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BEFORE THE
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of:) Docket No.
) 12-AFC-03
REDONDO BEACH ENERGY PROJECT)
) Status Conference
_____)

CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Hearing Room B
Sacramento, California

THURSDAY, AUGUST 7, 2014
8:30 A.M.

Reported by Adrian Edler

APPEARANCES

COMMITTEE:

Karen Douglas, Presiding Commissioner

Janea A. Scott, Associate Commissioner

HEARING OFFICER:

Susan Cochran, California Energy Commission

ADVISORS:

Jennifer Nelson, Advisor to Commissioner Douglas

Eli Harland, Advisor to Commissioner Douglas

Jim Bartridge, Advisor to Commissioner Scott

CEC STAFF:

Pat Kelly, Project Manager

Kerry Willis, Senior Staff Counsel

APPLICANT:

Greggory Wheatland, Attorney for AES Southland LLC

Samantha Pottenger, Attorney for AES Southland LLC

Steven O'Kane

INTERVENORS:

John Welner, Attorney, City of Redondo Beach

Shahiedah Coates, Attorney, City of Hermosa Beach
(petition pending)

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AUGUST 7, 2014 8:30 A.M.

COMMISSIONER DOUGLAS: Good morning, everybody. Welcome to the status conference for the Redondo project. My name is Commissioner Karen Douglas, I'm the presiding member of this committee. To my left is our Hearing Officer, Susan Cochran. To her left, Commissioner Janea Scott, she's the associate member on this committee. And to her left is Jim Bartridge, Commissioner Scott's advisor.

Let me ask the parties to introduce themselves, beginning with the applicant. And please remember both to turn your mikes off and then to turn them back -- turn them on when you speak and turn them off when you're done, because we can't have more than two mikes on at the same time.

MR. WHEATLAND: I think I'm on now. Greg Wheatland for the applicant. With me is Samantha Pottenger and Steven O'Kane.

COMMISSIONER DOUGLAS: Welcome, thank you. Staff.

MS. WILLIS: Good morning. My name is Kerry Willis, I'm Senior Staff Counsel, and with me is Pat Kelly, Project Manager.

COMMISSIONER DOUGLAS: All right.

1 Intervenor, City of Redondo Beach, could you introduce
2 yourself.

3 MR. WELNER: Thank you. I'm Jon Welner, here
4 for the City of Redondo Beach.

5 COMMISSIONER DOUGLAS: Thank you very much.

6 Do we have any other -- we don't have any
7 other parties in the room, for the record, so do we
8 have any other intervenors who are on the phone, or on
9 the WebEx? If there are, you might be muted but we're
10 working on unmuting you and we'll just ask you to
11 speak up.

12 Building a Better Redondo?

13 All right, I don't hear anybody from Building
14 a Better Redondo.

15 Is City of Hermosa Beach on the line?

16 MS. COATES: Hi, good morning. This is
17 Shahiedah Coates, Assistant City Attorney for the City
18 of Hermosa Beach.

19 COMMISSIONER DOUGLAS: Thank you very much.

20 Okay. At the moment -- oh, public advisor's
21 office, is anyone here from the public advisor's
22 office? Not yet.

23 I think we really threw people for a loop
24 starting at 8:30, but it was for scheduling reasons
25 necessary to do so.

1 At this point we don't have any members of
2 the public in the room. We'll take public comment
3 after the status conference concludes.

4 Let me ask now if there are any state,
5 federal or local government agencies on the line who
6 have not yet spoken?

7 MR. NAZEMI: Good morning, this is Mohsen
8 Nazemi, Deputy Executive Officer with South Coast Air
9 Quality Management District.

10 COMMISSIONER DOUGLAS: Excellent. Thank you,
11 Mohsen.

12 Anyone else?

13 All right. With that, I'll turn this over to
14 the hearing officer.

15 HEARING OFFICER COCHRAN: As set forth in the
16 order calling for the status conference today, we're
17 here to discuss the effect of the potential land use
18 initiative being presented by AES to the City of
19 Redondo Beach and to determine what effect that should
20 have on the proceedings currently before us on the
21 AFC.

22 We've read the status report statements that
23 you all submitted, thank you very much. I think that
24 at this point we'd like to hear from applicant first
25 because it seemed that your status report said "let's

1 talk" and then "times are uncertain" and then "full
2 speed ahead" so if you could give us a little bit more
3 input into what the status is of the initiative as
4 well as how you see the AFC proceeding from this point
5 forward.

6 MR. WHEATLAND: Okay. Well, thank you very
7 much, Commissioners and Hearing Officer Cochran.
8 Thank you for calling the status conference and we're
9 very happy to answer the questions you have posed
10 today.

11 As to the status of the initiative, on
12 July 23rd of 2014 the parent company of Redondo Beach
13 Energy Project filed with the City of Redondo Beach a
14 Notice of Intent to begin gathering signatures for an
15 initiative measure for the local ballot, and this
16 measure would establish as an alternative to a
17 generating plant at that site a new land use plan for
18 the site and it would provide a feasible economic path
19 for the elimination of power generation and industrial
20 uses at the site.

21 The filing of the Notice of Intent was the
22 result of AES's efforts to consider the land use
23 concerns that were raised by the City of Redondo Beach
24 and to address potential alternative uses of the site.
25 The notice that was filed is the first step in what's

1 going to be a lengthy process for determining whether
2 the residents of Redondo Beach share our vision for an
3 alternative use of the site.

4 Later today, the City Attorney is expected to
5 issue a ballot title and summary. This document will
6 allow AES to begin the process of gathering signatures
7 for an initiative. If sufficient signatures are
8 gathered, the initiative then would be voted upon by
9 the residents of Redondo Beach in an election that we
10 would expect to occur in March of 2015. If the
11 initiative passes, as we hope it will, it will give
12 legal form to a vision of the project site that would
13 not involve electric generation.

14 Also, we understand that on August 19th the
15 Redondo Beach City Council will consider a resolution
16 of support for the initiative.

17 The question of whether the applicant should
18 request suspension of the AFC proceeding, as you
19 mentioned, Hearing Officer Cochran, is complicated.
20 On a strictly legal basis, the proposed initiative
21 measure would have no impact on the processing of the
22 AFC. The initiative process is a local land use
23 process separate from the conditioned certification
24 under the Warren Alquist Act.

25 But there are, of course, practical

1 considerations that need to be discussed. This is
2 dependent upon a number of factors, many of which are
3 outside the applicant's control.

4 As you know, the AFC was filed in November of
5 2012 and was found data adequate on August 27th, 2013.
6 So we are already one year into the proceeding and we
7 have made very substantial progress.

8 A PSA has been issued now in this proceeding
9 that is -- represents a bulk of the staff's workload,
10 and the remaining steps of the proceeding are not as
11 onerous as what we've already been through this last
12 year.

13 The applicant has already invested millions
14 of dollars to design the project, to conduct
15 environmental studies and to prepare the AFC, not to
16 mention the \$500,000-plus filing fee.

17 We recognize also that the Commission and
18 other parties have also made a substantial investment
19 in time and resources to participate in this
20 proceeding. Certainly no one, including the
21 applicant, would want to devote unnecessary resources
22 to this proceeding if, as we hope and expect, the
23 initiative will be successful. In just a few weeks --
24 however, it's still slightly premature to assess the
25 likely success of that initiative.

1 In just a few weeks, following issuance of
2 the ballot title and summary and after consideration
3 of a resolution by the Redondo Beach City Council on
4 August 19th, we're going to have a much better idea
5 whether the City shares our vision for alternative
6 uses of the project site, and we will be in a much
7 better position to advise you whether the applicant
8 would be able to request suspension of the proceeding.
9 So at this point in the proceeding what I would
10 recommend to you is three things.

11 First of all, the committee -- we would
12 recommend that the committee extend for 30 days the
13 deadline for filing comments on the PSA, which I
14 understand is now scheduled to be August 27th, so that
15 no party would need to prepare comments on the PSA
16 while the question of suspension is pending.

17 Second of all, I'd recommend to you that the
18 committee direct the parties to update the committee
19 on their positions on suspension in the next regularly
20 scheduled status update, which would be on September
21 1st. This would follow the City Council's meeting of
22 August 19th.

23 And third, we'd recommend to you that the
24 committee defer until after September 1st any further
25 ruling on the scheduling or suspension of this

1 proceeding. In particular, this will allow all
2 parties to see the ballot title and summary and will
3 allow the Redondo Beach City Council to consider their
4 support for the initiative. I think that would put us
5 in a much better position to make a recommendation to
6 you, and that would be our recommendation to you
7 today.

8 HEARING OFFICER COCHRAN: Okay, thank you.
9 Let's turn now to staff. Do you have -- in your
10 status report you made a suggestion of at a minimum
11 reopening discovery to allow some discussion then in
12 the alternatives section an analysis as it relates to
13 this sort of newly proposed land use. And you've
14 heard Mr. Wheatland's suggestions regarding further
15 actions. Do you concur, do you have different ideas?
16 Where do we stand?

17 MS. WILLIS: Well, this is the first time
18 we've heard the proposed recommendations. Once again,
19 good morning. My name is Kelly Willis, Senior Staff
20 Counsel. We also want to thank you for the
21 opportunity to address the status of these
22 proceedings.

23 We only found out about the Harbor Village
24 proposed project through the media. AES had not
25 contacted us nor its attorneys, so we were quite

1 surprised by the news, and that was only just a few
2 days before we published our over a thousand page
3 preliminary staff assessment.

4 It was staff's goal to publish a complete PSA
5 in a timely manner, so the PSA includes all technical
6 sections and was published on July 28th, 45 days after
7 the preliminary determination of compliance was issued
8 by South Coast Air District.

9 There remains a few areas where we would
10 still need to workshop. That would be (inaudible)
11 mitigation and staff's proposed use of recycled water.

12 In addition, staff -- the applicant still
13 needs to provide an air quality cumulative impact
14 assessment. In addition, staff had planned on a meet-
15 and-confer with the City on the urgency ordinance on
16 the building moratorium on the site, and staff found
17 that it was not an applicable LORS and we assumed that
18 the City would disagree with that -- with that
19 determination.

20 Prior to July 23rd when we first found out
21 about the Harbor Village, Ms. Kelly had contacted AES
22 and AES had said that they would want to hold
23 workshops during early and mid September, so this is
24 all news to us that we want to put this all on, you
25 know, hold for 30 days.

1 As you mentioned, if the proposed project
2 moves forward, the power plant project, staff would
3 need additional information on the project description
4 of Harbor Village, the environmental impacts and any
5 other information that we might need to go forward.

6 The PSA, in the PSA staff determined no
7 project alternative would be the current power plant
8 as it exists but nonoperational after 2020.
9 Obviously, if this Harbor Village is in the picture,
10 it would also become another option for the no project
11 alternative, which would cause a delay in getting the
12 FSA out.

13 At this point in time, we don't have specific
14 comments on this because we just heard about it just
15 moments ago, but it would make some sense to delay if
16 this is going to go -- if this eventually is going to
17 go into suspension.

18 Staff's put an enormous amount of work into
19 getting this, you know, thousand-page document out and
20 it clearly was AES already knew that they were going
21 forward with the Harbor Village plan, so it was a
22 little shocking to find this out.

23 HEARING OFFICER COCHRAN: If the committee
24 were going to provide additional time for discovery,
25 what timeframe are you looking for, how much time

1 would be necessary?

2 MS. WILLIS: Well, it would mostly depend on
3 how fast the applicant would give us the information
4 that we requested. Ms. Kelly talked to Mr. O'Kane
5 about, what, three weeks ago? Two or three weeks ago,
6 and he said he was going to be sending her the plans.
7 We have yet to receive any of that information. So
8 it's basically in the applicant's court on how fast
9 they would get that information to us, and then I
10 would imagine that we'd need probably an additional
11 probably 30 days to evaluate it, because it is quite
12 -- it appears to be, at least from what minimal
13 information that we've received, a complex
14 development.

15 HEARING OFFICER COCHRAN: I have to write my
16 notes before I forget them.

17 Let's turn now then to the City of Redondo
18 Beach as an intervenor as well as, obviously, the land
19 use planning agency in this, and what's your position
20 regarding the further processing of the AFC?

21 MR. WELNER: Well, thank you for the
22 opportunity to -- to comment on this. I think first,
23 first let me quickly address the proposal that was
24 just put on the table by AES.

25 I think I'm going to discuss our preferred

1 approach, but with regard to their specific proposal,
2 I would say that the City doesn't have any objection
3 to this kind of idea of a 30-day delay (inaudible)
4 issue. However, the one adjustment we would make to
5 that is that we think that there should be a specific
6 date after September 1st when comments are received
7 about next steps, to again have a status conference or
8 some equivalent meeting to make sure that this issue
9 is again addressed.

10 So I guess what I'm saying is, I don't know
11 if we can schedule that date altogether here or
12 shortly after this meeting, but if that's the route
13 that the committee chooses to take, we just want to
14 make sure that there's a time certain when we'd be
15 back here to discuss what's happened since.

16 With regard the City's preferred approach, we
17 submitted comments suggesting an immediate suspension
18 until the initiative issue is resolved. We disagree
19 with AES that it's -- it would not be legal to impose
20 the suspension. We think that the Commission and the
21 committee certainly has the discretion for a number of
22 reasons I'll describe to husband both the Commission's
23 and the intervenor's resources to suspend the process.

24 There are two ways to approach it. We could
25 delay doing -- delay suspension and then we meet and

1 then issue a suspension. Or the flip side is we can
2 suspend the process now, and if the initiative doesn't
3 work out, then we can unsuspend.

4 To me it seems more efficient to suspend the
5 process now and see. I think we all expect the
6 initiative to move forward positively, and so this
7 additional 30-day period seems unnecessary.

8 The second comment is with regard to the
9 staff, staff comments that were made. We didn't make
10 this point but we thought staff made really excellent
11 points with regard to the no project alternative and
12 the impact that this proposal has in terms of a real
13 analysis of the no project alternative and we fully
14 support staff's view that if there isn't a suspension,
15 at a minimum that issue needs to be revisited, there
16 needs to be time allocated for that and discovery
17 should be reopened.

18 In addition to that, if that is the route
19 that the committee takes, we recommend that it not
20 just be the no project alternative that is revisited,
21 but actually the entire alternatives section, and the
22 reason for that is that it's become clear in the
23 course of the Public Utility Commission's long-term
24 procurement planning process that there have been
25 changes in the analysis of California ISO with regard

1 to what they call the locational effectiveness factor
2 calculations in the L.A. basin area.

3 That's a complicated way of saying that it
4 appears and it's coming out in that PUC process that
5 there may be a strong preference for facilities
6 further south than Redondo Beach in a way that wasn't
7 fully available to folks to analyze earlier. So to
8 the extent that the project -- to the extent that this
9 process is reopened for the no project alternative, we
10 actually just suggest that it be reopened for the no
11 project alternative and alternatives in general
12 because of this new information that's come to light.

13 The last point I would make, I just want to
14 respond directly to the comment that was made by AES
15 about whether or not this proposed initiative has a
16 legal impact on the AFC process. The comment that was
17 made essentially dismissed this as a local, this is
18 just a local process, how could it affect the AFC
19 process? I think there are at least three things to
20 consider in that regard.

21 One is that this obviously generates a new
22 potential and potentially very serious LORS conflict,
23 and it seems to me that the Commission not only can
24 but should suspend the proceedings until it's clear
25 whether or not that LORS conflict is real.

1 Secondly, again, the staff's no project
2 alternative comment we think is quite valid. This
3 creates a new opportunity to look at a different no
4 project alternative, and not only should it be looked
5 at but it must be looked at.

6 And then finally, we would simply reiterate
7 the point that, while we've never seen it litigated,
8 certainly the Commission has in the past exercised
9 discretion to address changing circumstances in the
10 course of an application process and to conserve its
11 resources and the resources of involved parties when
12 it appears that moving forward with the process might
13 be a waste of peoples' time and resources.

14 So that's the extent of our comments. We're
15 available to answer any questions that the committee
16 has.

17 HEARING OFFICER COCHRAN: I do have a
18 question for you. You mentioned a couple of times
19 that you believe that the committee has the
20 independent legal authority to suspend the
21 proceedings. Can you tell me what the genesis of that
22 authority is?

23 MR. WELNER: Well, the -- and I don't have
24 specific past examples in front of me, but the -- the
25 committee and the Commission always have the

1 discretion to manage proceedings in a way that is most
2 efficient and doesn't waste resources, particularly
3 when it appears that a project may not go forward at
4 all. And so in our view, that's the kind of
5 discretion we can't imagine that would be challenged
6 if it were exercised.

7 HEARING OFFICER COCHRAN: Okay, thank you.

8 I believe it's Ms. Coates from the City of
9 Hermosa Beach.

10 MS. COATES: Hi. Yes, thank you for the
11 opportunity to comment.

12 HEARING OFFICER COCHRAN: Just as a preface.
13 Even though the committee has not yet acted upon your
14 petition to intervene, we would still like to hear
15 your comments and position on this matter.

16 MS. COATES: Thank you. And as you know, our
17 petition to intervene is still pending and the City is
18 at the very early stages of analyzing the potential
19 impacts to the city and this new information regarding
20 the Harbor Village project will impact the City's
21 analysis.

22 And we don't have a formal position regarding
23 extension of the proceedings, but you know, of course,
24 an extension of time to respond to the PSA would
25 provide some additional time for the City to conduct

1 its analysis.

2 And we'll look forward to the Commission's
3 determination on our petition to intervene.

4 HEARING OFFICER COCHRAN: Okay, thank you
5 very much.

6 I'll turn back to the applicant now so you
7 get the last bite of the apple regarding the comments
8 that have been made so far.

9 MR. WHEATLAND: Well, thank you for the last
10 bite, but I don't think I will bite. There are a
11 number of substantive things that were discussed, but
12 I just, in terms of whether there's a LORS conflict or
13 what we would need to do in terms of evaluation of the
14 no project alternative, but I don't think there's a
15 need here today to engage in those substantive
16 discussions. I would prefer to defer that until we
17 can address the procedural issues. But just for the
18 record, we disagree.

19 HEARING OFFICER COCHRAN: Thank you. Is
20 there anything further that anyone would like to say?

21 Turning now then to public comment, are there
22 any members of the public who would like to address
23 the committee regarding the pendency of this matter?

24 Okay, seeing none, we are now going to retire
25 to closed session as set forth in the agenda notice.

1 We are off the record.

2 (OFF THE RECORD FOR CLOSED SESSION AT 9:01)

3 HEARING OFFICER COCHRAN: We are back on the
4 record on the Redondo Beach matter for the status
5 conference.

6 I will report out of closed session that the
7 committee has opted to extend the PSA comment period
8 until Monday, September 29th, 2014. The committee
9 would ask that you update it on the status of the
10 matter in your normally scheduled status conference
11 statements on 9/1/2014, and that there will be a
12 subsequent status conference held in the latter part
13 of September after we have received the information
14 and hopefully before the comment deadline period for
15 the PSA.

16 And with that we're adjourned.

17 (ADJOURNED AT 9:14 A.M.)

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