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STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

In the Matter of:)
)
Application for Certification for the)
Redondo Beach Energy Project)
)
AES Southland Development, LLC)

Docket No. 12-AFC-03

**APPLICANT'S
RESPONSE TO
THE CITY OF REDONDO BEACH'S
MOTION TO COMPEL PRODUCTION OF INFORMATION**

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AES Southland Development LLC (“Applicant”) provides this Response to *Intervenor City of Redondo Beach’s Motion to Compel Production of Technical Noise Data by AES*, filed on August 4, 2015 (“Motion”).

INTRODUCTION

Nearly two years after the Redondo Beach Energy Project (“Project”) was deemed data adequate, and almost eighteen months after the close of the discovery period in this proceeding, the City of Redondo Beach (“City”) has filed a motion to compel the production of information that the City requested for the first time in an email on June 18, 2015. Even allowing for the period during which this proceeding was suspended (and during which the project description remained unchanged), the City’s Motion is filed nine months after the close of the discovery period.¹

¹ See, *Committee Scheduling Order*, p. 4 “Committee Schedule”, Docket No. 12-AFC-03 (dated Oct. 16, 2013) (stating that February 24, 2014 was the last day to filed data requests), TN# 200903, available at http://docketpublic.energy.ca.gov/PublicDocuments/12-AFC-03/TN200903_20131016T153931_Committee_Scheduling_Order.pdf.

In its Motion, the City asserts nothing more than that it “assumed” certain technical data had been previously provided by the Applicant.² The City does not assert, much less prove, that it exercised due diligence in seeking to obtain this information during the period provided for discovery, or that good cause justifies its untimely request for data at this late stage in the proceeding. In the absence of good cause shown, the Motion must be denied.

Moreover, even if the City had met its burden to show good cause for its failure to request the information during the discovery period, the Motion should still be denied because these requests do not meet discovery standards set by the Commission’s regulations. Much of the requested information has been provided. To the extent that any information has not been provided to the City’s satisfaction, it is either because (1) the information is not reasonably available to the Applicant, (2) the information is not relevant or reasonably necessary for the Commission to make any decision on this application, or (3) the information is confidential or proprietary information subject to a non-disclosure agreement with a third party.

Both the City and the Staff have just recently announced the retention of noise consultants for this proceeding.³ Despite the fact that both the City and the Commission Staff have taken these steps very late in the proceeding (nearly two years after the Application was accepted as data adequate), the Applicant has endeavored in good faith to provide additional information to both parties to the extent that such information is reasonably available and not confidential. We have provided the City with more than 100 pages of noise-related documents

² *Intervenor City of Redondo Beach’s Motion to Compel Production of Technical Noise Data by AES*, p. 2 (TN# 205633) (hereinafter, “Motion”). As will be discussed in this response, the City’s “assumption”, in large part, was correct, as a much of the information requested in the June 18th Data Requests and subject to the Motion has already been provided by the Applicant previously in this proceeding.

³ On August 13, 2015, Commission Staff disclosed that it had retained a “modeler” to “augment the information available to parties on the potential noise impacts” in its filing, *Energy Commission Staff’s Support of the City of Redondo Beach’s Motion to Compel Production of AES’ Technical Noise Data* (TN# 205715). The City’s noise consultant was present at the May 20, 2015 workshop. (TN# 204742-4.)

since May. Further, we have responded to Staff's most recent request of August 11, 2015 for additional noise information.⁴

However, the Applicant's voluntary cooperation in responding to these untimely requests is certainly not a waiver of the Applicant's substantive due process rights, and should not be an excuse to compel the production of information where the information is not reasonably available. As the Commission has previously ruled, "Our regulations do not require that an applicant conduct original research or analysis on behalf of, or prepare documents specifically for, an intervenor. Nor do they require that the information provided satisfy all expectations of the requesting party."⁵

For the reasons set forth below, the City's Motion to Compel should be denied.

PROCEDURAL BACKGROUND

The Application for Certification for the Redondo Beach Energy Project ("Application") was filed on November 20, 2012. During the Data Adequacy phase of the proceeding, the City commented on the adequacy of the AFC, including the Noise section of the AFC.⁶ Although the City stated that ambient noise monitoring should be conducted at two additional locations, the City did not raise any concerns about the acoustical design, equipment specifications or the

⁴ The Applicant's response (TN# 205747) is available at http://docketpublic.energy.ca.gov/PublicDocuments/12-AFC-03/TN205747_20150814T142620_Noise_Modeling_Data_Spreadsheet.pdf. Staff's request (TN# 205701) is available at http://docketpublic.energy.ca.gov/PublicDocuments/12-AFC-03/TN205701_20150812T150848_RBEP_Noise_Data_Additional_Information.pdf.

⁵ *Committee Order Responding to CURE's Petition to Compel Production of Information*, p. 2 (Docket No. 09-AFC-7) (July 29, 2010), available at http://www.energy.ca.gov/sitingcases/palen/notices/2010-07-29_Committee_Order_on_CURE_Motion_to_Compel.pdf.

⁶ City of Redondo Beach, *Comments on "Data Adequacy" of Application for Certification Redondo Beach Energy Project (12-AFC-03)*, p. 4 (TN# 68920) (Dec. 18, 2012), available at http://www.energy.ca.gov/sitingcases/redondo_beach/documents/other/2012-12-18_City_of_Redondo_Beach_Comments_on_Data_Adequacy_of_Application_for_Certification_TN-68920.pdf.

sufficiency of the noise modeling described in the Application.⁷ The Application was accepted as data adequate by the Commission August 27, 2013.

On October 2, 2013 the City submitted a petition to intervene in the proceeding,⁸ which was subsequently granted by the Committee on October 23, 2013 with the condition that the “deadlines for conducting discovery and other matters shall not be extended by the granting of this Petition.”⁹ According to the Commission’s siting regulations¹⁰ and the Committee’s scheduling order,¹¹ the discovery period began on August 27, 2013 and expired on February 24, 2014.

On December 5, 2013¹² and February 10, 2014¹³ Commission Staff held public workshops in the City of Redondo Beach at which several technical areas, including Noise, were extensively discussed.¹⁴ Representatives of the City attended and actively participated in both workshops.

At 4:54 pm on February 24, 2014 -- the last few minutes of the last hour of the last day of the discovery period -- the City submitted its first and only set of timely data requests. Seven of the City’s data requests related to Noise issues. None of the data requests requested information

⁷ City of Redondo Beach, *Comments on “Data Adequacy” of Application for Certification Redondo Beach Energy Project (12-AFC-03)*, p. 4 (TN# 68920); *Applicant’s Data Adequacy Supplement*, p. (TN# 69327.), available at http://www.energy.ca.gov/sitingcases/redondo_beach/documents/applicant/2013-01-30_Applicant_Data_Adequacy_Supplement_TN-69327.pdf

⁸ http://docketpublic.energy.ca.gov/PublicDocuments/12-AFC-03/TN200732_20131003T150346_Petition_to_Intervene.pdf

⁹ http://docketpublic.energy.ca.gov/PublicDocuments/12-AFC-03/TN201024_20131023T145553_Committee_Order_Granteeing_Petition_to_Intervene.pdf

¹⁰ 20 C.C.R. § 1716(e).

¹¹ http://docketpublic.energy.ca.gov/PublicDocuments/12-AFC-03/TN200903_20131016T153931_Committee_Scheduling_Order.pdf

¹² http://docketpublic.energy.ca.gov/PublicDocuments/12-AFC-03/TN201264_20131119T131929_Notice_of_Public_Workshop_on_December_5_2013.pdf

¹³ http://docketpublic.energy.ca.gov/PublicDocuments/12-AFC-03/TN201615_20140131T133757_Notice_of_Public_Workshop_to_be_held_on_February_10_2014.pdf

¹⁴ Also see, *Energy Commission Staff’s Support of the City of Redondo Beach’s Motion to Compel Production of AES’ Technical Noise Data*, p.1 (TN# 205715).

related to the acoustical design, equipment specifications or the sufficiency of the noise modeling described in the Application.

On May 20, 2015 the Commission Staff held a workshop on the Preliminary Staff Assessment (“PSA”). At the workshop, the City requested “a copy of the “technical study” conducted to support the Application for Certification.¹⁵ The City followed up on this data request with an email on Friday, May 22, 2015 requesting “a copy of the noise study performed by your consultants for the RBEP.”¹⁶ This email, and subsequent email correspondence, is provided as Attachment A.

On June 2, 2015, in response to the request for the “noise study performed by your consultants”, AES provided to the City a copy of the Noise Section of the AFC, related Appendices, and copies of data responses provided by the Applicant to the Staff and the City relating to noise.¹⁷ AES also explained that:

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 [City-employed consultant] Charles Salter, will also comply with the indoor noise limitations at this location.

¹⁵ See, *Intervenor City of Redondo Beach’s Status Report*, Exhibit A (TN# 204907) (“Welner: Finally I have a question back to AES which is something that was asked in a number of places by our consultant and –actually this really surprised me—and that is that no one from the public, no intervenor, and no one from the Commission has seen the technical study. What they have seen is the description of the study obtained from AES. Our question to AES is: will you provide the study for public review, and if not, why not?”)

The City replied in an email on June 2, 2015, stating that it expected to see more detailed information in the “technical noise analysis”.¹⁸

AES replied on June 3, 2015, again stating that “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.”¹⁹

In the City’s June 5, 2015 Status Report, the City announced that it “will file a motion to require AES to produce the technical data underlying its noise analysis.”²⁰ However, the City did not submit a motion to compel within 30 days of AES’s response. Instead, on June 18, 2015, the City submitted new data requests to AES, this time requesting “the data and calculations underlying statements made in the AFC and responses to data requests”, and identifying specific data being requested by the City in a matrix correlating to specific statements in the Application or PSA.²¹

AES responded to these new requests on July 23, 2015.²² The Applicant noted that although the City’s new data requests were untimely, the Applicant was providing a response as a courtesy to the City.²³ On August 4, 2015, the City filed its Motion alleging that certain requests had not been submitted to its satisfaction. The specific items which the City seeks to compel are set forth in Exhibit B to the City’s Motion.²⁴ For ease of reference, the Applicant has

¹⁶ See, Attachment A, pdf p. 6 to this response.

¹⁷ See, Attachment A, pdf p. 4.

¹⁸ See, Attachment A, pdf p. 3.

¹⁹ See, Attachment A, pdf p. 3.

²⁰ *Intervenor City of Redondo Beach’s Status Report*, p. 5 (TN# 204907)

²¹ See, Attachment A, pdf p. 1.

²² TN# 205628.

²³ TN# 205628.

²⁴ Motion, p. 3.

reproduced the matters the City seeks to compel in Attachment B, and assigned specific data request numbers to each item.²⁵

Unrelated to the City's Motion, the Commission Staff has also requested additional information regarding noise.²⁶ The Applicant has responded to these requests with information that is reasonably available.²⁷

DISCUSSION

I. THE CITY'S REQUEST FOR INFORMATION IS UNTIMELY.

A. The information that the City seeks to compel was requested by the City long after the 180 day discovery period had expired.

Section 1716(e) of the Commission's regulations require the submission of all requests for information not later than 180 days from the date the Commission determines an AFC is complete, unless the Committee conducting the AFC proceedings allows requests for information at a later time for good cause shown. The Commission found the Application data adequate on August 27, 2013. By Committee order, the last day to issue data requests was February 24, 2014. The Committee order granting the City's petition to intervene on October 23, 2013 was unambiguous and unchallenged by the City: "deadlines for conducting discovery and other matters shall not be extended by the granting of this Petition."²⁸ The information which the City seeks to compel was requested on June 18, 2015, approximately 16 months after the expiration of the discovery period on February 24, 2014. Even accounting for the suspension of

²⁵ The information sought by the City has shifted with every communication. *See*, Attachment A. Even in its Motion, the vernacular morphs with each iteration. The City's request include requests for (1) "technical data"; then (2) "this data"; (3) thereafter "technical noise analysis"; then (4) then "data" and "calculations." (Motion, pp. 2-3.)

²⁶ Staff's request (TN# 205701) is available at http://docketpublic.energy.ca.gov/PublicDocuments/12-AFC-03/TN205701_20150812T150848_RBEP_Noise_Data_Additional_Information.pdf.

²⁷ The Applicant's response (TN# 205747) is available at http://docketpublic.energy.ca.gov/PublicDocuments/12-AFC-03/TN205747_20150814T142620_Noise_Modeling_Data_Spreadsheet.pdf.

²⁸ http://docketpublic.energy.ca.gov/PublicDocuments/12-AFC-03/TN201024_20131023T145553_Committee_Order_Granteeing_Petition_to_Intervene.pdf

the proceeding, the June 18th Data Requests comes nine months after the period for discovery had closed. Therefore, the City's Motion should be denied as untimely.

B. The City lacks Good Cause for its untimely request.

When the Commission examines whether good cause has been shown for an untimely data request, the Commission “requires a showing that a diligent effort has been made to complete discovery within the prescribed time frames and that failure to do so was caused by obstacles which could not reasonably be avoided.”²⁹

The City is silent as to the diligence of its effort to complete discovery within the prescribed time frame. The City has not cited any obstacle to its ability to request the information that could not have reasonably been avoided. The City merely alleges that it had “assumed” that the information had been provided, and that it requested this data after learning (on April 29, 2015) that it had not been provided.

The purpose of the 180 day period of discovery is to allow parties an opportunity to examine the record, to ascertain (not assume) what information has been provided, and to request additional relevant information. Merely assuming that information has been provided, without making any effort to ascertain whether the assumption is correct, does not reflect the exercise of due diligence.

The Commission has ruled, under similar circumstances, that the technical or legal sophistication of the requesting party is a relevant factor to be carefully weighed in determining good cause to extend discovery, stating “It is important not to punish parties with counsel nor reward parties without. However, when, as here, a party misses a deadline or some other

²⁹ *Committee Order Denying CURE's Motion to Compel Production of Information*, Docket No. 08-AFC-2, pp. 2-3 (April 15, 2009).

procedural hurdle, the party's past dealings with the Energy Commission and apparent knowledge of our procedures is relevant to a determination of good cause."³⁰

In that case, the Commission held that a party's excuse that "'discovery appeared to be ongoing' might contribute to a finding of good cause for an unsophisticated, unrepresented member of the public attempting to navigate our process for the first time, but coming from the highly sophisticated, well-represented CURE, that excuse rings hollow."³¹ Similarly, in this case, where the City is represented by a sophisticated law firm, the excuse that the City simply "assumed" that the information had been provided rings hollow, and does not satisfy the requirement that good cause be shown to excuse the untimely request.

The City's only other assertion of good cause for its delay in seeking this request is the vague and unsupported assertion that "Much has changed since the AFC was first filed in November 2012. This extended delay of the proceedings justifies reopening the data request period."³² However, the project remained unchanged during this timeframe and has not changed since reinitiation of the proceeding. Significantly, the City does not explain what has "changed" and why that unarticulated change would justify reopening the data request period. It is very clear that the design and location of the project have not changed – and any of the requests now being posed could and should have been raised during the discovery period.

Therefore, in the absence of good cause shown, the City's Motion to compel responses to untimely requests must be denied.

³⁰ *Committee Order Denying CURE's Motion to Compel Production of Information*, Docket No. 08-AFC-2, p. 6 (April 15, 2009).

³¹ *Committee Order Denying CURE's Motion to Compel Production of Information*, Docket No. 08-AFC-2, p. 6 (April 15, 2009).

³² Motion, p. 5.

II. THE INFORMATION THE CITY SEEKS TO COMPEL DOES NOT MEET THE COMMISSION'S STANDARDS FOR DISCOVERY.

Section 1716 of the Commission's regulations provides:

Any party may request from the applicant any information reasonably available to the applicant which is relevant to the . . . application proceedings or reasonably necessary to make any decision on the . . . application.³³

Pursuant to Section 1716, a party may request from an applicant information that is reasonably available to the applicant. Section 1716 does not require that an applicant “perform research or analysis on behalf of the requesting party.”³⁴

As demonstrated below, the City’s Motion does not meet the standards for discovery under the Commission’s regulations and prior decisions. Therefore, the City’s Motion should be denied.

A. The information requested by Data Request 7 has been provided.

Data Request 7 seeks “ambient noise data for monitor locations M1, M2, M3 and M4.” The City incorrectly claims that “We did not receive hourly ambient noise data for locations M3 and M4.”³⁵ Hourly ambient noise data for locations M3 and M4 were provided to the City (and all other parties) as part of the Applicant’s Data Request, Set 1R on May 22, 2014.³⁶ Therefore, because the Applicant has already provided the requested information, the City’s Motion as to Data Request 7 should be denied.

B. The information requested by Data Request 8 has been satisfied.

Data Request 8 requested 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

³³ 20 C.C.R. § 1716(b).

³⁴ See Committee Ruling on Intervenor Center for Biological Diversity’s Petition to Compel Data Requests, Docket No. 07-AFC-6 (Dec. 26, 2008).

³⁵ Motion, Exhibit B, p. 1.

source documentation) used to establish the parameters.” The City’s Motion asserts that it is only in receipt of input noise levels, and that it does “not have information relating to the source location/orientation assumptions, acoustical shielding, and mitigation measures implemented in the model.”³⁷

In response to the City’s June 18th Data Requests, the Applicant referred the City to Section 5.7 of the Application for an overview of the modeling that was conducted, in addition to responses to Data Requests 69-70 and 72 for additional detail. The Applicant explained where the sound propagation factors were adopted from, and identified specific parameters that were input to the noise model including ground absorption factors, shielding from nearby buildings, and sound pressure levels for equipment enclosures and other features. Finally, the Applicant provided an electronic copy of the inputs used for the model.³⁸

This information, combined with the input noise levels used in the model, the STC ratings of the building walls and ceilings, together with the layout plan of the project and preliminary design measures to address noise provided in the Application, provide the City with information that substantially satisfies Data Request 8. Moreover, the Applicant will be providing additional locational data in response to a recent request for clarification of noise data from the Commission Staff. This information will also be provided to the City.

What the Applicant did not provide is a copy of the CADNA/A commercial software package used to conduct the modeling. The Applicant explained to the City that the CADNA/A noise model is a proprietary model, and that the Applicant does not have authority to provide the model to third parties. The Applicant should not be compelled to produce a proprietary

³⁶ Redondo Beach Energy Project Data Request Set 1R (1C 26R-28-Revised), TN # 202364 (May 22, 2014).

³⁷ Motion, p. 3.

³⁸ TN# 205628

commercial software package or the files used in that software, because this information is proprietary and not reasonably available to the Applicant for distribution to third parties.

The Motion to compel any further response to Data Request 8 should be denied.

C. To the extent that the information was not confidential and proprietary, the information requested by Data Request 9 has been provided.

Data Request 9 requested “the source or reference documentation used to determine the equipment sound levels.” As explained in Applicant’s response to the June 18th Data Requests, sound propagation factors used in the model were adopted from International Organization for Standardization (ISO) 9613-2, Acoustics – Sound Attenuation during Propagation Outdoors (ISO, 1996). The specific source for each Sound Power Level in Table 5.7-10 of the Application is based on proprietary and confidential equipment vendor information that is subject to a non-disclosure agreement with a third-party, and cannot be released by the Applicant. However, the Applicant also informed the City that similar information for equipment sound levels could be confirmed in publicly available reference materials from sources such as the Edison Electric Institute. The Applicant should not be compelled to produce information that is subject to a non-disclosure agreement with a third party, particularly where comparable information that can verify the Applicant’s assumptions is publicly available to the City. The motion to compel any further response to Data Request 9 should be denied.

D. The additional information requested by Data Request 10 is not reasonably available to the Applicant and not reasonably necessary to reach a decision on this application.

The City claims that “A list of mitigation measures incorporated into the noise model” has not been provided. In fact, noise reduction measures have been identified by the Applicant. These measures, however, have not been provided to the level of specificity demanded by the

City. As we explain below, this information is not reasonably available to the Applicant nor is it reasonably necessary for the Commission to reach a decision on this Application.

As described in Section 5.7.3.3.3 of the AFC, the noise model developed by the Applicant is a “preliminary” noise model. The modeling is preliminary because specific and detailed equipment and features will not be identified until the detailed design phase of the Project, which will occur post-certification – and which always occurs post-certification in the Commission’s process. The information is not required for the Commission’s environmental analyses or its LORS compliance determination. As a matter of sound public policy, the Legislature has determined that it would be wasteful to require detailed design unless and until a project is approved. Therefore, because the final equipment and features are not yet known to the Applicant nor are they required at this stage in the proceeding, it is not possible to provide specific “data” and “source documentation” for these measures. This information is not reasonably available to the Applicant without performing far more detailed and expensive engineering and design, contrary to sound public policy.

Despite the preliminary nature of the modeling, the Applicant has provided the City and Staff with substantial information. Unlike most power plant designs where the equipment is not enclosed, the RBEP will operate inside a building. This, in and of itself, is an extremely significant noise reduction measure. Information for the preliminary measures, such as the building walls and ceilings, was provided to the City as part of the Applicant’s response to the June 18th Data Requests.³⁹ As set forth in the response, building walls and ceilings were modeled to have a Sound Transmission Class (STC) of 45 with a minimum Transmission Loss (TL) of 17 dB in the lower frequencies (31.5 and 63 Hz). The motion to compel a further response to Data Request 10 should be denied because the information that was reasonably

available to the Applicant, and not subject to a non-disclosure agreement, has already been provided to the City.

Moreover, the additional information requested in Data Request 10 is not reasonably necessary to make any decision on the Application. The City claims that its objective in the Motion “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.” However, under longstanding precedent, the “appropriate” noise-related design features are developed during the detailed design and engineering of the Project that occurs after the project is licensed and before it is constructed. These detailed design features are reviewed and approved by the CBO and the efficacy of these features are confirmed by stringent noise monitoring tests that are performed when the facility commences construction. Therefore, notwithstanding the City’s assertion that a “wait and see approach...is not acceptable”⁴⁰, the detailed acoustical design and equipment specifications requested by the City are not necessary to the decisions that the Commission must make on this Application. The Commission Staff agrees that this information is not reasonably necessary for the Commission to make a decision on this application.⁴¹

Therefore, the City’s Motion to compel production of further information in response to Data Request 10 should be denied because such information is not reasonably available to the Applicant and is as required to make any decision on this Application.

E. The proposed equipment layout plan has been provided.

Although not requested in the City’s June 18th Data Requests, the City’s motion implies that the City was not provided a proposed lay out plan of the equipment and mitigation

³⁹ TN# 205628

⁴⁰ Motion, Exhibit B p. 2.

⁴¹ *Energy Commission Staff’s Support of the City of Redondo Beach’s Motion to Compel Production of AES’ Technical Noise Data*, p.2.

measures.”⁴² This information is already available in Section 2.0 of the Application.⁴³ Specifically, Figure 2.1-2 provides a plot layout of the Project’s General Arrangement. Figures 2.1-3a through 2.1-3d provide elevation drawings of the Project. The design measures incorporated in the preliminary modeling to ensure compliance with applicable acoustical requirements are described in Section 5.7.⁴⁴ These design measures are also reflected in Figure 2.1-2. In addition, the Applicant will be providing additional locational data in response to a recent request for clarification of noise data from the Commission Staff. This information will also be provided to the City.

CONCLUSION

For the reasons set forth above, the City’s Motion to Compel should be denied.

Dated: August 19, 2015

Respectfully submitted,

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⁴² Motion, Exhibit B, p. 1.

⁴³ See, Application, Section 2, Project Description, available at http://www.energy.ca.gov/sitingcases/redondo_beach/documents/applicant/AFC/Vol_1/RBEP_2.0_Project%20Description.pdf.

⁴⁴ http://www.energy.ca.gov/sitingcases/redondo_beach/documents/applicant/AFC/Vol_1/RBEP_5.7_Noise.pdf.

ATTACHMENT A
Email Correspondence

From: Welner, Jon <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.
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

Jeffer Mangels Butler & Mitchell LLP | JMBM

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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

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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
Ellison, Schneider & Harris L.L.P.

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From: Welner, Jon [<mailto:jxw@jmbm.com>]

Sent: Friday, May 22, 2015 7:05 PM

To: Gregory L. Wheatland

Subject: Noise study

Gregg,

I am writing to follow up on your offer during the workshop to provide a copy of the noise study performed by your consultants for the RBEP. Please let me know how I can obtain it.

Have a nice holiday weekend!

jw

Jon Welner | Partner

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ATTACHMENT B

Data Request No. ⁴⁵	City's Exhibit A June 18 th Data Requests	City's Exhibit B Items Subject to Motion to Compel
Data Request 7	Provide all ambient noise measurement data for monitor locations M1, M2, M3, and M4 . . .	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.
Data Request 8	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.	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.
Data Request 9	Provide the source or reference documentation used to determine the equipment sound levels.	Source/reference documentation of equipment noise levels was requested. For most major equipment, the answer was that the data are "proprietary and confidential."
Data Request 10	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.	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.

⁴⁵ For ease of reference, we have numbered the City's data requests. The numbering continues from the City's first set of data requests on February 24, 2014, and available at: http://docketpublic.energy.ca.gov/PublicDocuments/12-AFC-03/TN201797_20140224T165423_City_of_Redondo_Beach_Data_Requests_Set_One.pdf