



**BEFORE THE ENERGY RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA**

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

DOCKET NO.: 11-CAI-02

DATED: OCTOBER 19, 2011

Energy Commission Staff's Reply Brief

Pursuant to the Energy Commission's Order, Staff conducted its review and analysis of the East Brawley and North Brawley geothermal facilities to determine if either facility produced 50 megawatts or more using the Commission's regulations (title 20, California Code of Regulations section 2003). Also, Staff examined both facilities to determine if they should be aggregated for jurisdictional purposes.

As set forth in Staff's exhibit 200, Staff determined that both of the geothermal facilities should be rated at 49.5 megawatts and that aggregation of the two facilities was not appropriate.

Notably, neither CURE nor Ormat questioned Staff about its analysis about the net generating capacity or about aggregation at the evidentiary hearing. Staff believes our analysis is correct and should be adopted by the Committee.

Whether or not these facilities are within the jurisdiction of the Commission is fact specific. Staff asked for, and received, specific information about the equipment being used or proposed to be used at Ormat's facilities. Based on the responses to Staff's engineering questionnaire (Exhibits 201, 202) and supporting confidential technical information (Exhibits 203, 204), Staff analyzed the generating capacity of the East Brawley and North Brawley facilities pursuant to title 20, California Code of Regulations section 2003. That regulation sets forth the methodology that is used to calculate the generating capacity of an electric generating facility. Using the information provided by Ormat, and by independent verification and analysis, Staff determined that the generating capacity of each facility was 49.5 megawatts, which is below the 50 megawatt threshold for Commission jurisdiction.

CURE's witnesses provided an alternative analysis of the generating capacity of the two facilities. However, Staff does not believe that the analysis was carried out consistent with the methodology set forth in the regulation because the analysis makes assumptions about the operations that are not based on the information submitted by Ormat. Staff verifies that the specifications of the equipment are accurate or reasonable based upon industry standards but does not assume operation of the equipment that is different from design standards.

With respect to possible aggregation of the two facilities for the purpose of determining Commission jurisdiction, Staff's analysis resulted in the conclusion that the two facilities should not be aggregated and thus the Commission should not assert jurisdiction over the East and North Brawley facilities. Mr. Terrence O'Brien, Deputy Director of the Siting, Transmission, and Environmental Protection Division, testified that based upon his experience at the Commission, and considering the legal precedents, he did not believe the two facilities should be aggregated.

It appears that CURE's analysis with respect to aggregation is premised on documents that are no longer accurate. When appropriate, Staff agrees that such documents may be relevant to the issue of aggregation. Also, Staff does not agree with CURE's description of the shared facilities or physical proximity of the two sites. Staff's position is that using the factors set forth in the prior matters considered by the Commission with respect to aggregation, the two facilities are independent and should not be aggregated.

Having said all of the above, Staff reserves the right to change its conclusion should it appear that the facts presented by Ormat are not accurate, particularly in the case of the East Brawley facility which has not yet been approved by Imperial County or constructed as of this date.

Dated: October 19, 2011

Respectfully submitted,

/s/ Jeffery M. Ogata

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