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November 4, 2013

Commissioner Karen Douglas, Presiding Member
Commissioner Janea Scott, Associate Member
Patricia Kelly, Siting Project Manager
Redondo Beach Energy Project (12-AFC-03)
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: Redondo Beach Energy Project (12-AFC-03): Notice of Objection Pursuant to 20 C.C.R. 1716(f): Staff Data Requests Set 1.

Dear Commissioner Douglas, Commissioner Scott, and Ms. Kelly:

Pursuant to Section 1716(f) of the Commission's regulations, AES Southland Development, L.L.C. (the "Applicant") hereby files this notice of objection to Data Requests 26, 27, and 28 issued by Commission Staff on October 15, 2013 as part of its Data Requests, Set 1 ("Set 1").

As provided in Section 1716 of the Commission's regulations, a party may request from another party information that is *reasonably available* and relevant to any decision the Commission must make in the proceeding.¹ Factors considered by the Commission to determine whether the information requested is discoverable include the following: (1) the relevance of the information; (2) whether the information is available to the applicant, or from some other source, or whether the information has been provided in some other form; (3) whether the request is for data, analysis, or research; and (4) the burden

¹ 20 C.C.R. § 1716(b).

on the applicant to provide the data.² Data and information must be available to the answering party, and the party is “not, however, required to perform research or analysis on behalf of the requesting party.”³ The Applicant objects to Data Requests 26, 27 and 28 on the grounds the requested information is not reasonably available to Applicant, and the production of which would impose burdens that outweigh whatever limited value the information might produce.

I. DISCUSSION

A. Data Requests 26-28 seeks information not reasonably available to the Applicant.

Data Requests 26-28 request that the Applicant conduct 25-hour continuous ambient noise measurements and perform additional noise impact analysis at three locations in the vicinity of the Redondo Beach Energy Project (“Project”) site. The Application for Certification (“AFC”) for the Project already provides 25-hour continuous ambient noise measurements from two locations in the vicinity of the Project site. Three additional 25-hour continuous ambient measurements would be costly and time consuming to perform and analyze. Because Data Requests 26-28 require extensive and costly additional measurement and analysis, at locations that are neither under the ownership or control of the Applicant, the information requested by Data Requests 26-28 is not reasonably available to the Applicant.

B. The burden of conducting three additional 25 hour ambient noise measurements (where two measurements have already been performed) outweighs the limited value of the information that might be produced.

The two 25-hour continuous ambient noise measurements provided in the AFC are sufficient to allow the Commission to assess the potential noise impacts of the Project. Staff’s data requests provide

² See, Committee Ruling on Intervenor Center for Biological Diversity’s Petition to Compel Data Requests, Docket No. 07-AFC-6 (Dec. 26, 2008).

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no justification for the requests for additional information, other than a statement that the Staff needs more data.

The purpose of performing 25-hour background ambient noise measurements is to characterize the current, general or “ambient” conditions in the vicinity of the project site.

Neither the California Environmental Quality Act (“CEQA”) nor the Commission’s regulations require numerous 25-hour ambient measurements from all sides of a proposed development. For example, the Commission’s regulations require 25-hour monitoring at only one site in support of an AFC.⁴ Similarly, CEQA does not require the analysis of noise impacts from a proposed project to be exhaustive, or that every test, research, or study be performed.⁵ Instead all that is required is a good faith effort at full disclosure of the potential impacts of a project. The two 25-hour ambient noise measurements already conducted by the Applicant, which is one more than required by the Commission’s regulations, represent a good faith effort to assess ambient locations, and provide a representative characterization of the ambient noise levels in the project vicinity. The data and analysis resulting from these two measurements provide a fair basis for assessing the potential noise impacts of the Project in accordance with CEQA. Nothing more is required.

The Background provided in support of Data Requests 26-28 implies that the Applicant should conduct 25-hour continuous ambient noise measurements near all receptors. However, the 25-hour measurement required by the CEC, not by CEQA, is simply one factor that is considered in the noise assessment of a project. For this purpose, it is not possible or reasonable to expect measurements at

³ See, Committee Ruling on Intervenor Center for Biological Diversity’s Petition to Compel Data Requests, Docket No. 07-AFC-6, p, 2 (Dec. 26, 2008).

⁴ 20 C.C.R., Chapter 5, Appendix B, § (g)(4)(B).

⁵ 14 C.C.R. §§ 15151, 15204.

every potential receptor or in all areas around a potential project. In a complex environment such as that surrounding the Project, it is impossible to ascertain a single existing noise level at all receptors around the Project. Within the areas identified in Data Requests 26-28, the existing sound levels can be expected to vary given the numerous factors such as distance to roads, barrier effects of various buildings or other structures, etc. The relevant factors to consider in a noise analysis include the distance and angle of the measuring point in relation to existing noise sources, and the barriers or other features that might influence the path of the noise. When considered in relation to the 25-hour continuous ambient measurements already provided by the Applicant, which provide a representative characterization of the ambient noise levels in the project vicinity, there is more than sufficient information to conduct a noise analysis of the potential impacts of the Project.

By way of example, Data Request 28 requests 25-hour continuous ambient measurements “at or near the residential areas in Redondo Beach east of North Catalina Avenue bounded by Beryl Street, North Elena Avenue, and North Broadway”. The views of the Project and other noise sources within this area vary dramatically— for example, some residences will be shielded by intervening buildings; for others, the front might be shielded while the back is not. The back of the closest residence within the area subject to Data Request 28 is approximately 700 feet from the closest existing stack. However, monitoring Location M1 is also approximately 700 feet from the stack. Therefore, M1 already provides a reasonable approximation of existing ambient levels that would be expected 700 feet from the existing stacks. Given the similarities in distance, orientation, and proximity to a similarly sized roadway, additional monitoring in the area called for in Data Request 28 is unwarranted.

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In the past, the Commission has been able to analyze potential noise impacts from other projects based on two or fewer 25-hour noise measurements.⁶ There is no reason why two locations are not sufficient to reasonably inform the Commission regarding the potential noise impacts of the proposed Project. The evaluation of the existing ambient levels is just one aspect of the noise analysis. Therefore, the very limited value that information from additional measurements might yield does not outweigh the cost and burden of performing such measurements.

II. CONCLUSION

As set forth above, the Applicant objects to providing the information requested in Staff Data Requests Set 1, Data Requests 26-28. The Applicant objects to Data Requests 26-28 as requesting information not reasonably available to the Applicant because the requests ask the Applicant to perform costly additional studies, and because Staff has failed to make any showing as to why the additional measurements are needed.

Sincerely,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By 
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⁶ See, for example, Malburg Generating Station, 01-AFC-25; Marsh Landing Generating Station, 08-AFC-03; and Eastshore Energy Power Plant, -6-AFC-06.