in Table 4.5.5 of the Initial Study and reduce the percentage contribution of the Moss Landing Power Plant to total emission sources in the entire air basin. A decrease in the relative contribution of the Moss Landing Power Plant emissions to other sources would not change the conclusion of the Initial Study that air quality impacts of the project would be less than significant.

MBUAPCD-8.

Please refer to response to MBUAPCD-6 and MBUAPCD-7. The described changes would increase emissions from natural sources above the levels shown in Table 4.5.5 of the Initial Study and reduce the percentage contribution of the Moss Landing Power Plant to total emission sources in the entire air basin. A decrease in the relative contribution of the Moss Landing Power Plant emissions to other sources would not change the conclusion of the Initial Study that air quality impacts of the project would be less than significant.

REFERENCES:

Brennan, Janet, Supervising Air Quality Planner, Monterey Bay Unified Air Pollution Control District, Planning and Air Monitoring Division, letter to CPUC, September 4, 1997.

22 September 1997

Bruce Kaneshiro, Project Manger
California Public Utilities Commission
c/o Environmental Science Associates
225 Bush Street, Ste. 1700
San Francisco, CA 94104

Re: Mitigated Negative Declaration And Initial Study, dated august 25, 1997, PG&E Application 96-11-020, Proposal for Divestiture

Dear Mr. Kaneshiro,

[\[Begin ORA-1\]](#)

After reviewing the Mitigated Negative Declaration And Initial Study, the Office of Ratepayer Advocates' (ORA) main concern is the estimated cost of the proposed mitigation measures, and whether mitigation activities would delay divestiture. ORA is aware that PG&E proposed to submit to the Commission an environmental remediation cost forecast and supporting testimony on 1 October 1997.

[\[End ORA-1\]](#)

Sincerely yours,

/s/

Truman L. Burns

Project Manager
415/703-2932

cc: PG&E/M. Christie McManus; ALJ Careaga

ORA - OFFICE OF RATEPAYER ADVOCATES

ORA-1.

Five of the six mitigation measures listed in the Mitigated Negative Declaration ensure that an existing rule applies to a new owner, or the transfer of materials and documents from PG&E to the new owner. The sixth mitigation measure requires PG&E to “prepare and certify its intent to comply with a program to address potential impacts to archaeological resources from PG&E actions related to the divestiture at the Morro Bay and Moss Landing power plants, such as construction to separate the properties or soil remediation activities.” PG&E is not likely to incur delay or significant expense in complying with any of these mitigation measures. Soil remediation is not a mitigation measure, but rather is PG&E's liability, with or without divestiture (see response to CCC-2). The costs associated with remediation at plants to be divested are under consideration in the CPUC's divestiture proceeding (A96-11-020), as ORA is aware.

September 25, 1997

Mr. Bruce Kaneshiro, Project Manager
c/o Environmental Science Associates
225 Bush Street - Suite 1700
San Francisco, California 94104

Re: Comments on Mitigated Negative Declaration and Initial Study for Pacific Gas & Electric Company's Proposed Divestiture (Application No. 96-11-020)

Dear Mr. Kaneshiro:

Pacific Gas & Electric Company (PG&E) hereby submits the following brief comments on the Mitigated Negative Declaration and Initial Study prepared concerning its proposed divestiture of its Oakland, Moss Landing and Morro Bay Power Plants.

[\[Begin PG&E-1\]](#)

1. p. 5 - Cultural Resources. Section 4.14.b.1

The second paragraph of the mitigation has inadvertently dropped a few words from the mitigation measure accepted by PG&E. The first few sentences of that paragraph should read as follows:

A qualified archaeologist shall be consulted prior to implementing construction or soil remediation activities that will involve earth moving or soil excavation, and the archeologist shall be available for consultation or evaluation of any cultural resources uncovered by such activities. For any previously undisturbed, known archeological areas, a qualified archeologist shall monitor earth moving and soil excavation activities . . .

Corresponding changes should be made when the mitigation measure is described in the body of the report.

[\[End PG&E-1\]](#)

[\[Begin PG&E-2\]](#)

2. p. 2.2 - Project Characteristics

As reflected in the Addendum to the Application, tank farms and marine terminal facilities are all being offered for sale with the plants. PG&E is training only switchyards and transmission related equipment and property.

[\[End PG&E-2\]](#)

[\[Begin PG&E-3\]](#)

The proposal for entering into "bidding contracts" with the buyers if the sales are not able to close before PX operations begin has been deleted from the PG&E's application, as reflected in the Addendum to the Application filed February 25, 1997.

[\[End PG&E-3\]](#)

4. p. 3.2 - Amount and Timing of Construction, Refurbishment, Repowering . . . etc.

[\[Begin PG&E-4\]](#)

The last few sentences in the paragraph could be misunderstood by some readers to suggest that increases of up to 49 MW could be made at a plant site without any permits or environmental reviews. Although such expansions may be exempt from CEC approval, other permit and environmental reviews, such as construction permits or new source review by the air agencies would still apply.

[\[End PG&E-4\]](#)

3. p. 4.4.9 - Combined Issues

[\[Begin PG&E-5\]](#)

PG&E has now completed Phase II testing that further addresses the potential contamination issues identified in the Phase I reports and otherwise characterizes the nature and extent of soil and groundwater contamination at each of the plant sites. Upon testing, many of the potential issues identified in the Phase I reports were found not to exist, or not to require any additional investigation or remediation. Based on the Phase II work and a health based risk assessment, PG&E has concluded that none of the environmental conditions found at the sites currently requires remediation to protect human health and safety. Remediation of some conditions is required, however, to meet various regulatory standards. PG&E is working with responsible environmental agencies to develop appropriate strategies for addressing such conditions.

Corresponding changes should be made in sections on the individual plants that refer to the Phase I results.

[\[End PG&E-5\]](#)

[\[Begin PG&E-6\]](#)

4. p. 4.4.5 - Air Basin Attainment Designations

Table 4.5.2 should indicate that the Bay Area Basin is currently designated as in attainment with federal ozone standards. Footnote /a/ to Table 4.5.2 should reflect only that the EPA has proposed a redesignation of the Bay Area Basin to "moderate" nonattainment.

[\[End PG&E-6\]](#)

PG&E appreciates the opportunity to comment on the proposed Mitigated Negative Declaration and Initial Study, and urges the Commission to adopt a Final Mitigated Negative Declaration as soon as possible.

Sincerely,

M. Chistie Mcmanus
Project Manager
Application No. 96-11-020

PG&E - PACIFIC GAS AND ELECTRIC

PG&E-1.

The first sentence of the last paragraph on page 4.14.4 of the Initial Study, and the corresponding section in the Mitigated Negative Declaration, are revised as follows:

A qualified archaeologist shall be consulted prior to implementing construction or soil remediation activities that will involve earth moving or soil excavation, and the archeologist shall be available for consultation or evaluation of any cultural resources uncovered by such activities. For any previously undisturbed, known archeological areas, a qualified archeologist shall monitor earth moving and soil excavation activities, consistent with relevant Federal, State, and local guidelines.

PG&E-2.

The paragraph identified by PG&E as inaccurate was taken directly from PG&E's own Proponent's Environmental Assessment (PEA), as stated at page 2.2 of the Initial Study. PG&E has since submitted an Addendum to its application showing that the tank farms and marine terminal facilities are included in the property being divested. This information is already accurately reflected in Figures 2.3, 2.4, 2.6 and 2.7, showing the property proposed for sale at the Moss Landing and Morro Bay plants. However, the second item in the list of terms and conditions found on page 2.2 of the Initial Study is revised as follows:

All generating and retired units at a site would be sold to the same buyer, along with equipment and land necessary to the generation function. Related facilities at some of the power plant sites (such as tank farms and marine terminals) ~~may be retained or sold separately~~ are included in the sale, as shown in Figures 2.3, 2.4, 2.6, 2.7, and 2.9.

PG&E-3.

This comment actually applies to the first paragraph on page 2.4. To clarify and correct the report, the entire seventh enumerated set of Terms and Conditions is fully deleted.

- ~~7. If the PX operations begin before the plant sales are able to close, PG&E would enter into "Bidding Contracts" with the buyer, which would give the buyer bidding and dispatch control and thereby mitigate market power concerns, until such time as full ownership can be transferred.~~

PG&E-4.

To provide clarification the sixth sentence of the first paragraph of page 3.2 is revised as follows:

With that exception, however, expansion or repowering of facilities at the plants would require issuance of new permits and accompanying environmental review by the CEC. Regardless of CEC jurisdiction, any plant expansion would require other permits and environmental reviews such as new construction permits or new source review by the affected air agencies.

PG&E-5.

The following text changes will be made:

The fifth paragraph on page 4.9.2 is revised as follows:

PG&E recently conducted both Phase I and Phase II Environmental Site Assessments at the plant ~~and will follow up, as appropriate, with Phase II testing~~ to determine the nature and extent of contaminants. The Phase I report (Camp Dresser & McKee, 1997a) identified 26 “recognized environmental conditions” at the Morro Bay Power Plant; these conditions represent past or present incidents of release of hazardous substances or petroleum products to the ground, groundwater, or surface water of the property. The Phase I report went on to identify at least 11 impaired conditions at the Morro Bay plant as “material recognized environmental conditions,” defined in the report as a situation of environmental contamination “requiring extensive investigation and/or remedial efforts to address.” The Phase II work (Fluor Daniel GTI, 1997a) investigated among other things the specific Phase I identified environmental concerns and concluded, “The risk assessment showed the cumulative risk posed to human health and the environment by chemicals in soil and groundwater did not exceed the acceptable level established for this project throughout the risk assessment process and by regulatory policies.” The Phase II report also indicated that remediation of two environmental concerns (relating to contaminated soil and groundwater) would likely be required. PG&E will work with appropriate environmental agencies to develop specific remediation plans.

The fifth paragraph on page 4.9.3 is revised as follows:

PG&E recently conducted both Phase I and Phase II Environmental Site Assessments at the plant ~~and will follow up, as appropriate, with Phase II testing~~ to determine the nature and extent of contaminants. The Phase I report (Camp Dresser & McKee, 1997b) identified 17 “recognized environmental conditions” at the Moss Landing Power Plant. The Phase I report went on to identify at least nine impaired conditions at the Moss Landing plant as “material recognized environmental conditions.” The Phase II work (Fluor Daniel GTI, 1997b) investigated among other things the specific Phase I identified environmental concerns and found them to “pose no unacceptable risks to current site workers or future construction workers.” The Phase II report also indicated that remediation of four environmental concerns (relating to contaminated soil and groundwater) would likely be required. PG&E will work with appropriate environmental agencies to develop specific remediation plans.

The second paragraph on page 4.9.4 is revised as follows:

PG&E has recently conducted both a Phase I and Phase II Environmental Site Assessments at the plant ~~and will follow up, as appropriate, with Phase II testing~~ to determine the nature and extent of contaminants. The Phase I report (Camp Dresser & McKee, 1997c) identified 15 “recognized environmental conditions” at the Oakland Power Plant. The Phase I report went on to identify at least nine impaired conditions at the Oakland plant as “material recognized environmental conditions. The Phase II work (Fluor Daniel GTI, 1997c) investigated among other things the specific Phase I identified environmental concerns and found them to “pose no unacceptable risks to current site workers or future construction workers.” The Phase II report also indicated that remediation of five (relating to contaminated soil and groundwater) environmental concerns would likely be required. PG&E will work with appropriate environmental agencies to develop specific remediation plans.

The fourth paragraph on page 4.9.9 is revised as follows:

Because of the fuels, water treatment chemicals, and other hazardous materials historically used at the power generating stations and discussed above, the three stations to be divested could have contaminated soils, structures, or equipment. Phase I and Phase II environmental site assessments have identified potential surface or subsurface contamination at specific facilities. Known conditions are summarized above under “Setting.” The transfer of plant ownership may advance the time at which existing hazards are remediated.

The fourth paragraph on page 4.9.10 is revised as follows:

Appropriate Phase I and Phase II Environmental Site Investigations have been conducted for each plant site. These reports document known site conditions, and would be provided to prospective new owners as part of the due diligence process and to appropriate regulatory agencies as part of the remediation process. Therefore, all likely areas of known and potential contamination have been identified and will be known to prospective buyers.

PG&E-6.

Refer to response to BAAQMD-1.

REFERENCES:

Fluor Daniel GTI, Phase II Environmental Site Assessment Morro Bay Power Plant, Morro Bay, California, prepared for Pacific Gas and Electric Company, July 1997a.

Fluor Daniel GTI, Phase II Environmental Site Assessment Moss Landing Power Plant, Highway 1 and Dolan Road, Moss Landing, California, prepared for Pacific Gas and Electric Company, July 1997b.

Fluor Daniel GTI, Phase II Environmental Site Assessment Oakland Power Plant, 50 Martin Luther King Jr. Way, Oakland, California, prepared for Pacific Gas and Electric Company, July 1997c.

September 23, 1997

Mr. Bruce Kaneshiro
Project Manager
c/o Environmental Science Associates
225 Bush Street - Suite 1700
San Francisco, California 94104

Re: Mitigated Negative Declaration and Initial Study, California Public Utilities Commission, Pacific Gas & Electric Company's Application No. 96-11-020, Proposal for Divestiture, Dated August 25, 1997, and Prepared by Environmental Science Associates

Dear Mr. Kaneshiro:

The Port of Oakland ("Port") has reviewed the above-referenced **Mitigated Negative Declaration and Initial Study** ("Initial Study") and respectfully submits the following comments.

1. Port's Jurisdiction

[\[Begin PO-1\]](#)

The Port's July 2, 1997, comment letter on the Draft Initial Study needs to be emphasized. The Oakland Power Plant is located within the Port Area, and therefore under the Charter of the City of Oakland the Board of Port Commissioners has the complete and exclusive power and duty on behalf of the City of Oakland to exercise planning and permit jurisdiction over the plant. In other words, the Port is the City within the Port Area. Accordingly, the CEQA lead agency and permitting authority and responsibility, which the Initial Study (p. 4.11.8) notes will be assumed by the Port with respect to the Oakland Power Plant.

[\[End PO-1\]](#)

2. Hazardous Materials

[\[Begin PO-2\]](#)

The Port's July 2 comment letter on the Draft Initial Study pointed out the failure of the Draft Initial Study to address the potential environmental effects, particularly regarding hazardous materials, of undertaking the \$620,526 of Necessary Capital Expenditures needed at the Oakland Power Plant. The Initial Study, for example, notes that 15 "recognized environmental conditions" and at least nine impaired conditions constituting "material recognized environmental conditions" exist at the site. (p. 4.9.4) The proposed Purchase and Sale Agreement for the site provides that the Necessary Capital Expenditures must be made. The port has requested, but has not been provided, the Phase II report on the site. The Initial Study improperly fails to address the hazardous materials impacts that may result from undertaking the Necessary Capital Expenditures.

[\[End PO-2\]](#)

3. Misleading and Incorrect Statements in the Initial Study Concerning Repowering or Other Substantial Changes or Increased Use at Oakland Power Plant

[\[Begin PO-3\]](#)

Any expanded use of the Oakland Power Plant for power generating purposes raises serious land use and environmental questions in view of the recent substantial changes in the immediate vicinity of the plant. The plant site is immediately adjacent to major new retail, commercial and public facility developments that have been developed in Jack London Square over the past 10 years. Many additional similar developments are proposed in Jack London Square in the near future. (See, for example, p.4.16.8 of Initial Study.) Similar new developments, including live-work facilities, have occurred recently and are planned in the areas near Jack London Square and the Oakland Power Plant. The Initial Study concedes "that overall there are incentives that create a tendency for the new owner of a divested plant to operate at higher levels than PG&E would operate that plant in the future." (p. 3.5) However, the Initial Study analyzes only the difference between (1) PG&E operations without divestiture (capacity factor of 0% for Oakland Power Plant) and (2) "technically feasible maximum operations (capacity factor of 10% for Oakland Power Plant). (pp. 3.5-3.6; Table 3.1) The Initial Study "does not consider the environmental effects that might arise from repowering." (P.C.16)

The Initial Study states on p. 4.1.6 and p.4.1.7 that:

"There is no anticipation that such a [Port of Oakland] land use or zoning code will be adopted in the near term, however, the Port does have the authority under the Charter to do so. The Port has accepted the land use for the power plant and assumes that it will continue so long as the facility remains in operation. (Heffes 1997)" (p.4.1.6; emphasis added) (See also p.4.1.9. which refers to "the Port of Oakland's acceptance of the site for heavy industrial use.")

"The Port of Oakland anticipates that the land use designation for the Oakland power plant [Heavy Industry] will remain unchanged so long as the facility is operational. (Heffes, 1997). Therefore the project would not be expected to cause conflicts with the Port of Oakland's planning or land use designations and would have a less-than-significant impact." (p.4.1.7.; emphasis added)

The foregoing statements in many important respects are incorrect and misleading:

- The Port may adopt a land use plan for the Jack London Square area, including the Oakland Power plant site, in the near future as the result of the Estuary Planning process being undertaken jointly with other agencies of the City of Oakland. Both the City's General Plan and the Port's land use plan may provide for commercial use of all or portions of the power plant site.
- The Port does not know what the Initial Study means by the phrases "Port has accepted" and "Port of Oakland's acceptance." The Port has not accepted, consented to or approved any changes in the level of operations or any physical modifications of the existing plant. Substantial modifications or changes in level of operations may conflict with both existing and proposed nearby retail, office, restaurant, entertainment, hotel and public uses in the Jack London Square area, and may create negative environmental impacts, which the Port does not accept, consent to or approve.

The statements on p.4.1.11 of the Initial Study, that "an established residential community is

within one-half mile" but "95% of these residences are separated from the plant by an elevated freeway" fail to acknowledge the 288-unit residential project approved by the Port in Jack London Square, increasing numbers of existing and planned live-work facilities south (the Oakland Power Plant side) of the freeway, and the existing and proposed offices, restaurant, entertainment, hotel and public uses in the Jack London Square very near to the power plant. The statements on p.4.5.22 of the Initial Study, that "no sensitive receptors are located near the project site" and that "The closest sensitive receptors are located east [north?] of Highway 880," and similar statements made elsewhere in the Initial Study (e.g. pp. 4.5.29 and 4.10.7), are simply wrong. The Port is very concerned about future potential substantial modification or changes in the level of operations at the Oakland Power Plant because of the large number of "sensitive receptors" represented by the large numbers of workers, patrons, public and future residents in the immediately adjacent Jack London Square area who are located much closer to the power plant site than areas east or north of Highway 880.

[\[End PO-3\]](#)

[\[Begin PO-4\]](#)

Although the project, as defined in the Initial Study to include no more than "technically feasible maximum operations" of a 10% capacity factor for the Oakland Power Plant, may have less-than-significant impact, the Port believes that any increase of the capacity factor of more than 10%, and any other substantial changes to the plant, may have a significant impact, should be the subject of an Environmental Impact Report and may be an inappropriate land use.

[\[End PO-4\]](#)

4. Fuel Oil Use

[\[Begin PO-5\]](#)

The statement on p.4.5.30 of the Initial Study, that although a "foreseeable scenario" of divestiture includes a "tendency for increased use of the power plants, no increase in fuel oil use is expected as a result of divestiture." Since the Oakland Plant is oil fueled, and the foreseeable scenario is for increasing the capacity factor of the plant from 0% to 10%, the statement on p.4.5.30 is clearly untrue for the Oakland Plant.

[\[End PO-5\]](#)

5. Conclusion

The Initial Study fails to respond to the Port's comment letter on the Draft Initial Study in that it does not consider the hazardous material impacts of the \$620,526 in Necessary Capital Expenditures a purchaser will be required to make to this documented materially contaminated site, and incorrectly assumes that the foreseeable scenario of divestiture would result in no increase in fuel oil even if the oil fueled Oakland Power Plant's capacity factor is increased from 0% to 10%. The Initial Study also incorrectly implies that the Port has accepted or approved heavy industry and/or power plant use of the site beyond the presently existing improvements at and level of use at the site. On the contrary, the Port believes that any substantial increase in the level of power plant operations at the site, or any substantial physical modification of the plant, will require the preparation of an environmental impact report, and may not be an appropriate use because it will conflict with immediately existing and planned adjacent retail, office, restaurant, hotel, entertainment, residential and public uses.

Should you have any questions regarding the Port's response comments, please contact Steven Reiner, Port Environmental Planner, of my staff at (510) 272-1180

Very Truly yours,

James McGrath
Manager
Environmental Planning

cc: Andy Altman
Steven Reiner
Thomas D. Clark
Michele Heffes
Parties of Record in
CPUC Application 96-11-020

PO - PORT OF OAKLAND

PO-1.

We refer the commentor to pages 4.1.5 and 4.1.6 of the Initial Study where the document clearly indicates that the Port of Oakland Commissioners have land use jurisdiction over Port of Oakland property. For further discussion, see response to PO-3.

PO-2.

As stated in the fifth paragraph of page 4.9.10 of the Initial Study, "PG&E has agreed to be responsible for any legally required remediation of existing contaminated soil and groundwater at the divested plants and therefore will be responsible for remediation activities that are part of the ownership transition." The commentor notes that on page 4.9.4 of the Initial Study, the Phase I report for the Oakland Power Plant identified 15 environmental concerns and nine impaired conditions. The Oakland Power Plant Phase II Report (Fluor Daniel GTI, 1997c), now available, shows that, for the most part, these environmental concerns and conditions are either not significant or pose no unacceptable risks to current site workers or future construction workers. The Phase II report further indicates that there are five environmental concerns at the plant site which may require remediation. Specifically these are petroleum hydrocarbons in soil and groundwater, lead in shallow soil, elimination of horizontal conduits with potential for transport of groundwater and stormwater runoff, PAHs in shallow soil, and cyanide in soil and groundwater. All of these issues and information related to them will be passed on to prospective new owners as part of the due diligence process. Also see response to PG&E-5

PO-3.

With regard to the commentor's issue regarding the environmental effects of repowering, the purpose of the Initial Study was to assess the impacts of the proposed divestiture. As stated on page 3.5 of the Initial Study, it is not foreseeable that repowering would occur with divestiture in any manner differently than without divestiture if the plants were retained by PG&E. Thus, repowering is not considered to be part of, or a result of, the project. As noted on page 3.2 of the Initial Study, if the Oakland Power Plant is purchased, the new owner may determine that modifications to the plant are needed. However, the same would apply to PG&E if it were to continue ownership of the facility, as discussed thoroughly in section 3.4 of Attachment C to the Initial Study. If either a new owner or PG&E decide to modify the plant, it must comply with applicable regulations, including environmental review. Based upon the type of modifications requested, either the Port of Oakland or the California Energy Commission (CEC) would be the CEQA Lead Agency. In any event, any changes proposed would be evaluated at the time an application for such changes were presented for consideration by the owner of the plant. Therefore, the Port of Oakland and other interested parties would have the opportunity to evaluate impacts to land use and other environmental effects at that time.

With respect to the issue raised by the commentor regarding the Port of Oakland's future adoption of a land use plan for the Jack London Square Area, including the Oakland Power Plant Site, the Initial Study correctly acknowledges that both the Port and the City of Oakland are jointly developing (with other agencies) an Estuary Plan and that as a consequence a land use plan may be adopted by the Port early in 1998. Recent contact with the Port of Oakland staff has indicated that the Estuary Plan would probably include a change to the land use designation for the power plant, recognizing the site as a transitional land use that could become available for commercial development at a future date (Reiner, 1997). To reflect this potential the first paragraph of page 4.1.6 of the Initial Study is revised as follows:

The Oakland power plant and surrounding vicinity are designated as M-40, Heavy Industry. However, because of the authority vested by the City Charter (Section 706) in the Board of Port Commissioners, the zoning designations of the City do not apply within the Port Area. At this time the Port of Oakland has not adopted a zoning or land use code for properties that are either under the control of the Port or private land which falls under Port of Oakland jurisdiction. There is no anticipation that such a land use plan will be adopted in near term; however, ~~the Port does have the authority under the Charter to do so.~~ both the City of Oakland's General Plan and the Port's Estuary Plan may designate all or portions of the Oakland Power Plant Site for future commercial use, and a land use plan for the area may be adopted by the Port in the future. The Port has accepted the land use for the power plant and assumes that it will continue so as long as the facility remains in operation (Heffes, 1997). It is probable that the property will remain a heavy industrial use so long as the power plant remains in operation.

Regarding the issue of sensitive receptors and their location relative to the power plant, the Port staff provided information for this Initial Study indicating that a 288 unit multifamily residential development is proposed by Lincoln Properties for Port property as a future project. It was noted in the Cumulative Impacts section on page 4.16.8 of the Initial Study for PG&E. However, the Port staff did not indicate the location of the proposed (Lincoln Properties) apartment complex. Recent contact with the Port staff indicates that the site of this future project is at the Embarcadero, west of Alice Street in the Jack London Square area (Reiner, 1997). While there are lofts and live/work units within proximity to the power plant, we still believe that the nearest foreseeable residential sensitive receptor is 600 or more feet from the project site on the north and northeast side of Highway 880.

The following text changes are made to reflect corrections regarding the direction of residential sensitive receptors in relationship to the Oakland Power Plant:

The last sentence of the first paragraph on page 4.5.22 is revised as follows:

The closest sensitive receptors are located north and northeast of Highway 880.

The last sentence of the fourth paragraph on page 4.5.29 is revised as follows:

The closest sensitive receptors to the Oakland Power plant are located north and northeast of Highway 880, over 600 feet from the project site.

The last sentence on page 4.10.7 is revised as follows:

The closest sensitive receptors are located north and northeast of Highway 880, over 600 feet from the project site.

PO-4.

Please see response to PO-5.

PO-5.

The Oakland Power Plant is composed exclusively of combustion turbine (CT) units. Such units are quick start units routinely able to come up to power and be synchronized with the grid in less than 10 minutes. They are not routinely used by the California investor-owned utilities and are held in reserve to fill in for unexpected deficits in resources needed to satisfy load/generation resource imbalances as would be occasioned by unexpected unit outages and transmission disturbances. These interruptions are not expected to occur with any greater frequency after divestiture than before and, indeed, Attachment C to the Initial Study (page C.12, et al.) describes incentives that may tend to increase the availability of divested plants, thereby reducing the need for CTs to fill in for units experiencing outages.

The existing CTs are inherently less efficient than steam boilers, so CTs are not used for economic dispatch because they cost more to operate. Because the Oakland CTs burn distillate exclusively, they are even more expensive to operate than most other available CTs, which burn natural gas, a significantly less expensive fuel. Since no mechanism has been identified by which the divestiture would cause a significant tightening of the load/resource balance, it is not foreseeable that the Oakland CTs would be used in other than their traditional reserve role.

REFERENCES:

Fluor Daniel GTI, Phase II Environmental Site Assessment Oakland Power Plant, 50 Martin Luther King Jr. Way, Oakland, California, prepared for Pacific Gas and Electric Company, July 1997c.

Reiner, Steve, Personal Communication between Mr. Dail Miller of ESA and Mr. Steve Reiner of the Port of Oakland. October 2, 1997.

September 25, 1997

By Email and Personal Delivery

Bruce Kaneshiro, Project Manager
c/o Environmental Science Associates
225 Bush Street, Ste. 1700
San Francisco, California 94104

Re: Comments on Mitigated Negative Declaration and Initial Study, CPUC, PG&E
Application No. 96-11-020, Proposal for Divestiture

Dear Mr. Kaneshiro:

[\[Begin SAEJ-1\]](#)

The Southeast Alliance for Environmental Justice (SAEJ) submits these comments on the proposed Mitigation Negative Declaration for the divestiture of three PG&E power plants. Since Hunters Point is no longer included in the current project, the members of SAEJ may not be directly affected by the divestiture these first three plants. However, SAEJ is concerned that the Commission may adopt the faulty reasoning and analysis in the Mitigated Negative Declaration. It may also lead to the failure to address certain cumulative impacts which could directly impact SAEJ upon the sale of the Hunters Point and Potrero facilities if not properly addressed. SAEJ also refers to and incorporates herein its prior comments on the draft Initial Study, which seem to have been substantially ignored.

It is important to note at the outset that SAEJ's concerns with the proposed divestiture of the Hunters Point power plant are not limited to those set forth here. SAEJ will address further issues when the proposed sale of Hunters Point undergoes CEQA review. SAEJ had previously recommended that the Commission use a programmatic EIR to examine the environmental impacts of divesting all the fossil-fueled plants that PG&E has proposed to sell. A programmatic EIR would avoid the unfortunate consequences of piecemealing found in the proposed Mitigated Negative Declaration, especially the underestimation of cumulative impacts. SAEJ also urges the Commission to reconsider its approach to mitigation in the Mitigated Negative Declaration, which seeks to defer environmental review and mitigation to other agencies in the future.

[\[End SAEJ-1\]](#)

[\[Begin SAEJ-2\]](#)

The Mitigated Negative Declaration may lead to a "piecemealing" of the larger divestiture project because the proposed additional sales under the second phase of PG&E divestiture are not considered.

On November 15, 1996 PG&E filed an application to sell four of its fossil-fueled electric generation plants: Hunters Point, Morro Bay, Moss Landing, and Oakland. On June 25, 1997, PG&E amended its application to withdraw Hunters Point and announced its intention to file a second application to withdraw Hunters Point and announced its intention to file a second application in the fall to sell Hunter's Point along with most of its remaining fossil fuel power plants and one geothermal plant. PG&E thus intends to sell all but one of its fossil fuel electric generation plants and its geothermal plant. The Mitigated Negative Declaration examines only

one portion of PG&E's divestiture project, and if certified would "piecemeal" the divestiture project.

CEQA Guidelines section 15165 states:

"Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the Lead Agency shall prepare a single program EIR for the ultimate project . . . Where one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect."

"Piecemealing of a project is inconsistent with the principles of CEQA. *Bozung v. Local Agency Formation Comm.* (1975) 13 Cal.3d 263, 283-284; *Citizens Assoc. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 165-166. In *Bozung*, the California Supreme Court stressed that CEQA "mandates . . . that environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences." (13 Cal.3d. at 283-284). In that case, a county commission approved a proposal to annex certain properties without analyzing the environmental impacts of the annexation, nor the anticipated development of those properties. (Id. at 270, 284). The Court, however, required the environmental analysis to address the annexation of the properties and the anticipated development of those properties. (d. at 278, 284). In *County of Inyo*, the court held that the county had improperly described a proposed shopping center as two projects, and thus, the two separate negative declarations prepared were invalid.

[\[End SAEJ-2\]](#)

[\[Begin SAEJ-3\]](#)

CEQA Guidelines sections 15165, 15378 subd. (c) require, whenever possible, that the lead agency fully analyze a "project" in one environmental review. Project refers to the activity which is being approved and which may be subject to several discretionary approvals . . . "Project does not mean each separate governmental approval." (Guidelines section 15378, subd. (c)). PG&E's sale of almost all its fossil-fuel electric generation plants and its geothermal plant is the proper and accurate project description for divestiture.

CEQA requires consideration of complex or phased projects in a single environmental review. (see CEQA Guidelines section 15165, supra). The project description must incorporate future phases that 1) are reasonably foreseeable, and 2) change the scope or nature of the initial project. *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 396. The sale of PG&E's remaining fossil fuel power plants is certainly reasonably foreseeable, as noted in the Mitigated Negative Declaration(1), and must be considered. See *Bozung*, 13 Cal.3d at 269, 284 (stressing that the owners' intent to develop the properties was clear and must be included in the analysis of the "project").

[\[End SAEJ-3\]](#)

[\[Begin SAEJ-4\]](#)

The second prong of the *Laurel Heights* test has also been satisfied, since the scope of the project has changed. PG&E's application filed in November, 1996 (A.96-11-020) requested authority

from the Commission to sell four of its eight fossil-fueled power plants. In late June, 1997, PG&E withdrew the Hunters Point power plant from the application and announced its intention to auction it off with several other plants at a later date, leaving only Morro Bay, Moss Landing, and Oakland in the first phase of the divestiture. Since the proposed second sale changed both the present and future scope of the project, a single programmatic EIR was required. See *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 410 n.6 (explaining that the scope of the project, originally the drilling of one oil well, should include the additional five oil wells subsequently granted permits for drilling). The Commission should thus analyze the entire divestiture in one environmental review.

[\[End SAEJ-4\]](#)

[\[Begin SAEJ-5\]](#)

Cumulative impacts are not adequately addressed in the Mitigated Negative Declaration as a result of "piecemealing."

As a result of the piecemealing, cumulative impacts from the entire divestiture project, such as global warming and federal ozone standard violations, are not adequately considered. Cumulative impacts are those that "are individually limited but cumulatively considerable." *Whitman v. Board of Supervisors*, (1979) 88 Cal.App.3d 397, 406. The "Potential Cumulative Impacts" section of the Mitigated Negative Declaration states:

"Although the issues and analysis for the PG&E power plants that are to be included in the second round application for divestiture may be similar to the issues and analysis for the current PG&E application, at this time the Proponent's Environmental Assessment (PEA) has not been completed or submitted to the Commission and, thus far, the project's potential impacts have not been analyzed." Mitigated Negative Declaration 4.16.3.(2)

This conclusion is troubling since CEQA requires a cumulative impact analysis of all reasonably foreseeable future projects. Public Resources Code section 21000. This requirement was analyzed by the Court of Appeal in *Terminal Plaza Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892, 904-905. The court held that the lack of specific detail in a future project is no basis for the refusing to include it in a cumulative impacts analysis.

[\[End SAEJ-5\]](#)

[\[Begin SAEJ-6\]](#)

One glaring example of the Mitigated Negative Declaration's piecemealing of the entire divestiture project resulting in a failure to analyze cumulative impacts is the isolation of the Oakland facility analysis for purposes of regional San Francisco Bay Area air quality. The Initial Study ignores the cumulative impact from the divesting of all the Bay Area power plants because data from four of them is not presented. CEQA prohibits agencies from treating one project as a progression of smaller projects when cumulatively they may result in potentially adverse impacts. An agency may not break "a larger project into components in order to avoid analyzing it as a whole." *Rural Landowners Association v. Lodi City Council* (1983). 143 Cal.App.3d 1013, 1024-1025. If several small projects may result in cumulative impacts, an analysis must be done.

[\[End SAEJ-6\]](#)

[\[Begin SAEJ-7\]](#)

Although the Mitigated Negative Declaration recognizes that it is reasonably foreseeable that

new owners will have a tendency to increase generation at all of these plants, it concludes that the "impacts associated with the divestiture are primarily site specific and would not result in synergies or impacts on a cumulative basis" and that the cumulative impacts associated with divestiture will therefore be "less than significant." (4.16.4). This conclusion is unsupported by fact. PG&E's proposed divestiture includes five Bay Area power plants(3). The Initial Study concedes that it is reasonably foreseeable that divestiture could result in increased generation at individual plants ("With divestiture, a new buyer of such a power plant could likely have an economic incentive to operate the facility at higher levels . . . MND at 3.1). There is no assurance that these five facilities will not all operate at increased levels and accompanying increased air emissions. The cumulative impact on air quality of five plants operating at increased levels in the same air quality district is regional, not "site specific," and must be considered.

[\[End SAEJ-7\]](#)

[\[Begin SAEJ-8\]](#)

The cumulative impacts from air quality in the Bay Area are even more important to analyze properly and require greater attention because the region has recently been proposed to be classified by the United States Environmental Protection Agency (EPA) Region IX as a nonattainment area for ozone due to a number of year of violation of the current federal 1 hour standard. See Attachment 1. Further, EPA on the national level has adopted new standards for ozone that when in place will cause the region to be out of attainment, requirement more stringent requirements. See Federal Register, Vol. 62, No 138, page 38421 et seq., July 18, 1997. Instead of analyzing the impacts of the Oakland plant in isolation, the Commission should analyze the cumulative impacts of divestiture of the Bay Area power plants cumulatively, and not dismiss the results as "speculative."

[\[End SAEJ-8\]](#)

[\[Begin SAEJ-9\]](#)

Another cumulative impact not addressed in the Mitigated Negative Declaration due to piecemealing and, perhaps, inattention is global warming. The Draft Initial Study notes at 4.5.36 that excess CO2 emission may impact global warming. This discussion was deleted from the Mitigated Negative Declaration without comment. It is certainly foreseeable that increased generation at the plants could result in increased emissions of CO2, a known greenhouse gas, especially since Selective Catalytic Reduction systems ("SCR's") included as mitigation measures at Moss Landing and Morro Bay actually increase emissions of CO2, which is a byproduct of the catalytic reaction that breaks down NOx. If all of these facilities are increasing their CO2 emissions the result could be significant if collectively analyzed.

[\[End SAEJ-9\]](#)

[\[Begin SAEJ-10\]](#)

The Commission is now faced with two phases of one PG&E sale process, which requires a single environmental review. The CPUC should not analyze the sale of each and every power plant in isolation, nor divide the environmental analysis of the sale into segments. Dividing a project into segments and considering the segments as mutually exclusive little projects would constitute an abuse of discretion by the Commission as the CEQA Lead Agency. *County of Inyo*, 172 Cal.App.3d at 167.

[\[End SAEJ-10\]](#)

[\[Begin SAEJ-11\]](#)

The Mitigated Negative Declaration inappropriately analyzes what it calls "considerable uncertainty and countervailing factors", although those factors raise a fair argument that potentially significant impacts could occur.

The Mitigated Negative Declaration also states that here is "considerable uncertainty and countervailing factors that would make it infeasible to accurately predict the particular plants at which operation would increase as a result of divestiture or the amounts by which generation would increase at any particular plant." (4.16.3). This statement apparently rests on the assumption contained in the Mitigated Negative Declaration that increased generation will not necessarily result in increased emissions. Even if increased generation will not "necessarily" result in higher emissions, it still provides the basis for a "fair argument" standard.

The "fair argument standard," states that an EIR is required whenever it can be fairly argued on the basis of substantial evidence that significant impacts may occur. No Oil, Inc. v. City of Los Angeles ("No Oil I") (1975) 13 Cal.3d 68, 75, 188 Cal.Rptr. 34. Even if other substantial evidence supports the opposite conclusion, the agency must still prepare an EIR. Long Beach Savings and Loan Assn. v. Long Beach Redevelopment Agency (1986) 188 Cal. App.3d 249, 264, 232 Cal.Rptr. 413. The rule was succinctly explained in Sierra Club v. County of Sonoma (1992) 6 Cal.App.4th 1307, 1381, 8 Cal.Rptr.2d 473. "An agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary."

[\[End SAEJ-11\]](#)

[\[Begin SAEJ-12\]](#)

Although increased generation does not necessarily mean increased emissions, the possibility remains that increased emissions may result. Whether increased generation will result in higher emissions, and whether the foreseeable levels of future emissions will pose potentially significant impacts, are the types of questions that should be addressed in an EIR. Determining the foreseeable level of emissions from divested powerplants and the cumulative impacts of these new levels is not possible based on the information contained in the Mitigated Negative Declaration. As noted above, the Mitigated Negative Declaration does not in fact analyze the potential cumulative impacts associated with the proposed sale of PG&E's four other Bay Area fossil fuel plants. Since it has already been noted in the Draft Initial Study that the Hunters Point plant alone contributes 7.26% of the county's NOx emissions, the failure to consider air quality data renders a conclusion that no potentially significant cumulative effects will result from the project meaningless.

[\[End SAEJ-12\]](#)

[\[Begin SAEJ-13\]](#)

The Commission's approach to evaluating and mitigating potentially adverse impacts is contrary to CEQA.

Rather than proposing concrete mitigation measures to address specific potential adverse impacts, the Commission has instead chosen to deem existing regulatory schemes sufficient to render impacts less than significant. This is seen in the Mitigated Negative Declaration's handling of water quality (section 4.4), air quality (section 4.5), hazards (section 4.9), and noise (section 4.10). Reliance on hoped for future action by other agencies does not meet the requirements set forth in CEQA for mitigated negative declarations. The Commission is unable to ensure that mitigation measures will be implemented or that they will actually mitigate against

significant adverse environmental impacts. Where the success of mitigation is uncertain, the Commission can not reasonably determine that significant impacts will not result.

[\[End SAEJ-13\]](#)

[\[Begin SAEJ-14\]](#)

This deferral of mitigation analysis until after project approval violates CEQA's policy that impacts must be identified before project momentum reduces or eliminates the agency's flexibility to subsequently change its course of action. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296. The *Sundstrom* court specifically disapproved of a deferral of environmental review. 202 Cal.App.3d at 306-309. See also *Oro Fino Gold Mining Corporation v. County of El Dorado* (1990) 225 Cal.App.3d 872, 884-885 (There cannot be meaningful scrutiny of a mitigated negative declaration when the mitigation measures are not set forth at the time of project approval); *Gentry v. City of Murieta* (1995) 36 Cal.App.4th 1359, 1393-94. It is especially inappropriate to rely on existing BAAQMD rules and permits based upon those rules to prevent potential adverse effects on air quality posed by the project, since, as discussed above, the Bay Area is now proposed to be a non-attainment area under the current 1 hour ozone standard, a new 8 hour ozone standard has been adopted, and new permits with unknown requirements may need to be issued.

[\[End SAEJ-14\]](#)

Thank you for considering our comments.

Sincerely,

/s/

on behalf of

Alan Ramo Supervising Attorney under State Bar of California Student Certification Rules

Patrick Clifford, Certified law student under State Bar of California Student Certification Rules

Garth Ward, Certified law student under State Bar of California Student Certification Rules

Golden Gate University School of Law, Environmental Law and Justice Clinic

Anne Simon, Environmental Law Community Clinic

Attorneys for SAEJ

Enclosure

Footnotes:

1. "PG&E has announced its intent to apply in Fall, 1997, for approval to sell most of its remaining fossil-fueled power plants (Contra Costa, Hunters Point, Pittsburg, and

Potrero, but not Humboldt) and the Geysers geothermal power plant." Mitigated Negative Declaration ("MND") at 1.2.

2. This statement suggests that the MND was in error in also claiming that, "PG&E's anticipated second divestiture application (encompassing the four fossil-fuel power plants and one geothermal plant) is considered in the cumulative impacts analysis of this Initial Study." MND at 2.13.
3. Oakland, Hunters Point, Potrero Hill, Pittsburg and Contra Costa. Mitigated Negative Declaration 1.2.

SAEJ - SOUTHEAST ALLIANCE FOR ENVIRONMENTAL JUSTICE

SAEJ-1.

The comments submitted on the Draft Initial Study by the Southeast Alliance for Environmental Justice (SAEJ) were reviewed and considered in the process of preparing the Initial Study and proposed Mitigated Negative Declaration. The remainder of the topics raised by this comment (e.g., use of a program EIR, underestimation of cumulative impacts, and deferral of mitigation measures) are addressed in detail in the responses to this letter, below.

SAEJ-2.

PG&E's current proposal to sell three plants is a "project" in and of itself under CEQA. The commentor is correct that PG&E has stated its intention to submit an application in the future for the sale of additional fossil fuel power plants and its Geysers geothermal plants. However, the CPUC's action on PG&E's current application will not affect or in any way curtail the CPUC's discretion with respect to such later application, which would be subject to CEQA. The near-term sale by PG&E of three plants, if approved by the CPUC, is not the initial step toward, or a necessary precedent for action on, the sale of additional plants. As the commentor has noted, *CEQA Guidelines* §15165 states:

Where one project is one of several similar projects of a public agency, but is not deemed to be part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect.

This section of the *CEQA Guidelines* speaks to cases in which an EIR is required, but can be analogized to a project such as this where a Mitigated Negative Declaration is prepared. Since PG&E's pending divestiture application is not deemed to be part of a larger undertaking or larger project, but is a separate and distinct "project" under CEQA, the CPUC may conduct CEQA review for that project separately from any others. Recognizing, however, the potential for cumulative impacts of PG&E's application together with Southern California Edison's pending divestiture application, as well as the possible future sale by PG&E of additional plants, the cumulative impacts analysis within the Initial Study addresses any combined impacts of these related projects. See, pages 4.16.2 - 4.16.14 of the Initial Study.

SAEJ-3.

As explained, in response to SAEJ-2, the Mitigated Negative Declaration properly applies to one "project" under CEQA — PG&E's proposed sale of the Moss Landing, Oakland and Morro Bay power plants. As *CEQA Guidelines* §15378(c) notes, a "project" may be subject to several

discretionary approvals. For instance, PG&E's current divestiture project requires approval by the CPUC, but may also require approvals from other agencies, such as the pertinent air quality management districts.

The commentator has cited the case of *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal. 3d 376, 396 (1988), somewhat incorrectly. That case requires an analysis of future activity or expansion only if "(1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects." *Id.* PG&E's stated intention to sell additional plants is not a reasonably foreseeable consequence of the CPUC's action on the current proposal. However, as noted in response to SAEJ-2, above, because the sale of additional plants by PG&E is reasonably foreseeable, the potential additional sales are addressed in the cumulative impacts discussion of the Initial Study.

SAEJ-4.

The possible sale by PG&E of additional plants in the future will not change the impacts of the sale of the three plants covered by the pending application. There is no basis for requiring a program-level document to be prepared. In any event, the cumulative impacts of all foreseeable sales have been analyzed in the Initial Study.

SAEJ-5.

The sentence quoted from the Mitigated Negative Declaration merely pointed out that, since PG&E has not yet submitted an application for the sale of additional plants, the CPUC has not received a Proponent's Environmental Assessment or conducted its own project-level environmental assessment of such potential future application. Contrary to the indication of the commentator, however, the CPUC has not refused to include such a foreseeable project in its cumulative impact analysis. The cumulative impacts analysis within the Initial Study does take into account a projected second divestiture application from PG&E.

SAEJ-6.

The four Bay Area power plants referred to are identified in the second paragraph on page 4.16.3 and considered in the cumulative impact analyses on pages 4.16.3 and 4.16.4. Specific data from these four plants were not included because it was not considered relevant to the conclusions. What is important for this divestiture project is that, as shown in Table 4.5.6 on page 4.5.23 of the Initial Study, the Oakland power plant is a very minor generator of air emissions in Alameda County (and in the San Francisco Bay Area). Table 4.5.6 shows that historical emissions from this plant are less than 0.01% of Alameda County total emissions for reactive organic gasses (ROG), carbon monoxide (CO) and respirable particulates (PM10); 0.01% of the Alameda County total for NO_x; and 0.2% of the Alameda County total for SO_x.

Divestiture is not expected to change the traditional operation of the Oakland power plant (see response PO-5) and, therefore, there would be no incremental air quality effects that would cumulate with other projects (including the four Bay Area power plants mentioned by the commentor).

SAEJ-7.

See response to SAEJ-6.

SAEJ-8.

See response to SAEJ-6. Any more stringent requirements that may be placed upon the combustion turbines at the Oakland power plant (presumably through revisions to BAAQMD Regulation 9, Rule 9) would apply to any owner of the power plant.

SAEJ-9.

The Draft Initial Study indicated that if nuclear power stations were displaced by the additional capacity resulting from the divestiture, then excess CO₂ emissions may impact global warming. Comments received on the Draft Initial Study pointed out that there could be increased use of existing capacity, but there would be no capacity increase from divestiture, and that closure of nuclear plants is not a realistic consequence of divestiture of fossil-fuel fired power plants. Upon further consideration the lead agency agrees that this is not a likely consequence of divestiture, and for that reason, the Initial Study concluded that “The project will not impact ... temperature, or cause any change in climate” (fourth paragraph, page 4.5.30).

Selective Catalytic Reduction (SCR) has not been required as mitigation for this project. .

SAEJ-10.

The CPUC does not consider the current application to be one phase of a two-phase PG&E sale process, but rather a “project” in its own right. Approval of the current application would not commit the CPUC to approving a later application, and the first sales are not a necessary precedent to later sales, but are wholly independent. Thus, it is appropriate to conduct CEQA review for the current application, taking the potential future sales into account in a cumulative sense. Also, see responses to SAEJ-2, SAEJ-3 and SAEJ-4.

SAEJ-11.

The commentor appears to have mistakenly assumed a correlation between two concepts that are not in fact related. The Initial Study explains that it is not feasible to predict at which plants and by how much operations (and thus generation) would increase as a result of divestiture. Contrary to the commentor's assertion, that statement does not rest on the assumption that increased

generation will not necessarily result in increased emissions. That would be illogical since the first statement concerns the amount of generation and not emissions. Rather, the statement about generation is based on the factors presented in the Initial Study at pages 3.1-3.6. The air quality analysis within the Initial Study then explains that, even assuming (despite the uncertainty) that generation will increase at a particular plant, such increase would not automatically translate to increased emissions (see page 4.5.25). Furthermore, at page 4.5.25, the Initial Study explains that, even if it were assumed that the sales of the plants would result in higher emissions, such increased emissions would not result in a significant environmental impact. Thus, there is no substantial evidence to support a fair argument that divestiture will generate significant impacts. The commentor's reference to page 4.16.3 is to the cumulative impacts analysis, which discusses both of these concepts (increased generation and increased emissions) to the extent that they affect cumulative impacts.

SAEJ-12.

See response to SAEJ-6.

SAEJ-13.

The Initial Study appropriately recognizes that numerous existing regulatory models are in place to address such issues as water quality, air quality, hazards and noise. The Initial Study does not rely on "hoped for future action by other agencies." Rather, it recognizes that the plants will be transferred subject to existing permits and will continue to be governed by existing laws that protect environmental quality and human health and safety. There is no reason to assume that the new owners would violate pertinent laws and regulations.

As to the CPUC ensuring that mitigation measures will be implemented, a Mitigation Monitoring and Reporting Program has been prepared in accordance with Public Resources Code §21081.6. If PG&E's divestiture application is approved, the CPUC will monitor the mitigation measures in the Mitigation Negative Declaration to ensure that they are implemented in a timely manner. The Initial Study demonstrates that as long as such mitigation measures are implemented, the project will not result in significant environmental impacts.

SAEJ-14.

The Mitigated Negative Declaration and Initial Study do not defer either the development of specific mitigation measures or the analysis of whether such measures will successfully mitigate the impacts to which they are addressed. The mitigation measures are detailed, directive and clear. They contain objective standards, and they plainly indicate the time frame for compliance. With respect to reliance on existing rules and permits (such as those of the BAAQMD), see the response to SAEJ-13.

September 18, 1997

Bruce Kaneshiro, Project Manager
c/o Environmental Science Associates
225 Bush Street, Suite 1700
San Francisco, California 94104

**SUBJECT: COMMENTS ON THE PROPOSED NEGATIVE DECLARATION FOR
PG&E APPLICATION NO. 96-11-202 PROPOSAL FOR DIVESTITURE**

Dear Mr. Kaneshiro:

Thank you for the opportunity to provide information and comments on the *Mitigated Negative Declaration and Initial Study, California Public Utilities Commission, Pacific Gas and Electric Company's Application No. 96-11-020, Proposal for Divestiture*. We have carefully reviewed the Initial Study, attended CPUC workshops on both June 13, 1997 and June 27, 1997, and met with Public affairs Management and ESA on March 27, 1997. After carefully reviewing the project and its potential environmental impacts, we have identified the following issues and concerns:

General Comments

[\[Begin SLOCDPB-1\]](#)

In general we are disappointed that the document does not make a fair attempt to address the full range of issues and questions brought forward in our March 27, 1997 meeting with the consultant, the two workshops, or our two letters of April 9, 1997 and July 1, 1997. We believe there are critical issues that need to be addressed in order to meet the spirit and intent of the California Environmental Quality Act with respect to this project. While we are aware of the CPUC's desire to meet a certain time line, meeting that line cannot justify a failure to fully evaluate and disclose the full range of environmental impacts that may clearly result from this project.

[\[End SLOCDPB-1\]](#)

[\[Begin SLOCDPB-2\]](#)

Our review of the document shows that it still suffers from an incomplete, and variable, project description. As noted in our letter of July 1, certain elements of the project, most notably the issue of resumption of tankering at Morrow Bay, "float" in and out of the project description, seemingly in order to support a particular finding or other. The offshore terminal, together with the on shore tank farm, are clearly part of the facilities to be sold. If these facilities have no chance of being utilized in the future, as assumed in various parts of the initial study, how can they reasonably be included as part of the divestiture process? More to the point, the document must either evaluate the resumption of tankering, or propose and evaluate a mitigation plan for both the offshore mooring and the on shore tank farm and related facilities. Otherwise, the tankering element becomes a "white elephant" which may contribute to long-term environmental degradation both on and offshore due to a lack of any coordinated plan to remediate the facility sites.

[\[End SLOCDPB-2\]](#)

Air Quality

[\[Begin SLOCDPB-3\]](#)

The Initial Study does not recognize the full scope of air quality impacts that could result from the project. The resumption of tankering could, in and of itself, result in substantial impacts to local and regional air quality. Operation of tanker engines, off-loading operations, and the potential for a fuel change at the power plant itself have not been adequately addressed. The CPUC should be aware that air quality and odor impacts arising from the operation of the nearby Chevron Estero marine terminal continue to result in community complaints, and have resulted in consequent action by the APCD.

[\[End SLOCDPB-3\]](#)

[\[Begin SLOCDPB-4\]](#)

The Initial Study also concludes that no increased exposure of sensitive receptors to air pollutants would result from divestiture, despite a companion conclusion that air emissions could substantially increase. We recommend that the CPUC reexamine this issue in light of the long-standing and ongoing controversy regarding air quality impacts on sensitive populations within the neighborhood located directly downwind on the Morro Bay power plant. We believe that CEQA Guidelines section 15064(h)(1) requires that the CPUC to conclude that sensitive receptors located in this neighborhood be given appropriate consideration in an EIR.

[\[End SLOCDPB-4\]](#)

[\[Begin SLOCDPB-5\]](#)

It is our understanding that PG&E has been working with the San Luis Obispo County APCD to develop changes in permits and regulations for the Morro Bay power plant that will, in the opinion of PG&E and the air district, fully mitigate any potential air quality impacts that could result from the divestiture of the Morro Bay plant. These conclusions appear to be based, at least in part, on CEQA guidelines section 15064(i). However, reducing the air emissions from the plant to a level that is in compliance with the limits set by applicable permits would not, in this case, result in less than significant impacts. As pointed out in our letter of April 9, the Morro Bay power plant has the potential to be the largest single stationary source of air pollutants in San Luis Obispo County. Deterioration of air quality is a regional issue that would result in far reaching impacts over the entire County. Regardless of the compliance status of the Morro Bay plant, any increase in emissions would impact the air district's overall attainment status. Having only recently been found to be in a better attainment status than previously considered, we have already seen the deleterious economic impacts of stricter air quality controls. In any scenario in which the Morro Bay power plant produces greater air emissions, all new development in the region would be constrained by stricter air quality requirements. Each and every new development project would face increased costs due to requirements to fully mitigate all incremental air quality impacts. In combination with the other regional economic impacts that could result from the full scope of deregulation activities undertaken by the CPUC, these impacts must be considered significant, as required by CEQA Guidelines section 15064(f).

[\[End SLOCDPB-5\]](#)

Marine Impacts

[\[Begin SLOCDPB-6\]](#)

The Morro Bay power plant is located to take advantage of the opportunity to utilize ocean water for cooling. The cooling water intake for the plant is located in the Morro Bay harbor, while the outfall is located at the base of Morro Rock. Changes in plant operation, including increased

output, reduced output, or a change in the yearly patterns of output, could result in thermal impacts to the marine environment at Morro Rock and in the harbor. Morro Rock, and its associated marine resources, are an important element in the State Parks system as well as the overall ecology of the region. The marine resources present are unique to the region, if not to the entire state. Morro Rock provides critical nesting areas for the peregrine falcon, and the area is known to support the southern sea otter and California Brown pelican. All three of these species are state and federally listed as endangered, and all three are wholly dependent on the complex food chains of the area. There is little doubt that existing thermal inputs into the local marine food chain are of critical importance to these species.

[\[End SLOCDPB-6\]](#)

[\[Begin SLOCDPB-7\]](#)

In addition to concerns related to thermal impacts at the plant cooling system outfall, new information has recently come to light indicating that significant numbers of marine organisms do not survive the cooling loop. Our understanding is that monitoring studies conducted at the San Onofre Nuclear Generating Station confirm significant marine impacts to fish larvae and microscopic organisms. Similar impacts are, no doubt, ongoing at the Morro Bay power plant, as well as Moss Landing and Hunter's Point. Given that the cooling water intake at Morro Bay plant is located within the confines of the Morro Bay harbor, between the estuary and the outlet to the open ocean, any increase in plant output that results in an increase in cooling water flow would necessarily increase the loss of marine organisms. The relationship between these impacts and the health and productivity of a wide area of ocean is a critical concern that clearly deserves consideration on a full EIR. This issue gains additional prominence when the cumulative effects of this impact are considered. The potential for increased output at any of the plants proposed for divestiture, and as a consequence, increased marine impacts related to sea water cooling, could affect the health and productivity of near coastal waters along the entire California coast.

[\[End SLOCDPB-7\]](#)

[\[Begin SLOCDPB-8\]](#)

A plant operation scenario that results in resumption of operation of the marine terminal presents a full set of additional risks to marine resources. While highly regulated, the transport of crude oil by tankers, and the transfer of petroleum products at marine terminals, has and will continue to threaten marine life. Oil spills related to historic tankering operations in Estero Bay have occurred in the past, and have undoubtedly contributed to the decline of sensitive marine species. The recent announcement by the Chevron corporation that they are working to end tankering operations in Estero Bay, and the designation of the Monterey Bay National Marine Sanctuary just north of Estero Bay, are two developments which together hold promise for the continued recovery and protection of the marine environment in the area. Divestiture will, to some degree and in certain reasonable scenarios, encourage the tankering of petroleum fuel to the Morro Bay power plant. The impact of the resumption of tankering operations, as well as the potential for shipping routes to pass through or adjacent to the Monterey Bay National Marine Sanctuary, must be considered.

[\[End SLOCDPB-8\]](#)

[\[Begin SLOCDPB-9\]](#)

We feel that an EIR is necessary to fully disclose the potential for impacts to marine resources that could occur from thermal changes, microorganism entrainment, and tankering related issues,

and to identify appropriate mitigation measures where necessary.

[\[End SLOCDPB-9\]](#)

Social and Economic Impacts

[\[Begin SLOCDPB-10\]](#)

State CEQA Guidelines Section 15064(f) describes the role that economic and social effects have in the initial study process.

"Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects to people, those adverse effects may be used as the basis for determining that the physical change is significant."

Section 15131(a) of the Guidelines describes the process wherein "An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes."

The Public Utilities Commission is well aware of San Luis Obispo County's concerns related to the ability of this agency to continue to provide an acceptable level of public services in the face of declining revenues (see *Socioeconomic Impacts of Electrical Industry Restructuring and their Physical Consequences in San Luis Obispo County*; County of San Luis Obispo, October 2, 1996). Divestiture of the Morro Bay power plant could incrementally reduce discretionary revenues to the County and other affected jurisdictions. Such revenues are used primarily to fund fire, police, parks, roads, and schools. As we have clearly documented, these essential public services already operate well below accepted statewide service level norms. Because PG&E generating facilities in San Luis Obispo County comprise a disproportionate share of the tax base, a worst case analysis of the local economic ramifications of divestiture must be analyzed in an EIR.

[\[End SLOCDPB-10\]](#)

Closure Alternative

[\[Begin SLOCDPB-11\]](#)

PG&E has already been given nearly overwhelming incentives by the CPUC to divest 50% of their generating capability as a step to implementing deregulation. We also understand that, if the Morro Bay power plant is not sold, PG&E could recover its investment through CTC. Section 15004(b) of the State CEQA Guidelines states "EIRs . . . should be prepared as early as feasible in the planning process to enable environmental considerations to influence [the] project program . . ." Given the actions taken by the CPUC in the divestiture process could ultimately lead to the closure of the Morro Bay power plant, in as much as the CPUC will control the conditions under which divestiture will or will not occur, the direct and indirect consequences of this alternative must be considered in an EIR. From the perspective of public service impacts that result from

socioeconomic impacts, the closure of the plant could represent a reasonable worst case scenario.
[\[End SLOCDPB-11\]](#)

Cumulative Impacts

[\[Begin SLOCDPB-12\]](#)

Section 15065 of the State CEQA Guidelines contains "Mandatory Findings of Significance."
According to Section 15065,

"A Lead Agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where any of the following conditions occur:

(c) The project has possible environmental effects which are individually limited but cumulatively considerable. AS used in the subsection, "cumulatively considerable" means that the incremental effects on an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."

The County of San Luis Obispo, together with local schools, faces the possibility of substantial revenue loss from both the divestiture of the Morro Bay power plant and other activities contemplated by the CPUC and PG&E at the Diablo Canyon Nuclear Power plant. There is no question that the cumulative economic effects of these potential actions will result in significant environmental effects in San Luis Obispo County (see *Socioeconomic Impacts of Electrical Industry Restructuring and their Physical Consequences in San Luis Obispo County; County of San Luis Obispo, October 2, 1996*).

The City of Morro Bay faces the potential closure of the Chevron marine terminal plus the eventual closure of the Morro Bay power plant. The socioeconomic and consequent environmental effects of these actions could prove devastating to the City. These effects would occur in concert with similar impacts to the County, to the degree that the County could not provide any meaningful relief to City residents. That is, County public services such as police (sheriff) protection, fire, road maintenance and park facilities simply could not be provided to the City.

Section 15065 clearly mandates the CPUC's EIR to evaluate these cumulative impacts, despite the documents' assertion that they have no relationship to this project.

[\[End SLOCDPB-12\]](#)

CEQA Requirements

[\[Begin SLOCDPB-13\]](#)

Section 150645(g)(1) of the State CEQA Guidelines requires the lead agency to prepare and EIR if it is presented with a fair argument that a project could have a significant effect on the environment, either directly or indirectly:

"If the Lead Agency finds there is substantial evidence in the record that the project may have a significant effect on the environment, the Lead Agency shall prepare and EIR (*Friends of B Street v. City of Hayward*, (1980) 106 Cal.App.3d. 988). Said another way if a Lead Agency is presented with a fair argument that a project may have a significant effect on the environment, the Lead Agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect (*No Oil, Inc. v. City of Los Angeles*, (1974) 13 Cal.3d 68)."

There is no question that a fair argument has been made that this project could result in significant impacts to air quality and marine resources, and that it has socioeconomic impacts that would lead to significant impacts to public services.

Section 15064(h)(1) of the State CEQA Guidelines requires the preparation of an EIR when there is "serious public controversy over the environmental effects of a project." The potential sale or closure of the Morro Bay power plant has been the subject of extensive local news coverage. Members of the public have expressed concerns to the County Board of Supervisors about the overall socioeconomic effects of deregulation and the indirect impacts to public services. An air of uncertainty exists in the public's mind as to the potential impacts that the actions of the CPUC may have in San Luis Obispo County. Section 15064(h)(1) requires the preparation of an EIR in cases such as this because one of the primary purposes of an EIR is to inform the public about the environmental effects of a project. In order to comply with the full disclosure requirements of CEQA, the CPUC must prepare and EIR.

Section 15064(h)(2) of the State CEQA Guidelines requires the preparation of an EIR when there is "serious public controversy over the environmental effects of a project." The potential sale or closure of the Morro Bay power plant has been the subject of extensive local news coverage. Members of the public have expressed concerns to the County Board of Supervisors about the overall socioeconomic effects of deregulation and the indirect impacts to public services. An air of uncertainty exists in the public's mind as to the potential impacts that the actions of the CPUC may have in An Luis Obispo County. Section 15064(h)(1) requires the preparation of an EIR in cases such as this because one of the primary purposes of an EIR is to inform the public about the environmental effects of a project. In order to comply with the full disclosure requirements of CEQA, the CPUC must prepare an EIR.

Section 15065(h)(2) of the State CEQA Guidelines requires the preparation of an EIR if there is disagreement between experts over the significance of an effect on the environment. We understand that both PG&E and SCE have issued opinions to the effect that an EIR is not required for the divestiture of their facilities. We do not know whether or how there two companies have evaluated the potential direct and indirect environmental impacts of divestiture on San Luis Obispo County. However, it is the express opinion of numerous local officials that this project could result in significant impacts to environmental, social, and economic resources in the area. We are certain that no other person or entity possesses the level of knowledge of these resources that lies with these local government officials. Therefore, while other "experts" may disagree, CEQA requires that these issues be evaluated in an EIR. A negative declaration is clearly not appropriate.

Section 15378(c) of the State CEQA Guidelines notes that the term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals. The term does not mean each separate approval. It is inappropriate to chop a project into small segments to avoid preparing an EIR (See *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263.) Therefore, the CPUC should not treat each step in the deregulation/divestiture process as a separate project for the purposes of CEQA review. In addition, the separation of PG&E facilities from SCE facilities for the purposes of conduction separate environmental reviews appears to be a further improper segmenting of the "project."

[\[End SLOCDPB-13\]](#)

Conclusion

Based on the information provided in this letter, we believe that the CPUC should commit to the preparation of an EIR for this project at the earliest possible time. WE would welcome the opportunity to participate in the scoping process for the EIR. We are also available to work with you or your consultants as the development of the EIR progresses.

If you have any questions, or need more information from us, please feel free to contact:

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Sincerely,

ELLEN CARROLL
Environmental Coordinator

cc: Mark Hutchinson, Environmental Specialist
Timothy McNulty, Deputy County Counsel
Lee Williams, Deputy County Administrator
James B. Lindholm, County Counsel
Gere Sibbach, County Auditor/Controller
Rory Livingston, San Luis Coastal Unified School District
Shauna Nauman, City of Morro Bay

SLOCDPB - SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING

SLOCDPB-1.

The CPUC took into account the issues and questions raised in meetings, workshops and letters from interested parties. The CPUC is confident that it has thoroughly and objectively analyzed the potential impacts of the project, and that the Initial Study evaluates the full range of environmental impacts that may reasonably be seen to result from the project.

SLOCDPB-2.

The description of the Marine Terminal facility and impacts resulting from divestiture indicate clearly in the Initial Study for PG&E on pages 2.6, 4.4.3, and 4.4.8 that: 1) the terminal facility is in a state of deactivation and needs considerable repair to be reactivated for use by either PG&E or a new owner; 2) if the facility were to be reactivated, an environmental analysis would be required at that time, before repairs could be made or the terminal recommissioned; 3) given the Morro Bay plant's current use of natural gas and the disrepair at the terminal, it is highly unlikely (i.e., not reasonably foreseeable) that either PG&E or a new owner would re-permit, repair and operate the terminal; and 4) PG&E is selling the Morro Bay facility as a package, that is the new owner (or PG&E if it retains ownership) will secure title to all PG&E facilities at the plant and the fuel farm(s).

Although it is not reasonably foreseeable, if either a new owner or PG&E were to decide to modify the plant to resume tankering, the owner would have to comply with applicable regulations, including environmental review. Any changes proposed in operations, retrofitting, fueling, etc. would be evaluated at the time an application for such changes is presented for consideration by the owner of the plant. Therefore, the County and other interested parties would have the opportunity to evaluate impacts to land use and other environmental effects at that time.

Regarding the issue of remediation for the marine terminal or other elements of the Morro Bay Power plant, PG&E is liable for any contamination as a result of the operation of those facilities (see response to CCC-2). This would not change with divestiture. The commentor is referred to pages 4.4.9-4.4.11 for additional clarification regarding this issue.

SLOCDPB-3.

The commentor is referred to the response to SLOCDPB-2 for a discussion of issues involving the PG&E marine terminal. For a discussion of the potential for fuel changes at the plants to be divested please see Section 3.0, page 3.3, of the Initial Study. The comment concerning the Chevron Estero marine terminal is noted.

SLOCDPB-4.

As discussed in the Initial Study on page 4.5.29, the analysis of exposure of sensitive receptors is divided into two parts: the criteria air pollutants, and the hazardous air pollutants (HAPs). The project was not determined to have an effect on the HAPs because HAPs are generated primarily from the use of fuel oil and the Initial Study indicated that "...no increase in fuel oil use is expected as a result of divestiture" (first paragraph, page 4.5.30; and fourth paragraph, page 3.3 of the Initial Study).

The discussion of criteria air pollution in general and specifically with respect to the Morro Bay Power Plant is presented on pages 4.5.24 to 4.5.28 of the Initial Study. The criteria air pollutant of concern to the San Luis Obispo Air Pollution Control District is NO_x, specifically in the role of NO_x as an ozone precursor. Because the current Morro Bay plant permit and Rule 429 did not specifically cap emissions, early consultation with regard to this project resulted in part in proposed revisions to Rule 429, which are described on page 4.5.27 of the Initial Study. Mitigation measure 4.5.a.1 (pages 4.5.27 and 4.5.28 of the Initial Study) requires a daily emission cap. The San Luis Obispo Air Pollution Control District has indicated implementation of measures in Draft Rule 429 (which also makes it clear that the rule applies to non-utilities) to be adequate mitigation of air quality issues related to divestiture (fourth paragraph on page 4.5.27 of the Initial Study).

SLOCDPB-5.

Neither the Initial Study nor correspondence from the San Luis Obispo Air Pollution Control District (SLOAPCD) specifically rely upon the CEQA Guidelines Section 15064(1). The SLOAPCD concern with divestiture was that Rule 429 focuses on volume pollutant concentration limits for each boiler, but does not limit total emissions from the facility. As a result of this concern, Rule 429 will be amended to include a facility-wide mass emission limit of 3.5 tons/day of NO_x beginning in year 2000. The Rule 429 amendment requires the facility-wide emission cap to be reduced to 2.5 tons/day NO_x on December 31, 2002. The net result of the rule change is to establish a facility-wide mass emission limit that did not previously exist. As stated above, the San Luis Obispo Air Pollution Control District has indicated that implementation of measures in Draft Rule 429 (which also makes it clear that the rule applies to non-utilities) will adequately mitigate air quality issues related to divestiture (fourth paragraph on page 4.5.27 of the Initial Study).

SLOCDPB-6.

The commentor is referred to pages 4.7.4 and 4.7.5 of the Initial Study for a discussion of potential impacts to endangered, threatened and rare species and in particular the issue of intake and discharge effects on marine organisms.

SLOCDPB-7.

The commentor is referred to the response to SLOCDPB-6. The issue of marine organism entrainment has been evaluated by the Initial Study. There are some marine organisms that do not survive the water cooling loop at the Morro Bay power plant. What is pertinent is the impact on endangered, threatened or rare species and if there is a significant number of these marine organisms that are injured or killed as a consequence. The current information available does not indicate that any endangered, threatened or rare species are significantly impacted due to the water intake system or operations at the Morro Bay Power Plant. Therefore, the impact of the project is less than significant, even if generation at the plant increases. Nor does the project contribute to significant cumulative impacts to marine organisms as well.

SLOCDPB-8.

We refer the commentor to the response to SLOCDPB-2. As stated earlier, under divestiture it is not considered likely or foreseeable that the PG&E marine terminal will be repaired and reactivated. If the marine terminal is reactivated, it will have to undergo extensive repairs, and any reactivation will require environmental review. Because the likelihood that a resumption in the use of the PG&E marine terminal is not reasonably foreseeable under divestiture, the impact of the resumption of tankering operations in Estero Bay was appropriately not evaluated in the Initial Study. While the announcement by Chevron to potentially close its terminal in the Estero Bay is of interest and could have a beneficial impact regarding the local marine environment in the Estero and the region (Monterey Bay National Marine Sanctuary), Chevron's action would not alter or affect the conclusions of the Initial Study regarding impacts to marine life.

SLOCDPB-9.

We refer the commentor to the responses to SLOCDPB -2, SLOCDPB-6, SLOCDPB-7, and SLOCDPB-8 for a detailed discussion of the impacts of divestiture on thermal changes to the marine environment, marine organism entrainment and the potential reactivation of the PG&E marine terminal. The analysis of these issues contained in the Initial Study concludes that there are no significant impacts as a result of divestiture and, therefore, an EIR is not required.

SLOCDPB-10.

The commentor is referred to pages 4.11.5 and 4.11.6 of the Initial Study. A determination of the consequences of the sale of the plant to a new owner that is as yet unknown and what possible revenue impact(s) might occur and how that would affect San Luis Obispo County is

highly speculative at best. The State Board of Equalization has not determined how utility plants will be treated for tax purposes with restructuring and the issue is one of restructuring and not of divestiture. It is just as likely that revenues from the Morro Bay Power Plant could increase as decline under a new owner. If PG&E were to retain ownership of the plant under restructuring, there is no indication that revenues from that facility would change in any substantial way from current levels. The same is true with divestiture. Again, the potential economic impacts that are a concern to the commentor are not reasonably foreseeable under divestiture.

While CEQA does require that economic impacts (Guidelines, §15131) be evaluated when a physical change resulting from the project is shown to occur, the Initial Study indicates that there is no basis for concluding that economic impacts will result, to begin with, or that any economic effects would lead to environmental impacts.

SLOCDPB-11.

Divestiture does not affect the decision whether or when to close the Morro Bay Power Plant. The market forces that will determine the viability of the Morro Bay facility, as well as most other generators, arise primarily from restructuring itself, not divestiture. As discussed in response to CCC-1, the legislation enacting restructuring is exempt from CEQA requirements. Attachment C, at page C.16, discusses how the incentives to repower (or implicitly, to retire) the facilities proposed for divestiture will not differ between existing and new owners substantially in a reasonably foreseeable manner over the next decade. As a result, the Initial Study concludes that Morro Bay will likely continue to exist in its current configuration under reasonably foreseeable conditions. There is no basis for concluding that the Morro Bay plant will close; thus, that remote and unforeseeable occurrence need not be evaluated.

The commentor should note that PG&E will recover its “uneconomic” investment in Morro Bay and other generation plant through the Competition Transition Charge (CTC) whether these plants are divested or not. PG&E will recover a portion of its investment either from the sale of the plant or from Power Exchange market revenues. The difference between the remaining book value and the net revenues from either source is the amount to be collected via the CTC. By the end of the transition period in 2002, the CTC will no longer be collected, and PG&E would depend on power market revenues to recover its investment in these plants, should it retain them.

SLOCDPB-12.

The commentor is referred to the response to SLOCDPB-10 regarding economic effects of the project. The Initial Study has evaluated cumulative impacts based upon those projects that are reasonably foreseeable in section 4.16 of the Initial Study. A list of cumulative projects in Morro Bay was included in the evaluation. The incremental effects determined to arise from these projects were found to be less than significant. There is no evidence that the sale of the Morro Bay plant would have any incremental economic effects that might combine with other projects to produce significant cumulative impacts.

SLOCDPB-13

The commentor is referred to the responses to SLOCDPB-1 through SLOCDPB-12, regarding the commentor's contention(s) that the Initial Study: 1) did not evaluate and address the environmental issues raised by the commentor; and 2) did not reduce all potential impacts to a less than significant threshold. After reviewing the comments and further analysis of the project, the CPUC is satisfied there is no substantial evidence before the agency of a fair argument that the project may have a significant effect on the environment, either directly or indirectly.

As to the commentor's contention that the proposed project evaluated in the Initial Study is the subject of serious public controversy and, therefore, §15064 (h)(1) of the *CEQA Guidelines* requires the preparation of an EIR, the commentor is in error. In May of 1997, the *CEQA Guidelines* were amended so that the issue of public controversy alone is not sufficient to trigger the preparation of an EIR, without significant indication of potential environmental impacts caused either directly or indirectly by the project. The *CEQA Guidelines* have been amended to say, "The existence of public controversy over the environmental effects of a project will not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment." Because no such substantial evidence exists, any public controversy over the project's effects would be irrelevant.

The commentor has also raised the issue of a disagreement between experts as giving rise to a requirement to prepare an EIR. *CEQA Guidelines* § 15064 (h) states:

After application of the principles set forth above in §15064 (g) [regarding substantial evidence of significant impacts], and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the Lead Agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

As is clearly documented in the Initial Study, the CPUC has considered a wealth of information submitted by a wide array of public agencies and organizations as well as the information provided by the applicants.

Having applied the principles in *CEQA Guidelines* § 15064 (g), the CPUC has determined that the project will not result in significant impacts that cannot be readily mitigated. For instance, *CEQA Guidelines* § 15064 (g) (5) and (6) state:

(5) Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinions supported by facts.

(6) Evidence of economic and social impacts that do not contribute to or are not caused by physical changes in the environment is not substantial evidence that the project may have significant effect on the environment.

The speculative and unsubstantiated opinions submitted by the commentor are thus not substantial evidence of any impacts. Also, since the Initial Study indicates that there is no evidence that any economic changes (which themselves are speculative and not based on reliable evidence) will contribute to physical changes, the commentor's opinions are not substantial evidence of any significant impacts.

Furthermore, this is not considered a marginal case. Thus, the issue of disagreement among experts does not come into play. Finally, even if it did, the commentor's concerns are not considered to be “expert opinion supported by facts.”

As noted in the Initial Study on pages 4.11.5 and 4.11.6, the CPUC believes the socio-economic concerns raised by the commentor are speculative and not foreseeable as a result of divestiture. With respect to the study conducted on behalf of the San Luis Obispo County Board of Supervisors and as stated in the second paragraph on page 4.11.6 of the Initial Study:

“The study conducted by San Luis Obispo County makes assumptions that are not expected or reasonably foreseeable under restructuring or divestiture.”

The analysis on which San Luis Obispo County relied to determine that divestiture of the Morro Bay plant would potentially cause a dramatic drop in County revenues was based upon assumptions which have not been borne out in recent electrical industry sales in other parts of the United States (see page 4.11.6 of the Initial Study) and in other countries such as Australia (see Attachment C, page C.12). The CPUC does not consider the speculative socio-economic arguments proposed by the commentor to implicate an environmental effect, therefore, there is no requirement by the Lead Agency to prepare an EIR.

The Commentor suggests that the Lead Agency has segmented the “project” into smaller projects in order to avoid impacts and by so doing avoid performing an EIR. The commentor is referred to SAEJ-2, and SAEJ-3. Further, it would be inaccurate and inappropriate to analyze PG&E's and Edison's applications in the same environmental document. Their plants are geographically in different areas and there are different local issues for each company. Both company's divestiture plans are being analyzed at the same time for efficiency and to facilitate comment by agencies and others that may have overlapping interests between the two companies. This is not being done in order to “piecemeal” a project, as alleged, or to avoid impacts. The cumulative impact analysis in the Initial Study (see pages 4.16.2-4.16.14) addresses the combined impacts of PG&E's and Edison's applications.

Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

September 26, 1997

BRUCE KANESHIRO
CALIFORNIA PUBLIC UTILITIES COMMISSION
225 BUSH STREET, SUITE 1700
SAN FRANCISCO, CA 94104

Subject: PG&E APPLICATION NO. 96-11-020 PROPOSAL FOR DIVESTITURE
SCH #: 97081067

Dear BRUCE KANESHIRO:

[\[Begin SCH-1\]](#)

The State Clearinghouse submitted the above named environmental document to selected state agencies for review. The review period is closed and none of the state agencies have comments. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

[\[End SCH-1\]](#)

Please call at (916) 445-0613 if you have any questions regarding the environmental review process. When contacting the Clearinghouse in this matter, please use the eight-digit State Clearinghouse number so that we may respond promptly.

Sincerely,

/s/

ANTERO A. RIVASPLATA
Chief, State Clearinghouse

SCH - STATE CLEARINGHOUSE

SCH-1.

Comment noted.