



August 10, 2004

California Energy Commission
Docket Office
Attn: Docket 03-IEP-01
1516 Ninth St., MS-4
Sacramento, CA 95814-5512

Re: Docket Number: 03-IEP-01
2005 Energy Report Scope

Dear Sir or Madam:

Associated Builders and Contractors of California represents more than 1400 predominantly non-union contractors in the California construction industry. Our contractor members build industrial, commercial, public works, and multi-unit residential projects. Associated Builders and Contractors of California is part of a national association that includes within its membership some of the largest industrial contractors in the country.

We request that the 2005 Integrated Energy Policy Report investigate the abuse of the permitting process by special interest groups with primary objectives unrelated to environmental protection. Of concern to our members is environmental permit extortion, or "greenmail," used by construction unions to win Project Labor Agreements (PLAs) or other exclusive union agreements from energy infrastructure developers. We believe greenmail has delayed and increased costs of energy infrastructure projects and cut competition in industrial construction contracting.

Greenmail is a common practice in the permitting process for power plants, transmission lines, refinery conversions, pipelines, storage tanks, marine facilities, and ethanol production plants. By requesting excessive data from industrial developers and using other tactics to increase costs and cause delays in the permitting process, unions are able to exert pressure on these developers to win PLAs on construction projects. An organization called California Unions for Reliable Energy (CURE) has even attained intervenor status for the licensing of many power plants, and thus the developers of almost every major power plant built in California since 1997 have signed PLAs and required their contractors to sign the PLAs to work on construction.

Perhaps the most insidious aspect of greenmail is that the union demands for labor agreements and the negotiations between private developers and unions to reach these agreements are a major part of the permitting process but are completely hidden from the public. Very little documentation is available to the public about greenmail against energy infrastructure projects because of the secret nature of this extortion and the unwillingness of corporations to risk jeopardizing their projects by exposing the practice. The most thorough summaries of greenmail available to date have been these two journal articles:

Northrup, Herbert and August T. White. "Construction Union Use of Environmental Regulation to Win Jobs: Cases, Impact, and Legal Challenges." Harvard Journal of Law & Public Policy, Vol. 19, No. 1, Fall 1995.

Northrup, Herbert. "Labor Union Tactics: Using Environmental Permitting Regulations to Win Jobs." Government Union Review, Special Edition, 2004.

In a perhaps unique case of newspaper coverage of greenmail against petroleum infrastructure developers, the April 29, 2002 Contra Costa (California) *Times* published a front-page article by reporter Peter Felsenfeld, "Unions Join Fights to Cut Deals, Environmentalists Complain." The article describes how unions challenged Ultramar's Golden Eagle refinery conversion from MTBE to ethanol on environmental grounds, but then left many environmental objectives unaddressed after it won a labor agreement, thus betraying its erstwhile environmentalist allies that were also challenging the project.

Documentation exposing greenmail is also available regarding the Roseville Energy Park, a proposed municipal power plant in Roseville. On May 11, 2004, California Unions for Reliable Energy (CURE) requested that the City of Roseville provide an absurdly enormous amount of environmental impact data about its proposed power plant. The California Energy Commission recognized CURE as an "intervenor," so the City of Roseville would have been forced to provide the data at tremendous cost and delay to the power plant permitting process. But, CURE then negotiated a deal with City of Roseville staff—a deal outlined in the attached "Lead Agreement" and described in the attached staff report. CURE would drop the huge data request in exchange for some minor changes to the project and a PLA for construction of the plant, as well as other union agreements for operation and maintenance.

On July 21, 2004, the Roseville City Council voted 4-1 to approve the union agreements, including the PLA, but not without universally lambasting the State Building and Construction Trades Council and CURE for its greenmail. The July 16 Sacramento *Business Journal*, July 24 Roseville *Press-Tribune*, July 25 Sacramento *Bee*, and July 28 *Bureau of National Affairs' Construction Labor Report* reported on the controversy. Informative footage of the July 21, 2004 Roseville City Council hearing and vote (Agenda Item #39) can be found via the City of Roseville web site at www.roseville.ca.us (Go to "Online City Council Meetings.")

August 10, 2004

Page 3

Here are areas outlined in the “Staff Proposal for Scoping the 2005 Integrated Energy Policy Report” within which it would be appropriate for the Energy Committee to research and address how unions have manipulated the energy infrastructure permitting process to win PLAs from industrial developers:

- Meeting California’s Infrastructure Needs, the Continuing Challenge: Transportation Fuels Supply, Demand, and Infrastructure: Petroleum Infrastructure Permitting Improvements: Examine the infrastructure permitting process and identify opportunities for improvements.
- Meeting California’s Infrastructure Needs, the Continuing Challenge: Electricity and Natural Gas Supply, Demand, and Infrastructure: Resource Adequacy, Reliability, and Deliverability: Identify ... obstacles relating to electricity generation development; Evaluate the state’s transmission planning and permitting to develop a workable system to ensure that needed transmission can be built in a timely, cost-effective, and environmentally sensitive manner.
- Energy, Environmental, and Economic Sustainability: Petroleum Infrastructure Environmental Performance Report: The Energy Commission’s 2003 Energy Report states that a major barrier to expanding petroleum infrastructure is the difficulty in acquiring construction permits from multiple local, state, and federal authorities; What are the best permitting and environmental review practices for petroleum infrastructure projects?

Associated Builders and Contractors of California believes that exposure of union greenmail by the California Energy Commission would allow the Governor, the Legislature, public agencies, market participants, and the public to evaluate the practice and determine whether or not it is good public policy. Research by the Energy Commission could reveal that greenmail has delayed important projects needed by the public, increased costs of projects for developers and subsequently for customers, and reduced competition in the construction market. We look forward to seeing the Energy Commission report on the practice of union greenmail on energy infrastructure in the 2005 Integrated Energy Policy Report.

Sincerely,



Matt Tennis
Legislative Director

[Enclosures]

August 10, 2004

Page 4

Enclosures:

“Unions joins fights to cut deals, environmentalists complain,” Peter Felsenfeld, *Contra Costa Times*, April 29, 2002, Pg. A1.

Lead Agreement [between the City of Roseville and California Unions for Reliable Energy], found in Agenda Packet for July 7th Roseville City Council Meeting.

Roseville Staff Recommendation Supporting Project Labor Agreement for Roseville Energy Park, Dated July 12, 2004, found in Agenda Packet for July 21st Roseville City Council Meeting.

“Power Play: Council, advocates resolve bitter chapter in approval process,” Jason Probst, *Roseville Press-Tribune*, July 24th, 2004, Pg. A1.

“This ‘CURE’ quite painful for city council,” Editorial, *Roseville Press-Tribune*, July 24th, Pg. A4.

“Union builders exercise power,” Jennifer K. Morita, *Sacramento Bee*, July 25th, 2004, Pg. N1

“Unions push Roseville for power plant pact,” Celia Lamb, *Sacramento Business Journal*, July 16, 2004, Pg. 3.

“No Strong-Arming”, Editorial, *Sacramento Business Journal*, July 18, 2004, Pg. 38.

“Roseville City Council Approves PLA for \$150 Million Electric Power Plant,” Brian Lockett, *Bureau of National Affairs - Construction Labor Report*, July 28, 2004, On-line edition (print edition page number unknown)

CENTRAL AND EAST COUNTY

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Unions join fights to cut deals, environmentalists complain

■ Martinez boilermakers dropped protest for labor pact, a former ally claims

By Peter Felsenfeld

TIMES STAFF WRITER

East Bay environmentalists smelled something fishy last week when a union abruptly dropped its objections to a Martinez refinery construction project.

Communities for a Better Environment and the Boilermakers Union Local 549 came together in February to force Ultramar to conduct impact studies on its

plans to change over to an ethanol-based gas additive.

But the day before the Contra Costa County Board of Supervisors considered the issue, the union switched its position. Union leaders say they were satisfied with a refinery concession to use clean diesel fuel and modern equipment in the project.

Environmental groups suspect their numerous concerns were sold out for a labor-friendly pledge.

"Typically, the unions get involved in this kind of thing for a

See [UNIONS](#), Back Page

Unions

FROM PAGE 1

work agreement," said Richard Drury, Communities for a Better Environment's legal director. "They want the company to use union labor, which we generally think is a good idea. But in this case, they left most of the environmental concerns undressed."

Over the past several years, labor and environmental groups have joined forces to challenge fast-track approvals of environmentally sensitive construction projects, most notably targeting new, power plant proposals statewide.

Unions usually emerge from appeals or other "intervention" proceedings with pro-union policies.

Kevin Dayton, government affairs director for the Associated Builders and Contractors Golden Gate Chapter, said unions have learned to exploit

the environmental review process and bully companies into project labor agreements that exclude nonunion contractors.

Dayton calls the practice "greenmail."

"What we're seeing is union organizers pretending to be environmental advocates," Dayton said. "They extort refinery and power plant owners, delaying their projects until the owners give in and sign project labor agreements."

A 32-union coalition called California Unions for Reliable Energy, or CURE, has had enormous success securing agreements through environmental interventions.

Bob Balgenorth, president of the California Building and Construction Trades Council and chairman of the coalition, called the extortion accusation a "vicious lie."

California Unions for Reliable Energy's long-term relationship with the California Energy Commission and the

environmental community at tests to the group's integrity, Balgenorth said.

"If we were to raise issues that have no substance, how long would anybody listen to us?" Balgenorth said. "Not at all."

The group's mission is to ensure new construction projects, especially power plants, are environmentally and economically sound — the latter indicating a project labor agreement, Balgenorth said.

Project labor agreements dictate labor-management relations in advance, setting standards for hiring, wages and hours. Supporters say the agreements bring projects in on time and on budget by helping to avert strikes.

Opponents claim they discriminate against nonunion workers and raise project costs by narrowing the pool of bidders.

CURE filed environmental interventions with the California Energy Commission and even-

tually won labor-friendly agreements for 23 of the state's 24 newly approved power plants, Balgenorth said.

These plants include Antioch's Mirant plant; Pittsburg's Delta Energy Center, owned by Calpine and Bechtel; and Calpine's Los Medanos Energy Center, also in Pittsburg.

"We have never raised an environmental issue where part of the settlement didn't address that issue," Balgenorth said. "And we never would. It makes no sense, and we would lose our credibility with everyone."

Some environmentalists question CURE's motivations, but recognize the group adds significant muscle to project challenges.

"The environment is how they get a seat at the table," said John White, a special representative to the Sierra Club. "But they can't get that seat unless they raise valid issues and move those issues forward."

Others feel used and taken for granted, suspecting their

union partners only care about one thing: control of the labor market.

"I'm very disappointed," Drury said after the boilermakers sided with the refinery. "It would have been much better for everybody if we had stuck together and pursued the environmental and labor concerns together. We would have had a cleaner and safer project."

Last week's drama surrounded Ultramar's Golden Eagle oil refinery and an impending ban on MTBE, a gasoline additive and water pollutant.

Now forced to introduce the cleaner ethanol, the company sought to adjust its facilities without conducting an extensive environmental review. The county Planning Commission approved Ultramar's transition strategy in February.

Communities for a Better Environment and the Boilermakers Local 549 appealed that decision, demanding an impact report to explore potential dangers associated with ethanol.

The appeal points ranged from air and water contamination to inadequate terrorist preparation, all backed by "voluminous evidence," according to boilermaker lawyers.

To Communities for a Better Environment's chagrin, the union accepted two refinery conditions: Ultramar agreed to use clean diesel fuel and modern equipment during construction. On Tuesday, Contra Costa supervisors denied the appeal.

Ultramar and union officials denied the settlement hinged on a labor agreement. Company spokesman Mark Hughes said Ultramar pledged a union-only policy long before the appeal. Theodore Franklin, an attorney for the boilermakers, called the Ultramar's mitigation measures significant.

"We consider Ultramar made valuable steps toward environmental compliance," Franklin said. "At that point, we felt it was important to cooperate with the project."

LEAD AGREEMENT

This Lead Agreement ("Agreement") is made effective as of this ___ day of July, 2004 ("Effective Date") by the City of Roseville ("Roseville") and the California Unions for Reliable Energy ("CURE").

POWER PLANT BENEFITS

Roseville and CURE agree that the timely and efficient completion of the Roseville Energy Park Project ("Project") is essential to the continued economic vitality of Roseville and to the health and well-being of its citizens. The Project must be completed on schedule to provide needed replacement power as current power purchase contracts are reduced or expire. Through efficient and timely construction of generation resources for its operation and under its control, Roseville will be protected from the uncertainties of the wholesale electric market, thus assuring an adequate supply of reliable, less-costly electricity.

LABOR AND ECONOMIC ISSUES

Roseville and CURE also agree that the Project will benefit from assurance that there will be an adequate supply of skilled craft workers to construct, maintain and operate the Project, the Project will benefit from assurance that there will be no labor disputes, strikes or grievances that could disrupt the timely construction or maintenance of the Project and the Project will benefit from standardized rules and regulations governing the workforce. Roseville and its citizens will also benefit from using local workers to build the Project, so that the economic benefits from construction stay in the community, and by supporting California certified apprentice training programs that produce workers that are necessary for future economic development.

For each of these reasons, Roseville agrees to enter into a Project Labor Agreement, Maintenance Agreement, Neutrality Agreement, Transmission Construction Agreement, and this Agreement for the Project.

ENVIRONMENTAL ISSUES

Roseville and CURE also agree that the Project should meet all applicable environmental standards to protect the workforce, community and the environment. Roseville's Application for Certification submitted to the California Energy Commission ("Commission") was designed to meet all applicable environmental standards. During the course of the Commission's review of that Application, CURE participated in workshops and requested data to assure that the Project would meet all applicable standards. Roseville and CURE agree that the following responds to the substance of CURE's requests:

1. During construction of the Project, Roseville (or a contractor hired by Roseville) will install gravel pads at all access points to unpaved construction areas to prevent trackout.
2. During construction of the Project, all storage piles and disturbed areas that remain inactive for longer than ten (10) consecutive days will be covered, or be treated with appropriate dust suppressant compounds.

3. During construction of the Project, all vehicles used to transport solid bulk material and that have potential to cause significant emissions resulting from the materials transported will be provided with a cover.
4. For backfilling during earthmoving operations during construction of the Project, Roseville (or a contractor hired by Roseville) will water backfill material or apply dust palliative to maintain material moisture or to form crust when not actively handling; cover or enclose backfill material when not actively handling.
5. Roseville (or a contractor hired by Roseville) will lay building pads and foundations as soon as practicable after grading, unless seeding or soil binders are used, or the areas are routinely watered to suppress dust generation.
6. Roseville (or a contractor hired by Roseville) will implement the Cooling Tower Institute and/or Commission guidelines regarding the prevention of Legionella bacteria from cooling towers.
7. Roseville agrees to perform representative testing of the salt cake generated from the operation of the zero liquid discharge system prior to disposal to determine the appropriate waste classification for proper handling and disposal. Roseville will properly dispose of the salt cake in accordance with California Law relating to the disposal of waste streams.
8. Roseville will periodically clean the paved surfaces in and around the cooling tower to remove excessive fugitive dust materials that may become entrained in the cooling tower intake.
9. Roseville (or a contractor hired by Roseville) will avoid permanent impacts to Swainson Hawk foraging habitat located in the northern portion of the site by relocating that portion of the construction laydown area proposed in said northern portion of the site to an off-site location that has already been proposed for development and has an approved mitigation plan.

ACTIONS BY CURE

Because of the community and environmental benefits of the Project, CURE, its agents, representatives and persons acting in concert with it, agree to support the successful permitting of the Project, and it will not engage in any actions before any administrative agency or other entity in proceedings considering permitting the Project that may adversely affect the successful permitting of the Project. CURE further agrees not to assist, support or collaborate with any entity engaged in such conduct.

DOCUMENTS TO BE FILED OR EXECUTED

Roseville and CURE will jointly file a jointly prepared document that describes the resolution of environmental issues and, consequently, that Roseville need not further respond to CURE's pending data requests. Roseville and CURE will cooperate to execute any other documents reasonably required to effectuate the intent of this Agreement.

MUTUAL RELEASES

Except for the obligations provided herein, Roseville and each of its representatives, agents, attorneys, successors and assigns hereby unconditionally release, acquit and forever discharge CURE and each of its member unions, representatives, agents, attorneys, successors and assigns from any and all claims, demands, injuries, actions, causes of action, either at law or in equity or of any kind, nature or description, known or unknown, which any of them has had or now has against CURE or its member unions arising out of, based upon or relating directly or indirectly to CURE's participation in the Commission process with respect to the Project.

Except for the obligations provided herein, CURE and each of its member unions, representatives, agents, attorneys, successors and assigns hereby unconditionally release, acquit and forever discharge Roseville, and each of its representatives, attorneys, agents, partners, successors and assigns from any and all claims, demands, injuries, actions, causes of action, either at law or in equity or of any kind, nature or description, known or unknown, which CURE or its member unions has had or now has against them arising out of, based upon or relating directly or indirectly to the Project.

ENFORCEMENT

In the event of a violation of this Agreement, Roseville or CURE shall be entitled to seek relief in court, specifically including injunctive relief, to restrain any such action or may seek relief under the expedited arbitration provisions contained in Section 7.6 of the Project Labor Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed one or more copies of this Agreement as of the Effective Date.

CITY OF ROSEVILLE

W. Craig Robinson
City Manager

CALIFORNIA UNIONS FOR RELIABLE ENERGY

Robert L. Balgenorth
Chair

COUNCIL COMMUNICATION# 8795
City Clerk Use Only**DATE:** July 12, 2004**TITLE:** Labor Agreements for the Roseville Energy Park**CONTACT:** Tom Habashi / 5602 / thabashi@roseville.ca.us

Meeting Date: July 21, 2004

SUMMARY RECOMMENDATION

Staff recommends City Council adopt a resolution authorizing the City Manager to execute a series of related agreements for the provision of labor to the Roseville Energy Park (REP):

- Project Labor Agreement (PLA)
- Maintenance Agreement (MA)
- Neutrality Agreement
- Transmission Construction Agreement
- Lead Agreement

BACKGROUND**Overall Objective**

The City of Roseville and Roseville Electric (RE) are committed to providing the most reliable and affordable cost of electric power to its ratepayers and at the same time to do so in an environmentally responsible manner. The changes underway and anticipated within the California electric power industry make it essential for RE to look forward and position itself to maintain its competitive and reliable position. To that end, given the uncertainty of future supplies to meet load growth within the state and other regulatory changes, the REP is expected to be a cornerstone of giving RE the ability to meet the challenges of providing reliable and affordable power to its customers.

Status of REP Permitting

The REP is in the middle of a permit review process under the California Energy Commission (CEC) which has the sole authority to license power projects the size of REP. An organization called California Unions for Reliable Energy (CURE) has in the past intervened on most power projects in the CEC process. On those projects that agree to a PLA and the related other agreements, CURE's involvement has been light and supportive. On those projects that do not sign PLA's, CURE's involvement has been heavy and adverse to the interests of the project sponsor. CURE is the only intervenor on the REP permit before the CEC and is in position to adversely influence the REP under the CEC permitting process. The liberal CEC procedures maximize public access to the process, thus providing an effective format for opposing a permit application. To prevent

AGENDA ITEM
39

disruption and delay of the REP permitting process due to actions by CURE, a PLA and associated other agreements (together, the Project Agreements, or PA's) have been negotiated with CURE. These agreements are essentially the same as similar agreements entered for the City of Santa Clara's power project now under construction. These agreements would remove CURE as an adverse intervenor against the project and place them in a position of supporting the project permitting process. However, as with any business decision, there are pros and cons of taking any course of action. The key question for the City and RE is what is the cost of proceeding under a PLA vs resisting a PLA. These points are addressed in more detail below.

Cost of a PLA

Unfortunately, no hard facts or data exist to estimate the cost of implementing a PLA for a power project.

The following are known facts that relate to this issue:

- Virtually all power plant construction in CA has been performed under a PLA and has used union craft labor. Thus, the skilled craft laborers with experience on power plants are nearly all union. This pool of experienced craft labor could offset any potential higher costs associated with union work rules that may affect productivity.
- The City must require its contractors to use, as a minimum, prevailing wages, which are close to or the same as union wages.
- The PLA will require a 25 cent payment (for each hour of construction labor worked) to the union trust fund, totaling about \$100,000 during the construction phase.

The following are best characterized as anecdotal, as no known data exists to support either position:

- The anti-union lobby claims a 20% labor cost premium under a PLA. Because union and non-union labor rates are essentially the same, if this is true, it must be based on less efficient union work rules and resulting lower productivity. For REP, if this is true, it would result in approximately a \$6 million additional cost for the project, which is estimated to cost in the \$150 million range. However, the REP cost estimate already assumes a PLA and union labor.
- The unions and CURE claim there is no cost premium under a PLA.

Bottom line for a PLA: anywhere from zero to \$6 million cost impact plus no loss of schedule and less risk.

Cost of Resisting a PLA:

Based on actual power plant experiences in California, the potential costs of resisting a PLA for REP are estimated below:

- Extra consultant and legal costs to respond to permitting challenges: \$3 to \$5 million. This results from responding to extra data requests, preparing additional technical and environmental impact data, hiring expert witnesses to testify at formal hearings, possibly defending legal challenges to the permit, etc.
- Additional environmental mitigation costs as a result of challenges under the permitting process: difficult to predict, but could range from zero to \$10 million or more for the REP
- Project schedule delay of ~18 months due to permitting challenges, both at the CEC, other agencies, and in court. This would result in a delay of REP commercial operation from January, 2007 to July, 2008.
- REP would provide over half of the City's electricity; if REP is delayed the City will be forced to enter the marketplace to purchase replacement power. The normal cost of this 18 month supply of replacement power, if purchased under long term contracts, would be about \$70 million. However, this price would be subject to uncertainty and market pricing risks that could increase this cost. (For example, if the replacement power cost were to increase by 10% due to a rise in market prices, the cost would increase by \$7 million and would require a rate increase.) Because of the uncertainty of any REP permitting schedule delay, this replacement power may need to be purchased under short term contracts, which carry additional price volatility and supply risk.
- A rebound in power plant construction is expected to meet forecasted energy shortages in the State in 2007 and beyond. An 18-month delay in constructing REP will expose the project to higher equipment and construction costs resulting from this increased demand.
- An 18 month delay would continue the City's exposure to bottlenecks in the state's transmission infrastructure and the risk of interruptions of power.

Bottom line to resist a PLA: anywhere from \$3 million to \$15 million or more cost impact, not including the risk of higher replacement power costs and rate increases, 18 month delay, plus greater risk and uncertainty.

Scope of the PA's:

It is the intent for the City to hire a contractor to perform the construction for the REP. The PLA in effect requires all covered construction laborers to be union members. For operation and maintenance (O&M), staff is evaluating whether to self-perform the work or hire an O&M contractor for an initial term of at least 5 years. In the case of self-perform, it is expected that the manual workers would

fall under the existing IBEW 1245 organization that represents covered RE employees. In the case of hiring an O&M contractor, the Neutrality Agreement would require the City to not intervene in the worker's attempts to organize under union representation. Additionally, the MA would require any major maintenance work to be performed by union contractors, unless the work is performed by City employees, the plant operator or by the Northern California Power Agency (NCPA). The Cooperation Agreement provides the City certain assurances that CURE and the unions will cooperate with the process of permitting the project. The Transmission Construction Agreement assures that the construction of the transmission interconnection and electrical switchyard will be performed in accordance with the Collective Bargaining Agreement with IBEW 1245 and would not be subject to the PLA.

While the City will sign the PLA, the City has no intention of ever directly performing work covered by the PLA with City forces (employees), rather this work will be performed by a contractor(s) hired by the City. Moreover, since the terms of the PLA differ from City's existing MOU's with its employee unions, the work covered by the PLA will **NOT** be performed by City forces. Under the terms of the PLA, the City's obligations will be shifted and assigned to the contractor at the moment the City awards the project and enters into a project construction agreement with the contractor. Accordingly, City's existing MOU's are respected and will not be violated. Under the MLA and Neutrality agreements, work by City forces is exempt from the agreement.

FISCAL IMPACT

The agreements are not expected to increase cost due to wage rates, as the City is already obligated to use prevailing wage rates in all contracts. The PLA requires payment by the construction contractor (thus a cost to the City) of a supplemental 25 cent per hour contribution to a union trust fund. The total payment under this contribution for the construction phase is estimated to be less than \$100,000.00. It is not possible to assess labor productivity differentials between union and non-union contractors, but the existing experienced union labor pool would help to mitigate any possible increases due to union work rules.

ENVIRONMENTAL REVIEW

Entering into these agreements is not considered a "project" as defined by the California Environmental Quality Act (CEQA) (CEQA Guidelines §15378). Consequently no CEQA action is required by the City. The CEC is the lead CEQA agency under the permitting process for the REP project.

RECOMMENDATION

All business decisions are a balance of weighing the pros and cons. In this instance, there are also fundamental philosophical issues to weigh. An agreement for exclusively union labor on a City construction project is a different approach

than previous City practice. However, at risk is the City's ability to serve its customers in the best manner. This is not a pro- or anti-union decision, it is a decision on how to best protect the interests of the City and the ratepayers. From a business decision basis and given the pros and cons of the two options, the staff's recommendation is to proceed with the PLA.

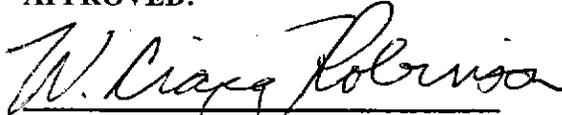
This recommends City Council adopt a resolution authorizing the City Manager to execute amendments to the five listed agreements.

Submitted by:



Tom Habashi
Electric Utility Director

APPROVED:



W. Craig Robinson
City Manager



How the Council voted

Power Play

Council, advocates resolve bitter chapter in approval process

By Jason Probst



An artist's rendering courtesy of Roseville Electric

Admittedly run up against a political dynamic bigger than itself, the Roseville City Council approved an agreement Wednesday night that would secure a union-only project labor agreement for the construction of the Roseville Energy Park.

Reluctantly voting 4-1 in favor of the motion, the council heard more than an hour of heated public testimony. And though council members John Allard, Jim Gray, Gina Garbolino and Mayor Rocky Rockholm voted to approve the agreement, all expressed sentiments ranging from mixed feelings to open animus with the circumstances at hand.

Council member Richard Roccucci voted against the project labor agreement, which received strong support and criticism from a standing-room-only crowd in council chambers packed with a contingent of union members and representatives from various builder's associations opposed to and in support of the agreement.

With the Roseville Energy Park in the seventh month of a one-year approval process by the California Energy Commission, city leaders felt trapped between competing agendas of securing power for the city's electricity customers and risking a delay in the park's approval by voting down the agreement.

Represented by California Unions for Reliable Energy (CURE), project labor agreements have been secured to build 23 of the 24 major power plants built statewide since deregulation in 1996.

The group acts as an "intervenor" in the CEC approval process of plants if a project labor agreement is not secured, by filing objections under the California Environmental Quality Act (CEQA).

Known as "greenmail," by critics of the process, power plant projects can be delayed a year or more in such interventions. And in California's tight energy market, delays drive cities to purchase expensive short-term power to satisfy demand supposed to be met by new plants.

In May, attorneys for CURE submitted a 23-page request to the city for additional air-quality and public health data.

CURE attorney Marc Joseph stated the union laborers have the necessary skill and experience to build power plants, something he said may not be available on the open market.

He added the project labor agreement would eliminate the risk of a worker's strike, plus would help the city avoid the hassle of coordinating multiple contractors operating under different rules.

But several members of the International Brotherhood of Electrical Workers were in attendance, and showed demonstrable solidarity for the agreement.

Joseph and other CURE representatives were unable to satisfy the five-member council that their intentions were as portrayed.

"I find it amusing that CURE states they're an open shop and yet goes on and on about the importance of union labor," said Eric Christen, representative of Western Electrical Contractor's Association.

Council member Gray asked Joseph if CURE would still intervene in the energy park process if the city went ahead and mitigated anticipated environmental impacts, but refused the union-only portion of the employment agreement.

"Yes or no?" said Gray.

"Once again, it's a balancing act between the environment and jobs," replied Joseph. "We'd have to step back and take a look. Does that answer your question?"

Gray provided a terse reply. "No, it doesn't," he said.

Eventually, Joseph said that CURE would still intervene in that scenario.

In a packed room peppered with business owners and special interests representatives from Colfax to San Francisco, several chided the Association of Building Contractors – an organization of non-union contractors that is a political adversary to CURE – for criticizing the agreement when the ABC hasn't filled the job market with properly trained electricians, who will be key to the project.

Garbolino said Roseville is a city that prides itself on calling the shots in the policymaking arena. But with the city's energy planners already budgeting a minimum 50 percent of the city electrical needs to be met by the plant in 2008, Roseville Electric would be forced to seek electrical power on the short-term or "spot" market, said officials.

Between those increased costs of power, and the potential litigation involved over a CEQA intervention by CURE, representatives of Roseville Electric say those costs could total \$3-15 million dollars. Those rate hikes would be passed on to customers.

Jason Probst can be reached at jasonp@goldcountrymedia.com

This 'CURE' quite painful for city council

For one of the few instances, a city that prides itself on carefully charting its own course was rendered helpless. This time the course was dictated.

It was a standing-room only crowd that witnessed the Roseville City Council bowing to outside pressure Wednesday in the controversial agreement to build the Roseville Energy Park.

Running the show on this occasion was the California Unions for Reliable Energy (CURE), which could have made a whole lot of trouble for the project if reluctant council

Jeffrey Weidel

Editor



members did not make the park construction a union-only deal.

Council members did not take the arm-twisting quietly. Strong words were spoken by all five members, who if voting from their heart, would have unanimously

opposed CURE.

Yet in the end, it was the typical voting pattern for this council – a 4-1 verdict with Richard Roccucci the only dissenting member.

Gina Garbolino, who will become Roseville's mayor following the next election, summed up the council's feeling in this candid admission.

"We're not in control. Roseville likes to be in control," she said.

That's the odd thing here – Roseville is almost always in control.

Detractors constantly question council and city staff on its desire to back growth initiatives. The alternative, according to the city officials and council, is if they back off the growth issue, Placer County will do the dictating and Roseville will have little say and little funding from the various projects.

However, very few Roseville people question the wisdom of building an energy park. At a time when Californians are getting gouged in their monthly energy bills, Roseville's proposal to supply their own power is a smart idea that will save citizens money.

The issue at the latest council meeting was essentially bowing to a powerful group like CURE. Getting the project going as soon as possible reluctantly became the prime goal, which is why the city now finds itself in bed with a reluctant guest – CURE.

Make no mistake, CURE is one formidable opponent. If the council went the other way in its decision there's little doubt CURE would help muddle the waters.

CURE is notorious for implementing a "greenmail" approach, using the threat of environmental legislation and other tactics to get their way. The objections would delay the Roseville project – now in its seventh month of a one-year process by the California Energy Commission – indefinitely.

And guess who suffers when the stop sign goes up? It would be Roseville citizens, who would watch their energy bills increase while the park project remained dormant.

It's not an illegal practice, yet certainly one CURE has used in the past quite successfully. The group has built all but one of the major power plants in California since deregulation took place in 1996.

A bill this spring, authored by State Assemblyman Dave Cox, that could have limited CURE's power in these situations, died in April. Nothing has changed; CURE still has the upperhand.

Although there will no doubt be opposing viewpoints on the council's stand with people saying they should have dug their heels in and voted no, the reality is they were caught in the no-win zone.

It was a highly frustrated councilman John Allard who lashed out at CURE late Wednesday evening at a meeting that went excessively long, extending to 4½ hours.

"In my opinion, it's disgusting," Allard angrily told the gathering at city hall. "I'm 100 percent opposed to this, personally, philosophically and politically. (But) I have to do what's best for the ratepayers of Roseville Electric. I want to ask the members of CURE to think long and hard about what you are doing tonight."

The ironic thing is, cities like Roseville get cornered and are literally strong-armed into making decisions against their will.

And right now, there is no cure for for "CURE".

Jeffrey Weidel is the Editor of The Press-Tribune. His column runs every Saturday. He can be reached at pteditor@goldcountrymedia.com



This story is taken from [Roseville](#) at sacbee.com.

Union builders exercise power

The Roseville council capitulates over fears that a labor group would block an energy plant.

By Jennifer K. Morita -- Bee Staff Writer - (Published July 25, 2004)

Stuck between two warring interests, the Roseville City Council on Wednesday reluctantly agreed to use union labor to build a proposed \$150 million power plant.

City-operated Roseville Electric is more than halfway through the California Energy Commission's yearlong environmental review and permit process to construct a 160-megawatt, natural gas-fired plant on Phillips Road in west Roseville.

The plant is scheduled to begin operation in 2006 and eventually will generate 65 percent of the city's electricity.

A group called California Unions for Reliable Energy, however, received "intervenor" status from the Energy Commission that gives it standing equal to Roseville Electric. As an intervenor, CURE could block or delay Roseville's permit by as much as 18 months unless the city approves a project labor agreement.

Under the agreement, any contractor the city hires to build the plant must use laborers who are union members.

An organization representing Northern California nonunion contractors opposed signing the agreement.

"This is extortion through the environmental protection laws," Kevin Dayton of the Associated Builders and Contractors Golden Gate chapter said before the meeting. "CURE's interest is not in saving the environment but in monopolizing construction for special interest groups."

Dayton's group sent 10,000 mailers to Roseville voters and urged the council to vote against the agreement.

"I don't see how a project labor agreement has anything to do with environmental issues," Dayton said.

The CEC has to weigh the benefits of a power plant project with its potential impacts on the environment.

CURE representatives said their group considers the same issues because if projects are not properly mitigated, it could threaten approval of future power plants and affect the availability of work.

"Construction depends on the next job," CURE attorney Marc Joseph said.

CURE Chairman Bob Balgenorth said at least 3,000 skilled union workers live in the city.

"This is a good business decision and allows Roseville construction workers to get jobs in their own city," Balgenorth said.

Roseville Electric Director Tom Habashi and the plant's project manager, Bob Hren, recommended signing the agreement.

"This is key to our continued efforts to get the Roseville Energy Park built within budget and on schedule," Habashi said. "Believe me, we have agonized over this for months."

Hren told the council that without the agreement, CURE likely would challenge Roseville's CEC permit application, costing the city between \$3 million and \$15 million in consultant fees and extra environmental mitigations. The delay also would force the city to purchase additional electricity at higher market rates and increase construction costs, Hren said.

The council voted 4-1 to approve the agreement. Richard Rocucci cast the only dissenting vote, saying the environment and labor are separate issues.

Councilman John Allard criticized the state Energy Commission's permit process, saying it allows special interest groups to intervene in projects under the guise of environmental protection laws.

"I'm not anti-union, but I am opposed to a process in which CURE can move to delay construction, increase costs and threaten the reliability of energy in the city of Roseville," Allard said.

"I'm 100 percent opposed to what we're being asked to do tonight, personally, philosophically and politically. However ... I have to do what is best for Roseville ratepayers."

Other council members also chastised CURE for its actions but said their decision was based on saving taxpayers money and the city's need for a power plant to stabilize electricity rates.

About the Writer

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SACRAMENTO Business Journal

EXCLUSIVE REPORTS

From the July 16, 2004 print edition

Unions push Roseville for power plant pact

Celia Lamb
Staff Writer

Labor leaders have pressed Roseville to require union membership for workers who build a proposed power plant, and city officials fear project delays and higher power costs if they don't comply.

Roseville's city-owned electric utility intends to build a 160-megawatt power plant that would supply 60 percent of the electricity needed by the city's homes and businesses by 2007. At issue is whether Roseville's City Council should approve a project-labor agreement that would cover all construction contractors who work on the plant, even those with nonunion shops.

PLA opponents say a union advocacy group called California Unions for Renewable Energy is making veiled threats of obstructionist tactics and environmental lawsuits unless the city signs the agreement.

"CURE has never made any threats of any kind," countered Marc Joseph, an attorney with the San Francisco law firm Adams Broadwell Joseph & Cardozo, which represents CURE.

Nonetheless, Roseville is seeking assurances that CURE and local unions will cooperate with the city's efforts to get a state Energy Commission permit for the proposed power plant. In a June 17 staff report, Roseville city manager W. Craig Robinson, electric utility director Tom Habashi and Roseville Energy Park project manager Robert Hren urged the City Council to sign the PLA.

"It's really not a union versus nonunion decision for us," said Roseville Electric spokeswoman Linda Chou. "It's really a business decision."

Powerful precedents: Project-labor agreements have been a controversial and recurring feature for major construction projects in recent years. First used in the 1930s, PLAs set minimum working conditions for laborers in exchange for a guarantee that workers won't strike. West Sacramento adopted the first PLA in the Sacramento region for the construction of the Palamidessi Bridge in 1995.

All but one major power plant built in California since 1997 had a PLA. The Sacramento Municipal Utility District adopted a PLA in 2002 for the 500-megawatt Cosumnes Power Plant, now under construction in southern Sacramento County.

"The project-labor agreement gives the city (Roseville) access to a skilled work force that has experience building power plants," Joseph said.

Advocates claim PLAs promote efficiency and lower costs by organizing workers and preventing labor conflict. Opponents say the pacts discriminate against the 80 percent of construction workers in the United States who are nonunion, reduce competition for contracts, and raise project costs.

Roseville's proposed PLA with the Building and Construction Trades Council of California and the Sacramento-Sierra Building & Construction Trades Council would also:

- Require workers to join local unions, even if they work for a nonunion contractor;
- Require contractors with nonunion shops to hire some workers through a union hiring hall;
- Set standard work hours and overtime pay.

Based on estimates provided by the power company Calpine Corp., Roseville believes labor costs will compose \$30 million of the overall \$150 million needed to build the plant.

The project-labor agreement would require contractors and subcontractors to pay into a local union trust fund 25 cents per hour for each employee. The city estimates that would raise construction costs by up to \$100,000. Beyond that it's not clear how the agreement would affect project costs.

A project-labor agreement would not raise wages since the city is already obligated to pay prevailing-wage rates in all contracts, according to the staff report.

Data overload: Roseville applied to the state Energy Commission in October 2003 for a permit to build the proposed power plant on 12 acres in western Roseville near a city wastewater treatment plant. City officials worry if they don't sign the PLA, union advocates might make getting that permit difficult.

"The inference has been put out there that if we don't do this deal there will be significant delays for our project," said Roseville Mayor F.C. "Rocky" Rockholm, adding that he supports union labor but resents having "a gun put to our head."

Formed in 1997, "CURE seeks full compliance with environmental requirements, and employment for local union workers to build, maintain and operate" power plants, according to an article by Bob Balgenorth, president of the California State Building and Construction Trades Council. Balgenorth was not available for comment.

The Energy Commission has given CURE permission to "intervene" in the permit process, meaning CURE can present evidence, cross-examine witnesses at hearings and request data from the city. On May 11 attorneys for CURE submitted a 23-page request to the city for additional air-quality and public-health data.

CURE's request challenged Roseville's air-pollution analyses and asked for detailed construction schedules, assessments of specific kinds of air pollutants from power plants in other parts of the country, and other highly technical information. An accompanying letter said it was CURE's "first set of data requests" from the city.

Answering such data requests and addressing other permit challenges would increase the city's legal and environmental consulting costs, Chou said. It could also delay construction, exposing the utility to volatile electric markets and higher interest rates on bonds used to pay for construction, she added.

That extra time could cost money for Roseville residents and business owners. If the project gets delayed, the city may have to seek short-term power deals in volatile wholesale electric markets, Chou said. If the city's energy costs rise, it would have to raise electric rates, she added.

"Environmental extortion": Signing a package of contracts that includes the project labor agreement would turn CURE from foe to friend. One of the agreements would commit CURE to supporting a permit for the proposed power plant. It would also require Roseville to follow nine environmental mitigation measures.

Most of the measures deal with suppressing dust during construction. One condition would require the city to test salt wastes and dispose of them "in accordance with California law relating to the disposal of waste streams." Another would require the city to avoid damaging Swainson's hawk habitat.

Eric Christen, spokesman for Sacramento-based Western Electrical Contractors Association Inc., called the

package deal "environmental extortion." Western Electrical Contractors represents nonunion electrical contractors in the PLA debate. Christen said he has seen CURE use similar tactics in other power plant cases, including one now under consideration in Riverside County.

"They throw up roadblock after roadblock," Christen said.

CURE has intervened in several Energy Commission power plant proceedings, said Energy Commission spokesman Chris Davis.

"I think they have been pretty active in (Roseville's) case," he added. "We actually modified our assessment and added information in a couple of areas as a result of the CURE data request."

Roseville's City Council tabled the PLA issue at its last meeting July 7 and may take it up again July 21.

"We have asked staff to give us a report of what the costs will be long-term," Rockholm said. "I think we could wait a month or so before we do anything."

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Sacramento Business Journal - July 19, 2004

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SACRAMENTO Business Journal

OPINION

From the July 16, 2004 print edition

No strong-arming

THE ISSUE: Roseville's proposed power plant faces 'environmental' pressure to sign a project-labor agreement

OUR POSITION: Don't sign

Here's how Roseville should be able to avoid an environmental lawsuit over its proposed 160-megawatt power plant -- by building the plant safely to legal and industry standards.

But here's what it's being prodded to do -- sign a project-labor agreement, with the State Building & Construction Trades Council of California and the Sacramento-Sierra Building & Construction Trades Council, so that the construction work goes to union members only.

Perhaps you're wondering what a labor deal has to do with sound environmental practice. The answer is, not much. The link between environment and labor in this case is opportunistic, a tactic by the trades councils to present Roseville's public utility with the prospect of costly, time-wasting litigation that could delay the plant if it doesn't play ball.

The unions are working with California Unions for Reliable Energy, an affiliate based at a San Francisco law firm. That group, cleared by the state Energy Commission to intervene in the commission's review of the Roseville proposal, has already peppered Roseville Electric with detailed questions. The implication is that if the city doesn't make nice with the unions, the group will ask for lots more data and might object legally or file suit on environmental grounds. But if the city signs, the group becomes an ally supporting the project as it seeks final state approvals.

This is wrong. Environmental laws should protect the environment, not be drafted as a weapon to pursue unrelated goals.

The Roseville Energy Park is due to deliver 60 percent of the city's electricity by 2007. The utility's sole purpose should be to build the plant as expertly and inexpensively as possible. That purpose doesn't require a PLA.

The question of whether unions will represent the construction workers can be settled after Roseville Electric collects bids and picks a contractor. Prevailing-wage obligations mean the jobs will pay well regardless of whether the workers belong to a union, pre-empting the argument that the PLA is required to attract skilled labor.

But the main reason Roseville should reject the project-labor agreement is to take a stand against strongarming based on the misuse of environmental laws. The city should be able to escape environmental obstructionism by planning and building well. No other factor should apply. No other factor is relevant.

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Previous Document	Next Document	Search	Contents
Construction Labor Report Banner			

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Page 715

State News

California

Roseville City Council Approves PLA For \$150 Million Electric Power Plant

The city council of Roseville, Calif., July 21 voted 4-1 to approve its staff recommendation to build the city's new \$150 million power plant using a project labor agreement.

"This is not a pro- or anti-union decision, it is a decision on how to best protect the interests of the city and the ratepayers," according to the staff report to the city council.

Upon completion by 2007, the new 160-megawatt, natural gas-fired generating facility will provide 60 percent of the electricity needed by the city, according to Linda Chou, spokeswoman for the city-owned utility.

The city council vote to build the new plant under a project agreement "was strictly a business decision," Chou said July 26.

The staff report was written by Tom Habashi, the city's electric utility director, and Craig Robinson, city manager.

Potential for CURE Disruption

Central to the staff report was the role California Unions for Reliable Energy may have played had a decision been made not to use a PLA. CURE is union advocacy group affiliated with the California State Building Trades Council that promotes employment of union building trades workers on power plant projects.

Roseville Electric is in a permit review process for the project before the California Energy Commission, which has sole authority to license power plants in the state. The staff report noted that CURE has intervened "on most power projects" in the CEC permit process.

"On those projects that agree to a PLA and the related other documents, CURE's involvement has been light and supportive. On those projects that do not sign PLAs, CURE's involvement has been heavy and adverse to the interests of the project sponsor," according to the staff report.

CURE is the only intervenor in the Roseville Electric permit application, the staff report stated, and "is in a position to adversely influence" the utility's permit application.

In order to prevent "disruption and delay" of the permitting process, the staff said in its report that a project agreement had been negotiated for the Roseville project.

Anti-union groups claim a PLA would add 20 percent or about \$6 million to the cost of the project, the staff said. Also noted by the staff was the fact that the publicly funded project would be covered by the state prevailing wage law, requiring wages that "are close to or the same as union wages."

There are considerable potential costs of resisting a project agreement, according to the report,

associated with permitting challenges, a delayed start date for the project, and the need to purchase replacement power from outside sources. The staff report put these costs at "anywhere from \$3 million to \$15 million."

The staff concluded that the best interests of the city and the ratepayers would be served by building the project using a PLA.

Chou at Roseville Electric said the availability of skilled labor under a PLA had considerable appeal for the city council. With virtually every power plant in the state built by union labor, "that says something about the kind of labor force we would get" under a PLA, Chou said.

CURE Fears 'Wildly Overblown.'

Marc Joseph, with the San Francisco law firm of Adams Broadwell Joseph & Cardozo who represents CURE, July 27 said insinuations of union strong-arm tactics were "wildly overblown" in the staff report.

Given the nature of the permitting process, Joseph said the claim that CURE or any intervenor "can hold a gun to anyone's head is nonsense." While the permitting process is open to any organization, Joseph said an intervenor will not have an effect on the outcome unless the commission finds "substantial merit" in the intervenor's arguments.

Virtually all recently completed power plants in the state and plants under construction are covered by project agreements, he said. Of the 17 power plants completed since 1998, 16 were built under project agreements. Of the 11 power plants currently under construction, all are being built by union trades workers under PLAs.

The only project not built with union labor--in Huntington Beach--has become "a poster child for disaster" in power plant construction, he said. According to Joseph, the project was completed more than 12 months behind schedule and was over budget by "the tens of millions of dollars." Protracted litigation between the plant owner and the contractor caused the contractor to declare bankruptcy, he said.

Power plant projects provide an average of 750,000 construction manhours of work, according to the California State Building Trades Council, and typically obligate the owner to a 30-year maintenance contract.

Pressure to Use, Not Use PLAs

PLAs are pre-hire collective bargaining agreements that usually apply only to a specific project and exist only for the duration of that project. They are multicraft agreements, generally signed by local building trade unions and all contractors on the project. On public works projects, prevailing wage and benefit rates normally apply and are recognized in the agreements. Work rules typically are standardized for all crafts, which agree not to strike in exchange for a commitment that all workers on the project are referred through union hiring halls.

While PLAs generally are promoted by building trade unions and their employers, they are opposed by nonunion builders who argue that both private and public contracts should be awarded to the lowest responsible bidder regardless of labor policy.

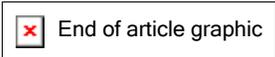
Public officials frequently face political pressures from nonunion builders and business groups to oppose project agreements on public projects. PLA opponents assert the agreements raise project costs by limiting competition and discriminate against 80 percent of construction workers who are not represented by unions.

Project agreements on state-funded projects in California have been given a clean bill of legal health. Challenges to PLA use on the San Francisco Airport expansion project and a large reservoir project in Southern California were rejected by the California Supreme Court in 1999

(45 CLR 647, 671, 8/18/99; 45 CLR 963, 11/3/99).

Separate studies by the California Research Bureau and UCLA concluded that project labor agreements play a valuable role in improving the efficiency and cost effectiveness of public and

private sector projects in the state (47 CLR 1103, 11/28/01).



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Previous Document	Next Document	Search	Contents
-----------------------------------	-------------------------------	------------------------	--------------------------

