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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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PETITION TO AMEND THE:

HUNTINGTON BEACH ENERGY PROJECT

Docket No. 12-AFC-02C

**ENERGY COMMISSION STAFF'S PRE-HEARING
CONFERENCE STATEMENT**

On December 2, 2016, the Committee assigned to this proceeding issued an Order Shortening Time; Order Granting Motion to Advance Date for Evidentiary Hearing; Scheduling Order. In that document, amongst other things, the Committee ordered that parties file Prehearing Conference Statements no later than December 16, 2016. Energy Commission staff hereby files the following in response to the information requested in the Notice.

Staff has completed its analysis in all subject areas in Part A and Part B of the Final Staff Assessment (FSA) and is ready to proceed to evidentiary hearings set for December 21, 2016. Staff has concluded that, with the conditions of certification and related impact mitigation proposed in the FSA, no significant adverse impact to the environment or public health will result from the construction or operation of the Huntington Beach Energy Project (HBEP) as amended, and that the proposed project will comply with all applicable laws, ordinances, regulations and standards.

Staff has received the testimony of AES Huntington Beach Energy, LLC (petitioner) filed in this matter. Based on a review of the documents received thus far, staff believes that there remains disagreement in several technical areas: Noise and Vibration, Traffic and Transportation, Biological Resources, Cultural Resources, Geology and Paleontological Resources, Visual Resources, and Compliance.

1. The issues that are complete and ready to proceed to hearing.

For those matters not subject to dispute between the parties, staff proposes to enter testimony into the record by declaration. The sections and testimony and the respective authors are identified below and declarations have been included in the FSA:

Project Description.....	John Heiser
Air Quality.....	Wenjun Qian, Ph.D., P.E., David Vidaver
Public Health.....	Huei-An (Ann) Chu, Ph. D.
Socioeconomics.....	Lisa Worrall
Traffic and Transportation.....	John Hope
Land Use.....	Steven Kerr
Transmission Line Safety and Nuisance.....	Obed Odoemelam, Ph.D.
Facility Design.....	Shahab Koshmashrab
Soil and Water Resources.....	Mike Conway
Power Plant Efficiency.....	Edward James Brady
Noise and Vibration.....	Edward James Brady
Power Plant Reliability.....	Edward James Brady
Transmission System Engineering.....	Laiping Ng and Mark Hesters
Worker Safety and Fire Protection.....	Geoff Lesh / Brett Fooks
Alternatives.....	Matthew Layton, P.E. / David Vidaver / John Hope

2. The issues that are not complete and not yet ready to proceed to evidentiary hearing, and the reasons therefore.

All issues are complete and ready to proceed to evidentiary hearing.

3. The issues that remain disputed and require adjudication, and the precise nature of the disputes for each issue.

In analyzing the respective positions of the parties as set forth in both the direct and rebuttal testimony filed in this proceeding related to FSA Parts A and B, staff has identified the following issues as remaining in dispute and requiring adjudication.

a. Air Quality

Staff does not agree with petitioner’s proposed changes to the Air Quality Conditions of certification. The conditions as proposed are in harmony with the conditions adopted by the South Coast Air Quality Management District as provided in the Final Determination of Compliance, and staff therefore rejects petitioner’s proposal and urges the committee to adopt the conditions of certification as set forth in the FSA Part B.

b. Noise and Vibration

Staff does not agree with petitioner’s assertion that there is “no new evidence” that would justify a slight modification to NOISE-6. The City of Huntington Beach submitted a comment about the potential noise impacts of activities at the Plains All-American Tank Farm (Plains site). The city has asked, based on concerns expressed by nearby residents, that certain activities related to construction

(such as warm-up activity, arrival of construction workers at off-site parking facilities, on-site, or queuing outside the facility or outside the Plains site, etc.) should not be allowed to occur before 7:00 a.m. These revisions include requiring certain activities to be performed in a manner that would avoid excessive noise, thus reducing the potential for noise complaints as much as practicable, and prohibiting construction staging and warm-up activities from occurring outside the city's preferable construction hours.

c. Traffic and Transportation

Staff and petitioner generally agree with the conclusions set forth in the Traffic and Transportation section of the FSA parts A and B, with the exception of staff's newly proposed revisions to TRANS-3.

d. Biological Resources

Staff does not agree with the petitioner's suggested revisions to BIO-1. The truncated time for CPM review and approval of the recommended Designated Biologist as proposed by the petitioner is insufficient for CPM review, even for a candidate who has served as Designated Biologist on a prior project. While staff understands the petitioner'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 needs a special condition in how biological resource personnel are approved or that as written BIO-1 will delay project construction. Staff and the petitioner are otherwise in agreement regarding the conclusions in the Biological Resources section of the FSA that the project will comply with all applicable laws, ordinances, regulations, and standards (LORS).

e. Cultural Resources

Staff does not agree with the petitioner's suggested revisions to CUL-1. The truncated time for CPM review and approval of the recommended Designated Cultural Resource Specialist (CRS) as proposed by the petitioner is insufficient for CPM review, even for a candidate who has served as CRS on a prior project. As stated above, 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 needs a special condition in how cultural resource personnel are approved or that as written CUL-1 will delay project construction. Staff and the petitioner are otherwise in agreement regarding the conclusions in the Cultural Resources section of the FSA that the project will comply with all applicable LORS.

f. Geology and Paleontology Resources

Staff and petitioner disagree on the inclusion of Condition of Certification GEO-3. Staff concluded that the hazard to public health and safety from tsunami inundation is significant and requires mitigation, and considers preparation and implementation of a Tsunami Hazard Mitigation Plan to be an essential element for ensuring public safety. Staff modified GEO-3 to require the petitioner 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 and the petitioner are otherwise in agreement regarding the conclusions in the Geology and Paleontology Resources section of the FSA that the project will comply with all applicable LORS.

g. Visual Resources

As set forth in staff's initial Pre-Hearing Conference Statement filed on December 9, staff and applicant are not in agreement regarding the underlying analysis and conclusions regarding the impacts to visual resources.

h. Compliance Conditions

Staff disagrees with petitioner's proposed language revisions to Conditions of Certification COM-3, COM-4, and to the last paragraph of COM-15.

Staff and the petitioner are otherwise in agreement regarding the Compliance Conditions in the FSA that the project will comply with all applicable LORS.

4. The identity of each witness that the party intends to sponsor, the subject area(s) about which the witness(es) will testify, a brief summary of the testimony to be offered by the witness(es), qualifications of each witness, the time required to present testimony by each witness, and whether the witness seeks to testify telephonically.

Staff has read and considered the evidence that has been presented by the parties in this proceeding, and is prepared to submit the matter based on the filings of the parties. Staff will make the following expert witnesses available for questions by the committee if so desired:

For Air Quality, staff will make available staff's expert witness, Wenjun Qian, Ph.D., P.E. His written testimony and statement of his qualifications are contained in the FSA (Exh. 6003).

For Traffic and Transportation, staff will make available staff's expert witness, John Hope. His written testimony and statement of his qualifications are contained in the FSA (Exh. 6000, 6003).

For Noise and Vibration, staff will make available staff's expert witness, Edward James Brady. His written testimony and statement of his qualifications are contained in the FSA (Exh. 6000, 6003).

For Biological Resources, staff will make available staff's expert witnesses, Tim Singer and Heather Blair. Their written testimony and statements of their qualifications are contained in the FSA (Exh. 6000).

For Cultural Resources, staff will make available staff's expert witness, Gabriel Roark. His written testimony and statement of his qualifications are contained in the FSA (Exh. 6000).

For Geology and Paleontology Resources, staff will make available staff's expert witness, Mike Conway, P.G. His written testimony and statement of his qualifications are contained in the FSA (Exh. 6000).

For Visual Resources, staff will make available staff's expert witness, Jeanine Hinde. Her written testimony and statement of her qualifications are contained in the FSA (Exh. 6000).

For Compliance, staff will make available staff's expert witness, Eric Veerkamp. His written testimony and statement of his qualifications are contained in the FSA (Exh. 6000).

5. Subject areas upon which the party desires to question the other parties' witness(es), a summary of the scope of the questions, the issue(s) to which the questions pertain, and the time desired to question each witness.

Staff has read and considered the evidence that has been presented by the parties in this proceeding, and is prepared to submit the matter based on the filings of the parties. Staff reserves the right to cross-examine any witness whose testimony comes into question at the time of the hearing, particularly those who may testify in any contested subject, and would reserve no more than 15 minutes of cross-examination per witness.

6. A list identifying exhibits with transaction numbers (TN) that the party intends to offer into evidence and the technical subject areas to which they apply.

Exhibit No.	TN	Name of Document	Subject Area
6000	214025	Final Staff Assessment, Part A	All
6001	214358	Energy Commission Staff's Rebuttal Testimony	Biological Resources, Cultural Resources, Water Resources, Geology and Paleontological Resources, Visual Resources, Transmission Line Safety and Nuisance, Waste Management
6002	214533	Huntington Beach Energy Project Final Determination of Compliance Package	Air Quality, Public Health
6003		FSA Part B and Supplemental testimony to FSA part A	Air Quality, Public Health, Traffic and Transportation, Noise and Vibration

7. Proposals for briefing deadlines, impact of scheduling conflicts, or other scheduling matters.

Staff respectfully reserves the right to augment the proposed exhibit list and the time requested for direct or cross-examination depending on the testimony filed by the applicant and any other parties, their Prehearing Conference Statements, and comments made at the Prehearing Conference.

Staff recommends that the Committee allow for the filing of Errata prior to the close of the evidentiary record.

Should any matter need briefing after evidentiary hearings, assuming the transcript is expedited, staff proposes that Opening Briefs and Reply Briefs be filed as currently scheduled.

8. The applicable statutes under which the Comments from the Coastal Commission should be considered by the Committee.

The Coastal Commission has submitted comments to the FSA in the form of a report entitled "Coastal Commission's § 30413(d) Report for the Petition to Amend Application for Certification #12-AFC-02C – proposed Huntington Beach Energy Project by AES Huntington Beach Energy, LLC." These comments include recommendations of the

Coastal Commission that affect several technical areas, including Land Use, Biology, Geology, Soil and Water, and Traffic and Transportation. Responses to those specific comments can be found in each section. The document submitted by the Coastal Commission is not, however, a Report under § 30413(d).

The Huntington Beach Energy Project site is within in the Coastal Zone and therefore subject to the Coastal Act. Were the Coastal Commission to exercise its permitting authority when the Application for Certification (AFC) was filed, it would have reviewed the project against the policies of the City of Huntington Beach's Local Coastal Program, general plan, and Land Use ordinances as well as the Coastal Act. The Coastal Commission's permitting authority is in turn subject to the Energy Commission's jurisdiction over power plants. The Energy Commission, when exercising its jurisdiction, conducts a similar analysis and solicits and considers the views of the agencies that would otherwise have jurisdiction over a proposed project, such as the Coastal Commission.

On April 14, 2005, the Energy Commission and the Coastal Commission entered into a Memorandum of Agreement, the purpose of which was to ensure timely and effective coordination between the Energy Commission and the Coastal Commission during the Energy Commission's review of an AFC for a proposed site and related facilities under Energy Commission jurisdiction. The agreement recognized the exclusive authority of the Energy Commission to certify sites and related facilities subject to the requirements of the Warren-Alquist Act , as well as the Coastal Commission's role in filing a report under Division 20 § 30413(d) in AFC proceedings .

Pursuant to requirements of Sections 25523(b) and 30413(d), and as set forth in the Memorandum of Agreement, and the Coastal Commission is responsible for providing a report to the Energy Commission during the AFC proceeding for each project located within the Coastal Zone. However, neither the relevant statutes nor the Memorandum of Agreement impose a requirement of the Coastal Commission to submit a report under § 30413(d) in a proceeding to amend a Final Commission Decision brought under Title 20, California Code of Regulations, § 1769.

The scope of the analysis conducted by staff in a proceeding brought under Section 1769 is limited to an evaluation of the incremental impacts, if any, of the proposed modifications to the project on the environment, as well as a determination of the consistency of the proposed modifications with the applicable LORS. The analysis of the proposed changes must be consistent with the requirements of CEQA Guidelines § 15162, which limits additional environmental review to any "substantial changes" that will result in greater environmental impacts than what was analyzed in the Final Decision. Under § 15162, the Energy Commission may rely on the Final Decision for areas that will not have substantial changes. Here, staff has concluded that the proposed modifications to the project do not include any "substantial changes" that would result in any new significant environmental impacts or a substantial increase in the severity of previously identified significant effects that would require additional analysis.

In accordance with § 1744(e) of the Commission's regulations, staff gives due deference to an interested agency's assessment. As that states:

“Comments and recommendations by an interested agency on matters within that agency's jurisdiction shall be given due deference by Commission staff.” (Title 20, California Code of Regulations, § 1744(3))

Due deference must be given in circumstances where an interested agency provides substantial evidence on matters within that agency's jurisdiction that would justify a recommended change or addition to the Commission's Final Decision on a project. To give “due deference” to an interested agency is not to say that the Commission must blindly follow the recommendations of that agency. Pursuant to § 1748(e) of the Commission's regulations:

“The proponent of any additional condition, modification, or other provision relating to the manner in which the proposed facility should be designed, sited, and operated in order to protect environmental quality and ensure public health and safety shall have the burden of making a reasonable showing to support the need for and feasibility of the condition, modification, or provision.” (Title 20, California Code of Regulations, § 1748(e))

In the original licensing proceeding, the Coastal Commission submitted comments on the Energy Commission's Final Decision for the Huntington Beach Energy Project that included recommendations and additional Conditions of Certification which were accepted and implemented where feasible. However, some of the recommendations of the Coastal Commission were rejected as being infeasible or not otherwise supported by the evidentiary record. The Coastal Commission is repeating some of the same recommendations that were rejected in the original case, in its latest comments. While due deference should certainly be afforded to the Coastal Commission, it would be improper to re-open the underlying evidentiary proceeding and re-litigate those issues that have been previously addressed, or implement measures that are not supported by the evidentiary record.

One overarching concern of the Coastal Commission is the potential for the project to impact coastal wetlands resources. Energy Commission staff shares this concern, and has proposed Conditions of Certification to ensure that any potential impacts to all coastal resources have been fully mitigated. However, the original Energy Commission Final Decision found that no wetlands existed on the HBEP site or project-related parking areas. The evidence introduced at the original AFC Hearing demonstrated that the project owner conducted a wetlands delineation, which was confirmed by staff, concluding that there were no wetlands on the HBEP site or project-related parking areas. The conclusion of both the project owner's consultant and Energy Commission staff is consistent with the Coastal Commission's own definition of wetlands. There is no new information that was unknown or could not have been introduced in the original proceeding, and no physical changes associated with the HBEP, relating to wetlands on

the project site or project-related parking areas that would justify the re-opening of the final decision and re-litigating this issue.

9. Whether Water Code § 10910, subdivision (h) applies to the Project's Water Supply Assessment (WSA).

In the FSA published October 17, 2016, staff examined, out of an abundance of caution, the project's water usage habits and to compare what would be used by a 500 dwelling unit development. Staff did not, however, prepare a WSA, nor would the information provided by staff stand alone as a WSA. If staff were to prepare a WSA, it would provide a thorough description of all sources of supply to the city as well as contractual obligations and contingent supplies and demands. The extensive network of the city's water supply chain is complex and likely subject to changing restrictions over time, all of which would be evaluated alongside the most current information if a WSA were required.

Water Code § 10910, subdivision (h) states in relevant part:

Notwithstanding any other provision of this part, if a project has been the subject of a water supply assessment that complies with the requirements of this part, no additional water supply assessment shall be required for subsequent projects that were part of a larger project for which a water supply assessment was completed and that has complied with the requirements of this part and for which the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), has concluded that its water supplies are sufficient to meet the projected water demand associated with the proposed project, in addition to the existing and planned future uses, including, but not limited to, agricultural and industrial uses, unless one or more of the following changes occurs:

- (1) Changes in the project that result in a substantial increase in water demand for the project.
- (2) Changes in the circumstances or conditions substantially affecting the ability of the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), to provide a sufficient supply of water for the project.
- (3) Significant new information becomes available which was not known and could not have been known at the time when the assessment was prepared.

A WSA was prepared for the HBEP in the original licensing proceeding, and none of the three changes that would trigger the requirement for a new WSA under § 10910(h) have occurred; therefore, a new WSA is not needed for the amended HBEP as proposed.

Staff’s analysis in the FSA documented that there were changes in circumstances since the Final Commission Decision for the HBEP that warranted an update to the WSA data for informational purposes only. But there is nothing to indicate that any of those changes in circumstances would substantially affect the City’s ability to provide a sufficient supply of water to the Amended HBEP. Staff notes that the HBEP as amended would actually use approximately 14 AFY of water less than the Licensed HBEP. Therefore, no WSA is required for the Amended HBEP.

DATED: December 16, 2016

Respectfully submitted,

/s/ original signed by
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