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August 13, 2010

**VIA FEDEX**

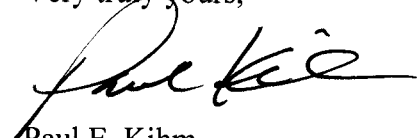
CALIFORNIA ENERGY COMMISSION  
Attn: Docket No. 07-AFC-3  
1516 Ninth Street, MS-4  
Sacramento, California 95814-5512

Re: CPV Sentinel Energy Project: Docket No. 07-AFC-3

Dear Sir/Madam:

Pursuant to California Code of Regulations, title 20, sections 1209, 1209.5, and 1210, enclosed herewith for filing please find Applicant's Opening Brief.

Please note that the enclosed submittal was filed today via electronic mail to your attention and served on all parties to the above-referenced project.

Very truly yours,  
  
Paul E. Kihm  
Senior Paralegal

Enclosure

cc: CEC 07-AFC-3 Proof of Service List (via email and U.S. Mail)  
Michael J. Carroll, Esq. (w/encl.)

650 Town Center Drive, 20th Floor  
Costa Mesa, California 92626-1925  
Tel: +1.714.540.1235 Fax: +1.714.755.8290  
www.lw.com

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File No. 030137-0012

<b>DOCKET</b>	
<b>07-AFC-3</b>	
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Michael J. Carroll  
LATHAM & WATKINS LLP  
650 Town Center Drive, Suite 2000  
Costa Mesa, CA 92626  
(714) 540-1235

STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF: ) Docket No. 07-AFC-03  
)  
APPLICATION FOR CERTIFICATION FOR ) APPLICANT'S OPENING BRIEF  
THE CPV SENTINEL ENERGY PROJECT )  
BY CPV SENTINEL, L.L.C. )  
)  
)  
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On behalf of CPV Sentinel, LLC (“Applicant”) for the CPV Sentinel Energy Project (07-AFC-03) (“Project”), we hereby provide Applicant’s Opening Brief. As demonstrated herein, substantial evidence in the evidentiary record supports a finding that the Project would not result in any significant environmental impacts and would comply with all applicable federal, State, regional and local laws, ordinances, regulations and standards (“LORS”), including all applicable requirements related to emission offsets.

**A. Procedural History and CEC Staff’s Independent Assessment**

On June 6, 2007, the Applicant filed an Application for Certification (AFC) for the Project with the California Energy Commission (CEC). (*See* Exhibit Nos. 1 – 60.) On August 29, 2007, the CEC accepted the AFC as Data Adequate.

Pursuant to Public Resources Code, §25500, the CEC has the exclusive authority to certify the construction, modification and operation of thermal electric power plants 50 megawatts (MW) or larger, and the CEC certification is in lieu of any permit required by state, regional, or local agencies, and federal agencies to the extent permitted by federal law. The CEC must review power plant AFCs to assess

potential environmental impacts and compliance with applicable governmental laws or standards (Public Resources Code, §§ 25519, 25523 (d)). (See Final Staff Assessment (FSA), p. 2-2.)

In accordance with the CEC's siting regulations (Cal. Code of Regs., tit. 20, §§1742, 1743(b) 1742.5(a), and 1744(b)), Staff independently reviewed the AFC and assessed whether the Project would result in any significant environmental impacts or noncompliance with LORS and assessed whether mitigation measures were necessary, feasible and available. (See FSA, p. 2-2.) Staff prepared its analysis in accordance with the Warren-Alquist Act (Public Resources Code) § 25500 *et seq.*, CEC siting regulations, Title 20, California Code of Regulations § 1701 *et seq.*, and the California Environmental Quality Act (CEQA) (Public Resources Code, § 21000 *et seq.*). (See FSA, p. 2-1.)

To facilitate public review of the Project, the Project AFC was sent to libraries in Riverside, Palm Springs, Eureka, Fresno, Los Angeles, Sacramento, San Diego, and San Francisco. (FSA, p. 2-4.) The Public Advisor's Office (PAO) notified all affected county and city officials and the 96 sensitive receptors identified within six miles of the proposed site. (FSA, p. 2-4.) In addition, the PAO distributed bilingual notices for the October 5, 2007 Informational Hearing and Site Visit held in Desert Hot Springs. (FSA, p. 2-4.) In accordance with CEC regulations, notices were sent as required to property owners within 1,000 feet of the Project site and 500 feet of the linear facilities, including notices for the Data Response and Issue Resolution Workshops conducted on April 17, 2008, June 12, 2008, and June 20, 2008, the Preliminary Staff Assessment (PSA) Workshop on September 3, 2008, and the Notices of Availability for the PSA and the FSA. (See FSA, pp. 1-5, 2-4.)

On July 31, 2008, Staff issued the PSA. On October 10, 2008, Staff issued the FSA for all environmental issue areas except for Air Quality. Staff issued the FSA, Air Quality Addendum, on April 15, 2010 (discussed below). Staff issued errata to the FSA, Air Quality Addendum on May 6, 2010 and May 19, 2010. Based on its independent review, Staff determined that the Project, with the incorporation of proposed conditions of certification, would not result in any significant environmental

impacts (FSA, p. 1-7; FSA, Air Quality Addendum, p. 2.1-70) and would comply with all applicable LORS. (FSA, p. 1-7; FSA, Air Quality Addendum, p. 2.1-60 through 2.1-66, 2.1-70.)

Cal. Code of Regs., tit. 20, § 1752.5, requires the PMPD to contain responses to comments raised during the proceedings. This requirement is satisfied by relying on Staff responses to public comments in the FSA. (*See* FSA, p. 2-1.) Staff's analysis was based on: 1) the AFC; 2) responses to data requests; 3) supplementary information from local, state, and federal agencies, interested organizations and individuals; 4) existing documents and publications, 5) independent research; 6) public comments at informational workshops and site visits; and 7) public comments pertaining to the PSA. (FSA, p. 2-1.)

Evidentiary Hearings for the Project were held on November 3, 2008 for all environmental topics except for Air Quality. The evidentiary record for the Project was closed for all topics except Air Quality in December 2008. (*See* Order Granting Motion To Supplement The Evidentiary Record, dated December 5, 2008.) The evidentiary record for Air Quality was closed at the Evidentiary Hearing on Air Quality, held on July 19, 2010. (*See* Transcript for the Evidentiary Hearing on Air Quality, July 19, 2010, p. 81.) As a result, the entire evidentiary record for the Project was closed as of July 19, 2010. (*Id.*)

#### **B. Air Quality and GHG Emissions; Findings Required by Assembly Bill 1318**

The Project will not result in any significant environmental impacts related to Air Quality and will comply with all applicable Air Quality LORS, including requirements related to Assembly Bill 1318. (*See* FSA, 4.1-1; FSA, Air Quality Addendum, p. 2.1-60 through 2.1-70; *see also* Exhibit No. 102, Declaration of J. Lague Regarding Air Quality; Exhibit No. 143[including by reference the exhibits and testimony relied upon therein]; Declaration of John Lague Regarding Air Quality [including by reference the exhibits and testimony relied upon therein]; Exhibit No. 144, Declaration of Mark Turner Regarding Air Quality [including by reference the exhibits and testimony relied upon therein]; Exhibit No. 147, Applicant Comments on the FSA, Air Quality Addendum; Exhibit 148, Supplemental Declaration of John Lague Regarding Air Quality [including by reference the exhibits and testimony relied upon therein].)

The following Section B(1) provides an overview of key Air Quality and GHG determinations. A

detailed discussion of the findings required by AB 1318 is then provided in Section B(2).

### **1. Air Quality and GHG Emissions**

According to Cal. Code Regs., tit. 20, § 1752.3 (Presiding Member's Proposed Decision; Air Quality Findings):

(a) The presiding member's proposed decision shall include findings and conclusions on conformity with all applicable air quality laws, including required conditions, based upon the determination of compliance submitted by the local air pollution control district.

(b) If the determination of compliance concludes that the facility will comply with all applicable air quality requirements, the commission shall include in its certification any and all feasible conditions necessary to ensure compliance. If the determination of compliance concludes that the proposed facility will not comply with all applicable air quality requirements, the commission shall direct its staff to meet and consult with the agency concerned to attempt to correct or eliminate the noncompliance.

The South Coast Air Quality Management District (SCAQMD) issued the Project's Preliminary Determination of Compliance in May 2008 (Exhibit No. 140) and the Final Determination of Compliance (FDOC) on September 2, 2008 (Exhibit No. 87). The FDOC determined that the project as mitigated would satisfy the SCAQMD permitting requirements, including emission offset requirements. (*See* Exhibit No. 144, Declaration of Mark Turner Regarding Air Quality.) However, at the time the PDOC and FDOC were prepared, the Project intended to rely on SCAQMD Rule 1309.1 - Priority Reserve, as amended on August 3, 2007, as its source of emission offsets for particulate matter less than ten microns (PM10) and sulfur oxides (SOx). (*Id.*) A ruling in California Superior Court<sup>1</sup> precluded that option. Subsequently, California Assembly Bill (AB) 1318, approved on September 11, 2009,<sup>2</sup> added Section 40440.14 to the California Health and Safety Code and established an alternative emission offset strategy for the Project. (*Id.*) The SCAQMD issued an Addendum to the Determination of Compliance on March

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<sup>1</sup> *See NRDC et al. v. SCAQMD*, Case Number B110792.

2, 2010 (Exhibit No. 141) , and a Revision to the Addendum to the Determination of Compliance on May 12, 2010 (Exhibit No. 149), which, amongst other things, addressed the alternative emission offset strategy for the Project.

Health and Safety Code § 40440.14 applies to certain eligible electrical generating facilities that meet all of the following requirements: (1) the facility is subject to the permitting jurisdiction of the CEC; (2) the facility has a power purchase agreement, executed on or before December 31, 2008, to provide electricity to a public utility, as defined in Section 216 of the California Public Utilities Code, subject to regulation by the California Public Utilities Commission (CPUC), for use within the Los Angeles Basin Local Reliability Area; and (3) the facility is under the jurisdiction of the SCAQMD, but not within the South Coast Air Basin. The Project meets these requirements. (Exhibit No. 144, Declaration of Mark Turner Regarding Air Quality; Exhibit No. 141, Addendum to the FDOC; Exhibit No. 142, CPUC Decision 08 04 011, issued April 11, 2008.) Within 60 days of the effective date of Health and Safety Code § 40440.14, the SCAQMD was required to report to the CEC the emission credits to be transferred to any eligible facility pursuant to Section 40440.14(c). The Addendum to the Determination of Compliance satisfied this requirement and identified the SO<sub>x</sub> and PM<sub>10</sub> emission credits that will be transferred to the Project pursuant to AB 1318. (Exhibit No. 144, Declaration of Mark Turner Regarding Air Quality; Exhibit No. 141, Addendum to the FDOC.) Specifically, the Project will utilize ERCs created pursuant to Rule 1309 to satisfy its offset obligation for emissions of VOCs. (Exhibit No. 141, Addendum to the FDOC, Appendix N, p. 2.) As a NO<sub>x</sub> RECLAIM facility, the Project will utilize NO<sub>x</sub> RECLAIM Trading Credits to satisfy its offset obligation for emissions of NO<sub>x</sub>. (*Id.*, Appendix N, p. 3.) The Project will obtain offsets for both PM<sub>10</sub> and SO<sub>x</sub> emissions from the SCAQMD's internal bank pursuant to AB 1318. (*Id.*) Finally, the Project is not required to provide offsets for emissions of CO and PM<sub>2.5</sub>. (*Id.*, Appendix N, p. 3-4.)

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<sup>2</sup> AB 1318 was introduced by Assembly Member V. Manuel Perez on February 27, 2009. The California Legislature

Health and Safety Code § 40440.14(e) also prevents the transfer of emission credits to an eligible electrical generating facility prior to the payment of mitigation fees by the applicant to the SCAQMD. Applicant intends to pay the required mitigation fees subsequent to final certification of the Project by the CEC as a prerequisite to obtaining a final Permit to Construct from the SCAQMD. (Exhibit No. 144, Declaration of Mark Turner Regarding Air Quality.)

The Addendum to the FDOC also analyzed minor Project design refinements that would improve the overall performance of the Project. (*See* Exhibit No. 143, Declaration of John Lague Regarding Air Quality.) Since the refinements would cause very minor changes to the Project's emissions sources, the Applicant filed an Amended Application for the Permit To Construct/Permit to Operate with the SCAQMD on October 15, 2009, which was docketed with the Energy Commission on October 30, 2009. (*Id.*) At the request of the SCAQMD, the Applicant performed dispersion modeling to evaluate the minor revisions to the Project; the modeling verified that the air quality effects would be negligible and no new significant impacts would result. (*Id.* [referencing the model input and output files (Exhibit No. 139)].)

Based on the Project's revised offset strategy and the Addendum to the FDOC, Staff issued the FSA, Air Quality Addendum, on April 15, 2010. Staff issued errata to the FSA, Air Quality Addendum on May 6, 2010 and May 19, 2010. Specific findings by Staff included:

- The Project meets the requirements of Assembly Bill 1318 to qualify for obtaining emission offsets from the SCAQMD's internal offset account. (FSA, Air Quality Addendum, p. 2.1-36 through 2.1-45, including Air Quality Tables 17 and 18.)
- The Project would comply with applicable SCAQMD Rules and Regulations, including New Source Review (NSR) requirements. (FSA, Air Quality Addendum, p. 2.1-61 through 2.1-66.)
- The Project would not cause new violations of any NO<sub>2</sub>, SO<sub>2</sub>, or CO ambient air quality standards, and therefore, the Project's NO<sub>x</sub>, SO<sub>x</sub> and CO emission impacts are not significant. (FSA, Air

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adopted AB 1318 on September 11, 2009. AB 1318 was approved by the Governor and filed with the Secretary of State on October 11, 2009. AB 1318 became effective on January 1, 2010.

Quality Addendum, p. 2.1-18, Air Quality Table 5.) The analyses did not need to include the new federal short-term NO<sub>2</sub> ambient air quality standard because it was not in effect at the time the project application was filed with the District and the Energy Commission. (FSA, Air Quality Addendum, p. 2.1-8 through p. 2.1-9.)

- Without mitigation, the Project's NO<sub>x</sub> and VOC emissions would potentially contribute to existing violations of the state's 1-hour and the federal 8-hour ozone air quality standards. Staff has determined that emission offset credits from the South Coast Air Basin would mitigate the Project's contribution to ozone impacts to a level that is not cumulatively considerable. (FSA, Air Quality Addendum, p. 2.1-36, Air Quality Table 16, p. 2.1-45.)

- Without mitigation, the Project's PM<sub>10</sub> emissions and PM<sub>10</sub> precursor emissions of SO<sub>x</sub> would contribute to the existing violations of the state 24-hour PM<sub>10</sub> air quality standard. However, Staff has determined that emission offsets would mitigate the Project's contribution to PM<sub>10</sub> and PM<sub>10</sub> precursor emissions impacts to a level that is not cumulatively considerable. (FSA, Air Quality Addendum, p. 2.1-46 through 2.1-48.)

- Staff also concluded the Project's potential incremental greenhouse gas (GHG) emissions were not cumulatively considerable and thus did not represent a significant impact. (FSA, Air Quality Addendum, p. 2.1-1; FSA, Air Quality Addendum, Air Quality Appendix AIR-1.)

During the evidentiary hearing held on July 19, 2010, the expert witness for the SCAQMD, Mohsen Nazemi testified as to the surplus nature of the PM<sub>10</sub> and SO<sub>x</sub> emission offsets that will be utilized by the Project. (Hearing Transcript for the Evidentiary Hearing on Air Quality, July 19, 2010, pp. 54-55.) Mr. Nazemi concluded that even after the SCAQMD applied necessary surplus adjustments, the quantity of offsets identified by the SCAQMD as available for the Project was more than sufficient to meet the needs of the Project. (*Id.* at p. 55).

Regarding the GHG analysis, the Project would displace other less efficient, higher GHG-emitting



generation and facilitate the integration of renewable resources. (FSA, Air Quality Addendum, p. 2.1-99.) Because the Project's GHG emissions per megawatt-hour (MWh) would be lower than those of other power plants that the Project would displace, the addition of the Project would contribute to a reduction of the California and overall Western Electricity Coordinating Council system GHG emissions and GHG emission rate average. (FSA, Air Quality Addendum, p. 2.1-107, Greenhouse Gas Table 3) While the Project would emit GHG emissions, the relative efficiency of the Project and the system build-out of renewable resources in California would result in a net cumulative reduction of energy and GHG emissions from new and existing fossil resources. (FSA, Air Quality Addendum, p. 2.1-108 to 2.1-114.)

Short-term minor emissions of greenhouse gases during construction that are necessary to create this new low GHG-emitting peaking resource would be sufficiently reduced by "best practices" and would, therefore, not be significant. (FSA, Air Quality Addendum, p. 2.1-100, 2.1-108.) The operation of the Project would affect the overall electricity system operation and GHG emissions in several ways: the Project would provide flexible, dispatchable power necessary to integrate some of the growing generation from intermittent renewable sources, such as wind and solar generation; the Project would provide for peaking capacity needs identified by Southern California Edison (SCE), the CEC, the California Public Utilities Commission (CPUC), and the California ISO for the Los Angeles Basin Local Capacity Requirements Area; the Project would facilitate to some degree the replacement of high GHG emitting (e.g., out-of-state coal) electricity generation that must be phased out to meet the State's new Emissions Performance Standard; the Project could facilitate to some extent the replacement of generation provided by aging and once-through cooling power plants; the Project would utilize the General Electric Power Systems (GE) LMS100's to allow for fast startup and ramping capability; and the Project would help a load-serving entity (LSE) meet resource adequacy (RA) requirements. (FSA, Air Quality Addendum, p. 2.1-99 to 2.1-100; p. 2.1-108 to 2.1-114.)

The Project would meet the Greenhouse Gases Emission Performance Standard (Title 20,

California Code of Regulations, section 2900 et seq.) that applies to utility purchases of base load power from power plants should operating conditions at the Project change in the future to a base load facility. The Project also meets the EPS of 0.500 metric tonnes CO<sub>2</sub> per megawatt-hour, with a rating of 0.451 metric tonnes CO<sub>2</sub> per megawatt-hour. (FSA, Air Quality Addendum, p. 2.1-99 to 2.1-100.)

In conclusion, the evidence indicates that the Project, with the incorporation of proposed conditions of certification, complies with all applicable Air Quality and GHG LORS and will not result in any significant impacts related to Air Quality or GHG emissions. (FSA, Air Quality Addendum, pp. 2.1-60 through 2.1-66, 2.1-70, 2.1-99 through 2.1-100; *see also* Exhibit No. 102, Declaration of J. Lague Regarding Air Quality; Exhibit No. 143, Declaration of John Lague Regarding Air Quality; Exhibit No. 144, Declaration of Mark Turner Regarding Air Quality; Exhibit No. 147, Applicant Comments on the FSA, Air Quality Addendum; Exhibit 148, Supplemental Declaration of John Lague Regarding Air Quality; Testimony of Mohsen Nazemi at July 19, 2010 Evidentiary Hearing.)

## **2. Finding Required By Assembly Bill 1318**

Assembly Bill (AB) 1318 provides that the CEC “shall determine whether the emission credits to be credited and transferred [from the SCAQMD to the CPV Sentinel Project] satisfy all applicable legal requirements.”<sup>3</sup>

### **a. AB 1318 Did Not Create A Novel Duty For CEC**

The determination required by AB 1318 does not impose unique obligations on the CEC. The CEC’s normal siting and certification procedures require substantially similar, if not identical, findings. AB 1318 provides:

The State Energy Resources Conservation and Development Commission shall determine whether the emission credits to be credited and transferred satisfy all applicable legal requirements. In the exercise of its regulatory responsibilities under its power facility and site certification authority, the State Energy Resources Conservation and Development Commission shall not certify an eligible electrical

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<sup>3</sup> Health & Safety Code Section 40440.14(c).

generation facility if it determines that the credit and transfer by the south coast district do not satisfy all applicable legal requirements.<sup>4</sup>

Even in the absence of AB 1318, the CEC “may not certify a facility ... when it finds, pursuant to subdivision (d) of Section 25523, that the facility does not conform with any applicable state, local, or regional standards, ordinances, or laws, unless” the CEC makes specified findings regarding public convenience and necessity.<sup>5</sup> Regardless of such specified findings, the CEC “may not make a finding in conflict with applicable federal law or regulation.”<sup>6</sup> Accordingly, the determination required by AB 1318 essentially represents a reiteration of the CEC’s pre-existing obligations.

**b. CEC Can Rely On Local Air District’s Expertise**

The CEC is allowed, indeed instructed, to rely on a local air pollution control district’s Determination of Compliance (DOC) when finding that a facility complies with applicable local, regional, state, and federal standards, ordinances, regulations or laws.<sup>7</sup> This reliance is both commonsensical and administratively efficient considering the expertise of local air pollution control districts with air quality laws. Since the local air pollution control districts have been delegated the authority to act as federal Clean Air Act permitting authorities, it is understandable that the California Legislature intends the CEC to leverage the districts’ knowledge and permitting efforts when making its findings.<sup>8</sup>

The California Legislature’s instructions to rely on the expertise of local air pollution control districts is especially explicit regarding emission offsets: “The commission may not find that the proposed facility conforms with applicable air quality standards ... unless the applicable air pollution control district

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<sup>4</sup> *Id.*

<sup>5</sup> Public Resources Code § 25525; *see also* 20 CCR § 1752(a).

<sup>6</sup> *Id.*

<sup>7</sup> 20 CCR § 1752.3(a)(“The ... proposed decision shall include findings and conclusions on conformity with all applicable air quality laws, including required conditions, based upon the determination of compliance submitted by the local air pollution control district.”)(emphasis added); 20 CCR § 1744.5 (“The local air pollution control officer shall conduct, for the commission’s certification process, a determination of compliance review of the application in order to determine whether the proposed facility meets the requirements of the applicable new source review rule and all other applicable district regulations.”)(emphasis added).

<sup>8</sup> *See* Public Resources Code § 25216.3 (acknowledging the special status of air quality standards).

or air quality management district certifies ... that complete emissions offsets for the proposed facility have been identified and will be obtained by the applicant....”<sup>9</sup> Here, the CEC is permitted to rely on the SCAQMD’s expert determination on the legality of the emission credits proposed to be utilized by the Sentinel Project. The SCAQMD has prepared, and submitted to the CEC, an Addendum to the DOC and a Revision to the Addendum to the DOC for the Sentinel Project. Therein, the SCAQMD “identified a series of emission offsets for PM10 and SOx which have been created as a result of reductions from permitted equipment that permanently ceased operation in AQMD.”<sup>10</sup> These emission credits “meet the integrity criteria for qualifying as offsets, meaning they are all Real, Permanent, Quantifiable, Enforceable and Surplus.”<sup>11</sup> This conclusion was further buttressed by testimony from Mohsen Nazemi at the evidentiary hearing on July 19, 2010.

**c. EPA and California Air Resources Board Have Made Previous Relevant Determinations Regarding Legality of Emission Offsets**

As noted in the Addendum to the DOC, the “PM10 and SOx offsets [to be credited and transferred to Sentinel Project] have been removed from the AQMD’s internal offset accounts....”<sup>12</sup> The Environmental Protection Agency (EPA) previously has determined that the emission credits located in the SCAQMD’s internal accounts comply with federal law.

EPA approved SCAQMD Rule 1309.1 as part of the state implementation plan (SIP) on December 4, 1996.<sup>13</sup> In approving Rule 1309.1 in 1996, EPA “determined that the District’s implementation of a tracking system demonstrated that the Priority Reserve bank’s emission reduction

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<sup>9</sup> Public Resources Code § 25523(d)(2).

<sup>10</sup> Addendum to Determination of Compliance, Appendix N (Emission Offset Evaluation), 6 (March 2, 2010; Docket Log No. 55739)(revised May 12, 2010; Docket Log Nos. 56650, 56737).

<sup>11</sup> *Id.* (referencing the necessary integrity criteria for federal Clean Air Act emission offsets).

<sup>12</sup> *Id.* at 7.

<sup>13</sup> *See* 40 CFR Part 52 “Approval and Promulgation of Implementation Plan for South Coast Air Quality Management District,” 61 Fed. Reg. 64291 (December 4, 1996).

credits complied with the requirements of section 173(c).”<sup>14</sup> Due to the energy crisis, the SCAQMD approved amendments, in 2001 and again in 2002, to Rule 1309.1 to allow electric generating facilities to access the Priority Reserve. The California Air Resources Board submitted the twice-revised Rule 1309.1 to EPA on December 23, 2002. EPA approved the 2002 version of Rule 1309.1 on May 25, 2006.<sup>15</sup> In approving Rule 1309.1, EPA explained that its “role is to determine whether the SIP revision [i.e., the revisions to Rule 1309.1 allowing power plants to access the SCAQMD’s offset accounts] meets the requirements of the CAA [Clean Air Act].”<sup>16</sup> In other words, EPA found that allowing electric generating facilities to access the SCAQMD’s internal accounts, in particular the Priority Reserve, does not violate Clean Air Act Section 173(c). Further, in the related Response to Comments for Docket No. EPA-R09-OAR-2006-0281, EPA reiterated the appropriateness of its initial 1996 approval of Rule 1309.1: “In 1996, EPA concluded that the Priority Reserve Fund ERCs [emission reduction credits], based on the District’s Tracking System, satisfied the legal requirements of Section 173(c).”<sup>17</sup> EPA continued, “we have not determined that any credits in the District’s ERC bank are illegal.”<sup>18</sup>

The PM10 and SOx emission offsets being made available to CPV Sentinel pursuant to AB 1318 originated from the SCAQMD’s internal emission offsets accounts, which, as described above, were previously validated by CARB and EPA. Furthermore, in establishing the AB 1318 Tracking System, from which the offsets for the Project will be drawn, the SCAQMD applied additional rigorous scrutiny to the offsets placed in the AB 1318 Tracking System above and beyond that applied to the SCAQMD’s internal emission offset account generally. Thus, the offsets in the AB 1318 Tracking System represent a distinct and unique subset of offsets from the SCAQMD’s internal emission offset account, which was

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<sup>14</sup> 71 Fed. Reg. 35158 (June 19, 2006)(citing 61 Fed. Reg. 64292).

<sup>15</sup> See 40 CFR Part 52 “Revisions to the California State Implementation Plan, South Coast Air Quality Management District,” 71 Fed. Reg. 35157 (June 19, 2006).

<sup>16</sup> 71 Fed. Reg. 35158 (June 19, 2006).

<sup>17</sup> *Id.* at 4.

<sup>18</sup> *Id.* at 6.

previously approved by both CARB and EPA.

### **3. Timing of Source-Specific SIP Revision**

This issue was fully briefed in Applicant's Rebuttal to the Testimony of Michael Harris filed on June 30, 2010 (Exhibit No. 152). In short, approval of the proposed SIP amendment is not a prerequisite to SCAQMD's issuance of the DOC or the CEC's certification of the Project. To the extent that the proposed SIP amendment is necessary at all, it need not be approved by EPA until commencement of Project operations. Moreover, even if one took an overly conservative view that the SIP amendment, to the extent required, must be fully approved prior to issuance of the New Source Review permit to construct, that permit has not yet been issued by the SCAQMD and need not be issued for CEC approval.

## **C. Other Environmental Topic Areas**

### **1. Biological Resources**

The Project will not result in any significant environmental impacts related to Biological Resources and will comply with all applicable LORS. (*See* FSA, 4.2-1; *see also* Exhibit No. 103, Declaration of D. Kisner regarding Biological Resources [including by reference the exhibits and testimony relied upon therein].) Without mitigation, operational impacts from project groundwater use would contribute to groundwater drawdown in the Willow Hole Conservation Area resulting in impacts to the groundwater-dependant mesquite hummock vegetation and the special-status species it supports. (FSA, 4.2-1.) Using groundwater modeling, staff identified a water recharge schedule that would ensure an adequate amount of water is recharged into the Mission Creek spreading grounds sufficiently in advance of project groundwater pumping to prevent groundwater drawdown, thereby avoiding impacts to mesquite hummocks. (*Id.*) Based on communications between Staff and United States Fish and Wildlife Service (USFWS), USFWS is in agreement with implementation of this water recharge schedule to avoid impacts to mesquite hummocks and consultation under the Endangered Species Act is not required. (*Id.*)

### **2. Cultural Resources**

The Project will not result in any significant environmental impacts related to Cultural Resources

and will comply with all applicable LORS. (*See* FSA, 4.3-1; *see also* Exhibit No. 104, Declaration of B. Hatoff regarding Archaeological Cultural Resources [including by reference the exhibits and testimony relied upon therein]; Exhibit No. 105, Declaration of R. Herbert regarding Historic Architectural Cultural Resources [including by reference the exhibits and testimony relied upon therein].) With incorporation of proposed conditions of certification, the Project would not have a significant impact on potentially significant cultural resources that may be discovered during construction. (FSA, p. 4.3-23.)

### **3. Hazardous Materials**

The Project will not result in any significant environmental impacts related to Hazardous Materials and will comply with all applicable LORS. (*See* FSA, 4.4-1; *see also* Exhibit No. 106, Declaration of S. Hussain regarding Hazardous Materials [including by reference the exhibits and testimony relied upon therein].)

### **4. Land Use**

The Project will not result in any significant environmental impacts related to Land Use and will comply with all applicable LORS. (*See* FSA, 4.5-1; *see also* Exhibit No. 107, Declaration of T. Dorje regarding Land Use and Soil [including by reference the exhibits and testimony relied upon therein].) Staff determined that the Project is consistent with the current development pattern for the area established by the Riverside County General Plan, and Municipal Code, and the City of Palm Springs General Plan and Municipal Code. (FSA, 4.5-1.) The Project is consistent with permitted uses within these zoning and land use designations and would not divide an established community. (Exhibit No. 107, Declaration of T. Dorje regarding Land Use and Soil.) In addition, the proposed Project would not be incompatible with existing onsite or nearby uses, as it is consistent with the general character of these permitted uses and the planned development pattern for the area. (FSA, 4.5-1.)

### **5. Noise And Vibration**

The Project will not result in any significant environmental impacts related to Noise and Vibration and will comply with all applicable LORS. (*See* FSA, 4.6-1; *see also* Exhibit No. 108, Declaration of R.

Reeves regarding Noise [including by reference the exhibits and testimony relied upon therein].)

## **6. Public Health**

The Project will not result in any significant environmental impacts related to Public Health and will comply with all applicable LORS. (*See* FSA, 4.7-1; *see also* Exhibit No. 109, Declaration of J. Mitchell regarding Public Health [including by reference the exhibits and testimony relied upon therein].)

## **7. Socioeconomic Resources**

The Project will not result in any significant environmental impacts related to Socioeconomic Resources and will comply with all applicable LORS. (*See* FSA, 4.8-16; *see also* Exhibit No. 110, Declaration of M. Feeney regarding Socioeconomic Resources [including by reference the exhibits and testimony relied upon therein].)

The Project would have a positive impact on fiscal resources in Riverside County and the region. (Exhibit No. 110, Declaration of M. Feeney regarding Socioeconomic Resources.) Construction personnel and the project's operation workers could be drawn from the local labor force. The construction and operation of the project would not have a significant adverse impact on law enforcement, emergency, fire, medical, utility, or educational services. Although some of the census block groups in the project's vicinity could hold environmental justice populations, the project would not result in significant adverse environmental impacts. Therefore, there would not be a disproportionate adverse impact on environmental justice groups. (*Id.*; FSA, 4.8-16.)

## **8. Soil and Water Resources**

The Project will not result in any significant environmental impacts related to Soil and Water Resources and will comply with all applicable LORS. (*See* FSA, 4.9-1 and 4.9-2; *see also* Exhibit No. 111, Declaration of G. Molinario Regarding Environmental Site Investigations [including by reference the exhibits and testimony relied upon therein]; Exhibit No. 112, Declaration of G. Muehleck Regarding Groundwater [including by reference the exhibits and testimony relied upon therein]; Exhibit No. 114, Declaration of A. Connell regarding Soil and Water Resources [including by reference the exhibits and



testimony relied upon therein]; Exhibit No. 115, Declaration of K. Helm regarding Soil and Water Resources [including by reference the exhibits and testimony relied upon therein]; Exhibit 128, Declaration of B. Hren regarding Soil and Water Resources [including by reference the exhibits and testimony relied upon therein]; Exhibit 129, Declaration of R. Krieger regarding Water Resources [including by reference the exhibits and testimony relied upon therein].)

The Project water supply plan consists of wet cooling using groundwater pumped from on-site wells. (See Exhibit 128, Declaration of B. Hren regarding Soil and Water Resources.) To mitigate any adverse impacts associated with groundwater pumping, and to comply with applicable LORS and CEC policy, the Project water supply plan includes:

**Importation** – The Project will import more than 108% of its water demand to ensure that the Project increases the total water supply in the basin. Since the Project would use water from the Mission Creek Sub-basin, all of this imported water will be recharged in the Mission Creek Sub-basin. In addition, the Project has agreed to pay an extraction fee to Desert Water Agency (DWA), equivalent to the groundwater replenishment assessment paid by other groundwater pumpers in the basin, to contribute to DWA’s ongoing replenishment program aimed at correcting the long-term overdraft within the basin. (See Exhibit 128, Declaration of B. Hren regarding Soil and Water Resources; FSA, p. 4.9-11.)

**Conservation** – Freshwater conservation is achieved in two innovative ways. First, degraded reclaimed water will be developed to supply the Palm Springs National Country Club to replace the freshwater currently used by the golf course. Second, Applicant is paying the cost of retrofitting existing retail users’ irrigation systems with high-tech ET irrigation controllers with a proven track record of achieving reductions in the landscape irrigation use by water users. (See Exhibit 128, Declaration of B. Hren regarding Soil and Water Resources; FSA, p. 4.9-11.)

With implementation of conditions of certification, the Project’s water supply plan would not cause any unmitigated significant impacts, and would conform to applicable LORS and CEC policy. (See

Exhibit 128, Declaration of B. Hren regarding Soil and Water Resources; FSA, p. 4.9-1.)

### **9. Traffic And Transportation**

The Project will not result in any significant environmental impacts related to Traffic and Transportation and will comply with all applicable LORS. (*See* FSA, 4.10-1; *see also* Exhibit No. 117, Declaration of N. Casil regarding Traffic and Transportation [including by reference the exhibits and testimony relied upon therein].) Although three intersections would experience short-term potential impacts during the peak construction period, mitigation measures, including deploying trained traffic control personnel and rerouting project-added traffic, will reduce potential impacts to less than significant levels. (Exhibit No. 117, Declaration of N. Casil regarding Traffic and Transportation.)

### **10. Transmission Line Safety And Nuisance**

The Project will not result in any significant environmental impacts related to Transmission Line Safety and Nuisance and will comply with all applicable LORS. (*See* FSA, 4.11-1; *see also* Exhibit No. 118, Declaration of J. Kritikson regarding Transmission Facilities [including by reference the exhibits and testimony relied upon therein].) The Project would transmit power to the Southern California Edison (SCE) transmission grid through its existing 220-kV Devers Substation approximately 700 feet west of the Project site. (FSA, p. 4.11-1.) The Project would include construction of a single-circuit, 220-kV line from the power plant to the substation. (*Id.*) The line would (a) traverse undisturbed desert land with no nearby residents, thereby eliminating the potential for residential electric and magnetic field exposures, and (b) be owned and operated by SCE so its proposed design, erection, and maintenance plan would be according to standard SCE practices, which conform to applicable LORS. (*Id.*) With conditions of certification, any line-related safety and nuisance impacts would be less than significant. (*Id.*)

### **11. Visual Resources**

The Project will not result in any significant environmental impacts related to Visual Resources and will comply with all applicable LORS. (*See* FSA, 4.12-1; *see also* Exhibit No. 119, Declaration of R. Stuhan regarding Visual Resources [including by reference the exhibits and testimony relied upon

therein].) During construction, the short-term visual intrusion of construction materials and equipment would constitute an adverse, but not significant, impact. (Declaration of R. Stuhan regarding Visual Resources.) Modeling suggests that plumes would occur during operation. However, due to the limited operational hours, of which the bulk would occur during summer months when conditions are least favorable for plume formation, visible vapor plumes from the proposed project would result in a less-than-significant impact on visual resources. (*Id.*)

## **12. Waste Management**

The Project will not result in any significant environmental impacts related to Waste Management and will comply with all applicable LORS. (*See* FSA, 4.13-1; *see also* Exhibit No. 120, Declaration of E. Skov regarding Waste Management [including by reference the exhibits and testimony relied upon therein].) The amount of hazardous wastes that would be generated annually by the Project is expected to result in a less-than-significant impact. (Exhibit No. 120, Declaration of E. Skov regarding Waste Management.) Recycling wastes generated by the project during construction and operation; best practices; appropriate procedures; and personnel training would ensure that nonhazardous and hazardous wastes are minimized, properly handled, and do not significantly affect the environment. (*Id.*)

## **13. Worker Safety and Fire Protection**

The Project will not result in any significant environmental impacts related to Worker Safety and Fire Protection and will comply with all applicable LORS. (*See* FSA, 4.14-1; *see also* Exhibit No. 121, Declaration of L. Griggs regarding Worker Safety [including by reference the exhibits and testimony relied upon therein].) Worker exposure to physical and chemical hazards will be minimized through adherence to appropriate engineering design criteria, implementation of safety and administrative procedures, use of personal protective equipment, and compliance with health and safety regulations. (Exhibit No. 121, Declaration of L. Griggs regarding Worker Safety.)

## **14. Facility Design**

The Project will not result in any significant environmental impacts related to Facility Design and

will comply with all applicable LORS. (*See* FSA, 5.1-1.)

#### **15. Geology and Paleontology**

The Project will not result in any significant environmental impacts related to Geology and Paleontology and will comply with all applicable LORS. (*See* FSA, 5.2-1; *see also* Exhibit No. 122, Declaration of B. O’Braitis regarding Geologic Hazards [including by reference the exhibits and testimony relied upon therein]; Exhibit No. 123, Declaration of R. Rice regarding Geologic Resources [including by reference the exhibits and testimony relied upon therein] ; Exhibit No. 124, Declaration of L. Fisk regarding Paleontology [including by reference the exhibits and testimony relied upon therein].)

There are no known viable geologic or mineralogical resources at the CPV Sentinel site. (*See* FSA, 5.2-1.) Paleontological resources have been documented within 6 miles of the project, but no significant fossils were found during cursory field evaluation of the plant site, near ancillary facilities or at the off-site lay down area. Potential impacts to paleontological resources due to construction activities would be mitigated through worker training and monitoring by qualified paleontologists. (*Id.*)

#### **16. Power Plant Efficiency**

The Project will not result in any significant environmental impacts related to Power Plant Efficiency and will comply with all applicable LORS. (*See* FSA, 5.3-1.)

#### **17. Power Plant Reliability**

The Project will not result in any significant environmental impacts related to Power Plant Reliability and will comply with all applicable LORS. (*See* FSA, 5.4-1.)

#### **18. Transmission System Engineering**

The Project will not result in any significant environmental impacts related to Transmission System Engineering and will comply with all applicable LORS. (*See* FSA, 5.5-1; *see also* Exhibit No. 118, Declaration of J. Kritikson regarding Transmission Facilities [including by reference the exhibits and testimony relied upon therein].)

**19. Alternatives**

The Project will not result in any significant environmental impacts related to Alternatives and will comply with all applicable LORS. (*See* FSA, 6-1; *see also* Exhibit No. 126, Declaration of K. Rushmore regarding Alternatives [including by reference the exhibits and testimony relied upon therein].)

**20. General Conditions**

The Project will not result in any significant environmental impacts related to General Conditions and will comply with all applicable LORS. (*See* FSA, 7-1.) The project's General Compliance conditions of certification, including Compliance Monitoring and Closure Plan (Compliance Plan), have been established as required by Public Resources Code § 25532. (*Id.*) The plan provides a means for assuring that the facility is constructed, operated and closed in compliance with public health and safety, environmental and other applicable regulations, guidelines, and conditions. (*Id.*)

DATED: August 13, 2010

Respectfully submitted,

*/S/ MICHAEL CARROLL*

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Michael Carroll  
LATHAM & WATKINS LLP  
Counsel to Applicant

**STATE OF CALIFORNIA  
ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT COMMISSION**

In the Matter of: ) Docket No. 07-AFC-3  
)  
Application for Certification, ) **PROOF OF SERVICE**  
for the CPV SENTINEL ENERGY PROJECT )  
) (July 1, 2010]  
)  
\_\_\_\_\_ )

APPLICANT

**Mark Turner**  
Project Manager  
CPV Sentinel, LLC  
55 Second Street, Suite 525  
San Francisco, California 94105  
[mturner@cpv.com](mailto:mturner@cpv.com)

**Dale Shileikis**  
Vice President  
URS Corporation  
Post Montgomery Center  
One Montgomery Street, Suite 900  
San Francisco, CA, 94104-4538  
[dale\\_shileikis@urscorp.com](mailto:dale_shileikis@urscorp.com)

INTERESTED AGENCIES

**California ISO**  
E-mail preferred  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)

**Mohsen Nazemi**  
South Coast Air Quality Management District  
21865 E. Copley Drive  
Diamond Bar, California 91765-4178  
[mnazemi@aqmd.gov](mailto:mnazemi@aqmd.gov)

CPV SENTINEL ENERGY PROJECT  
CEC Docket No. 07-AFC-3

INTERVENORS

**Angela Johnson Meszaros**  
CA Communities Against Toxics  
1107 Fair Oaks Avenue, #246  
South Pasadena, CA 91030  
[Angela@CleanAirMatters.net](mailto:Angela@CleanAirMatters.net)

**Shana Lazerow**  
Communities for a Better Environment  
1904 Franklin Street, Suite 600  
Oakland, California 94612  
[slazerow@cbeval.org](mailto:slazerow@cbeval.org)

ENERGY COMMISSION

**James D. Boyd**  
Vice Chair and Presiding Member  
CALIFORNIA ENERGY COMMISSION  
1516 Ninth Street  
Sacramento, California 95814-5512  
[jboyd@energy.state.ca.us](mailto:jboyd@energy.state.ca.us)

**Kenneth Celli**  
Hearing Officer  
CALIFORNIA ENERGY COMMISSION  
1516 Ninth Street  
Sacramento, California 95814-5512  
[kcelli@energy.state.ca.us](mailto:kcelli@energy.state.ca.us)

**John Kessler**  
Project Manager  
CALIFORNIA ENERGY COMMISSION  
1516 Ninth Street  
Sacramento, California 95814-5512  
[jkessler@energy.state.ca.us](mailto:jkessler@energy.state.ca.us)

CPV SENTINEL ENERGY PROJECT  
CEC Docket No. 07-AFC-3

**Tim Olson**

Advisor to Commissioner Boyd  
CALIFORNIA ENERGY COMMISSION  
1516 Ninth Street  
Sacramento, California 95814-5512  
[tolson@energy.state.ca.us](mailto:tolson@energy.state.ca.us)

**Caryn Holmes**

Staff Counsel  
CALIFORNIA ENERGY COMMISSION  
1516 Ninth Street  
Sacramento, California 95814-5512  
[cholmes@energy.state.ca.us](mailto:cholmes@energy.state.ca.us)

**Dick Ratliff**

Staff Counsel  
CALIFORNIA ENERGY COMMISSION  
1516 Ninth Street  
Sacramento, California 95814-5512  
[dratliff@energy.state.ca.us](mailto:dratliff@energy.state.ca.us)

**Jennifer Jennings**

Public Adviser  
CALIFORNIA ENERGY COMMISSION  
1516 Ninth Street  
Sacramento, California 95814-5512  
[Publicadviser@energy.state.ca.us](mailto:Publicadviser@energy.state.ca.us)



**DECLARATION OF SERVICE**

I, Paul Kihm, declare that on August 13, 2010, I served and filed copies of the attached:

**Applicant's Opening Brief**

to all parties identified on the Proof of Service List above in the following manner:

**California Energy Commission Docket Unit**

- Transmission by depositing one original paper copy with FedEx overnight mail delivery service at Costa Mesa, California, with delivery fees thereon fully prepaid and addressed to the following:

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I further declare that transmission via U.S. Mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 13, 2010, at Costa Mesa, California.

  
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Paul Kihm