

STATE OF CALIFORNIA

Energy Resources Conservation  
And Development Commission

In the Matter of: ) Docket No. 03-SPPE-01  
)  
Small Power Plant Exemption for the ) **Staff's Prehearing Conference**  
Modesto Irrigation District ) **Statement**  
Electric Generation Station (MEGS) )  
\_\_\_\_\_ )

The California Energy Commission Staff files the following PREHEARING CONFERENCE STATEMENT in response to the Committee's ORDER of June 27, 2003.

1. Topic areas ready for hearing: Staff will complete its Final Initial Study of all topic areas by the final week in August, following which it will be prepared to testify regarding all issues. Staff is ready to proceed on all topic areas.
2. Topic areas that are incomplete: As mentioned above, Staff anticipates that all topic areas will be complete by the final week in August, following which they will be ready for the Committee's consideration.
3. Existing Disputes: At the present time several disputes may remain that may prevent the Commission from exempting the project from its certification process. Those potential disputes exist in the topic areas of Air Quality, Visual and Noise.

*Air Quality*

At present, Applicant disputes Staff's analysis and conclusion that Regulation VIII of the SJVUAPCD will not adequately mitigate significant adverse construction impacts from the project. Applicant also disputes Staff's conclusion that modeled operational PM<sub>10</sub> impacts constitute a significant adverse impact. Applicant has proposed changes to Staff's Conditions of Exemption, which Applicant contends mitigate all significant adverse impacts. Because of the disputes, Staff and Applicant have yet to reach agreement on what

mitigation measures should be required to support the findings required for an exemption.

Intervenor Sarvey contends that the project may cause significant adverse impacts due to emissions of ammonia from the SCR system and PM<sub>2.5</sub>. Staff is still evaluating Mr. Sarvey's position.

### *Visual*

In its Draft Initial Study, Staff concluded that the project as proposed would create a significant adverse visual impact on views from residential areas to the north of the project site. Staff also concluded that applicable LORS requiring post-project landscaping did not adequately address the impact to residents. During the Draft Initial Study workshop Staff, Applicant and a representative of the City of Ripon extensively discussed the basis for Staff's conclusions as well as various mitigation ideas to alleviate Staff's concerns. During the workshop the Applicant presented Staff with a new mitigation proposal. Staff's initial reaction to the proposal is positive and is now hopeful that this new mitigation will avert a dispute in this technical area.

### *Noise*

With regard to noise, Staff has concluded that the MEGS project, as proposed to be built and operated, will produce no significant adverse noise impacts. The Applicant agrees with Staff's conclusion. However, Intervenor Robert Sarvey questioned Staff's conclusions at the Draft Initial Study Workshop on August 8, 2003, and in written comments, by alleging that Staff inadequately analyzed noise impacts to the closest residential receptors. In addition, Daniel Lehman and Pam Kaefer, both local residents, have submitted comments to the effect that Staff did not provide data in the Draft Initial Study to demonstrate that noise emanating from the plant will have no substantial adverse impact on their neighborhood to the north of the proposed plant. Staff will address

intervenor and public comments in the Final Initial Study. Nevertheless, a potential dispute remains concerning noise impacts of the project.

In light of these comments, there is some dispute whether the project as proposed will cause a substantial impact on the environment. Such disputes could prevent the project from being exempt from the Commission's certification process if they are supported by substantial evidence in light of the whole record and they support a fair argument that the project, even with all proposed modifications and mitigation measures, may have a significant adverse impact on the environment. Substantial evidence includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (Pub. Resources Code § 21082.2.) Thus, should intervenors or members of the public present substantial evidence at evidentiary hearings in the form of credible expert testimony, or in another form supported by facts, to support a fair argument that the project as proposed will cause a significant adverse impact on the environment, the dispute could prevent the project as proposed from being exempt from the Commission's certification process. If the applicant agreed to revisions or mitigation measures such that clearly no significant effects would occur and there is no substantial evidence in the record to the contrary, the revised project could then be exempted.

4. Witnesses: With the exception of Air Quality and Noise, Staff intends to submit testimony on each technical area contained in the Final Initial Study by declaration, unless otherwise requested by another party or the Committee. The identity of the declarants is listed under the title at the beginning of each technical area, and the qualifications of each will be appended to the Final Initial Study. With respect to Air Quality and Noise, Staff plans to present witnesses who will sponsor testimony and be available for cross-examination at the hearings. In terms of Air Quality, staff will present the following witnesses:

Witness

Summary of Testimony

William Walters  
Lisa Blewitt

Presentation of Staff's evaluation of expected air quality impacts and mitigation necessary to reduce project impacts to a level of insignificance.

The qualifications of each witness were attached to the Draft Initial Study, previously docketed in this proceeding.

In terms of Noise, Staff will present the following witness:

Witness

Summary of Testimony

Steve Baker

Presentation of Staff's evaluation of expected noise impacts and mitigation necessary to reduce project impacts to a level of insignificance.

Mr. Baker's qualifications were submitted with the Draft Initial Study.

5. Cross-examination of other witnesses: Staff reserves the right to cross-examine all witnesses who testify at the evidentiary hearing. Although, it is difficult to anticipate how long cross-examination of other party witnesses, as yet unidentified, might take, Staff requests one hour of cross-examination time for each witness who testifies.
6. Exhibits: Staff identifies the following exhibit that it intends to offer into evidence and the topic areas to which it applies:

**TENTATIVE EXHIBIT LIST**

**EXHIBIT 1:** Final Initial Study for the Modesto Irrigation District Electric Generation Station Ripon (*yet to be completed*). The Final Initial Study will contain signed declarations by each Staff witness sponsoring testimony for their respective specific technical areas.

A list of Declarations and the technical topics to which they apply is attached as Attachment A.

7. Schedule: Staff proposes to file its Final Initial Study during the last week in August. Staff is proposing no date for evidentiary hearings, but requests that other parties file their testimony 14 days prior to hearings. Staff suggests a post-hearing briefing deadline of 21 days following issuance of hearing transcripts.

Respectfully submitted,

Dated: August 14, 2003

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**ATTACHMENT A**

<b><u>Technical Topic Area</u></b>	<b><u>Declarations By</u></b>
Executive Summary .....	James W. Reede, Jr., ED.D
Project Description.....	James W. Reede, Jr., ED.D
Air Quality .....	William Walters, Lisa Blewitt
Biological Resources .....	Rick York
Cultural Resources .....	Dorothy Torres
Energy Resources.....	Kevin Robinson, Shahab Khoshmashrab
Geology and Paleontology .....	Patrick A. Pilling, Ph.D, P.E., G.E
Hazardous Materials .....	Geoff Lesh, Rick Tyler
Hydrology and Water Quality.....	Mike Krolak
Land Use and Recreation .....	David Flores
Noise and Vibration .....	Steve Baker
Public Health.....	Ramesh Sundareswaran
Socioeconomics .....	Amanda Stennick
Traffic & Transportation.....	James Adams
Transmission Line Safety and Nuisance.....	Obed Odoemelam, Ph.D
Transmission System Engineering.....	Laiping Ng, Al McCuen
Visual Resources.....	Eric Knight
Waste Management .....	Ramesh Sundareswaran