STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of Complaint Against:	)	Docket No. 11-CAI-02
	)	
ORMAT NEVADA, INC. brought by	)	Order No. 12-0213-1
CALIFORNIA UNIONS FOR RELIABLE ENERGY	)	
	)	

ORDER DENYING PETITION FOR RECONSIDERATION OF ADOPTION OF COMMISSION ORDER NO. 11-1130-4

I. Introduction

On June 30, 2011, California Unions for Reliable Energy ("CURE") filed a Complaint that asked this Commission to investigate whether two power plants are subject to the Commission's licensing jurisdiction. Both power plants are owned by Ormat Nevada, Inc. ("Ormat"); one, the North Brawley Geothermal Development ("North Brawley"), is operating now under a permit granted by Imperial County, and the other, the East Brawley Geothermal Development ("East Brawley"), is currently the subject of an application by Ormat for an Imperial County permit.

Under California law, the Commission has the exclusive authority to license ("certify", in the formal language of the statute) any thermal power plant, such as Ormat's geothermal facilities, if the generating capacity of the power plant is 50 Megawatts ("MW") or more.[1] CURE asserted that both North Brawley and East Brawley exceed this minimum jurisdictional threshold, and that Ormat was thus violating the law because neither plant had applied for or obtained a certificate from the Commission.

On December 5, 2011, after an evidentiary hearing and consideration of the parties' briefs, the Commission dismissed CURE's Complaint, finding that CURE failed to provide sufficient evidence to show that either North Brawley or East Brawley has a generating capacity of 50 MW or more.[2]

On January 4, 2012, CURE filed a Petition for Reconsideration ("Petition") of that Decision. In this Order we deny the Petition.

II. Discussion

The Petition makes two arguments: first, that each power plant exceeds 50 MW, because North Brawley's permit and East Brawley's conditional-use permit application state that each respective plant's generating capacity exceeds 50 MW; and second, that the Commission failed to correctly apply its regulations that define power plant capacity. Neither argument has merit.

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[1] Pub. Resources Code, §§ 25110, 25120, and 25500.
[2] Docket No. 11-CAI-02, Order No. 11-1130-4 (Dec. 5, 2011) ("Decision"), p. 20.

A. The North Brawley Conditional-Use Permit and the East Brawley Conditional-Use Permit Application is Not Determinative of the Facilities' Capacity and In Any Event, Do Not Authorize a Facility With a Capacity Greater than 49.9 MW.

CURE asserts that Ormat "holds a permit [issued by Imperial County] authorizing construction of a 59 MW power plant at North Brawley" and has applied for a conditional use permit that would authorize the same at its proposed East Brawley facility.[3] But neither the permit nor the application refers to a 59 MW power plant (or to any power plant of 50 MW or more). In reality, the North Brawley permit specifically states that Ormat is authorized to construct and operate "[t]he North Brawley Geothermal **49.9 MW** net binary power plant"[4] and that "expanding the geothermal power plant beyond **49.9 MW** . . . shall require separate permits."[5] Likewise, the East Brawley application is expressly for a "**49.9** net megawatt geothermal power plant . . . ."[6] Furthermore, an Imperial County official testified that the permits for both North Brawley and East Brawley do and would, respectively, prohibit the projects from exceeding 49.9 MW.[7]

The sole rationale supporting CURE's assertion that the permit and the application "authoriz[e] construction of a 59 MW power plant" is that the permit and the application refer to 6 "Ormat Energy Generators" ("OECs") and that if all six OECs were installed at either location, the power plant would be able to generate 59 MW. In light of the facts in the record, this rationale is irrelevant for the following reasons.

With regard to East Brawley, Ormat testified that the project will have only 3 OECs installed.[8] There is no dispute that with only 3 OECs, the project would not be capable of generating 50 MW,[9] and at this time we have no reason to believe that Ormat will install more OECs than it cited in its sworn testimony.

With regard to North Brawley, although the permit states that the "North Brawley . . . power plant consists of (6) Ormat Energy Converters," [10] the project as actually built contains only five (5)[11]. The Decision finds convincing the testimony of both Ormat and our Staff (which independently reviewed the generating capacity at North Brawley) that as built, North Brawley cannot generate 50 MW,[12] and CURE gives us no reason to reverse that evidentiary determination. (However, we express no opinion about our potential jurisdiction if Ormat were to install a sixth OEC at North Brawley.)

We also note that even if the North Brawley permit expressly allowed a power plant of 50 MW or more, that would not be determinative. Our regulations indicate that in determining power plant capacity, we must account for the actual physical capabilities of

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[3] Petition at p. 1-2.
[4] Ex. 200, Appendix D, p. 7, S-1(a).
[5] Ex. 200, Appendix D, p. 7.
[6] Ex. 200, Appendix B, p. 2.
[7] 9/26/11 RT 295:5-296:2.
[8] Decision at p. 11; 9/26/11 RT 230:18-25.
[9] Decision at p. 11; 9/26/11 RT 104:24-105:6.
[10] Ex. 200, Appendix D, p. 7, S-1(a).
[11] Decision at p. 9; Ex. 300, p. 1.
[12] Decision at p. 10-11.

generators (whether existing or only subject to a permit application). This leads us to CURE's second argument, which we now address.

B. Sections 2001 and 2003 of the Commission's Regulations Were Applied.

CURE's Petition claims that the Commission failed to apply (or perhaps misapplied) sections 2001 and 2003 of its regulations.[13] This assertion is false.

As noted above, our guiding statute gives us jurisdiction over those thermal power plants with a "generating capacity" of 50 MW or more.[14] Section 2001 of our regulations requires us to use section 2003 in "all commission determinations of megawatt capacity thresholds, including the 50 megawatt jurisdictional threshold"[15]; in turn, section 2003 defines "generating capacity" as "the *maximum gross rating* of the plant's turbine generator(s) . . . minus the minimum auxiliary load."[16] Section 2003 then goes on to explain that "maximum gross rating" means "the output . . . of the turbine generator *at those steam conditions and at those extraction and induction conditions* which yield the highest generating capacity on a continuous basis."[17]

The generating capacity of geothermal power plants – or, to use the language of section 2003, "the highest generating capacity on a continuous basis" [18] – is highly dependent on the nature of the geothermal resource that the power plant uses.[19] Factors such as the amount of the resource, whether the resource is steam or liquid, and the chemical composition of the resource – or, again using the language of section 2003, the "steam conditions and [the] extraction and induction conditions"[20] – can be crucial. In this case (which might or might not have applicability to future jurisdictional determinations), both Ormat's witnesses and the Staff's independent evaluators determined that, applying section 2003 to the actual conditions on the ground at both North Brawley (and East Brawley), neither plant is (or would be) capable of generating 50 MW or more.[21]

It is unfortunate that the East Brawley permit application refers to "up to six" OECs.[22] If all we had before us were that statement, and assuming that 6 OECs are capable, under ideal conditions, of generating 50 MW or more, we might well determine that we had jurisdiction. But here, of course, we have a more extensive record (e.g., Ormat's intention to install only 3 OECs). Similarly in the future we are likely to know considerably more facts with regard to any potential power plant, including but not limited to any terms and conditions in a County-issued permit which may limit the generating capacity similar to the North Brawley site.

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[13] Cal. Code Regs., tit. 20, §§ 2001, 2003.
[14] See Pub. Resources Code, § 25120.
[15] *Id.*, § 2001.
[16] Cal. Code Regs., tit. 20, § 2003, subd. (a) (italics added).
[17] *Id.*, § 2003, subd. (b)(1) (italics added).
[18] Ibid.
[19] Decision at p. 10-11.
[20] Ibid.
[21] Decision at p. 10; Ex. 300, p. 2; 9/26/11 RT 308:4-315:13; 9/26/11 RT 243:1-246:4.
[22] Decision at p. 12; Ex. 200, Appendix B, p. 2.

CURE asserts that because the Decision discusses other considerations such as fuel constraints, Ormat's economic considerations, transmission constraints, and the County's conditional use permit conditions, the Commission improperly "relied" on these other considerations instead of or in addition to sections 2001 and 2003. This is not true. The Decision is more than sufficiently supported by the evidence produced throughout the proceeding in making the calculations required by the Regulations.

III. Ormat's Request for Sanctions

In its opposition to the Petition, Ormat seeks sanctions and fees against CURE for filing either a frivolous petition or complaint.[23] The issues considered upon a petition for reconsideration, however, are limited to errors of fact or law, or matters which could not have been considered during the evidentiary hearings, and their effects upon a substantive element of the Commission's final decision.[24] Therefore, we decline to explore this request.

IV. Conclusion

The Commission followed the procedures required by the Warren-Alquist Act and sections 2001 and 2003 and thereby properly determined that the North Brawley and East Brawley facilities are not subject to Energy Commission jurisdiction. CURE failed to provide sufficient evidence during the proceeding to controvert this determination. As we have explained here, the Petition for Reconsideration fails to describe any "error in fact or . . . law."[25] Therefore, the Petition is denied.

CERTIFICATION

The undersigned secretary to the Commission does hereby certify that the foregoing is a full, true and correct copy of a Resolution duly and regularly adopted at a meeting of the California Energy Commission held on February 13, 2012.

AYE: Weisenmiller, Douglas, Peterman
NAY: None
ABSENT: None
ABSTAIN: None

HARRIET KALLEMEYN
Secretariat

[23] See Opposition of Ormat Nevada, Inc., filed January 20, 2012, p.6 and, alternatively, p.7.
[24] See Cal. Code Regs., tit. 20, § 1720, subd. (a).
[25] Ibid.

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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 9/12/11)

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DECLARATION OF SERVICE

I, Janice Titgen, declare that on, February 13, 2012, I served and filed copies of the attached Order Denying Petition for Reconsideration of Adoption of Commission Order No. 11-1130-4. 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*)

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For filing with the Docket Unit at the Energy Commission:

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OR

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CALIFORNIA ENERGY COMMISSION – DOCKET UNIT
Attn: Docket No. 11-CAI-02
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
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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:

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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
Janice Titgen