

## DOCKETED

<b>Docket Number:</b>	13-AFC-01
<b>Project Title:</b>	Alamitos Energy Center
<b>TN #:</b>	213929-1
<b>Document Title:</b>	Memo on Upcoming October 10th Status Conference
<b>Description:</b>	N/A
<b>Filer:</b>	ELIZABETH LAMBE
<b>Organization:</b>	Los Cerritos Wetlands Land Trust
<b>Submitter Role:</b>	Intervenor
<b>Submission Date:</b>	10/7/2016 1:24:38 PM
<b>Docketed Date:</b>	10/7/2016

Commissioner Karen Douglas, Presiding Member  
Commissioner Janea Scott, Associate Member  
Hearing Advisor Kenneth Celli

**RE: Alamitos Energy Center (13-AFC-01):  
Memo on Upcoming Status Conference Subjects**

Dear Commissioner Douglas, Commissioner Scott, and Hearing Adviser Celli:

We are writing in advance of the Status Conference scheduled for October 10. We hope to save the Applicant, CEC staff and the Committee any additional time spent discussing the issue of whether demolition of AGS should be considered a part of the AEC project. However, we also request a discussion of the draft Schedule and the dates that are determined by adoption of the Final Staff Assessment.

For the reasons below, we request the Committee reconsider the Tentative Ruling. However, we are prepared to accept the Tentative Ruling after the Committee reviews and considers our comments below.

Further, regardless of whether the Committee modifies the Tentative Ruling, we request the Committee postpone scheduling the dates for Opening Testimony, Rebuttal Testimony and the Evidentiary Hearing until the Final Staff Assessment is published in full.

**TENTATIVE RULING**

In large part, our belief that the demolition of AGS and construction and operation of the AEC are one project was founded on our belief there was an integration of those activities in a Memorandum of Understanding (MOU) between AES and the City of Long Beach. The Staff Motion disagreed the MOU created that “integration” and the Tentative Motion further clarified why a plain read of the MOU did not indicate any connection between the promised demolition and construction of the AEC.

Admittedly, we erred in our comments on the PSA and reply to the Staff Motion. A Land Trust volunteer attended the City Council hearing where the City staff presented a report to the City Council (City Staff Report) recommending the MOU. *See attached.* Our volunteer indicated that the City Council agreed to support the AEC at this Commission in exchange for AES’s commitment to demolish the AGS once the AEC was constructed and operating. The volunteer’s report was corroborated by the City Staff Report recommendation presented to the City Council prior to their approval for the City Manager to finalize the MOU.

In large part, the City Staff Report presented this language:

While the California Energy Commission (Commission) has the exclusive authority to approve thermal power plant projects 50 megawatts or greater, it has no legal authority to order AES to demolish the existing power generating units as a **condition of approval**. Thus, an MOU between the City and AES for

the demolition of the existing steam generators and stacks is highly desirable. **The MOU will provide certainty for the public, the City of Long Beach, and the Commission that the existing power plant will be removed after the new facilities are constructed and operating.** Further, **the MOU will demonstrate to the Commission,** which will review the application for a new power plant, that a proactive partnership exists between the City and AES, and **that there is commitment to the modernization of the plant** and the revitalization of this area of Long Beach. *See Attachment A: City Staff Report*

This language in the City Staff Report integrates demolition of the AGS with construction and operation of the AEC through what is, in effect, a “condition of approval.” The facts are similar to the facts in *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214. Further, the timeline for demolition was to be after the AEC was “constructed and operating” without the identification of any need for additional acts by other agencies.

However, it is now clear to us that the conditions in the City Staff’s recommendation for an MOU, approved by the City Council, were not memorialized in the MOU.

Therefore, we admit our error in misreading the MOU, as pointed out in the Tentative Ruling. Nonetheless, we are presenting the information that was the basis of our error in hopes the Committee will reconsider the Tentative Ruling.

We deeply regret the time and effort this error has caused. In that spirit, and with the intent to avoid any further delays finalizing the Committee’s ruling on the Staff Motion, we are willing to accept the Tentative Ruling if the Committee sees no benefit in reconsideration.

#### **TIMING OF EVIDENTIARY HEARING**

We believe the proper steps forward require postponement of finalizing a Schedule for an evidentiary hearing and preparation of the Committee’s final decision. After further consideration, we are modifying our request for a two-week postponement of the evidentiary hearing. We strongly urge the Committee to direct staff to publish a “final” Final Staff Assessment for public review before finalizing any dates in the Schedule.

We very much appreciate the finding in the Tentative Ruling that the demolition of AGS is a foreseeable future project that should be documented in the FSA. We believe that, in these circumstances, where both the project and the demolition are on the same site and controlled by the same proponent, the FSA should include a more thorough description of the demolition project<sup>1</sup> and a more detailed

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<sup>1</sup> CEQA Guidelines Section 15130(b) [emphasis added]: The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone. The discussion should be guided by the standards of practicality and reasonableness, and should focus on the cumulative impact to which the

discussion of potentially significant adverse impacts from simultaneous operation of the AEC and demolition of the AGS and other nearby projects. Given that demolition of AGS will occur on the site owned by the Applicant, and the demolition will be under control of the Applicant, it is both “practical and reasonable” that the Applicant inform the Committee and the public with a plan for the demolition project. At the very least, the FSA should include a description of the AGS (including any hazardous materials in the structures or on the site), and how the demolition would be accomplished. Further, the FSA should include analyses of the potential adverse impacts of noise, dust, air emissions, traffic, lighting, removal of debris from the site, and disposal of the materials, etc.

We disagree that the details of the demolition can be left until later review by the City. That would be the type of “project momentum” found unacceptable by the courts.<sup>2</sup>

Finally, we very much appreciate the Committee’s clarification that this and other issues of a legal nature will be dealt with during the evidentiary hearing. We will do our best to participate in that process in a way that is beneficial to the Committee, the Los Cerritos Wetlands, and the public at large.

However, the current draft Schedule for finalizing the decision is based on publication of the FSA. And while staff has published a “partial” Final Staff Assessment, it is clearly not “final.” It appears to us that a “final” Final Staff Assessment is only possible after the Committee finalizes their Tentative Ruling on the Staff’s motion, and then after the South Coast Air Quality Management District (SCAQMD) returns a Final Determination of Compliance so the two unfinished sections of the Final Staff Assessment can be completed.

Until the Final Staff Assessment is finalized, it is premature to schedule Opening Testimony, Rebuttal Testimony or any other dates for public participation. The public needs ample notice and time to fully participate in the Committee process. And preparation starts when the Final Staff Assessment is actually final.

Further, as we stated in our informal request for a brief two-week postponement, the principle people reviewing the AEC for Los Cerritos Wetlands Land Trust will be unavailable until late-November. We strongly recommend scheduling the pre-hearing process no sooner than November 23. We hope this gives the SCAQMD time

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identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact.

<sup>2</sup> “Environmental review which comes too late runs the risk of being simply a burdensome reconsideration of decisions already made and becoming the sort of ‘*post hoc* rationalization to support action already taken,’ which our high court disapproved in [ *Laurel Heights* ].” (*Keep Berkeley Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1359.)

to produce the FDOC, and CEC staff time to finalize the FSA, so that the public can fully prepare and participate in the hearing and final decision process.

## **CONCLUSION**

Again, we apologize for our error reading the MOU. We hope our acceptance of the Tentative Ruling will reduce the time and effort of CEC staff and committee members. However, we still believe there is work to do prior to evidentiary hearings and preparation of the final decision. We request the Committee modify the Schedule to allow fully-informed participation by the Los Cerritos Wetlands Land Trust and other members of the public interested in this project. The public will live with the decision of the Commission for decades to come, so it is critical to take the time to get this decision right.

In hindsight, it is clear our parents' generation made a dramatic error in filling coastal wetlands to develop power plants. They didn't understand the critical ecosystem benefits of these areas. But with the understanding of this generation, and the inherent difficulties of both mitigating climate change and adapting coastal management to the threats of inevitable climate change, the fragmented remaining coastal wetlands are even more critical today.

This Commission has the almost indescribably important charge of ensuring that polluting gas-fired generation is minimized and fully mitigated. It is beyond unfortunate that the analysis is performed on the "baseline" of what we now know were dire mistakes made in the past – and continuation of those clear errors and the environmental devastation they caused is a heavy weight to carry. Our children, and our children's children, will view this decision with the clarity of hindsight and be the final judge of this generation's effort to make their world a safer and more sustainable place to live.