

**STATE OF CALIFORNIA**  
**Energy Resources Conservation  
and Development Commission**

<b>DOCKET</b>	
<b>08-AFC-12</b>	
DATE	<u>NOV 10 2009</u>
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In the Matter of: )  
 )  
Application for Certification for the )  
San Joaquin Solar 1 and 2 Hybrid Power Plant )  
 )  
San Joaquin Solar 1 and 2 LLC )

Docket No. 08-AFC-12

**SAN JOAQUIN SOLAR 1 AND 2, LLC'S  
RESPONSE TO  
CALIFORNIA UNIONS FOR RELIABLE ENERGY'S  
MOTION TO COMPEL PRODUCTION OF INFORMATION  
FOR DATA REQUEST SET 5**

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San Joaquin Solar 1 LLC and San Joaquin Solar 2 LLC, collectively referred to as San Joaquin Solar (“SJS” or “Applicant”), provide this Response to “California Unions for Reliable Energy’s (“CURE”) Petition to Compel Production of Information in Response to CURE Data Requests, Set Five” (“Petition”). CURE filed its Petition on October 26, 2009.

**INTRODUCTION**

Applicant filed its Application for Certification (“Application”) on November 26, 2008 and the Application was accepted as data adequate on March 11, 2009. Shortly thereafter, CURE filed a Petition to Intervene and began propounding data requests.

CURE’s first two sets of data requests, filed on May 28 and July 14, 2009, contained a total of 35 requests. On July 27, 2009, CURE propounded sixty-four (64) more data requests. More followed over the next three months, and as of the date of this filing, CURE has filed five sets of data requests containing two-hundred seventy-eight (278) requests, which includes subparts totaling more than three-hundred (300) distinct requests. To date, SJS has objected to

sixty-eight (68) of CURE's two-hundred seventy-eight (278) data requests in sets 1 through 5 and provided answers to the remaining two-hundred ten (210) requests in a good faith effort at full disclosure.

With respect to Set 5, CURE submitted seventy-two (72) data requests. SJS objected to twenty-eight (28) of these requests. CURE's petition seeks to compel a response to twenty (20) of these objectionable requests. CURE's Petition also seeks to compel a further response to three (3) data requests in Set 5 because CURE is unsatisfied with the response or disagrees with the response provided by the Applicant.

The volume of requests propounded by CURE is unprecedented, nearly twice as many as the requests submitted by Commission Staff. Not only is the volume of requests staggering, but these requests are also unprecedented, as CURE seeks to compel the Applicant to perform additional, costly, complex and burdensome research and analysis at CURE's request. In Set 5 CURE seeks, among other matters, to compel the Applicant to calculate emission factors for "various types" of fuel mixes and combustion temperatures without even specifying the mixes to be analyzed, to obtain and disclose confidential well data from third parties, to revise conceptual models to CURE's specifications, to needlessly review site sedimentation and erosion control plans, to create a needless three-dimensional model based on specific factors identified by CURE, and to conduct several, additional comparative analyses of the aquifer, based on methodologies for types of aquifers that are not present at the Project site.

Not only are each of these data requests founded on patently false assumptions and assertions by CURE (as we explain below) but each of these requests stray so over the line drawn by the Commission of "undiscoverable research and analysis" that these requests may be summarily denied. Section 1716 of the Commission's regulations:

require[s] parties to provide information *that they possess*; the regulations do not require parties to perform new or different analyses at the whim of other parties.<sup>1</sup>

We note that many of CURE's most egregious attempts to burden and delay this proceeding are cloaked in the guise of a concern for CEQA. CEQA's purpose is to provide lead agencies with sufficient information to fully consider the potential environmental impacts of a proposed project, and ensure that decisions are "informed and balanced."<sup>2</sup> However, CEQA "must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement."<sup>3</sup> Neither CEQA nor this proceeding should be used as an instrument for the oppression and needless delay of renewable resource projects. CURE's Petition to Compel responses to Data Request Set 5 should be denied.

## **DISCUSSION**

**I. The information requested by CURE in Data Requests 223, 232, 237, 242, 249, 257, 259, 261, 266-269, 270-274, and 278 is not relevant or reasonably necessary for the Commission to make a decision on this application.**

A. The information requested in Data Request 223 regarding "various types of fuel mixes and combustion temperatures" is not reasonably available to the applicant, and is not relevant or reasonably necessary for the Commission to make a decision on this application.

CURE's Data Request 223 asks the Applicant to "provide N<sub>2</sub>O and CH<sub>4</sub> emission factors for the Projects biomass combustors for the various types of fuel mixes and combustion temperatures" and to "document all your assumptions."<sup>4</sup> CURE's Petition to Compel production of this information should be denied, as this data request is fatally vague, and the information is not reasonably available to the Applicant.

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<sup>1</sup> Application for Certification of the Tesla Power Project by Midway Power LLC, *Order Denying Intervenor's Petitions for Reconsideration*, p. 3, Docket 01-AFC-21, Certified June 16, 2004, Order No. 04-0811-02 (filed Aug. 11, 2004)(emphasis added).

<sup>2</sup> CEQA Guidelines, § 15003, stating CEQA policies.

<sup>3</sup> *Id.*

<sup>4</sup> *California Unions for Reliable Energy Data Requests Set 5*, Data Request 232, p. 9 (filed on Sept. 4, 2009).

Under CEQA “agencies cannot be expected to read the minds of project opponents who are demanding analysis of vague alternatives without specifying what they have in mind.”<sup>5</sup> Similarly, the Applicant should not be expected to read the mind of CURE when it demands analysis of vague alternatives without specifying what it has in mind. CURE's request for analysis of “various types” of “fuel mixes and combustion temperatures” connotes limitless permutations of emission factors to calculate. CURE's Petition does not provide any further specificity. Once again, CURE's request would require an extraordinary amount of additional research and analysis of dubious relevance. This is a burden that Applicant is not required to bear.<sup>6</sup> Applicant has already provided the emission factors for the types of fuel that the Project is expected to utilize.<sup>7</sup> This information is sufficient for the Commission to make a decision on this Application.

CURE's Petition to Compel response to Data Request 223 should be denied.

- B. The information requested in Data Request 232 is not relevant or necessary, as there is no need to discuss mitigation when there are no significant impacts, and the Project's emissions are below the CEQA threshold.

CURE's Data Request 232 asks Applicant to:

[D]iscuss potential mitigation measures to mitigate the Project's mobile source emissions, including the feasibility of a “Clean Air Truck” program (retrofit and replacement of trucks owned by trucking firms delivering biomass) such as proposed by the Liberty Quarry Applicant.<sup>8</sup>

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<sup>5</sup> Remy, *Guide to CEQA*, 11th Edition, p. 568.

<sup>6</sup> Committee Ruling on Intervenor Center for Biological Diversity's Petition to Compel Data Responses, Application for Certification for the Carlsbad Energy Center, Docket No. 07-AFC-6, Dec. 26, 2008, p. 2, 3.

<sup>7</sup> San Joaquin Solar 1 and 2 Hybrid Power Project, Application for Certification (“SJS AFC”) Section 5.2.2.2 and Appendix B-3.

<sup>8</sup> *California Unions for Reliable Energy Data Requests Set 5*, Data Request 232, p. 13 (filed on Sept. 4, 2009).

CURE asserts that information regarding mitigation measures to address emissions from off-site mobile sources “is reasonably necessary for the Commission’s decision on whether the Project will mitigate potentially significant air quality impacts from mobile source emissions.”<sup>9</sup>

The reasoning supporting CURE’s assertions supporting its Data Request is circular, and fails to account for a crucial threshold step: determining whether potentially significant impacts from mobile source emissions will occur. CEQA does not require that mitigation measures be identified to evaluate “whether the Project will mitigate.”<sup>10</sup> Instead, as the Commission has long recognized, “appropriate mitigation measures must be identified” only if “significant emission impacts are identified.”<sup>11</sup> Requiring the identification of “specific mitigation measures is in the nature of analysis and research” which Applicant is “not required to perform.”<sup>12</sup>

As stated in Applicant’s response to Staff’s Data Request 24, the offsite mobile source emissions of the project do not constitute a significant impact; consequently, discussion of mitigation measures is not required.<sup>13</sup> CURE has not identified any significant impact to which the requested information would be relevant in addressing. CURE’s Data Request 232 crosses the line between requesting “discoverable data,” and requiring Applicant to perform “undiscoverable analysis”<sup>14</sup> by requesting a discussion of the “feasibility of a ‘Clean Air Truck’ program.”<sup>15</sup> Furthermore, Applicant has provided sufficient information regarding the Project’s stationary source emissions, mobile emissions, and operations emissions for the Commission to

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<sup>9</sup> *California Unions for Reliable Energy Petition to Compel Production of Information in Response to CURE Data Requests, Set Five* (“CURE Petition to Compel”) Data Request 232, pp. 14, 15 (filed on Oct. 26, 2009);

<sup>10</sup> CURE Petition to Compel, p. 15.

<sup>11</sup> Committee Ruling on Intervenor Center for Biological Diversity’s Petition to Compel Data Responses, Application for Certification for the Carlsbad Energy Center, Docket No. 07-AFC-6, Dec. 26, 2008, p. 3.

<sup>12</sup> Committee Ruling on Intervenor Center for Biological Diversity’s Petition to Compel Data Responses, Application for Certification for the Carlsbad Energy Center, Docket No. 07-AFC-6, Dec. 26, 2008, p. 2, 3.

<sup>13</sup> San Joaquin Solar 1&2 Hybrid Project Supplemental Information in Response to CEC Data Request Set #1, Data Request 24, p. AIR-46.

<sup>14</sup> Committee Ruling on Intervenor Center for Biological Diversity’s Petition to Compel Data Responses, Application for Certification for the Carlsbad Energy Center, Docket No. 07-AFC-6, Dec. 26, 2008, p. 2.

<sup>15</sup> *California Unions for Reliable Energy Data Requests Set 5*, Data Request 232, p. 13 (filed on Sept. 4, 2009).

make a decision on Applicant's AFC. Therefore, CURE's Petition to Compel response to Data Request 232 should be denied.

- C. The information requested in Data Request 237 is not relevant to the Commission's decision on Applicant's AFC, and is already available to CURE.

CURE's Data Request 237 requests the "source tests for the Mendota Biomass Power Plant."<sup>16</sup> CURE argues that this information is "reasonably available" because "SJS relied on the requested information to estimate toxic air contaminant emissions from this Project."<sup>17</sup> CURE's argument fails for four reasons.

First, the Commission's regulations state that a requesting party must "state the reasons for the request."<sup>18</sup> Neither CURE's Data Request 237 or the background information provided for the data requests state the reasons why the source tests for the Mendota Biomass Power Plant has been requested.

Second, the Commission's regulations state that information from a party must be relevant or reasonably necessary for the Commission to make a decision on the AFC.<sup>19</sup> Although CURE makes a general statement that "Commission regulations require applicants to provide 'information necessary for the air pollution control district... to make a Determination of Compliance,'" CURE does not state how Applicant has failed to satisfy the applicable Commission regulations.<sup>20</sup> In fact, CURE's Petition ignores the fact that the San Joaquin Valley Air Pollution Control District ("SJVAPCD") has already issued its Preliminary Determination of Compliance for the Project.<sup>21</sup> As the asserted relevance of the Mendota source test was to

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<sup>16</sup> CURE Petition to Compel, pp. 23, 24.

<sup>17</sup> CURE Petition to Compel, p. 24.

<sup>18</sup> 20 C.C.R. § 1716.

<sup>19</sup> 20 C.C.R. § 1716.

<sup>20</sup> CURE Petition to Compel, pp. 23, 24.

<sup>21</sup> A copy of the letter confirming the Preliminary Determination of Compliance is available at <http://www.valleyair.org/notices/Docs/2009/10-12-09/San%20Joaquin%20Solar%20C-1090203.pdf>. The Notice of

provide information for the SJVAPCD's Determination of Compliance, that issue is now moot as the Preliminary Determination of Compliance has been issued.

Third, the Mendota Biomass source tests are not reasonably available to the Applicant. Applicant estimated the Project's toxic air contaminant emissions using emission factors provided by SJVAPCD, not the Mendota Biomass Power Plant source tests. CURE recognizes this fact in its Set 5 Data Requests.<sup>22</sup>

Finally, the Commission evaluates whether the requested information is already available before requiring a party to produce the information.<sup>23</sup> Even if the Mendota source tests were relevant to this proceeding, CURE has already submitted a Public Records Act request to the SJVAPCD to obtain the information requested in Data Request 237. Thus, as the information is already available in some form to CURE, Applicant should not be required to obtain the information from the District on CURE's behalf.

CURE's Petition to Compel response to Data Request 237 should be denied for all the reasons stated above.

D. The information requested in Data Request 242 is not relevant or reasonably necessary to the Commission's decision on Applicant's AFC.

CURE's Data Request 242 requests a "comparison of the TPH-d sample concentrations to regulatory agency screening levels."<sup>24</sup> Specifically, CURE alleges in its Petition to Compel that Applicant is required to provide a comparison of TPH-d sample concentrations to screening levels set by the Regional Water Quality Control Board for the San Francisco Bay Region ("San Francisco Bay Region RWQCB"). According to CURE, these screening levels, called

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Preliminary Decision was published on October 14, 2009, and is available at

<http://www.valleyair.org/notices/Docs/2009/10-12-09/C-1090203%20public%20notice.pdf>.

<sup>22</sup> *California Unions for Reliable Energy Data Requests, Set Five* (served on Sept.4, 2009) p. 15.

<sup>23</sup> Committee Ruling on Intervenor Center for Biological Diversity's Petition to Compel Data Responses, Application for Certification for the Carlsbad Energy Center, Docket No. 07-AFC-6, Dec. 26, 2008, p. 2.

Environmental Screening Levels (ESLs), “provide a regulatory threshold for TPH.”<sup>25</sup> CURE’s argument fails for three reasons.

First, the ESLs are “intended for use only at sites overseen by the San Francisco Bay Region RWQCB,<sup>26</sup> and were developed to address environmental protection goals outlined in its *Water Quality Control Plan for the San Francisco Bay Basin*.<sup>27</sup> As the Project site is not within the jurisdiction of the RWQCB, or within the area that the ESLs were specifically designed to address, the RWQCB’s ESLs are not directly relevant to Applicant. Consequently, CURE’s Data Request 242 requests a “comparison” to a screening level that was established by a different agency, to satisfy different environmental goals, and that is not applicable to the Project site. This information is neither relevant nor reasonably necessary for the Commission’s decision on Applicant’s AFC, and would require Applicant to conduct needless research and analysis on CURE’s behalf.

On this basis alone, CURE’s Petition to Compel response to Data Request 242 should be denied.

Second, CURE states that Applicant’s Phase II Environmental Site Assessment (“Phase II ESA”) “fails to provide which TPH was detected” and does not “include the requested” comparison.<sup>28</sup> In response, Applicant directs the Committee to page 2-2 of the Phase II ESA, which specifically notes:

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<sup>24</sup> CURE Petition to Compel, p. 28.

<sup>25</sup> CURE Petition to Compel, p. 29.

<sup>26</sup> <http://www.calepa.ca.gov/brownfields/documents/2005/CHHSLsGuide.pdf>; p. v.

<sup>27</sup> San Francisco Bay Region RWQCB, *Screening for Environmental Concerns at Sites with Contaminated Soil and Groundwater*, p. ES-1,

(Nov. 2007, as revised March 2008) available at

[http://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/available\\_documents/esl.pdf](http://www.waterboards.ca.gov/sanfranciscobay/water_issues/available_documents/esl.pdf). A map of the area covered by the *Water Quality Control Plan for the San Francisco Bay Basin* is available at

[http://www.swrcb.ca.gov/rwqcb2/water\\_issues/programs/basin\\_plan/docs/fig\\_1-01.pdf](http://www.swrcb.ca.gov/rwqcb2/water_issues/programs/basin_plan/docs/fig_1-01.pdf), and the plan itself is available at [http://www.swrcb.ca.gov/rwqcb2/water\\_issues/programs/basin\\_plan/docs/basin\\_plan07.pdf](http://www.swrcb.ca.gov/rwqcb2/water_issues/programs/basin_plan/docs/basin_plan07.pdf).

<sup>28</sup> CURE Petition to Compel, p. 29, 30.

The composite sample analyzed from the AST area was analyzed for total petroleum hydrocarbons quantified as diesel fuel (TPH-D) and the concentration detected was 23,000 milligrams per kilogram (mg/kg). Based on this result, it was recommended that the soil in the visibly stained area be removed and properly disposed.<sup>29</sup>

The extent of the area with staining was found to be *de minimis*.<sup>30</sup> In addition, Applicant directs the Committee to pages 16-18 of CURE's own Data Requests Set 5, where CURE notes that TPH-d was detected in Applicant's composite samples. Thus, CURE's Data Request 242 has already been addressed by Applicant's Phase II ESA, and further response is not warranted.

Third, CURE incorrectly cites to the RWQCB report, *Screening for Environmental Concerns at Sites with Contaminated Soil and Groundwater*, to support its assertion that ESLs "provide a regulatory threshold for TPH."<sup>31</sup> The RWQCB report specifically states:

This document is not intended to establish policy or regulation. The Environmental Screening Levels presented in this document and the accompanying text are specifically not intended to serve as:

- 1) a stand-alone decision making tool,
- 2) guidance for the preparation of baseline environmental assessments,
- 3) a rule to determine if a waste is hazardous under the state or federal regulations, or
- 4) a rule to determine when the release of hazardous chemicals must be reported to the overseeing regulatory agency.<sup>32</sup>

In addition, the RWQCB report states:

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<sup>29</sup> URS, *Phase II Environmental Site Assessment San Joaquin Solar Hybrid Power Stations 1 & 2*, p. 2-2 and Table 1, 08-AFC-12( filed Oct. 16, 2009); also see CalScience Environmental Laboratories, Inc. Analytical Report pp. 31, 57, and 68.

<sup>30</sup> URS, *Phase II Environmental Site Assessment San Joaquin Solar Hybrid Power Stations 1 & 2*, pp. 7-2, 7-3, 08-AFC-12( filed Oct. 16, 2009).

<sup>31</sup> CURE Petition to Compel, p. 29, FN 61.

The Tier 1 ESLs presented in the lookup tables are NOT regulatory cleanup standards. Use of the ESLs and this document in general is intended to be *entirely optional* on the part of the regulated facility and subject to the approval of the case manager in the overseeing regulatory agency.<sup>33</sup>

The purpose of the ESLs within the RWCCB report was to provide an optional method for those with limited financial resources to conduct an environmental risk assessment.<sup>34</sup> Even if Applicant were within the RWCCB's jurisdiction, the ESLs would not constitute a "regulatory threshold" that Applicant is required to meet.

In addition, CURE's Petition to Compel raises the issue that Applicant's Phase II ESA did not address cleanup goals for TPH-d.<sup>35</sup> Although this information was not requested in CURE's Data Request 242, and CURE has not sought an order to compel a response to this issue, it should be noted that Applicant is currently in discussions with the DTSC regarding remediation strategies. The *de minimis* soil found to contain TPH-d in the vicinity of the diesel-fuel and mixing tank will be excavated and properly handled and disposed.

Therefore, as the information requested in Data Request 242 is not relevant or reasonably necessary to the Commission's decision on Applicant's AFC, CURE's Petition to Compel response to Data Request 242 should be denied.

- E. The information requested in Data Request 249 is not reasonably available to the Applicant, and is not relevant or reasonably necessary for the Commission to make a decision on Applicant's AFC.

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<sup>32</sup> <http://www.waterboards.ca.gov/sanfranciscobay/esl.shtml>;

<sup>33</sup> RWBCB, *Screening for Environmental Concerns at Sites with Contaminated Soil and Groundwater*, p. ES-2, (Nov. 2007, as revised March 2008) available at [http://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/available\\_documents/esl.pdf](http://www.waterboards.ca.gov/sanfranciscobay/water_issues/available_documents/esl.pdf) (emphasis added).

<sup>34</sup> RWBCB, *Screening for Environmental Concerns at Sites with Contaminated Soil and Groundwater*, p. 1-1, (Nov. 2007, as revised March 2008) available at [http://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/available\\_documents/esl.pdf](http://www.waterboards.ca.gov/sanfranciscobay/water_issues/available_documents/esl.pdf).

<sup>35</sup> CURE Petition to Compel p. 29.

CURE's Data Request 249 seeks a "revised comprehensive and Site-specific Erosion and Sediment Control Plan that incorporates pesticide and TPH-d data."<sup>36</sup> CURE states that this information is "reasonably available" as Applicant has "collected pesticide and TPH-d data," and "need only add mitigation measures to address pesticide and TPHd in the soil."<sup>37</sup>

CURE's Petition to Compel production of this information is, at best, premature and should be denied as this information is not reasonably available to the Applicant. Applicant is currently in discussions with regulatory agencies regarding appropriate remediation strategy for these potential contaminants prior to construction. Only if these potential contaminants are not remediated prior to construction will it be necessary to determine whether the Erosion and Sediment Control Plan needs to be updated. A "comprehensive and site specific plan" is the final step in the Commissions AFC and post-compliance review process and should not be compelled at this time before all parties have had an opportunity to review and discuss these matters.

Therefore, CURE's Petition to Compel response to Data Request 249 should be denied.

F. The information requested in Data Request 257 is not reasonably available to the Applicant.

CURE's Data Request 257 requests "supporting evidence that any portion of the tested aquifer is *truly* confined." (emphasis added) CURE asserts that this information "should be reasonably available to SJS, because the assumption that the basin is confined dictated SJS's decision to use the Theis analytical method to determine the safe yield of the Pleasant Valley Groundwater Basin."<sup>38</sup>

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<sup>36</sup> *California Unions for Reliable Energy Data Requests, Set Five* (served on Sept.4, 2009) p. 25.

<sup>37</sup> CURE Petition to Compel, p. 31.

<sup>38</sup> CURE Petition to Compel, p. 40.

However, it should be noted that Applicant's consultants did not use the Theis method to estimate the safe yield of the Pleasant Valley Basin. The Theis method, which is discussed in further detail in Applicant's Aquifer Test Analysis, was used to estimate draw down in nearby wells as a result of long term pumping at the Project site.

Applicant submitted its Aquifer Test Analysis on February 19, 2009, which outlines the aquifer test procedure used to evaluate the aquifer characteristic, and the information that supported characterization of the aquifer as "confined."<sup>39</sup> Two main factors are evaluated to determine whether an aquifer is confined: the drawdown response during the constant-rate pump test, and the storativity of the aquifer. As stated in the Aquifer test analysis, the aquifer drawdown response during the constant-rate pump test indicates that the aquifer can be considered confined.<sup>40</sup> Similarly, the estimated storativity of the Anderson Well based on the results of the aquifer test was 0.001.<sup>41</sup> This storativity value falls within the range expected for confined aquifers.<sup>42</sup> CURE's assertion that the storativity value "is actually greater than the range typically observed in confined aquifers" has no basis in fact.<sup>43</sup> Therefore, as Applicant has already provided information to show its basis for determining the aquifer characteristics, CURE's Petition to Compel the production of further information showing that the aquifer is "truly" confined should be denied.

- G. The information requested in Data Request 259 is not reasonably available to the Applicant, and is not relevant or reasonably necessary to the Commission's decision on Applicant's AFC.

CURE's Data Request 259 requests that Applicant:

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<sup>39</sup> URS, *San Joaquin Solar 1 & 2- Aquifer Test Analysis* (filed on Feb. 19, 2009) ("Aquifer Test Analysis").

<sup>40</sup> URS, *San Joaquin Solar 1 & 2- Aquifer Test Analysis*, p. 3-5 (filed on Feb. 19, 2009) ("Aquifer Test Analysis").

<sup>41</sup> URS, *San Joaquin Solar 1 & 2- Aquifer Test Analysis*, p. 4 (filed on Feb. 19, 2009) ("Aquifer Test Analysis").

<sup>42</sup> Willis D. Weight, *Hydrogeology Field Manual*, p. 102 (2nd ed. 2008); *also see* Driscoll (1986) (storativities range from 0.00005 to 0.005), and Freeze and Cherry (1979) ( storativities in confined aquifers range from 0.00001 to 0.001).

<sup>43</sup> CURE Petition to Compel, p. 38.

provide a comparative analysis of the time-drawdown data using the conventional Cooper-Jacob (“steady-state”) technique for a confined aquifer, Hantush (“leaky semi-confined aquifer”) technique, and unconfined aquifer techniques (Neuman and Moench, at a minimum).<sup>44</sup>

CURE’s Petition to Compel asserts that this information is “reasonably available,” and CURE speculates that it would “require only a small number of keystrokes by the consultant.”<sup>45</sup>

Section 1716 of the Commission’s regulations state that a party may request from the applicant information that is “reasonably available.”<sup>46</sup> “Reasonably available” has been defined by the Commission as “information *that they* [parties] *possess*.”<sup>47</sup> The Commission has stated that “the regulations do not require parties to perform new or different analyses at the whim of other parties.”<sup>48</sup> CURE’s “requested analysis,” regardless of the “number of keystrokes,” that the analysis may or may not entail, requires the Applicant to produce analyses that it does not possess, and that Applicant is not required to perform on CURE’s behalf.

Moreover, CURE’s assertion that Applicant’s consultant “used several other analytical methods” does not make the specific comparative analyses requested in Data Request 259 readily available.<sup>49</sup> Neither CURE’s data requests nor its Petition to Compel request information regarding the “other analytical methods” Applicant may have used. CURE specifically requests new, comparative analyses, conducted with specific analytical methods specified by CURE.

Finally, there is no evidence other than CURE's unsupported speculation to indicate that the

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<sup>44</sup> CURE Petition to Compel, p. 44.

<sup>45</sup> CURE Petition to Compel, p. 44.

<sup>46</sup> 20 C.C.R. § 1716(b).

<sup>47</sup> Application for Certification of the Tesla Power Project by Midway Power LLC, *Order Denying Intervenor’s Petitions for Reconsideration*, p. 3, Docket 01-AFC-21, Certified June 16, 2004, Order No. 04-0811-02 (filed Aug. 11, 2004).

<sup>48</sup> Application for Certification of the Tesla Power Project by Midway Power LLC, *Order Denying Intervenor’s Petitions for Reconsideration*, p. 3, Docket 01-AFC-21, Certified June 16, 2004, Order No. 04-0811-02 (filed Aug. 11, 2004).

<sup>49</sup> CURE Petition to Compel, p. 45.

aquifer is unconfined.<sup>50</sup> As a result, analyses based on techniques for leaky or unconfined aquifers would have no relevance in this proceeding.

As the information is not reasonably available to the Applicant or relevant to this proceeding, and Applicant does not bear the burden under the Commission's regulations to perform the comparative analyses, CURE's Petition to Compel response to Data Request 259 should be denied.

H. The information requested in Data Request 261 is not relevant or reasonably necessary to the Commission's decision on Applicant's AFC.

CURE's Data Request 261 requests that Applicant "explain the resultant uncertainties introduced to estimates of long-term aquifer yield and drawdown as a result of the Applicant's test well partial penetration."<sup>51</sup> Besides a bold assertion that "the test well is probably partially penetrating," CURE provides no support for the assertion that the Applicant's test well is partially penetrating.<sup>52</sup> The Applicant fundamentally rejects the premise of CURE's request. If CURE believes that the test well is partially penetrating and believes that uncertainties may result from CURE's own presumption, then CURE is free to address these alleged uncertainties.

CURE's Petition to Compel response to Data Request 261 should be denied.

I. The information requested in Data Request 266 is not reasonably available to the Applicant, and is not reasonably necessary to the Commission's decision on Applicant's AFC.

CURE's Data Request 266 asks Applicant to "provide logs for a minimum of six additional nearby wells, spaced at distances greater than 230 feet from the Project site test

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<sup>50</sup> Application for Certification for the Carrizo Energy Solar Farm, *Committee Order Responding to CURE's Motion to Compel Production of Information*, p. 2, Docket No. 07-AFC-8 (Dec. 3, 2008).

<sup>51</sup> CURE Petition to Compel, p. 45.

<sup>52</sup> CURE Petition to Compel, p. 46.

well.”<sup>53</sup> CURE then alleges that Applicant’s AFC “fails to meet” the standard established by the Commission’s regulations, such as “fail[ing] to provide any ‘narrative discussion’” of groundwater wells identified in the AFC, and fails to provide “basic information regarding the hydrologic setting of the Project.”<sup>54</sup>

At the outset, it should be noted that neither CURE’s Data Requests nor its Petition to Compel sought further information from the Applicant regarding a “narrative discussion” on groundwater wells or the hydrologic setting of the Project. It should also be noted that the Commission deemed this Project data adequate on March 16, 2009, showing that the Applicant has not failed to meet the standard established by Commission regulations.

CURE’s Petition to Compel asserts that the “logs for a minimum of six additional nearby wells” is reasonably available to Applicant, because Applicant SJS’s consultant identified “at least five wells...based upon ‘copies of well logs on file at the local DWR office.’”<sup>55</sup> However, CURE’s Petition to Compel mischaracterizes Applicant’s AFC. Nowhere in Applicant’s AFC does it state that the wells were identified based on well logs from the local DWR office. Instead, the portion of Applicant’s AFC to which CURE cites to states,

Copies of the well logs on file at the local DWR office for Sections 4, 9, and 10 of Township 21S/Range 16E are included in Appendix E. Note that there are no logs listed on file for Section 3.<sup>56</sup>

Thus, by mischaracterizing Applicant’s AFC, CURE’s Petition to Compel attempts to infer that the well logs are reasonably available to Applicant because consultant identified wells “based upon” copies of the well logs. However, wells were actually identified via visual inspection of

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<sup>53</sup> CURE Petition to Compel, p. 48.

<sup>54</sup> CURE Petition to Compel, p. 48

<sup>55</sup> CURE Petition to Compel, p. 48

<sup>56</sup> SJS AFC, p. 5.5-11.

the site and the surrounding area. In its AFC, Applicant provided the well logs available to it. Additional logs are not reasonably available to the Applicant as explained below.

California Water Code Section 13752 prohibits the distribution of wells logs to anyone but the landowner or a government agency without the owner's permission.<sup>57</sup> To obtain the well logs requested by CURE, Applicant would have to research, at a minimum, the assessor's parcel number, the street address, and the owners name when the well was drilled.<sup>58</sup> The Applicant would then have to seek the owner's permission to obtain the logs and provide them to CURE. This is exactly the type of "undiscoverable research and analysis" that Applicant does not have the burden to perform.<sup>59</sup> If CURE wants these logs, CURE should contact the owners to obtain them.

Finally, CURE's Petition to Compel ignores Section 5.5.1.6 of Applicant's AFC, which extensively discusses the hydrogeology not only of the Project site, but of the entire San Joaquin Valley. It is unclear to Applicant what further "basic information" regarding the hydrologic settings of the Project is required. As the Commission already possesses extensive information regarding the hydrogeology of the Project site, further information is not necessary for the Commission to make a decision in this proceeding.

CURE's Petition to Compel response to Data Request 266 should be denied as the well logs are not reasonably available to the Applicant, and the information is not reasonably necessary for a Commission decision on Applicant's AFC.

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<sup>57</sup> 10 Cal. Water Code § 13752; more information regarding the Department of Water Resources policies regarding the proprietary nature of well logs, please see

[http://www.water.ca.gov/groundwater/well\\_info\\_and\\_other/well\\_completion\\_reports.cfm](http://www.water.ca.gov/groundwater/well_info_and_other/well_completion_reports.cfm).

<sup>58</sup> [http://www.water.ca.gov/groundwater/well\\_info\\_and\\_other/well\\_completion\\_reports.cfm](http://www.water.ca.gov/groundwater/well_info_and_other/well_completion_reports.cfm).

<sup>59</sup> Committee Ruling on Intervenor Center for Biological Diversity's Petition to Compel Data Responses, Application for Certification for the Carlsbad Energy Center, Docket No. 07-AFC-6, Dec. 26, 2008, p. 2.

- J. The information requested in Data Request 267 is not reasonably available to the Applicant, and requires Applicant to conduct research and analysis on CURE's behalf.

CURE's Data Request 267 requests "pump test data from each of the additional nearby wells" referenced in Data Request 266.<sup>60</sup> CURE's Petition to Compel response to this data request should be denied as Applicant does not possess pump test data for the wells referenced in Data Request 266 and the Applicant should not be compelled to conduct pump tests on these wells at CURE's behest. Thus, this information is not reasonably available to the Applicant, and cannot be requested of Applicant pursuant to Section 1716 of the Commission's regulations.

Although pump test data is sometimes provided on the well log filed with DWR, this information is proprietary and not reasonably available to the Applicant, as noted above in response to Data Request 266.

CURE's Petition to Compel response to Data Request 267 should be denied.

- K. The information requested in Data Request 268 is not relevant or reasonably necessary to the Commission's decision on Applicant's AFC, and requires Applicant to conduct research and analysis on CURE's behalf.

CURE's Data Request 268 requests the Applicant to:

Use data requested in Data Request Nos. 259 to 261 to provide a revised conceptual model of the local aquifer system surrounding the proposed Project site (at least 1.5 miles from the on-site test well).

CURE's Petition to Compel asserts that this information "should be reasonably available to Applicant" as "other projects before the Commission" discussed surrounding wells, and because Applicant "has failed to provide basic information regarding the Project's hydrologic setting and impacts."<sup>61</sup>

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<sup>60</sup> CURE Petition to Compel p. 50.

<sup>61</sup> CURE Petition to Compel, p. 53.

As noted above, the information requested in Data Requests 259 and 261 is not reasonably available to the Applicant. If the Committee rejects CURE's Petition to Compel responses to Data Requests 259 and 261, then Data Request 268 should be summarily denied, because the data requested in Data Requests 259 and 261 are a necessary precondition to Data Request 268.

However, even assuming *arguendo* that the information in response to Data Requests 259 and 261 was available, CURE's Petition to Compel response to Data Request 268 should still be denied. Parties are "not required to perform research or analysis on behalf of the requesting party"; therefore, Applicant is not required to perform this research and analysis on CURE's behalf.<sup>62</sup>

CURE's Petition to Compel response to Data Request 268 should be denied as the information is not reasonably available to Applicant, and would result in a significant burden on the Applicant to obtain.

- L. The information requested in Data Request 269 is not relevant or reasonably necessary to the Commission's decision on Applicant's AFC, and requires Applicant to conduct research and analysis on CURE's behalf.

CURE's Data Request 269 requests Applicant to "evaluate and comment on the impacts of the Applicant's revised conceptual model provided in response to Data Request 268."<sup>63</sup>

CURE's Petition to Compel response to Data Request 269 should be denied for the same reasons stated in response to Data Requests 259, 261 and 268. If the Petition to Compel responses to these questions is denied, then the Petition to Compel response to Data Request 269 should be summarily denied.

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<sup>63</sup> *California Unions for Reliable Energy Data Requests, Set Five* (served on Sept.4, 2009) p. 32.

Applicant should not be required to “evaluate” the impacts of a new, unspecified conceptual model based upon data this is not in the Applicant's possession and that is not relevant or necessary to the Commission’s decision in this proceeding. Therefore, CURE’s Petition to Compel response to Data Request 269 should be denied.

M. The information requested in Data Requests 270-274 is not relevant or reasonably necessary to the Commission’s decision on Applicant’s AFC.

1. CURE Data Requests 270 and 271.

CURE’s Data Requests 270 and 271 both request an “evaluation of perennial yield (operational safe yield) of the PVB that establishes the baseline of the Project’s analysis of the proposed Project water demand impacts.”<sup>64</sup> Data Request 270 requests “Applicant’s evaluation,” whereas Data Request 271 requests an additional, separate evaluation, based on the following information specified by CURE:

- Data as far back as 1950, if possible;
- Total basin groundwater extractions from as many pumpers as possible; and
- Water level data from a minimum of six (6) wells within a 1.5 mile radius of the proposed Project site.

CURE’s Petition to Compel asserts that this information is “necessary for an adequate impact analysis,” as it “establishes the baseline for the Project’s analysis of the proposed Project water demand impacts.”<sup>65</sup> However, CURE’s Petition to Compel creates a false equivalence between the “perennial yield for the Pleasant Valley Basin” and the “environmental baseline” that should

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<sup>64</sup> CURE Petition to Compel, p. 60, 61.

<sup>65</sup> CURE Petition to Compel, p. 61.

be used to evaluate potential impacts caused by the Project.<sup>66</sup> CURE's Petition to Compel response to these two data requests should be denied as the requested information is not reasonably available to the Applicant, and is not necessary to establish an appropriate environmental baseline to assess potential impacts from the Project.

a) This information is not reasonably available to the Applicant.

Section 1716 of the Commission's regulations require applicants to provide information that is "reasonably available" upon request by a party to the proceeding. "Reasonably available" has been interpreted by the Commission as information that is actually possessed by a party.<sup>67</sup> As noted by the Commission in previous proceedings, Section 1716 does not require "parties to perform new or different analyses at the whim of other parties."<sup>68</sup> Contrary to CURE's assertions, Applicant does not possess an "evaluation of perennial yield" of the Pleasant Valley Basin, as information regarding the perennial yield for the Pleasant Valley Basin is simply not available. However, based on available information, Applicant was able to estimate well groundwater yields in the Pleasant Valley Basin, to establish the groundwater budget for the Project site area.<sup>69</sup>

Applicant's provision of the perennial yield of the Westside Basin was not, as stated by CURE, an "attempt[ ] to draw a parallel" between the Pleasant Valley Basin and the Westside Basin, nor does Applicant's AFC ever make the "assumption that their perennial yields are

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<sup>66</sup> CURE Petition to Compel, p. 61.

<sup>67</sup> Application for Certification of the Tesla Power Project by Midway Power LLC, *Order Denying Intervenor's Petitions for Reconsideration*, p. 3, Docket 01-AFC-21, Certified June 16, 2004, Order No. 04-0811-02 (filed Aug. 11, 2004).

<sup>68</sup> Application for Certification of the Tesla Power Project by Midway Power LLC, *Order Denying Intervenor's Petitions for Reconsideration*, p. 3, Docket 01-AFC-21, Certified June 16, 2004, Order No. 04-0811-02 (filed Aug. 11, 2004).

<sup>69</sup> SJS AFC, p. 5.5-4.

interchangeable or even comparable.”<sup>70</sup> The Westside Basin perennial yield information was provided in recognition of the fact that both subbasins are part of the larger San Joaquin Valley Groundwater basin, and the demarcation between the two is man-made, not hydrogeological.<sup>71</sup>

A result of the “political division” of the two subbasins is the availability of information. As recognized in *O.W.L. Foundation v. City of Rohnert Park*, “because groundwater use is not regulated by the State, information on it is limited.”<sup>72</sup> While information was available regarding the Westside Basin’s perennial yields, comparable information was not available for the Pleasant Valley Basin. Therefore, information regarding Pleasant Valley Basin’s perennial yield is not reasonably available.

Furthermore, Applicant is not in possession of an “evaluation of perennial yield” that analyzes the factors identified by CURE in Data Request 271. Moreover, the information that Applicant would have to acquire to create such an evaluation is not reasonably available to Applicant, and would be extremely burdensome to obtain. For example, as noted by the Court in *O.W.L. Foundation v. City of Rohnert Park*:

requiring a water supplier to collect data on pumping throughout a groundwater basin would impose an enormous if not impossible burden on the water supplier.<sup>73</sup>

Requiring Applicant to obtain information regarding “[t]otal basin groundwater extractions from as many pumpers as possible”<sup>74</sup> is a similarly “enormous if not impossible burden.” In addition, as noted above in response to CURE’s Petition to Compel response to Data Requests 266-269, the information contained in well logs, such as “water level data,” is considered proprietary information by the State. Even if Applicant had access to such data, permission from the well

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<sup>70</sup> CURE’s Petition to Compel, p. 61.

<sup>71</sup> SJS AFC, p. 5.5-3.

<sup>72</sup> *O.W.L. Foundation v. City of Rohnert Park*, 168 Cal. App. 4th 568, 591 (Cal. App. 1st Dist. 2008).

<sup>73</sup> *O.W.L. Foundation v. City of Rohnert Park*, 168 Cal. App. 4th 568, 591 (Cal. App. 1st Dist. 2008).

<sup>74</sup> CURE Petition to Compel, p. 62.

owners would have to be obtained before releasing such information. Therefore, CURE's Petition to Compel response to Data Requests 270 and 271 should be denied as Applicant does not possess such information, and the information is not reasonably available to the Applicant.

- b) The requested information is not necessary for the Commission to make a decision on Applicant's AFC.

CURE asserts that the requested information is relevant to "ascertain the environmental baseline against which the Project's impacts may be measured."<sup>75</sup> However, the CEQA Guidelines state that the existing physical environmental conditions in the vicinity of the project will "normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant."<sup>76</sup> Furthermore, when evaluating whether a proposed project will impact the environment, a lead agency normally "limit[s] its examination to changes in the existing physical conditions" that would be caused by the proposed project.<sup>77</sup> In evaluating potential impacts to groundwater that would be caused by the Project, Applicant compared historical site usage to anticipated operational project groundwater water uses. The proposed groundwater use for the Project is less than has been historically used for agriculture on the property. Although the Project's proposed groundwater use is less than historical use, the potential change to existing physical conditions is not anticipated to be a significant impact. Therefore, the evaluation of Pleasant Valley Basin perennial yield is not necessary for the Commission to make a decision on Applicant's AFC, and CURE's Petition to Compel production of this information should be denied.

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<sup>75</sup> CURE Petition to Compel, p. 60, 63.

<sup>76</sup> 14 C.C.R. §15125.

<sup>77</sup> 14 C.C.R. § 15126.2.

## 2. CURE Data Requests 272, 273, and 274

CURE Data Requests 272, 273, and 274 all “seek an analysis from SJS”<sup>78</sup> that focuses on specific factors identified by CURE, on CURE’s behalf. As noted above, although parties can seek from an applicant any information, including “data and other objective information,” the information must be “reasonably available” to the applicant.<sup>79</sup> The applicant must “actually possess” the requested information.<sup>80</sup> In addition, Commission regulations do not require “parties to perform new or different analyses at the whim of other parties.”<sup>81</sup> Such a request crosses the line from “discoverable data” to “undiscoverable analysis and research.”<sup>82</sup>

CURE’s Petition to Compel response to Data Requests 272, 273, and 274 should be denied as the information is not reasonably available to the Applicant, and each data request requires Applicant to perform new and different analyses on CURE’s behalf. For example, Data Request 272 requests an “analysis” of the “effects of foreseeable future continued drought and climate change conditions,” replete with supporting “probability values and quantitative estimates of uncertainty.”<sup>83</sup> Data Request 273 requests an “evaluation of the potential effect of continued restricted imported water supplies... as a result of Bay-Delta legal decisions, CEQA process, and uncertainties,” that “assumes future restrictions may be even less than the prevailing 40% allocation.”<sup>84</sup> Finally, Data Request 274 requests a convoluted “demonstrat[ion]” of the

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<sup>78</sup> CURE Petition to Compel, p. 66.

<sup>79</sup> 20 C.C.R. 1716; Committee Ruling on Intervenor Center for Biological Diversity’s Petition to Compel Data Responses, Application for Certification for the Carlsbad Energy Center, Docket No. 07-AFC-6, Dec. 26, 2008, p. 2.

<sup>80</sup> Application for Certification of the Tesla Power Project by Midway Power LLC, *Order Denying Intervenor’s Petitions for Reconsideration*, p. 3, Docket 01-AFC-21, Certified June 16, 2004, Order No. 04-0811-02 (filed Aug. 11, 2004).

<sup>81</sup> Application for Certification of the Tesla Power Project by Midway Power LLC, *Order Denying Intervenor’s Petitions for Reconsideration*, p. 3, Docket 01-AFC-21, Certified June 16, 2004, Order No. 04-0811-02 (filed Aug. 11, 2004).

<sup>82</sup> Committee Ruling on Intervenor Center for Biological Diversity’s Petition to Compel Data Responses, Application for Certification for the Carlsbad Energy Center, Docket No. 07-AFC-6, Dec. 26, 2008, p. 2.

<sup>83</sup> CURE Petition to Compel, pp. 65, 67.

<sup>84</sup> CURE Petition to Compel, pp. 67-68.

“effect of continued restricted imported water supplies” on, among other things, “Applicant’s scenario of future CVP-SWP allocations.”<sup>85</sup> Applicant is not in possession of any of the information requested by CURE.

Furthermore, CURE’s Petition to Compel incorrectly asserts that the California Supreme Court’s decision in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (“*Vineyard*”) requires the information requested in Data Requests 272, 273, and 274.

In *Vineyard*, the Court stated that “if it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies.”<sup>86</sup> The Court emphasized that the key issue under CEQA “is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable *impacts* of supplying water to the project.”<sup>87</sup>

In this case, unlike in *Vineyard*, the reasonably foreseeable impacts of supplying water to the Project can be adequately addressed, as anticipated future water sources for the Project can be “confidently determine[d].” As stated in the AFC, the future City of Coalinga’s wastewater treatment facility will provide the Project’s main water supply, augmented by groundwater from the existing onsite well during periods of peak use, and until such time as the treated effluent becomes available for use.<sup>88</sup>

The reasonably foreseeable impacts of supplying water to the Project have been adequately discussed in the AFC and in response to Staff and CURE data requests.<sup>89</sup> As the

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<sup>85</sup> CURE Petition to Compel, p. 68.

<sup>86</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal. 4th 412, 432 (Cal. 2007).

<sup>87</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal. 4th 412, 434 (Cal. 2007) (emphasis added by the Court).

<sup>88</sup> SJS AFC, p. 5.5-9. A letter from the City of Coalinga, confirming its progress in constructing the facility, is attached as Attachment A.

<sup>89</sup> SJS AFC, Sections 5.5.2 and 5.5.4.

anticipated groundwater use by the Project, even without the construction of the City of Coalinga's wastewater treatment facility, is less than the historical agricultural use, the Project is not expected to have any significant impacts on the existing physical environment. CURE Data Requests 272, 273, and 274 do not request information regarding the impacts caused by the Project. Instead, CURE's data requests request new analyses, focusing on unspecified, unidentified potential "future uncertainties" that may impact the Project itself. This information is not necessary for the Commission to make a decision on Applicant's AFC. Therefore, CURE's Petition to Compel responses to Data Requests 272, 273, and 274 should be denied.

N. The information requested in Data Request 278 is not relevant or reasonably necessary to the Commission's decision on Applicant's AFC, requires Applicant to conduct research and analysis on CURE's behalf, and is not reasonably available to the Applicant.

CURE's Data Request 278 seeks a "robust three-dimensional conceptual and numerical groundwater flow model," specifically tailored to address two pages of factors and parameters identified by CURE.<sup>90</sup> CURE states that this information is necessary because Applicant has not provided "basic information" that addresses the "potential impacts to groundwater resources under CEQA" or the "hydrologic setting of the Project."<sup>91</sup> CURE's Petition to Compel states that Applicant should "provide response to previous data requests in order to explain the basis for SJS's analysis of groundwater impacts, or provide, as an alternative" the three dimensional model requested in Data Request 278.<sup>92</sup>

CURE's Petition to Compel response to Data Request 278 should be denied for three reasons: (1) Applicant has already provided extensive information regarding the hydrologic

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<sup>90</sup> *California Unions for Reliable Energy Data Requests, Set Five*, Data Request 278 p. (served on Sept.4, 2009) p. 25.

<sup>91</sup> CURE Petition to Compel, p. 76.

<sup>92</sup> CURE Petition to Compel, p. 76.

setting of the Project and potential groundwater impacts; (2) the requested information is not reasonably available, and (3) Applicant does not have the burden to conduct such extensive analysis and research on CURE's behalf.

First, Applicant has already provided extensive information regarding the hydrologic setting of the Project. As stated above in response to CURE's Petition to Compel response to Data Requests 266, 268, and 269, Section 5.5.1.6 of Applicant's AFC discusses the hydrogeology of the Project site and the San Joaquin Valley at length.<sup>93</sup> Further information was provided in response to Staff data requests.<sup>94</sup> The Aquifer Test Analysis submitted to the Commission specifically "evaluate[s] the aquifer characteristics" of the Project site and surrounding areas, and analyzes the affects long-term pumping may have on the aquifer and surrounding wells.<sup>95</sup> An extensive discussion of impacts was provided in Applicant's AFC, the Aquifer Test Analysis, and in response to Staff data requests.<sup>96</sup> Furthermore, in response to Staff data requests, Applicant provided aquifer testing information to support the estimated well yield from the Project.<sup>97</sup>

The three dimensional model was requested in Data Request 278 "as an alternative" to "basic information" that CURE asserts Applicant has not provided.<sup>98</sup> However, Applicant has provided far more than just "basic information."<sup>99</sup> Applicant has provided extensive and in depth

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<sup>93</sup> SJS AFC, pp. 5.5-2 to 5.5.-7.

<sup>94</sup> San Joaquin Solar 1&2 Hybrid Project Supplemental Information in Response to CEC Data Request Set #1, Data Requests 2, 3, and 4, pp. WATER-3,4, and 5; San Joaquin Solar 1&2 Hybrid Project Supplemental Information in Response to CEC Data Request Set #1, Data Request 1 and 12, p. WATER-1, 2, 15.

<sup>95</sup> URS, *San Joaquin Solar 1 & 2- Aquifer Test Analysis* (filed on Feb. 19, 2009) ("Aquifer Test Analysis").

<sup>96</sup> SJS AFC Sections 5.5.2 and 5.5.3; San Joaquin Solar 1&2 Hybrid Project Supplemental Information in Response to CEC Data Request Set #1, Data Request 1 and 12, p. WATER-1, 2, 15.

<sup>97</sup> SJS Supplemental Information in Response to CEC Data Requests, 08-AFC-12, Data Adequacy Request 3, p. WATER-4.

<sup>98</sup> CURE Petition to Compel, p. 76.

<sup>99</sup> CURE Petition to Compel, p. 76.

analysis of the hydrogeology of the Project site and potential impacts.<sup>100</sup> Therefore, CURE’s Petition to Compel response to Data Request 278 should be denied per the express terms of the data request, which requested the three dimensional model in lieu of allegedly missing “basic information.”

Second, Applicant does not have the burden to create a three dimensional model, based on information that is not reasonably available to the Applicant, on CURE’s behalf. As noted by the Commission in the *Application for Certification of the Tesla Power Project* proceeding, Section 1716 of the Commission’s regulations:

require[s] parties to provide information *that they possess*; the regulations do not require parties to perform new or different analyses at the whim of other parties.<sup>101</sup>

Stating that the commercial software to produce the three dimensional model requested by CURE is “reasonably available” does not, in turn, make the requested information reasonably available.<sup>102</sup> Simply put, Applicant does not possess the three dimensional model requested by CURE, and does not bear the burden under Commission regulations to perform “new or different analyses” at CURE’s whim. Therefore, CURE’s Petition to Compel response to Data Request 278 should be denied.

**II. The information requested by CURE in Data Requests 206, 234, and 235 has already been provided by the Applicant.**

The Applicant has already responded to Data Requests 206, 234 and 235. However, CURE is unsatisfied with these responses, and has sought to compel a further response to these

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<sup>100</sup> SJS AFC Sections 5.5.2, 5.5.3, and pp. 5.5-2 to 5.5.-7; San Joaquin Solar 1&2 Hybrid Project Supplemental Information in Response to CEC Data Request Set #1, Data Requests 1, 2, 3, 4, and 12, pp. WATER-1 to 5, 15; URS, *San Joaquin Solar 1 & 2- Aquifer Test Analysis* (filed on Feb. 19, 2009) (“Aquifer Test Analysis”).

<sup>101</sup> Application for Certification of the Tesla Power Project by Midway Power LLC, *Order Denying Intervenor’s Petitions for Reconsideration*, p. 3, Docket 01-AFC-21, Certified June 16, 2004, Order No. 04-0811-02 (filed Aug. 11, 2004).

questions. As discussed below, the Applicant's response to each request is as full and complete as permitted by all available information and no further response should be compelled.

- A. Further response to Data Request 206 is not feasible, as the requested information is not reasonably available to the Applicant.

CURE's Data Request 206 requests the "EPI vendor specifications for the fluidized bed combustors that will be installed at the Project."<sup>103</sup>

As explained in Applicant's response to Data Request 206, the vendor specifications for the fluidized bed combustors, such as equipment dimensions or materials of construction, are not yet finalized. Thus, specific vendor specifications for the equipment "that will be installed" cannot be provided at this time. In most power plant licensing proceedings, vendor specifications are finalized after the AFC is approved and prior to construction, not in the midst of the AFC proceeding. As the information is not reasonably available to the Applicant, CURE's Petition to Compel response to Data Request 206 should be denied.

In addition, CURE's Petition to Compel requests Applicant to "provide the following documents (1) EPI boiler model data from October 22, 2009 (EPI reference 1587), relied on by SJS for the estimates of "EPI Emission Predictions";<sup>12</sup> (2) "Data from EPI Emissions Predictions stm 9 26 08.pdf," relied on by SJS for the estimates of the Project's CO<sub>2</sub> emissions;<sup>13</sup> or (3) "EPI 22-Oct-08," which includes the emission factors used in SJS's calculation of toxic air contaminant emissions."<sup>104</sup> It should be noted that this information was not requested in CURE Data Request 206, and this information is requested past the time

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<sup>102</sup> CURE Petition to Compel, p. 72.

<sup>103</sup> *California Unions for Reliable Energy Data Requests, Set Five*, Data Request 206 p. 2 (served on Sept.4, 2009) p. 25.

<sup>104</sup> CURE Petition to Compel, p. 6.

allowed for discovery. Thus, CURE's attempt to compel production of these documents should be denied as untimely.

Furthermore, the information that CURE seeks from those documents is already available. For example, the first and third documents identified by CURE were already included in Applicant's response to CEC Data Requests Set 1. This response contained three pages titled "Combustor Data from EPI" in Attachment AQ-2, and presented the emissions data as received from EPI (note reference number of 1587 in header). The second document requested is EPI's proprietary information regarding equipment specifications, and is not available for public review. However, the information that Applicant used to estimate the CO<sub>2</sub> was excerpted from this document and included in response to CURE Data Requests Set 2, Data Request 12.

B. Further response to Data Request 234 is not relevant or reasonably necessary for a Commission decision on the application.

CURE's Data Request 234 requests information regarding the "specifications for C&D wood waste that fuel suppliers must meet to ensure that the majority of contaminants and non-burnables are removed from the C&D waste."<sup>105</sup> Applicant's noted that as biomass supply contracts have not yet been executed, the maximum percentage of C&D wood waste is unknown, and that details such as managing the various components of urban wood waste would be determined during contract negotiations.

CURE's Petition to Compel response to Data Request 234 should be denied as Applicant has already provided a response, and further information is not reasonably available at this time.

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<sup>105</sup> *California Unions for Reliable Energy Data Requests, Set Five*, Data Request 234, p. 15 (served on Sept.4, 2009) p. 25

C. Further response to Data Request 235 is not relevant or reasonably necessary for a Commission decision on the application.

CURE's Data Request 235 requests that Applicant "describe the testing and sampling procedures for the fuel at both the C&D processing facility and the Project to ensure that the fuel quality will be maintained."<sup>106</sup> Applicant's response noted that the testing and sampling procedures for the fuel supply is unknown, as biomass fuel supply contracts have not yet been executed. Applicant's response further noted that these details, such as ensuring the quality of fuel, would be determined during contract negotiations.

CURE's Petition to Compel response to Data Request 235 should be denied, as the Applicant has already provided a response to this Data Request. The regulations do not require "that the information provided necessarily satisfies the expectations of the requesting party."<sup>107</sup> Furthermore, this information is not readily available to the Applicant at this time as biomass fuel supply contracts have not yet been executed, therefore Applicant does not possess information as to the "testing and sampling procedures for the fuel" at the C&D processing facility, or as to which party will bear the responsibility of testing for fuel quality.

However, even if it was known which C&D processing facility were supplying the fuel, the information requested by CURE would be "best requested" of the C&D processing facility, not Applicant.<sup>108</sup> For example, in the Carlsbad Energy Center Project proceeding, the Commission noted that information regarding the "sources and amounts of LNG" that would be combusted during operations was information "best requested" from the LNG provider, as the

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<sup>106</sup> *California Unions for Reliable Energy Data Requests, Set Five*, Data Request 235, p. 15 (served on Sept.4, 2009) p. 25

<sup>107</sup> Application for Certification for the Carrizo Energy Solar Farm, *Committee Order Responding to CURE's Motion to Compel Production of Information*, p. 2, Docket No. 07-AFC-8 (Dec. 3, 2008).

<sup>108</sup> Committee Ruling on Intervenor Center for Biological Diversity's Petition to Compel Data Responses, Application for Certification for the Carlsbad Energy Center, Docket No. 07-AFC-6, Dec. 26, 2008, p. 2, 3.

Applicant in that case would have no control over the source of the gas supply. Similarly, SJS has no control over the fuel sources at the C&D processing facility, and would have no control over the testing and sampling procedures used by the facility to guarantee fuel quality.

Therefore, CURE's Petition to Compel response to Data Request 235 should be denied, as Applicant has already provided a response, and further information is not reasonably available.

**III. Applicant provides the following information to address CURE's Data Requests 224 and 236.**

A. Data Request 224

Subsequent to Applicant's response to CURE Data Request 224, Applicant has received additional information relevant to this question. Therefore, the following information is provided that will more than adequately satisfy Data Request 224.

DATA REQUEST 224: PLEASE PROVIDE ESTIMATES OF ANNUAL CARBON DIOXIDE-EQUIVALENT EMISSIONS OF N<sub>2</sub>O AND CH<sub>4</sub> FOR THE PROJECT BIOMASS COMBUSTORS. PLEASE DOCUMENT ALL YOUR ASSUMPTIONS.

RESPONSE:

Using the CCAR emission factors for CO<sub>2</sub>, N<sub>2</sub>O and CH<sub>4</sub> for wood combustion, as recommended by CURE, the annual carbon dioxide-equivalent emissions rate is the equivalent of 191,364 tonnes per year.

This amount is lower than the CO<sub>2</sub> emissions estimated in the AFC and subsequent responses to data requests. Table DR-224, attached herein as Attachment B, shows the carbon dioxide-equivalent emissions estimation using the CCAR emission factors. It should also be noted that the CCAR guidelines state "The CO<sub>2</sub> emissions from burning wood, wood waste and biogas are considered biogenic and should not be included as a direct stationary emission in your inventory." These

emissions are considered neutral as the biomass absorbs GHGs before releasing them when combusted.

B. Data Request 236

Subsequent to Applicant's response to CURE Data Request 236, the Applicant has received additional information relevant to this question. Although it remains unclear exactly what vendor specifications CURE is requesting, the vendor supplied toxic air contaminant emission factors used to estimate the projects toxic air contaminant emissions are attached. Therefore, the following information is provided that will more than adequately satisfy this Request.

DATA REQUEST 236: PLEASE PROVIDE VENDOR SPECIFICATIONS FOR THE FLUIDIZED BED COMBUSTORS THAT WILL BE INSTALLED AT THE PROJECT INCLUDING TOXIC AIR CONTAMINANT EMISSION FACTORS.

RESPONSE:

Please refer to Attachment C.

**CONCLUSION**

For the reasons set forth above, CURE's Petition to Compel responses to CURE Data Request Set 5 should be denied.

Dated: November 10, 2009

Respectfully submitted,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By 

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## **ATTACHMENT A**



155 W. Durian Avenue  
Coalinga, CA 93210



Phone (559) 935-1533  
FAX (559) 935-5912  
[www.coalinga.com](http://www.coalinga.com)

November 2, 2009

Spinnaker Energy, Inc.  
San Joaquin Solar  
Attn: Ms. Elizabeth Ingram, Project Manager  
12555 High Bluff Drive, Suite #100  
San Diego, CA 92130

Dear Ms. Ingram:

The City of Coalinga is pleased to respond to your inquiry pertaining to the status of the City's new wastewater treatment plant (sewer plant).

The City is currently under the Design Build (Government Code Section 5956) for the wastewater treatment plant and trunk line from the existing plant to the new plant.

The anticipated schedule for completion of the project would be 18 to 24 months from January 2010. The CEQA review for both the wastewater treatment plant and the trunk line has been completed and certified by the Council. Furthermore, the City has purchased the property (492 acres) for the new wastewater treatment plant.

The City Council will be conducting a Proposition 218 Public Hearing in January 2010 to consider raising the sewer rates to fund the cost for the new wastewater treatment plant.

Once the Council has adopted the sewer rate increase, the City will proceed with the issuance of utility bond for the funding of the new wastewater treatment plant and trunk line (approximately 20 million).

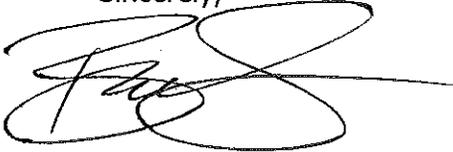
The City is under contract with Urban Futures and Del a Rosa as our financial/bond advisor and underwriter for the bond.

The anticipated rate increase for the sewer charges has been calculated fully to cover the debt/service for the bond issuance.

As the City progresses with the Design Build Contract I will ensure that my office forwards you status reports.

If you should have any additional questions and require clarification on the issues presented herein, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Skinner", with a large, stylized flourish extending to the right.

**BILL SKINNER,  
CITY MANAGER**

cc: City Council  
Solar Plant File  
Community Development Coordinator  
City Engineer  
KEH & Associates

## **ATTACHMENT B**

## **GREENHOUSE GAS EMISSIONS FROM THE BIOMASS COMBUSTORS ESTIMATED USING CCAR TECHNIQUES**

	<b>CO2</b>	<b>CH4</b>	<b>N2O</b>	<b>CO2e</b>
Emission Factor (kg/MMBtu)	93.87	0.032	0.0042	
Global Warming Potential	1	21	310	
Emission Rate (tonne/year)	749,692	255.6	33.5	765,457

**Note:**

1. Total energy input per combustor (HHV) of 303.9 MMBtu/hr from the 50/50 fuel mix annual case
2. Emission factors and GWP from California Climate Action Registry (CCAR), General Reporting Protocol, Version 3.1, January 2009
2. Emission factor for CO2 from CCAR Table C.7 and for CH4 and N2O from CCAR Table C.8

## **ATTACHMENT C**



STATE OF CALIFORNIA

Energy Resources Conservation  
and Development Commission

Application for Certification for the SAN JOAQUIN )  
SOLAR UNITS 1 AND 2 LICENSING PROJECT ) Docket No. 08-AFC-12  
)  
)  
\_\_\_\_\_)

**PROOF OF SERVICE**

I, Karen A. Mitchell, declare that on November 10, 2009, I served the attached *San Joaquin Solar 1 and 2, LLC'S Response to California Unions for Reliable Energy's Motion to Compel Production of Information for Data Request Set 5* via electronic and U.S. mail to all parties on the attached service list.

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



\_\_\_\_\_  
Karen A. Mitchell

**SERVICE LIST**  
**08-AFC-12**

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