

DOCKETED

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February 5, 2014

Ms. Pat Kelly
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

VIA EMAIL: patricia.kelly@energy.ca.gov

RE: Comments on California Energy Commission Application for Certification (AFC) review of AES Southland LLC's proposed Redondo Beach Energy Project (#12-AFC-03)

Dear Ms. Kelly:

We are providing some initial comments on the above-referenced AFC review. Based on recent documentation provided in the AFC process, our comments at this time are limited to two issue areas – the potential presence of wetlands at the project site and the status of a recent urgency ordinance adopted by the City of Redondo Beach regarding power plants in the coastal zone. We plan to conduct a more thorough review later in your AFC process and provide a report from the Coastal Commission after Energy Commission staff issues its Preliminary Staff Assessment for the proposed project.¹

Wetlands

Coastal Commission staff reviewed several documents provided by AES, including biological information provided in the AFC application materials, Wetland Data Sheets, and a jurisdictional determination request to the Corps of Engineers. Additionally, on January 22, 2014, Coastal Commission staff ecologist, Dr. Jonna Engel, conducted a site visit at the proposed project site along with Energy Commission staff, Department of Fish and Wildlife biologists, and representatives from AES and CH2M Hill.

The site includes several areas that formerly held fuel oil storage tanks and their containment berms, and several pit areas that are, or were, used for various purposes. During the site visit, Dr. Engel observed wetland characteristics in several of these areas, including the entire containment areas of Former Tanks 1 through 3 and the Constructed Pit, and all or most of the containment area of Former Tank 4 (names of these areas are from Figure 2 of the January 31, 2013 jurisdictional determination request). Observed characteristics included ponding, secondary hydrology characteristics, and wetland vegetation. Based on information in the above-referenced materials and on site visit observations, we have determined that these areas include approximately five to six acres of Coastal Commission-jurisdictional wetlands.

¹ Pursuant to the Warren-Alquist Act, the CEC has sole permitting authority for locating or modifying power plants with a greater than 50-megawatt capacity, including those located in the coastal zone. Nevertheless, section 30413(d) of the Coastal Act expressly authorizes the Coastal Commission to participate in the CEC's proceedings and provide findings with respect to specific measures needed to bring a power plant project located within the coastal zone into conformity with Coastal Act and LCP policies.

We understand AES may want to conduct a delineation to better identify wetland areas in the Tank 4 area or elsewhere. Dr. Engel has provided AES with a guidance document that describes the recommended procedures for conducting the necessary delineation.

Status and Applicability of Urgency Ordinance #3120-14

We understand Energy Commission staff is reviewing the status and applicability of an urgency ordinance adopted by the City of Redondo Beach in response to this proposed project. As described below, it is Commission staff's position that the ordinance is not effective until approved by the Coastal Commission.

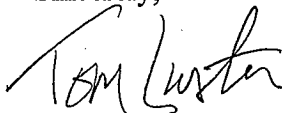
Background: On January 14, 2014, the City of Redondo Beach adopted a temporary urgency ordinance meant to prevent construction of power plants within the City's coastal zone for a period of approximately two years.² The ordinance, adopted pursuant to Government Code Section 65858, "imposes a moratorium on the approval of any conditional use permit, coastal development permit or any other discretionary City permit or approval for the construction, expansion, replacement, modification or alteration of any facilities for the on-site generation of electricity on any property located within the coastal zone." It further states that any proposal to build or modify a non-coastal dependent electrical generating facility in the coastal zone is to be considered inconsistent with the City's land use policies and zoning regulations. In the accompanying Administrative Report, the City states that "[a]lthough the moratorium in this case would affect land in the City's coastal zone, Coastal Commission certification is not required to make the moratorium effective." The City does not state the basis for this conclusion.

We have determined that the City's ordinance is not effective unless approved by the Coastal Commission. Coastal Act Section 30514(a) requires that all local implementing ordinances that would amend provisions of a certified Local Coastal Program (LCP) are to take effect only after approval by the Commission. This ordinance would amend the City's certified LCP; therefore it is subject to Commission approval. Specifically, the City's ordinance selectively prohibits a type of use that is currently allowed under the LCP, creating a conflict with the LCP. This conflict represents a proposed amendment to the LCP that is subject to review and approval by the Commission before it can become effective.

Conclusion

Thank you for this opportunity to comment. As noted above, we will provide a more thorough review later in the AFC process. Please feel free to contact me if you have questions.

Sincerely,



Tom Luster
Senior Environmental Scientist
Energy, Ocean Resources, and Federal Consistency Division

² The full ordinance is available at:

<http://redondo.siretechnologies.com/sirepub/cache/16/cerzsbvsnon0bv5lnd4vz1hh/2908501292014030751533.PDF>