

## DOCKETED

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November 27, 2013

Commissioner Karen Douglas, Presiding Member  
Commissioner Janea Scott, Associate Member  
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 1B.

Dear Commissioner Douglas and Commissioner Scott:

Pursuant to Section 1716(f) of the Commission's regulations (Title 20 of the California Code of Regulations), AES Southland Development, L.L.C. (the "Applicant") hereby files this notice of objection to Data Requests 48, 49, 52, and 64-66 issued by Commission Staff on November 12, 2013 as part of its Data Requests, Set 1B ("Set 1B").

As provided in Section 1716 of the Commission's regulations, a party may request from the Applicant information that is *reasonably available* and relevant to any decision the Commission must make in the proceeding.<sup>1</sup> 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

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<sup>1</sup> 20 C.C.R. § 1716(b).

on the applicant to provide the data.<sup>2</sup> 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.”<sup>3</sup>

The Applicant objects to Data Requests 48, 49, 52, and 64-66 on the grounds that the requested information is (1) not reasonably available to Applicant and (2) not relevant or reasonably necessary to make any decision on the Application for Certification (“AFC”) for the Redondo Beach Energy Project (“RBEP”). Notwithstanding these objections, the Applicant reserves the right to answer portions of certain requests on or before December 12, 2013.

## **I. DISCUSSION**

### **A. Data Request 48**

Data Request 48 asks the Applicant to perform an analysis of off-site alternatives within the California Independent System Operator (“CAISO”) Western Los Angeles Basin Local Reliability Sub-Area. This Data Request prescribes in detail how the analysis should be undertaken. In particular, the Data Request asks the Applicant to select one or more sites, and to then provide a comparison of the environmental impacts of construction and operation of the project at the alternative site(s) in comparison to the proposed site.

The Applicant has not undertaken this off-site alternatives analysis and objects to doing so for the following reasons:

- For projects with a strong relationship to an existing industrial site, the lead agency is not required to perform an analysis of alternative sites.

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

<sup>3</sup> 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).

- For any off-site alternative to a project involving modernization of an existing facility, the combined impacts of the existing plant and a plant on the alternative site would create more impacts, rather than fewer impacts compared to the proposed project.
- For projects where significant adverse impacts have not been identified, the lead agency is not required to perform an analysis of alternative sites.
- For alternatives that are shown to avoid or substantially lessen significant environmental impacts, an agency should consider only those alternatives that meet most of the basic project objectives.
- Off-site alternatives to RBEP are not feasible, because they are not capable of being accomplished prior to the deadline for discontinuing once-through cooling at the RBEP site, and
- To perform an off-site alternatives analysis for RBEP, where such an analysis was not performed for other similarly situated projects is discriminatory and creates an un-level playing field in a highly competitive energy market.

**1. Off-site alternatives analysis is not required for projects with a strong connection to an existing industrial site.**

The law is clear that an off-site alternatives analysis is not required for this project. Public Resources Code Section 25540.6(b) states: “The commission may also accept an application for a noncogeneration project at an existing industrial site without requiring a discussion of site alternatives if the commission finds that the project has a strong relationship to the existing industrial site and that it is therefore reasonable not to analyze alternative sites for the project.”

RBEP has a strong relationship to the existing industrial site. A power plant has been located on this site for more than 100 years. The proposed project will utilize the existing infrastructure and ancillary facilities of an existing power plant, on a site zoned for a power plant, at a location that is used for a power plant for more than 100 years. It is difficult to conceive of a stronger relationship than this

to an existing industrial site. Therefore, it is eminently reasonable not to analyze off-site alternatives for the project.

**2. For any off-site alternative to RBEP, the combined impacts of the existing Redondo Beach Generating Station and a plant on the alternative site would create more impacts, rather than fewer impacts compared to the proposed project.**

The baseline condition for assessing the impacts of RBEP is an existing industrial site with an operating power plant. As explained in the Commission's decision in the Morro Bay case, an offsite alternative to the modernization of an existing power plant will increase, not lessen, the impacts in comparison to the proposed project:

Although not the case with this project, if one assumes the existence of significant impacts and further assumes that alternative sites meet basic project objectives, the CEQA process for analyzing alternatives also requires consideration of whether the alternative sites reduce or avoid significant impacts and are feasible.... However, the Staff analysis assumes that the impacts of putting a power plant at the alternative sites are not in addition to the impacts of the existing plant. When continued operation of the existing plant is accounted for, Staff acknowledged that the combined impacts of the existing plant and a plant at one of the alternative sites would not create fewer impacts compared to the Project.<sup>4</sup>

In the instant case of RBEP, as for Morro Bay, there has not been a showing of the existence of significant adverse environmental impacts from the RBEP. But even assuming *arguendo*, that such a showing could be made, the fact remains that any off-site alternatives analysis must take into account the continued operation of the existing Redondo Beach Generating Station.

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<sup>4</sup> Transcript for the Evidentiary Hearings for the Morro Bay Power Plant Project (00-AFC-02), 6/4/02 RT 57-58, available at [http://www.energy.ca.gov/sitingcases/morrobay/documents/2002-06-04\\_TRANSCRIPTS.PDF](http://www.energy.ca.gov/sitingcases/morrobay/documents/2002-06-04_TRANSCRIPTS.PDF).

The Energy Commission has no current permit jurisdiction over the Redondo Beach Generating Station. Even if the Commission were to approve a new power plant at an alternative site, it cannot condition such approval on the closure of Redondo Beach Generating Station. There is no basis in law to assume that the existing Redondo Beach Generating Station would cease operations or be dismantled if a power plant at an alternative site was approved. Therefore, when the continued operation of the existing plant is accounted for, the combined impacts of the existing plant and a plant on the alternative site would create more impacts, rather than fewer impacts compared to the proposed project.

**3. Off-site alternatives analysis is not required for projects that have not been shown to have significant adverse impacts.**

Under California law, it is reasonable to not analyze off-site alternatives if no offsite location has been shown to avoid or substantially lessen any of the significant effects of the project. In such a case, an off-site alternative need not be considered for inclusion in the Commission's environmental review.

According to the CEQA Guidelines, "The key question and first step in analysis [of any alternative] is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the environmental impact report ["EIR"]."<sup>5</sup>

In the case of RBEP, the only potentially significant environmental effect that the Staff identified in its Issues Identification Report is a potential impact on possibly historic structures.<sup>6</sup> It is debatable whether any of these features will be found to be historically significant, but even if they are, the

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<sup>5</sup> 14 C.C.R. § 15126.6(f)(2).

<sup>6</sup> Redondo Beach Energy Project Issues Identification Report, p. 7-8 (Sept. 2013).

[http://docketpublic.energy.ca.gov/PublicDocuments/12-AFC-03/TN200534\\_20130920T082515\\_Redondo\\_Beach\\_Energy\\_Project\\_Issues\\_Identification\\_Report.pdf](http://docketpublic.energy.ca.gov/PublicDocuments/12-AFC-03/TN200534_20130920T082515_Redondo_Beach_Energy_Project_Issues_Identification_Report.pdf).

impacts can be mitigated to a less than significant level by evaluation and recordation of the resources, or in the worst case, by avoidance of these features in the construction of the RBEP. Apart from these impacts, the Staff has yet to identify any other potentially significant environmental impacts.<sup>7</sup> If there are no potentially significant impacts to be avoided or substantially lessened by an off-site alternative, then the selection of off-site alternatives is an idle exercise.

**4. Offsite alternatives will not meet most of the RBEP project objectives.**

Another important reason why it is reasonable to not analyze offsite alternatives is that no offsite alternative will meet most of the RBEP basic project objectives.

According to the CEQA Guidelines, of those alternatives that would avoid or substantially lessen any of the significant effects of the project, “the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project.”<sup>8</sup>

The basic project objectives of the RBEP are fundamentally two-fold. One fundamental basic objective of the project is “Provide the most efficient, reliable, and predictable generating capacity available by using combined-cycle, natural-gas-fired combustion turbine technology to replace the OTC generation, support the local capacity requirements of southern California’s western Los Angeles Basin Local Reliability Area and be consistent with SCAQMD Rule 1304(a)(2).”<sup>9</sup>

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<sup>7</sup> Data Request 48(g) requests a comparison of the environmental impacts of construction and operation of the project at the alternative site(s) versus the proposed site (RBGS). However, CEQA does not require a comparison of all environmental impacts, only those of the project that are significant. If the proposed project will not result in significant, unmitigated environmental impacts, an offsite alternative analysis is not required.

<sup>8</sup> 14 C.C.R. § 15126.6(f).

<sup>9</sup> RBEP AFC (12-AFC-03), Executive Summary p. 1-3.

A second fundamental basic project objective of RBEP is to utilize the existing Redondo Beach Generating Station infrastructure and ancillary facilities to support RBEP, “such as the Southern California Gas Company (SoCalGas) natural gas pipeline serving the site, the existing onsite SCE 230-kV switchyard, the existing connections to the California Water Service Company’s onsite pipeline and the City of Redondo Beach sanitary sewer system. Other existing infrastructure at the existing Redondo Beach Generating Station, such as the portions of the fire water distribution system, and process water distribution and storage systems, wastewater discharge systems and access roads will be used as needed to support RBEP. The ability to reuse these facilities, coupled with the fact that the existing Redondo Beach Generating Station site has a long history of power generation and is a previously disturbed brownfield site already zoned for power generation, makes the existing Redondo Beach Generating Station site a highly valued location for power plant re-development in the western Los Angeles Basin Local Reliability Area.”<sup>10</sup>

In theory, and putting aside the question of feasibility, an off-site alternative could meet the first of these two basic project objectives. However, Data Request 48 ignores the second– and equally important objective – of utilizing the existing infrastructure of the Redondo Beach Generating Station site.

In a similar case involving the Morro Bay Modernization Project, the Staff performed a detailed alternative site analysis despite the fact that the Morro Bay project had a strong connection to the existing site. In the Morro Bay case, as with the RBEP, modernization of an existing facility and the use of existing infrastructure was a basic objective of the project. The Staff, however, argued “that

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<sup>10</sup> RBEP AFC (12-AFC-03), Executive Summary p. 1-2.



Applicant has defined its project objectives “so narrowly” as to eliminate any alternatives, thus forcing Staff to look beyond Applicant’s objectives for a reasonable range of alternatives.<sup>11</sup>

The Commission firmly rejected the Staff’s argument that a basic project objective to modernize an existing power plant and reuse an existing power site was drafted too narrowly. The Commission held:

Applicant has included in its Project description its objective to make extensive use of existing infrastructure as well as other relationships of the Project to the MBPP site. Many of these relationships are physical connections, fundamental to this Project. To ignore them is to ignore many essential parts of the Project. While CEQA Guidelines allow an examination of alternatives which impede the attainment of project objectives by some degree, it appears that in this case the Staff alternatives would impede fundamental objectives of this project. [See CEQA Guideline § 15126.6(b).] Therefore, we find that Staff has presented a range of alternative sites which are reasonable only in light of Staff’s identification of Project objectives. However, we find that Staff erred in ignoring the Applicant’s fundamental Project objectives which connect this particular project to the existing MBPP site. Few non-cogeneration project applications are as tightly integrated to a particular site as is this Project.<sup>12</sup>

As with the Staff’s offsite alternatives analysis in the Morro Bay case, Data Request 48 errs in ignoring the Applicant’s fundamental project objective which is to reuse and modernize an existing power plant, to eliminate once through cooling on that site, and to make efficient and economic use of the existing infrastructure. Because off-site alternatives are not consistent with the basic project objectives for RBEP, no off-site alternatives analysis should be performed.

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<sup>11</sup> 3<sup>rd</sup> Revised Presiding Members Proposed Decision for the Morro Bay Power Plant Project AFC (00-AFC-02), P800-04-013, p. 576 (June 2004).

<sup>12</sup> 3<sup>rd</sup> Revised Presiding Members Proposed Decision for the Morro Bay Power Plant Project AFC (00-AFC-02), P800-04-013, p. 576 (June 2004).

**5. Off-site alternatives are not feasible.**

CEQA requires a consideration of only those alternatives that could feasibly attain most of the basic project objectives.<sup>13</sup> CEQA provides, “Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent). Not one of these factors establishes a fixed limit on the scope of reasonable alternatives.”<sup>14</sup>

We have earlier explained why an off-site alternative would not feasibly attain the basic project objective of modernizing and reusing the existing power plant site and infrastructure. In addition, no off-site alternative could feasibly attain the objective of providing a new source of generation that would eliminate use of ocean water at the Redondo Beach Generating Station site by December 31, 2020.

Assuming, for the sake of argument that the Commission were to decide in this proceeding that the Applicant should pursue an off-site alternative and assuming such a decision were to be issued one year from the filing of the AFC, this would allow only six and a half years for the Applicant to negotiate and purchase site control of the alternative sites, prepare a new AFC including all necessary biological and cultural studies, prepare applications for air quality permits, and complete transmission and interconnection studies. From our experience, this pre-filing development process requires a minimum

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<sup>13</sup> 14 C.C.R. §15126.6(f).

<sup>14</sup> 14 C.C.R. §15126.6(f).

of 2 to 3 years. Once the AFC is approved, it must be found to be data adequate and must be processed by the Commission. Unfortunately, the Commission's review process has tended to average 2 years or more from initial filing to Final Decision.<sup>15</sup> Thus, given the current CEC requirements for filing an AFC and current Commission processing times it is not reasonable to expect a decision approving an alternative site until 2019, at the earliest. Clearly, this does not allow sufficient time to construct a new combined cycle facility before the December 31, 2020 deadline.

In summary, the development, licensing and construction, of a new power plant at a different location in the Los Angeles region, as an alternative to the modernization of the Redondo Beach Generating Station, cannot feasibly be accomplished by 2020 absent significant and immediate reforms in the manner air permits are processed, interconnection and transmission requests are approved, and CEC licenses are processed.

**6. Similarly situated projects that have a strong relationship to an existing industrial site have not required an analysis of off-site alternatives.**

We have previously addressed the Morro Bay case, where the Commission held that the Staff erred in performing an off-site alternatives analysis in disregard to the basic project objectives of modernizing an existing power plant. But that is not the only case in which the Commission has found that an off-site alternatives analysis should not be performed. In a number of cases that have come before the Commission, an off-site analysis has not been required for projects that have a strong relationship to an existing site.

For example, in the case of the El Segundo Repower Project, the Commission Staff "determined that locating the project at an alternative site would not achieve one of the major objectives of the

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<sup>15</sup> For the five applications for large, non-solar thermal power plants the Energy Commission approved from 2002 through 2006, the average review took 674 days, not including data adequacy. California State Auditor Report, January 2008,

project, since it would no longer be possible to make use of the existing infrastructure at the ESGS site. While an alternative site would reduce or eliminate the project's impacts to coastal resources, staff believes that alternative means to reduce or avoid those impacts are available that would allow the project to make use of the existing infrastructure at the ESGS site. Under these circumstances, staff has applied the "rule of reason" and decided that it need not perform a detailed analysis of alternative sites.<sup>16</sup>

Similarly, in the case of the AES Huntington Beach Retool Project, the Staff did not perform an alternative site analysis for the proposed project:

One of the project objectives is to complete the project on schedule to meet Summer 2001 peak load demands. The process of identifying an alternative site, preparing and processing an application, and construction of a facility would involve substantial time periods that would preclude the applicant from satisfying this objective. Nor would the development of an undeveloped site satisfy another objective, which is to utilize existing infrastructure in terms of gas supply, electrical transmission, water supply and wastewater streams.

This analysis of alternatives is governed by the "rule of reason" as stated in the CEQA Guidelines, which requires that project alternatives satisfy most of the basic objectives of the project. Identification of new undeveloped sites as alternatives to the HBGS site could not feasibly accomplish this result. No project identified as an alternative site, and not already planned, could feasibly be licensed and constructed to be on-line in the summer of 2001. Staff has, therefore, not identified alternative sites for the proposed project.<sup>17</sup>

More recently, for the Pastoria Expansion project, the Staff similarly "determined that locating the project at an alternative site would not achieve most of the major objectives of the project.

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<https://www.bsa.ca.gov/pdfs/reports/2007-119.pdf>.

<sup>16</sup> El Segundo Power Redevelopment Project Final Staff Assessment, September 2002, 00-AFC-14, page 6-7;  
[http://www.energy.ca.gov/sitingcases/elsegundo/documents/2002-09-12\\_FSA.PDF](http://www.energy.ca.gov/sitingcases/elsegundo/documents/2002-09-12_FSA.PDF).

<sup>17</sup> AES Huntington Beach Generating Station Retool Project Staff Assessment, 00-AFC-13, March 2001, page 336;  
[http://www.energy.ca.gov/sitingcases/huntingtonbeach/documents/2001-03-09\\_STAFF\\_ASSESSMENT.PDF](http://www.energy.ca.gov/sitingcases/huntingtonbeach/documents/2001-03-09_STAFF_ASSESSMENT.PDF)

Furthermore an alternative site location would not substantially lessen currently identified potential significant transmission impacts of the project. Under these circumstances, staff has applied the “rule of reason” and decided that it need not perform a detailed analysis of alternative sites.”<sup>18</sup>

Data Request 48 has not stated a valid reason for requiring an off-site alternatives analysis for RBEP, where such an analysis was not required in the above-cited cases. The mere fact that the Staff has received public or governmental agency comments requesting an analysis of alternative sites does not overcome the clear statutory exemption for projects with a strong relationship to an existing industrial site, nor can it compel an analysis of alternatives that do not meet basic project objectives nor avoid or substantially lessen a significant environmental impact. Regardless of what others may request, the Commission has a duty to follow the law.

**B. Data Request 49 seeks information not reasonably available to the Applicant.**

Data Request 49 requests information regarding a “No Project Alternative” that entails a very specific set of circumstances: (1) decommissioning of the [Redondo Beach Generating Station]; (2) remediation of the site for public use; and (3) land acquisition by either the city of Redondo Beach or a private developer for non-industrial use.<sup>19</sup>

As explained in the CEQA Guidelines, the “purpose of describing and analyzing a no project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project.”<sup>20</sup>

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<sup>18</sup> Pastoria Expansion Project, Final Staff Assessment, 05-AFC-1, November 28, 2005, page 6-5; <http://www.energy.ca.gov/2005publications/CEC-700-2005-022/CEC-700-2005-022-FSA.PDF>.

<sup>19</sup> Redondo Beach Energy Project (12-AFC-03), Data Requests Set 1B, p. 6 (Nov. 12, 2013).

<sup>20</sup> 14 C.C.R. § 1526.6(e)(1).

A “no project” alternative analysis requires a discussion of “the existing conditions” at the time environmental analysis is commenced, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.<sup>21</sup> The CEQA guidelines state clearly that if, as here, the proposed project is a development project on identifiable property, the “no project” alternative is the circumstance under which the project does not proceed. Here the discussion would compare the environmental effects of the property remaining in its existing state against environmental effects which would occur if the project is approved.<sup>22</sup>

Environmental review of the RBEP commenced on August 27, 2013. At that time, the condition of the project site in its existing state was, and continues to be, a currently operating fossil-fueled power plant on an industrial zoned site. Clearly, the alternative development scenario outlined in Data Request 49, does not represent existing conditions.

Furthermore, the alternative development scenario does not represent what would reasonably be expected to occur if the project were not approved, based on current plans. If the repowering project were not approved, it is reasonably expected in the next 7 years or more that the existing power plant would remain in operation in its current configuration. If the project is not approved, if the 2020 deadline for discontinuance of one-through cooling is extended, or, if has happened in the past, the facility were ordered to run by state or federal officials to ensure electric reliability, the Redondo Beach Power Plant would reasonably be expected to operate beyond 2020. Based on current plans and current

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<sup>21</sup> 14 C.C.R. § 1526.6(e)(2).

<sup>22</sup> 14 C.C.R. § 1526.6(e)(3)(B).

zoning, continued operation of the existing facility (including mandated operations to ensure electric reliability) is the only scenario that is reasonably likely to occur in the foreseeable future if the project was not approved.

Data Request 49 outlines a very specific alternative development scenario in which the Staff speculates without any basis in law regarding decommissioning of the existing facility, remediation of the site for public use and sale of the site to the City or a third party for non-industrial use. The Data Request does not explain, much less justify, why this very specific scenario is reasonably expected to occur in the foreseeable future based on current plans and zoning. There are no current plans for decommissioning of the Redondo Beach Generating Station, for public use of the site, for sale to a third party, or for alternative development of the site. Even if the power plant were to be removed from service sometime after 2020, there is no legal requirement that the structures be removed and the site remediated for public use.

The CEQA guidelines explain that “If disapproval of the project under consideration would result in *predictable* actions by others, such as the proposal of some other project, this “no project” consequence should be discussed.”<sup>23</sup> However, in this instance there is no predictable action by others that would result from a decision not to approve the RBEP. The only predictable action resulting from a decision not to approve the project is the continued operation of the existing facility.

The no project analysis must focus on the practical and reasonably foreseeable consequences of disapproval, and should not create and analyze a set of artificial assumptions.<sup>24</sup> However, all of the

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<sup>23</sup> 14 C.C.R. § 1526.6(e)(3)(B), emphasis added.

<sup>24</sup> 14 C.C.R. § 1526.6(e)(3)(B).

assumptions that are contained in Data Request 49 are artificial and speculative and are not supported by substantial evidence, including but not limited to the assumption that the Redondo Beach Generating Station will be decommissioned in the foreseeable future, that the site will be remediated for public use rather than continued industrial use on an industrial zoned site, or that the site will be offered for sale or acquired by the City or a private sale for non-industrial use. Because these assumptions are not consistent with current use, current zoning or any current plans, these assumptions do not represent the “No Project” alternative.

Finally, not only is the speculative scenario set forth in Data Request 49 not a proper “no project” alternative, it also cannot be considered as a development alternative to the project. In order for a development alternative to the proposed project to be considered, it must (1) be determined by the lead agency to be one that could “feasibly attain most of the basic objectives of the project”, and (2) avoid or substantially lessen any of the significant effects of the project.<sup>25</sup> The scenario set forth in Data Request 49 meets neither criteria. First, a scenario to convert the site to public or non-industrial use does not meet any of the project objectives of modernizing an existing electric generating facility. Second, because there are no current plans for non-industrial uses, there is no basis for concluding that such an alternative would or substantially lessen potential significant impacts, if any, of the proposed project.<sup>26</sup>

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<sup>25</sup> 14 C.C.R. § 1526.6(f).

<sup>26</sup> The only potentially significant impacts that has been identified by Staff is a potential impact to structures or landscaping that may be deemed to be of historical significance. The alternative development scenario posed by Data Request 49 for residential or commercial development of the site would not avoid the impact to existing structures or landscaping on the site. Indeed, given the entirely speculative nature of the scenario set forth in Data Request 49, it is as likely as not that the impacts from non-industrial uses of the site could be greater than those of the proposed project in areas such as air quality, traffic, visual resources and socioeconomics.



**C. Data Request 52.**

Data Request 52 requests information regarding the “proposed source(s) for obtaining rock aggregate for construction”.<sup>27</sup> The background for the request speculates that procurement of “construction materials, such as rock and soil, from off-site sources has the potential to cause a variety of environmental impacts”, including “damage” to a “previously unidentified, off-site archaeological resource”, or disturbance to “human remains” or “sensitive plant communities.”<sup>28</sup>

The Applicant objects to Data Request 52 as requesting information that is neither relevant nor reasonably necessary for the Commission to reach a decision in this proceeding. Information regarding the source for construction materials is not required by the Commission’s regulations, or by CEQA. CEQA Guidelines requires an examination of direct and indirect effects of a project that are “reasonably foreseeable.”<sup>29</sup> Construction materials will be obtained from licensed and regulated third party vendors, who are themselves, subject to vigorous federal, state, and local regulations. Therefore, significant indirect effects from the procurement of construction materials is not reasonably foreseeable. The statement that the procurement of construction materials “might cause” impacts to “previously unidentified, off-site archaeological resource”, or disturbance to “human remains” or “sensitive plant communities” is speculative at best. CEQA cautions against the reliance on “speculation” and “unsubstantiated opinion” by agencies.<sup>30</sup>

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<sup>27</sup> Redondo Beach Energy Project (12-AFC-03), Data Requests Set 1B, p. 8 (Nov. 12, 2013).

<sup>28</sup> Redondo Beach Energy Project (12-AFC-03), Data Requests Set 1B, p. 8 (Nov. 12, 2013).

<sup>29</sup> 14 C.C.R. §§ 15358.

<sup>30</sup> For example, *see* Public Resources Code §§ 21080(e)(2) (“Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.”); 21082.2(c) (“Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence.”); 21159 (“In the preparation of this analysis, the agency may utilize numerical ranges or averages where specific data is not available; however, the agency shall not be required to engage in speculation or conjecture.”); 14 C.C.R. §§15145 (“If, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency

**D. Data Request 64-66.**

Data Requests 64 through 66 request the Applicant to retain a “Registered Consulting Arborist” or “another qualified tree professional” to “[c]onfirm and report the genus, species, and age” of the following:

- The “five fig trees extant on the AES Redondo Beach property”;
- The “extant palm trees on the AES Redondo Beach property frontage along Harbor Drive; and
- The “juniper shrubs extant on the AES Redondo Beach property in the foundation planting of the front entry to the Administration Building (north elevation).”<sup>31</sup>

Staff asserts that this information is needed to “better understand the landscape elements of the site, its design and evolution over time, and how such site elements relate to the period of significance for the historic-age power plant.”<sup>32</sup> The requested information is not reasonably available to the Applicant and would require the Applicant to obtain additional professional services. These trees and shrubs have not been designated as landmark or heritage trees under federal, state, or local law; nor are the plants cultural resources pursuant to CEQA. Therefore, information regarding the trees and shrubs is not relevant or reasonably necessary for any Commission decision in this proceeding, whether to determine LORS compliance or assess environmental impacts pursuant to CEQA.

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should note its conclusion and terminate discussion of the impact.”); 15384 (“Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.”).

<sup>31</sup> Redondo Beach Energy Project (12-AFC-03), Data Requests Set 1B, p. 15 (Nov. 12, 2013).

<sup>32</sup> Redondo Beach Energy Project (12-AFC-03), Data Requests Set 1B, pp. 14-15 (Nov. 12, 2013).

Furthermore, as acknowledged in the Background to Data Requests 64-66, the 1948 landscape plan for the power plant is already available.<sup>33</sup> The existing site plan is depicted and represented in several photographs in the AFC.<sup>34</sup> Therefore, even assuming that the “design and evolution” of the landscape elements of the power plant site is relevant to the cultural resources analysis, sufficient information regarding these elements has already been provided by the Applicant.

Information regarding the non-native trees or shrubs on the Project site is not necessary for the Commission to make a decision on whether the existing power plant is a historical resource. The “level of analysis” required by CEQA is “subject to a rule of reason.”<sup>35</sup> In this case, requiring the Applicant to hire a consultant to determine the genus, species, and age of the trees and shrubs on the Project site is not reasonable, particularly where, as here, Staff has not demonstrated that such highly detailed information has any bearing on whether there are historical resources on the project site. CEQA does not require that “every test” be conducted, or that “all research, study, and experimentation recommended or demanded” be performed,<sup>36</sup> or that “all information available on a subject” be included in an EIR.<sup>37</sup> Rather, CEQA requires “sufficient information” regarding the potential environmental effects of a project.<sup>38</sup> The Applicant has provided sufficient information regarding cultural resources; further information, particularly information regarding the precise genus, species, or age of particular trees and shrubs on the Project site, is not reasonably necessary for the Commission to reach a determination on

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<sup>33</sup> Redondo Beach Energy Project (12-AFC-03), Data Requests Set 1B, p. 14 (Nov. 12, 2013).

<sup>34</sup> For example, *see* RBEP AFC (12-AFC-03), Executive Summary Figure 1.1-4.

<sup>35</sup> *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal. 3d 376, 407 (Cal. 1988).

<sup>36</sup> 14 C.C.R. § 15204; *Association of Irrigated Residents v. County of Madera*, 107 Cal. App. 4th 1383, 1396 (Cal. App. 5th Dist. 2003).

<sup>37</sup> *North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors*, 216 Cal. App. 4th 614, 639 (Cal. App. 1st Dist. 2013).

<sup>38</sup> For example, *see*, *North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors*, 216 Cal. App. 4th 614, 639 (Cal. App. 1st Dist. 2013) and *Association of Irrigated Residents v. County of Madera*, 107 Cal. App. 4th 1383, 1397-1398 (Cal. App. 5th Dist. 2003).

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the Project's potential impacts to cultural resources. Therefore, the Applicant objects to Data Requests 64-66.


## II. CONCLUSION

As set forth above, the Applicant objects to providing the information requested in Staff Data Requests Set 1B, Data Requests 48, 49, 52, and 64-66. The Applicant objects to Data Requests 48, 49, 52, and 64-66 as requesting information not reasonably available to the Applicant, and as requesting information that is neither relevant nor reasonably necessary for the Commission to make a decision in this proceeding.

Sincerely,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By \_\_\_\_\_

  
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