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*Comment Received From: Robert Simpson*
*Submitted On: 10/3/2014*
*Docket Number: 12-AFC-02*

## PMPD commments SImpson/Helping Hand Tools

*Additional submitted attachment is included below.*

Re: Huntington Beach Energy Project (12-AFC-02)

Helping Hand Tools and Rob Simpson Comments on the Presiding Member's Proposed Decision

"Absent responding to the current electricity emergency, the AES project does not present sufficient justification to perpetuate the vintage Huntington Beach power plant on a coastline of world-renowned scenic, recreational, and environmental value."[1] The Commission should override these words in its own 2001 decision if it were to approve of this facility. In contrast the PMPD states; No particular view in the project vicinity has a level of scenic appeal that could distinguish it as a scenic vista; therefore, no further analysis of the project relating to this criterion is necessary. (Ex. 2000, p. 4.12-6.). The City of Huntington Beach commented in TN 68804

7. Section 5.6.2.1.2 *Scenic Land Use* characterizes the area adjacent to the HBEP site as industrial. The City of Huntington Beach disagrees with this characterization and while the existing power generating station and the existing storage tanks have an industrial appearance the area adjacent to the site on three sides is characterized by wide open wetlands to the east, low profile residential to the west, and the iconic Pacific Coast Highway and uninterrupted expansive views of the Pacific Ocean to the south.

The environment has not changed that much in this last decade. It is clear from the photos of the project area that scenic vistas are present. The Decision should consider scenic vistas in the vicinity of the project.

The Commission should also take this opportunity to reflect on how far it has come since the 2001 decision, in its zeal to license projects. Why would the Commission waste so much time, plus violate state and federal law to license facilities that will never be built. It has licensed 7878 MW of facilities that it admits will not be built and another 8558 MW that are approved and not under construction, most of which will not be built. The Commission should demonstrate the credibility that it did in 2001 by truly considering the project and requiring that the application meet thresholds before approval. This project is another example of a facility that violates federal law and so will not be built.

There is presently no emergency (or fake emergency like was perpetrated on the public in 2001 by the energy industry.) The PMPD has not determined that the proposed project is coastal dependent. If it is needed it should be sited elsewhere. The Commission erred by failing to consider alternative sites. This error is built on the overly narrow project objectives that would appear to have a strong relationship only to this site. The PMPD states; The proposed HBEP project objectives are as follows:

• Provide an efficient, reliable and predictable power supply by using combined- cycle, natural gas-fired combustion turbines to replace the OTC generation;
• Provide replacement generation to replace that of SONGS for southern California customers;
• Eliminate the use of ocean water for once-through-cooling;
• Be able to support the local capacity requirements of Southern California's Western Los Angeles Basin;
• Develop a 939 MW power generation plant that provides efficient operational flexibility with rapid-start and fast ramping capability to allow for efficient integration of renewable energy sources in the California electrical grid;

[1] Application For Certification 00-AFC-13 AMENDED PRESIDING MEMBER'S PROPOSED DECISION APRIL 2001

• Reuse existing electrical, water, wastewater, and natural gas infrastructures and land to minimize land resource and environmental justice impacts by developing on an existing brown field site;
• Site the project on property that has industrial land use designation with consistent zoning.

It is not the projects objectives that should be considered, it is the projects purpose. The majority of these objectives are not the projects purpose and should not limit the alternatives consideration. To require fossil fuel burning generation simply undermines any environmentally superior alternative and leads to a number of assumptions which could be otherwise unnecessary. The Commission should at least consider superior alternatives which include; preferred technologies and sites.

The PMPD and FSA give short shrift; Alternative generating technologies for HBEP include solar thermal technology, other fossil fuels, nuclear, biomass, hydroelectric, wind, and geothermal technologies. However, given the project objectives, location, air pollution control requirements, and the commercial availability of the above technologies, we find that only natural gas burning technologies (whether coupled with solar technology or not) are feasible. (Ex. 1001, §§ 1.5, 6.6; Ex. 2000, p. 5.3- 6.)PMPD (the entire FSA alternatives consideration is virtually identical)

Even with this passing glance at alternatives the PMPD identified solar technology to be feasible; The PMPD reiterates;

FINDINGS OF FACT

"Only natural gas-burning technologies (<u>whether coupled with solar technology or not</u>) are feasible alternatives because of project objectives, location, air pollution control requirements, and the commercial availability of the other technologies" (emphasis added)

The BACT analysis confirms that integrated solar is preferable;

> "Both projects proposed the use of combined-cycle configurations to produce commercial power, and the BACT analyses for both projects concluded that plant efficiency was the only feasible combustion control technology. However, the Palmdale project includes a 251-acre solar thermal field that generates up to 50 MWs during sunny days, <u>which reduces the project's overall heat rate</u>. (emphasis added)

The EPA further clarified the Palmdale solar status; "we find it appropriate to clearly state that the solar component is a lower-emitting GHG technology at this facility... we consider the solar component to be part of the GHG BACT determination"[2] There is no reason that the Commission cannot require the developer to include some of this renewable energy, in which it claims to wish to integrate. How many plants will the Commission license to support renewables without renewables to support? Surely oversupply of fossil fuel generation would actually prevent commercial need for renewable development. The decision should include an analysis of how much renewable energy this project will help integrate with a determination of the need for this design of facility. Storage technologies should also be considered. At least the Decision should include a condition to include some solar power. The Decision should include a requirement; The applicant is to develop at least 10MW of solar generation at the site or another location in the load pocket by completion of construction.

[2] http://www.epa.gov/region9/air/permit/palmdale/palmdale-response-comments-10-2011.pdf

The PMPD states; "Any alternative site would require conversion of some other area of similar acreage to a new electrical power generation facility." This assumes facts which are not on the record. There certainly may be other sites that are in use for electrical generation that may not impinge on the California Coast but no other sites were considered. To the extent that the statement is true it is also true for the site selected and so should not be a basis for declining to consider other, perhaps non-coastal, sites. The PMPD states "No other site is identified where the project applicant could reasonably acquire site access to allow the timely completion of necessary environmental reviews, permitting, and approvals." The statement should be shortened to, no other sites were considered. The applicant should not benefit by skipping the analysis then claiming timeliness prevents consideration. The PMPD states; The extent to which development of a different site could meet the project objectives is unknown," *because it has not been considered*. "and it is questionable whether any off-site alternative would allow the project to remain a viable proposal given the likely extreme project schedule delay that would accompany a change of project site." Years into this proposal and the issues are unknown and questionable. These issues should be known The project may become viable in a shorter time period if a another site was considered, Federal law was followed, and the applicant completes the project in 2 years instead of 7.

It is absurd to have a seven year construction period. It is likely that this, like many applications, is merely a fishing expedition for the developer. It can break ground and if sometime in the next 7 years plus possible extensions commence construction if the market is favourable. The Decision should limit the construction period to 2 years.

It is reasonable to consider other sites, particularly given the coastal location. The Commission has not made the findings necessary to demonstrate that the projects relationship to the site is such that consideration of other sites is not necessary. A true alternatives analysis should be considered prior to licensing of this project.

**The project is not Coastal Dependent**

The Commission should be clear in its consideration of the facility's coastal dependence and the relationship of the Coastal Commission in this sitting. The PMPD alludes to coastal dependence but never seems to make the determination. It states;

*Coastal-Dependent Development*

The HBEP would be located on the same property as the existing HBGS power plant, and all of its associated infrastructure would be on-site at the existing HBGS. Public Resources Code section 30101 defines "Coastal-dependent development or use" as "any development or use which requires a site on, or adjacent to, the sea to be able to function at all." Locating the HBEP and its associated facilities/features on-site at the HBGS allows the HBEP to utilize the plant's infrastructure (natural gas supply lines and electricity transmission lines), thereby avoiding off-site construction of new linear facilities. Constructing the HBEP on this site would avoid the need to develop in areas of Huntington Beach unaccustomed or unsuited to this type of industrial development. In addition, by shutting down the existing HBGS, the proposed HBEP would enhance the marine environment by reducing the use of seawater for once-through cooling.

The record cites no need to develop in areas unaccustomed or unsuited to this type of industrial development. No other site was considered. The Coastal act inherently recognizes that development which is not coastal dependent would need to be developed elsewhere. The project is not the cause of reduction in the use of seawater, The reduction of the use of seawater is already mandated as demonstrated in this record. Even if it the project reduced the

use of seawater that would not infer that it is coastal dependent. The Decision should state; The project is Coastal Dependent Or The Project is not Coastal Dependent.

If the project is not coastal dependent it violates local zoning and the California Coastal act, the authority for which stems from the Federal Coastal Zone Management Act and Public Trust Doctrine of the Magna Carta. The Commission should be clear if it is claiming to override these laws or not. The Commission should consider in these deliberations the City of Huntington Beach comments; "the conclusions reached in this section seem to describe the implementation of HBEP as a coastal dependent use and should be corrected.

*and*

16. Table 5.6-6 Coastal Element accurately describes the existing HBGS as a coastal dependent use. The City disagrees that the new development can also be characterized as coastal dependent as discharge of stormwater and process water is not dependent on the ocean outfall.

Tn 68804. The PMPD further states; We give due deference to the determination by the city of Huntington Beach of its own ordinances. (Cal. Code Regs., tit. 14, §1744(e).)

The PMPD states;

*Coastal-Dependent Industrial Facilities*

"Public Resources Code section 30260 provides, in part: "Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division…" The HBEP, proposed inside the existing boundaries of the HBGS site, is consistent with the Coastal Act policy that prefers on-site expansion of existing power plants to development of new power plants in undeveloped areas of the Coastal Zone. The HBGS property is zoned for public utility use and has been previously developed in its entirety for industrial uses. Construction of the HBEP on the site of an existing industrial property with access to existing power infrastructure, and with limited adjacent sensitive uses, has greater relative merit to development of a power plant at an alternative site. Therefore, the HBEP is consistent with Section 30260 of the Coastal Act."

The Commission must first determine if the project is coastal dependent before determining consistency with Section 30260 because 30260 only applies to coastal dependent industrial facilities The Commission should also explain how the determination was made that the project has a greater relative merit over an alternative site when no alternative site was considered.

The PMPD declines to adopt the Coastal Commission's recommendations therefore the Commission must make findings consistent with;

25523. The commission shall prepare a written decision after the public hearing on an application, which includes all of the following:

(a) Specific provisions relating to the manner in which the proposed facility is to be designed, sited, and operated in order to protect environmental quality and assure public health and safety.

(b) In the case of a site to be located in the coastal zone, specific provisions to meet the objectives of Division 20 (commencing with Section 30000) as may be specified in the report submitted by the California Coastal Commission pursuant to subdivision (d) of Section 30413, unless the commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or that the provisions proposed in the report would not be feasible.

The Commission should be clear if its license would represent a coastal development permit.

Even considering the overly narrow objectives of the project the project fails to satisfy its objective; "Site the project on property that has industrial land use designation with consistent zoning." The City commented; "In many sections of the AFC, the land use is described as industrial. The Land Use section accurately describes the site with a General Plan Land Use designation of Public and a zoning designation of Public-Semipublic. If the City was the permitting authority for development of a new major utility within the Public-Semipublic zoning district, approval of a conditional use permit, coastal development permit, and variance by the City's Planning Commission would be required. The references to industrial land use and zoning designations throughout the document should be corrected….. Section 5.6.3.2.1 Divide an Established Community states that the land is designated for industrial uses. This incorrect statement should be corrected here and elsewhere throughout the document to describe the land use as Public (General Plan) or Public-Semipublic (zoning). Land uses allowed in these categories are cultural institutions, government offices, hospitals, park and recreation facilities, public safety facilities, religious assembly, major and minor utilities, etc."

The PMPD relies on a resolution made by the Huntington Beach City Council, it states; "By this resolution, the City Council is making hypothetical findings… If the City had jurisdiction over this project, a proposal to exceed the City's maximum height limits would be subject to approval of a variance by the Planning Commission." (emphasis added) So if a faux decision on a variance was made it should have been made by the Planning Department not the City Council, The PMPD should not rely on the hypothetical resolution. The Decision should rely on the opinion of the planning Department which states.

17. Table 5.6-6 *Zoning Ordinance* incorrectly describes maximum building height and provisions for legal non-conforming structures. The maximum building height within the Public Semi-public zoning district is 50 feet. An additional 10 feet may be permitted for chimneys, vent pipes, cooling towers, flagpoles, water tanks, etc. for a maximum of 60 feet height. The Zoning Administrator may approve a greater height for only the specific building and mechanical appurtenances listed, not for the entire proposed structure. Within the coastal zone, exceptions to height limits for these specific items may be granted only when public visual resources are preserved and enhanced where feasible. Therefore, the new proposed HBEP should conform to the maximum building height of 50 feet with an additional 10 feet of height permitted for cooling towers, vent pipes, and similar equipment. A proposal to exceed the City's maximum height limits would be subject to approval of a Variance by the Planning Commission and compliance with General Plan and zoning code policies to enhance public visual resources.

Signed by Jane James Senior Planner Planning and Building Department. TN 68804

The Resolution further relies on the incomplete alternatives analysis, it states; "The CEC's Preliminary Staff Assessment concludes that no feasible design alternatives will eliminate the need for stacks in excess of the City's height limitations."

The Resolution states (hypothetically); "Exceeding the maximum 50 ft height limit for the proposed approximately120 ft high electrical generating plant along with approximately 125 ft high architectural screening will not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity and under an identical zone classification. There are other existing approximately 70 ft high electrical tower structures that have been approved and constructed exceeding maximum height limitations in Low Density Residential zones, Residential Agriculture zones, and Public Semi-Public zones. The strict application of the zoning ordinance would deprive HBEP of the existing privileges enjoyed by the current

power generating station and other existing electrical tower structures operating under the same and other zoning classifications." Under state law, a variance can be granted only when "because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification." Gov't Code § 65906. A variance cannot be used as an ad hoc change to zoning requirements, and "shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone." Id.; Orinda Association v. Board of Supervisors, 182 Cal.App.3d 1145 (1986). Here, there are no privileges enjoyed by other owners of property. An occasional 70 foot electrical tower is not comparable to a bank of 120 foot smokestacks and related structures. Electrical towers are not demonstrated to be a privilege enjoyed by other property, instead they are an encumbrance imposed upon the properties through easements.

This action did not proceed like prior commission actions. In Blythe the Commission required the developer to get actual decisions from the local government;

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| CUL City Confirmation | The Applicant shall provide notification of action by the City of Blythe to grant a height variance for the exhaust stacks. (60 days*) |
| LAND City Height Variance | The Applicant shall provide notification of action by the City of Blythe to grant a height variance for the exhaust stacks. (60 days*) |
| LAND ALUCOverride | The Applicant shall provide notification of action by the City of Blythe to override the ALUC determination. (60 days*)[3] |

The Commission should allow the city to make actual decisions or override their laws. The Decision should include an override of local laws.

**Nitrogen Deposition**

The FSA states; "In the Focused Supplemental Analysis to the PSA, staff presented its preliminary analysis of nitrogen deposition impacts from the proposed HBEP. Staff determined that significant impacts would occur in limited protected areas in the project vicinity, but disclosed that the evaluation included several conservative estimates." Staff utilized the EPA mandated AERMOD system to model nitrogen deposition and further admitted in the FSA "AERMOD is the best available model." What followed was a lengthy dissertation on the benefits of using a less conservative modelling program. If the Commission wishes to change federal law to accommodate less conservative estimates than this is not the forum to do so. It should petition the EPA to change the law. Licensing this facility in defiance of federal law simply creates another state license that will never be followed by development.

USFWS commented; Combustion Turbine Emissions- The application evaluates the potential for project associated nitrogen deposition to impact adjacent coastal wetlands. No impacts from the project are expected due to proposed emission controls, mitigation in the form of RECLAIM Trading Credits, and prevailing wind patterns (west to east) that are

[3] http://www.energy.ca.gov/sitingcases/blythe2/notices/2004-02-04_status.html

anticipated to direct air quality impacts inland (5.2-35). Critical nitrogen loads for intertidal salt marsh wetlands are identified in the application, but the actual anticipated loads are not provided for comparison. The applicant should clarify the anticipated nitrogen loads in the Huntington Beach Wetlands. In addition, please clarify how the RECLAIM Trading Credits will reduce nitrogen loads in the wetlands. TN 67075

California Department of Fish and Game commented; Nitrogen deposition impacts to sensitive habitats. Emissions from operation of the proposed project would result in nitrogen deposition at sensitive habitats, potentially including critical habitat for western snowy plover, San Diego fairy shrimp, and California gnatcatcher.TN 201169

**Noise Impacts**

The PMPD states; "The July 2014 Report suggests that we apply thresholds utilized by the California Department of Transportation after consultation with the USWFS and the California Department of Fish & Wildlife. These thresholds identify hearing damage and masking (the prevention or reduction of communication among birds) and are even more sensitive than those provided by Energy Commission staff. The July 2014 Report concludes by requesting that we impose greater restrictions in Condition of Certification BIO-9. (Ex. 4026, pp. 13-14.) As we explained above, the weight of the evidence in this proceeding is that bird hearing differs from that of human beings. Because of that, we concluded that the low frequencies typical of construction activities would not adversely impact wildlife species. We therefore decline to implement the changes to Condition of Certification BIO-9—a Condition that we declined to impose in the first instance." The PMPD overrides the Coastal Commission determination by claiming that birds do not hear as well as humans. The Decision should admit that; This project represents an override of the California Coastal Commission's determinations.

The PMPD also overrides the United States Fish and Wildlife Services determination; "To avoid noise-related impacts to the clapper rail, we recommend that a solid fence be erected around the project area and that the fence be of sufficient length and height and be constructed of appropriate materials to maintain ambient noise levels within the marsh for the duration of the construction period. The effectiveness of the fencing to reduce noise levels to ambient conditions should be tested with noise monitoring equipment. Fencing should be maintained in working condition until completion of the project. Provided the fence is constructed and maintained as described above, it will have the added benefit of reducing or avoiding the need for monitoring of adjacent clapper rails and avoiding potential construction delays resulting from disturbance of nesting clapper rails. If impacts to clapper rails cannot be avoided, the project may require consultation under the provisions of section 7 (Federal consultations) or section 10 (private actions) of the Act."The Decision should inform the USFWS that the commission declined its recommendation and let Federal consultation commence.

The PMPD also represents a rejection of the California Department of Fish and Game's comment on the same issue; "Construction and demolition noise would result in significant impacts to special status birds in marshes near the HBEP, especially in the adjacent Upper Magnolia and Magnolia marshes, as well as rehabilitating wildlife at the Wildlife Care Center.

The PMPD states; With respect to operational noise, as required by Condition of Certification NOISE-4, when the project becomes operational, a noise survey would be conducted to ensure that the project would not exceed applicable city of Huntington Beach noise limits. The noise conditions include no monitoring in the sensitive habitat. Even if it did once the project is operational little could be done to mitigate noise. The endangered species will not be available to submit a noise complaint as Noise-4 requires. They will be dead.

**The PMPD contains no evidence that bird incineration was considered.**

The FSA states; The exhaust temperature is required to be at least 500°F
The Decision is different; The exhaust temperature at the inlet of the selective catalytic reduction shall be maintained between 400-700 deg F except during start up and shutdowns. The PMPD further states;The evidence shows that power plants like the proposed HBEP produce high velocity, high temperature exhausts that disperse quickly" *and* "Plume average velocity is calculated to drop below 4.3 m/s at a height of approximately 1,100 feet for the single turbine plume. In the case of two plumes fully merging, the average velocity is calculated to drop below 4.3 m/s at the height of 1,740 feet. The Decision further demonstrates that each of the six 120 foot tall exhaust stacks could start emissions some 625 times each per year. That represents an intermittent maze of sometimes invisible inferno's which must surely have an impact on avian flyovers. This effect could be exacerbated by the sound of the intermittent starts startling the birds into flight. This issue should be studied before the Commission makes another decision that compromises biological resources. At least the Decision should disclose that it represents a take permit under the Endangered Species Act and/or CESA.

The PMPD states; "Although collision may occur, it is not likely that bird mortality due to collision with HBEP transmission lines and facilities would significantly reduce the population numbers of any bird species or that the reduction in numbers within any population would impair its function within the local ecosystem. The proposed HBEP exhaust stacks would be much shorter than 350 feet (the height above which is considered dangerous to migrating birds), and shorter than the existing built environment (e.g., Huntington Beach Generating Station exhaust stacks). The reduction in height of the exhaust stacks would result in a lower risk of bird collision with this project feature compared with existing conditions." (Notably it is not migrating birds but local endangered birds flying at much lower elevations that deserve consideration)

**Closure**

The PMPD does not contain adequate assurance that when the facility is closed the site will be remediated. The California coast is littered with obsolete energy facilities. The developer should deposit Ten Million Dollars per year into a fund managed by the energy Commission until the fund contains adequate funding to dismantle the facility upon retirement. The monies should then be held to ensure site remediation.

This issue was referred to the IEPR committee in the Carlsbad proceeding (another licensed facility that will never be built because it fails to comport with Federal law)[4]

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http://docketpublic.energy.ca.gov/PublicDocuments/Regulatory/Non%20Active%20AFC's/07-AFC-6%20Carlsbad%20Energy%20Center/2012/July/TN%2066316%2007-24-12%20Email%20re%20Referral%20for%20IEPR%20Consideration.pdf

**The Applicant removed wetlands without a license prior to the Biological report.**

The PMPD does not discuss the fact that the Coastal commission disclosed that the applicant eliminated onsite wetlands before the biological report. The Coastal Commission stated; "Part of this tank farm site consisted of wetlands that AES removed without benefit of a coastal development permit, which is the subject of a Coastal Commission staff investigation of a potential violation[5]…The adjacent Plains America Tank Farm area appears to have similar wetland characteristics within part of its 32 acres, and may have similar limitations on its use. As stated in the previous section, we recommend that the CEC staff evaluation assess the effect of these policies on the potential use of these sites, and that the evaluation be provided for additional public review and comment as part of this AFC proceeding…. Regarding the AES tank farm area, we understand that it is currently devoid of wetland characteristics; however, as noted above, AES's removal of wetland vegetation in that area several years ago is the subject of a Commission staff investigation of a potential violation. Pursuant to LCP Policy C7.2.7, the areas formerly containing wetlands remain subject to the LCP's wetland and ESHA protection policies."(TN 202701) The Commission should deny the application based upon this, or at least the Decision should require mitigation for the take of endangered species and cover up of biological resources. The Decision should state the Applicant is to deposit $10,000,000 into a wetland recovery project identified by the Coastal Commission prior to construction.

The PMPD states; "A license issued by the Commission is in lieu of other state and local permits; the license may also include all necessary federal permits, to the extent permitted by law." The Decision should disclose exactly what permit(s) it represents. Is it the PSD permit? Is it a Coastal Development permit? Is it a Take permit under the Endangered Species Act? Due process requires that the Commission identify what kind of permit(s) it is issuing. These comments should be considered comments on any state or local permits or Federal permits including ones that are delegated to state agencies. Can the public rely on the MOU between the Coastal Commission and Energy Commission?

The Notice for the PMPD states; "The deadline for filing comments on the PMPD is 4:00 p.m. on October 3, 2014." The Decision should identify if the Commission is compelled to respond to comments. The Decision should include instructions for any appeal procedures if commenters believe that the Commission does not adequately respond to comments.

For the reasons above and all the reasons identified in the Coastal Commission, US Fish and Wildlife, California Department of Fish and Game, Huntington Beach Planning Department, and intervener comments the project should be denied.

Rob Simpson Executive Director Helping Hand Tools (2HT) Rob@redwoodrob.com

[5] See Commission staff's August 3, 2012, Data Adequacy letter for 12-AFC-02 and Commission staff report for Poseidon Water – Appeal #A-5-HNB-10-225 and Application No.: E-06-007, November 2013, available at:http://documents.coastal.ca.gov/reports/2013/11/W19a-s-11-2013.pdf