

## DOCKETED

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# Memorandum

**Date:** February 16, 2016  
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**Subject:** ALAMITOS ENERGY CENTER (13-AFC-01) STATUS REPORT 15

Energy Commission staff reviewed the revised data responses to Data Requests 160, 161 and 163 for the Supplemental Application for Certification (SAFC) for the Alamos Energy Center (AEC) filed by AES on February 8, 2016 and filed additional data requests seeking clarification. These data requests (Nos. 170-175) were made in the technical area of Transmission System Engineering and were based on the revised responses to Data Requests 160, 161 and 163, filed by AES on February 8, 2016. Although written responses to the data requests are not due to the Energy Commission staff before March 11, 2016, the applicant has indicated that they anticipate filing the responses well before that date.

Staff is working to meet the overall PSA publication date. Staff also continues to work with the applicant and the South Coast Air Quality Management District (SCAQMD) to track the communications between the applicant and SCAQMD clarifying details on the district permit in order to identify any efficiencies that could shorten the time needed for the completion of the Air Quality and Public Health technical sections once the Preliminary Determination of Compliance (PDOC) is received. Staff may have additional requests for clarification in the technical area of Air Quality as additional information is received from SCAQMD.

Despite conflicting staff assessment deadlines for other projects,. This includes, but is not limited to, shifting staff assignments to avoid conflicting priorities and moving early sections through review and formatting to avoid any potential bottlenecks. Overall, staff continues working on updating or rewriting PSA sections prepared as part of the original AFC process or working to complete analysis on projects with more immediate publication dates in order to shift focus to AEC.

### Clarification Sought on January 14, 2016 Scheduling Order

On January 14, 2016 the AEC Committee issued a scheduling order that stated the following related to demolition of the existing units:

*However, it appears that demolition of AGS Units 1-6 is a reasonably foreseeable consequence of construction and operation of the AEC, and has the potential to change the scope or nature of the environmental impacts of the currently proposed project. Therefore, Staff's environmental assessment should consider the environmental effects of these activities. For example, in analyzing the*

*impacts to visual resources, the staff assessment should consider the effects of the proposed project in comparison to both the pre-demolition and post-demolition view sheds.*

The Committee's direction is for staff to treat demolition as a direct effect of AEC and under *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal. 3d to include an analysis of demolition as part of the whole of the project because demolition is a reasonably foreseeable consequence of the initial project; and (2) the future action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.

Staff believes that a factual clarification is necessary and that based on the clarification, the appropriate environmental review under the California Environmental Quality Act (CEQA) and the Commission's certified regulatory program would be to consider decommissioning and demolition of the existing facilities to be part of staff's standard cumulative impact section for the relevant technical areas but not as direct impact from the proposed project.

CEQA mandates that "environmental considerations do not become submerged by chopping a large project into many little ones—each with minimal potential impact on the environment—which cumulatively may have disastrous consequences."<sup>1</sup> In order to avoid this piecemealing issue, the California Supreme Court set forth a piecemealing test: an EIR must include an analysis of environmental effects of future expansion/action if (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future action will be significant in that it will likely change the scope of nature of the initial project or its environmental effects.<sup>2</sup>

The piecemealing test set forth in *Laurel Heights* implies that where land use activities are a reasonable foreseeable consequence of the initial project approval, later land use activities must be considered as part of the whole project.<sup>3</sup> Similarly, if an individual project is a "necessary precedent" for a larger project, or commits the lead agency to a larger project with significant environmental impacts, then the scope of the CEQA document must encompass the larger project.<sup>4</sup>

In AEC the facts are different. In 2010, the State Water Resources Control Board adopted a policy on the use of coastal and estuarine waters for power plant cooling. The policy establishes technology-based standards pursuant to section 316(b) of the Clean Water Act and phases out once-through cooling facilities due to impacts on marine ecology. The policy applies to 19 existing power plants in California, including AEC. The existing units are being shut down and decommissioned not because of the proposed new AEC facility but because of the once-through cooling restrictions imposed by the State Water Resources Control Board.

In the AFC the applicant noted that an agreement was reached with the city to demolish the existing units sometime after 2020 and upon approval by the California Independent System Operator (CAISO) and California Public Utilities Commission (CPUC). This third

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<sup>1</sup> *Bozung v. Local Agency Formation Commission* (1975) 13 Cal. 3d 263, 283--284.

<sup>2</sup> *Laurel Heights Improvement Ass'n v. Regents of the University of California*, 47 Cal. 3d 376, 396 (1988).

<sup>3</sup> *Id.* at 398.

<sup>4</sup> See CEQA Guidelines § 15165; *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005), 131 Cal.App.4th 1170, 1208.

party agreement does not make the demolition of the existing units a foreseeable consequence of the construction and operation of the new facility. The new facility is not a necessary precedent for the demolition of the existing facility. Parts of the existing facility can continue to operate with or without the new facility and the entire existing facility can continue in existence even with the full construction of the new facility.

Given that demolition is not a foreseeable consequence of construction and operation of the new Alamitos facility, the appropriate environmental assessment for the potential demolition would fall under cumulative impacts.

Under CEQA Guidelines, "a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts" (14 Cal. Code Regs., § 15130(a)(1).) Cumulative impacts must be addressed if the incremental effect of a project, combined with the effects of other projects is "cumulatively considerable" (14 Cal. Code Regs., § 15130(a).) Such incremental effects are to be "viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects" (14 Cal. Code Regs., § 15164(b)(1).) Together, these projects comprise the cumulative scenario which forms the basis of the cumulative impact analysis.

Staff asks that the Committee's order be amended to clarify that staff is to consider demolition as part of a standard cumulative impacts analysis as relevant to each technical area.