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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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APPLICATION FOR CERTIFICATION FOR THE:

ALAMITOS ENERGY CENTER

Docket No. 13-AFC-01

ENERGY COMMISSION STAFF REPLY BRIEF

At the conclusion of the Alamitos Energy Center (AEC) evidentiary hearing covering part 1 of the Final Staff Assessment (FSA), the assigned Committee provided an opportunity for parties to file reply briefs. Staff offers the following reply to issues raised by the parties in opening briefs.

The Los Cerritos Wetlands Trust (Trust)

The Trust makes four arguments: 1) Demolition of the Alamitos Generating Station (AGS), should have been analyzed by Staff as part of the project; 2) A 1040 MW project is inconsistent with the awarded Power Purchase Agreement (PPA) of 640 MW; therefore, Staff should have considered a 640 MW alternative; 3) The Commission cannot license a 1040 MW project without making the findings necessary for an override; and 4) Staff's cumulative impacts analysis as to the demolition of AGS is inadequate.

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1) <u>Demolition of AGS was not required to be analyzed.</u>

The Committee already issued a ruling holding that the demolition of AGS is not part of the AEC project. That ruling came after Staff filed a motion, parties filed replies, a tentative ruling was issued, opportunity for oral argument was provided, and finally a comprehensive decision was issued (Exh. 2002). The purpose of going through that process was to adjudicate the issue well in advance of the evidentiary hearing so the scope of the environmental review could be established as staff developed the FSA and parties prepared to develop the evidentiary record. Given the Committee's ruling, the Trust's continued argument in its opening brief for the inclusion of the demolition of AGS as part of the AEC project should be ignored.

2) <u>A PPA is not required before an Applicant can seek a license from the Commission.</u>

There is no requirement in the Public Resources Code or the Commission's regulations that an applicant obtains a PPA in order for the Commission to evaluate the proposed project and issue a decision on the application. Nor is there a requirement that a project have a PPA to initiate and complete construction. If there is no requirement that a project even have a PPA, and the Commission has licensed projects without PPAs, there is also no requirement that the proposed project size match the PPA in existence at the time Staff is reviewing the project.

It appears that the Trust's primary concern is that the Energy Commission's siting process will undo the California Public Utilities Commission's Long Term Procurement Plan (LTPP) process which sets forth the amount of natural gas power generation and renewable energy resources that will need to be built in an

area for reliability. The licensing of AEC at 1040 MW would not change this. The Applicant can seek a license for a 1040 MW facility believing that either other proposed projects in the area will not go forward, existing facilities will shut down or that future reliability conditions will change. Ultimately, whether the full 1040 MW facility operates at the site, would likely depend on the existence of an approved PPA for the extra 400 MW (Exh. 2000, pp. 6-17 to 6-18).

3) <u>An override is not needed to license a project with an output greater than its PPA.</u>

For the reasons stated in #2 above, a PPA is not a pre-requisite for the Commission to reach a decision on a license and no override is necessary.

4) <u>Staff adequately assessed the cumulative impacts from the demolition of AGS.</u>

The approach Staff takes to developing the cumulative analysis is consistent with the CEQA Guidelines, section 15130, and is fully described in the FSA (Exh. 2000, pp. 1-14 to 1-15). The process starts with developing a comprehensive list of past, present and future projects (Exh. 2000, pp. 1-16 to 1-26). Then, Staff considers the entire list and identifies the appropriate geographical range relevant to each discipline.

Because the identified projects are at various levels of planning, limited information is usually available regarding potential impacts. In the case of AGS, the facility is still operating and will continue to operate into 2020 (Exh. 2000, p. 3-1), before it can be decommissioned and seek regulatory approval for permanent shutdown and ultimate demolition (Exh. 2000, p. 3-12). Where appropriate, Staff

has performed a qualitative cumulative impacts assessment relating to demolition of AGS as set forth in the FSA and supplemental testimony (See Exhs. 2000, 2001, 2003, 2004, 2005, 2010 and 2012).

Disputed Conditions of Certification with Project Applicant

BIO-8

The Applicant opposes BIO-8, arguing that there are no burrowing owls on site and the proposed mitigation is burdensome compared with any identified impact (Applicant Brief, pp. 2-3).

Burrowing owls are designated as a species of special concern by the California Department of Fish and Wildlife (Exh. 2000, p.4.2-21) and therefore take of a burrowing owl should be avoided and would be significant according to CEQA significance criteria identified in the FSA; *In this analysis, impacts to biological resources are considered significant if the project would result in the following: a substantial adverse effect to wildlife species of special concern to CDFW* (Exh. 2000, p. 4.2-23).

Burrowing owls have been documented in the project vicinity utilizing drainage pipes and ground squirrel burrows for cover. This species also has been documented nesting in degraded areas on the Seal Beach Wildlife Refuge just two miles away (Exh. 2000 pp. 4.2-6, 4.2-21, Exh. 3046 p. 2).

Recognizing only a moderate chance for burrowing owls to be on site, Staff recommends mitigation that protects the owl, but also can be easily performed when complying with other conditions. The mitigation is simply to check for birds before

performing site work. Staff expects this can be accomplished while the Applicant is performing other required pre-construction surveys which the Applicant has already agreed to perform under BIO-2, BIO-7 and portions of BIO-8 (Exh. 2000, p. 4.2-26).

Given the presence of burrowing owls in the areas around the project, the consequences of a take of this special status species, and the common sense mitigation of checking for wildlife prior to construction activities, the mitigation proposed in BIO-8 is reasonable, effective and should be implemented.

BIO-1/CUL-1/PAL-1

The applicant states in its opening brief:

> *"Staff and Applicant disagree on the processes for appointment of the Designated Biologist (BIO-1), Cultural Resources Specialist (CUL-1), and paleontological resource specialist (PAL-1). As explained in the Applicant's Opening Testimony, the conditions in the FSA can result in the rejection of otherwise qualified biologists and cultural resources experts based on subjective criteria. (Ex. 1070, pp. 29-31; also, see, p. 21.) A similar concern is present for the potential paleontological resources experts."* (Applicant Brief, p.7)

The Applicant's proposed changes to these three conditions appear to be a solution in search of a problem. The Applicant alleges that Staff could subjectively reject a proposed specialist, causing project delay. The source of this concern is unclear. There is nothing in the record evidencing a pattern of delays or problems associated with the current process, reflected in BIO-1, CUL-1 and PAL-1, which set forth how staff approves qualified specialists. The Applicant provides no specific example of Staff's arbitrary rejection of a specialist or how the selection process causes project delay.

The criteria and processes found in the three conditions are simple and objective. They rely on commonsense metrics: academic training, types of experience and the duration of that experience. It is a straightforward exercise of matching relevant experience to the stated criteria and cumulatively presenting the requisite amount of experience (Ex. 2000, pp. 4.2-56, 4.3-63 to 4.3-64, 5.2-32 to 5.2-33). The application of these conditions would not result in the subjective disqualification of qualified personnel, interfere with construction schedules, or prevent qualified individuals from gaining employment.

GEO-2

Should the Applicant who is proposing a power plant near the Pacific Ocean have to consider and plan for the consequences of a tsunami to protect workers and visitors at the AEC facility? Staff believes a basic tsunami response plan is a prudent measure that should be imposed. The Applicant believes such a plan is burdensome and should not be required.

In its opening brief the Applicant argues:

> *"First, Staff still fails to identify a LORS requiring preparation of the THMP* [Tsunami Hazard Mitigation Plan] *proposed in GEO-2. Staff concedes that the 2006 Tsunami Annex to the Los Angeles County Emergency Response Plan, which GEO-2 requires that the AEC comply with, is not applicable to the project (See, Ex. 2010, p.1.)"* (Applicant Brief, p. 4)

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In GEO-2 staff did not require that "AEC comply with" the Los Angeles County Operational Area Emergency Response Plan (LACOAERP). Specifically what staff proposed is:

> *"The project owner shall ensure that the emergency response and evacuation* ***information provided to staff and visitors comply*** *with the 2006 Tsunami Annex to the Los Angeles County Operational Area Emergency Response Plan…"* [emphasis added] (Exh. 2010)

The operative language is for the relevant information from the LACOAERP be incorporated into AEC's tsunami plan. The facility itself would not be complying with the LACOAERP. The LACOAERP and the National Tsunami Hazard Mitigation Program (NTHMP) are considered standards, and information contained in these standards can be used to ensure worker safety. Using existing vetted regional information standards is the least burdensome and most effective way to develop a site specific tsunami plan that also takes into consideration the activities of emergency personal and nearby evacuation protocols.

Staff fails to understand how a comprehensive tsunami response plan can be developed for AEC if there is no coordination with local emergency responders, or adjacent property owners, and if the access routes planned by government for use by emergency responders and other emergency response activities, which are outlined in the LACOAERP, are not evaluated and addressed in the AEC tsunami response plan. Without coordination, and compliance, with government emergency response plans the primary evacuation route planned for AEC could turn out to be the primary ingress route for first responders to assist adjacent property owners in the event of a tsunami. Without compliance on the part of the project owner greater harm may come to site workers and visitors.

The focus of GEO-2 is the protection of public health and safety consistent with Public Resources Code sections 25511 and 25520(b) and Title 20 sections 1742(b), which address "*public health and safety.*" Staff recommends GEO-2 to ensure this is satisfied but also allows for the flexibility the applicant is requesting.

Additionally, the applicant states in their opening brief:

> *"Worker safety will be addressed by the construction and operations Emergency Action Plans required by Conditions WORKER SAFETY-1 and 2, which will address tsunami hazards and measures to inform employees and contractors of potential hazards. Condition GEO-2 would impose the burden of preparing and maintaining redundant plans that is not proportional to the identified risk."* (Applicant Brief, p. 5)

With respect to addressing safety issues related to a tsunami hazard, the conditions of certification related to worker safety refer to GEO-2 (Exh. 2000, 4.14-8 to 4.14-9). The worker safety conditions of certification are designed to comply with existing LORS and are designed to protect workers during the construction, operation, and demolition of AEC. The conditions presume the safety issues are related to a hazard specifically associated with AEC that impacts the worker.

The nature of the tsunami hazard is different than other hazards encountered by workers and visitors at AEC. Therefore, planning to protect workers and visitors from this hazard would be different from other safety hazards. This planning is not redundant and can be accomplished in conjunction with other safety planning efforts.

The need for additional planning is exacerbated by the fact that a tsunami hazard is an area hazard, not a point hazard. This means that a tsunami impacts a great number of facilities and people in the area surrounding AEC, not just the workers and visitors at AEC. Because restrictions to ingress and egress can be determined prior to a tsunami more detailed planning regarding tsunamis can be performed to ensure worker and visitor safety at AEC.

The applicant states in their opening brief:

> *"Third, the requirements of GEO-2 are burdensome and excessive. Condition GEO-2, as proposed in Staff's Rebuttal Testimony, still requires that all visitors, regardless of the duration of the visit, be "informed of tsunami hazards in the region and have been shown how and where to evacuate the site if there is potential for a tsunami."* (Applicant Brief, p. 6)

Staff would like to ensure that visitors to the site are adequately protected from hazards, and staff envisions that incorporation of tsunami information can be part of other safety information provided to site visitors. The Applicant noted it already has a tsunami plan for the AGS facility so developing one for the adjacent AEC facility should not be too burdensome as information and protocols should overlap (Applicant Brief, p.6).

Compliance COM-15

COM-15 requires the Applicant to submit a plan, one year prior to closure, on how the facility will be safely closed to ensure closure and long-term maintenance do not pose a threat to public health, safety, or to environmental quality. One aspect of the plan is to provide a cost estimate of the closure process and any long term maintenance.

Cost estimates can inform staff, sister agencies, and the public of the potential costs associated with ongoing facility maintenance or monitoring after closure and the potential costs associated with the use of a third party contractor for closure services under an insolvency or abandonment scenario. Understanding potential long term costs of decommissioning will serve as a planning tool to ensure protection of health and safety for the public and environmental quality in the event that a facility is abandoned.

The Applicant objects to providing the cost estimate and argues that such information is not authorized by any regulation, is burdensome and does not serve a purpose. Staff is puzzled by the Applicant's opposition and claims since the Applicant did not object to the inclusion of a cost estimate in COM-15 of the Huntington Beach project (See http://docketpublic.energy.ca.gov/PublicDocuments/12-AFC-02C/TN214211_20161027T125157_Project_Owner's_Opening_Testimony.pdf and http://docketpublic.energy.ca.gov/PublicDocuments/12-AFC-02C/TN214025_20161017T134120_Final_Staff_Assessment__Part_1.pdf at pp. 7-12 and 7-26)

A cost estimate for project closure would not be a burden as such information would typically be determined anyway as the facility is set for shut down and the closure plan is developed with associated implementation costs. As part of the Application for Certification, the project Applicant routinely provides cost estimates covering total construction costs, operational expenditures, payroll costs and other expenses (Exh. 1503, pp 1-1, 1-9). Closure costs should be equally available.

Authority for the development of a closure plan and the information it needs to contain stems from a number of sources including; Public Resources Code section

25532 and Title 20, Cal. Code Regs., section 1770, which require the Commission to establish a monitoring system to assure that any facility is operating in compliance with public health, safety and other applicable regulations, guidelines and conditions. Decommissioning is part of the facilities life cycle and to provide the Commission with details of the decommissioning process, a closure plan is required that contains certain information, including cost estimates (Exh. 2000, p. 7.1).

Conclusion

The entire hearing record supports a finding by the Committee that cumulative impacts analysis was adequate and that BIO-1, CUL-1, PAL-1, BIO-8, GEO-2 and COM-15, as set forth in the FSA and Staff's supplemental testimony, should be adopted into the proposed decision.

Date: December 9, 2016

Respectfully submitted,

Original signed by

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