

STATE OF CALIFORNIA  
Energy Resources Conservation  
and Development Commission

<b>DOCKET</b>	
<b>11-CAI-02</b>	
DATE	OCT 12 2011
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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

**OPENING BRIEF**  
**OF**  
**CALIFORNIA UNIONS FOR RELIABLE ENERGY**

October 12, 2011

Marc D. Joseph  
Tanya A. Gulesserian  
Elizabeth Klebaner  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080  
(650) 589-1660 Voice  
(650) 589-5062 Facsimile  
tgulesserian@adamsbroadwell.com  
eklebaner@adamsbroadwell.com

Attorneys for the CALIFORNIA  
UNIONS FOR RELIABLE ENERGY

## I. INTRODUCTION

The preponderance of evidence shows that the Commission has mandatory, exclusive statutory authority over Ormat's North Brawley Geothermal Development Project ("North Brawley or "Project") and the East Brawley Geothermal Development Project ("East Brawley or "Project") as one facility and as individual thermal powerplants. First, consistent with the Commission's long-standing precedent, North Brawley and East Brawley must be aggregated and deemed one facility. The Projects were simultaneously conceived and planned as one larger 150 megawatt ("MW") facility and are under the ownership and control of one entity – Ormat, Nevada, Inc. ("Ormat"). The Projects are also physically linked. The record shows that North Brawley and East Brawley are collocated and together represent one 5,500-acre geothermal development ("Brawley Geothermal Development") which will share, or reasonably could share, one control room, one physical and legal point of interconnection with the California grid, and water service. Ormat failed to present any evidence to the contrary.

Second, the Commission has jurisdiction over North Brawley and East Brawley as individual thermal powerplants. Uncontroverted evidence shows that the Commission has jurisdiction over each Project site because North Brawley and East Brawley, as proposed, have a generating capacity of 59 MW. California Unions for Reliable Energy ("CURE") has also shown, as a matter of law and by a preponderance of the evidence, that the Commission has jurisdiction over the existing North Brawley powerplant because the

facility has a generating capacity in excess of the Commission’s jurisdictional threshold.

## **II. FACTUAL BACKGROUND**

In June 2007, following exploratory geothermal activities in the Brawley KGRA, Ormat secured a potential buyer for up to 100 MW of generation. Ormat then proceeded to gain transmission capacity and attain site control over an area in the Brawley KGRA to support facility that could generate 100 MW, and sought to permit that facility piecemeal through two, conditional use permit applications. The facility is comprised of two nominally separate Projects – North Brawley and East Brawley – which are contiguous, physically linked, and interdependent.

On June 26, 2007, Ormat filed a conditional use permit application with Imperial County to construct and operate the North Brawley facility. Ormat proposed and, in November 2007, received County authorization to construct a binary plant with six 12.5 MW Ormat Energy Converters (“OEC”s)<sup>1</sup> and an associated wellfield on the North Brawley site. On August 8, 2008, Ormat filed a conditional use permit application with the County to construct and operate the East Brawley facility. East Brawley is proposed as a binary plant with six 16 MW OECs and an associated wellfield. Each of the powerplants, as proposed, meets and exceeds the Commission’s 50 MW jurisdictional threshold.

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<sup>1</sup> Each OEC unit includes a generator.

Ormat proposes to site East Brawley adjacent to the existing North Brawley facility. To date, Ormat has built five OECs at the North Brawley site, the combined generating capacity of which meets and exceeds the Commission's 50 MW jurisdictional threshold. The East Brawley facility is not permitted.

### **III. BURDEN AND STANDARD OF PROOF**

“Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to that party's claim.” (Evid. Code § 500; *see also Kellogg v. Asbestos Corporation Limited*, 41 Cal.App.4<sup>th</sup> 1397, 1408.) Subject to limited exceptions specified in the law, the standard of proof in an administrative proceeding is a preponderance of the evidence. (*See Manaster & Selmi, California Env't Law and Land Use Practice*, Vol. 1 (2011), § 10.35 [14], p. 10-25; *see also Skelly v. State Personnel Board* (1975), 15 Cal.3d 194, 204 n.19; Evid. Code § 115.) A preponderance of the evidence is evidence that, when weighed with that opposed to it, has the more convincing force and the greater probability of truth. (Justice Bernard S. Jefferson, *Jefferson's California Evidence Benchbook* [4<sup>th</sup> Ed. 2011] § 47.3, p. 1076 *citing Leslie G. v. Perry & Assocs.* (1996) 43 Cal.App.4<sup>th</sup> 472, 483.) The preponderance-of-the-evidence standard is also known as the “balance-of-probabilities” standard; it requires a party to convince the trier of fact that the existence of a fact sought to be proved is more probable than its nonexistence. (*In re Cheryl H.* (1984) 153 Cal.App.3d

1098, 1112 n.9 *disapproved on other grounds in People v. Brown* (1994) 8 Cal.4<sup>th</sup> 746, 748.)

In determining whether a party's burden is met, the trier of fact must consider "direct and circumstantial evidence, and all reasonable inferences to be drawn from both kinds of evidence, giving full consideration to the negative and affirmative inferences to be drawn from all of the evidence." (*Leslie G. v. Perry & Assocs.*, 43 Cal.App.4<sup>th</sup> at 483.) Under the preponderance-of-the-evidence standard, an inference based on circumstantial evidence may be used to prove an essential element of a claim if the favorable inference is more reasonable or probable than the opposing inference. (*See id. citing San Joaquin Grocery Co. v. Trehitt* (1926) 80 Cal.App. 20, 33.)

#### **IV. LEGAL BACKGROUND**

##### **A. The Warren-Alquist State Energy Resources Conservation and Development Act**

In enacting the Warren-Alquist State Energy Resources Conservation and Development Act of 1974 ("Warren-Alquist Act" or "Act"), the Legislature found and declared that "the prevention of delays and interruptions in the orderly provision of electrical energy, protection of environmental values, and conservation of energy resources require expanded authority and technical capability within state government." (Pub. Resources Code § 25005.) Through the Warren-Alquist Act, the Legislature consolidated the State's responsibility and authority over energy resources development and

regulation in the Commission. (See Pub. Resources Code §§ 25006, 25200-25224.) The Warren-Alquist Act identifies power facility and site certification as a core Commission power and function. (See Pub. Resources Code §§ 25216.5 subd. (a); see also 25500-25543.) Critically, by enacting the Warren-Alquist Act, the Legislature also identified facilities that are presumed to impact State environmental and energy interests and granted the Commission exclusive permitting authority over those projects. (See Pub. Resources Code §§ 25120, 25500; 25541.)

Section 25500 of the Act, vests the Commission with:

***the exclusive power*** to certify ***all sites and related facilities in the state***, whether a new site and related facility or a change or addition to an existing facility.

(Pub. Resources Code § 25500 (emphasis added).) A “site” is “any location on which a facility is constructed or is proposed to be constructed.” (Pub. Resources Code § 25119.) “Facilities” include “thermal powerplant[s],” defined as:

any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity of 50 megawatts (MW) or more, and any facilities appurtenant thereto.

(Pub. Resources Code §§ 25110, 25120.) The Commission’s jurisdiction over “sites” and “facilities” supersedes the regulatory authority of every other State or local agency, as well as that of the Federal government to the degree permitted by federal law. (Pub. Resources Code § 25500.)

Section 25218.5 of the Warren-Alquist Act mandates that the Act's provisions specifying any power or duty of the commission shall be liberally construed. (Pub. Resources Code § 25218.5) Pursuant to section 25218.5, the Commission interprets its certification authority to include multiple thermal energy electric generating facilities, the aggregate generating capacity of which is equal to 50 MW or more, if "the energy and environmental impacts" of those projects are that of one powerplant. (See California Energy Commission Resolution Providing Direction to Staff, In the Matter of Staff Investigation of Possible Energy Commission Power Facility Siting Jurisdiction over Five 30 MW Units Known as Luz SEGS Units III-VII, October 29, 1986, pp. 1-2 ("Luz SEGS Decision"); see also William M. Chamberlain, General Counsel California Energy Commission, Memorandum Regarding Commission Jurisdiction Over Kern Island Cogeneration Project, May 20, 1986, pp. 5-8 ("Chamberlain Opinion").) Whether separate powerplants should be aggregated and deemed one powerplant for the purpose of section 25500 is a fact-specific inquiry, requiring consideration of "all relevant factors." (Chamberlain Opinion, p. 8 (emphasis in original).) However, "those [factors] that are not easily modified to achieve a jurisdictional result should be given more weight." (*Id.*) Accordingly, aggregation is appropriate where nominally separate projects were:

1. conceived and planned as a larger project;
2. designed, proposed, installed, and would be operated by one organization;
3. proposed on land owned or leased by that same organization;
4. proposed on contiguous parcels or in a common location; and
5. will, or reasonably could, share facilities, including utility service and road access.

(Luz SEGS Decision at pp. 1-2 *citing id.* at Appendix I *analyzing five separate powerplants, owned by one entity; see also* Chamberlain Opinion, p. 8 *analyzing three, separately owned but interdependent powerplants.* While common ownership and the timing of construction schedules of the different generation facilities should be considered, “neither of these factors should be determinative in and of itself.” (Chamberlain Opinion, p. 8, n. 10.) Any indicia of separateness which can be easily manipulated in order to avoid Commission jurisdiction, including individual conditional use permits, individual power purchase agreements, and separate or redundant power plant equipment and substations, are not determinative and should be accorded no weight. (*See, e.g.* Luz SEGS Decision p.2; *see id.* Appendix I, pp. 3-4; *see also* Chamberlain Opinion, p. 8.)

Pursuant to section 25213 of the Act, the Commission also adopted regulations necessary to exercise its exclusive jurisdiction over “facilities,” specifically “thermal powerplants,” as defined by the Act. (*See* Pub. Resources Code §§ 25213, 25500; Cal. Code Regs., tit. 20, §§ 2001, et seq.)

The Commission's exclusive jurisdiction over "thermal powerplants" is exercised through sections 2001 and 2003 of the Commission's regulations. (Cal. Code Regs. tit. 20, §§ 2001, 2003.) Section 2001 incorporates the provisions of the Warren-Alquist Act and the Commission's regulations and provides that these authorities "*shall* apply to *all commission determinations of megawatt capacity thresholds.*" (Cal. Code Regs. § 2001 emphasis added.)

## V. NORTH BRAWLEY AND EAST BRAWLEY ARE A FACILITY

The preponderance of the evidence shows that the Commission has exclusive jurisdiction over Ormat's Brawley Geothermal Development pursuant to section 25500 of the Warren-Alquist Act. Ormat's proposed Brawley Geothermal Development meets all of the factors relied on by the Commission in its Luz SEGS Decision finding that the Luz units were a single facility. Consequently, North Brawley and East Brawley must be aggregated and deemed one "facility" for the purpose of the Warren-Alquist Act.

The record shows that, at least as early as April 2007, Ormat conceived of North Brawley and East Brawley as one project with a 150 MW gross generating capacity. Ormat proceeded to permit the project through two, nominally separate, but contemporaneous phases, now known as the "North Brawley Geothermal Development Project" and the "East Brawley Geothermal Development Project." It is undisputed that Ormat exercises

management and control as land-owner or lessee over both Project sites, designed both Projects and is the owner and operator of both Projects.

The preponderance of the evidence also shows that North Brawley and East Brawley exhibit all the relevant elements of physical interconnectedness to compel aggregation in this case. The Projects will be sited on contiguous parcels and in a common location, comprising an approximate 5,500-acre geothermal complex in the Brawley Known Geothermal Resource Area (“KGRA”). The Projects will, or reasonably could, share one control room and one physical interconnection point with Imperial Irrigation District’s (“IID”) system at the North Brawley substation, owned by Ormat. The Projects also will, or reasonably could, share water utility services pursuant to Ormat’s tentative agreement with the City of Brawley for all of the City’s effluent and, as described in Ormat’s most recent East Brawley project description, Ormat is proposing to extend two water pipelines across the New River, toward the North Brawley.

**A. North Brawley and East Brawley Were Conceived Simultaneously and Planned as One Project.**

The record shows that at least as early as April 2007, Ormat set out to develop and sell up to 100 MW of renewable generation within the Brawley KGRA, and entered into negotiations with Southern California Edison (“SCE”) through its wholly owned subsidiary, ORNI 18, LLC.<sup>2</sup> SCE understood from its discussions with Ormat’s geotechnical and drilling staff

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<sup>2</sup> See Exh. 1, CURE, Attach. C, pp. 1, 7, 8, 13.

that the Brawley “project’s geothermal resource will be able to sustain at least a 50 MW facility, and likely provide adequate supply for a 100 MW facility.”<sup>3</sup> By June 2007, ORNI 18, LLC concluded negotiations with SCE for the sale of 50 and up 100 MW of generation from a proposed geothermal project north of Brawley, California.<sup>4</sup> Thus, Ormat secured a potential buyer for East Brawley’s total, potential output *more than one year before* Ormat filed a conditional use permit application with the County to construct and operate the East Brawley Geothermal Development Project.<sup>5</sup>

Significantly, when Ormat entered into a power purchase agreement with SCE, Ormat did not commit itself to the number and the size of powerplants it would develop in the Brawley KGRA.<sup>6</sup> From approximately June 2007 through June 2010, Ormat worked to obtain site control in the Brawley KGRA sufficient to support a facility that could produce 50 and up to 100 MW of electricity.<sup>7</sup> While Ormat now claims that its option to increase

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<sup>3</sup> Exh. 1, CURE, Attach. C, p. 13.

<sup>4</sup> Exh. 1, CURE, p. 15; *see also* Conf. Exh. 203, Ormat, North Brawley PPA-Redacted, p. 1.

<sup>5</sup> *See* Confidential Exh. 203, Ormat, North Brawley PPA-Redacted.

<sup>6</sup> *See* Conf. Exh. 203, Ormat, North Brawley PPA-Redacted, p. 2, art. 1, § 1.01 subd. (b).

<sup>7</sup> *See* Exh. 200, Ormat, App. C, North Brawley Conditional Use Permit Application, June 2007, pp. 20-21; Exh. 33, CURE, CUP 07-007, Request for Amendment, May 12, 2008, p. 1 “. . . Ormat Nevada Inc. requests a minor amendment . . . for the North Brawley geothermal development project as a result of the exploration wells that were drilled and the additional leases acquired since the initial CUP application was submitted” *and* Exh. 7, CURE, p. 1; Exh. 19, CURE, p. 21 “The [East Brawley Geothermal Project] well field was revised in March 2009 to reflect addition land that has been leased and the results of the exploration well drilling to date.”; Exh. 5, CURE, p. 4 “The [East Brawley Geothermal Project] well field is being amended [in August 2009] to reflect addition land that has been leased and purchased and the results of the exploration well drilling to date” *and* Exh. 32, CURE p. 1; Exh. 201, Ormat p. 2 “Given the delay in getting East Brawley permitted . . . the decision was made to request an amendment to the North Brawley CUP requesting that the exploration wells drilled for the East Brawley Geothermal Exploration Project be added to North Brawley . . . the amendment was approved in June 2010.”

sales to SCE to 100 MW lapsed, record evidence suggests that Ormat was able to extend the option to increase sales sometime between June 29, 2007 and January 2010.<sup>8</sup> In particular, in a revised Project description for the East Brawley Geothermal Development Project, dated January 2010, Ormat stated:

ORNI 19, LLC is negotiating a power purchase agreement (PPA) for sale of the energy generated by the project with Southern California Edison (SCE). If these negotiations falter, the project would not stop as ORNI 19 LLC could either contract with other utilities or energy companies or ***could use an option under the existing North Brawley Geothermal Project PPA with SCE which allows them to sell up to 100 MWs.***<sup>9</sup>

Within six months of concluding negotiations with SCE, Ormat worked to secure sufficient transmission capacity on IID's system for an approximate 150 MW gross, 99.8 MW net, generation project. Ormat and IID prepared a System Impact Study, dated December 11, 2007, evaluating a "North Brawley 150 MW generation project" comprised of 12 generators which would interconnect to IID's grid at a common interconnection point.<sup>10</sup> Ormat's witness, Robert Sullivan testified that the System Impact Study evaluated two phases of a generation project with an approximate gross capacity of 150 MW;<sup>11</sup> Phase A would soon become known as the North Brawley Geothermal

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<sup>8</sup> See Exh. 19, CURE, p. 28 *cf.* Ormat/Sullivan, RT p. 255:8-14; *id.* at 258:7-14.

<sup>9</sup> Exh. 19, CURE, p. 28 (emphasis added).

<sup>10</sup> Exh. 201, Ormat, North Brawley System Impact Study, December 11, 2007, p. 1 (excluding appendices); *and* Exh. 29, CURE, North Brawley System Impact Study, revised January 8, 2009, Appendix B, Fig. 2 "System One-Line Diagram at Point of Interconnection" (including appendices); *see also* Ormat/Sullivan, RT 252:14-25.

<sup>11</sup> *See* Ormat/Sullivan, RT, 252:14-253:20.

Project and Phase B would, eventually, become known as the East Brawley Geothermal Project:

The 100 was -- the first 50 leaving the system was envisioned to be North Brawley. It's 50 megawatts of generation. And then a second 50 was contemplated at that time as a separate phased approach to another development, which turned out to be East Brawley, eventually.<sup>12</sup>

In a Facility Study Agreement with IID, signed by Ormat in December 2007, Ormat described the “North Brawley” project as a two-phase project, each with a maximum gross load of 75 MW and an estimated maximum output of 49.9 MW.<sup>13</sup> Both phases would share a single point of interconnection to IID’s system.<sup>14</sup> The single point of interconnection analyzed by Ormat and IID would later become the “North Brawley” substation; as described by Ormat “the substation at North Brawley is the point of demarcation between Ormat and the IID. The substation is owned by ORNI 18, LLC.”<sup>15</sup>

The record clearly shows that Ormat simultaneously conceived and planned the North Brawley and East Brawley projects as one, 150 MW project. Ormat’s contention that the Projects were treated “internally” as separate projects does not rebut the overwhelming evidence that since early

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<sup>12</sup> Ormat/Sullivan, RT, 253:21-254:1.

<sup>13</sup> Exh. 26, CURE, Attach. B; *see also* Ormat/Sullivan, RT p. 254:7-16.

<sup>14</sup> Exh. 26, CURE, Attach. B (“Number of generation connections:1”).

<sup>15</sup> Exh. 19, CURE, p. 28.

2007, Ormat intended to install and collocate 12 generators with a combined generating capacity of approximately 100 MW in the Brawley KGRA.<sup>16</sup>

**B. Ormat Exercises Management and Control of the North Brawley and East Brawley Geothermal Projects**

The record clearly shows that a single entity – Ormat – exercises management and control over North Brawley and East Brawley as owner, developer, operator, and land-owner or lessee. North Brawley and East Brawley are owned by Ormat through its wholly owned subsidiaries, ORNI 18, LLC and ORNI 19, LLC.<sup>17</sup> Ormat designed both North Brawley and East Brawley.<sup>18</sup> Ormat constructed, operates, and maintains the North Brawley facility, and proposes to construct, operate and maintain the East Brawley facility.<sup>19</sup> Finally, North Brawley and East Brawley would be located on land leased or owned by Ormat, or its wholly-owned subsidiaries ORNI 17, LLC, ORNI 18, LLC, and ORNI 19, LLC.<sup>20</sup>

**C. The North Brawley and East Brawley Geothermal Projects are Proposed on Contiguous Parcels or in a Common Location**

The North Brawley and East Brawley Projects will be sited in a common location and on contiguous parcels of land. Ormat plans to site the North Brawley and East Brawley powerplants less than 2 miles apart, on opposite sides of the New River.<sup>21</sup> The North Brawley powerplant and the

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<sup>16</sup> See Ormat/Sullivan RT, p. 234:10-12.

<sup>17</sup> See Exh. 301, Staff, p. 2; Exh. 200, Ormat, App. C, p. 5; Exh. 19, CURE, p. 1.

<sup>18</sup> See, e.g., Ormat/Sullivan, RT p. 236: 15-19; Exh. 200, Ormat, Appx. C, p.5; Exh. 19, CURE, p.1.

<sup>19</sup> Exh. 200, Ormat, App. C, p. 5; Exh. 19, CURE, p. 1.

<sup>20</sup> Exh. 200, Ormat, App. D, p. 1; Exh. 32, CURE, p. 1; Exh.19, CURE, pp. 25-26, 29; Exh. 47, p. 3.0-2.

<sup>21</sup> See Exh. 200, Ormat, p. 6.

East Brawley powerplant would only be separated by other land leased by Ormat for geothermal resource extraction.<sup>22</sup> The North Brawley geothermal field extends over approximately 2,500 acres.<sup>23</sup> The proposed East Brawley geothermal wellfield, includes 39 leased parcels encompassing approximately 3,000 acres.<sup>24</sup> The individual Project wellfields are traversed, but not actually separated, by the New River.<sup>25</sup> This is because Ormat constructed geothermal piping over the New River and presently plans to extend additional geothermal piping, a transmission line, cables, and a water pipeline from the East Brawley site across the New River, toward North Brawley.<sup>26</sup>

Although Ormat states that wells will not be shared between the two Projects, nothing about the proposed layout of the North Brawley Project and the East Brawley Project remotely suggests that there would be a physical barrier or separation between the two developments. The well fields for the East Brawley and North Brawley powerplants will not be fenced and site access to both fields would be over existing private, IID, and County roads.<sup>27</sup> As such, the North Brawley Project and the East Brawley Project would be configured as one, contiguous geothermal development.

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<sup>22</sup> Exh. 19, CURE, p. 1; Exh. 200, Ormat, App. D, p. 1; Exh. 32, CURE, p. 1; Exh.19, CURE, pp. 25-26, 29; Exh. 47, p. 3.0-2; *see also* Exh. 200, Ormat, Appx. B, Fig. 7.

<sup>23</sup> Ormat/Sullivan, RT, 259:2-6.

<sup>24</sup> Exh. 47, CURE p. 1.0-1.

<sup>25</sup> *See* Exh. 205, Ormat, Attach. 2; Exh. 47, CURE, Fig. 3.0-5' Exh. 19, CURE, Fig.3.

<sup>26</sup> Exh. 205, Ormat, Attach. 2; Exh. 19, pp. 21-22.

<sup>27</sup> Exh. 205, Ormat, p. 3. Response No. 11; *see* Exh. 200, Ormat, Appx. C, p. 12-13; Exh. 19, CURE p. 7.

**D. North Brawley and East Brawley Share or Reasonably Could Share Facilities**

The preponderance of the evidence shows that, in significant ways, North Brawley and East Brawley share, or reasonably could share facilities. North Brawley and East Brawley will, or reasonably could, share a common control room. North Brawley and East Brawley will also share a substation, owned by Ormat, as a common point of interconnection to IID's network.

1. East Brawley and North Brawley Share, or Could Reasonably Could Share a Control Room.

The preponderance of the evidence shows that North Brawley and East Brawley can be operated from one control room. Based upon information provided by Ormat, Staff concluded that "the projects can be operated from a common control room, but there is no information about whether the operations will be coordinated in any way."<sup>28</sup> However, Ormat's witness Robert Sullivan, Vice President of Business Development for North America, testified that the "control room" is at least a common monitoring station and that Ormat currently has the technological capability and actually uses one control room to coordinate operations for other projects:

MR. SULLIVAN: Each facility -- North Brawley has a control room. East Brawley will have a control room located physically at the location. Now, the state of technology is that because everything is computerized we currently -- for example, Ormat, just to elucidate, we currently operate master control rooms that control multiple facilities, for example. In our Reno control room for our Steamboat facility and geothermal facility in Reno, Nevada, we operate 50 megawatts of power plants in North and South Dakota and Minnesota, remotely, because of the technology. We also have control rooms at those

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<sup>28</sup> Exh. 301, Staff, p. 2.

facilities in North and South Dakota and Minnesota. At North Brawley and East Brawley we contemplated having a console that -- in each control room that could see the operation of the other facility. It's not a specific control room, it's only for monitoring purposes. It utilizes the advantages of current technology where with just a separate computer console and computer you can see the other facility. Which we use for multiple facilities around the US.<sup>29</sup>

Therefore, Ormat admits that both Projects will be monitored from a shared control room.

The Commission should afford little weight to Mr. Sullivan's testimony that, despite Ormat's proven technological ability to operate multiple projects in different states from a common control room, Ormat would not in this instance. Mr. Sullivan's testimony is contradicted by Ormat's principal witness for development and permitting of North Brawley and East Brawley, Charlene Wardlow.<sup>30</sup> In particular, in response to Staff's data request regarding whether North Brawley and East Brawley will share any facilities, Ms. Wardlow stated that Ormat plans to monitor and operate each of the Projects from a control room at each Project site.<sup>31</sup> Therefore, Ormat's witnesses contradict each other. Moreover, just because the facilities can be operated from separate control rooms does not mean that they will be. In fact, according to Mr. Sullivan, Ormat typically employs a master control room for multiple powerplants *and* a control room at each powerplant.

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<sup>29</sup> Ormat/Sullivan, RT, p. 262:23-264:2; *see also* Ormat/Sullivan, RT, p. 282:22-284:16; 282:22-284:16.

<sup>30</sup> *See* In the Matter of Complaint Against Ormat Nevada Inc., Brought By California Unions for Reliable Energy, California Energy Commission Docket No. 11-CAI-02, Respondent's Prehearing Conference Statement, p. 2.

<sup>31</sup> Exh. 201, Ormat, pp. 1-2 (emphasis added); *see also* Exh. 202, Ormat, pp. 1-2.

The testimony clearly shows North Brawley and East Brawley will or could reasonably share a common control room. In particular, Mr. Sullivan testified that Ormat operates “50 megawatts of power plants in North and South Dakota and Minnesota, remotely, because of the technology” from Reno, Nevada.<sup>32</sup> It is therefore highly probable that Ormat’s advanced technology allows Ormat to operate North Brawley at a distance of two miles, from the East Brawley control room, and vice versa.<sup>33</sup>

2. East Brawley and North Brawley Interconnect to IID’s System Through a Shared Substation.

It is undisputed that North Brawley and East Brawley share a legal and physical point of interconnection with IID’s network. Ormat admitted that North Brawley and East Brawley will, or reasonably could share transmission facilities.<sup>34</sup> In response to Staff’s data requests, Ormat provides that:

North Brawley will likely share the same point of interconnection to the Imperial Irrigation District’s (“IID’s [*sic*]) transmission system as the proposed East Brawley Geothermal Development Project . . . [t]he proposed East Brawley power plant, which will also have its own substation, will also interconnect to the IID line at the proposed North Brawley substation as this is where there is available capacity on the IID transmission system.<sup>35</sup>

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<sup>32</sup> Ormat/Sullivan, RT, p. 262:23-264:2.

<sup>33</sup> Ormat/Sullivan, RT, p. 262:23-264:2.

<sup>34</sup> Exh. 201, Ormat, pp. 1-2; Exh. 202, Ormat, pp. 1-2.

<sup>35</sup> Exh. 201, Ormat p.1.

The “North Brawley” substation: “is the point of demarcation between Ormat and the IID. The substation is owned by ORNI 18, LLC.”<sup>36</sup> Mr. Robert Sullivan’s testimony only confirms what is already clear from the record:

East Brawley will have its own separate substation at the East Brawley facility. We’ll construct a gen-tie line from that substation and connect it to the interconnect point with Imperial Irrigation District, *which happens to be the same point that North Brawley utilizes*.<sup>37</sup>

Ormat’s admission is consistent with information provided in documents authored by Ormat in the course of permitting the North Brawley and East Brawley Projects, which describe a “North Brawley 1” substation, located at Hovley and Andre Roads.<sup>38</sup> Contrary to Mr. Sullivan, it is not at all surprising that North Brawley and East Brawley will interconnect to IID’s system at the same point; as already discussed, that was Ormat’s plan from the start.<sup>39</sup>

**E. East Brawley and North Brawley Will or Reasonably Could Share Water Service**

The record shows that North Brawley and East Brawley will, or reasonably could share water service because Ormat is seeking County authorization to construct water pipelines to connect the two Project sites and plans to supply both Projects with effluent from the City of Brawley. In particular, record evidence shows that Ormat, to date, has not secured sufficient water supplies to meet North Brawley and East Brawley’s

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<sup>36</sup> Exh. 19, CURE, p. 28.

<sup>37</sup> Ormat/Sullivan, RT 262:8-15 (emphasis added).

<sup>38</sup> See Exh. 200, Ormat, App. B, pp. 1, 2, 28; Exh. 47, CURE, p. 2.0-2, 3.0-14, 3.0-16; Exh. 13, CURE, p. 2; Exh. 28, p. 7; Exh. 200, Ormat, Appx. C, p. 4; Exh. 19, p. 5.

<sup>39</sup> See *infra* Section V.A.; see Exh. 29, CURE, pp. 1, Appx. B, Fig. 2: System One-Line Diagram at the Point of Interconnection.

operational water demand. As recently as April 2011, Ormat was pursuing a water supply agreement with the City of Brawley which could support both Projects' operational water demands. Ormat is also presently seeking authorization to construct water conveyance systems across the New River as part of Ormat's proposed East Brawley Project. These facts show by the preponderance of evidence that, that North Brawley and East Brawley will or, in the very least could, receive water service pursuant to one contract between Ormat and the City.

Ormat encountered a significant roadblock to permitting the East Brawley Project when, in a letter dated October 30, 2008, the County suspended Ormat's CUP application because Ormat failed to demonstrate that it had a water supply agreement with IID for East Brawley.<sup>40</sup> In particular, the County wrote:

In our discussion with IID it was made clear that although IID staff has had one in [*sic*] contact with Ormat, said contact was preliminary and that no water availability contract has been drafted, nor is there one proposed in the near future.<sup>41</sup>

But, just seven days earlier, Ormat entered into a Water Supply Agreement ("WSA") with IID for deliveries of 6,800 acre feet per year ("AFY") for use "in and incidental to the operation of" the North Brawley Geothermal Development Project," proposed by ORNI 18, LLC.<sup>42</sup> The WSA does not identify a specific point of delivery, but states that water has historically

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<sup>40</sup> Exh. 12, CURE.

<sup>41</sup> *Ibid.*

<sup>42</sup> Exh. 200, Ormat, Appx. G, p. 1.

been delivered via IID's Spruce Lateral Canal, which runs through both North Brawley and East Brawley Project sites.<sup>43</sup>

Pursuant to the WSA, IID would start reducing deliveries to Ormat by 1,360 AFY in 2019, and by 2,720 AFY in 2023.<sup>44</sup> The WSA requires Ormat to provide replacement water to IID starting in 2019 by (1) reducing the North Brawley's need for IID water; (2) importing water into IID's system; or (3) funding water conservation measures within the District, subject to IID's approval.<sup>45</sup> The WSA terminates ten years before the permitted operational life of the North Brawley Project.<sup>46</sup> As such, starting in 2019, North Brawley would be in need of approximately 1,300 AFY to meet its operational water demand, and that need would approximately double every ten years.<sup>47</sup>

On October 6, 2009, Ormat executed a Memorandum of Understanding ("MOU") with the City of Brawley, to investigate the feasibility of pursuing the design, financing, development and operation of a tertiary wastewater treatment plant.<sup>48</sup> Pursuant to the MOU, Ormat would pay the City for all operation and maintenance expenses related to the tertiary treatment plant in exchange for all of the City's treated effluent.<sup>49</sup> On January 29, 2010, Ormat represented to the County that "Ormat was selected by the City of

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<sup>43</sup> See *id.* at p. 1; Exh. 28, p.45; see also Exh. 47, CURE, pp. 4.13-1.

<sup>44</sup> Exh. 200, Ormat, Appx. G, Exh. A; *id.* Appx. G, p. 3.

<sup>45</sup> See Exh. 200, Ormat, Appx. G, p 3 § 2.9.

<sup>46</sup> Exh. 200, Ormat, Appx. G, p. 5 *cf.* Exh. 200, Ormat, Appx. D, p. 4.

<sup>47</sup> See Exh. 205, Ormat, p.1 Response 1 (stating that the Project's water demand is 6,800 AFY).

<sup>48</sup> See Exh. 21, CURE, p. 1.

<sup>49</sup> *Id.* at p. 1 Recitals, D; *id.* at p. 4 §§ 5.2 and 5.3.

Brawley to negotiate exclusively for the water from their [the City's] Waste Water Treatment Plant.”<sup>50</sup> Ormat further explained that:

Ormat proposes to build the upgrades needed to bring the facility to tertiary treatment and then give the facility to the City and pay for the water via an operations and maintenance agreement . . . [T]he treatment plant will generate enough water for the East Brawley power plant such that canal water from the IID will only need to be a backup once the facility is built.<sup>51</sup>

**Ormat also revised East Brawley’s Project Description to include two water pipelines, which would cross the New River; one for “canal water,” and the other for cooling tower water blowdown water “possibly from North Brawley to East Brawley.”**<sup>52</sup> Also, in a document titled “Brawley Wastewater Treatment Plant Tertiary Treatment Facility Conceptual Design Report,” Ormat stated:

Ormat Nevada, Inc. (Ormat) currently utilizes canal water from the Imperial Irrigation District to provide make-up water to the cooling towers of the existing geothermal power generation facilities. Ormat is interested in reducing its use of canal water, and has commissioned this report to evaluate the use of effluent from the City of Brawley Wastewater Treatment Plant (WWTP) for use in the cooling tower make-up water at *the East Brawley and North Brawley facilities*.<sup>53</sup>

According to Ormat’s April 8, 2010 Application for Tertiary Treatment System, the proposed tertiary treatment system will operate at the initial available flow rate of 3.9 million gallons per day (“mgd”), and thereafter

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<sup>50</sup> See Exh. 19, CURE, p. 21.

<sup>51</sup> *Ibid.*

<sup>52</sup> Exh. 19, CURE p. 27 (emphasis added).

<sup>53</sup> Exh. 22, CURE, p.1 (emphasis added).

increase to an average of 5.9 mgd.<sup>54</sup> Ormat expected that the City's water supply would be sufficient to meet East Brawley's annual demand within two to five years.<sup>55</sup> After that, assuming an annual water demand of 5,500 AFY for East Brawley, Ormat would have approximately 1,100 AFY to spare.<sup>56, 57</sup> In light of: (1) Ormat's earlier representations that the tertiary treatment system would serve both Projects; (2) the fact that North Brawley would be in need of replacement water starting in 2019; (3) Ormat's current plans to build a water conveyance system between the two Projects; and (4) the fact that North Brawley must secure a water source another water source as early as 2019, the evidence shows Ormat's plan to provide water service to both Projects pursuant to its tentative agreement with the City and to connect the two Projects with water pipelines. Indeed, Ormat has identified no other source of replacement water for North Brawley.<sup>58</sup>

According to Ormat, using the City's effluent has now been incorporated into the final design for the East Brawley project.<sup>59</sup> Ormat's agreement was subject to ongoing discussions between Ormat and the City as

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<sup>54</sup> Exh. 200, App. H, Project Description – Brawley Tertiary Treatment System, p. 1; *see also* Exh. 21, CURE; Exh. 200, Ormat, App. H, Email from Ron Leiken, Dec. 9, 2009, pp. 3-4.

<sup>55</sup> *See* Exh. 200, Ormat, App. H, Email from Ron Leiken, Dec. 9, 2009, pp. 3-4.

<sup>56</sup> *See* Exh. 205, Ormat, p. 1 Response No. 2; *See* Exh. 28, CURE, p.43 (1 acre foot = approximately 325,851 gallons and there are 365 days in the year – thus, 5,900,000 gallons x 325,581= 18.1 AF; 18.1 AF x 365= 6,607).

<sup>57</sup> However, Ormat may have as much as 2,750 AFY, based on Mr. Sullivan's testimony that the Project size has been reduced by half. *See* Exh. 205, Ormat, Response No. 2 (East Brawley's annul water demand is 5,500 AFY, as described in Exhibits 19, 28 and 47, which all assume that East Brawley will have 6 Ormat Energy Converters (OECs), each one quipped with two cooling towers) and Ormat/Sullivan, RT p. 230:16-231:9 ("and of course it's [East Brawley] a much smaller facility based on three OECs").

<sup>58</sup> *See* Exh. 200, Ormat p. 8; Exh. 205, Ormat, Response No. 1; *see also* Ormat/Sullivan, RT p. 232:24-233:18.

<sup>59</sup> Exh. 200, Ormat, p. 8.

recently as April 14, 2011.<sup>60</sup> Yet, Ormat now denies its earlier plan to deliver effluent from the City of Brawley to both the North Brawley and East Brawley Projects.<sup>61</sup> Ormat also claims that the Brawley Wastewater Treatment Plant produces only 2/3 of the proposed East Brawley Project needs.<sup>62</sup> Ormat's claim is entirely unsupported.<sup>63</sup>

The Committee should afford no weight to Staff's premature conclusion that the North Brawley and East Brawley powerplants will not share water supplies because Staff's conclusion lacks basis.<sup>64</sup> Staff's conclusions were based entirely on information Ormat provided to Staff in response to Staff's data requests.<sup>65</sup> And Ormat failed to provide Staff with key documents regarding the Project's existing and planned water sources before Staff rendered its conclusions, including but not limited to Ormat's WSA with IID and Ormat's MOU with the City of Brawley.<sup>66</sup> As such, Staff's conclusion regarding shared utility service could not consider the facts now in the record. CURE has shown by the preponderance of the evidence that the North Brawley and East Brawley Projects will, or reasonably could, share water service.

Just as in the case of the Luz SEGS Units, here: Ormat conceived and planned North Brawley and East Brawley as one, larger project which is

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<sup>60</sup> See Exh. 20, CURE.

<sup>61</sup> See Exh. 200, p. 8, n.26.

<sup>62</sup> *Id.* at p. 8; *see also id.* at p. 8 n. 26.

<sup>63</sup> See Exh. 200, Ormat, p. 8, n. 26 *cf.* Exh. 1, CURE, p. 10.

<sup>64</sup> See Exh. 301, Staff, p. 2.

<sup>65</sup> See Staff/O'Brien, RT p. 311:15-312:5; Staff/Lesh, RT, p. 313:2-20.

<sup>66</sup> See, *generally*, Exh. 201, Ormat; Exh. 202, Ormat; Exh. 203, Ormat; Exh. 204, Ormat.

designed, owned, and would be operated by Ormat; and North Brawley and East Brawley would be located on adjoining lands and in a common location, and will share facilities, maintenance roads, and utility service. The evidence clearly shows that North Brawley and East Brawley are one facility. The Commission has jurisdiction over Ormat's Brawley Geothermal Development.

Indeed, Ormat fails to provide any evidence explaining the need for these apparently redundant Project components.

## **VI. THE COMMISSION HAS EXCLUSIVE JURISDICTION OVER NORTH BRAWLEY AND EAST BRAWLEY**

The preponderance of the evidence shows that the North Brawley and East Brawley Projects are each subject to the Commission's exclusive jurisdiction. Under the Warren-Alquist Act, the Commission has mandatory, exclusive jurisdiction over any location over which a facility is constructed or is ***proposed to be constructed***. (Pub. Resources Code §§ 25500, 25119, 25120.) The record shows that Ormat proposed to construct two thermal powerplants in the Brawley KGRA, one at the North Brawley site and the other at the East Brawley site, and that each facility has a net generating capacity of 59 MW ***or more***. As such, the Commission has clear, present and mandatory jurisdiction over both Projects.

Furthermore, the North Brawley powerplant, as built, also ***meets and exceeds*** the Commission's 50 MW jurisdictional threshold. CURE has shown as a matter of law and by the preponderance of the evidence that the net generating capacity of the North Brawley powerplant, as constructed to date,

is 50.36 MW. Thus, even as currently built, the Commission has clear, present and mandatory jurisdiction over the North Brawley facility. The North Brawley powerplant was permitted and constructed and is operating illegally.

**A. The Commission Has Present, Exclusive and Mandatory Jurisdiction Over the North Brawley and East Brawley Projects As Proposed and Permitted**

With respect to any and all jurisdictional determinations, the Commission is bound by the Warren-Alquist Act and its own regulations to calculate generating capacity in accordance with the definitions prescribed in section 2003 of the California Code of Regulations. (*See* Cal. Code Regs. §§ 2001, 2003.) In relevant part, section 2003 of the Commission’s regulations defines “generating capacity” as used in section 25120 of the Act to mean:

The maximum gross rating of the plant's turbine generator(s), in megawatts (“MW”), minus the minimum auxiliary load.

(Cal. Code Regs., tit. 20 § 2003 subd. (a).) As such, section 2003 of the Commission’s regulations is concerned with two factors: a powerplant’s maximum gross rating, as defined, and a powerplant’s auxiliary load, as defined. (Cal. Code Regs. § 2003(a)-(c).) The Commission’s method for determining generating capacity is unambiguously focused on the proposed plant hardware. (*See* Cal. Code Regs. § 2003 subd. (b).)

On June 26, 2007, Ormat proposed to construct a geothermal powerplant with six 12.5 MW generators at the North Brawley site.<sup>67</sup> Ormat

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<sup>67</sup> Exh. 200, Ormat, Appx. C, p. 5.

received County authorization to proceed with powerplant construction and operation in November 2007.<sup>68</sup> The generating capacity of the North Brawley Project powerplant meets and exceeds the Commission's jurisdictional threshold. In particular, taking the sum of the maximum gross ratings of North Brawley's proposed and approved six generators and subtracting the plant auxiliary load, CURE's witness David Marcus showed that North Brawley's generating capacity is 59 MW.<sup>69</sup> Ormat does not dispute this fact.

On August 8, 2008, Ormat proposed to construct a geothermal powerplant consisting of up to six 16 MW generators at the East Brawley site.<sup>70</sup> The record shows that Ormat has not changed its proposed Project. Critically, Ormat's witness, Ms. Charlene Wardlow testified that, to date, Ormat has not sought to revise its East Brawley Project application.<sup>71</sup> The record shows that the generating capacity of the East Brawley Project powerplant meets and exceeds the Commission's jurisdictional threshold. In particular, taking the sum of the maximum gross ratings of East Brawley's proposed six generators and subtracting the plant auxiliary load, CURE's witness David Marcus showed that East Brawley's generating capacity would be approximately 59 MW.<sup>72</sup>

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<sup>68</sup> *Id.* Appx. D, p. 1.

<sup>69</sup> CURE/Marcus, RT 104:3-105:10.

<sup>70</sup> Exh. 1, CURE, p. 8; Exh. 200, Ormat, Appx. A.

<sup>71</sup> Ormat/Wardlow, RT p. 281:2-7' *id.* at 280:12-281:1.

<sup>72</sup> CURE/Marcus, RT p. 60:23-61:16; *see* CURE/Marcus, RT 120:20-121:3, 104:3-105:10.

**B. The Commission Has Present, Exclusive and Mandatory Jurisdiction Over the North Brawley Powerplant**

In this case, the Commission clearly has jurisdiction over Ormat's North Brawley powerplant even as currently built. Although Ormat proposed and received a permit to construct the plant with six 12.5 MW generators,<sup>73</sup> Ormat, to date, has installed only five generators at the site.

The fact that Ormat has only constructed a powerplant with five generators is both irrelevant and unhelpful to Ormat. It is irrelevant because Ormat is authorized by law to add a sixth generator under its existing permit. Therefore, Ormat is legally entitled to add a sixth generator. It is unhelpful because, in calculating net generating capacity under the Commission's regulations, the North Brawley powerplant, even with five generators, has a net generating capacity of over 50 MW. Specifically, using Ormat's own heat and mass balance data, engineering specifications and generator manufacturer's performance guarantees, CURE's expert witnesses, Mr. David Marcus and Mr. Robert Koppe, have shown that the North Brawley powerplant has a current generating capacity of 50.3 MW. Mr. David Marcus concluded that the Project has a generating capacity of 50.3 MW after identifying an unsupported and legally irrelevant assumption in Ormat's data.

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<sup>73</sup> Exh. 200, Ormat, Appx. C, p. 5; Appx. D, p.19.

Mr. David Marcus identified North Brawley's brine booster pumps as the critical hardware constraint on the plant's maximum gross rating.<sup>74</sup> However, Mr. Marcus determined that the pumps are physically capable of pumping 3% more brine than assumed by Ormat. Critically, Mr. David Marcus concluded that with a 3% increase in brine flow rate, the North Brawley Project, as designed, is "physically capable of producing . . . 50.36 megawatts" in generating capacity.<sup>75</sup>

The Commission cannot, and indeed, does not assume that fuel availability is a limiting factor on generation.<sup>76</sup> (See Cal. Code Regs. § 2001; California Energy Commission Method for Determining Thermal Power Plant Generating Capacity<sup>77</sup>.) A contrary interpretation would fundamentally frustrate the objectives of the Warren-Alquist Act by allowing project proponents to construct "thermal powerplants" but avoid Commission jurisdiction based upon unverifiable allegations of potential resource constraints. This result is clearly contrary to the Legislature's intent and the express wording of the Act which mandates that the Commission's power be broadly construed. (Pub. Resources Code § 25218.5.) The Commission cannot rely on Ormat's legally irrelevant and flawed generating capacity determination for North Brawley. Staff's conclusions simply repeats Ormat's

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<sup>74</sup> CURE/Marcus, RT pp.108:4-110:21.

<sup>75</sup> CURE/Marcus, RT p. 115:19-22; CURE/Koppe, RT p. 156:25- 158:1.

<sup>76</sup> Staff's generating capacity calculations merely repeats Ormat's error. Cf. Exh. Staff, 300 and Conf. Exh. 203, Ormat, Documents 00021823 (East Brawley Net and Gross Power Calculations); 00021824 (North Brawley Net and Gross Power Calculations).

<sup>77</sup> Exh. 50, CURE, p.4 of 8; see also Exh. 51, CURE, p. 4 of 8.

analysis.<sup>78</sup> Even if the Commission could rely on Ormat's calculations, which it cannot, Mr. Marcus has shown that North Brawley's generating capacity exceeds 50 MW assuming a limit on brine flow.<sup>79</sup>

The preponderance of the evidence shows that the existing North Brawley Project powerplant has a generating capacity of 50 MW or more. Therefore, the Commission has exclusive, mandatory jurisdiction over the Project. The Commission must immediately assert its jurisdiction over the sites and facilities and effect its mandatory siting authority over the powerplants in accordance with the Warren-Alquist Act and the Act's implementing regulations.

**VII. THE COMMISSION SHOULD ENJOIN THE DEVELOPMENT AND OPERATION OF ORMAT'S BRAWLEY GEOTHERMAL DEVELOPMENT AND DIRECT ORMAT TO FILE AN APPLICATION FOR CERTIFICATION**

The Commission has the authority to enjoin the development of illegally permitted projects. (*See* Pub. Resources Code § 25900; *see also* Luz SEGS Decision.) The Commission also has the authority to assume jurisdiction over ongoing power projects that are subject to the Commission's exclusive jurisdiction, but were not brought before the Commission review. (*See* Pub. Resources Code § 25900; *see also* Luz SEGS Decision.) In selecting the appropriate remedy for Ormat's ongoing violations of State law, the Commission should be guided by its authorizing statute and precedent. (*See* Luz SEGS Decision.)

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<sup>78</sup> *See generally*, Exh. 300, Staff.

<sup>79</sup> CURE/Marcus, RT 116:1:120:11.

This is not the first time that a project proponent commenced construction of power facilities without first obtaining Commission certification. Consistent with precedent, the Commission should seek a settlement with Ormat and issue an order directing Ormat to halt licensing activities at the East Brawley site and work with Staff to develop an appropriate application for certification for Ormat's Brawley Geothermal Development; directing Staff to visit the North Brawley and East Brawley sites in order to allow Staff to develop an independent assessment of the Brawley Geothermal Development; and commencing a formal siting and certification proceeding once an application for certification is complete to ensure that all significant environmental impacts have been mitigated to a less than significant level, pursuant to the Warren-Alquist Act, the California Environmental Quality Act, and Title 20 of the California Code of Regulations.

CURE's proposed remedies mirror those the Commission adopted with respect to the Luz SEGS Units III-VIII upon finding that the units were subject to the Commission's jurisdiction. The facts of this proceeding and the Commission's policy and precedent all counsel for a similar resolution in this case. Ormat's position is not significantly different and is potentially less onerous for Ormat and the Commission. Here, only one facility – the North Brawley Project powerplant – has been substantially constructed, and the East Brawley Project is not yet permitted. (*See Luz SEGS Decision*, pp. 2-3

(three units substantially constructed, construction of the fourth had begun, and Luz had received a County permit for the fifth unit.)

## **VIII. CONCLUSION**

The Commission has jurisdiction over Ormat's proposed 150 MW Brawley Geothermal Development. CURE showed by the preponderance of the evidence that Ormat's North Brawley and East Brawley Projects are one facility pursuant to section 25500 of the Warren-Alquist Act, and that the Commission has jurisdiction over both Projects as distinct facilities under the Act. The record shows that the North Brawley and East Brawley Projects exhibit all of the relevant elements for the purpose of aggregation: Ormat conceived and planned the Projects as one, larger 150 MW facility, which is designed, owned and controlled by Ormat; the Projects are proposed on adjoining parcels of land and in a common location; and the Projects will or could reasonably share facilities and water service. As such, the Commission has jurisdiction over both Projects as one facility. The record also shows that North Brawley and East Brawley are individually subject to the Commission's jurisdiction as thermal powerplants with a generating capacity of 50 MW or more. The Commission has the authority to enjoin Ormat's ongoing development activities and should immediately effect its mandatory siting jurisdiction over Ormat's Brawley Geothermal Development.

Dated: October 12, 2011

Respectfully submitted,

/s/

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Marc D. Joseph  
Tanya A. Gulesserian  
Elizabeth Klebaner  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080  
(650) 589-1660 Voice  
(650) 589-5062 Facsimile  
tgulesserian@adamsbroadwell.com  
eklebaner@adamsbroadwell.com

## DECLARATION OF SERVICE

In the Matter of Complaint Against Ormat Nevada, Inc. Brought By  
California Unions for Reliable Energy

Docket No. 11-CAI-02

I, David Weber, declare that on October 12, 2011, I served and filed copies of the attached **OPENING BRIEF OF CALIFORNIA UNIONS FOR RELIABLE ENERGY** dated October 12, 2011. The original document, filed with the Docket Office, 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 firstclass 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.

\_\_\_\_\_  
/s/  
David Weber