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December 6, 2012

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VIA EMAIL

Mr. Jason Pyle
9071 Kapaa Drive
Huntington Beach, CA 92646

The Honorable Andrew McAllister
The Honorable Karen Douglas
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814



**Re: Huntington Beach Energy Center Project (12-AFC-02)
Request for Extension to Submit Certain Data Responses Contained In Set One
(#1-16) From Intervenor Pyle); Objections**

Dear Commissioners and Mr. Pyle:

On or about November 16, 2012, Intervenor Jason Pyle submitted Data Requests (#1-16) to the Applicant, AES Southland Development, LLC, related to the Application for Certification for the Huntington Beach Energy Center Project ("HBEP"). Applicant has worked diligently since the issuance of the Data Requests to obtain the responsive data sought by Mr. Pyle in his requests. However, Applicant has identified certain Data Requests that require additional time beyond December 16, 2012 for Applicant to respond to as well as requests to which Applicant objects, as set forth below. Pursuant to California Code of Regulations, section 1716(f), Applicant herein notifies Mr. Pyle and the Committee that responses to certain data requests require additional time. In addition, Applicant timely objects to other data requests as discussed below.

As noted in certain objections, Applicant has conducted additional noise monitoring and will be filing the results of that modeling along with more information and analysis on noise impacts. This information will be partly responsive to many of Mr. Pyle's data requests. Applicant intends to file this additional noise information no later than January 18, 2013. The additional noise data and analysis that will be filed in January is one example of Applicant's commitment to the Huntington Beach community surrounding this project and to ensuring all noise requirements are met.



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Request for Extension

Pursuant to Title 20, California Code of Regulations, section 1716(f), Applicant herein requests an extension of time to respond to Data Requests PYLE-2, PYLE-3, PYLE-5, PYLE-6, PYLE-7, and PYLE-16 as these requests require Applicant to obtain additional information and/or conduct additional modeling. Because of the time needed to compile the information Mr. Pyle seeks, coupled with the intervening holiday season, Applicant is unable to furnish the information requested in the aforementioned Data Requests by the December 16, 2012 deadline.

As such, Applicant is seeking an extension to respond to Data Requests PYLE-2, PYLE-3, PYLE-5, PYLE-6, PYLE-7, and PYLE-16 and respectfully requests that the requesting party agree to extend the deadline and that the Committee allow Applicant until **January 18, 2013** to respond to such Data Requests.

OBJECTIONS

In addition to the specific Data Requests that Applicant seeks an extension of time in which to respond, Applicant herein also objects to the following Data Requests: PYLE-2, PYLE-3, PYLE-5, PYLE-6, PYLE-7, PYLE-9, PYLE-10, and PYLE-11. Such objections are set forth separately below.

PYLE-2 This request seeks specific design measures and features that will be incorporated into the project to reduce sound levels. This information is simply not determined at this phase of the AFC proceeding and, for that reason, Applicant partially objects to this data request. Further, providing such information at this stage would force project owners to make relatively arbitrary and premature design decisions that may turn out to be ill-timed or premature. The data request seeks information that exceeds what is required to assess the project's potential for significant impacts and compliance with LORS and is problematic and burdensome to produce. A project owner must be able to choose the ideal design measures at the final design stage to ensure that the project meets acoustical performance levels determined by the CEC and the Conditions of Certification will require a demonstration of compliance. Notwithstanding the foregoing objection, Applicant conducted additional noise monitoring on September 19-21, 2012 and will provide additional data and analysis related to that monitoring by January 18, 2013. Such analysis may contain a summary of additional possible design measures that are available to Applicant to ensure acoustical performance requirements are realized.

PYLE-3 This request seeks a definition for "feasible" in the context of sound mitigation design measures and asks Applicant to describe how feasibility will be measured. Regardless of the use



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of the term “feasible” in section 5.7.6.2 of the AFC,¹ any definition of the term or how it will be measured as provided by Applicant is irrelevant. Ultimately, the CEC has exclusive jurisdiction over the project to determine what measures will be allowed. Applicant objects to the data request to extent it asks the Applicant to attempt to determine what will or will not be a feasible. Applicant notes that the additional noise monitoring information that will be provided in January may contain a summary of additional possible design measures that are available to Applicant to ensure acoustical performance requirements are realized.

PYLE-5 This request seeks noise information during the construction and demolition phases across the project site and into the residential areas, specifically near the intersection of Magnolia and Banning. Applicant provided information related to construction and demolition noise and its effects on offsite receptors on pages 5.7-9 to 5.7-10 of the AFC. Moreover, the additional noise monitoring that Applicant will be providing in mid-January 2013 will offer more details related to construction and demolition noise associated with HBEP and noise levels associated with the same as measured at residential receptors near the HBEP site.

PYLE-6 This request seeks a model (isopleth map) of offsite noise in surrounding residential areas when both Block 1 and Block 2 of HBEP are in operation. As noted above, Applicant conducted additional noise monitoring on September 19-21, 2012 and will provide additional data and analysis related to that monitoring by January 18, 2013. This information will include an analysis of predicted project sound levels at offsite locations including the identified street intersections in tabular and graphic form (iso-dB sound level contours). Thus, Applicant will be providing the information requested but not in an “isopleth map” as such is not applicable to this scenario. As such, Applicant objects to the request for a “model” and an “isopleth map” as used in Data Request PYLE-6. The iso-dB sound contours provided in January 2013 will contain the information sought in PYLE-6.

PYLE-7 This request seeks a model (isopleth map) of ambient noise levels in neighborhoods near the HBEP site, both during operation of the existing Huntington Beach Generating Station (HBGS) and when the HBGS is not operating. Applicant objects to Data Request PYLE-7 as it is not technically feasible to provide a model that would generate iso-dB or sound contours of existing noise levels. There are numerous sources of environmental noise outside of the control

¹ Presumably, the reference is to the fourth bullet point in the discussion related to “Noise Complaint Resolution,” which states “If the noise complaint is legitimate, take all feasible measures to reduce the noise at its source.” (AFC § 5.7.6.2, p. 5.7-13.)



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of the Applicant that contribute to the total existing noise levels throughout the general area of the HBEP site. Notwithstanding the foregoing objection, Applicant the additional noise monitoring data and analysis to be provided in January 2013 will include a summary identifying the sound monitoring locations and measured in tabular and graphical form and will contain both ambient noise levels and noise levels associated with HBEP.

PYLE-9 This request seeks a model (isopleth map) of the cumulative noise by all operations on the site, including the HBEP and the proposed desalination facility. Applicant objects to Data Request PYLE-9 because it seeks modeling results from noise impacts from all operations on the site, when in fact the HBEP and proposed desalination facility are not located on the same site. Applicant further objects to this request as it requires Applicant to estimate noise levels associated with the proposed desalination facility. Applicant does not have this information, nor is Applicant able to speculate about the noise levels of the proposed desalination facility. Applicant has previously provided cumulative noise information regarding HBEP and the proposed desalination plant (*see* AFC at § 5.7.5) as well as a discussion of cumulative impacts of HBEP (*see, e.g.*, responses to Staff's Data Request BIO-34 and response to Coastal Commission Data Request CCC-4 docketed on November 2, 2012) to the extent that such information was readily available to Applicant.

PYLE-10 This request seeks a model (isopleth map) as to what the noise levels will be in the residential neighborhoods off Magnolia, Newland and Hamilton for all cumulative noise from all operations on the site, as well as the proposed desalination facility. This data request is substantially similar too and perhaps duplicative of data request, PYLE-9. Applicant objects to this request as it requires Applicant to estimate noise levels associated with the proposed desalination facility. Applicant does not have this information nor is Applicant able to speculate about the noise levels of the proposed desalination facility. Applicant further objects because the data request seeks modeling results from noise impacts from all operations on the site, when in fact the HBEP and proposed desalination facility are not located on the same site. Applicant has previously provided cumulative noise information regarding HBEP and the proposed desalination plant (*see* AFC at § 5.7.5) as well as a discussion of cumulative impacts of HBEP (*see, e.g.*, responses to Staff's Data Request BIO-34 and response to Coastal Commission Data Request CCC-4 docketed on November 2, 2012).

PYLE-11 This request asks the Applicant to correct conflicting data submitted in the AFC regarding anticipated steady state noise levels associated with HBEP as compared to the City of Huntington Beach noise standards. Applicant objects to Data Request PYLE-11 on the basis that it requests Applicant to correct data as measured at various monitoring points. Applicant provided such data in the AFC (*see* AFC section 5.7.4 and page 5.7-12) and, as noted above,



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collected additional data on September 19-21, 2012. Notwithstanding the foregoing objection, Applicant will provide additional data related to the September 2012 monitoring in January 2013 and the accompanying analysis will address noise associated with HBEP in relation to applicable LORS. The January 2013 submittal will also include an analysis of predicted project sound levels at offsite locations in tabular and graphic form (iso-dB sound level contours) and will demonstrate that HBEP will comply with all applicable noise LORS.

Notwithstanding the above objections and the need for an extension of time to respond to Data Requests PYLE-2, PYLE-3, PYLE-5, PYLE-6, PYLE-7, and PYLE-16, Applicant will respond to the best of its ability to Mr. Pyle's remaining Data Requests on or before December 16, 2012.

Respectfully submitted,

Melissa A. Foster

MAF:jmw

cc: Proof of Service



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
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**APPLICATION FOR CERTIFICATION FOR THE
HUNTINGTON BEACH ENERGY PROJECT**

Docket No. 12-AFC-02
(Revised 10/08/12)

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*indicates change

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DECLARATION OF SERVICE

I, Judith M. Warmuth, declare that on December 6, 2012, I served and filed a copy of the attached **Applicant's Request for Extension to Submit Certain Data Responses Contained in Set One (#1-16) from Intervenor Pyle); Objections** dated December 6, 2012. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at:

http://www.energy.ca.gov/sitingcases/huntington_beach_energy/index.html.

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

(Check all that Apply)

For service to all other parties:

- Served electronically to all e-mail addresses on the Proof of Service list;
- Served by delivering on this date, either personally, or for mailing with the U.S. 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 marked **“hard copy required”** or where no e-mail address is provided.

AND

For filing with the Docket Unit at the Energy Commission:

- by sending one electronic copy to the e-mail address below (preferred method) to the Docket Unit; **OR**
- by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

CALIFORNIA ENERGY COMMISSION – DOCKET UNIT
Attn: Docket No. 12-AFC-02
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.ca.gov

OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

- Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

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


JUDITH M. WARMUTH