

## DOCKETED

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<b>Document Title:</b>	Project Owner's Opening Testimony
<b>Description:</b>	Project Owner's Opening Testimony, Preliminary Identification of Issues, and Witness and Exhibit Lists, and Comments on the Final Staff Assessment Part 1
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**STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

In the Matter of:

The Petition to Amend the

HUNTINGTON BEACH ENERGY PROJECT

**Docket No. 12-AFC-02C**

**AES HUNTINGTON BEACH ENERGY,  
LLC'S OPENING TESTIMONY AND  
COMMENTS ON THE FINAL STAFF  
ASSESSMENT, PART 1**

**AES HUNTINGTON BEACH ENERGY, LLC'S OPENING TESTIMONY,  
PRELIMINARY IDENTIFICATION OF ISSUES AND WITNESS AND EXHIBIT LISTS,  
AND COMMENTS ON THE FINAL STAFF ASSESSMENT, PART 1**

October 27, 2016

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Pursuant to the Committee's Notice of Prehearing Conference and Evidentiary Hearing, Scheduling Order, and Further Orders, dated October 20, 2016 ("Hearing Order"), AES Huntington Beach Energy, LLC ("Project Owner") herein provides its opening testimony, preliminary identification of issues, and witness and exhibit lists in support of the Huntington Beach Energy Project ("HBEP" or "Project") Petition to Amend ("PTA") (hereinafter referred to as the "Amended HBEP"). In addition, the Project Owner's opening testimony also constitutes its comments on the Staff's Final Staff Assessment, Part 1 ("FSA").

**I. PROJECT OWNER'S OPENING TESTIMONY**

Project Owner herein presents testimony on uncontested topics in the form of declarations, which have been previously docketed. Herein, Project Owner provides a list of the declarations and the assigned California Energy Commission ("CEC" or "Energy Commission") Transaction Numbers (TN#) for each. Testimony for contested topics is set forth in Part I.C.

below by issue area. All exhibits in support of such testimony have been docketed previously and are identified on Project Owner's Preliminary Exhibit List, attached hereto as Exhibit L.

**A. Project Overview**

After more than three years from the date of filing the Application for Certification, the California Energy Commission ("CEC") approved the Licensed HBEP on October 29, 2014. The Licensed HBEP was proposed to replace the existing Huntington Beach Generating Station ("HBGS") with 939 megawatts ("MW") of generating capacity, relying on air cooling instead of ocean water for cooling. After the CEC issued the Final Decision for the Licensed HBEP, Southern California Edison ("SCE") publicly announced that AES Southland had been selected in the 2013 Local Capacity Requirements Request for Offers to provide 644 MW of nominal generating capacity at the Huntington Beach site. Thus, the project configuration selected by SCE necessitated a modification to the Licensed HBEP.

As correctly stated in the FSA, the PTA proposes to modify the previously approved 939 MW HBEP to a new configuration that would total 844 MWs. The Amended HBEP is in keeping with the original intent of the Licensed HBEP as a fully dispatchable, quick-start facility able to meet the current and projected electric reliability needs and market demands of the Western Los Angeles Basin. The Amended HBEP is also part of a larger effort of replacement and retirement of ocean-cooled generating facilities with smaller, highly efficient, air cooled, flexible, and visually improved generating facilities. As documented throughout the PTA proceeding, the Amended HBEP is smaller than the Licensed HBEP (844 MW compared to 939 MW), and has impacts that are less than or the same as those impacts that were analyzed for the Licensed HBEP. Like the Licensed HBEP, no new offsite linear facilities are proposed as part of the Amended HBEP. Construction would commence in two phases with the first phase consisting of a natural gas-fired, combined-cycle, air-cooled, 644 MW electrical generating

facility. After the first phase combined-cycle gas turbine (“CCGT”) power block is operational, phase two construction would commence on two 100-MW simple-cycle gas turbines (“SCGT”). The Amended HBEP is designed to start and stop very quickly and be able to ramp up and down, which is critical to supporting both local electrical reliability and grid stability to support peak demand and meet resource adequacy requirements.

The Amended HBEP would be located on 30 acres of the HBGS site comprised of 28.6 acres approved for the Licensed HBEP plus an additional 1.4 acres of paved area that Project Owner acquired from SCE (and analyzed in the Licensed HBEP as construction laydown/parking). In addition, as part of the amendment, a total of 22 acres of combined construction parking and construction laydown area is proposed at the Plains All-American Tank Farm site, which also will require a new entrance and modifications to the existing intersection at Magnolia and Banning.

The planned construction and demolition activities of the amended HBEP would occur on a schedule that allows continued operation of the existing HBGS power generation and synchronous condensers to maintain power delivery and grid reliability during construction of the new facilities.

## **B. Uncontested Issues**

Topics identified by the Project Owner as uncontested are set forth in the table below. Declarations supporting the materials relevant to this proceeding and the specific issue area that have been prepared by or at the direction of the declaring witness are listed in Applicant’s Preliminary Exhibit List, attached hereto as Exhibit L. In summary, testimony provided in the form of a declaration identifies the documents drafted or otherwise prepared by (or directed to be prepared by) the witness as pertinent to that witness’s area of expertise. It should be noted that witnesses whose testimony is based solely upon the identified declaration will not be made

available for examination unless Staff specifically requests to cross-examine the witness in rebuttal.

<b>Topic</b>	<b>Witness(es)</b>	<b>CEC Transaction # (TN#)</b>
Project Description*	Stephen O’Kane Jerry Salamy	TN# 214193 TN# 214192
Biological Resources**	Melissa Fowler	TN# 214183
Hazardous Materials Management	Jerry Salamy	TN# 214192
Noise & Vibration	Mark Bastasch	TN# 214181
Socioeconomics	Fatuma Yusuf, Ph.D.	TN# 214177
Soils	Jennifer Krenz-Ruark	TN# 214180
Traffic & Transportation	Lisa Valdez	TN# 214179
Worker Safety & Fire Protection	Jerry Salamy	TN# 214192
Facility Design	Stephen O’Kane	TN # 214193
Paleontological Resources**	James Verhoff	TN# 214178
Power Plant Efficiency	Stephen O’Kane	TN# 214193
Power Plant Reliability	Stephen O’Kane	TN# 214193
Transmission Line Safety and Nuisance**	Robert Sims	TN# 214187
Visual Resources**	Thomas Priestley, Ph.D.	TN# 214186
Transmission System Engineering	Robert Sims	TN# 214187
Alternatives	Stephen O’Kane Jerry Salamy	TN# 214193 TN# 214192

\* Project Owner has no substantive comments on the Project Description, but does provide testimony clarifying certain information in Part I.C. below.

\*\* Project Owner has provided testimony regarding specific conditions contained within each issue area as set forth in Part I.C. herein.

### **C. Preliminary List of Contested Issues**

Following Project Owner's review of the FSA, Project Owner has compiled a list and summary of outstanding contested issues, set forth by topic area below. Project Owner remains hopeful, however, that most, if not all, of Project Owner's issues and concerns related to the topics set forth below can be resolved prior to the evidentiary hearing. In the meantime, Project Owner will proceed as though each of the potentially disputed areas identified below and in the attached testimony require adjudication.

#### **1. Executive Summary & Project Description**

Project Owner concurs with Staff's Project Description set forth in the FSA. Project Owner would like to clarify the plan for demolition of Units 1 and 2 to grade, which is contrary to statements made by Staff throughout the FSA.<sup>1</sup> Project Owner's testimony regarding this issue is attached as **Exhibit A** hereto.

#### **2. Biological Resources**

As noted in Part I.B, *supra*, Project Owner concurs with Staff's conclusions in the Biological Resources section of the FSA and agrees with the Conditions of Certification set forth in the FSA pertaining to Biological Resources, with the exception of BIO-1. Project Owner's testimony regarding Biological Resources is attached as **Exhibit B** hereto.

#### **3. Cultural Resources**

As noted in Part I.B, *supra*, Project Owner concurs with Staff's conclusions in the Cultural Resources section of the FSA. Project Owner provides testimony regarding revisions to CUL-1, CUL-2, and CUL-4 in the attached and a minor comment regarding information not

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<sup>1</sup> See, e.g., FSA pages 1-2, 3-4, 3-5, Project Description - Figure 1, 4.5-11, 4.13-8, 4.13-11.

included within the “Introduction” portion of the Cultural Resources section of the FSA. Project Owner’s testimony regarding Cultural Resources is attached as **Exhibit C** hereto.

#### **4. Land Use**

Project Owner concurs with Staff’s conclusions regarding Land Use set forth in the FSA. Since release of the FSA, Project Owner has identified concerns with the timing set forth in the Verification of LAND-1 as well as identified minor changes to the FSA language in the Land Use section of the FSA. Project Owner’s testimony regarding Land Use is attached as **Exhibit D** hereto.

#### **5. Water Resources**

Project Owner concurs with Staff’s conclusions regarding Soil & Water Resources set forth in the FSA. Project Owner’s attached testimony provides details regarding proposed minor changes to SOIL&WATER-2 and SOIL&WATER-3. Project Owner’s testimony regarding Water Resources is attached as **Exhibit E** hereto.

#### **6. Visual Resources**

The impacts of the Amended HBEP on Visual Resources are less than significant and no mitigation is required. However, as discussed throughout this and the Licensed HBEP proceeding, Project Owner commits to implementing the architectural screening recommended by the City. Project Owner appreciates certain revisions to the Visual Resources Conditions of Certification proposed by Staff, especially to VIS-1. There remains, however, an infeasible timing element in VIS-1. Project Owner’s testimony regarding Visual Resources is attached as **Exhibit F** hereto.

#### **7. Waste Management**

Project Owner concurs with Staff’s conclusions and agrees with the Conditions of Certification set forth in the FSA pertaining to Waste Management, with the exception of the



City “approval” language added to WASTE-5. Project Owner’s testimony regarding Waste Management is attached as **Exhibit G** hereto.

## **8. Geology**

Project Owner concurs with Staff’s conclusions and agrees with the Conditions of Certification set forth in the FSA pertaining to Geology, with the exception of GEO-3. Project Owner’s testimony regarding Geology is attached as **Exhibit H** hereto.

## **9. Paleontological Resources**

As noted in Part I.B, *supra*, Project Owner concurs with Staff’s conclusions in the Paleontological Resources section of the FSA and agrees with the Conditions of Certification set forth in the FSA pertaining to Paleontological Resources, with the exception of PAL-1. Project Owner’s testimony regarding Paleontological Resources is attached as **Exhibit I** hereto.

## **10. Transmission Line Safety and Nuisance**

As noted in Part I.B, *supra*, Project Owner concurs with Staff’s conclusions in the Transmission Line Safety and Nuisance section of the FSA and agrees with the Conditions of Certification set forth in the FSA pertaining to Transmission Line Safety and Nuisance, with the exception of TLSN-1 and TLSN-2. Project Owner’s testimony regarding Transmission Line Safety and Nuisance is attached as **Exhibit J** hereto.

## **11. Compliance**

Project Owner agrees to the Conditions of Certification set forth in the FSA pertaining to Compliance, with the exception of certain language in Conditions COM- 13, COM-14, and COM-15. Project Owner also provides testimony regarding additional language required to be added to COM-3 and COM-4 regarding the timeframe for approval after submission of compliance-related materials. Project Owner’s testimony regarding Compliance and the Compliance Conditions is attached as **Exhibit K** hereto.

**II. PROJECT OWNER’S WITNESSES FOR CONTESTED ISSUES**

As noted in Part I.C., *supra*, written testimony of the witnesses listed below is attached hereto as Exhibits A through L. Unless otherwise noted, the witnesses identified below will be available for cross-examination in their respective areas at the evidentiary hearing, should Staff wish to conduct cross-examination. In some cases, there is more than one witness for a particular subject matter.<sup>2</sup>

<b>EXHIBIT HERETO</b>	<b>ISSUE AREA</b>	<b>WITNESS(ES)</b>
A	Executive Summary & Project Description	Stephen O’Kane Jerry Salamy
B	Biological Resources	Stephen O’Kane
C	Cultural Resources	Stephen O’Kane Natalie Lawson (TN# 214184)
D	Land Use	Stephen O’Kane Seth Richardson <sup>3</sup> (TN# 214194)
E	Water Resources	Matt Franck (TN# 214182)
F	Visual Resources	Stephen O’Kane
G	Waste Management	Jerry Salamy
H	Geology	Stephen O’Kane Jerry Salamy Thomas A. Lae (TN# 214185)
I	Paleontological Resources	Stephen O’Kane
J	Transmission Line Safety & Nuisance	Stephen O’Kane

<sup>2</sup> In addition to the testimony provided by these witnesses as set forth in the exhibits attached hereto, witnesses identified in the table below have provided a declaration to sponsor documents related to his/her discipline of expertise. Such declarations have been docketed in this proceeding and are also included in Project Owner’s Preliminary Exhibit List, Exhibit L attached hereto. TN#s are noted only for those witnesses whose declarations have not been identified in prior sections of this testimony.

<sup>3</sup> Mr. Richardson will be available via telephone to participate in the November 30, 2016 evidentiary hearing. Further details about Mr. Richardson’s availability will be provided in Project Owner’s Prehearing Conference Statement.

EXHIBIT HERETO	ISSUE AREA	WITNESS(ES)
K	Compliance	Stephen O’Kane

**III. PROJECT OWNER’S PRELIMINARY EXHIBIT LIST**

Project Owner presents a list of preliminarily identified exhibits in Exhibit L attached hereto. Each exhibit and its assigned CEC Transaction Number (TN#) are identified therein. As set forth in the Hearing Order, exhibits are numbered consecutively, starting with Exhibit 5000. Project Owner will provide an updated Exhibit List as an attachment to its Rebuttal Testimony on or before November 3, 2016, with a final Exhibit List to follow with its Prehearing Conference Statement on or before November 9, 2016.

**IV. CONCLUSION**

Project Owner is confident that the Amended HBEP PTA proceeding is ready for evidentiary hearings. Project Owner looks forward to the conclusion of the hearings and a favorable decision by the Commission approving these critical modifications to the Licensed HBEP.

Date: October 27, 2016

STOEL RIVES LLP




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Melissa A. Foster  
Kristen T. Castaños

Attorneys for Project Owner  
AES HUNTINGTON BEACH ENERGY, LLC

**EXHIBIT A**  
EXECUTIVE SUMMARY AND PROJECT DESCRIPTION

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**Opening Testimony of AES Huntington Beach Energy, LLC  
in the Huntington Beach Energy Project Petition to Amend Proceeding  
(12-AFC-02C)**

*Project Owner's Witness:* **STEPHEN O'KANE  
JERRY SALAMY**

*Date:* **October 27, 2016**

*Topic:* **PROJECT DESCRIPTION/EXECUTIVE  
SUMMARY**

OPENING TESTIMONY

As previously set forth in Project Owner's response to the City's PSA comments (TN# 212752), while demolition to the turbine deck is the current proposal, Project Owner has maintained throughout the PTA proceedings that final design of the architectural screening may necessitate demolition of Units 1 and 2 to grade, which was evaluated as part of the Licensed HBEP AFC proceeding. Project Owner is now aware that it is infeasible to demolish Units 1 and 2 solely to the turbine deck based on certain architectural screening requirements and adherence to City Specifications.

Project Owner also reiterates that the construction timeline for the Amended HBEP is approximately 9 years, as correctly set forth in Table 1 on page 3-5 of the FSA. This same timeline needs to be carried through throughout the environmental analysis (*i.e.*, FSA pp. 4.5-9, 4.8-1).

Lastly, there is an error on page 3-7 of the FSA that should be revised. The FSA incorrectly states "The existing HBGS currently has five steam generating units (units 1, 2, 3, 4, and 5)." However, there were only four steam generating units at HBGS (Unit 5 was a peaking gas turbine).

**EXHIBIT B**  
BIOLOGICAL RESOURCES

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**Opening Testimony of AES Huntington Beach Energy, LLC  
in the Huntington Beach Energy Project Petition to Amend Proceeding  
(12-AFC-02C)**

*Project Owner's Witness:* **STEPHEN O'KANE**

*Date:* **October 27, 2016**

*Topic:* **BIOLOGICAL RESOURCES**

OPENING TESTIMONY

Project Owner's PSA comments requested changes to Staff's proposed BIO-1, specifically regarding streamlining the Designated Biologist ("DB") approval process.

As discussed at the July 12, 2016 PSA Workshop, the Project Owner requests that the requirements for obtaining approval of a Designated Biologist set forth in BIO-1 be revised. As discussed with Staff at the July 12, 2016 PSA Workshop, in light of the Project construction schedule, it is imperative that Project Owner obtain timely approvals for all designated resource specialists and timely review and approval of required plans. Project Owner proposes the following language be added to the Verification of BIO-1:

**Any Designated Biologist previously approved by Commission Staff within the preceding five (5) years shall be deemed approved ten (10) days after project owner provides a resume and statement of availability of the proposed Designated Biologist. The CPM may disapprove a previously approved Designated Biologist within seven (7) days of Project Owner submission of the Proposed Designated Biologist's resume and statement of availability only if non-compliance or performance issues were documented in the compliance record for the previous CEC project work conducted by the proposed Designated Biologist or the Designated Biologist's qualifications are not applicable to the specific biological resources identified in the HBEP project area.**

Project Owner's proposed changes to BIO-1 (above) address all of the concerns noted by Staff on page 4.2-7 of the FSA. The proposed changes allow for the Designated Biologist to be disapproved for documented noncompliance or performance issues and for not having the applicable qualifications for the specific biological resources identified in the project area.

Additionally, the current Designated Biologist qualifications require a Bachelor's Degree in biological sciences or closely related field, three years of experience in field biology (or current certification of a nationally recognized biological society), and at least one year of field experience with biological resources found in or near the project area. As the proposed changes to BIO-1 require the submittal of a resume, it should not be difficult to determine if the proposed Designated Biologist previously approved by the CEC within the last five years complies with the current Designated Biologist qualifications.

**EXHIBIT C**  
CULTURAL RESOURCES

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**Opening Testimony of AES Huntington Beach Energy, LLC  
in the Huntington Beach Energy Project Petition to Amend Proceeding  
(12-AFC-02C)**

*Project Owner's Witness:* **STEPHEN O'KANE  
NATALIE LAWSON**

*Date:* **October 27, 2016**

*Topic:* **CULTURAL RESOURCES**

OPENING TESTIMONY

Project Owner's PSA comments requested changes to Staff's proposed CUL-1, specifically regarding the lengthy process of receiving approval of a Cultural Resource Specialist already approved on another CEC project. As discussed at the July 12, 2016 PSA Workshop and in Project Owner's PSA Comments, Project Owner requests certain revisions be made to CUL-1 (requirements for a Cultural Resource Specialist). Specifically, Project Owner requests the following language be added to the CUL-1 Verification related to the Cultural Resource Specialist:

**The Project Owner shall provide the Compliance Project Manager (CPM) with the resume and qualifications of its Cultural Resource Specialist (CRS) for review and approval. A proposed CRS previously approved by Commission Staff within the preceding five (5) years shall be deemed approved ten (10) days after project owner provides a resume and statement of availability of the proposed CRS.**

**The CPM may disapprove a previously approved CRS within seven (7) days of Project Owner submission of the CRS' resume and statement of availability only if non-compliance or performance issues events were documented in the compliance record for the previous CEC project work conducted by the proposed Cultural Resource Specialist. Any Cultural Resource Specialist previously approved within the last five (5) years by the Commission shall be automatically approved and the project owner shall provide a resume and statement of availability. The CPM may disapprove a previously approved CRS if non-compliance or performance issues were documented in the record during the previous project work by the CRS or the CRS's qualifications are not applicable to the specific biological resources identified in the HBEP project area.**

Staff's rejection of this language in the FSA is without merit. The CRS qualifications in CUL-1 already require qualifications above and beyond that required in Title 36, Code of Federal Regulations (CFR), Part 61:

1. A background in anthropology, archaeology, history, architectural history, or a related field;

2. At least 10 years of archaeological or historical experience (as appropriate for the project site), with resources mitigation and fieldwork;
3. At least one year of field experience in California; and
4. At least three years of experience in a decision-making capacity on cultural resources projects in California and the appropriate training and experience to knowledgeably make recommendations regarding the significance of cultural resources.

Staff's proposed CUL-1 requires ten years of archaeological or historical experience (as appropriate for the project site). In contrast, the U.S. Secretary of the Interior's Professional Qualifications Standards requires at least four months of supervised field and analytic experience in general North American archeology. The minimum standards required by the U.S. Secretary of the Interior's Professional Qualifications Standards are significantly less rigorous regarding local archaeological experience than in Staff's proposed CUL-1.

Staff rejected the proposed changes to Condition CUL-1 on the grounds that the qualifications of a CRS may change over time as missing information comes to light or inaccurate information is corrected, whereby a CRS approved several years prior may not be considered qualified subsequently. Project Owner's proposed Verification language for CUL-1 requires the submittal of a resume demonstrating the proposed CRS's conformance with the qualification requirement. Project Owner agrees that if a previously approved CRS does not meet the qualification requirement of Condition CUL-1, then the person should not be approved. In fact, the language proposed above does not prohibit the Staff from disqualifying a proposed CRS who does not meet certain requirements.

Staff also relies on subjective reasons for failing to modify CUL-1 as proposed herein. Staff states the possibility that someone previously found qualified "subsequently engages in compromising job-related conduct that disqualifies them from being considered an adequate candidate for overseeing implementation of project mitigation." Again, the type of "compromising job-related conduct" that would disqualify a person is not explained, nor is it clear how a determination that "compromising job-related conduct" occurred will be made by the CPM. It is extremely concerning that these types of subjective determinations as to what may constitute "compromising job-related conduct," may be used as a basis by which a CPM will disqualify an otherwise qualified individual, potentially interfering with a qualified professional's opportunity to work. It is even more concerning that an otherwise qualified individual has no mechanism with which to dispute an allegation that "compromising job-related conduct" occurred, or to otherwise defend the integrity of that person's work. Project Owner's proposed language addresses this concern by allowing rejection based on documented non-compliance or performance issues. If "compromising job-related conduct" occurs, Staff should be required to document that conduct in the record of the applicable project. Failure to document such conduct creates the potential for subjective and inequitable treatment of professionals, but also creates risk for future projects that may unknowingly engage the individual.

In short, Staff's proposed CUL-1 lacks an objective mechanism by which a CRS is approved and creates the possibility of well-qualified individuals being wrongly prevented from pursuing their chosen profession. Project Owner's proposed changes to the Verification for CUL-1 set forth

above provide for a provision to reject a proposed CRS based on clear, objective standards, and should be adopted.

CUL-2 governs information to be provided to the Cultural Resource Specialist and provides that “Maps shall include any NRHP/CRHR-eligible historic built environment resources identified in the FSA. Given the broad project area of analysis, this requirement is burdensome. Project Owner requests limiting the NRHP/CRHR-eligible cultural resources to those identified in the FSA archaeological project area of analysis. Project Owner proposes the following revision to CUL-2:

**CUL-2: INFORMATION TO BE PROVIDED TO CRS**

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Maps shall include any NRHP/CRHR-eligible historic built environment resources identified in the FSA’s archaeological project area of analysis.

Project Owner also requests changes to CUL-4, which provides for preparation of a final Cultural Resources Report (“CRR”), and a draft CRR upon a suspension of ground disturbance and/or construction activities. Completing a draft CRR for a short-term suspension of ground disturbance and/or construction activities creates an unnecessary burden on the Project Owner. Project Owner, therefore, requests the following revisions to CUL-4:

**CUL-4: FINAL CULTURAL RESOURCES REPORT**

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If the project owner requests a suspension of ~~all ground disturbance and/or~~ construction activities for more than 30 days, then a draft CRR that covers all cultural resources activities associated with the project shall be prepared by the CRS and submitted to the CPM for review and approval. The draft CRR shall be retained at the project site in a secure facility until ~~ground disturbance and/or~~ construction resumes or the project is withdrawn. If the project is withdrawn, then a final CRR shall be submitted to the CPM for review and approval.

Project Owner’s proposed revisions to CUL-2 and CUL-4 have been accepted by CEC Staff in the Final Staff Assessment for AES’ Alamitos Energy Center project (13-AFC-01, TN #213768).

In addition to the foregoing, Project Owner notes that a reference to the 1.4 acre triangle of land acquired from SCE should be added to the bullet point list on page 4.2-1 of the FSA. Doing so does not change any of the conclusions in the FSA as this area was analyzed in the Licensed HBEP for proposed construction laydown and construction worker parking.

**EXHIBIT D**  
LAND USE

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**Opening Testimony of AES Huntington Beach Energy, LLC  
in the Huntington Beach Energy Project Petition to Amend Proceeding  
(12-AFC-02C)**

*Project Owner's Witness:* **STEPHEN O'KANE  
SETH RICHARDSON**

*Date:* **October 27, 2016**

*Topic:* **LAND USE**

OPENING TESTIMONY

Since Staff's publication of the Final Staff Assessment ("FSA"), Project Owner has determined that, because of ongoing operations of the Huntington Beach Generating Station ("HBGS"), it may be necessary to extend the timeline within which Project Owner is required to create a single legal parcel for the entirety of the Amended HBEP. Therefore, as set forth below, Project Owner proposes to locate the first power block on a single legal parcel, which parcel will then be enlarged through lot line adjustment(s) or parcel merger(s) to encompass the entire 30 acre HBEP site before construction of the second power block commences. Project Owner's proposal is consistent with the spirit and intent of Appendix B(g)(3)(c) of the CEC Siting Regulations because it ensures that each phase of Amended HBEP is located on a single legal parcel, consistent with the phased nature of the Amended HBEP.

The Amended HBEP consists of two phases. Phase I consists of the construction of the combined cycle gas turbine ("CCGT") power block, which Project Owner intends to locate on land adjacent to the Existing Project's power blocks. Phase II consists of the construction of the simple cycle gas turbines ("SCGTs") power block, which Project Owner intends to locate on the land currently occupied by the Existing Project's power blocks. Phase II can be constructed only after the Existing Project's power blocks have been removed. The Existing Project's power blocks are expected to be removed after the Existing Project's Reliability Must Run (RMR) contract (Units 3 & 4) and tolling agreement (Units 1 & 2) (the "Existing Tolling Agreement") expires and the California Public Utilities Commission has been notified of their permanent retirement. The Existing Project cannot be retired prior to construction of the Amended HBEP because of the Existing Project's RMR contract and Tolling Agreement and the need to allow continued operation of the Existing Project power generation and synchronous condensers to maintain power delivery and grid reliability during construction of the Amended HBEP.

A portion of the 30 acre HBEP site on which a majority of both Phase I and Phase II of the Amended HBEP will be located (the "Existing Project Land") is owned by AES Huntington Beach, LLC (the "Existing Project Owner"), which is an affiliate of Project Owner. The Existing Project Owner has guaranteed a portfolio financing of a number of power projects indirectly owned by one of the Project Owner's parent companies (the "Existing Financing"). When the Existing Financing was put in place, the Existing Financing's lenders did not agree to finance the construction of the Amended HBEP and

generally prohibit the Existing Project Owner from transferring any interest in the Existing Project Owner's assets, including the Existing Project Land. However, the Existing Financing's lenders structured the Existing Financing to permit the sale of all or a portion of the Existing Project Land to Project Owner so that Project Owner could construct and separately finance the Amended HBEP, but, until the expiration of the RMR contract and Existing Tolling Agreement, only if such sale could not reasonably be expected to materially impair the use or operation of the Existing Project.

Project Owner intends to acquire a fee or leasehold interest in the Existing Project Land from the Existing Project Owner in order to construct both phases of the Amended HBEP. However, because (i) construction of Phase I will occur while the Existing Project continues to operate and (ii) Existing Project Owner can take no action that could reasonably be expected to materially impair the use and operation of the Existing Project, Project Owner will acquire the portion of the Existing Project Land on which Phase I will be located (the "Phase I Site") before construction of Phase I commences, but will not acquire the portion of the Existing Project Land on which Phase II will be located (the "Phase II Site") until after the expiration of the RMR contract and Existing Tolling Agreement.

It appears that the Subdivision Map Act ("SMA") may require the Phase I Site and the Phase II Site to remain separate legal parcels until the Existing Tolling Agreement expires and Project Owner acquires the remainder of the Existing Project Land on which the Phase II Site will be located. The SMA prohibits the sale, lease, or financing of a portion of a legal parcel without first establishing such portion as a separate legal parcel with its own parcel map, unless an exception to the SMA applies (see Cal. Gov. Code §§64499.30; 64412; 64412.1). While the financing or leasing of a portion of a parcel of land in connection with the construction and financing of a commercial or industrial project is common and would typically be exempt from the SMA (see Cal. Gov. Code § 64412.1(a)), such exemption does not apply when the commercial or industrial project is "not subject to review under local agency ordinances regulating design and improvement" (see *id.*). Given the nature of the CEC's exclusive jurisdiction over the Amended HBEP, it is unclear whether this exemption from the SMA applies to the Amended HBEP and, therefore, whether the SMA requires that the Phase I Site and the Phase II Site remain separate legal parcels until the Existing Tolling Agreement expires and Project Owner acquires the remainder of the Existing Project Land on which Phase II Site will be located. If the exemption does not apply in this instance, the Existing Project Land would have to be subdivided, or a portion of the Existing Project Land would have to be incorporated into an adjacent parcel through lot line adjustment(s), so that the portion of the Existing Project Land required for the Amended HBEP would be distinct and separate from the portion of the Existing Project Land required by the Existing Project. Given that the Amended HBEP will be built in phases and that the Amended HBEP's second power block (SCGT) will occupy the same land as the Existing Project's power blocks (once the Existing Project is demolished), it may not be possible to divide the Existing Project Land in such a manner as to establish a single legal parcel for both phases of the Amended HBEP and a separate legal parcel for the Existing Project, before construction of the Amended HBEP's first power block (CCGT) commences.

As mentioned above, the Existing Financing, although structured to accommodate the development of the Amended HBEP, will not allow the Existing Project Owner to transfer any portion of the Existing Project Land prior to the expiration of the RMR contract and Existing Tolling Agreement to the extent such transfer could reasonably be expected to materially impair the use or operation of the Existing Project. Given that the SMA may require the Existing Project Owner to transfer all of the Existing Project Land to Project Owner (which would cause Existing Project Owner to forfeit its right to locate and maintain the Existing Project on the Existing Project Land), Project Owner cannot acquire the portion of the Existing Project Land comprising the SCGTs until after the Existing Tolling Agreement expires.

In light of the ambiguity of California Government Code § 64412.1(a) and the uncertainty as to whether it would apply to the Amended HBEP, and to ensure compliance with the SMA if it does apply, Project Company is requesting the modification to the Verification of LAND-1 as set forth herein. Project Owner proposes to construct the CCGT on a single legal parcel (the “Project Parcel”), which will be comprised of a legal parcel adjacent to the Existing Project Land, the Phase I (CCGT) Site (which will be acquired from the Existing Project Owner and made part of the Amended HBEP Parcel through a lot line adjustment), and the additional 1.4-acre triangle of land included in the Amended HBEP (which will also be incorporated into the Amended HBEP Parcel through a lot line adjustment or parcel merger). Then, after Project Owner has acquired the remainder of the Existing Project Land from the Existing Project Owner, Project Owner will initiate a lot line adjustment or parcel merger to incorporate the Phase II (SCGT) Site into the Amended HBEP Parcel, thus establishing a single legal parcel for the entire 30 acre Amended HBEP site. Project Owner and the Existing Project Owner (which are affiliates owned and controlled by a common parent company) will enter into appropriate documentation to ensure that Project Owner has the right to acquire the remainder of the Existing Project Land once the Existing Tolling Agreement has expired.

Project Owner’s proposal meets the spirit and intent of Appendix B(g)(3)(c) by ensuring that all portions of the Amended HBEP, when constructed, will be located on a single legal parcel. Here, all facilities associated with the CCGT will be located on a single legal parcel, and before construction of the SCGT commences, the entire Amended HBEP site would be on a single legal parcel. In addition, site control of the entire 30 acre Amended HBEP site will not be an issue as Project Owner will have entered into agreements with the Existing Project Owner that will entitle Project Owner to acquire the portions of the Existing Project Land as and when necessary to construct both Phase I and Phase II of the Amended HBEP. Finally, Project Owner’s proposed approach also has the benefit of avoiding any future potential site control issues or problems that can arise due to project facilities being located on separate parcels.

Accordingly, Project Owner provides the following revisions to the Verification language of LAND-1:

LAND-1: The project owner shall comply with Appendix B(g)(3)(c) of the Siting Regulations (Title 20, California Code of Regulations) by

ensuring that the HBEP site, excluding linear and temporary lay down or staging area, will be located on a single legal parcel.

Verification: Prior to construction of the **combined cycle gas turbine (CCGT)** power block, the project owner shall submit evidence to the compliance project manager (CPM) indicating approval of a Lot Line Adjustment **or other action** by the city of Huntington Beach, establishing a single parcel for the **CCGT power block and related facilities** ~~30-acre~~ HBEP site. The submittal to the CPM shall include evidence of compliance with all conditions and requirements associated with the approval of the Lot Line Adjustment **or other action** by the city. **Prior to construction of the second power block, the project owner shall submit evidence to the CPM indicating approval of a Lot Line Adjustment or other action by the city of Huntington Beach establishing a single parcel for the 30 acre HBEP site. The submittal to the CPM shall include evidence of compliance with all conditions and requirements associated with the approval of the Lot Line Adjustment or other action by the city.**

In addition to the proposed revisions to the LAND-1 Verification language set forth above, Project Owner requests and additional clarification to language set forth on page 4.5-4 of the FSA regarding the local project approvals that would have otherwise been required but for the CEC's exclusive jurisdiction over the Amended HBEP. Proposed revisions to the FSA language are shown below in **bold underline** and ~~strike through~~:

But for the Energy Commission's exclusive authority to license the project, licensing the HBEP within the HBGS site would have required the following land use actions by the city of Huntington Beach:

- A Variance to exceed the maximum allowable structure height within the PS zone.
- A Conditional Use Permit to allow development of a Major Utility use within the PS zone. **(CHB 2016a, section 241.10)**
- A Coastal Development Permit to allow development, **including a lot line adjustment**, within the CZ overlay district. (CHB 2016a, sections **221.06, 241.10 245.06, 250.06**)



**EXHIBIT E**  
WATER RESOURCES

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**Opening Testimony of AES Huntington Beach Energy, LLC  
in the Huntington Beach Energy Project Petition to Amend Proceeding  
(12-AFC-02C)**

*Project Owner's Witness:* **MATT FRANCK**

*Date:* **October 27, 2016**

*Topic:* **SOIL & WATER RESOURCES**

OPENING TESTIMONY

Project Owner agrees with the conclusions in the FSA that Amended HBEP will not result in any new significant environmental impacts. Project Owner proposes revisions to the timing related to hydrostatic testing in the verification of Condition of Certification SOIL&WATER-2 because the testing is likely to occur well after site mobilization. Project Owner proposes the following revision, which has been accepted by CEC Staff in the Final Staff Assessment for AES' Alamitos Energy Center project (13-AFC-01, TN #213768):

**SOIL&WATER-2:**

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**Verification:** ~~Prior to construction mobilization~~ Thirty (30) days prior to the first scheduled hydrostatic testing event, the project owner shall submit to the CPM documentation that all necessary NPDES permits were obtained from the Santa Ana Regional Water Quality Control Board ....

Additionally, Project Owner requests that the following language in condition SOIL&WATER-3 be moved to the verification: "The project owner shall pay all necessary fees for filing and review of the RWD and all other related fees. Checks for such fees shall be submitted to the RWQCB and shall be payable to the State Water Resources Control Board." This will avoid the need to seek a project amendment if the State changes the payor or payee information. Project Owner proposes the following revision, which has been accepted by CEC Staff in the Final Staff Assessment for AES' Alamitos Energy Center project (13-AFC-01, TN #213768):

**SOIL&WATER-3:**

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Discharge of dewatering water shall comply with the Santa Ana Regional Water Quality Control Board (RWQCB) and State Water Resources Control Board regulatory requirements. ... ~~The project owner shall pay all necessary fees for filing and review of the RWD and all other related fees. Checks for such fees shall be submitted to the RWQCB and shall be payable to the State Water Resources Control Board....~~

**Verification:** Prior to any dewatering water discharge, the project owner shall submit a ROWD to the RWQCB to obtain the appropriate waiver or permit and submit the dewatering plan to the CPM. The appropriate waiver or permit, as well as dewatering plan, must be obtained at least 30 days prior to the discharge. The project owner shall

submit a copy of any correspondence between the project owner and the RWQCB regarding the waiver or permit and all related reports to the CPM within 10 days of correspondence receipt or submittal. **The project owner shall pay all necessary fees for filing and review of the RWD and all other related fees. Checks for such fees shall be submitted to the RWQCB and shall be payable to the State Water Resources Control Board.**

**EXHIBIT F**  
VISUAL RESOURCES

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**Opening Testimony of AES Huntington Beach Energy, LLC  
in the Huntington Beach Energy Project Petition to Amend Proceeding  
(12-AFC-02C)**

*Project Owner's Witness:* **STEPHEN O'KANE**

*Date:* **October 27, 2016**

*Topic:* **VISUAL RESOURCES**

OPENING TESTIMONY

The impacts of the Amended HBEP on visual resources are less than significant and no mitigation is required. As previously noted in Project Owner's PSA comments, Project Owner commits to implementing the architectural screening recommended by the City.

Project Owner appreciates Staff's revisions to VIS-1 to allow for a preliminary and a detailed plan. However, Project Owner disagrees with certain additional changes proposed by Staff related to the timing of plan implementation because the modified timing is infeasible. The FSA revises VIS-1 to require implementation of the visual enhancement elements that screen the CCGT within 12 months of commercial operation of the CCGT. Project Owner has initiated preliminary planning for the project and determined that one of the screen walls will need to be placed across the Unit 1 and 2 foundation. This placement will require demolition of Units 1 and 2 prior to full implementation of the plan elements that screen the CCGT. It is, therefore, not possible to implement the CCGT screening elements within 12 months of commercial operation of the CCGT. Accordingly, Project Owner proposes the following revision to the VIS-1 verification language.

**VIS-1**

**Verification:**

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The Plan elements pertaining to screening and enhancement of the CCGT units shall be implemented within 12 months of ~~beginning commercial operation of the CCGT units~~ **demolition of Units 1 and 2**. The Plan elements pertaining to screening and enhancement of the simple-cycle gas turbine (SCGT) units shall be implemented within 12 months of beginning commercial operation of the SCGT units.

A clean version of the proposed change to the VIS-1 Verification is set forth below:

**VIS-1**

**Verification:**

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The Plan elements pertaining to screening and enhancement of the CCGT units shall be implemented within 12 months of demolition of Units 1 and 2. The Plan elements pertaining to screening and enhancement of the simple-cycle gas turbine

(SCGT) units shall be implemented within 12 months of beginning commercial operation of the SCGT units.

Additionally, the summary of STRUC-1 on page 4.12-17 of the FSA is incomplete. The FSA states, “The required timing for the STRUC-1 submittal is 60 days prior to the start of construction.” Consistent with STRUC-1, this should be revised to state, “The required timing for the STRUC-1 submittal is 60 days prior to the start of **any increment of** construction.”

**EXHIBIT G**  
WASTE MANAGEMENT

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**Opening Testimony of AES Huntington Beach Energy, LLC  
in the Huntington Beach Energy Project Petition to Amend Proceeding  
(12-AFC-02C)**

*Project Owner's Witness:* **JERRY SALAMY**

*Date:* **October 27, 2016**

*Topic:* **WASTE MANAGEMENT**

OPENING TESTIMONY

Project Owner concurs with Staff's conclusions in the Waste Management section of the FSA. However, as previously stated in Project Owner's comments on Staff's Preliminary Staff Assessment (TN# 211973), Staff's proposed revision to the verification of WASTE-5 needs further revision. Project Owner agrees that the Waste Management Plan shall be provided to the City and the CPM, but the City should receive the Plan for review and comment and the CEC CPM will have approval authority over the Waste Management Plan. Thus, Staff's additional proposed language about submission to the City for approval should be deleted from the Condition Verification. Proposed revisions to the WASTE-5 Verification are set forth below.

**WASTE-5** \*\*\*

**Verification:** The project owner shall submit the C&D Debris Waste Reduction and Recycling Plan to the ~~CPM and the~~ city of Huntington Beach Department of Planning and Building for **review and comment** ~~approval~~ **and to the CPM for approval** no less than 30 days prior to the initiation of demolition and construction activities at the site.



**EXHIBIT H**  
GEOLOGY

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**Opening Testimony of AES Huntington Beach Energy, LLC  
in the Huntington Beach Energy Project Petition to Amend Proceeding  
(12-AFC-02C)**

*Project Owner's Witness:* **STEPHEN O'KANE  
JERRY SALAMY**

*Date:* **October 27, 2016**

*Topic:* **GEOLOGY**

OPENING TESTIMONY

Project Owner concurs with Staff's conclusions in the Geology section of the FSA. However, Project Owner reiterates the comments originally set forth in Project Owner's PSA Comments (TN# 212379) regarding the deletion of GEO-3, which Staff failed to acknowledge or respond to in the FSA.

As previously stated, and as discussed at the July 12 PSA Workshop, Project Owner agrees with Staff's conclusion that the geologic hazards present at the amended HBEP site are essentially the same as those considered in the Commission's Decision and appreciates Staff's consideration for mitigating potential tsunami risks. The PSA proposed GEO-3 requiring preparation of a "Tsunami Hazard Mitigation Plan." Project Owner's PSA comments stated that while there is no legal or regulatory requirement to prepare a Tsunami Hazard Mitigation Plan, Project Owner would not object to incorporating tsunami hazard notification and evacuation plans into the Emergency Action Plan for construction and operation. At the July 12, 2016 PSA Workshop, Project Owner pointed to the existing Emergency Action Plan that is in place at the Huntington Beach Generating Station, which addresses tsunami hazards and measures to inform employees and contractors of the potential hazard. Like the Licensed HBEP, the Amended HBEP will be designed to minimize and avoid potential risks from tsunami run-up hazards.

Project Owner agrees with Staff that it is appropriate to be prepared to respond to a potential tsunami event and ensure that all workers and site visitors would be safe from a tsunami event. The Project Owner is willing to incorporate applicable tsunami recommendations and procedures into the Emergency Action Plans specified in Conditions Worker Safety-1 (Project Construction Safety and Health Program) and Worker Safety-2 (Project Operations and Maintenance Safety and Health Program) similar to other known geologic hazards that exist.

In addition, GEOLOGY AND PALEONTOLOGY - FIGURE 1 was issued by the City of Huntington Beach well before the Commission issued the Final Decision for the Licensed HBEP. It is not new information (it was issued by the City in 2007) and is not a law, ordinance, regulation, or standard ("LORS"). The figure was included in an advisory brochure issued by the Huntington Beach Fire Department Emergency Management & Homeland Security to the general public.

The project's design features will help minimize the effects of a tsunami. Furthermore, the Emergency Action Plans that will be put into place for both construction and operation of the Amended HBEP in accordance with Conditions WORKER SAFETY-1 and WORKER SAFETY-2 will address tsunami hazards and measures to inform employees and contractors of the potential hazards. Therefore, GEO-3 is not required to mitigate a significant impact, as measures are already in place to minimize potential impacts.

Not only is GEO-3 unnecessary, the language of the condition is onerous and contains requirements that should not be applied to a private entity. GEO-3 requires that the Tsunami Hazard Mitigation Plan "complies with the recommendations and procedures provided by the city of Huntington Beach or Orange County" but does not reference any LORS requiring such compliance.

GEO-3 also requires that every visitor to the HBEP site be subject to a training program for how to respond to tsunami hazards. By its express terms, this language would require extensive training and documentation for a wide array of people that may happen to "visit" the HBEP site, including package delivery people or other occasional visitors whose visit to the site could be for a shorter period of time than would be required for the mandatory training. There is no justification in the FSA or elsewhere in the record for such a burdensome "training" requirement.

In short, the extensive requirements set forth in GEO-3 are simply not needed. As set forth herein, various tsunami recommendations and procedures can be included in the Emergency Action Plans for the construction and operation of the Amended HBEP. GEO-3 should not be adopted as part of the Final Decision on the project.

**EXHIBIT I**  
PALEONTOLOGICAL RESOURCES

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**Opening Testimony of AES Huntington Beach Energy, LLC  
in the Huntington Beach Energy Project Petition to Amend Proceeding  
(12-AFC-02C)**

*Project Owner's Witness:* **STEPHEN O'KANE**

*Date:* **October 27, 2016**

*Topic:* **PALEONTOLOGICAL RESOURCES**

OPENING TESTIMONY

As discussed at the July 12, 2016 PSA Workshop, the Project Owner also requests that Staff revise proposed Condition PAL-1 regarding the requirements for approval of a Paleontological Resource Specialist. Specifically, Project Owner requests the following language be added to the Verification of proposed Condition PAL-1 related to the Paleontological Resource Specialist:

**The Project Owner shall provide the Compliance Project Manager (CPM) with the resume and qualifications of its Paleontological Resource Specialist (PRS) for review and approval. A proposed CRS previously approved by Commission Staff within the preceding five (5) years shall be deemed approved ten (10) days after project owner provides a resume and statement of availability of the proposed PRS. The CPM may disapprove a previously approved PRS within seven (7) days of Project Owner submission of the Proposed PRS' resume and statement of availability only if non-compliance or performance issues events were documented in the compliance record for the previous CEC project work conducted by the proposed Paleontological Resource Specialist previously approved within the last five (5) years by the Commission shall be automatically approved and the project owner shall provide a resume and statement of availability. The CPM may disapprove a previously approved PRS if non-compliance or performance issues were documented in the record during the previous project work by the PRS or the PRS's qualifications are not applicable to the specific paleontological resources identified in the HBEP project area.**

Staff failed to address Project Owner's PSA comments presenting the above proposed additional language. Project Owner's proposed changes to PAL-1 (above) allow for the Paleontological Resource Specialist to be disapproved for documented noncompliance or performance issues and for not having the applicable qualifications for the specific paleontological resources identified in the project area.

Additionally, the current qualifications require that a proposed Paleontological Resource Specialist have the equivalent or combination of the following qualifications approved by the CPM: a Bachelor's Degree in geology of paleontology and one year of experience monitoring in California; or an AS or AA in geology, paleontology, or biology and four years' experience monitoring in California; or enrollment in upper division classes pursuing a degree in the fields of geology or paleontology and two years of monitoring experience in California. Since the

proposed changes to PAL-1 require the submittal of a resume, it should not be difficult to determine if the proposed Paleontological Resource Specialist previously approved by the CEC within the last five years complies with the current Paleontological Resource Specialist qualifications.

**EXHIBIT J**  
TRANSMISSION LINE SAFETY AND NUISANCE

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**Opening Testimony of AES Huntington Beach Energy, LLC  
in the Huntington Beach Energy Project Petition to Amend Proceeding  
(12-AFC-02C)**

*Project Owner's Witness:* **STEPHEN O'KANE**

*Date:* **October 27, 2016**

*Topic:* **TRANSMISSION LINE SAFETY &  
NUISANCE**

OPENING TESTIMONY

In the FSA, Staff failed to address Project Owner's PSA comments on conditions of certification TLSN-1 and TLSN-2. The language of TLSN-1 and TLSN-2 in both the PSA and the FSA does not reflect the language in the HBEP Final Decision (TN #214116), but Staff has not explained the basis for any amendments to this language, nor reflected the amendments in ~~strikeout~~ or **bold underline**, which is the standard method of identifying proposed changes to condition language.

In the Final Decision, TLSN-1 states:

**TLSN-1** The project owner shall construct the proposed 230-kV generator tie transmission line according to all applicable laws, ordinances, regulations, and industry standards, including the National Electric Safety Code (NESC) the requirements of California Public Utility Commission's GO-95, GO-52, GO-131-D, Title 8, and Group 2, High Voltage Electrical Safety Orders, sections 2700 through 2974 of the California Code of Regulations, and Southern California Edison's EMF Design Reduction Guidelines for Electrical Facilities.

**VERIFICATION:** At least 30 days prior to start of construction of the generator tie line or related structures and facilities, the project owner shall submit to the Compliance Project Manager (CPM) a letter signed by a California registered electrical engineer affirming that the lines will be constructed according to the requirements stated in the condition.

In the Final Decision, TLSN-2 states:

**TLSN-2** The project owner shall measure the maximum strengths of the line electric and magnetic fields at the edge of the right-of-way to validate the estimates the applicant has provided for these fields. These measurements shall be made (a) according to the standard procedures of the American National Standard Institute/Institute of Electrical and Electronic Engineers (ANSI/IEEE) and, (b) before



and after energization. The measurements shall be completed no later than six months after the start of operations.

**VERIFICATION:** The project owner shall file copies of the pre- and post-energization measurements with the CPM within 60 days after completion of the measurements. The CPM shall determine the need for further mitigation from these field measurements.

Without explanation, the language in the PSA and FSA varied from this language in the Final Decision. Project Owner raised this issue in comments on the PSA (TN #212379) and staff failed to address the comment in the FSA. There is no basis or explanation for varying from the Final Decision language. The Presiding Member should rely on the above language in the Presiding Member's Proposed Decision and not on the language set forth in the FSA.

**EXHIBIT K**  
COMPLIANCE

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**Opening Testimony of AES Huntington Beach Energy, LLC  
in the Huntington Beach Energy Project Petition to Amend Proceeding  
(12-AFC-02C)**

*Project Owner's Witness:* **STEPHEN O'KANE**

*Date:* **October 27, 2016**

*Topic:* **COMPLIANCE**

OPENING TESTIMONY

Project Owner has experienced delayed CEC Staff review and approval of compliance submittals associated with other CEC projects. In particular, delayed Staff review and approval of certain cultural submittals resulted in unnecessary delays in obtaining authorization to proceed with activities on another CEC project. Timely review and approval of compliance certifications is critical to meeting the project's construction and operation related milestones. In order to assure timely approval of compliance submittals, Project Owner requests the following revisions to COM-3 and COM-4.

**COM-3: Compliance Verification Submittals.** Verification lead times associated with the start of construction may require the project owner to file submittals during the amendment process, particularly if construction is planned to commence shortly after certification. The verification procedures, unlike the conditions, may be modified as necessary by the CPM after notice to the project owner. **For any compliance verification submittal requiring approval by the CPM, if the CPM fails to comment on or approve such submittal at least 15 days prior to the approval trigger (e.g., site mobilization, start of construction), such submittal shall be deemed approved.**

**COM-4: Pre-Construction Matrix and Tasks Prior to Start of Construction.**

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The deadlines for submitting various compliance verifications to the CPM allow staff sufficient time to review and comment on, and, if necessary, also allow the project owner to revise the submittal in a timely manner. These procedures help ensure that project construction proceeds according to schedule. Failure to submit required compliance documents by the specified deadlines may result in delayed authorizations to commence various stages of the project. **Similarly, staff's failure to timely review and comment on or approve compliance documents may impair the project's construction schedule. Accordingly, if staff fails to comment on or approve any compliance submittal listed on the pre-construction matrix at least 15 days prior to planned start of construction, the subject submittal will be deemed approved.**

Project Owner appreciates Staff's modifications to COM-13 regarding triggers for incident reporting and, particularly, the replacement of Item 1 with new language. To avoid any ambiguity regarding the definition of unplanned outage, Project Owner proposes that Item 1 be further revised to use the term "Forced Outage" as defined in the CAISO tariff as follows:

**COM-13 Incident-Reporting Requirements.** The project owner shall notify the CPM within one (1) hour after it is safe and feasible of any incident at the facility that results in any of the following:

1. An event of any kind that causes an unplanned **"Forced Outage" as defined in the CAISO tariff;**

\*\*\*

Project Owner also objects to the requirement in COM-14 to provide notice of non-operation to "interested agencies, and nearby property owners." This language is ambiguous and creates unnecessary burden. Project Owner's proposed revision to COM-14 has been accepted by CEC Staff in the Final Staff Assessment for AES' Alamitos Energy Center project (13-AFC-01, TN #213768). The revised language is set forth below:

**COM-14 Non-Operation and Repair/Restoration Plans.** If the facility ceases operation temporarily (excluding planned and unplanned maintenance) for longer than one(1) week (or other CPM-approved date), but less than three (3) months (or other CPM-approved date), the project owner shall notify the CPM, ~~interested agencies, and nearby property owners....~~

Finally, as stated in Project Owner's comments on the PSA, there is no basis for adding the following language to COM-15: "the Energy Commission may initiate corrective actions against the property owner to complete facility closure." This language is unnecessary and duplicative, and should be stricken. COM-15 should be revised to reflect the language in the Final Decision as follows:

**COM-15 Facility Closure Planning.**

\*\*\*

If the Energy Commission-approved Final Closure Plan and Cost Estimate procedures are not initiated within one (1) year of the plan approval date, it shall be updated and re-submitted to the Energy Commission for supplementary review and approval. If a project owner initiates but then suspends closure activities, and the suspension continues for longer than one (1) year, ~~the Energy Commission may initiate correction actions against the project owner to complete facility closure~~ the Final Closure Plan and Cost Estimate shall be resubmitted to the Commission for supplementary review and approval....

**EXHIBIT L**  
**PROJECT OWNER'S PRELIMINARY EXHIBIT LIST**

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In the Matter of:

**The Petition to Amend the  
HUNTINGTON BEACH ENERGY PROJECT**

Docket No. 12-AFC-02C

**PROJECT OWNER'S  
PRELIMINARY EXHIBIT LIST**

No.	TN #	DOCUMENT TITLE (AS DOCKETED)	SUBJECT AREA
5001	206087	<a href="#">Petition to Amend With Appendices</a> Docketed 9/9/2015	All Topics
5002	206442	<a href="#">Project Owner's Proposed Schedule and Request for Scheduling Order</a> Docketed 10/27/2015	General
5003	206806	<a href="#">Project Owner's Response to Staff's Issues Identification Report, Proposed Schedule, and Request for Committee Scheduling Order</a> Docketed 12/1/2015	General
5004	206807	<a href="#">Objections to Certain Data Responses Contained in CEC Staff's Data Requests Set One (#A1-A74)</a> Docketed 12/1/2015	General Visual Resources Cultural Resources
5005	206858	<a href="#">Data Responses, Set 1 (Responses to Data Requests 1-74)</a> Docketed 12/7/2015	Traffic & Transportation Visual Resources Project Description Cultural Resources Socioeconomics Transmission System Engineering
5006	206859	<a href="#">AES Southland Development LLC's Repeated Application for Confidential Designation and for Response to Data Request</a> Docketed 12/7/2015	General Cultural Resources
5007	207211	<b>Confidential</b> Response to Staff's Data Requests, Set One Docketed 12/7/2015	General Cultural Resources

No.	TN #	DOCUMENT TITLE (AS DOCKETED)	SUBJECT AREA
5008	206916	<a href="#">Project Owner's Handout for Huntington Beach Energy Project Site Visit 12-08-2015</a> Docketed 12/10/2015	General
5009	206917	<a href="#">Presentation - Environmental Scoping Meeting and Informational Hearing by AES Southland Development, LLC</a> Docketed 12/10/2015	General
5010	206935	<a href="#">AES Southland Development, LLC's Application for Designation of Confidential Cultural Resources Records</a> Docketed 12/11/2015	General Cultural Resources
5011	207209	AES Southland Development, LLC's <b>Confidential</b> Cultural Resources Records Docketed 12/11/2015	General Cultural Resources
5012	207011	<a href="#">Project Owner's Follow-Up to Data Request Workshop 12.14.15</a> Docketed 12/14/2015	General Visual Resources Socioeconomics
5013	207017	<a href="#">Response Letter to the 10/26/15 Request for Water Supply Assessment</a> Docketed 12/15/2015	Water Resources
5014	210109	<a href="#">Project Owner's Status Report #1; Response to Committee Scheduling Order</a> Docketed 2/1/2016	General
5015	210262	<a href="#">Project Owner's Response to City of Huntington Beach Comments on PTA</a> Docketed 2/10/2016	General Compliance Conditions Traffic & Transportation Visual Resources
5016	210567	<a href="#">Project Owner's Status Report #2</a> Docketed 3/1/2016	General
5017	210763	<a href="#">Conceptual Design Plan - Status Update</a> Docketed 3/16/2016	Visual Resources
5018	210923	<a href="#">Project Owner's Status Report #3</a> Docketed 4/1/2016	General

No.	TN #	DOCUMENT TITLE (AS DOCKETED)	SUBJECT AREA
5019	210984	<a href="#">AES Huntington Beach Energy, LLC's Petition to Change Ownership</a> Docketed 4/8/2016	General
5020	211139	<a href="#">CAISO Section 25 Affidavit</a> Docketed 4/19/2016	Transmission System Engineering
5021	211292	<a href="#">Status Report #4</a> Docketed 4/29/2016	General
5022	211411	<a href="#">Letter Regarding Response to Conservancy</a> Docketed 5/9/2016	General Biological Resources Noise & Vibration Traffic & Transportation Land Use Water Resources
5023	211690	<a href="#">Project Owner's Status Report #5</a> Docketed 6/1/2016	General
5024	211756	<a href="#">Applicant's Supplement to Status Report No. 5</a> Docketed 6/8/2016	General
5025	211856	<a href="#">Order Approving Transfer of Ownership</a> Docketed 6/17/2016	General
5026	212044	<a href="#">Project Owner's Status Report #6</a> Docketed 6/30/2016	General
5027	212311	<a href="#">Project Owner's Response to the Committee's Amended Scheduling Order</a> Docketed 7/15/2016	General



No.	TN #	DOCUMENT TITLE (AS DOCKETED)	SUBJECT AREA
5028	212379	<a href="#">Project Owner's Comments on the Preliminary Staff Assessment</a> Docketed 7/21/2016	General Project Description Biological Resources Cultural Resources Land Use Soil & Water Resources Traffic & Transportation Transmission Line Safety & Nuisance Visual Resources Waste Management Geology & Paleontology Transmission System Engineering Alternatives Compliance Conditions
5029	212380	<a href="#">City of Huntington Beach RESOLUTION NO 2016-27</a> Docketed 7/21/2016	Land Use Visual Resources
5030	212525	<a href="#">Status Report #7; Request for Status Conference</a> Docketed 8/1/2016	General
5031	212678	<a href="#">Huntington Beach California ISO Repowering Study Report</a> Docketed 8/8/2016	Transmission System Engineering
5032	212752	<a href="#">Response to City of Huntington Beach Comments on the PSA</a> Docketed 8/11/2016	General Traffic & Transportation Compliance Conditions Worker Health & Safety
5033	212753	<a href="#">AES Huntington Beach Energy LLC Response to CCC Draft Report</a> Docketed 8/11/2016	General
5034	212948	<a href="#">Project Owner's Follow-Up to Status Conference - Additional PSA Comments (Alternatives - Clutches)</a> Docketed 8/25/2016	Alternatives

No.	TN #	DOCUMENT TITLE (AS DOCKETED)	SUBJECT AREA
5035	213457	<a href="#">AES Status Report #8</a> Docketed 9/1/2016	General
5036	213478	<a href="#">Project Owner's Additional Response to Coastal Commission Comments</a> Docketed 9/2/2016	Traffic & Transportation Biological Resources Land Use Noise
5037	213492	<a href="#">Response to August 29, 2016 Amended Committee Scheduling Order [Clutches]</a> Docketed 9/6/2016	General Alternatives
5038	213812	<a href="#">Project Owner's Motion for Order to Publish Final Staff Assessment</a> Docketed 9/27/2016	General
5039	213865	<a href="#">Project Owner's Status Report #9</a> Docketed 9/30/2016	General
5040	213999	<a href="#">Project Owner's Request for Evidentiary Hearing Date and Related Deadlines</a> Docketed 10/13/2016	General
5041	214181	<a href="#">Declaration of Mark Bastasch in Support of Project Owner's Opening Testimony</a> Docketed 10/26/2016	Noise & Vibration
5042	214183	<a href="#">Declaration of Melissa Fowler in Support of Project Owner's Opening Testimony</a> Docketed 10/26/2016	Biological Resources
5043	214186	<a href="#">Declaration of Thomas Priestley in Support of Project Owner's Opening Testimony</a> Docketed 10/26/2016	Visual Resources
5044	214179	<a href="#">Declaration of Lisa Valdez in Support of Project Owner's Opening Testimony</a> Docketed 10/26/2016	Traffic & Transportation
5045	214185	<a href="#">Declaration of Thomas A. Lae in Support of Project Owner's Opening Testimony</a> Docketed 10/26/2016	Geologic Hazards & Resources

No.	TN #	DOCUMENT TITLE (AS DOCKETED)	SUBJECT AREA
5046	214182	<a href="#">Declaration of Matt Franck in Support of Project Owner's Opening Testimony</a> Docketed 10/26/2016	Water Resources
5047	214180	<a href="#">Declaration of Jennifer Krenz-Ruark in Support of Project Owner's Opening Testimony</a> Docketed 10/26/2016	Soils
5048	214177	<a href="#">Declaration of Fatuma Yusuf, Ph.D. in Support of Project Owner's Opening Testimony</a> Docketed 10/26/2016	Socioeconomics
5049	214184	<a href="#">Declaration of Natalie Lawson in Support of Project Owner's Opening Testimony</a> Docketed 10/26/2016	Cultural Resources
5050	214178	<a href="#">Declaration of James Verhoff in Support of Project Owner's Opening Testimony</a> Docketed 10/26/2016	Paleontological Resources
5051	214187	<a href="#">Declaration of Robert Sims in Support of Project Owner's Opening Testimony</a> Docketed 10/26/2016	Transmission Line Safety & Nuisance Transmission System Engineering
5052	214192	<a href="#">Declaration of Jerry Salamy</a> Docketed 10/26/2016	Project Description Executive Summary Geology Waste Management
5053	214193	<a href="#">Declaration of Stephen O'Kane</a> Docketed 10/26/2016	All Topics
5054	214194	<a href="#">Declaration of Seth Richardson</a> Docketed 10/26/2016	Land Use
5055	TBD	Applicant's Opening Testimony, including Exhibits A through L Docketed 10/27/2016	All Topics