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California Energy Commission
Docket Unit
1516 Ninth Street
Sacramento, CA 95814-5512

Subject: **STA DEVELOPMENT'S RESPONSES TO COMMISSION ORDER 11-0824-8 IN SUPPORT OF MOTION FOR ORDER AFFIRMING APPLICATION OF JURISDICTIONAL WAIVER**
RIDGECREST SOLAR POWER PROJECT
DOCKET NO. (09-AFC-9)

Enclosed for filing with the California Energy Commission is the original of **STA DEVELOPMENT'S RESPONSES TO COMMISSION ORDER 11-0824-8 IN SUPPORT OF MOTION FOR ORDER AFFIRMING APPLICATION OF JURISDICTIONAL WAIVER**, for the Ridgecrest Solar Power Project (09-AFC-9).

Sincerely,

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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of: **RIDGECREST SOLAR POWER PROJECT**	**DOCKET NO: 09-AFC-9** **STA DEVELOPMENT'S RESPONSES TO COMMISSION ORDER 11-0824-8 IN SUPPORT OF MOTION FOR ORDER AFFIRMING APPLICATION OF JURISDICTIONAL WAIVER**

INTRODUCTION

Pursuant to the Commission Order No: 11-0824-8 (Order), STA Development (STA) hereby provides answers to the questions contained in the Appendix to the Order submitted to the parties on August 26, 2011. The Order directs the parties to not repeat legal arguments previously submitted. STA has endeavored not to repeat such arguments. However, since some of the questions bear directly on a legal point included in STA's prior briefs, STA includes a summary of that information only as it is relevant to answering the particular question and to provide context for the answer.

1. WHAT IS THE LEGISLATIVE PURPOSE OF SECTION 25502.3?

The legislative purpose of Public Resources Code Section 25502.3[1] is to allow an applicant to waive its right to be excluded from the mandatory exclusive siting jurisdiction of the Commission – and to voluntarily submit to the Commission's exclusive siting jurisdiction. As described in our prior briefs, it is important to note the difference between ***mandatory*** and ***permissive*** siting jurisdiction. The concept of ***permissive*** siting jurisdiction requires that the facility electing to submit to the exclusive siting jurisdiction ***must be excluded or exempted from the mandatory Commission exclusive siting jurisdiction.*** Both pathways result in the Commission having the exclusive siting jurisdiction over the facility.

After a careful review of the hundreds of pages of legislative files contained in the California State Archives relating to the enactment of the Warren Alquist Act (Act)[2], we have found documents which support the contention that Section 25502.3 was intended by the Legislature to be a ***general*** "opt-in" provision – distinct and separate from a ***specific*** "opt-in" provision designed solely for projects that were excluded from the Commission mandatory exclusive siting jurisdiction by a "grandfather clause"[3].

Section 25502.3 states:

> ***Except as provided in Section 25501.7***, any person proposing to construct a facility excluded from the provisions of this chapter may waive such exclusion by submitting to the commission a notice of intention to file an application for certification, and any and all of the provisions of this chapter shall apply to the construction of such facility. (Emphasis added)

There are two sets of documents that are relevant to determining the Legislature's intent and purpose for including Section 25502.3. Both support our contention that Section 25502.3 was intended by the Legislature in 1974 to be a general "opt-in" provision. The

[1] All statutory references in this document are to the California Public Resources Code unless otherwise noted.
[2] AB 1575 enacted in the 1973-1974 Regular Legislative Session
[3] Original Sections 25501, 25501.3, 25501.5 and 25501.7

first is the Legislative Counsel's Opinion dated May 13, 1974 and is discussed in detail in our prior briefs.[4]

The second set of documents includes all of the amendments to the original bill made during the 1973-74 Regular Legislative Session. The bill was introduced on April 25, 1973 as a spot bill indicating Assemblymember Warren's intent to create a state energy agency and statewide energy policy. It was amended on May 29, 1973 to include the first siting provisions. This amendment included the first language of a grandfathering provision, which excluded from Commission jurisdiction those facilities that had received a Certificate of Public Convenience and Necessity (CPCN) prior to the effective date of the Act.

On August 6, 1973 the bill was amended again, but this amendment is not relevant to either the grandfathering provisions or any waivers of exclusion.

The bill was again amended on January 9, 1974 when Senator Alquist became a co-author. This amendment substantially altered the Act and appears to be the result of incorporation of many of the concepts and language from SB 283 authored by Senator Alquist during the preceding legislative session but vetoed by then Governor Reagan. One affect of this amendment was to expand the types of projects that would be grandfathered out of the exclusive siting jurisdiction of the Commission. Specifically, this amendment created a new Section 25501 which now grandfathered facilities that had a CPCN and those that had a CPCN on file prior to the effective date of the Act and were planning to begin construction within three years. This amendment also created Section 25501.3, which further expanded the grandfathering provisions to extend to facilities that did not require a CPCN (municipal utilities were not regulated by the California Public Utilities Commission). This amendment also directly incorporated a waiver provision that was included in Section 25519. Specifically, this waiver provision specifically allowed applicants to "opt-in" to the Commission's exclusive siting jurisdiction but it applied only to

[4]RSPP Motion For Order Affirming Application of Jurisdictional Waiver, dated June 17, 2011, page 5; RSPP Additional Brief in Support of Motion For Order Affirming Application of Jurisdictional Waiver, dated July 6, 2011, pages 3 and 4

situations where a “thermal powerplant” and “transmission line” was excluded. The term “facility” was not used.

The bill was amended again on March 28, 1974. At this time the Legislature moved the waiver provision from Section 25519 to a separate paragraph in Section 25502 but most importantly it abandoned the terms “thermal power plant” and “transmission line” in favor of the term “facility”. This indicates an intention by the Legislature to expand the meaning beyond thermal power plants and transmission lines that were excluded, otherwise they would have continued to use those specific terms. The modified waiver provision language is nearly identical to the current Section 25502.3. The only difference was that it did not include the caveat, “Except as provided in Section 25501.7” because at that time, the bill did not include Section 25501.7.

The most relevant amendment to the bill occurred on April 4, 1974. This amendment reworked the grandfathering provisions significantly. Section 25501 was rewritten to provide overall grandfathering exclusion for facilities that had a CPCN and for facilities that were planned to commence construction within three years. Section 25501.3 was amended to provide the criteria under which a facility could demonstrate it was planning to commence construction within three years. Section 25501.5 was added and identified a large list of proposed facilities that were deemed to meet the criteria for planning to commence construction within three years. ***Most importantly, at this time the Legislature split and created two expressly separate waiver provisions***. Section 25501.7 was created at this time – and this version remained intact until 1994. This section provided for a waiver of the exclusion specifically applicable only to any facility that was ***excluded by Section 25501***; that is, facilities that had a CPCN, facilities that were planning to commence construction within three years, and facilities that were specifically listed in Section 25501.5. At this time, the Legislature ***did not delete*** the language of the general waiver included in Section 25502. Instead the Legislature moved the language to a new stand alone Section 25502.3 and included the important caveat “***Except as provided in Section 25501.7***”. If the Legislature intended Section 25502.3 to apply only to the grandfathered projects excluded by Section 25501, they would have simply deleted the language since they just created Section 25501.7 to be used as a waiver specifically

for every grandfathered project. Instead, the Legislature elevated the waiver to a separate and stand-alone section and included language specifically distinguishing it from grandfathered projects in Section 25501.7. This conclusively shows that the Legislature intended this provision to apply to facilities excluded from Commission mandatory exclusive siting jurisdiction by some other reason rather than the grandfathering clause of Section 25501. The only other way to be excluded from Commission mandatory exclusive siting jurisdiction (in 1974 and today) is to be excluded from the definitions of facility and thermal power plant. Please see our prior briefs for a more detailed discussion of "definitional exclusions".

While it is important to understand the original purpose of Section 25502.3, the Legislature's conduct in 1994 conclusively indicates they intended it to be used as a general "opt-in" provision applicable to those facilities that would otherwise be excluded from the Commission mandatory exclusive siting jurisdiction because they did not meet the facility and thermal power plant definitions.

In 1994, the Legislature removed obsolete provisions from the Warren-Alquist Act, but specifically retained and reenacted Section 25502.3[5]. Please see the testimony of Robert Therkelsen for an explanation.[6] While there is no specific reference to Section 25502.3 in any of the legislative files as to why the Legislature decided to retain and re-enact Section 25502.3, such an absence of documentation is not uncommon. However, the lack of documentation does not render us helpless in determining why Section 25502.3 was re-enacted. The courts have outlined the following principles that **must be used for determining the legislative purpose** – and therefore the logical meaning of Section 25502.3.

1. The first rule of statutory construction is that the plain and commonsense meaning of the statutory language controls[7].

[5] AB 446 (1974)
[6] 8/25/11 RT pages 18-24.
[7] *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476.

2. It must be assumed that the Legislature intended in 1994 to leave Section 25502.3 in place and to have a legal effect. In other words, it is impermissible to assume the Legislature made a mistake and left in a "hold over" provision. As described by the California Supreme Court in *Estate of McDill,* (1975) 14 Cal. 3d. 831, 837-838, it is well settled that:

> It is assumed that the Legislature has in mind the existing laws when it passes a statute. (Estate of Simpson (1954) 43 Cal. 2d. 594, 600; Buelke v. Levenstadt (1923) 190 Cal. 684, 689; People ex rel. Thain v City of Palo Alto (1969) 273 Cal. App.2d.400, 406, 78 Cal. Rptr. 240.) '***The failure of the Legislature to change the law in a particular respect when the subject is generally before it and changes in other respects are made is indicative of a intent to leave the law as it stands in the aspects not amended***.' (Cole v. Rush (1955) 45 Cal. 2d. 345, 355, 456 (overruled on another point in Vesely v. Sager (1971) 5 Cal. 3d. 153, 167); Bishop v. City of San Jose (1969) 1 Cal. 3d. 56, 65, 81 Cal. Rptr. 465; Place v. Trent (1972) 27 Cal. App. 3d 526, 532, 103 Cal. Rptr. 841.) (Emphasis added)

3. Courts are required to give statutes a reasonable and commonsense interpretation which will result in wise policy rather than mischief or absurdity".[8]
4. The courts have held that it must be presumed that the statute has purpose and it is impermissible to attempt to reconcile inconsistencies by repealing a portion of statute by implication.[9]

Applying these principles as set forth in more detail in our prior briefs, the only conclusion consistent with the California Supreme Court guidance is that the legislative purpose of Section 25502.3 is to allow an applicant to waive its right to be excluded from the mandatory exclusive siting jurisdiction of the Commission and voluntarily submit to the exclusive siting jurisdiction of the Commission.

Staff agrees that the purpose of Section 25502.3 is to allow applicants to "opt-in" to the Commission's exclusive siting jurisdiction. However, Staff believes it is limited only to those projects that were excluded from the Commission jurisdiction by "grandfathering".

[8] *USA v. Gibson* (1992) 6 Cal.App.4th 577, 582.
[9] *Flores v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 171, Page 177. See also *Nickelsberg v. Workers' Comp. Appeals Bd.* (1991) 54 Cal.3d 288, 298 and *In re White* (1969) 1 Cal.3d 207.

As described above, this assertion is not supported by the amendment history of the original bill. Nevertheless, Staff asserts that the Section is essentially a "hold-over" provision retained by mistake.[10] However, assuming arguendo, that in 1975 Section 25502.3 did apply to the grandfathered projects, **Staff's position ignores the fact that the Legislature reenacted Section 25502.3 in 1994**. If the Legislature intended Section 25502.3 to apply to grandfathered projects in 1975 (which it did not), one cannot argue that it intended Section 25502.3 to apply to only grandfathered projects in 1994 when simultaneously in the same bill the Legislature removed all references to these same grandfathered projects. Staff's analysis manifestly conflicts with the California Supreme Court direction outlined in Principle 2 above, which prohibits the Commission from finding that Section 25502.3 was a "hold-over" provision retained by mistake.

2. WHAT IS THE LEGISLATIVE PURPOSE OF SECTION 25501.7?

The legislative purpose of Section 25501.7 is to allow facilities that are excluded from the Commission's mandatory exclusive siting jurisdiction solely due to the application of Section 25501 to waive its rights to be excluded. As described in the Answer to Question 1 above, Section 25501 originally excluded facilities that had a CPCN, those that were planning to commence construction within three years, and those that were specifically listed. The Legislature amended Section 25501 in 1994[11] removing all references to specifically listed grandfathered projects and the criteria for determining whether a facility was planned to commence construction within three years. With that amendment, Section 25501 currently only excludes facilities from the mandatory exclusive siting jurisdiction that have received a CPCN or were approved by a municipal utility prior to January 7, 1975. Therefore, the current legislative purpose of Section 25501.7 is to allow an applicant for a facility that has a CPCN or was approved by a municipal utility prior to January 7, 1975 to voluntarily waive the exclusion and submit to the Commission exclusive siting jurisdiction.

[10] See Staff Brief dated July 3, 2011, page 3 "section 25502.3 is a legacy "grandfathering" provision that no longer has applicability to any proposed site or related facility" and at page 6, "With the removal of section 25501(b), *the three year exemption*, and the listed facilities of section 25501.5, section 25502.3 has become obsolete."

[11] AB 446 (1994)

3. WHAT DOES THE TERM "FACILITY" IN SECTION 25502.3 REFER TO? ARE THERE ANY ELECTRICAL GENERATING FACILITIES OF ANY SIZE OR TECHNOLOGY THAT WOULD NOT BE INCLUDED IN THIS DEFINITION?

The term facility in Section 25502.3 means the general definition of the word facility, and does not mean the "facility" as defined in Sections 25110 and 25120.

If one were to apply "facility" as defined in Sections 25110 and 25120, such an interpretation would render Section 25502.3 obsolete. (Please see our prior briefs for an explanation on why rigorously applying the definition of facility leads to an absurd result; an "opt-in" provision that is only applicable to projects that cannot "opt-in" because they are already required to submit to the Commission's exclusive mandatory siting jurisdiction. Recently, the Legislature has again used the term "facility" in a general sense by referring to a photovoltaic power plant as a "facility" five times in the newly passed SB 226.) ***Such an interpretation is impermissible*** – as explained in the California Supreme Court case law cited in the Principles outlined in the Answer to Question 1.

The California Supreme Court and the Legislature itself have cautioned the Commission to use care when applying definitions. As discussed more thoroughly in our prior briefs, the Legislature included Section 25100 which states:

> ***Unless the context otherwise requires***, the definitions in this chapter govern the construction of this division. ***(Emphasis added)***

(Please see our prior briefs where we indicate where the term facility is used in the Warren Alquist Act where the context otherwise requires the general meaning of the term facility be used to avoid an absurd interpretation.)[12] This admonishment is also applicable with other definitions in the same way we contend the Commission should heed it when interpreting Section 25502.3. For example, Section 25112 defines the term "member" which "means a member of the State Energy Resources Conservation and Development Commission appointed pursuant to Section 25200". There are many times throughout the

[12] The Legislature recently enacted SB 226 (not signed by the Governor at the time of this brief) which created new Section 25500.1. That bill uses the term facility five times. If the definition of facility were rigorously applied without heed to the context, the entire Section would be rendered meaningless since it is intended to apply to photovoltaic energy facilities, which are excluded by definition from the term "facility".

Warren Alquist Act when the term "member" is used when the context requires the general use of the term be used instead of the Section 25112 definition.[13] For example, Section 25204 states, "Every appointment made by the Governor to the commission shall be subject to the advice and consent of a majority of the ***members*** elected to the Senate." Clearly the Legislature did not intend for the Section 25112 definition of member be applied in this context because then only members of the Commission who would also be State Senators could confirm a member of the Commission. It is not necessary to have a specific note in the author's file or a Legislative Analysis directly on point to determine that the Legislature did not intend this absurd result.

Recently, the California Court of Appeal applied the Principles outlined above in Watershed Enforcers v. Department of Water Resources (2010) 185 Cal. App. 4th 969 (Watershed) to obtain a logical and common sense result. In Watershed, the court found that the California Endangered Species Act (CESA) provisions required a state agency to obtain a permit, even though the definition of "persons" (Section 67 of the Act) required to get a permit did not expressly include state agencies. First, the court relied on the same Legislative warning contained in CESA and the Act when applying the definitions. Both include similar language that direct the definitions to be applied, ***unless the provisions or the context otherwise requires***. The court opined at page 980:

> But Section 67 is subject to the proviso of section 2, which allows an alteration, and a legally permissible expansion of the specific statutory definition if "the provisions or the context otherwise requires." This proviso, along with our duty to construe section 2080 to effect the Legislature's intent and to promote the resource-conservation purposes and policies of the CESA statutory scheme, poses a serious question whether the definition of "person" is limited to the exact language of section 67.

This court also relied on Department of Water Resources own interpretation of CESA which believed that state agency's were "persons" required to get a permit even though technically excluded from the definition. The court opined at page 982:

> While we exercise our independent judgment in interpreting a statute, we will give deference to an agency's interpretation if warranted under the circumstances of the agency's actions.

[13] 25201; 25217 (b); 25218 (f); 25358 (d)

As described herein, the specific Legislative intent of Section 25502.3 was, and is currently, to act as a general "opt-in" measure for facilities that would otherwise be excluded. With respect to the intent of the Act, the Legislature in 1974 was clearly trying to create new energy policy and a new agency that would oversee the construction and operation of the State's energy supply. The Legislature wisely included Section 25502.3 to allow for a state-wide energy mix that was unforeseeable in 1975; one that includes large renewable energy facilities that did not use thermal energy to create electricity. However, a careful read of the legislative history, including many excerpts from Charles Warren's letters and speeches, shows that it was his vision that the State could move to renewable energy in a fashion that would allow minimal dependence on fossil fuels. One of the purposes of the Act as a whole was to create statewide energy policy and to provide a one-stop state permitting authority for power plants that were essential to California. With California's mandate and commitment to realizing aggressive renewable portfolio standards, there is ample evidence upon which a reviewing court could rely, while giving deference to the Commission's interpretation of its implementing statute, that supports that Section 25502.3 should not be read so narrowly as to preclude use of the "opt-in" provision by an applicant seeking to construct a photovoltaic electrical generating facility.

4. WHAT FACILITIES REFERRED TO IN SECTION 25502.3 WOULD NOT BE ELIGIBLE FOR AN EXEMPTION UNDER SECTION 25501.7?

Based on the analysis in our previous briefs and the conclusions summarized in Questions 1 through 3 above, Section 25501.7 applies only to those facilities that have a CPCN or municipal utility approval prior to January 7, 1975. Therefore, any facility that is excluded by definition from the Commission's mandatory exclusive jurisdiction and did not have a CPCN or municipal utility approval prior to January 7, 1975 would be eligible for the exemption under Section 25502.3 – because they would not be eligible for the grandfathering waiver under Section 25501.7.

5. IF YOU CONCLUDE THAT SECTIONS 25501.7 AND 25502.3 ARE BOTH INTENDED TO APPLY ONLY TO THE FACILITIES IDENTIFIED IN SECTION 25501, WHY WERE TWO STATUTES ADOPTED INSTEAD OF A SINGLE STATUTE?

Section 25501.7 and 25502.3 are not intended to apply only to the facilities identified in Section 25501. Such an interpretation would violate common sense and the court interpretation principles outlined in the Answer to Question 1.

Section 25502.3 includes the legal proviso "Except as provided in Section 25501.7" which clearly shows the legislature intended in 1974, and again in 1994, that it should be a separate and distinct waiver provision. Section 25501.7 was intended to allow projects that were excluded because they met the grandfathering provisions in 1974 (or, as amended in 1994, have a CPCN or municipal utility approval prior to January 7, 1975). Section 25502.3 was intended in 1974, and again in 1994, to apply to excluded facilities that were not grandfathered. There simply is no other explanation that would comply with the court interpretation principles outlined in the Answer to Question 1.

Staff has asserted that the two statutes apply only to these grandfathered facilities, and then attempts to explain why there are two separate statutes that do the exact same thing – by claiming that they involve different processes. Staff relies on the difference of the use of the word "notice" in both statutes. In Section 25502.3, Staff asserts that the Applicant elects the notice of intention process; while when relying on Section 25501.7, the Applicant elects a more streamlined process by filing a simple "notice". First, this is nonsensical because an applicant seeking a permit would never voluntarily elect a more cumbersome, costly and lengthy permitting process when a process with less burden was available simply by electing the form of the filing. Second, Staff fails to apply the definition of "notice" contained in Section 25113, which states that: "Notice" means the notice of intent, as further defined in Chapter 6 (commencing with Section 25500)…". When applying the definition of the word "facility" Staff urges the Commission that it must under all circumstances rigorously apply the definitions. If the Commission were to agree with Staff, then Section 25501.7 can only be interpreted to require the Applicant to file a Notice of Intention in the exact same manner as Section 25502.3, further rendering the statutes

completely identical. Common sense must prevail; the Legislature did not intend for both statutes to accomplish the same thing in the same manner. The Legislature intended in 1974, and again in 1994, for the Section 25502.3 to be a general opt-in waiver.

It's important to note that the concept of "opting in" or "opting out" is not foreign to the Commission process. Some have alleged that the concept is somehow impermissible as "forum shopping". ***However, no party has cited a single legal citation supporting the proposition that "opting in" to a state agency process is prohibited***. In fact, in addition to Section 25501.7, which allows an applicant to "opt in" to the Commission process, the Warren Alquist Act contains Section 25541, which allows an applicant to "opt-in" or "opt-out" of the Commission exclusive siting jurisdiction by receiving a Small Power Plant Exemption (SPPE). Section 25541 allows an applicant to elect to seek an exemption for a power plant that would be otherwise required to submit to the mandatory exclusive jurisdiction of the Commission.[14] Upon certain findings that the project is eligible to "opt-out", the Commission approves the exemption and the power plant becomes subject to local regulation. To our knowledge, no person has ever claimed that this is impermissible forum shopping, nor did any County object at the time of enactment of this statute. Similarly, nothing requires an applicant to request the Commission to approve an SPPE. An applicant can and has voluntarily submitted[15] an Application For Certification (AFC) thereby waiving its right to seek the exemption. The Commission is familiar with applicants since 1975 that have elected both pathways and neither pathway has been challenged as impermissible forum shopping. The enactment of Section 25541 and Section 25501.7 further indicates the intent of the Legislature to allow applicants to "opt-in" to the Commission exclusive siting jurisdiction. Section 25502.3 is another method for projects that would otherwise be excluded or exempted.

[14] Available to thermal power plants with generating capacities between 50 and 100 MW.
[15] The most recent examples are Henrietta Peaker 01-AFC-18, Valero Cogen 01-AFC-5, Orange Grove 08-AFC-4

6. DISCUSS THE SIGNIFICANCE OF THE LEGISLATIVE HISTORY OF RELEVANT PROVISIONS AND AMENDMENTS TO THE WARREN-ALQUIST ACT, INCLUDING BUT NOT NECESSARILY LIMITED TO SECTIONS 25120, 25501.7, 25502, 25502.3, 25540, AND 25542, AND WHETHER THE LANGUAGE AND TIMING OF THOSE PROVISIONS AND AMENDMENTS SUPPORTS THE APPLICANT'S ASSERTION THAT SECTION 25502.3 PERMITS IT TO OPT-IN TO THE ENERGY COMMISSION'S EXCLUSIVE CERTIFICATION JURISDICTION BY FILING A NOTICE OF INTENTION TO FILE AN APPLICATION FOR CERTIFICATION OF A SOLAR PHOTOVOLTAIC ELECTRICAL GENERATING FACILITY.

Our prior briefs include a description of the Legislative purpose and history associated with SB 928, which modified the definition of thermal power plant to exclude from the definition other types of facilities including photovoltaic electrical generating facilities (PV). As cited in our prior briefs, the stated purpose of the amendment was to ensure renewable energy developers that they would not have to submit to the Commission's mandatory and exclusive jurisdiction. The history is silent as to whether the previously enacted waiver provision of Section 25502.3 would apply. However, applying the Principles for interpretation outlined in the Answer to Question 1 above, we are prohibited from assuming that the Legislature intended the waiver to be inapplicable to PV and thereby prohibiting a PV applicant from waiving its right to "opt-in" to the Commission jurisdiction. In fact, since the Legislature did not amend Section 25502.3 in 1988 when it enacted SB 928, the California Supreme Court would interpret this correctly as indicative of legislative intent to keep the law as it was.

As discussed in our prior briefs and in the testimony of Robert Therkelsen before the Committee on July 25, 2011, in 1994 the Legislature enacted AB 446, which removed obsolete provisions from the Warren Alquist Act. The Legislature modified the grandfathering provision significantly by removing any reference to specific projects and removing the exclusion for facilities that would be constructed within three years of enactment of the Warren Alquist Act. But they elected to leave Section 25502.3 and 25501.7 intact, indicating that they intended the two provisions to act independently of the list of "grandfathered" projects.

CONCLUSION

Section 25502.3 was originally intended to apply, not to grandfathered power plants, but to other power plants that would otherwise be excluded from the Commissions exclusive mandatory siting jurisdiction. Even if the Commission agrees with Staff's assertion that it applied to grandfathered projects, it is legally impermissible to conclude that Section 25502.3 is a "hold over" provision that was mistakenly retained by the Legislature in 1994. It is similarly impermissible to find that the definition of facility and thermal power plant must be rigorously applied to Section 25502.3 because it would lead to an absurd result; a Section that has no purpose. Such a result would result in the Commission repealing the Section by implication which is also legally impermissible. Legally and logically there is only one defensible conclusion; an applicant has the right to voluntarily submit to the exclusive siting jurisdiction of the Commission a proposal to construct and operate a power plant that would otherwise be excluded from Commission jurisdiction, including a photovoltaic energy facility.

Respectfully Submitted,

Dated: September 16, 2011

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David L. Wiseman, Counsel to STA

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APPLICATION FOR CERTIFICATION
For the *RIDGECREST SOLAR POWER PROJECT*

Docket No. 09-AFC-9

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(Revised 8/15/2011)

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DECLARATION OF SERVICE

I, Ashley Y Garner, declare that on September 16, 2011, I served and filed copies of the **STA DEVELOPMENT'S RESPONSES TO COMMISSION ORDER 11-0824-8 IN SUPPORT OF MOTION FOR ORDER AFFIRMING APPLICATION OF JURISDICTIONAL WAIVER**, dated September 16, 2011. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:
[http://www.energy.ca.gov/sitingcases/solar_millennium_ridgecrest].

The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(***Check all that Apply***)

FOR SERVICE TO ALL OTHER PARTIES:

_X_ sent electronically to all email addresses on the Proof of Service list;

____ by personal delivery;

_X_ by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

_X_ sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (***preferred method***);

OR

____ depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 09-AFC-9
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Ashley Y Garner