



500 Capitol Mall, Suite 1600
Sacramento, California 95814
main 916.447.0700
fax 916.447.4781
www.stoel.com

MELISSA A. FOSTER
Direct (916) 319-4673
mafoster@stoel.com

October 22, 2012



VIA EMAIL

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 Data Responses, Set One (#1-72); Objections**

Dear Ms. Miller:

On October 2, 2012, CEC Staff issued Data Requests, Set One (#1-72) ("Data Requests") and identified November 2, 2012 as the date by which responses to such Data Requests are due. Applicant has worked diligently since the issuance of the Data Requests to obtain the responsive data Staff and the California Coastal Commission seek in their respective requests. However, Applicant has identified certain Data Requests that require additional time beyond November 2, 2012 for Applicant to fully respond to as well as requests to which Applicant objects, as set forth below.

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 AQ-11, AQ- 23, AQ-24, AQ-25, and AQ-26 as these requests require Applicant to obtain additional information and/or conduct additional modeling.¹

¹ Specifically, Applicant must obtain certain information from the South Coast Air Quality Management District ("SCAQMD") on sources for the cumulative air quality impact assessment and concurrence from CEC Staff on the applicable sources to be included in the assessment before modeling can commence. Applicant submitted a public records request to SCAQMD on October 5, 2012 to obtain such information and will keep the CEC Project Manager, Felicia Miller, apprised of the status of information requests with the SCAQMD and subsequent modeling consistent with Data Request AQ-1.



October 22, 2012

Page 2

Applicant is unable to furnish the information requested in Data Requests AQ-11, AQ- 23, AQ-24, AQ-25, and AQ-26 by November 2, 2012. As such, Applicant is seeking an extension to respond to Data Requests AQ-11, AQ- 23, AQ-24, AQ-25, and AQ-26 and respectfully requests the Committee allow Applicant until **December 14, 2012** 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: AQ-14, AQ-15, AQ-16, AQ-17, BIO-27, S&W-42, S&W-43, S&W-44, TRAFFIC-52, CCC-2, CCC-3, and CCC-4.² Such objections are set forth separately below.

AQ 14-17: Applicant objects to Data Requests AQ-14, AQ-15, AQ-16, and AQ-17 on the grounds that they seek information that is outside the scope of the Project and are therefore irrelevant. The Project will not involve the installation of new emergency fire water pumps nor will the existing pumps require modification or replacement. The Title V operating permit for the Huntington Beach Generation Station (“HBGS”) Units 3 and 4 includes compliance provisions for these engines and the Owner of the facility is required to secure RECLAIM Trading Credits for the engines’ NOx and SOx emissions. Therefore, no additional permitting is needed and additional mitigation is not necessary or appropriate. Furthermore, the referenced emissions standard in AQ-14 (section 93115.6 (a)(4)) applies to the installation of new stationary emergency standby engines, not in-use engines like the engines in question.

BIO-27: Applicant objects to Data Request BIO-27 on the basis that this request seeks information that is already included in the AFC and AFC Data Adequacy Supplement. (See AFC Section 5.2.2.2, Figures 5.2-1a, 5.2-1b, 5.2-2a, 5.2-2b, and AFC Supplement at pp. 5.2-2 – 5.2-3 and Figures 5.2-2cR, 5.2-2aR, and 5.2-2bR (set forth in Attachment DA5.2-5).) Specifically, the Magnolia Marsh has already been delineated by the United States Fish & Wildlife Service (“USFWS”) as a jurisdictional wetland; therefore, no further delineation is required to assess the potential direct and indirect impacts to the wetlands adjacent to the HBEP site. Applicant’s Data Request Response BIO-28 will include a discussion of potential direct and indirect biological impacts to wetlands adjacent to the HBEP site, and, as appropriate, a discussion of measures to avoid, minimize, and mitigate potential impacts from the project on the jurisdictional wetlands.

² For the sake of more readily identifying requests contained within the Coastal Commission’s September 24, 2012 correspondence to Felicia Miller, Applicant designated each separate request by number.



S&W-42 - S&W-44: Applicant objects to Data Requests S&W-42, S&W-43, and S&W-44 on the grounds that these requests seek information beyond the control of the Applicant. Furthermore, the suggestion of funding of a water conservation program or programs is unreasonable mitigation as the project will not have a significant impact on water resources. In fact, as noted in the AFC, the Huntington Beach Energy Project (“HBEP”) would have a significant positive impact on water resources since HBEP operating continuously at the maximum proposed capacity will use 60 percent less potable water than is currently used by the existing HBGS operating at 15 percent capacity on an annual basis. (AFC §§ 2.1.9.1 and 6.6.3.) Further, Applicant has demonstrated that recycled water is not currently available for project use and the costs associated with construction of miles of pipelines and/or additional treatment systems for HBEP to even consider using recycled water are economically unsound and environmentally undesirable. HBEP complies with all LORS and State Water Policy and, thus, there is no basis under California law for the mitigation Staff appears to be contemplating for HBEP. (AFC at pp. 6-8 – 6-9.)

TRAFFIC-52: Applicant objects to Data Request TRAFFIC-52 on the basis that this request seeks information that will be overly burdensome for the Applicant to develop. Moreover, it is standard and accepted practice that it is not feasible, reasonable or required that all potential specific routes that may be used by individual construction workers to reach a construction site be identified for traffic analyses to be completed. The traffic analysis contained in the AFC makes general assumptions as to major roads in the proximity of the HBEP site on which construction worker traffic will converge near the designated offsite construction parking areas and assumes various routes to the offsite construction worker parking areas. Thus, Applicant has properly addressed the major roads in the vicinity of the offsite construction worker parking areas as well as the HBEP site. While it is within the purview of the Applicant to require construction workers to park at one of the designated offsite construction worker parking areas and take a shuttle to and from HBEP, it is not within Applicant’s ability to dictate specific routes for construction workers to take from their homes or residences to such parking areas.

CCC-2 [Biological Resources]: CCC-2 incorporates, by reference, “requests” made by the USFWS in a comment letter sent to CEC Staff on September 10, 2012 into the Coastal Commission’s data request letter. Applicant objects to CCC-2 on the grounds that it is vague, overbroad, and is not a specific request. CCC-2 “joins” a comment letter sent by another agency to CEC Staff regarding the AFC and inaccurately characterizes the comments set forth therein as data requests. Moreover, to the extent that CEC Staff deemed any of the USFWS comments as requiring additional data and therefore incorporated them into the CEC Staff Data Requests, Set One, Applicant is responding to such requests.



CCC-3 [Geologic Hazards]: CCC-3 provides:

“The power plant site has several known geologic hazards, several of which were recently identified in the 2010 Supplemental EIR for the proposed Poseidon desalination facility at the site. According to the AFC application and EIR, the site has a fault running directly beneath it, has the potential for surface rupture, could experience ground motions greater than 1 g, has corrosive soils, and could experience liquefaction, lateral spread, and subsidence resulting from seismic events. The site is also within a tsunami runup zone that extends some distance inland. Any of these site characteristics could affect project feasibility, require project components be relocated, or could result in significant adverse effects on coastal resources. We therefore request that AES provide detailed, site specific information describing the type and extent of this suite of geologic hazards and the mitigation measures it will include as part of the project to avoid and minimize the adverse effects of these hazards. Information provided should also describe how these hazards affect the proposed layout of project components and any feasible alternative layouts that might avoid or reduce potential impacts of these hazards. The studies conducted and information provided should be consistent with that we requested for the proposed desalination project, as described in our July 13, 2012 letter to Poseidon that we attached to our previous AFC review correspondence.”

Applicant objects to Data Request CCC-3 as it is overly burdensome and requests information that far exceeds what is needed to assess the project’s potential for significant impacts or compliance with LORS. Section 5.4 of the AFC contains sufficient information to complete a geologic hazards analysis and demonstrate HBEP’s compliance with LORS.

Applicant further objects to this request on the grounds that the Poseidon Desalination Project (“PDP”) is an independent and separate project from HBEP, proposed by a different company than Applicant. Moreover, Applicant does not make any claims as to the accuracy of information provided in the PDP permitting proceedings.

A few key points to understand about the PDP and the HBEP:

- Although the PDP and HBEP are projects independent from each other, it is possible that both projects might receive the requisite approvals, and, thus, both projects might end up being constructed and/or become operational.



- The PDP will purchase or lease land within the larger historic HBGS site from a different AES entity than the AES entity developing HBEP. The land sale/lease agreement between PDP and that AES entity will be one of business and at arm's length. Thus, there will be no partnership or involvement in the development of the PDP project by an AES entity other than as landlord or seller. The involvement between Applicant and PDP is limited to the consideration of easements for PDP access on the HBEP site and shared use of an existing ocean outfall.
- The PDP will have to obtain and have its own permits including any necessary permits for operation of ocean water intake and discharge through the existing pipelines that currently provide cooling water for the existing HBGS.
- The PDP will have to purchase its needed power, like any other user, from SCE.
- The expected common facilities to the two projects are: the existing outfall associated with the existing HBGS to discharge water; Share emergency and property access roads; and an easement through the HBEP project site for PDP ocean water intake and discharge pipes will be provided. It should be noted that PDP's proposed discharge to the existing and shared outfall would be more than 1,400 times the volume than the discharge to the existing outfall proposed as part of HBEP. (AFC at § 5.15.3 (p. 5.15-19).)
- The PDP is allowed use of the existing intake and outfall via a separate agreement (lease) with the State Lands Commission and allowed use of the existing outfall as permitted by a National Pollutant Discharge Elimination System Permit issued to PDP by the Santa Ana Regional Water Quality Control Board.
- Although PDP will use the existing intake facilities to draw ocean water into its desalination process, HBEP will not use ocean water or the existing intake facilities nor will the HBEP use any effluent from PDP.
- Applicant has not proposed the use of water produced by PDP for HBEP; HBEP will use potable water as discussed in Section 5.15 of the AFC.

CCC-4 [Cumulative Impacts]: CCC-4 provides:

“The AFC application briefly mentions the desalination facility being proposed within the power plant boundary, but does not include sufficient information about likely or potential cumulative impacts that could occur during concurrent construction and operation of the power plant and desalination projects, as well as another project — construction of a City of Huntington Beach reservoir — that is proposed for the site. The combined project schedules, locations of project components, and interactions among the three proposals could result in substantial cumulative impacts, which need to be identified and assessed during the AFC process. For example, the power plant project proposes to use up to



October 22, 2012

Page 6

several hundred offsite public parking spaces during the several years of project construction, and use of these spaces would adversely affect public access to the shoreline. However, if areas within the power plant site now set aside for the desalination facility or reservoir are available during all or part of the power plant construction, the adverse public access effects associated with the proposed offsite parking could largely be eliminated.

We request that the applicant provide detailed proposed layouts and schedules for the three proposed projects and identify potential modifications to those layouts and schedules that could avoid or reduce potential individual and cumulative impacts to coastal resources, including impacts to biological resources, public access, and those associated with geologic hazards.”

Applicant objects to Data Request CCC-4 as it seeks information beyond the control of Applicant related to proposed layouts and construction schedules of other proposed projects near HBEP and possible modifications thereto.

Notwithstanding the above objections and the request for extension of time to respond to Data Requests AQ-11 and AQ-23 through AQ-26, Applicant will respond to the best of its ability to the remaining Data Requests in Set One on or before November 2, 2012.

Very truly yours,

Melissa A. Foster

MAF:jmw

cc: Proof of Service List



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

**APPLICATION FOR CERTIFICATION FOR THE
HUNTINGTON BEACH ENERGY PROJECT**

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

APPLICANT

Stephen O'Kane
AES Southland, LLC
690 Studebaker Road
Long Beach, CA 90803
Stephen.Okane@aes.com

Jennifer Didlo
AES Southland LLC
690 Studebaker Road
Long Beach, CA 90803
Jennifer.Didlo@aes.com

APPLICANT'S CONSULTANT

Robert Mason, Project Manager
CH2MHill
6 Hutton Centre Drive, Suite 700
Santa Ana, CA 92707
Robert.Mason@CH2M.com

COUNSEL FOR APPLICANT

Melissa A. Foster
Stoel Rives, LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
mafoster@stoel.com

John A. McKinsey, Esq.
Stoel Rives, LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
jamckinsey@stoel.com

INTERVENOR

Jason Pyle
9071 Kapaa Drive
Huntington Beach, CA 92646
jasonpyle@me.com

INTERESTED AGENCIES

California ISO
e-recipient@caiso.com

Tom Luster
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
tluster@coastal.ca.gov

Brian Ketterer
California State Parks
Huntington State Beach
21601 Pacific Coast Highway
Huntington Beach, CA 92646
bketterer@parks.ca.gov

Jane James
Scott Hess
City of Huntington Beach
Planning & Bldg. Department
2000 Main Street, 3rd floor
Huntington Beach, CA 92648
jjames@surfcity-hb.org
shess@surfcity-hb.org

Cathy Fikes
Johanna Stephenson
City of Huntington Beach
City Council
2000 Main Street, 4th floor
Huntington Beach, CA 92648
cfikes@surfcity-hb.org
johanna.stephenson@surfcity-hb.org

Gary Stewart
Santa Ana Regional
Water Quality Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339
gstewart@waterboards.ca.gov

**ENERGY COMMISSION –
DECISIONMAKERS**

ANDREW MCALLISTER
Commissioner and Presiding Member
andrew.mcallister@energy.ca.gov

KAREN DOUGLAS
Commissioner and Associate Member
karen.douglas@energy.ca.gov

Raoul Renaud
Hearing Adviser
raoul.renaud@energy.ca.gov

Eileen Allen
Commissioners' Technical
Advisor for Facility Siting
eileen.allen@energy.ca.gov

David Hungerford
Advisor to Commissioner McAllister
david.hungerford@energy.ca.gov

***Pat Saxton**
Advisor to Commissioner McAllister
patrick.saxton@energy.ca.gov

Galen Lemei
Jennifer Nelson
Advisors to Commissioner Douglas
galen.lemei@energy.ca.gov
jennifer.nelson@energy.ca.gov

ENERGY COMMISSION - STAFF

Felicia Miller
Project Manager
felicia.miller@energy.ca.gov

Kevin W. Bell
Staff Counsel
Kevin.W.Bell@energy.ca.gov

**ENERGY COMMISSION – PUBLIC
ADVISER**

Jennifer Jennings
Public Adviser's Office
publicadviser@energy.ca.gov

*indicates change

72538013.1 0043653-00005

DECLARATION OF SERVICE

I, Judith M. Warmuth, declare that on October 22, 2012, I served and filed a copy of the attached **Applicant's Request for Extension to Submit Data Responses, Set One (#1-72); Objections**, dated October 22, 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); **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:

California Energy Commission
Michael J. Levy, Chief Counsel
1516 Ninth Street MS-14
Sacramento, CA 95814
michael.levy@energy.ca.gov

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