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September 6, 2012

VIA EMAIL

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



**Re: Huntington Beach Energy Project (12-AFC-02)
Applicant's Comments on the Staff's Issues Identification Report**

Dear Commissioners:

On August 31, 2012, Energy Commission Staff docketed its Issues Identification Report ("IIR") for the Huntington Beach Energy Project ("HBEP"). Applicant, AES Southland Development, LLC ("Applicant"), has reviewed Staff's IIR and provides the following comments related thereto.

ALTERNATIVES

Applicant supports Staff's position that HBEP meets the intent of Public Resources Code section 25540.6(b) with regard to consideration of offsite alternatives. Offsite alternatives or alternative locations to the HBEP site are not be feasible due to the highly developed area, the critical energy need and grid reliability requirements in this area of the Los Angeles basin, and the availability of existing infrastructure to serve the project. Applicant is confident that the alternatives analysis conducted by Staff throughout this proceeding will confirm that the HBEP site is the best site for the HBEP.

TRANSMISSION SYSTEM ENGINEERING

At this time, Applicant has no comments on this topic. Applicant will respond as appropriate to any Data Requests on this topic issued throughout the AFC proceeding.



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WASTE MANAGEMENT

At this time, Applicant has no comments on this topic. Applicant will respond as appropriate to any Data Requests on this topic issued throughout the AFC proceeding and will assist Staff and any other relevant agencies as necessary related to waste management issues.

CALIFORNIA COASTAL COMMISSION

Applicant wishes to clarify the potential role of the California Coastal Commission in this proceeding. In the IIR, Staff states that the “HBEP project . . . falls within the jurisdiction of the California Coastal Commission.” (IIR at p. 4.) Applicant believes this might be construed to overstate the function or authority of the California Coastal Commission in a California Energy Commission Application for Certification (“AFC”) proceeding. HBEP, as an AFC, is under the exclusive jurisdiction of the California Energy Commission (Pub. Resources Code § 25500) and the California Coastal Commission may participate in CEC AFC proceedings related to the HBEP. (Pub. Resources Code § 30413(e) (“The [California Coastal Commission] may, at its discretion, participate fully in other proceedings conducted by the [CEC] pursuant to its powerplant siting authority. In the event the commission participates in any public hearings held by the [CEC], it shall be afforded full opportunity to present evidence and examine and cross-examine witnesses”).)

The IIR cites Public Resources Code section 30413(d) and suggests that the California Coastal Commission is required to prepare a report regarding HBEP. Section 30413(d) provides:

Whenever the [CEC] exercises its siting authority and undertakes proceedings pursuant to the provisions of Chapter 6 (commencing with Section 25500) of Division 15 with respect to any thermal powerplant or transmission line to be located, in whole or in part, within the coastal zone, the commission shall participate in those proceedings and shall receive from the [CEC] any notice of intention to file an application for certification of a site and related facilities within the coastal zone. The commission shall analyze each notice of intention and shall, prior to completion of the preliminary report required by Section 25510, forward to the [CEC] a written report on the suitability of the proposed site and related facilities specified in that notice.

(Pub. Resources Code § 30413(d) (emphasis added).) The language of section 30413(d) is abundantly clear that the requirements for a “report” from the Coastal Commission involve “notices of intent” (“NOI”) proceedings. While NOI proceedings are required for certain kinds of powerplant siting (*e.g.*, nuclear facilities or coal plants), new thermal natural-gas fired



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powerplant facilities are statutorily exempt from the NOI process. (Pub. Resources Code § 25540.6(a)(1).)

The IIR also cites a 2005 Memorandum of Agreement (“MOA”) as part of the assertion that the California Coastal Commission is required to prepare a report pursuant to section 30413(d). Such an interagency agreement does not change existing statutory law, or create new statutory duties. Applicant does not believe that the MOA legally binds the California Coastal Commission to participate or the California Energy Commission to receive a report pursuant to section 30143(d).

For the reasons set forth above, Applicant believes that the California Coastal Commission’s involvement in this AFC-only proceeding is discretionary and the California Coastal Commission is not required by law to provide a 30413(d) report. If the California Coastal Commission chooses to exercise its discretionary right to participate in the HBEP AFC proceeding, Applicant will work with CEC Staff and the California Coastal Commission to provide responses to Data Requests as appropriate.

SCHEDULING

Applicant concurs with Staff’s Proposed Schedule set forth on pp. 5-6 of the IIR.

WARWA CONCLUSION

Applicant wishes to thank Staff for its hard work to date in this proceeding. Applicant looks forward to presenting the HBEP to the Siting Committee, Staff, and the public at the Site Visit and Informational Hearing scheduled for September 10, 2012.

Respectfully submitted,

Melissa A. Foster

MAF:jmw

cc: Proof of Service List



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 8/21/12)

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DECLARATION OF SERVICE

I, Judith M. Warmuth, declare that on September 6, 2012, I served and filed a copy of the attached APPLICANT'S COMMENTS ON THE STAFF'S ISSUES IDENTIFICATION REPORT, dated September 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); 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