

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

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In the Matter of:

Complaint Against Ormat Nevada, Inc.
Brought By California Unions for
Reliable Energy

Docket No. 11-CAI-02

REPLY BRIEF
OF
CALIFORNIA UNIONS FOR RELIABLE ENERGY

October 19, 2011

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Pursuant to the Committee's September 19, 2011 ruling,¹ California Unions for Reliable Energy submits this Brief in response to the Opening Brief of Ormat Nevada, Inc. and Intervenor County of Imperial's Joinder to Opening Brief of Ormat Nevada, Inc.

I. INTRODUCTION

CURE alleged and proved that Ormat is violating section 25500 of the Warren-Alquist Act by: (1) circumventing the Commission's authority with its 150 MW Brawley Geothermal Development; (2) permitting and operating the North Brawley Geothermal Development Project illegally; and (3) failing to seek certification of its proposed East Brawley Geothermal Development Project from the Commission. Ormat failed to contradict any facts proving these violations of the Act. As such, the Commission must find that the Commission has jurisdiction over Ormat's Projects, as one facility and as individual thermal powerplants.

The Committee should deny Ormat's and the County's Motion to Dismiss CURE's Complaint because the Complaint fully complies with the Commission's format and content requirements and because Ormat and the County failed to raise any credible defense. However, even if the Committee were to grant the Motion, the Commission cannot waive its jurisdiction under the Act. The record shows that the Commission has present, exclusive, and mandatory statutory authority over North Brawley and East Brawley.

¹ See 9/19/11 RT, 62:1-17.

II. THE COMMISSION HAS JURISDICTION OVER ORMAT'S BRAWLEY GEOTHERMAL DEVELOPMENT

The Warren-Alquist Act grants the Commission exclusive and mandatory jurisdiction over Ormat's Brawley Geothermal Development. (*See* Pub. Resources Code §§ 25500, 25119, 25120.) The evidence shows, contrary to Ormat's representations, that North Brawley and East Brawley are one facility. (*See*, CURE Br., pp. 8-24.) In particular, CURE showed that North Brawley and East Brawley exhibit all of the relevant elements of shared ownership, management, control and physical interconnectedness to be deemed one 150 MW facility. (*Ibid.*) Although overwhelming evidence supports CURE's first claim for relief, Ormat argues that aggregation is inappropriate in this case for two, factually unpersuasive and legally deficient reasons.

First, Ormat claims that North Brawley and East Brawley are not one facility because North Brawley and East Brawley will not be operated in a coordinated manner, the powerplants themselves are not located in close proximity, North Brawley and East Brawley do not share any common facilities, and the Project had "very different" schedules for development and construction. (Ormat Br., pp. 7-8.) Ormat's argument lacks merit because not one of Ormat's claims is borne out by the record. As set forth below, uncontroverted evidence shows that aggregation is appropriate, consistent with Commission precedent, and necessary to carry out the language and intent of the Warren-Alquist Act.

Second, Ormat argues that there is no evidence in the record that could legally support a decision in favor of CURE. (Ormat Br., pp. 2, 9-10.) Ormat fails to provide any legal support for this wildly inaccurate contention because it cannot. As set forth below, CURE supported each and every one of its allegations with testimonial or documentary evidence. CURE's evidence shows that Ormat circumvented the Commission's mandatory permitting review of a 150 MW geothermal power facility. The Commission should reject Ormat's argument.

A. Ormat Failed To Contradict The Evidence Showing That North Brawley and East Brawley are One Facility.

Ormat claims that North Brawley and East Brawley are not one facility. Ormat's argument is premised on the following four claims: the Project operation will not be coordinated; the Project powerplants are located 1.75 miles apart; the Projects will not share facilities; and the Projects' permitting and development timing is not concurrent. (See Ormat Br., pp. 7-8.) Ormat's stretch for facts to support its argument that the facilities are separate is unpersuasive. The Committee should reject Ormat's argument because Ormat's claims are irrelevant and are otherwise contradicted by record evidence.

1. The Ormat Development Meets the Commission's Luz Criteria, So It Is Irrelevant Whether North Brawley and East Brawley Will Be Operated as One, Integrated Facility; And The Evidence Shows that They Could Be Operated as One Facility

Ormat argues that North Brawley and East Brawley are not one facility because the Projects will not be operated as a coordinated larger project. (See Ormat Br., p.8.) Ormat's argument is legally irrelevant and factually unsupported. Contrary to Ormat's argument, coordination of multiple facilities is not a dispositive factor for determining aggregation. Consistent with the Luz SEGS Decision, the Commission is not *required* to find that Project operation will be coordinated in order to conclude that aggregation is appropriate. (See, *generally*, Luz SEGS Decision.) Instead, the Commission found that aggregation was appropriate where nominally separate projects were:

1. conceived and planned as a larger project;
2. designed, proposed, installed, and would be operated by one organization;
3. proposed on land owned or leased by that same organization;
4. proposed on contiguous parcels or in a common location; and
5. will, or reasonably could, share facilities, including utility service and road access.

(Luz SEGS Decision at pp. 1-2 *citing id.* at Appendix I (analyzing five separate powerplants, owned by one entity).) The evidence shows that Ormat's development meets all of these criteria. Ormat's argument that the

Projects will not be operated as a coordinated larger project is not a legally dispositive factor in determining aggregation.

Ormat appears to rely on the Chamberlain Opinion in the matter of the Kern Island Generation Project. However, in the Kern Island Cogeneration Project case, the issue before the Commission was whether separate ownership *precluded* a finding that three generation units were one facility for the purpose of section 25500 of the Warren-Alquist Act. (*See* Chamberlain Opinion, p. 4, n. 5.) There the Commission looked at whether the separate ownership precluded aggregation where other factors, such as the coordinated operation of the generation units, showed that the units were one facility for the purpose of the Act. (*See* Chamberlain Opinion, p. 4, n. 5; *id.* at pp. 8-10.) Here, it is undisputed that North Brawley and East Brawley are owned and controlled by one entity.

In addition to coordination not being a dispositive factor, Ormat's claim that the Projects will not be operated as a coordinated larger project is factually unsupported. In particular, evidence shows that East Brawley will, or reasonably could, rely on cooling tower blowdown water from North Brawley during peak heat conditions.² In addition, the record shows that North Brawley and East Brawley will, or reasonably could be, operated from one control room to deliver up to 100 MW to one or more customers. (*See* CURE Br. pp. 15-17, 25-26.) While Ormat's witness, Robert Sullivan, suggested during the evidentiary hearing that the Projects would not be

² *See* Exh. 19, CURE, pp. 26-27.

operated from one control room, Mr. Sullivan immediately admitted that Ormat's practice is to coordinate operation of power facilities from remote locations across the country.³ As such, the evidence shows that North Brawley and East Brawley will or reasonably could share a control room. In sum, the evidence supports a finding that Ormat envisioned a degree of coordinated operation among North Brawley and East Brawley in order to provide reliable and adequate generation to one or more customers.

(*Cf.* Chamberlain Opinion, p. 4, FoF 7, 8; *see id.* p. 9, n. 12.)

2. The Projects Are Not Proposed in Faraway, Uncommon Locations.

Ormat argues that aggregation is inappropriate because the actual powerplants are 1.75 miles apart. Ormat's argument lacks merit. In the Luz case, the Commission concluded that projects located on contiguous parcels, which are separated by utility and access roads should be aggregated. (*See* Luz SEGS Decision, p. 1; *id.*, Appx I, p.3.) Therefore, the Commission should give little weight to Ormat's emphasis that the *powerplants* themselves would be sited 1.75 miles apart.

Contrary to Ormat, the evidence shows that aggregation *is* appropriate here because the generation facilities are physically proximate. (*See* Chamberlain Opinion, p.8. n.10.) The North Brawley and East Brawley powerplants and their respective well fields would be configured as one, contiguous, geothermal development. (CURE Br., p.14) The record also

³ Ormat/Sullivan, RT 263:6-264:2.

shows that, to the degree possible, Ormat endeavored and largely succeeded in siting the Projects on contiguous parcels of land. Ormat's own witness, Robert Sullivan, testified that Ormat was prevented from siting the Projects on adjoining parcels of land due to common and practical barriers to site control, such as individual land-owners' objections.⁴ Mr. Sullivan's testimony reveals that, where possible, Ormat secured leases from private owners, as well as easements from IID and the County to site the Projects adjacent to each other.⁵ The *entire* development is designed, owned, sited and operated or would be operated on land leased or owned by one entity: Ormat. (CURE Br., p. 13.) As such, the evidence shows that aggregation is appropriate.

3. The Projects Will Or Reasonably Could Share Facilities.

Aggregation is appropriate where separate projects share, or *reasonably could share* facilities and all the other Luz factors are met. (See Chamberlain Opinion, p. 8, n. 10; Luz SEGS Decision, pp. 1-2.) Ormat's witness testified at the evidentiary hearing that the Projects will not share facilities. However, the evidence shows that North Brawley and East Brawley will, or reasonably could, share one physical point of transmission interconnection, a single control room, water service and water conveyance infrastructure, as well as road access. (CURE Br., pp. 14-24.) Indeed, Ormat failed to produce any evidence to the contrary. (See CURE Br., pp. 15-16, 17-18, 22-24.)

⁴ See Ormat/Sullivan, RT 258:22-259:16.

⁵ *Ibid*; Exh. 19, CURE, p. 7.

4. Ormat Simultaneously Conceived and Developed Both Projects.

Ormat argues that aggregation is inappropriate because there is “nearly a four-year gap” between the development and construction of the two Projects. (Ormat Br., p. 8.) Ormat’s effort to characterize development timing as far apart is unconvincing and overbroad.

First, while in the Luz SEGS case the applications for the five SEGS units were filed concurrently, the timing of construction schedules of the different generation facilities is not itself determinative for the purpose of aggregation. (See Chamberlain Opinion, p. 8, n. 10; see also Luz SEGS Decision, Appx. I, p. 2.) Therefore, even if Ormat’s claim were true, which it is not, the fact that the Projects did not proceed on simultaneous permitting and development schedules does not preclude aggregation.

Second, Ormat’s claim that there was a four-year gap between the permitting and development of North Brawley and East Brawley is simply not true. Ormat planned the development of the two Projects simultaneously as early as June 2007 when Ormat secured a potential buyer for the output from **both** North Brawley and East Brawley.⁶ In December 2007, Ormat began securing transmission on IID’s network for **both** Projects.⁷ On June 26, 2007, Ormat filed a conditional use permit (“CUP”) application with

⁶ See Conf. Exh. 203, Ormat, North Brawley PPA-Redacted, Exh. 1 CURE, Attach. C., p. 13.

⁷ See Exh. 201, Ormat, North Brawley System Impact Study, December 11, 2007, p. 1. (excluding appendices); Exh. 20, CURE, North Brawley System Impact Study, revised January 8, 2009, Appendix B, Fig.2 “System One-Line Diagram at Point of Interconnection” (including appendices); Ormat/Sullivan, RT 252:14-25.

Imperial County for construction and operation of the North Brawley Project.⁸ On August 8, 2008, just over one year later, Ormat filed a CUP application with the County for construction and operation of the East Brawley Project.⁹ Ormat was constructing North Brawley when the County suspended review of Ormat's CUP application for East Brawley; hence the reason for the "gap."¹⁰ Therefore, Ormat's argument that the Projects have "very different" permitting timeframes is contradicted by the record.

During the evidentiary hearing, Ormat was unable to contradict CURE's evidence that North Brawley and East Brawley are one facility. (*See* CURE Br., pp. 8-24.) In fact, Ormat's own evidence supports the conclusion that aggregation is appropriate in this case. (*See* CURE Br., pp. 9-24; *id.* at n. 12-66.) For example, Ormat's Answer supports CURE's allegation that North Brawley and East Brawley will, or reasonably could, share water service. (*See* CURE BR., pp.19-20, 22; Exh. 200, App. G.) Ormat's witness Robert Sullivan also testified that the Projects were conceived simultaneously as a larger Project and would share one point of interconnection with IID's system.¹¹ (*See* CURE Br. pp. 9-13.) In sum, Ormat fails to identify a single factor that counsels against aggregation in this case.

CURE showed that Ormat conceived of and planned North Brawley and East Brawley as one larger project and that the Projects are configured

⁸ *See* Exh. 200, Ormat, App. A.

⁹ *Ibid.*

¹⁰ *See* Exh. 12, CURE.

¹¹ *See* Ormat/Sullivan, RT 252:14-253:25, 253-12-254:1, 262:8-15.

and will function as an integrated, geothermal power facility. It is undisputed that North Brawley and East Brawley are owned and controlled by one entity, and all the other Luz SEGS factors are met. (See Luz SEGS Decision, pp. 1-2; *id.* at Appendix I.) As such, the Commission has present, mandatory and exclusive jurisdiction over Ormat’s Brawley Geothermal Development.

B. The Commission Has Legally Adequate Evidence to Find That North Brawley and East Brawley are One Facility.

Ormat attempts to dissuade the Commission from finding that the Projects are one facility by arguing that the evidence in the record is not the type of evidence upon which the Commission may legally rely. (See Ormat Br., p. 2; *see id.* at p. 9.) Ormat’s argument should be rejected. Not only is the evidentiary standard broad, but CURE relied on a wealth of evidence comprised of documents authored by Ormat and the County and their representatives and testimony to explain and supplement that direct evidence in the record.

Pursuant to the California Administrative Procedure Act and the Commission’s regulations, “any relevant noncumulative evidence” is admissible in Commission adjudicative actions to show the existence of nonexistence of an essential claim or defense “. . . if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.” (See Cal. Gov. Code § 11513 subd. (c); *Mast v. State Bd.* (1956) 139 Cal.App.2d 78, 85; Cal. Code Regs., tit. 20, § 1212 subd. (a).) CURE relied on

evidence admissible pursuant to the APA and the Commission's regulations to prove that the facilities must be aggregated.

Each and every one of CURE's allegations is supported by evidence that is clearly relevant to Ormat's plan of development for North Brawley and East Brawley and is also the type of "evidence on which responsible persons are accustomed to rely in the conduct of serious affairs." (See Cal. Gov. Code § 11513 subd. (c); *Mast v. State Bd.* (1956) 139 Cal.App.2d 78, 85; Cal. Code Regs., tit. 20, § 1212 subd. (a).) Moreover, the vast majority of CURE's evidence comprises documents authored by Ormat and the County and their representatives. Such evidence is admissible in civil proceedings and the Commission may rely on this evidence, alone, to support the finding that North Brawley and East Brawley are one facility. (See Evid. Code § 1220; see also *Szmciarz v. State Personnel Bd.* (1978) 79 Cal.App.3d 904, 913-14.)

In particular, CURE's allegation that the Projects were conceived and planned as a larger project is supported by the following documents:

1. California Public Utilities Commission Resolution E-4126 approving Southern California Edison's ("SCE") power purchase agreement with Ormat;^{12,13}
2. Ormat's May 12, 2008 Request for Amendment to the North Brawley Conditional Use Permit;¹⁴

¹² Exh. 1, CURE, Attach. C.

¹³ The CPUC Resolution may be used by the Committee to supplement and explain other evidence in the record. See Cal. Code Regs., tit. 20, § 1212 subd. (d); see also *Ring v. Smith* (1970) 85 Cal.Rptr 197, 204.

¹⁴ Exh. 33, CURE.

3. A May 28, 2009 letter from the County approving Ormat's Request for Amendment;¹⁵
4. Ormat's January 29, 2010 Updated Project Description for the East Brawley Geothermal Development Project;¹⁶
5. Ormat's August 2009 Request for Amendment to the East Brawley Conditional Use Permit;¹⁷
6. The North Brawley System Impact Study, revised on January 8, 2009;¹⁸ and
7. The Facility Study Agreement Between Imperial Irrigation District and Ormat Nevada, Inc.¹⁹

CURE's allegation that the Projects were designed, proposed, installed, and would be operated by one company is supported by the following documents:

1. Ormat's January 29, 2010 Updated Project Description for the East Brawley Geothermal Development Project;²⁰
2. Ormat's August 2009 Request for Amendment to the East Brawley Conditional Use Permit;²¹ and
3. The Draft Environmental Impact Report for the East Brawley Geothermal Development Project, prepared for Imperial County.²²

CURE's allegation that the Projects are proposed on contiguous parcels or in a common location is supported by the following documents:

1. CURE's Verified Complaint and Petition for Investigation;²³
2. Ormat's January 29, 2010 Updated Project Description for the East Brawley Geothermal Development Project;²⁴

¹⁵ Exh. 7, CURE.

¹⁶ Exh. 19, CURE.

¹⁷ Exh. 5, CURE, Exh. 32, CURE.

¹⁸ Exh. 29, CURE.

¹⁹ Exh. 26, CURE.

²⁰ Exh. 19, CURE.

²¹ Exh. 32, CURE.

²² Exh. 47, CURE.

²³ Exh. 1, CURE.

3. Ormat's August 2009 Request for Amendment to the East Brawley Conditional Use Permit;²⁵ and
4. The Draft Environmental Impact Report for the East Brawley Geothermal Development Project, prepared for Imperial County.²⁶

Finally, CURE's allegation that the Projects will or reasonably could share facilities, and in particular transmission and water service facilities, is supported by the following documents:

1. CURE's Verified Complaint and Petition for Investigation;²⁷
2. Ormat's January 29, 2010 Updated Project Description for the East Brawley Geothermal Development Project;²⁸
3. The Draft Environmental Impact Report for the East Brawley Geothermal Development Project, prepared for Imperial County;²⁹
4. Ormat's Noise Impact Assessment for East Brawley;³⁰
5. The East Brawley Geothermal Development Project SB 610 Water Supply Agreement, prepared for Ormat by Ormat's consultants;³¹
6. The North Brawley System Impact Study, revised on January 8, 2009;³²
7. A letter from Jurg Heuberger, Imperial County Planning & Development Director to Charlene Wardlow, Ormat's Director of Project Development, dated October 30, 2008;³³

²⁴ Exh. 19, CURE.

²⁵ Exh. 32, CURE.

²⁶ Exh. 47, CURE.

²⁷ Exh. 1, CURE.

²⁸ Exh. 19, CURE.

²⁹ Exh. 47, CURE.

³⁰ Exh. 13, CURE.

³¹ Exh. 28, CURE.

³² Exh. 29, CURE.

³³ Exh. 12, CURE.

8. The Memorandum of Understanding executed by Ormat's Vice President of Business Development for North America, Robert Sullivan and the City of Brawley, on October 19, 2009;³⁴
9. Ormat's Brawley Wastewater Treatment Plant Tertiary Treatment Facility Conceptual Design Report;³⁵ and
10. A letter from the City of Brawley to CURE, dated April 14, 2011, producing public records regarding the East Brawley Project.³⁶

This significant body of evidence was admitted into the record without objection from Ormat³⁷ and is consistent with testimony given by Ormat's own witnesses. (*See* CURE Br., pp. 9-13, 15-18.) Accordingly, the Committee should reject Ormat's argument that a finding in favor of CURE is an abuse of discretion. The Committee has more than enough legally sufficient evidence to find that North Brawley and East Brawley are one facility for the purpose of section 25500 of the Warren-Alquist Act. Indeed, the record supports no other finding.

III. ORMAT PERMITTED AND BUILT THE NORTH BRAWLEY PROJECT ILLEGALLY AND BOTH NORTH BRAWLEY AND EAST BRAWLEY ARE SUBJECT TO THE COMMISSION'S EXCLUSIVE MANDATORY JURISDICTION

CURE showed as a matter of law and by the preponderance of evidence that the existing North Brawley powerplant, as permitted *and* built, exceeds the Commission's 50 MW jurisdictional threshold. (*See* CURE Br. pp. 24-29.) CURE also showed as a matter of law and by the preponderance of evidence that the proposed East Brawley Project exceeds the Commission's 50 MW

³⁴ Exh. 21, CURE.

³⁵ Exh. 22, CURE.

³⁶ Exh. 20, CURE.

³⁷ Ormat/Pottenger, RT 34:22-35:4.

jurisdictional threshold. (*See* CURE Br., pp. 25-26.) In response to CURE’s evidence, Ormat makes four claims that are either incorrect as a matter of law, irrelevant or factually wrong.

First, Ormat argues that, if calculated according to the Commission’s regulations, the generating capacity of North Brawley and East Brawley is 49.5 MW each. (Ormat Br., p. 3.) Second, Ormat attempts to show that North Brawley and East Brawley were each “designed” to produce no more than 49.5 MW.³⁸ (*Id.* at pp. 3-4). Third, Ormat attempts to show that due to a plethora of engineering, transmission, resource, permitting, and economic constraints, North Brawley and East Brawley are unable to operate to their full generating capacity of 50 MW or more. (*Ibid.*) Fourth, Ormat asserts that CURE’s witnesses could not testify to the generating capacity of North Brawley and East Brawley. (*Id.* at pp. 4-5.) Not one of these assertions helps Ormat. Ormat fails to apply the Commission’s mandatory method for determining generating capacity, Ormat’s evidence is irrelevant to the Commission’s jurisdictional determination, and Ormat’s characterization of CURE’s witnesses’ testimony is false.

A. Contrary to Ormat, If Calculated in Accordance with the Commission’s Regulations, North Brawley and East Brawley Each Have a Generating Capacity of 50 MW or More.

Ormat claims to have calculated the generating capacity of North Brawley and East Brawley according to the Commission’s regulations.

³⁸ If that really was the case, it is difficult to understand why Ormat sought permits for two, **49.9** MW Projects.

(Ormat Br., p. 3.) But, as explained in CURE’s Opening Brief, Ormat failed to apply the Commission’s mandatory method for jurisdictional determinations by assuming a limit on brine flow. (See CURE Br., pp. 25-26, 28-29.) Moreover, Mr. Marcus showed that the generating capacity of North Brawley and East Brawley would each exceed the Commission’s 50 MW jurisdictional threshold *even when using Ormat’s legally incorrect method*.³⁹ The Committee cannot rely on Ormat’s claims that the net generating capacity of North Brawley and East Brawley is 49.5 MW each because Ormat’s calculation is legally faulty *and* erroneous. (See Cal. Code Regs. § 2001.)

B. Ormat Did Not Show That North Brawley and East Brawley Were Designed to Generate No More than 49.5 MW

Ormat claims that even if North Brawley and East Brawley have a generating capacity of 50 MW or more, each Project was “specifically designed to be 49.5 net megawatt facilities.” (Ormat Br. pp. 3-4.) However, Ormat’s claim that the North Brawley and East Brawley powerplants are designed so as to limit their output is not supported by the record.

Mr. Sullivan’s testimony does not support Ormat’s claim. In particular,

Mr. Sullivan’s states:

Other issues. The OEC [Ormat Energy Converter] was treated as an off the shelf type of component looking only at the generator for capacity. It's not off the shelf. *We optimize the OEC based on the resource given to us.*

³⁹ CURE/Marcus, RT 116:1-119:21; 126:24-133:7.

(*See Ormat Br.*, p. 4, n. 8 (emphasis added).) This virtually incomprehensible statement is not conclusive evidence of anything, and is contradicted by Mr. Sullivan own testimony.

In particular, Mr. Sullivan also testified that Ormat did not know the nature of the resource until after Ormat proposed the North Brawley project.⁴⁰ As such, Ormat could not have designed the North Brawley OECs based upon the resource. The evidence also shows that North Brawley has been producing more electricity per unit of heat input than it was designed for.⁴¹ As such, the record supports a finding that Ormat was incapable of limiting North Brawley's generating capacity.

Ormat's claim that the East Brawley powerplant has been designed so as to limit its generating capacity to 49.5 MW is also contradicted by the record. In particular, Ormat states that East Brawley has neither been designed, nor built, and Ormat does not yet know the resource constraints at the East Brawley site.⁴² As such, Ormat could not have limited East Brawley's generating capacity by design.

⁴⁰ *See Ormat/Sullivan*, RT 237:18-238:8; *Ormat/Marcus*, RT 177:25-178:14.

⁴¹ *See Ormat/Sullivan*, RT 237:18-238:8; *CURE/Marcus*, RT 177:25-178:14.

⁴² *See CURE/Marcus*, RT 121:23-123:12; *Ormat/Sullivan*, RT 230:16-231:14; *Ormat/Buchanan*, RT 271:13-271:25 ("I don't know what the capacity of each well was . . . until the wells are drilled it's not possible to answer this.").

C. Ormat Failed to Show That Engineering, Transmission, Resource, Cabling, Permitting, and Economic Constraints Limit North Brawley’s and East Brawley’s Generating Capacity to Below 50 MW and Urges the Application of Legally Irrelevant Factors in Calculating Generating Capacity.

Ormat fails to rebut CURE’s evidence that North Brawley and East Brawley can each generate 50 MW or more with an increased rate of brine flow. (*See infra*, § III.D.) But Ormat claims and attempted to show that engineering, transmission, resource, cabling, permitting and economic constraints prevent Ormat from increasing the rate of brine flow above Ormat’s current assumptions. (Ormat Br., pp. 3-4.) Ormat’s claim lacks merit. The litany of constraints cited by Ormat are not legally relevant to the Commission’s jurisdictional determination and are further contradicted by Ormat’s own testimony. Therefore, the Committee should reject Ormat’s attempt to avoid Commission jurisdiction.

1. The Record Does Not Support a Finding That Project Engineering and Resource Characteristics Limit North Brawley and East Brawley’s Generating Capacity

The Commission should give no weight to Ormat’s claims that engineering and resource characteristics preclude increasing the brine flow rate for the North Brawley and East Brawley facilities. Ormat’s claims are irrelevant to the Commission’s determination and are further unsupported by the record. (*See Cal. Code Regs. §§ 2001, 2003.*)

In particular, with respect to engineering constraints, Ormat cites to Mr. Sullivan’s testimony that the pumping flow rate cannot be increased

above Ormat’s design point because of corrosion and wear on pipes. (Ormat Br., p. 4, n. 10.) However, Section 2003 is unambiguous; in making a jurisdictional determination, the Commission considers a plant’s generating capacity based on the capability of the proposed hardware, not system wear and tear. (Cal. Code Regs. §§ 2001, 2003 subd. (a)-(b)(1); *see also* Cal. Code Regs. 2003 subd. (c).) Consistent with the Commission’s regulations, Staff assumes “new and clean conditions (typical of new equipment) in making a maximum gross rating determination.”⁴³ As such, future wear and tear is not relevant to the Commission’s jurisdictional determination.

Even if the Commission could consider system wear and tear in making a jurisdictional determination – which it cannot – Mr. Sullivan failed to rebut Mr. Marcus and Mr. Koppe’s conclusion that North Brawley and East Brawley each can generate 50 MW or more. Specifically, Mr. Sullivan testified that, a geothermal piping system is limited in how much flow it can take due to pipe corrosion and wear on the pumping system.⁴⁴ With respect to North Brawley, Mr. Sullivan testified that “increasing flow five percent with no consideration to the piping system is poor engineering.”⁴⁵ However, CURE’s experts Mr. Marcus and Mr. Koppe have shown that only a 3% increase in the flow rate would allow North Brawley to generate more than

⁴³ Exh. 50, CURE, p. 5; Exh. 50, CURE, p. 5.

⁴⁴ Ormat/Sullivan, RT 236:4-6, 239:10-240:1.

⁴⁵ Ormat/Sullivan, RT 236:4-6.

50 MW.⁴⁶ As such, Ormat fails to show that piping is a constraint for North Brawley.

The piping system for East Brawley has not been designed and, according to Ormat, will be optimized to meet resource constraints.⁴⁷ As such, there is no evidence that piping and resource characteristics will constrain East Brawley's generating capacity.

Finally, Ormat's own witness testified that piping is not a hard constraint. In particular, as explained by Ormat's witness Mr. Donald Campbell, piping system wear is not a hard constraint:

[P]umps is one thing that burns out very rapidly into your thermal services. As Bob noted, by erosion and corrosion. And so we design for an average life, not -- so they are over-designed if you assume perfect operations as new. ***But we still wind up replacing them very frequently.***⁴⁸

In sum, the record contradicts Ormat's irrelevant and unsupported claim that engineering and resource constraints limit North Brawley and East Brawley's generating capacity.

2. The Evidence Does Not Support a Finding that Transmission Limits North Brawley and East Brawley's Generating Capacity

Transmission constraints are not legally relevant to the Committee's jurisdictional determination of **generating** capacity. (See Cal. Code Regs. §§ 2001, 2003.) Thus, Ormat's discussion of transmission limits has no

⁴⁶ CURE/Marcus, RT 115:19-22; CURE/Koppe, RT 156:25- 158:1.

⁴⁷ See CURE/Marcus, RT, 121:23-123:12; see Ormat/Sullivan, RT 237:17-238:16; Ormat/Sullivan, p. 229:20-:230:15.

⁴⁸ Ormat/Campbell, RT 250:16-251:1 (emphasis added).

bearing on the Commission's authority over these plants. However, even if the Committee could consider transmission constraints as a limit on North Brawley and East Brawley's generating capacity, the record does not support Ormat's claim that transmission limits North Brawley and East Brawley to 49.5 MW. In particular, Ormat cites to the following statement by

Mr. Sullivan:

There's significant other constraints [*sic*] that we rely upon when we design a power plant. One of those is transmission. Our transmission is limited for North Brawley **at 50 megawatts. Actually 49.9.**

(*See Ormat Br.*, p. 4 *citing* RT, 235:1 (emphasis added).) Mr. Sullivan's statement does not support Ormat's claim that transmission is limited to **49.5 MW**. Moreover, Mr. Sullivan's statement that transmission imposes **any** constraint on generating capacity is entirely unsupported. The North Brawley interconnection agreement with IID is conspicuously absent from the record, and Ormat has provided no document that could verify Mr. Sullivan's claim.⁴⁹ According to Mr. Sullivan, East Brawley does not yet even have an interconnection agreement.⁵⁰

3. The Record Does Not Support a Finding That Cabling Is the Critical Constraint On North Brawley and East Brawley's Generating Capacity

Ormat argues that cabling constrains the generating capacity of North Brawley and East Brawley. (Ormat Br. p. 4.) However, Ormat fails to provide any evidence to support the conclusion that the auxiliary loads for

⁴⁹ *See generally*, Exh. 200-206, Ormat; *see* Exh. 26, CURE, p. 1.

⁵⁰ Ormat/Sullivan, RT 233:24-234:2.

the facilities' cabling system would increase so much as to reduce North Brawley and East Brawley's generating capacity below 50 MW.⁵¹ The mere fact that Ormat excluded the associated load for the cabling system from its own heat and mass balance calculations for both North Brawley and East Brawley suggests that, consistent with Mr. Marcus' testimony, these plant components would have a marginal, if any, impact on plant load.⁵²

4. The Record Does Not Support a Finding That Project Permits Limit North Brawley's and East Brawley's Generating Capacity

Ormat argues that "permit limitations" limit the generating capacity of the North Brawley and East Brawley powerplants. (Ormat Br., p. 4.) This claim is irrelevant to the Commission's jurisdictional determinations, is unsupported, and should be disregarded. East Brawley has neither been designed, permitted, nor built.⁵³ Mr. Sullivan testified on several occasions that East Brawley does not have an interconnection agreement or a power purchase agreement.⁵⁴ Obviously, there are *no* permitting constraints on East Brawley's operation.

Ormat's witnesses also fail to explain how North Brawley's conditional use permit and air permit could possibly prevent Ormat from increasing brine flow by 3%. The simple fact is that North Brawley can, according to Ormat, produce 49.5 MW from five OECs (generators), but is permitted for

⁵¹ See generally, Exh. 203 and 204, Ormat.

⁵² See CURE/Marcus, pp. 181:16-182:19; see also 183:14-185:22.

⁵³ See CURE/Marcus, RT 121:23-123:12; Ormat/Sullivan, RT 230:16-231:14.

⁵⁴ Ormat/Sullivan, RT 233:24-234:2; 232:17-232:20, 252:8-13.

six.⁵⁵ So simply adding a sixth OEC and operating it identically to the planned operation of the existing five would increase generating brine flow by 20 percent. As such, both permits authorize Ormat to pump 15% more brine than is currently pumped at North Brawley in order to generate 49.9 MW.⁵⁶

5. The Record Does Not Support a Finding That Project Economics Constrain North Brawley's and East Brawley's Generating Capacity

Ormat's claim that economic considerations constrain its ability to increase the brine flow rate at the North Brawley and the East Brawley sites is legally irrelevant to a jurisdictional determination that must be based on physical capacity. (*See* Ormat Br., p. 4.) In particular, Mr. Buchanan testified that the cost of drilling another well, taken together with diminishing returns on generating capacity, would pose an economic constraint to increasing brine flow at the North Brawley and East Brawley site.⁵⁷ The Commission should give little, if any, weight to Mr. Buchanan's testimony because a project proponent's economic disincentives cannot be considered by the Commission in making a jurisdictional determination. (*See* Cal. Code Regs. §§ 2001, 2003(a)-(c).) Moreover, there is absolutely no evidence that Ormat would have to drill another well to increase flow at the North Brawley and East Brawley sites. On the contrary, the record shows

⁵⁵ *See* Ormat/Sullivan, RT 238:5-16.

⁵⁶ *See* Exh. Ormat 200, Appx. p. 7; Exh. 34 CURE, Attach. 1, p. 2. *cf.*

⁵⁷ Ormat/Buchanan, RT 246:13-246:25.

that the resource constraints at North Brawley “have been primarily limited by injection capacity” – not brine quantity.⁵⁸

As explained by Ormat’s witness, Donald Campbell, Ormat has not yet succeeded in achieving the needed injection capacity for the North Brawley project by how much fluid it could produce. We can't run it through the power plant and inject it.⁵⁹

Mr. Campbell anticipates that the same “resource constraints” will be encountered at the East Brawley site, and that Ormat is working on solving this problem.⁶⁰ Further, as testified by Mr. Sullivan, the temperature of the brine at the North Brawley site exceeded Ormat’s expectations, such that generating capacity could be maintained at 49.5 MW using only five generators and, therefore, less brine than initially assumed.⁶¹

D. Ormat’s Claim That CURE’s Witnesses Did Not Provide Testimony In Support of CURE’s Jurisdictional Allegation Is False.

Ormat claims that neither of CURE’s witnesses could testify that North Brawley or East Brawley are capable of producing 50 MW or more. (Ormat Br., p. 5.) Ormat’s repeated mischaracterization of the record in this proceeding is shocking. Ormat has twice represented to the Committee that Mr. Marcus and Mr. Koppe could not testify to the generating capacity of the North Brawley and East Brawley Projects. (See Ormat Br., p. 5; Ormat’s

⁵⁸ Ormat/Campbell, RT 247:21-249:24.

⁵⁹ Ormat/Campbell, RT 247:16-20.

⁶⁰ Ormat/Campbell, RT 247:11-249:24.

⁶¹ See Ormat/Sullivan, RT 238:5-16.

September 30, 2011 Letter Requesting Expedited Ruling on the MTD.) This claim is false.

Mr. Marcus testified that the Projects are capable of producing 50 MW or more each:

MR. ELLISON: Okay. And if you were to increase the brine flow, so that that was not a limiting condition, do you know that all of the surface facilities, pumps, wiring, cabling, OECs everything, the plant as a whole, can you testify under oath that that project can produce more than 49.5 megawatts?

MR. MARCUS: No.

MR. ELLISON: And lastly, with respect – this question is directed to both Mr. Koppe and Mr. Marcus.

MR. MARCUS: Let me clarify, with respect to all the equipment that has been shown as evidence that it can produce 49.5 megawatts, then ***I believe, and I will testify and have testified here today, it could produce more than 49.5 and, in fact, more than 50.*** Whether there is something that is not shown in the documents that justify 49.5, but that if examined would justify 49.5, but would not justify 50.1, I don't know.⁶²

Ormat's claim that Mr. Koppe is not familiar with the Commission's method for calculating generating capacity and that his testimony is irrelevant is also contradicted by the evidence. (*See Ormat Br.*, p. 5.) The record shows that Mr. Koppe applied the Commission's method for calculating generating capacity and that Mr. Koppe's expert opinions and independent analysis are based upon Ormat's calculations, which include all

⁶² Ormat/Marcus, RT 185:6-22 (emphasis added).

the data necessary to reach a jurisdictional determination pursuant to the Commission's regulations.⁶³

Applying the Commission's regulations, Mr. Marcus showed that North Brawley and East Brawley, as proposed and permitted, each have a generating capacity of 59 MW or more.⁶⁴ With respect to the existing North Brawley powerplant, Mr. Marcus and Mr. Koppe showed that with just a 3% increase above Ormat's assumed brine flow rate, North Brawley "as designed, would have been physically capable of producing . . . 50.36 megawatts" in generating capacity.⁶⁵ Even if Ormat were to change the East Brawley Project design to include 5 instead of 6 Ormat Energy Converters (OECs) – which Ormat has not done⁶⁶ – Mr. Marcus showed that the East Brawley Project, would produce 52.46 MW with just a 6% increase above Ormat's assumed brine flow rate.⁶⁷

Critically, Ormat's witnesses *were unable to contradict* CURE's evidence that increasing the brine flow rate to North Brawley and East Brawley would also increase the generating capacity of each Project.⁶⁸ Ormat's witnesses conspicuously failed to bring into question Mr. Marcus and Mr. Koppe's conclusion that even a marginal increase in brine flow would be sufficient to bring North Brawley and East Brawley beyond the Commission's

⁶³ See CURE/Koppe, RT 196:12-201:21, 145:15-146:10, 150:2-158:17.

⁶⁴ See CURE/Marcus, RT 104:3-105:10, 120:20-121:3.

⁶⁵ CURE/Marcus, RT 115:19-22; CURE/Koppe, RT 156:25- 158:1.

⁶⁶ See Ormat/Wardlow, RT 281:2-7; *id.* at 280:12-281:1.

⁶⁷ See CURE/Marcus, RT 124:25-125:2; CURE/Koppe, RT 155:25-158:1.

⁶⁸ See Ormat/Buchanan, RT 244:8-245:8 (admitting a positive relationship between increases in fuel input and generating capacity up to an "efficiency point.")

jurisdictional threshold.⁶⁹ Using Ormat's data, Mr. Marcus and Mr. Koppe showed that the generating capacity of North Brawley and East Brawley would each exceed 50 MW, if a one percent increase in fuel input resulted in anything more than a half percent increase in energy output.⁷⁰ In sum, Ormat failed to rebut CURE's showing that North Brawley and East Brawley each have a generating capacity of 50 MW or more.

IV. ORMAT AND THE COUNTY'S MOTION TO DISMISS THE COMPLAINT SHOULD BE DENIED

The Commission should deny Ormat and the County's third attempt to dismiss CURE's Complaint. Ormat merely repeats its earlier motion to dismiss the Complaint on the ground that it does not comply with the Commission's format and content requirements. However, Ormat still has not provided any valid legal argument to support its motion. Ormat and the County also again fail to raise a credible laches defense because laches is inapplicable and because Ormat and the County both fail to show unreasonable delay by CURE or prejudice to them.

Moreover, even if the Committee dismisses CURE's Complaint, the Commission cannot waive its jurisdiction. The evidence clearly shows that the Commission has jurisdiction over Ormat's Brawley Geothermal Development, the existing North Brawley facility, and the proposed East Brawley facility.

⁶⁹ *See ibid.*

⁷⁰ CURE/Marcus, RT 113:9-115:22.

A. The Complaint Meets the Commission’s Format and Content Requirements.

Ormat for the third time moves to dismiss CURE’s Complaint for failing to comply with the format and content requirements of section 1231 of the Commission’s regulations. (*See* Ormat Br. p. 12.) This time, the Committee should deny Ormat’s Motion with prejudice. The Committee has twice determined that CURE alleged facts essential to its claims and that the Complaint was properly verified.⁷¹ Ormat fails to present any new facts or legal analysis to justify a different result.

B. Ormat and the County Fail to Raise a Credible Laches Defense.

Both Ormat and the County move to dismiss the Complaint on the ground that it is time-barred pursuant to the doctrine of laches. (*See* Ormat Br., pp. 10-11; *see, generally*, Intervenor County of Imperial’s Joinder to Opening Brief of Ormat Nevada, Inc.) The Commission should deny Ormat and the County’s Motion because laches is inapplicable to CURE’s Complaint. (*See Hope Rehabilitation Services v. Department of Rehabilitation* (1989) 212 Cal.App.3d 938, 948 (laches applies to **administrative action**); *see also Fountain Valley Regional Hospital and Medical Center v. Bonta* (1999) 75 Cal.App.4th 316, 321.) Laches also does not apply because this case involves a continuing violation. (*See Westly v. Cal. Public Emp. Retirement Sys. Bd.* (2003) 105 Cal.App.4th 1095 (citing *California Trout v. State Water Resources Board* (1989) 207 Cal.App.3d 585, 631; *FPI Development*, 231 Cal.App.3d at

⁷¹ *See* 9/19/11, RT 8:9-19; 9/26/11, RT 218:1-8.

384.) However, even if laches were an available defense, the Committee must deny Ormat and the County's Motion because both parties fail to show unreasonable delay on CURE's part, or prejudice to them.

The party arguing in favor of a finding of laches has the burden of proof on the laches issue. (*Fountain Valley Regional Hospital and Medical Center v. Bonta* (1999) 75 Cal.App.4th at 323 -24.) Ormat and the County are required to demonstrate unreasonable delay and the resulting prejudice by evidence in the record. (*See Fountain Valley Regional Hospital and Medical Center v. Bonta* (1999) 75 Cal.App.4th at 323 -24; *see also Hope Rehabilitation Services v. Department of Rehabilitation*, 212 Cal.App.3d at 943.) Ormat and the County failed to meet their initial burden.

1. CURE Did Not Unreasonably Delay Action.

Ormat argues that CURE unreasonably delayed action. (Ormat Br., p. 11.) Ormat's claim has no merit. The facts essential to CURE's Complaint became known to CURE in March 2011, at the time the County issued the Draft Environmental Impact Report for the East Brawley Project for public review.⁷² CURE immediately commenced its investigation,⁷³ and submitted the Complaint to the Commission just **three months later**, on June 28, 2011.⁷⁴ CURE did not delay action.

⁷² See Exh. 47, CURE, p. 1.

⁷³ See Exh. 3, CURE (County Public Records Act response, dated April, 2011); Exh. 20, CURE (City of Brawley Public Records Act response, dated April, 2011); Exh. 25, CURE (IID Public Records Act Response, dated April 21, 2011); Exh. 31, CURE (Imperial County Air Pollution Control District, Public Records Act response, dated March 30, 2011.)

⁷⁴ See Exh. 1, CURE p. 1.

Ormat argues that North Brawley was approved almost four years ago, but fails to present any evidence to support a finding that CURE had knowledge of the North Brawley Project when it was approved. (Ormat Br., p.11.) Ormat also argues that CURE has been “aware” of the East Brawley Project since at least August 2009. (Ormat Br. p. 11.) Neither Ormat nor the County produced evidence to show the extent of CURE’s knowledge of the facts essential to CURE’s claims in August 2009. The Committee must deny the Motion because Ormat and the County fail to show any unreasonable delay.

2. Ormat Failed to Show Prejudice to Ormat as Result of a Favorable Decision on CURE’s Complaint.

Ormat argues that it “reasonably relied” on the Commission’s regulations for determining the generating capacity of powerplants when it permitted the North Brawley Project. (Ormat Br., p. 11.) The Commission should reject this bold claim because Ormat fails to show that its silent “reliance” on the Commission’s regulations was reasonable. (*See Hope Rehabilitation Services v. Department of Rehabilitation* (1989) 212 Cal.App.3d 938, 948.) First, Ormat did not avail itself of the Commission’s process for an expedited jurisdictional determination when it proposed the North Brawley and the East Brawley Projects. (*See* Cal. Code Regs., tit. 20, § 2010; *see also, id.* at § 1233 subd. (c).) Second, at no time did Ormat seek an informal jurisdictional determination from the Commission Staff.⁷⁵ Third,

⁷⁵ *See* Ormat/O’Brien, RT 309:9-310:4.

Ormat's claim that the County reviewed the conditional use permit application for North Brawley and confirmed that the project was under 50 megawatts is unsupported. (*See* Ormat Br., p. 11.) Neither Ormat nor the County produced evidence of the County's "jurisdictional review," or the method that was used by the County in making a jurisdictional determination. Moreover, Ormat's own calculations show that North Brawley as permitted and approved has a generating capacity of 59 MW.⁷⁶

Finally, Ormat's claim that its reliance was reasonable because the Commission had "notice" of North Brawley does not help Ormat, because the evidence is inconclusive. (Ormat Br., p. 11, n. 40.) The record is devoid of information regarding Ormat's early communications with the Commission. Thus, there is no evidence from which to conclude that Ormat could have reasonably assumed that North Brawley was not, in fact, jurisdictional. (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 483.) The opposite could just as easily be true.

3. The County Failed to Show Prejudice to the County as a Result of a Favorable Decision on CURE's Complaint.

The County's claim of prejudice suffers from the same legal and factual deficiencies as Ormat's. In particular, the County argues that it reviewed the North Brawley permit and confirmed that the project was under 50 MW. (County Br., p. 2.) However, the County provided no documentation to support this claim. The County's conclusion that North Brawley, as

⁷⁶ *See* CURE/Marcus, RT 104:3-105:10, 120:20-121:3.

proposed, had a generating of less than 50 MW contradicts Ormat's own calculations. In fact, the evidence relied upon by CURE, Ormat, and Staff shows that the County under-calculated by 9 MW.⁷⁷

Remarkably, the County also attempts to show prejudice on the ground that a favorable determination on CURE's Complaint would "make it very difficult for the County to develop the [sic] its significant natural and indigenous resources." (County Br., p. 2.) The County's plea is unpersuasive, to say the least. The County's authority to permit North Brawley and East Brawley is preempted by State law. (See Pub. Resources Code § 25500.) Although pursuant to the Warren-Alquist Act the County could have petitioned the Commission for delegation of the Commission's siting authority, the County has not even done that. (See Pub. Resources Code § 25540.3.)

In sum, the County has not demonstrated legally or factually, that its assumption that North Brawley and East Brawley were subject to the Commission's jurisdiction was reasonable. (See *Hope Rehabilitation Services v. Department of Rehabilitation* (1989) 212 Cal.App.3d 938, 948.) The Committee should reject the County's claim of prejudice.

⁷⁷ See CURE/Marcus, RT 104:3-105:10, 120:20-121:3.

C. Even if the Commission Grants Ormat’s Motion to Dismiss, the Commission Has Present, Exclusive and Mandatory Jurisdiction Over Ormat’s Brawley Geothermal Development

“As a matter of law, subject matter jurisdiction either exists or it does not exist.” (Luz SEGS Decision, p.4.) “The Commission can neither waive it if it does exist, nor create it by stipulation if it does not.” (*Ibid. citing Marin Municipal Water District v. North Coast Water Co.* (1918) 178 Cal. 324.) The record in this proceeding shows that the Commission has present, mandatory, and exclusive statutory authority over Ormat’s Brawley Geothermal Development site, Ormat’s proposed East Brawley Project site, and the existing North Brawley site and facility. Thus, even if the Commission were to dismiss CURE’s Complaint, State law compels the Commission to assert its authority and ensure that Ormat’s Brawley Geothermal Development complies with State law.

V. CONCLUSION

The record in this proceeding supports only one finding: the Commission has present, exclusive, mandatory statutory authority over Ormat’s Brawley Geothermal Development, Ormat’s existing North Brawley facility, and Ormat’s proposed East Brawley facility. The Committee should deny Ormat’s and the County’s motion to dismiss CURE’s Complaint because the motion lacks merit. CURE’s Complaint meets all the requirements of the Commission’s Rules and Regulations and was timely brought. And even if Ormat’s and the County’s motion were granted, the record shows that the

Commission has jurisdiction and is required to assert its jurisdiction pursuant to section 25500 of the Warren Alquist Act.

Dated: October 19, 2011

Respectfully submitted,

/s/

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DECLARATION OF SERVICE

In the Matter of Complaint Against Ormat Nevada, Inc. Brought By
California Unions for Reliable Energy

Docket No. 11-CAI-02

I, Valerie Stevenson, declare that on October 19, 2011, I served and filed copies of the attached **REPLY BRIEF OF CALIFORNIA UNIONS FOR RELIABLE ENERGY** dated October 19, 2011. The original document, filed with the Docket Office, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

<http://www.energy.ca.gov/proceedings/11-cai-02/index.html>.

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

(Check all that Apply)

For service to all other parties:

- √ Served electronically to all e-mail addresses on the Proof of Service list;
- √ Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with firstclass postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email service preferred."

AND

For filing with the Docket Unit at the Energy Commission:

- √ by sending an original paper copy and one electronic copy, mailed with the U.S. Postal Service with first class postage thereon fully prepaid and e-mailed respectively, to the address below (preferred method);

OR

by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

CALIFORNIA ENERGY COMMISSION – DOCKET UNIT
Attn: Docket No. 11-CAI-02
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

/s/
Valerie Stevenson



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
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***IN THE MATTER OF COMPLAINT AGAINST
ORMAT NEVADA, INC. BROUGHT BY
CALIFORNIA UNIONS FOR RELIABLE ENERGY***

**Docket No. 11-CAI-02
(Revised 9/12/11)**

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