CALIFORNIA ENERGY COMMISSION
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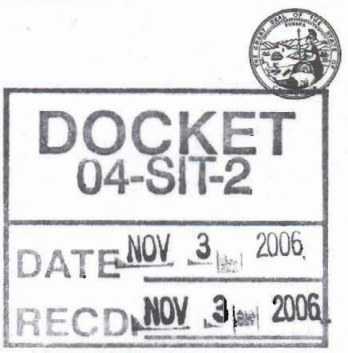

November 3, 2006

To: **INTERESTED PARTIES**

Subject: **CALIFORNIA ENERGY COMMISSION STAFF RESPONSE TO COMMENTS FROM INTERESTED PARTIES AND STAFF PROPOSED REVISIONS TO THE RULES OF PRACTICE AND PROCEDURE AND POWER PLANT SITE CERTIFICATION REGULATIONS (DOCKET NO. 04-SIT-2)**

On October 6, 2004, the Energy Commission issued an Order Instituting Rulemaking (Order) to revise, as needed, the regulations governing the Rules of Practice and Procedure and Power Plant Site Certification. The Energy Commission staff issued proposed revisions to the regulations on August 29, 2006. A workshop was held on September 20, 2006 to receive comments and Interested Parties submitted comments on October 16, 2006.

Staff has responded to the comments by the Interested Parties and made changes to the proposed revisions as appropriate, with new language in double underline and deleted language "double strikethrough."

Energy Commission staff's Response to Comments and proposed changes to the Rules of Practice and Procedure and Information Requirements can be viewed on the Energy Commission's website at http://www.energy.ca.gov/siting/rulemaking/documents/index.html. The language in the first proposed revision is underlined and deleted language is shown with "strikethrough." Each proposed change is followed by a rationale. If you would like to obtain a paper copy or CD of the proposed changes, please contact Angela Hockaday at (916) 654-3925 or by email at ahockada@energy.state.ca.us.

The Siting Committee has scheduled a workshop to be held November 13, 2006, that will focus on the staff's proposed revisions, comments received, and suggested changes to the proposed revisions. The workshop has been noticed separately and can be found on the Energy Commission website at http://www.energy.ca.gov/siting/rulemaking/notices/index.html. Following the workshop, staff will prepare a revised set of Regulations, based upon additional information and direction from the Siting Committee, a Notice of Proposed Action, and Initial Statement of Reasons, and submit them to the Siting Committee for their approval.

The Energy Commission's Public Adviser, Margret J. Kim, provides the public with assistance in participating in Energy Commission activities. If you want information on how to participate in this proceeding, please contact the Public Adviser's Office at (916) 654-4489 or toll free at (800) 822-6228, by FAX at (916) 654-4493, or by e-mail at pao@energy.state.ca.us. If you have a disability and require assistance to participate, please contact Lou Quiroz at (916) 654-5146 at least five days in advance.

Please direct all news media inquiries to Claudia Chandler, Assistant Director, at (916) 654-4989 or e-mail at mediaoffice@energy.ca.gov.

For questions on the subject matter, please contact James W. Reede, Jr., Ed.D, Project Manager at (916) 653-1245 or at: jreede@energy.state.ca.us.

Date: 11/3/06

Roger E. Johnson
Siting & Compliance Office Manager

Changes to RULES OF PRACTICE AND PROCEDURE

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1209.5	Electronic Filing
1213	Official Notice
1216	Ex Parte Contacts
1217	Informal Hearings ~~Precedent Decisions of the Commission~~
1219	Effective Date of All Decisions and Orders ~~Interim Regulations for Adjudicatory Procedure~~
1231	Complaints and Request for Investigation
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Appendix B (g)(15)(B)	Agriculture and Soils
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COMMENTS AND RESPONSES
RULES OF PRACTICE AND PROCEDURE

James W. Reede, Jr. Ed.D
Project Manager

SECTION 1207

CURE

Staff proposes in the alternative to substitute the requirements of the Administrative Procedures Act for the current regulations governing participation of intervenors. In several ways, the APA could significantly constrain the ability of intervenors to meaningfully participate in Commission siting cases.

First, the APA requires the potential intervenor to meet a higher standard to be entitled to intervene in the proceedings. (Section 11440.50(b)(3) and (4).) Second, even if allowed to intervene, the presiding member could impose conditions that limit participation to "designated issues in which the intervenor has a particular interest" and could impose other procedural limitations. (Section 11440.50(c).) These limitations are inconsistent with Commission's practice of several decades, unnecessary and inconsistent with CEQA.

The Commission has a long history of welcoming participation by any intervenor interested and willing to devote the time and resources needed t o participate in Commission siting proceedings. This enhances both the quality of the Commission's decisions and their legitimacy. The Commission should not take any steps that diminish this laudable history.

The presiding member has ample authority under the existing regulations to control siting proceedings and to quickly rule on issues raised by vexatious litigants. Section 1207(c) authorizes the presiding member to grant leave to intervene "to the extent he deems reasonable and relevant." This allows the presiding member to control the proceeding. It is not necessary to change the regulations.

Finally, any new constraints on participating in Commission siting proceedings could jeopardize the CEQA equivalency of the siting process. Because CEQA does not impose any limitations on who may comment on which issues, the Commission should not adopt any such limitations. If the Commission limited participation more strictly than CEQA, its siting process could not retain its CEQA equivalency. The Commission should not replace Section 1207 with the APA provisions regarding intervenors

LOS ANGELES DEPARTMENT OF WATER AND POWER

We recommend that the CEC staff proposed changes to the Section 1207 (b) be kept, instead of using the alternative proposal as described in Attachment A (Government Code section 11440.50), Sections 11440.50 (b), 4(c), (1). The alternative proposal is overly restrictive and can prevent an intervenor from fully representing and protecting its interest from a prospectively adverse decision or finding in a power plant siting proceeding.

DOWNEY BRAND, LLC.

This change is helpful and clarifies the importance of participating in the Prehearing Conference for potential intervenors. The Prehearing Conference is where the hearing schedule is discussed and the issues are narrowed to only those that have not been resolved by the parties. Significant issues raised after the Prehearing Conference create unnecessary schedule delays if the hearing schedule needs to be modified to accommodate additional issues raised by new intervenors. If possible, these unnecessary delays should be avoided

LS POWER LLC

LS Power supports the proposal offered by Staff. (Workshop Transcript page 11, line 4 through page thirteen, line 6 (hereafter citations to pages and lines will be as follows: “Tr. at 11:4 to 13:6”).

CALPINE

Calpine supports the staff clarifications, not the alternative APA language.

SEMPRA

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.

§ 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

RESPONSE: ***Staff supports the original changes proposed and is removing the APA Alternative Proposal from further consideration*****.**

SECTION 1209.5

CALPINE

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.

RESPONSE: ***This section applies only to electronic filings.***

SECTION 1213

CALPINE

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.

LS POWER

LS Power supports the proposal to limit the official notice to the CEC and not other agencies. (Tr. at 19:12 to 20:5.)

RESPONSE: ***Staff has changed "agency's" to "commission's" in the first sentence. Staff disagrees with narrowing the scope of official notice as recommended by Calpine.***

SECTION 1216

LOS ANGELES DEPARTMENT OF WATER AND POWER

The alternative proposal for Section 1216 is preferable as it clearly stipulates what is prohibited and allowed in terms of communications between individuals and parties during pending power plant siting proceeding.

SEMPRA

Ex Parte Contacts

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 kinds 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.**

RESPONSE: ***Staff is proposing the following changes to clarify the rule on ex parte contacts.***

§ 1216. Ex Parte Contacts

The ex parte provisions of Article 7 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code (sections 11430.10 et seq.) apply to all adjudicative proceedings conducted by the commission.

~~Commissioners and assigned hearing officer(s) shall avoid any oral or written communication with a representative of any party to an adjudicatory proceeding pending before the commission including those members of the commission staff who have been involved or are likely to be involved as principals in case management or who have participated or are likely to participate in the preparation or presentation of staff testimony, documentary evidence, or cross-examination concerning any substantive issue involved in the proceeding; provided, however, that communications contained in the formal record at a commission hearing shall not be prohibited.~~

~~(a) If such a communication occurs, the commissioners or hearing officer shall include a description of the substance of the discussion in the public file on the proceeding to permit rebuttal of the matter on the record by any party affected.~~

~~(b) All of the written communications received by a commissioner or hearing officer which relate to substantive issues raised in an adjudicatory proceeding before the commission shall be included in the public file on the proceeding and shall be subject to rebuttal on the record by any party affected.~~

~~(c) An adviser to a commissioner or any other member of a commissioner's own staff shall not be used in any manner that would circumvent the purposes and intent of this section.~~

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Sections 11430.10 – 11430.80, Government Code, Section 25210, Public Resources Code.

[Rationale: This section has been revised to be consistent with the Administrative Procedures Act, Govt. Code Section 11430.10.]

SECTION 1217

LOS ANGELES DEPARTMENT OF WATER AND POWER

In Section 1217, part (a) and (b), the efforts of the CEC staff to define the scope and meaning of a "precedent decision" by the CEC can reasonably be interpreted that any decision made by the CEC cannot be relied upon as indicative of any future decision under identically similar facts, unless the CEC declares such a decision being a "precedent". This is unacceptable because the CEC must be accountable for its decisions and provide certainty to the regulatory process; otherwise the CEC will loose its credibility.

Furthermore, the CEC needs to clearly explain its rationale whenever it has taken a different position from previous cases that are factually similar; otherwise, again, there will be no certainty in the regulatory process, and the credibility of the CEC will be in question.

Finally, where it is anticipated that a proceeding might produce a "precedent" decision, either in law or policy, effective and adequate notification should be given so that all affected stakeholders can participate through intervention.

DOWNEY BRAND, LLC.

This section on precedent raises concerns. We agree with Mr. Harris' comments at the hearing on September 20th that applicants in similar situations expect to be treated in the same manner on similar issues. We would be concerned that the Commission would not have time to determine which decisions in which areas are precedent such that none would be deemed precedent. We would be concerned that similar projects would be treated differently raising equal protection and due process issues.

LS POWER

LS Power believes that this section should be deleted in its entirety. (Tr. at 22:15 to 25:7.)

CALPINE

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.

RESPONSE: ***Based on the comments received during the workshop and in writing, staff is withdrawing this proposed section. In its place, staff proposes a new section which would allow the Commission to hold informal hearings.***

§ 1217. Informal Hearings.

The commission may choose to implement the informal hearing procedures identified in Article 10 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code (sections 11445.10 et seq.) when conducting an adjudicative proceeding.

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Sections 11445.10 – 11455.60, Government Code, Section 25210, Public Resources Code.

[Rationale: Govt. Code Section 11445.20(c) provides that an agency may use an informal hearing procedure if, by regulation, the agency has authorized its use. This section allows the Commission the discretion to hold informal hearings and is consistent with the Powers of the Chairman and presiding member as set out in Section 1203.]

SECTION 1702

CALIFORNIA COASTAL COMMISSION

Definition of "feasible": We recommend the Siting Regulation's definition of "feasible" be changed to match the definition used in both CEQA and the Coastal Act. Those two state laws define "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." The definition in the Siting Regulations, however, is slightly different in that it adds the term "legal" as one of the factors to be considered. The use of "legal" in this instance is vague and unnecessary. Deleting it would reduce confusion and would provide additional clarity in the Energy Commission's CEQA-equivalent AFC process. We therefore recommend that the definition in Section 1702 be changed as shown below:

> "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." This change would allow the Energy Commission's definition to be consistent with the definition used in other applicable state laws.

RESPONSE: ***CEQA defines "feasible" as including "legal" as one of the factors to consider. (See Cal. Code Regs., tit. 14, §15364.) Our current definition is consistent with CEQA and should not be changed.***

SECTION 1708

CALPINE

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.

RESPONSE: ***Public Resources Code Section 25806 requires payment of fees at the time of AFC submittal.***

SECTION 1716

CURE

Staff proposes to require that a party petitioning the siting committee to require a second party to provide information must do so within 10 days of being notified that the second party is unable or objects to providing the information request ed. (Section 1716 (g).) There is nothing wrong with establishing a deadline for a motion to compel production of information, but 10 days from the date of objections would cause many needless motions. Section 1716 (f) requires a party asked for information to provide any objections within 10 days of receiving the request, but gives that party 30 days to provide information requested. If a motion to compel were required within 10 days of the objection, it would be required **before** any information is provided. Because partial or precautionary objections are common, it would save the Commission's and all parties' resources to wait until after information is produced to determine if a motion to compel was actually necessary. As we suggested at the workshop, motions to compel should be due 30 days after the responding party has provided its responses. We also note that Jeff Harris suggested that the 10 day time period for objections should be 20 days. We agree that this would reduce the need for objections. In combination, the two changes would minimize the need for motions to compel that could otherwise be avoided.

DOWNEY BRAND

The comments of Mr. Harris and Mr. Joseph at the September 20th hearing will improve this section, and we support both comments.

LS POWER

Obtaining Information: LS Power supports changing the time for objecting to Data Requests from 10 days to 20 days. (Tr. at 17:22 to 18:18.)

SEMPRA

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.**

RESPONSE: ***Staff has changed the timing from 10 to 20 days for both the time to object 1716(f) and the filing of a motion to compel 1716(g).***

Staff believes that work papers relied on for testimony should be made available upon request as provided in section 1716(j); therefore, no changes are being proposed for subsection (j).

SECTION 1719

DOWNEY BRAND

The applicant is the party most impacted by consolidation or severance proceedings. The Proposed Regulations remove the ability of the applicant to agree or disagree with any consolidation. At a minimum the applicant should be given a specified time period within which to respond to the motion since their project depends upon a license from the Commission in order to proceed. The way the new section 1719 reads, the applicant may not be given an opportunity to respond prior to the Commission taking action on this item.

CALPINE

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.

RESPONSE: ***Staff withdraws its proposed changes.***

SECTION 1720

LS POWER

LS Power supports the proposal to limit the grounds for reconsideration to (1) new evidence which could not have been produced at the hearing or (2) legal or factual errors in the decision. (Tr. at 30:7 to 34:11.)

CALPINE

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 <u>despite the diligence of the moving</u> party could not have been produced during evidentiary hearings on the case ; or (2) a<u>n</u> ~~change or~~ error in fact or law~~ or a change in circumstance~~. * *

RESPONSE: ***Staff believes Calpine's comments are unclear and would add ambiguity to the section.***

SECTION 1721

CALPINE

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.

RESPONSE: ***Staff believes these sections are general and are not necessarily tied to the former need determination.***

SECTION 1744

DOWNEY BRAND

Section 1714.5(b) notwithstanding, we are concerned that this proposed revision will erode the Commission's authority to site power plants in Public Resources Code Section 25500. The task of licensing large power facilities lies with the Commission, a state agency, to remove potentially parochial concerns and create a forum wherein larger state interest and goals can be taken into account. We would hate to see a local agency make a politically motivated zoning consistency decision and have the Commission Staff fail to provide an independent evaluation of that determination.

CALPINE

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.

RESPONSE: ***Staff agrees with Calpine and supports the current proposed changes.***

SECTION 1748

CALPINE

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.

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.

SEMPRA

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.

RESPONSE: ***Staff withdraws its proposed changes to section 1748.***

SECTION 1751

DOWNEY BRAND

We recommend that 1751 be revised to state:
The presiding member's proposed decision shall be based exclusively upon the hearing record of the proceedings on the application. The decision may rely on any portion of the hearing record, including public comment entered into the hearing record, 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.

We believe this change gives the correct weight to public comment. Comments that are not given under oath and not subject to cross examination should not be the basis of findings of fact. Because these cases evolve over time with issues resolved along the way, we believe that only the public comment presented at the hearing or specifically requested to be part of the hearing record should be relied upon in the presiding member's proposed decision.

LS POWER

We are also concerned regarding Section 1751, “Presiding Member’s Proposed Decision, Basis.” The Staff’s proposal can be reasonably read to elevate “public comment” to be the functional equivalent of testimony offered under oath and subject to cross examination. We agree with the comments made at the workshop that the Committee should reject the call to elevate public comment to equate such comment with testimony given under oath, subject to cross examination. The transcripts of the workshop contain an excellent discussion of why the Commission should rely on the hearing record of a proceeding. 1 This elevation of public comment may not be Staff’s intention, but the effect could be to allow members of the public and representatives of other agencies, like the Coastal Commission, to offer “public comment” instead of witnesses who testify under oath, subject to cross-examination. The Commission should reject Staff’ s proposed revisions to this important section.

SEMPRA

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.

SCOTT GALATI (AT WORKSHOP)

MR. GALATI: And we certainly support that. We think that the Commission should be able to hear from a member of the public that they don't want a facility in their community, and can rely on that. And certainly use that in formulating a decision. I'm concerned with docketed pieces of evidence in the administrative record being automatically elevated, without an opportunity. I think what would happen to me is I would be preparing a case at the evidentiary hearing to review each and everything in the administrative record to insure that the Commissioners wouldn't rely on something that was inaccurate. There is a procedure already for moving that into the hearing record. And I believe that maybe even the Public Adviser's Office, or the staff could move it into the record if they think it's important. That way I know how to prepare my case.

RESPONSE: ***Staff believes the proposed changes to this section were creating confusion and withdraws its proposal.***

COMMENTS AND RESPONSES
APPENDIX B

PROJECT OVERVIEW

DOWNEY BRAND, LLC.

Section (b)(2)(E)
Please be aware that the control of this document does not lie with the applicant. The IOUs control when and how this document is issued. There are negotiations that happen between the applicant and the IOU regarding the study and the potential impacts. These negotiations must occur prior to writing a check to the IOU. We understand the Commission's interest in getting this information in a timely manner but are concerned that much of this process is outside of the applicant's control. An applicant can request very minor changes to the document only have the IOU take weeks or months to respond. Since the IOU projects are and will be competing directly with independent projects, there is always the potential for favoring its own projects over those that compete with them. Therefore, we respectfully request that the proposed regulations include only items that are within the control of the applicant and are not subject to potential abuse.

Section (b)(2)(G) Environmental Information
Our general comment is that it is not a good idea to move discovery issues into the data adequacy phase. We are concerned that moving this information into data adequacy fails to take advantage of the streamlining of the process in non-controversial areas. Almost every case has subject areas that do not create environmental impacts or where the mitigation is straight forward and agreed upon by all parties. By moving the information into the data adequacy stage, each applicant will have to provide that information just to get through the data adequacy screen whether the facts of that case merit the detail in each subject area or not.

LS POWER LLC

Section (b)(2)(E)
LS power opposes the addition that a System Impacts Study or a signed SIS agreement. This proposed change is anti-competitive. It gives the IOUs and other Transmission owners complete control over a competitor’s AFC process.

CALPINE

General Comments
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).”

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.

Section (b)(2)(E)
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.

RESPONSE: ***Downey Brand, LLC, LS Power LLC and Calpine provide comments on the Section (b)(2)(e) and oppose the regulation change because "It gives the IOUs (Investor Owned Utilities) and other transmission owners complete control over a competitors AFC process "(LS Power LLC comment). Calpine also adds an argument that the IOUs and other transmission owners give preference to their affiliates, completing the affiliate System Impact Studies much faster than they do the studies for competitors.***

The generator interconnection process for the IOUs is now under the direction of the California Independent System Operator (CAISO) and not the IOUs. Thus, the proposed regulation change should not give control of the AFC process to the IOUs. The CAISO sets strict timelines for both the acceptance of the study agreement and the subsequent completion of the System Impact Study. The timely responses to changes requested by the generator are specified in the CAISO tariff. Non-ISO transmission owners are required to complete generator interconnection studies according to their own tariffs which include study timelines.

The majority of the AFCs submitted to the CEC includes completed System Impact Studies and would not be affected by this regulation change in regulation. For the applications without System Impact Studies, issues raised by Downey Brand, LLC, LS Power LLC and Calpine put the CEC's AFC process schedule at risk. If the applicant hasn't initiated the System Impact Study process at the time an AFC is accepted as data adequate by the Commission, critical transmission data would not be available until a <u>minimum</u> of 120 days into the 365 day process. If the IOUs (and other transmission owners) give preference to their affiliate generators (as claimed in the comments) and thus delay or slow the completion of other studies, then a generator without a study agreement at the time the AFC is submitted would not have a completed System Impact Study until well past the 120 day minimum which jeopardizes the Commissions AFC process. The change in regulations would insure that the transmission data is received no later than 120 days into the AFC process.

DOWNEY BRAND, LLC.

Section (g)(8)(K)
Any additional mitigation that goes beyond the requirements of the local air district is always the subject of negotiation with Commission Staff. Unlike air districts, Commission Staff has not developed regional plans that take into account pollution sources other than power plants. The unusual requirements of Commission Staff should be addressed in discovery where each party has an opportunity to present the issue. Data adequacy should only include those items that are not matters that are often taken to hearings. Additional mitigation falls into the category of items that often go the hearings and therefore, should not be included in data adequacy.

Detailed offset information should be the subject of discovery. Projects have become resourceful in obtaining offsets through transfers from another air district or creating offsets. These solutions are often discussed with both the air district and Commission Staff. The Commission should support these efforts to find solutions and not saddle a project with finding the solution prior to filing their application.

RESPONSE: ***Staff disagrees. Staff maintains their position under the rationale discussion for this requirement. Note that air districts determine which air pollutants require offset under their rules. Staff is responsible for the CEQA review of the project's potential impacts and mitigation, and as such, requests that the applicant identify potential impacts and propose mitigation as appropriate.***

CURE

Section (g)(8)(J)(iii)
Among the proposed requirements for data adequacy is information concerning offsets. However, the proposal does not require the Applicant to identify the location of the offsets. This information is important for the CEQA analysis and should be required. The Commission's CEQA analysis often shows that a project will have localized air quality impacts. For the Commission to determine the effectiveness of offsets as mitigation, it must know the location of the source creating the offsets. Therefore, this information requirement should be added to Appendix B.

RESPONSE: ***Staff would not object to adding language beyond "identification" to clarify that this includes the location of possible offset sources, however, this information could be gathered during discovery if staff receives the information in Section (g)(8)(iii). Either way, a discussion of the location of emission offsets would be included in the staff's Preliminary Staff Assessment. Staff has revised the section to identify location of the offsets. See below:***

> (iii) Provide a schedule that ensures that the offsets or emission reductions are specifically identified by the release of the district's Preliminary Determination of Compliance. Identification includes ERC numbers, or ERCs owned, under contract, or under option contract by the project owner and the location of the offsets. Shutdowns, process modifications, or emissions controls proposed to generate

offsets or emission reductions should be formalized by final engineering drawings and specifications by the release of the district's Preliminary Determination of Compliance.

SEMPRA

Commissioning and start-up

Section (g)(8)(F)(ii)
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.

RESPONSE: ***It is staff's responsibility to assess all aspects of the operation of a project. This includes the potentially significant period of time when the project is undergoing commissioning and the potential of sometimes hundreds of start-ups and shutdowns per year. Staff believes that applicants and power plant equipment vendors are aware of the commissioning and start-up issues and have attempted to present realistic scenarios of these circumstances especially now that these types of power plants have been operating for a number of years now.***

Cumulative Air Quality Modeling

Section (g)(8)(I)(iii)
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.

RESPONSE: ***Staff has a responsibility under Section 15355 to analyze the cumulative impacts of (subsection b) ….."the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects." It should be noted that Section 15355 makes no mention of EPA modeling guidelines of significant impact levels. The significant impact levels identified by the commentator is for the Federal Prevention of Significant***

Deterioration analysis, an analysis that is not related to the CEQA Cumulative Impacts requirements.

Availability of Offsets

Section (g)(8)(J)
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.

RESPONSE: ***Staff can only re-iterate their rationale for this section, that it is the applicant's responsibility to provide an emission offset package that constitutes adequate mitigation. This process of identifying adequate mitigation needs to occur during the AFC review process, so that all parties including the public can review and evaluate the efficacy of the mitigation package.***

Timing of Offsets

Section (g)(8)(J)(iii)
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."(emphasis added).</u>

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.

RESPONSE: ***The commentator is quoting Section 25523(d)(2) that is no longer current. The language that is underlined is no longer in the current version of Section 25523(d)(2). Staff is requiring that the offsets be identified, that does not necessarily mean that they be acquired or surrendered. An option contract is sufficient assurance that a project's emission offsets have been identified. It should also be noted that EPA has commented on many District PDOC's in the past when the District does not identify the sources of ERCs that are expected to be used for the new permit action (the power plant proposal). EPA believes (along with staff) that emission offsets need to identified during the permit process and not afterwards. Staff also includes conditions of certification that allow changes in the offset proposal prior to surrender of the offsets, if the applicant applies for an amendment to the Commission identifying the proposed changes.***

CALPINE

Section (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.

RESPONSE: ***It should be understood that these regulations apply to all possible fuel types, including coal, refinery gas, biomass, refuse derived fuel, or any other type of fuel that may used to generate electricity.***

Section (g)(8)(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.

RESPONSE: ***The Energy Commission 2003 Integrated Energy Policy Report, p.42, states: "The state should require reporting of greenhouse gas emissions as a condition of state licensing of new electric generating facilities." By direction from management, air quality staff is including the reporting of greenhouse gases emissions to comply with the IEPR findings. Regulatory enforcement or compliance is not an issue here.***

Section (g)(8)(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.

RESPONSE: ***Staff believes that the impacts associated with the commissioning phase can potentially be significant since some of the air pollution control equipment would not be operational, emission levels are elevated, and could operate in such fashion for weeks. Staff maintains that the impacts from commissioning should be quantified through air dispersion modeling.***

Section (g)(8)(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.

RESPONSE: ***Staff disagrees. Staff maintains their position under the rationale discussion for this requirement.***

Section (g)(8)(~~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.

RESPONSE: ***No comment***

Section (g)(8)(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.

RESPONSE: ***Staff disagrees. Staff maintains their position under the rationale discussion for this requirement. Note that air districts determine which air***

pollutants require offset under their rules. Staff is responsible for the CEQA review of the project's potential impacts and mitigation, and as such, requests that the applicant identify potential impacts and propose mitigation as appropriate.

BIOLOGICAL RESOURCES

CALIFORNIA COASTAL COMMISSION

Section (g)(13)
We believe it is particularly important the proposed changes in this section are included in the final adopted regulation, especially those related to the effects of cooling water use. During the past several years, the issue most responsible for extending AFC proceedings of coastal proposals past their required 12-month timeline has been the lack of acceptable entrainment and impingement studies. Requiring recent and thorough entrainment and impingement studies as part of the AFC application will remove the main reason for delay from the Energy Commission's decision-making process.

We also recommend that some of the language proposed in the next section of the regulations (Section (g)(14) – Water Resources) be added to the Biological Resources section. We concur with the recommendation in Section (g)(14) to require an explanation of why a "zero liquid discharge process" is "environmentally undesirable" or "economically unsound" when such a process is not proposed as part of a project. We believe this same requirement should apply to the "intake end" of a proposed project, since the adverse environmental effects of cooling water systems are caused by both their intakes and discharges. We therefore recommend the same language be included in the Biological Resources section as well as in the Water Resources section. This change would help clarify that the factors to be considered in reviewing a cooling system's environmental desirability and economic soundness apply to both its intake and its discharge.

RESPONSE: ***The suggested language in the Water Resources section is meant to address the new freshwater use policy developed by the Commission in 2003. The new freshwater policy was not meant to be applied to ocean water and its use for power plant cooling and seems unnecessary and inappropriate for the Biological Resources section. Staff agrees to add language to section (F) (iii) regarding mitigation measures and design features that disperse '<u>or eliminate</u>' thermal discharges. Please see revision below:***

(iii) Design features to better disperse or eliminate a thermal discharge.

Section (g)(13)(B)(iii) – Wetlands: We recommend the proposed change to this section be further modified to require wetland delineations based on the Coastal Act's definition of "wetland" for projects proposed to be located in the coastal zone[1]. This additional change

[1] Coastal Act Section 30121 defines "wetland" as "lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens."

would also allow this section to be consistent with Section (g)(13)(D)(iii), which does refer to the Coastal Act's wetland definition.

The recommended change is as follows:

> "(iii) An aerial photo or wetlands delineation maps at a scale of (1:2,400) showing any potential jurisdictional and non-jurisdictional wetlands delineated out to 250 feet from the edge of disturbance if wetlands occur within 250 feet of the project site and/or related facilities that would be included with the US Army Corps of Engineers Section 404 Permit application. For projects proposed to be located within the coastal zone, also provide aerial photos or maps as described above that identify wetlands as defined in the Coastal Act."

The Coastal Act's wetland definition is broader than that used by the Corps and its application to projects proposed within the coastal zone will be an important consideration for determining project compliance with the Coastal Act.

RESPONSE: ***The California Coastal Commission has a different wetlands definition that is applied to projects located in the coastal zone, so staff agrees to make the suggested change. See below***

> (iii) An aerial photo or wetlands delineation maps at a scale of (1:2,400) showing any potential jurisdictional and non-jurisdictional wetlands delineated out to 250 feet from the edge of disturbance if wetlands occur within 250 feet of the project site and/or related facilities that would be included with the US Army Corps of Engineers Section 404 Permit application. For projects proposed to be located within the coastal zone, also provide aerial photographs or maps as described above that identify wetlands as defined by the Coastal Act.

DOWNEY BRAND, LLC.

Section (g)(13)(E)(i)

The request to include cooling tower drift discussions in the data adequacy requirements is another area of potential contention between Commission Staff and applicants. The potential impacts from these types of sources can be very speculative and removed. This information belongs in discovery not data adequacy.

RESPONSE: ***Biological resource impacts associated with cooling tower drift and air emissions are recurring issues. Staff needs to determine direct, indirect, and cumulative impacts to complete its CEQA analysis, and cooling tower drift and air emissions have been determined to have the potential to have indirect and cumulative impacts to sensitive species and their habitat for several recent power plant siting cases. Staff is only asking for a discussion of these issues, and if modeling is necessary, then staff will request this information during Discovery.***

SEMPRA

Section (a)(13)(H)

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.

RESPONSE: ***Staff agrees that state and federal permits are often developed later in the permitting process and granted following project certification. Staff has revised this section to provide more clarity as to what preliminary information staff needs that provides some indication of whether or not other state and federal permits will be necessary. Please see revisions below:***

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.

RESPONSE: ***Staff agrees that other state and federal permits are often not granted until after project certification. Staff is willing to discuss the timing of state and federal permits, however staff agrees that federal participation is seldom completed prior to licensing and there is often very little that can be done to make things happen in a timelier manner. Therefore staff has revised this section to provide additional guidance. Please see revisions below:***

> (H) Submit copies of any preliminary correspondence between the project applicant and state and federal resource agencies regarding whether ~~the biological resource information provided to obtain~~ federal or state permits from other agencies such as the U. S. Fish and Wildlife Service, ~~and/or~~ the National Marine Fisheries Service, ~~and/or Clean Water Act section 404 permit from~~ the U.S. Army Corps of Engineers, ~~incidental take authorization from~~ the California Department of Fish and Game, and

~~water discharge permits from~~ the Regional Water Quality Control Board will be required for the proposed project.

LS POWER LLC

Section (g)(13)(A)
Staff is seeking 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?

RESPONSE: ***Staff is requesting a discussion of the biological resources for a 10-mile radius area, not a 'tremendous increase in detail' about the 10-mile radius area. Staff is suggesting the 10-mile radius since many sensitive species (e. g. birds) move throughout a project region, so staff needs to know which species are likely to occur in the region. This regional perspective discussion has always been a part of a complete CEQA analysis and staff believes that our suggested area for a regional discussion more completely reflects what staff believes is needed to complete our analysis.***

CALPINE

Section (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?

RESPONSE: ***See staff response to Sempra comment regarding (H), above.***

Section (g)(13)(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.

RESPONSE: ***Staff is only asking for a discussion of impacts, not a discussion of what is significant or insignificant. Regarding the use of the phrase 'functioning ecosystem', staff agrees to delete this phrase to lessen the likelihood of future debates about what is or is not a functioning ecosystem.***

(E)(ii) facilities that propose to take water directly from, and/or discharge water to surface water features~~ sources with functioning ecosystems~~, daytime and nighttime impacts from the intake and discharge of water during operation, water velocity at the intake screen, the intake field of influence, impingement, entrainment, and

thermal discharge. Provide a discussion of the extent of the thermal plume, effluent chemicals, oxygen saturation, intake pump operations, and the volume and rate of cooling water flow at the intake and discharge location.

Section (g)(13)(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.

RESPONSE: ***Staff is asking for a discussion of 'all feasible mitigation measures' under CEQA, not a discussion of the 'entire universe of mitigation measures.'***

Section (g)(13)(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.

RESPONSE: ***See staff response to LS Power LLC comment, above.***

LADW&P

Section (g)(13)(A)
LADWP believes that a more flexible requirement for 13(A) should be considered other than the absolute requirement of 10 miles. The CEC staff has not explained the rationale and justification that necessitates a 10-mile radius requirement. In the case of an existing facility that is not expanding, it would seem that the overview of biological resources could be limited to the facility footprint.

RESPONSE: ***See response to LS Power LLC comment, above.***

Section (g)(13)(B)
The CEC staff in preparing these siting provisions have not clearly distinguished between those requirements made of existing projects (i.e. repowering) and those that are made of 'greenfield projects". For instance in 13(B) and (C), existing studies should be permitted whenever there are no changes in circumstance that could impact that study's conclusions. There are additional subsequent sections in this document where such consideration should also be extended.

RESPONSE: ***Staff agrees to make a distinction between what is required for a repower project currently using once-through cooling and what is required for a 'greenfield' project that proposes to use once-through cooling. Staff also agrees that utilizing existing impact studies may be appropriate if the existing studies are done properly, apply to the proposed project, and are current. See revisions below:***

(g)(13)(C)(ii) If cooling water is proposed to be taken directly from a water ~~source with a functioning ecosystem~~, seasonal aquatic resource studies and surveys shall be conducted. Aquatic resource survey data shall include, but is not limited to, fish

trawls, ichthyoplankton and benthic sampling, and related temperature and water quality samples. For new projects or repower projects anticipating a change in cooling water flows, sSampling protocol shall be provided to the Energy Commission staff for review and concurrence prior to the start of sampling. For repower projects not anticipating a change in cooling water flows, tThis information shall be provided in the form of the most recent a federal Clean Water Act 316(b) impingement and entrainment impact study that has been completed within the last five (5) years for the facility under consideration..

Section (g)(13)(B)(iii)
LADWP suggests that the phrase "jurisdictional and "non-jurisdictional" be deleted. Any project site that is included in the US Army Corps of Engineers Section 404 permit application is automatically jurisdictional. Furthermore, LADWP does not understand the CEC staff's rationale for requiring non-jurisdictional wetlands information and how it will assist in AFC processing. There appears to be no need for such a requirement.

RESPONSE: ***When wetlands are mapped for the Corps of Engineers Section 404 permit process, some wetlands are determined to be 'jurisdictional' because they meet the federal wetland criteria for inundation duration, soil characteristics, and vegetation. However, some wetlands are determined to be 'non-jurisdictional' since they do not meet one or more of the wetland criteria. Staff believes that non-jurisdictional wetlands are likely to be important to local wildlife and humans, and very likely to meet the Coastal Commission wetland criteria for projects in the coastal zone, so staff needs information about jurisdictional and non-jurisdictional wetlands and disagrees with the recommended deletion.***

Section (g)(13)(C)
CEC staff should clarify that for any existing site where there are no changes in circumstances, that any existing studies and/or information would be acceptable for an AFC.

RESPONSE: ***See response to LADWP comment regarding suggested changes to Section (13)(B).***

Section (g)(13)(C)(iii)
LADWP suggest, as a matter of consistency, that the CEC staff should consider adopting the same language as used in the Clean Water Act section 316(b) when describing the same factor. For instance, in (iii) above, the term "velocity field of influence" is not used in 316(b) instead it is referred to as "hydraulic zone of influence".

In the second to last line of (iii) the reference to 316(a) of the federal Clean Water Act should be deleted. The document states as its rationale for the proposed changes, the need for consistency with the newly adopted federal 316(b) regulation; therefore, only information covered by 316(b) on "intake" water into a power plant should be solicited here and the request for discharge information such as 316(a) thermal water characteristics should be deleted.

Furthermore, in recognition of a non-"green field" power plant AFC, it is suggested that the phrase: "that has been completed within the last five (5) years" in the last line of (iii) be

deleted. As written, the phrase requires that a study should be completed every 5 years. Instead, the requirement should be only for the "most recent" study required by the Water Board. Existing power plant facilities are required by the Water Board to perform a study whenever the Water Board deems that there is a significant change in circumstances. Thus, unless there have been significant changes to the facility, the most recent 316(b) study conducted to comply with the Phase II 316(b) Rule should suffice. Accordingly, the most recent study is always an accurate representation of current conditions and there is no need to perform a study every 5 years.

Part (C) (iii), line 3, "thermal plume dispersion area", is not a requirement of 316(b) and is not needed to conform to 316(b).

RESPONSE: ***Staff agrees to change 'velocity field of influence' to 'hydraulic zone of influence'. Staff also agrees to create a distinction between what information staff needs related to Section 316(a) and (b) studies, and replace the line regarding the five year requirement with a suggested requirement that the results of the most recent 316(b) studies be provided. See revisions below:***

> (iii) If cooling water is taken directly from or discharged to a surface water feature ~~source containing a functioning ecosystem~~, include a description of the intake structure, screens, water volume, intake ~~velocity~~ hydraulic zone ~~field~~ of influence, and the thermal plume dispersion area as depicted in response to B(ii) above. Describe the thermal plume size and dispersion under high and low tides, and in response to local currents and seasonal changes. Provide a discussion of the aquatic habitats, biological resources, and critical life stages found in these affected waters. For repower projects that anticipate no change in cooling water flow, t~~T~~his information shall be provided in the form of the most recent ~~federal~~ Clean Water Act 316~~(a) and~~ (b) studies of entrainment and impingement impacts ~~that has been completed within the last five (5) years~~. For new projects or repower projects proposing to use once-through cooling and anticipating an increase in cooling water flow, provide a complete impingement and entrainment analysis per guidance in (D)(ii), below.

Section (g)(13)(D)(ii)
In (D) (ii), CEC staff needs to clarify what is meant by "seasonal", because it can either be biological or calendar based. Additionally, LADWP reiterates that only the most recent 316(b) study be required notwithstanding that it is older than 5 years for repowering projects.

RESPONSE: ***Staff is using 'seasonal' to indicate that studies will likely be completed throughout a year during all four seasons. Regarding 316(b) studies, staff has made a change regarding recent studies for existing projects versus new studies for new projects.***

Section (g)(13)(D)(iii)
Refer to LADWP previous comments in (13)(B)(iii).

RESPONSE: ***See staff response to LADWP comments on suggested changes to (B)(iii), above.***

Section (g)(13)(E)(ii)
Federal Clean Water Act 316(b) only governs "intake" water and does require any impact information on "discharge" water. CEC Staff can only expect to receive "intake" water information if its request is premised upon 316(b) requirements.

RESPONSE: ***Staff understands that Clean Water Act Section 316(a) relates to the cooling water discharge and Section 316(b) to the cooling water intake. In (E)(ii) and (iii), staff makes no distinction between 316(a) or (b), but instead suggests that the Data Adequacy regulations include the requirement for a discussion of potential impacts related to the cooling water intake and discharge.***

Section (g)(13)(E)(iii)
LADWP request that the CEC staff clarify that this requirement is not applicable for repowering projects because existing projects are regulated by the National Pollutant Discharge Elimination System (NPDES) permit.

RESPONSE: ***Staff disagrees that repowering projects should not be required to provide information about discharge characteristics. Staff understands that cooling water discharge characteristics are provided to the Regional Water Control Board to satisfy NPDES permit requirements, so staff suggests that this information be provided for repower and new projects. Staff has revised the section below to provide additional clarity:***

> (iii) Methods to control biofouling, chemical concentrations, and temperatures that are currently being discharged or will be discharged to receiving waters.

CULTURAL RESOURCES

DOWNEY BRAND, LLC.

GENERAL COMMENTS

Keep the distances for surveys the same across subject areas. That way the different disciplines can conduct their field work at the same time with one request to landowners for access when necessary.

RESPONSE: Staff in the technical areas for which field surveys are conducted as part of the preparation of the AFC (Cultural Resource, Geological Hazards, Paleontological Resources and Biology) have reviewed their proposed survey coverages and concluded that the proposed coverages are appropriate for each technical area. Though the coverages proposed for Cultural Resources survey and Biological Resources survey differ, the applicant's specialists can still coordinate their survey schedules and make just one request to each landowner for access.

The new requirements work well for a site that has potential cultural resource impacts. If the site is located in an area relatively devoid of cultural resources, the requests are

onerous. It is often difficulty finding the specific individuals with the high level of training Commission Staff would like to see in this area. We understand the desire of Commission Staff to have specialized experts when potentially significant impacts arise but find that requirement excessive for sites without real impacts.

RESPONSE: Staff believes that the research activities proposed in revised Section (g)(2) are needed to establish that an area is, indeed, relatively devoid of cultural resources. It is staff's understanding that most environmental consulting firms offer the services of persons who meet the federal standards proposed in revised Section (g)(2) because these firms seek the business of projects with both state and federal environmental requirements.

Downey Brand: We find it interesting that the Commission Staff states in its rationale that the base resource information is necessary because the staff has to make an independent judgment on significance but also is asking for mitigation measures in the application. Applicants routinely provide proposed mitigation measures or project enhancements in their applications. Requiring specific types of mitigation measures without first looking at the impacts of the project seems to prejudge an impact in all cases.

RESPONSE: Staff understands the dissonance of requiring the applicant to make a case for no or insignificant impacts and at the same time to provide mitigation measures for significant impacts. Both the current regulations and the proposed changes do this, but there are advantages to both staff and applicants for retaining the status quo. The advantage to staff of having the applicant provide mitigation measures for significant impacts is the acquisition of well-considered and useful options for mitigating any identified significant impacts. The advantage to the applicant is the opportunity to inform staff what mitigation measures the applicant considers reasonable and feasible. Additionally, under CEQA, staff customarily provides contingency measures, including mitigation, to manage the discovery of previously unknown archaeological resources encountered during construction, when significant impacts are likely (PRC §21083.2(i)).

LS POWER LLC

Section (g)(2)
LS Power opposes the proposed additions to the Cultural Resources data adequacy requirements.

RESPONSE: ***Staff acknowledges this expression of the opposition of LS Power LLC to all of the proposed changes to the Cultural Resources data adequacy requirements. Staff, however, has carefully considered its proposed changes to the Siting Regulations and believes them reasonable and advantageous to both applicants and the people of California. Some additional changes have been made in response to public comments (see below).***

CALPINE

Section (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.

RESPONSE: ***Staff reasoned that cost savings to applicants would accrue in two ways. The first would be in not having to put cultural resources specialists into the field twice, which could happen now if the surveys conducted for the AFC prove inadequate in some respect, and further survey is requested via Data Requests. The second cost savings would be in avoiding the cultural resources specialists having to re-familiarize themselves with the particulars of the project and of the history and prehistory of the affected area in order to answer one or more rounds of Data Requests months after the AFC was submitted. Regarding options early in the planning stage, the more an applicant knows about the cultural resources on and around a potential power plant site, the sooner the applicant can plan avoidance and/or build mitigation costs into the budget. Regarding cultural resources in developed industrial areas, while intact archaeological resources are less likely to have survived in fully developed areas, staff cannot assume that nothing could be discovered. Moreover, potentially significant cultural resources of an architectural or technological nature are more likely to exist in fully developed industrial areas because such areas often have been established for many years, and resources reflecting critical stages in the evolution of one or more industries could be present.***

Section (g)(2)(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.

RESPONSE: ***Technical archaeological reports provide two kinds of information to staff: locations of identified cultural resources and historical context for evaluating the significance of cultural resources. DPR 523 forms provide site locations, but not context. Thus staff needs copies of technical reports for archaeological activities in the vicinity of a proposed project. Calpine's concern over the burden of providing to staff a large number of technical reports is a valid one, and staff is willing to make the following changes to proposed Section (g)(2)(B):***

Copies of ~~technical survey reports and~~ California Department of Parks and Recreation (DPR) 523 forms shall be provided for all cultural resources (ethnographic, architectural, historical, and archaeological) identified in the literature search as being 45 years or older or of exceptional importance as defined in the National Register Bulletin Guidelines, (36CFR60.4(g)). A copy of the USGS 7.5' quadrangle map of the literature search area delineating the areas of all past surveys and noting the California Historical Resources Information System (CHRIS) identifying number shall be provided. Copies also shall be provided of all technical reports whose survey coverage is wholly or partly within .25 mile of the area surveyed for the project under Section (g)(2)(C), or which report on any archaeological excavations or architectural surveys within the literature search area.

Section (g)(2)(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 a common and preferred practice to install pipelines in road rights-of-way; i.e., 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.

RESPONSE: ***Contrary to Calpine's assertion, staff believes that it is common professional archaeological practice to survey a buffer area beyond the project footprint because discovering archaeological materials within 100-200 feet of a project boundary indicates a greater likelihood of such materials existing beneath the surface of the project site. When there is evidence of archaeological materials nearby, archaeologists usually recommend shovel testing or careful monitoring of construction in the part of the project area closest to the discovered materials.***

While no one intends for project impacts to extend beyond project boundaries, by accident or necessity this sometimes happens. Having an already-surveyed buffer zone around the expected project impact area provides insurance against this eventuality. If, for unforeseen reasons, the project boundaries must be changed, or a linear facility alignment must be shifted, construction would not be delayed by the necessity for cultural resources survey if a buffer zone had already been surveyed during the project's data-gathering phase. Regarding the proposed survey corridor for linear facilities, Calpine has misread staff's specification. Staff's proposal is for a 100-foot-wide corridor on either side of the road, not a 200-foot-wide corridor on either side of the road. Regarding the possibility of not obtaining access to private land, staff suggests that this issue can be brought up by applicants during pre-filing meetings, and staff can advise applicants on feasible alternatives on a case-by-case basis.

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.

RESPONSE: ***Calpine has raised some valid concerns regarding the appropriate survey level and area coverage proposed for historic architecture, and staff is willing to make the following changes in proposed Section (g)(2)(C):***

<u>New pedestrian archaeological surveys shall be conducted inclusive of the project site and project linear</u>~~s~~ <u>facility routes,</u> ~~and~~ <u>extending to no less than 200' around the project site</u>

and to no less than 100' to either side of the project linear facility~~ies~~ routes~~, and new historic architecture field surveys shall be conducted inclusive of the project site and the project linear facilities and extending no less than 1 mile (or alternate distance approved by staff) out from the project footprints.~~ New historic architecture field surveys in rural areas shall be conducted inclusive of the project site and the project linear facility routes, extending no less than .5 mile out from the proposed plant site and from the routes of all above-ground linear facilities. New historic architecture field surveys in urban and suburban areas shall be conducted inclusive of the project site, extending no less than one parcel's distance from all proposed plant site boundaries. New historic architecture field reconnaissance ("windshield survey") in urban and suburban areas shall be conducted along the routes of all linear facilities to identify, inventory, and characterize structures and districts that appear to be older than 45 years or that are exceptionally significant, whatever their age.

GEOLOGICAL HAZARDS AND RESOURCES

CALIFORNIA COASTAL COMMISSION

Section (g)(17)(B)
We recommend adding tsunami runup to the list of geologic hazards, as shown below.

> "A map at a scale of 1:24,000 and description of all recognized stratigraphic units, geologic structures, and geomorphic features within two (2) miles of the project site and along proposed facilities. Include an analysis of the likelihood of ground rupture, seismic shaking, mass wasting and slope stability, liquefaction, subsidence, tsunami runup, and expansion or collapse of soil structures at the plant site. Describe known geologic hazards along or crossing linear facilities."

For coastal power plants, this is likely to be an important consideration in upcoming AFC proceedings. We note that the tsunami runup is included in Appendix B's section on Water Resources, but we believe it is more important to evaluate it as part of geologic hazard review.

RESPONSE: ***Comments have been incorporated into revised regulations below.***

> (B) A map at a scale of 1:24,000 and description of all recognized stratigraphic units, geologic structures, and geomorphic features within two (2) miles of the project site and along proposed facilities. Include an analysis of the likelihood of ground rupture, seismic shaking, mass wasting and slope stability, liquefaction, subsidence, tsunami runup, and expansion or collapse of soil structures at the plant site. Describe known geologic hazards along or crossing linear facilities.

CALIFORNIA COASTAL COMMISSION

Section (g)(3)(a)(ii)
We concur with the recommendation to include "proposed zone changes and/or general plan amendments" as part of the AFC's land use description. This has been an issue in past AFC proceedings and is an issue in at least one current proceeding where a local jurisdiction is in the midst of considering substantial land use changes to the area in and around a proposed project site. By identifying both existing and proposed land use designations for a proposed project site, it is less likely that parts of the AFC review will have to be redone if the designations change during the course of the review.

We recognize, however, that the proposed language could be further clarified. We recommend adding language that defines "proposed" changes and amendments as those being considered by an elected or appointed board, commission, or similar entity at the state or local level. This clarification would ensure that an AFC applicant would not be required to submit descriptions of every possible land use change that could occur at a proposed project site.

RESPONSE: ***Staff's agrees with the Coastal Commission's comment.***

CALPINE

Section (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.

RESPONSE: ***Staff disagrees with the comment. All cities and counties have Land Use Elements and Open Space Elements in their General Plans, some of which have goals or policies on the siting (including undergrounding) of project linears such as transmission lines. Likewise, some cities and counties have Energy Elements in their General Plans that have goals or policies on the siting of pipelines and transmission lines. As more local jurisdictions update their general plans to include smart growth principles and energy conservation/planning policies, local land use will become more restrictive. To provide additional clarification, staff has revised its proposed language as follows:***

> (ii) A discussion of any ~~trends in~~ recent or proposed ~~zoning~~ zone changes and/or general plan amendments ~~potential future land use development~~; *considered by an elected or appointed board, commission, or similar entity at the state or local level.*

Section (g)(3)(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.

RESPONSE: ***Staff disagrees with this comment. Please see the Response to comment from the Coastal Commission.***

Section (g)(3)(C)
This is not a Data Adequacy issue.

RESPONSE: ***Staff disagrees with this comment. Section (g)(3)(C) directly addresses the need to determine what would be necessary to make the proposed project conform to state and local land use regulations and requirements. See RATIONALE following the proposed change.***

Further, the State Subdivision Map Act (Government Code Sections 66410-66499) provides the State requirements and procedures for determining the establishment of a legal parcel for the purpose of sale, lease or finance. All local jurisdictions have ordinances implementing the Map Act.

Section (g)(3)(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).

RESPONSE: ***Staff disagrees with this comment. USGS topographical maps are the standard used for mapping purposes. The US Census, all local jurisdictions, and GIS generated maps use USGS topo maps as a base map for all mapping.***

Section (g)(3)(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.

RESPONSE: ***Staff disagrees with this comment. The proposed changes in this section address agricultural/land use issues besides whether the proposed parcel is under a Williamson Act contract. Further, when construction of a project requires the removal of agricultural lands, staff is required to analyze the loss of agricultural lands and associated crops, both in acreage lost and the dollar value of the crop.***

SEMPRA

Section (a)(3)(A)(ii)
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.

RESPONSE: ***Staff disagrees with this comment. Please see the comment from the Coastal Commission.***

Section (a)(3)(B)
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".

RESPONSE: ***Staff disagrees with the comment. The issue of a project's "compatibility" with respect to surrounding land uses speaks to whether the project is consistent with the zoning and the general plan designation, the Agricultural Land Conservation Act, the Coastal Commission, and Airport Land Use Plans, or whether the project is compatible with uses delineated in a specific or master plan.***

NOISE

CALPINE

Section (g)(4)(A)
Calpine 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."

Section (g)(4)(B)
Calpine would like to suggest the following wording changes to (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.]

RESPONSE: ***Staff agrees and the comments have been incorporated into revised regulations. See below:***

(A) A land use map which identifies residences, hospitals, libraries, schools, places of worship, or other facilities where quiet is an important attribute of the environment within the area impacted by the proposed project. 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.

(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).

PALEONTOLOGICAL RESOURCES

CALPINE

Section (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.

RESPONSE: ***Staff agrees and the comments have been incorporated into the revised regulations below:***

> (D) Information on the specific location of known paleontologic resources, survey reports, locality records, and maps at a scale of 1:24,000, showing occurrences of fossil finds within a one-mile radius of the project and related facilities (if fossil finds are known) shall be included in a separate appendix to the Application and submitted to the Commission under a request for confidentiality, pursuant to Title 20, California Code of Regulations, s 2501 et seq.

PUBLIC HEALTH

CALPINE

Section (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."

RESPONSE: ***Staff's suggested revisions already include "….HARP or its successor…"***

Section (g)(9)(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 <u>publicly</u> available health studies. . .

RESPONSE: ***Staff has incorporated the suggested clarification in the revised regulations. See below:***

> (C) <u>Identification of publicly available health studies concerning the potentially affected population(s) within a six-mile radius of the proposed power plant site.</u>

SEMPRA

Section (a)(9)(C)
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.

RESPONSE: ***Please see response above.***

Section (a)(9)(E)(i)
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.

RESPONSE: ***Staff notes that "sensitive receptors" are included in paragraph (D). Sensitive receptors refer to humans not buildings.***

SOCIOECONOMICS

CALPINE

Section (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).

RESPONSE: ***Staff agrees with this point. It should be in Section (g)(7)(B). The proposed regulation has been revised to delete it out of Section (g)(7)(A), see below:***

> (A) A description of the socioeconomic circumstances of the vicinity and region affected by construction and operation of the project. ~~Provide the year of estimate, model, if used, and appropriate sources~~. Include:

Section (g)(7)(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.

RESPONSE: ***Staff agrees with this point and the proposed regulation has been revised to delete the words.***

> (iii) Existing ~~and projected~~ unemployment rates;

Section (g)(7)(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 are 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 socioeconomics 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.

RESPONSE: ***Utilities provide community/regional services and are part of the community/regional infrastructure. Therefore, it belongs in the socioeconomics section. Please provide the best possible projection for school enrollments and note data limitations. Staff agrees to delete “for the duration of the project construction schedule.”***

> (vi) Capacities, existing and expected use levels, and planned expansion of utilities (gas, water, and waste) and public services, including fire protection, law enforcement, emergency response, medical facilities, other assessment districts, and school districts. For projects outside metropolitan areas with a population of 500,000 or more, information for each school district shall include current enrollment

and yearly expected enrollment by grade level groupings, excluding project-related changes.~~, for the duration of the project construction schedule.~~

Section (g)(7)(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.

RESPONSE: ***Comment noted.***

Section (g)(7)(A)(B)(v)
Remove "hospitals" from the inserted phrase. Hospitals don't have response times.

RESPONSE: ***Staff agrees. The response time (distance/time) to hospitals by whatever means (ambulance or helicopter) needs to be provided. Please see revisions below:***

(v) The potential impacts, including additional costs, on utilities (gas, water, and waste) and public services, including fire, law enforcement, emergency response, medical facilities, other assessment districts, and school districts. Include response times to ~~for~~ hospitals and for police, and emergency services. For projects outside metropolitan areas with a population of 500,000 or more, information on schools shall include project-related enrollment changes by grade level groupings and associated facility and staffing impacts by school district during the construction and operating phases;

Section (g)(7)(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.

RESPONSE: ***Staff agrees with the comment on cumulative economic effects and will delete the last sentence in this section in the proposed revised regulations. See revisions below:***

(xii) The expected direct, indirect, and induced income and employment effects due to construction, operation, and maintenance of the project. ~~Also, include an evaluation of the cumulative economic effects from construction of this and other similar projects simultaneously occurring in the study area~~

Economic impact assessment models such as IMPLAN are cost-effective and low-cost. It provides an economic tool to quantify secondary impacts (indirect and induced) income and employment impacts which can be important and improve the accuracy of the analysis. This information can provide information on public benefits from a project. Project benefits are a project impact just as a negative impact is a project impact. The information can be used by decision-makers in an override (when public benefits are used to outweigh negative significant environmental impacts that are not able to be mitigated.) Staff further notes for smaller SPPE projects, economic impact modeling analysis to assess secondary impacts is not required. However, many applicants choose to do economic impact modeling analysis. Finally, economic impacts analysis using models is common in evaluating projects and policies.

ASSOCIATED BUILDERS AND CONTRACTORS

Section(g)(7)(A)(iv)
We recommend the deletion of "construction and" in Section (7)(A)(iv) regarding the applicant's submission of information concerning the availability of skilled workers by craft required for construction and operation of the project.

(iv) Availability of skilled workers by craft required for ~~construction and~~ operation of the project;

RESPONSE: ***Staff disagrees. Staff needs to evaluate the construction labor force and local and non-local labor markets. Non-local project labor may create significant negative socioeconomic impacts through relocation with their families.***

There are problems with Section (7)(A)(iv) as it is now included in the regulations:

1. There is no indication in law that the availability of skilled workers is meant to be a part of a socioeconomic analysis of the vicinity and region affected by construction of a power plant. Therefore, the question is misplaced. In addition, there is evidence that general contractors and subcontractors that obtained workers for recent power plant construction through a union hiring hall dispatching procedure employed many workers from outside the state and even outside the country, and not from the vicinity and region of the power plant. This is not surprising, since skilled labor that specializes in large industrial projects such as power plant construction tend to work nationally or even internationally. If the potential workforce pool encompasses the country, or even other countries, there will always be an adequate supply of skilled labor to construct the plant. Therefore, the question is absurd as well as misplaced.

2. For applicants not seeking approval under expedited review, the applicant has not necessarily selected a general contractor (with its subcontractors) when it seeks power plant site certification. Therefore, how could and applicant legitimately claim to know about the availability of skilled workers for the contractor (and its subcontractors)? For example, the California Energy Commission issued its final permit on April 13, 2005 to Roseville Electric for the Roseville Energy Park Power Plant. On June 1, 2005– 48 days later– the Roseville City Council approved an $80 million engineering procurement construction contract with Gemma Power Systems California, Inc., a California-licensed Class A general engineering contractor/Class B general building contractor based in Glastonbury, Connecticut that builds power plants throughout the country. How could Roseville Electric legitimately claim to know about the availability of skilled workers for the contractor (and its subcontractors) when the out-of-state general contractor had not been selected yet?

RESPONSE: ***The AFC/Energy Commission socioeconomic assessments are based on the best available applicant construction and operation labor force/labor market information at the time. Often conservative scenarios are used to augment current and future labor market information.***

Section (g)(7)(B)(ii)
For similar reasons, Section (7)(B)(ii) should be changed to specify that "work on the project" refers to the operation of the project:

(ii) An estimate of the percentage of non-local workers who will relocate to the project area to ~~work on~~ operate the project;

RESPONSE: ***Staff disagrees with this point, and proposes to revise Section (g)(B)(ii) to make it clear that an estimate is needed for both construction and operation. As stated previously, adverse socioeconomic impacts can occur if non-local workers relocate with their families.***

As stated above, an applicant not seeking expedited review does not have to contract with a general contractor (with its subcontractors) when it seeks power plant site certification. If the applicant has not yet selected a general contractor (with its subcontractors) during the power plant site certification process, and if the applicant does not intend to perform the construction itself as a licensed contractor, the question of the percentage of non-local workers in construction of the proposed power plant is unanswerable and theoretical.

RESPONSE: ***Staff disagrees. Socioeconomic data requirements seek estimates based on the best economic information and scenarios available.***

In its April 2005 final decision approving the Roseville Energy Park Power Plant, the CEC contended that "the bulk of the construction workers are expected to come from Sacramento and Placer counties…" with references to a November 2004 staff report contending that no more than 10 percent of the workforce at its peak would be non-local. How would the CEC even have a rough estimate in April 2005 of the number of non-local workers if the applicant had not yet contracted with the general contractor (with its

subcontractors)? Noting that a worker is not necessarily "local" even though he or she is dispatched from a "local" union hiring hall, Associated Builders and Contractors of California is interested to know if the construction workforce for this power plant was truly 90 percent "local" in the end, or if the workforce was composed largely of itinerant industrial construction workers. Since the CEC would not have any credible way of predicting the geographical origins of the future construction workforce without knowing the identities of the general contractors (with their subcontractors), Section (7) (B) (ii) should be changed to specify that "work on project" refers to the operation of the project.

RESPONSE: ***Please see the response above.***

TRAFFIC AND TRANSPORTATION

LS POWER

Section (g)(5)(b)
LS Power opposes the new additions to data adequacy related to visible water vapor plumes that may present an aviation hazard.

RESPONSE: ***Staff disagrees with the LS Power comment. Staff has historically required visual plume modeling to assess both potential visual resource and air navigation safety impacts where a proposed project is near an airport and could be a concern.***

CALPINE

Section (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.

RESPONSE: ***Staff agrees with the Calpine comment. Staff has revised the proposed data adequacy requirement to have an applicant provide to the Energy Commission similar information they are required to provide to the FAA in accordance to FAR Part 77 at data adequacy. See revisions below:***

~~(B) A discussion of the potential aviation safety issues (e.g., thermal plumes, visible plumes, evaporation ponds, and transmission lines and towers) of siting the power plant if the proposed power plant would be located within three (3) miles or electrical transmission lines would be within one (1) mile of any operating or planned airport or airstrip (including agricultural airstrips). The discussion should include a map at a scale of 1:24,000 that displays the airport or airstrip runway configuration, the proposed power plant site and related facilities.~~

(B) If the proposed project including any linear is to be located within 20,000 feet

of an airport runway that is at least 3,200 feet in actual length, or 5,000 feet of a heliport (or planned or proposed airport runway or an airport runway under construction, that is the subject of a notice or proposal on file with the Federal Aviation Administration), discuss the project's compliance with the applicable sections of the current Federal Aviation Regulation Part 77 – Objects Affecting Navigable Airspace, specifically any potential to obstruct or impede air navigation generated by the project at operation; such as, a thermal plume, a visible water vapor plume, glare, electrical interference, or surface structure height. The discussion should include a map at a scale of 1:24,000 that displays the airport or airstrip runway configuration, the proposed power plant site and related facilities.

Section (g)(5)(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).

RESPONSE: ***Staff disagrees with the Calpine comment. United States Geological Survey (USGS) topographic maps are the industry standard. A longstanding goal of the USGS has been to provide complete, large-scale topographic map coverage of the United States. The result is a series of more than 54,000 maps that cover in detail the entire area of the 48 contiguous States and Hawaii. Topographic maps usually portray both natural and manmade features and are produced at a scale of 1:24,000 (some metric maps are produced at a scale of 1:25,000). They show and name works of nature including mountains, valleys, plains, lakes, rivers, and vegetation. They also identify the principle works of man, such as roads, boundaries, transmission lines, and major buildings. The feature that most distinguishes topographic maps from maps of other types is the use of contour lines to portray the shape and elevation of the land.***

Section (g)(5)(D)
Delete this requirement, as it is redundant with Item (C) above which includes the language "existing and planned."

RESPONSE: ***Staff agrees with the Calpine comment and it has been incorporated into the revised regulations.***

~~(C)~~ (D) ~~A description of any new, planned, or programmed transportation facilities in the project vicinity, including those necessary for construction and operation of the proposed project. Specify the location of such facilities on topographic maps at a scale of 1:24,000.~~

TRANSMISSION LINE SAFETY AND NUISANCE

SEMPRA

Section (a)(18)(C)
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.

RESPONSE: ***Staff did not propose changes to the above section and does not see the need for the suggested change.***

VISUAL RESOURCES

CALIFORNIA COASTAL COMMISSION

Section (g)(6)(B)

This section includes several provisions related to the protection of visual quality near a proposed power plant. We recommend the section be revised to additionally require that projects proposed to be sited within the coastal zone submit information needed to determine conformity to Coastal Act provisions related to visual resources[2]. We recommend that subsection (B) of this section be revised as follows:

> "An assessment of the visual quality of those areas that would ~~will~~ be affected ~~impacted~~ by the proposed project. For projects proposed to be located within the coastal zone, the assessment should also describe how the proposed project would be sited to protect views to and along the ocean and scenic coastal areas, would minimize the alteration of natural land forms, would be visually compatible with the character of surrounding areas, and, where feasible, would restore and enhance visual quality in visually degraded areas."

This additional proposed language would allow the AFC application to more closely match the Coastal Act's visual resource provision and make the review process more efficient.

RESPONSE: ***Staff agrees with the language proposed by the Coastal Commission. The additional language does not establish the amount of area to consider for protection of visual quality within the guidelines identified, therefore staff recommends the following language be added to the end of the recommended change "within the view of the selected Key Observation Points as determined by Energy Commission staff". See below:***

> (B) An assessment of the visual quality of those areas that would ~~will~~ be affected ~~impacted~~ by the proposed project. For projects proposed to be located within the coastal zone, the assessment should also describe how the proposed project would be sited to protect views to and along the ocean and scenic coastal areas, would minimize the alteration of natural land forms, would be visually compatible with the

[2] Coastal Act Section 30251: "The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting."

character of surrounding areas, and, where feasible, would restore and enhance visual quality in visually degraded areas within the view of the selected Key Observation Points as determined by Energy Commission staff.

DOWNEY BRAND, LLC

Section (g)(6)(E)
We believe that the visual plume information should be conducted in discovery. Not all projects have cooling towers and not all projects produce plumes. This area of study is really in its infancy and the information provided by all parties are approximations. We would like to keep the level of accuracy of this information in perspective. We believe that the discovery process is the best place to address visual plumes.

RESPONSE: ***Staff disagrees. The data requested for cooling tower, heat recovery steam generator or simple cycle exhaust stacks is necessary for staff's plume modeling analysis. Staff conducts plume modeling on nearly all projects, with the exception of simple cycle projects that typically have no possibility of visible water vapor plume. Requiring this information in the AFC would eliminate the need for data requests for this data.***

LS POWER

Section (g)(6)(A)
LS Power opposes the proposed changes. 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.

RESPONSE: ***Staff disagrees with this comment. The purpose of this requirement is to obtain basic information necessary for Energy Commission staff to complete the visual analysis.***

Section (g)(6)(C)
LS Power opposes this provision because it 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.

RESPONSE: ***Staff disagrees with this comment. By mandating consultation with staff, this ensures that KOP selection and location for photographs are mutually agreed upon. In most cases, this eliminates the possibility of additional field trips to redo unacceptable photos.***

Section (g)(6)(D)
LS Power opposes this section because Staff is requesting very detailed design information. Detail design is, by Commission design, a post-Certification process.

RESPONSE: ***Staff disagrees with this comment. The proposed information is basic project description type information that does not involve final design plans. This information is necessary for the visual analyst to consider project component visibility from off-site, as well as how the proposed project size blends with other structures in the field of view.***

Section (g)(6)(E)
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 have to provide mitigation and expensive photo simulations 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.

RESPONSE: ***The comment refers to new section (g)(6)(F). Staff disagrees with this comment. The proposed language seeks photo-simulation of landscaping if it is proposed by the applicant. Staff proposes a clarification to the proposed regulations to clarify that applicant proposed landscaping, whether to comply with zoning requirements or to mitigate a visual impact should be included in photo-simulations.***

~~(E)~~ (F) Provide: i) ~~F~~full-page color photographic reproductions of the existing site, and ii) full-page color simulations of the proposed project at life-size scale when the picture is held 10 inches from the viewer's eyes, including any project-related electrical transmission lines, in the existing setting from each key observation point. If any landscaping is proposed to comply with zoning requirements or to mitigate visual impacts, include the landscaping in simulation(s) representing sensitive area views, depicting the landscaping five years after installation; and estimate the expected time until maturity is reached. ~~location representative of the view areas most sensitive to the potential visual impacts of the project~~.

Section (g)(6)(G)
Staff is again assuming a significant impact and a need for "modeling" as part of the data adequacy phase. These issues are not data adequacy issues.

RESPONSE: ***Staff disagrees. The proposed language was written to obtain the applicant's plume modeling information in the AFC. If no plume modeling has been done for the AFC, the applicant need only so state.***

Section (g)(6)(H)
Staff is again assuming a significant impact and a need for "mitigation" as part of the data adequacy phase. These issues are not data adequacy issues.

RESPONSE: ***Staff disagrees with this response. Consistent with Section (g) (6) (F), staff proposes that a conceptual landscaping plan be included in the AFC if the applicant has determined that landscaping is part of the project.***

CALPINE

Section (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.

RESPONSE: ***Staff disagrees. The purpose of this requirement is to obtain basic information about the existing visual setting that is necessary for Energy Commission staff to complete the visual analysis.***

Section (g)(6)(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.

RESPONSE: ***Staff disagrees with this comment. The requirement is for one or more maps that depict the vicinity of the proposed project and routes of linear facilities, and that identify the locations where KOP photographs were taken. Photo-simulations need only be provided for the KOP photos.***

Section (g)(6)(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.

RESPONSE: ***Staff disagrees with this comment. Joint selection of KOPs is "good practice", and saves time and money for the applicant and staff in the siting process. Understanding that KOP selection site visits occur approximately two months prior to submittal of the AFC, if staff is informed that confidentiality is desired, staff can and will respect the applicant's wishes.***

Section (g)(6)(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 design is, by Commission design, a post-Certification process. Staff's changes should be rejected.

RESPONSE: ***Staff disagrees. The proposed information is basic project description type information that does not involve final design plans. This information is necessary for the visual analyst to consider project component visibility from off-site, as well as how the proposed project size blends with other structures in the field of view.***

Section (g)(6)(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.

RESPONSE: ***Staff disagrees. The data requested for cooling tower, heat recovery steam generator or simple cycle exhaust stacks is necessary for staff's plume modeling analysis. Staff conducts plume modeling on nearly all projects, with the exception of simple cycle projects that typically have no possibility of visible water vapor plume. Requiring this information in the AFC would eliminate the need for data requests for this data.***

Section (g)(6)(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.

RESPONSE: ***Staff disagrees with this comment. The proposed language seeks photo-simulation of landscaping if it is proposed by the applicant. Staff proposes a clarification to the proposed regulations to clarify that applicant proposed landscaping, whether to comply with zoning requirements or to mitigate a visual impact should be included in photo-simulations.***

Section (g)(6)(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.

RESPONSE: ***Staff disagrees. The proposed language was written to obtain the applicant's plume modeling information in the AFC. If no plume modeling has been done for the AFC, the applicant need only so state.***

Section (g)(6)(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.

RESPONSE: ***Staff disagrees with this response. Consistent with Section (g) (6) (F), staff proposes that a conceptual landscaping plan be included in the AFC if the applicant has determined that landscaping is part of the project.***

SEMPRA

Section (g)(6)
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.

RESPONSE: ***In general, the details of staff's visual methodology are not appropriate for inclusion in the data adequacy regulations. However, specific to the full-page, color photo-simulations, staff agrees that additional specificity is desirable. Staff has proposed an additional change to Section (g)(6)(F) to include the words "life size scale when the picture is held 10 inches from the viewer's eyes." Please see the response and revisions under the comments by LS Power.***

Section (g)(6)(D)
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.

RESPONSE: ***Staff disagrees with this statement. In cases where local design review committees are involved, staff makes allowances for their input in the condition of certification pertaining to color and architectural treatments of the facility. As the permitting and CEQA lead agency, the Energy Commission retains the final approval authority for color and architectural treatments.***

WASTE MANAGEMENT

CALPINE

Section (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 have 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.

RESPONSE: S*taff disagrees with Calpine's comments. Waste Management evaluates the potential for non-hazardous waste and hazardous waste associated with proposed project sites. Phase I Environmental Site Assessment (ESA) support the "innocent landowner" defense under the Comprehensive Environmental Response, Compensation and Liability Act. CERCLA imposes potentially significant liabilities on owners and operators of environmentally contaminated properties, but also provides certain defenses for innocent landowners and their tenants who conduct "all appropriate inquiries" before owning or operating environmentally contaminated properties. The most current Phase I ESA is critical to the technical analysis for Waste Management. Technology, governmental agency data bases and other resources continue to improve and provide more useful data every year. It is appropriate for the applicant to provide the most up-to-date and complete information so that staff can conduct a thorough analysis.*

Staff often reviews Phase I ESA older than six months. A data base search run may be cheaper, however, the actual condition of the physical site and proper identification of recognized environmental conditions are the most important aspects of evaluating a potential project site.

WATER RESOURCES

CALPINE

Section (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.

RESPONSE: ***Staff reviewed Calpine's comment and would note that the qualifying text "if applicable," is contained in the proposed text for this section.***

Section (g)(14)(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.

RESPONSE: ***Staff disagrees with Calpine's comment that the information on nearby water sources is not relevant to the proposed use of water or discharge by the project. The intent of the proposed revision is to establish a pre-construction/operation water quality baseline for those potential water courses that could sustain environmental degradation from construction/operation of the proposed facility.***

Calpine may have misinterpreted the meaning of water sources as the source of cooling or industrial supply water rather than those nearby water course and/or groundwater basin(s).

Section (g)(14)(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.

RESPONSE: ***Staff interprets Calpine's comments as pertaining to Sections (g)(14)(C)(ii) and (v). Calpine's opening sentence that staff seeks additional information on "source waters with seasonal variations" that may not be relevant in every case, is a comment on the closing sentence of proposed changes to Section (g)(14)(C)(ii).***

Staff agrees with Calpine's interpretation that this section may not apply to every proposed project, and as stated in the revised section (g)(14)(C)(ii), qualifying language is included in the opening phrase. "For source waters with seasonal variation, provide seasonal ranges of the physical and chemical characteristics." Therefore, this information is not required for those cases where there are no seasonal variations in source water quality. Staff rejects Calpine's argument for removing this sentence from Section (g)(14)(C)(ii).

Staff reviewed Calpine's comments that: "Staff seeks more information than it needs, and in doing so, may compromise commercial operation . . . which may compromise ongoing negotiations for supply." Staff proposes the following changes to Section (g)(14)(C)(v), **shown below:**

> (v) For all water supplies to be provided from public or private water purveyors, a letter of intent or will-serve letter indicating that the purveyor is willing to serve the project, has adequate supplies available for the life of the project, ~~the term of service to the project, any previous uses of the allocated water (if known),~~ and any conditions or restrictions under which water will be provided. In the event that a will-serve letter or letter of intent can not be provided, identify the most likely water purveyor and discuss the necessary assurances from the water purveyor to serve the project. ~~were unable to be secured. Also discuss the term of the water service to the project, whether the water purveyor has adequate water supplies for the life of the project, any previous uses of the allocated water (if known), and any issues or conditions/restrictions the purveyor may impose on the project for use of its water.~~

Section (g)(14)(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.

RESPONSE: ***The inclusion/admission of a potential environmental impact has always been part of the AFC process. In this case, a potential impact that has been identified through an aquifer drawdown study, performed by a professional geologist would be considered valid CEQA information.***

Staff's rational that the volume and pumping rate of groundwater for power plant cooling has the potential to interfere with and significantly impact other users of the groundwater basin is a valid concern. If an applicant is not willing to mitigate potential groundwater impacts, then a different water source should be selected prior to submission of the AFC. Staff rejects Calpine's suggestion to remove Section (g)(14)(E)(ii) but proposes to add the following language for clarification to the section, (*shown in italics and/or strikethrough*):

> (ii) If the project will pump groundwater, an aquifer drawdown study will be conducted by a professional geologist and the estimated drawdown on neighboring wells within 0.5 mile of the proposed well(s) ~~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 will be provided;

Section (g)(14)(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.

RESPONSE: ***Staff reviewed Calpine's comment. While the IEPR was the subject of extensive Commission workshops and hearings, staff acknowledges that the IEPR was not an APA-Compliant Rulemaking proceeding. However, this is an APA-Compliant Rulemaking proceeding, therefore it is appropriate to promulgate this proposed revision to the regulations.***

SEMPRA

Section (a)(14)(B) and (C)
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.

RESPONSE: ***Staff disagrees with SEMPRA's comments. Please see response to Calpine on Sections (a)(14)(B) and (C).***

Section (a)(14)(C)(v)
Regarding “will serve” letters appears repetitive and is confusing. Perhaps some words were dropped or misplaced.

RESPONSE: ***Staff agrees with SEMPRA’s comment and has edited Section (g)(14)(C)(v) for content and syntax in response to Calpine’s comments to this section.***

Rules of Practice and Procedure

&

Power Plant Site Certification Regulations Revisions

04-SIT-2

November 3, 2006

INDEX OF CHANGES

§ 1002. Service on the Commission.

Service of process may be made on the commission by personal service on the chairman, the executive director, or ~~general~~ chief counsel, or as otherwise provided by law addressed as follows:

Energy Resources Conservation and Development Commission
1516 Ninth Street
Sacramento, CA 95814
Attn: ~~General~~ Chief Counsel

[RATIONALE: This change creates consistency with the title actually used.]

§ 1201. Definitions.

The following definitions shall apply unless otherwise indicated:

(a) "Staff" means the staff of the State Energy Resources Conservation and Development Commission.

(b) "Respondent" means any person named in a complaint, pursuant to Section 1231 of these regulations, and alleged to be in violation of any regulation, order, decision, or statute adopted, administered, or enforced by the commission, and any person who is the subject of a complaint proceeding pursuant to Sections 1230 and 1231 of these regulations.

(c) "Complainant" means any person who files a complaint, pursuant to section 1231 of these regulations, alleging the violation of any regulation, order, decision, or statute adopted, administered, or enforced by the commission.

(d) "Intervenor" means any person who has been granted leave to intervene pursuant to these regulations.

(e) "Party" means any applicant, respondent, complainant, or intervenor, and the staff of the commission.

(f) "Presiding member" means the chairman of the commission or any member of the commission designated to preside over any proceeding pursuant to Section 1204 of these regulations.

(g) "Comment" means any oral or written statement made by any person, not under oath, in any proceeding before the commission.

(h) "Testimony" means any oral or written statement made ~~by any person,~~ under oath in any proceeding before the commission.

(i) "Witness" means any person who offers testimony in any proceeding before the commission.

(j) "Docket Unit" means the Docket Unit of the Energy Resources Conservation and Development Commission.

[RATIONALE: This is consistent with §1212(b).]

§ 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 the Prehearing Conference or ~~at least~~ 30 days prior to the first hearing held pursuant to sections 1725, 1748, or 1944 of this Chapter, whichever is earlier, subject to the exception in subsection (c) below. The petitioner shall also serve the petition upon the Applicant.

(c) The presiding member may grant leave to intervene to any petitioner to the extent he deems reasonable and relevant, but may grant a petition to intervene filed after the deadline provided in subdivision (b) only upon a showing of good cause by the petitioner. Any person whose petition is granted by the presiding member shall have all the rights and duties of a party under these regulations.

(d) Any petitioner who has been denied leave to intervene by the presiding member may appeal the decision to the full commission within fifteen (15) days of the denial. Failure to file a timely appeal will result in the presiding member's denial becoming the final action on the matter.

(e) Any petitioner may withdraw from any proceeding by filing a notice to such effect with the Docket Unit or presiding committee member.

[RATIONALE: Encouraging earlier intervention encourages more timely and meaningful participation. The presiding member would still retain the discretion to allow intervention at a later date.]

§ 1208. Conferences; Purpose; Notice; Order.

The presiding member or hearing officer may hold a conference with the parties, the public adviser, the ~~general~~ chief counsel, and any other persons interested in the proceeding, at any time he deems necessary, for the purpose of formulating the issues, organizing the questioning of witnesses, determining the number of witnesses, providing for the exchange of exhibits or prepared statements, and such other matters as may expedite the orderly conduct of the

proceedings. The public adviser may, upon request, present the views submitted by persons interested in the proceeding who are unable to attend.

(a) The conference shall be publicly noticed and the notice served in person or by mail on all parties at least ten (10) days before the conference.

(b) The presiding member may enter an order which specifies issues or states any other matter to aid in the orderly conduct of the hearing, and may, upon agreement of all the parties, accept stipulations of law or fact.

[RATIONALE: This change creates consistency with the title actually used.]

§ 1209. Form of Submissions.

(a) Except for drawings, photographs, maps, diagrams, charts, graphs, or similar documents and exhibits, all formal paper filings and accompanying materials submitted to the commission pursuant to these regulations shall be typewritten or printed on paper eight and one-half (8 1/2) inches wide and eleven (11) inches long. To the extent possible, all attachments thereto, including drawings, photographs, maps, diagrams, charts, graphs, and similar documents, and all other exhibits, shall be folded to the same size. To the extent possible, no document should be larger than eleven (11) inches wide and seventeen (17) inches long unfolded. Documents should be printed on both sides of the page. Clear, permanently legible copies made by any reproduction process may be submitted. Pages shall be bound securely and shall be consecutively numbered. Formal filings may also be submitted electronically. Electronic copies shall be in the number, media, and format specified in Section 1209.5.

(b) All filings and accompanying materials, including exhibits not attached to other materials, shall show the following on a title page or cover:

(1) the title of the proceedings before the commission;

(2) the docket number, if any, assigned by the commission;

(3) the nature of the material;

(4) the name, address, and telephone number of the person submitting the material.

(c) Unless otherwise specified in these regulations or required by the commission or the executive director, any person submitting written materials in connection with a proceeding before the commission shall provide twelve (12) paper copies thereof, including one original paper copy. ~~, unless provision of twelve (12) copies would impose an undue burden on the submitter. If the undue burden is one of inconvenience, a check covering the cost of making additional copies at the current rate per page specified by the commission's Docket Unit shall be submitted with the original copy. If the undue burden is financial, the letter of transmittal, written material, or comment should so state.~~ The Docket Unit shall photocopy and distribute submitted

material in the normal course. Alternatively, a person may provide one original paper copy and electronic copies in the number, media and format specified in Section 1209.5.

(d) Unless otherwise specified in these regulations all materials filed with the commission shall be filed with the Docket Unit. The executive director shall assure the proper distribution of such materials and shall assure that all materials submitted to the commission shall be made available at the Docket Unit to the public in accordance with provisions of the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7, Title 1 of the Government Code, and commission regulations.

(e) Unless otherwise stated in these regulations, in other applicable law, or by order of the commission or a committee thereof, a document is filed, received, or similarly submitted when it is delivered in paper or electronic format to the Docket Unit. ~~Materials shall be deemed filed as of the date upon which such material is served upon the appropriate officer of the commission, or if mailed, as of the date upon which such material is deposited in the mail, first class postage prepaid.~~

(f) Filing pursuant to this section does not satisfy the requirement that a party serve a copy of its documents on every other party in a proceeding, contained in section 1210.

[RATIONALE: Hardship status is unnecessary in light of electronic filing and the alternative specified (providing only one paper copy and electronic copies) currently contained in 1209(c). Current Statutes use various terms to describe the act of filing a document. The amendment gives all of those terms the same meaning, avoiding confusion and uncertainty. Section (f) is to emphasize the requirement to serve other parties in a siting case at the time a document is filed at the Commission.]

§ 1209.5. Electronic filing.

(a) Electronic documents may be submitted in any of the following media in the number of copies specified:

(1) Two CD-ROMs (read only);

(2) Two magnetic diskettes;

(3) One internet e-mail; or

~~(4) One posted to an FTP site; or~~

(4~~5~~) Any other media and number of copies authorized by the Executive Director.

(b) The format version used must be noted on the media. Charts, graphs, drawings, maps, and photographs should be incorporated within the document, but may be included in an appendix. Maps and photographs may be submitted as paper copies in the number specified by the executive director.

(c) Electronic documents shall be provided in the Portable Document Format (PDF), or its equivalent, as determined by the executive director.

(1) The executive director may waive the format requirement if it is shown to constitute an undue burden on the submitter of a document. A written request for a waiver may be submitted to the executive director at any time prior to the filing of a document. The request shall include a description of each such document and a discussion of the reasons why the format specified in (c) above is an undue burden. The requesting party may not file the electronic document while such a request is pending. If a request is granted, the executive director shall specify the format allowed. The executive director shall act on all such requests within 15 days.

(d) Documents shall be delivered to the Dockets Unit in one of the following ways:

(1) by personal delivery to the Dockets Unit;

(2) by electronic transfer (e-mail) of smaller documents (5MB maximum file size) to: docket@energy.state.ca.us ~~dockets@energy.state.ca.us~~;

(3) by first class mail, or other equivalent delivery service, with postage prepaid; or

(4) in any other delivery method approved by the Executive Director.

(e) Data the submitter considers confidential must be filed as a separate document with an application for confidential designation pursuant to Section 2505.

[RATIONALE: These are simple cleanup revisions. The reference to the FTP format for delivered documents appears obsolete and in any event there is no corresponding description of an FTP delivery method in subsection (d). Staff pointed out that the email address for Dockets wasn't correct.]

§ 1213. Official Notice.

~~During a proceeding the commission may take official notice of any generally accepted matter within the commission's field of competence, and of any fact which may be judicially noticed by the courts of this state. Parties to a proceeding shall be informed of the matters to be noticed, and those matters shall be noted in the record, or attached thereto. Any party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority.~~

In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the commission's special field, and of any fact which may be judicially noticed by the courts of this State. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by

written or oral presentation of authority, the matter of such refutation to be determined by the agency.

[RATIONALE: This is consistent with APA text of Government Code section 11515.]

§ 1216. Ex Parte Contacts

The ex parte provisions of Article 7 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code (sections 11430.10 et seq.) apply to all adjudicative proceedings conducted by the commission.

~~Commissioners and assigned hearing officer(s) shall avoid any oral or written communication with a representative of any party to an adjudicatory proceeding pending before the commission including those members of the commission staff who have been involved or are likely to be involved as principals in case management or who have participated or are likely to participate in the preparation or presentation of staff testimony, documentary evidence, or cross-examination concerning any substantive issue involved in the proceeding; provided, however, that communications contained in the formal record at a commission hearing shall not be prohibited. (a) If such a communication occurs, the commissioners or hearing officer shall include a description of the substance of the discussion in the public file on the proceeding to permit rebuttal of the matter on the record by any party affected.~~

~~(b) All of the written communications received by a commissioner or hearing officer which relate to substantive issues raised in an adjudicatory proceeding before the commission shall be included in the public file on the proceeding and shall be subject to rebuttal on the record by any party affected.~~

~~(c) An adviser to a commissioner or any other member of a commissioner's own staff shall not be used in any manner that would circumvent the purposes and intent of this section.~~

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Sections 11430.10 – 11430.80, Government Code, Section 25210, Public Resources Code.

[RATIONALE: This section has been revised to be consistent with the Administrative Procedures Act, Govt. Code Section 11430.10.]

§ 1217. Informal Hearings.

The commission may choose to implement the informal hearing procedures identified in Article 10 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code (sections 11445.10 et seq.) when conducting an adjudicative proceeding.

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Sections 11445.10 – 11455.60, Government Code, Section 25210, Public Resources Code.

[RATIONALE: Govt. Code Section 11445.20(c) provides that an agency may use an informal hearing procedure if, by regulation, the agency has authorized its use. This section allows the

Commission the discretion to hold informal hearings and is consistent with the Powers of the Chairman and presiding member as set out in Section 1203.]

§1219. Effective Date of All Decisions and Orders Interim Regulations for Adjudicatory Procedure.

For all purposes, including but not limited to implementation of sections 25530, 25531, and 25901 of the Public Resources Code, a decision or order is adopted, issued, final, and effective on the day when the decision or order is docketed, unless the decision or order states otherwise. ~~Government Code Sections 11430.10 through 11430.80 (ex parte communications) and 11445.10 through 11445.60 (informal hearings) are hereby incorporated by reference as applicable to commission adjudicatory proceedings commended prior to July 1, 1997.~~

[RATIONALE: The current section 1219 is obsolete. Current Statutes use various terms to describe the date which begin time limitations for filing appeals and other actions. The amendment gives all of those terms the same meaning, avoiding confusion and uncertainty.]

§ 1702. Definitions.

For purposes of this subchapter and unless otherwise indicated, definitions found in Public Resources Code Section 25100 as well as the following definitions shall apply:

(a) "Administrative record" means all materials and comments that have been entered into the docket ~~on~~ of the proceeding. The administrative record includes, but is not limited to, the hearing record (as defined below).

(b) "CEQA" means the California Environmental Quality Act of 1970 commencing with Section 21000 of the Public Resources Code.

(c) Chief Counsel means the Chief Counsel of the commission.

~~(c)~~(d) "Committee" means the committee of the commission appointed pursuant to Section 1204 of these regulations to conduct proceedings on a notice or application.

~~(d)~~(e) "Environmental documents" means draft environmental impact reports (draft EIR), final environmental impact reports (final EIR), initial studies, negative declarations, notices of preparation, notices of determination, notices of exemption and statements of findings and overriding considerations, and the documentation prepared by the Commission or its Staff for a certified regulatory program in compliance with Section 21080.5 of the Public Resources Code.

~~(f) "General counsel" means the general counsel of the commission.~~

~~(e)~~(f) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

(g) "Hearing officer" means any person designated pursuant to Section 1205 of these regulations to assist the presiding member in conducting the proceeding.

(h) "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. The hearing record includes:

(1) written and oral testimony presented at a hearing including direct and cross-examination of a witness;

(2) supporting documentary evidence submitted with testimony;

(3) public comment offered at a hearing or entered into the record at a hearing:

(4) public agency comment offered at a hearing or entered into the record of a hearing;

(5) matters of which official notice has been taken, and

(6) other evidence that the committee accepts at a hearing.

[RATIONALE: The proposed amendments would delete the definition of an outdated classification at the Energy Commission--"General Counsel"—and add the definition of the current classification, "Chief Counsel." The amendments would also revise the definitions of "administrative record" and "hearing record" to make it clear that public comments are included in the administrative record and that the commission may rely in part on public comments, in addition to the hearing record, in making a finding or reaching a decision.]

(i) "Intervenor" means any person who has been granted leave to intervene in notice or application proceedings pursuant to Section 1712 of these regulations.

(j) "Party" means the applicant, the staff of the commission, and any intervenor.

(k) "Presiding member" means the presiding member of the committee appointed to conduct proceedings on a notice or application.

(l) "Filing" means submission of any document to the commission docket. A document is filed on the day it is received by the commission docket.

(m) "Acceptance" means a formal determination by the commission, pursuant to Public Resources Code, sections 25516.6, 25522, or 25540.1 that a notice or application for certification is complete.

(n) "Related Facility" means a thermal powerplant, electric transmission line, or any equipment, structure, or accessory dedicated to and essential to the operation of the thermal powerplant or electric transmission line. These facilities include, but are not limited to, transmission and fuel lines up to the first point of interconnection, water intake and discharge structures and equipment, access roads, storage sites, switchyards, and waste disposal sites. Exploratory, development, and production wells, resource conveyance lines, and other related equipment used in conjunction with a geothermal exploratory project or geothermal field development project, and, absent unusual and compelling circumstances, the thermal host of a cogeneration facility, are not related facilities.

(o) "Application" means either an Application for Certification or an application for a Small Power Plant Exemption, unless otherwise indicated.

(p) "Local agency" means any local or regional governmental authority within the state, including but not limited to, any city, county, air pollution control or air quality management district, or Native American government.

(q) "Areas of critical concern" means special or unique habitats or biological communities that need protection from potential adverse effects resulting from project development and which may be identified by local, state, or federal agencies with resource responsibility within the project area, or by educational institutions, museums, biological societies, or special interest groups with specific knowledge of resources within the project area. This category includes, but is not limited to, wildlife refuges, wetlands, thermal springs, endangered species habitats, and areas recognized by the California Natural Area Coordinating Council and the Governor's Office of Planning and Research.

(r) "Performance criteria" means performance goals for which the applicant proposes to design the facilities.

(s) "MCE" means Maximum Credible Earthquake as defined by the United States Geological Survey.

(t) "MPE" means Maximum Probable Earthquake as defined by the United States Geological Survey.

(u) "Impact area" means the area which is potentially affected by the construction, modification, or operation of a site and related facilities.

(v) "Species of special concern" means candidate rare, threatened, or endangered species that may need protection from potential adverse effects resulting from project development and which may be identified by local, state, or federal agencies with resource responsibility within the project area or by educational institutions, museums, biological societies, and special interest groups with specific knowledge of resources within the project area. In addition to species designated pursuant to state or federal law, this category includes, but is not limited to, those rare and endangered plant species recognized by the Smithsonian Institution or the California Native Plant Society.

[RATIONALE: This change creates consistency with the title actually used.]

§ 1708. Application, Compliance, and Reimbursement Fees.

(a) A cashier's check or wire transfer in the amount required by ~~Section 25802 of the Public Resources Code shall be prepared by the applicant and~~ subsections (c) and (d) shall accompany the filing of the notice.

(b) Upon the demand of the executive director, the applicant shall pay additional fees to the commission in the amount of any reimbursement made to local agencies by the commission pursuant to Section 1715 of this article.

(c) A cashier's check or wire transfer for $100,000 plus $250 per megawatt (MW) of gross generating capacity shall accompany the filing of an Application for Certification (AFC). Gross generating capacity shall be determined in accordance with Section 2003 (a).

(d) The owner of each facility granted certification shall submit a cashier's check or wire transfer for $15,000 annually. The first payment of the annual fee shall be due on the date the Commission adopts the final decision for the facility. Subsequent payments shall be paid on July 1 of each year in which the facility retains its certification.

(e) The fees specified in (c) and (d) shall be adjusted annually to reflect the percentage change in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, as published by the U.S. Department of Commerce.

(f) A project which use a renewable resource as its primary fuel or power source is exempt from the filing and compliance fees identified in (c) and (d).

(g) Fees paid pursuant to this section are non-refundable. Additional fees may be required in the event an amendment to the AFC increases the Gross generating capacity identified in (c).

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25538, 25802 and 25806, Public Resources Code.

[RATIONALE: Changes needed to conform with filing fee revisions to Public Resources Code.]

§ 1709.7. Informational Hearing, Site Visit, and Schedule.

(a) Within 45 days after the acceptance of a notice or application for certification or the filing of an application for small powerplant exemption, the committee shall ~~hole~~ hold one or more informational presentations and site visits in the county or counties in which the proposed sites and related facilities are proposed to be located. The place of the presentations shall be as close as practicable to the proposed sites. Notice of the first informational presentation shall be mailed to all owners of land adjacent to the proposed sites.

(b) At or before the first informational presentation, the commission staff shall file with the committee a written statement summarizing the major issues that the staff believes will be presented in the case. This summary shall not preclude the staff or any other party from raising additional issues later in the case.

(c) No later than 15 days after the last informational presentation, the presiding member shall issue an order establishing the schedule for the prehearing phase of the proceedings on the notice or application. The presiding member may change the schedule at any time upon motion by any party or upon his or her own motion.

(d) At each informational presentation, the applicant shall describe the proposed project, and the staff shall explain how the certification or exemption proceedings are conducted. These presentations shall allow for informal questions to the applicants and the staff from local residents and other interested persons regarding the proposed sites and facilities.

[RATIONALE: Correction of a typo and clarification to make the reference to the Presiding Member's Proposed Decision gender neutral.]

§ 1710. Noticing Procedures; Setting of Hearings, Presentations, Conferences, Meetings, Workshops, and Site Visits.

(a) All hearings, presentations, conferences, meetings, workshops, and site visits shall be open to the public and noticed as required by subsection (b); provided, however, these requirements do not apply to communications between parties, including staff, for the purpose of exchanging information or discussing procedural issues. Information includes facts, data, measurements, calculations and analyses related to the project. Discussions between the staff and any other party to modify the staff's position or recommendations regarding substantive issues shall be noticed. The staff may also meet with any governmental agency, not a party to the proceedings, for the purpose of discussing any matter related to the project without public notice.

(b) Except for the hearing conducted pursuant to Section 1809(a) and the workshop pursuant to Section 1709.5(d), notice of the initial public hearing on a notice or application shall be mailed or otherwise delivered fourteen (14) days prior to the first such hearing to the applicant, intervenors, and to all persons who have requested notice in writing. Except for continued hearings, notices shall, to the extent possible, be mailed at least fourteen (14) days in advance, and in no case less than ten (10) days in advance.

(c) The public adviser shall be consulted in the scheduling of locations, times, and dates for all noticed hearings, presentations, conferences, meetings, workshops, and site visits so as to encourage maximum public participation.

(d) Notices of Committee hearings, conferences, and meetings shall be signed by a member of the committee or specific designee thereof. Notices of staff workshops, conferences,

and meetings shall be signed by the Executive Director or a Deputy Director, unless, in a specific proceeding, the Committee or Commission orders otherwise.

(e) The public adviser shall be afforded a reasonable opportunity to review all notices of hearings, presentations, conferences, meetings, workshops, and site visits for timeliness, completeness, clarity, and adequacy of dissemination.

(f) Publicly noticed hearings, presentations, conferences, meetings, workshops, and site visits may be continued from the date, time, and place originally scheduled to a future date, time, and place, by posting notice at the door in the same manner as provided by Government Code section 11129. If the continuance is to a date ten days or more in the future, then notice shall also be provided by mail as provided in subdivision (b).

(g) Publicly noticed hearings, presentations, conferences, meetings, workshops, and site visits may be canceled for good reason, provided the following requirements are met:

(1) A notice of cancellation shall be posted at the door in the same manner as provided by Government Code section 11129.

(2) A notice of cancellation shall be mailed as provided in subdivision (b).

(3) If the notice of cancellation is mailed less than ten (10) days before the originally noticed date, then the staff shall work with the public adviser to ensure that notice is provided to all interested parties by the best means available.

[RATIONALE: It is unnecessary to involve the Committee in the noticing of staff conducted meetings and workshops.]

§ 1716. Obtaining Information.

(a) The executive director or the ~~general~~ chief counsel shall have authority to request or otherwise obtain from the applicant such information as is necessary for a complete staff analysis of the notice or application.

(b) Any party may request from the applicant any information reasonably available to the applicant which is relevant to the notice or application proceedings or reasonably necessary to make any decision on the notice or application. All such requests shall include the reasons for the request.

(c) Any public agency which is not a party and which has been requested to provide comments on the notice or application shall have the same rights as a party to obtain information necessary to comply with the commission's request for comments. To the extent practicable, the staff shall coordinate requests from agencies to the applicant to avoid duplicative requests.

(d) Any party may request from a party other than the applicant information which is reasonably available to the responding party and cannot otherwise be readily obtained, and which

is relevant to the proceeding or reasonably necessary to make any decision on the notice or application. All such requests shall state the reasons for the request.

(e) All requests for information shall be submitted no later than 180 days from the date the commission determines an application is complete, unless the committee allows requests for information at a later time for good cause shown.

(f) Any party requested to provide information pursuant to this section shall, within 20 days of receiving the request, notify the requesting party and the committee in writing if it is unable to provide or objects to providing the information requested of it. Such notification shall state the reasons for the inability or the grounds for the objection. Absent such an objection, the party shall provide the information requested within 30 days of the date that the request is made. The dates specified in this section may be changed by mutual agreement of the parties or by committee order.

(g) If the requesting party or agency is unable to obtain information as provided in this section, such party or agency may petition the committee for an order directing the responding party to supply such information. A party petitioning the committee for an order to provide information must do so within 20 days of being informed in writing by the responding party that such information will not be provided. The committee may set a hearing to consider argument on the petition, and shall, within 30 days of the filing of the petition, either grant or deny the petition, in whole or in part. The committee may direct the commission staff to supply such of the information requested as is available to the staff.

(h) The committee shall have the authority to require from any electric utility, including any aggregator, scheduling coordinator, energy service provider, or independent power producer, information which is specific to the subject notice or application and reasonably necessary to make any decision on the notice or application; provided, however, that such information, or its equivalent, is not reasonably available from any party or from publicly available records. Applications for confidentiality may be filed pursuant to Title 20, California Code of Regulations, section 2501 et seq.

(i) All information requests and responses shall be served on all parties to the proceeding by the requesting and responding parties respectively; provided, however, that requests for information made orally at a public meeting or hearing authorized by the presiding member need not be made in writing or served unless otherwise required by the presiding member. The presiding member may set reasonable time limits on the use of, and compliance with, information requests in order to avoid interference with any party's preparation for hearings or imposing other undue burdens on a party. No information requests shall be submitted by any party after release of the presiding member's hearing order except upon petition to the presiding member.

(j) 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.

[RATIONALE: This is needed to bring closure to the period in which a petition to compel may be filed.]

§ 1717. Distribution of Pleadings, Comments, and Other Documents.

(a) Any party or agency who submits petitions (except petitions to intervene), motions, briefs, comments, written testimony or exhibits, shall file its documents in accordance with section 1210. ~~twelve (12) copies with the Dockets Unit of the commission, or with the presiding member if presented during a hearing, as well as serve the document upon all parties and all other persons designated by the presiding member. Proof of service on such parties and other designated persons shall be filed with the twelve (12) copies provided to the commission. The presiding member may direct the executive director to provide such copies and their service upon all parties on behalf of any party for whom compliance with this section would impose an undue hardship.~~

(b) Upon receipt of any agency comments and recommendations, and unless such service is already provided by the agency, the executive director shall immediately serve such comments and recommendations on the applicant and all parties to the proceeding and to any other person who requests a copy of such comments and recommendations.

(c) During the course of the proceedings under this article, the presiding member shall, if requested by any party or member of the public, cause to be distributed, to all parties and to any persons so requesting, a list of all materials and documents introduced into the record of the proceeding. Such list shall be kept up to date on at least a weekly basis by the Dockets Unit and kept on file with the record of the proceeding.

(d) The executive director shall cause a copy or summary of materials and documents introduced into the record of the proceeding to be placed in a public document room in each county in which a proposed site and related facility or any portion thereof is located.

[RATIONALE: This removes the requirement for 12 paper copies to be consistent with 1210(a) and the duplication of POS requirements of 1210(c). Elimination of the requirement for 12 paper copies should remove any credible assertions of hardship.]

§ 1720. Reconsideration of Decision or Order.

(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 during evidentiary hearings on the case; or 2) a change or error in fact or law or a change in circumstance. The petition must fully explain why the matters set forth could not have been considered during the evidentiary hearings, and their effects upon a substantive element of the decision. ~~For purposes of calculating deadlines pursuant to Section 25530 of the Public~~

~~Resources Code, the date of adoption by the commission of a decision or order shall be the date that a written decision or order is docketed.~~

(b) The commission shall hold a hearing for the presentation of arguments on a petition for ~~to~~ reconsider<u>ation</u> and shall act to grant or deny <u>the</u> ~~a~~ petition ~~for reconsideration~~ within <u>30</u> ~~thirty (30)~~ days of <u>its filing. In the absence of an affirmative vote of three members of the commission to grant the petition for reconsideration, the petition shall be denied.</u> ~~the receipt of such petition. The chairman shall set the place, time, and date for the hearing. Decision on the substantive merits of any such petition shall occur, after public hearing, within thirty (30) days after the commission has granted consideration of such petition. The commission or chairman may consolidate for hearing petitions dealing with similar issues.~~

(c) <u>If the commission grants a petition for reconsideration, or if on its own motion it orders reconsideration, then within 90 days, or within a longer period set by the commission for good cause stated, the commission shall hold a subsequent hearing, which may include the taking of evidence, and shall decide whether to change the decision or order. In the absence of an affirmative vote of three members of the commission to change the decision or order, it shall stand.</u> ~~The petition for reconsideration shall set forth with specificity the grounds for reconsideration, addressing any error in fact or law.~~

~~(d) In the absence of an affirmative vote of three members of the commission to grant the petition for reconsideration, the petition shall be denied. In the absence of an affirmative vote of three members of the commission to change a previously adopted final decision, the decision shall stand.~~

(d~~e~~) The commission may stay the effective date of <u>all or part of</u> a decision or order pending reconsideration <u>thereof</u> ~~of the decision or order~~. <u>The commission shall specify the length of the stay, which shall expire no later than the end of the period for action upon reconsideration, as established in or pursuant to subdivision (c) of this section.</u>

[RATIONALE: This section clarifies deadlines and the process for reviewing petitions for reconsideration of a Commission order. This also specifies the grounds for reconsideration, limiting such grounds and preventing re-argument,]

§ 1720.3. Construction Deadline.

<u>Unless a shorter deadline is established pursuant to § 25534,</u> ~~T~~<u>t</u>he 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.

[Rationale: This change reflects a recent statutory amendment governing construction deadlines.]

§ 1720.4. Effective Date of Decisions and Orders.

The effective date of a decision or order is established by section 1219. ~~Unless otherwise specified in the final decision on a notice or application, the effective date of the decision is the date that it is filed with the Docket Unit.~~

[RATIONALE: The operative language of this section has been moved to § 1219. It is appropriate to provide a cross-reference to that location. Another option to address that fact would be to simply the delete the entire section.]

~~§1720.5. Demand Conformance~~.

~~The criteria for determining demand conformance in a particular siting case shall be established in the Electricity Report adopted most recently prior to acceptance of a notice or application for certification or prior to the first informational hearing in a small powerplant exemption case, unless the Commission by order determines otherwise.~~

[RATIONALE: No longer appropriate.]

~~§ 1720.6. Demonstration Projects.~~

~~The criteria for determining whether a project is a demonstration project under Public Resources Code section 25540.6, subdivision (e), shall be established in the Electricity Report adopted most recently prior to acceptance of a notice or application for certification or prior to the informational hearing in a small powerplant case, unless the Commission by order determines otherwise.~~

[RATIONALE: No longer appropriate.]

§1721. Purpose of Notice and Notice of Intention Proceeding.

(a) The purpose of a notice, and such supporting documentation as may be filed concurrently with the notice, is to provide the commission, interested agencies, and interested members of the public with an informative document which does all of the following:

(1) Accurately describes the nature, size, and location of the sites and related facilities proposed by the applicant;

(2) Fairly identifies and explains the principal environmental, economic, and technological advantages and disadvantages of each siting proposal in the notice;

(3) Identifies measures which the applicant is considering to mitigate the principal disadvantages of each siting proposal in the notice;

(4) Explains the need for the proposed facilities;

(5) Describes the commercial availability of the generation technologies proposed in the notice (if not already determined to be commercially available by the commission); discusses the

economic comparability of the proposals based upon comparative generation costs available to the applicant; and explains the impact of the proposed facilities on the overall reliability of the service area system;

(6) Specifies the measures proposed or being considered by the applicant to ensure public health, safety, and reliability during construction and operation of the proposed facilities at each site; and

(7) Indicates the degree to which the proposed facilities can be constructed and operated at each site in conformity with applicable federal, state, and local standards, laws, ordinances, and regulations, including any long-range land use plans or guidelines adopted by any federal, state, regional, or local planning agency.

(b) The purpose of notice of intention proceedings shall be to engage the applicant, the commission, interested agencies and members of the public in an open planning process designed to identify sufficient acceptable sites and related facilities ~~to meet the need for electricity determined pursuant to Section 25309 of the Public Resources Code~~. To this end, each notice of intention proceeding shall be conducted in order to determine the technical, environmental, public health and safety, economic, and social and land use acceptability of alternative sites and related facilities, by accomplishing each of the following:

~~(1) To make findings on the need for the proposed facility in terms of its conformity with the forecast and assessment of electricity demand adopted pursuant to Section 25309 of the Public Resources Code;~~

~~(2)~~(1) To provide information on the nature of the siting proposals to interested agencies and members of the public, and to actively solicit their assessments, comments, and recommendations on any aspect of the sites and related facilities proposed in the notice, including recommendations for modification in the location, design, construction or operation of the proposed facilities, or alternatives to the proposal;

~~(3)~~(2) To determine whether there is a reasonable likelihood that the facilities will comply with applicable federal, state, regional and local standards, laws, ordinances, regulations, and plans;

~~(4)~~(3) To attempt to resolve critical issues affecting the ability to employ the proposed technology at each of the sites and to determine the feasibility of any conditions or modifications necessary to make any site and related facilities proposed acceptable;

~~(5)~~(4) To determine whether the proposed facilities can be designed, constructed, and operated in a manner which ensures public health, safety, and reliability, by evaluating the adequacy of the measures proposed by the applicant, assessing their conformity with applicable standards, and where appropriate, determining the necessity, feasibility, and relative costs and benefits of additional measures;

~~(6)~~(5) To identify the most serious environmental impacts and assess the feasibility of mitigating such impacts;

~~(7)~~(6) To consider alternatives to the proposal, including feasible alternative sites, facilities, or sites and related facilities which may substantially lessen any significant adverse effects which the applicant's proposals may have on the environment or which may better carry out the policies and objectives of the Act;

~~(8)~~(7) To consider the economic, financial, rate, system reliability, and service implications of the proposed facilities, in coordination with the Public Utilities Commission (for facilities requiring a certificate of public convenience and necessity) or with the board of directors or other appropriate body of a municipal utility (for all other facilities); and

~~(9)~~(8) To prevent any needless commitment of financial resources and regulatory effort prior to a determination of the basic acceptability of, and need for, the proposed facilities, and the suitability of proposed sites to accommodate the facilities; and to eliminate from further consideration and commitment of resources any site and related facility found to be unsuitable, unneeded, or otherwise unacceptable.

(c) In assessing the proposed sites and related facilities, the commission shall defer until the formal application stage (1) a detailed scrutiny of engineering and design aspects, (2) a detailed identification and analysis of significant adverse environmental impacts, or (3) a precise analysis of need for new generating facilities; provided, however, that issues relating to such matters may be considered where resolution of such issues will not unduly hinder or burden the parties and the proceeding and evidence for the resolution of such issues is readily available, or where resolution of such issues is necessary to determine the acceptability of one or more of the sites and related facilities proposed.

(d) It shall be the responsibility of the presiding member to ensure that the notice proceeding is conducted in a manner consistent with the purposes of this article and to ensure that the needless expenditure of time, effort, and financial resources in considering matters more appropriate for the formal certification stage is avoided.

[RATIONALE: No longer appropriate.]

§ 1744. Review of Compliance with Applicable Laws.

(a) Information on the measures planned by the applicant to comply with all applicable federal, state, regional, and local laws, regulations, standards, and plans shall be provided in the application as specified in the appropriate appendix. Such information shall not duplicate information contained in environmental, safety and reliability, and air quality sections of the application.

(b) Upon acceptance of the application, each agency responsible for enforcing the applicable mandate shall assess the adequacy of the applicant's proposed compliance measures to determine whether the facility will comply with the mandate. The commission staff shall assist

and coordinate the assessment of the conditions of certification to ensure that all aspects of the facility's compliance with applicable laws are considered.

(c) The applicant's proposed compliance measures and each responsible agency's assessment of compliance shall be presented and considered at hearings on the application held pursuant to Section 1748.

(d) If the applicant or any responsible agency asserts that an applicable mandate cannot be complied with, the commission staff shall independently verify the non-compliance, and advise the commission of its findings in the hearings.

(e) Comments and recommendations by a interested agency on matters within that agency's jurisdiction shall be given due deference.

[RATIONALE: This conforms to section 1714.5(b)]

§ 1747. Final Staff Assessment

At least 14 days before the start of the evidentiary hearings pursuant to section 1748 or at such other time as required by the presiding member, the staff shall publish the reports required under sections 1742.5, 1743, and 1744 ~~, and a need assessment,~~ as the final staff assessment, and shall distribute the final staff assessment to interested agencies, parties, and to any person who requests a copy.

[RATIONALE: A need assessment is no longer appropriate.]

APPENDIX B: INFORMATION REQUIREMENTS FOR AN APPLICATION

(a) Executive Summary

(1) Project Overview

(A) A general description of the proposed site and related facilities, including the location of the site or transmission routes, the type, size and capacity of the generating or transmission facilities, fuel characteristics, fuel supply routes and facilities, water supply routes and facilities, pollution control systems, and other general characteristics.

[RATIONALE: Applicants to the Commission's Facility Siting process have misunderstood that the information regarding fuel and water supply routes and facilities must be evaluated, and they usually provide a generic description without discussing the specific routes and facilities proposed. The above additions are needed to ensure that a complete project description is submitted by the applicant.]

(B) Identification of the location of the proposed site and related facilities by section, township, range, county, and assessor's parcel numbers.

(C) A description of and maps depicting the region, the vicinity, and the site and its immediate surroundings.

(D) A full-page color photographic reproduction depicting the visual appearance of the site prior to construction, and a full-page color simulation or artist's rendering of the site and all project components at the site, after construction.

(E) In an appendix to the application, a list of current assessor's parcel numbers and owners' names and addresses for all parcels within 500 feet of the proposed transmission line and other linear facilities, and within 1000 feet of the proposed powerplant and related facilities.

(2) Project Schedule: Proposed dates of initiation and completion of construction, initial start-up, and full-scale operation of the proposed facilities.

(3) Project Ownership

(A) A list of all owners and operators of the site(s), the power plant facilities, and, if applicable, the thermal host, the geothermal leasehold, the geothermal resource conveyance lines, and the geothermal re-injection system, and a description of their legal interest in these facilities.

(B) A list of all owners and operators of the proposed electric transmission facilities.

(C) A description of the legal relationship between the applicant and each of the persons or entities specified in subsections (a)(3)(A) and (B).

(b) Project Description

(1) In a section entitled, "Generation Facility Description, Design, and Operation" provide the following information:

(A) Maps at a scale of 1:24,000 (1" = 2000'), (or appropriate map scale agreed to by staff) along with an identification of the dedicated leaseholds by section, township, range, county, and county assessor's parcel number, showing the proposed final locations and layout of the power plant and all related facilities;

(B) Scale plan and elevation drawings depicting the relative size and location of the power plant and all related facilities to establish the accuracy of the photo simulations required in Sections (a)(1)(D) and (g)(6)(F) ;

(C) A detailed description of the design, construction, and operation of the facilities, specifically including the power generation, cooling, water supply and treatment, waste handling and control, pollution control, fuel handling, and safety, emergency and auxiliary systems, and fuel types and fuel use scenarios; and

(D) A description of how the site and related facilities were selected and the consideration given to engineering constraints, site geology, environmental impacts, water, waste and fuel constraints, electric transmission constraints, and any other factors considered by the applicant.

(2) In a section entitled, "Transmission Lines Description, Design, and Operation" provide the following information:

(A) Maps at a scale of 1:24,000 (or appropriate map scale agreed to by staff) of each proposed transmission line route, showing the settled areas, parks, recreational areas, scenic areas, and existing transmission lines within one mile of the proposed route(s);

(B) A full-page color photographic reproduction depicting a representative above ground section of the transmission line route prior to construction and a full-page color photographic simulation of that section of the transmission line route after construction;

(C) A detailed description of the design, construction, and operation of any electric transmission facilities, such as power lines, substations, switchyards, or other transmission equipment, which will be constructed or modified to transmit electrical power from the proposed power plant to the load centers to be served by the facility. Such description shall include the width of rights-of-way and the physical and electrical characteristics of electrical transmission facilities such as towers, conductors, and insulators. ~~This description shall include power load flow diagrams which demonstrate conformance or non-conformance with utility reliability and planning criteria at the time the facility is expected to be placed in operation and five years thereafter; and~~

(D) A description of how the route and additional transmission facilities were selected, and the consideration given to engineering constraints, environmental impacts, resource conveyance constraints, and electric transmission constraints; and

(E) A completed System Impact Study or signed System Impact Study Agreement with the California Independent System Operator and proof of payment. When not connecting to the California Independent System Operator controlled grid, provide the executed System Impact Study agreement and proof of payment to the interconnecting utility.

If the interconnection and operation of the proposed project will likely impact an transmission system that is not controlled by the interconnecting utility (or California Independent System Operator), provide evidence of a System Impact Study agreement and proof of payment with/to the impacted transmission owner or provide evidence that there are no system impacts requiring mitigation.

[RATIONALE: The Energy Commission must ensure that a project proposed for construction can be connected to the California electrical system in a manner that protects both public health and safety and the operation of the state's electrical system. The California Independent System Operator must review a proposed facility and determine, through a System Impact Study, the potential impacts to the electrical system from the construction and operation of the proposed facility. Item (E) is added to insure that the Interconnection System Impact Study for the project's proposed interconnection to the grid is underway at the time a project is found to be data adequate by the Energy Commission. The California Independent System Operator has issued Standard Large Generator Interconnection Procedures which specify that the Interconnection System Impact Study be completed within 120 days of the completion of the Study Agreement. If the Study Agreement is left to discovery, delays in the AFC process could occur because the Interconnection System Impact Study is required to determine whether downstream transmission facilities will be required for the interconnection or and operation of the proposed project. The second paragraph is added to ensure that the potential transmission impacts of projects which connect to transmission lines outside the control of a utility or the California Independent System Operator are properly accounted for.]

(3) Applications for geothermal facilities shall contain the following additional information:

(A) Maps at a scale of 1:24,000 (or appropriate map scale agreed to by staff) showing the location of the geothermal leaseholds, along with a description by section, township, range, county, and assessor's parcel numbers of the leaseholds;

(B) Full-page color photographic reproductions of the geothermal leaseholds;

(C) A description of the process by which the geothermal leasehold was selected and the consideration given to engineering constraints, site geology, environmental impacts, water, steam, waste and fuel constraints, electric transmission constraints, and any other factors considered by the applicant. Include references to any environmental documents which address ~~steamfield~~ steam field development;

(D) A detailed description of the type, quality, and characteristics of the geothermal resource, including pressure and temperature flow rates, constituents and concentrations of ~~non-condensible~~ non-condensable gases, and constituent concentrations of dissolved solids, and

descriptions and concentrations of any substances potentially harmful to public health and safety or to the environment;

[RATIONALE: Correct (C) & (D) misspelled words.]
(E) Proposed locations of production and re-injection wells for the project. Include the applicant's assessment of geothermal resource adequacy, including the production history of those wells within the leaseholds dedicated to the project, including pressure decline curves as available; and

(F) A discussion of the potential impacts on the temperature, mineral content, and rate of flow of thermal springs affected by the project.

~~(c) Demand Conformance~~

~~In a section entitled, "Demand Conformance" provide a discussion explaining how the proposed project conforms with the requirements of Public Resources Code s 25524 or Public Resources Code s 25540.6(a)(5). If the provisions of Public Resources Code s 25523.5 are applicable, explain how the project conforms with the requirements of this section. Additional data adequacy requirements may be contained in the Electricity Report applicable pursuant to Title 20, California Code of Regulations, s 1720.5.~~

[RATIONALE: Removed from regulation pursuant to Public Resources Code Section 25009.]

(d) Information for Projects Which Completed the NOI Process

(1) A copy of any study or analysis required by the terms of the Commission's Final Decision on the NOI, and a brief summary of the results of the study or analysis.

(2) Updates of any significant information which has changed since the Commission's Final Decision on the NOI.

(e) Facility Closure

(1) A schedule for the development of a preliminary plan for closing the project facilities when the project ceases operation at the end of its useful life.

(2) A discussion of how facility closure will be accomplished in the event of premature or unexpected cessation of operations.

(f) Alternatives

(1) A discussion of the range of reasonable alternatives to the project, or to the location of the project, including the no project alternative, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and an evaluation of the comparative merits of the alternatives. In accordance with Public Resources Code section 25540.6(b), a discussion of the applicant's site selection criteria,

any alternative sites considered for the project, and the reasons why the applicant chose the proposed site.

(2) An evaluation of the comparative engineering, economic, and environmental merits of the alternatives discussed in subsection (f)(1).

(g) Environmental Information

(1) General Information: For each technical area listed below, provide a discussion of the existing site conditions, the expected direct, indirect, and cumulative impacts due to the construction, operation, and maintenance of the project, the measures proposed to mitigate adverse environmental impacts of the project, the effectiveness of the proposed measures, and any monitoring plans proposed to verify the effectiveness of the mitigation. Additional requirements specific to each technical area are listed below.

(2) Cultural Resources

(A) A ~~brief~~ summary of the ethnology, prehistory, and history of the region with emphasis on the area within no more than a 5-mile radius of the project location. ~~in which the project site and related facilities are located and maps at a scale of 1:24,000, indicating areas of ethnographic occupation. The region may vary depending on the extent of the territory occupied or used by prehistoric cultures indigenous to the area in which the project is located.~~

[RATIONALE A1:. The recommended changes to (A) identify for Applicants specifically what is needed and reduce extraneous information. This will facilitate early issue identification and result in fewer Data Requests. The public benefits from the streamlined permitting process, and Applicants can both save money on research costs and have more options earlier in their planning.]

[RATIONALE A2: Cultural Resources staff needs a broad synthesis of past human activities in the project region as a background for the evaluation of cultural resources directly affected by the project. Staff also needs to focus specifically on the area close to the project location to predict the kinds of cultural resources which could be present and impacted by a project. Applicants typically provide general background summaries but neglect to focus on the local area. Specifying the 5-mile-area focus will result in staff getting the needed information in the AFC, eliminating considerable time spent by both Applicants and staff on Data Requests. This will benefit the public by ensuring a more efficient review process.]

~~(B) A description of literature searches and field surveys used to provide information about known cultural resources in the project vicinity. If survey records of the area potentially physically affected by the project are not available, and the area has the potential for containing significant cultural resources, the applicant shall submit a new or revised survey for any portion of the area lacking comprehensive survey data. A discussion of the dates of the surveys, methods used in completing the surveys, and the identification and qualification of the individuals conducting the surveys shall be included.~~

(B) The results of a literature search to identify cultural resources within an area not less than a 1-mile radius around the project site and not less that than one-quarter (0.25) mile on each side of the linear facilities. Identify any cultural resources listed pursuant to ordinance by a city or county, or recognized by any local historical or archaeological society or museum. Literature searches to identify the above cultural resources must be completed by, or under the direction of, individuals who meet the Secretary of the Interior's Professional Standards for the technical area addressed.

Copies of ~~technical survey reports and~~ California Department of Parks and Recreation (DPR) 523 forms shall be provided for all cultural resources (ethnographic, architectural, historical, and archaeological) identified in the literature search as being 45 years or older or of exceptional importance as defined in the National Register Bulletin Guidelines, (36CFR60.4(g)). A copy of the USGS 7.5' quadrangle map of the literature search area delineating the areas of all past surveys and noting the California Historical Resources Information System (CHRIS) identifying number shall be provided. Copies also shall be provided of all technical reports whose survey coverage is wholly or partly within .25 mile of the area surveyed for the project under Section (g)(2)(C), or which report on any archaeological excavations or architectural surveys within the literature search area.

[RATIONALE B1: The current requirement (B) slows down the permitting process by providing insufficient guidance to Applicants on either conducting a literature search or conducting and reporting new archaeological and architectural surveys, and it does not require adequate qualifications for cultural resources specialists.. The recommended changes divide requirement (B) into two parts, one (new (B)) detailing the coverage, sources, and personnel qualifications for an adequate cultural resources literature search, and the other (new (C)) detailing the coverage, personnel qualifications, and technical report requirements for new archaeological and architectural surveys. These changes will provide Applicants with clear direction regarding the level of information staff needs for its CEQA analysis and the professional training and experience which staff expects cultural resources specialists to have. These changes will help Applicants hire consultants who are able to conduct the level of scientific research that produces data of the quality and reliability that staff needs. Staff will be able to make fewer and more specific Data Requests, which will save time for staff and money for the Applicants. In addition, critical issues will be identified early in the siting process.]

[RATIONALE B2: The one-mile-diameter coverage area specified for the literature search is commonly used in cultural resources management. It reflects the surrounding geographical context of the cultural resources potentially affected by a project. Learning what kinds of resources are already known to exist in the area around a proposed project provides staff with a sampling of what to expect archaeologically in the immediate project location, which aids Applicants and staff in planning mitigation measures for project impacts. Also, for historical architectural resources, whose integrity of setting can be affected even over long distances by a power plant, one mile is a reasonable distance over which to evaluate visual impacts, and similarly, ¼ mile is reasonable for the visual impact of transmission lines in open country.]

[RATIONALE B3: Adding the requirement that Applicants include in their literature search any cultural resources listed by cities, counties, professional societies, and museums casts a wider net

inclusive of all the kinds of cultural resources that California statutes list as potentially eligible for the California Register of Historical Resources (CRHR), and therefore within the consideration of CEQA (Sect. 21084.1).]

[RATIONALE B4: To be granted access to the primary source of cultural resources data, the California Historic Resources Information System (CHRIS), cultural resources specialists are required to meet the Secretary of the Interior's Professional Qualifications Standards, as stated on p. 36 in the "CHRIS Information Center Procedural Manual," (2002). Also, staff can better rely on the information provided in the AFC being complete and correct when the specialist or director of research meets minimum professional standards. These standards are in the Code of Federal Regulations (36 CFR Part 61) and apply to persons working on projects with any federal connection. Some Energy Commission-certified power plant projects have a federal connection, so requiring these qualifications will cover the needs of those Applicants who have such projects.]

[RATIONALE B5: Applicants may include in AFCs their consultants' cultural resources significance determinations, but as the lead agency, staff needs to make its own determinations, based on detailed information presented in either the AFC or in responses to Data Requests. Currently, AFCs rarely provide the detailed level of information that staff needs to compile a complete inventory of cultural resources subject to project impacts and to make significance evaluations. To fulfill its CEQA responsibilities, staff needs to review all available information on affected cultural resources. Staff does its own additional research as necessary, but must start with reviewing copies of all CHRIS DPR 523 records and reports for cultural resources in the project vicinity.(For more information on DPR 523 forms, see Rationale C2, below.)]

[RATIONALE B6: The 45-year requirement is from the California Office of Historic Preservation's (OHP) "Instructions for Recording Historical Resources," p. 2, and reflects the first essential basis for most preservation protections of cultural resources: the age eligibility criterion for listing on the National Register of Historic Places, which is 50 years unless a younger resource is exceptional. OHP uses 45 years, rather than 50 years, for contingency planning purposes. It can take 5 years for a project to actually begin construction, by which time a 45-year-old resource has become a 50-year old resource. If such a resource was not in the inventory of resources considered for impacts 5 years before, when the project was proposed, construction could be delayed while a new evaluation takes place. Having a contingency "waiting period" for cultural resources benefits Applicants by preventing construction delays and benefits the public by ensuring that all potential cultural resources will be identified and evaluated, and impacts to significant cultural resources will be mitigated.]

~~(C) A discussion of the sensitivity of the project area described in subsection (g)(2)(A) and the presence and significance of any known archeological sites and other cultural resources that may be affected by the project. Information on the specific location of archeological resources shall be included in a separate appendix to the application and submitted to the Commission under a request for confidentiality pursuant to Title 20, California Code of Regulations, § 2501 et seq.~~

(C) The results of new surveys or surveys less than 5 years old shall be provided if survey records of the area potentially affected by the project are more than five (5) years old. Surveys

to identify new cultural resources must be completed by (or under the direction of) individuals who meet the Secretary of the Interior's Professional Standards for the technical area addressed.

New pedestrian archaeological surveys shall be conducted inclusive of the project site and project linear~~s~~ facility routes, ~~*and*~~ extending to no less than 200' around the project site and to no less than 100' to either side of the project linear facilit*y*~~*ies*~~ *routes*~~*, and new historic architecture field surveys shall be conducted inclusive of the project site and the project linear facilities and extending no less than 1 mile (or alternate distance approved by staff) out from the project footprints.*~~ New historic architecture field surveys in rural areas shall be conducted inclusive of the project site and the project linear facility routes, extending no less than .5 mile out from the proposed plant site and from the routes of all above-ground linear facilities. New historic architecture field surveys in urban and suburban areas shall be conducted inclusive of the project site, extending no less than one parcel's distance from all proposed plant site boundaries. New historic architecture field reconnaissance ("windshield survey") in urban and suburban areas shall be conducted along the routes of all linear facilities to identify, inventory, and characterize structures and districts that appear to be older than 45 years or that are exceptionally significant, whatever their age.

A technical report of the results of the new surveys, conforming to the Archaeological Resource Management Report format (CA Office of Historic Preservation Feb 1990), shall be separately provided and submitted (under confidential cover if archaeological site locations are included). Information included in the technical report shall also be provided in the Application for Certification, except that confidential information (archaeological sites or areas of religious significance) shall be submitted under a request for confidentiality pursuant to Title 20, California Code of Regulations, § 2501 et seq. At a minimum, the technical report shall include the following:

[RATIONALE C: This section, old (C), has been deleted because the requested information will be included in the technical report requested as part of the new (C).]

[RATIONALE C1: Under CEQA, if a historical resource is potentially eligible for the CRHR it is significant and therefore impacts to it are potentially significant. The California Code of Regulations requires that the documentation of a resource being considered for nomination to the CRHR must be updated if it is five or more years old (CCR 4852 (e) (3)). This means staff needs information that is no more than 5 years old on resources potentially affected by the project. New surveys ensure identification of all cultural resources while verifying old survey results, which prevents wasting staff and Applicant time on unnecessary avoidance and mitigation planning for sites that no longer exist. Submitting new survey reports to the CHRIS provides a benefit to the wider public, as well, by aiding cultural resources specialists on other, future projects. The five-year limit on survey viability also means that Applicants only have to conduct new surveys if existing surveys in the area are more than 5 years old or do not fully cover the specified area around projects. This benefits Applicants by omitting unnecessary surveys.]

[RATIONALE C2: Adding professional qualifications for directors of surveys to the new (C) reflects a requirement of the Office of Historic Preservation (OHP) that evaluators of cultural resources on DPR 523 detail forms meet the Secretary of the Interior's Professional

Qualifications Standards. When cultural resources are evaluated for potential eligibility to the CRHR on the DPR 523 detail forms, OHP entrusts this only to cultural resources specialists who meet the Secretary of the Interior's Professional Qualifications Standards. Also, the CHRIS only accepts new DPR 523 detail forms from evaluators who meet those qualifications. The Secretary of the Interior's Professional Qualifications Standards are the generally accepted standards for cultural resources specialists tasked with project management responsibilities all over the country.

[RATIONALE C3: The distance parameters specified for the coverage of new surveys reflect the knowledge and experience of staff regarding the vulnerabilities of all kinds of cultural resources and regarding the physical impacts of construction activities and the visual intrusions commonly associated with power plants and transmission lines. The distances specified encompass the full extent of potential impacts from construction, not just the footprint of the project. This will aid staff in meeting obligations under historic preservation law to minimize the loss of cultural resources. It will aid Applicants because they will not have to do additional surveying to satisfy Data Requests to increase survey coverage beyond the project footprint.]

[RATIONALE C4: Technical reports of new surveys must be sent to the Commission in an appendix, and under confidential cover if it contains information on the locations of archaeological sites. This language must be added to protect known archaeological sites from damage caused by artifact hunters who, when they find prehistoric and historic-period archaeological deposits, dig through them randomly looking for such artifacts as projectile points and antique bottles in order to remove and sell them. All archaeologists are expected to uphold this professional ethical standard. The CHRIS only discloses the exact locations of known archaeological sites to professional archaeologists (see Rationale B4, above), the owners of the land where a site is located, or the NAHC. The California Public Records Act exempts from public disclosure archaeological site information held by the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency (Government Code Sect. 6254.10).]

[RATIONALE C5: In California, technical reports organized in a specific, systematic, consistent layout are standard in professional cultural resources management. That layout is detailed in "Archaeological Resource Management Reports (ARMR): Recommended Contents and Format" (February, 1990). The reasoning behind OHP's establishing the ARMR format was the recognition that regulatory and review agencies need the information in archaeological reports, and standardizing the format of reports would assure that "all needed data would be included and organized to optimize efficiency and utility" (1990: p. 1). This exactly expresses why staff has specified ARMR format for the technical reports for new surveys conducted by Applicants under new (C).

[RATIONALE C6: The technical report is a professional cultural resources document which is the appropriate medium for conveying detailed information on new, project-driven surveys. Staff can combine that information with additional information obtained through independent research to reach its own conclusions, either agreeing or disagreeing with those of an Applicant's consultants.]

(i) The summary from Appendix B (g)(2)(A) and the literature search results from Appendix B (g)(2)(B).

[RATIONALE C (i): Since Applicants have to prepare these sections for the AFC, the additional cost in time and money of putting them into the technical report is negligible. The benefit of putting them into the report is that it will make the report more readily useful to staff and to other cultural resources specialists who will acquire these reports later from the CHRIS. This benefits the wider public, as well, by aiding cultural resources specialists on other, future projects. Also, the ARMR format requires a section on background and a section on a literature search.]

(ii) The survey procedures and methodology used to identify cultural resources and a discussion of the cultural resources identified by the survey.

[RATIONALE C (ii): The current requirement (B) calls for a description of literature searches and survey methodology, so this is not new or burdensome. Staff needs this information to evaluate the survey method and determine if it was adequate to produce reliable results. Also, the ARMR format requires a section on survey methods.]

(iii) Copies of all new and updated DPR 523(A) forms. If a cultural resource may be impacted by the project, also include the appropriate DPR 523 detail form for each such resource.

[RATIONALE C (iii): The OHP and the CHRIS together oversee the development of California's state-wide inventory of cultural resources by encouraging all persons, whether amateur or professional, to fill out OHP's DPR 523 primary forms for all potential cultural resources over 45 years of age and to submit them to the CHRIS. The completion and submission of the forms is voluntary. But all professional archaeologists and architectural historians consider it their duty to add to the state-wide inventory in this way when their surveys find new sites or structures. To encourage cooperation, the CHRIS can impose a condition on cultural resources specialists under which users of the CHRIS database and reports must complete and submit records and reports of their recent investigations no later than 30 days after the final report is completed. Failure to comply with this condition could result in denial of subsequent access to CHRIS data. Most federal and state agencies require the cultural resources specialists who conduct surveys for their public projects to complete the DPR 523 primary forms for newly found resources and submit them to the CHRIS, and the same is true of many private projects.]

(iv) A map at a scale of 1:24,000 U.S. Geological Survey quadrangle depicting the locations of all previously known and newly identified cultural resources compiled through the research required by Appendix B (g)(2)(B) and Appendix B (g)(2)(C) (ii).

[RATIONALE C (iv): A requirement similar to this is included in the current (A). The recommended change moves the map requirement from (A) to (C) (iv), and changes it from depicting ethnographic areas to depicting all known cultural resources. Staff needs this map to compare cultural resource locations to project impact locations. Applicants can best compile such maps because they can most accurately identify project locations. The specified scale is

standard in cultural resources management, used on DPR 523 forms, and used by the CHRIS to plot all their known resources. Because this map size is standard, it will be easy for Applicants to obtain, and it will facilitate the direct transfer and compilation of map locations. Also, the ARMR format requires a map at this scale depicting the cultural resources found by survey.]

(v) The names and qualifications of the cultural resources specialists who contributed to and were responsible for literature searches, surveys, and preparation of the technical report.

[RATIONALE C (v): Including the names and qualifications of all persons responsible for the various aspects of the research reported in technical reports provides information required for projects which have a federal connection and affords staff a means of evaluating the quality and reliability of the data in the reports. It will serve the same purpose for other cultural resources specialists who will acquire these reports later from the CHRIS. This is why the ARMR format requires the inclusion of the names and qualifications of the cultural resources specialists who did the reported research.]

~~(D) A summary of contacts and communications with, and responses from, Native American representatives who may have an interest in heritage lands and/or resources potentially affected by the proposed project.~~

(D) Provide a copy of your request to the Native American Heritage Commission (NAHC) for information on Native American sacred sites and lists of Native Americans interested in the project vicinity, and copies of any correspondence received from the NAHC. Notify the Native Americans on the NAHC list about the project, including a project description and map. Provide a copy of all correspondence sent to Native American individuals and groups listed by the NAHC and copies of all responses. Provide a written summary of any oral responses.

[RATIONALE D: Consultation with Native Americans is essential to identify all archaeological sites and all areas of Native American religious significance (PRC §§ 5097.9, 5097.94, 5097.97, & 5097.98) Current requirement (D) does not provide sufficiently detailed guidance to Applicants about obtaining information regarding archaeological and ethnographic cultural resources known only to Native Americans with traditional ties to a project area. This lack burdens the permitting process when staff has to provide Applicants with the missing guidance by means of Data Requests, and Applicants have to submit supplementary information. The NAHC, a state agency, exists to provide information on known Native American sacred sites and to facilitate the process of contacting Native Americans knowledgeable about a given project area. The recommended changes to requirement (D) indicate that Applicants must work through the NAHC to obtain sacred site information and to obtain the names of appropriate Native Americans to contact about Native American cultural resources in their project areas. The changes also specify what information about the project Applicants should provide to Native Americans to ensure they can make informed and useful responses. These changes assure that appropriate Native Americans are consulted regarding potential projects and given ample opportunities to convey their concerns to Applicants and the Commission.]

~~(E) In the discussion on mitigation and monitoring prepared pursuant to subsection (g)(1), a discussion of any educational programs proposed to enhance awareness of potential impacts to archeological resources by employees and contractors, measures proposed for mitigation of~~

~~impacts to known cultural resources, and a set of contingency measures for mitigation of potential impacts to previously unknown cultural resources.~~

(E) Include in the discussion of proposed mitigation measures required by subdivision (g)(1):

(i) A discussion of measures proposed to mitigate project impacts to known cultural resources;

(ii) A set of contingency measures proposed to mitigate potential impacts to previously unknown cultural resources and any unanticipated impacts to known cultural resources.;

(iii) Educational programs to enhance employee awareness during construction and operation to protect cultural resources.

[RATIONALE E: The recommended changes are not substantive. They just state more clearly what is needed in the AFC to meet CEQA requirements on mitigation for unavoidably impacted cultural resources. Applicants will find it advantageous to suggest possible mitigation measures because only they will know what resources they have which can be applied to mitigating impacts to cultural resources. Educational programs are typically included as part of the mitigation package.]

(3) Land Use

(A) A discussion of existing land uses and current zoning at the site, land uses and land use patterns within one mile of the proposed site and within one-quarter mile of any project-related linear facilities. Include:

(i) An identification of residential, commercial, industrial, recreational, scenic, agricultural, natural resource protection, natural resource extraction, educational, religious, cultural, and historic areas, and any other area of unique land uses;

(ii) A discussion of any ~~trends in~~ recent or proposed ~~zoning~~ zone changes and/or general plan amendments ~~potential future land use development~~; *considered by an elected or appointed board, commission, or similar entity at the state or local level.*
;

[RATIONALE: Critical to the siting of proposed generation facilities are the identified land uses at the proposed project site and its vicinity. Land use issues have a potential to add additional costs to developers. The proposed modification moves the required discussion from a general discussion of "trends" in zoning changes to a discussion of any general plan amendments which have actually occurred in the project vicinity. This information allows staff to better determine the actual land use impacts of the project.]

(iii) Identification of all discretionary reviews by public agencies initiated or completed within 18 months prior to filing the application for those changes or developments identified in subsection (g)(3)(A)(ii); and

(iv) Legible maps of the areas identified in subsection (g)(3)(A) potentially affected by the project, on which existing land uses, jurisdictional boundaries, general plan designations, specific plan designations, and zoning have been clearly delineated.

(B) A discussion of the compatibility of the proposed project ~~facilities~~ with present and expected land uses, and conformity with any long-range land use plans adopted by any federal, state, regional, or local planning agencies~~y~~. The discussion shall identify the need, if any, for land use decisions by another public agency or as part of the commission's decision ~~variances or any measures~~ that would be necessary to make the project ~~proposal~~ conform to adopted federal, state, regional, or local coastal plans, land use plans, or zoning ordinances. ~~with permitted land uses~~. Examples of land use decisions include: general plan amendments, zoning changes, lot line adjustments, parcel mergers, subdivision maps, Agricultural Land Conservation Act contracts cancellation, and Airport Land Use Plan consistency determinations.

[RATIONALE: Critical to the siting of proposed generation facilities are the identified land uses at the proposed project site and its vicinity and the proposal's conformance with current land use regulations in the vicinity. Land use issues have a potential to add additional costs to developers. The proposed changes clarify the information needed to determine the compatibility of the proposed project with all adopted land use plans for the site and vicinity.]

(C) A discussion of the legal status of the parcel(s) on which the project is proposed. If the proposed site consists of more than one legal parcel, describe the method and timetable for merging or otherwise combining those parcels so that the proposed project, excluding linears and temporary laydown or staging area, will be located on a single legal parcel. The merger need not occur prior to a decision on the Application but must be completed prior to the start of construction.

[RATIONALE: Good planning practice and the development requirements of local agencies, require that a project be located on a single legal lot. Various local development standards, such as set-back distances, which staff must apply to the proposed project, are measured from lot boundaries. In some cases the applicant may find that all the land it owns in the project vicinity is not required for the power plant and may wish to reconfigure the lots to maximize development potential of the power plant site and the remaining lands. Addressing this issue early in the siting process will help avoid delay in the review of the application while a reconfiguration is designed. The process of merging lots is handled through the City or County having jurisdiction over the site. Early identification of the need to process a merger will help successful applicants avoid an unexpected delay of the start of construction.]

(D) A map at a scale of 1:24,000 and written description of agricultural land uses found within all areas affected by the proposed project. The description shall include:

(i) Crop types, irrigation systems, and any special cultivation practices; and

(ii) Whether farmland affected by the project is prime, of statewide importance, or unique as defined by the California Department of Conservation.

(iii) Direct, indirect, and cumulative effects on agricultural land uses.~~; and~~ If the proposed site or related facilities are subject to an Agricultural Land Conservation contract, provide a written copy and a discussion of the status of the expiration or canceling of such contract.

[RATIONALE: Moved from Agriculture and Soils for clarity as a Land Use issue. Agricultural Land Conservation and Williamson Act contracts prohibit industrial development of agricultural land for the duration of the contract. A proposed power plant is prohibited on land containing this land use restriction. Williamson Act cancellation requires the land use agency to conduct a CEQA assessment for canceling the contract and allows for a 180-day noticing period before taking final action in canceling the contract. Providing information on the status of an Williamson Act related actions will assure that the staff can work early in the process to solve any Williamson Act related issues.]

(4) Noise

(A) A land use map which identifies residences, hospitals, libraries, schools, places of worship, or other facilities where quiet is an important attribute of the environment within the area impacted by the proposed project. 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.

(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).

(C) A description of the major noise sources of the project, including the range of noise levels and the tonal and frequency characteristics of the noise emitted.

(D) An estimate of the project noise levels, during both construction and operation, at residences, hospitals, libraries, schools, places of worship, or other facilities where quiet is an important attribute of the environment, within the area impacted by the proposed project.

(E) An estimate of the project noise levels within the project site boundary during both construction and operation and the impact to the workers at the site due to the estimated noise levels.

(F) The audible noise from existing switchyards and overhead transmission lines that would be affected by the project, and estimates of the future audible noise levels that would result from

existing and proposed switchyards and transmission lines. Noise levels shall be calculated at the property boundary for switchyards and at the edge of the rights-of-way for transmission lines.

[RATIONALE: Items (A) & (B) insert missing words for clarification.]

(5) Traffic and Transportation

(A) A regional transportation setting, on topographic maps (scale of 1:250,000), identifying the project location and major transportation facilities. Include a reference to the transportation element of any applicable local or regional plan.

~~(B) A discussion of the potential aviation safety issues (e.g., thermal plumes, visible plumes, evaporation ponds, and transmission lines and towers) of siting the power plant if the proposed power plant would be located within three (3) miles or electrical transmission lines would be within one (1) mile of any operating or planned airport or airstrip (including agricultural airstrips). The discussion should include a map at a scale of 1:24,000 that displays the airport or airstrip runway configuration, the proposed power plant site and related facilities.~~

(B) If the proposed project including any linear is to be located within 20,000 feet of an airport runway that is at least 3,200 feet in actual length, or 5,000 feet of a heliport (or planned or proposed airport runway or an airport runway under construction, that is the subject of a notice or proposal on file with the Federal Aviation Administration), discuss the project's compliance with the applicable sections of the current Federal Aviation Regulation Part 77 – Objects Affecting Navigable Airspace, specifically any potential to obstruct or impede air navigation generated by the project at operation; such as, a thermal plume, a visible water vapor plume, glare, electrical interference, or surface structure height. The discussion should include a map at a scale of 1:24,000 that displays the airport or airstrip runway configuration, the proposed power plant site and related facilities.

[RATIONALE: The Energy Commission has a responsibility to ensure that impacts to any nearby air facilities are identified and mitigated during the regulatory review of the project. Aircraft which pass over the cooling towers of a facility may be adversely affected by thermal plumes emanating from the power plant. The newly requested information from the applicant regarding flight paths, runway configurations, and airport influence areas is essential for staff to make LORS findings in relation to the proposed site and will enable staff to evaluate compatibility between the project and airport activities.]

~~(B)~~ (C) An identification, on topographic maps at a scale of 1:24,000, and a description of existing and planned roads, rail lines~~,~~ (including light rail), bike trails, airports, bus routes serving the project vicinity, pipelines, and canals in the project area affected by or serving the proposed facility. For each road identified, include the following information, where applicable:

(i) Road classification and design capacity;

(ii) Current daily average and peak traffic counts;

(iii) Current and projected levels of service before project development, during construction, and during project operation;

(iv) Weight and load limitations;

(v) Estimated percentage of current traffic flows for passenger vehicles and trucks; and

(vi) An identification of any road features affecting public safety.

~~(C) (D) A description of any new, planned, or programmed transportation facilities in the project vicinity, including those necessary for construction and operation of the proposed project. Specify the location of such facilities on topographic maps at a scale of 1:24,000.~~

(D) ~~(E)~~ An assessment of the construction and operation impacts of the proposed project on the transportation facilities identified in subsection (g)(5)(B). Also ~~I~~include anticipated project-specific traffic, estimated changes to daily average and peak traffic counts, levels of service, and traffic/truck mix, and the impact of construction of any facilities identified in subsection (g)(5)(C).

[RATIONALE: Project truck routes and workers' commute patterns may conflict with school bus routes and other commute patterns within the community. The above addition assures that all of the facilities identified by the applicant are discussed and that the information needed to assess the potential impacts to transportation in the project vicinity are addressed.]

(E) ~~(F)~~ A discussion of project-related hazardous materials to be transported to or from the project during construction and operation of the project, including the types, estimated quantities, estimated number of trips, anticipated routes, means of transportation, and any transportation hazards associated with such transport.

(6) Visual Resources

(A) Descriptions of the existing visual setting of the vicinity of the proposed project site and the proposed routes for any project-related linear facilities. ~~the region that can be seen from the vicinity of the project, and the proposed project site.~~ Include:

[RATIONALE: The above changes and additions clarify the information required to assess the potential impacts of the project on visual resources and to evaluate the visual quality and character of the project's existing visual setting. Since this information is regularly requested in discover, 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.]

(i) Topographic maps at a scale of 1:24,000 ~~of the areas~~ that depict all directions from which the project would ~~may~~ be seen, ~~identification of~~ the view areas most sensitive to the potential visual impacts of the project, and the locations where photographs were taken for (g)(6)(C); and

[RATIONALE: The above changes and additions clarify the information required to assess the potential impacts of the project on visual resources and to evaluate the visual quality and character of the project's existing visual setting. 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.]

~~(ii) Elevations of any existing structures on the site; and~~

(iii~~i~~) ~~The~~ Description of the existing visual properties of the topography, vegetation, and any modifications to the landscape as a result of human activities, including existing water vapor plumes, above-ground electrical transmission lines, and nighttime lighting levels in the project viewshed.

[RATIONALE: The above changes and additions clarify the information required to assess the potential impacts of the project on visual resources and to evaluate the visual quality and character of the project's existing visual setting. Since this information is regularly requested in discover, 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.]

(B) An assessment of the visual quality of those areas that would ~~will~~ be affected ~~impacted~~ by the proposed project. For projects proposed to be located within the coastal zone, the assessment should also describe how the proposed project would be sited to protect views to and along the ocean and scenic coastal areas, would minimize the alteration of natural land forms, would be visually compatible with the character of surrounding areas, and, where feasible, would restore and enhance visual quality in visually degraded areas within the view of the selected Key Observation Points as determined by Energy Commission staff.

[RATIONALE: Staff's visual resources analysis of a proposed project considers both degradation of visual quality and visual character. The addition of "character" to this requirement assures that the applicant addresses this potential visual impact. A request for the description of the method used by the applicant to assess visual resources has been added so that staff can assess the appropriateness of the methodology used.]

(C) ~~After discussions~~ In consultation with Energy Commission staff ~~and community residents who live in close proximity to the proposed project~~, identify ~~the~~ i) any designated scenic roadways or scenic corridors and any visually sensitive areas that would be ~~potentially~~ affected by the proposed project, including recreational and residential areas and ii) the locations of the key observation points to represent the most critical viewing locations from which to conduct detailed analyses of the visual impacts of the proposed project. Indicate the approximate number of people using each of these sensitive areas and the estimated number of residences with views of the project. ~~For purposes of this section, a scenic corridor is that area of land with scenic natural beauty, adjacent to and visible from a linear feature, such as a road, or river.~~ Also identify any major public roadways and trails of local importance that would be visually impacted by the project and indicate the types of travelers (e.g., local residents, recreationists, workers, commuters, etc.) and the approximate number of vehicles, bicyclists, and/or hikers per day.

[RATIONALE: Applicants have indicated that the preparation of the visual resources analysis can be burdensome. Requiring that applicants consult with Energy Commission staff in the selection of the key observation points (KOPs) is the first step in reducing this burden. By consulting with staff in the selection of the KOPs, applicants will gain first hand knowledge of concerns and view areas to be protected which can focus the review and further reduce applicant costs.]

(D) A table providing ~~description of~~ the dimensions (height, length, and width, or diameter) and, color(s), ~~and~~ materials, finishes, patterns, and other proposed design characteristics of each major ~~visible~~ component visible from off ~~of~~ the project site, including any project-related electrical transmission line and/or offsite aboveground pipelines and metering stations.

[RATIONALE: Applicants have indicated that the preparation of the visual resources analysis can be burdensome. The changes attempt to reduce this cost by specifying the structures to be included in the application, as well as the dimensions and appearance (e.g., color and finish) of the project structures.]

(E) Provide the cooling tower and heat recovery steam generator (HRSG) exhaust design parameters that affect visible plume formation. For the cooling tower, data shall include heat rejection rate, exhaust temperature, exhaust mass flow rate, liquid to gas mass flow ratio, and, if the tower is plume-abated, moisture content (percent by weight) or plume-abated fogging curve(s). The parameters shall account for a range of ambient conditions (temperature and relative humidity) and proposed operating scenarios, such as duct firing and shutting down individual cells. For the heat recovery steam generator exhausts, data shall include moisture content (percent by weight), exhaust mass flow rate, and exhaust temperature. The parameters must correspond to full-load operating conditions at specified ambient conditions, and shall account for proposed operating scenarios, such as power augmentation (i.e., evaporative coolers, inlet foggers, or steam injection) and duct firing, or proposed HRSG visible plume abatement, such as the use of an economizer bypass. For simple-cycle projects, provide analogous data for the exhaust stack(s).

[RATIONALE: Over the last 10 years the analysis of visible plumes has taken on greater importance in the Energy Commission's review process. Staff regularly requests the above information during discovery in order to address the project's potential visible plume impacts. If the information is provided in the application staff can move forward with its analysis and reduce the number of data requests to which the applicant must respond.]

~~(E)~~ (F) Provide: i) ~~F~~full-page color photographic reproductions of the existing site, and ii) full-page color simulations of the proposed project at life-size scale when the picture is held 10 inches from the viewer's eyes, including any project-related electrical transmission lines, in the existing setting from each key observation point. If any landscaping is proposed to comply with zoning requirements or to mitigate visual impacts, include the landscaping in simulation(s) representing sensitive area views, depicting the landscaping five years after installation; and estimate the expected time until maturity is reached. ~~location representative of the view areas most sensitive to the potential visual impacts of the project~~.

[RATIONALE: Applicants have failed to include all potential project features in their visual simulations. The above changes provide specificity for the information to be contained in the color simulations of the project submitted with the application. If landscaping is proposed in the application in order to mitigate impacts, simulations (and supporting data to verify their accuracy) should also be included.]

(~~F~~) (G) An assessment of the visual impacts of the project, including light, ~~and~~ glare, and any modeling of visible plumes. Include a description of the method and identify any computer model used to assess the impacts. Provide an estimate of the expected frequency and dimensions (height, length, and width) of the visible cooling tower and/or exhaust stack plumes. Provide the supporting assumptions, meteorological data, operating parameters, and calculations used.

[RATIONALE: While the application should employ a methodology for assessing visual impacts, applicants typically provide generic language on plume impacts and present no computer modeling to support their conclusions. Applicants typically present such information during hearings to rebut staff's analysis, requiring staff to evaluate an applicant's analysis late in the process. This delay in review can lengthen the evidentiary hearings on the project and increase the expense to both the applicant and the State of California.]

(H) If any landscaping is proposed to reduce the visual impacts of the project, provide a conceptual landscaping plan at a 1:40 scale (1"=40'). Include information on the type of plant species proposed, their size, quantity, and spacing at planting, expected heights at 5 years and maturity, and expected growth rates.

[RATIONALE: Most applicants propose landscaping to reduce the potential impacts of the project. Because this information is not currently required, staff routinely requests that applicants provide conceptual landscape plans during discovery. If landscaping is proposed in the application, a conceptual plan, and related information, must be provided.]

(7) Socioeconomics

(A) A description of the socioeconomic circumstances of the vicinity and region affected by construction and operation of the project. ~~Provide the year of estimate, model, if used, and appropriate sources~~. Include:

[RATIONALE: Many applicants have failed to provide the above information in their socioeconomic analysis. This information is critical to the accurate review of the potential socioeconomic impacts of the proposed project. The addition of this information will reduce the need for additional data requests and will streamline staff's analysis.]

(i) The economic characteristics, including the economic base, fiscal resources, and a list of the applicable local agencies with taxing powers and their most recent and projected revenues;

(ii) The social characteristics, including population and demographic and community trends;

(iii) Existing ~~and projected~~ unemployment rates;

(iv) Availability of skilled workers by craft required for construction and operation of the project;

(v) Availability of temporary and permanent housing and current vacancy rate; and

[RATIONALE: In order to determine the availability of housing in the project area a current vacancy rate is needed. This additional information will reduce the need for additional data requests and will streamline staff's analysis.]

(vi) Capacities, existing and expected use levels, and planned expansion of utilities (gas, water, and waste) and public services, including fire protection, law enforcement, emergency response, medical facilities, other assessment districts, and school districts. For projects outside metropolitan areas with a population of 500,000 or more, information for each school district shall include current enrollment and yearly expected enrollment by grade level groupings, excluding project-related changes. ~~, for the duration of the project construction schedule.~~

(B) A discussion of the socioeconomic impacts caused by the construction and operation of the project (note year of estimate, model, if used, and appropriate sources), including:

[RATIONALE: Applicants frequently provide inconsistent economic data. If the applicant provides the above information staff can verify the information provided by the applicant. This additional information will reduce the need for additional data requests and will streamline staff's analysis.]

(i) An estimate of ~~T~~the number of workers to be employed each month by craft during construction and operation, and separate estimates for the average permanent and short-term (contract) operations workers during a year;

[RATIONALE: This change clarifies the level of information needed to accurately assess the potential employees needed for construction and operation of the project .This additional information will reduce the need for additional data requests and will streamline staff's analysis.]

(ii) An estimate of the ~~number and~~ percentage of non-local workers who will ~~commute daily, commute weekly, or~~ relocate to the project area ~~in order~~ to work on the project;

[RATIONALE: The proposed modification is designed to clarify and simplify the information needed to determine the potential socioeconomic impacts of non-local workers. Applicants are no longer required to determine the actual number of workers who might commute to the project site. Staff believes that, in areas where housing supplies are short, socioeconomic impacts may result from the migration of non-local workers to a project area. This change provides the necessary data to analyze this potential impact.]

(iii) An estimate of the potential population increase caused directly and indirectly by the project;

(iv) The potential impact of population increase on housing during the construction and operations phases;

(v) The potential impacts, including additional costs, on utilities (gas, water, and waste) and public services, including fire, law enforcement, emergency response, medical facilities, other assessment districts, and school districts. Include response times to ~~for~~ hospitals and for police, and emergency services. For projects outside metropolitan areas with a population of 500,000 or more, information on schools shall include project-related enrollment changes by grade level groupings and associated facility and staffing impacts by school district during the construction and operating phases;

[RATIONALE: The addition of a power plant in a local community may create additional responsibilities for emergency services in the area. Information on the potential response times for these services can be an indicator of the community's ability to handle these increased responsibilities. Staff will use this information, which has been typically requested during discovery, to assess the project's potential impacts on these services. Provision of this data in the application will reduce the applicant's cost for responding to staff's data request.]

(vi) An estimate of applicable school impact fees;

(vii) An estimate of the total construction payroll and separate ~~an~~ estimates of the total operation payroll for permanent and short-term (contract) operations employees;

[RATIONALE: This change clarifies the level of information needed to accurately assess the potential payroll for the facility. This additional information will reduce the need for additional data requests and will streamline staff's analysis.]

(viii) An estimate of the expenditures for locally purchased materials for the construction and operation phases of the project; and

(ix) An estimate of the capital cost (plant and equipment) of the project ~~of the potential impacts on tax revenues from construction and operation of the project~~.

(x) An estimate of sales taxes generated during construction and separately during an operational year of the project.

(xi) An estimate of property taxes generated during an operational year of the project.

(xii) The expected direct, indirect, and induced income and employment effects due to construction, operation, and maintenance of the project. ~~Also, include an evaluation of the cumulative economic effects from construction of this and other similar projects simultaneously occurring in the study area~~

[RATIONALE: This section of the regulations previously required applicants to provide information regarding the potential impacts of tax revenues from the construction and operation of the project. Staff has found that the estimate provided by applicants was often inaccurate. Because

of this, staff typically requests this data during discovery. The proposed modifications provide the detail needed by staff to accurately describe the potential socioeconomic benefits or impacts of a project. Further, provision of this information in the application will lessen the need for data requests and associated project delays.]

(8) Air Quality

(A) The information necessary for the air pollution control district where the project is located to complete a Determination of Compliance.

(B) The heating value and chemical characteristics of the proposed fuels, the stack height and diameter, the exhaust velocity and temperature, the heat rate and the expected capacity factor of the proposed facility.

(C) A description of the control technologies proposed to limit the emission of criteria pollutants.

(D) A description of the cooling system, the estimated cooling tower drift rate, the rate of water flow through the cooling tower, and the maximum concentrations of total dissolved solids.

(E) The emission rates of criteria pollutants and greenhouse gases (CO2, CH4, N2O, and SF6) from the stack, cooling towers, fuels and materials handling processes, delivery and storage systems, and from all on-site secondary emission sources.

[RATIONALE: The Energy Commission's 2003 IEPR requires the reporting of greenhouse gas emissions as a condition of licensing. This modification implements this condition.]

(F) (i) A description of typical operational modes, and start-up and shutdown modes for the proposed project, including the estimated frequency of occurrence and duration of each mode, and estimated emission rate for each criteria pollutant during each mode.

(ii) A description of the project's planned initial commissioning phase, which is the phase between the first firing of emissions sources and the consistent production of electricity for sale to the market, including the types and durations of equipment tests, criteria pollutant emissions, and monitoring techniques to be used during such tests,

[RATIONALE: In evaluating many projects over the years, staff has learned that during the initial commissioning phase of operation, especially for the larger combustion turbine projects, that the duration of this phase of operation can be many weeks or months. Emissions and associated impacts during this period of time are usually quite elevated in comparison to normal project operation, thus this mode of operation should be analyzed.]

(G) The ambient concentrations of all criteria pollutants for the previous three years as measured at the three Air Resources Board certified monitoring stations located closest to the project site, and an analysis of whether this data is representative of conditions at the project site. The

applicant may substitute an explanation as to why information from one, two, or all stations is either not available or unnecessary.

(H) One year of meteorological data collected from either the Federal Aviation Administration Class 1 station nearest to the project or from the project site, or meteorological data approved by the California Air Resources Board or the local air pollution district.

(i) If the data is collected from the project site, the applicant shall demonstrate compliance with the requirements of the U.S. Environmental Protection Agency document entitled "On-Site Meteorological Program Guidance for Regulatory Modeling Applications" (EPA - 450/4-87-013 (August 1995)), which is incorporated by reference in its entirety.

(ii) The data shall include quarterly wind tables and wind roses, ambient temperatures, relative humidity, stability and mixing heights, upper atmospheric air data, and an analysis of whether this data is representative of conditions at the project site.

(I) An evaluation of the project's direct and cumulative air quality impacts, consisting of the following:

(i) A screening level air quality modeling analysis, or a more detailed modeling analysis if so desired by the applicant, of the direct criteria ~~inert~~ pollutant impacts of project construction activities on ambient air quality conditions, including fugitive dust (PM 10) emissions from grading, excavation and site disturbance, as well as the combustion emissions [nitrogen oxides (NOx), sulfur dioxide (SO_2), carbon monoxide (CO), particulate matter less than 10 microns in diameter (PM 10) and particulate matter less than 2.5 microns in diameter (PM2.5)] from construction-related equipment;

[RATIONALE: This change is needed to update the regulation to more accurately refer to the criteria pollutants which are the scope of the analysis of the proposed facility. Also there is a new criteria air pollutant (PM2.5) that must now be analyzed.]

(ii) A screening level air quality modeling analysis, or a more detailed modeling analysis if so desired by the applicant, of the direct ~~inert~~ criteria pollutant (NOx, SO_2, CO, PM10 and PM2.5) impacts on ambient air quality conditions of the project during typical (normal) operation, and during shutdown and startup modes of operation. Identify and include in the modeling of each operating mode the estimated maximum emissions rates and the assumed meteorological conditions; and

[RATIONALE: This change is needed to clarify the discussion of criteria pollutants expected in the application. The term “inert” is unnecessary and does not add clarity to the regulation. Also there is a new criteria air pollutant (PM2.5) that must now be analyzed.]

(iii) A protocol for a cumulative air quality modeling impacts analysis of the project's typical operating mode in combination with other stationary emissions sources within a six mile radius which have received construction permits but are not yet operational, or are in the permitting process. The cumulative inert pollutant impact analysis should assess whether estimated

emissions concentrations will cause or contribute to a violation of any ambient air quality standard.

(iv) an air dispersion modeling analyses of the impacts of the initial commissioning phase emissions on state and federal ambient air quality standards for NOx, SO_2, CO, PM10 and PM2.5.

(J) If an emission offset strategy is proposed to mitigate the project's impacts under subsection (g)(1), provide the following information:

(i) The quantity of offsets or emission reductions that are needed to satisfy air permitting requirements of local permitting agencies (such as the air district), state and federal oversight air agencies, and the California Energy Commission. Identify by criteria air pollutant, and if appropriate, greenhouse gas; and

(ii) ~~Potential offset sources including location, and quantity of emission reductions;~~ Discuss the method to obtain or sources of the needed offsets or emissions reductions, including relevant information such as, but not limited to, emission reduction certificate numbers, contemporaneous shut-downs, process modifications, district accounts/banks or reserve programs, emissions controls, inter-pollutant trades, and district rule or attainment designation revisions; and

(iii) Provide a schedule that ensures that the offsets or emission reductions are specifically identified by the release of the district's Preliminary Determination of Compliance. Identification includes ERC numbers, or ERCs owned, under contract, or under option contract by the project owner and the location of the offsets. Shutdowns, process modifications, or emissions controls proposed to generate offsets or emission reductions should be formalized by final engineering drawings and specifications by the release of the district's Preliminary Determination of Compliance.

[RATIONALE: Applicants have sometimes failed to provide offsets for the entire quantity needed to offset the project's air quality impacts. Staff needs assurances that the applicant is in serious negotiations with prospective ERC owners, so that the eventual offset package is secured in a timely fashion (prior to issuance of the final Determination of Compliance from the appropriate air district) and not delay the siting process. In many areas of California, offset availability can be a key determinate as to whether or not a facility can be permitted. Without an assurance that there are offsets available to cover the entirety of project emissions staff, and the applicant, could waste valuable resources on a project that could not be constructed.]

~~(iii) Method of emission reduction.~~

[RATIONALE: Staff believes that this requirement is vague and confusing, and (J)(ii) above adequately addresses "method of emission reduction."]

~~(K) A topographic map containing contour and elevation data, at a scale of 1:24,000, showing the area within 6 miles of the power plant site.~~

[RATIONALE: Staff believes that this information is no longer necessary to perform our analysis. Removing this requirement reduces the application preparation cost for applicants.]

(K) a detailed description of the mitigation, which an applicant shall propose, for all project impacts from criteria pollutants that currently exceed state or federal ambient air quality standards, but are not subject to offset requirements under the district's new source review rule.

[RATIONALE: In some instances, certain air districts do not require emission offsets for sources of air pollution, even though those sources can contribute to an air pollution problem in those districts. Staff believes that mitigation is still necessary in those circumstances, notwithstanding the district's offsetting requirements.]

(9) Public Health

~~(A) A list of all toxic substances emitted by the project under normal operating conditions, which may cause an adverse public health impact as a result of acute, or chronic, or sub-chronic exposure and to which members of the public may be exposed. The list should include, at a minimum, any pollutants emitted by the project that are listed pursuant to Health and Safety Code s 25249.8.~~

(A) An assessment of the potential risk to human health from the project's hazardous air emissions using the Air Resources Board Hotspots Analysis and Reporting Program (HARP) or its successor and Approved Risk Assessment Health Values. These values should include the cancer potency values and noncancer reference exposure levels approved by the Office of Environmental Health Hazard Assessment (OEHHA Guidelines, Cal-EPA 2005).

[RATIONALE: This change is to be consistent with requirements specified in the Office of Environmental Health Hazard Assessment's "*Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments.*"]

~~(B) A protocol describing the analysis which the applicant will conduct to determine the extent of potential public exposure to substances identified in subsection (g)(9)(A) resulting from normal facility operation. The analysis itself can be submitted after the AFC is completed.~~

(B) A listing of the input data and output results, in both electronic and print formats, used to prepare the HARP health risk assessment.

[RATIONALE: The proposed change better identifies the information needed by staff to confirm the HARP study results and reduces the burden on applicants for providing information on the protocols used to perform the health risk analysis.]

~~(C) A map at a scale of 1:24,000, showing all terrain areas exceeding the elevation of the stack within a 10-mile radius of the facility.~~

(C) Identification of publicly available health studies concerning the potentially affected population(s) within a six-mile radius of the proposed power plant site.

[RATIONALE: Available health studies for the potentially affected area will allow staff to analyze additional health effects that may need to be considered in its public health analysis. Staff does not need map information to perform this analysis.]

(D) A map ~~at a scale of 1:24,000,~~ showing ~~the distribution of population and~~ sensitive receptors within the area exposed to the substances identified in subsection (g)(9)(A).

[RATIONALE: Staff does not need a particular scaled map of population distribution to conduct its public health analysis. This allows applicants to determine the scale needed to appropriately show the requested data.]

(E) For purposes of this section, the following definitions apply:

(i) A sensitive receptor refers to infants and children, the elderly, and the chronically ill, and any other member of the general population who is more susceptible to the effects of the exposure than the population at large.

(ii) An acute exposure is one which occurs over a time period of less than or equal to one (1) hour ~~between the time of emission and eight hours after the emission~~.

[RATIONALE: This change makes the definition consistent with the Office of Environmental Health Hazard Assessment's *Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments*.]

~~(iii) A sub-chronic exposure is one in which total exposure over a one-week period is greater than four hours, but less than sixteen hours.~~

[RATIONALE: The Office of Environmental Health Hazard Assessment's *Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments* does not refer to subchronic exposures.]

(iii~~iv~~) A chronic exposure is one which is greater than twelve (12) percent of a lifetime of seventy (70) years. ~~occurs intermittently and repeatedly for more than one month~~.

[RATIONALE: This change makes the definition consistent with the Office of Environmental Health Hazard Assessment's *Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments*.]

(10) Hazardous Materials Handling

(A) A list of all materials used or stored on-site which are hazardous or acutely hazardous, as defined in Title 22, California Code of Regulations, s 66261.20 et seq., and a discussion of the toxicity of each material.

(B) A map at a scale of 1:24,000 depicting the location of schools, hospitals, day-care facilities, emergency response facilities, and long-term health care facilities, within the area potentially affected by any release of hazardous materials.

(C) A discussion of the storage and handling system for each hazardous material used or stored at the site.

(D) For each hazardous material stored or used at the site, an evaluation of the likelihood, consequences, and potential quantity of an accidental release, the locations and estimates of maximum acute exposure levels, and the operating and plausible worst-case upset conditions that could lead to a release.

(E) The protocol that will be used in modeling potential consequences of accidental releases that could result in off site impacts. Identify the model(s) to be used, a description of all input assumptions, including meteorological conditions. The results of the modeling analysis can be substituted after the AFC is complete.

(F) A discussion of whether a Risk Management Prevention Plan (Health and Safety Code s 25500 et seq.) will be required, and if so, the requirements that will likely be incorporated into the plan.

(G) A discussion of measures proposed to reduce the risk of any release of hazardous materials.

(H) A discussion of the fire and explosion risks associated with the project.

(11) Worker Safety

(A) A description of the safety training programs which will be required for construction and operation personnel.

(B) A complete description of the fuel handling system and the fire suppression system.

(C) Provide draft outlines of the Construction Health and Safety Program and the Operation Health and Safety Program, as follows:

Construction Health and Safety Program:

* Injury and Illness Prevention Plan (8 Cal. Code Regs., § 1509);

* Fire Protection and Prevention Plan (8 Cal. Code Regs., § 1920);

* Personal Protective Equipment Program (8 Cal. Code Regs., §§ 1514-1522).

Operation Health and Safety Program:

* Injury and Illness Prevention Program (8 Cal. Code Regs., § 3203);

* Fire Prevention Plan (8 Cal. Code Regs., § 3221);

* Emergency Action Plan (8 Cal. Code Regs., § 3220);

* Personal Protective Equipment Program (8 Cal. Code Regs., §§ 3401-3411).

(12) Waste Management

(A) A Phase I Environmental Site Assessment for the proposed power plant site using methods prescribed by the most recent version of the American Society for Testing and Materials (ASTM) document entitled "Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process" (Designation: E 1527~~-93, May 1993~~), ~~which is incorporated by reference in its entirety~~; or an equivalent method agreed upon by the applicant and the CEC Staff that provides similar documentation of the potential level and extent of site contamination.

[RATIONALE: The ASTM periodically revises its standard for preparation of Environmental Site Assessments. This change will assure that applicants use the proper version when preparing their Site Assessment.]

(B) A description of each waste stream estimated to be generated during project construction and operation, including origin, hazardous or nonhazardous classification pursuant to Title 22, California Code of Regulations, Sections 66261.20 et seq., chemical composition, estimated annual weight or volume generated, and estimated frequency of generation.

(C) A description of all waste disposal sites which may feasibly be used for disposal of project wastes. For each site, include the name, location, classification under Title 23, California Code of Regulations, Sections 2530 et seq., the daily or annual permitted capacity, daily or annual amounts of waste currently being accepted, the estimated closure date and remaining capacity, and a description of any enforcement action taken by local or state agencies due to waste disposal activities at the site.

(D) A description of management methods for each waste stream, including methods used to minimize waste generation, length of on- and off-site waste storage, re-use and recycling opportunities, waste treatment methods used, and use of contractors for treatment.

(13) Biological Resources

(A) A regional overview and discussion of terrestrial and aquatic biological resources, with particular attention to sensitive biological resources within ten (10) miles of ~~near~~ the project.~~, and~~ Include a map at a scale of 1:100,000 (or ~~some~~ other suitable scale) showing sensitive biological resource ~~their~~ location(s) in relation to the project site and related facilities and any boundaries of a local Habitat Conservation Plan or similar open space land use plan or designation. Sensitive biological resources include the following:

(i) species listed under state or federal Endangered Species Acts;

(ii) resources defined in sections 1702(q) and (v) of Title 20 of the California Code of Regulations;

(iii) species identified as state Fully Protected;

(iv) species covered by Migratory Bird Treaty Act;

(v) species and habitats identified by local, state, and federal agencies as needing protection, including but not limited to those identified by the California Natural Diversity Database, or where applicable, in Local Coastal Programs or in relevant decisions of the California Coastal Commission; and

(vi) fish and wildlife species that have commercial and/or recreational value.

[RATIONALE: To improve clarity and lessen confusion, Section (A) now includes all the sensitive species and habitat information requirements, and their definitions, which were moved from Sections (G), (H), and (I).

Habitat Conservation Plan (HCP) information has been added to the Data Adequacy regulations so each application is more complete when projects are located near or within an HCP area. HCPs are an important local tool, developed in consultation with state and federal wildlife agencies, that are used to determine impacts, identify appropriate mitigation, protect habitat, and manage state and federal protected species and their remaining habitat.

California counties have sensitive species and habitat lists that include species that are neither state nor federally listed. These local sensitive species and habitats need to be identified and addressed in the application. With this information, staff will be better able to address locally rare species and lessen the need for data requests during Discovery. Reducing the number of data requests reduces the cost of regulatory review to both the state and applicant.

Also in subsection (v), the California Natural Diversity Database (CNDDB) is included as a source of sensitive species lists for completeness. CNDDB, Fish and Game's official sensitive species and habitat data base, is continually updated with ecological and site-specific data for sensitive plant, mammal, fish, bird, etc. lists. These lists include all state and federally listed species; however, they also include all proposed, candidate, and other sensitive species that may be locally rare that are monitored for possible future state or federal listing consideration. This data is essential to understand potential project impacts and develop measures to mitigate the impacts to biological resources.]

(B) ~~A discussion and detailed maps at a scale of 1:6,000, of the biological resources at the site of the proposed project and related facilities, and in areas adjacent to them, out to a mile from the site and 1000 feet from the outer edge of linear facility corridors.~~ Include a list of the species actually observed and those with a potential to occur within 1 mile of the project site and 1,000 feet from the outer edge of linear facility corridors. ~~The discussion and maps shall address the~~

~~distribution of community types, denning or nesting sites, population concentrations, migration corridors, breeding habitats, and the presence of sensitive biological resources.~~

Maps or aerial photographs shall include the following:

(i) Detailed maps at a scale of 1:6,000 or color aerial photographs taken at a recommended scale of 1 inch equals 500 feet (1:6,000) with a 30 percent overlap that show the proposed project site and related facilities, biological resources including, but not limited to, those found during project-related field surveys and records from the California Natural Diversity Database, and the associated areas where biological surveys were conducted. Label the biological resources and survey areas as well as the project facilities.

(ii) A depiction of the extent of the thermal plume at the surface of the water if cooling water is proposed to be discharged to a water source. Provide the location for the intake and discharge structures on an aerial photograph(s) or detailed maps. Water sources include, but are not limited to, waterways, lakes, impoundments, oceans, bays, rivers, and estuaries.

(iii) An aerial photo or wetlands delineation maps at a scale of (1:2,400) showing any potential jurisdictional and non-jurisdictional wetlands delineated out to 250 feet from the edge of disturbance if wetlands occur within 250 feet of the project site and/or related facilities that would be included with the US Army Corps of Engineers Section 404 Permit application. For projects proposed to be located within the coastal zone, also provide aerial photographs or maps as described above that identify wetlands as defined by the Coastal Act.

[RATIONALE: The current data adequacy regulations lack specificity and guidance on which maps and aerial photographs are useful to complete staff's analysis. This increases both the time required to complete the analysis and the cost of the environmental review. All required maps and suggested map scales are consolidated in Section (B). By requiring these items be filed with the application, applicants will save time and money since fewer data requests will likely be necessary and maps will not have to be redone during Discovery.

The current regulations lack specific guidance regarding mapping wetlands and allowing for more precise measurements of their extent. Requiring better maps for measurement will also help applicants when they provide this same information to the Army Corps of Engineers if a wetlands fill permit (Section 404) is required from the Corps.

Providing map information about wetlands and adjacent habitat that occurs within 250 feet of the project will be helpful to staff and the applicant since this distance matches the distance the USFWS and Corps use when determining impacts to isolated wetlands such as vernal pools or creeks and rivers. This clarification is needed since *indirect* impacts are likely to occur if the project will affect upland areas within 250 feet of the nearby wetland.

Section 316(a) of the federal Clean Water Act requires thermal plume information for projects that discharge heated cooling water into an adjacent water body. The current data adequacy regulations lack specificity regarding what needs to be included in an Application for Certification for a complete thermal discharge impacts analysis. Including this information in the application will

make the application more complete and reduce the costs of participation for both applicants and staff.]

~~(C) A description of all studies and surveys used to provide biological information about the project site, including seasonal surveys and copies of the California Department of Fish and Game's Natural Diversity Data Base Survey Forms, "California Native Species Field Survey Forms", and "California Natural Community Field Survey Forms", completed by the applicant. Include the dates and duration of the studies, methods used to complete the studies, and the names and qualifications of individuals conducting the studies.~~

(C) A discussion of the biological resources at the proposed project site and related facilities. Related facilities include, but are not limited to, laydown and parking areas, gas and water supply pipelines, transmission lines, and roads. The discussion shall address the distribution of vegetation community types, denning or nesting sites, population concentrations, migration corridors, breeding habitats, and other appropriate biological resources including the following:

(i) A list of all the species actually observed.

(ii) A list of sensitive species and habitats with a potential to occur (as defined in (A) above).

(iii) If cooling water is taken directly from or discharged to a surface water feature ~~source containing a functioning ecosystem~~, include a description of the intake structure, screens, water volume, intake ~~velocity~~ hydraulic zone ~~field~~ of influence, and the thermal plume dispersion area as depicted in response to B(ii) above. Describe the thermal plume size and dispersion under high and low tides, and in response to local currents and seasonal changes. Provide a discussion of the aquatic habitats, biological resources, and critical life stages found in these affected waters. For repower projects that anticipate no change in cooling water flow, t~~T~~his information shall be provided in the form of the most recent ~~federal~~ Clean Water Act 316~~(a) and~~ (b) studies of entrainment and impingement impacts ~~that has been completed within the last five (5) years~~. For new projects or repower projects proposing to use once-through cooling and anticipating an increase in cooling water flow, provide a complete impingement and entrainment analysis per guidance in (D)(ii), below.

[RATIONALE: The new federal Clean Water Act section 316(b) regulations require updated impact analyses during the 5-year National Pollution Discharge Elimination System permit renewal, so recent impact information will be available and must be provided for a complete analysis. To provide clarity and make the regulations easier to use, Section (C) now consolidates all the general biological resources data requirements in one section. The current data adequacy regulations are incomplete regarding what information should be required of applicants for projects that propose to use or are currently using once-through cooling. Staff always asks for a current impingement and entrainments impacts analysis; however, when the data is not provided, the Commission decision is significantly delayed until the data is collected / provided.]

~~(D) A description of all permanent and temporary impacts to biological resources from site preparation, construction activities, and plant operation. Discussion of impacts must consider impacts from cooling tower drift, and from the use and discharge of water during construction~~

~~and operation. For facilities which use once-through cooling or take or discharge water directly from or to natural sources, discuss impacts resulting from entrainment, impingement, thermal discharge, effluent chemicals, type of pump (if applicable), temperature, volume and rate of flow at intake and discharge location, and plume configuration in receiving water.~~

(D) A description and results of all field studies and seasonal surveys used to provide biological baseline information about the project site and associated facilities. Include copies of the California Natural Diversity Database records and field survey forms completed by the applicant's biologist(s). Identify the date(s) the surveys were completed, methods used to complete the surveys, and the name(s) and qualifications of the biologists conducting the surveys. Include:

(i) Current biological resources surveys conducted using appropriate field survey protocols during the appropriate season(s). State and federal agencies with appropriate jurisdiction shall be consulted for field survey protocol guidance prior to surveys if a protocol exists.

(ii) If cooling water is proposed to be taken directly from a water ~~source with a functioning ecosystem~~, seasonal aquatic resource studies and surveys shall be conducted. Aquatic resource survey data shall include, but is not limited to, fish trawls, ichthyoplankton and benthic sampling, and related temperature and water quality samples. For new projects or repower projects anticipating a change in cooling water flows, s~~S~~ampling protocol shall be provided to the Energy Commission staff for review and concurrence prior to the start of sampling. For repower projects not anticipating a change in cooling water flows, t~~T~~his information shall be provided in the form of the most recent ~~a~~ federal Clean Water Act 316(b) impingement and entrainment impact study ~~that has been completed within the last five (5) years for the facility under consideration.~~.

(iii) If the project or any related facilities could impact a jurisdictional or non-jurisdictional wetland, provide completed Army Corps of Engineers wetland delineation forms and/or determination of wetland status pursuant to Coastal Act requirements, name(s) and qualifications of biologist(s) completing the delineation, the results of the delineation and a table showing wetland acreage amounts to be impacted.

[RATIONALE: The current regulations lack specificity and are incomplete regarding field survey protocols. To make the Data Adequacy regulations easier to understand, new Section (D) consolidates all terrestrial and aquatic survey protocol information requirements contained in the current regulations. Section (D) requires clarification regarding study design and sampling protocols regarding federal Section 316(b) studies being completed under new Clean Water Act regulations. Suggested California Coastal Commission language regarding wetland status is added to help clarify requirements for determining California Coastal Act compliance.]

(E) Impacts ~~A~~ discussion of the following:

~~(i) All measures proposed to avoid and/or reduce any adverse impacts;~~

(i) all impacts (direct, indirect, and cumulative) to biological resources from project site preparation, construction activities, plant operation, maintenance, and closure. Discussion shall also address sensitive species habitat impacts from cooling tower drift and air emissions.

[RATIONALE: For clarity, all impact information requirements are now consolidated in Section (E). CEQA requires that information on direct, indirect, and cumulative impacts be provided so staff can complete its CEQA analyses.]

~~(ii) All measures proposed to mitigate any adverse impacts, including any proposals for off-site mitigation;~~

(ii) facilities that propose to take water directly from, and/or discharge water to surface water features ~~sources with functioning ecosystems~~, daytime and nighttime impacts from the intake and discharge of water during operation, water velocity at the intake screen, the intake field of influence, impingement, entrainment, and thermal discharge. Provide a discussion of the extent of the thermal plume, effluent chemicals, oxygen saturation, intake pump operations, and the volume and rate of cooling water flow at the intake and discharge location.

[RATIONALE: Due to substantial changes to the Federal Clean Water Act section 316(b), subsection (ii) now includes data adequacy requirements that will help staff complete its analysis for power plant projects that currently withdraw cooling water and discharge it after its use. Staff currently attempts to get this information during Discovery; however, it would be more efficient for staff and the applicant, saving time and money, if this information is required in the data adequacy regulations.]

~~(iii) Any educational programs proposed to enhance employee awareness in order to protect biological resources.~~

(iii) Methods to control biofouling, chemical concentrations, and temperatures that is currently being discharged or will be discharged to receiving waters.

[RATIONALE: The biofouling issue is not addressed in the current data adequacy regulations; however, the chemicals used to control biofouling can impact biological resources when discharged. Anti-fouling agents often include copper-based and other metal-based chemicals which can have a negative impact on biological resources in the discharge receiving water. Requiring this information in their application will save time for the staff's analysis and time and money for the applicant during Discovery.]

~~(F) A discussion of compliance and monitoring programs to ensure the effectiveness of mitigation measures incorporated into the project.~~

(F) A discussion of all feasible mitigation measures including, but not limited to the following:

(i) All measures proposed to avoid and/or reduce adverse impacts to biological resources.

(ii) All off-site habitat mitigation and habitat improvement or compensation, and an identification of contacts for compensation habitat and management.

(iii) Design features to better disperse or eliminate a thermal discharge.

(iv) All measures proposed to avoid or minimize adverse impacts of cooling water intake. This shall include a Best Technology Available (BTA) discussion. If BTA is not being proposed, the rationale for not selecting BTA must be provided.

(v) Educational programs to enhance employee awareness during construction and operation to protect biological resources.

[RATIONALE: Our current data adequacy regulations lack clarity regarding a complete mitigation discussion. This lack of clarity often results in more data requests during Discovery which slows staff's completion of its analysis and costs the applicants additional money. As an example, Section (F) now requires a more complete discussion of ways to minimize impacts associated with cooling water withdrawal and discharge. This has been a time-consuming issue during several recent siting cases (Moss Landing, Morro Bay, and Potrero) requiring multiple data requests and data request rounds. If this information is provided in their application, then staff may be able to complete its analysis more quickly and result in a more timely Commission decision.

This section also provides suggested California Coastal Commission additions that are appropriate and will help determine Coastal Act compliance. Without this critical information, Coastal Act compliance will be costly for the applicants and delay the Commission decision.]

(G) A discussion of compliance and monitoring programs to ensure the effectiveness of impact avoidance and mitigation measures incorporated into the project. ~~native fish and wildlife species of commercial and/or recreational value that could be impacted by the project.~~

[RATIONALE: Section (G) originally provided one of the sensitive species (native fish and wildlife species of commercial and/or recreational value) definitions; however, this definition has been moved to improve clarity to Section (A) so all sensitive species definitions are found in the same section.

Since the original material has been moved to Section (A), the new Section (G) now contains refinements to the language regarding compliance and mitigation monitoring requirements and the need to determine if the mitigation is effective. This is missing in the current data adequacy regulations and needs to be added for clarity and completeness.]

~~(H) For purposes of this section, sensitive biological resources are one of the following:~~

(H) Submit copies of any preliminary correspondence between the project applicant and state and federal resource agencies regarding whether ~~the biological resource information provided to obtain~~ federal or state permits from other agencies such as the U. S. Fish and Wildlife Service, ~~and/or~~ the National Marine Fisheries Service, ~~and/or Clean Water Act section 404 permit from~~ the U.S. Army Corps of Engineers, ~~incidental take authorization from~~ the California Department of Fish

and Game, and ~~water discharge permits from~~ the Regional Water Quality Control Board will be required for the proposed project.

~~(i) Species listed under state or federal Endangered Species Acts;~~

[RATIONALE: This sensitive species definition has been deleted here and moved along with the other definitions to Section (A) so the sensitive species concept, and related definitions, are located in the same section. This change makes the biological resources data adequacy regulations easier to use and helps applicants compile a more complete application.

Current data adequacy regulations are incomplete regarding other federal permits that may be required outside of the Commission licensing authority. Requiring this information be provided as part of a complete application is essential to a better understanding of the overall project permitting schedule.]

~~(ii) Resources defined in sections 1702 (q) and (v) of Title 20 of the California Code of Regulations; and~~

[RATIONALE: Subsection (ii) is no longer necessary – to improve clarity, all sensitive species and habitat Data Adequacy information requirements and definitions are consolidated in revised Section (A) .

~~(iii) Species or habitats identified by legislative acts as requiring protection.~~

[RATIONALE: Subsection (iii) is no longer necessary – to improve clarity, all sensitive species and habitat Data Adequacy information requirements and definitions are consolidated in revised Section (A).

(14) Water Resources

(~~A) All information required by the Regional Water Quality Control Board in the region where the project will be located to apply for~~:

(A) All the information required to apply for the following permits, if applicable, including:

(i) Waste Discharge Requirements; ~~and~~ National Pollutant Discharge Elimination System Permit; and/or a Section 401 Certification or Waiver from the appropriate Regional Water Quality Control Board (RWQCB);~~.~~

~~(ii) National Pollutant Discharge Elimination System Permit~~

(ii) Construction and Industrial Waste Discharge and/or Industrial Pretreatment permits from wastewater treatment agencies;

(iii) Nationwide Permits and/or Section 404 Permits from the U.S. Army Corps of Engineers; and

(iv) Underground Injection Control Permit(s) from the U.S. Environmental Protection Agency, California Division of Oil and Gas, and RWQCB.

[RATIONALE: The number of permits which regulate discharge is broader than originally proposed in the Data Adequacy Regulations. The inclusion of this set of permits will cover most discharges and allow staff to begin discovery knowing what other agency regulations apply to the discharge of wastewaters]

(B) A detailed description of the hydrologic setting of the project. The description shall include laboratory analysis of at least one sample from nearby water sources for chemical and physical characteristics. The ~~information shall describe in~~ description shall include a narrative discussion ~~writing~~ and maps at a scale of 1:24,000 (or appropriate scale approved by staff), ~~the chemical and physical characteristics~~ of the following nearby water bodies that may be affected by the proposed project:

[RATIONALE: To ensure the discussion and description of the hydrological setting is sufficient to provide an adequate technical basis for a staff assessment. An incomplete or inaccurate technical basis for hydrological impacts is frequently a cause of delay in both the staff assessment and the licensing of power projects.]

(i) Ground water bodies and related geologic structures;

(ii) Surface water bodies; ~~and~~

(iii) Water inundation zones, such as the 100-year flood plain and tsunami run-up zones;

(iv) Flood control facilities (existing and proposed); and

(v) Groundwater wells within ½ mile if the project will include pumping.

(C) A description of the water to be used and discharged by the project. This information shall include:

(i) Source(s) of the primary and back-up water supplies and the rationale for their selection; ~~and if fresh water is to be used for power plant cooling purposes, a discussion of all other potential sources and an explanation of why these sources were not feasible;~~

[RATIONALE: The project water supply must be established as a critical path item in the staff assessment in order to assure that the project has adequate water supplies for continued operation at the proposed site.]

(ii) The expected physical and chemical characteristics of the source and discharge water(s) including identification of both organic and inorganic constituents before and after any project-related treatment. For source waters with seasonal variation, provide seasonal ranges of the

expected physical and chemical characteristics. Provide copies of background material used to create this description (e.g., laboratory analysis);

[RATIONALE: Incomplete or inadequate characterization of the physical and chemical characteristics of the water supply and wastewater discharge is often the cause of unanticipated problems resulting in delays in the production of the staff assessment and licensing of power projects.]

(iii) Average and maximum daily and annual water demand and waste water discharge for both the construction and operation phases of the project; ~~and~~

(iv) A detailed description of all facilities to be used in water conveyance (from primary source to the power plant site), water treatment, and wastewater discharge. ~~Include a water mass balance diagram~~;

[RATIONALE: A final conceptual design is necessary to prevent delays in the staff analysis and licensing of power plants. Problems with conveyance facilities and pipelines are a frequent cause of delay.]

(v) For all water supplies to be provided from public or private water purveyors, a letter of intent or will-serve letter indicating that the purveyor is willing to serve the project, has adequate supplies available for the life of the project, ~~the term of service to the project, any previous uses of the allocated water (if known),~~ and any conditions or restrictions under which water will be provided. In the event that a will-serve letter or letter of intent can not be provided, identify the most likely water purveyor and discuss the necessary assurances from the water purveyor to serve the project. ~~were unable to be secured. Also discuss the term of the water service to the project, whether the water purveyor has adequate water supplies for the life of the project, any previous uses of the allocated water (if known), and any issues or conditions/restrictions the purveyor may impose on the project for use of its water.~~

(vi) For all water supplied which necessitates transfers and/or exchanges at any point, identify all parties and contracts/agreements involved, the primary source for the transfer and/or exchange water (e.g., surface water, groundwater), and provide the status of all appropriate agencies' approvals for the proposed use, environmental impact analysis on the specific transfers and/or exchanges required to obtain the proposed supplies, a copy of any agency regulations that govern the use of the water, and an explanation of how the project complies with the agency regulation(s);

[RATIONALE: The project water supply must be established as early as possible as a critical path item in the staff assessment. An incomplete or inaccurate technical and/or legal basis for the proposed water supply is frequently a cause of delay in both the staff assessment and the licensing of power projects.]

(vii) Provide water mass balance and heat balance diagrams for both average and maximum flows that include all process and/or ancillary water supplies and wastewater streams. Highlight any water conservation measures on the diagram and the amount that they reduce water demand.

[RATIONALE: State law prohibits the waste or unreasonable use of water. Resolution of excessive water use issues by a proposed project is a frequent cause of delay.]

(viii) For all projects which have a discharge, provide a copy of the will-serve letter, permit or contract with the public or private entity that will be accepting the wastewater and contact storm water from the project. The letter, permit or contract should identify the discharge volumes and the chemical or physical characteristics under which the wastewater and contact storm water will be accepted.

In the event that a will-serve letter, permit, or contract cannot be provided, identify the most likely wastewater/storm water entity and discuss why the applicant was unable to secure the necessary assurances to serve the project's wastewater/storm water needs. Also, discuss the term of the wastewater service to the project, whether the wastewater entity has adequate permit capacity for the volume of wastewater from the project and has adequate permit levels for the chemical/physical characteristics of the project's wastewater and storm water for the life of the project, and any issues or conditions/restrictions the wastewater entity may impose on the project.

[RATIONALE: Any pre-treatment requirements found in the permit or contract could change the configuration of the project. For instance, if it was cost prohibitive to clean the wastewater to the permit's chemical standards, then the project may need to use zero-liquid discharge. It is necessary to know the permit conditions early in the process to avoid any amendments and major project changes. In addition, it is necessary for staff to establish that the proposed provider has the capacity to accept the wastewater and contact stormwater and to establish that the project's discharge (with or without pre-treatment) can occur without causing additional impacts. For example, if the project's discharge were to cause a municipal utility to violate the volume limit in its own discharge permit, this would be an indirect impact of the project which must be mitigated.]

(D) Identify all project elements associated with stormwater drainage, including a ~~A~~ description of the following: ~~pre-, and post-construction runoff and drainage patterns, including~~:

(i) Monthly and/or seasonal ~~P~~precipitation and stormwater runoff and drainage patterns for the proposed site and surrounding area that may be affected by the project's construction and operation.~~; and~~

(ii) Drainage facilities and the design criteria used for the plant site and ancillary facilities, including but not limited to capacity of designed system, design storm, and estimated runoff;

(iii) All assumptions and calculations used to calculate runoff and to estimate changes in flow rates between pre- and post construction; and

(iv) A copy of applicable regional and local requirements regulating the drainage systems, and a discussion of how the project's drainage design complies with these requirements.

[RATIONALE: The information on the project's potential stormwater drainage impacts provided by applicants under the previous regulation did not provide all of the information necessary for staff to fully determine the potential drainage impacts of the project. The additional information requested will allow staff to analyze the project without the need for additional data requests. This will reduce the cost to applicants for responding to data requests and will further speed staff's review of the application.

(E) An ~~assessment of the effects~~ impacts analysis of the proposed project on water resources and a discussion of conformance with water-related LORS and policy. This discussion shall include:

(i) The effects of project demand on the water supply and other users of this source, including, but not limited to, water availability for other uses during construction or after the power plant begins operation, consistency of the water use with applicable RWQCB basin plans or other applicable resource management plans, and any changes in the physical or chemical conditions of existing water supplies as a result of water use by the power plant;

[RATIONALE: Water supply related issues are highly significant reasons for delays during the licensing process. As the state's demand on water resources continues to increase, unresolved water supply issues will only cause further delays.]

~~(ii) The effects of construction activities and plant operation on water quality; and~~

(ii) If the project will pump groundwater, an aquifer drawdown study will be conducted by a professional geologist and the estimated drawdown on neighboring wells within 0.5 mile of the proposed well(s) ~~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 will be provided;

[RATIONALE: Due to the volume and pumping rate of groundwater at power plants, interference with, and significant impacts to other users in a groundwater basin frequently cause delays in review of the potential impacts from a facility.]

(iii) The effects of construction activities and plant operation on water quality and to what extent these effects could be mitigated by best management practices; ~~the project on the 100-year flood plain or other water inundation zones.~~

[RATIONALE: Unmitigated discharge related issues are common reasons for delays. Requiring that complete and detailed stormwater drainage, erosion, and sediment control information be included with the AFC will minimize such delays.]

(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."

[RATIONALE: This will establish consistency with the 2003 IEPR Water Policy]

(v) If using fresh water, include a discussion of the cumulative impacts, alternative water supply sources and alternative cooling technologies considered as part of the project design. Include an explanation of why alternative water supplies and alternative cooling are "environmentally undesirable," or "economically unsound."

[RATIONALE: This will establish consistency with the 2003 IEPR Water Policy]

(vi) The effects of the project on the 100-year flood plain, flooding potential of adjacent lands or water bodies, or other water inundation zones.

[RATIONALE: Identification of impacts to adjacent lands or water bodies will allow for more accurate identification of any required mitigation measures early in the licensing process.]

(vii) All assumptions, evidence, references, and calculations used in the analysis to assess these effects.

[RATIONALE: Understanding how the applicant has analyzed these issues will prevent misunderstandings and related delays in processing the application.]

(15) ~~Agriculture and~~ Soils

(A) A map at a scale of 1:24,000 and written description of soil types and all agricultural land uses that will be affected by the proposed project. The description shall include:

(i) The depth, texture, permeability, drainage, erosion hazard rating, and land capability class of the soil; ~~and~~

(ii) An identification of other physical and chemical characteristics of the soil necessary to allow an evaluation of soil erodibility, permeability, re-vegetation potential, and cycling of pollutants in the soil-vegetation system;

(iii) The location of any proposed fill disposal or fill procurement (borrow) sites; and

(iv) The location of any contaminated soils that could be disturbed by project construction.

[RATIONALE: The additional items are needed to understand the potential impacts of the project to agriculture and soils in the vicinity of the project. Without this information staff would be required to burden the applicant with data requests for this additional information.]

~~(B) A map at a scale of 1:24,000 and written description of agricultural land uses found within all areas affected by the proposed project. The description shall include:~~

~~(i) Crop types, irrigation systems, and any special cultivation practices; and~~

~~(ii) Whether farmland affected by the project is prime, of statewide importance, or unique as defined by the Natural Resource Conservation Service or the California Department of Conservation.~~

(B) ~~(C)~~ An assessment of the effects of the proposed project on soil resources and agricultural land uses. This discussion shall include:

(i) The quantification of accelerated soil loss due to wind and water erosion.;

~~(ii) Direct, indirect, and cumulative effects on agricultural land uses.; and If the proposed site or related facilities are subject to an Agricultural Land Conservation contract, provide a written copy and a discussion of the status of the expiration or canceling of such contract.~~

(ii~~i~~) The effect of power plant emissions on surrounding soil-vegetation systems.

[RATIONALE: Deleted sections were moved to Land Use for continuity of analysis.]

(16) Paleontologic Resources

(A) Identification of the physiographic province and a brief summary of the geologic setting, formations, and stratigraphy of the project area. The size of the paleonotological study area may vary depending on the depositional history of the ~~area~~ region.

[RATIONALE: This addition is needed to clarify that the "area" requested was the size of the area under study. Also, the word "area" was used twice in the same sentence which was confusing to applicants and the public. Region more appropriately describes the requested information.]

(B) A discussion of the sensitivity of the project area described in subsection (g)(16)(A) and the presence and significance of any known paleontologic localities or other paleontologic resources within or adjacent to the project. Include a discussion of sensitivity for each geologic unit identified on the most recent geologic map at a scale of 1:24,000. Provide rationale as to why the sensitivity was assigned.

[RATIONALE: This addition clarifies that the applicant must address each geologic unit and that they must provide rationale for sensitivity assignments. This will reduce the need for staff to seek this information during discovery and will reduce the applicant's cost for responding to staff data requests.]

(C) A summary of all local museums, literature searches and field surveys used to provide information about paleontologic resources in the project area described in subsection (g)(16)(A). Identify the dates of the surveys, methods used in completing the surveys, and the names and qualifications of the individuals conducting the surveys.

[RATIONALE: Local museums are a primary source of information regarding paleontologic resources in an area. This addition assures that applicants contact museums in the area to

determine what resources may have been collected near the site. While many applicants provide this information, this addition will streamline the review process by assuring that no data request is need to obtain this information.]

(D) Information on the specific location of known paleontologic resources, survey reports, locality records, and maps at a scale of 1:24,000, showing occurrences of fossil finds within a one-mile radius of the project and related facilities shall be included in a separate appendix to the Application and submitted to the Commission under a request for confidentiality, pursuant to Title 20, California Code of Regulations, s 2501 et seq.

[RATIONALE: The requirement to provide information on known paleontologic resources, on a map at a scale of 1:24,000, lacks definition on the area surrounding the project and its facilities that must be studied by the applicant. Providing information only on resources within a one-mile radius will provide the needed definition and will reduce the cost to applicants who might needlessly study a larger area.]

(E) A discussion of educational programs proposed to enhance awareness of potential impacts to paleontological resources by employees, measures proposed for mitigation of impacts to known paleontologic resources, and a set of contingency measures for mitigation of potential impacts to currently unknown paleontologic resources.

(17) Geological Hazards and Resources

(A) A summary of the geology, seismicity, and geologic resources of the project site and related facilities~~;~~, including linear facilities.

(B) A map at a scale of 1:24,000 and description of all recognized stratigraphic units, geologic structures, and geomorphic features within two (2) miles of the project site and along proposed facilities. Include an analysis of the likelihood of ground rupture, seismic shaking, mass wasting and slope stability, liquefaction, subsidence, tsunami runup, and expansion or collapse of soil structures at the plant site. Describe known geologic hazards along or crossing linear facilities.

[RATIONALE: This section did not explicitly require the applicant to provide information regarding the submission of data relative to any proposed linear facilities. This resulted in additional requests for information during discovery, and additional costs to the applicant for responding to these requests. The proposed revisions will clarify that the information is required in each application.]

(C) A map and description of geologic resources of recreational, commercial, or scientific value which may be affected by the project. Include a discussion of the techniques used to identify and evaluate these resources.

(18) Transmission System Safety and Nuisance

(A) The locations and a description of the existing switchyards and overhead and underground transmission lines that would be affected by the proposed project.

(B) An estimate of the existing electric and magnetic fields from the facilities listed in (A) above and the future electric and magnetic fields that would be created by the proposed project, calculated at the property boundary of the site and at the edge of the rights of way for any transmission line. Also provide an estimate of the radio and television interference that could result from the project.

(C) Specific measures proposed to mitigate identified impacts, including a description of measures proposed to eliminate or reduce radio and television interference, and all measures taken to reduce electric and magnetic field levels.

~~(i~~ h) Engineering

(i)(1) Facility Design

(A) A description of the actual site conditions and investigations or studies conducted to determine the site conditions used as the basis for developing design criteria. The descriptions shall include, but not be limited to, seismic and other geologic hazards, adverse conditions that could affect the project's foundation, adverse meteorological and climate conditions, and flooding hazards, if applicable.

(B) A discussion of any measures proposed to improve adverse site conditions.

(C) A description of the proposed foundation types, design criteria (include derivation), analytical techniques, assumptions, loading conditions, and loading combinations to be used in the design of facility structures and major mechanical and electrical equipment.

(D) For each of the following facilities and/or systems, provide a description including drawings, dimensions, surface-area requirements, typical operating data, and performance and design criteria for protection from impacts due to adverse site conditions:

(i) The power generation system;

(ii) The heat dissipation system;

(iii) The cooling water supply system, and, where applicable, pre-plant treatment procedures;

(iv) The atmospheric emission control system;

(v) The waste disposal system and on-site disposal sites;

(vi) The noise emission abatement system;

(vii) The geothermal resource conveyance and re-injection lines (if applicable);

(viii) Switchyards/transformer systems; and

(ix) Other significant facilities, structures, or system components proposed by the applicant.

(i)(2) Transmission System Design

(A) A discussion of the need for the additional electric transmission lines, substations, or other equipment, the basis for selecting principal points of junction with the existing electric transmission system, and the capability and voltage levels of the proposed lines, along with the basis for selection of the capacity and voltage levels.

(B) A discussion of the extent to which the proposed electric transmission facilities have been designed, planned, and routed to meet the transmission requirements created by additional generating facilities planned by the applicant or any other entity.

(i)(3) Reliability

(A) A discussion of the sources and availability of the fuel or fuels to be used, and their expected prices, over the estimated service life of the facilities.

(B) A discussion of the anticipated service life and degree of reliability expected to be achieved by the proposed facilities based on a consideration of:

(i) Expected overall availability factor, and annual and lifetime capacity factors;

(ii) The demonstrated or anticipated feasibility of the technologies, systems, components, and measures proposed to be employed in the facilities, including the power generation system, the heat dissipation system, the water supply system, the reinjection system, the atmospheric emission control system, resource conveyance lines, and the waste disposal system;

(iii) Geologic and flood hazards, meteorologic conditions and climatic extremes, and cooling water availability;

(iv) Special design features adopted by the applicant or resource supplier to ensure power plant reliability including equipment redundancy; and

(v) For technologies not previously installed and operated in California, ~~T~~the expected power plant maturation period.

[Rationale: As currently written, the request for information regarding the project's maturation period makes sense only for new technologies which do not have a demonstrated operational record in California. The generating technologies currently being sited in California (such as simple cycle and combined cycle gas turbine generating plants), are well understood. The

current requirement often causes delays in staff's data adequacy review, and additional costs for applicants, because it is commonly overlooked in preparing the AFC. The proposed addition makes it clear that the information is needed only for technologies which have not previously been installed and operated in California.]

(i)(4) Efficiency

(A) Heat and mass balance diagrams for design conditions for each mode of operation.

(B) Annual fuel consumption in BTUs for each mode of operation, including hot restarts and cold starts.

(C) Annual net electrical energy produced in MWh for each mode of operation, including starts and shutdowns.

(D) Number of hours the plant will be operated in each design condition in each year.

(E) If the project will be a cogeneration facility, calculations showing compliance with applicable efficiency and operating standards.

(F) A discussion of alternative generating technologies available for the project, including the projected efficiency of each, and an explanation why the chosen equipment was selected over these alternatives.

(5) Demonstration, if applicable

(A) Justification for the request for demonstration status, based on the criteria contained in the most recently adopted Electricity Report.

(B) A demonstration plan containing the following elements:

(i) A description of the technology to be demonstrated;

(ii) The objectives of the demonstration;

(iii) The plans for acquiring the data necessary to verify the state demonstration objectives;

(iv) The schedule for implementing the demonstration tasks;

(v) The expected date of commencement of commercial operation of the facility, if applicable, and

(vi) A description of contingent actions to be implemented if individual demonstration tasks are technologically unsuccessful.

~~(h~~ i) Compliance with Laws, Ordinances, Regulations and Standards

(1) Tables which identify:

(A) Laws, regulations, ordinances, standards, adopted local, regional, state, and federal land use plans, leases, and permits applicable to the proposed project, and a discussion of the applicability of, and conformance with each. The table or matrix shall explicitly reference pages in the application wherein conformance, with each law or standard during both construction and operation of the facility is discussed; and

(B) Each agency with jurisdiction to issue applicable permits, leases, and approvals or to enforce identified laws, regulations, standards, and adopted local, regional, state, and federal land use plans, and agencies which would have permit approval or enforcement authority, but for the exclusive authority of the commission to certify sites and related facilities.

~~(2) A discussion of the conformity of the project with the requirements listed in subsection (h)(1)(A).~~

[RATIONALE: This discussion requirement has been moved to (i)(1)(A) to make it clear to applicants that information on conformance with all LORS is needed in the application. Clarity in the regulation reduces the applicants cost for compliance.]

(2~~3~~) The name, title, phone number, ~~and~~ address (required), and email address (if known), of an official who was contacted within each agency, and also provide the name of the official who will serve as a contact person for Commission staff ~~the agency~~.

[RATIONALE: This section has been updated to provide an electronic contact point for agency contacts. This additional contact information will be helpful to both the staff and to public who wish to discuss the proposed project.]

(3~~4~~) A schedule indicating when permits outside the authority of the commission will be obtained and the steps the applicant has taken or plans to take to obtain such permits.

Note: Authority cited: Sections 25213, 25216.5(a), 25218(e), Public Resources Code. Reference: Sections 21080.5, 25308.5, 25519(a), 25519(c), 25520, 25522(b), 25523(d)(1), 25540.1, 25540.2, 25540.6, Public Resources Code.

ATTACHMENT A

ALTERNATIVE - Section 1207. Intervenors

11440.50. (a) This section applies in adjudicative proceedings of an agency if the agency by regulation provides that this section is applicable in the proceedings.

(b) The presiding officer shall grant a motion for intervention if all of the following conditions are satisfied:

(1) The motion is submitted in writing, with copies served on all parties named in the agency's pleading.

(2) The motion is made as early as practicable in advance of the hearing. If there is a prehearing conference, the motion shall be made in advance of the prehearing conference and shall be resolved at the prehearing conference.

(3) The motion states facts demonstrating that the applicant's legal rights, duties, privileges, or immunities will be substantially affected by the proceeding or that the applicant qualifies as an intervenor under a statute or regulation.

(4) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing the intervention.

(c) 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.

(d) As early as practicable in advance of the hearing the presiding officer shall issue an order granting or denying the motion for intervention, specifying any conditions, and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification. The presiding officer shall promptly give notice of an order granting, denying, or modifying intervention to the applicant and to all parties.

(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) Nothing in this section precludes an agency from adopting a regulation that permits participation by a person short of intervention as a party, subject to Article 7 (commencing with Section 11430.10) of Chapter 4.5.

ALTERNATIVE - Section 1216. Ex Parte Contacts

11430.10. (a) While the proceeding is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an interested
person outside the agency, without notice and opportunity for all parties to participate in the communication.

(b) Nothing in this section precludes a communication, including a communication from an employee or representative of an agency that is a party, made on the record at the hearing.

(c) For the purpose of this section, a proceeding is pending from the issuance of the agency's pleading, or from an application for an agency decision, whichever is earlier.

11430.20. A communication otherwise prohibited by Section 11430.10 is permissible in any of the following circumstances:

(a) The communication is required for disposition of an ex parte matter specifically authorized by statute.

(b) The communication concerns a matter of procedure or practice, including a request for a continuance, that is not in controversy.

11430.30. A communication otherwise prohibited by Section 11430.10 from an employee or representative of an agency that is a party to the presiding officer is permissible in any of the following circumstances:

(a) The communication is for the purpose of assistance and advice to the presiding officer from a person who has not served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage. An assistant or advisor may evaluate the evidence in the record but shall not furnish, augment, diminish, or modify the evidence in the record.

(b) The communication is for the purpose of advising the presiding officer concerning a settlement proposal advocated by the advisor.

(c) The communication is for the purpose of advising the presiding officer concerning any of the following matters in an adjudicative proceeding that is nonprosecutorial in character:

(1) The advice involves a technical issue in the proceeding and the advice is necessary for, and is not otherwise reasonably available to, the presiding officer, provided the content of the advice is disclosed on the record and all parties are given an opportunity to address it in the manner provided in Section 11430.50.

(2) The advice involves an issue in a proceeding of the San Francisco Bay Conservation and Development Commission, California Tahoe Regional Planning Agency, Delta Protection Commission, Water Resources Control Board, or a regional water quality control board.

11430.40. If, while the proceeding is pending but before serving as presiding officer, a person receives a communication of a type that would be in violation of this article if received while serving as presiding officer, the person, promptly after starting to serve, shall disclose the content of the communication on the record and give all parties an opportunity to address it in the manner provided in Section **11430**.50.

11430.50. (a) If a presiding officer receives a communication in violation of this article, the presiding officer shall make all ofthe following a part of the record in the proceeding:

(1) If the communication is written, the writing and any written response of the presiding officer to the communication.

(2) If the communication is oral, a memorandum stating the substance of the communication, any response made by the presiding officer, and the identity of each person from whom the presiding officer received the communication.

(b) The presiding officer shall notify all parties that a communication described in this section has been made a part of the record.

(c) If a party requests an opportunity to address the communication within 10 days after receipt of notice of the communication:

(1) The party shall be allowed to comment on the communication.

(2) The presiding officer has discretion to allow the party to present evidence concerning the subject of the communication, including discretion to reopen a hearing that has been concluded.

11430.60. Receipt by the presiding officer of a communication in violation of this article may be grounds for disqualification of the presiding officer. If the presiding officer is disqualified, the portion of the record pertaining to the ex parte communication may be sealed by protective order of the disqualified presiding officer.

11430.70. (a) Subject to subdivision (b), the provisions of this article governing ex parte communications to the presiding officer also govern ex parte communications in an adjudicative proceeding to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(b) An ex parte communication to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated is permissible in an individualized ratemaking proceeding if the content of the communication is disclosed on the record and all parties are given an opportunity to address it in the manner provided in Section **11430**.50.

11430.80. (a) There shall be no communication, direct or indirect, while a proceeding is pending regarding the merits of any issue in the proceeding, between the presiding officer and the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(b) This section does not apply where the agency head or other person or body to which the power to hear or decide in the proceeding is delegated serves as both presiding officer and agency head, or where the presiding officer does not issue a decision in the proceeding.