

DOCKETED

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Project Title:	Huntington Beach Energy Project - Compliance
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Document Title:	Memorandum of Agreement Between California Energy Commission and California Coastal Commission
Description:	For the convenience of the Committee and the parties, Staff is docketing the 2005 Memorandum of Agreement referenced in the Opening Brief by Helping Hands/Robert Simpsons and Staff's Reply Brief
Filer:	Sabrina Savala
Organization:	California Energy Commission
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ATTACHMENT B

MEMORANDUM OF AGREEMENT

**Between
The California Energy Commission and
the California Coastal Commission
Regarding
The Coastal Commission's Statutory Role
in the Energy Commission's AFC Proceedings**

PURPOSE:

The purpose of this agreement is to ensure timely and effective coordination between the Energy Commission and the Coastal Commission during the Energy Commission's review of an Application for Certification (AFC) of a proposed site and related facilities under Energy Commission jurisdiction. The agreement recognizes the exclusive authority of the Energy Commission to certify sites and related facilities subject to the siting and timing requirements of the Warren-Alquist State Energy Resources Conservation and Development Act (Public Resources Code Section 25500 et seq.). The agreement also recognizes the Coastal Commission's role in AFC proceedings as described in the Warren-Alquist Act, Public Resources Code section 25523(b), and in the California Coastal Act, Public Resources Code section 30413(d).

This agreement describes the manner in which the two Commissions and their staffs will coordinate during AFC reviews in four main issue areas:

- I. Timing of the Coastal Commission's 30413(d) Report
- II. Information Necessary to Complete the Coastal Commission's 30413(d) Report and How the Information will be Obtained
- III. Staff Coordination During AFC Proceedings
- IV. Supplemental Coastal Commission Review For Substantial Project Changes

This agreement additionally establishes the process for resolving disagreements between the two Commissions and staffs and describes the process for canceling the agreement. It also includes three attachments:

- A. Energy Commission Power Plant Permitting Timeline for Coastal Projects
- B. List of Coastal Act Provisions and Information Needed During AFC Review of Proposed Coastal Power Plants
- C. Staff Coordination and Timeline for Producing 30413(d) Report During AFC Proceedings

WHEREAS:

- I. Pursuant to requirements of the Warren-Alquist Act, the Energy Commission has exclusive authority to certify thermal power plants with a generating capacity of 50 megawatts or more and certain electric transmission lines. The AFC process may or may not be preceded by a Notice of Intention (NOI) process to determine an appropriate site for a proposed facility. During the NOI and AFC processes, Energy Commission staff acts as an independent party and is responsible for conducting an assessment of the environmental effects, safety, and reliability of the facility, and the facility's conformity with applicable laws. The AFC timeline is described in Attachment A.

- II. Pursuant to requirements of Sections 25523(b) and 30413(d), the Coastal Commission is responsible, during the AFC proceeding for each project, for reviewing thermal power plant projects proposed in the coastal zone and providing a report to the Energy Commission specifying provisions regarding the proposed site and related facilities to meet the objectives of the California Coastal Act. As stated in Section 30413(d), the report is to include findings on all of the following:
 - 1) The compatibility of the proposed site and related facilities with the goal of protecting coastal resources.
 - 2) The degree to which the proposed site and related facilities would conflict with other existing or planned coastal-dependent land uses at or near the site.
 - 3) The potential adverse effects that the proposed site and related facilities would have on aesthetic values.
 - 4) The potential adverse environmental effects on fish and wildlife and their habitats.
 - 5) The conformance of the proposed site and related facilities with certified local coastal programs in those jurisdictions which would be affected by any such development.
 - 6) The degree to which the proposed site and related facilities could reasonably be modified so as to mitigate potential adverse effects on coastal resources, minimize conflict with existing or planned coastal-dependent uses at or near the site, and promote the policies of this division [the California Coastal Act].
 - 7) Such other matters as the commission deems appropriate and necessary to carry out this division.

Section 25523(b) and section 1752(d) of the Energy Commission's regulations (Cal. Code Regs., tit. 20, § 1752 subd. (d)) require the Energy Commission to then adopt the specific provisions specified in the Coastal Commission's report as conditions of certification in its final AFC decision unless the Energy Commission finds that any such provisions either would be infeasible or would cause greater adverse effect on the environment.

- III. Each Commission believes it is in the best interest of the state and in the mutual interest of both Commissions to complete the necessary AFC review in a manner that is both timely and comprehensive in order to assure the compliance of each Commission with its respective statutory and regulatory requirements.
- IV. Staff of each Commission have interacted in past and current AFC reviews to help each Commission fulfill its respective responsibilities, and have developed a common understanding of the statutory and regulatory requirements of each Commission during the AFC review. Both the Energy Commission and the Coastal Commission have recognized this relationship in recent AFC decisions and 30413(d) reports.
- V. Each Commission believes it is useful to enter into this Memorandum of Agreement to ensure a shared understanding of their respective roles and responsibilities during the AFC review, to maintain clear communication and expectations between the two Commissions and their staffs, and to assure that the reviews and analyses necessary during an AFC review are completed in a thorough and timely manner.

THEREFORE:

The Energy Commission and the Coastal Commission agree to the following:

I. Timing of the Coastal Commission's Section 30413(d) report

A. In accordance with the California Coastal Act and the Warren-Alquist Act, the Coastal Commission must provide its report to the Energy Commission in time for the Presiding Member's Proposed Decision (PMPD) to consider the report's specific provisions to meet the objectives of the Coastal Act. In addition, the Energy Commission must incorporate those specific provisions as conditions of certification in both the PMPD and the final decision, subject to the exceptions under Section 25523(b).

B. The PMPD must, by regulation (Cal. Code Regs., tit. 20. § 1751), be based exclusively on the hearing record of the AFC proceeding. Therefore, in order for the Coastal Commission's report to be the basis of conditions of certification in the Energy Commission's decision, the Coastal Commission will provide the report in time to be entered into the Energy Commission's hearing record at an evidentiary hearing in the AFC proceeding.

C. Decisions by the Coastal Commission to approve a 30413(d) report for submittal to the Energy Commission are subject to the provisions of California's Open Meetings Act (Government Code Section 11120 et seq.), which requires the Coastal Commission to hold a noticed public hearing for such actions, and are additionally subject to applicable provisions of the Coastal Commission's regulations (CCR, Cal. Code Regs., tit.14, § 13001 et seq.).

D. The Coastal Commission will provide a report addressing the factors in Section 30413(d) as early as feasible after it receives the information necessary to complete the report and holds the necessary public hearing, and in time for the parties to prepare for the AFC hearings required pursuant to section 1748 of the Energy Commission's regulations (Cal. Code Regs., tit.20, § 1748). (See Attachment C)

E. The ability of the Coastal Commission to meet the hearing schedule of an AFC proceeding (see Attachment A) depends largely on receipt by the Coastal Commission and its staff of information necessary to produce that report. To ensure that the Coastal Commission receives information needed for the report in timely fashion, the two Commissions and staffs will coordinate as described in subsequent sections of this Agreement.

II. Information necessary for the Coastal Commission to complete its 30413(d) reports for proposed projects in California's coastal zone

A. Section 1704 and Appendix B of the Energy Commission's siting regulations in Title 20, California Code of Regulations, section 1701 *et seq.*, contain the informational requirements that an AFC must meet to be accepted as complete. Pursuant to Section 1709 (Cal. Code Regs., tit. 20, § 1709), the Energy Commission reviews any siting application that is submitted to it to ensure that it satisfies the informational requirements of Section 1704 and Appendix B, and, on the basis of such review, determines whether the application is complete.

B. The Coastal Commission is to include in its report to the Energy Commission findings as specified in Section 30413(d) of the Coastal Act, which will be based in large part on information obtained by the Energy Commission about a proposed project and its likely effects on coastal resources.

C. For projects undergoing AFC review that are proposed to be located in the coastal zone, the Energy Commission recognizes that the Coastal Commission is likely to need different information about certain aspects of a proposed project than might be required of proposed projects outside of the coastal zone for purposes of meeting the informational requirements. The Coastal Commission may need this different information to evaluate the potential effects of a proposed project on various coastal resources or to determine the conformity of the proposed project to policies of the Coastal Act or certified Local Coastal Programs and, on the basis of such evaluation, to specify, pursuant to Section 30413(d), the findings and specific provisions required to bring a proposed project into conformity with the objectives of the California Coastal Act.

D. A list of the standard minimum information needed for any 30413(d) report, along with the applicable Coastal Act provisions that create the need for this information, is provided in Attachment B. The information includes the following:

- Entrainment: For projects involving the use of ocean water, analysis of the proposed project's entrainment impacts based on recent and applicable entrainment data from the proposed project site.
- Coastal erosion: Evaluation of any new or modified shoreline protective devices that may be needed during the anticipated operating life of the proposed project.
- Public access: Analysis of the proposed project's effects on public access to the shoreline.
- Visual resources: Evaluation of the proposed project's effects on coastal visual resources.

E. The Energy Commission recognizes that its siting regulations (Appendix B of Title 20, Section 1701 *et seq.*) currently provide for requiring most, if not all, of the standard information needed by the Coastal Commission. Energy Commission staff will make Attachment B available to potential applicants interested in the AFC process for coastal projects and will encourage them to provide all the information in their applications. To the extent information identified in Attachment B may go beyond the scope of the Energy Commission's informational requirements in its siting regulations, Energy Commission staff will undertake a rule-making to amend the Energy Commission's regulations to clarify or require additional information that is relevant to the Coastal Commission's report and needed to find the AFC for a coastal project complete.

F. In addition to the standard information needed for coastal power plants, Coastal Commission staff will develop project-specific information requests as specified in this Agreement during the initial review and discovery phases for each AFC process. The process for requesting this project-specific information is described in Attachment C of this MOA as set forth below.

III. Coordination During AFC Proceedings

A. The AFC review process includes a number of steps during which it would be mutually beneficial for the two staffs to coordinate, exchange information, or discuss issues. This coordination, as detailed in Attachment C, includes early notice from Energy Commission staff to Coastal Commission staff about preliminary AFC submittals, requests by both staffs for additional information as needed during the discovery phase of the AFC review process, and ongoing involvement by Coastal Commission staff as feasible and necessary during the various phases of the Energy Commission's AFC process.

B. Coastal Commission staff will keep Energy Commission staff informed of the status of the data requests relevant to the 30413(d) report and any other matters related to the report and its issuance by the Coastal Commission. Energy Commission staff will include such information in its monthly status reports to the AFC committee. In the case of delinquent data responses, the staffs of the two Commissions will confer about whether to file a motion to compel responses and whether to seek a day-for-day slip in the AFC schedule, pending receipt of all the information requested in the outstanding data requests.

C. Coastal Commission staff will prepare a draft 30413(d) report for consideration at a noticed public hearing of the Coastal Commission. Coastal Commission staff will provide notice of that hearing to the Energy Commission, the AFC applicant, intervenors, and other interested parties to allow those parties an opportunity to comment in writing or verbally to the Coastal Commission before or during the hearing on the findings and provisions proposed to be submitted in the 30413(d) report.

D. Upon approval by the Coastal Commission of a 30413(d) report, Coastal Commission staff will submit the report to the Energy Commission. A representative of the Coastal Commission or its staff will sponsor the report into the Energy Commission's evidentiary record and be available at appropriate Energy Commission workshop(s) and hearing(s) to answer any questions about the report.

E. Energy Commission staff will ensure that Coastal Commission staff is timely informed of all project changes that occur or are proposed during Energy Commission review. Coastal Commission staff will determine whether changes to the proposed project are substantial enough to require supplemental review as described in the following Section IV.

F. The staffs of both Commissions shall work together to refine the timeline in Attachment C, pending a rulemaking to amend Appendix B in the Energy Commission's siting regulations, to coordinate further their roles and responsibilities with respect to the submittal of the 30413(d) report in accordance with the terms and objectives of this Agreement.

IV. Supplemental Coastal Commission Review Upon Substantial Changes to Proposed Projects

A. If a proposed project changes substantially between the time the Coastal Commission issues its 30413(d) report and the time the Energy Commission's AFC committee closes the evidentiary record or re-opens the record to accept additional evidence, the Coastal Commission shall be provided the opportunity to supplement its original report, pursuant to a schedule to be established by the AFC committee, taking into account the time needed for the Coastal Commission to adopt a supplement. The Coastal Commission will review the changed project and provide any new or modified specific provisions that the Coastal Commission determines to be necessary or appropriate to ensure the report will include the determinations required by Section 30413(d) with respect to the changed project. The Energy Commission will include those new or modified provisions in its final decision, except where it finds a provision would result in greater adverse environmental impact or would be infeasible.

For purposes of this agreement, a substantial change is defined as a change to the proposed site or related facilities that would affect coastal resources in a manner substantially different from what was reviewed by the Coastal Commission in its initial 30413(d) report.

B. When Coastal Commission staff determines that a substantial change has occurred, it will notify the Energy Commission's AFC committee as soon as possible within 15 days of receiving information of the substantial change of its intent to supplement its 30413(d) report for the Energy Commission's AFC committee to consider under Section 25523(b). The Coastal Commission or its staff may also determine that, even if a substantial change has occurred, there is no need to supplement the original 30413(d) report.

V. Resolving disagreements

If there are disagreements between the two Commissions or their staffs regarding the provisions of this agreement or other matters related to the 30413(d) report, representatives of each staff will meet to discuss the issues in dispute and shall work towards agreement.

If agreement is not reached within twenty-one days of this initial meeting, the Executive Directors of the two Commissions or their representatives shall confer to attempt to resolve the disagreement.

VI. Amendments

This agreement may be amended by mutual agreement of the two Commissions.

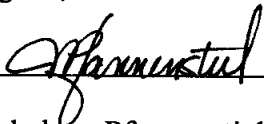
VII. Cancellation

This agreement is in effect until either Commission requests cancellation with a 30-day written notice to the other.

CONCURRENCE

The Energy Commission and the Coastal Commission agree to the terms of this agreement, as evidenced by the signatures of their representatives below.

Signed,



Jackalyne Pfannenstiel, Vice Chair,
Energy Commission

Date: 5/19/05



Meg Caldwell, Chair,
Coastal Commission

Date: 4/14/05