



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
1-800-822-6228 – WWW.ENERGY.CA.GOV

IN THE MATTER OF COMPLAINT AGAINST  
ORMAT NEVADA, INC. *BROUGHT BY*  
*CALIFORNIA UNIONS FOR RELIABLE ENERGY*

Docket No. 11-CAI-02

**DOCKET**  
11-CAI-02

DATE AUG 23 2011

RECD. AUG 23 2011

**NOTICE OF PREHEARING CONFERENCE  
AND  
EVIDENTIARY HEARING**

**PLEASE TAKE NOTICE** that the Committee designated by the Energy Commission to conduct proceedings on the Complaint brought by California Unions for Reliable Energy (CURE) against Ormat Nevada, Inc. (Respondent) for a jurisdictional determination regarding East and North Brawley Geothermal Projects, has scheduled a Prehearing Conference and an Evidentiary Hearing as follows:

***The Prehearing Conference will be conducted on:***

**MONDAY, SEPTEMBER 19, 2011**  
Beginning at 10:00 a.m.

California Energy Commission  
Hearing Room A  
1516 Ninth Street  
Sacramento, CA 95814  
(Map attached)

***The Evidentiary Hearing will be conducted on:***

**MONDAY, SEPTEMBER 26, 2011**  
Beginning at 9:30 a.m.

California Energy Commission  
Hearing Room B  
1516 Ninth Street  
Sacramento, CA 95814

## **Teleconference Option**

Parties and the public may attend the Prehearing Conference and Evidentiary Hearing in person at the above locations or by telephone and/or by computer via our "WebEx" web conferencing system. For details on how to participate by WebEx, please see the "**Participation through WebEx**" directions attached to this Notice.

## **Background and Procedure**

On June 30, 2011, Complainant, CURE, filed a Verified Complaint and Request for Investigation ("Complaint"), requesting the California Energy Commission to investigate whether Ormat Nevada, Inc. ("Ormat") has violated Public Resources Code section 25500 by circumventing the Commission's jurisdiction over Ormat's existing North Brawley Geothermal Development ("North Brawley") and Ormat's proposed East Brawley Geothermal Development ("East Brawley"). CURE alleges that Ormat's North and East Brawley developments are not distinct facilities operating under the 50 megawatt (MW) jurisdictional threshold, but are, instead, one facility with a combined generating capacity over the 50 MW jurisdictional threshold, and thus would be subject to the Commission's licensing authority. CURE provides, as support, a California Public Utilities Commission ("CPUC") resolution authorizing a Power Purchase Agreement ("PPA") between Southern California Edison Company ("SCE") and Ormat for the sale of 50 MW from the North Brawley facility, with an option to sell an additional 50 MW from the East Brawley facility. CURE also alleges that the North Brawley and East Brawley facilities are not distinct units but are a single facility because they will function as interdependent and physically interconnected generation units. CURE further alleges that both facilities will share transmission and water supply infrastructure which will be developed and owned by Ormat on adjoining parcels which are leased or owned by Ormat.

The Complaint requests the following relief:

1. Immediately commence an investigation of Ormat for the purpose of a jurisdictional determination regarding the North Brawley and East Brawley facilities.
2. Immediately commence an investigation to determine the nature and extent of any violations by Ormat.
3. Request the Attorney General to petition for an injunction of any ongoing licensing and construction activities relating to the North Brawley and East Brawley facilities.
4. Find that North Brawley and East Brawley are individually and collectively subject to the Commission's licensing jurisdiction under the Warren-Alquist Act.

5. Take any other action necessary and appropriate under the Commission's statutory and regulatory authority to assume licensing jurisdiction of the North Brawley and East Brawley projects.
6. Take any other action necessary and appropriate under the Commission's statutory and regulatory authority to prevent any further violation by Ormat and to remedy any and all adverse impacts to the public health, safety, and welfare, and the environment, resulting from the violation.
7. Serve a copy of this Complaint on Ormat, provide notice of the Complaint and future investigatory proceedings to petitioners, respondents, and all entities identified in this Complaint, schedule any necessary hearings, and take additional steps to notify other individuals, organization, and businesses which the Committee or the Chairman has reason to believe would be adversely affected by a decision.

The Chairman of the Energy Commission has found that there is good cause to set the matter for a hearing on the Complaint and in the 7/26/11 Order required Energy Commission Staff to prepare an assessment of the Complaint and Answer. The matter was assigned to a Committee consisting of Karen Douglas (presiding) and Bob Weisenmiller on August 10, 2011. The Committee will hear the evidence on the Complaint in two phases. The first phase will be limited to the question of whether the North Brawley and East Brawley facilities are subject to Energy Commission jurisdiction. CURE has the burden of proving the allegations by a preponderance of evidence. After hearing all the evidence on the question of jurisdiction, the Committee will render a decision. If the Committee decides that the Energy Commission lacks jurisdiction, in favor of Ormat, there will be no further hearings and the Complaint will be dismissed. If, on the other hand, the Committee finds that the Energy Commission has jurisdiction, in favor of the Complainant, the Committee will immediately conduct further hearings limited to the question of administrative remedies. After receiving all the evidence relevant to administrative remedies, the Committee will issue a Proposed Decision setting out its recommendations to the full Commission within 21 days of the hearing. (Cal. Code. Regs., tit. 20, § 1235.) The Energy Commission will prepare a Decision within 21 days of the filing of the Committee's Proposed Decision. (Cal. Code. Regs, tit. 20, § 1235.)

The Complaint alleges that the following statutes, regulations, orders and decisions are in issue: Public Resources Code sections 25110, 25120, and 25500; Title 20, California Code of Regulations section 2003 and sections 1230 through 1238, and the October 29, 1986 Decision in the matter of the Luz SEGS Units III-VII. The Energy Commission may take any action it deems reasonable and necessary to enforce the provisions of the Warren-Alquist Act (Pub. Res. Code § 25000, et seq.) [Pub. Res. Code § 25218(e)], including, but not limited to seeking an injunction against violations of the Warren-Alquist Act or the Energy Commission's rules and regulations.

## Purpose

The Prehearing Conference is a public forum where the Committee will assess the parties' readiness for an evidentiary hearing, identify areas of agreement or dispute, and discuss the remaining schedule and procedures necessary to conclude the complaint and investigation process. The Committee may interrupt the Prehearing Conference to allow the parties to convene a workshop, if warranted.

At the Prehearing Conference, all parties (Complainant, Respondent, Staff, and Intervenors, if any) shall identify exhibits, proposed witnesses, the time required for direct testimony and/or cross-examination and a proposed briefing schedule.

## Prehearing Conference Statements

To facilitate the process, each party shall serve and file a **Prehearing Conference Statement**. The statements shall be received by the Hearing Officer and other parties on the Proof of Service list and the Commission's Docket Unit, 1516 9th Street, MS-4, Sacramento, California 95814-5512, by **12:00 Noon on Monday, September 12, 2011**. The parties shall also submit Microsoft Word versions of their statements, including the exhibit list, to the Hearing Officer via e-mail.

***FAILURE TO FILE A PREHEARING CONFERENCE STATEMENT BY THE DEADLINE MAY PRECLUDE A PARTY FROM PARTICIPATING AT THE PREHEARING CONFERENCE AND EVIDENTIARY HEARING.***

Each statement shall specify:

1. The identity of each witness sponsored by the party; a **brief summary of the testimony** to be offered by each witness; **qualifications** of each witness; and the **time required** to present direct testimony by each witness;
2. An exhibit list identifying exhibits and declarations that each party intends to offer into evidence, **provided in the format attached to this Notice**. The Hearing Office can provide the parties with a Word version of the exhibit list template;
3. Proposals for briefing deadlines and other scheduling matters;
4. Comments, if any, on the Committee's intention to use informal hearing procedures, described below; and
5. Intervenors' Prehearing Conference Statement must include a statement that identifies those allegations of the Complaint and responses in the Answer that you believe are true and a statement that identifies those allegations and responses that you believe are not true.

## Format for Presenting Evidence

Each document shall be numbered and identified on the party's **exhibit list**.

- **Complainant's** exhibits shall be numbered consecutively as **Exhibits 1 through 100**.
- **Respondent's** exhibits shall be numbered consecutively as **Exhibits 200 through 299**.
- **Staff's** exhibits shall be numbered consecutively as **Exhibits 300 through 399**.

**Printed or electronic (i.e. e-mail or compact disk) copies of the exhibits shall be provided to the Committee and other parties no later than 12:00 Noon on Monday, September 12, 2011. If sent by e-mail, a compact disk or paper copy shall also be placed in the first class or overnight mail by 12:00 Noon on Monday, September 12, 2011. In addition, printed and electronic copies of all exhibits shall be provided to the Hearing Officer no later than 12:00 Noon on Monday, September 12, 2011.**

## Notice of Committee's Intention to Use Informal Hearing Procedures

Pursuant to Government Code section 11445.10 et seq. and section 1217 of the Commission's regulations, the Committee may conduct all or portions of the evidentiary hearings in an informal manner. For example, the Committee could allow a panel of witnesses sponsored by a single party or by multiple parties to testify at one time, with an exchange of questions and responses between the witnesses and counsel for the various parties instead of formal direct and cross-examination. Other aspects of the hearing may be conducted informally as well at the discretion of the Committee. Any objections to the taking of testimony or evidence in an informal manner shall be filed on or before the deadline for filing Prehearing Conference Statements (**12:00 Noon on Monday, September 12, 2011**). In their Prehearing Conference Statements, the parties are encouraged to comment on the format best suited for the hearings and identify the topics for which informal hearings may be appropriate.

## Petitions to Intervene to Become a Formal Party

The Energy Commission's Decision on the Complaint will be based on the official evidentiary record developed at the hearing. Only formal parties (Complainant, Respondent, Staff, and approved Intervenors) may present evidence and cross-examine witnesses at the hearing.

Anyone with an appropriate interest in the Complaint may file a Petition to Intervene and become a formal party. At the Evidentiary Hearing, a formal party may offer testimony and documentary evidence, receive documents filed by other parties, and cross-examine witnesses. However, a formal party must also comply with Committee orders,

procedures, and filing requirements, and is subject to having its own witnesses cross-examined by other parties.

**The deadline to file a Petition to Intervene in this complaint proceeding is noon on Friday September 9, 2011.** Petitions filed after that date and time extensions for new Intervenors to review case materials will be granted only upon a showing of extraordinary good cause. Otherwise, Intervenors will take the case as they find it at the time intervention is granted. For example, if the deadline for filing opening testimony has passed, the newly approved Intervenor will not be allowed to file opening testimony. Persons interested in obtaining intervenor status are therefore encouraged to file their petitions as soon as possible.

### **How to Intervene**

The Energy Commission's Public Adviser's Office will assist any person or organization interested in preparing a Petition to Intervene. For assistance in this process, contact the Public Adviser's Office at (916) 654-4489 or (800) 822-6228 or e-mail: **[publicadviser@energy.state.ca.us]**.

### **Agency and Public Participation**

It is not necessary to be an Intervenor to participate in the public process. Anyone desiring information on how to participate may contact the Public Adviser's Office as indicated above.

Local, state, and federal governmental agencies may participate at the Prehearing Conference and Evidentiary Hearing, as necessary. (Cal. Code Regs., tit. 20, § 1714.5.) Elected officials and members of the public may present public comments at these events and/or submit written comments to the Energy Commission's Docket Unit. Please include "**CURE v. ORMAT, Docket No. 11-CAI-02**" on any written comments. **Comments made or submitted after the close of the Evidentiary Hearings will not be considered in the Proposed Decision.**

### **Energy Commission Information**

Contact Lourdes Quiroz if you have a disability and need assistance to participate in this event, at (916) 654-5146 or e-mail: **[lquiroz@energy.state.ca.us]**.

Media inquiries should be directed to the Office of Media and Public Communications at (916) 654-4989 or e-mail: **[mediaoffice@energy.state.ca.us]**.

Questions of a legal or procedural nature should be directed to Ken Celli, the Hearing Officer, at (916) 651-8893 or e-mail: **[kcelli@energy.state.ca.us]**.

Technical questions concerning the project should be addressed to Bob Worl, Staff Project Manager, at (916) 651-8853, or e-mail: **[rworl@energy.state.ca.us]**.

Information concerning the status of the project, as well as notices and other relevant documents, may be viewed on the Energy Commission's Internet web page at: [\[http://www.energy.ca.gov/proceedings/11-cai-02/index.html\]](http://www.energy.ca.gov/proceedings/11-cai-02/index.html).

Dated: August 19, 2010, at Sacramento, California.

A handwritten signature in black ink, appearing to read 'K. Douglas', written over a horizontal line.

KAREN DOUGLAS  
Commissioner and Presiding Member  
CURE v. ORMAT Committee

A handwritten signature in black ink, appearing to read 'Robert B. Weisenmiller', written over a horizontal line.

ROBERT B. WEISENMILLER  
Chair and Associate Member  
CURE v. ORMAT Committee

PARTICIPATION IN THE PRE-HEARING CONFERENCE AND EVIDENTIARY HEARINGS THROUGH WEBEX  
THE ENERGY COMMISSION'S ON-LINE MEETING SERVICE

1. COMPUTER LOG-ON WITH A DIRECT PHONE NUMBER:

- Please go to <https://energy.webex.com> and enter the MEETING NUMBER unique to the specific hearing date:
  - 9/19/11 – Prehearing Conference meeting number: 923 475 536
  - 9/26/11 – Evidentiary Hearing meeting number: 921 202 362
  
- When prompted, enter your information and the MEETING PASSWORD: **complaint#1**

After you login, a prompt will appear on-screen for you to provide your phone number. In the **Number box**, type your area code and phone number and click OK. **You will receive a call back on your phone for the audio portion of the meeting.** International callers can use the "Country/Region" button to help make their connection.

2. COMPUTER LOG-ON FOR CALLERS WITH AN EXTENSION PHONE NUMBER, ETC.:

- Please go to <https://energy.webex.com> and enter the unique meeting number and the meeting password (above).
  
- *After you login, a prompt will ask for your phone number. Click "CANCEL."*
  
- *Instead call 1-866-469-3239 (toll-free in the U.S. and Canada). When prompted, enter the meeting number above and your unique Attendee ID number which is listed in the top left area of your computer screen after you login.*

3. TELEPHONE ONLY (NO COMPUTER ACCESS):

- *Call 1-866-469-3239 (toll-free in the U.S. and Canada) and when prompted enter the meeting number unique to the specific hearing date:*
  - 9/19/11 – Prehearing Conference meeting number: 923 475 536
  - 9/26/11 – Evidentiary Hearing meeting number: 921 202 362

If you have difficulty joining the meeting, please call the WebEx Technical Support number at 1-866-229-3239. To see if your computer is compatible, visit <http://support.webex.com/support/system-requirements.html>.

Please be aware that the meeting's WebEx audio and on-screen activity may be recorded.



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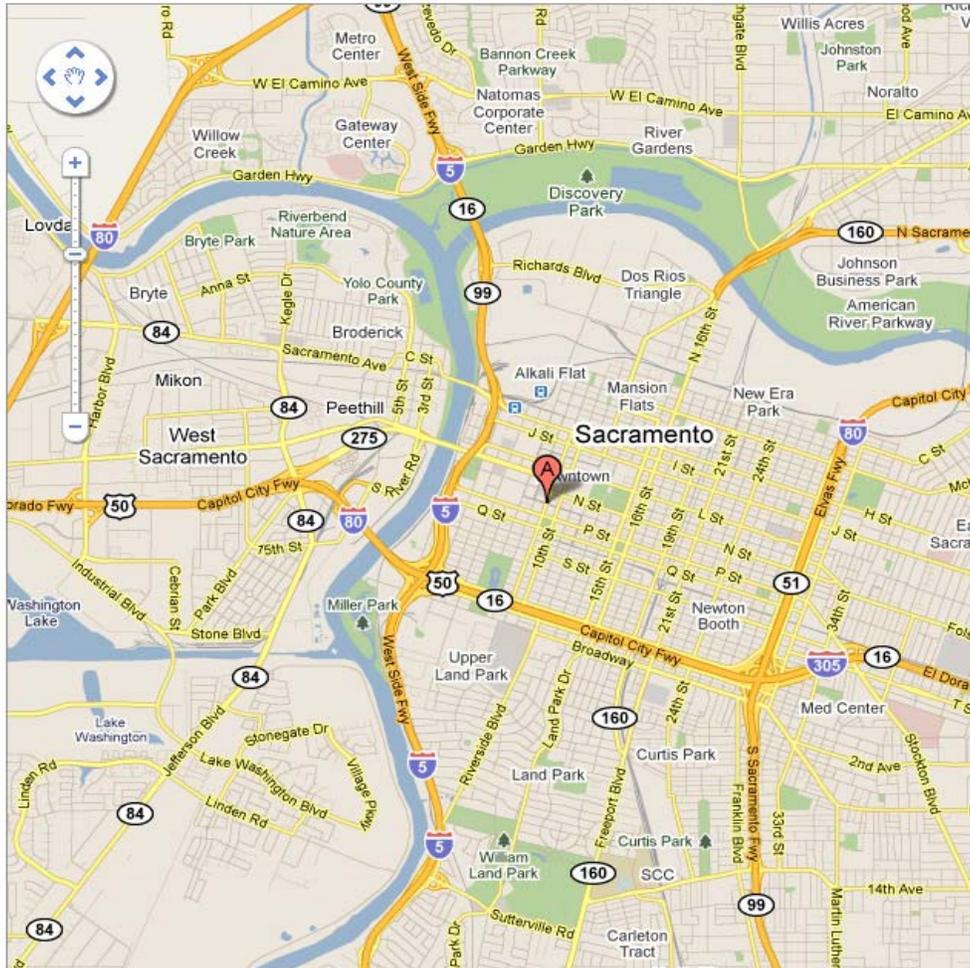
**SAMPLE EXHIBIT LIST**

**NOTE:** The format of the samples provided below is equally applicable to all parties. However, given the likely differences in the documentary evidence submitted by the parties, the samples illustrate how to address specific types of evidence that might be unique to each party.

Exhibit	Brief Description	Offered	Admitted
<b>COMPLAINANT'S EXHIBITS</b>			
1	ABC Power Plant Project Complaint; dated [month, day, year], and docketed on [month, day, year].		
<b>RESPONDENT'S EXHIBITS</b>			
200	LETTER FROM CALIFORNIA ENERGY COMMISSION DATED dated [month, day, year], and docketed on [month, day, year].		
<b>STAFF'S EXHIBITS</b>			
300	Testimony of Expert, John Doe		
<b>INTERVENOR'S EXHIBITS</b>			
400	Testimony of Expert, Jane Doe		

**SUBMIT ALL EXHIBIT LISTS IN WORD FORMAT.**

**California Energy Commission  
Hearing Rooms A and B  
1516 Ninth Street  
Sacramento, CA 95814**





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***IN THE MATTER OF COMPLAINT AGAINST  
ORMAT NEVADA, INC. BROUGHT BY  
CALIFORNIA UNIONS FOR RELIABLE ENERGY***

**Docket No. 11-CAI-02  
(Revised 8/19/11)**

**RESPONDENT**

\*Ormat Nevada, Inc.  
6225 Neil Road  
Reno, NV 89511

**COUNSEL FOR RESPONDENT**

\*Christopher T. Ellison  
Samantha Pottenger  
Ellison, Schneider and Harris, LLP  
2600 Capitol Avenue, Suite 400  
Sacramento, CA 95816  
[cte@eslawfirm.com](mailto:cte@eslawfirm.com)  
[sgp@eslawfirm.com](mailto:sgp@eslawfirm.com)

**COMPLAINANT**

California Unions for Reliable Energy  
c/o Adams Broadwell Joseph  
& Cardozo  
Marc D. Joseph  
Tanya A. Gulesserian  
Elizabeth Klebaner  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080  
[mjoseph@adamsbroadwell.com](mailto:mjoseph@adamsbroadwell.com)  
[tgulesserian@adamsbroadwell.com](mailto:tgulesserian@adamsbroadwell.com)  
[eklebaner@adamsbroadwell.com](mailto:eklebaner@adamsbroadwell.com)

**INTERESTED  
AGENCIES/ENTITIES/PERSONS**

Imperial County Planning and  
Development Services  
801 Main Street  
El Centro, CA 92243

Imperial County Air Pollution  
Control District  
150 South 9th Street  
El Centro, CA 92243-2801

Imperial Irrigation District  
333 E. Barioni Boulevard  
Imperial, CA 92251

**ENERGY COMMISSION  
DECISIONMAKERS**

ROBERT B. WEISENMILLER  
Chair and Associate Member  
[rweisenm@energy.state.ca.us](mailto:rweisenm@energy.state.ca.us)

KAREN DOUGLAS  
Commissioner and Presiding Member  
[kldougl@energy.state.ca.us](mailto:kldougl@energy.state.ca.us)

Kenneth Celli  
Hearing Officer  
[kcelli@energy.state.ca.us](mailto:kcelli@energy.state.ca.us)

**ENERGY COMMISSION  
CHIEF COUNSEL**

Michael J. Levy  
Chief Counsel  
*e-mail service preferred*  
[mlevy@energy.state.ca.us](mailto:mlevy@energy.state.ca.us)

**ENERGY COMMISSION STAFF**

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[jogata@energy.state.ca.us](mailto:jogata@energy.state.ca.us)

**ENERGY COMMISSION  
PUBLIC ADVISER**

Jennifer Jennings  
Public Adviser  
*e-mail service preferred*  
[\\*publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)

**DECLARATION OF SERVICE**

I, Maggie Read, declare that on, August 23, 2011, I served and filed copies of the attached Notice of Prehearing Conference and Evidentiary Hearing, dated August 19, 2011. The original document, filed with the Docket Unit or the Chief Counsel, as required by the applicable regulation, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

<http://www.energy.ca.gov/proceedings/11-cai-02/index.html>.

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

*(Check all that Apply)*

**For service to all other parties:**

- Served electronically to all e-mail addresses on the Proof of Service list;
- Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email service preferred."

**AND**

**For filing with the Docket Unit at the Energy Commission:**

- by sending an original paper copy and one electronic copy, mailed with the U.S. Postal Service with first class postage thereon fully prepaid and e-mailed respectively, to the address below (preferred method);

**OR**

- by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

**CALIFORNIA ENERGY COMMISSION – DOCKET UNIT**  
Attn: Docket No. 11-CAI-02  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

**OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:**

- Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission  
Michael J. Levy, Chief Counsel  
1516 Ninth Street MS-14  
Sacramento, CA 95814  
[mlevy@energy.state.ca.us](mailto:mlevy@energy.state.ca.us)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

*Original signed by:* \_\_\_\_\_  
**Maggie Read**  
Hearing Adviser's Office