DEPARTMENT 82 LAW AND MOTION RULINGS

Hon. Mary H. Strobel The clerk for Department 82 may be reached at (213) 893-0530.

Case Number: 22STCP00983 **Hearing Date:** July 13, 2023 **Dept:** 82

SIERRA CLUB, Petitioner, vs. CITY OF GLENDALE, *et al.*, Respondents.	Case No. 22STCP00983 [TENTATIVE] RULING ON PETITION FOR WRIT OF MANDATE Dept. 82 (Hon. Curtis A. Kin)

Petitioner Sierra Club petitions for writ of mandate directing respondents City of Glendale, Glendale City Council, and Glendale Water and Power (collectively, "Glendale" or "Glendale respondents") to withdraw all approvals of the installation of five new natural gas fired engines at the Grayson Power Plant, including the certification of the 2022 Final Environmental Impact Report. Sierra Club also petitions for the Court to direct the Glendale respondents to refrain from granting further approvals unless and until the City complies with the California Environmental Quality Act ("CEQA").

I. Factual Background

Since 1941, the Grayson Power Plant ("Grayson" or "facility") has generated electrical power for the City of Glendale ("City"). (AR 5394-95.) Glendale Water and Power ("GWP") is responsible for generating and importing electricity to serve the residents and businesses of the City. (AR 5401.)

The facility currently has eight operating generation units—Units 1, 2, 3, 4, 5, 8A, 8BC, and 9.[1] (AR 8, 14435.) Units 1 through 5, built between 1941 and 1964, are steam turbines. (AR 81.) Steam turbines have an average retirement age of 54 years. (AR 81.) Units 8A and 8BC (collectively referred to as "Unit 8"), both built in 1977, are combustion turbines. (AR 81, 5852.) Combustion turbines have an average retirement age of 40 years. (AR 81.) Except for Unit 9, the existing generation units are beyond their expected service life. (AR 63.) The units require costly, ongoing maintenance. (AR 81.) The units also require air quality retrofits to comply with current and anticipated South Coast Air Quality Management District ("SCAQMD") regulatory requirements. (AR 5823.) However, the retrofits are not financially sensible considering that the units are past their retirement age. (AR 5823.)

The most energy the City has required on a particular day, or the "peak load," was 346 megawatts ("MW"), which happened on September 1, 2017. (AR 5823, 14494.) The peak load is expected to increase to 398 MW by 2027. (AR 14494.) Without the replacement of Units 1 through 5 and 8, the amount of power available to the City would be 287 MW. (AR 5824.) The power would come from Unit 9, as well as the power imported from the Pacific Direct Current ("DC") Intertie (running from the Nevada-Oregon border to the Los Angeles Department of Water and Power ["LADWP"]) and the Southwest Transmission System (running from southwestern states to the LADWP). (AR 5824, 14497.) Additional opportunities to import power are infrequent and generally not available. (AR 14521.)

On June 2, 2015, the Glendale City Council ("City Council") adopted a resolution directing GWP to proceed with design, engineering, environmental review, and evaluation of financing options for repowering Grayson ("Grayson Repowering Project" or "Project"). (AR 5-6.) The City Council recognized challenges in maintaining reliable electric service and keeping utility rates affordable, including unplanned outages and contractual and physical constraints

on the importation of power. (AR 5.) In adopting the resolution, the City Council relied on analysis of repowering options contained in an Integrated Resource Plan ("IRP"), which the City hired a third party to prepare. (AR 5.)

Between December 20, 2016 and January 20, 2017, as part of the initial review process, a Notice of Preparation ("NOP") soliciting comments from public agencies with expertise was prepared and circulated. (AR 5386.) Based on responses to the NOP, as well as preparation of an Initial Study and the City's review of the Project, the City determined that various environmental topics could be significantly impacted by the Project. (AR 5386.) These topics include aesthetics, air quality, geology and soils, greenhouse gases, hazards and hazardous materials, hydrology and water quality, noise, traffic and transportation, and tribal cultural resources. (AR 5386–87.) Based on the percentage of minority and low-income individuals residing in the City, compared to the percentage of such individuals in Los Angeles County – where the City is located – the Initial Study concluded that the City was not an "environmental justice" community.[2] (AR 15765.)

On September 15, 2017, GWP released a Draft Environmental Impact Report ("EIR"). (AR 36.) The Draft EIR sought to evaluate the environmental effects of replacing the existing generation units at issue, *i.e.*, all existing units except for Unit 9, with two simple cycle natural gas-fired combustion turbines and two combined cycle natural gas-fired combustion turbines. (AR 46, 73, 5586.) Under the proposal in the Draft EIR, the generation capacity would increase from 286 MW (gross) to 328 MW (gross). (AR 73.)

During the 66-day public review and comment period, over 1,000 comments were received in response to the Draft EIR. (AR 5783, 16453.) On November 20, 2017, Sierra Club submitted comments to the City. (AR 13084.) Based on assertions in the IRP concerning opportunities to sell excess power, Sierra Club asserted that the Draft EIR exaggerated the City's energy needs. (AR 13086-90.) In response, GWP maintained that the Project was sized to ensure adequate reserves so that the City would be able to meet peak power demand even if the Pacific DC Intertie line and a unit in the repowered Grayson facility were both unavailable. (AR 5822.)

On March 1, 2018, GWP released a Final EIR. (AR 5351.) The Final EIR contained responses to the Draft EIR comments with respect to the City's pursuit of renewable energy and reliability of energy (AR 5808-15), the relation between the IRP and the Project (AR 5815-21), the need for the Project (AR 5821-32), and environmental justice (AR 5890-94). On April 10, 2018, Sierra Club submitted comments to the Final EIR. (AR 63751-57.) Sierra Club argued that GWP overstates its reserve obligations and that GWP is not considering the impacts of the Project on environmental justice communities surrounding the City. (AR 63751-53, 63756-57.)

On April 10, 2018, the City Council held a hearing to consider the Final EIR. (AR 16444-45.) The City Council voted to continue the hearing and directed the City to evaluate clean energy alternatives. (AR 14295, 16449.) The City issued a Clean Energy Request for Proposal ("RFP"). (AR 14295.) From the responses to the RFP, the City selected two alternatives – Alternative 7, the Wartsila Repowering Project Alternative, and Alternative 8, the Unit 8 Refurbishment Project Alternative. (AR 14294-95, 14311.)

On August 6, 2021, GWP released a Partially Recirculated Draft EIR ("PR-DEIR") to examine the alternatives. (AR 13569.) The PR-DEIR was circulated on August 9, 2021 for a 60-day public review period. (AR 18000.) Over 100 comments were received in response to the PR-DEIR. (AR 14492.) In the PR-DEIR, GWP asserted that, due to its load and reserve requirements, alternatives that would not involve the usage of fossil fuels were not feasible. (AR 13685-86 [No Project alternative]; 13693-94 [Energy Storage Project alternative]; 13698-99 [Alternative Energy Project alternative].) On November 15, 2021, Sierra Club submitted comments to PR-DEIR. (AR 103146.) Sierra Club again asserted that the City was exaggerating its energy needs and reserve obligations. (AR 103147-50.)

On January 20, 2022, GWP released a second Final EIR. (AR 14288.) GWP responded to the comments to the PR-DEIR, including by asserting that its reserve obligations arise from contracts with LADWP and therefore are neither misstated nor inflated. (AR 14495.) On February 15, 2022, the City Council held a hearing to consider the second Final EIR. (AR 17990, 17992, 17996-98.) During the hearing, the General Manager of GWP promoted Alternative 7, the Wartsila alternative, as the environmentally superior alternative that meets GWP's reserve obligations while using less fossil fuel. (AR 98163, 98184.) GWP also said during the hearing that the Wartsila engines could eventually run on hydrogen by 2025. (AR 19692–93, 19841.) Sierra Club argued during the hearing that GWP's assertions regarding its reserve obligations are incorrect and that the second Final EIR did not analyze the environmental impacts of using hydrogen. (AR 19707-10, 19713.)

On February 15, 2022, the City Council certified the second Final EIR and approved Alternative 7 by a 3-2 vote. (AR 31.) Under Alternative 7, the existing units at issue would be replaced with five Wartsila internal combustion engines producing 93 MW at average site conditions and a battery energy storage system producing 75 MW with a storage capacity of 300 MWH. (AR 14428.) The City Council determined that Alternative 7 allows the City to minimize its reliance on importing power from remote generation locations and meet its electrical demands even if separated from existing interconnections with the electrical grid. (AR 26.) The City Council also determined that all significant effects on the environment were eliminated or substantially lessened where feasible. (AR 26.) On March 1, 2022, the City Council approved a resolution to delay purchase of the Wartsila engines until December 2022. (AR 33, 19943.)

II. Procedural History

On March 18, 2022, petitioner Sierra Club filed a Verified Petition for Writ of Mandate in Case No. 22STCP00983. On May 16, 2022, the Glendale respondents filed an Answer to Sierra Club's petition.

On April 5, 2022, Sierra Club filed a notice seeking to relate its petition to the petition filed by Glendale Residents Against Environmental Destruction ("GRAED") in Case No. 22STCP01021. On April 7, 2022, the Court (Hon. Mary H. Strobel) granted Sierra Club's notice of related case and transferred GRAED's petition to Department 82.

On August 18, 2022, during the trial setting conference, Judge Strobel set the trial in the Sierra Club petition and the GRAED petition for October 4, 2022. Upon agreement of the parties, the hearing on the Sierra Club petition and the related GRAED petition were continued to July 13, 2023. (12/20/22 Minute Order.)

On February 21, 2023, pursuant to stipulation of the parties, Judge Strobel entered an order setting the briefing schedule. On February 24, 2023, Sierra Club filed an opening brief. On April 3, 2023, the Glendale respondents filed an opposition. On May 5, 2023, Sierra Club filed a reply. The parties have complied with the briefing schedule. The Court has received the joint appendix in hard copy and the administrative record in electronic format.

III. Standard of Review

In an action challenging an agency's decision under CEQA, the trial court reviews the agency's decision for a prejudicial abuse of discretion. (Pub. Res. Code § 21168.5.) "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (*Ibid.*) Challenges to an agency's failure to proceed in a manner required by CEQA are subject to a less deferential standard than challenges to an agency's factual conclusions. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.) In reviewing these claims, the Court must "determine de novo whether the agency has employed the correct procedures." (*Ibid.*)

"[S]ubstantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.… Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment." (Pub. Res. Code § 21080(e).) Under the substantial evidence test,

the Court "review[s] the administrative record to see if it contains evidence of ponderable legal significance that is reasonable in nature, credible, and of solid value, to support the agency's decision." (*Protect Tustin Ranch v. City of Tustin* (2021) 70 Cal.App.5th 951, 960.) However, "a court reviewing the evidentiary basis of an agency's decision must consider all relevant evidence in the administrative record including evidence that fairly detracts from the evidence supporting the agency's decision." (*California Youth Authority v. State Personnel Board* (2002) 104 Cal.App.4th 575, 585.)

An agency is presumed to have regularly performed its official duties. (Evid. Code § 664.) When an appellant challenges "'the sufficiency of the evidence, all material evidence on the point must be set forth and not merely [its] own evidence.'" (*Toigo v. Town of Ross* (1998) 70 Cal.App.4th 309, 317, quoting *Jordan v. City of Santa Barbara* (1996) 46 Cal.App.4th 1245, 1255.) The petitioner "must lay out the evidence favorable to the other side and show why it is lacking." (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266.) "Failure to do so is fatal. A reviewing court will not independently review the record to make up for appellant's failure to carry his burden." (*Ibid.*)

IV. Analysis

A. Project Description in EIR

1. GWP's Reserve Obligations

Sierra Club maintains that the EIR misstates that the Project was necessary to fulfill GWP's reserve obligations.

"An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) "If a final EIR does not 'adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project,' informed decisionmaking cannot occur under CEQA and the final EIR is inadequate as a matter of law." (*RiverWatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal.App.4th 1186, 1201.) According to regulations governing CEQA, codified in 14 C.C.R. § 15000, *et seq.* ("CEQA Guidelines"), the description of the project in an EIR must include a statement of the objectives sought by the proposed project, including the underlying purpose of the project. (CEQA Guidelines § 15124(b).)

The Court must determine whether the alleged inconsistencies or errors in the EIR were prejudicial because they "preclude[d] informed decisionmaking and informed public participation." (*See Washoe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277, 290, internal quotations omitted.) "Under CEQA 'there is no presumption that error is prejudicial' [citation]. Insubstantial or merely technical omissions are not grounds for relief." (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 463, citing Pub. Res. Code § 21005(b) [agency's decision to use only a future conditions baseline was not supported by substantial evidence, but error was not prejudicial].)

As background, Public Utilities Code § 9620(a) states: "Each local publicly owned electric utility serving end-use customers, shall prudently plan for and procure resources that are adequate to meet its planning reserve margin and peak demand and operating reserves, sufficient to provide reliable electric service to its customers." An N-1 or single outage contingency is a reliability consideration based on the loss of the single largest source of electricity. (AR 5378-79.) An N-1-1 or secondary contingency is a reliability consideration based on the loss of the single largest source of electricity, followed by the second largest source of electricity. (AR 5379.) Currently, the N-1 contingency for GWP is one of the two circuits on the Pacific DC Intertie, and the N-1-1 contingency for GWP is a loss of Unit 8BC. (AR 14495.)

Glendale maintains that it is covering its N-1 and N-1-1 contingencies through a Balancing Authority Area Services Agreement ("Balancing Agreement") with LADWP and other resources in GWP's portfolio, including Grayson. (AR 45704.) In the event of loss of GWP's N-1, under the Balancing Agreement, LADWP provides 80 MW for 60 minutes. (AR 14495, 20224, 45733.) The Balancing Agreement only covers the N-1 contingency, not the N-1-1 contingency. (AR 14495.)

In all iterations of the EIR, GWP maintained that an objective of the Project was to cover its N-1-1 reserve obligations. (AR 82 [Draft EIR – Additional Capacity Needed to Recover and Support the System], 5827-32 [2018 Final EIR], AR 13729 [PR-DEIR – Alternative 7 does not meet N-1-1 contingency reserve requirements], 14494-95 [2022 Final EIR].) Sierra Club disputes that GWP is subject to a N-1-1 contingency. Sierra Club maintains that the City Council rejected cleaner energy alternatives because such alternatives would not have covered the N-1-1 contingency. (AR 13685-86 [No Project alternative]; 13693-94 [Energy Storage Project alternative]; 13698-99 [Alternative Energy Project alternative].)

Before discussing whether GWP was subject to an obligation to cover an N-1-1 contingency, the Court first clarifies that the standard of review with respect to whether the EIR's project description complies with CEQA is de novo. (*Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 15.) The Court reviews whether the agency has employed the correct procedures de novo. (*Rodeo Citizens Assn. v. County of Contra Costa*

(2018) 22 Cal.App.5th 214, 219.) However, an agency's factual conclusions are subject to deference and reviewed for substantial evidence. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.) Accordingly, an agency's resolution of a factual dispute supporting the project description is reviewed for substantial evidence. (*See Rodeo Citizens,* 22 Cal.App.5th at 220-22 [finding substantial evidence supports agency's conclusion regarding whether project requires refinery to process heavier crude oil feedstock].) Where the adequacy of a project description presents questions of law and fact, "to the extent a mixed question requires a determination whether statutory criteria were satisfied, de novo review is appropriate; but to the extent factual questions predominate, a more deferential standard is warranted." (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516.)

In the 2022 Final EIR, GWP asserted that "Glendale is contractually obligated to cover its system's reserve requirements, including the N-1 and N-1-1 contingencies." (AR 14495.) GWP explained that the obligations "stem from longstanding contracts with LADWP that make Glendale solely responsible for covering system's reserve requirements and obligate Glendale to design,

construct, operate, and maintain its system in conformance with Good Utility Practice and the applicable North American Electric Reliability Corporation's (NERC) Reliability Standards." (AR 14495.)

Interpretation of a contract is a question of law when it is based on the words of the contract alone. (*Oakland-Alameda County Coliseum Authority v. Golden State Warriors, LLC* (2020) 53 Cal.App.5th 807, 818.) The Court also determines whether a contract is ambiguous. (*Id.* at 816.) Ambiguities may be resolved by ascertaining the intent of the parties through the introduction of extrinsic evidence. (*Id.* at 817.) When there is no conflict in the extrinsic evidence, the interpretation of a contract poses a question of law. (*Id.* at 818.) When the extrinsic evidence is conflicting, however, evaluation of the credibility of the evidence and resolution of the conflict is a factual question. (*Id.* at 819.)

Based on a review of the Balancing Agreement, the Court finds that, as a matter of law, GWP is subject to a contractual obligation to cover an N-1-1 contingency. Under the Balancing Agreement, LADWP agreed to provide a total of 80 MW to GWP for 60 minutes during the single largest contingency, *e.g.,* N-1. (AR 45733 [40 MW of spinning reserves], 45735 [GWP may draw energy for 60 minutes], 45738 [40 MW of supplemental reserves], 45740 [GWP may draw energy for 60 minutes], 14516, 40250.)

Section 4.c of Schedule 5 of the Balancing Agreement states: "If GWP schedules more than 86 MW (at Nevada Oregon Border ("NOB")) on the PDCI sinking in the BAA, GWP shall self-supply or purchase additional Spinning Reserves from a third-party to support the schedules greater than 86 MW." (AR 45733.) Section 4.c of Schedule 6 of the Balancing Agreement states: "If GWP schedules more than 86 MW (at Nevada Oregon Border ("NOB")) on

the PDCI sinking in the BAA, GWP shall self-supply or purchase additional Supplemental Reserves from a third-party to support the greater than 86 MW."[3] (AR 45739.) Based on sections 4.c in Schedules 5 and 6 of the Balancing Agreement, GWP promised LADWP that it would ensure that it has adequate reserves to cover the loss of GWP's second largest source of electricity, *i.e.*, the N-1-1 contingency.[4] Accordingly, the explicit terms of the Balancing Agreement support Glendale's assertion that GWP is contractually obligated to ensure reliable electric service in the event of an N-1-1 contingency.

The Balancing Agreement also requires GWP to operate its electricity transmission system in accordance with "Good Utility Practice." (AR 45705 [recital], 45712 [section 3.5.1].) "Good Utility Practice" is defined as "any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition." (AR 45707.) "Good Utility Practice" does not expressly require a public utility to ensure reliable electric service during an N-1-1 contingency. Sierra Club disputes the amount of electricity required for GWP to satisfy Good Utility Practice. (OB at 19:13-21.) Sierra Club points out that the Federal Energy Regulatory Commission retracted a prior determination that N-1-1 is the operating reliability standard. (AR 104580.)

However, GWP points out in the 2022 Final EIR that LADWP, California Integrated System Operator (CAISO) Balancing Authority, the other balancing authorities in California, and other system operators in the Western Electricity Coordinating Council and throughout the United States maintain reserves sufficient to cover N-1-1 contingencies. (AR 14512; *see also* AR 15052 [letter from Sierra Club's counsel stating, "In accordance with NERC/WECC reliability standards, LADWP carries full reserves for its own N-1-1 contingencies, which cover reserves for GWP"].)

Based on the factual dispute regarding the requirements of Good Utility Practice, the Court reviews the definition for substantial evidence. Glendale has presented substantial evidence that Good Utility Practice includes maintenance of sufficient reserves in the event of N-1-1 contingencies.

In addition, the Balancing Agreement states: "Each Party shall, to the fullest extent practicable, cause all its transmission and generating equipment to be designed, constructed, maintained, and operated in accordance with Good Utility Practice." (AR 45712.) Because GWP is a party to the Balancing Agreement, GWP is contractually obligated to operate in accordance with Good Utility Practice, which Glendale sufficiently demonstrates to include having reserves sufficient for N-1-1 contingencies.

Further, to the extent the Balancing Agreement is ambiguous with respect to whether GWP is subject to a requirement to maintain N-1-1 reserves, on February 14, 2022, LADWP explained its perspective on GWP's reserve obligations under the Balancing Agreement:

> These [North American Electric Reliability Corporation] requirements mean that LADWP coordinates activities within its BAA [Balancing Authority Area] to ensure sufficient reserves are carried within the BAA to satisfy unexpected contingencies and to plan for the curtailment of load should it become necessary to maintain system reliability. LADWP must therefore he assured by Glendale that it is carrying sufficient reserves for its load service obligations that could become the most severe single contingency (MSSC) for the BAA, and whether Glendale has plans in place to curtail load should that become necessary or to secure reserves from third party suppliers beyond what the BAASA is providing. It is important to note that Schedules 5 and 6 of the BAASA enable Glendale to purchase 80 megawatts of reserves from LADWP for a duration of 60 minutes in accordance with BAL-002-WECC-3.... It is Glendale's sole responsibility to provide reserves or to curtail its load, as necessary, when the need for energy exceeds the reserves provided in the BAASA....
>
> If any penalties are imposed on LADWP and/or mitigation required of LADWP as a result of Glendale failing to: (a) set aside sufficient reserves, (b) deploy its reserves, or (c) curtail load, and thereby shift these responsibilities to LADWP; LADWP, on behalf of its ratepayers will seek full redress from Glendale for the cost of those penalties and/or mitigation, the value of the transmission and power utilized by Glendale plus applicable penalties, along with damages recoverable by LADWP ratepayers associated with curtailments.

(AR 40267, emphasis added.) LADWP stated that it requires assurances that GWP has secured reserves beyond the 80 MW provided under the Balancing Agreement, *i.e.*, reserves sufficient to cover the N-1-1 contingency. Otherwise, LADWP may be subject to penalties, for which it would seek reimbursement from GWP. Accordingly, to the extent that the Balancing Agreement is ambiguous with respect to GWP's reserve obligations, Glendale presents substantial evidence that the Balancing Agreement requires GWP to maintain N-1-1 reserves.

Based on the foregoing, Sierra Club's assertion that the EIRs misstate GWP's need to maintain N-1-1 reserves fails.

2. Potential Sale of Excess Energy

Sierra Club also argues that the EIRs conceal a plan by Glendale to sell excess fossil fuel energy. In the 2015 IRP, the consultant noted that certain configurations for the Project

present opportunities for sales of excess power. (AR 30772, 30998.) An IRP prepared for GWP in 2019 also presents the potential of selling excess energy to neighboring regions. (AR 33072-73.)

However, GWP expressly disclaimed any intent to sell excess energy in the 2018 Final EIR. (AR 5820-21 ["Even though the City had considered power purchase agreements as a way to partially finance the Project cost at the time that the IRP was adopted in 2015, the City is not planning to sell the power and indeed, has not sized the Project to do so."], 6360 ["There is no excess energy to sell during high load periods. If the Project had been intended to sell into the energy markets, it would have been sized larger because peak load periods are the most lucrative time for energy sales."]; 6444.) GWP also explained in the 2022 Final EIR that there are some circumstances in which it engages or would engage in energy sales, including when it over-procures imported energy or, in the long term after local generation efforts have matured, when stored battery energy exceeds local demand. (AR 14531-32.) Nevertheless, GWP concluded that the Project was not sized to allow for energy sales and that Alternative 7 is constrained by SCAQMD fuel burn limits which align with an objective of ensuring electric reliability, not sales of energy. (AR 14531.) The Court finds that GWP presents substantial evidence that it did not conceal any intention to sell excess energy in the EIRs.

B. Impact of Burning Hydrogen

Sierra Club argues that the EIRs do not discuss the potential impacts from burning hydrogen.

"The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project." (CEQA Guidelines § 15126.6(d).) An analysis of alternatives "must be specific enough to permit informed decision making and public participation." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 406.) Whether the discussion of project alternatives is adequate under CEQA is a question of law. (*Ibid.*)

In the 2022 Final EIR, GWP states with respect to Alternative 7, which the City Council ultimately approved: "[T]he Wartsila engines would have the ability to run on a mix of 30 percent hydrogen and 70 percent natural gas with minor modification. Wartsila is further developing their technology to allow the engines to run on 100 percent hydrogen by 2025. Thus, once a hydrogen supply becomes available, the Wartsila engines could be modified to operate on 100 percent green hydrogen." (AR 14611.)

Sierra Club also points out that Senate Bill ("SB") 100 requires utilities to generate 100% of their electricity from renewable resources by 2045. (AR 14302.) GWP presented the Project to the City Council as creating a path to 100% percent clean energy using hydrogen. (AR 19692.) One of the members of the City Council expressed enthusiasm toward obtaining generation units that run on hydrogen from Wartsila by 2025. (AR 20057-58; *see also* AR 20075-77 [Mayor characterized Wartsila engines as "path to hydrogen"].) GWP also asserted that Southern California Gas is implementing a green hydrogen pipeline, with the aim to achieve at-scale green hydrogen by 2030. (AR 39605, 100814.)

However, the evidence of the potential for hydrogen cited by Sierra Club is speculative. "[A]n EIR must include a[n] analysis of the environmental effects of future expansion or other action 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." (*Laurel Heights*, 47 Cal.3d at 396.) "[S]pecific future action that is merely contemplated or a gleam in a planner's eye" need not be discussed in an EIR. (*Id.* at 398.)

The 2025 timeframe for Wartsila to allow their engines to run on 100% hydrogen is merely a goal that is beyond the control of the Glendale respondents. The same applies to the potential availability of at-scale green hydrogen by 2030. Hydrogen technology is continuing to develop, but there is no definite timeframe when it becomes commercially available. (AR 18035.) Under these circumstances, even if the Wartsila engines provide a "path to hydrogen," it cannot be said that the availability and use of hydrogen engines is reasonably foreseeable such that an analysis of burning hydrogen was required. (AR 19805, 19841-42 [statement from councilmember regarding cost of modifying Wartsila engines to run on 100% hydrogen is not guaranteed].) While further environmental studies may be required once the Wartsila engines are able to run on hydrogen (AR 19945 [GWP states that further studies on hydrogen would be done in future]), at this stage, the actual use of hydrogen technology is too speculative to require an analysis of the environmental effects with respect to the Project at issue.

C. Environmental Justice Communities

Sierra Club lastly argues that the EIRs did not analyze the environmental effects on minority and low-income environmental justice communities surrounding Grayson that are located outside the City's boundaries. (AR 533, 5891 [stating that Glendale was not an environmental justice community].)

"[W]hether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question." (*Sierra Club,* 6 Cal.5th at 514.) However, Sierra Club does not cite to any provision in CEQA that requires an analysis of impacts on environmental justice communities.[5] (*Cf.* Gov. Code §

65302(h) [requiring identification of objectives and policies to reduce pollution exposure in disadvantaged communities in the context of planning and zoning].) Courts may not interpret CEQA "in a manner which imposes procedural or substantive requirements beyond those explicitly stated in this division or in the state guidelines." (Pub. Res. Code § 21083.1.) Accordingly, any failure of GWP to consider environmental justice impacts does not warrant granting of the instant petition.

Setting aside whether GWP was required to analyze impacts on environmental justice communities outside of the City's limits, Sierra Club is correct that GWP may not arbitrarily limit an analysis of environmental impact to the City's borders. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 575 ["an EIR may not ignore the regional impacts of a project proposal, including those impacts that occur outside of its borders; on the contrary, a regional perspective is required"].) Nevertheless, GWP compared the emissions from Alternative 7 with existing emissions from Grayson and concluded that Alternative 7 would result in a net reduction of existing emissions. (AR 14444-45.) Accordingly, considering that emissions do not stay within a city's borders, GWP sufficiently analyzed the environmental impact of repowering Grayson through Alternative 7 in the City and the surrounding region.

V. Conclusion

The petition is DENIED.

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[1] Units 6 and 7 were removed in 2006. (AR 5393.)

[2] Environmental justice means "the fair treatment and meaningful involvement of people of all races, cultures, incomes, and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." (Gov. Code § 65040.12(e)(1).)

[3] GWP explained in the 2022 Final EIR that the 6 MW excess above the 80 MW N-1 reserve refers to additional energy that LADWP agreed to provide to address transmission losses. (AR 14517.)

[4] If GWP does not have access to electricity to cover the N-1-1 contingency, LADWP may provide additional electricity after 60 minutes, but GWP must pay three times LADWP's rate. (AR 45735 [section 10(a)], 45740 [same].)

[5] An environmental justice analysis involves a determination of whether a project's "significant, unmitigable impacts on high-minority or low-income populations/communities are

'disproportionate' to its significant, unmitigable impacts on 'other' (i.e., mixed populous) populations/ communities within the project area." (AR 5892.)
