

September 18, 1997

Bruce Kaneshiro, Project Manager
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**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
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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.