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STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification for the) Docket No. 12-AFC-03
Redondo Beach Energy Project)

**REDONDO BEACH ENERGY PROJECT
STATUS REPORT # 16**

Pursuant to the *Order Directing Parties to Respond to Identified Issues and Questions* issued on July 23, 2015, AES Southland Development, LLC (the “Applicant”) hereby files this Status Report #16 to address the issues raised by the Committee relating to the Redondo Beach Energy Project (“Project”) Application for Certification (“AFC”) proceeding.

1. Site Description: The RBEP would occupy only a portion of the existing AES Redondo Beach Generating Station power plant site. What is the plan for the reuse of the rest of the site?

AES Redondo Beach, LLC owns approximately 50 acres of land within the City of Redondo Beach. Located within this area is the Redondo Beach Generating Station. Four units (Units 1–4) have since been retired in place, and four units (Units 5–8) are currently operational, as well as auxiliary boiler no. 17. Southern California Edison (“SCE”) owns and operates two electrical switchyards located in the northern portion of the Redondo Beach Generating Station property. A 66-kilovolt (“kV”) switchyard is adjacent to Redondo Beach Generating Station’s retired Units 1–4, and a high voltage 220-kV switchyard is located in the northeastern portion of the site. The remaining portions of the property consist of the administration building, retention basins, existing industrial structures, paved roadways, and parking areas. The eastern portion of the property includes an unpaved area occupied by five large containment structures (asphalt-covered soil berms) that were part of the containment facilities for former fuel oil storage

tanks (the storage tanks have since been removed). Water-retention structures are located in the central and northeastern portions of the property.

The new RBEP generating units will be sited on a new parcel of approximately 11 acres in the northeastern quadrant of the property. The remaining 39 acres of the 50 acre property are not part of the RBEP project site..

Where the Committee is asking “what are the plans for the rest of the site”, we assume that the Committee is asking the Applicant to describe its plans for the remaining 39 acres that are not part of the RBEP project site.

The Applicant plans to eventually demolish the Redondo Beach Generating Station, once the new generating facilities are licensed and after the Applicant has received any necessary approvals from the California Independent System Operator (“CAISO”), the State Water Resources Control Board (“SWRCB”), and the California Public Utilities Commission (“CPUC”) related to retirement of the once-through cooling units. (Please see TN #205092 for the updated demolition schedule.) Retired Units 1 through 4, which are non-operable, will begin in the third quarter of 2016. Assuming that the CAISO, SWRCB, and the CPUC consent to the Redondo Beach Generation Station ceasing operations, demolition of the operating units of Redondo Beach Generating Station will be expected to commence in the third quarter of 2019 beginning with the removal and relocation of the Wyland Whaling Wall. Relocation of the Wyland Whaling Wall and construction of the new control building will be expected to take approximately two quarters. Demolition of the operating Units 5-8 will be expected to begin in the next quarter, targeted for the first quarter of 2020, after commercial operation of the RBEP begins in the fourth quarter of 2019. Demolition will be expected to continue until the second quarter of 2021. Demolition activities will be expected to include the removal of existing office and warehouse buildings, auxiliary mechanical and electrical equipment associated with the Redondo Beach Generating Station units, but is not expected to include the removal of the SCE electric switchyards which are owned and operating by SCE.

Beyond the demolition activities described above, AES has no present plans for the use of the remaining 39 acres of the 50 acre property.

AES has no present plans for the use or development of the remaining 39 acres primarily due to the fact that in recent years the City of Redondo Beach has created conditions and taken actions that make it very difficult for AES to plan for any beneficial use of this property.

On November 4, 2008, the voters of Redondo Beach enacted Article XXVII into the City Charter. The new charter provisions require that any new development, zoning change or amendment of the General Plan that would increase traffic, density or congestion above stringently defined levels must first be approved by a majority of voters in a general or special election.

In 2013, an initiative called Measure A was placed before the voters. Measure A proposed to rezone the 50 acres and replace the currently permitted power plant use with a minimum of 60% public recreation and open space, and up to 40% commercial use. Measure A was defeated.

On December 3, 2013, the Redondo Beach city council adopted Urgency Interim Ordinance No. 3116-13 imposing a 45-day moratorium on the approval of any conditional use permit, coastal development permit, or any discretionary city permit or approval of construction, expansion, replacement, modification or alteration of any facilities for the on-site generation of electricity on any property located within the coastal zone.

On January 14, 2014, the city council adopted Urgency Ordinance No. 3120-14, which extended the moratorium for 22-months and 15-days from the date of adoption of this ordinance to November 2015.

In 2014, Measure B was placed before the voters. Measure B proposed to rezone the property and replace the power plant uses with 600 new residential units, 85,000 square feet of new commercial development, 250 hotel rooms and 10 acres of public open space. Measure B was defeated by the voters.

On July 7, 2015, the City Council adopted Ordinance No. 3134-15 (the “Ordinance”). The Ordinance prohibits the construction of all new electrical generating facilities of 50 megawatts or more, as well as the alteration replacement or improvement of equipment that would result in a 50 megawatt or more increase in the electric generating capacity of an existing electric generating facility in the City of Redondo Beach.

In the unlikely event that Ordinance No. 3134-15 is effective and enforceable, the only remaining permissible uses of the property are parks, new electrical generating facilities of less than 50 megawatts, well as the alteration replacement or improvement of equipment in the existing Redondo Beach Generating Station that would result in a less than 50 megawatt increase of the generating capacity of the plant. Non-thermal power plants might also be a permissible use of the of the property; however, the City has left open for further consideration a prohibition on energy storage projects within the City.

Since the voters have already defeated a measure that would have provided for up to 60% of the 50 acre parcel being used for public recreation and open space and because parks and recreation areas are two of the few remaining uses of the property, it is unclear what use, if any, would be permitted on this property under existing zoning if the Ordinance is effective. Moreover, due to the highly restrictive nature of Measure DD, it is likely that any measure affecting the future zoning, including Ordinance No. 3134-15, must be put to a vote before it can become effective.

2. Air Quality/GHG: How does the efficiency of the proposed turbines, including its heat rate average, impact the Commission’s greenhouse gas analysis?

The Applicant supports the greenhouse gas emissions analysis conducted by Staff in the Preliminary Staff Assessment’s Air Quality Appendix AIR-1. This analysis considered the efficiency of the proposed turbines, including heat rate average, and concludes:

- “RBEP would displace less efficient (and thus higher GHG-emitting) generation. Because the project’s GHG emissions per megawatt-hour (MWh) would be lower than those power plants that the project would displace, the addition of the RBEP

would contribute to a reduction of California and overall Western Electricity Coordinating Council [WECC] system GHG emissions and GHG emission rate average” (Appendix AIR-1, p. 4.1-81.)

- “Despite having a heat rate in excess of the WECC average, the operation of the RBEP should result in a reduction in the system heat rate for natural gas plants in the WECC due to its displacing energy from less-efficient natural gas-fired generation as discussed above. In those instances where RBEP is higher emitting on a per-MWh basis than the resources it displaces, but does so because it can operate at lower output levels and thus allow for more renewable integration and generation, the result might be a higher system heat rate, but total gas-fired generation (energy) and GHG emissions will fall” ((Appendix AIR-1, p. 4.1-105.)

The proposed technology for RBEP is more efficient than the technology currently in use at RBGS. Since fuel use closely correlates to the efficiency of and carbon dioxide emissions from natural gas-fired power plants, installation of the RBEP is expected to reduce statewide GHG emissions. This conclusion is consistent with Commission Staff’s findings.

3. Noise

- a. **The RBEP is located on the border of the cities of Redondo Beach and Hermosa Beach. To the extent the two communities’ requirements differ, how should the differences be addressed to determine compliance with LORS?**

The Redondo Beach Energy Project is located in the City of Redondo Beach. Consistent with California law and the precedent established for every development located in a single jurisdiction, the only applicable Noise “LORS” are the noise ordinances of the City of Redondo Beach.

Since 1999 the Commission has licensed more than 60 power plants that are now operating. To our knowledge, the Commission has always found the applicable noise LORS to be the laws of the jurisdiction in which the site is located. We are not aware of any instance in which the Commission has found the noise laws of any adjacent jurisdiction to be applicable to a project. We are likewise aware of no case law finding a

project located in one jurisdiction subject to the noise ordinance of a wholly different jurisdiction.

When the Commission determines applicable LORS it “stands in the shoes” of the local agency in which the project is located, and applies the laws in that jurisdiction. The noise ordinance of the City of Redondo Beach requires compliance only with the noise standards of Redondo Beach, and not adjacent jurisdictions. When the City of Redondo Beach has undertaken to permit development on or near the border of Hermosa Beach, such as the Shade Hotel, the City has applied only the noise standards of the City of Redondo Beach. Similarly, the noise ordinance of the City of Hermosa Beach requires compliance only with the noise standards of Hermosa Beach, and not adjacent jurisdictions.

Therefore, even if the requirements regarding noise may differ between Redondo Beach and Hermosa Beach, the Commission may lawfully only apply the noise standards of the jurisdiction in which the project is located – and those are the standards of the City of Redondo Beach.

1) To the extent the two communities’ requirements differ, how should the differing standards, including noise, be addressed in the environmental analysis?

As stated above, even if the noise standards and requirements regarding noise may differ, by law the Commission should only apply the noise standards of the jurisdiction in which the project is located.

b. Questions have been raised regarding the appropriate baseline for noise. Please provide a comparison between the operations of the existing plant and the anticipated operation of the proposed project to help put this in context.

The existing Redondo Beach Generating Station was built between 1954 and 1967 and is based on an older electrical generation technology. A substantial portion of the existing equipment is located outdoors and is spread over a large area. Outdoor equipment includes large motors and fans associated with the exhaust stacks and various valves, motors, pumps associated with the boilers as well as the boilers themselves. Over

the past several decades, the trend has been for electrical and mechanical equipment to both improve in efficiency and to lower sound emissions. The Redondo Beach Generating Station is an aging facility and has experienced periodic steam releases or other upset conditions that generate noise. AES is proposing to build a new plant, with modern equipment and technology. While all steam power systems require the ability to vent in case of unusual operating circumstances, the new combined cycle systems require less steam venting during upset events. Even then, the venting steam occurs at much lower volumes than the older boiler technologies. Compared to the older boiler technology, the new combined cycle configurations will, for example, almost completely eliminate the most sound intensive events associated with the existing facility, steam releases from the boiler power plant. The new combined cycled configuration will significantly reduce the frequency and intensity of steam releases.

The new facility has a smaller footprint and most major noise generating equipment will be located within modern acoustically designed enclosures or buildings. This includes the combustion turbine generator, the heat recovery steam generator, the steam turbine generator and gas compressors. The combustion turbine and heat recovery steam generator building were sized to accommodate additional silencing and equipment enclosures. Nearly all equipment and project components, including those located indoors, will be specified not to exceed near-field maximum noise levels of 90 dBA at 3 feet (or 85 dBA at 3 feet where available as a vendor standard). To ensure the project complies with the applicable conditions of certification, further acoustical specifications will be developed during detailed design, including those related to steam handling equipment. The combined cycle technology that RBEP will use is the same as numerous projects licensed and currently operating under the Commission's jurisdiction. As noted in Section 5.7.3.3.3 of the AFC, numerous design features, including low noise valves and steam vent silencers, will be assessed during the final design of RBEP.

c. Several questions have been raised about the Conditions of Certification NOISE 2, NOISE-3, NOISE-4, and NOISE-5.

- 1) What are the standards for employee protection from noise during construction and then during operations (Conditions of Certification NOISE-3 and NOISE-5)?**

During construction and operation, NOISE-3 and NOISE-5 provide that the noise control program will be used to reduce employee exposure to high (above permissible) levels in accordance with Title 8, California Code of Regulations, Sections 5095 through 5099 and Title 29, Code of Federal Regulations, Section 1910.95.

Sections 5095 through 5099 of Title 8, California Code of Regulations are regulations enacted by California's Division of Occupational Safety and Health ("Cal/OSHA") to protect workers from health and safety hazards on the job. Subchapter 7 is composed of General Industry Safety Orders. Sections 5095 through 5099 are part of Group 15, Occupational Noise and Ergonomics, of the General Industry Safety Orders, and establish requirements for controlling occupational exposures to noise. (See, 8 C.C.R. § 5095.)

Section 1910.95 of Title 29, Code of Federal Regulations is a regulation enacted by the United States Department of Labor, Occupational Safety and Health Administration ("OSHA"), which requires protection for workers against the effects of noise exposure when sound levels exceed a certain level.

Thus, the standards for employee protection from noise are those established by Cal/OSHA and OSHA.

2) How will the Energy Commission ensure proper mitigation on neighboring properties (NOISE-4)?

If the Commission adopts Condition of Certification Noise-4, the condition will ensure that noise levels off-site do not exceed the standards set in the Commission's Decision.

NOISE-4 provided that the project design and implementation will include appropriate noise mitigation measures adequate to ensure that the operation of the project will not cause the noise levels due to normal steady-state plant operation alone, during the four quietest consecutive hours of the nighttime, to exceed an average of 43 dBA L90 measured at or near monitoring location M1, 44 dBA L90 measured at or near monitoring

location M2, 50 dBA L90 measured at or near monitoring location M3a, and 45 dBA L90 measured at or near monitoring location M4.

This is the same means of enforcement of noise standards that the Commission has employed for all of the power plants it has previously licensed.

NOISE-4 provides that when the project first achieves a sustained output of 85 percent or greater of its rated capacity, the project owner shall conduct a 25-hour community noise survey at monitoring locations M1, M2, M3a, and M4, or at a closer location acceptable to the CPM. This survey shall also include measurement of one-third octave band sound pressure levels to ensure that no new pure-tone noise components have been caused by the project.

The measurement of power plant noise for the purposes of demonstrating compliance with this condition of certification may alternatively be made at a location, acceptable to the CPM, closer to the plant and this measured level then mathematically extrapolated to determine the plant noise contribution at the affected residence. The character of the plant noise shall be evaluated at the affected receptor locations to determine the presence of pure tones or other dominant sources of plant noise.

If the results from the noise survey indicate that the power plant noise at the affected receptor sites exceed the above values, mitigation measures shall be implemented to reduce noise to a level of compliance with these limits. If the results from the noise survey indicate that pure tones are present, mitigation measures shall be implemented to reduce the pure tones to a level that complies with Noise Table A1 (bottom row defining pure tone).

- 3) Regarding the potential for residents being disturbed by noise from the proposed power plant, NOISE-2 requires a complaint reporting program. Upon receipt of a complaint, mitigation measures are then to be devised and implemented. What standards apply for determining appropriate mitigation measures?**

The Commission has been successfully dealing with noise related reports during construction and in compliance since the Commission's inception, and there is nothing

unique at Redondo Beach that would preclude the continuation of the Commission's successful program. The standards that apply to the adjudication of a complaint filed pursuant to NOISE-2 are in this case, as in every case, the standards adopted by the Commission in the decision certifying the facility. Upon receipt of a complaint, the Compliance Project Manager ("CPM") will investigate to determine whether the noise complained of was actually project related. (For example, there have been instances in the past where noise complaints were lodged, and, upon investigation, the CPM determined the power plant was off-line and thus could not be the source of the noise.) After the initial investigation by the CPM, the noise resolution process may involve monitoring of noise levels at the source and at the point of the complaint, and these levels would be reported on the noise resolution form provided by the Project Owner to the CPM. If the measured noise levels exceed the standards set in the license, the Commission could direct the Project Owner to install additional noise reduction measures at the plant. To our knowledge, this has never been necessary. There are more than 60 power plants licensed by the Commission since 1999 that are currently operating. Because the Commission's noise standards are so stringent, there have been very few noise complaints filed for these facilities, and to the best of our knowledge, all of these complaints have been successfully resolved by the Project Owner and the CPM.

4. Land Use

- a. **The PSA noted that the City of Redondo Beach is in the process of adopting a moratorium that could create a non-conformity between the RBEP and local land use LORS. The PSA argues that the moratorium is not effective because it has not been approved by the California Coastal Commission. The City of Redondo Beach argues that Coastal Commission approval is not required. The Committee needs to be able to evaluate staff's underlying argument (legal or factual) regarding whether the moratorium impacts the proposed project's conformity with local LORS. If the City of Redondo Beach adopts a moratorium and it is determined that it does apply, what options are available to the Energy Commission?**

As explained in response to Question #1, on July 7, 2015, the City Council adopted Ordinance No. 3134-15 (the "Ordinance"). The Ordinance prohibits the construction of all new electrical generating facilities of 50 megawatts or more, as well as

the alteration replacement or improvement of equipment that would result in a 50 megawatt or more increase in the electric generating capacity of an existing electric generating facility in the City of Redondo Beach. The Ordinance is not merely a moratorium, it is a general and permanent prohibition on electric generating facilities, as defined. The Ordinance is intended to prohibit power plants licensed by the California Energy Commission. The stated intent for the Ordinance is to impede or constrain the current AFC licensing proceeding for RBEP. As the City plainly admitted in an Administrative Report for the May 14, 2015 Planning Commission meeting:

“[I]t is important that the City enact zoning and land use plan amendments during the term of the Moratorium. The presence of a conflict with LORS requires the California Energy Commission (CEC) to make additional finding[sic] before approving an AFC.” (Administrative Report, p. 3.)

The Applicant contends that the adoption of the Ordinance is procedurally and substantively flawed, is not a legitimate exercise of the police powers of the City and is neither legally effective nor an “applicable” local ordinance.

The options available to the Commission for ordinances adopted by the City of Redondo Beach are the same as for any other local ordinance. The Commission must first determine if the ordinance is effective and applicable. Assuming, hypothetically, that the Commission determines that an ordinance *does* apply to the project and further determines that the project is not in conformance with the ordinance, the Commission may certify the project upon a determination that the project is required for public convenience and necessity, and that there are not more prudent and feasible means of achieving public convenience and necessity with a Section 25525 Approval. (Pub. Resources Code § 25525.) Statutory factors to consider in making this determination include, but are not limited to, the facility’s environmental impacts, consumer benefits, and electric system reliability. (Pub. Resources Code § 25525.)

- b. The Energy Commission power plant certification process involves consolidated permitting. However, the Land Use Section’s Conditions of Certification all require future approvals by the city of Redondo Beach, for such things as signage, parking, and structural design standards. How is the Energy Commission discharging its obligations to determine**

compliance with LORS by allowing post-decision action by the city of Redondo Beach?

Conditions of certification cannot, as a matter of law, and should not, as a matter of practice, contain any post-Commission certification discretionary approvals by any state, regional, or local entities.

Conditions requiring approval by any state, regional, or local entity, including a city or county, post approval, are simply inconsistent with the Commission’s statutory authorities embodied in the Commission’s exclusive authority as to all state law matters pursuant to Public Resources Code section 25500.

Certain items, such as the non-discretionary review of signage, parking and structural design standards, can only be satisfied only after the final detailed design of the project, post-certification. The Commission does not allow or require post-decision approval by the local jurisdiction. Instead, the approval of these conditions rests with the Commission. Some of these approvals are delegated to the CBO. Some are performed by the CPM. This approval authority is made clear in that the Commission is the only entity with the authority to take enforcement actions against certified facilities.

As a matter of practice and comity with local governments whose land use authority is preempted by the Public Resources Code, the Commission typically provides in verification language that the Project Owner submit the signage, parking plans and other non-discretionary approvals to the City or County for “review”, but submitted to the CPM for approval. This review process allows the local jurisdiction to have input into the matter, but does not delegate final approval to the local jurisdiction for these ministerial acts. For example, the verification language of LAND-3 states: “At least 30 days prior to start of construction, the project owner shall submit to the CPM, written documentation, including evidence of review by the city that the project conforms to all applicable parking standards.”¹

¹ We would recommend that the language be slightly modified to require the materials to “be submitted for review by the city” to limit the project’s obligation to submit documents and

With regards to LAND-1, the Applicant agrees that requiring a lot-line adjustment to be approved by the City after the AFC is approved, would not be consistent with the Commission's peremptory and exclusive jurisdiction pertaining to all applicable laws. If the Commission were to allow the City to exercise discretionary authority over a lot-line adjustment post-certification, such action would be an unlawful delegation of the Commission's exclusive authority.

The Commission has several options for handling the lot line adjustment issue. First, the Commission could find that a lot-line adjustment is not lawfully required, and that the Project Owner may construct the facility without the need for such an adjustment. Second, assuming hypothetically that the Commission determines that there is an applicable LORS that would require a lot-line adjustment, the Commission could override the requirement pursuant to Public Resources Code Section 25525. Third, as a variation of the second option, the Commission could require the Project Owner to apply to the City for a lot line adjustment, but also out of an abundance of caution, grant an override that would apply, in the alternative and only if necessary, if the City refused to process or denied the application.

The Commission has issued a Section 25525 Approval for a lot line adjustment in at least one instance where it was not practical to make an adjustment. In the case of the Metcalf Energy Center, the project was located partially in the city and partially in the county. Given the city's opposition, the Commission issued a Section 25525 Approval. As a matter of state law, no further action was required. Later, as a matter of comity, the project owner and the city worked out an agreement for the applicant to have an annexation, general plan amendment and rezone processed by the city after the project was built. But again, this post-approval alignment of the local LORS with the Commission Section 25525 Approval was not required.

In this instance, given the City's pronouncement in Ordinance 3134-15 that it will not issue any permits to any electric generating facilities subject to the Commission's

preclude any attempts to block the project if the submissions are ignored or not otherwise timely processed.

jurisdiction, it may not be practical to obtain a lot line adjustment. Therefore, barring a change of position by the City, we recommend Option 3.

5. Soil & Water Resources

a. The LORS table on applicable statutes relating to water regulation appears to be incomplete.

1) Are there additional LORS relating to water use or supply that should be included in the LORS table?

AES has reviewed PSA Soil and Water Table 1 (LORS). It appears complete, and we have no suggested additions.

b. The PSA indicates that the project will use recycled/reclaimed water for process purposes.

1) What is the status of RBEP's use of recycled water during construction/demolition?

Use of recycled water during construction/demolition has not been addressed in prior correspondence, but AES commits to using recycled water as soon as practicable during construction/demolition. Interconnection with the existing recycled water line can be made early in the construction process, and so can be made available for most construction and demolition activities as long as a proper tap is installed. The initial phases of construction will use the existing potable water connection as the source of construction water, but the recycled water tap will be used as soon as it is available.

2) What is the status of RBEP's use of recycled water during operation?

The RBEP will use recycled water for the process water supply.

c. The PSA states that the use of recycled water will require a short interconnection to an existing pipeline. What is the length of the recycled water interconnection?

The recycled water pipeline would be approximately 330 feet in length, of which approximately 230 feet will be on site, and approximately 100 feet would be outside the property line in the Herondo Street public right of way.

1) When will the interconnection be built?

The recycled water interconnection will be made early in the construction process. See Response 5b above.

2) Has construction of the recycled water interconnecting pipeline been included in the project description?

Construction of the recycled water pipeline was not included in the original AFC project description submitted in 2012. It is our understanding that recent correspondence regarding the recycled water pipeline (including this Status Report) provides adequate information such that the recycled water line is now a part of the project description.

3) Have the potential impacts of that interconnection been analyzed?

The Applicant's analysts have reviewed the proposed connection of approximately 330 feet and have determined that no new impacts would occur. It is our understanding that the Commission Staff is will be analyzing the potential impacts of the interconnection.

d. The PSA is unclear on whether recycled water would need treatment before use in the project. If the recycled water supply would need pre-treatment before power plant use, what steps would be required?

Similar to the potable water supply, treatment would be required prior to power plant use. Because of the differences in initial quality, some additional treatment steps are required. In addition, a slightly greater amount of source water will be needed in order to generate sufficient process water for power plant use. Based on these expected changes, two new water balance figures have been prepared – see Attachment A. These changes are minor modifications to the planned water treatment process to accommodate the new water source, and are not “pre-treatment.”

1) What potential impacts may arise from pre-treatment?

There would be no pre-treatment required. The impacts of the overall treatment process would be similar to the RBEP as described in the AFC.

6. Coastal Commission 30413(d) Report *** The Coastal Commission has also recommended certain coastal zone impact mitigation measures. By law, the Energy Commission must adopt these measures unless it finds that these measures are (1) infeasible or (2) that the proposed mitigation would cause greater environmental impacts.

It is important to understand the different roles of the Coastal Commission in two very different CEC proceedings: a Notice of Intent (“NOI”) proceeding and an Application for Certification (“AFC”) proceeding.

The Coastal Act clearly delineates that the Coastal Commission’s provides only discretionary comments in AFC proceedings before the California Energy Commission per Public Resources Code Section 30413(e). In marked contrast, in NOI proceedings the Coastal Commission role is expanded and a “report” is issued per 30413(d).

The important distinction between an NOI “report” and AFC discretionary comments by the Coastal Commission, are explained in the defined statutory terms in both the Warren-Alquist Act and the Coastal Act.

A “Notice of Intent” is defined as follows: “‘Notice’ means the notice of intent, as further defined in Chapter 6 (commencing with Section 25500), which shall state the intention of an applicant to file an application for certification of any site and related facility.” (Pub. Resources Code § 25113.) The primary purpose of the NOI is site selection for powerplants to be built by the investor-owned utilities using “captive” ratepayer money. The NOI, “notice or intent,” or, sometimes referred to in the Warren-Alquist Act, simply as a “notice”, is the stated intent to engage in the first part of the dual NOI-AFC process: NOI site selection followed by AFC approval of the selected site.

An “Application for Certification” is defined as an “Application”: “‘Application’ means any request for certification of any site and related facility filed in accordance with the procedures established pursuant to this division.” (Pub. Resources Code § 25102.)

The NOI and AFC proceedings are distinct processes. Merchant (i.e., privately owned) natural gas-fired powerplants like RBEP are *exempt* from the NOI: “No notice of intention is required for a thermal power plant that will employ natural gas-fired technology.” (Pub. Resources Code § 25540.6.) Thus, RBEP is subject to an AFC process alone,.

Like all other state law entities, the Coastal Commission is preempted by the Commission’s exclusive siting jurisdiction. The Coastal Act clearly defines the Coastal Commission’s various roles in the Commission siting process. Those roles are dependent on whether the CEC is conducting an NOI or AFC proceeding.

There are limited circumstances when the Coastal Commission issues a “report”. The Coastal Commission only issues a report for a project in a NOI proceeding. Specifically, Public Resources Code section 30413(d) provides for a “report” from the Coastal Commission, but only in the NOI or “Notice” process:

(d) Whenever the State Energy Resources Conservation and Development Commission [CEC] exercises its siting authority and undertakes proceedings pursuant to the provisions of Chapter 6 (commencing with Section 25500) of Division 15 with respect to any thermal powerplant or transmission line to be located, in whole or in part, within the coastal zone, the [Coastal] ***commission shall participate in those proceedings*** and shall receive from the State Energy Resources Conservation and Development Commission ***any notice of intention*** to file an application for certification of a site and related facilities within the coastal zone. The commission shall analyze ***each notice of intention*** and shall, prior to completion of the preliminary report required by Section 25510 [titled, “Summary and hearing order on notice of intention to file application”], forward to the State Energy Resources Conservation and Development Commission ***a written report*** on the suitability of the proposed site and related facilities specified in that ***notice***. * * *

Thus, the circumstances calling for a “30413(d) report” are limited to “Notice of Intent” or NOI proceedings. In such cases, the Coastal Commission is required by law to

participate in any notice of intention, analyze each notice of intention and “shall” forward to the CEC a written report on the notice.

In marked contrast – a contrast that must begin with an appreciation of the clear statutory distinction between a NOI and an AFC proceeding – the Coastal Act provides only for comments on an AFC by the Coastal Commission. Section 30413(e) provides for “comments”, not a report, on an AFC:

The [Coastal] commission may, at its discretion, participate fully in other proceedings conducted by the State Energy Resources Conservation and Development Commission pursuant to its powerplant siting authority. In the event the commission participates in any public hearings held by the State Energy Resources Conservation and Development Commission, it shall be afforded full opportunity to present evidence and examine and cross-examine witnesses. (PRC 30413(e).)

Section 30413(e) makes the Coastal Commission participation in “other proceeding” pursuant to the CEC’s “powerplant siting authority,” i.e., AFC proceedings and post-certification amendments, discretionary. Thus, while the Coastal Commission is mandated to participate and submit a Report in a NOI proceeding, the Coastal Commission “may” participate in AFC proceedings.

The CEC has licensed other coastal powerplants where the Coastal Commission’s participation was discretionary (Moss Landing and Morro Bay, as just two examples.) As further evidence that the Coastal Commission participation is discretionary per 30413(e) and not mandatory, during the last state budget crisis, the Coastal Commission sent the CEC letters saying that the Coastal Commission was not participating in CEC siting cases due to budgetary constraints. The Coastal Commission could only opt out because their participation was discretionary, per 30413(e)’s “may” language for an AFC and not mandatory under Section 30413(d)’s “shall” language for an NOI.

The harmonized readings of mandatory participation and submittal of written reports by the Coastal Commission pursuant to Section 30413(e) and discretionary

participation pursuant to Section 30413(d) is consistent with pleadings filed by the Commission before the California Supreme Court.

Specifically, the CEC argued to the California Supreme Court (in a filing that post-dates the Memorandum of Understanding between the Coastal Commission and the Energy Commission) that in AFC proceedings, the Coastal Commission provides discretionary comments per subsection 30413(e) -- not a "report" per subsection 30413(d). A copy of the Commission's brief to the California Supreme Court is attached hereto as Attachment B.

In its brief filed with the California Supreme Court in *City of Carlsbad v. California Energy Resources and Development Commission, et al.* (Case No. S203634), the Commission explained that 30413(d) reports are not relevant in AFC-only proceedings. (See, generally, the CEC California Supreme Court Brief, at pp. 16-20.) Specifically, the Commission stated:

The language of Section 30413 make it abundantly clear that the requirements for a **"report" from the Coastal Commission involves "notices of intent," or the "NOI"** as it is commonly referred to. **NOI proceedings** are required for certain kinds of power plant siting (e.g., nuclear facilities or coal plants), but **not new gas-fired turbines**. (§ 25540.6, subd. (a)(l).) (CEC California Supreme Court Brief, p. 18)

The CEC further stated to the California Supreme Court that the Coastal Commission participation in an AFC proceeding is discretionary as set forth in Section 30414(e):

The Energy Commission has sought **to encourage** Coastal Commission participation in its proceeding for coastal facilities, both by proposing and signing the MOA, and by directly requesting participation, but these acts **in no way legally bind** the Coastal Commission to participate, **nor does the lack of that participation put a stop to the power plant licensing process at the Energy Commission**. (CEC California Supreme Court Brief, p. 20.)

As the Commission correctly argued to the Supreme Court, the statutory language is clear. The Coastal Commission provides “comments” on an AFC per Section 30413(e), not a “report” per Section 30414(d).

In summary, it would not be correct to state that “By law, the Energy Commission must adopt the measures in the Coastal Commission comments submitted in this AFC proceeding unless it finds that these measures are (1) infeasible or (2) that the proposed mitigation would cause greater environmental impacts. That language relates to actions under the NOI process pursuant to Section 30413(d). The mere fact that the Coastal Commission may choose to characterize its comments as a “report”, does not change the legal status of such comments. Section 25523(b) of the Public Resources Code (and corresponding Sections 1752(c) of the Commission’s regulations) requires only that the written decision of the Commission include “specific provisions to meet the objectives of the California Coastal Act.” The Coastal Commission comments in this proceeding should not be accorded any greater weight than the comments of any other party or agency.

- a. For all issues identified in the Coastal Commission’s 30413(d) reports, when will the analysis of whether the proposed mitigation measures are feasible or likely to cause more significant environmental effect be completed?**

As we explain above, in an AFC proceeding, the Coastal Commission does not issue a “report.” Therefore, it is not necessary to prepare an “analysis of whether the proposed mitigation measures are feasible or likely to cause more significant environmental effect.” That language relates to actions under the NOI process pursuant to Section 30413(d).

It is appropriate to consider the Coastal Commission’s recommendations along with the recommendations of all other parties to the proceeding, since the Coastal Commission has elected, in its discretion, to participate in the RBEP proceeding. The Applicant plans to submit a response regarding the Coastal Commission’s comments, as part of its opening testimony submitted on September 25, 2015. If necessary and responsive to opening testimony submitted by other parties, the Applicant will submit

additional information and analyses with its rebuttal testimony to be filed on October 2, 2015.

b. In its “Land Use” section, the Coastal Commission’s 30413(d) report contains a comment about the need for open space for conformity with the Coastal Act. How does this apply to the proposed reuse of the site?

The Commission recently addressed the application of Public Resources Code section 25529 in the Final Decision for the Huntington Beach Energy Project.

With respect to coastal access, the Commission’s Final Decision for the Huntington Beach Energy Project provides as follows:

Public Resources Code section 30211 provides: “Development shall not interfere with the public’s right of access to the sea where acquired through the use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.” The Coastal Act section 30212 (a) provides: “Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby; or (3) agriculture would be adversely affected...”

Here, the Pacific Coast Highway, which is between HBGS and the Huntington Beach State Beach, already provides adequate access to the sea. As HBEP will occupy a portion of the long-standing HBGS industrial facility, whose fence lines will not change in a way to deny access to the shoreline, the proposed project is consistent with Coastal Act access policies. (Final Decision, p. 6.1-14.)

The same rationale should apply to the RBEP. Similar to the Huntington Beach Energy Project, North Harbor Drive is between the RBEP site and the harbor, tennis courts and other public amenities on the ocean-ward side of North Harbor Drive and already provides adequate access to the sea. Hermosa Beach is located to the northwest of the project site across North Harbor Drive and Beach Drive, which provides substantial, existing public access to the coast. Seaside Lagoon, King Harbor, and the Redondo Beach State Park are all open for public use and provide public access to the sea. The RBEP

would be located on a small parcel located entirely within the property of the existing Redondo Beach Generation Station and no new off-site facilities would be constructed. The fence lines of the existing property will not change in any way to deny access to the shoreline. Thus, as with the Huntington Beach Energy Project, the Commission should find that the proposed project is consistent with Coastal Act access policies.

With respect to “Public Use Area”, the Final Decision for the Huntington Beach Energy Project finds as follows:

The Energy Commission must require the establishment of an area for public use as a condition of certification of a facility proposed in the Coastal Zone. (Pub. Resources §25529.) The HBEP would be located entirely within the site of the existing Huntington Beach Generation Station and no new off-site facilities would be constructed. The Huntington State Beach is located to the southwest of the project site across the Pacific Coast Highway, which provides two miles of existing public access to the coast. An additional 3.5 miles of city beach with public access continues north of the state beach. (Ex. 2000, p. 4.5-1.) Therefore, we find that reasonable access for public use of the nearby coastal areas currently exists and no additional lands would need to be acquired by the applicant. (Final Decision, p. 6.1-15.)

Again, the factual circumstances for RBEP are similar to those at Huntington Beach, dictating similar findings for the RBEP project. The RBEP would be located entirely within the site of the existing Redondo Beach Generation Station and no new off-site facilities would be constructed. Hermosa Beach is located to the northwest of the project site across North Harbor Drive and Beach Drive, which provides substantial, existing public access to the coast. Seaside Lagoon, King Harbor, and the Redondo Beach State Park are all open for public use and provide public access to the sea. Therefore, reasonable access for public use of the nearby coastal areas currently exists, and no additional lands or “open space” should be required of the Applicant.

7. Schedule: The Committee will discuss with the parties the most expeditious way to communicate any revised, expanded, or other amended analysis.

a. What is the best way to communicate any new or revised information and analysis?


The siting process provides multiple and plenary opportunities for parties to provide revised, expanded or amended analysis. Parties had an opportunity to share information prior to the preparation of the Preliminary Staff Assessment (“PSA”) and again prior to preparation of the Final Staff Assessment (“FSA”). The FSA will contain an updated analysis of the Project based on comments and information which were received between the publication of the PSA on July 28, 2014 and the closure of the public comment period on June 4, 2015. To the extent that there is still any revised, expanded or amended analysis that should be considered, the siting process provides all parties a further opportunity to submit this information as part of their prepared testimony during the evidentiary phase of the proceeding. All parties will have an opportunity to include such information in their opening testimony to be submitted September 25, 2015.

b. How much time is required to make any analytical changes/additions that may be identified?

The time currently provided for in the *Revised Committee Scheduling Order* issued on May 7, 2015 for parties to submit opening testimony (September 25, 2015) is more than sufficient to make any “analytical changes/additions” that may result from new information or analyses introduced by parties.

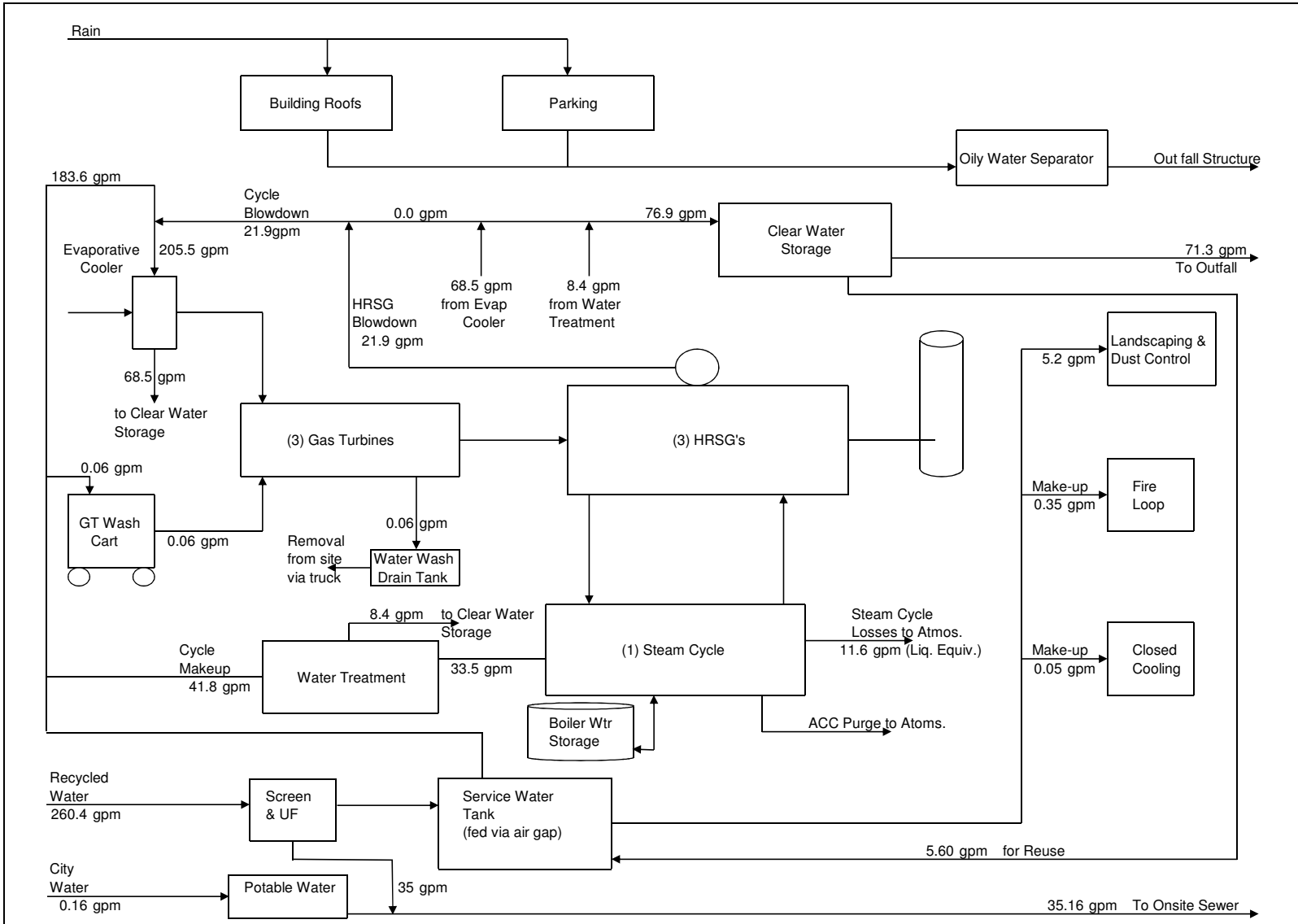
July 31, 2015

By: _____


Greggory L. Wheatland
Samantha G. Pottenger
ELLISON, SCHNEIDER & HARRIS L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
(916) 447-2166 Telephone
(916) 447-3512 Facsimile
Attorneys for the Applicant

ATTACHMENT A:

- AES Southland Redondo Beach Energy Project Peak Temp Water Balance (SPSAT)
- AES Southland Redondo Beach Energy Project Ave. Monthly Temp Water Balance (SMMAAT)

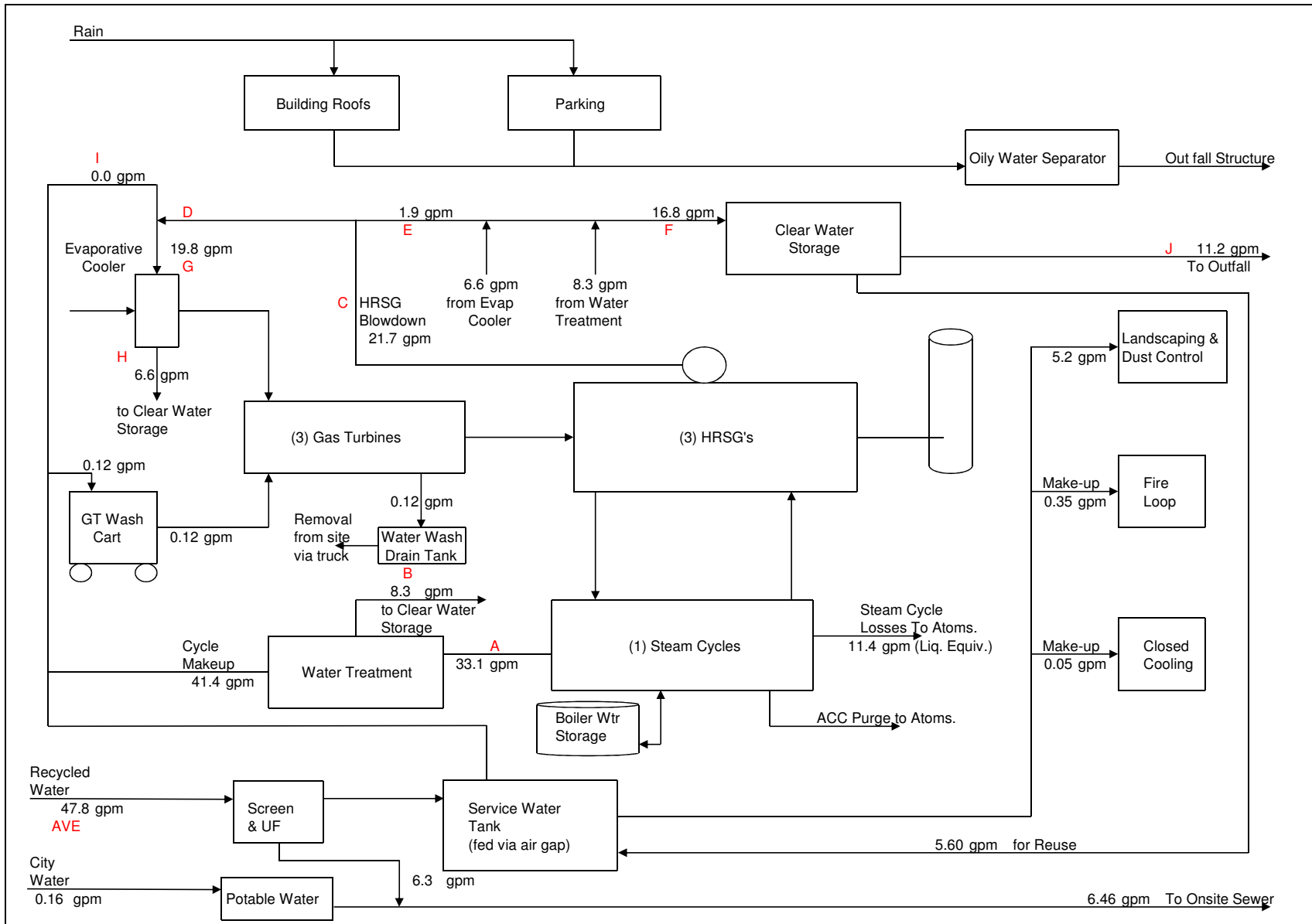


AES Southland
Redondo Beach Energy Project
Peak Temp Water Balance (SPSAT)

Date: 7/31/2015
 Rev: 2
 Designed: D Perlin
 Calcs: D Perlin
 Checked: B Eskra
 Approved: B Eskra



Power Engineers Collaborative, LLC.



AES Southland
Redondo Beach Energy Project
Ave Monthly Temp Water Balance (SMMAAT)

Date: 7/31/2015
 Rev. 2
 Designed: D Perlin
 Calcs: D Perlin
 Checked: B Eskra
 Approved: B Eskra



Power Engineers Collaborative, LLC.

ATTACHMENT B:

**Excerpt from “Respondent California Energy Commission’s Preliminary
Opposition to Petition for Writ of Mandate”
(Filed July 9, 2012, California Supreme Court Case S203634)**

**CONFORMED
COPY**

**IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

CITY OF CARLSBAD,)
)
Petitioners,)
)
v.)
)
CALIFORNIA ENERGY)
RESOURCES CONSERVATION)
AND DEVELOPMENT)
COMMISSION, et al.)
)
Respondent, and)
)
CARLSBAD ENERGY CENTER,)
LLC)
)
Real Party in Interest.)

Case No.: S203634

California Energy Commission
Docket No. 07-AFC-6

**SUPREME COURT
FILED**

'JUL - 9 2012

Frank A. McGuire Clerk

Deputy

**RESPONDENT CALIFORNIA ENERGY COMMISSION'S
PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE**

Exempt from Filing Fees, Gov. Code § 6103

**MICHAEL J. LEVY, SBN 154290
CARYN J. HOLMES, SBN 119207
California Energy Commission
1516 Ninth Street, MS 14
Sacramento, CA 95814
Telephone: (916) 654-3951
Facsimile: (916) 654-3843**

**Attorneys for Respondent California
Energy Resources Conservation and
Development Commission**

B. No Coastal Commission Report or Participation is Required for the Energy Commission's AFC Licensing Process, and Coastal Act compliance was Thoroughly Considered.

For many years, the Energy Commission has encouraged Coastal Commission participation in its power plant licensing process. However, shortly after the CECP application was filed, the Coastal Commission's Executive Director informed the Energy Commission by letter that it would not participate in several new licensing proceedings, including the CECP proceeding. (CEC Exh. 3[October 16 letter from Peter Douglas, Executive Director for Coastal Commission].) The letter stated that "substantial workload and limited resources" were an important consideration, but further explained that the principal environmental issue of interest to the Coastal Commission was no longer in play:

We note that all the projects listed above [including CECP] are proposing to end the environmentally destructive use of seawater for once-through cooling and instead employ dry cooling technology, which the Coastal Commission has strongly supported during past power plant reviews. This move away from once-through cooling removes what has been the single most contentious and environmentally damaging aspect of past project proposals. It also reduces the Coastal Commission's concerns about the type and scale of impacts associated with these proposed projects and about the ability of these projects to conform to Coastal Act provisions. Although each of these proposed projects have the potential to cause other types of adverse effects to coastal resources, we trust that the Energy Commission staff will continue to thoroughly review these projects as it has done in the past AFC proceedings....

(Ibid.)

The City contends that the Energy Commission cannot license a power plant in an AFC proceeding absent a report from the Coastal Commission regarding consistency with the Coastal Act. (Pets. Brf., pp. 3-

4.) The City is incorrect, and its citations to the applicable law do not support its claim.

The City cites three statutory provisions to support its claim. The first is Section 25519, subdivision (d), which requires the Energy Commission to transmit a copy of any AFC to the Coastal Commission “for its review and comments.” (Pet. Brf., p. 3.) It is undisputed that the Energy Commission did so, and solicited Coastal Commission participation. But nothing in that statutory provision requires a report from the Coastal Commission.

The City also cites Section 25523, subdivision (b), a part of the Energy Commission’s statute, and Section 30413, subdivision (d), a corresponding provision in the Coastal Commission’s statute, as authority that a Coastal Commission report was required before CECP could be licensed. (Pet. Brf, pp. 4-9.) Again, these statutes do not require what the City alleges. Initially, we defer to the Coastal Commission’s interpretation of its statutes that Section 30413 in its entirety is directory and not mandatory. (See Coastal Commission’s Preliminary Opposition filed in this proceeding.) More fundamentally, the City has conflated the requirements of NOI proceedings (described above) with those of the AFC licensing proceedings, thereby confusing these requirements. The City’s interpretation is inconsistent with the statutes themselves, and with the Coastal Commission’s long-standing interpretation of its statutory duties under these provisions.

Section 25523 addresses the findings that the Energy Commission must make when it licenses a project (AFC proceeding). Subdivision (b) requires, for projects licensed in the coastal zone, “specific provisions to

meet the objectives of [the Coastal Act] *as may be specified* in the report submitted by the California Coastal Commission pursuant to subdivision (d) of Section 30413, unless the [Energy] Commission specifically finds that the adoption of the provisions specified in the report would result in a greater adverse effect on the environment or . . . would not be feasible.” (Emphasis added.)

Section 30413, subdivision (d), of the Coastal Act describes the report referenced in Section 25523, subdivision (b), as follows:

(d) Whenever the [Energy] Commission exercises its siting authority and undertakes proceedings [for any power plant or transmission line] within the coastal zone, the [Coastal] Commission shall participate in those proceedings and shall receive from the [Energy] Commission *any notice of intention* to file an application for certification The [Coastal] Commission shall *analyze each notice of intention and shall, prior to completion of the preliminary report required by Section 25510, forward to the [Energy] Commission a written report on the suitability of the proposed site . . . specified in that notice.* The [Coastal] Commission’s report shall contain a consideration of, and findings regarding, all of the following: (Emphasis added.)

The language of Section 30413 make it abundantly clear that the requirements for a “report” from the Coastal Commission involves “notices of intent,” or the “NOI” as it is commonly referred to. NOI proceedings are required for certain kinds of power plant siting (e.g., nuclear facilities or coal plants), but not new gas-fired turbines. (§ 25540.6, subd. (a)(1).) Thus, the Carlsbad proceeding was not preceded by an NOI process that involved site selection, nor the report referened by Section 30413. Accordingly, Section 25510 (titled “Summary and Hearing Order on Notice of Intention to File the Application”) is irrelevant to the Carlsbad AFC proceeding, and no Coastal Commission report is statutorily required.

More important, the finding in Section 25523, subdivision (b), is inapplicable to CECP because it did not require any “report submitted by the Coastal Commission pursuant to . . . Section 30413.”

The above distinction between the statutory duty to provide the report in the NOI, compared to the discretionary ability to provide such a report in an AFC, is subject to long-standing legal interpretation by the Coastal Commission. A legal memorandum from the Coastal Commission’s attorney in 1990 described the NOI/AFC distinction as follows:

The Coastal Commission is required to submit a report during the NOI process to the Energy Commission on the suitability of the proposed coastal zone sites. The report must address a number of subject areas, pursuant to Public Resources Code section 30413(b). . . . Section 30413 provides that the Coastal Commission shall submit the report to the Energy Commission prior to the time that the Energy Commission completes its preliminary report on the issues presented in the NOI . . . [Para.] The Energy Commission will consider, but not be bound by the Coastal Commission’s recommendations in making its determination *as to which of the sites proposed in the NOI have greater relative merit.* [Para.] *The Coastal Commission’s role in the AFC Process. The Coastal Commission’s role with respect to the AFC . . . would be similar to that discussed above with respect to the NOI.* [Fn. omitted.] *The major difference is that the Coastal Commission is not required to submit a report to the Energy Commission. The Coastal Commission is nevertheless authorized, “at its discretion, to participate fully” in the proceeding pursuant to section 30413(e).* (CEC Exh. 4 (Memorandum of Deputy Chief Counsel Dorothy Dickey to Commissioner David Malcolm (May 23, 1990), pp. 3-4 [Emphasis added].)

Testimony at the evidentiary hearings for CECP established that Ms. Dickey was the Coastal Commission’s legal expert on how the Coastal Act provisions apply to power plant siting, that the memorandum was

apparently reviewed by the agency's chief counsel, and that no further agency letters, interpretations, or adopted regulations have occurred during the past 20 years that would have affected the legal analysis provided in the memorandum. (CEC Exh. 5, pp. 249-250[excerpt from 2/1/10 evidentiary hearing transcript].)

The City argues that the 2005 Memorandum of Agreement (MOA) between the Coastal Commission and the Energy Commission, providing for the Coastal Commission participation in power plant AFCs for coastal projects, creates a legally binding duty that the Coastal Commission must provide its "30413 report" before an AFC license can be issued. (Pets. Brf., p. 8.) Again, the City is incorrect. Such an interagency agreement does not change existing statutory law, or create new statutory duties. The Energy Commission has sought to encourage Coastal Commission participation in its proceeding for coastal facilities, both by proposing and signing the MOA, and by directly requesting participation, but these acts in no way legally bind the Coastal Commission to participate, nor does the lack of that participation put a stop to the power plant licensing process at the Energy Commission.

In sum, no participation or report is required from the Coastal Commission in an AFC proceeding, and no authorities render the energy Commission's certificate infirm in the absence of such a report.

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