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December 10, 2001

File Ref: PRC 5040

Ms. Billie Blanchard
California Public Utilities Commission
c/o Environmental Science Associates
505 Van Ness Avenue, 4th Floor,
San Francisco, CA 94102-3298

Ms. Nadell Gayou
The Resources Agency
901 P Street
Sacramento, CA 95814

Dear Ms. Blanchard and Ms. Gayou:

Staff of the California State Lands Commission (CSLC or Commission) has reviewed the Mitigated Negative Declaration (MND), SCH#2001102139, for Pacific Gas and Electric Company's Application to Sell the Richmond to Pittsburg Fuel Oil Pipeline and Hercules Pump Station, and San Pablo Bay Pipeline Company's Application to Own and Operate these Assets. Based on our review of the MND, we offer the following comments.

CSLC Jurisdiction

As general background, upon admission to the Union in 1850, California acquired nearly 4 million acres of sovereign land underlying the State's navigable waterways. Such lands include, but are not limited to, the beds of more than 120 navigable rivers and sloughs, nearly 40 navigable lakes, and the 3 mile wide band of tide and submerged lands adjacent to the coast and offshore islands of the State. These lands are managed by the California State Lands Commission. The CSLC has an oversight responsibility for tide and submerged lands legislatively granted in trust to local jurisdictions (Public Resources Code Section 6301). All tide and submerged lands, granted or ungranted, as well as navigable rivers, sloughs, etc. are impressed with the Common Law Public Trust. A lease from the CSLC is required for any portion of a project extending onto State-owned lands that are under its exclusive jurisdiction.

Based on the information provided, it appears that the proposed project will be located on lands under the CSLC's jurisdiction and a lease from the Commission is required. Please, however, provide a more detailed site specific map of all project components to assist staff of the CSLC in making a more definitive response regarding the CSLC's jurisdiction.

01

Staff of the CSLC is particularly concerned that the MND does not meet the requirements of the CEQA. The MND, page 1-9, states that, "Because SPBPC has not defined in its Application (A.00-12-008) the exact methods to be used, this analysis assumes that the replacement pipeline section will be constructed using standard trenching and boring methods." It further states that, "Thus, this document examines impacts at a general level, based on available information and reasonable assumptions". In order for the document to assess the potential impacts from the proposed project, as required under the California Environmental Quality Act (CEQA), specific project details, impacts and mitigation measures must be known and identified in the environmental document. If the CEQA document cannot provide for full public and agency review at this time, then a supplemental or subsequent CEQA process may be initiated when project description details, potential impacts and mitigation measures have been identified during the CSLC's leasing process.

02

The MND, (front section, without page numbers), under Environmental Determination, states that, "Each of the identified impacts can be mitigated to avoid the impact or reduce it to a less than significant level." The biological resources section, however, states that, "Prior to commencing construction activities, SPBPC shall conduct a biological survey of all work areas that may be affected by construction of the replacement section in Martinez and submit the survey for review and approval by the CPUC mitigation monitor". It is stated that, "The survey shall include a biological assessment of the potential of construction activities to create an adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service". It is stated that, "If the survey reveals that such a potential exists, SPBPC shall conduct a formal consulting process with appropriate resources agencies to address the potential to create a significant impact to listed species". "Based on the consultation process, SPBPC shall implement measures deemed necessary by these agencies to reduce impacts to a less than significant level." Staff of the CSLC questions how a determination can be made, at this time, and that potentially significant project impacts can be mitigated to a less than significant level absent consultation with the resource agencies prior to circulation of the MND. The MND uses this approach in other issues areas listed in the document, as well.

03

The Environmental Checklist, Biological Resource Impact Discussion, acknowledges that numerous rare or endangered plant species and special status wildlife may be found at the project area. It also states that the potential to impact listed species is not fully known without a complete biological survey of the areas potentially affected by construction activities. It further states that, "Mitigation measures, such as

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avoidance of work during critical life stages of potentially affected species, replacement of valuable vegetation for habitat, or soil erosion and sediment transport avoidance, are commonly used and approved by resource agencies to reduce potential adverse effects to less than significant levels to species that might be affected at this site". Again, the mitigation measures proposed are standard mitigation measures that are not specific to the proposed project.

04 cont.

Page I-9, the Construction Schedule and Procedures section states that, "Though neither SPBPC nor PG&E have released details of any construction plans related to the missing section in Martinez, the likely sequence of events for a typical replacement project is as follows:..." Is this a "typical replacement project? Is the location a typical location? Although the document describes general activities that could apply to any given project, it does not provide project methodologies specific to the project at hand, nor does it identify specific site locations where some of the activities will take place. As an example, where will the staging areas be located? Will fueling of equipment and vehicles take place at the staging areas? Has a Spill Contingency Plan been developed?


05

In summary, Sundstrom v. County of Mendocino (202 Cal. App. 3d 296, 307) determined that future "studies" are insufficient mitigation. Instead, it required that detailed information about project effects be provided to agencies and the public. Further, in Citizens for Quality Growth v. City of Mount Shasta (198 Cal. App. 3d 443), it was established that future compliance with regulatory programs of other agencies is insufficient as mitigation. As such, staff of the CSLC believes that the proposed MND is not adequate to meet the requirements of the CEQA. All specific potential impacts and mitigation measures that relate to this project should be identified in the document and circulated for public and agency review. The Mitigation Monitoring Program, as well, should identify, in detail, all mitigation measures proposed to reduce potentially significant impacts to a less than significant level.

06

We appreciate the CPUC's consideration of these comments and apologize for their lateness. For questions regarding the CSLC's jurisdiction, please contact Nanci Smith at (916) 574-1872. For questions regarding content of the Mitigated Negative Declaration, please contact Betty Silva at (916) 574-1872.

Sincerely,



Stephen L. Jenkins, Assistant Chief
Division of Environmental Planning
And Management

Cc: Nanci Smith
Betty Silva