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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 OPPOSITION TO HELPING
HAND TOOLS' AND ROBERT
SIMPSON'S MOTION TO CONTINUE
HEARING DATES AND CHANGE OF
VENUE**

**AES HUNTINGTON BEACH ENERGY, LLC'S
OPPOSITION TO HELPING HAND TOOLS' AND ROBERT SIMPSON'S
MOTION TO CONTINUE HEARING DATES AND CHANGE OF VENUE**

December 19, 2016

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I. INTRODUCTION

On Friday, December 16, 2016, Robert Simpson and Helping Hand Tools docketed a Motion to Continue Hearing Dates and Change of Venue ("Simpson Motion") (TN# 214870) in the Huntington Beach Energy Project ("Amended HBEP" or "Project") Petition to Amend ("PTA") proceeding. AES Huntington Beach Energy, LLC ("Project Owner") herein opposes the Simpson Motion, as well as the proposed schedule set forth in Helping Hand Tools' and Robert Simpson's Pre-hearing Conference Statement. (TN# 214869, 214870.) For the reasons set forth herein, the Committee should deny the Simpson Motion.

II. OPPOSITION TO MOTION TO CONTINUE HEARING DATES

There is no basis for continuing the Prehearing Conference and Evidentiary Hearing because the public, including Helping Hand Tools and Robert Simpson, has had ample opportunity to participate in this PTA proceeding. Furthermore, as the Committee is aware, the

schedule for this Project is critical and any further delay will significantly impact electrical reliability in the Los Angeles basin.

Significantly, the Amended HBEP is going through a PTA) proceeding. Neither the Warren-Alquist Act nor the California Energy Commission (“CEC”) regulations contemplate the extensive amount of public participation and hearing procedure that has been provided for the Amended HBEP PTA. (Tit. 20 Cal. Code Regs., § 1769.) The CEC regulations merely require that “the petition must be processed as a formal amendment to the decision and must be approved by the full commission at a noticed business meeting or hearing.” (*Ibid.*) In this PTA proceeding, not only will the petition be presented for approval by the full commission at a noticed business meeting or hearing, but the petition has been subjected to an extremely rigorous public review process, including public review and comment on Staff’s Preliminary Staff Assessment, site visit and informational hearing, public workshops, status conferences before the Committee, a prior prehearing conference, an upcoming second prehearing conference, and the pending evidentiary hearing before the Committee. Contrary to the allegation that “the local community must not have been adequately engaged by the Commission” (Motion to Continue Hearing Dates and Change of Venue, TN# 214870), the public has received multiple opportunities to participate in this PTA proceeding and, in fact, has participated.¹

This PTA was filed over a year ago, in September 2015. (TN# 206087.) Notice of the PTA requesting public participation and providing instructions for such participation was provided to the public and to public agencies in several notices immediately following the filing of the PTA. (TN# 206153; 206379; 206464.) On December 8, 2015, the CEC held a public site

¹ The level of public participation in this PTA is evidence of the fact that there was significant opportunity for public involvement in the original proceeding and the Amended HBEP will have lesser impacts than the originally licensed project.

visit, scoping meeting and informational hearing, as well as a data request workshop in the city of Huntington Beach. (TN# 206730; 206776.) In addition to agency representatives, two members of the public provided comments at this workshop. (TN# 207314.)

Following the informational hearing, the Committee issued the first of several scheduling orders² in this proceeding. (TN # 207324; *see also*, Amended Committee Scheduling Order (TN# 210666).) These initial scheduling orders contemplated issuance of a Final Decision in October 2016. Neither Helping Hand Tools, Mr. Simpson, nor any other members of the public objected to this schedule.

The public, including Helping Hand Tools and Mr. Simpson, also had more than adequate time to comment on the PSA and the FSA. The PSA was issued in June of 2016 (TN# 211973), and was accompanied by notice to the public of the opportunity to comment (TN# 211975). The public was also notified of the PSA workshop, which was held in the city of Huntington Beach in July 2016. (TN # 212043.) Members of the public also attended and provided comments at this workshop. (Declaration of Stephen O’Kane in Opposition to Motions of Helping Hand Tools and Robert Simpson (“O’Kane Decl.”), ¶ 3, attached hereto.)

Due to delays in issuance of the Final Determination of Compliance, the Committee issued an Amended Committee Scheduling Order in July 2016, which contemplated issuance of a Final Decision in December 2016 or January 2017. (TN# 212210, further amended by Amended Committee Scheduling Order docketed August 29, 2016, TN # 213017.) Although Project Owner has continued to maintain that the Project must obtain final approval in 2016 (see,

² At least seven scheduling orders have been issued in this proceeding. Each order, with the exception of the most recent order, has further extended the schedule and timeline for Final Decision. (TN #207324, 210666, 212210, 213017, 214127, 214627, 214701.)

e.g., TN # 212311, 212525, 213812), neither Helping Hand Tools, Mr. Simpson, nor any other members of the public objected to this schedule.

In addition to attendance by members of the public at the site visit and informational hearing in December 2015 and the PSA workshop in July 2016, Huntington Beach Wetlands Conservancy, a member of the local community, submitted written comments on the PTA in April 2016. (TN# 211134.) The allegation that the local community has not participated in this proceeding is unsupported by the record as several members of the public have attended public meetings and workshops and submitted comments throughout this proceeding, including the City of Huntington Beach.

Moreover, FSA Part 1 was released two months ago (TN # 214025), accompanied by notice to the public and additional instructions on public participation (TN # 214074, 214075). The public was further notified of the originally scheduled November 14, 2016 Prehearing Conference and the November 30, 2016 Evidentiary Hearing (TN # 214127), and neither Helping Hand Tools, Mr. Simpson, nor any member of the public objected to this schedule. Significantly, Mr. Simpson attended the November 14, 2016 Prehearing Conference, at which members of the public were provided an opportunity to comment, yet Mr. Simpson made no comments at all, and in no way indicated any objection to the prior hearing schedule. (O’Kane Decl., ¶ 3.) Although FSA Part 2 was only recently released, the PSA has been available for review for many months, the Preliminary Determination of Compliance (“PDOC”) was available for review for many months (and Mr. Simpson filed comments on the PDOC with the local air district), the Final Determination of Compliance has been available since mid-November, and the public has had ample opportunity to review and comment on the topics covered in FSA Part 2 throughout this proceeding.

Finally, there is no prohibition on holding the prehearing conference on the same day as the evidentiary hearing and, in fact, there is no requirement to hold a prehearing conference or Committee-led evidentiary hearing at all in a PTA proceeding. (20 Cal. Code Regs., § 1769.) Because a prehearing conference has already been held on FSA Part 1, the upcoming prehearing conference focuses only on FSA Part 2 and, as a matter of efficiency, it is appropriate to hold the evidentiary hearing on the same day as the hearing.

In addition to the numerous opportunities for participation that have been afforded to the public in this proceeding, the schedule for approval of this PTA is critical to maintaining electrical reliability in the Los Angeles basin. Because members of the public, including Mr. Simpson, have been provided ample opportunity to participate in this proceeding and Mr. Simpson waited until the eleventh hour to attempt to influence the schedule for this critically important project, the Motion to Continue Hearing Dates should be denied.

III. OPPOSITION TO MOTION FOR CHANGE OF VENUE

Project Owner also opposes the Motion for Change of Venue as untimely and unnecessary.³ As noted above, there have been at least two opportunities during the Amended HBEP PTA proceeding for public participation in the City of Huntington Beach. (TN # 206730, 206776, 212043.) There is no requirement that PTA hearings be held in the vicinity of the Project and, indeed, no requirement that a PTA be subject to a Committee hearing process at all. (20 Cal. Code Regs., § 1769 (the only procedural requirement is that a PTA “must be approved by the full commission at a noticed business meeting or hearing.”) Given the significant public

³ Project Owner is aware that several individuals have also filed comments requesting a change in venue, some of which have been labeled as a “petition.” (See, e.g., TN # 214871, 214875, 214876, 214878, 214880.) Notably, none of these comments indicate that the commenters even live in or around Huntington Beach. Additionally, for the reasons stated herein, Project Owner also opposes each of these requests for change in venue.

proceedings that occurred in the original proceeding and the prior opportunities for local participation in this PTA proceeding, as well as the critical schedule needs of the Project, there is no basis for changing venue for the evidentiary hearing at this late date. Doing so would have a significant, detrimental effect on the Project and there is no legal requirement to do so. Moreover, members of the local community are not precluded from participating in the Prehearing Conference and Evidentiary Hearing and, in fact, the public is encouraged to do so and is provided with WebEx and telephone options to facilitate such participation. (TN # 214701.)

IV. CONCLUSION

For all of the foregoing reasons, the Committee should DENY the Simpson Motion and proceed with the Evidentiary Hearing as scheduled on December 21, 2016.

Date: December 19, 2016

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AES HUNTINGTON BEACH ENERGY, LLC

**Declaration of
STEPHEN O'KANE
In Opposition to Motions of Helping Hand Tools and Robert Simpson
Huntington Beach Energy Project
(12-AFC-02C)**

I, **Stephen O'Kane**, declare as follows:

1. I am presently employed by the AES Corporation as the Vice-President of AES Huntington Beach Energy, LLC ("Project Owner"), the owner of the Huntington Beach Energy Project ("HBEP").
2. I attended the Public Workshop on the Preliminary Staff Assessment for Amended HBEP, held in Huntington Beach on July 12, 2016. Members of the public attended the Public Workshop and provided oral comments at the workshop.
3. I attended the Prehearing Conference for Amended HBEP held on November 14, 2016 in Sacramento, California. Mr. Robert Simpson also attended the Prehearing Conference on November 14, 2016, but did not make public comment. The Public Advisor attended the Prehearing Conference and was available to facilitate public participation in the proceeding. Mr. Simpson approached me after the Prehearing Conference and provided me copies of federal court papers related to a separate matter. I had met Mr. Simpson prior to this date and recognize him.
4. On at least two occasions since 2014, Mr. Simpson has sent me emails stating that he intended to commence activities to increase public awareness of the project in Huntington Beach.
5. I am personally familiar with the facts and conclusions related in the testimony presented by me and, if called as a witness, could testify competently thereto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: 12/19/16



Stephen O'Kane