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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

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**AES HUNTINGTON BEACH ENERGY,
LLC'S POST EVIDENTIARY HEARING
OPENING BRIEF**

**AES HUNTINGTON BEACH ENERGY, LLC'S
POST EVIDENTIARY HEARING OPENING BRIEF**

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I. INTRODUCTION

Pursuant to the Committee's January 5, 2017 Order Regarding Briefing Schedule ("Briefing Order"), Project Owner AES Huntington Beach, LLC herein submits its Post Evidentiary Hearing Opening Brief in support of the Petition to Amend ("PTA") the Final Decision for the Huntington Beach Energy Project ("Amended HBEP").

II. BACKGROUND

A Project Overview

Project Owner proposes to modify the 939 megawatt ("MW") Licensed 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. 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. The Amended HBEP is designed to start and stop very quickly and be able to ramp up and down, which is critical to supporting local electrical reliability and grid stability, peak demand, meeting resource adequacy requirements, and helping to integrate an ever increasing amount of intermittent renewable energy supply into the electrical system.

The Amended HBEP would be located on 30 acres of the larger Huntington Beach Generating Station (“HBGS”) site and is 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 (that was analyzed in the Licensed HBEP as construction laydown/parking). In addition, a total of 22 acres of combined construction parking and construction laydown area is proposed at the former Plains All-American Tank Farm site (which includes the 1.9 acre area analyzed in the Licensed HBEP proceeding for construction worker parking). The use of the former Plains site will require a new entrance and modifications to the existing intersection at Magnolia and Banning.

As noted throughout the PTA proceeding, 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 condenser to maintain power delivery and grid reliability during construction/commissioning of the new facilities.

B. Scope of PTA Review

Pursuant to section 1769 of title 20 of the California Code of Regulations, the scope of CEC Staff’s analysis of the PTA is limited to an evaluation of the impacts of the proposed modifications on the environment and the proposed modifications compliance with laws, ordinances, regulations, and standards (“LORS”). Further, CEC Staff’s evaluation of a PTA must be consistent with the requirements of CEQA Guidelines section 15162, which governs the

requirements for subsequent environmental review under CEQA after a project has been approved. Section 15162 limits additional environmental review to “substantial changes” that will result in greater environmental impacts than what was analyzed in the Final Decision, and provides for reliance on the Final Decision for areas that will not have substantial changes.

(Exhibit 6000 (Final Staff Assessment (“FSA”) Part 1 at p. 1-6).)

The Amended HBEP does not include any “substantial changes” that will result in new significant environmental impacts or a substantial increase in the severity of previously identified significant effects that would require additional analysis. (*Ibid.*; CEQA Guidelines, § 15162.)

III. LEGAL ARGUMENT

A. There is No Legal Basis for Staff’s Proposed New Condition of Certification GEO-3

As set forth in Project Owner’s Comprehensive Prehearing Conference Statement (*see* Exhibit 5121 at pp. 6-7) and as discussed during both Prehearing Conferences held in the HBEP PTA proceeding, Staff and Project Owner remain in dispute about the legal basis for Staff’s proposed new Condition of Certification GEO-3. (November 14, 2017 Prehearing Conference Transcript (TN# 214601 at p. 34); December 21, 2017 Prehearing Conference Transcript (TN# 215154 at pp. 33-34).) GEO-3 is not an existing Condition of Certification for the Licensed HBEP. Project Owner concurs with Staff’s conclusions and agrees with the Conditions of Certification set forth in the FSA Part 1 pertaining to Geology, with the exception of GEO-3. As stated in its Opening Testimony (Part 1), Condition of Certification GEO-3 is unnecessary, onerous, and contains requirements that should not be applied to a private entity. Although Staff states that 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,” no LORS exist requiring such a condition, and no significant environmental impact has been

identified requiring such “mitigation.” (Exhibit 5055 (Project Owner’s Opening Testimony (Part 1) at Exhibit H, p. 1-2).) Further, the potential for tsunami inundation at the Project site was previously analyzed and decided in the 2014 CEC approval of the Licensed HBEP.

The LORS that are applicable to emergency action planning are evaluated in the Worker Safety & Fire Protection section of FSA Part 1. For example, Worker Safety and Fire Protection Table 1 summarizes the LORS that govern emergency action planning in California. (*See generally* Exhibit 6000 (FSA Part 1 at p. 4.14-2 (citing Title 8, California Code of Regulations)); *see specifically* Title 8 Cal. Code Regs. § 3220 (setting forth the requirements for emergency action plans).) As set forth in Project Owner’s Opening Testimony (Part 1), Existing Conditions of Certification Worker Safety-1 and Worker Safety-2 ensure that the Amended HBEP will comply with all emergency action planning LORS.

Project Owner agrees with Staff that it is appropriate to be prepared to respond to a potential tsunami event and ensure that onsite workers receive emergency action training. Project Owner will 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. (Exhibit 5055 (Project Owner’s Opening Testimony (Part 1) at Exhibit H, p. 2).) The extensive requirements set forth in Staff’s proposed GEO-3, however, are not supported by law.

Staff claims to have proposed new GEO-3 based on the discovery of additional information since the licensing of the HBEP that can be used to further analyze potential impacts from tsunami. (Exhibit 6000 (FSA Part 1 p. 5.2-3).) Staff also claims to have proposed new GEO-3 to mitigate potential impacts to public health and safety from tsunamis; however, no new

information or LORS exist to support the imposition of this new Condition of Certification on the Amended HBEP. (*Ibid.*)

As summarized in Part II.B., *supra*, Staff concluded the following in FSA Part 1 regarding Geology and Paleontology:

The Petition to Amend (PTA) for the Huntington Beach Energy Project (HBEP) does not seek to substantially modify the existing Geology and Paleontology conditions of certification. Therefore, in accordance with the California Environmental Quality Act (CEQA) Guidelines section 15162 (Cal. Code Regs., tit. 14, § 15162), staff concludes that no supplementation to the 2014 HBEP Commission Decision is necessary for Geology and Paleontology. The Committee need not re-analyze the conclusions of the 2014 Decision.

(Exhibit 6000 (FSA Part 1 at p. 5-2 -1).) The Soil & Water Resources section of the 2014 Final Decision concluded the following regarding tsunamis:

The proposed site is within a six square-mile area that could be impacted by a tsunami. However, the site is above the expected inundation elevation and therefore tsunami events are not expected to be a threat, as described in the **GEOLOGY & PALEONTOLOGY** section. (Ex. 2000, p. 4.9-18.)

(Exhibit 5114 (Final Decision at p. 5.2-16).) In a similar vein, the Geology & Paleontology section of the 2014 Final Decision concluded that the potential effects of tsunami inundation on the HBEP site were less than significant:

All of California is at risk from both local and distant tsunamis. In reviewing modeling from a variety of sources on the potential for tsunamis to be generated by either earthquake or submarine slumps, the evidence indicates that the maximum flood elevations in the area of the HBEP project are about 11 feet above MSL (Mean Sea Level) - very close to the beach heights in the project area. Thus, direct inundation is not likely. However, tsunami flooding could also come from behind the beach through the drainage channel outfall and potentially overtop the flood control levees. (Ex. 2000, pp. 5.2-26 – 5.2-28.)

To address the potential for and mitigation of the effects of tsunami-caused inundation on the HBEP site, we impose Conditions of Certification **GEO-1**, **GEN-1**, **GEN-5** and **CIVIL-1** that require the project owner to prepare a project-specific geotechnical report,

per CBC 2013 requirements, and include identified mitigations such as strengthening of seafront structures, providing emergency warning systems, and structural reinforcement at the site. With the imposition and implementation of Conditions of Certification **GEO-1**, **GEN-1**, **GEN-5** and **CIVIL-1**, we find that the potential effects of tsunami-caused inundation on the HBEP site to be “less than significant”.

(Exhibit 5114 (Final Decision at p. 5.4-15).)

Inexplicably, however, and immediately following the statements in FSA Part 1 that “no supplementation to the 2014 HBEP Commission Decision is necessary for Geology and Paleontology” and “[t]he Committee need not re-analyze the conclusions of the 2014 Decision”, Staff stated that it “proposes new Condition of Certification GEO-3 to mitigate potential impacts to public health and safety from tsunamis.” (Exhibit 6000 (FSA Part 1 at p. 5.2-1).) However, no changes in LORS have occurred since the Licensed HBEP was approved that require the imposition of GEO-3. In FSA Part 1, Staff relies on the “current” planning scenario and speculation as the basis for proposing GEO-3:

Given the current planning scenario that shows the project site is in the tsunami inundation zone (CGS 2009), staff is concerned there may be a threat of impact to public health and safety from tsunami. Also, since the science behind estimating sea level rise is evolving, it is possible projections could change during the life of the project and that the project design would not adequately incorporate mitigation for potential site inundation. In addition, recent fault studies and tsunami modeling that are currently being evaluated by the scientific community could add to the potential for tsunami impacts at the site. Staff concludes that it would be appropriate for the project owner to be prepared to respond to a potential tsunami event and ensure that all workers and site visitors would be safe from an event similar to the nearby areas of the city of Huntington Beach that are located in a tsunami zone.

(Exhibit 6000 (FSA Part 1 at 5.2-3).) The “current planning scenario” relied upon in FSA Part 1 is cited by Staff as “CGS 2009,” which is defined as “Tsunami Inundation Map for Emergency Planning, Newport Beach Quadrangle. California Geological Survey. March 15, 2009.” (Exhibit

6000 (FSA Part 1 at p. 5.2-20).) Staff, however, relied on this very same Map in the Licensed HBEP proceeding. (Exhibit 5114 (Final Decision at 5.2-16¹).)

It is unclear as to what the specific “additional information” Staff refers to as the basis for GEO-3, but Project Owner assumes Staff is referring to the City of Huntington Beach’s Tsunami Evacuation Map (dated January 2007), which Staff included in FSA Part 1 as Geology and Paleontology Figure 1. (Exhibit 6000 (FSA Part 1 at p. 5.2-3).) A ten year-old map² (which predates the California Geological Survey’s Tsunami Inundation Map relied on in the Licensed HBEP proceedings and in the FSA Part 1) is not new evidence or additional information not previously available to CEC Staff, Project Owner, or any other interested party in the Amended HBEP PTA proceeding or the Licensed HBEP AFC proceeding. (See CEQA Guidelines, § 15162.) As set forth in Project Owner’s Opening Testimony (Part 1), the map was included in an advisory brochure issued by the Huntington Beach Fire Department Emergency Management & Homeland Security to the general public and is not a LORS. (Exhibit 5055 (Project Owner’s Opening Testimony (Part 1) at Exhibit H, p. 1).) Moreover, as discussed herein, the issues associated with the potential for tsunami inundation at the Project site were previously analyzed and decided in the 2014 CEC approval of the Licensed HBEP.

Staff’s Rebuttal Testimony acknowledges Project Owner’s willingness to address tsunami impacts. (Exhibit 6001 (Staff’s Rebuttal Testimony (Part 1) at p. 6).) Throughout the Amended

¹ This same map is referred to in two different ways in the Licensed HBEP AFC proceeding. (See Exhibit 5114 (Final Decision at p. 5.4-14 (citing 2014 FSA at p. 5.2-28 (wherein Staff noted “[a]s a disclaimer, the map states that it is not a legal document and does not meet disclosure requirements for real estate transactions nor for any other regulatory purpose.”).)

² Staff explains that the Tsunami Hazard Mitigation Plan contemplated by proposed Condition of Certification GEO-3 shall “include, among other things, a discussion of the city of Huntington Beach evacuation plan and how it applies to the project.” (Exhibit 6000 (FSA Part 1 at 5.2-4) (emphasis added).)

HBEP PTA proceeding, Project Owner has repeatedly indicated that although no LORS exist requiring Project Owner to address tsunami inundation, Project Owner would not object to incorporating tsunami hazard notification and evacuation response measures into the Emergency Action Plans 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.

(Exhibit 5055 (Project Owner's Opening Testimony (Part 1) at Exhibit H, p. 1).)

Staff's Rebuttal Testimony also states that "Staff concluded that the hazard to public health and safety from tsunami inundation is significant and requires mitigation," which is incorrect. (Exhibit 6001 (Staff's Rebuttal Testimony (Part 1) at p. 6.) FSA Part 1 relies solely on speculation of a possible tsunami event; Staff does not conclude that tsunami inundation is a significant impact that requires mitigation. Specifically, "staff is concerned there may be a threat of impact to public health and safety from tsunami" and Staff acknowledges that "the science behind estimating sea level rise is evolving, it is possible projections could change during the life of the project and that the project design would not adequately incorporate mitigation for potential site inundation." (Exhibit 6000 (FSA Part 1 at p. 5.2-3) (emphasis added.) Staff then acknowledges that studies and modeling are still undergoing scientific review ("recent fault studies and tsunami modeling that are currently being evaluated by the scientific community

could add to the potential for tsunami impacts at the site.”). (*Id.* (emphasis added).) Based on pure speculation, Staff proposes Condition of Certification GEO-3.

Lastly, Staff’s Rebuttal Testimony states that “Staff has referred to the Huntington Beach/Fountain Valley Hazard Mitigation Plan, which outlines steps to ensure public health and safety from such hazards.” (Exhibit 6001 (Staff’s Rebuttal Testimony (Part 1) at p. 6).). Staff, however, does not evaluate or even mention the Huntington Beach/Fountain Valley Hazard Mitigation Plan (“2004 HMP”³) in the Geology section of FSA Part 1; the only reference to the 2004 HMP is in response to a Coastal Commission comment (“Comment CCC-2”) regarding the Prado Dam set forth in the Soil and Water Resources section of FSA Part 1. In response to Comment CCC-2, Soil & Water Resources Staff stated:

Staff reviewed two Prado Dam failure scenarios and found different expected depths of inundation at the part of Huntington Beach where the facility would be constructed. The city of Huntington Beach Hazard Mitigation Plan shows the expected inundation resulting from Prado Dam failure in Huntington Beach at the intersection of Beach Boulevard and Atlanta Avenue. The reported total elevation is 9 feet NGVD29 (or 11.3 feet NAVD88), and would be expected to arrive 9.5 hours after dam failure (HMP 2004). The Coast Community College District Hazard Mitigation Plan similarly shows inundation from dam failure would arrive 9.5 hours after failure, with a resulting total elevation of 9 feet NAVD88 (CCCD 2012). Both of these elevations are lower than the site elevation, 12 to 16 feet NAVD88. Prado Dam failure does not create a particular risk at the site due to its elevation advantage over the surrounding areas. In addition, if flooding were to occur, there would be sufficient time to evacuate personnel and ensure worker safety.

(Exhibit 6000 (FSA Part 1 at 4.9-12).) Thus, as noted above, the site has an elevation advantage over surrounding areas and Staff concluded that no additional condition of certification addressing flooding was necessary.

³ Staff defines the Huntington Beach/Fountain Valley Hazard Mitigation Plan as “HMP 2004” in the Reference list contained on page 4.9-17 of FSA Part 1 (Exhibit 6000).

For all the reasons set forth herein and in Project Owner's pre-hearing filings, GEO-3 should not be adopted.

B. The Amended HBEP Complies with LORS and Will Have Less Environmental Impacts Than Those Previously Analyzed For the Licensed HBEP

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. Pursuant to section 1769 of title 20 of the California Code of Regulations, the scope of CEC Staff's analysis of the PTA is limited to an evaluation of the impacts of the proposed modifications on the environment and the proposed modifications compliance with LORS. Further, CEQA Guidelines section 15162 limits Staff's environmental review of the Amended HBEP to "substantial changes" that will result in greater environmental impacts than what was analyzed in the Final Decision, and provides for reliance on the Final Decision for areas that will not have substantial changes. (Exhibit 6000 (FSA Part 1 at p. 1-6); CEQA Guidelines, § 15162.) The Amended HBEP does not include any "substantial changes" that will result in new significant environmental impacts or a substantial increase in the severity of previously identified significant effects that would require additional analysis. (*Id.*

For example, even though Air Quality Staff determined that the Amended HBEP's modifications "constitute a considerable change in fact and circumstance from the project as licensed," Staff concluded that "there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects associated with those modifications." (Exhibit 6000 (FSA Part 1 at 4.1-1.) Thus, Air Quality Staff concluded

that no supplementation to the 2014 Final Decision is necessary for Air Quality.⁴ Further, Project Owner reiterates that the Amended HBEP's air emissions are more than fully mitigated, even beyond what is required by law, regulation, and District rules. Amended HBEP air emissions will be fully offset consistent with South Coast Air Quality Management District ("SCAQMD" or the "District") Rules. (Exhibit 5079 (Petition to Amend Revised Air Quality and Public Health Assessment Section at § 5.1.7.3).) The Amended HBEP will also comply with District Rule 1304.1, which requires electrical generating facilities that use the specific offset exemption described in Rule 1304(a)(2)⁵ to pay fees for up to the full amount of offsets provided by the District in accordance with Rule 1304. (*Id.*) The Amended HBEP would be required to demonstrate compliance with the specific requirements of this rule prior to issuance of the PTC. The fees paid pursuant to Rule 1304.1 would be spent on air quality improvement projects, with priority given to projects located within the surrounding communities where the repower project is located. (SCAQMD Rule 1304.1.) Rule 1304.1 fees are mitigation above and beyond that required to demonstrate compliance with state and federal air quality and environmental quality rules and the California Health and Safety Code. (Exhibit 5079 Petition to Amend Revised Air Quality and Public Health Assessment Section at § 5.1.7.3.) Lastly, Project Owner is permanently retiring HBGS Units 1 and 2 and Redondo Beach Generating Station Unit 7, which

⁴ Similar conclusions were made by Staff regarding all environmental issue areas evaluated in the Final Staff Assessment. (*See generally* Exhibit 6000 (FSA Part 1 (Introduction)) and Exhibit 6003 (FSA Part 2 (Introduction)), as well as the first page of each environmental subject area analysis contained in FSA Parts 1 and 2.)

⁵ In order to qualify for the exemption, Project Owner proposes to shut down three boilers in conjunction with the construction of the Amended HBEP. The three boilers include HBGS boiler 1 (215 MW), boiler 7 (480 MW) at AES' Redondo Beach Generating Station, and HBGS boiler 2 (215 MW). The total capacity of the boilers being shutdown is 910 MWs. (Exhibit 5079 (Petition to Amend Revised Air Quality and Public Health Assessment Section at § 5.1.7.3).)

will further reduce air quality impacts as these units will no longer contribute to background air quality concentrations. (*Ibid.*)

In addition, regarding Visual Resources, Staff also noted that “[b]ecause the amended HBEP would change the types, sizes, and massing of power plant structures on the site, staff evaluated how those changes could affect views of the project site for the key observation points (KOPs) closest to the project site.” (Exhibit 6000 (FSA Part 1 at 4.12-1).) Staff then concludes that the Amended HBEP “would not result in new significant adverse impacts on visual resources or increase the severity of previously identified significant effects” and the Project “would not cause any inconsistencies with visual resources [LORS] identified in the [2014] Final Decision” and “[t]he amended HBEP does not change the “Findings of Fact” or “Conclusions of Law” for visual resources that are contained in the [2014 Final] Decision.” (*Id.*) 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, as set forth in City Resolution 2016-27. (Exhibit 5029.) Project Owner and Staff also agreed to revised language in Condition of Certification VIS- 1 as set forth in Project Owner’s Comprehensive Prehearing Conference Statement (Exhibit 5121 at p. 7) and as captured in FSA Part 2 (Exhibit 6003 at p. 10-26).

Lastly, while certain topic areas still contain disputed Conditions of Certification language,⁶ Project Owner and Staff reached agreement on language for NOISE-6, TRANS-3,

⁶ AQ-SC1, AQ-SC9, BIO-1, CUL-1, GEO-3, PAL-1, COM-3, COM-4, and COM-15.

and TRANS-8 during the December 21, 2016 Evidentiary Hearing. (*See* Evidentiary Hearing Transcript (TN# 215154 at pp. 65-68 (TRANS-3), 69-70 (TRANS-8), and 80-83 (NOISE-6).)⁷

IV. CONCLUSION

Project Owner is confident that the Presiding Member has all of the requisite information necessary to complete the Presiding Member’s Proposed Decision (“PMPD”) for the Amended HBEP. Project Owner looks forward to publication of the PMPD and a favorable decision by the Commission.

Date: January 11, 2017

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⁷ *See* also language for Conditions of Certification NOISE-6, TRANS-3 and TRANS-8 contained within Exhibit 5113 (Project Owner’s Opening Testimony (Part 2) at attached Exhibits C (Noise) and D (Traffic & Transportation)).