

DOCKETED

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Organization:	Jeffer Mangels Butler & Mitchell LLP
Submitter Role:	Intervenor Representative
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3 **STATE OF CALIFORNIA**
4 **California Energy Commission**

5 **In the Matter of:**

6 **REDONDO BEACH ENERGY PROJECT**

Docket No. 12-AFC-03

7
8 **APPLICATION FOR CERTIFICATION**
9

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11 **INTERVENOR CITY OF REDONDO BEACH'S**
12 **MOTION TO COMPEL PRODUCTION OF AES' TECHNICAL NOISE DATA**

13
14
15 August 4, 2015
16

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27 Attorneys for Intervenor CITY OF REDONDO BEACH
28

1 STATE OF CALIFORNIA
2 California Energy Commission

3
4 In the Matter of:

5 REDONDO BEACH ENERGY PROJECT
6 APPLICATION FOR CERTIFICATION
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Docket No. 12-AFC-03

8
9 INTERVENOR CITY OF REDONDO BEACH'S MOTION TO
10 COMPEL PRODUCTION OF TECHNICAL NOISE DATA BY AES

11 I. INTRODUCTION

12 Intervenor City of Redondo Beach ("City") hereby submits this Motion to Compel
13 Production of Technical Noise Data by AES to the Committee assigned to this proceeding. The
14 City has repeatedly asked AES to produce the technical data underlying its claims about the noise
15 impacts of its proposed project, but AES has cynically delayed production of this data and then
16 provided only a small part of what was requested. The data is necessary for the City and the
17 Commission to properly evaluate AES' claims regarding the noise impacts of the RBEP. The City
18 therefore turns to the Committee for relief.

19 II. FACTUAL BACKGROUND

20 Prior to the "meet-and-confer" meeting that the City had with Commission staff on
21 April 29, 2015, the City assumed—erroneously, it turns out—that AES had provided to the
22 Commission the technical data underlying its claims regarding the noise impacts of its proposed
23 project. The City was surprised to learn at that meeting that Commission staff had accepted AES'
24 conclusions without receiving or reviewing the underlying technical data or methodology used by
25 AES.

26 At the PSA workshop on May 20, 2015, the City asked AES whether it would agree
27 to provide this data. AES responded that "the technical data that supports the AFC...has been
28

1 available at all times for public review... [and] we can provide it to you now." (See *City of*
2 *Redondo Beach - Status Report - 06/04/15.*)

3 The City followed up with email on June 2, 2015, asking for AES' technical noise
4 analysis. AES responded on June 3, 2015, with an email saying, "The type of analysis you refer to
5 is not available prior to June 4." *Id.*

6 On June 18, 2015, the City again followed up with an email requesting the data. The
7 City's email stated:

8 I believe there may be a misunderstanding about the data being
9 requested by the City. We are not asking AES to perform any
10 additional studies. Rather, we are asking AES to provide the data and
calculations underlying the statements it has already made in the AFC
and responses to data requests.

11 The email then provided a detailed list of the requested data. (See *City of Redondo Beach - Status*
12 *Report - 07-06-15*, attached as Exhibit A.)

13 On June 24, 2015, AES' counsel responded with an email saying:

14 I am in receipt of your data requests. AES's noise consultant is
15 currently on vacation. I will discuss your requests with him, when he
returns next week.

16 On July 23, 2015, AES sent to the City a document entitled, "Responses to Data
17 Requests from City of Redondo Beach" ("Data Response"), published in the docket on 08-04-15.
18 The Data Response purported to provide the requested data. In reality, it provided only a small
19 amount of the requested data and was grossly inadequate.

20 Attached as Exhibit B is a letter from the City's noise consultant, describing the
21 specific data that AES did *not* provide in its Data Response:

- 22 • Ambient noise data for monitor locations M1, M2, M3 and M4
23 was requested. We did not receive hourly ambient noise data for
locations M3 and M4.
- 24 • An electronic copy of the CADNA/A noise model file was
25 requested. The file was not provided. Only tabular printouts of
26 input noise levels were provided. Therefore, we do not have
information relating to the source location/orientation
27 assumptions, acoustical shielding, and mitigation measures
implemented in the model.
- 28 • Source/reference documentation of equipment noise levels was
requested. For most major equipment, the answer was that the
data are "proprietary and confidential."

- A list of mitigation measures incorporated into the noise model was requested. The answer was that it is “not possible to provide specific data and source documentation for these measures.” Except, the building walls and ceilings were modeled to have an STC rating of 45.

The letter then goes on to explain why this data is essential to evaluating AES' claims regarding noise impacts:

Without the requested information we are not able to confirm or refute the analysis results and corresponding noise impact conclusions. We are not requesting that a more detailed analysis be performed. Our task is to review backup information that was used to form the basis of the AFC/PSA conclusions for the purpose of public review and confirmation.

...
The AES Response Letter claims that “the Applicant has not yet performed the type of detailed acoustical design and equipment specification study described by the City.” However, the analysis results and conclusions are quite detailed. For example, AES predicted noise levels were within one decibel of being characterized as a significant impact. In addition, the published equipment noise contours show the significant impact noise level contour just shy of surrounding homes. This level of precision is indicative of an analysis where equipment noise levels are carefully and purposefully addressed by detailed mitigation. *Detailed conclusions require a detailed analysis. We wish to review the analysis that AES has already performed. However, the information requested above has not been provided.*

In short, based on the materials provided by AES, our consultants have concluded that AES has in its possession the requested data and is simply choosing not to disclose it. Moreover, the data is critical to determining whether AES' claims about noise impacts are correct.

III. THE COMMISSION HAS AUTHORITY TO COMPEL PRODUCTION OF THIS DATA "UPON A SHOWING OF GOOD CAUSE"

Energy Commission regulations provide that:

- (a) The executive director or the chief counsel shall have authority to request or otherwise obtain from the applicant such information as is necessary for a complete staff analysis of the notice or application.
- (b) Any party may request from the applicant any information reasonably available to the applicant which is relevant to the notice or application proceedings or reasonably necessary to make any decision on the notice or application....
- ...
- (e) All requests for information shall be submitted no later than 180 days from the date the commission determines an application is complete, *unless the committee allows requests for information at a later time for good cause shown.*

1 20 CCR § 1716.

2 In this case, the regular deadline for submitting data requests to AES was February
3 24, 2014. However, for the reasons set forth below, the Committee has *good cause* to compel the
4 production of the technical noise data requested by the City:

5 **A. The data is "relevant to the notice or application proceedings or reasonably**
6 **necessary to make any decision on the notice or application."**

7 The request is clearly relevant to the proceedings and necessary for a decision. The
8 Commission cannot make a decision on the AFC application without a valid review of the potential
9 noise impacts. It cannot simply take the Applicant's word. It must review the underlying data to
10 ensure that AES' conclusions are accurate and based on appropriate evidence and analysis. The
11 City's experts have repeatedly stated that no meaningful review of AES' work is possible without
12 this underlying data. (See, e.g., Letter to AFC Committee in Exhibit A.)

13 **B. The significant delay in these proceedings justifies additional discovery.**

14 AES voluntarily suspended these proceedings for a period of nine months. Much has
15 changed since the AFC was first filed in November 2012. This extended delay of the proceedings
16 justifies reopening the data request period.

17 **C. AES should be required to prove its assertions.**

18 AES has made multiple, detailed assertions regarding the noise impacts of the
19 proposed project. It should be required to provide the technical basis for its assertions.

20 **D. Existing errors in AES' analysis justify a more thorough review.**

21 Even with the limited data available, the City's noise consultant found multiple errors
22 in the calculations made by AES in its noise analysis. (See *Redondo Beach Energy Project PSA*
23 *Workshop-Noise Presentation*, docketed on June 24, 2015; and *City of Redondo Beach-Preliminary*
24 *Staff Assessment Comments-Noise*, docketed on June 5, 2015.) These errors underscore the need for
25 a peer review of the work done by AES' noise consultant.

26 **E. The City requested this data shortly after learning it had not yet been provided.**

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As noted above, the City first learned on April 29, 2015, that AES had not provided the Commission with the technical data underlying its claims about noise impacts. Upon learning about the situation, the City promptly requested the data at the PSA workshop on May 20, 2015.

F. AES has agreed to provide the data.

At the PSA workshop on May 20, 2015, AES publicly stated that it would voluntarily provide the requested data to the City. Since then, it has dragged its feet and ultimately failed to provide the requested data. AES should be held to its word.

G. The City's request is narrow.

The City's request is narrow in scope and asks only for specific data that is the basis for AES' detailed claims about noise impacts. (The specific request is attached as Exhibit A.) The request is not a "fishing expedition." Rather, it is a narrowly tailored request for data that will allow the City's noise experts to replicate and review AES' noise analysis.

IV. CONCLUSION

For the reasons set forth above, the City respectfully requests that this Motion be heard at the Committee Conference on the Preliminary Staff Assessment on August 5, 2015; and that the Committee grant the Motion and compel AES to provide the requested technical noise data by August 19, 2015.

DATED: August 4, 2015

JEFFER MANGELS BUTLER & MITCHELL LLP



By: _____
JON WELNER

Attorneys for Intervenor CITY OF REDONDO
BEACH

EXHIBIT A

Welner, Jon

From: Welner, Jon
Sent: Wednesday, June 24, 2015 1:47 PM
To: 'Greggory L. Wheatland'
Cc: Samantha Pottenger; Jeffery Harris; Stephen O'Kane
Subject: RE: Noise Study

Thanks. We look forward to hearing from you next week.

jw

Jon Welner | Partner

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From: Greggory L. Wheatland [<mailto:glw@eslawfirm.com>]
Sent: Wednesday, June 24, 2015 9:50 AM
To: Welner, Jon
Cc: Samantha Pottenger; Jeffery Harris; Stephen O'Kane
Subject: RE: Noise Study

Mr. Welner:

I am in receipt of your data requests. AES's noise consultant is currently on vacation. I will discuss your requests with him, when he returns next week.

Gregg Wheatland
Ellison, Schneider & Harris L.L.P.

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From: Welner, Jon [<mailto:jxw@jmbm.com>]
Sent: Thursday, June 18, 2015 6:04 PM
To: Gregory L. Wheatland
Cc: Samantha Pottenger; Jeffery Harris; Stephen O'Kane
Subject: RE: Noise Study

Gregg,

I believe there may be a misunderstanding about the data being requested by the City. We are not asking AES to perform any additional studies. Rather, we are asking AES to provide the data and calculations underlying the statements it has already made in the AFC and responses to data requests.

At the PSA Workshop, you confirmed that this data would be made available: "the technical data that supports the AFC...has been available at all times for public review...[and] we can provide it to you now."

Specifically, we are requesting the following technical data:

Statement in the AFC or PSA	Underlying Data Being Requested
PSA: Page 4.7-7 Ambient noise was monitored at four locations.	Provide all ambient noise measurement data for monitor locations M1, M2, M3, and M4. Provide hourly measured noise levels, including Leq, L10, L50, L90, and Lmax; and the existing power plant total facility output (in MW) during each hour of noise monitoring.
AFC: Page 5.7.11, Section 5.7.3.3.3, 1st Paragraph PSA: Page 4.7-17, 2nd Paragraph A noise model of the proposed RBEP was developed using CADNA/A computer software.	Provide an electronic copy of the CADNA/A noise model file; all parameters that were input to the noise model; and all supporting calculations and data (with source documentation) used to establish the parameters.
AFC: Page 5.7-11, Table 5.7-10 List of major equipment sound power levels used in the AES analysis	Provide the source or reference documentation used to determine the equipment sound levels.
AFC: Page 5.7.12, 3rd Paragraph PSA: Page 4.7-17, 2nd Paragraph List of noise mitigation measures included in the AES noise model or analysis	Provide the noise reduction data (with source documentation) and related calculations used for all of these noise mitigation measures as incorporated into the noise model.
PSA: Page 4.7-18, Noise Table 7, Column 2 & Page 4.7-20, Noise Table 8, Column 2 Predicted operational noise levels	Provide the calculations and data (with source documentation) used to develop the predicted operational noise levels.

Statement in the AFC or PSA	Underlying Data Being Requested
PSA: Page 4.7-40, Noise-Figure 1 The figure depicts "noise model results" as a projected noise contour map.	Provide the calculations and data (with source documentation) used to develop this noise contour map.

Also, in the PSA, there are a number of assertions that do not appear to have any supporting data or calculations. Please confirm that you do not have any data or calculations to support the following assertions:

Assertion in the PSA
PSA: Page 4.7-17, 3rd Paragraph Assertion that the project will be able to avoid the creation of annoying tonal (pure-tone) noises by balancing the noise emissions of various power plant features during plant design.
PSA: Page 4.7-17, 3rd Paragraph Assertion that flash tanks and direct condenser bypass can be used as an alternative to direct steam release, and that these operations will not generate significant noise impacts.
PSA: Page 4.7-22, 1st Paragraph Assertion that use of the Mitsubishi MHI 501 system will ensure that ground-borne vibration will be undetectable by any likely receptor.
PSA: Page 4.7-22, 2nd Paragraph Assertion that the combination of SCR units and stack silencers ensure that RBEP will not cause perceptible airborne vibration effects.

Please let me know if you have any questions. Thank you for your assistance.

Jon Welner | Partner
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From: Gregory L. Wheatland [<mailto:glw@eslawfirm.com>]
Sent: Wednesday, June 03, 2015 11:44 AM
To: Welner, Jon
Cc: Samantha Pottenger; Jeffery Harris; Stephen O'Kane
Subject: RE: Noise Study

Mr. Welner:

At the workshop I agreed to provide you with the noise analysis prepared by the Applicant in support of this AFC.

As I indicated in my earlier email, the type of "technical noise analysis" described by the City at the workshop and in your email below is prepared prior to the start of construction (as it has been for every other power plant licensed by the Commission). The type of analysis you refer to is not available prior to June 4.

Gregg Wheatland
Ellison, Schneider & Harris L.L.P.

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From: Welner, Jon [<mailto:jxw@jmbm.com>]
Sent: Tuesday, June 2, 2015 5:36 PM
To: Gregory L. Wheatland
Cc: Samantha Pottenger; Jeffery Harris; Stephen O'Kane
Subject: RE: Noise Study

Gregg,

At the PSA workshop, you agreed to provide a copy of your technical noise analysis. At a minimum, we would expect the analysis to include:

- Equipment noise levels that are the basis of your analysis (including their reference source for information).
- Documentation showing which noise reduction measures were included in their analysis and thus should become necessary mitigation to achieve their projected noise levels.
- Noise reduction data for the mitigation measures.
- Calculation methodology with site plan details and other assumptions of acoustical shielding, directivity, and similar factors.
- Safety factor used in their analysis

Does AES or CH2M Hill have this data? Can you provide it to us prior to June 4?

Thanks,

jw

Jon Welner | Partner

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From: Gregory L. Wheatland [<mailto:glw@eslawfirm.com>]

Sent: Tuesday, June 02, 2015 11:47 AM

To: Welner, Jon

Cc: Samantha Pottenger; Jeffery Harris; Stephen O'Kane

Subject: Noise Study

Mr. Welner:

The following information is provided in response to your request for the Applicant's "Noise Study".

We are providing a copy of the Noise Section of the AFC and related Appendices. We are also providing copies of Data Responses to the Staff and the City regarding noise. Data Response Set 1A is too large to attach; therefore, please refer to this link:

http://docketpublic.energy.ca.gov/PublicDocuments/12-AFC-03/TN201167_20131112T144549_RBEP_12AFC03_DR_Set_1A_17_1112_1419_2425_2947.pdf

Consistent with established CEC protocols and typical project development and design processes, the Applicant has not yet performed the type of detailed acoustical design and equipment specification study described by the City at the PSA Workshop. Instead, as we explained in response to Staff Data Request 30, "Prior to the start of construction, the Project Owner's engineering contractor will determine the necessary acoustical design treatments to ensure that the City of Redondo Beach noise standards are satisfied." The expected project operational noise level at the closest residence on N. Elena Avenue is less than 55 dBA. A project level of 55 dBA complies with the applicable City of Redondo Beach noise limitations

at this location, and, following the assessment methodology used by the CEC as proposed by Charles Salter, will also comply with the indoor noise limitations at this location.

Gregg Wheatland

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EXHIBIT B

Acoustics

Audiovisual

Telecommunications

Security

30 July 2015

Karen Douglas, Presiding Member
Janea A. Scott, Associate Member
**Redondo Beach Energy Project
AFC Committee, California Energy Commission**
1516 Ninth Street
Sacramento, CA 95814

Subject: **Redondo Beach Energy Project (12-AFC-03, RBEP)
Review of AES Response to Technical Information Request**

Dear Commissioners Douglas and Scott:

We reviewed¹ the Preliminary Staff Assessment (PSA, July 2014) and the AES Application for Certification (AFC, November 2012). Based on our review, the City of Redondo Beach requested that AES provide the backup documentation, data, and analyses that were used as the basis of the impact analysis. In response, AES provided a letter dated 23 July 2015 via Ellison, Schneider & Harris LLP (AES Response Letter). This letter summarizes our review of this AES response to the City's request.

The City's detailed request for underlying data and analysis that might support the statements and assertions made in the AFC and PSA is outlined in an email from Jeffer Mangels Butler & Mitchell LLP, dated 18 June 2015. The following summarizes the exchange:

- Ambient noise data for monitor locations M1, M2, M3 and M4 was requested. We did not receive hourly ambient noise data for locations M3 and M4.
- An electronic copy of the CADNA/A noise model file was requested. The file was not provided. Only tabular printouts of input noise levels were provided. Therefore, we do not have information relating to the source location/orientation assumptions, acoustical shielding, and mitigation measures implemented in the model.
- Source/reference documentation of equipment noise levels was requested. For most major equipment, the answer was that the data are "proprietary and confidential."
- A list of mitigation measures incorporated into the noise model was requested. The answer was that it is "not possible to provide specific data and source documentation for these measures." Except, the building walls and ceilings were modeled to have an STC rating of 45.

Without the requested information we are not able to confirm or refute the analysis results and corresponding noise impact conclusions. We are not requesting that a more detailed analysis be performed. Our task is to review backup information that was used to form the basis of the AFC/PSA conclusions for the purpose of public review and confirmation.

At the very least, we would need a proposed layout plan of the equipment and mitigation measures. With this information, we would perform peer review calculations of equipment noise emissions to the surrounding neighborhoods.

¹ Our comments on the PSA and AFC are summarized in our letter dated 4 June 2015.

Charles M. Salter, PE
David R. Schwind, FAES
Eric L. Broadhurst, PE
Philip N. Sanders, LEED AP
Thomas A. Schindler, PE
Anthony P. Nash, PE
Ken Graven, PE, RCDD, CTS-D
Cristina L. Miyar
Jason R. Duty, PE
Durand R. Begault, PhD, FAES
Joseph G. D'Angelo
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Noel J. Bacani
Adrian L. Lu
Greg R. Enestein
Natalie T. Packard
Phillip J. Perry
Brian J. Good
Heather A. Salter
Dee E. Garcia
Catherine F. Spurlock
Marva De Veer - Noordzee
Elizabeth F. Trocker
Jennifer G. Palmer
Jodessa G. Cortez
Susan E. Lonergan
Courtney H. Vineys
Erin D. Gorton
Tish Patel
Nicolette A. Sullivan

The AES Response Letter claims that "the Applicant has not yet performed the type of detailed acoustical design and equipment specification study described by the City." However, the analysis results and conclusions are quite detailed. For example, AES predicted noise levels were within one decibel of being characterized as a significant impact. In addition, the published equipment noise contours show the significant impact noise level contour just shy of surrounding homes. This level of precision is indicative of an analysis where equipment noise levels are carefully and purposefully addressed by detailed mitigation. Detailed conclusions require a detailed analysis. We wish to review the analysis that AES has already performed. However, the information requested above has not been provided.

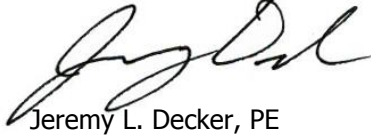
Our objective is to confirm that appropriate mitigation is incorporated into the design and construction of the project to that noise impacts to surrounding residences are avoided. This mitigation should address a factor of safety, tonal noise, and the existing impact from power plant noise. It should also be required that this mitigation is implemented in the initial construction of the project. A "wait-and-see" approach is not acceptable. Fixing noise impacts after the power plant is operational would result in a lengthy process to fix the problem (if even feasible), while the community is exposed to excessive industrial noise.

* * *

This concludes our current comments on the AES Response Letter. Should you have any questions, please call.

Sincerely,

CHARLES M. SALTER ASSOCIATES



Jeremy L. Decker, PE
Principal Consultant



Charles M. Salter, PE
President

cc: Jon Welner
Jeffer Mangels Butler & Mitchell LLP
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