CALPINE

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Commissioner John L. Geesman
Presiding Member, Siting Committee
Commissioner Jeffrey Byron
Associate Member, Siting Committee
California Energy Commission
Docket
1516 Ninth Street, MS #4
Sacramento, CA 95814-5512

Re: Comments to Proposed Revisions to CEC Regulations
Docket 04-SIT-02

Dear Commissioners Geesman and Byron:

Calpine Corporation thanks the California Energy Commission ("CEC") and its staff for the opportunity to comment on the CEC's proposed revisions to the CEC's siting and other regulations, published by the CEC on August 29, 2006.

Generally, Calpine supports many of the CEC's proposed revisions, which clarify certain areas which were previously ambiguous. However, Calpine believes certain proposed revisions may create uncertainty, have unintended consequences, or will otherwise increase the costs of siting plants without providing any benefits to the CEC or the public. Calpine has the following general concerns, which are addressed in greater detail later in this letter:

1. The proposal to allow the Commission to base its decisions upon *any* public comments, including those comments which are unsubstantiated or not subject to any cross-examination or review, would be unfair to applicants and risk decisions which are not based upon the hearing record for the proceeding;
2. The underlying statute and the accompany regulations are unclear and perhaps inconsistent whether an applicant must begin construction within one year, three years, or five years of certification by the CEC. While the ambiguity does not arise directly from Staff's proposed changes, Calpine nevertheless requests clarification regarding the term of CEC issued licenses.
3. The Data Adequacy requirements in the proposed additions to "Appendix B" to the Commission's siting regulations will require a greater expenditure of time and resources. For example, requiring project applicants to lock down emission reduction credits ("ERCs") prior to being deemed data adequate will temporarily and artificially inflate ERC prices in areas where as market participants scramble to lock up local ERCs just to become Data Adequate. As described in greater detail below, these increased costs are ultimately borne by the public.
4. Similarly, other proposed data adequacy regulations, especially the cultural resources requirements, will result in the unnecessary expenditure of significant

CALPINE CORPORATION
3875 Hopyard Road, Suite 345 • Post Office Box 11749 • Pleasanton, CA 94588
Phone: (925) 479-6600 • Fax: (925) 479-7300

resources for projects. Moreover, as you know, the Commission's siting process contemplates that "detailed design" work is completed post-certification. The staff's proposed revisions will require applicants to expend significant resources that should be spent, if at all, after the commission approval of the project, during the detailed design phase. Unnecessarily increasing up-front costs creates market barriers to all project applicants, without any commensurate public benefit.

As a final, general comment, Calpine believes it is important to step back and revisit the overall objectives of the power plant siting process and consider how to best achieve those objectives given the current environment in which new power plants are brought into existence. There is no question that the primary objective is to ensure that new generation is developed in an environmentally sound and feasible manner. Beyond the siting process, however, building new generation at present is largely dependent upon the wholesale procurement process, the results of which lead to new contracts and a pass through of costs to the electricity consumer, where all costs are ultimately borne.

In order for consumers and their service providers to have access to the best, most efficient and cost effective generating assets, there must be broad participation in a competition to provide these generating assets. Rules that increase the barriers to early participation such as increasing initial costs, artificial inflating the costs of ERCs for short periods of time, and increasing the uncertainty of obtaining a license, as well as reducing the longevity of that license once obtained, can only serve to reduce the number parties who can perform under those conditions. The result is less creativity, less competition and ultimately, higher cost to the ultimate consumer. None of us can afford to leave good, creative options and opportunities behind. As we all proceed in this effort, at least one of the objectives should be to assist in bringing all opportunities for appropriate generation into the arena.

Calpine's comments are described below, and in Attachment A, on a section–by-section basis.

Staff's Proposed Revisions

- § 1751. Presiding Member's Proposed Decision; Basis.

  Staff Proposal: Staff proposes expanding the basis for the issuance of the Proposed Decision, as follows: "The presiding member's proposed decision shall be based exclusively upon the hearing record, ~~including the evidentiary record~~, of the proceedings on the application and public comment contained in the administrative record. The decision may rely on public comments and any portion of the hearing record in making a finding of fact, but only those items properly incorporated into the hearing record pursuant to Section 1212 or 1213 are sufficient in and of themselves to support a factual finding."

Calpine's Recommendation: First, the Staff's proposed deletion of the phrase ", including the evidentiary record," is acceptable. However, all of the remaining proposed additions should be rejected.

Rationale: A decision must be made on the *hearing record*, as that term is defined in the regulations: "'Hearing record' means the materials that the committee or commission accepts at a hearing. While the committee or commission may rely in part on any portion of the hearing record in making a finding, only those items properly incorporated into the hearing record pursuant to Section 1212 or 1213 are sufficient in and of themselves to support a finding of fact.* * *" Indeed, the primary purpose of the lengthy and formal evidentiary hearing process is to create a "hearing record" to form the basis of the CEC's final decision on the Application. In contrast to the "hearing record", "public comment" can be made at every CEC meeting that is transcribed by a court reporter. The "administrative record" includes everything docketed in the case. The purpose of creating a "hearing record" is to distill down all of the information in the administrative record and public comments to the issues and the information that is relevant to the Commission's final decision. Staff's proposed changes frustrate the hearing process, and more importantly, expose the Commission and Applicants to lawsuits on the issue of whether the Commission properly considered "comments" that were not offered under oath, subject to cross examination at evidentiary hearings. Staff's proposals should be rejected.

- § 1720.3. Construction Deadline.

Staff Proposal: The Staff proposes a conforming change due to amendments to Public Resources Code § 25534: "Unless a shorter deadline is established pursuant to § 25534, tThe deadline for the commencement of construction shall be five years after the effective date of the decision. Prior to the deadline, the applicant may request, and the commission may order, an extension of the deadline for good cause."

Calpine's Recommendation: The problem is not with this section of the regulations *per se*; the problem is with Public Resources Code Section 25534 cited in this revised regulation. For licenses issued before January 1, 2003, the CEC licenses are clearly five-year licenses; that is, applicants must begin construction within five years of certification or seek separate commission approval to extend the five-year period. However, based on ambiguities in Public Resources Code Section 25534, it is not clear whether CEC licenses issued *after* January 1, 2003 are now good for one year, three years, five years, or some other term. The Commission should offer an opinion on the term of a CEC license issued after January 1, 2003.

Rationale: Public Resources Code Section 25534(a)(4) provides that a CEC license can be "revoked" if, among other things: "The owner of a project does not start construction of the project ***within 12 months after the date all permits***

necessary for the project become final and all administrative and judicial appeals have been resolved provided the California Consumer Power and Conservation Financing Authority [aka the California Power Authority" or "CPA"] notifies the commission that it is willing and able to construct the project pursuant to subdivision (g). The project owner may extend the 12-month period by 24 additional months pursuant to subdivision (f). This paragraph applies only to projects with a project permit application deemed complete by the commission after January 1, 2003." [1]

This section refers to an obligation to offer a project to the CPA. It is our understanding that that CPA still exists in statute, though it has not been funded for some time. With the uncertain status of the CPA, what exactly is the "deadline for the commencement of construction" for projects Data Adequate after January 1, 2003?

Public Resources Code Section 25534 is not internally consistent. Subsection (g) of Section 25534 has a different 12-month deadline:

> (g) If the owner of a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) fails to commence construction, without good cause, ***within 12 months after the project has been certified by the commission*** and has not received an extension pursuant to subdivision (f), the commission shall provide immediate notice to the California Consumer Power and Conservation Financing Authority. The authority shall evaluate whether to pursue the project independently or in conjunction with any other public or private entity, including the original certificate holder. If the authority demonstrates to the commission that it is willing and able to construct the project either independently or in conjunction with any other public or private entity, including the original certificate holder, the commission may revoke the original certification and issue a new certification for the project to the authority, unless the authority's statutory authorization to finance or approve new programs, enterprises, or projects has expired. If the authority declines to pursue the project, the permit shall remain with the current project owner until it expires pursuant to the regulations adopted by the commission."

Thus, on the one hand, Subsection (a) threatens revocation of a CEC license if construction does not begin "within 12 months after the date all permits necessary

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[1] Further, certain types of projects are exempted from the obligation to offer the project to the CPA, including "modernization, repowering, replacement, or refurbishment of existing facilities", qualifying small power production facilities or qualifying cogeneration facilities, and "generation units installed, operated, and maintained at a customer site exclusively to serve that facility's load." (Public Resources Code Section 25534(k).) Similarly, the CPA offer obligation does not apply to "licenses issued to "local publicly owned electric utilities" as defined in subdivision (d) of Section 9604 of the Public Utilities Code whose governing bodies certify to the commission that the project is needed to meet the projected native load of the local publicly owned utility." (Public Resources Code Section 25534(l).)

for the project become final and all administrative and judicial appeals have been resolved." On the other hand, Subsection (g) requires construction to begin in a shorter period, "within 12 months after the project has been certified by the commission," or the owner must offer the project to the CPA or pay for an extension.

The Commission should clarify the term of a CEC license issued after January 1, 2003.

Also, although the Staff did not propose changes to the post certification amendments and changes requirements, Calpine believes that it would be appropriate to incorporate a schedule for approval of post certification amendments and changes. Calpine suggests that the Staff be provided with an additional 30 days (in addition to the 30 days provided in 1769 (a)(2)) to issue the analysis on the amendment petition. The rationale for this recommendation is that it provides a clear and definitive timeline for amendment petition process and avoids delays that could affect a project's construction.

- Appendix B Data Adequacy Requirements

Staff Proposal: Some of the most troubling proposed revisions to the CEC's siting regulations are the additional Data Adequacy requirements Staff proposes to add to "Appendix B" of the commission's regulations. The CEC's 12-month, statutory siting process is triggered by the determination that the project is "Data Adequate," i.e., the Applicant has filed all of the information required for the CEC staff to begin their analyses of the Application for Certification ("AFC"). Until the project is deemed "Data Adequate," the 12-month siting clock will not start. Data Adequacy is then followed by project-specific "Discovery" via the promulgation of Data Requests and Applicant's Data Responses.

Calpine's Recommendation: For the reasons described below Calpine generally opposes many of the proposed additions to the Appendix B Data Adequacy Requirements. Calpine's detailed comments on the Staff's proposed additions to Appendix B Data Adequacy requirements are included below and in Attachment A, which is incorporated hereto.

Rationale: It is important to note that during the Discovery phase, Applicants can object to Data Requests as burdensome, irrelevant, or otherwise inappropriate. Discovery disputes require cooperation between Staff and Applicant and are, significantly, ultimately appealed to the assigned Hearing Officer for dispute resolution if the parties cannot reach agreement.

In marked contrast, during the Data Adequacy phase, CEC Staff has almost unfettered discretion to continue to demand information, and the Applicant has little meaningful recourse. The first appeal on a Data Adequacy determination is

to the same Staff that has found the applicant data inadequate in the first place. Thereafter, disputes at the Data Adequacy stage must be brought to the full Commission at a regularly scheduled Business Meeting. Data Adequacy disputes are rarely taken to the full Commission and, generally, the Commissioners who prefer that these issues be resolved outside the regular Business Meeting process.

Many of the significant issues that arise from the Staff's proposed revisions are related to Staff's desire to "raise the bar" during Data Adequacy, i.e., require more information be supplied at Data Adequacy instead of in response to Data Requests. Staff has provided narrative descriptions of the changes as the Staff's "Rationale," following the proposed redline/strikeout text of the regulations. Staff's Rationales often suggest that the changes will result in cost savings to Applicants. In most cases, Staff arguments are incorrect. As one example, Staff states, "Provision of this data in the application will reduce the Applicant's cost for responding to staff's data request." Of course, increasing the informational requirements for Data Adequacy will not "reduce" the costs of responding to Data Requests. At best, the Staff proposals merely shift those costs forward from the Discovery Phase to the Data Adequacy phase. At worst, they result in costs that Applicants could completely avoid by successfully objecting to an unreasonable Staff Data Request during the Discovery Phase.

Calpine believes that the existing Appendix B requirements are sufficiently detailed. To the extent that additional information is required for a Staff Assessment of the proposed project, the existing process contemplates Discovery (Data Requests and Data Responses). As a general matter, Calpine supports rejecting Staff's proposed revisions to Appendix B.

Calpine's Proposal Revisions

The Commission's 2004 Order establishing this Rulemaking stated that the Commission may consider "any other changes to these regulations, whether raised by its own motion, by staff or by members of the public." Thus, in addition to responding to Staff-proposed changes, Calpine offers the following proposed revisions to the Commission's siting regulations.

- § 1709. Filing of Notices and Applications for Certification; Data Adequacy Review and Docketing.

  Calpine's Proposal: Under the existing system, if an Applicant disagrees with the Data Adequacy determination of the Staff and the Executive Director, the Applicant must appeal that decision to the full Commission at a regularly scheduled Business meeting. As discussed above, such appeals to the full Commission are generally disfavored. Moreover, the current practice puts the Applicant in the difficult position of having to introduce a project and a new Applicant to the Commission at a contested, full-Commission hearing.

- **Calpine's Recommendation**: Calpine recommends that the Committee give Applicants the right to appeal a finding that a project is not Data Adequate to the Siting Committee. Specifically, the Committee should amend Section 1709(c) a follows:

  (c) No later than 45 days after receipt of a nongeothermal notice or application for certification, and no later than 30 days after receipt of a geothermal notice or application for certification, the commission shall act upon the executive director's recommendation as to whether the notice or application for certification contains the information specified in Section 1704 and is therefore complete. If the commission determines that the notice or application for certification is complete, the notice or application for certification shall be deemed accepted for the purpose of this section on the date that this determination is made. If the commission determines that the notice or application for certification is incomplete, the commission shall indicate, in writing, those parts of the notice or application for certification that fail to meet the information requirements and the manner in which it can be made complete. Within 5 business days of a commission determination that a notice or application for certification is incomplete, the applicant may appeal such a determination to the Standing Siting Committee. Within 10 working days of such appeal, or as soon as reasonably possible given the availability of the Members of the Standing Siting Committee, the Standing Siting Committee's Presiding Member, its Associate Member, or both Members shall conduct a public hearing wherein the Applicant and the executive director or a delegate shall participate to determine whether the application filed should be deemed complete.

  Rationale: The Commission finds a project data incomplete in almost every case. This places Applicants in the inevitable position of having their first Commission decision being in the negative, i.e., a recommendation that a project is not Data Adequate. There is no recourse at the Commissioner level to challenge a finding that a project is not data complete. Calpine's proposed changes give Applicants such recourse.

- § 1716. Obtaining Information.

  Calpine's Proposal: Staff has not proposed any changes to subsection (f); however, the last time the CEC amended these regulations, the time frame for an Applicant to object or give notice that the Applicant needs more time to respond was reduced from 20 days to object to 10 days. Responses are due within 30 days if no objection is made or if no notice of the need for additional time to response is given within this 10-day period.

  Calpine's Recommendations: Change "10 days" back to "20" days.

Rationale: Ten days is too short a timeframe and often requires Applicants to preemptively object to preserve their rights. If more time were allowed, preemptive objections might be avoided. Similarly, Applicants often state they will need additional time to respond (even if they do not object) because it is too difficult to ascertain with certainty whether the requested information can be assembled within the 30-day timeline.

Conclusions

It is important to note that Calpine does not object to many of the Staff's proposed changes to the Commission's siting regulations. Indeed, Calpine applauds the Staff's two-year effort to improve and update the Commission's regulations. However, as described above and in Attachment A, Calpine believes certain proposed regulatory changes will unnecessarily increase the costs of permitting power plants without generating a corresponding public benefit.

Calpine again thanks the Commission for the opportunity to submit comments to the CEC's proposed regulatory changes. If you have any questions, comments or concerns regarding Calpine's comments, please contact me, Kurt Seel at 916-294-6149 or Barbara McBride at 925–479-6729.

Very truly yours,

Mike Rogers

Mike Rogers
Senior Vice President
Western Power Region
Calpine Corporation

cc: Rick Thomas, Calpine Corporation

ATTACHMENT A

Calpine's Specific Comments on Proposed Revisions

This Attachment present comments to specific California Energy Commission Staff-Proposed Revisions to the Rules of Practice and Procedure and Power Plant Site Certification Regulations **(04-SIT-02).** Comments are presented by Section as presented in the proposed revisions.

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1207: Intervenors; Calpine supports the staff clarifications, not the alternative APA language.

1209.5 - The number of hard copies should be reduced when electronic copies are filed. The CEC should be encouraging paperless transactions wherever possible to increase efficiency and reduce environmental impact.

1213: Official Notice: Change "agency" special field to the "commission's" special field. Also consider limiting official notice to only "any fact which may be judicially noticed by the courts of this State," given the strong body of law on California Courts and Official Notice.

1217. Precedent Decisions of the Commission. The U.S. Constitution and the California Constitution have as cornerstones Due Process and Equal Protection. To the extent two projects are similarly situated, these Constitutional protections ensure similar treatment. To the extent that two projects are not similarly situated, there is no issue of "precedent." The Commission should reject the Staff's proposed changes in total.

1708 - The AFC filing fee should be tied to data adequacy, as an AFC is not considered filed until the AFC is deem data adequate. Likewise, the first compliance fee payment should be tied to the initiation of construction activities demonstrated by the Applicants submittal of preconstruction compliance documentation.

1719. Consolidation or Severance Proceedings. This section should not be amended. Applicants have a statutory right to a decision within one year; Staff's proposed changes ignore this statutory right.

1720. Reconsideration of Decision or Order.

- The Staff proposed changes are an improvement; however, the grounds for reconsideration should be limited to (1) new evidence which could not have been produced at the hearing despite the diligence of the moving party or (2) legal or factual errors in the decision, as follows:
  - "(a) Within 30 days after a decision or order is final, the Commission may on its own motion order, or any party may petition for, reconsideration thereof. A petition for reconsideration must

specifically set forth either: (1) new evidence ~~which was unavailable~~ that despite the diligence of the moving party could not have been produced during evidentiary hearings on the case ; or (2) an ~~change or~~ error in fact or law ~~or a change in circumstance~~. * * *"

1721(a)(4) and (5) - These requirements appear to be tied to the purpose and need requirements of Public Resources Code Section 25309, which has been removed from other sections of these regulations.

1744 (e) - This allows an agency to articulate its interpretation of its own rules and policies so that facilities in its jurisdiction are sited in a consistent and fair manner. We wholeheartedly endorse this addition.

1748. Hearings; Purposes; Burden of Proof. In subsection (a) Staff proposes to add: "All testimony filed by the parties to the proceeding must be submitted following publication of the Final Staff Assessment specified in Section 1747 prior to the commencement of committee hearings." This addition is unnecessary and sets up procedural due process challenges. The Committee established a schedule for the proceeding, including the filing of testimony. This provision limits the Committee's discretion. Staff's change would mean that any testimony submitted "after" the commencement of hearings would not be allowed. This creates problems and possible procedural challenges. First, Staff itself often files a Staff "addendum". Under staff's proposal, such addendums would be forbidden, or arguably, the hearing process would have to be re-started. Second, other agencies, like local air districts, sometimes produce relevant materials after the commencement of hearings. Under Staff's proposal, any such vital air district information would be disallowed. Third, the Staff proposal would arguably limit the Committee's discretion to ask for additional testimony and evidence on highly contested issues. Staff's proposed changes should be rejected.

Appendix B: Information Requirements for an Application

General Comment - All requirements for maps and figures should eliminate the reference to topographic map and include the parenthetical "(or appropriate map scale agreed to by staff)."

General Comment - Projects need to be analyzed on a case-by-case basis. Throughout these changes staff often states, "This additional information will reduce the need for additional data requests and will streamline staff's analysis." We disagree. Such requirements force every project into the same box. To require the same data for every project, not only adds a burden to the applicant, but it removes the opportunity to discuss the data requested and understand what staff needs the data for.

Project Description (b)(2) "Transmission Lines Description, Design, and Operation" (b)(2)(E) Completed SIS Required. Staff's proposed addition of this new section should be rejected. This proposed change is anti-competitive. It gives the IOUs and other Transmission Owners complete control over a competitor's AFC process. The IOU and their

affiliates have a track record of receiving the SIS quickly, while the IOUs can drag their feet on the SIS for competing, merchant projects. The Staff proposal allows the IOUs to "game" the system by delaying the studies for merchant projects while favoring their projects and those of their affiliates. Staff's proposed language does more than just ensure that an SIS is "underway" as suggested by the Rationale; it requires a "completed" SIS or a signed SIS Agreement. These issues are beyond the applicant's unilateral control, and thus the Commission should not make them a data adequacy requirement. Staff's language should be deleted.

Cultural Resources (g)(2)

General Comments. Staff has effectively tried to put all possible discovery into Data Adequacy. Staff expressly says: "This [intensive data compilation] will facilitate early issue identification and result in fewer Data Requests." Staff should respect the Commission process, which includes both Data Adequacy and project-specific Discovery. Staff's request will result in potentially wasteful studies, particularly for projects in fully developed industrial areas. It is wholly inconceivable that Applicants will "save money on research costs and have more options earlier in their planning." Thus, as a general matter, the Committee should consider rejecting all of the proposed revisions to the Cultural Resources Data Adequacy Requirements. Notwithstanding this recommendation to reject all of the proposed changes, we offer the following comments.

(B) - The search areas of 1-mile (project site) and 0.25 mile (linear) set appropriate and reasonable standards for a literature search. It is also appropriate that the Applicant provide site records (DPR-523 forms) for all recorded sites within these areas. This new criterion, however, implies that all archaeological reports ("technical survey reports") for all studies previously done in the search area also be provided to Staff. For some areas, this requirement would be burdensome and inappropriate. For example, in areas where there has been significant recent development and particularly for projects for which there are long linears, the number of reports could be relatively large. In addition, much of the information in these reports is not relevant to the case. What is relevant is the presence or absence of previously recorded archaeological or historic sites and this information is conveyed in the DPR-523 forms. Please note that there is no similar requirement to provide all technical reports pertaining to a given area for other disciplines (biology, geology, water resources, meteorology, etc.). The Applicant reviews, summarizes, and cites the literature in the Application. A requirement to provide copies of the technical reports would place a burden on the Applicant, and would enlarge the size of the AFC (or documents filed with it) unnecessarily. It may be appropriate, however, for Applicant to provide technical reports that pertain to the project site itself and it would be appropriate to provide technical reports that are evaluation or excavation reports for sites that are in the project's direct impact area. If this is what Staff intends, then this should be clarified.

(C) - This requirement should be modified because it will generally not be possible to comply with it. To require archaeological surveys to extend beyond the site of the project and its associated temporary impact areas (such as construction corridors for pipelines) goes beyond the limits of standard professional practice as well as the limits of practicality. First, it is highly unlikely that there could be project impacts to archaeological sites beyond the

limits of the project boundary and temporary construction impact areas, so the requirement to survey outside project area serves no valid purpose. Second, areas surrounding the project site are nearly always in the control of parties other than the Applicant. Permission to survey these areas could and often is denied by the property owners. Generally speaking, project impacts to archaeological sites will end at the project site boundary. Linear appurtenances (such as pipelines) require a very small direct impact footprint (2 to 10 feet for pipelines), and a wider temporary impact area (generally 50 to 70 feet in total). In addition, it is common (and preferred) practice to install pipelines in road rights-of-way; that is, under the pavement, in the shoulder, or open land adjacent to the roadway on one side of it. In these cases, surveys of the road shoulder are generally adequate to ensure that there are no adjacent archaeological sites that may extend into the road shoulder or road areas. For a pipeline of several miles, or tens of miles, a requirement to survey a 200-foot-wide corridor on either side of the road would clearly be burdensome and out of proportion to the potential for impact. It would require obtaining access permission from hundreds of landowners and the intensive survey of hundreds of acres of land that would not be subject to impacts.

The requirement to conduct architectural surveys up to 1 mile from a project site would also be burdensome. Perhaps this should be changed to architectural "reconnaissance." A true architectural survey would require that a qualified architectural historian inventory all properties within one mile of a given project that could be more than 50 years old and record and evaluate them. In an older urban area, this could amount to hundreds of properties. This effort would be appropriate perhaps if the project would cause a direct impact on these properties. The potential effect at this distance, however, is entirely visual. For such an effect to be significant and adverse, a given property would have to be considered significant because of the state of preservation of its setting, not simply its architectural merit or historic associations. More reasonable would be a screening-level reconnaissance within a reasonable visible distance, say, one quarter-mile to determine whether or not properties exist that appear to be older than 45 years (or exceptionally significant) and for which there would be any possibility of visual impacts. Site records and impact evaluations should be prepared for those properties only.

The criterion implies that architectural reconnaissance is required for 1 mile from project linears ("extending 1 mile out from the project footprints"). For transmission lines, which could have visual impacts on historic architecture, a reconnaissance would be appropriate, only at a shorter distance, such as the 0.25-mile distance of the literature search for linear appurtenances. Note that the California Office of Historic Preservation and Caltrans use the standard of "one-parcel distance (one-lot deep)" as an area of potential effects within which to assess impacts on architecture of linear projects such as light rail lines and highway projects. For underground pipelines, it is appropriate to conduct a records search for sites within 0.25 miles, but the visual impacts of underground pipelines are temporary and so there is no basis for requiring architectural reconnaissance in relation to these lines because there is no possibility of permanent impact. Therefore, the requirements should clearly spell out the distinctions between reconnaissance and survey and between aboveground and underground linear appurtenances and the data requirements for each.

Land Use (g)(3)

(A) – Requiring a discussion and mapping of land uses within ¼-mile of all linears is unnecessary. Most jurisdictions (if there are any, they are certainly the exception) don't have specific land use regulations (general plan or zoning) that affect the location of project linears (pipelines or transmission lines). Therefore, this is unnecessary.

(B) - The proposed changes greatly expand the scope of the land use issues to be considered. They also suggest that other agencies may need to act or the Commission may need to override by assuming non-conformity with land use plans. The changes do not "clarify" information needs; they ask for judgments and decisions on the merits of conformity, not just information. If this provision is not amended, the Chief Counsel's Office should opine regarding whether all the examples of land use decisions are the types of actions that would require an override from the Commission, or, in the alternative, whether they are the sorts of permits and approvals that are subsumed within the Commission's authority.

(C)- This is not a Data Adequacy issue.

(D) – All requirements for maps and figures should eliminate the reference to topographic map and include the parenthetical (or appropriate map scale agreed to by staff).

(D)(i) – The requirement to catalogue crop types and irrigation and cultivation practices is irrelevant. The issue of concern is whether or not the parcel under consideration, or impacted by the project, has a Williamson Act restriction and how the project proposes to address that restriction. The type of crop and cultivation/irrigation practices are irrelevant to that determination.

(4) Noise

Would like to suggest the following wording changes to (A):

> "The area potentially impacted by the proposed project is that area where, during either construction or operation, there is a potential increase of 5 dB(A) or more~~, during either construction or operation,~~ over existing background levels."

Would like to suggest the following wording changes to (B):

> "(B) A description of the ambient noise levels at those sites identified under subsection (g)(4)(A) which the applicant believes provide a representative characterization of the ambient noise levels in the project vicinity, and a discussion of the general atmospheric conditions, including temperature, humidity, and the presence of wind and rain at the time of the measurements. The existing noise levels shall be determined by taking noise measurements for a minimum of 25 consecutive hours at a minimum of one site. Other sites may be monitored for a lesser duration at the applicant's discretion, preferably during the same 25-hour period. The results of the noise level measurements shall be reported as hourly averages in Leq (equivalent sound or noise level), Ldn (day-night sound or noise level) or CNEL (Community Noise Equivalent Level) in units of dB(A). The L10, L50, and L90 values (noise levels exceeded 10 percent, 50 percent, and 90 percent of the time, respectively) shall also be reported in units of dB(A)."

[RATIONALE: Ideally, measurements are conducted concurrently, but this is not always feasible and shouldn't restrict the applicant's ability to submit additional data for consideration.]

Traffic and Transportation (g)(5)

(B) – The requirement is duplicative of the federal requirement for a notice of construction within 5 miles of an airport if specific criteria are met. The FAA has established its own guidelines for determining what constitutes an aviation hazard and the CEC should be relying on FAA expertise rather than creating a new set of regulatory requirements. Maybe in lieu of this requirement, the applicant should be required to submit evidence of filing a proposed Notice of Construction and any FAA response to that Notice.

(C) – All requirements for maps and figures should eliminate the reference to topographic map and include the parenthetical (or appropriate map scale agreed to by staff).

(D) – Delete this requirement, as it is redundant with Item (C) above which includes the language "existing and planned."

Visual Resources (g)(6)

(A) - Staff's "Rationale" states: Since this information is regularly requested in Discovery, providing this information as part of the application will reduce the Applicant's cost for responding to data requests and will streamline the review of the project by staff." Staff should respect the process by not trying to make "Discovery" items "Data Adequacy" items. Discovery occurs after Data Adequacy. Staff "regularly" asks for these items during Discovery; this suggests that the Staff does not always ask for the information. Making this a Data Adequacy issue rather than a Discovery issue will increase costs and is unnecessary. Staff's proposed changes should be rejected.

(A)(i) - Staff has expanded this request to include "all directions" as opposed to views from Key Observation Points or "KOPs." This expansion is a significant change and the increased costs for additional photosimulations will be great. Staff again admits that it is moving a "Discovery" item into the "Data Adequacy" determination. The Staff's proposed changes should be rejected.

(C) - This provision requires, i.e., mandates consultation with Staff before selection of KOPs. While it is "good practice" to consult with Staff on KOPs, the consultation should not be a mandate. Applicants have, in the past, had confidential information about their projects be released by Staff, resulting in one or more applications being withdrawn. To mandate a consultation forces some Applicants to take on this risk. The Commission should not impose a mandate, and thus should reject Staff's proposed changes.

(D) - The Staff is requesting very detailed design information. Instead, the Applicants should provide "representative" information, not detailed design. As one example, Applicants in many cases will not purchase major equipment until the CEC license has been issued. At the time of purchase, the available materials, finishes, and colors may be different than those available during the siting process. Applicants face claims that they

have "changed" a project if the detailed design information requested is not properly characterized as "representative" of the final design. Detail deign is, by Commission design, a post-Certification process. Staff's changes should be rejected.

(E) - Many projects are located where significant adverse visual resources impacts resulting from cooling tower or HRSG plumes would be very unlikely. Requiring a plume analysis in every Application for data adequacy would be an unnecessary burden for these cases. This issue is easily resolved during the Discovery Phase. Staff can and should issue data requests on a case-by-case basis for projects located in more humid areas or in locations where there are nearby sensitive visual resources that are worthy of protection. Exhaust stack plumes from simple-cycle projects are very unlikely and plume analysis would be reasonable only in extreme cases.

Staff should respect the process by not trying to make "Discovery" items "Data Adequacy" items. Discovery occurs after Data Adequacy. Staff's Rationale states that Staff "regularly" asks for these items during Discovery; this suggests that the Staff does not always ask for the information. Making this a Data Adequacy issue rather than a Discovery issue will increase costs and is unnecessary. Staff's proposed changes should be rejected.

(F) - Staff is requesting additional photo simulations, including photo simulations of proposed "mitigation." Staff is in effect asking Applicants to assume that a visual impact is a "significant impact" and thus the Applicant would need to provide mitigation and expensive photosimulations before the Discovery and workshops take place. Put another way, if the Applicant provides no photo simulations of landscaping and Staff disagrees and demands photo simulations for Data Adequacy, the Staff will effectively be litigating the case and using Data Adequacy to extract mitigation when the Applicant disagrees with the need for mitigation in the first instance. Staff's language should be rejected.

(G) - Staff is assuming a significant impact and a need for "modeling" as part of the Data Adequacy phase. These issues are not Data Adequacy issues. Staff needs to respect the distinction between Data Adequacy and Discovery. Staff's proposed language should be rejected.

(H) - Requiring the upfront preparation of the landscaping plan at this phase of the project is premature and can be onerous. Landscaping mitigation typically evolves during the licensing process in a balancing act between visual resource and biological resource impacts. The development of a Landscaping Plan should continue to be a discovery phase requirement, following interaction with the applicable Commission Staff, interested agencies, and the community regarding these impacts and the need/form of mitigation.

Staff is assuming a significant impact and a need for "mitigation" as part of the Data Adequacy phase. These issues are not Data Adequacy issues. Staff's proposed language should be rejected.

Socioeconomics (g)(7)

(A) - Adding the sentence "Provide the year of estimate, model, if used, and appropriate sources." is redundant and doesn't fit here. It should be left in (B).

(A)(iii) - Delete the words "and projected." It is fine (although irrelevant) to ask for unemployment rates; however, there is no agency that provides projected unemployment rates. Therefore, it makes no sense to require information that does not exist.

(A)(vi) - The text "Capacities, existing and expected use levels, and planned expansion of utilities (gas, water, and waste) and" should be deleted. Project impacts to utilities is better discussed in other sections that deal with natural gas supply or water resources. Those sections contain "will serve" letters from utility purveyors. To include that discussion in the socioeconomic section is redundant and generally only cursory.

Also delete the phrase "for the duration of the project construction schedule." at the end of the subsection. Generally, school enrollment projections are only available for 1 year in advance. That might cover the licensing period. It could take 2 or 3 years of projections to cover the project construction schedule. This data is simply not available.

(B)(i) - The proposed addition creates confusion, not clarity. We believe staff is asking is to provide:

- An estimate of the number of construction workers to be employed each month by craft; and
- Separate employment estimates of workers during operations.

Requesting information about temporary operations workers are details that are not generally known at the time of filing and would be little better than guess work. In addition, the number of operations workers are generally so small that they do not have an impact and "short-term (contract)" workers would, also just be temporary—having even less of an impact.

(B)(v) - remove "hospitals" from the inserted phrase. Hospitals don't have response times.

(B)(xii) - The request for cumulative economic effects is not relevant to the licensing of a given project and can impose a burden on the applicant. "Other similar projects simultaneously occurring in the study area..." does not specify the scope of the study area or define what a similar project would be or define a projected time range. This would be likely to lead to disagreements about whether or not a given application is data adequate. In addition, economic data on those projects may not be available. Providing IMPLAN modeling can be burdensome and only provides a little information as to additional project benefits (not project impacts). It should be in the applicant's discretion if it wants to incur the costs of this additional modeling.

Air Quality (g)(8)

(B) - The requirement to provide chemical characteristics for pipeline quality natural gas and CARB compliant fuels appears irrelevant. Providing fuel heat and sulfur content provides data used in air quality emission estimates, but chemical characteristics do not. The content of these fuels is not controlled by the Applicant and both undergo strict regulatory review by the California Public Utility Commission and the California Air Resources Board.

(E) - The IEPR is not a regulation. It was never subject to the APA Rulemaking process. It is at best a policy statement, not a basis for new regulatory requirements. There must be an APA-Compliant Rulemaking.

(I) - Commissioning emissions are, by definition, short term, and temporary. CEQA does not require additional mitigation beyond the best practices employed during the commissioning phase, consistent with local air district requirements. Thus, there is no benefit from modeling such impacts with a dispersion model. The Staff's proposed changes should be rejected.

(J) - To the extent that the information requested is relevant, it can be supplied during the normal course of the proceeding, including during the discovery phase. The Staff's "Rationale" that it "needs this information to show that the applicant is in serious negotiations with prospective ERC owners" is not a Data Adequacy issue. Further, to the extent that applicants have this information in hand, they will provide it to staff; to the extent that applicants are still in negotiations for ERCs, applicants cannot publicly disclose much of the requested information without compromising applicant's negotiations for ERCs. Moreover, there are no "air permitting requirements" of the "California Energy Commission" beyond the application of applicable LORS. Staff's proposed changes should be rejected.

(~~K~~) - We concur with the deletion of the former (K). The elimination of the topographic map requirement is welcomed and eliminates the need to provide topographic maps of little use in light of aerial photography and digital elevation mapping.

(K) - California air quality agencies have determined, at a minimum, which air emissions and at what magnitude require offsets or emission reduction credits to be provided for a new or modified facility. Air agencies promulgate these regulatory requirements through New Source Review programs that are reviewed and approved by the California Air Resources Board, U.S. Environmental Protection Agency, and the public through a revision to the State Implementation Plan. These NSR programs are required to comply with both the State and Federal Clean Air Acts, and are programs developed to move the area to attainment of the ambient air quality standards or maintain compliance with these standards. The presumption that a project's criteria pollutant emissions/impacts are automatically significant, and therefore, require mitigation, may conflict with some agencies' NSR programs. In addition, this requirement memorializes a commitment on the part of the applicant when the applicable air agency may consider a project's attainment criteria pollutants emissions/impacts to be insignificant and not required to be mitigated. In fact the issue of mitigation beyond that required by district offsetting requirements is an issue for litigation during evidentiary hearings. It is not an issue for Data Adequacy. As such, Staff's proposal should be rejected.

Public Health (g)(9)

(A) and (B) - The regulations should not be prescriptive regarding the specific health effects program to be used. Should the HARP program be replaced by an alternative, the siting regulations would be obsolete. We suggest that references to the HARP program be

replaced with "approved health risk assessment methodology."

(C) – The requirement to identify available health studies concerning the potentially affected populations within 6 miles of the proposed plant site as a data adequacy requirement is onerous and subjective and should be stricken. This requirement is from the 6-month AFC regulations and rarely is such information necessary or helpful in a siting case and adds an additional data collection burden without providing any value to Commission staff or the Applicant. These data should remain a discovery phase data request for those siting cases where such data is necessary and warranted. Even so, the text should be modified to read, "Identification of publicly available health studies. . ."

Waste Management (g)(12)

(A) – We disagree with the proposed changes to only accept a Phase I ESA that is prepared using the "most recent version" of the ASTM standards. Phase I ESAs are generally prepared to protect purchasers from becoming potentially responsible parties. The CEC staff uses these studies to provide information as to the potential contamination of a site. Most of the time if contamination is present, it occurred as a result of historical practices. Thus, it is not necessary to require an applicant to pay to have a Phase I redone, just because the requirements for its use as a defense has changed. The contamination did not change. Secondly, per the ASTM standards, a Phase I is only valid if less than 6 months old. So for example, a Phase I prepared just before filing, would no longer be valid half way through the licensing process. Would it be rational to require a new Phase I to be completed prior to the issuance of the FSA? Also, if a Phase I is older than 6 months, it may only be necessary to have a recent data base search run, which is substantially cheaper than paying for a new Phase I. Again, putting everything into one box doesn't make sense. Any Phase I prepared within the last few years is adequate for the staff's initial review. If more information is needed, it can be requested as a data request.

Biological Resources (g)(13)

(A): Staff seeks a tremendous increase in detail for biological resources. For example, the Staff wants information on Biological resources within a 10-mile radius. What is the rationale for this?

(E) - Staff proposes to change a discussion of the measures taken to avoid or lessen impacts to a discussion of "all impacts (direct, indirect, and cumulative) to biological resources from project site preparation, construction activities, plant operation, maintenance, and closure." Staff has not distinguished between potentially insignificant impacts and significant effects. Staff also fails to define what it means by a "functioning ecosystem." For example, staff stated that the California Aqueduct south of the main pumping facilities would likely not be considered a "functioning ecosystem." It is not clear whether other resource agencies would share this view. Staff offered this opinion in response to a question. We acknowledge that the response was an initial response by staff, not a determination. It does, however, reflect the potentially subjective determination of a functioning ecosystem. Staff's language should be rejected.

(F): Staff asks for a "discussion of all feasible mitigation measures." This request is overly broad. The information should include all proposed mitigation measures to reduce potential impacts to a level of insignificance, not the entire universe of feasible measures.

(H): Staff asks applicant to submit "copies of the biological resource information provided to obtain federal permits from other agencies." This request is infeasible. Federal permit applicants will be filed at a later date, based on the final design of the project. The Commission's process contemplates that final, detailed design occurs post-certification. Staff's language should be rejected.

Water Resources (g)(14)

(A) – Requiring "All the information to apply for the following permits. . . " (emphasis added). Placing this type of requirement in data adequacy is not only onerous, it's unworkable. The licensing process is based on preliminary design. Often the information required to complete these permits requires final design information. Requiring that level of permit information in data adequacy is a sure way to keep every project from meeting the data adequacy requirements. The fact is that every project will need to obtain relevant permits. Before they do so, they will need to be designed to meet the permit requirements.

(B) - Staff seeks "laboratory analysis of at least one sample from nearby water sources for chemical and physical characteristics." The information on nearby water sources is not relevant to the proposed use of water or discharge by the project. Staff's language should be rejected.

(C) - Staff seeks additional information on "source waters with seasonal variation" that may not be relevant in every case. These issues are more appropriate for discovery, not Data Adequacy. Staff's language should be rejected.

While it is reasonable to seek a "will serve letter" for water and wastewater services, Staff seeks more information than it needs and, in doing so, may compromise commercial negotiations. For example, Staff seeks "any previous uses of the allocated water (if known), and any conditions or restrictions under which water will be provided," which may compromise ongoing negotiations for supply. Staff's language should be rejected.

(E)(ii). Staff seeks information on "the estimated drawdown on neighboring wells with 0.5 mile of the place of withdrawal, any effects on the migration of groundwater contaminants, and the likelihood of any changes in existing physical or chemical conditions of groundwater resources." Staff is, in effect, asking an applicant to admit that a well may have a significant effect on neighboring wells and surrounding water quality. Staff should be seeking information, not subjective estimates or admissions of potential well interference. The staff's language should be rejected.

(E)(iv) If not using a zero liquid discharge project design for cooling and process waters, include the effects of the proposed wastewater disposal method on receiving waters, the

feasibility of using pre-treatment techniques to reduce impacts, and beneficial uses of the receiving waters. *Include an explanation why the zero liquid discharge process is "environmentally undesirable," or "economically unsound."* Staff is using the IEPR as a basis to promulgate a new regulation. The IEPR is not a regulation. It was never subject to the APA Rulemaking process. It is at best a policy statement, not a basis for new regulatory requirements. There must be an APA-Compliant Rulemaking.

The Commission's policy on ZLD, which has not been subject to a rulemaking process with notice and opportunity for comment, is not the basis for a new regulatory requirement. No other similar industrial use of water is subject to such a ZLD restriction, and there is no basis in law for making power plants a "class of one," treated different from all other similarly situated industrial users. Staff's language should be rejected.

Paleontological Resources (g)(16)

(D) – Incorporate the parenthetical "(if fossil finds are known)" after the proposed text. We have been required to provide maps that show nothing since no sites are known. In such cases, a statement in the text should suffice.