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9 STATE OF CALIFORNIA

10 ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

11 In the matter of:

Docket No. 12-AFC-03

12 Application for Certification of Redondo Beach
13 Energy Project

**INTERVENOR CITY OF REDONDO
14 BEACH'S FIRST SET OF DATA
15 REQUESTS TO APPLICANT AES
16 SOUTHLAND DEVELOPMENT, LLC**

15 PROPOUNDING PARTY: Intervenor CITY OF REDONDO BEACH

16 RESPONDING PARTY: Applicant AES SOUTHLAND DEVELOPMENT, LLC

17 SET NUMBER: One

18 Intervenor CITY OF REDONDO BEACH ("City"), pursuant to the provisions of
19 Title 20, Section 1716, of the California Code of Regulations, hereby requests from Applicant AES
20 SOUTHLAND DEVELOPMENT, LLC ("AES" or "Applicant") the following information
21 reasonably available to the Applicant which is relevant to the application proceedings or reasonably
22 necessary to make a decision on the application, as follows:

23
24 **ANNUAL CAPACITY FACTOR (AIR QUALITY / NOISE AND VIBRATION)**

25 In Section 2.4 of the Application for Certification (AFC), AES states that "RBEP is
26 expected to have an annual capacity factor between 15 and 25 percent."¹ Stephen O'Kane of AES

27
28 ¹ The term "capacity factor" means the percentage of time that the facility is operating.

1 used this range to estimate a 20% capacity factor at the Information Hearing on October 1, 2013
2 ("Hearing"):

3 We expect the new plant to make somewhere between 15 and 25
4 percent annual, total energy in a year. So out of 20 percent annual
5 capacity you can estimate the emissions and they'll look like that. And
6 that's right in our application.

7 (Hearing Transcript at 41-42.)

8 AES has thus represented to the Commission and the public that the facility will
9 likely operate no more than 25% of the time. However, in the AFC, AES later states that the
10 facility could operate up to 70% of the time: "The permitted capacity factor for RBEP will be
11 approximately 70 percent." (AFC Section 5.1.9.2.) In addition, AES states that the facility will be
12 able to operate nearly 100% of the time: "RBEP will be capable of being dispatched throughout the
13 year and will have annual availability 98.4 percent. It will be possible for plant availability to
14 exceed 99 percent for a given 12-month period." (AFC Section 2.4.)

15 The capacity factor has a huge impact on the air and noise impacts produced by the
16 facility. If the facility operates at 70% capacity, it will generate almost *three times* the emissions
17 that it would at 25% capacity, and will generate almost *five times* the emissions that it would at 15%
18 capacity.

19 Moreover, the current facility operates at a capacity factor of around 5%.² If the new
20 facility operates at 70% capacity, it will increase the amount of time in which the facility is
21 operating—and generating noise—by *14 times*.

22 We therefore ask the following:

23 **DATA REQUEST 1.1:**

24 Please explain the basis for your statement that, "RBEP is expected to have an
25 annual capacity factor between 15 and 25 percent."

26 _____
27 ² "[I]f we assume that the existing plant running at a five percent annual capacity factor,
28 which is about what it's been doing over the last five, six years or so, about five percent of the total
energy it could produce in a year we produce." Stephen O'Kane, Hearing Transcript at 41.

1 **DATA REQUEST 1.2:**

2 Please explain the basis for your statement that, "The permitted capacity factor for
3 RBEP will be approximately 70 percent."

4 **DATA REQUEST 1.3:**

5 Please provide your estimate of the likelihood that the capacity factor in any given
6 year could be any of the following: 15% or greater; 20% or greater; 25% or greater; 50% or greater;
7 70% or greater. Please explain the basis for your estimates.

8 **DATA REQUEST 1.4:**

9 Are there any circumstances in which AES believes that its capacity factor in any
10 given year could exceed 70%? If so, please explain.

11 **DATA REQUEST 1.5:**

12 Would AES be willing to accept a permitted maximum annual capacity factor of
13 25%? If not, why not?
14

15 **HISTORIC RESPONSE TO NOISE COMPLAINTS (NOISE AND VIBRATION)**

16 In Section 5.7.5.2 of the AFC, AES states that "the Project Owner will document,
17 investigate, evaluate, and attempt to resolve all legitimate project-related noise complaints."

18 However, at the public workshops on December 5, 2013, and February 10, 2014,
19 (collectively, "Public Workshops") numerous residents testified regarding the current facility's long
20 history of frequent, severe, unaddressed noise complaints. This calls into question whether AES is
21 willing or able to implement an effective system for mitigating noise impacts.

22 At the public workshop on December 5, 2013, a resident asked AES to describe its
23 historic record of responding to and addressing noise complaints. AES declined. The City and
24 Energy Commission Staff (" Commission Staff") then made the same request. AES responded that
25 if the public, the City, or the Commission are interested in obtaining this information, they should
26 submit a written data request.

27 **DATA REQUEST 2.1:**

28 Please provide the following with regard to all known or suspected exceedances of

1 local noise ordinances by the existing facility since AES acquired the facility in 1998:

2 (1) description of the underlying incident; (2) description of complaints submitted to AES or of
3 which AES is aware; (3) description of any investigation conducted by AES; (4) description of
4 corrective measures taken by AES to resolve the exceedance; (5) description of any preventive steps
5 taken by AES to avoid such exceedances in the future.

6 **DATA REQUEST 2.2:**

7 Please provide the following with regard to all noise complaints regarding the
8 current facility, which were submitted to AES or of which AES is aware, since AES acquired the
9 facility in 1998: (1) description of the underlying incident; (2) description of complaints submitted
10 to AES or of which AES is aware; (3) description of any investigation conducted by AES; (4)
11 description of corrective measures taken by AES to resolve the complaint; (5) description of any
12 preventive steps taken by AES to avoid such complaints in the future.

13 **DATA REQUEST 2.3:**

14 At least 31 noise complaints have been filed with the City against the existing
15 facility since 2007. The complaints are listed below, with brief excerpts of the text from each.
16 (Redacted copies of the complaints are available from the City upon request.) For each complaint,
17 please provide the following: (1) description of the underlying incident; (2) description of any
18 investigation conducted by AES; (3) description of corrective measures taken by AES to resolve the
19 complaint; and (5) description of any preventive steps taken by AES to avoid such complaints in the
20 future.

21 **2.3.1.** Case No. 19830 (Date of complaint: September 13, 2011): "The AES
22 power plant had another venting event that clearly exceeded Redondo noise limits on Tuesday at
23 about 1445."

24 **2.3.2.** Case No. 19840 (Date of complaint: September 9, 2011): "I measured the
25 noise from the power plant while it was running from the base of Harbor Cove Apartments. It
26 exceeds 55 db constantly. Here is the data from one of the readings with no traffic noise:

27 Source: Built-in Mic, 61.5 db (Lp, A, Imp), 69.6 max, 82.7 peak
28 Sep 13, 2011 19:11
Lat. +33.853°, Long. -118.393°

1 This is not the steam relief valve anomalies, this is the normal noise
2 of the plant in operation."

3 **2.3.3.** Case No. 19821 (Date of complaint: September 7, 2011): "On September
4 7th at about 9:28 a.m. the AES power plant vented. This venting exceeds Redondo noise limits."

5 **2.3.4.** Case No. 19824 (Date of complaint: September 7, 2011): "At about 2:47
6 p.m. this afternoon, 9/7/2011, the AES power plant was venting steam and it was incredibly loud in
7 our neighborhood! . . . Doesn't AES have to comply with noise restrictions, especially since it is so
8 close to residences?"

9 **2.3.5.** Case No. 19769 (Date of complaint: August 18, 2011): "On August 11th at
10 about 4:53 p.m. and about 1 hour later and on August 15th at about 11 p.m. the AES power plant
11 vented multiple times. This venting exceeds Redondo noise limits."

12 **2.3.6.** Case No. 19762 (Date of complaint: August 17, 2011): "On August 11th
13 about 4:53 p.m. and at about 6:00 p.m., and on August 15th about 11 p.m. the AES plant vented
14 multiple times making a tremendous amount of noise."

15 **2.3.7.** Case No. 19763 (Date of complaint: August 17, 2011): "I wanted to make
16 you aware that about 11 p.m at night, on August 15th, the AES power plant emitted a tremendous
17 noise that woke up my entire household. The noise was absolutely tremendous."

18 **2.3.8.** Case No. 19767 (Date of complaint: August 17, 2011): "[W]e had visitors
19 from Virginia staying with us Aug. 11-16 who were scared at the fire blasts and in disbelief that this
20 is something the city just puts up with and accepts every year. Our little baby was alarmed by the
21 sounds as well."

22 **2.3.9.** Case No. 19735 (Date of complaint: August 16, 2011): "On August 15th
23 about 11 p.m. the AES power plant vented multiple times. This venting exceeds Redondo noise
24 limits."

25 **2.3.10.** Case No. 19739 (Date of complaint: August 16, 2011): "The random AES
26 power plant groans are literally frightening my 2 year old daughter. Is this really how we want to
27 live? Are there any noise pollution statutes on the books preventing this, or can AES emit these
28 sounds at any unsuspecting moment they choose?"

1 **2.3.11.** Case No. 19742 (Date of complaint: August 16, 2011): "Last night around
 2 11 p.m. my sleep was interrupted by the sound of what I imaged was a jet engine. The noise was
 3 ongoing for about 1 - 2 minutes and the blasts were happening every 5 - 10 seconds. I later heard
 4 that the noise was coming from the AES power plant."

5 **2.3.12.** Case No. 19743 (Date of complaint: August 16, 2011): "Last night at about
 6 11 p.m. the AES power plant vented multiple times. . . . I have to believe that if playing my radio at
 7 11 p.m. at night is a noise violation, then a thunderous and continuous roar that rattles my windows
 8 from a mile away would be too."

9 **2.3.13.** Case No. 19744 (Date of complaint: August 16, 2011): "Over the past week
 10 the AES power plant has vented some type of gas/steam several times. These bursts are extremely
 11 loud, especially given my proximity to the plant; and happen unannounced, which can be very
 12 unnerving. This, of course is not the first time this has happened."

13 **2.3.14.** Case No. 19745 (Date of complaint: August 16, 2011): "On August 11th at
 14 about 4:53 p.m. and about 1 hour later and on August 15th about 11 p.m. the AES power plant
 15 vented multiple times. This venting exceeds Redondo noise limits."

16 **2.3.15.** Case No. 19746 (Date of complaint: August 16, 2011): "On August 15th
 17 about 11 p.m. the AES power plant vented multiple times. This venting exceeds Redondo noise
 18 limits."

19 **2.3.16.** Case No. 19748 (Date of complaint: August 16, 2011): "On August 11,
 20 2011 at about 4:55 p.m. and 5:55 p.m. and on August 15, 2011 at about 11:00 p.m., the AES
 21 Redondo Beach power plant vented multiple times. Each venting exceeds Redondo Beach noise
 22 limits as established by the city ordinance."

23 **2.3.17.** Case No. 19751 (Date of complaint: August 16, 2011): "On August 11th at
 24 4:54 p.m. +/- and on August 15th at 11 p.m. +/- the AES Power Plant created incredibly loud noises.
 25 The sounds exceeded the 60 to 70 dba outlined in the Redondo Beach Municipal Code 4-24.301
 26 maximum permissible sound levels by land use categories. The loud noises were a nuisance to my
 27 family and neighbors."

28 **2.3.18.** Case No. 19753 (Date of complaint: August 16, 2011): "On Thursday,

1 August 11th...the most awful noise erupted from the power plant. . . .What an embarrassment for
2 our city."

3 **2.3.19.** Case No. 19754 (Date of complaint: August 16, 2011): "On August 11 in
4 the afternoon and again on August 15 near midnight the AES power plant blasted our neighborhood
5 as it vented. I'm sure the noise exceeded the city's noise limits."

6 **2.3.20.** Case No. 19756 (Date of complaint: August 16, 2011): "What's wrong with
7 the power plant in RB? Twice in the last week it seems to have erupted. Since it hasn't consistently
8 worked for years, it's scary when it blasts especially in the middle of the night!"

9 **2.3.21.** Case No. 19759 (Date of complaint: August 16, 2011): "On August 15th
10 about 11 p.m. the AES power plant vented multiple times. This venting exceeds Redondo noise
11 limits."

12 **2.3.22.** Case No. 19760 (Date of complaint: August 16, 2011): "The AES power
13 plant blasts its vent pipes (or whatever it does) at the most annoying times . . . like in the middle of
14 the night."

15 **2.3.23.** Case No. 19761 (Date of complaint: August 16, 2011): "On August 11th at
16 about 4:53 p.m. and on August 15th at 11 p.m. the AES power plant vented multiple times Not
17 only did it wake us up, it also startled my baby."

18 **2.3.24.** Case No. 19736 (Date of complaint: August 16, 2011): "It is a public
19 nuisance (the noise is ridiculous, as they "blow off steam" whenever they feel, like at 11 p.m. last
20 night or 7 a.m. this past Saturday morning)"

21 **2.3.25.** Case No. 19758 (Date of complaint: August 16, 2011): "On August 15th at
22 about 11 p.m. the AES power plant vented multiple times...It is extremely loud & actually woke me
23 up."

24 **2.3.26.** Case No. 19752 (Date of complaint: August 16, 2011): "The power plant
25 went off about 12 times after 11 p.m. yesterday. It was truly disturbing the peace."

26 **2.3.27.** Case No. 19747 (Date of complaint: August 16, 2011): "The freakish noises
27 that emanate from the stacks are off the chart."

28 **2.3.28.** Case No. 19734 (Date of complaint: August 16, 2011): "Last night around

1 23:00 I was woken by a terrible noise that startled everyone in my house – it took a few seconds to
2 realize it was the AES power plant. . . ."

3 2.3.29. Case No. 19733 (Date of complaint: August 16, 2011): "On August 11th at
4 about 4:53 p.m. and about 1 hour later and on August 15th about 11 p.m. the AES power plant
5 vented multiple times. This venting exceeds Redondo noise limits."

6 2.3.30. Case No. 19738 (Date of complaint: August 16, 2011): "On August 11th at
7 approximately 4:55 p.m. the AES power plant erupted sounding like a jet plane and went off about
8 an hour again later. . . . Also, August 15th at 11 p.m., the power plant BLASTED over 15 times
9 waking up my entire family."

10 2.3.31. Case No. 16366 (Date of complaint: July 7, 2007): "This morning at 1:29
11 a.m. it started to make loud noises (sort of like a jet engine) . . . I hope the plant is fined each time
12 this occurs, cause it is often loud enough to wake us up at early morning hours (2 a.m. – 5 a.m.) and
13 can often be very loud."

14
15 **SELECTION OF MONITORING SITES FOR NOISE STUDY (NOISE AND VIBRATION)**

16 At the Public Workshops, AES was asked the following questions by Commission
17 Staff, the City, and members of the public: (1) Why are the monitoring sites for the noise study
18 ("Sites") not located closer the facility? (2) Why is there no Site located directly across the street to
19 the north of the facility? and (3) Why was the noise study not completed when initially requested by
20 the Commission Staff, and why will it not be completed until August (almost a year after the date
21 initially requested by the Commission)?

22 AES responded, in part, that it had requested access to many potential sites that were
23 closer to the facility and to the north and east of the facility, but that the property owners had
24 refused to provide access.

25 **DATA REQUEST 3.1:**

26 Please identify all sites that were considered by AES for use as monitoring sites for
27 the noise study. For each site, please provide the following: (1) specify the location of the site; (2)
28 specify whether and when AES requested access from the property owner; and (3) describe the

1 response of the land owner.

2 **DATA REQUEST 3.2:**

3 Specifically, did AES request access from a property owner at any of the following
4 locations: (1) any property "across the street" to the north of the facility, located on Herondo Street
5 between Valley Drive and Monterey Drive; or (2) any property located on N. Catalina Avenue,
6 between N. Francisca Avenue and N. Pacific Coast Highway?

7 **DATA REQUEST 3.3:**

8 At the public workshop on February 10, 2014, Hermosa Beach Council Member
9 Hany Fangary told AES that he would be happy to work with them to identify appropriate
10 monitoring sites located on property owned by the City of Hermosa Beach. Has AES contacted
11 Council Member Fangary regarding his offer? Please describe any such discussions.

12
13 **VIOLATION OF LOCAL CONSTRUCTION ORDINANCE (LORS VIOLATION)**

14 At the public workshop on February 10, 2014, Stephen O'Kane of AES stated that
15 the construction of RBEP would require at least one incident of continuous construction activity
16 overnight, and possibly more. This appears to be a direct violation of Section 9-1.12 of the
17 Redondo Beach Municipal Code ("Construction Noise Ordinance"), which provides, in relevant
18 part:

- 19 (a) All construction activity shall be prohibited, except between
20 hours of 7:00 a.m. and 6:00 p.m. on Monday, Tuesday, Wednesday,
21 Thursday, and Friday and between the hours of 9:00 a.m. and 5:00
22 p.m. on Saturday. No construction activity shall be permitted on
Sundays, or the days on which the holidays designated as Memorial
Day, the Fourth of July, Labor Day, Thanksgiving Day, Christmas
Day, and New Year's Day are observed.

23 **DATA REQUEST 4.1:**

24 Please describe the extent to which the demolition and construction activities for the
25 RBEP project—including transportation activity—will extend beyond the hours permitted by the
26 Redondo Beach Construction Noise Ordinance. Please specify the number of expected incidents,
27 and the amount of time by which each incident will exceed the limits specified in the ordinance.

1 **CONSTRUCTION OF BATTERY FACILITIES**

2 At the meeting of the City's Planning Commission on January 16, 2014, Eric
3 Pendergraft spoke on behalf of AES regarding the possible construction of battery storage facilities
4 at the RBEP facility. Later, at the public workshop on February 10, 2014, Stephen O'Kane of AES
5 was asked whether battery storage "is going to be a part of this plant?" He responded, "It's not part
6 of this project, but it's part of AES' portfolio; but not part of this project, right."

7 This raises the question of whether AES might be planning to construct battery
8 storage facilities as part of the RBEP power plant or at the RBEP site, but is not communicating this
9 information to the Energy Commission in order to avoid complicating or delaying the AFC process.
10 If AES is planning to construct a battery storage facility at the RBEP facility, it must disclose this
11 information to the Energy Commission, and the Energy Commission must review the proposed
12 battery storage facility as a critical component of the proposed power plant.

13 **DATA REQUEST 5.1:**

14 Is AES considering or discussing (internally or externally) the possibility of
15 constructing an electricity storage facility or capability at the RBEP site? If so, please provide a
16 description of the possibilities that are being considered or discussed.

17 **DATA REQUEST 5.2:**

18 Please provide all written materials in AES' possession—including electronic
19 communication—regarding the possibility of its constructing an electricity storage facility or
20 capability at the RBEP site.

21
22 **ALTERNATIVES ANALYSIS**

23 As a result of AES' refusal to provide an analysis of reasonable alternatives as
24 required by the California Environmental Quality Act ("CEQA")³ and the Warren-Alquist Act⁴,
25 Energy Commission staff are conducting their own independent alternatives analysis. (See Staff's

26 _____
27 ³ Public Resources Code § 21001; 14 CCR § 15126.6.

28 ⁴ Public Resources Code § 25549.6(b).

1 Response to Applicant's Notice of Objection to Set 1B and Notice of Additional Time Needed to
2 Respond, Dec. 17, 2013.)

3 **DATA REQUEST 6.1:**


4 Please provide a detailed description of any project alternative or alternative site
5 configuration considered or discussed by AES that is not contained in the AFC or other materials
6 submitted by AES to the Energy Commission. This includes but is not limited to any facilities or
7 equipment involving batteries or electrical storage.

8 **DATA REQUEST 6.2:**

9 Please provide all written materials in AES' possession—including electronic
10 communication—regarding any project alternative or alternative site configuration responsive to
11 Data Request 6.1.

13 DATED: February 24, 2014

JEFFER MANGELS BUTLER & MITCHELL LLP

15 By: 
16 JON WELNER
17 Attorneys for Intervenor CITY OF REDONDO
18 BEACH.