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**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of:

Docket No. 12-AFC-02C

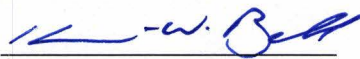
Petition to Amend the Energy Commission
Final Decision for the
HUNTINGTON BEACH ENERGY PROJECT

**ENERGY COMMISSION
STAFF'S REBUTTAL TESTIMONY**

Staff has received the testimony filed by AES Huntington Beach, LLC (project owner) on October 27, 2016. Based on a review of the project owner's opening testimony, staff notes that, absent resolution, several contested issues remain. These include: Biological Resources, Cultural Resources, Water Resources, Geology and Paleontological Resources, Visual Resources, Transmission Line Safety and Nuisance, Waste Management, and Compliance Conditions. Staff notes that all testimony regarding these areas has been docketed by staff in the Final Staff Assessment and by the applicant in their opening testimony, and these contested issues are ripe for adjudication. Staff offers the following rebuttal testimony where applicable, and reserves the right to submit additional evidence at such time as becomes necessary.

DATED: November 3, 2016

Respectfully submitted,



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BIOLOGICAL RESOURCES

Rebuttal Testimony of Tim Singer and Heather Blair

Staff provides this testimony to supplement and clarify staff's testimony in the final staff assessment (FSA) for Biological Resources and to address differences between the petitioner and staff's views regarding Condition of Certification **BIO-1**.

Staff concludes that the applicant's proposed approval window is insufficient for CPM review, even for a candidate who has served as Designated Biologist on a prior project. While staff understands the project owner's stated concern regarding their preferred schedule, there is nothing to suggest that the CPM or staff could not - or would not - provide timely review of the Designated Biologist's qualifications in the regular course of business. Staff is always keenly aware of scheduling issues, and routinely works with project owners to ensure that all of the technical areas of each facility are reviewed in a timely manner. There are no facts to indicate the Amended HBEP project needs a special condition in how cultural resource personnel are approved or that as written **BIO-1** will delay project construction. Important features of **BIO-1** include:

- The criteria are **objective**, as they are keyed to types and amounts (time) of relevant experience.
- Staff's proposed **BIO-1** is **time-tested**: Energy Commission CPMs have used staff's proposed **BIO-1** to apply objective criteria for the approval of Biological Resources Specialists and other personnel for nearly all recent Energy Commission-licensed projects.
- In case after case, these CPM-approved personnel have implemented the biological resource conditions in a manner responsive to both project owner and Energy Commission needs.

Nothing in the petitioner's proposed changes to **BIO-1** would improve the objectivity or reliability of the criteria that CPMs have been using to approve qualified cultural resources personnel. Staff further concludes that restricting the CPM to allow disapproval of a proposed Designated Biologist only for non-compliance or performance issues documented on previous Energy Commission project work is contrary to the intent of the approval process by disallowing consideration of issues that may have arisen on non-Energy Commission project work. Staff recommends retaining Condition of Certification **BIO-1** as it is presented in the FSA.

CULTURAL RESOURCES

Rebuttal Testimony of Gabriel Roark

Staff provides this testimony to supplement and clarify staff's testimony in the FSA of cultural resources and to address differences between the petitioner and staff's views regarding Condition of Certification **CUL-1**. Staff agrees with the petitioner's proposed changes to conditions **CUL-2** and **CUL-4** (see Foster and Castaños 2016: Exhibit C, p. 3).

Among the FSA's eight conditions defining a cultural resources mitigation and monitoring program is condition **CUL-1**, which defines the professional qualifications of cultural resources personnel charged with implementation of the mitigation and monitoring program (CEC 2016:4.3-11–4.3-13). Staff proposes that the Committee retain **CUL-1** as provided in its Final Decision on the Huntington Beach Energy Project (HBEP). As already recognized and adopted, the Final Decision's **CUL-1** establishes objective and time-tested criteria for the approval of cultural resources personnel for construction of the HBEP¹. The petitioner's opening testimony argues that, as written, **CUL-1** may result in delays in the approval of qualified cultural resources personnel or subject otherwise qualified personnel to subjective rejection by Commission staff. The only criteria that **CUL-1** provides for an Energy Commission compliance project manager (CPM) to decline prospective cultural resources personnel are the professional qualifications described in the condition itself. There are no facts to indicate the Amended HBEP project needs a special condition in how cultural resource personnel are approved or that as written **CUL-1** will delay project construction. Important features of **CUL-1** include:

- The criteria are **objective**, as they are keyed to *types* and *amounts (time)* of relevant experience.
- Staff's proposed **CUL-1** is **time-tested**: Energy Commission CPMs have used staff's proposed **CUL-1** to apply objective criteria for the approval of Cultural Resources Specialists and other personnel for nearly all recent Energy Commission-licensed projects.
- In case after case, these CPM-approved personnel have implemented the cultural resource conditions in a manner responsive to both project owner and Energy Commission needs.

Nothing in the petitioner's proposed changes to **CUL-1** would improve the objectivity or reliability of the criteria that CPMs have been using to approve qualified cultural resources personnel. In fact, the *petitioner's* proposed changes to **CUL-1** would *unevenly* apply **CUL-1's** objective and reliable qualifications criteria. The petitioner's proposal reads, "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

¹ Such personnel include Cultural Resource Specialists, Cultural Resource Monitors, and Native American Monitors.

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 [cultural] resources identified in the HBEP project area.*" (Foster and Castaños 2016: Exhibit C, p. 1; emphasis added.) The petitioner's proposal would apply **CUL-1**'s qualification criteria to any candidates who have not been previously approved by the CPM, but *would not apply* the same criteria to candidates who have been previously approved within the last 5 years, *irrespective of whether they meet the CUL-1 qualifications*. Staff's conviction is that good governance and sound resource management principles are upheld by applying the same qualifications standards to *all* candidates.

The petitioner brings forth the idea that somehow the selection or not of a particular cultural resource specialist or monitor impacts the ability for one to earn a living. Staff takes the vetting process seriously and objectively attempts to ensure appropriate specialists and monitors are selected. There is no evidence that the number of positions available in which staff has any selection authority is to such a degree that the entire California market is impacted. The extent of monitoring (which in this case would only occur if construction activities expose buried cultural resources) would not appear to control the market for monitoring as many other types of projects in the state employ cultural resources monitors, such as wind energy facilities, highway construction, and redevelopment of industrial properties. Therefore, staff recommends that the Committee adopt **CUL-1** as presented in the FSA and Decision (included in **Appendix CR-1** for your reference along with conditions **CUL-2** and **CUL-4**).

REFERENCES CITED

CEC 2016—California Energy Commission. *Final Staff Assessment, Part 1 for the Petition to Amend the Huntington Beach Energy Project Decision.* October. Sacramento, CA. CEC-700-2016-003-FSA-PT1. TN 214025.

Foster and Castaños 2016—Melissa A. Foster and Kristen T. Castaños. 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. Stoel Rives, Sacramento, CA. 88364403.1 0048585- 00009. On file, Docket Unit, California Energy Commission, Sacramento. TN 214211.

SOIL AND WATER RESOURCES

Testimony of Mike Conway, P.G.

Staff has reviewed the opening testimony filed by the parties. Staff concurs with the petitioner's opening testimony and agrees with the proposed changes to conditions of certification **SOIL&WATER-2** and **-3**.

Staff accepts the petitioner's proposed changes to the verification language of **SOIL&WATER-2**. The requested change concerns the deadline to submit proof that a dewatering permit was obtained from the Santa Ana Regional Water Quality Control Board. The change allows the project owner to submit proof of permit "Thirty (30) days prior to the first scheduled hydrostatic testing event..." rather than prior to construction mobilization. This change would still allow adequate advance warning of any permitting issues related to dewatering.

Staff accepts the petitioner's proposed changes to condition **SOIL&WATER-3**. The petitioner requests to remove language related to fees payable to the Regional and State Water Boards and replace them in the verification section of the condition. The proposed change is administrative in nature and will not change the effectiveness of the condition.

GEOLOGY AND PALEONTOLOGY RESOURCES

Rebuttal Testimony of Mike Conway, P.G.

This rebuttal testimony supplements and clarifies the information in the FSA for the Amended HBEP. Staff has reviewed the opening testimony filed by the parties.

Staff declines to delete condition **GEO-3**, as requested by the petitioner. Staff appreciates the petitioner's cognizance of the tsunami hazard and a willingness to address the impacts this hazard presents. Staff concluded that the hazard to public health and safety from tsunami inundation is significant and requires mitigation. This is within the regulatory purview of the California Energy Commission as authorized, consistent with the Warren-Alquist Act. Staff has referred to the Huntington Beach/Fountain Valley Hazard Mitigation Plan, which outlines steps to ensure public health and safety from such hazards. Staff concludes **GEO-3** is also consistent with this LORS.

Staff considers preparation and implementation of a Tsunami Hazard Mitigation Plan (THMP) to be an essential element for ensuring public safety. Staff does agree that the THMP could be part of the Emergency Action Plan, which is part of the Project Construction Safety and Health Program and Project Operations and Maintenance Safety and Health Program required under conditions **WORKER SAFETY-1** and **-2**, respectively. Staff modified **GEO-3** prior to the release of the FSA to accommodate the petitioner's comments and to allow for incorporation of the tsunami hazard response into the plans for **WORKER SAFETY-1** and **-2**. Staff is not currently proposing new changes to **GEO-3** in response to the petitioner's comments.

Staff modified **GEO-3** to require the project owner to conduct regular tsunami evacuation drills. This modification will improve the effectiveness of **GEO-3** and make the condition consistent with recently proposed conditions for other projects.

The petitioner also requested a change to **PAL-1** that would add additional language to the condition's verification. Staff declines to revise **PAL-1** in the manner requested because prior performance as a Paleontological Resource Specialist (PRS) on other Energy Commission projects may have no bearing on an individual's qualifications to do so for the Amended HBEP. Each proposed project is located in a unique environmental setting that requires an original evaluation of the professional qualifications requirements for a PRS. Therefore, a blanket approval process, based solely on prior acceptance within the last 5 years, is not appropriate for the Amended HBEP.

Staff provides condition of certification **GEO-3** below to show the staff recommended language, which includes the petitioner's recommended changes that allow for the incorporation of the tsunami hazard response into the plans for **WORKER SAFETY-1** and **-2**.

PROPOSED CONDITIONS OF CERTIFICATION

TSUNAMI HAZARD MITIGATION PLAN

GEO-3 **The project owner shall ensure that all staff and visitors at the project site are informed of tsunami hazards in the region and have been shown how and where to evacuate the site if there is potential for a tsunami to affect public health and safety at the site. The project owner shall ensure that the information provided to staff and visitors complies with the recommendations and procedures provided by the city of Huntington Beach or Orange County.**

The project owner shall provide a Tsunami Hazard Mitigation Plan (THMP) to the compliance project manager (CPM) for review and approval.

The THMP shall include:

- A. **A general discussion of tsunami hazard and the public safety risk they present at the site.**
- B. **Identification of what tsunami hazards exist specific to the project site and how the project owner proposes to ensure compliance with applicable hazard response plans.**
- C. **A discussion of criteria for a response to ensure public safety for a tsunami event and show where on and offsite refuge can be accessed, and evacuation routes.**
- D. **Identification of any site modifications or signage that may be needed to show how and where refuge is accessible.**
- E. **The THMP shall also include a training program for visitors and workers, which could be incorporated with other safety training programs such as those required in WS-1 and WS-2. The purpose of training is to inform workers and visitors how to respond to tsunami hazards and where they may obtain refuge in the event it is determined it is necessary to evacuate the project site. The project owner may include the training for tsunami hazard response as a part of the Worker Environmental Awareness Program required in PAL-4 below. The training shall include:**
 - 1. **Information on who and how staff and visitors will be notified that there is a potential for a tsunami event to impact the site and how they should respond;**
 - 2. **Graphics showing methods of seeking refuge and routes for evacuation of the site;**

3. A certification of completion form signed by each worker indicating that he/she has received the training; and
4. Submittal of the training script and, if the project owner is planning to use a video for training, a copy of the training video, with the set of reporting procedures for workers to follow that will be used to present the training.
5. Provision for conducting a tsunami evacuation drill for the entire site at least once every two years or in conjunction with other site safety drills. A report summarizing the results of an evacuation drill, including a list of participants and any recommendations for modification of the THMP arising from issues identified during conduct of these drills shall be prepared.

The THMP shall be updated if the city of Huntington Beach or Orange County updates their tsunami response plan. When there is an update to hazard response plans, the project owner shall submit for CPM approval an updated THMP showing how the project owner proposes to comply.

VISUAL RESOURCES

Testimony of Jeanine Hinde

This testimony supplements and clarifies the information in the FSA Part 1 for the Petition to Amend the Huntington Beach Energy Project. Staff has reviewed the opening testimony filed by the project owner and agrees with the proposed change to Condition of Certification **VIS-1**. Staff offers additional testimony to clarify the requirements under “Verification” for **VIS-1** and to edit text under “Response to Comments” to match the changes to the condition of certification. Only the applicable portions of text recommended for edits are reproduced below. None of the edits proposed by staff in this rebuttal testimony change staff’s conclusions or analysis of project impacts on visual resources. Modifications are shown in ~~strike-through~~ for deletions and **bold and underline** for additions.

RESPONSE TO COMMENTS

Staff recommends the following edits to a portion of the response to comment on page 4.12-18 of the FSA, third paragraph on the page:

In its comments on maintaining site access, the HBFD requests assurance that the middle sphere wall will not interfere with aerial access to the existing power plant (HBGS Units 1 and 2), which are denoted with gray shading on **VR Figure 10** (Huntington Beach Fire Department 2016). Under “Verification” for **VIS-1**, staff recommends that architectural screening and enhancement of the CCGT units, **including the easternmost and middle screens**, be completed within 12 months of ~~beginning commercial operation of those units, which is planned for the second quarter of 2020~~ **completing demolition of the HBGS Units 1 and 2. With this change in timing, interference with the HBFD’s need to maintain aerial access to an operating power plant would be avoided.** ~~Based on the demolition and construction timeline discussed in the **Project Description**, retirement of HBGS Unit 1 is planned for the fourth quarter of 2019, and retirement of Unit 2 is anticipated by the end of 2020. Assuming this approximate schedule, installation of the middle sphere wall could commence in early 2021, following shut down of HBGS Unit 2, and could be completed reasonably close to the 12-month schedule proposed by staff under **VIS-1**.~~

MODIFICATIONS TO CONDITION OF CERTIFICATION VIS-1 PROPOSED BY THE PROJECT OWNER AND STAFF

Staff recommends minor edits to the project owner’s proposed change to the timing for completing visual screening of the CCGT units. The edits shown below include staff’s and the project owner’s changes to verification for Condition of Certification **VIS-1**. The project owner requested to change the timing for completing implementation of the **VIS-1** Plan to follow demolition of the HBGS Units 1 and 2. Staff added minor edits (in italics) to the project owner’s change to clarify that implementation of the Plan should occur within 12 months of *completing* demolition of *the HBGS* Units 1 and 2. The text proposed for edits is under “Verification,” in the middle paragraph on page 4.12-24 of the FSA:

VIS-1 VISUAL SCREENING AND ENHANCEMENT PLAN FOR PROJECT STRUCTURES – PROJECT OPERATION

Verification:

~~The project owner shall schedule periodic site visits with the CPM to view progress on implementing the Plan. At a minimum, site visits shall be scheduled within 30 calendar days of commercial operation of Power Block 1 and again within 30 calendar days of commercial operation of Power Block 2.~~ **The Plan elements pertaining to screening and enhancement of the CCGT units** ~~The Plan shall be fully implemented within 12 months of 90 calendar days of completing demolition of the Huntington Beach Generating Station Units 1 and 2~~ **completing demolition of the HBGS 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.**

TRANSMISSION LINE SAFETY AND NUISANCE

Testimony of Obed Odoemelam

The Transmission Line Safety & Nuisance staff accepts the Project Owner's suggested revisions regarding Conditions of Certifications 1 and 2. As stated on page 4.11-2 of the Final Staff Assessment for the Amended HBEP, staff intended to retain the TLSN conditions of certification contained in the Decision for the licensed HBEP. Staff agrees with the petitioner's testimony dated October 27, 2016, that staff's recommended conditions of certification TLSN-1 and TLSN-2 for the amended HBEP in the PSA and FSA do not reflect the language in the Decision for the Licensed HBEP. The TLSN-1 and TLSN-2 versions as presented by the petitioner are correct; staff recommends these for the Amended HBEP.

WASTE MANAGEMENT

Rebuttal Testimony of Ellie Townsend-Hough

Waste management staff reviewed the HBEP petitioner's comments on the Final Staff Assessment. Staff agrees with the modification to Condition of Certification **WASTE-5**. Consistent with the Energy Commission's in-lieu permitting authority for power plant licensing the CPM shall approve the C&D Debris Waste Reduction and Recycling Plan with review and comment from the City of Huntington Beach. The modifications to the verification for **WASTE-5** shown below, which includes staff and petitioner's proposed language changes to the Decision, will ensure proper exercise of this authority for the Amended HBEP.

AMENDED CONDITION

WASTE-5 The project owner shall prepare a Construction Waste Management Plan for all wastes generated during construction of the facility and shall submit the plan to the CPM for review and approval. The plan shall contain, at a minimum, the following:

- a description of all construction waste streams, including projections of frequency, amounts generated, and hazard classifications;
- management methods to be used for each waste stream, including temporary on-site storage, housekeeping and best management practices to be employed, treatment methods and companies providing treatment services, waste testing methods to assure correct classification, methods of transportation, disposal requirements and sites, and recycling and waste minimization/source reduction plans.
- a method for collecting weigh tickets or other methods for verifying the volume of transported and or location of waste disposal; and,
- a method for reporting to demonstrate project compliance with construction waste diversion requirements of 50 percent pursuant to the CalGreen Code and Construction and Orange County Construction & Demolition Recycling and Reuse Program.

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