RIVERSIDE ENERGY RESOURCE CENTER

Application For Small Power Plant Exemption (04-SPPE-1)
Riverside County

CALIFORNIA ENERGY COMMISSION

SMALL POWERPLANT EXEMPTION DECISION AND MITIGATED NEGATIVE DECLARATION

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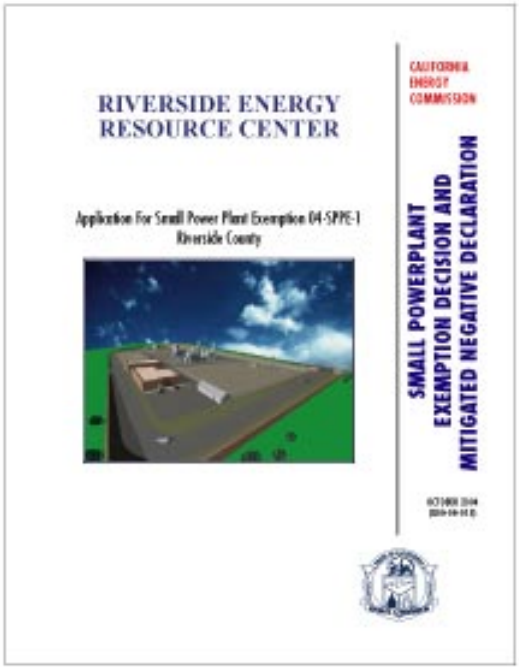

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The Committee hereby submits its Proposed Decision and Notice of Intent to Adopt a Mitigated Negative Declaration on the Application for a Small Power Plant Exemption for the Riverside Energy Resource Center Project (Docket Number 04-SPPE-01). We have prepared this document pursuant to the requirements set forth in the Energy Commission's regulations (20 Cal. Code of Regs., §§ 1934 et seq.) and the requirements of the California Environmental Quality Act and implementing Guidelines (14 Cal. Code of Regs, §§ 15000 et seq.).

Based upon the entirety of the record in this proceeding including the Small Power Plant Exemption Application, Applicant's Data Responses, the Energy Commission Staff's Draft and Final Initial Study and Proposed Negative Declaration, and comments by agencies and others, the Committee hereby recommends that the Application for the Small Power Plant Exemption be granted and that a Mitigated Negative Declaration be adopted, subject to the Conditions of Exemption set forth herein.

We direct Energy Commission staff to file this document with the Office of Planning and Research and take all other necessary and appropriate action to ensure that opportunity for public and agency review, as required by the provisions of the Public Resources Code and Guidelines, is provided.

Dated: November 15, 2004

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

JACKALYNE PFANNENSTIEL
Commissioner and Presiding Member
RERC SPPE Committee

JOHN L. GEESMAN
Commissioner and Associate Member
RERC SPPE Committee

MITIGATED NEGATIVE DECLARATION

Pursuant to Title 14, California Code of Regulations, Sections 15070 and 15071 and pursuant to the California Energy Commission's Rules of Practice and Procedure (Cal. Code Regs., tit. 20, section 1101 et seq.) and Site Certification Regulations (Cal. Code Regs., tit. 14, section 1701 et seq.), the California Energy Commission does prepare, make, declare, publish, and cause to be filed with the County Clerk of Riverside County, State of California, this Mitigated Negative Declaration for the Riverside Energy Resource Center (RERC), Application for Small Power Plant Exemption (04-SPPE-1).

1. The State Energy Resources Conservation and Development Commission (Energy Commission) is responsible for licensing all thermal power plants in California that have a capacity of 50 megawatts (MW) or greater. (Pub. Resource Code, section 25500.) The Energy Commission may exempt power plants from these requirements if they have a capacity not exceeding 100-MW and if the Energy Commission finds that the project will not create a substantial adverse impact on the environment or energy resources. (Pub. Resources Code section 25541.) Such projects remain subject to applicable local permitting requirements.

   The Energy Commission is the Lead Agency for all projects that it licenses or exempts. (Pub. Resources Code section 25519(c).) The Energy Commission has granted the Application for a Small Power Plant Exemption which was filed by City of Riverside Public Utilities (RPU) on April 29, 2004, for the Riverside Energy Resource Center (RERC), project. RPU is required to obtain all necessary local, regional, state and federal permits to construct and operate the proposed facility.

2. Title and Short Description of Project:

   a) Riverside Energy Resource Center (RERC), Application for Small Power Plant Exemption (04-SPPE-1).

   b) The proposed project is to construct and operate a nominal 96 MW simple-cycle power plant on a 12-acre fenced industrial site and referred to as the Riverside Energy Resource Center (RERC). RPU would develop, build, own and operate the facility. The plant would consist of two General Electric LM6000 PC NxGen SPRINT combustion turbine generators equipped with inlet air chiller coils, exhaust ducting, flue gas treatment system to meet the proposed air emission limits, a common chiller package with cooling tower, gas compressor equipment, water storage and treatment facilities, emission monitoring system, zero liquid discharge (ZLD) wastewater treatment system and electrical transmission and interconnection system and associated auxiliary systems and equipment.

In addition, the project would include approximately 1.75 miles of new double circuit 69kV transmission line interconnecting RERC to the Mountain View and Riverside substations in an existing transmission line right-of-way. Natural gas would be supplied to RERC from a short (~140 ft.) natural gas service line. Potable water for sanitary use would come directly from the City's general water supply while the adjacent WWTP would supply reclaimed water for plant process and cooling water. The RERC would utilize a Zero Liquid Discharge (ZLD) system.

3. Location of Project:

   a) 5950 Acorn Avenue within the City of Riverside (Sections 29, 30, 31, and 32, T2S, R5W, SBBM), (see Ex. 12, p. 2-1; Ex. 1, p. 1.) The proposed site is owned by the City of Riverside and is adjacent to the City's Waste Water Treatment Plant (WWTP) in a light industrial / manufacturing area.

4. Project Applicant:

   City of Riverside Public Utilities
   3900 Main Street
   Riverside, CA 92522

5. Energy Commission staff completed an Initial Study (IS) for the proposed RERC project. The IS concludes that the revisions agreed to by the applicant, in conjunction with the conditions imposed by the Commission will avoid or mitigate all potential significant effects to a point where clearly no significant adverse effects will occur.

6. Further information about the RERC, the IS, or the Energy Commission's exemption process may be obtained by contacting the California Energy Commission's Siting Project Manager for the RERC project, James W. Reede, Jr., California Energy Commission,1516 9th Street, M.S. 15, Sacramento, CA 95814, Phone (916) 653-1245.

7. The mitigation measures included in the project to avoid potentially significant effects are included in Part IV of the Commission Decision.

Therefore, the Energy Commission finds that the Initial Study has identified potentially significant effects on the environment, but: 1) revisions to the project plans or proposals made by, or agreed to by, the applicant will avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur; and 2) there is no substantial evidence or fair argument, in light of the whole record before the agency, that the project, as revised, may have a significant effect on the environment. As a result, the Energy Commission finds that approval of the Application for a Small Power

Plant Exemption for the Riverside Energy Resource Center (RERC) will result in no significant adverse impact upon the environment or upon energy resources.

Dated:

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

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WILLIAM J. KEESE, Chairman

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I. INTRODUCTION

The California Energy Resources Conservation and Development Commission (Commission) possesses the exclusive authority to license thermal power plants of 50 megawatts (MW) or more in capacity.[1] This licensing process generally is known as the Application for Certification (AFC). It is equivalent to the environmental impact report (EIR) process under the California Environmental Quality Act (CEQA).[2]

The Commission may exempt a project not exceeding 100 MW in capacity from this licensing process if it finds that no substantial adverse impacts on the environment or on energy resources will result from the construction or the operation of the project.[3] This is known as the Small Power Plant Exemption (SPPE) process. The stated purpose of the SPPE process is to expedite the procedures necessary for approval of small electric generation resources.[4]

The Commission is the lead agency under CEQA for all projects that it licenses or exempts from the licensing process.[5] SPPE projects exempted from the AFC process remain subject to applicable local permitting requirements, such as those imposed by the local air district permits[6]. In addition, exempt projects have

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[1] Pub. Resources Code, section 25500. All statutory references are to the Public Resources Code. Additional references are to various documentary Exhibits (Ex.) and to the reporter's transcript (RT) of various hearings. These references are abbreviated according to month, day, year, page and, if necessary, line reference. Thus, reference to page 92, lines 2-9 of the August 31, 2004 evidentiary hearing would be abbreviated as "8/31/04 RT 92:2-9".

[2] Section 21080.5; 14 Cal. Code of Regs., section 15251(k).

[3] Section 25541.

[4] See, 20 Cal. Code of Regs., sections 1934 et seq.

[5] Section 25519 (c); see also section 21067.

[6] The project must obtain a Facility Permit from the South Coast Air Quality Management District (SCAQMD). The permit contains conditions of operation for the project and is subject to a 30-day

incorporated into the definition of the project all of the various Conditions of Exemption (COE) imposed by the Commission as shown by those found in the section of this Decision entitled **FINAL CONDITIONS OF EXEMPTION** as well as section entitled **General Conditions of Exemption.**

A. Project Considered

The proposed project, referred to as the Riverside Energy Resource Center (RERC), is a 96 MW simple-cycle power plant on an industrial 12-acre fenced site adjacent to the city sewage plant. The RERC project is proposed by the Riverside Public Utilities (RPU). When the Tequesquite Landfill was built, the project site was excavated for fill material for the landfill. Thus the entire project site has been previously disturbed and is degraded for habitat. As a result of the excavation, the site is surrounded on the south and east side with steep walled berms. The project site and the existing adjacent waste water treatment plant are located along the Santa Ana River. (Ex. 12, p. 5-3, Project Description-Fig. 4.)

The project would consist of two General Electric LM6000 PC NxGen SPRINT combustion turbine generators equipped with inlet air chiller coils, exhaust ducting, a flue gas treatment system to meet the proposed air emission limits, a common chiller package with cooling tower, gas compressor equipment, water storage and treatment facilities, emission monitoring system, and electrical transmission and interconnection system and associated auxiliary systems and equipment. (8/30/04 RT 71-72.) The project will use reclaimed water from the adjacent wastewater treatment plant for process water. It will also feature a zero-liguid discharge (ZLD) design that would eliminate the need to discharge process water to the wastewater treatment plant. (Ex. 12, p 2-3.)

In addition, the project would include approximately 1.75 miles of new double circuit 69kV transmission line interconnecting RERC to the Mountain View and

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public comment period under CEQA and a 45-day public comment period under the National Environmental Protection Act (NEPA).

Riverside substations in an existing transmission line right-of-way. Natural gas would be supplied to RERC from a short (140 ft.) natural gas service line. Potable water for sanitary use would come directly from the City's general water. (Ex. 1, Section 2; Ex. 12, pp. 2-1 to 2-7.)

B. Project Objectives

The evidence establishes that the RPU has proposed the RERC to meet the City's native electrical load and is not intended as a merchant plant. (8/30/04 RT 33.) The project will operate on an interim basis during periods of high electrical demand to meet the City's peak loads, which have increased due to City growth. The project is not proposed to exceed 1330 hours of operation per year. (8/30/04 RT 13.) The proposed project will also reduce the City's reliance on volatile power purchases, relieve the power loadings on the Southern California Edison (SCE) Vista Substation, and provide a source of emergency power to the City of Riverside in the event of a power grid blackout.[7] (8/30/04 RT 13-14, 16; Ex. 1, p.12-13.) The project would provide increased electrical reliability in Riverside and help meet growing demand for electricity in this fast-growing region of the State. (8/30/04 RT 20.) The record shows that the RPU considered alternative project locations, as well as alternative technologies to meet the project goals. (Ex. 1. pp. 13, 349-355; 8/30/04 RT 42, 47.)

C. The Parties

The applicant for the SPPE, **Riverside Public Utilities** (RPU or Applicant) is a municipal utility offering water, electric and related services to over 100,000 customers within the City of Riverside. Its Board of Directors is made up of seven City Council-appointed citizens and is charged with governing utility policies and representing the community. RPU intends to develop, build, own and operate the proposed RERC in its entirety. (Ex. 1, p. 7.)

[7] Consulting Engineer and former Chairman of RPU Robert Krieger stated that, except for the City's existing 40-MW plant, the City's present source of power from Southern California Edison (SCE) is primarily a single line from a single substation, leaving Riverside in a "vulnerable position". (8/30/04 RT 30.)

RPU owns the proposed 12-acre plant site. The site is comprised of two parcels, both of which are zoned Manufacturing Park (MP). (Id.) The parcels lie in a fenced area dedicated to the City's wastewater treatment plant.

The record shows that after a lengthy review process of bid proposals for project construction, the City's project team awarded the project construction contract for a not-to-exceed contract price of $25,288,000, including a requirement that the contractor pay prevailing wages.[8] RPU Director Tom Evans commented that prior to the award of the construction contract, Intervenor CURE, as well as the International Brotherhood of Electrical Workers Local 47, and the State and local councils for the Building and Construction Trades requested that Riverside Public Utilities enter into a Project Labor Agreement (PLA) and a Maintenance Labor Agreement (MLA) for RERC. These agreements provide that all work performed will be done by union laborers. The City determined that the short-term nature of the construction project and the relatively small number of employees on the construction site at one time did not justify the benefits of a Project Labor Agreement. Thus, the City did not enter a PLA. (8/30/04 RT 38-40.)

The **Energy Commission staff** (Staff) is responsible for preparing the Commission's Initial Study. Under the State's Administrative Procedure Act, licensing proceedings requiring fact finding are adjudicatory in nature, and require Staff to function as an independent party with a separate function from that of the decision-makers (i.e., the Commissioners). (See Govt. Code, Secs. 11400 et. seq.) Thus, the Staff's analysis is not controlled by the Commission, and the Commission may accept or reject the Staff's conclusions.

The extensive analyses of this project by the Staff are detailed in Appendix A and B of this document. While this review process is formally termed a Small Power Plant *Exemption*, in the single contested topic area of Air Quality, the Staff

[8] City of Riverside City Council Memorandum dated July 27, 2004, (docket log # 32438)

witness made clear in sworn testimony that the Staff analyses of emissions, modeling, significance determination and requirements for conditions of exemption were at least as complete as would be done if the project were reviewed under the AFC process.[9]

California Unions for Reliable Energy (CURE) is an organization that represents several building trades labor unions involved in the construction and operation of electric power plants throughout the state and in the Riverside area. For many years CURE has been an experienced and knowledgeable intervenor in power plant siting cases at the Energy Commission. For cases in which an Applicant has not previously agreed to enter a Project Labor Agreement for construction and operation of its project, CURE has taken an active and aggressive role in the siting case, challenging the adequacy of environmental review and potential mitigation measures.

In the instant case, CURE filed a Petition to intervene in the RERC case on May 17, 2004, and the Committee granted Intervener status on May 26, 2004. Thereafter, CURE began active participation, eventually submitting 133 data requests on a wide variety of issues, filing an 83-page motion to terminate the SPPE process[10], cross examining the witnesses of Staff and Applicant, and sponsoring its own expert witnesses. CURE is urging the Commission to reject an SPPE for the project because CURE argues the RERC will have significant impacts on air quality. (See CURE's Opening and Reply Briefs).

[9] While, due to the SPPE process, Staff did not analyze the project's compliance with laws, ordinances, regulations and standards (LORS), the witness testified that the local air district will carry out a LORS analysis. (8/30/04 RT 92.)

[10] Motion of California Unions for Reliable Energy to Convert this Proceeding to an Application for Certification and Comment on the Staff's Draft Initial Study. (July 26, 2004.)

In addition, while not offering formal testimony in support of other issues, CURE put forth several additional challenges to the RERC at the time of the Pre-hearing Conference. These included: 1.) the assertion that impacts from the RERC project would disproportionately impact a significant minority population within a six-mile radius of the project site; 2.) the claim that impacts from two additional generation units, which are not part of the RPU resource plan, had not been analyzed as part of the project and would add significant impacts; 3.) the argument that construction noise from building the project would be significant, and; 4.) the assertion that noise from project operation would be significant. At the Pre-hearing Conference, held July 28, 2004, CURE's attorney argued that merely by filing a motion arguing the RERC would have various significant impacts on the environment; CURE had provided comment sufficient by itself to terminate the SPPE process.[11] However, the record contains no evidence to support these arguments.

D. Process Followed

This Decision and Mitigated Negative Declaration is the result of a comprehensive process which provided extensive opportunity for public review and comment. The process is termed a Small Power Plant *Exemption* and is designed to expedite procedures for approval and development of plants smaller than 100-MW. A successful SPPE applicant must show that its project will have no substantial adverse impact on the environment or upon energy resources. However, even though this process can lead to an exemption from the longer AFC process, SPPE applications are still subject to extensive environmental review by the Energy Commission staff and participating agencies. This process is also a very public one, with all hearings, workshops, and Staff and Commission documents involving interagency coordination and subject to public comment periods. In cases such as the RERC project, the analysis can be as, or

[11] Hearing Officer Fay: "Is it your position that your motion alone, with its offer of proof, constitutes substantial evidence when we have no record at this time?" Mr. Joseph: "Absolutely it is." (Pre-hearing conference of July 28, 2004 RT 6:9-13.)

more, exhaustive than the Environmental Impact Report-type review done in the AFC process. (8/31/04 RT 91-94.)

In this case the Committee has proposed granting the exemption for the RERC project and issuing a *Mitigated Negative Declaration* containing 36 Conditions of Exemption (COE) which Applicant has agreed to incorporate into its project. After receiving an SPPE from the Commission, Applicant must then pursue all required local permits in order to build and operate its plant. The local agencies which administer these permits (such as the local air district) will maintain primary regulatory authority over the project.

On April 29, 2004, RPU filed an Application for a Small Power Plant Exemption (04-SPPE-01), and Staff began its review of the project. The Energy Commission appointed a Siting Committee on May 5, 2004, to oversee the SPPE application. The various Commission staff analyses contained in its Initial Study are based upon information from: 1) the SPPE Application for the RERC; 2) the applicant's responses to data requests from both Energy Commission staff and Intervenors[12]; 3) comments from interested federal, state, and local agencies; 4) public workshops and site visits. Staff issued a Draft Initial Study for public comment July 8, 2004, and received comments on the draft from the Riverside Airport manager, CalTrans, Riverside County Airport Land Use Commission, US Army Corps of Engineers, CURE, and the applicant. Those comments were addressed in the Staff's Final Initial Study and in some instances Staff added additional mitigation measures to resolve an issue raised by a commenter.

In addition to these Staff documents, the Commission has made a substantial effort to notify interested parties and encourage public participation. These efforts have included: Mailing notices to interested parties, local libraries, responsible and trustee agencies, and contiguous property owners; mailing a

[12] During the discovery phase of the case, Applicant responded to 75 data requests from Staff and to 133 data requests submitted from CURE.

Notice of Public Hearing and Site Visit on May 11, 2004 to responsible and trustee agencies, persons with contiguous property to the proposed project, sensitive receptors, larger private businesses (100 employees) in the area and individuals that have expressed interest in the project; placing an advertisement notice in the Riverside Press Enterprise on May 14, 2004, to announce the Public Hearing and Site Visit and placing 6,111 information flyers as inserts in the Sunday, May 23, 2004, edition of the Riverside Press Enterprise. In addition, a Notice of Availability of the Proposed Decision was published in the Riverside Press Enterprise newspaper.

The Committee of Commissioners designated to conduct this proceeding held the Informational Hearing and Site Visit on May 26, 2004. The Commission staff held local public workshops on May 26 and June 17, 2004. Upon issuing its Draft Initial Study on July 8, 2004, Staff sent notices to responsible and trustee agencies, libraries, persons with contiguous property to the proposed project and individuals that have expressed interest in the project. Staff held a Draft Initial Study workshop on July 15, 2004, and accepted public comments on the Draft Initial Study until July 28, 2004.

The Committee held its Prehearing Conference on July 28, 2004. Staff issued the final version of its Initial Study on July 29, 2004 and the Air Quality portion on August 2, 2004. The Committee conducted formal evidentiary hearings on August 5, 30, and 31, 2004, the latter two held in the City of Riverside. The parties were then given the opportunity to present written argument by filing Opening Briefs on September 22, 2004, and Reply Briefs on October 4, 2004.

This extensive review process has resulted in more than a half-dozen days of public hearings and workshops, hundreds of data requests and responses during the discovery period, as well as several thousand pages of testimony and exhibits from dozens of experts witnesses.

The Committee hereby issues its Proposed Decision and Notice of Intent to adopt a Mitigated Negative Declaration. This document was circulated in accordance with applicable provisions of the CEQA Guidelines. The parties are invited to submit written comments on this Proposed Decision no later than 3 p.m. on Monday, December 6, 2004. The Committee intends to hold a Conference at the Commission to discuss those comments on Thursday, December 9, 2004.

This Decision serves two purposes. First, it contains the Commission's reasoning explaining its decision to exempt the RERC project from the more formal and time consuming AFC licensing process review.[13] It also serves as a Notice of Intent to adopt a Mitigated Negative Declaration pursuant to CEQA.[14] In arriving at our decision, we have independently reviewed and carefully considered not only the environmental impacts of the project, but also the impacts to the electric transmission system and the project's effect upon energy resources.

As explained below, the evidence establishes that all impacts attributable to the project can be mitigated to insignificant levels. RPU has agreed to implement the mitigation identified during this proceeding. We have specified Conditions of Exemption required to ensure adequate mitigation and to provide an established mechanism to monitor and ensure compliance with the conditions imposed.[15]

In addition, Applicant and Staff each made procedural requests in their opening briefs to correct inadvertent omissions. Applicant requests that the Committee accept into the record the following:

1.) Applicant's Revised and Updated Prehearing Statement and Prepared Rebuttal Testimony, filed August 20. 2004.
2.) Applicant's introduced exhibits 1-11, 17, 18, 21, 22, 23, 24, 32, and 33.

[13] 20 Cal. Code of Regs., section 1945.

[14] Section 21064.5; 14 Cal. Code of Regs., section 15072.

[15] See, section 21081.6.

Applicant also requests that the Committee take administrative notice of the entire MRI Report, three pages of which CURE introduced as Exhibit 31. (MRI Report, Improvement of Specific Emission Factors (BACM Project No. 1), Final Report, March 29, 1996.) In light of no objection having been raised, we have accepted the referenced documents and exhibits into the record and hereby take administrative notice of the entire MRI Report, a few pages of which makes up Exhibit 31.

The Commission staff too requests that certain of its exhibits offered at the evidentiary hearing of August 31, 2004 be moved into the record. The request includes exhibits 12, 13, 15, 19, and 20. In light of no objection have been raised, we have accepted these exhibits into the record.

In addition, the project would include approximately 1.75 miles of new double circuit 69kV transmission line interconnecting RERC to the Mountain View and Riverside substations in an existing transmission line right-of-way. Natural gas would be supplied to RERC from a short (~140 ft.) natural gas service line. Potable water for sanitary use would come directly from the City's general water supply while the adjacent WWTP would supply reclaimed water for plant process and cooling water. The RERC would utilize a Zero Liquid Discharge (ZLD) system.

3. Location of Project:

   a) 5950 Acorn Avenue within the City of Riverside (Sections 29, 30, 31, and 32, T2S, R5W, SBBM), (see Ex. 12, p. 2-1; Ex. 1, p. 1.) The proposed site is owned by the City of Riverside and is adjacent to the City's Waste Water Treatment Plant (WWTP) in a light industrial / manufacturing area.

4. Project Applicant:

   City of Riverside Public Utilities
   3900 Main Street
   Riverside, CA 92522

5. Energy Commission staff completed an Initial Study (IS) for the proposed RERC project. The IS concludes that the revisions agreed to by the applicant, in conjunction with the conditions imposed by the Commission will avoid or mitigate all potential significant effects to a point where clearly no significant adverse effects will occur.

6. Further information about the RERC, the IS, or the Energy Commission's exemption process may be obtained by contacting the California Energy Commission's Siting Project Manager for the RERC project, James W. Reede, Jr., California Energy Commission,1516 9th Street, M.S. 15, Sacramento, CA 95814, Phone (916) 653-1245.

7. The mitigation measures included in the project to avoid potentially significant effects are included in Part IV of the Commission Decision.

Therefore, the Energy Commission finds that the Initial Study has identified potentially significant effects on the environment, but: 1) revisions to the project plans or proposals made by, or agreed to by, the applicant will avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur; and 2) there is no substantial evidence or fair argument, in light of the whole record before the agency, that the project, as revised, may have a significant effect on the environment. As a result, the Energy Commission finds that approval of the Application for a Small Power

Plant Exemption for the Riverside Energy Resource Center (RERC) will result in no significant adverse impact upon the environment or upon energy resources.

Dated:

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

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WILLIAM J. KEESE, Chairman

II. ENVIRONMENTAL ASSESSMENT

A. The Standard for Issuing a Negative Declaration

As we noted above, the Commission may grant an SPPE if it finds that "no substantial adverse impact on the environment or energy resources . . . will result from the construction or operation of the proposed facility . . . ." (Pub. Resources Code, § 25541.) In the RERC proceeding, no party asserted that the project will result in a substantial impact on energy resources, and we so find in part II. C. and in part VI. of this Decision. With regard to "substantial adverse impact[s] on the environment," in previous SPPE proceedings the Commission has stated that its decision whether to grant an SPPE (or to require an AFC) is equivalent to a state or local agency's decision whether to prepare a negative declaration [or to require an environmental impact report ("EIR")] under the California Environmental Quality Act ("CEQA"). All parties in the RERC proceeding agree that this is the correct standard. CURE argues that a negative declaration (and thus the granting of an SPPE) would be improper. As we discuss in detail below, we find and conclude otherwise.

The legal criterion for choosing between a negative declaration and an EIR (and thus for choosing between an SPPE and an AFC) is as follows:

> If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant [adverse] effect on the environment, the agency shall prepare an EIR.

(State CEQA Guidelines, Cal. Code Regs., tit. 14, § 15064, subd. (a)(1).[16] Thus if there is substantial evidence that a project may have a significant effect on the environment, we must deny the SPPE and certify the project (if at all) through the

[16] In assessing CEQA issues, the courts give great weight to the State CEQA Guidelines (Cal Code Regs., tit. 14, § 15000 et seq.) ("CEQA Guidelines"). *(Laurel Heights Improvement Association v. Regents of University of California* (1993) 6 Ca1.4th 1112, 1123, fn. 4.)

AFC process. (See CEQA Guidelines, Cal. Code of Regs., tit. 14, sec. 15064 (a)(1).) In applying this test, we must determine both (1) whether there is "substantial evidence, in light of the whole record . . . that a project may have a[n adverse] . . . effect on the environment" and (2) if there is such evidence of an effect, whether the effect is "significant." [17]

a. "Substantial Evidence"

The CEQA Guidelines define what "substantial evidence" is and what it is not:

> Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.
> . . . .
> Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence.

[CEQA Guidelines, §§ 15384, subd. (b), 15064, subd. (f)(5).]

The Guidelines also explain what "substantial evidence in light of the whole record" means in the context of deciding whether to prepare a negative declaration or an EIR:

> If there is substantial evidence, in light of the whole record before [the] agency, that a project may have a significant [adverse] effect . . . the agency shall prepare a[n] EIR. . . . . Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.

[17] Section 25541 refers to "substantial" adverse environmental impact. We believe this equates with the "significant" adverse environmental impact commonly referred to under CEQA. Indeed, CEQA defines "significant effect on the environment" as "a substantial, or potentially substantial, adverse change in the environment." Pub. Resources Code § 21068. See also State CEQA Guidelines, Cal. Code Regs., tit. 14, sec. 15064, subd. (a)(1). Thus in order for an effect to be considered "significant" it must be more than just perceptible—it must be, or at least potentially be, substantial.

[CEQA Guidelines, §§ 15064, subds. (a)(1), (f) (1); see also Pub. Resources Code, § 21080, subds. (c) - (d).]

This fair argument test has been recognized and applied by the Commission in many SPPE proceedings. (e.g., CEC, Modesto Irrigation District Electric Generating Station SPPE Decision (Docket No. 03-SPPE-1, Feb. 2004), pp. 6 – 7.) In applying the fair argument test, an agency must first determine whether "it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact." (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 74 - 75.) If there is no such evidence, that ends the discussion; a negative declaration is appropriate. But if there is any substantial evidence supporting a fair argument, then the agency looks at the countervailing evidence – not to weigh the countervailing evidence against the evidence of a fair argument, but rather to determine whether, in light of the countervailing evidence, the fair argument evidence consists only of "[a]rgument, speculation, unsubstantiated opinion or narrative [or] evidence which is clearly erroneous or inaccurate" and is therefore not "substantial evidence." (CEQA Guidelines, §§ 15064, subds. (a), (f), 15384; see *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 151.)

Examples of expert evidence that has been held not to be "substantial" include irrelevant evidence, evidence lacking a necessary factual foundation, evidence that is inherently improbable, evidence outside the expert's field, or evidence presented by a biased expert. (See *Lucas Valley Homeowners Association v. County of Marin* (1991) 233 Ca1.App.3d 130, 157; *Brentwood Association for No Drilling, Inc. v. City of Los Angeles* (1981) 134 Ca1.App.3d 491, 504. As we discuss below, we find that CURE's evidence is either (a) unsupported by facts, (b) clearly inaccurate or erroneous, or (c) both. Therefore, we conclude that there is no substantial evidence supporting CURE's assertions that the RERC project will or may cause a significant adverse effect on the environment.

b. "Significance"

The CEQA Guidelines define "significant effect on the environment" as "a *substantial, or potentially substantial,* adverse change in . . . the physical conditions . . . affected by the project," although the Guidelines recognize that "[a]n ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting." (CEQA Guidelines, §§ 15064, subd. (b), 15382) [italics added]; see *Friends of Mammoth v. Board of Supervisors of Mono County* (1972) 8 Cal.3d 247, 271 [meaning of "significant effect" will have to be "fleshed out by the normal process of case-by-case adjudication"].) An agency has substantial discretion in determining what is "significant." (See 1 Kostka & Zischke, Practice Under the California Environmental Quality Act (CEB, 2003) ("Kostka & Zischke"), pp. 277-279; 281-283, 287.)

CURE relies heavily on Section 15064(g) of the CEQA Guidelines, which states:

> [I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and prepare an EIR.

(CEQA Guidelines, § 15064, subd. (g).) This rule applies, however, only where it is arguable that the record contains "substantial evidence" showing a significant effect. (See *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 755 ["Conflicting assertions do not ipso facto give rise to substantial "fair argument" evidence . . . Disagreement of expert opinion regarding significance of an environmental effect only requires an EIR in 'marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment'"]; 1 Kostka & Zischke,

p. 298 [the "rule for determining significance should not apply . . . when the only disagreement is about whether a potential impact should be classified as significant or insignificant by the lead agency"].) As we discuss under "F.1" below, we find that CURE's evidence of significant adverse environmental effects is not "substantial."

c. The Purposes of CEQA.

In applying the "fair argument" test, we must be mindful of the purposes of CEQA. That is because resolution of the "fair argument" issue involves interpretation and application of legal standards such as the provisions of Section 15064(g), and in construing a law an agency should strive to carry out its purposes. (*Manriquez v. Gourley* (2003) 105 Cal.App.4th 1227, 1234 – 1235.) The two fundamental purposes of CEQA are to provide governmental decisionmakers and the public with environmental information about proposed projects, and to avoid environmental damage by requiring mitigation (or alternatives) wherever feasible. (See CEQA Guidelines, §§ 15002, subd. (a), 15003; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 563 - 564.)

In usual circumstances, the "fair argument" test supports CEQA's purposes by erring on the side of preparing EIRs rather than negative declarations, because – again, in usual circumstances – "[a] negative declaration is simply a brief statement describing the reasons why a proposed project will not have a significant effect on the environment . . . . An EIR, on the other hand, is a more formal report, the result of extensive study and public review." (*Chamberlin v. City of Palo Alto* (1986) 186 Cal.App.3d 181, 184, fn. 1.)

But the RERC case (and most Commission SPPEs) do not present usual circumstances: the environmental analyses in SPPE proceedings are generally similar, in their breadth and depth, to those in AFC proceedings. Moreover, in an

SPPE proceeding, the public enjoys procedural rights to present and challenge evidence that go far beyond the rights granted to the public under CEQA to comment on an EIR, much less a negative declaration. Thus, it is clear that requiring the RERC project to undergo the AFC process would neither produce additional environmental information nor result in any additional environmental protection. For example, the Staff's air quality witness testified that had the RERC project been filed as an AFC, Staff would do no more analysis than it had already done in the SPPE proceeding. (8/31/04 RT 91 – 94.) The Staff air quality witness testified that "[i]n terms of emission analysis, in terms of modeling impact analysis, in terms of significance and significance determination, for those aspects the analysis is essentially identical to what I've done in an AFC. And actually probably more so because of the active intervenor that we have on this particular case." (8/31/04 RT 92:2-9.) And the Staff's recommended conditions of exemption, which we adopt here, include all feasible mitigation. (See 8/31/04 RT 94, 288 – 292; see also IV. FINAL CONDITIONS OF EXEMPTION, contained in this Decision.)

Thus, if we denied the SPPE, the result would be additional delay and paperwork, with no additional information or environmental protection to show for it. That would do nothing to implement the purposes of CEQA; "[t]he purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind." *(Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 283.) We are mindful that in some cases concerning the propriety of negative declarations, the courts have based their resolution of the issue on the thoroughness or paucity of the agency's initial study. (See *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) Here, an AFC proceeding would add nothing to what is already in the RERC Initial Study and the rest of the RERC record.

Denying the SPPE for RERC would not serve the purposes of CEQA either in terms of environmental protection or that of informing the public. The Commission should therefore not require what would essentially be a meaningless act by requiring an AFC proceeding after the extensive review already carried out on this project.

Furthermore, the needless delay involved in processing the RERC project as an AFC would frustrate the City of Riverside's need to provide additional peaking power in time to avoid electricity shortages. Both the Commission and the California Independent System Operator have warned of anticipated shortages of electrical generation, especially during peak demand periods in Southern California. These anticipated shortages may occur as soon as the summer of 2005.[18] (2004 Update to the 2003 Integrated Energy Policy Report, Docket No. 03-IEP-01, Pub. No. 100-04-006CTF.)

B. Summary of Impacts

The evidence of record supports the characterization of impacts as summarized in the following table.

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[18] We hereby take official notice of the Commission's 2004 Update to the 2003 Integrated Energy Policy Report.

Summary of Conclusions: Environmental and Engineering Checklist

	Potentially Significant Impact	***Less Than Significant Impact With Mitigation***	***Less Than Significant Impact***	***No Impact***
ENVIRONMENTAL				
Agricultural Resources				X
Air Quality		X		
Biological Resources		X		
Cultural Resources		X		
Energy Resources				X
Geology and Paleontology		X		
Hazardous Materials and Waste		X		
Hydrology and Water Quality			X	
Land Use and Recreation				X
Noise		X		
Public Health		X		
Socioeconomics				X
Traffic & Transportation		X		
Visual Resources			X	
Waste Management		X		
ENGINEERING				
Transmission Line Safety & Nuisance			X	
Transmission System Engineering			X	

The evidentiary bases for these characterizations are set forth below.

C. Environmental Areas with No Impacts

The evidence of record is uncontroverted in establishing that the RERC project will have no impacts to **Agricultural Resources** or in the disciplines of **Energy Resources** and **Socioeconomics**. (Ex. 12, 13.; 8/5/04 RT 8-16, 38-54, 37; 8/30/04 RT 69-70.) Specifically with regard to Energy Resources, the project "… will not create significant adverse effects on energy supplies or resources, will not require additional sources of energy supply, and will not consume energy in a wasteful or inefficient manner." (Ex. 12, p. 7-7.) The socioeconomics analysis and testimony submitted by Applicant and by Staff addressed the potential for the project to adversely affect minority or low-income populations. This analysis is often referred to under the heading "Environmental Justice". (Ex. 1, pp. 292-296; 8/30/04 RT 68-69; Ex. 12, pp. 14- through 14-12; 8/5/05 RT 37.) No impacts were identified by any witness in any of the above subject areas. Therefore, no further discussion or Conditions of Exemption are required.

In addition, in the area of **Land Use,** the testimony of Applicant and that of Staff each showed through the witnesses' analyses that the project would have no impact. Staff set forth one Condition of Exemption (COE) to insure that the project will comply with the City of Riverside zoning ordinance. (Ex. 12, p. 11-7; Ex. 1, sec. 6.2; 8/5/04 RT 22-23).

D. Environmental Areas with Less than Significant Impacts

The testimony of Applicant and Staff demonstrated that the project would create no significant impacts in the areas of **Hydrology and Water Quality. (**Ex. 12, p. 10-15; 8/30/04 RT 54, 71.) In order to mitigate for any potential increase in storm water runoff at the site resulting from the proposed project, the applicant included as part of the project an unlined storm water retention basin designed to retain excess storm runoff. (Ex. 12, p.10-7.) The basin will be sized to contain the difference in runoff volume between pre and post development of the site

during a 50-year storm event and would have an open bottom for infiltration. (*Id.)* Any overflow will be sent to the adjacent wastewater treatment plant. (*Id.*) The size of the detention basin was determined using Los Angeles County regulations, which are generally more stringent and conservative than those of other California counties. (Ex. 12, p.10-8.) Monitoring and maintenance will be required to ensure that the detention basin remains effective through the life of the project. (8/30/04 RT62.)

The ability of water to infiltrate from the basin is merely the result of the basin being unlined and is not required for mitigation. (RT 8/30/04 pp. 58-59.) Thus, if there was no possibility of infiltration of water from the basin, the basin would still fully mitigate for the increase in storm water runoff that could occur from the proposed project. (RT 8/30/04 p. 66.) In addition, a COE requires Applicant to monitor water use by the project. (Ex. 12, p. 10-15.)

While CURE cross examined the Staff witness on the adequacy of the design for storm water handling, CURE did not submit any testimony or evidence on the matter. Thus, there is no substantial evidence in the record to support a fair argument that the project would have a significant environmental impact due to storm water runoff.

Both the testimony of Applicant and Staff determined that the project will have less than significant impacts in the area of **Hydrology and Water Quality.**

Applicant's original application and later responses to data requests formed the basis for its testimony that the project will have no significant effects on **Visual Resources**. (Ex. 1, 2; 8/5/04 RT 31.) Staff confirmed this in its own analysis, finding either no visual impacts or, in some cases, impacts that are less than significant. (Ex. 12 p. 18-14.) Staff determined that the mitigation steps included by Applicant were adequate to avoid significant visual impacts and therefore proposed no COEs in this area. The testimony was not challenged. (Ex.12, pp. 18-1 through 18-22; 8/5/04 RT 32.)

The record reveals that the project will have a less than significant impact in the subject area of **Transmission Line Safety and Nuisance**. This evidence ruled out any significant project-related impact related to aviation hazards, radio frequency interference, fire hazard, shock hazard, or the risk from electric and magnetic field exposure. (Ex. 1, Section 4; Ex. 12, pp. 16-1 through 16-7; 8/5/04 RT 28-29.) Similarly, the evidence establishes that there are less than significant impacts related to the project's **Transmission System Engineering**. (Ex. 12, p. 17-7.) The record contains no evidence to the contrary and these topic areas require no further discussion.

E. Topic Areas Having Less Than Significant Impacts After Mitigation

Staff and Applicant presented analysis in the area of **Biological Resources**, focusing on potential impacts of the project on state and federally protected species, species of special concern, riparian areas, wetlands and other areas of critical biological concern. In its prehearing conference statement CURE raised concerns about the effects project construction noise could have on wildlife in the adjacent riparian corridor. However, Staff's analysis revealed that construction noise at the nearby recreation trail would be approximately 51 dB(A), a noise level shown to not affect wildlife behavior. The riparian corridor is more distant from the project than the trail, thus noise levels in the corridor would be even lower. (Ex. 12, p. 5-11; Ex. 1, sec. 6.3; Ex. 17; 8/5/04 RT 112-113.) The record clearly establishes that the project, as mitigated, will have no significant impacts on biological resources.

In the area of **Cultural Resources**, Applicant and Staff presented uncontested testimony showing that the project's impacts to cultural resources would be less than significant with the incorporation of both Applicant's proposed mitigation and the seven COEs proposed by Staff in its Initial Study. (Ex. 1,sec 6.4; Ex. 12, pp. 6-1 through 6-17; 8/5/04 RT 17-18.)

Staff and Applicant determined that the project would have less than significant impacts in **Geology and Paleontology.** The testimony shows that in most subtopics concerning geology, the project would have no impacts. (Ex. 1, Section 6.5; Ex. 12, p. 8-7.) A few subtopics were identified by Staff as less than significant with the incorporation of Applicant's mitigation. (Id.)

However, CURE offered testimony in an effort to show that the silt content of soils at the project site would result in significant impacts due to particulates released during project construction. Because this is primarily an issue related to modeling for air quality impacts, we address the silt content of the soils in our discussion of air quality.

Applicant's analysis regarding project impacts concerning **Hazardous Materials Management** are contained its application. (Ex. 1, secs. 2.9, 6.14; 8/30/04 RT 33-34.) Staff's analysis in this area concluded that the project would have no impact in most areas concerning hazardous materials management. It would pose a less than significant safety hazard to people working or residing in the project area. Staff proposed three COEs which will reduce potential impacts to less than significant concerning transportation of hazardous materials and concerning foreseeable accident conditions. Staff also concluded that the project will comply with all LORS pertaining to hazardous materials management. (Ex. 12, pp.9-1 through 9-11; 8/5/04 35-36.) None of the testimony in this area was contested.

In its pre-filed testimony, CURE argued that the project would impose significant environmental impacts in the area of **Noise**. However**,** Applicant and Staff found otherwise in each of their separate analyses. (Ex. 1, sec 6.7; Ex. 12, p. 12-13; Ex. 18.) Nevertheless, in response to challenges raised in CURE's written testimony, both Applicant and Staff each conducted further analyses. (8/30/04 RT 115.) Applicant also relocated some plant equipment to further reduce any

risk of off-site noise impacts. Applicant's witness testified that its revised analysis lead to the same conclusion of no significant noise impacts due to construction or operation of the project. (8/30/04 RT 116.) Noise impacts at the nearest residence and at the nearest commercial building will be below local noise standards. (Id.) The witness noted errors in CURE's pre-filed testimony where it relied upon standards not used in the City of Riverside or by the CEC and of noise levels based on a receptor located 50 feet from the noise source, while the nearby recreational trail is about 830 feet from construction activity. (8/30/04 RT 117.) Staff also carried out additional analysis in response to CURE's assertions. The analysis addressed CURE's claims and concluded "that the RERC's project noise levels will comply with local noise LORS, and will create no significant impacts under CEQA". (Ex. 19.)

CURE did not cross examine the other parties' witnesses and did not sponsor its pre-filed testimony into evidence. (8/30/04 RT 121.) There is no substantial evidence in the record to support an argument that the project will have a significant environmental impact based on noise.

Applicant presented an analysis of the project's potential impacts in the area of **Public Health**. This included a discussion of three areas that overlap with air quality management. First, the potential health risks attributable to accidental releases of ammonia from the on-site storage facility; second, a discussion concerning health risks related to construction emissions from diesel-fueled construction equipment and third, health risks attributable to operation of the facility once it is constructed. (Ex. 1, sec. 6.8.) Staff conducted its own analysis of the project's potential public health impacts and concluded that, with the addition of the COEs recommended in the areas of public health and air quality, the project's impact to public health would be less than significant. The Staff analysis focused on the potential for the project to pose any significant risks of cancer, as well as any risk of short or long-term noncancer health impacts due to

project emissions. In addition, Staff analyzed the risk of Legionella growth and dispersion. (Ex. 12, pp. 13-1 to 13-13; 8/5/04 RT 24-25.)

There was no objection or challenge to receiving the Staff testimony. (Id.) However, to the extent that some of the public health issues overlap the topic area of **Air Quality**, we have addressed below those areas in controversy.

In addition, Applicant and Staff each submitted their separate analysis of potential project impacts in the area of **Traffic and Transportation.** The Staff analysis found the project would basically have no impacts. Staff also determined that with the proposed COEs put into effect, the project will have a less than significant impact concerning transportation of hazardous materials and concerning general effects on local traffic flow and transportation, including air transport. (Ex. 12, pp. 15-1 through 15-14; 8/5/04 RT 26-27) Applicant's testimony in this area reached the same conclusions. (Ex 1, sec 6.9, Ex. 2, Ex. 6, Ex. 10; 8/5/04 RT 26.)

Concerning **Waste Management,** Applicant's testimony (Ex. 1, 2; 8/5/04 RT 33-34.) was consistent with that of the Commission staff in determining that the project would have no impact in many waste-related areas. Furthermore, the Staff analysis showed the project would have a less than significant impact regarding waste disposal and regarding any potential risk to the public from transportation of wastes. All topics relative to waste management were addressed in the record. Staff proposed, and we have adopted, a single COE to ensure adequate mitigation. (Ex. 12 p. 19-6; 8/5/04 RT 34-35.)

F. <u>Topics of Concern – Air Quality</u>

1. Introduction

This Mitigated Negative Declaration is based on the analysis contained in the Initial Study and evidence provided by parties. It incorporates numerous

conditions that fully mitigate the air quality (and other) impacts of the proposed project to less than significant levels. However, the conclusion is contested by CURE, which presented testimony asserting that both the construction and operation of the project will result in unmitigated significant adverse air quality effects. That conclusion is supported by elaborate modeling of air quality impacts, at the level that would ordinarily be found in EIRs (or AFCs), by both Staff and Applicant. The conclusion is also consistent with Commission conclusions regarding similar power plant licensing cases, using the same technology with similar impacts, at other project sites. However, the conclusion is contested by CURE, which presented testimony asserting that both the construction and operation of the project will result in significant adverse air quality effects.

This section of the Decision explains why we find that CURE's testimony does not constitute substantial evidence that the project will (or might) cause a significant adverse effect. We so find for two reasons. First, CURE's assertions of significant construction effects are based, in general, on impacts alleged to occur at the fenceline of the project. That is a "clearly erroneous" approach, because there are no human beings at the fenceline and because the local air district measures air quality effects either where there are human beings or at air quality monitoring stations. At those locations, the air quality effects are much lower than estimated by CURE. Second, with regard to CURE's testimony on the significance of specific air quality effects, we find CURE's assertions to be clearly erroneous, unsupported by facts, or both.

2. CURE's Assessment of Air Quality Effects at the RERC Fenceline.

All of CURE's allegations of significant adverse effects from construction emissions are based, with one minor exception, on air quality impacts at the fenceline of the project. (8/31/04 RT 115, 131, 184.) That approach is "clearly erroneous." Ambient air quality standards and emissions limitations are

designed to protect public health, in particular the health of "sensitive receptors" – children, the elderly, and people with impaired health. (RT 8/31/04 77, 82, 240.) Yet there are no humans, and certainly no sensitive receptors, at or near the fenceline; the area adjacent to the fence is uninhabited land and a roadway. (RT 8/31/04 28, 240-241; Ex. 27-2B.) The isopleth maps (an isopleth map has a series of lines showing air quality effects at various levels) produced by CURE itself show no significant impacts beyond the area immediately adjacent to (i.e., within a few feet of) the fence. (Ex. 27-1B; RT 8/31/04 29.) (one editor stated," I don't understand this sentence.) The nearest potential sensitive receptors are more than one-half mile distant, where the effects of the project's construction activities are only a small fraction of those at the fenceline. (RT 8/31/04 55 – 57.) [19] Indeed, air districts measure the quality of air at specific monitoring stations, which in the case of RERC are far from the project. (8/31/04 RT 100.) For these reasons, we find (1) that impacts at the fenceline are neither "substantial, or potentially substantial" nor "adverse" (see CEQA Guidelines, § 15382 [definition of "significant effect on the environment"]), and (2) that therefore CURE's assertions that a significant adverse effect exists at the fenceline to be "clearly erroneous" and "not based on facts."

3. CURE's Assertions of Significant Effects

Appendix G of the CEQA Guidelines suggests five criteria for assessing whether a project will have a significant adverse air quality effect: We use those criteria here, as did the Commission Staff in its analysis. (8/31/04 RT 42; Ex. 15, p. 4-16.) The criteria are whether the project would:

[19] CURE *assumed* that the two residents of a dog kennel near the site are sensitive receptors. However, the only evidence in the record is to the contrary. (8/31/04 RT 19-20, 241.) In addition, the two residents have agreed to vacate the kennel (a residential nonconforming use) during a substantial part of the construction period in order to avoid the dust and diesel fumes during peak earthmoving activity. (Ex. 21; RT 9, 20-22.)

1. conflict with or obstruct implementation of an applicable air quality plan,

2. would violate an air quality standard or contribute substantially to an existing or projected air quality violation,

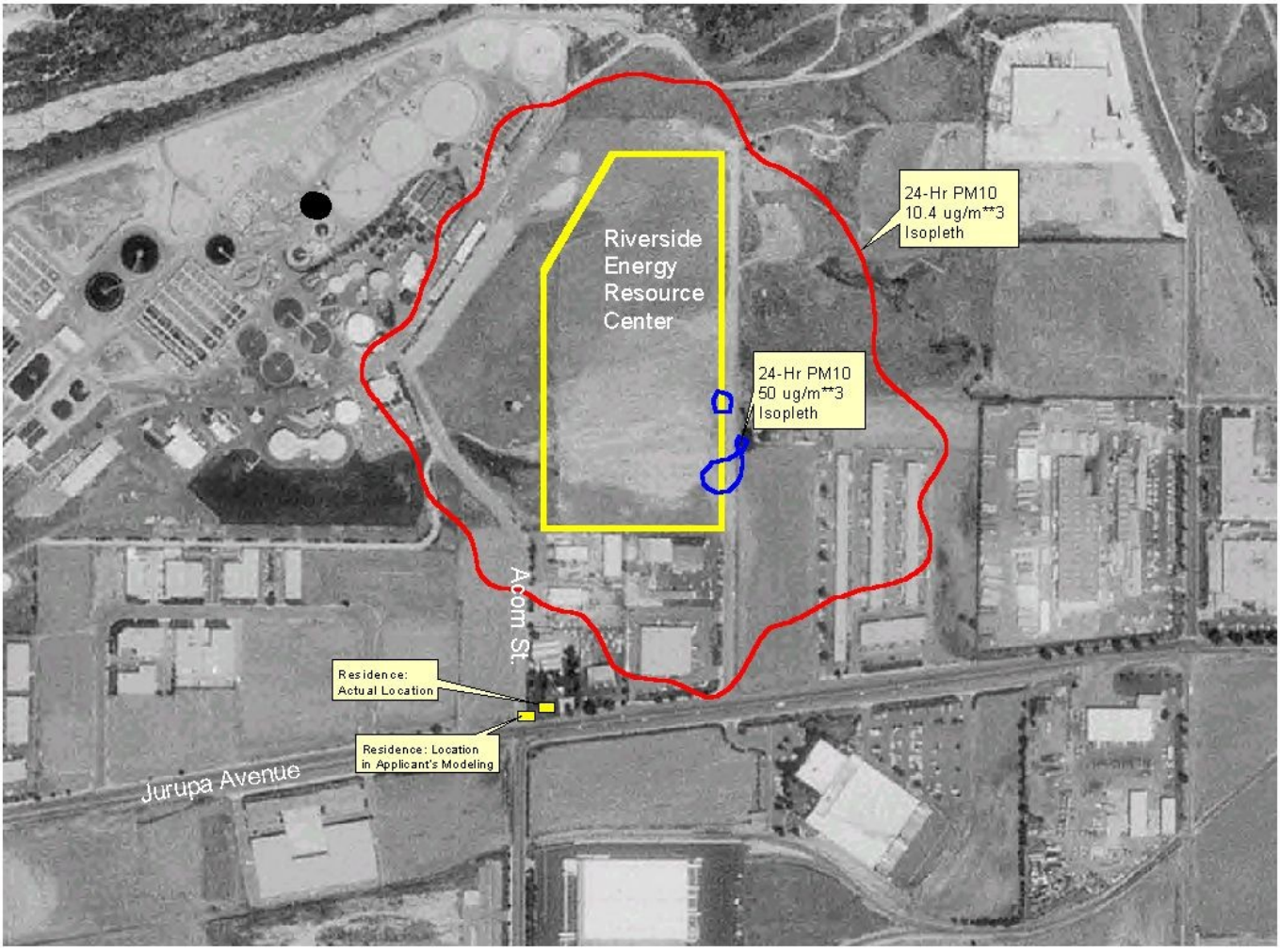
3. result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in non-attainment under an applicable federal or state ambient air quality standard;

4. expose sensitive receptors to substantial pollutant concentrations; and

5. create objectionable odors affecting a substantial number of people.

Figure 1B

Riverside Energy Resource Center
24-Hour PM10 Impacts from 8 Hr/Day On-site Construction Activities
Data Source: Prepared Direct Testimony of Karl Lany, August 13, 2004



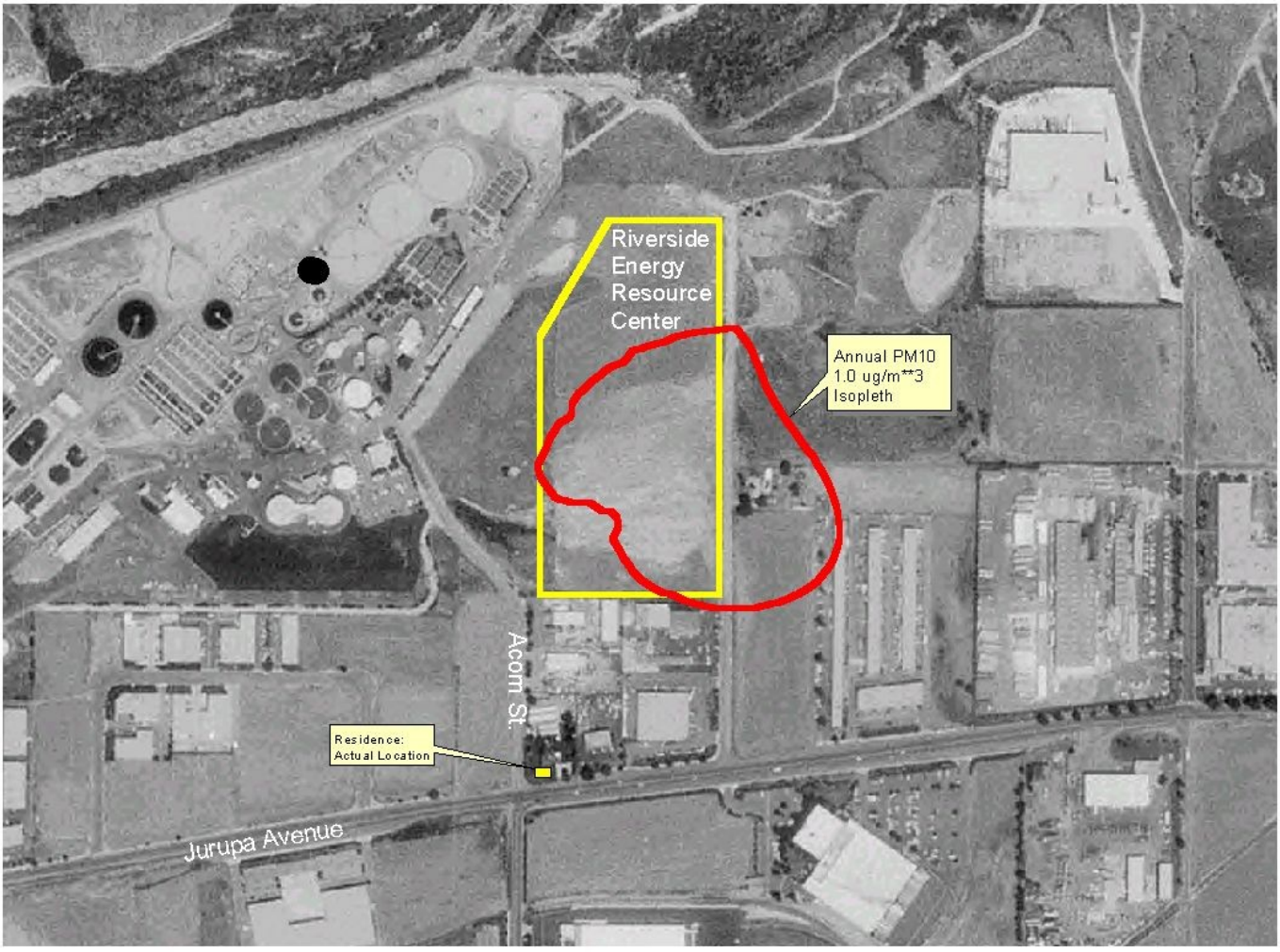
300 0 300 Meters

10.4 ug/m**3 Isopleth: 4ra10p4.dxf
50 ug/m**3 Isopleth: 4ra50.dxf

Basemap: Riverside West NW DOQQ

Figure 2B:

Riverside Energy Resource Center
Annual PM10 Impacts from 8 Hr/Day On-site Construction Activities
Data Source: Prepared Direct Testimony of Karl Lany, August 13, 2004



300 0 300 Meters

1.0 ug/m**3 Isopleth: 4rb1.dxf

Basemap: Riverside West NW DOQQ

The criteria allow us to analyze the particular circumstances of each project and each proposed site, including matters such as the length of time impacts would occur, the probability of impacts occurring, and the context of the modeling results, including the proximity of any potential receptors. (8/31/04 RT 83-84.)

Because the potential air quality impacts of a project are different during project construction than during operation, the Commission considered the potential impacts of construction and operation separately. With regard to both types of potential impacts, we note that the presence or absence of the violation of a legal standard is not dispositive of the issue whether a significant impact exists (or whether there is "fair argument" that such an impact may exist). In particular, noncompliance with an environmental law does not automatically mean that the project has a significant adverse environmental effect. (Compare CEQA Guidelines, § 15065 [noncompliance is not listed as a "mandatory finding of significance"] with *id.*, App. G, Part III.) Moreover, CURE's arguments are largely premised on the fact that there are already violations of the state's particulate (PM_{10}) standards in the Riverside area. This premise is contrary to CEQA Guideline Section 15064(i)(5): "The mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable."

a. Construction Effects

The air quality effects resulting from RERC's construction will be of two types: dust kicked up by construction equipment, and tailpipe emissions from the equipment. CURE asserts that impacts from dust particulate matter of 10 microns or less in diameter (known as PM_{10}), and from tailpipe emissions of oxides of nitrogen (NO_x), may be significant. Yet both will be very short-lived: three weeks or less, with the worst impacts coming in a three- to four-day period. (8/31/04 RT 230.) In order to ensure that construction emissions are as

insignificant as possible, the Commission Staff recommended, the Applicant agreed to, and we adopt numerous conditions of exemption, the most important of which are:

1. Limiting heavy earth-moving construction to eight-hour periods each day.
2. Extensively irrigating project soils prior to earthmoving activity.
3. Tailpipe emission control requirements (including diesel low sulfur fuel) for construction equipment.
4. Frequent re-watering during the earthmoving activity.
5. The requirement of a "construction mitigation manager" whose job is to be on-site to supervise the implementation of all mitigation measures, with detailed reports to the Commission.

(RT 58-60, Ex. 12, pp. 4-39.; Ex. 15, p. 4-12) The Staff testified that in observed practice such measures have been very effective in assuring that construction impacts are minimal. (8/31/04 RT 59-60.)

(1) 24-Hour Concentrations of PM_{10}

(a) The California Ambient Air Quality Standard

CURE argues that RERC will both "cause" a violation of the California 24-hour Ambient Air Quality Standard for PM_{10} ("24-hour PM_{10} CAAQS") and "contribute to" a violation. Because the legal issue regarding significance is essentially the same, we consider them as one.

The RERC evidence shows that the 24-hour PM_{10} CAAQS is 50 µg/m^3 and that 24-hour PM_{10} background concentrations in the project vicinity are 164 µg/m^3. (Ex. 15, Walters Suppl. Test., p. 4-17.) CURE's experts testified that RERC construction activities will, assuming an 8-hour-per-day construction schedule, cause an increase in 24-hour PM_{10} concentrations at the project fenceline of 65 µg/m^3, even after all mitigation is applied, and asserted that the increase is

significant. (CURE Op. Br., p. 20; Ex. 25, p. 2; Ex. 26; RT 8/31/04 113 - 114, 122, 132 - 134.)

Staff argues, and we agree, that the project's contribution to the violation of the 24-hour PM_{10} CAAQS is not a "significant impact" because:

1. there will no people at the project fenceline, so PM_{10} concentrations where there are humans will be substantially lower (see "Fenceline" discussion in section F. 3. above);

2. AAQS already have a built-in margin of safety, because they are designed to protect sensitive receptors.

3. any humans potentially affected are not sensitive receptors; and

4. the effects will be temporary - approximately three to four days for maximum emissions.

(Ex. 12, pp. 4-35 – 4-41; RT 8/31/04, pp. 53, 143, 229-230, 234 – 236, 239-241.) CURE does not dispute those facts but argues that the mere violation of the AAQS is "significant." We disagree. As we noted above in our discussion of "significant effects" above, violation of a standard does not automatically equate to a significant effect. Because of the four factors listed immediately above, and in particular in light of the absence of any evidence that there will be impacts on humans and of the very limited temporal nature of the impacts, we find that CURE's assertion of significance is clearly erroneous.

(b) SCAQMD's 10.4 $\mu g/m^3$ Threshold

In order to assess the significance of PM_{10} concentrations, SCAQMD has recommended a "local significance threshold" ("LST") of 10.4 $\mu g/m^3$, for a 24-hour period, at the nearest sensitive receptor. CURE claims that the concentration is exceeded and that the exceedance is significant. On both counts, CURE is clearly erroneous. With regard to the concentration, all parties (including CURE) testified that 24-hour concentrations will be less than 10.4 $\mu g/m^3$ at all receptors, even at the dog kennel where concentrations to non-

sensitive receptors will be 10.23 µg/m$^{3.}$ The concentration level drops rapidly with distance and is only 2.5 µg/m^3 at the nearest sensitive receptor, or less than one-quarter of the level predicted at the dog kennel. (Ex. 15, p. 4-14; 8/31/04 RT 54-55.) With regard to the threshold, as the Air District testified, it is inapplicable because it is a threshold designed for long-term operation impacts, not short-term construction impacts (8/31/04 RT 206), and, was explained above, it is not binding on us in any event (e.g., 8/31/04 RT 41 – 51).

(2) Annual Concentrations of PM_{10}

The Annual PM_{10} CAAQS is 20 µg/m^3, background concentrations in the project vicinity are 63.3 µg/m^3, and RERC will cause an increase in annual PM_{10} concentrations at the project fenceline of 4.97 µg/m^3 even after all mitigation is applied. CURE makes two arguments here: (1) that the contribution to the AAQS violation is significant, and (2) that the project's emissions would exceed a SCAQMD significance threshold of 1 µg/m^3. (E.g., CURE Op. Br., pp. 21 - 22.)

(a) The California Ambient Air Quality Standard

CURE testified that the air district is "non-attainment" with the annual state PM_{10} standard, that the project's construction will increase the annual average PM_{10} levels at the fenceline, and that this increase is a significant impact. (8/31/04 RT 134-135) However, as we have stated earlier, the testimony is undisputed that there are no sensitive receptors at the fenceline (8/31/04 RT 55, 239-241), that such impacts drop off very quickly with distance (8/31/04 RT 57), and that the modeled maximum impacts with which CURE is concerned will be of very short duration. (8/31/04 RT 229-230) ["three to four days"].) As we stated above, such a short-term, localized impact where there are no sensitive receptors is clearly not, in our view, a "substantial adverse change" to the physical environment. We thus find CURE's testimony to be clearly erroneous.

(b) SCAQMD's 1.0 $\mu g/m^3$ Threshold.

CURE's experts also testified that the 4.97 $\mu g/m^3$ increase in annual PM_{10} concentrations resulting from RERC's construction emissions would be significant because it would exceed a CEQA significance threshold of 1.0 $\mu g/m^3$ established by the South Coast Air Quality Management District's ("SCAQMD") Rule 1303. (E.g., CURE Op. Br., pp. 21 - 22; Ex. 25, p. 3 & Att. C.) However, SCAQMD testified that Rule 1303 is not applicable to temporary emissions such as those resulting from construction. (RT 8/31/04, pp. 206 - 207.) CURE attempted to refute SCAQMD's testimony by noting that "[t]he significance of a change doesn't depend on the source of the emissions. In other words, if the emissions come from a power plant stack or a refinery stack or the exhaust pipe of a scraper doesn't really make any difference." (RT 8/31/04, p. 137.) CURE's testimony is inapposite, because the SCAQMD testimony addressed not the source of emissions but their duration. Therefore, CURE's experts were "clearly inaccurate or erroneous."

(3) SCAQMD's 100 Pounds/Day NO_X Threshold

The parties appeared to agree that NO_X emissions from construction will be 134.9 pounds/day, and that SCAQMD uses a significance threshold of 100 pounds/day for construction-related NO_X emissions; as a result, CURE's expert opined that the emissions were significant. (CURE Op. Br. pp. 24 - 25; Ex. 28, App. H, p. 6-4; RT 8/31/04, pp. 150 - 151.) However, the 134.9 pounds/day figure is based on a 12-hour construction schedule. (Ex. 15. p. 4-13.) In an 8-hour day, which we are requiring as a condition of exemption (AQ-C5), the emissions would be approximately 89.9 pounds/day, well under the threshold. Moreover, we would find even 134.9 pounds/day to be insignificant, because such emissions would not substantially increase ozone concentrations in the site vicinity, would not interfere with implementation of SCAQMD's ozone attainment plan, and would be temporary – no more than three or four days. (Ex. 15, p. 240;

RT 8/31/04 57, 229-230, 242.) (The threshold appears to be part of a control strategy for ozone, for which NO_X is a precursor.)

(4) Modeling of Construction Emissions

In addition to asserting that various agreed-upon facts showed that construction emissions would be significant, CURE also asserted that the Applicant's and Staff's estimates of PM_{10} emissions were understated. We find that CURE's assertions in this regard are clearly erroneous and not based on facts, and therefore do not constitute substantial evidence.

(a) Silt Content of the Soil

One factor affecting PM_{10} impacts is the percentage of silt in the soil at the project site. Silt content includes silt and clay particles less than 75 microns in diameter. (8/30/04 RT 79.) Only those particles with a diameter of 10 microns or less have the potential to contribute to a PM_{10} impact. (8/30/04 RT 79.)

Several tests to estimate silt content, either for geotechnical or air quality purposes, were conducted either by the applicant's expert witness or under his supervision. (8/30/04 RT 74-75, 210.) CURE claimed that the first two tests should have been used in estimating PM_{10} emissions. But neither test was conducted for the purpose of determining the potential amount of PM_{10} that could be generated during grading of the site, and the first report explicitly states that the data should not be extrapolated for other than geotechnical uses (which require a less precise level of analysis). (8/30/04 RT 78-79, 212.) The tests are not reliable when used in the manner suggested by CURE. (8/30/04 RT 89.)

A third test was conducted for the explicit purpose of obtaining silt content data with reasonable accuracy for use in an air quality analysis. (8/30/04 RT 79-80.) The samples were taken in the southwest portion of the site, where construction

will occur and where the maximum amount of topsoil and fill (non-bedrock material) is located. (8/31/04 RT 211.) This most recent test showed that the silt content fell within a range of 10-13 percent, with 12.2% being a representative number. (8/30/04 RT 80; 8/31/04 RT 215.) Applicant's witness testified that because the samples were taken in the area of greatest topsoil and fill, they represent the worst-case silt content, and that no other area of the site is likely to have a higher silt content. (8/30/04 RT 109-110.) Based on the most recent test, the applicant's witness disavowed his earlier silt content estimation (which relied on visual observation) as being too high and characterized it as not reliable for use in PM_{10} calculations. (8/30/04 RT 80; 8/31/04 RT 214-215.)

Staff's expert witness, who had been to the site and observed the soil first-hand, concurred with the applicant's conclusion and testified that, based upon the most recent data provided by the applicant, a 12% silt content value best represented the soil on the project site. (8/30/04 RT 88.) The new estimate superceded the 22% estimate that staff had previously calculated. (8/30/04 RT 87-90.)

CURE's testimony relied on the earlier, repudiated information to reach his conclusion that the project site silt content "may" range from 18 to 38%. (Ex. 16.) The CURE witness did not go on the project site to gather data, did not view the soil up-close, and did not conduct any of the tests upon which he relied. He merely visually observed the soil from outside the site at the fenceline. (8/30/04 RT 95.) However, he acknowledged that a visual analysis of silt content is merely a "first cut" and that subsequent sieve analyses, such as those conducted in the third test, more clearly define silt content and are more accurate. (8/30/04 RT 97-98,104.) He also stated that his reason for not relying on the most recent sieve analysis was his belief that the samples were not taken from the zero to one foot range and thus represent bedrock, not topsoil or artificial fill. (8/30/04 RT 100-101.) However the most recent sieve analysis shows that all samples

were taken from the zero mark.[20] Thus, the sole basis for his testimony is an erroneous claim, and we therefore find it not to constitute substantial evidence.

CURE's air quality witness relied on the earlier, misapplied test results and claimed that the silt content should be 18%. (8/31/04 RT 167.) Her opinion, like that of CURE's geologist, is based on the erroneous assumption that the latest sieve analyses done by Applicant's geologist did not include the upper foot of fill soil. (8/31/04 RT 197,199.) As we just discussed, this was proven to be false. She also acknowledged that when estimating fugitive dust emissions, it is appropriate to use a surface silt content for those operations that generate fugitive dust from operating on the surface. (8/31/04 RT 200.) Of the 12 soil samples taken by the applicant, 8 included the upper foot of soil, including the four most recent sieve analyses, which arrived at a range of 10-13% silt. (Ex. 32; 8/31/04 RT 213-214.) The evidence establishes that lower soils will have substantially lower silt contents. CURE did not provide any evidence to call into question the accuracy of the applicant's analyses. Therefore, we find that a silt content of 12.2% represents the worst-case potential for fugitive dust emissions from surface operations (which, we again note, will only occur for the very limited time that the surface fill soils are being worked). In sum, we find that the assertions of CURE's witnesses regarding the silt content of the soils at the project site are clearly erroneous and not based on facts, and are therefore not substantial evidence.

(b) Watering Efficiency

The amount of dust generated by disturbance of the soil during construction activities depends in part on the water content of the soil. During RERC construction, the applicant will water the soil to control dust. CURE's air quality

[20] Sample TP-5 was taken at 0-1.8 feet and contained a silt content of 13.2%; TP-6 was taken at 0-5.8 feet and contained a silt content of 9.7%; TP-7 was taken at 0-2.2 feet and contained a silt content of 12.4%; and TP-8 was taken at 0-2.7 feet and contained a silt content of 13.4%. (Ex. 32.)

witness testified that the applicant erred in relying on an 85% watering control efficiency. The witness based her claim on excerpts from a SCAQMD CEQA handbook (Ex. 28, tab H), which, she asserted, allows the use of 85% watering control efficiency only when dust palliatives are used. However, the handbook states that, although the use of dust palliatives is one factor that would support the use of 85% watering control efficiency, so too would watering three times daily (Ex. 28, tab H, p. 11-16.) Additionally, other emission factor documents (such as AP-42 Section 13.2.2) clearly show that an 85% water control efficiency for unpaved road dust emissions can be achieved with appropriate watering. Thus the witness's assertion that dust palliatives are the only option for justifying the 85% watering control efficiency is not supported by fact and is clearly erroneous. By contrast, the record shows that 85% watering control efficiency will be achieved by the one-week period of site irrigation that will occur prior to site preparation (see COE AQ-C3) (which the CURE witness did not account for (8/31/04 RT 274)), consistent watering between earth moving sweeps, and the use of an on-site air quality control mitigation monitor (AQCMM) who will ensure that the site will be watered to ensure the maximum control efficiency. (8/31/04 RT 217-219, 252, .)

For all of these reasons, we find that the assumption of 85 percent watering control efficiency is justified and that CURE's testimony on this point is not substantial evidence because it is clearly erroneous and not based on facts.

(c) Scraper Drop

"Scraper Drop" refers to the amount of material that will escape into the air from loading and piling of dirt by construction scrapers. In estimating scraper drop emissions, the applicant used an emission factor of .04 pounds PM_{10} per ton of material handled, which was derived from section 11.9 of AP-42, a document produced by the U.S. Environmental Protection Agency (EPA). (8/31/04 RT 243-245.)

CURE daims that the factor is inappropriate for RERC because it is a mine-specific emission factor based on loamy sand and soils that should be used only to estimate scraper drop emissions at mines. (8/31/04 RT 156; 159.) However, as CURE's witness acknowledged AP-42 involved topsoil found in many places, not only soil found in coal mining. (8/31/04 RT 192-193, 247; Ex. 29.) We therefore find that CURE's claim is clearly erroneous and not based on facts.

CURE also argued that a more appropriate scraper drop emission factor would be 45 pounds per scraper hour, based on a few pages from an MRI Report entitled "Improvement of Specific Emission Factors." (Ex. 31; 8/31/04 RT 162.) The MRI report is intended to provide improved specific emission factors for construction equipment during earthmoving activities. Relying upon this excerpt CURE asserts that the applicant underestimated scraper drop emissions by 59 pounds per day. (8/31/04 RT 174.) The MRI report acknowledges that the scraper drop emission factor does not "account for the mitigative effects of watering…" (Ex. 31.) However, the calculations of CURE's witness did not include analysis of the fact that the site would be irrigated for an entire week prior to grading. (8/31/04 RT 272, 274.) Therefore, CURE's reliance on the MRI report was misplaced and clearly erroneous.

In addition, CURE's witness failed to explain that the MRI report provides an emission factor methodology based on four levels, with each subsequent level considered more accurate and requiring more site-specific information than the previous levels. The scraper emission factor quoted by CURE is a third-level estimate. The full MRI report contains a fourth and final level that requires site-specific data rather than estimates.[21] CURE's witness did not mention this fourth test which, given the site-specific detail available in this case, may have been

[21] We take administrative notice of the complete MRI Report from which CURE has selected the excerpts contained in Exhibit 31. (MRI Report, Improvement of Specific Emission Factors (BACM Project No. 1) Final Report, SCAQMD Contract No. 95040, MRI Project No. 3855, March 29, 1996. Docket log no. 32372.

applicable and should at least have been addressed by the witness. This provides an additional reason to find that CURE's testimony on this issue is not credible and does not constitute substantial evidence.

Finally, the testimony is undisputed that peak emissions from scraper drop will occur over a maximum period of four days. (8/31/04 RT 230.) Thus, any emissions attributable to this activity, as with all other potential air quality impacts from RERC construction, will occur in such a short time period that they will be insignificant.

b. Operations Effects

The RERC project will emit air pollutants through its exhaust stacks throughout its lifetime. Those emissions have been fully mitigated ("offset," in the vernacular of air quality law) in accordance with SCAQMD rules and the principles of CEQA. (See COE AQ-1.) CURE, however, maintains that significant effects remain. As we discuss more fully below, we find that CURE's assertions are clearly erroneous, not based on facts, or both.

(1) SCAQMD's 150 pounds/day PM10 Threshold

CURE asserts that during operation each of the project's two turbines will emit 3.1 pounds/hour of PM_{10} and that as a result the total project emissions from the turbines and other sources will exceed SCAQMD's 150 pounds/day CEQA significance threshold for PM_{10}. (CURE Rpl. Br., pp. 40 - 42; RT 8/31/04, pp. 297 - 298.) If the per-turbine emissions are 3.0 pounds/hour then the total project daily emissions would be 144.93 pounds/day, which is under the threshold. (RT 8/31/04, p. 296.)[22] The manufacturer of the turbines, General Electric, has

[22] 3.0 pounds/hour/turbine x 2 turbines x 24 hours/day = 144 pounds/day. The extra 0.93 pounds appears to result from "emissions from the cooling tower and ZLD filter cake handling." (See CURE Op. Br., p. 31; RT 8/31/04, p. 298.)

provided a guarantee of 3.0 pounds/hour. (Ex. 33.) In addition, recent source tests for projects similar to RERC also support the applicant's and staff's use of 3.0 lbs PM_{10}/hr per turbine as the appropriate emission factor. (Ex. 15, Attachments A-6 – A-8; 8/31/04 RT 285.) Furthermore, Applicant's witness testified that other projects using LM6000's had results much lower than 3 pounds of PM_{10} per hour. (8/31/04 RT 317-318.)

The Applicant has unequivocally stated that "[t]he Commission should rely on the project guarantees of General Electric." (Applicant Op. Br., p. 17.) The more reliable test data contained in the record and the GE guarantee make it reasonable for the Commission to include a COE mandating that the RERC have an operating emissions rate of no more than 3.0 pounds/hour under all relevant circumstances. CURE's evidence also ignores the fact that where testing reveals that a required emission level is exceeded, the air district requires re-testing and measures to remedy the problem. (8/31/04 RT 324.) Furthermore, SCAQMD will require the project to offset all of its operation emissions, thus fully offsetting any potential impacts to less than significance. As a result, we find CURE's assertion of a significant impact is clearly erroneous and not based on facts.

(2) Vehicle Retrofit ERCs for PM_{10} Emissions.

As a condition of granting the SPPE, we are requiring that the project obtain emission reduction credits ("ERCs" or "offsets") on a pound-for-pound basis for all of its emissions of criteria pollutants. (See Ex. 15, p. 4-29, COE AQ-1.) Thus Condition of Exemption AQ-1 requires the project to provide emission reductions of 7,930 lbs/yr of PM_{10}, 2,600 lbs/yr of VOC, and 736 lbs/yr of SO2. (Ex. 15, p. 4-29.) (The applicant has already provided all of the NOx emission offsets for the project. (8/31/04 RT 276.)) If the project's potential to emit is revised during the SCAQMD permitting process, the applicant will be required to obtain emission reductions for the revised amount. (8/31/04 RT 288-289.) Several options are available to the applicant for obtaining the necessary emissions reductions: 1)

the applicant can retrofit the emission controls on diesel powered school buses within the Riverside School District, or any other directly adjacent school district; 2) the applicant can retrofit the emission controls on diesel powered equipment under the direct or contracted control of the City of Riverside; 3) the applicant can provide for the reduction or elimination of other combustion sources within the City of Riverside boundaries, if approved by the Compliance Project Manager; or 4) the applicant can provide emission reduction credits or RECLAIM trading credits banked with SCAQMD and approved by the CPM. (Ex. 15, pp.4-28 to 29; 8/31/04 RT 276-278, 289-290.) Regardless of which of these option(s) the applicant utilizes, it must provide the reductions in amounts sufficient to satisfy the identified emissions before it can begin operation. (8/31/04 RT 290.) Applicant has agreed to implement the conditions and has begun identifying likely sources of ERCs. (8/31/04 RT 276-279.)

CURE asserts that the diesel engine retrofit program will not mitigate project impacts since the school buses would not operate during the exact same hours, on the exact same days, and in the exact same location as the proposed project, and thus the reductions would not mitigate for the project's impacts. (Ex. 25, p.39.) However, the diesel engine retrofit program is only one of several options the applicant may choose to mitigate project impacts, and there is no evidence that the options, including the diesel program, will not provide adequate mitigation. Moreover, CURE's argument that offsets are valid only if they come from the identical place at the identical time of the impact they mitigate is clearly erroneous, and contradicts the entire regulatory offset scheme administered by the federal EPA, the California Air Resources Board, and the air quality management districts. Neither the Commission (nor any air district) has ever required that offsets be perfectly simultaneous and at the same location as the emission source in order to count as project mitigation – otherwise, no development with any air emissions, whether a powerplant or otherwise, would ever be possible. (8/31/04 RT 325.) CURE's assertions to the contrary are simply incredible and clearly erroneous and not based on facts.

(3) ERCs for PM10, or VOCs, Based on "Potential to Emit"

CURE asserts that the RERC project has failed to obtain sufficient ERCs for PM_{10} or VOCs, on the ground that the project has the "potential to emit" 4 or more tons of PM_{10} per year and thus exceeds SCAQMD's 4.0 tons/year threshold for obtaining ERCs for PM_{10} and VOCs. (CURE Op. Br., pp. 33 - 41; CURE Rpl. Br., pp. 44 - 46; Ex. 25, p. 26.) CURE claims that the failure to obtain sufficient ERCs is a significant impact.

CURE's assertion that the project will emit 4 or more tons of PM_{10} per year is based on its earlier claim that the project's turbines will each emit more than 3.0 pounds of PM_{10} per hour. However, we have previously determined that turbine test data, the GE guarantee, and our COE limiting operation emissions to 3.0 pounds of PM10 per hour, all render CURE's argument that the GE turbines will exceed that emission rate clearly erroneous.

CURE also argues that under SCAQMD rules, the project's "potential to emit" should be assessed not on the basis of its annual emissions, but on the basis of a monthly average of 30 days of emissions. (See CURE Op. Br., pp. 34 - 37.) However, if this Commission grants an SPPE, RERC must then obtain a permit from SCAQMD. If, during the permitting proceedings, SCAQMD determines that the potential to emit was miscalculated, it will require RERC to provide offsets to cover what it believes to be the accurate potential to emit. (COE AQ-1 requires the applicant to provide offsets for any amount required by SCAQMD.) There is no possibility RERC could be constructed and operated without first complying with all of SCAQMD's requirements. CURE's claim thus ignores the continuing jurisdiction and permit authority of the SCAQMD and is clearly erroneous.

(4) CO Emissions

The record shows that the project's worst-case carbons monoxide (CO) emissions of 721.1 pounds/day would exceed a SCAQMD significance threshold of 550 pounds/day. (Ex. 12, AQ table 16; Ex. 25, Att. H.) CURE asserts that this "effect" is significant. We find that CURE's assertion is clearly erroneous. The project area is in attainment for CO (the applicable CAAQS is violated only in one part of the SCAQMD area, approximately 50 miles west of the project site), and as a result the project will not cause or contribute to a violation of any AAQS for CO. In addition, CO impacts are relatively localized, and there are no sensitive receptors near the project to be affected. (Ex. 12, pp. 4-7 - 4-8, 4-15; Ex. 15, pp. 4-21 - 4-22; 8/31/04, RT 286 - 287.) Furthermore, the project will use Best Available Control Technology (BACT) to limit CO emissions, and any remaining CO emissions will be offset through implementation of the required diesel engine retrofit program. (Ex. 12, p. 4-49.) For all of these reasons, we find CURE's assertion's in this regard to clearly erroneous and not based on facts.

(5) Cumulative Impacts

CURE notes that the City of Riverside is currently undertaking a Capital Improvement Project (CIP) at its wastewater treatment facility and cogeneration plant, which lies adjacent to the RERC site. CURE asserts that the RERC Initial Study should have concluded that the combined impacts of air emissions from RERC and the CIP would be significant and claims that Staff failed to analyze the impacts. (Ex. 25, pp. 40 - 42.)

However, despite CURE's implications to the contrary, the RERC Initial Study does assess the CIP. The Initial Study states that the CIP does not involve major new equipment or any other activities that could cause a substantial change in the facility's emissions. The CIP does not involve any major new equipment or major changes to the emission potential of the existing boilers; most of the

proposed improvements involve replacing old and worn equipment or parts and improving wastewater and sewer features, neither of which will impact air quality. (Ex. 15, p.4-24; 8/31/04 RT 63.) Indeed, work on the two projects is not likely to coincide in time at all. (8/31/04 RT 7.) In sum, there is no factual basis for CURE's assertion that there will be significant cumulative impacts.

In fact, Moreover, CURE did not provide any concrete, specific evidence of potential impacts from the CIP. As Staff puts it:

> The sole documents on which CURE bases their assertions consist of a summary of the anticipated expenditures with a one-sentence description of each of the proposed activities and a schedule layout of . . . the anticipated month and year in which the various components of the aeration upgrade portion of the CIP will be constructed. (Ex. 28, tabs O and P.) Neither of those documents discusses any potential environmental impacts that might result from the CIP and CURE admits that they have not seen any environmental documentation on the potential impacts of the CIP and acknowledges that, therefore, they cannot base any of their assertions on a quantitative analysis of potential impacts. (Ex. 25, p. 40.)

(Staff Rpl. Br., p. 30.) This further reinforces our conclusion that CURE's assertion is not based on facts.

CURE also argued that potential construction of addition generating units 3 and 4 at the project site should be considered in a cumulative impacts analysis. Not so. The record shows that Applicant has merely designed the RERC so as not to preclude future expansion; RPU has not determined that it will undertake such expansion. (8/5/04 RT 64-68, 72; 8/30/04 RT 47.) Thus, expansion is mere speculation at this point and is not to be included in our cumulative analysis.

III. ENGINEERING TOPIC AREAS

CEQA's requirements for a Mitigated Negative Declaration focus on potential impacts to the natural environment. The Commission, however, also performs an assessment of relevant engineering disciplines. In the present case, these disciplines involve electrical transmission issues such as determining whether the tie line from the project may expose the public to potential hazards (including electromagnetic fields), as well as the effects the project's generation may have upon the grid.

The evidence uniformly establishes that the line will be designed according to existing RPU criteria, and that Applicant's proposed measures will assure the line does not create radio frequency interference or aviation, shock, fire, or electromagnetic field hazards. (Ex. 1, Sec IV; Ex. 2, Response 6; Ex.12, pp. 16-1 to 16-7; 8/5/04 RT 28-29.) Staff recommended several COEs to insure that necessary design and operational measures are implemented. (Ex. 12, p. 16-5.) Uncontested evidence on the topic of **Transmission System Engineering** also demonstrates that Applicant performed, and Staff reviewed, various studies addressing the project's impacts. (Exs. 1, 2, 3, 6, 12, pp. 17-1 through 17-11; 8/5/04 RT 30-31.) The evidence establishes that the project's proposed switchyard and interconnection facilities are in accordance with good utility practices and comply with applicable LORS. (Ex. 22, pp. 16-1.) No additional downstream transmission facilities are needed as a result of the project and no significant impacts will occur. While the interconnection would have some marginal impacts on the RPU system, recommended breaker replacements with higher interrupting ratings will be effective in eliminating the marginal impacts. (Ex. 12, p. 17-1.)

In sum, the undisputed evidence establishes that the project will have no significant environmental or system impacts as a result of its transmission facilities.

V. PROJECT ALTERNATIVES

Applicant's Application for Certification of a Small Power Plant Exemption contained an analysis of various alternatives to the proposed project. (Ex. 1, sec 7.) These alternatives include an analysis of:

- Alternatives sites.
- Generation technology and configuration alternative.
- Alternative water supply source.
- Alternative wastewater discharge methods.
- "No Project" Alternative.
- Transmission Line Alternatives.
- Alternative Emission Controls.

Applicant's main criteria for selecting a suitable site included "appropriate land area, environmental compatibility, proximity to existing utilities including transmission lines, natural gas pipelines and water supply, and compatibility with local land uses and zoning." (Ex. 1, p. 349.) The proposed site was one of two sites considered. The rejected site, known as the TORO site, contains undisturbed habitat and rolling hills which would require significant excavation to accommodate the project. It would also require longer water and natural gas pipelines than the preferred site, thus increasing the cost and the environmental impacts of the TORO site over the preferred site. (Id.)

Alternative fuels such as coal, biomass, waste and oil were found not to match the environmental benefits of using natural gas to fuel the project. Solar, wind-generation, fuel cell or hydroelectric were found to be cost-prohibitive or infeasible. Biodiesel would not meet air quality limits. Combined cycle technology, which is superior for base-load operations, would not best meet RPU's need for peaking power. Thus, Applicant selected the gas fired simple-cycle technology proposed. (Ex. 1, p. 350.)

Applicant also analyzed alternative cooling systems and found that an inlet chilling system in lieu of evaporative coolers would be cost effective and can provide an extra power boost over evaporative coolers. (Id.) The use of potable

water for cooling was considered and rejected in favor of readily available reclaimed wastewater from the adjacent wastewater treatment plant.[24]

Applicant selected a zero liquid discharge (ZLD) option to substantially reduce liquid discharge from the project into the City wastewater system. (Ex. 1, p. 351.)

A "No Project" alternative was considered and rejected as not meeting the City's objectives to provide electric power and local system support. In addition, the No Project alternative was found to have greater potential environmental impacts such as increased fuel consumption and air pollution because without RERC, electrical generation to the city would be provided by older, less efficient, peaking power plants with higher air emissions. (Id.)

Transmission line route alternatives were considered, including a one mile route that followed the Santa Ana River corridor. This was rejected as creating adverse impacts to a previously undisturbed area. Undergrounding of the transmission line was also rejected because it has similar environment impacts to that of a pipeline installation and because of its far higher cost than an overhead line. (Ex. 1, p. 352.)

Applicant also examined alternative emissions controls including SCONOx, which oxidizes NOx to NO2 and is then absorbed into an adsorption bed. However, SCONOx has only been installed in limited applications and is less reliable that the proposed SCR/CO oxidation system. In addition, SCONOx requires steam in the reformer section. Since steam is not available in a simple cycle plant, the SCONOx technology is not feasible for the project. (Ex. 1, pp. 352-353.)

[24] This complies with state water conservation policies contained in State water Recourses Control Board Resolution 75-58.

IV. FINAL CONDITIONS OF EXEMPTION

Following are the final Conditions of Exemption applicable to the MEGS project. The versions below contain the appropriate amendments discussed at the evidentiary hearings and subsequent submittals, as well as incorporate any changes by the Commission. They supercede all other versions, including those in the Final Initial Study (Appendix A), as amended (Appendix B).

A. AIR QUALITY

General Conditions

AQ-G1 The project owner shall provide the CPM copies of all Permit-to-Construct (PTC) and Permit-to-Operate (PTO) air quality permits received from the District.

Verification: The project owner shall submit copies of the PTCs and PTOs to the CEC CPM upon receipt of those permits from the SCAQMD.

AQ-G2 The project owner shall report to the CPM the quantities of each greenhouse gas (GHG) emitted on an annual basis as a result of project and related facility operation. GHG emissions shall be reported as equivalent CO_2 pounds and the method shall conform to the California Climate Action Registry General Reporting Protocol.

Verification: GHG emissions shall be reported to the CPM as part of the annual compliance reports required by the General Conditions of Exemption.

CONSTRUCTION AND PRE-CONSTRUCTION CONDITIONS

AQ-C1 The project owner shall provide an air quality construction mitigation plan (AQCMP), for approval, which shows the steps that will be taken, and reporting requirements, to ensure compliance with conditions **AQ-C3** through **AQ-C5**.

Verification: At least 60 days prior to starting any ground disturbance, the project owner shall submit to the CPM, for approval, the AQCMP. The CPM will notify the project owner of any necessary modifications to the plan within 30 days from the date of receipt. Otherwise, the plan shall be deemed approved.

AQ-C2 The project owner shall designate and retain an on-site Air Quality Construction Mitigation Manager (AQCMM) who shall be responsible for directing and documenting compliance with conditions AQ-C3 through AQ-C5 for the entire project site and linear facility construction.

The on-site AQCMM may delegate responsibilities to one or more air quality construction mitigation monitors. The AQCMM shall have full access to areas of construction of the project site and linear facilities. The AQCMM may have other responsibilities in addition to those described in this condition. The AQCMM shall not be terminated without written consent of the CPM.

Verification: At least 60 days prior to the start of ground disturbance, the project owner shall submit to the CPM for approval, the name, resume, qualifications, and contact information for the on-site AQCMM and any air quality construction mitigation monitors. The AQCMM and all delegated monitors must be approved by the CPM before the start of ground disturbance.

AQ-C3 The on-site AQCMM shall submit to the CPM, in a monthly report, a construction mitigation report that demonstrates compliance with the following mitigation measures:

a) All unpaved roads and disturbed areas in the project and linear construction sites shall be watered until sufficiently wet. The frequency of watering can be reduced or eliminated during periods of precipitation.

b) No vehicle shall exceed 10 miles per hour within the construction site.

c) The construction site entrances shall be posted with visible speed limit signs.

d) All construction equipment vehicle tires shall be washed or cleaned free of dirt prior to entering paved roadways.

e) Gravel ramps of at least 20 feet in length must be provided at the tire washing/cleaning station.

f) All entrances to the construction site shall be graveled or treated with water or dust soil stabilization compounds.

g) No construction vehicles can enter the construction site unless through the treated entrance roadways.

h) Construction areas adjacent to any paved roadway shall be provided with sandbags to prevent run-off to the roadway.

i) All paved roads within the construction site shall be swept twice daily when construction activity occurs.

j) At least the first 500 feet of any public roadway exiting from the construction site shall be swept twice daily on days when construction activity occurs, and twice daily on any other day when dirt or runoff from the construction site is visible on the public roadways.

k) All soil storage piles and disturbed areas that remain inactive for longer than 10 days shall be covered, or be treated with appropriate dust suppressant compounds.

l) All vehicles that are used to transport solid bulk material on public roadways and that have potential to cause visible emissions shall be provided with a cover, or the materials shall be sufficiently wetted and loaded onto the trucks in a manner to provide at least one foot of freeboard.

m) Wind erosion control techniques, such as windbreaks, water, chemical dust suppressants, and vegetation shall be used on all construction areas that may be disturbed. Any windbreaks used shall remain in place until the soil is stabilized or permanently covered with vegetation.

n) Any construction activities that may cause fugitive dust in excess of the visible emission limits specified in Condition **AQ-C4** shall cease when the wind exceeds 25 miles per hour unless water, chemical dust suppressants, or other measures have been applied to reduce dust to the limits set forth in **AQ-C4**.

o) The heavy traffic areas, any onsite construction parking areas and equipment and material laydown areas shall be covered with crushed stone after they have been graded. Additionally the crushed stone surface shall be maintained by watering or other appropriate measure to limit dirt that may be tracked on or may otherwise over time cover the crushed stone.

p) Diesel Fired Engines

(1) All diesel-fueled engines used in the construction of the facility shall be fueled only with ultra-low sulfur diesel, which contains no more than 15 ppm sulfur.

(2) All diesel-fueled engines used in the construction of the facility shall have clearly visible tags issued by the on-site AQCMM that shows the engine meets the conditions set forth herein.

(3) All large construction diesel engines, which have a rating of 50 hp or more, shall meet, at a minimum, the Tier 1 ARB/EPA certified standards for off-road equipment unless certified by the on-site AQCMM that a certified engine is not available for a particular item of equipment. All large construction diesel engines, which have a rating of 50 hp or more, where a Tier 1 or better ARB/EPA certified engine was not available shall be equipped with catalyzed diesel particulate filters (soot filters), unless certified by engine manufacturers or the on-site AQCMM that the use of such devices is not practical for the specific engine types.

(4) Equipment will be properly maintained in accordance with manufacturer guidelines

(5) Engine idling for all onroad and off-road diesel-fueled equipment shall be limited to no more than five minutes, as practical.

Where mitigation measures identical to or similar to those provided in (a) through (n) are required in District Rule 403, the most stringent requirement shall apply and be identified in the AQCMP; except when the requirements listed in (a) through (n) would conflict with the implementation and compliance with a District rule requirement. Any conflict between mitigation measures (a) through (n) and District Rule 403 will be identified in the AQCMP.

q) The site shall be pre-irrigated for a week prior to initiating the site preparation activities.

Verification: In a monthly report, the project owner shall provide the CPM a copy of the construction mitigation report and all diesel fuel purchase records, including quantity purchased, which clearly demonstrates compliance with condition **AQ-C3**.

AQ-C4 The AQCMM, or the air quality construction mitigation monitors, shall continuously monitor the construction activities for visible dust plumes. Observations of visible dust plumes that have the potential to be transported (1) off the project site or (2) 200 feet beyond the centerline of the construction of linear facilities or (3) within 100 feet upwind of any regularly occupied structures not owned by the project owner indicate that existing mitigation measures are not resulting in effective mitigation. The AQCMM shall implement the following procedures for additional mitigation measures in the event that such visible dust plumes are observed:

Step 1: The AQCMM shall direct more intensive application of the existing mitigation methods within 15 minutes of making such a determination.

Step 2: The AQCMM shall direct implementation of additional methods of dust suppression if step 1 specified above fails to result in adequate mitigation within 30 minutes of the original determination.

Step 3: The AQCMM shall direct a temporary shutdown of the activity causing the emissions if step 2 specified above fails to result in effective mitigation within one hour of the original determination. The activity shall not restart until the AQCMM is satisfied that appropriate additional mitigation or other site conditions have changed so that visual dust plumes will not result upon restarting the shutdown source. The owner/operator may appeal to the CPM any directive from the

AQCMM to shut down an activity, provided that the shutdown shall go into effect within one hour of the original determination, unless overruled by the CPM before that time.

Verification: In a monthly report, the project owner shall document any additional mitigation measures or activity shutdowns required pursuant to AQ-C4.

AQ-C5 Construction activities shall be limited to an eleven-hour per day schedule, and activities that may cause fugitive dust shall not begin before 7 am daily. To limit the creation of fugitive dust, during initial site preparation/grading activities the use of mass earthmoving equipment shall be limited to no more than eight hours per day, occurring between the hours of 7 am to 4 pm.

Verification: The project owner shall provide records of compliance as part of a monthly report.

OPERATION CONDITION

AQ-1 The project owner shall provide emission reductions in the amounts of 7,930 lbs/year of PM_{10}, 2,600 lbs/year of VOC, and 736 lbs/year of SO_2. Any diesel retrofit reductions shall be from combustion sources within CPM approved proximity of the project site and shall be fully implemented no later than the start of project commissioning activities. The emission reductions shall be developed from any combination of the following sources:

1. The retrofit of emission controls on diesel powered school buses within the Riverside School District or directly adjacent school districts.

2. The retrofit of emission controls on diesel powered equipment under the direct or contracted control of the City of Riverside.

3. The reduction or elimination of other combustion sources within the city boundaries of the City of Riverside as approved by the CPM.

4. Any remaining emission reductions not provided as specified above from their voluntary surrender and retirement of emission reduction credits or RECLAIM trade credits banked with the South Coast Air Quality Management District and approved by the CPM.

5. Turbine emissions shall not exceed 3 lbs/hr PM_{10} or an equivalent emission limitation imposed by the South Coast Air Quality Management District.

6. Hours of operation for the project shall be limited to 1330 hours per turbine annually or a comparable emissions limitation imposed by the South Coast Air Quality Management District.

The project owner shall verify or provide any minor revisions to the PM_{10}, VOC and SO_2 emissions levels provided above based on the final South Coast Air Quality Management District air quality permit annual potential to emit limits for each of the three listed pollutants, as well as, any revised emission estimates for equipment exempt from South Coast Air Quality Management District permitting (such as the cooling tower and ZLD system).

Verification: The project owner shall, in consultation with representatives of the appropriate school district or City of Riverside, provide to the CPM an Emission Reduction Implementation Plan (ERIP) that establishes the earliest possible start date and expected completion date for the emission reductions. The ERIP shall, at a minimum, specifically identify the types and numbers of vehicles or equipment to be retrofit, the make, model, horsepower, approximate annual hours of use (or annual fuel consumed) and age of each engine (since last overhaul), the approximate emissions (PM_{10}, VOC and SO_2) and expected emission reductions for each engine.

The project owner shall report, on a monthly basis, the progress of all emission reduction plans and estimate emission reductions that are expected to be the basis for the purchase and voluntary retirement of appropriate emission reduction credits from the South Coast Air Quality Management District as approved by the CPM.

Interpollutant trading of SO_2 for PM_{10} and PM_{10} for SO_2 emission reductions shall be allowed at interpollutant trading ratios determined to be appropriate for Riverside in consultation with the South Coast Air Quality Management District.

The project owner shall submit the ERIP to the CPM for approval no later than 30 days following approval of the SPPE by the Energy Commission. The project owner shall submit monthly status reports to the CPM.

If RECLAIM trading credits are used as part of the required emission reductions specified in this condition, and if those credits have limited year(s) of use, then the project owner shall provide replacement emission reductions annually as necessary to maintain the required emission reductions using any of the emission reduction methods specified in this condition, and shall provide the quantity and method of reduction for the expired RECLAIM trading credit replacement emission reductions in a report due to the CPM one month prior to the expiration of the RECLAIM trading credits.

B. BIOLOGICAL RESOURCES

BIO-1 The project owner shall design, install and maintain transmission lines and all electrical components in accordance with the Avian Power Line Interaction Committee, *Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 1996* to reduce the likelihood of electrocutions of large birds.

Verification: No fewer than 60 days prior to the start of site mobilization the project owner shall submit to the CPM written verification that the transmission line design meets APLIC guidelines.

BIO-2 The project owner must provide written verification to the Compliance Project Manager (CPM) that the project has purchased a minimum of 12 acres of credit at the current fee level adopted by Riverside County for the Western Riverside County Multiple Species Habitat Conservation Plan prior to the start of any project-related construction activities.

Verification: No fewer than 60 days prior to any project-related site mobilization activities, the project owner must provide written verification to the CPM that the project has provided the required habitat compensation for the Riverside Energy Resource Center project to the Western Riverside County Regional Conservation Authority, including a description of how the habitat compensation funds will be utilized.

BIO-3 The biological monitor shall complete the following measures:

1. Two preconstruction surveys for burrowing owls shall be completed; the first at least 14 days prior to site mobilization and the second 48 hours prior to site mobilization. If burrowing owls are present on the site or along the linear facilities then the California Department of Fish and Game (CDFG) guidelines (1995) shall be implemented prior to the initiation of ground disturbing activities;

2. If one way doors are used to exclude burrowing owls, the burrows shall be monitored and hand excavated to ensure the individual has evacuated the burrow prior to ground disturbing activities.

3. At least two artificial burrows shall be constructed in the slope around the site, with an additional two artificial burrows for each active burrow used by a wintering or nesting burrowing owl;

4. A preconstruction survey immediately prior to ground disturbing activities and boulder removal to ensure clearance of sensitive species. A biological monitor shall be present during boulder removal;

5. Construction activities shall maintain a 500 foot setback from the riparian corridor during the least Bell vireo's nesting season;

6. Environmental awareness training of all construction personnel to

recognize sensitive habitat areas and sensitive species;

7. Species specific avoidance and take minimization measures shall be implemented if a sensitive species is found on site in preconstruction surveys that was not previously encountered. Measures may include relocation of the animal as advised by CDFG and the US Fish and Wildlife Service. The Energy Commission shall be notified prior to measures being implemented; and

8. The applicant shall prepare an end of construction report that discusses sensitive species encountered, monitoring performed, mitigation measures implemented, and the success of those measures.

Verification: The written results of the above activities 1 through 7 shall be submitted to the CPM within 14 days of the start of site mobilization. Information including but not limited to when surveys were completed, what was observed, and any additional follow up measures shall be reported. If sensitive species are found on the project site then a report on the mitigation measures implemented and the results of the measures shall be provided to the CPM within 14 days of completion. The close of construction report (number 8) shall be submitted at the same time the report is submitted to the Western Riverside County Multiple Species Habitat Conservation Plan.

C. CULTURAL RESOURCES

CUL-1 Prior to the start of ground disturbance, the project owner shall obtain the services of a **Cultural Resources Specialist (CRS)**, and one or more alternates, if alternates are needed, to manage all monitoring, mitigation and curation activities. The CRS may elect to obtain the services of **Cultural Resource Monitors (CRMs)** and other technical specialists, if needed, to assist in monitoring, mitigation and curation activities. The project owner shall ensure that the CRS evaluates any cultural resources that are newly discovered or that may be affected in an unanticipated manner for eligibility to the California Register of Historic Resources (CRHR). No ground disturbance shall occur prior to City of Riverside Historic Preservation Specialist approval of the CRS, unless specifically approved by the City of Riverside Historic Preservation Specialist.

CULTURAL RESOURCES SPECIALIST

Protocol: The resume for the CRS and alternate(s) shall include information demonstrating that the minimum qualifications specified in the U.S. Secretary of Interior Guidelines, as published in the Code of Federal Regulations, 36 CFR Part 61 are met. In addition, the CRS shall have the following qualifications:

1. The technical specialty of the CRS shall be appropriate to the needs of the project and shall include a background in anthropology, archaeology, history, architectural history or a related field; and

2. At least three years of archaeological or historic, as appropriate, resource mitigation and field experience in California.

The resume of the CRS shall include the names and telephone numbers of contacts familiar with the work of the CRS on referenced projects, and shall demonstrate that the CRS has the appropriate education and experience to accomplish the cultural resource tasks that must be addressed during ground disturbance, grading, construction and operation. In lieu of the above requirements, the resume shall demonstrate to the satisfaction of the City of Riverside Historic Preservation Specialist that the proposed CRS or alternate has the appropriate training and background to effectively implement the conditions of exemption.

CULTURAL RESOURCES MONITOR

CRMs shall have the following qualifications:

1. a BS or BA degree in anthropology, archaeology, historic archaeology or a related field and one year experience monitoring in California; or

2. an AS or AA degree in anthropology, archaeology, historic archaeology or a related field and four years experience monitoring in California; or

3. enrollment in upper division classes pursuing a degree in the fields of anthropology, archaeology, historic archaeology or a related field and two years of monitoring experience in California.

CULTURAL RESOURCES TECHNICAL SPECIALISTS

The resume(s) of any additional technical specialists, e.g. historic archeologist, historian, architectural historian, physical anthropologist shall be submitted to the City of Riverside Historic Preservation Specialist for approval.

The project owner shall submit the resume for the CRS, and alternate(s) if desired, to the City of Riverside Historic Preservation Specialist for review and approval at least 45 days prior to the start of ground disturbance.

Verification: At least 35 days prior to ground disturbance, the project owner shall submit the resume of the proposed CRS for review and approval to the City of Riverside Historic Preservation Specialist. At least 10 days prior to a termination or release of the CRS, the project owner shall submit the resume of

the proposed new CRS to the City of Riverside Historic Preservation Specialist for review and approval.

At least 20 days prior to ground disturbance, the CRS shall provide a letter naming anticipated CRMs for the project and stating that the identified CRMs meet the minimum qualifications for cultural resource monitoring required by this condition. If additional CRMs are obtained during the project, the CRS shall provide additional letters to the City of Riverside Historic Preservation Specialist identifying the CRMs and attesting to their qualifications, at least five days prior to the CRM beginning on-site duties. At least 10 days prior to beginning tasks, the resume(s) of any additional technical specialists shall be provided to the City of Riverside Historic Preservation Specialist for review and approval.

At least 10 days prior to the start of ground disturbance, the project owner shall confirm in writing to the City of Riverside Historic Preservation Specialist, that the approved CRS will be available for on-site work and is prepared to implement the cultural resources conditions of exemption.

CUL-2 Prior to the start of ground disturbance, the project owner shall provide the CRS and the City of Riverside Historic Preservation Specialist with maps and drawings showing the footprint of the power plant and all linear facilities. The City of Riverside Historic Preservation Specialist shall review submittals and in consultation with the CRS approve those that are appropriate for use in cultural resources planning activities.

At a minimum, the CRS shall consult weekly with the project construction manager to confirm area(s) to be worked during the next week, until ground disturbance is completed.

No ground disturbance shall occur prior to City of Riverside Historic Preservation Specialist approval of maps and drawings, unless specifically approved by the City of Riverside Historic Preservation Specialist.

Verification:

1. At least 30 days prior to the start of ground disturbance, the project owner shall submit the subject maps and drawings to the CRS and City of Riverside Historic Preservation Specialist.
2. If there are changes to any project related footprint, revised maps and drawings shall be provided at least 10 days prior to start of ground disturbance for those changes.

CUL-3 The project owner shall ensure that:

1. All cultural resources encountered shall be recorded on a Department of Parks and Recreation (DPR) form 523 and mapped (may include photos). In addition, all archaeological materials collected as a result

of the archaeological investigations (survey, testing, and data recovery) shall be curated in accordance with State Historical Resources Commission "Guidelines for the Curation of Archaeological Collections," into a retrievable storage collection in a public repository or museum. The public repository or museum must meet the standards and requirements for the curation of cultural resources set forth at Title 36 of the Federal Code of Regulations, Part 79. Copies of any DPR forms shall be provided to the City of Riverside, Historic Preservation Specialist.

2. All applicable curation fees are paid by the project owner, and any agreements concerning curation are retained and available for audit for the life of the project.

3. The CRS prepares and presents a training program (video or on-site presentation) to all employees hired during periods of ground disturbance. The training shall include applicable laws and at a minimum photos of artifacts that might be encountered in the local area.

4. If there is a discovery and a research design has not been approved by the City of Riverside Historic Preservation Specialist, then construction will remain halted until the project area research design is approved. A research design that includes a discussion of research questions and testable hypotheses applicable to the project area would be prepared for any resource where data recovery is required. The research design shall contain lists of artifacts and other cultural materials that would be collected because they contribute information to answer the research questions. (A research design may be prepared and reviewed at any time prior to a discovery).

Verification: At least one week prior to initiating ground disturbance, the project owner shall provide a letter to the City of Riverside Historic Preservation Specialist that states the project owner's intention to comply with each of the four elements of this condition.

At least one-week prior to beginning an archaeological excavation, the project owner shall submit a research design, prepared by the CRS to the City of Riverside Historic Preservation Specialist for approval.

CUL-4 After all ground disturbance has been completed, the project owner shall submit the Cultural Resources Report (CRR) to the City of Riverside Historic Preservation Specialist for approval. The CRR shall be written by the CRS and shall be provided in the Archaeological Resource Management Reports (ARMR) format. The CRR shall report on all field activities including dates, times and locations, findings, samplings and analysis. All survey reports, Department of Parks and Recreation (DPR)

523 forms and additional research reports not previously submitted to the California Historic Resource Information System (CHRIS) and the State Historic Preservation Officer (SHPO) shall be included as an appendix to the CRR. If the ARMR reports have previously been sent to the CHRIS, then receipt letters from the CHRIS shall be included in an appendix.

Verification: The project owner shall submit the CRR to the City of Riverside Historic Preservation Specialist within 90 days after completion of ground disturbance (including landscaping). Within 10 days after City of Riverside Historic Preservation Specialist approval, the project owner shall provide documentation to the City of Riverside Historic Preservation Specialist that copies of the CRR have been provided to the SHPO, the CHRIS, Agua Caliente Band of Cahuilla Indians and the curating institution (if archaeological materials were collected). Letters acknowledging receipt of the City of Riverside Historic Preservation Specialist approved report from the CHRIS and SHPO are acceptable documentation.

CUL-5 The project owner shall ensure that the CRS, alternate CRS, or CRMs shall monitor ground disturbance full-time wherever native sediments would be disturbed at project site. Cultural resources monitoring shall not continue below bed rock.

After overburden has been removed in locations where power poles will be installed, the CRS shall examine the soils and determine whether native sediment will be disturbed. If native sediments will be disturbed, cultural resources monitoring shall be conducted full-time.

CRMs shall keep a daily log of any monitoring or cultural resource activities and the CRS shall prepare a weekly summary report on the progress or status of cultural resources-related activities. The CRS may informally discuss cultural resource monitoring and mitigation activities with the City of Riverside Historic Preservation Specialist and Energy Commission technical staff.

Cultural resources monitoring activities are the responsibility of the CRS. Any interference with monitoring activities, removal of a monitor from duties assigned by the CRS or direction to a monitor to relocate monitoring activities by anyone other than the CRS shall be considered non-compliance with these conditions of exemption.

If Native American artifacts are discovered, a Native American monitor shall be obtained to monitor ground disturbance. Informational lists of concerned Native Americans and guidelines for monitoring shall be obtained from the Native American Heritage Commission. Preference in selecting a monitor shall be given to Native Americans with traditional ties to the area that shall be monitored.

Verification: During the ground disturbance phases of the project, the project owner shall ensure that the CRS provides to the City of Riverside Historic Preservation Specialist copies of the weekly summary reports prepared by the CRS regarding project-related cultural resources monitoring. Copies of daily logs shall be retained and made available for audit by the City of Riverside Historic Preservation Specialist.

If Native American artifacts are discovered, the project owner shall send notification to the City of Riverside Historic Preservation Specialist identifying the person(s) retained to conduct Native American monitoring. If efforts to obtain the services of a qualified Native American monitor are unsuccessful, the project owner shall immediately inform the City of Riverside Historic Preservation Specialist and the Historic Preservation Specialist will either identify potential monitors or will allow ground disturbance to proceed without a Native American monitor.

CUL-6 The project owner shall grant authority to halt construction to the CRS, alternate CRS and the CRMs in the event previously unknown cultural resource sites or materials are encountered, or if known resources may be impacted in a previously unanticipated manner (discovery). Redirection of ground disturbance shall be accomplished under the direction of the construction supervisor in consultation with the CRS.

In the event cultural resources are found or impacts can be anticipated, construction shall be the halted or redirected and shall remain halted or redirected until all of the following have occurred:

1. The CRS has notified the project owner, and the City of Riverside Historic Preservation Specialist has been notified within 24 hours of the discovery, or by Monday morning if the cultural resources discovery occurs between 8:00 AM on Friday and 8:00 AM on Sunday morning, including a description of the discovery (or changes in character or attributes), the action taken (i.e. work stoppage or redirection), a recommendation of eligibility and recommendations for mitigation of any cultural resources discoveries whether or not a determination of significance has been made.
2. The CRS and the project owner have consulted with the City of Riverside Historic Preservation Specialist and the City of Riverside Historic Preservation Specialist has concurred with the recommended eligibility of the discovery and the proposed data recovery or other mitigation; and
3. Any necessary data recovery and mitigation has been completed.

Verification: At least 30 days prior to the start of ground disturbance, the project owner shall provide the City of Riverside Historic Preservation Specialist, and the CRS with a letter confirming that the CRS, alternate CRS and CRMs

have the authority to halt construction activities in the vicinity of a cultural resource discovery, and that the project owner shall ensure that the CRS notifies the City of Riverside Historic Preservation Specialist within 24 hours of a discovery, or by Monday morning if the cultural resources discovery occurs between 8:00 AM on Friday and 8:00 AM on Sunday morning.

CUL-7 Prior to beginning ground disturbance or construction within 100 feet of any cultural resources listed as a landmark, structure of merit or designated as an historic district by the City of Riverside; the project owner shall notify the City of Riverside's Cultural Heritage Board.

Verification: At least thirty days prior to ground disturbance within 100 feet of any cultural resources listed by the City of Riverside, the project owner shall notify the Cultural Heritage Board and City of Riverside in writing. The project may not proceed until approval to continue work is received from the City of Riverside. Within 14 days of receiving documentation allowing the project to proceed with construction, the project owner shall provide the City of Riverside Historic Preservation Specialist with copies of those documents.

D. GEOLOGY AND PALEONTOLOGY

GEO-1 The Soils Engineering Report required by the 2001 CBSC Appendix Chapter 33, Section 3309.5 Soils Engineering Report, shall specifically include data verifying that the potential for liquefaction, dynamic compaction, expansion, and collapse potential of site soils is negligible along the transmission line alignment.

Verification: At least 30 days prior to the start of ground disturbance, the project owner shall submit a copy of the Soils Engineering Report.

E. HAZARDOUS MATERIALS MANAGEMENT

HAZ-1 The project owner shall direct all vendors delivering aqueous ammonia to the site to use only tanker truck transport vehicles, that meet or exceed the specifications of DOT Code MC-307.

Verification: At least 30 days prior to receipt of aqueous ammonia onsite, the project owner shall submit to the CPM for review and approval, copies of the notification letter sent to supply vendors indicating the required transport vehicle specifications.

HAZ-2 The project owner shall not use any hazardous material in reportable quantities, as specified in Title 40, Code of Federal Regulations, section

355.50, not listed in Table 6.14-2 of the SPPE application (RERC2004a), unless approved in advance by the CPM.

Verification: The project owner shall provide to the CPM, in the Annual Compliance Report, a list of hazardous materials contained at the facility in reportable quantities.

HAZ-3 The project owner shall develop and implement a Safety Management Plan for delivery of aqueous ammonia and submit the plan to the CPM for review and approval. The plan shall include procedures, protective equipment requirements, training and a checklist. It shall also include a section describing all measures to be implemented to prevent mixing of aqueous ammonia with incompatible hazardous materials.

Verification: At least thirty days prior to the delivery of aqueous ammonia to be used at the facility, the project owner shall provide a safety management plan as described above to the CPM for review and approval.

F. HYDROLOGY AND WATER QUALITY

WATER-1 The project owner shall install metering devices and record on a monthly basis the amount of water used by the project. The report on the monthly water use shall include the monthly range and monthly average of daily usage in gallons per day, and total water used by the project on a monthly and annual basis in acre-feet. Following the first full year of operation and in subsequent years, the annual summary shall also include the yearly range and yearly average water used by the project.

Verification: The project owner shall include a water summary use report in the Annual Compliance Report submitted to the CPM for the life of the project.

G. LAND USE AND RECREATION

LAND-1 The project owner shall prepare a site development plan that complies with the applicable design criteria and performance standards for the Manufacturing Park (MP) zoning district set forth in the City of Riverside Zoning Ordinance. The site development plan must contain the following features:

- Setbacks (i.e. yard area requirements) for structures;
- Building elevations;
- Landscaping requirements;

- Temporary and permanent signs for project identification; permanent and construction phase signs);and
- Permanent parking lot design, showing the quantity and dimension of spaces.

Following preparation of the above site development plan, the project owner shall design and construct the project consistent with the applicable design criteria and performance standards for the Manufacturing Park (MP) zoning district set forth in the City of Riverside Zoning Ordinance.

Verification: At least 60 days prior to the start of construction, the project owner shall concurrently submit the site development plan to the CPM and the City of Riverside Planning Department. The material submitted to the CPM must include documentation that the City of Riverside Planning Department has been given the opportunity to review and comment on the plan and its compliance or conformance the above-referenced requirements.

Monthly Compliance Reports submitted to the CPM must contain a written statement from the CBO that the project is being constructed in compliance with the site development plan.

H. NOISE

NOISE-1 At least 15 days prior to the start of ground disturbance, the project owner shall notify all residents within ¾ mile of the site and ½ mile of the linear facilities, by mail or other effective means, of the commencement of project construction. At the same time, the project owner shall establish a telephone number for use by the public to report any undesirable noise conditions associated with the construction and operation of the project. If the telephone is not staffed 24 hours per day, the project owner shall include an automatic answering feature, with date and time stamp recording, to answer calls when the phone is unattended. This telephone number shall be posted at the project site during construction in a manner visible to passersby. This telephone number shall be maintained until the project has been operational for at least one year.

Verification: Prior to ground disturbance, the project owner shall transmit to the Compliance Project Manager (CPM) a statement, signed by the project owner's project manager, stating that the above notification has been performed, and describing the method of that notification, verifying that the telephone number has been established and posted at the site, and giving that telephone number.

NOISE-2 Throughout the construction and operation of the project, the project owner shall document, investigate, evaluate, and attempt to resolve all project related noise complaints.

The project owner or authorized agent shall:

- Use the Noise Complaint Resolution Form (see Exhibit 1), or functionally equivalent procedure acceptable to the CPM, to document and respond to each noise complaint;
- Attempt to contact the person(s) making the noise complaint within 24 hours;
- Conduct an investigation to determine the source of noise related to complaint;
- If the noise is project related, take all feasible measures to reduce the noise at its source; and
- Submit a report documenting the complaint and the actions taken. The report shall include: a complaint summary, including final results of noise reduction efforts; and, if obtainable, a signed statement by the complaint stating that the noise problem is resolved to the complainant's satisfaction.

Verification: Within 30 days of receiving a complaint, project owner shall file a copy of the Noise Complaint Resolution Form, with the City of Riverside Planning Department and with the CPM, documenting the resolution of the complaint. If mitigation is required to resolve a complaint, and the complaint is not resolved within a 30-day period, the project owner shall submit an updated Noise Complaint Resolution Form when the mitigation is finally implemented.

NOISE-3 The project design and implementation shall include appropriate noise mitigation measures adequate to ensure that noise due to operation of the project during the quietest 4-hour period will not exceed 44 dBA when measured at residential receivers at noise monitoring location LT-1; that noise due to operation of the project will not exceed 51 dBA when measured at the recreational trail north of the site (ST-5); and that the noise due to plant operations will comply with the noise standards of the City of Riverside Municipal Code and the Riverside County General Plan Noise Element.

No single piece of equipment shall be allowed to stand out as a source of noise that draws legitimate complaints. The production of pure tones during normal plant operation is not allowed.

Within 30 days of the project first achieving a sustained output of 80 percent or greater of rated capacity, the project owner shall conduct a 25-hour community noise survey at monitoring locations LT-1 and ST-5. The survey during the power plant operations shall also include

measurement of one-third octave band sound pressure levels to ensure that no new pure-tone noise components have been introduced.

If the results from the noise survey indicate that the noise produced by the project exceeds 44 dBA at location LT-1 for the quietest 4-hour period during the 25-hour period; that the noise produced by the project exceeds 51 dBA at the recreational trail north of the site; or that the noise standards of the City of Riverside Municipal Code or the Riverside County General Plan Noise Element have been exceeded, mitigation measures shall be implemented to reduce noise to a level of compliance with these limits. If any pure tones are present, mitigation measures shall be implemented to eliminate the pure tones.

Verification: Within 15 days after completing the survey, the project owner shall submit a summary report of the survey to the City of Riverside Planning Department, to the Riverside County Planning Department, and to the CPM. Included in the report shall be a description of any additional mitigation measures necessary to achieve compliance with the above listed noise limits, and a schedule, subject to CPM approval, for implementing these measures. Within 15 days of completion of installation of these measures, the project owner shall submit to the CPM a summary report of a new noise survey, performed as described above and showing compliance with this condition.

I. PUBLIC HEALTH

Public Health-1: The project owner shall develop and implement a Cooling Water Management Plan to ensure that the potential for bacterial growth in cooling water is kept to a minimum. The Plan shall be consistent with either Staff's "Cooling Water Management Program Guidelines" or with the Cooling Technology Institute's "Best Practices for Control of Legionella" guidelines.

Verification: At least 30 days prior to the commencement of cooling tower operations, the Cooling Water Management Plan shall be provided to the CPM for review and approval.

J. TRAFFIC AND TRANSPORTATION

TRANS-1 The project owner shall develop and implement a construction traffic control plan for the project in coordination with the City of Riverside and Caltrans. Specifically, the overall traffic control plan shall be designed to:

- schedule heavy vehicle equipment and building materials deliveries to occur during off-peak hours to the extent feasible; and

- encourage heavy vehicles and vehicles transporting hazardous materials to proceed from SR-60 to Van Buren Boulevard, and then proceed east on Jurupa Avenue, and north on Payton Avenue to the project site.

The construction traffic control plan shall include measures to minimize traffic impacts associated with the construction of the associated linear facilities and shall include information on:

- signing, lighting, and traffic control device placement;
- temporary travel lane closures;
- maintaining access to adjacent residential and commercial properties;
- emergency access.

Verification: At least 45 days prior to the start of ground disturbance the project owner shall provide to the City of Riverside and Caltrans for review and comment and to the CPM for review and approval, a copy of its construction traffic control plan.

TRANS-2 The cooling tower stacks and transmission poles shall have red obstruction lights so that the stacks and transmission poles do not create a hazard to air navigation. The transmission towers shall also have obstruction markers (orange beach balls) and shall be Federal Aviation Authority (FAA) approved. The transmission pole red obstruction lights and orange obstruction markers on the transmission lines shall be in the area as identified in B1 (Inner Approach/Departure Zone), B-2 (Adjacent to Runway Zone), and C (Extended Approach/Departure Zone), as defined in Table 2A in the Riverside County Airport Land Use Compatibility Plan Policy Document (April 2004).

Verification: At least 30 days prior to the start of transmission line mobilization, the project owner shall provide supporting documents on how the project plans to comply with stack lighting and marking requirements imposed by the City of Riverside Airport and the Riverside County Airport Land Use Commission.

TRANS-3 The project owner shall ensure that an Avigation Easement is prepared in accordance with the Riverside Airport Land Use Commission criteria.

Verification: At least 60 days prior to the start of construction, the project owner shall submit an Avigation Easement to the Riverside County Land Use Commission staff for review and for recordation purposes, and a copy of the recorded document forwarded to the CPM for review and approval.

TRANS-4 The project owner shall contact the Riverside Airport Director to insure that a request is submitted to the Federal Aviation Administration

(FAA) to modify the existing remark in the Airport Facility Directory (AFD) to advise pilots not to fly over the power plant.

Verification: The project owner shall include in its Monthly Compliance Reports during construction documents that reflect that the request to the FAA has been initiated, and provide a status report of their progress in modifying the AFD document.

K. WASTE MANAGEMENT

WASTE-1: The project owner shall determine if the ZLD generated waste is hazardous or nonhazardous pursuant to sections 66261.3 and 66262.11 of Title 22 of the California Code of Regulations. Testing of representative samples of the wastes shall incorporate the methods set forth in Chapter 11, Division 4.5, Title 22 California Code of Regulations. If deemed nonhazardous, then future sampling and testing is not required unless there is a substantial change in the wastewater treatment process or due to cross-contamination between materials and/or processes. If not classified as a hazardous waste, the project owner shall discharge all ZLD generated waste only to those disposal facilities that are authorized to accept such a waste, unless it is sold as a commercial product. If the ZLD generated waste is deemed hazardous, the project owner will comply with all hazardous waste LORS.

Verification: No later than 45 days after the initial generation of the ZLD wastes, the project owner shall notify the CPM of the test results and the planned disposal methods. A copy of the acceptance letter from the disposal facility that is authorized and willing to accept the ZLD wastes shall also be included.

L. TRANSMISSION LINE SAFETY AND NUISANCE

TLSN-1 The project owner shall construct the transmission lines according to the requirements of CPUC's GO-95, GO-52, applicable sections of Title 8, Section 2700 et seq. of the California Code of Regulations and PG&E's EMF-reduction guidelines arising from CPUC Decision 93-11-013.

Verification: Thirty days before starting construction of the transmission line or related structures and facilities, the project owner shall submit to the Energy Commission's Compliance Project Manager (CPM) a letter signed by a California registered electrical engineer affirming compliance with this requirement.

TLSN-2 The project owner shall ensure that every reasonable effort will be made to identify and correct, on a case-specific basis, any complaints

of interference with radio or television signals from operation of the project-related lines and associated switchyards.

The project owner shall maintain written records for a period of five years, of all complaints of radio or television interference attributable to operation together with the corrective action taken in response to each complaint. All complaints shall be recorded to include notations on the corrective action taken. Complaints not leading to a specific action, or for which there was no resolution should be noted and explained. The record shall be signed by the project owner and also the complainant, if possible, to indicate concurrence with the corrective action or agreement, with the justification for a lack of action.

Verification: All reports of line-related complaints shall be summarized for the project-related lines and included during the first five years of plant operation in the Annual Compliance Report.

TLSN-3 The project owner shall engage a qualified consultant to measure the strengths of the lines' electric and magnetic fields from the lines before and after they are energized. Measurements shall be made according to American National Standard Institute/Institute of Electrical and Electronic Engineers (ANSI/IEEE) standard procedures at representative points along the edge of the right-of-way for which field strength estimates were provided.

Verification: The project owner shall file copies of the pre-and post-energization measurements with the CPM within 60 days after completion of the measurements.

TLSN-4 The project owner shall ensure that the rights-of-way of the project-related lines are kept free of combustible material, as required under the provisions of Section 4292 of the Public Resources Code and Section 1250 of Title 14 of the California Code of Regulations.

Verification: During the first five years of plant operation, the project owner shall provide a summary of inspection results and any fire prevention activities carried out along the right-of-way and provide such summaries in the Annual Compliance Report.

TLSN-5 The project owner shall ensure that all permanent metallic objects within the rights-of-way of the project-related lines are grounded according to industry standards.

Verification: At least 30 days before the lines are energized, the project owner shall submit a letter confirming compliance with this condition to the CPM.

VI. COMPLIANCE MONITORING AND GENERAL CONDITIONS OF EXEMPTION

CEQA requires the Commission to employ a reporting or monitoring program in order to ensure that measures and conditions designed to mitigate or prevent significant adverse environmental effects are implemented and enforced. In addition to the foregoing specific Conditions of Exemptions, the following "General Conditions of Exemption" apply to the RERC project and provide the required compliance monitoring mechanism.

Under these general conditions, RERC is required to regularly report on various matters during the construction period, as well as on an ongoing basis in other instances. On-site monitors and the periodic reports will assist in assuring compliance with all conditions. (9/31/04 RT 58; Exs. 12, 15.)

Since we are exempting the RERC project from our licensing procedures, other public authorities, such as the Air District and the City of Riverside, will have the primary responsibility for regulating the project. The Commission, however, will exercise oversight on aspects of the project through the various specific Conditions of Exemption discussed in this Decision. We have done this to ensure RERC does not create any significant environmental impacts, and will enforce both the general and the specific conditions.

GENERAL CONDITIONS OF EXEMPTION

INTRODUCTION

The Riverside Energy Resources Center (RERC) Project Compliance Plan will be developed to help track Conditions of Exemption. The plan provides a means for assuring that the facility is constructed and operated in compliance with air and water quality, public health and safety, other applicable laws, ordinances, regulations and standards, and Conditions of Exemption.

The Compliance Plan is divided into two sections:

1. Compliance General Conditions of Exemption which specify the framework for record keeping and reporting throughout the construction and operation phases of the project; and

2. Conditions of Exemption which contain measures that must be taken to mitigate any and all potential adverse project impacts to an insignificant level.

The Conditions of Exemption detailed in the technical subject area analysis include a verification statement describing the means by which compliance with the condition can be verified. The verification procedures may be modified by the Commission Compliance Project Manager (CPM) as necessary to ensure compliance with the adopted Conditions of Exemption. Verification of compliance with the Conditions of Exemption will be accomplished by periodic reports filed by RERC as required by the general Conditions of Exemptions.

I. DEFINITIONS

To ensure consistency, continuity and efficiency, the following terms, as defined, apply to all technical areas, including Conditions of Exemption:

SITE MOBILIZATION:

Site mobilization occurs when moving trailers and related equipment onto the site, usually accompanied by minor ground disturbance, grading for the trailers and limited vehicle parking, trenching for utilities, installing utilities, grading for an access corridor, and other related activities. Ground disturbance, grading, etc. for site mobilization are limited to the portion of the site necessary for placing the trailers and providing access and parking for the occupants. Site mobilization is for temporary facilities and is therefore not considered construction.

GROUND DISTURBANCE:

Ground disturbance occurs when onsite activity results in the removal of soil or vegetation, boring, trenching or alteration of the site surface. This does not include driving or parking a passenger vehicle, pickup truck, or other light vehicle, or walking on the site.

GRADING:

Grading occurs when onsite activity conducted with earth-moving equipment results in alteration of the topographical features of the site such as leveling, removal of hills or high spots, or moving of soil from one area to another.

CONSTRUCTION:

[From section 25105 of the Warren-Alquist Act.] Construction means onsite work to install permanent equipment or structures for any facility. Construction does **not** include the following:

1. The installation of environmental monitoring equipment.

2. A soil or geological investigation.

3. A topographical survey.

4. Any other study or investigation to determine the environmental acceptability or feasibility of the use of the site for any particular facility.

5. Any work to provide access to the site for any of the purposes specified in a., b., c., or d.

COMPLIANCE PROJECT MANAGER

A Compliance Project Manager (CPM) will be designated to oversee compliance with Conditions of Exemption. The assigned CPM, after consultation with the appropriate technical staff, and approval of Commission management and responsible agencies, shall:

1. Ensure that compliance files are established and maintained for the RERC project;

2. Track compliance filings;

3. Ensure the timely processing of proposed changes to the Commission Decision;

4. Use all available means to encourage the resolution of disputes; and

5. Coordinate compliance monitoring activities of Commission and delegate agency staff as specified in the Conditions of Exemption.

PROJECT OWNER RESPONSIBILITY

It shall be the responsibility of the project's owner and operator, RERC, to comply with and ensure that the compliance general conditions and all Conditions of Exemption are satisfied. Failure to comply with any of the Conditions of Exemption or the compliance general conditions may result in reopening of the case and revocation of the SPPE, or other action as appropriate.

RERC shall send verification submittals to the CPM, whether such condition was satisfied or work performed by RERC or other agent, and whether or not such verification was also submitted to the CPM by an agent.

COMPLIANCE RECORD

RERC shall maintain, for the life of the project, files of all Conditions of Exemption correspondence, and final as-built drawings.

The Commission shall maintain as a public record:

1. All documents received regarding compliance with the Conditions of Exemption;
2. All complaints filed with the Commission; and
3. All petitions for changes to Conditions of Exemption and documentation of the resulting staff or Commission action taken.

COMPLIANCE SUBMITTALS

All compliance submittals and correspondence pertaining to compliance matters shall include a cover letter with a description of the submittal and a reference to the compliance general condition and/or the condition of exemption number(s) which the submittal is intended to satisfy. All submittals shall be addressed as follows:

Compliance Project Manager
California Energy Commission
1516 Ninth Street (MS-2000)
Sacramento, CA 95814

CONSTRUCTION MONTHLY REPORTS

The project owner must submit construction monthly reports to the CPM and City of Riverside as designated to assist in tracking activities and monitoring compliance with the terms and conditions of the Commission Decision. During construction, the project owner or authorized agent will submit monthly reports for air quality, hazardous material, and water.

Tasks Prior to Start of Construction

Construction shall not commence until all pre-construction Conditions of Exemption have been complied with. Project owners frequently anticipate starting project construction as soon as the project is exempted. In some cases it may be necessary for the project owner to file submittals prior to exemption if the required lead-time for a required compliance event extends beyond the date anticipated for start of construction. It is also important that the project owner understand that pre-construction activities that are initiated prior to exemption are performed at the owner's own risk.

Various lead times for verification submittals to the CPM for Conditions of Exemption are established to allow sufficient staff time to review and comment, and if necessary, allow the project owner to revise the submittal in a timely manner. This will ensure that project construction may proceed according to schedule.

The first construction monthly report is due the month following the Energy Commission business meeting date on which the project was approved, unless otherwise agreed to by the CPM.

During pre-construction and construction of the project, the project owner or authorized agent shall submit an original and three copies of the monthly report within 10 working days after the end of each reporting month. Monthly reports shall be clearly identified for the month being reported. The reports shall contain at a minimum:

1. a transmittal letter summarizing the current project construction status;

2. documents required by specific conditions to be submitted along with the monthly report. Each of these items should be identified in the transmittal letter.

ANNUAL REPORTS

After the air district has issued a Permit to operate, the project owner shall submit annual reports instead of monthly reports. The reports are for each year of commercial operation and are due to the CPM and City of Riverside at a date agreed to by the CPM and City of Riverside. Annual reports shall be submitted over the life of the project unless otherwise specified by the CPM and City or Riverside. The report shall contain at a minimum:

1. a transmittal letter summarizing the current project operating status and an explanation of any significant changes to the facility operations during the year;

2. documents required by specific conditions to be submitted along with the annual report. Each of these items should be identified in the transmittal letter.

CONFIDENTIAL INFORMATION

Any information which RERC deems proprietary shall be submitted to the Commission Docket Unit (Mail Stop 4) to be processed pursuant to California Code of Regulations Title 20 section 2505(a). Any information which is determined to be confidential shall be kept confidential as provided for in CCR Title 20 section 2501 et seq. Information deemed not to be confidential will become public information.

ACCESS TO THE FACILITY

The CPM, or other designated Commission staff or agent, shall be granted access at any time to the project site, transmission line right-of-way, and related sites.

VII. FINDINGS AND CONCLUSIONS

Based upon our independent judgment and the evidence of record as a whole, we make the following findings and reach the following conclusions in addition to those specified in the text above:

1. The RERC project is a simple-cycle gas fired power plant, nominally rated at 96-MW in capacity. The project's related facilities include 1.75 miles of transmission tie line, approximately 140 feet of gas supply pipeline, and water supply lines.

2. The RERC project and its related facilities, with implementation of the mitigation agreed to by Applicant and that contained in the Conditions of Exemption will comply with all applicable laws and will not create significant adverse impacts on the environment or on energy resources. The project description includes all Conditions of Exemption contained in this Decision.

3. On the basis of its legal authority, experience, and expertise, the Commission is the appropriate lead agency to conduct environmental review of the RERC and to determine the significance of any allegations of environmental impacts resulting from the project.

4. Intervenor CURE has argued that the RERC fails to comply with standards which the Commission does not apply to this, or similar projects. The failure to comply with such irrelevant standards does not constitute substantial evidence of a significant environmental impact.

5. Intervenor CURE has misunderstood or misinterpreted the Commission's role as lead agency in determining the significance of any alleged impacts from a power plant within its review jurisdiction.

6. While CURE offered expert opinion that the project would cause significant environmental impacts, our close examination of the record as a whole reveals that these opinions are clearly erroneous, lack credibility, and do not constitute substantial evidence.

7. The record does not contain substantial evidence which supports a fair argument that the project, as mitigated, would create a significant adverse impact in any environmental or engineering discipline reviewed. This specifically includes the technical discipline of **Air Quality**.

8. The process followed in arriving at this SPPE Decision and Mitigated Negative Declaration conforms with the requirements of the appropriate portions of the Public Resources Code section 25541, as well as implementing regulations and Guidelines.

9. The Commission's process in reviewing the RERC application included extensive interagency coordination with interested federal, state, and local agencies.

10. The Commission's process in reviewing the RERC application included extensive public notification and public participation.

11. This Decision and Mitigated Negative Declaration reflect the independent judgment of the California Energy Commission, acting as lead agency in reviewing the RERC project and its related facilities.

12. The Compliance and Monitoring Plan included herein meets the requirements of the Public Resources Code and adequately ensures that the Conditions of Exemption will be implemented and enforced.

13. The evidentiary record contains an analysis of reasonable project alternative sites and technologies.

14. The evidence of record establishes that the RERC project, as mitigated, will not cause significant impacts to air quality from its construction or operation.

15. Commission review and analysis of the RERC's potential to impact air quality was conducted at or above the level of review applied in an Application for Certification (AFC) process.

16. The evidence of record establishes that the project, with the Conditions of Exemption, includes all feasible mitigation.

17. Submitting the RERC to the Commission's AFC process, after the extensive review already conducted under our SPPE process, would serve no purpose to further protect the environment, inform the public, or decision-makers. It would, however, significantly delay the proposed project.

18. The Commission has determined that there exists a substantial risk of electrical generation shortages in Southern California as early as the summer of 2005.

19. The RERC is designed to help the City of Riverside avoid or reduce the impacts of generation shortages in Southern California.

20. No substantial evidence of record shows that the project, as mitigated, will create significant adverse noise impacts.

21. The project will be located in an existing industrial area adjacent to the City of Riverside's waste water treatment plant.

22. The RERC project will be subject to the City of Riverside's Site Plan Permit Process.

23. Although granted an SPPE by this Commission, the RERC project must still pursue local permits, including appropriate air quality permits from the South Coast Air Quality Management District.

24. After granting an SPPE to a project such as RERC, the Commission may not override local permit conditions placed on the project.

25. The project is part of Applicant's integrated resource plan, and will contribute to increasing the system's reliability.

26. The City of Riverside's primary generation resource need is for peaking power.

27. The RERC project is permitted to operate no more than 1330 hours per year for every year of the project's operating life or will be subject to an equivalent emissions limitation from the South Coast Air Quality Management District.

28. The proposed simple-cycle configuration is preferable to a combined cycle for producing peaking power and meeting Applicant's need for operational flexibility.

29. Operation of the RERC project will not result in adverse effects on local or regional energy supplies, or require additional energy supply capacity, and will not consume energy in a wasteful or inefficient manner.

30. The evidence, as supplemented, contains an analysis of impacts upon energy resources were the RERC project to operate 1330 maximum allowable hours per year.

31. Potential environmental justice impacts of the project were analyzed and found to be insignificant.

We therefore conclude that the RERC project is eligible for an exemption from the Application for Certification provisions of the Commission's power plant licensing process.

VIII. ORDER

The Small Power Plant Exemption for the Riverside Public Utilities' Riverside Energy Resource Center is granted. We adopt the Committee's recommended Proposed Decision and Mitigated Negative Declaration for the Riverside Energy Resource Center.

Commission staff shall ensure that the Decision and Mitigation Negative Declaration are submitted for public and agency review as required by the pertinent portions of the Public Resources Code and implementing Guidelines.

Dated_____ in Sacramento, California.

WILLIAM J. KEESE Chairman	ARTHUR H. ROSENFELD Commissioner
JAMES D. BOYD Commissioner	JOHN L. GEESMAN Commissioner
JACKALYNE PFANNENSTIEL Commissioner	

Appendix A: *Final Initial Study*

Appendix B: *Errata to Final Initial Study and Supplemental Testimony re: Energy Resources*

Appendix C: *Exhibit List*

Appendix D: *Proof of Service List*

APPENDICES

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

APPLICATION FOR CERTIFICATION **FOR THE RIVERSIDE ENERGY RESOURCE CENTER PROJECT**	**Docket No. 04-SPPE-01**

EXHIBIT LIST

EXHIBIT 1: City of Riverside, Riverside Energy Resource Center, Application for Certification for a Small Power Plant Exemption, filed April 26, 2004. Sponsored by Applicant; admitted into evidence on August 5, 2004.

EXHIBIT 2: Applicant Responses to CEC Staff Data Requests 1-72, and certain questions asked at May 26, 2004 hearings in areas of substation expansion, part load operation efficiency, and hazardous materials business plan, filed June 14, 2004. Sponsored by Applicant; admitted into evidence on August 5, 2004.

EXHIBIT 3: Supplemental Data Request Responses in areas of Visual Resources, Biological Resources, Water Resources, Transmission System Engineering, Geology and Paleontology, Cultural Resources, Air Quality and Traffic and Transportation, filed June 25, 2004. Sponsored by Applicant; admitted into evidence on August 5, 2004.

EXHIBIT 4: Letter from Power Engineers to Glenn Robertson of Santa Ana RWQCB, dated June 25, 2004. Sponsored by Applicant; admitted into evidence on August 5, 2004.

EXHIBIT 5: "Will Serve" Letter and Sensitive Receptors within a six-mile radius, filed June 28, 2004. Sponsored by Applicant; admitted into evidence on August 5, 2004.

EXHIBIT 6: Applicant's Responses to CURE Data Requests, Set 1, filed June 28, 2004. Sponsored by Applicant; admitted into evidence on August 5, 2004.

EXHIBIT 7: Applicant's Responses to Supplemental Data Requests, filed July 12, 2004. Sponsored by Applicant; admitted into evidence on August 5, 2004.

EXHIBIT 8: Applicant's Responses to CURE Data Requests Set 2, filed July 6, 2004. Sponsored by Applicant; admitted into evidence on August 5, 2004.

EXHIBIT 9: Applicant's Responses to CURE Data Requests Set 3, filed July 12, 2004. Sponsored by Applicant; admitted into evidence on August 5, 2004.

EXHIBIT 10: FAA Application, dated July 2, 2004. Sponsored by Applicant; admitted into evidence on August 5, 2004.

EXHIBIT 11: Revised General Arrangement drawing, filed July 26, 2004. Sponsored by Applicant; admitted into evidence on August 5, 2004.

EXHIBIT 12: Staff's Final Initial Study, filed July 29, 2004. Sponsored by Staff, admitted into evidence on August 5, 2004.

EXHIBIT 13: Staff Supplemental Testimony on Energy Resources. Sponsored by Staff; admitted into evidence on August 5, 2004.

EXHIBIT 14: Enlargement: Plant Arrangement Combined Cycle Drawing No.M1-4. Sponsored by CURE; admitted into evidence on August 5, 2004.

EXHIBIT 15: Energy Commission Staff's Supplemental Air Quality and Geology Testimony, dated August 23, 2004,. Sponsored by Staff; admitted into evidence on August 30, 2004.

EXHIBIT 16: Testimony of John Baldwin, Senior Geologist, dated August 13, 2004. Sponsored by Intervenor CURE; admitted into evidence on August 30, 2004.

EXHIBIT 17: Prepared Direct Testimony of Brian Arnold, along with attached declaration in the field of Biological Resource. Sponsored by Applicant; admitted into evidence on August 30, 2004.

EXHIBIT 18: Prepared Direct Testimony of David Wieland, along with attached tables. Sponsored by Applicant; admitted into evidence on August 30, 2004.

EXHIBIT 19: Supplemental Noise Testimony of Steve Baker, dated August 13, 2004. Sponsored by Staff; admitted into evidence on August 30, 2004.

EXHIBIT 20: Declaration of Steve Baker, dated August 13, 2004. Sponsored by Staff; admitted into evidence on August 30, 2004.

EXHIBIT 21: Letter to Stephen Badgett from Paul and Peggy Doiron re work schedule adjustment during plant construction. Sponsored by Applicant; admitted into evidence on August 30, 2004.

EXHIBIT 22: Prepared Air Quality Testimony of Karl Lang. Sponsored by Applicant; admitted into evidence on August 31, 2004.

EXHIBIT 23: Relevant Construction Emissions of thirteen different CEC reviewed projects. Sponsored by Applicant; admitted into evidence on August 31, 2004.

EXHIBIT 24: Air Quality Data Responses to CURE Data Requests, Set 4, No. 60-93, dated August 9, 2004. Sponsored by Applicant; admitted into evidence on August 31, 2004.

EXHIBIT 25: Air Quality Testimony of Dr. Phyllis Fox and Dr. Petra Pless, dated August 13, 2004. Sponsored by Intervenor CURE; admitted into evidence on August 31, 2004.

EXHIBIT 26: Air Quality Testimony of Camille Sears, dated August 13, 2004. . Sponsored by Intervenor CURE; admitted into evidence on August 31, 2004.

EXHIBIT 27: Four figures showing isopleths. Sponsored by Intervenor CURE; admitted into evidence on August 31, 2004.

Figure 1A - Region of 24-hour PM_{10} impacts of 12-hour day construction;
Figure 1B - Region of 24-hour PM_{10} impacts of 8-hour day construction;
Figure 2A - Aerial photos of the project area showing the Riverside Energy Resource Center property boundary and regions of PM_{10} impacts for 8-hour construction; and
Figure 2B - Aerial photos of the project area showing the Riverside Energy Resource Center property boundary and regions of PM_{10} impacts for 12-hour construction.

EXHIBIT 28: Bound collection of documents entitled Exhibits of Dr. Fox and Dr. Pless Testimony. Sponsored by Intervenor CURE; admitted into evidence on August 31, 2004.

EXHIBIT 29: A chapter out of AP-42, section 11.9 on Western Surface Coal Mining. Sponsored by Intervenor CURE; admitted into evidence on August 31, 2004.

EXHIBIT 30: Revised Final Report for the Revision of Emission Factors for AP-42 Section 11.9, Western Surface Coal Mining, dated September 1998. Sponsored by Intervenor CURE; admitted into evidence on August 31, 2004.

EXHIBIT 31: Improvement of Specific Emission Factors (BACM Project No. 1) Sponsored by Intervenor CURE; admitted into evidence on August 31, 2004.

EXHIBIT 32: Electronic mail from Andrew Tardie to Dave Tateosian re six samples of the existing fill materials. Sponsored by Applicant; admitted into evidence on August 31, 2004.

EXHIBIT 33: Letter dated August 6, 2004, to Mr. Robert Gill, Riverside Public Utilities, from Harry Cotham, GE Energy regarding GE LM6000 Gas Turbine Exhaust Emissions. Sponsored by Applicant; admitted into evidence on August 31, 2004.

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

APPLICATION FOR CERTIFICATION FOR THE RIVERSIDE ENERGY RESOURCE CENTER PROJECT	**Docket No. 04-SPPE-01** **PROOF OF SERVICE** **Revised 6/9/04*

I, _____, declare that on _____, I deposited copies of the attached _____ in the United States mail in Sacramento, CA with first class postage thereon fully prepaid and addressed to the following:

DOCKET UNIT

Send the original signed document plus 12 copies to the following address:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 04-SPPE-01
DOCKET UNIT, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512

In addition to the documents sent to the Commission Docket Unit, also send individual copies of all documents to:

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Milasol Gaslan
Santa Ana Regional Water
Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501

John Yee and Ken Coats
South Coast Air Quality Mgmt. District
21865 E. Copley Drive
Diamond Bar, CA 91765-4182
kcoats@aqmd.gov

Guenther Moskat, Chief
Planning and Environmental Analysis Section
Department of Toxic and Substances
Control1001 "I" Street, 22nd Floor
P.O. Box 806
Sacramento, CA 95812-0806

I declare that under penalty of perjury that the foregoing is true and correct.

_____
(Signature)

* * * *

CEC INTERNAL DISTRIBUTION LIST ONLY

Parties DO NOT mail to the following individuals. The Energy Commission Docket Unit will internally distribute documents filed in this case to the following:

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MS-9

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