GALATI & BLEK
Counselors & Advocates

Plaza Towers
555 Capitol Mall
Suite 600
Sacramento, CA 95814

January 12, 2007

Ms. Raquel Rodriguez
California Energy Commission
Docket Unit, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512

Re: **WALNUT CREEK ENERGY, LLC'S PRELIMINARY COMMENTS ON THE PRELIMINARY STAFF ASSESSMENT DOCKET NO. (05-AFC-2)**

Dear Ms. Rodriguez:

Enclosed for filing with the California Energy Commission are one original and 12 (Twelve) copies of the **WALNUT CREEK ENERGY, LLC'S PRELIMINARY COMMENTS ON THE PRELIMINARY STAFF ASSESSMENT**, for the Walnut Creek Energy Project (05-AFC-2).

Sincerely,

Marguerite Cosens

Marguerite Cosens

Scott A. Galati
GALATI & BLEK LLP
555 Capitol Mall
Suite 600
Sacramento, CA 95814
(916) 441-6575

STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of: Application for Certification for the Walnut Creek Energy Park	**DOCKET NO. 05-AFC-2** **WALNUT CREEK ENERGY, LLC'S PRELIMINARY COMMENTS ON THE PRELIMINARY STAFF ASSESSMENT**

Walnut Creek Energy, LLC (WCE), a wholly-owned subsidiary of Edison Mission Energy (EME) hereby submits its comments on the Preliminary Staff Assessment (PSA). According to the Notice of Publication of the PSA, comments are due on January 30, 2007. Since a Public Workshop on the PSA is scheduled for January 19, 2007, WCE has prepared the following comments to provide Staff input in advance of the workshop. Our goal is to engage in productive discussions with Staff and, where possible, provide clarification and achieve resolution of issues. Therefore, WCE reserves the right to augment these comments prior to the close of public comment period on January 30, 2007.

PROJECT DESCRIPTION

Page 3-1 and 3-2 – Staff has described the demolition of the warehouse as part of the "whole of the action" for CEQA purposes. WCE disagrees and holds that demolition is not part of the "whole of the action" because it will occur with or without the WCEP and has been authorized by the City of Industry pursuant to a validly adopted Mitigated Negative Declaration. While Staff is free to elect to evaluate the potential effects of the demolition, it must do so in the correct context. Staff should clarify that its review focused on whether or not the demolition of the warehouse, after incorporation of all the mitigation incorporated in the Mitigated Negative Declaration, will result in residual impacts that when combined with residual unmitigated impacts of the WCEP together

combine to cumulatively significant. Staff should further clarify that none of the Conditions of Certification proposed apply to demolition of the warehouse.

Figure 2 – This Figure does not show the transmission line as proposed in the AFC. The two options shown are options in addition to the one shown in the AFC and are not the only available options. Please modify the figure accordingly.

AIR QUALITY

Page 4.1-1, paragraph 1 - "*Staff recommends that the applicant investigate the potential for local mitigation measures that either the applicant or South Coast Air Quality Management District may administer to mitigate local impacts of PM10/PM2.5 that would occur within 10 kilometers of the project site. We also suggest that the applicant work with the SCAQMD to earmark the funds the applicant will pay the South Coast Air Quality Management District for the Priority Reserve Credits to fund mitigation programs and measures near the project site to offset localized impacts from PM10/PM2.5 emissions from the facility.*"

Applicant has no control over the SCAQMD's plan to administer Priority Reserve credit funds. The CEC may wish to suggest to the District that they allocate Priority Reserve funds to areas located near projects that use Priority Reserve credits. As an agency responsible for regional air quality, however, SCAQMD may feel it is appropriate to use the Priority Reserve funds to target specific programs or localities for which there is a particular need or good opportunity to improve air quality. WCE feels that purchase of PRCs more than fully offsets any potential project impacts.

Page 4.1-8, l 5 - "*District published state implementation plans (SIP) rely on the ARB to control mobile sources, the U.S. EPA to control emission sources under federal jurisdiction, and SCAQMD to control local industrial sources. Through these control measures, California and the SCAQMD are required to reach attainment of the federal ozone ambient air quality standard by 2010.*"

SIP plans rely on the SCAQMD to control local industrial sources.

Page 4.1-9, final paragraph, line 1 - "*The proposed project region (represented in AIR QUALITY Figure 1 by the Perris monitoring station) is in an area very near the inland regions of the SCAQMD.*"

The figure says that the Pico Rivera monitoring station represents the project area and that the Redlands Station represents the Inland Area.

Page 4.1-13, first paragraph, last line - *"The District expects to submit a PM2.5 SIP in early 2007, and once the plan is approved by USEPA, the District will prepare revised NSR rules that will likely require offsetting of PM2.5 emissions. The District is thus unlikely to address PM2.5 in their rules within the schedule of this proposed project.*

Staff, however, has a CEQA responsibility to address PM2.5 emissions since there are current ambient air quality standards in effect and the proposed project region is not in attainment of those standards."

The District is the administrator of the NSR rules. It is inappropriate for CEC Staff to arbitrarily assume authority under CEQA to administer the federal program of a responsible sister agency that has been delegated authority under the Clean Air Act for NSR.

Further, WCE submitted a conservative estimate of the fraction of PM2.5 emissions that likely compose the Priority Reserve's PM10 account in its responses to data requests. Staff completely ignores that response and instead gives no credit to the surrendering of any Priority Reserve PM10 ERCs for mitigating any of the WCEP proposed emissions. This is neither warranted by CEQA nor technically justifiable.

Page 4.1-19, second paragraph – Staff refers to a diesel generator. The WCEP is not proposing a diesel generator.

Page 4.1-31, Table 18, SOx, CO, PM10 - *"Alternatively, the applicant may purchase credits in the Priority Reserve under SCAQMD Rule 1309.1, but has not completed the required due diligence to participate in the Priority Reserve program."*

The PDOC indicates that compliance is pending: "*The applicant has submitted written correspondence to AQMD (see letter in file dated September 27, 2006 from Latham & Watkins to Mr. Mohsen Nazemi) which indicates the applicant is in the process of attempting to secure ERCs for the requested Priority Reserve pollutants. AQMD has received a letter dated September 27, 2006 which provided information regarding the progress in securing offsets for WCEP. EME will continue to provide progress reports (sic) the ERCs are secured.*"

WCE has submitted four Confidential Air Quality Status Reports to the CEC Staff and to the District demonstrating early compliance with the due diligence requirement. Rule 1309.1 does not require the type of due diligence progress on a monthly basis that has been performed by WCE in the last several months. In fact, the rule only requires that such a due diligence effort be conducted prior to actually paying the mitigation fee to the District for withdrawal of the Priority Reserve emission reduction credits. The timing for this is prior to obtaining a Permit To Construct from the District, which will not be granted until after the CEC Decision. Air Quality Staff is attempting to require compliance with a rule prior to issuance of the CEC Decision, which is inconsistent with the approach Staff takes in many other technical areas. In order to ensure that the WCEP will comply with all applicable LORS, the CEC routinely reiterates the requirement in a Condition of Certification rather than require compliance prior to the PSA. If Staff is concerned that WCE will not conduct a due diligence effort and that the District will allow access the Priority Reserve with such an effort, it can simply propose a Condition of Certification rather than imply the applicant has failed to comply with a rule.

P. 4.1-33, second paragraph (bullet) - *"The applicant is required to conduct a due diligence effort approved by the Executive Officer to secure ERCs for the requested Priority Reserve pollutants (potentially SOx, CO and PM10; the applicant has not demonstrated compliance with this requirement)."*
See comment, above.

Page 4.1-33-34, Priority Reserve – The tone of this section is dismissive *"District believes these credits are surplus..."* The section lacks any discussion of the purpose of the Priority Reserve, which is to allocate offsets that might otherwise be unavailable on the open market to essential services, or a discussion of how the Priority Reserve program is consistent with the District's progress towards achieving criteria pollutant attainment in the air basin.

Page 4.1-34, Quantification of Mitigation -*"Notwithstanding the lack of ERCs, RTCs, or credits from the Priority Reserve program (PRCs), there is another issue as to the quantification of the mitigation and offsets that the SCAQMD will require. For the pollutants SO_2, CO, VOC and PM10, the SCAQMD calculates the ERC liability based on a 30-day average calculated from the highest potential month of emissions. This method results in an average daily emission to be offset, and not the potential maximum daily emissions. For facilities that operate as baseloaded power plants, there is little difference between the SCAQMD 30-day average daily limit and the actual potential maximum daily emissions. However, when a facility is operated as a peaking unit, the SCAQMD 30-day average daily limit includes a significant portion of the month that the power plant does not operate.*

Staff lacks the legal authority to modify the District's rules. The District is the permitting authority for air quality. Staff's beginning premise that the method for calculating offsets is favorable to a peaking plant is erroneous. Because the project will operate as a peaking unit, the daily average emissions in the maximum month is much greater than the daily average facility emissions over the course of the entire year, so requiring emission offsets based on the maximum month penalizes a peaker plant compared with a baseload unit. In WCEP's case, SCAQMD requires emission offsets as if WCEP were going to operate with a 59% annual capacity factor even though the expected annual capacity factor is in the range of 20-40%. Staff's analogy to a baseload plant with an annual capacity factor of 60 percent erroneously assumes that it operates at 60 percent each and every day. In fact, such a plant operates more in the summer and less in the winter and will often operate at full output for much longer during the summer and is not penalized with a maximum daily emissions offset requirement such as the one proposed by Staff for the WCEP. Staff confuses the way in which offsets are quantified with the way impacts are analyzed. For example in some districts, offset requirements are based on total quarterly emissions. In those districts a plant could operate at full output on several days during the quarter while reducing output on other days so as to stay within its full quarterly emission offsets. Other districts apply the same principle on an annual basis.

WCE analyzed its worst case daily emission by comparing them to the most conservative metorological and ambient air quality conditions demonstrating the impacts to air quality are less than significant. Yet Staff believes that in order to it make a finding that the impacts are less than significant, each molecule must be offset in real time. Such a requirement is neither legally nor technically justified and is arbitrary and capricious. Such treatment is inconsistent with the way other energy projects in other air basins are analyzed.

Staff's request for offsets based on a maximum day is grossly out of proportion to actual emissions and is totally inconsistent with SCAQMD offset requirements. In addition, it fails to give any credit for the offsetting that occurs during times in which the WCEP produces no emissions.

Page 4.1-34 Quantification of Mitigation -*"The maximum potential emissions from the project that are potentially not mitigated are shown in the last row. The solution for this difference is for the applicant to provide the additional emission credits to cover their true maximum emissions liability or get the cooperation of the District to use the applicant's fees for PRC's to fund emission-reduction programs in communities affected by the project."*

See response, above.

Page 4.1-35, last paragraph, Conclusions - *"Thus staff recommends that local emission reductions should be identified and secured to adequately mitigate these localized impacts. Staff recommends that the applicant investigate the potential for local mitigation measures that either the applicant or SCAQMD may administer. The applicant should work with the SCAQMD to earmark the funds the applicant will pay the SCAQMD for the Priority Reserve Credits to fund mitigation programs and measures near the project site."*

Applicant has no control over the SCAQMD's plan to administer Priority Reserve credit funds. The CEC may wish to suggest to the District that they allocate Priority Reserve funds to areas located near projects that use Priority Reserve credits. As an agency responsible for regional air quality, however, SCAQMD may feel it is appropriate to use the Priority Reserve funds to target specific programs or localities for which there is a particular need or good opportunity to improve air quality. WCE feels that purchase of PRCs more than fully offsets any potential project impacts.

Page 4.1-39, Localized Cumulative Impacts – *"It is far more likely that the emissions from the COI Energy Center have been mis-characterized because the applicant used the AP-42 Emission Factors and not actual emission data from the facility. The AP-42 Emission Factors Compendium contains conservative general emission factors that are not reflective of actual emissions from a facility."*

The applicant used emissions data provided in the SCAQMD permit and did not use AP-42. In addition, the contribution from WCEP was less than significance and therefore, does not contribute to the exceedance. The modeled impact from COI was entirely due to the modeling methodology of using a 0.1 meter tall stack with a 0.01 m/s exit velocity. Remodeling this source with stack parameters from a similar type of source, the maximum modeled 1-hour NO2 becomes 25 ug/m^3 and combining it with all other sources plus background, the total then becomes 463 ug/m^3 which is less than the state 1-hour standard of 470 ug/m^3.

Page 4.1-43, Rule 402 – The PSA inadvertently refers to the location of the project to be in San Bernardino County.

Page 4.1-50, last paragraph, Conclusions - *"VOC – Prior to the staff publishing the FSA, the applicant should submit additional VOC ERCs certificates or other contractual documentation (option contracts) in the amount of 3.2 (from Table 19) lbs/day (229 lbs/day minus the 226 lbs/day already identified)."*

Applicant has fully offset VOC impacts in accordance with District rules (see comments, above, regarding Staff's ERC calculations). Staff has no authority to withhold preparation of the FSA. WCE is seeking a scheduling order from the Committee to force Staff to prepare its FSA on a date certain.

Page 4.1-50, last paragraph, - *"PM10/PM2.5 – Prior to the staff publishing the FSA, the applicant should submit the following information that would result in the emission reductions in the local community equivalent to 731 (from Table 19) lbs/day to mitigate the potential localized impacts of PM10/PM2.5. Staff recommends that the applicant investigate the potential for local mitigation measures that either the applicant or SCAQMD may administer. The applicant should work with the SCAQMD to earmark the funds the applicant will pay the SCAQMD for the Priority Reserve Credits for mitigation programs and measures near the project site. "*

Applicant has fully offset its impacts in accordance with District rules (see comments, above, regarding Staff's ERC calculations and the District's use of Priority Reserve funds).

Staff's opinion is impractical. If it were possible to obtain 731 pounds per day of PM10 Emission Reduction Credits within the basin, there would be no need for the District to open the Priority Reserve to energy projects to avoid the pending energy crisis in Southern California. In addition, such credits if they could be obtained with the basin would be worth several tens of millions of dollars. With such a monetary incentive to be made, if the credits could be created they would be created. To this requirement Staff adds yet another by requiring that the emission reductions be obtained within a 6 mile radius. These requirements cannot be complied with by any energy project.

AQ-SC7 Applicant requests that the offset requirement for CO be removed as the SCAQMD air basin will be in attainment prior to surrendering CO offsets. In addition, the listed ERC amounts for PM10 and VOC are incorrect and should be as follows:

PM10 535 lb/day
VOC 225 lb/day

AQ-SC11 The applicant requests that daily water flow monitoring is un-necessary. The PM10 emissions modeling assumed the maximum water flow and the maximum TDS content in the water. We propose that the engineering design data sheets be provided instead since the recorded water flow rates will be less than the maximum modeled design value.

AQ-SC12 The applicant has demonstrated in the air quality modeling assessment that the PM10 emissions of 10.7 lbs/day will not cause a violation of the ambient air quality standards for PM10/2.5. Therefore, the applicant requests that the continuous monitoring requirement be removed since it is considered unnecessary and excessive.

AQ-SC13 The daily emissions limit proposed by Staff is based on the SCAQMD offset calculation methodology. The applicant requests that the daily emissions limit be removed. The daily offset liability is calculated from the worst-case monthly operation as per SCAQMD rules and regulations. The offset requirements limit, on a monthly basis, the total amount of operation that can occur. Further, the project was modeled to run for periods of up to 24-hour and no violations of the ambient air quality standards occurred. Therefore, there is no need to place a daily limit on emissions and this condition should be deleted.

AQ-1 The monthly emissions limits are currently being revised by the SCAQMD.

AQ-2 The applicant requests that the annual emissions limit be removed for pollutants where a monthly limit (Condition AQ-1) applies. Thus, the annual limits for PM10, VOC, SO_2, and CO should be removed. Further, the annual limits listed in AQ-2 are in error. The correct annual limits are:

PM10 20,800 lbs/year
CO 49,800 lbs/year
SOx 2,200 lbs/year
VOC 8,800 lbs/year

AQ-3 WCEP would like to clarify the commissioning schedule. With regards to the source test being completed no later than 180 hours from the initial startup, WCEP proposes that the initial source test completion date language be changed to state that the source test shall occur within 394 operational hours of initial turbine startup. As stated in our comments on Condition A99.1 and A99.2, WCEP will require 394 hours of

commissioning activities. Specifically, the turbine vendor guarantees require that 300 hours of full load operational time must occur before the PM10 and VOC emissions will be within the specified guarantees. As the units are peaking turbines, WCEP proposes to conduct the last 300 hours of commissioning only during times when the Cal ISO requests plant operation for power generation. Otherwise, operating the final 300-hour phase of commissioning outside of the Cal ISO request for power would simply consume fuel and produce emissions without the need for generating electricity. During this final phase of commissioning, the turbines are expected to be in compliance with non-commissioning emission limits for NO_x (2.5 ppm), CO (6.0 ppm) and SO_2 (0.62 lbs/hr). Thus, the total length of commissioning may occur over a period longer than 180 days from first fire if the need for peaking power is not requested. Hence, WCEP proposes that the commissioning period limit be based on turbine run hours rather than 180 calendar days and that the initial source test requirements occur within the commissioning time frame of 394 operational hours.

It is also requested that the annual number of turbine startups and shutdowns not be limited to 350. Rather, compliance with the monthly/annual emission limits will be tracked with CEMS and fuel use data and will be in compliance regardless of the number of turbine starts.

Additionally, the proposed emission factor, used to determine compliance after the CO catalysts are installed and operational, is 18.46 lb CO/mmcf. The correct emission factor should be 14 lb CO/mmcf.

AQ-7 The emission guarantees by the turbine manufacturer are based on certain specified test methods. For VOC the method is TO12 and for PM10 the method is SCAQMD Test Method 5.1. Please replace the terms "District approved method" in the table with these specific test methods.

AQ-8 Based upon the worst-case month of 463 hours of operation (432 hours base load plus startup/shutdown) the fuel use limit should be set at 409 MMCF/month rather than the 393 MMCF/month. The proposed permit limit of 413 MMCF/month is based upon the Appendix A data listed in Table 8.1A-11.

AQ-8 The applicant requests that the quarterly source testing requirements be removed. The turbines will be equipped with CEMS to monitor NOx and CO concentrations as well as monitor the fuel use in each turbine. In addition, initial source testing will occur for all pollutants. The only quarterly testing requirement from the SCAQMD was for ammonia and quarterly testing for criteria pollutants is not required by the SCAQMD.

AQ-9 WCEP proposes to change the language for the CEMS installation and operation from 90 days from initial startup to 394 operational hours from initial startup. This will allow for the completion of all six (6) phases of commissioning.

AQ-11 Please remove the reference to the HRSG.

AQ-15 The applicant requests that items 1 and 4 under AQ-15 be removed since the fire-pump must be tested on a weekly basis and will operate only during a fire.

AQ-16 The NO_x RTCs should be set at 29,880 lbs per turbine after commissioning. During the commissioning year, the NO_x RTC requirement should be set to 41,204 lbs per turbine.

CULTURAL RESOURCES

Page 4.3-24, Proposed Condition of Certification CUL-7, Native American Monitor - State law requires that project owners consult with a Native American Most Likely Descendant appointed by the Native American Heritage Commission when human remains are discovered during a project's construction and those remains are identified by a County Coroner as likely to be Native American remains. There are no LORS that require project owners to retain Native American monitors for construction, however. This condition therefore places a financial burden on the applicant without a regulatory basis for doing so.

This condition does not, furthermore, mitigate an identified significant impact. Although disturbance of a Native American burial would be considered an adverse impact if it were to occur inadvertently during construction, this condition would not prevent the accidental disturbance of such a burial and there is no direct evidence indicating that burials are likely to be found at the WCEP construction site. Condition CUL-6 requires full-time construction monitoring by a qualified archaeologist and Native American human remains would be considered an archaeological find. The requirement for a Native American Monitor would therefore be redundant with CUL-6. There are also no LORS requiring notification of Native American groups of a Native American archaeological discovery. WCE therefore suggests deletion of CUL-7.

HAZARDOUS MATERIALS

Page 4.4-16, Proposed Condition of Certification HAZ-2 - WCE requests a shorter verification timeline submittal of the final Hazardous Materials Business Plan and Risk Management Plan, given review by the Certified Unified Program Authority and the Environmental Protection Agency.

At least ~~60~~ **30** days prior to receiving any hazardous material on the site for commissioning or operations, the project owner shall provide a copy of a final Business Plan to the CPM for approval. At least sixty (~~60~~ **30**) days prior to delivery of aqueous ammonia to the site, the project owner shall provide the final RMP to the CUPA for information and to the CPM for approval.

LAND USE

Page 4.5-10, Proposed Condition of Certification LAND-1 – WCE requests a modification to stipulation number 6 in Condition of Certification LAND-1. This condition refers to a City requirement that industrial buildings have a dock-high loading door or one truck well with a loading door. This City standard is not appropriate for the WCEP, which will have several buildings at which supplies will be unloaded, but will not require a loading dock or truck well, given the nature and quantities of supplies needed. The letter from Mike Kissell, City of Industry Planning Director, to Eric Knight, CEC Project Manager, dated April 18, 2005 states, in reference to this standard that a "Zone Exception will be required in lieu of conformance with this standard" (Attachment B, Page 5) and also states "...the WCEP is consistent with the City's zoning regulations providing a Zone Exception is obtained for the areas identified in Attachment A."

In addition, WCE requests clarification that the control building should be exempted from stipulation number 5 in Condition of Certification LAND-1 since the use of the control building is more like an office use than an industrial warehouse.

LAND-1 The project owner shall design and construct the project to the following design standards in the Development Plan Standards of the City of Industry's Development Guidelines (City Code Section 17.03.060):

5. No industrial building **other than the control building** shall be permitted to use more than one-third of its total floor area for office use.

6. ~~All buildings~~**The warehouse building** shall be provided with a minimum of one ~~dock high~~ loading door ~~or one truck well with loading door~~. The required truck loading door shall be designed with sufficient size to permit truck trailer loading and unloading through the loading door.

NOISE AND VIBRATION

Page 4.6-11, Compliance With LORS - Staff cites a Los Angeles County Noise Ordinance restricting exterior residential noise levels to 45 dBA L_{50}. Staff goes on to note that the applicable standards under this ordinance would be 47 dBA L_{50} at receptor M2 and 48 L_{50} at receptor M4 because the existing ambient noise becomes the County standard if it is greater than the standard. This standard does not apply within the City of Industry, however, because the source of the noise is within the City and is not in County jurisdiction. The California Supreme Court has ruled that a County's ordinances are inapplicable within a legally incorporated City. See *Great Western Shows, Inc. v.*

County of Los Angeles (2002) 27 Cal.4th 853. Staff's application of the Los Angeles County's Noise Ordinances violates this holding.

Staff also elects to adopt the County of Los Angeles Noise Ordinance as a threshold of significance presumably under its CEQA authority. However, CEQA does not authorize an agency to choose arbitrary and capricious standards. Given that the California Supreme Court has held standards of a County to be inapplicable within a City, Staff's use of the more restrictive standard just because it is more restrictive arbitrary and capricious.

Page 4.6-12, CEQA Impacts: Staff states that increases in ambient noise between 5 and 10 dBA may or may not be significant and adverse, depending on the circumstances. Staff believes that WCEP will increase ambient noise by 9 dBA and indicates that this should be considered an adverse impact to nighttime noise in a residential area. Staff chooses the quietest nighttime four-hour L_{90} average as a measure of ambient noise, however. The L_{90}, as the level of noise exceeded 90 percent of the time, is not an appropriate measure of ambient noise because it disregards a large component of noise that helps to make up the texture of ambient noise. The L_{90} instead should be regarded as a measure of background noise, the component of ambient noise in a given setting that is relatively constant and unchanging.
The effects of this assumption are dramatic in terms of Staff's impacts analysis. For example, the quietest nighttime four-hour average L_{eq} (which averages all measured noise) would be 51 dBA at M2 and 54 dBA at M4, and the increase combined with the WCEP would be less than 3 dBA and clearly not significant. Using the L_{50} of the Los Angeles County Noise ordinance as a measure of ambient noise, the four-hour nighttime averages would be 47 dBA and 48 dBA, at M2 and M4, respectively. Thus, even using the L_{50} as a measure of ambient noise, the project plus ambient noise would be 6 dBA above ambient at M2 and 3 dBA above ambient at M4. The impact would thus not be significant, particularly in view of the fact that, as a peaking power plant, the WCEP would be unlikely to operate at night and least likely to operate during the quietest nighttime hours when the demand for electricity is the lowest. In addition, unlike most power plants, for which operational noise is relatively constant regardless of load, noise from WCEP will depend on how many of the WCEP's five turbines are in operation at a given time.

Page 4.6-16, Proposed Condition of Certification NOISE-2- Replace "all feasible measures" with "reasonable measures" in the fourth bullet. A complaint does not necessarily indicate a significant impact requiring the use all feasible measures.

Page 4.6-17, Proposed Condition of Certification NOISE-4 - In light of the above discussion, WCE requests a modification to Staff's proposed Condition NOISE-4 that establishes the project's noise standard at the M2 and M4 residential areas as 52 dBA. In addition, we request a change in the wording of the condition such that the noise standard applies to noise attributable to the project as modeled from near-field

measurements during operation. This change is necessary because the Applicant can control noise only from the WCEP itself and not other sources of noise. For example, a new noise source could be developed in the vicinity of one of the sensitive receptors after the AFC was filed and before final noise testing takes place after the plant begins operation. With the condition worded in this way, the applicable noise standard could be a "moving target" and this is inconsistent with CEQA. Under CEQA, the project environmental baseline consists of existing conditions at the time the application is filed and a project under CEQA review cannot be held liable for changing conditions after applying for certification. In previous siting cases, Conditions of Certification that have stipulated noise limits have used the "noise attributable to the plant operation" wording.

NOISE-4 The project design and implementation shall include appropriate noise mitigation measures adequate to ensure that operation of the project will not cause noise levels **attributable** ~~due~~ to plant operation ~~plus ambient~~, during the four quietest consecutive hours of the nighttime, to exceed an average of ~~47~~52 dBA L_{50} measured near the intersection of Fieldgate Avenue and Folger Street (monitoring location M2) and an average of ~~48~~ 52 dBA L_{50} measured near the intersection of Inyo Street and Roxham Avenue (monitoring location M4).

The measurement of power plant noise for the purposes of demonstrating compliance with this condition of certification may alternatively be made at a location, acceptable to the CPM, closer to the plant (e.g., 400 feet from the plant boundary) and this measured level then mathematically extrapolated to determine the plant noise contribution at the affected residence. However, notwithstanding the use of this alternative method for determining the noise level, the character of the plant noise shall be evaluated at the affected residential locations (M2 and M4) to determine the presence of pure tones or other dominant sources of plant noise.

No new pure-tone components may be introduced. No single piece of equipment shall be allowed to stand out as a source of noise that draws legitimate complaints.

A. When the project first achieves a sustained output of 90 percent or greater of rated capacity, the project owner shall conduct a 25-hour community noise survey at monitoring sites M2 and M4, or at a closer location acceptable to the CPM. This survey during power plant operation shall also include measurement of one-third octave band sound pressure levels to ensure that no new pure-tone noise components have been introduced.

B. If the results from the noise survey indicate that the power plant average noise level (L_{50}) at the affected receptor sites exceeds the above values during the four quietest consecutive hours of the nighttime, mitigation

measures shall be implemented to reduce noise to a level of compliance with these limits.

If the results from the noise survey indicate that pure tones are present, mitigation measures shall be implemented to eliminate the pure tones.

PUBLIC HEALTH

Page 4.7-15, Proposed Condition of Certification Public Health-1 – WCE requests the following modifications to the condition:

Public Health-1 The project owner shall develop and implement a Cooling Water Management Plan to ensure that ~~the potential for~~ bacterial growth in cooling water is controlled is **controlled** ~~kept to a minimum~~. The Plan shall be consistent with either Staff's "Cooling Water Management Program Guidelines" or with the Cooling Technology Institute's "Best Practices for Control of Legionella" guidelines.

TRAFFIC AND TRANSPORTATION

Page 4.10-18, Conclusion number 8 – Conclusion 8 should be revised to show a net reduction in traffic impacts due to operation of the WCEP. At present the existing warehouse building has up to 90 employees whereas the WCEP will employ approximately 9 workers. This reduction in traffic should be reflected in Staff's conclusions.

Page 4.10-20, Proposed Condition of Certification TRANS-4 – WCE requests that SR-60 be excluded from the requirement to photograph or videotape because of its length and existing traffic.

VISUAL RESOURCES

Page 4.12-3, Power Plant – Staff refers to "combustion silencer stacks" which are actually compressor bleed air vents.

Page 4.12-14, Proposed Condition of Certification VIS-1 – WCE has committed to non-reflective surface treatment of the WCEP and to using neutral gray tones for surfacing and Staff has indicated that, as long as this is carried through, the project would cause no significant adverse impact to visual resources. Proposed Condition of Certification VIS-1 addresses surface treatment of the WCEP. WCE suggest the following modifications to the condition for clarity:

> **VIS-1** The project owner shall color and finish the surfaces of all project structures and buildings visible to the public to ensure that they: (1) minimize visual intrusion and contrast by blending with the landscape; (2) minimize glare;

and (3) comply with local design policies and ordinances. The transmission line conductors shall be non-specular and non-reflective, and the insulators shall be non-reflective and non-refractive.

The project owner shall submit a surface treatment plan to the Compliance Project Manager (CPM) for review and approval. The treatment plan shall include:

A. A description of the overall rationale for the proposed surface treatment, including the selection of the proposed color(s) and finishes;

B. A list of each major project structure, building **and** tank, ~~pipe, and wall; transmission line towers and/or poles; and fencing~~, specifying the color(s) and finish proposed for each. Colors must be identified by vendor, name, and number; or according to a universal designation system;

C. One set of color brochures or color chips showing each proposed color and finish;

~~D. One set of 11" x 17" color photo simulations at life size scale of the proposed treatment for project structures, including structures treated during manufacture, from the Key Observation Points;~~

E. A specific schedule for completing the treatment; and

F. A procedure to ensure proper treatment maintenance for the life of the project.

The project owner shall not request vendor **final finish** treatment of any buildings or structures during their manufacture, or perform final field treatment on any buildings or structures, until the project owner has received treatment plan approval by the CPM.

Verification: At least ~~90~~ **60** days prior to ~~specifying~~ **applying** vendor color(s) and finish(es) for structures or buildings to be surface treated during manufacture, the project owner shall submit the proposed treatment plan to the CPM for review and approval and simultaneously to the City of Industry Planning Department for review and comment. The project owner shall provide the CPM with the City's comments ~~at least 30 days prior to the estimated date of providing paint specification to vendors~~.

Page 4.12-16, Proposed Condition of Certification VIS-2 – WCE requests the following modifications for clarity:

VIS-2 The project owner shall ensure that lighting for construction of the power plant is used in a manner that minimizes potential night lighting impacts, as follows:

A. All lighting shall be of minimum necessary brightness consistent with worker safety and security;

B. All fixed position lighting shall be shielded/hooded, and directed downward and toward the area to be illuminated to prevent direct illumination of the night sky and direct light trespass (direct light extending **into public viewing areas**); ~~outside the boundaries of the power plant site or the site of construction of ancillary facilities, including any security related boundaries~~);

C. Wherever feasible and safe and not needed for security, lighting shall be kept off when not in use; and

D. Complaints concerning adverse lighting impacts will be promptly addressed ~~and mitigated~~.

Page 4.12-17, Proposed Condition of Certification VIS-3 – WCE requests the following modifications for clarity:

VIS-3 To the extent feasible, consistent with safety and security considerations and commercial availability, the project owner shall design and install all permanent exterior lighting such that a) **obtrusive light and glare** from **on-site** light fixtures **is minimized from public viewing areas** ~~do not cause obtrusive spill light beyond the project site~~; b) lighting does not cause excessive reflected glare; c) direct lighting does not illuminate the nighttime sky; d) illumination of the project and its immediate vicinity is minimized, and e) the plan complies with local policies and ordinances.

The project owner shall submit a lighting ~~mitigation~~ **management** plan to the CPM for review and approval and simultaneously to the City of Industry Planning Department for review and comment that includes the following:

A. A process for addressing ~~and mitigating~~ complaints received about ~~potential~~ **project** lighting ~~impacts~~;

B. **Locating and directing light fixtures to minimize obtrusive light and glare in public areas**. ~~A consideration of the ways in which the location and direction of light fixtures shall take the lighting mitigation requirements into account;~~

~~C. Lighting design shall consider setbacks of project features from the site boundary to aid in satisfying the lighting mitigation requirements;~~

C.~~D~~. ~~Lighting shall~~ Incorporate**ion of** commercially available fixture hoods/shielding~~, with~~ **to help direct** light ~~directed~~ downward or toward the area to be illuminated;

~~E. Light fixtures shall not cause obtrusive spill light beyond the project boundary;~~

D.~~F.~~ ~~All lighting shall be of~~ **Provisions to maintain the** minimum necessary brightness **that is** consistent with operational safety and security; and

E.~~G.~~ **Provisions for** ~~L~~lights in high illumination areas not occupied on a continuous basis (such as maintenance platforms) ~~shall~~ **to** have (in addition to hoods) switches, timer switches, or motion detectors so that the lights operate only when the area is occupied.

Verification: At least ~~90~~ **60** days prior to ordering any permanent exterior lighting, the project owner shall contact the CPM to determine the required documentation for the lighting ~~mitigation~~ **management** plan.

At least ~~60~~ **30** days prior to ordering any permanent exterior lighting, the project owner shall submit to the CPM for review and approval and simultaneously to the City of Industry Planning Department for review and comment a ~~mitigation~~ **management** plan. The project owner shall provide the City's comments to the CPM ~~at least 10 days prior to the date lighting materials are ordered~~.

If the CPM determines that the plan requires revision, the project owner shall provide to the CPM a revised plan for review and approval by the CPM.

The project owner shall not order any exterior lighting until receiving CPM approval of the ~~mitigation~~ **management** plan

Prior to commercial operation, the project owner shall notify the CPM that the lighting has been completed and is ready for inspection. If after inspection the CPM notifies the project owner that modifications to the lighting are needed, within 30 days of receiving that notification the project owner shall implement the modifications and notify the CPM that the modifications have been completed and are ready for inspection.

Within 10 days of receiving a lighting complaint, the project owner shall provide the CPM with a complaint resolution form report as specified in the Compliance General Conditions including a proposal to resolve the complaint, and a schedule for implementation. A copy of the complaint resolution form report shall be submitted to the CPM within 30 days of complaint resolution.

Page 4.12-9, Modeling Analysis, Visual Plumes and page 4.12-18 Proposed Condition of Certification VIS-4 - *"Staff modeled two operational profiles for this project, the applicant's proposed 40 percent capacity during summer months, and staff's reasonable and likely future case with the plant operating at a 65 percent capacity factor with a split of 60 percent during the summer and 40 percent during the winter. Frequency information for both operational profiles is presented in the following sections. Staff's visual analysis is based only on the future case modeling. Staff believes the future case is a reasonable expectation for long-term operations as regional electricity demand grows and older plants retire."*

Staff's modeling uses unreasonable and unrealistic assumptions. Staff takes the high end of WCE's proposed capacity factor for the entire year and assumes that this would apply during the winter, and then applies a higher capacity factor, of 65 percent, more characteristic of a different kind of power plant, for the summer months. In fact, the plant would be likely to operate approximately 20-40 percent of the time, with most operation in the summer, when plumes are relatively unlikely.

This argument is in sharp contrast to Staff's opinion in Section 5.3 of the PSA. ON page 5.3-5 of the PSA, Staff writes:

> As seen in the table, most of California's peakers operate at very low capacity factors; only four of the units surveyed showed capacity factors of ten percent or greater. Note that while these figures are smaller than the capacity factor predicted by the applicant, California's grid controllers are predicting increased need for peaking capacity in coming years. In addition, the WCEP will be more fuel efficient than its competition, and thus more likely to be economically dispatched. ***Staff thus believes that the applicant's prediction of project capacity factor is valid. (emphasis added)***

Staff further opines:

> In response to staff concerns regarding visible plumes during colder moths (October through March), the applicant has claimed that the WCEP is unlikely to see significant dispatch during this period. The Energy Commission has noted the seasonality of California's demand for peaking power. IN the 2005 Integrated Energy Policy Report (2005 IEPR) is a discussion of the "peakiness" of California's power demand, pointing out that "[e]lectricity demand in California increases most dramatically in the summer, driven by high air conditioning loads." (2005 IEP, p. 49) Efficiency staff thus ***agrees with the applicant that the WCEP will likely see dispatch chiefly in the warmer months. (emphasis added)***

In addition, Staff completely disregards that the WCEP will have operating limits imposed by the amount of emissions and associated offsets required. Staff's analysis assumes operation well in excess of the emission limits.

The use of an unrealistic operating scenario in Staff's analysis calls the analysis results into question. Despite this, Staff finds no significant adverse visual impact from plumes. Regardless of this finding, Staff proposes in Condition VIS-4 to restrict the project's cooling tower to operating parameters that Staff has used in modeling the WCEP plumes (5.6 kg/s/MW at 20 F and 60 percent humidity, etc). These values have no other basis in Staff's analysis and are not linked to a concrete significance threshold or any other criterion that would explain or justify their imposition as a Condition of

Certification. Therefore, Condition VIS-4 is unsupported, unnecessary and WCE requests that it be deleted.

WASTE MANAGEMENT

Page 4.13-13 Proposed Condition of Certification WASTE-3 – Generally speaking, it is the construction contractor who obtains the hazardous waste identification number during construction. WCE therefore suggests the following change to Condition WASTE-3

> **WASTE-3** The project owner **or construction contractor** shall obtain a hazardous waste generator identification number from the Department of Toxic Substances Control prior to generating any hazardous waste during construction ~~and operation~~. **The project owner shall obtain a hazardous waste generator identification number prior to generating any hazardous waste during operations**.

FACILITY DESIGN

Page 5.1-9 Proposed Condition of Certification GEN-5 – WCE requests the following modification to this Condition. An Engineering Geologist would not be necessary for a site, such as WCEP that lack unique geological features, such as active faults that require further delineation.

> **GEN-5** Prior to the start of rough grading, the project owner shall assign at least one of each of the following California registered engineers to the project: A) a civil engineer; **and** B) a soils engineer, or a geotechnical engineer or a civil engineer experienced and knowledgeable in the practice of soils engineering; ~~and C) an engineering geologist.~~ Prior to the start of construction, the project owner shall assign at least one of each of the following California registered engineers to the project: D) a design engineer, who is either a structural engineer or a civil engineer fully competent and proficient in the design of power plant structures and equipment supports; E) a mechanical engineer; and F) an electrical engineer. [California Business and Professions Code section 6704 et seq., and sections 6730, 6731 and 6736 requires state registration to practice as a civil engineer or structural engineer in California.] All transmission facilities (lines, switchyards, switching stations and substations) are handled in conditions of certification in the **Transmission System Engineering** section of this document.
>
> ...
>
> ~~C. The engineering geologist shall:~~

~~1. Review all the engineering geology reports and prepare final soils grading report; and~~

~~2. Be present, as required, during site grading and earthwork to provide consultation and monitor compliance with the requirements set forth in the 2001 CBC, Appendix Chapter 33; Section 3317, Grading Inspections (depending on the site conditions, this may be the responsibility of either the soils engineer or engineering geologist or both).~~

Page 5.1-15, Proposed Condition of Certification CIVIL-3 – The condition requires reporting all discrepancies immediately to the resident engineer and the CBO and CPM. The Condition also requires the resident engineer to report to the CBO and CPM these same discrepancies. To avoid this administrative burden on the CBO, CPM and the Applicant, WCE proposes to just report to the resident engineer and therefore proposes the following modification to the condition.

CIVIL-3 The project owner shall perform inspections in accordance with the 2001 CBC, Chapter1, Section 108, Inspections; Chapter 17, Section 17016. Continuous and Periodic Special Inspection; and Appendix Chapter 33, Section 3317, Grading Inspection. All plant site-grading operations, for which a grading permit is required, shall be subject to inspection by the CBO.

In, in the course of inspection, it is discovered that the work is not being performed in accordance with the approved plans, the discrepancies shall be reported immediately to the resident engineer, ~~the CBO and the CPM~~ [2001 CBC, Appendix Chapter 33, Section 3317.7, Notification of Noncompliance]. The project owner shall prepare a written report, with copies to the CBO and CPM, detailing all discrepancies, non-compliance items, and the proposed corrective action.

CONCLUSION

WCE hopes that these preliminary comments are useful to Staff in preparing for the Public Workshop on January 19, 2007. WCE will be preparing Supplemental Comments after the Public Workshop, which will incorporate discussions and/or resolution of issues at the Public Workshop as well comments for the remaining technical areas.

Dated: January 12, 2007

Respectfully Submitted,

Scott A. Galati
Counsel to Edison Mission Energy

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

In the Matter of:	Docket No. 05-AFC-02
Application for Certification for the WALNUT CREEK ENERGY PARK	PROOF OF SERVICE

I, Marguerite cosens, declare that on January 12, 2007, I deposited copies of **Edison Mission Energy's WALNUT CREEK ENERGY, LLC'S PRELIMINARY COMMENTS ON THE PRELIMINARY STAFF ASSESSMENT, for the Walnut Creek Energy Park (05-AFC-02)** in the United States mail at Sacramento, California with first class postage thereon fully prepaid and addressed to the following:

Original plus 4 copies delivered to:

DOCKET UNIT
California Energy Commission
Docket Unit, MS-4
Attn: Docket No. 05-AFC-02
1516 Ninth Street
Sacramento, CA 95814-5512

Copies also sent to:

APPLICANT
Lawrence Kostrzewa, Project Director
Edison Mission Energy
18101 Von Karman Avenue
Irvine, CA 92612-1046

Dereck Benham, Project Manager
Edison Mission Energy
18101 Von Karman Avenue
Irvine, CA 92612-1046

*Thomas McCabe
Edison Mission Energy
18101 Von Karman Avenue
Irvine, CA 92612

CH2M HILL
Douglas M. Davy, Ph.D., Sr. Project Manager
2485 Natomas Park Dr., Suite 600
Sacramento, CA 95833

Jenifer Morris
Project Manager
NJ Resources, LLC
7240 Heil Ave.
Huntington Beach, CA 92647

COUNSEL FOR APPLICANT
Galati & Blek, LLP
Scott Galati
Plaza Towers
555 Captiol Mall, Suite 600
Sacramento, CA 95814

INTERESTED AGENCIES
No agencies to date.

INTERVENORS
California Unions for Reliable Energy (CURE)
C/O Marc D. Joseph
Gloria D. Smith
Adams, Broadwell, Joseph & Cardozo

601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080

I declare under penalty of perjury that the foregoing is true and correct.

Marguerite Cosmo