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October 17, 2006

Mr. Roger E. Johnson
Siting and Compliance Office Manager
c/o Docket Unit
California Energy Commission
1516 Ninth Street, MS#4
Sacramento, CA 95814-5512

Re: Comments on Proposed Revisions to Rules of Practice and Procedure and Power Plant Site Certification Regulations, (Docket No. 04-SIT-2)

Dear Mr. Johnson:

Sempra Energy submits the attached comments in response to the Staff's notice of proposed revisions to the Rules of Practice and Procedure and Power Plant Site Certification Regulations, dated August 29, 2006. The siting process as further developed during the past ten years of very active project licensing has generally worked well to fully review and manage the environmental effects of proposed new generation in California. Sempra appreciates the professionalism and dedication the Staff and Commissioners bring to the process and resolution of difficult and complex issues that often arise during siting proceedings.

The attached comments reflect the experience gained in the course of proceedings in which our company has participated or has observed. Other participants may have other priorities and experiences, and staff may have addressed some of the issues outlined in our comments in various licensing proceedings involving other projects. The comments attached are intended as constructive measures to further address some of the more difficult, primarily procedural, issues that have arisen in our experience.

The more important issues we have identified when reviewing the siting regulations and staff's proposed revisions are:

1. The need to develop streamlined procedures for peaking facilities needed to come on line during the next two years, particularly for projects 100 MW or larger.

2. The need to balance the interest in obtaining all the information Staff may need to review an application "up front" against the cost and delay for all projects to uniformly provide such information.

3. The proper approach for requiring identification or final acquisition of air emission offsets in the course of the application or certification process. Sempra favors adopting requirements no more stringent than the applicable air pollution control district rule.

4. The potential value or detriment associated with developing more generic standards or policy guidelines for either application adequacy or substantive Commission certification approval pursuant to the authority granted to the Commission under Pub. Res. Code sec. 25216.3.

Sempra thanks you for the opportunity to comment on the Staff's proposed revision of the siting regulations. We appreciate the Committee and Staff's efforts to further improve the siting process for all parties and public participants.

Sincerely yours,

Taylor O. Miller

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Sempra Energy comments on proposed revisions to the California Energy Commission's Rules of Practice and Procedure and Power Plant Site Certification and Regulations (Docket No. 04-SIT-2)

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Sempra Energy hereby submits the following comments upon the Commission Staff's ("Staff") proposed revisions to the California Energy Commission ("Commission") Regulations. Before getting into the specific suggested amendments of the regulations, there are several general issues that should be considered. These issues are not addressed directly in the proposed amendments. These are as follows:

A. GENERAL ISSUES

1. Processing Schedules

The legislation authorizing the 6-month process and an expedited process for repowering projects sunsets on January 1, 2007. At that time there will be two procedural paths for licensing of projects at the Commission: (a) the standard "12-month" process, and (b) a small power plant exemption (SPPE). The SPPE process has taken from 4 to 10 months, and it is a

waiver of permitting jurisdiction by the Commission. The SPPE process is available only for projects between 50 and 100 MW. A number of peaking power projects appear likely to be developed to provide power to investor owned and municipal utility customers during the coming year. The siting regulations should be structured to enable these projects to move through the Commission as quickly as possible to facilitate early on-line dates. Any project greater than 100 MW will be in the undifferentiated 12-month process category. **The Commission should develop stream-lined procedures specifically for peaking power projects.**

The SPPE procedure has worked well to process smaller and less controversial projects. However, there still is a need to clarify Commission's authority to enforce the numerous "conditions of exemption" that it routinely imposes when approving SPPEs. For investor utility developed projects, the affect of an exemption from Commission permitting is to leave the CPUC as the permitting agency through a CPCN under General Order131-D. **There is a need in such cases to coordinate acceptance by the PUC of the Commission conditions of exemption rather than developing and imposing its own set of environmental mitigation conditions.**

2. <u>Application data requirements</u>

The proposed revisions to the siting regulations include revisions to the extensive list of data adequacy requirements set forth in "Appendix B; Information Requirements for an Application" attached to the siting regulations. The philosophy followed by the Staff in preparing its proposed amendments is that the application requirements should include a number of new items that have often been included in data requests subsequent to completion

of prior applications. The judgment is that it is better to get everything "up-front" in the application in order to ultimately facilitate the process. This may be true in some or even many cases, but does result in a "one size fits all" list adding to the already very extensive data requirements traditionally imposed by the Commission. Few projects succeed in attaining data adequacy with their initial application as it is. The proposed revisions to the data adequacy regulations would further raise the bar for all projects. **A possible alternative would be to at least give the Staff the authority, in response to proposals by the applicant, to reduce information requirements to better fit the specific projects being proposed. Staff is currently given that authority for six month process projects (20 Cal. Code Regs. §2022).**

3. Standards for data adequacy, impact analysis, and mitigation

This topic applies differently in various areas of the Commission siting process. In general, the applicant is better served by knowing in advance the standards to be applied to both data adequacy and substantive certification decisions involved in the permitting process. The regulations currently contain detailed standards as to some topics but not others. For data adequacy reviews of the application, the Staff applies their detailed requirements of Appendix B to the siting regulations. Yet even these do not contain some customary requirements that have evolved over time as the Staff has addressed various projects. An example is the size of photos used in photo simulations. In the Palomar proceeding (01-AFC-24), the application and testimony included photos assumed to be held 10 inches from the eyes of the viewer. The Staff required these photos to be reformatted to be held 18 inches from the eyes of the viewer because the Staff believed this would provide a more realistic

impression. Without debating the point, the proposed Appendix B revisions still do not include either requirement for the photo simulations. **Provided Staff has the discretion to waive requirements, discussed in section 2 above, Appendix B should include any additional evaluation criteria that the Staff proposes to require in practice.** New criteria should be available for review and debate on a generic basis prior their implementation by staff.

When reviewing various aspects of projects as to their environmental impacts and appropriate mitigations, the statute and regulations require compliance with a list of standards known as laws, ordinances, regulations and standards (LORS) (Public Resources Code §25525; Appendix B, Section (h); Siting Regs. §1748(c)); however, these are all standards of other agencies. The Warren-Alquist Act directs the Commission to develop its own standards which may be different from those adopted by local, regional or state agencies. The Commission has not extensively exercised this authority. Notably, this authority to develop additional standards explicitly excludes air and water quality standards (Pub.Res. Code §25216.3(a)), presumably because there is a large federal jurisdictional component in these areas and because there are other specialized state agencies dealing with air and water. On the other hand, there have been a number of instances where Staff has disagreed with the findings of the specialized air and water agencies as to the methodologies used and the adequacy of mitigation. **Sempra believes that more deference to these agencies should be given on these topics rather than Staff imposing requirements in individual cases higher than needed to meet California or federal requirements.**

There can be value in both having and not having standards in particular circumstances. Having standards allows better project planning and reduces the number of matters at issue during at licensing proceeding. Not having standards allows more flexibility in developing mitigations that make sense in a particular circumstance, but also allows for gradual "stringency creep" as licensing cases come and go. **Sempra recommends that Staff and the Siting Committee consider whether there are limited topics that could benefit from more formally adopted Commission decisional standards.** A follow-up separate proceeding may be the best forum for a further inquiry on this topic. There may be other approaches short of formal rulemaking, such as informal policy memoranda, that would be easier to adopt and amend than formal regulations. These could, however, be reviewed and adopted in a public process on a generic basis.

4. Coordination with other agencies

The Commission is given preemptive permitting authority by the Warren-Alquist Act, Public Resources Code §25500. The Act states that:

"the issuance of a certificate by the Commission shall be in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law, for use of the site or related facilities, and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by law."

On its face this seems to establish a "one-stop shop" permitting process. However, the requirements to apply LORS (Public Res. Code §25525), and the inability to preempt federal law frequently combined, diminish the Commission's ability to establish a literal one-stop shop permitting process. The absence of Commission standards in certain areas can heighten this problem. There is an irreducible minimum of necessary independent permitting or

regulatory actions by agencies rather than the Commission. Thus, coordination with these other agencies is necessary to insure a smoother and more predictable process. This is an issue that also may benefit from a second stage review by the Commission, rather than, an immediate development of alternative siting regulation provisions or legislation. Some specific instances of coordination challenges are as follows:

a. Local land use-zoning and plan amendments. Sometimes local zoning and plan changes are necessary to make a project comparable with zoning and planning requirements. Problems have arisen in the past concerning which agency goes first, local government or the Commission, and how the local government can satisfy its independent CEQA obligations. Sometimes, a local government is willing to act based upon completion of a particular stage of the Commission review, such as the issuance of the Final Staff Assessment or the Presiding Member's Proposed Decision (PMPD). However, there is no written policy provided either by the Commission or in the CEQA guidelines as to what constitutes the draft or final EIR equivalent within the Commission's process or otherwise, how this timing problem should be addressed. **We recommend that the Commission adopt a more specific policy concerning how to address this "Catch 22" problem where local land uses changes are necessary to allow a new generating facility to be built.**

b. Preemption vs. LORS compliance. These two concepts are somewhat at odds since on one hand the Commission preempts local permits, but on the other, compliance with LORS specifically includes local and other state agencies legal requirements. The Commission is given authority to override requirements of other agencies (unless conflicting with federal laws), but only if it finds that the proposed facility is required for public

convenience and necessity and there are not more prudent or feasible means of achieving such a public convenience and necessity. (Public Resources Code §25525; 20 California Code of Regulations §1752(k)). The Commission has rarely needed to exercise this authority. While the Commission certificate preempts a local permit, the Commission usually applies all local and other state agencies requirements as conditions to its approval. The problem arises -- both before and after the decisions by the Commission -- that in many cases compliance with LORS is determined by judgments of regulatory officials other than the Commission. To evidence approval by those agencies, a specific sign-off or even a permit by the other agency may be needed. In practice, the concept of preemption gets diluted with the Staff adding requirements to those of other agencies, rather than substituting its own regulations for those other agencies. **Two actions that Commission could take would be to clarify what local permits are not required and take more active role in ascertaining the preemptive authority of the Commission in post-licensing construction periods.**

c. Federal agency relations and multiple layers of permits

(1) Coordination of permit conditions

Delegations or program approvals for air and water regulation run from the U.S. EPA to the Air Resources Board and local air pollution control districts or the State Water Resources Control Board or Regional Water Quality Control Board, rather than to the Commission. There is a specific process developed to deal with the air quality permitting aspects in the Warren-Alquist Act and Commission regulations. They call for issuance of a Determination of Compliance by the air pollution control district that the project meets all applicable air

quality requirements. These requirements are then typically incorporated verbatim into the Commission certification conditions. Frequently, the Staff adds additional conditions for construction impacts that are usually not addressed by the local air districts. The Staff may also add mitigation requirements beyond those required under the Air Pollution Control District ("APCD") regulations, sometime referred to as CEQA mitigation, where Staff believes that local district regulations are not sufficiently stringent. Subsequent to construction of power plant projects, amendments are frequently necessary for one reason or another. Air pollution control districts continue to issue their own Permits to Operate following completion of construction in addition to the Determination of Compliance previously issued to the Commission. For San Joaquin Valley projects and some other areas, EPA issues its own separate PSD permit. In addition, following construction and commencement of operation, a federal Title V permit is required. This permit is usually issued by APCD's under an EPA delegation. For many projects, multiple post-construction amendments have been necessary. Over time, conditions of the local district ATC's, PTO's, the PSD permit or Title V permit can diverge from those in the Commission decision unless there are conforming amendments adopted by the Commission. In practice, the Commission follows the lead of the APCDs, although on post-decisional amendments this is not guaranteed. Projects are muddling through the complexity and potential confusion of overlapping permit programs. **However, more specific attention and written understanding between the Commission, the APCD, and EPA would be helpful in order to smooth the process and reduce the amount of "reinventing the wheel" that can go on at the Commission and EPA after the APCD has acted.**

Similar coordination problems could occur with Waste Discharge Requirements issued by the Regional Water Quality Board and requirements included in water-related conditions of certification by the Commission. However, these issues have yet not come up in Sempra related projects.

(2) Timing of federal approvals

Clarification in the siting regulations or informal guidance concerning the required timing of actions by federal agencies or federal delegee would also be helpful. For air quality, the Commission regulations do provide a timing procedure calling for issuance of the Determination of Compliance prior to the Commission's decision (§1744.5). The statute and regulations do not specifically address the other agencies. This can give rise to differing requirements concerning evidence required by Commission Staff that federal permits either have been or can be obtained from other agencies prior to the Commission decision. Approvals by the state and federal wildlife agencies and the U. S. Army Corps of Engineers for Section 404 discharge permits are examples of these additional key permits. Further comments on the coordination of Commission and federal agency permitting are contained in comments below regarding Appendix B. **The Commission should establish clearer guidelines in this regard and should not require that federal approvals be obtained prior to the Commission's decision.**

5. <u>Commission SPPE Conditions of Exemptions</u>

As noted earlier, the SPPE process is supposed to be an exemption, not a permit. One of the requirements for the Staff to recommend and the Commission to issue an exemption is a finding that the project does not have a substantial adverse impact in the environment (Pub.

Res. Code §25541). Staff makes findings in each of various environmental impact areas that no substantial adverse impact will occur if the project follows the various conditions of approval. The Staff's findings are analyzed in an Initial Study that is similar to a Final Staff Assessment for a 12-month process certification. The Initial Study often requires post-approval reporting to the Commission compliance unit regarding the compliance with these conditions of exemption. An example of a recent Initial Study of this type is http://www.energy.ca.gov/sitingcases/niland/index.html. The Commission's authority to enforce these conditions of exemption should be clarified. Without a Commission permit, some other agency - - either local government or the PUC in the case of an IOU developed project - - will have authority to issue and enforce its own permit conditions. **Therefore, the relationship of the SPPE conditions and permits of other entities is an area that should be clarified.**

6. <u>Testimony and Hearing Procedures</u>

a. Pre-filed Testimony

Parties have sometimes engaged in last minute filings of voluminous documents during Commission Hearings. These have included last minute telephone conversations and e-mails from claimed experts that are offered as rebuttals to positions taken in the applicant's testimony. The Commission process typically calls for written testimony to be filed prior to hearings (20 Cal. Code Regs. §1224(b)). However, this requirement is sometimes breached on the grounds that voluminous additional materials are necessary to "rebut" written testimony previously offered by the applicant. New documents have even been filed with post-hearing briefs. **These situations could be reduced by strengthening the procedural**

rules to mandate pre-filed testimony, including rebuttal, for all issues parties wish to address at the evidentiary hearings.

b. Scope of Issues

Hearing officers and the Commission are often reluctant to narrow the scope of allowed testimony and questioning possibly out of concern they could create an opportunity for appeal. This is a legitimate concern but taken to its logical conclusion leads to hearings that grind on into relatively speculative or insignificant issues. **Additional pre-hearing conferences and procedures as well as time limits on testimony should be considered to reduce the opportunity for skillful, well-funded opponents to inject peripheral or irrelevant issues into the hearing proceedings adding to cost, complexity, and time**. Further, allowing irrelevant or speculative issues to be introduced could actually increase the candidate areas for appeal by treating them as significant matters.

7. <u>Definition of Solar Thermal Power Plant</u>

The Warren-Alquist Act gives the Commission jurisdiction over the licensing of "thermal power plants" defined as an "electrical generating facility" using <u>any</u> source of thermal energy, with a generating capacity of 50 MW or more, and any facilities appurtenant to. (Public Resources Code §25120; emphasis added). Solar photovoltaic facilities are specifically exempted; however, other solar facilities which rely upon solar energy as a thermal input appear to be covered by the Commission's jurisdiction. A separate definition for "solar thermal power plant" states that this includes a thermal power plant in which 75% or more of the total energy output is from solar energy <u>and</u> the use of backup fuels does not

in the aggregate exceed 25% of the total energy input of the facility. (Pub. Res. Code §25140).

To our knowledge, the Commission has not yet licensed a solar project over 50 MW which does not have a backup fuel. **The Commission regulations could remove any doubt by stating explicitly whether a project without backup fuel is included within the definition of "solar thermal power plant".**

B. SPECIFIC COMMENTS ON PROPOSED REGULATIONS

Sempra submits the following more specific comments concerning the siting regulations as proposed by Commission Staff. Suggested revisions for certain of these provisions are set forth in Attachment 1.

1. Section 1207. Intervention.

The Staff proposal would set the Prehearing Conference date as the deadline for intervention. While an improvement over the current regulation, this deadline still comes too late in the process. As a practical matter, parties' pre-filed testimony is done, or close to done, by the time of the pre-hearing conference. The pre-hearing conference statement is to include an orderly statement of issues and matters to be addressed by each of the parties' witnesses. New intervenors at that point will likely cause confusion and unnecessary debate about their issues of concern, discovery rights and obligations. Staff and applicant pre-filed testimony may need to be hastily revised to address issues that may be raised by new intervenors. **A better deadline would be 120 days after data adequacy. This period allows ample time for interested members of the public and public or private entities to**

determine their interest in intervention. Counting the time following the first notice of filing of an Application for Certification and a finding of data adequacy, the public in most cases would actually have about six months to decide whether they will intervene in the process. The regulation can still include an opportunity for late petitions for intervention to cover situation where a petitioner can demonstrate a reason for not filing timely.

Intervenors have all the same rights to participate in proceedings, including filing data requests, testimony, and participation in hearings as other parties. Intervenors should be subject to discovery like any other party. Delaying the last day to intervene until the date of the Prehearing Conference limits the opportunity for other parties to properly account for intervenor issues when preparing for the hearings. It also puts them in the position of either foregoing discovery of intervenors or moving to delay the hearings to allow such discovery. **In addition to changing the time for intervention, the intervention provisions should provide the presiding member with more explicit authority to shape and condition the participation of intervenors to match their interest and avoid delay and cost in the proceedings. Suggested language is included in Attachment 1**. This suggested revision incorporates some of the provisions of APA §11440.50. Sempra does not favor a complete substitution of the present language in §1207 with the language in Attachment A of the Staff's proposal.

2. <u>Section 1216 – Ex Parte Contacts.</u>

a. Staff – party contacts

On its face, this provision appears to apply only to communications between Commissioners or hearing officers and other parties, including Staff, or outside interested

persons. In the past, Staff has sometimes taken the position that they are not allowed to communicate directly with the applicant or other parties concerning substantive issues. **The siting regulations should clarify that communications between parties, including Staff and other parties, is not prohibited**. Staff is a separate party to the proceeding, not the ultimate decision maker. Discussions between the parties can clarify and narrow issues in dispute. Direct discussions between relevant Staff and parties should be allowed provided that the Commission Project Manager is either informed or included in the discussion. In some cases there have been months of internal discussion among Commission Staff during discovery in relative isolation without the benefit of informed questions and interaction with other parties until after the Preliminary Staff Assessment is published and only then at the public workshop. A simple phone call could sometimes clarify an issue or solve a problem without the need for lengthy written position papers back and forth. This could also be accomplished earlier in the process rather than having to wait until the PSA to learn what Staff's findings or questions on particular issues may be. These kind of Staff contacts routinely occur in the course of land use permit proceedings for non-energy projects or projects outside the Commission's jurisdiction.

b. APA references

Staff's proposal includes a statement that the provisions of section 1216 are "augmented" by Government Code §§11430.10 - 11430.80. The Staff Rationale notes that these provisions apply as a matter of law whether or not they are referenced. These provisions overlap some of the provisions covered by language in the Staff proposal. Some, such as §11430.30 do not appear to apply. **We recommend that Staff clarify which provisions**

from the APA are intended to be covered by language in the Commission rule and which are not.

3. **Section 1716 (j) Working Papers.**

Section 1716(j) currently provides:

> "Any witness testifying at a hearing shall to the extent that it does not unduly burden the witness, make available to any party on request copies of any work papers relied upon in the preparation of the testimony. If a witness for the applicant sponsors any portion of the notice or application for inclusion in the hearing record, the applicant shall make available, on request, all work papers relied upon in the preparation of the sponsored portion."

This section seems overly broad. Testimony prepared for Commission siting hearings is typically drafted by environmental consultants. Opening the consultants to broad demands for all "work papers" could lead to requests for drafts of testimony and background reports If made to Staff witnesses these requests would likely fall within the exclusion for drafts in the California Public Records Act. Non-governmental witnesses should be treated the same. **Therefore**, t**his section should be deleted.**

4. **Section 1748(a) – Hearings – prefiled testimony.**

This topic was discussed above. **This section of the regulations should be strengthened to require that all proposed testimony and rebuttal testimony should be pre-filed.** A presumption should be established that no new testimony topics or exhibits should be introduced at the hearings except under extraordinary circumstances. This will help to reduce the opportunity for parties to game the hearings by introducing voluminous new exhibits and testimony shortly before or even at the hearings.

5. **Section 1751 – Presiding Member's Proposed Decision; Basis.**

This section and §1702(h) restate the rule that only evidence received pursuant to §§1212 or 1213 may in and of itself support a finding of fact. The latter sections contain rules of evidence and official notice but do not actually refer to the "hearing record". **To avoid confusion, §§1751 and 1702(h) could be amended to add the phrase "accepted into evidence" prior to "incorporated into the hearing record pursuant to §§1212 or 1213".**

The Rationale suggests that public comments can be used as "part of the basis" for the Presiding Member's Proposed Decision. A slightly different way of saying this is that public comments can only be relied upon to support a finding that can otherwise be made based solely upon evidence that is entered into the hearing record and subject to cross examination. **It would be helpful to have Staff confirm this understanding.** The present Rationale language may be interpreted as stating that a finding can be supported partly by record evidence and partly by a public comment outside the hearing but in the administrative record.

C. APPENDIX B COMMENTS

1. General Comments

a. "Front Loading"

The Staff proposal frequently notes that additional items are being added to Appendix B to establish data adequacy since these items will frequently need to be requested later during discovery anyway. This could ultimately save time. However, it does increase the already substantial information requirements for a complete AFC and associated costs. The additional requirements, as well as other existing requirements under Appendix B, may not be needed for all projects. **The Commission's existing 6-month process regulations**

include a provision allowing the applicant to state that certain informational requirements are not relevant because of the particular aspects of the project (See Section_2022). A similar option should be added to Appendix B.

b. Map scale

In some instances Appendix B has been revised to require a 1:24,000 scale map or "other scale agreed to with the applicant." In others, the requirement is 1:24,000 with no discretion. **Staff should explain whether this is intentional or whether discretion should be allowed in all cases.**

2. <u>Section (a)(3)(A)(ii) – Land Use</u>

a. Proposed or adopted plans

Paragraph (A) requires discussion of "proposed" zone or general plan changes. The Rationale refers to "amendments which have actually occurred". **Please clarify Staff's intention.**

b. Compatibility with present and expected land uses

Paragraph (B) reflects a tendency to add a subjective "compatibility" test to the question of whether the proposed plant is consistent with relevant land use plans. Effects of the project beyond consistency are not listed in the CEQA Guidelines Environmental Checklist (Appendix G, Item IX), and it should be covered in the analysis of other specific resource areas (e.g., traffic, noise, air, etc.) not in a subjective "impression" analysis under Land Use with no clear standards. Therefore, this section should be revised to eliminate the reference to general "compatibility".

3. <u>Section (a)(6) Visual Resources</u>

a. Standards

There is a need for explicit identification of the required methodology to analyze what is a uniquely subjective topic. Staff typically refers to various professional approaches to the evaluation of visual impacts process (e.g., Palomar Energy Project FSA, pp. 4.12-2 and 4.12.3-3.). A separate methodology has been developed for analysis of visible plumes from cooling towers. Applicants and their consultants should be able to identify and rely upon a designated methodology prior to preparation of the application. This could narrow bases for dispute during the proceeding. For example, a question arose during the Palomar proceeding concerning the distance to be assumed between the viewer's eye and the photo simulation page (10 inches vs. 18 inches). This issue is not addressed in the revision.

b. Local design review

Local government often has a design review process for development projects. **The regulations or other written policy should acknowledge the role of this body in making recommendations concerning architectural treatment of various project elements and provide guidance to the parties concerning whether the Commission does or does not preempt this local decision making body. (See paragraph (a)(6)(D).)**

4. Section (a)(8) – Air Quality

a. Commissioning and start-up

Paragraph (F)(ii) requires emissions data for commissioning. Data for this period, and to a lesser extent during start-up, is variable and is not nearly as well established as emissions data for normal operation of new combined-cycle facilities. Vendors do not typically guarantee commissioning or start-up emission rates. These operational periods have been a

frequent topic of post-approval project amendments as well as APCD variance petitions. **This uncertainty should be acknowledged in the data adequacy requirements and also taken into account when later drafting conditions of certification applicable during commissioning and start-up.** A review by Staff, APCDs and project operators of this issue might be helpful. The review will improve consistency between projects and develop an optimal procedural approach to deal with seemingly inevitable pre-operation uncertainty concerning actual commissioning and start-up emissions.

b. Cumulative Air Quality Modeling

This is another area that could benefit from a clearer standard approach to be followed in each case and should not go beyond EPA modeling guidelines. Subsection (I)(iii) restates the current requirement to do cumulative modeling for other stationary source emissions within six miles. EPA modeling guidelines only require cumulative modeling for projects when impacts are predicted to be greater than "Significant Impact Levels". Air district requirements generally follow these guidelines. Impacts below these SILs are considered insignificant, and hence not subject to further analysis. When a cumulative analysis is needed (per EPA guidelines), the acceptable modeling protocol should be clarified as to key aspects that could be at issue later in the process. Emissions data and modeling information for other sources are not readily available and collection of these data should not be required unnecessarily.

c. Timing of Offsets

Paragraph (J)(iii) of the draft proposal sets a more aggressive deadline for obtaining required offsets than is required pursuant to Public Resources Code sec. 25523(d)(2).

This code section appears to defer to a determination under the applicable air pollution control district's rules. The section provides:

> "2) The Commission may not find that the proposed facility conforms with applicable air quality standards pursuant to paragraph (1) unless the applicable air pollution control district or air quality management district certifies, prior to the licensing of the project by the Commission, that complete emissions offsets for the proposed facility have been identified and will be obtained by the applicant within the time required by the district's rules or unless the applicable air pollution control district or air quality management district certifies that the applicant requires emissions offsets to be obtained prior to the commencement of operation consistent with Section 42314.3 of the Health and Safety Code and prior to commencement of the operation of the proposed facility. <u>The Commission shall require as a condition of certification that the applicant obtain any required emission offsets within the time required by the applicable district rules, consistent with any applicable federal and state laws and regulations, and prior to the commencement of the operation of the proposed facility.</u>"(emphasis added).

Under the Staff proposal, offsets would need to at least be optioned by issuance of the PDOC and, judging by the Rationale statement, actually acquired by the time of issuance of the FDOC. Detailed engineering drawings for emission reductions would also be required by issuance of the PDOC. This sets an earlier requirement and appears to require more detail than required by some district rules or federal law.

The siting regulations should not go beyond requirements of the air pollution control district regarding offsets. The applicant is the best judge of what commercial risk to take regarding offsets, and it is not likely to either invest in or be financed to build a project without a clear path to obtaining required offsets.

d. Availability of Offsets

In many areas of the state offsets are relatively scarce, extremely expensive, and can take several years to obtain. Requiring the process to be more "front loaded" will only increase

the difficulty and put the applicant at a disadvantage when negotiating for offsets. At some point, perhaps already here, offsets for needed projects may simply not be available in some areas, such as San Diego and the Sacramento region. **Therefore, renewed consideration should be given by the Commission and ARB, in consultation with EPA, to developing a viable air offset mitigation fee program**. For now, the Commission offset timing requirements should be no more onerous than required by the applicable District rule and/or Clean Air Act requirements.

5. <u>Section (a)(9) – Public Health</u>

a. Health Studies

Paragraph (C) adds a requirement to identify available "health studies" concerning potentially affected populations within 6 miles of the proposed power plant site. This requirement is vague and could be interpreted to refer to a wide variety of studies conducted by private or public entities. **The scope of the requirement and the intended use of other studies should be further defined before this requirement is adopted.**

b. Sensitive Receptors

Paragraph (E)(i) defines "sensitive receptors" though the term is not otherwise used in this section. The term should be defined to refer to schools, hospitals, or "residential or other facilities for" infants and children, the elderly, or the chronically ill. Otherwise, it can be interpreted to mean any house or apartment that might possibly house a sensitive population member. **Perhaps the better approach is to simplify this section by just referring to a requirement to submit an HRA that complies with current Hot Spots and OEHHA**

Guidelines without further definitions. That seems to already be covered by paragraph (A) so perhaps paragraph (E) is not needed.

6. Section (a)(13) – Biology Resources

a. Timing of application for other biology related state and federal permits

In paragraph (H), the regulations appear to effectively require submittal of the applications for state and federal endangered species consultations, section 404 of the Corps of Engineers permits, and discharge permits from the Regional Water Quality Control Boards as part of the AFC. Paragraph (a)(14)(A) for Water Resources contains a similar requirement. These processes have often run concurrently in past cases. This requirement may speed Commission Staff reviews of biological resource matters but could also hold up the time of filing of AFCs. The need and practical implications of this requirement need to be further considered before this provision is adopted.

b. Timing of issuance of other biology related state and federal permits

A related matter is whether and when the Commission should require that "resource" agency approvals be completed and provided to the Commission (before or after licensing). This also comes up under the Water Resources section sited above. A draft BRMIMP has been required by Staff to be submitted prior to the completion of the Commission licensing proceeding. Since that document is to contain a compilation of all mitigations that may be required by the resource agencies, this could suggest that the other permits have been approved or are close to approval prior to the Commission. However, this often is not the case and the federal agencies in particular are not subject to Commission decision timelines. **Such approvals could be a condition of approval but should not be required to occur**

until subsequent to the Commission Final Decision. A more specific proposal concerning timing would help clarify understanding of the timing issue and could provoke some useful discussion among interested parties concerning how it should be addressed.

7. <u>Section (a)(14) – Water Resources</u>

a. Laboratory Testing.

Paragraphs (B) and (C) appear to overlap. Both appear to require laboratory water analyses. **Sempra suggests deleting the second sentence of (B) or combining it with (C).** There does not seem to be a need for sampling water that the project will not use or discharge into.

b. Will Serve Letters.

Subsection (C)(v) regarding "will serve" letters appears repetitive and is confusing. Perhaps some words were dropped or misplaced.

8. <u>Section (a)(18) – Transmission System Safety and Nuisance</u>

Subsection (C) requires specific measures to mitigate identified impacts including radio interference and EMF effects. **Consideration should be given to allowing applicants to refer to compliance with existing specified CPUC or other standards to satisfy this requirement.**

ATTACHMENT 1
Sempra Energy Comments
Commission Rules of Practice and Procedure and Power Plant Site Certification Regulations (Docket No. 04-SIT-2)

§ 1207. Intervenors.

(a) Any person may file with the Docket Unit or the presiding committee member a petition to intervene in any proceeding. The petition shall set forth the grounds for the intervention, the position and interest of the petitioner in the proceeding, the extent to which the petitioner desires to participate in the proceedings, and the name, address, and telephone number of the petitioner.

(b) In a power plant siting case, the petition shall be filed no later than 120 days following data adequacy ,subject to the exception in subsection (c) below. The petitioner shall also serve the petition upon the Applicant.

(c) The presiding member may grant a petition to intervene filed after the deadline provided in subdivision (b) only upon a showing by the petitioner establishing circumstances preventing filing a timely petition. Any person whose petition is granted by the presiding member shall have all the rights and duties of a party under these regulations.

(d) If an applicant qualifies for intervention, the presiding officer may impose conditions on the intervenor's participation in the proceeding, either at the time that intervention is granted or at a subsequent time. Conditions may include the following:

(1) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the motion.
(2) Limiting or excluding the use of discovery, cross-examination, and other procedures involving the intervenor so as to promote the orderly and prompt conduct of the proceeding.
(3) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceeding.
(4) Limiting or excluding the intervenor's participation in settlement negotiations.

(e) Whether the interests of justice and the orderly and prompt conduct of the proceedings will be impaired by allowing intervention is a determination to be made in the sole discretion, and based on the knowledge and judgment at that time, of the presiding officer. The determination is not subject to administrative or judicial review.

(f) Any petitioner may withdraw from any proceeding by filing a notice to such effect

with the Docket Unit or presiding committee member.