

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

February 14, 2007

DOCKET 04-SIT-2
DATE FEB 14 2007
RECD. FEB 14 2007

To: **INTERESTED PARTIES**Subject: **CALIFORNIA ENERGY COMMISSION'S SECOND RESPONSE TO COMMENTS FROM INTERESTED PARTIES REGARDING THE 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's Siting Committee issued a Notice of Proposed Action to revise the regulations on December 29, 2006. A hearing was held on January 17, 2007 to receive comments, and interested parties submitted written comments by February 12, 2007.

Energy Commission staff has responded to the comments by the interested parties and issued a Notice of Proposed Change (NOPC) on February 13, 2007. This NOPC has delayed the final hearing by 15 days. The Energy Commission had originally scheduled a final public hearing for February 14, 2007; given the NOPC, it has rescheduled the final hearing as an agenda item at its regularly scheduled Business Meeting on February 28, 2007, at 10:00 AM. This hearing will focus on the staff's proposed revisions, comments received, suggested changes to the proposed revisions and possible adoption of the regulations. The original hearing has been noticed separately in the Notice of Proposed Action and can be found on the Energy Commission website at <http://www.energy.ca.gov/siting/rulemaking/notices/index.html>. Following the hearing, staff will prepare a final set of revised regulations, based upon any additional information and direction from the Commission, and a Final Statement of Reasons, and submit them to the Office of Administrative Law for their approval and eventual filing with the Secretary of State.

Energy Commission staff's Second Response to Comments is attached. Proposed changes to the Rules of Practice and Procedure and Power Plant Site Certification Regulations can be viewed on the Commission's website at <http://www.energy.ca.gov/siting/rulemaking/documents/index.html>. The language changes in the Notice of Proposed Change are double underlined and deleted language is shown with "double strikethrough." Each proposed change is followed by a rationale. If you would like to obtain a paper copy or compact disk of the proposed changes, please contact Angela Hockaday at (916) 654-3925 or by email at ahockada@energy.state.ca.us.

The Energy Commission's Public Adviser's Office 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.

February 14, 2007

Page 2

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:

2/14/07



Roger E. Johnson
Siting & Compliance Office Manager

SECOND RESPONSE TO COMMENTS

APPENDIX B

Steve Baker
Senior Mechanical Engineer
Noise Specialist

NOISE

URS CORPORATION

Section (g)(4)(A)

Thank you for the opportunity to comment on the Proposed Revisions to the California Energy Commission's Rules of Practice and Procedure and Power Plant Site Certification (Rules). As one who has appeared in the capacity of expert witness during the adjudicative proceedings regarding several cases and one who has prepared the noise section of numerous Applications for Certification, I recommend the following:

In Appendix B of the Rules, subsection (g), (4) Noise, (A), substitute the words "ambient noise" for the word "background".

My rationale:

- This simple change will make the text consistent with the words already used in the following subsection (g) (4) Noise (B);
- remove confusion between terms that have specific scientific meanings;
- provide consistency with the term "ambient noise" as used in the California Environmental Quality Act (e.g., Appendix G. Section XI. Noise, (c) and (d)).

The CEC rationale for the change could remain as is (i.e., inserted for clarification). This is an ideal and opportune time to address this persistent concern that has been raised on the record in several previous cases upon which the Commission has acted (e.g., East Altamont (01-AFC-4), San Joaquin Valley (01-AFC-22), Tracy (01-AFC-16)).

RESPONSE: *Staff disagrees with the comment.*

In his February 9, 2007 letter to James Reede, Rob Greene of URS recommends making a change to the language in the Siting Regs, Appendix B(g)(4)(A), specifically, replacing the word "background" with the words "ambient noise." He characterizes the change as "simple." Staff disagrees with the change proposed.

Background Noise Level (L_{90}) as a Baseline

The ambient noise environment (that noise regime that exists around a proposed project's location, absent noise from the power plant itself) is typically composed of relatively random, intermittent sounds. The wind blows, vehicles drive by, dogs bark, frogs croak, birds and crickets chirp, airplanes fly overhead, people talk and shout, radios and televisions play. In the moments when none of these intermittent noises are present, what remains is constant background noise. This "background noise level," an integral component of the ambient noise environment, is commonly described in the noise industry by the L_{90} value, which is the noise level exceeded 90 percent of the time.

Power plant noise is unique. A power plant operates as essentially a steady, continuous noise source, unlike the intermittent sounds that comprise the majority of the ambient noise environment. As such, power plant noise not only contributes to the overall ambient noise environment, but contributes to, and becomes part of, the background noise level, or the sound heard when most intermittent noises cease. Where power plant noise is audible, it will tend to define the background noise level. For this reason, staff compares the projected power plant noise to the background (L₉₀) noise levels at the affected sensitive receptors.

The change Mr. Greene recommends would drastically change the way the Energy Commission treats noise in power plant siting cases. Specifically, project developers would be allowed to build power plants that are noisier (and cheaper) than the Energy Commission allows.

Staff has utilized the background (L₉₀) noise level in evaluating noise impacts for decades. Staff has consistently employed this approach in nearly every siting case throughout the years; it was deviated from only in specific cases where the details of the case made it appropriate to do so. Staff's method of analyzing noise has been accepted by the Energy Commission and adopted in its Decisions in nearly every case over many years.

Adoption of Mr. Greene's recommendation would result in power plants that subject nearby residences, hospitals and other sensitive noise receptors to greater noise impacts than is currently the case. (Very few power plants sited by the Energy Commission have caused noise complaints from nearby receptors; those that have caused problems were able to deal with those problems successfully through the Compliance process.)

In his letter, Mr. Greene claims that this change is "simple" and will:

- make the text consistent with the words already used in the following subsection (g)(4)(B);
- remove confusion between terms that have specific scientific meanings; and
- provide consistency with the term "ambient noise" as used in the California Environmental Quality Act (e.g., Appendix G, Section XI, Noise, (c) and (d)).

Energy Commission staff asserts:

- The existing language in paragraph (A) of the regulation is wholly consistent with that in paragraph (B), because the background noise level is an integral component of "...the ambient noise levels at those sites identified under subsection (g)(4)(A)...."
- There is no confusion between terms that have specific scientific meanings. The background noise level is a significant subset of the ambient noise regime, not a contradictory concept.
- The language in the regulation is wholly consistent with CEQA. CEQA requires consideration of "... (Appendix G)(XI)(c) A substantial permanent increase in ambient noise levels...above levels existing without the project..." and "... (d) A substantial temporary or periodic increase in ambient noise levels...above levels existing without the project." As explained above, the background noise level is an integral component of the ambient noise environment specified in these sections.