

DOCKETED

Docket Number:	12-AFC-02
Project Title:	Huntington Beach Energy Project
TN #:	202980
Document Title:	Applicant's Reply Brief After Evidentiary Hearings
Description:	N/A
Filer:	Kimberly Hellwig
Organization:	Stoel Rives LLP
Submitter Role:	Applicant
Submission Date:	8/25/2014 12:40:54 PM
Docketed Date:	8/25/2014

STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

In the Matter of:

The Application for Certification for the

**HUNTINGTON BEACH ENERGY
PROJECT**

Docket No. 12-AFC-02

**AES SOUTHLAND DEVELOPMENT, LLC'S
REPLY BRIEF AFTER EVIDENTIARY HEARINGS**

August 25, 2014

Melissa A. Foster, Esq.
Kristen Castaños, Esq.
Stoel Rives LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
Phone: (916) 447-0700
Facsimile: (916) 447-4781

Attorneys for AES SOUTHLAND DEVELOPMENT, LLC

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On August 6, 2014, the Committee for the Huntington Beach Energy Project (“HBEP” or the “Project”) ordered the parties to submit opening briefs after Evidentiary Hearings on or before August 20, 2014 and any Reply Brief on or before August 25, 2014.¹ To that end, Applicant herein provides its Reply Brief in support of the Huntington Beach Energy Project (the “Project” or “HBEP”).

**I. THE CHARACTERIZATION OF THE COASTAL COMMISSION
“REPORT” DOES NOT GOVERN THE ENERGY COMMISSION’S
TREATMENT OF THE “REPORT”**

Contrary to Staff’s conclusion, the Coastal Commission “Report” is not legally a Section 30413(d)² report simply because the Coastal Commission gives it that label. Regardless of what the Coastal Commission’s “Report” is called, the Energy Commission’s legal obligations regarding the recommendations in the report are governed by the Warren-Alquist Act. (Pub. Resources Code § 25500 *et seq.*)

¹ See also August 13, 2014 Memorandum from Hearing Officer Susan Cochran to all parties setting forth the briefing schedule for this proceeding. (TN# 202912.)

² Unless otherwise noted, all references to “Section” herein pertain to the Public Resources Code.

A. Section 30413(e) Governs Coastal Commission Involvement in AFC-Only Proceedings

As described in detail in Applicant’s Opening Brief, the statutory scheme provides that a 30413(d) Report be prepared *only* in NOI proceedings. In AFC-only proceedings, the Coastal Commission’s participation is governed by section 30413(e).³

B. The MOA is Not Law and Does Not Change Statutory Requirements

Both Staff and the Coastal Commission cite to the Memorandum of Agreement (“MOA”) for the proposition that a 30413(d) Report can be submitted in an AFC-only proceeding. (Staff’s Opening Brief, p. 6; Coastal Commission Letter at p. 1.) As noted in Applicant’s Opening Brief (“Opening Brief”), the MOA is not law and cannot change statutory requirements. (Opening Brief at pp. 7-9.) Indeed, the Energy Commission has acknowledged such in its brief to the California Supreme Court in *City of Carlsbad v. California Energy Resources and Development Commission, et al.* (Case No. S203634): “Such an interagency agreement does not change existing statutory law, or create new statutory duties. The Energy Commission has sought to encourage Coastal Commission participation in its proceeding for coastal facilities, both by proposing and signing the MOA, and by directly requesting participation.” (Exhibit 1133 (Attachment A, Exhibit B

³ On August 19, 2014, the Coastal Commission transmitted correspondence (“Coastal Commission Letter”) to the Energy Commission that included an April 2004 letter wherein the Coastal Commission provided comments on the 2nd Revised PMPD in the Morro Bay proceeding and the RPMPD in the El Segundo Proceeding. In the April 28, 2004 comment letter, the Coastal Commission purported to explain the legal basis for the Coastal Commission’s role in the HBEP proceeding. There, the Presiding Member took the position that Section 30413(e) governed AFC-only proceedings and the Coastal Commission challenged that position. In addition, the April 2004 letter predates the Legislative Counsel’s determination that “the report made by the Coastal Commission pursuant to subdivision (d) of Section 30413 is submitted only in response to a NOI, and the AFC-only procedure does not include a NOI proceeding” and “the statutory requirement that the Energy Commission include such specific provisions in its decision on an AFC ... is inapplicable in an AFC-only procedure established under Section 25540.6.” (Exhibit 1133 (Attachment A, pp. 6-7.)

at pp. 16-20.) Thus, while the Energy Commission and Coastal Commission, through the MOA, can agree to whatever participation the agencies desire and can label Coastal Commission comments in any manner they choose, the Energy Commission's obligations under Section 25523(b) are only triggered if a statutory 30413(d) Report is required. Further, the Energy Commission is only required to make the findings set forth in Section 25523(b) if the Coastal Commission submits a statutorily required 30413(d) report for a NOI proceeding. Accordingly, the Energy Commission should treat the Coastal Commission's "Report" in the HBEP proceeding as comments, giving due deference to the Coastal Commission with respect to matters within the Coastal Commission's jurisdiction, as it would the comments of any interested agency participating in the AFC process. (Tit. 20 Cal. Code Regs. § 1744(e).)⁴

C. The Coastal Commission "Report" Fails on Its Face to Meet the Express Requirements of Section 30413(d)

It is also significant that the Coastal Commission "Report" does not meet the express requirements of Section 30413(d). (*See* Opening Brief at p. 10, fn. 12.) The "Report" fails to include consideration of and findings regarding, at a minimum, "the degree to which the proposed site and related facilities would conflict with other existing or planned coastal-dependent land uses at or near the site" and "the potential adverse effects that the proposed site and related facilities would have on aesthetic values." (Pub.

⁴ Applicant generally agrees with Staff's conclusions that there is not substantial evidence to support the Coastal Commission's recommendations. (Staff's Opening Brief, pp. 8-13.) As noted in detail in Applicant's Rebuttal Testimony (Exhibit 1137, pp. 15-30), the record supports rejecting each of the Coastal Commission's recommendations. Applicant is, nonetheless, amenable to proposed condition SOIL&WATER-8, as revised in Attachment A to Applicant's Opening Brief, regarding dewatering. Applicant is also amenable to the proposed modification to TRANS-3, to provide that the Huntington Beach City Parking Area be used only if there is insufficient parking space available on the other four proposed parking areas.

Resources Code § 30413(d)(2) & (3).) This alone is sufficient to support the conclusion that the Energy Commission need not make the findings required under Section 25523(b) related to recommendations in 30413(d) Reports.

Moreover, as Staff noted, the Coastal Commission failed to honor the MOA requirement that a Coastal Commission representative or staff be available at appropriate Energy Commission workshop(s) and hearing(s) to answer any questions about the report. (MOA at p. 6.) The MOA also requires that the report include all the information and findings required by Section 30413(d). (MOA at p. 2.) Thus, the Energy Commission is not bound by the MOA to treat the “Report” as a 30413(d) Report where the Coastal Commission has not honored its obligations under the MOA. Rather, as stated, the Energy Commission should treat the “Report” as comments submitted by an interested agency.

II. CONTESTED ISSUE AREAS

First and foremost, Applicant reiterates the standing objection made on the record at the July 21 Evidentiary Hearing and at the August 6 Continued Hearing as to Intervenor Rudman’s qualifications to provide input and “testimony” as an expert. (July 21 Evidentiary Hearing transcript, TN# 202838, at p. 45, lines 3-8; August 6 Continued Evidentiary Hearing transcript, TN# 202915, at pp. 35-36.) Further, Applicant objects to Intervenor Rudman’s attempt to introduce additional evidence into the record and provide new unsupported testimony via legal briefing.

A. Air Quality

Energy Commission Staff has raised the issue of the timing for implementing the air quality improvement projects funded by the Applicant’s payment of the South Coast Air Quality Management District (“SCAQMD”) Rule 1304.1 fees being commensurate

with HBEP construction impacts. As noted in the Final Staff Assessment (“FSA”) (Exhibit 2000 at p. 4.1-37) and Final Determination of Compliance (“FDOC”) (Exhibit 1139 at p. 39), Applicant is required to pay the Rule 1304.1 fees prior to the SCAQMD’s issuance of the Permit to Construction (“PTC”), which is required prior to the commencement of construction. Due to the fact that Rule 1304.1 fees can be refunded if construction is not commenced for a project having paid these fees, at this time the SCAQMD believes that it cannot expend the collected fees until the source begins operation, at which time the SCAQMD would initiate a program to generate air quality improvement project with a preference for local projects. The FDOC estimates that the Applicant will pay an annual fee of \$3,165,225 (Exhibit 1139 at p. 40) prior to the commencement of construction. Considering that HBEP is expected to commence construction in 2015 (Exhibit 2000 at p. 3-5), the SCAQMD will have collected over \$12 million (\$3.1 million for 4 years – 2015 to 2018) in Rule 1304.1 air quality improvement fees before HBEP Block 1 becomes operational. Assuming the SCAQMD expends the HBEP Rule 1304.1 fees when HBEP’s first power block is operational in the first quarter of 2019 (Exhibit 2000 at p. 3-5), the air quality improvement projects implemented within the HBEP vicinity will yield air quality benefits that could mitigate some or all of HBEP’s remaining construction air quality impacts through the end of construction of HBEP in the third quarter of 2022.

Intervenor Rudman contends that HBEP’s operational particulate matter impacts are not mitigated by the shutdown of existing Huntington Beach Generating Station (“HBGS”) Units 1 and 2 and the Redondo Beach Generating Station Units 6 and 8. At stated during the July 21 Evidentiary Hearing, HBEP’s operational air emissions will be

offset by securing and surrendering RECLAIM Trading Credits (RTCs) for oxides of nitrogen and sulfur and the SCAQMD surrendering emission reduction credits (ERC) for volatile organic compounds and particulate matter (TN# 202838 at pp. 64-65). Intervenor Rudman also questioned whether providing emission reductions within the SCAQMD's jurisdiction adequately mitigates HBEP's air quality impacts. As noted by SCAQMD's witness, emission reduction requirements are viewed in a basin-wide approach (TN# 202838 at p. 68) and are appropriate for mitigating project specific emissions.

Intervenor Rudman also contends that the meteorological data used in the HBEP air dispersion modeling assessment is not representative of the project site. During testimony, Staff's witness confirmed that testimony by the Applicant's witness describing how the meteorological data used in the HBEP modeling assessment was representative of the meteorology of the HBEP site (TN# 202838 at pp. 59-61).

Finally, Intervenor Rudman suggests that Commission proposed Condition of Certification AQ-SC6 requires minimal effort on the Applicant's part which will result in local residents bearing the burden of reducing particulate impacts. As the Commission's witness noted, the proposed changes to Condition AQ-SC6 are intended "to be flexible and provide local PM-10 reductions to address what we believe are some impacts from construction PM." (TN# 202838 at p. 74.)

B. Greenhouse Gases

Intervenor Rudman contends that the record does not contain "solid" evidence to support the conclusion that if HBEP supports the local area reliability and the integration of renewable electrical generation, that HBEP's greenhouse gas impacts are less than significant. Staff's testimony indicated that if HBEP is dispatched for local reliability needs, there is another power plant in the Los Angeles basin with higher GHG emissions

that is being dispatched less and similarly that HBEP's fast start/ramp capabilities will allow HBEP to be preferentially dispatched to allow larger amounts of variable (zero GHG) generation to be incorporated into the electrical system. (TN# 202838 at pp. 59-60.)

C. Biological Resources

Part 3.B of Staff's Opening Brief includes a discussion of Staff's "contested issues" related to Biological Resources. Staff concludes that HBEP "with the recommended conditions of certification would be in compliance with all applicable LORS." (Staff's Opening Brief at p. 14.) Staff then states that Staff and Applicant are in "disagreement related to noise monitoring to protect wildlife in the vicinity of the project site." (*Id.*) Applicant disagrees with Staff's description of contested biological resources issues. Staff has not determined that HBEP will have any noise-related impacts to federally or state-listed species in the adjacent marsh area. (*See Applicant's Opening Brief at pp. 13-15; see also (See also Exhibit 1090 at p. 6; Exhibit 1132 at Exhibit C-1).*) Therefore, BIO-9 is unnecessary mitigation.

As set forth in Applicant's Opening Brief, and contrary to the assertions in Staff's Opening Brief that "staff believes [Staff's revised BIO-9] will address the concerns of Applicant in this area of dispute," Staff's proposed revised BIO-9 is unnecessary mitigation. Staff has not demonstrated that exceedances of any of the proposed metrics (Lmax, Leq) or time periods (hourly, 1-second, etc.) present a risk of significant impact to the species that inhabit the area. In fact, Applicant has offered clear noise criteria that would trigger clear actions and Staff has not identified that exceedance of Applicant's proposed criteria would result in significant noise impacts to sensitive species. (Exhibit 1105).

Although Applicant disagrees with staff about the need for BIO-9, and despite the lack of evidence to support imposing BIO-9, as an alternative to deleting BIO-9, Applicant has proposed several iterations to BIO-9 in an effort to address Staff's concerns. Such iterations are set forth in Applicant's Opening Testimony and in Applicant's Opening Brief. (*See* Applicant's Opening Brief at pp. 16-18 and Attachment A thereto at pp. 13-14.) Staff's revised BIO-9 does not address Applicant's concerns and Applicant maintains that, to the extent BIO-9 is adopted, one of Applicant's proposed iterations of BIO-9 should be utilized.

D. Cultural Resources

As the Committee is aware, the HBEP project site is highly disturbed from decades of development and use. This highly disturbed condition is undisputed and has been described by the Applicant in multiple filings to-date. (*See* Exhibits 1017, 1087, 1090, 1111, 1132 at Exhibit D); *see also* TN# 202838 at pp. 216-251.) Applicant is generally amenable to Staff's proposed CUL-1, with the additional revisions proposed in Applicant's Opening Brief as set forth on pages 18-19 therein and on pages 14-15 of Attachment A thereto. However, Applicant and Staff remain in dispute about the monitoring required by Staff's proposed CUL-6.

As previously stated (*see* Exhibits 1132 (and Exhibit D attached thereto), 1087, and 1090; Applicant's Opening Brief at p. 19) and as discussed at length during the July 21 Evidentiary Hearing (TN# 202838 at pp. 238-251), Applicant objects to Staff's proposed CUL-6 in its entirety. As documented in the record for this proceeding, no historical resources of any kind were found as a result of the comprehensive cultural resources analysis conducted for HBEP, nor were resources found during prior geotechnical testing or during any phase of previous construction. Additionally, no

Native American sacred sites or areas of concern are located within or near the HBEP site and no individual, group, or tribe indicated such resources exist at HBEP.

In response to Applicant's argument that no individual, group, or tribe indicated such resources exist at HBEP, Staff refers to a letter from the United Coalition to Protect Panhe wherein the Coalition wrote that they "believed the project site is culturally sensitive" and "encouraged staff to promote avoidance as mitigation for any cultural resource discoveries made in connection with the HBEP." (Staff's Opening Brief at p. 16.⁵) Staff relies on such correspondence as further support for Staff's overly burdensome proposed CUL-6. What Staff fails to recognize, however, is that the Coalition did not indicate that resources exist at the HBEP site and that Applicant's proposed CUL-6 addresses the concerns raised by the Coalition. Applicant's proposed CUL-6 is also commensurate with Staff's determination that "[t]he likelihood that the proposed project would actually result in significant impacts to buried archaeological resources appears low." (TN# 202838 at p. 237, lines 23-25; Exhibit 2000 at p. 4.3-50; Applicant's Opening Brief at p. 20.) Moreover, Staff completely ignores their own testimony in their Opening Brief related to the language quoted above. In their Opening Brief, Staff asserts:

Furthermore, the existence of radiocarbon dates from an adjacent property in the same environmental setting gives staff high confidence that the potential for buried archaeological deposits in native soils under the proposed project site is moderate. (EX 2000, Section 4.3, pg. 50) Therefore staff concluded that existing information is adequate to assess

⁵ Applicant notes that the FSA contains a similar statement. Applicant, however, does not believe that this letter is part of the evidentiary record for this proceeding nor has Applicant been provided with a copy of such correspondence from Staff, dockets, or any other means. Moreover, it is not listed as a reference in the FSA, nor is it listed in the docket log. Regardless of whether the letter is provided, as discussed herein, the evidence in the record does not support Staff's proposed CUL-6.

potential impacts and that the Energy Commission's historic preservation responsibilities are best served by implementing a cultural resources mitigation and monitoring program for the proposed project as set forth in **CUL-6**. Implementation of such monitoring in the affected area would reduce the potential project impacts to a less-than-significant level. The revised condition of certification **CUL-6** is supported by staff's analysis and conclusions as set forth in the FSA (Ex 2000), and Energy Commission staff urge the committee to adopt that conditions as submitted.

(Staff's Opening Brief at p. 17 (emphasis added).) What Staff fails to mention in their Opening Brief is one of the most important statements in their FSA analysis- that "[t]he likelihood that the proposed project would actually result in significant impacts to buried archaeological resources appears low." Specifically, the FSA provides:

Under other circumstances, staff would request that the applicant conduct an excavation-supported geoarchaeological study to determine the likelihood of encountering buried archaeological deposits in the proposed project site. In the present case, however, staff believes that a disproportionate amount of excavation into non-fill sediments would be required for such a study when compared to the potential project impacts. Furthermore, the existence of radiocarbon dates from an adjacent property in the same environmental setting gives staff high confidence that while the potential for buried archaeological deposits under the proposed project site is moderate, **the limited amount of excavation into non-fill sediments proposed renders the probability of encountering any such resources low.** Therefore staff concludes that existing information is adequate to assess potential impacts and that the Energy Commission's historic preservation responsibilities are best served by implementing a cultural resources mitigation and monitoring program for the proposed project. Implementation of such a program would reduce the potential project impacts to a less-than-significant level.

(Exhibit 2000 at p. 4.3-50 (emphasis added).)

Furthermore, Applicant's correspondence with tribes and individuals resulted in no indication of sacred sites or areas of assertion that such resources exist. No tribe expressed any particular concern in response to Applicant's thorough correspondence, which included written letters, emails, and telephone calls. (Exhibit 1132, specifically,

Exhibit D at p. 1 attached thereto.) In response to Staff's separate correspondence and telephone calls, Staff apparently received one expression of a desire for a Native American monitor to be present and one expression that resources should be avoided---this, however, is a standard response for most tribes, and certainly does not indicate the presence of ethnographic resources, or evidence that would require Applicant to agree to further work and mitigation. The facts and actual evidence for HBEP demonstrate no known resources and low potential for new resources to be found. No reasonable consideration of the evidence in this proceeding would result in a finding that full time monitoring of any sort should be applied to HBEP. Staff's continued assertion that more mitigation is required where no resources exist calls into question Staff's position, especially in light of Staff's own conclusions in the FSA:

- “As a result of ethnographic research, staff concludes that there are no ethnographic resources that would be impacted by the proposed project.” (Exhibit 2000 at p. 4.3-1.)
- “A check of the NAHC sacred lands files resulted in negative findings within one-half mile radius of the proposed project.” (*Id.* at p. 4.3-39.)
- “As staff did not identify ethnographic resources in the PAA, and because tribal responses were minimal, staff did not conduct ethnographic interviews with tribal people.” (*Id.* at p. 4.3-34.)
- “Staff research suggests that any ethnographic resources that may be in the project vicinity—specifically the ethnographic villages or camps named Lopuuknga, Kenyaanga and one unnamed camp or village—are not likely to be in the proposed project site because it is predominately located on fill materials that covered over former estuary or marsh lands associated with the Santa Ana River.” (*Id.* at p. 4.3-46.)
- “The likelihood that the proposed project would actually result in significant impacts to buried archaeological resources appears low.” (*Id.* at p. 4.3-50.)
- “No ethnographic resources have been identified in the PAA. The proposed project site has slight potential to contain buried ethnographic resources.” (*Id.*)

For the reasons set forth herein, and as set forth in Applicant's numerous submissions into the evidentiary record on this topic, Applicant respectfully requests that the Committee adopt CUL-6 as proposed by Applicant. (See Attachment A to Applicant's Opening Brief at pp. 16-18; see Exhibits 1132 (Exhibit D attached thereto); 1087, and 1090; (TN# 202838 at pp. 238-251.)

E. Visual Resources

1. The Project's Visual Impacts Are Less Than Significant

Staff's assertion that Applicant has ignored viewer response in its visual impact assessment is incorrect. (Staff's Opening Brief at p. 18.) In fact, Applicant has considered viewer sensitivity in a consistent and systematic manner in all of the visual analyses Applicant has prepared throughout this licensing process. In the AFC, the surrounding viewers are identified in the discussion of project setting (Exhibit 1001 at pp. 5.13-1 through 5.13-3), and viewer sensitivity was one of the factors taken into account in working with CEC Staff to identify the most appropriate locations for Key Observation Points ("KOP"). (Exhibit 1001 at pp. 5.13-4 through 5.13-5.) The characterizations of the conditions at each KOP include identification of the kinds of areas from which the view is seen, the numbers and types of viewers, their presumed sensitivity to the visual quality of the view, and the overall sensitivity of the view. (Exhibit 1001 at pp. 5.13-5 through 5.13-9.)

Applicant's consideration of viewer sensitivity in the visual assessment treats visual sensitivity as an overlay on the initial question of whether the visual changes will be negative. If negative visual effects are identified, then visual sensitivity is taken into account in determining whether determining whether the negative visual changes will be

significant. Had any of the visual changes resulting from the project been negative, it would then have been appropriate to take a close look at those negative impacts in light of the sensitivity of the views in which the negative visual changes would take place. Because the physical changes resulting from HBEP were found to produce positive visual effects, there was no need to further evaluate visual sensitivity. (*Id.* (noting that the project would improve the views from KOP-1 and KOP-2, which were both characterized as areas of high viewer concern and exposure).)

This is an appropriate manner in which to account for viewer sensitivity. On the other hand, without any explanation or authority, Staff has applied viewer sensitivity to turn positive or neutral visual changes into significant impacts. There is no support for such an approach.

The evidence in the record demonstrates that the analysis method Staff applied to identify visual changes and impacts is seriously flawed and is not consistent with accepted visual resource assessment methods, because it does not provide for the close comparison between existing conditions to those that would exist with the project in place. (Exhibit 1096 at pp. 14-17.) This analysis of the visual change that would result from the project is essential to making a systematic assessment of the specific changes that would take place in view character and quality. (*Id.*) Instead, Staff's method examines the with-project views in a vacuum, evaluating the levels of visual contrast, dominance, and view blockage that would exist with the project, without assessing how or the extent to which what is seen on the site under the with-project conditions would represent a change from the existing conditions. Because of the use of this flawed approach, Staff reached the erroneous conclusions that the Project would "substantially

degrade” the views of the site and its surroundings in the views from KOP-4 and KOP-5. However, as documented in considerable detail in a previous filing, when the focus is on the change between what the views look like now and what the views would look like with the project, the changes will be positive. (Exhibit 1096 (Tables Vis-Supp 1 and 2); *see also* Part E.2, *infra*.)

Applicant’s expert testimony at the hearing on July 21 questioned Staff’s use of assumptions about viewer sensitivity to transform the project’s neutral to positive effects on the visual character and quality of the views from KOP- 4 and KOP-5 into significant impacts. This question remains unanswered. The CEQA Guidelines define significant visual impacts without reference to visual sensitivity. However, if the visual sensitivity of viewers is to be taken into account in determining significance, it is essential that there be a logical process to establish how and the extent to which the sensitivity of the viewers would change the magnitude of the impact. Objectively, there is no explanation for how impacts that would be positive, or in worst case, neutral, could be transformed into impacts that are not only negative, but significant. Rather, a logical analysis would conclude that sensitive viewers would benefit from the positive visual changes, and that in areas with concentrations of sensitive viewers, the positive visual changes would provide a higher degree of public benefit. Staff has not established the logical process by which it has used its assumptions about visual sensitivity to morph visual changes that have been objectively established to be positive into ones that are negative and significant. As a consequence, Staff’s conclusions that the project would have significant impacts on the views from KOP 4 and KOP 5 need to be set aside.

2. The Existing Environment is the Appropriate Baseline

Intervenor Rudman argues that the baseline for evaluating visual impacts should

assume that HBGS does not exist. (Rudman’s Opening Brief, p. 13.) This is contrary to law. (CEQA Guidelines, §15125(a).) CEQA provides that the physical environmental conditions as they exist at the time the environmental analysis is commenced is the baseline by which a lead agency determines whether an impact is significant. (*Id.*) The existing environment includes the existing HBGS and, therefore, the baseline utilized by Staff to evaluate visual impacts is consistent with law. Contrary to Intervenor’s suggestion, there is no schedule for demolition of HBGS Units 3 and 4.

3. The View from Newport Pier is Not an Appropriate KOP

In her brief, Intervenor Rudman includes a Figure 1, the photo of the view in the direction of the HBGS from the Newport Beach Pier that she filed as a part of her Opening Testimony and also introduced as a part of her oral testimony at the Evidentiary Hearing on July 21, 2014. Ms. Rudman uses this photo to support her assertions that the view from the Newport Beach Pier is an important view that had not been considered by the Applicant and Staff, and that the proposed project would dominate the view from this location and that “...the addition of a colorful faux surfboard façade with its unique shape will actually increase the visual discordance of the project relative to its surroundings.” For the reasons discussed during the July 21 Evidentiary Hearing, the evidence does not support her contention that the project’s impacts on the views seen by visitors to Newport Beach would be significant. (TN# 202838 at pp. 151-157.) As an initial matter, the CEC staff visual specialist indicated that the HBEP would not have any potential for a significant visual impact beyond 1.5 miles. (TN# 202838 at p. 156; lines 5-13.) Moreover, as Applicant’s expert indicated, Staff’s conclusion is validated by the analysis of the view from KOP 2, which is a view looking south down the coast toward the project site from the end of the Huntington Beach Pier. This viewpoint is located 1.6 miles from

the project site, and the simulation prepared for this viewpoint makes it clearly evident that the proposed project would not create an adverse visual change to this view (p. 156). In addition, the Newport Beach Pier is on the order of 3.6 miles from the project site, placing it more than twice as far from the project site than the Huntington Beach Pier (p. 156).

In addition to the foregoing, and as noted during the July 21 Evidentiary Hearing Intervenor Rudman failed to establish that the Figure 1 photo accurately represents what a person at the viewing location would see. Visual impact assessments must comply with technical standards that ensure that photos used in making evaluations of views and impacts on views provide an accurate portrayal of the view. Intervenor Rudman was unable to verify whether the camera settings used in taking this photo would create an image that is the equivalent of a photo taken with a 35 mm camera using a lens with a 50 mm focal length, the specification required for taking photos that provide an accurate portrayal of what a person at the viewing location would see. (TN# 202838 at pp. 154-155.) As a consequence, the Figure 1 photo provides an entirely misleading portrayal of the HBGS in the existing view, greatly exaggerating the apparent size of the existing facility and its role in the view. Furthermore, Intervenor Rudman's sweeping assertions about the effects of the proposed project on views from the Newport Beach Pier are not substantiated by an accurate photo simulation that would provide a basis for determining how and the extent to which the replacement of the HBGS with the HBEP would actually alter the view and its overall level of visual quality. As a consequence, Intervenor Rudman's assertions about impacts on views from the Newport Beach Pier are not supported by expert or credible evidence.

IV. CONCLUSION

Applicant believes that the Committee has all the information needed to prepare a Presiding Member's Proposed Decision recommending approval of the HBEP.

Date: August 25, 2014

Stoel Rives LLP



Melissa A. Foster, Esq.
Kristen Castaños, Esq.
Attorneys for Applicant
AES SOUTHLAND DEVELOPMENT, LLC