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STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of
The Application for
Certification
For the
ALAMITOS ENERGY CENTER

Docket No: 13-AFC-01

Intervener Pre-Hearing Conference Statement

Prepared for Los Cerritos Wetlands Land Trust
November 2, 2016

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Intervenor Los Cerritos Wetlands Land Trust (the “Trust”) renews its request to postpone the Evidentiary Hearing until the Final Staff Assessment is final, and until all witnesses for the Trust are available.¹ Further, the Trust now moves to stay the proceedings until the PSA is revised, as we first recommended in our comments on the PSA, and in the recently-filed motion for an order by the Committee staying the proceedings and directing staff to prepare a complete PSA and FSA.²

Nonetheless, we offer this Pre-Hearing Statement, as directed by the Committee:

1. Subject areas that are complete and ready to proceed to Evidentiary Hearing:

- a. None – the FSA is not final and is required for all subject areas.
- b. Without inclusion of the Air Quality analyses, the other subject areas are incomplete.
- c. For the reasons below, the Project Description also needs revisions.

2. Subject areas upon which LCWLT proposes to introduce testimony in writing rather than oral testimony:

a. Cumulative Impacts in Several Subject Areas

i. Scope and definition of “cumulative impacts”

First, the scope of analysis of cumulative impacts is disputed by staff, LCWLT and Applicant.

As stated in the Trust’s Memo to the Committee³, we believe the MOU regarding the AGS demolition and the AEC project misrepresented what was considered and approved by the City Council. Furthermore, evidence in the record shows that the CEC previously issued a legal opinion that the demolition of a power plant on a separate site from its replacement power plant should be analyzed as the same project. Further, as part of a project to construct the proposed new facility in this case, the Air Quality Management District permit will require permanent shutdown of AGS as a permit condition for AES, triggering the commitment to demolish the AGS in the agreement promised the Long Beach City Council.

Taking into account CEC precedent on this issue in the South Bay Power Plant case, and the Air Quality Management District requirement to decommission the AES as a condition of the permit, the Committee should reconsider its ruling on the Staff Motion for Summary Adjudication and order that demolition of AGS should be analyzed as “part of the project,” not just a cumulative impact. The construction and operation of the proposed AEC and demolition of AGS should be considered as part and parcel of the same project and the Staff Assessment should be revised to include consideration of the entire project.

¹ See TN 213929-1 “Memo on Upcoming October 10 Status Conference”

² See “LCWLT Motion to Stay Proceedings” submitted November 2, 2016

³ Footnote 1 above

Second, the *definition* of cumulative impact “is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” (CEQA Guidelines §15130.) The demolition of AGS, even if it is considered a separate project from the proposed AEC, is a reasonably foreseeable result of the proposed AEC. Although the Committee ordered that AGS demolition be considered for cumulative impacts, the PSA and FSA fail to adequately analyze AGS demolition as a cumulative impact and, thus, need to be revised.

Staff argues that the adverse impacts from operation of the proposed AEC will be less than significant, and so the proposed AEC does not result in adding to the cumulative impacts of the AGS demolition. For example, in rebuttal to the Trust’s Opening Testimony, staff argues: “As is noted in the Project Description, demolition of AGS, if it occurs⁴, would take place during the operations of AEC. The noise impacts from the operations of AEC are minimal and mitigated are not expected to combine with the temporary AGS demolition noise.”⁵ It is irrelevant if the noise from the AEC is minimal in comparison to the past operation of the AGS. And the assumption that “the noise impacts are not expected to combine with the temporary AGS demolition” is without foundation and nonsensical. As noted below, this flawed logic is repeated in several subject areas in staff’s rebuttal testimony.

Therefore, the information presented as cumulative impacts analyses in the PSA and FSA do not comply with the definition of “cumulative impacts” and thus violate CEQA’s clear requirement that cumulative impacts be analyzed and mitigated for.

ii. Cumulative impacts in several subject areas

The flawed reasoning in the staff Rebuttal to Opening Testimony on Noise is repeated in the Biological Resources, Traffic, and Soil & Water analyses. And there is no Staff Rebuttal to our similar testimony on Hazardous Materials and Handling.

iii. Potential effect of analyses from omission of Air Quality analyses

As we noted in our Opening Testimony and Rebuttal, air quality impacts from operation of the proposed AEC, demolition of AGS, and traffic from AGS demolition, will compound the adverse impacts on Air Quality (including dust and GHG emissions), Biological Resources, Soil & Water and more. Until there is an analysis of air quality degradation, it is premature to conclude the other subject areas are complete, thorough and accurate.

b. Alternatives

⁴ Staff’s attempt to paint the AGS demolition as only a possibility fails to account for the Applicant’s promised to the City Council of Long Beach that the AGS would be demolished in return for their support of the AEC.

⁵ Staff Rebuttal Testimony at p.24

i. Purpose of the project and feasible alternatives

According to the CPUC, LA Basin grid reliability will be met at least through 2022 with 740 MW of new generation at the Alamos site -- a 640 MW combined cycle unit and a 100 MW battery storage unit. The CEC has done no independent LA Basin grid reliability assessment to justify additional gas-fired capacity at Alamos beyond the 640 MW identified by the CPUC as sufficient to address reliability issues. This CPUC determination pre-dated the imminent moth-balling of the 965 MW Paloma combined-cycle located on the main transmission trunkline between Kern County and the LA Basin, and therefore did not consider a long-term contract with La Paloma as an alternative to increasing reliable baseload and peaking capacity available to the LA Basin. As noted in Exhibit 2 (p. 2) to Powers Testimony, the La Rosita merchant combined cycle plant in Mexicali, Mexico, over 100 miles from San Diego, serves this local reliability function for the San Diego urban core. The Paloma combined cycle plant has the same efficiency as the proposed AEC combined cycle plant. In addition, the CPUC identified approximately 800 MW of demand response that will be added in the LA Basin by 2022 that is not currently classified as a grid reliability resource. Reclassification of this demand response as fully reliable, as an alternative to the proposed project, was not studied by the CEC. Nor was a combination of this demand resource and the available La Paloma combined cycle capacity evaluated by the CEC.

The Trust disagrees that the proposed project is the best “feasible” alternative to meet the purpose and simultaneously meet the regulatory standards in the CPUC’s “loading order.” As the Trust stated in its comments on the PSA, and all communications since, it is feasible to meet the purpose of the project with less than 640 MW of gas-fired generation.

And CEC licensing of more than 640 MW of gas-fired generation only exacerbates the significant cumulative impacts from construction/operation of the proposed facility and demolition of the AGS, while creating inconsistencies with State laws and regulations to reduce GHG emissions.

ii. LORS

Licensing a 1040 MW gas-fired facility when the CPUC, after a multi-year evaluation process, has only found the need for 640 MW of gas-fired generation at Alamos, is clearly contrary to the regulatory mandates in the state’s loading order. The Commission must make an affirmative decision on this LORS override -- and there is no reasonable basis for such an override.

3. Subject areas that are not complete and not yet ready to proceed to Evidentiary Hearing, and the reasons therefore:

a. Air Quality

The Final Staff Assessment is not final. The Air Quality subject area is missing, yet cited in several other subject areas.

b. All other related subject areas

Air Quality is an important element of several other subject areas that are considered “final” in the Final Staff Assessment Part 1. However, several subject areas in the Final Staff Assessment Part 1, most notably the Biological Resources section, refer to the Air Quality analyses and Conditions of Certification that are not included in the Part 1 FSA.

Further, several subject areas in the Part 1 FSA require additional consideration of cumulative impacts, including air quality degradation, from simultaneous demolition of the AGS and operation of the proposed AEC

4. Subject areas that remain disputed and require adjudication, the issues in dispute, and the precise nature of the dispute for each issue:

a. Definition and Scope of “cumulative impacts”

See #2 above. Also see “Motion to Stay Proceedings”, November 1

b. “Need” for the Project and consistency with LORS (eg. CPUC loading order consistency, Coastal Act consistency, Land Use compatibility, etc)

See eg, #2 above. Also see “Motion to Stay Proceedings”, November 1

5. LCWLT Witnesses;

a. Witnesses:

- i. Bill Powers (BP)
- ii. Joe Geever (JG)

b. Subject Areas of Testimony:

- i. scope and definition of “cumulative impacts” (JG)
- ii. cumulative impacts in several subject areas (JG)
- iii. LORS (JG and BP)
- iv. Alternatives (BP)

c. Whether Testimony is Written or Oral:

- i. Joe Geever’s testimony is written, but will be supplemented after the Final Staff Assessment is published with the Air Quality analyses included
- ii. Bill Powers’ testimony is written, but will be supplemented and presented orally at the Evidentiary Hearing, as well after the Final Staff Assessment is published with the Air Quality analyses included

d. Brief Summary of Testimony:

- i. The Project Definition is inconsistent with the Power Purchase Agreement approved by the CPUC after consideration of the state’s loading order, and consequently is inconsistent with state laws, regulations and standards (LORS)
 - ii. cumulative impacts from operation of the proposed AEC and other nearby projects will be significant and is not adequately documented
 - iii. proposed mitigation does not reduce foreseeable impacts to less than significant
 - iv. alternatives to the proposed project, including preferred resources, are feasible, will meet the “purpose” of the project, and will bring the proposed project into compliance with LORS.

- e. Witness Qualifications,
 - i. Bill Powers is a mechanical engineer with experience in power generation, transmission, storage and energy planning.
 - ii. Joe Geever spent a decade working in the building trades and has since worked as a community organizer and advocate for environmental protection and represents the collective knowledge of the Trust about the Los Cerritos Wetlands.

- f. Time required to testify,
 - i. Bill Powers will require 30 minutes for his testimony
 - ii. Joe Geever will be unavailable to testify due to the Committee’s denials of several requests for postponement of the Evidentiary Hearing to accommodate participation by LCWLT representatives

- g. Whether witness will testify telephonically.
 - i. No. As discussed at the October 10 Status Conference, Joe Geever and Elizabeth Lambe will not be available, either in-person or via telephone, for the November 15 Evidentiary Hearing. We renew our requests for postponement.
 - ii. Joe Geever and Elizabeth Lambe will participate in the Pre-hearing conference via telephone from an out-of-country telephone
 - iii. Bill Powers will testify and be available for cross-examination at the Evidentiary Hearing

6. Others’ Witnesses:

- a. Subject areas to question others’ witnesses:

- i. Alternatives:

Staff: Steven Kerr and David Vidaver

The Staff Rebuttal mischaracterizes the CPUC LTPP. Further, staff mischaracterizes the alternatives available.

- ii. Cumulative impacts:

Staff: Scott D. White, Jennifer Lancaster, Lisa Worrall, Abdul-Karim Abulaban, Joseph Hughes, Shahab Khoshmashrab
The Staff rebuttal of Opening Testimony questioned and mischaracterized Opening Testimony. Further, staff, for the first time, implied the AGS may not be demolished.

b. Summary of scope of questions (including their qualifications);
See above.

c. Issues to which the questions pertain;
See above

d. Time desired to question each witness.
Thirty minutes

7. List of exhibits by subject and TN

See attached LCWLT Exhibit List. We incorporate by reference the Staff Exhibit List

8. Proposal for briefing deadlines or other scheduling matters

a. See our Comments on PSA

In comments on the PSA we cited numerous flaws in the cumulative impacts analyses and recommended revisions and recirculation of the PSA. We renew that recommendation now.

b. See TN 213870: Request for Postponement

In our first request for a postponement, we simply requested a 2-week delay to allow us an opportunity to fully participate.

c. See TN 213929-1: Second Request for postponement

After seeing the Schedule and partial Final Staff Assessment, we requested a postponement until the Final Staff Assessment was final, and a hearing date could be scheduled for the complete record.

d. See attached: Motion to Stay Evidentiary Hearing until the Final Staff Assessment is final

After reviewing the Opening Statements and Rebuttal, we are now consolidating our previous requests for postponement and requesting a stay of the proceedings to allow time to revise the PSA, including the Project Description, for both an adequate analysis of adverse cumulative impacts and assurances that the proposed AEC be modified for consistency with LORS – in particular the CPUC’s enforcement of the “loading order.”

Conclusion

The process is unnecessarily hurried. The FSA needs to be completed prior to an Evidentiary Hearing, with inclusion of a Project Description that analyzes LORS consistency, a final Air Quality analysis, a revision of most subject areas with revised

consideration of demolition and air quality degradation included, and adequate cumulative impacts analyses in all subject areas.

There are major disputes fundamental to the basis of the assumptions and conclusions in the FSA that can't be resolved with decisions of fact – the disputes are legal questions.