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STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

In the Matter of:

The Application for Certification for the

**HUNTINGTON BEACH ENERGY
PROJECT**

Docket No. 12-AFC-02

**AES SOUTHLAND DEVELOPMENT, LLC'S OPENING TESTIMONY,
PRELIMINARY IDENTIFICATION OF CONTESTED ISSUES,
AND WITNESS AND EXHIBITS LISTS; FSA COMMENTS**

June 30, 2014

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STATE OF CALIFORNIA

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Pursuant to the Committee's Notice of Prehearing Conference and Evidentiary Hearing Scheduling Order, and Further Orders, dated June 9, 2014, Applicant AES Southland Development, LLC ("Applicant") herein provides opening testimony, preliminary identification of contested issues, and witness and exhibit lists in support of the Huntington Beach Energy Project ("HBEP") evidentiary hearings. In addition, Applicant's opening testimony also constitutes Applicant's comments on Staff's Final Staff Assessment ("FSA").

As correctly stated in the FSA, the proposed HBEP would be a natural gas-fired, combined-cycle, air-cooled, 939-megawatt electrical generating facility. No new offsite linear facilities are proposed as part of the project. HBEP is designed to start and stop very quickly and be able to ramp up and down, which is critical to supporting both local electrical reliability and grid stability to support peak demand and meet resource adequacy requirements, as identified by the California Independent System Operator. (FSA at 3-1). Demolition and construction of the HBEP will commence in phases over

approximately a continuous 90-month period to allow for continued operation to maintain a minimum generating capacity of at least 430 MW and provide critical voltage support at all times. (FSA at pp. 3-4 and 3-5.) Maintaining a continuous construction schedule throughout the 90-month period is critical to maintain power delivery and grid reliability in the Western Los Angeles Basin.

I. APPLICANT’S OPENING TESTIMONY

Applicant presents testimony on uncontested topics in the form of declarations, which have been previously docketed. Herein, Applicant provides a list of the declarations and the assigned California Energy Commission (“CEC” or “Energy Commission”) Transaction Numbers (TN#) for each. Testimony for contested topics is set forth herein by issue area. All exhibits in support of such testimony have been docketed previously and are identified on Applicant’s Exhibit List.

A. Uncontested Issues

Topics identified by the Applicant as uncontested are set forth in the table below. Declarations supporting the materials relevant to this proceeding and the specific issue area that have been prepared by or at the direction of the declaring witness are listed in Applicant’s Preliminary Exhibit List, attached hereto as Exhibit M. In summary, testimony provided in the form of a declaration identifies the documents drafted or otherwise prepared by (or directed to be prepared by) the witness as pertinent to that witness’s area of expertise. It should be noted that witnesses whose testimony is based solely upon the identified declaration will not be made available for examination unless parties specifically request to cross-examine the witness in rebuttal.

Topic	Witness(es)	CEC Transaction # (TN#)
Facility Design	Stephen O’Kane Horacio Larios	TN #202626 TN #202601
Geological Hazards & Resources	Thomas Lae, P.G	TN #202606
Paleontological Resources	W. Geoffrey Spaulding, Ph.D.	TN #202602
Project Description	Stephen O’Kane Horacio Larios	TN #202626 TN #202601
Public Health	Jerry Salamy	TN #202616
Socioeconomics	Fatuma Yusuf, Ph.D.	TN #202603
Soils	Jennifer Krenz-Ruark	TN #202600
Traffic & Transportation	Lisa Valdez	TN #202598
Transmission System Engineering; Transmission Line Safety and Nuisance	Robert Sims	TN #202613

B. Preliminary Identification of Contested Issues

Following Applicant’s review of the FSA, Applicant has compiled a list and summary of outstanding contested issues, set forth by topic area below. Applicant remains hopeful, however, that most, if not all, of Applicant’s issues and concerns related to the topics set forth below can be resolved prior to the evidentiary hearing. In the meantime, Applicant will proceed as though each of the potentially disputed areas, discussed separately below, require adjudication.

1. Air Quality

Applicant concurs with Staff’s conclusions in the Air Quality section of the FSA and agrees with the Conditions of Certification set forth in the FSA pertaining to Air Quality. Applicant, however, has concerns that Staff disregarded that all potential HBEP air quality impacts resulting from construction and operation will be reduced to less-than-

significant levels through a combination of emission offsets, air quality improvement projects, and the permanent shutdown of existing electrical utility steam boilers. In addition, Applicant proposes minor revisions to Staff’s proposed Condition of Certification AQ-SC6. Applicant’s testimony regarding Air Quality is set forth in **Exhibit A** hereto.

2. Alternatives

Applicant has reviewed the Alternatives section of the FSA and agrees with Staff’s conclusions therein. Applicant provides testimony regarding Alternatives in **Exhibit B**, which specifically identifies the evidence in the FSA that fully supports Staff’s conclusions.

3. Biological Resources

Applicant has reviewed the Biological Resources section of the FSA and agrees that HBEP will comply with all applicable laws, ordinances, regulations, and standards (“LORS”). Applicant, however, disagrees with the overly burdensome requirements of BIO-8 and proposes necessary changes thereto, as well as to Conditions of Certification BIO-2 and BIO-5. Lastly, Applicant provides detailed testimony about the effects of construction noise on avian receptors and proposed changes to BIO-9 related thereto. Applicant’s testimony regarding Biological Resources is set forth in **Exhibit C** hereto.

4. Cultural Resources

Applicant has reviewed the Cultural Resources section of the FSA and agrees that HBEP will comply with all applicable LORS. Applicant also is amenable to Staff’s proposed Conditions of Certification CUL-3 through CUL-5, CUL-7, and CUL-8. Applicant, however, requests minor changes to Conditions of Certification CUL-1 and CUL-2. Applicant also proposes a revised Condition of Certification CUL-6 to tailor the

condition to the circumstances involved at the HBEP site. Such changes include removing the requirement to have the continuous presence of a Native American Monitor and regulating archeological monitoring, as such is done in other CEC projects.

Applicant's testimony regarding Cultural Resources is set forth in **Exhibit D** hereto.

5. Hazardous Materials Handling

Applicant has reviewed the Hazardous Materials Handling section of the FSA and agrees with Staff's conclusions therein that HBEP will comply with all applicable LORS and will not result in significant adverse impacts to the environment. Applicant agrees with the Conditions of Certification set forth in the FSA pertaining to Hazardous Materials Management with the incorporation of one minor clarification to HAZ-6. Applicant's testimony regarding the minor changes to this condition is set forth in **Exhibit E** hereto.

6. Land Use

Applicant has reviewed the Land Use section of the FSA and agrees with Staff's conclusions therein that HBEP will comply with all applicable LORS and will not result in significant adverse impacts to the environment. Applicant concurs with the Condition of Certification set forth in the FSA pertaining to Land Use with the incorporation of one minor revision, as set forth in Applicant's testimony on Land Use, attached hereto as **Exhibit F**.

Applicant also wishes to clarify one point of law that Staff incorrectly interprets in the FSA. (FSA p. 4.5-12.) Staff interprets Section 30413(d) of the Coastal Act as applying to AFC-only proceedings. As Applicant has clearly stated in the record for this proceeding (TN# 67020; TN# 201142), a 30413(d) report is only relevant in "notices of intention" ("NOI") proceedings. ("The [Coastal] commission shall analyze each notice

of intention and shall, prior to completion of the preliminary report required by Section 25510, forward to the [CEC] a written report on the suitability of the proposed site and related facilities specified in that notice”). The language of Section 30413(d) is abundantly clear on its face that the requirements for a “report” from the Coastal Commission involve NOI proceedings. While NOI proceedings are required for certain kinds of powerplant siting (*e.g.*, nuclear facilities or coal plants), new thermal natural-gas fired powerplant facilities are statutorily exempt from the NOI process. (Pub. Resources Code § 25540.6(a)(1).) However, Staff is correct in noting that the Coastal Commission may choose to participate in the HBEP AFC proceedings. (*See* Pub. Resources Code § 30413(e).) Thus, Staff mistakenly assumes that if the Coastal Commission chooses to participate in these proceedings, the requirements of Section 30413(d), applicable only to NOI proceedings, are applicable in the HBEP AFC proceeding. Any comments or “report” received from the Coastal Commission in the HBEP AFC proceeding should be treated as participation by the Coastal Commission pursuant to Section 30413(e) and not as an official “report” as defined in Section 30413(d).

7. Noise & Vibration

Applicant has reviewed the Noise section of the FSA and agrees with Staff’s conclusions therein that HBEP will comply with all applicable LORS and will not result in significant adverse impacts to the environment. Applicant agrees with the Conditions of Certification set forth in the FSA pertaining to Noise & Vibration with the incorporation of minor clarifications to NOISE-2, NOISE-4 and NOISE-7. Applicant’s testimony regarding the minor changes to these noise conditions is set forth in **Exhibit G** hereto.

8. Soil & Water Resources

Applicant has reviewed the Soil & Water Resources section of the FSA and agrees that HBEP will comply with all applicable LORS and will not result in significant adverse impacts to the environment. Applicant believes that it is necessary, however, to clarify a few errors in Staff's testimony as well as provide additional evidence in support of Staff's conclusion regarding available water supplies for HBEP. Applicant's testimony regarding Soil & Water Resources is set forth in **Exhibit H** hereto.

9. Visual Resources

Applicant has reviewed the Visual Resources section of the FSA and disagrees with Staff's analyses regarding KOP-4 and KOP-5 as well as portions of Conditions of Certification VIS-1 and VIS-2. Applicant also proposes additional minor changes to Conditions of Certification VIS-3, VIS-5, and VIS-6. As noted in the attached testimony of Dr. Thomas Priestley regarding Visual Resources (**Exhibit I**), Applicant also proposes changes to Conditions of Certification VIS-1, VIS-2, VIS-3 and VIS-5, which include the deletion of the requirement for Coastal Commission review and comment on various plans for the project. The HBEP site is within the Coastal Zone and therefore subject to the Coastal Act (Public Resources Code § 30000 et. seq.), but the proposed HBEP site is within the retained jurisdiction of the Energy Commission. The Coastal Commission's permitting authority is subject to the Energy Commission's jurisdiction over power plants. (Pub. Resources Code §§ 25500, 30600.) Were the Coastal Commission to exercise its permitting authority, it would review the project against the policies of the City of Huntington Beach's Local Coastal Program, General Plan, and zoning ordinance as well as the Coastal Act. The Energy Commission, when exercising its jurisdiction, conducts a similar analysis and solicits and considers the views of the agencies that

would otherwise have jurisdiction over a proposed project, including the Coastal Commission, during this permitting process. Ultimately, the Energy Commission is charged with making its independent determination regarding project compliance with the Coastal Act and other LORS, during review of the AFC. Additional, post-approval review and comment by the Coastal Commission is not required nor warranted. Because the CEC has exclusive jurisdiction over HBEP and the Warren-Alquist Act clearly defines the role of the Coastal Commission in AFC proceedings, the VIS Conditions of Certification require additional revisions not specifically addressed in the testimony of Dr. Priestley, as set forth in Applicant's proposed revisions to VIS-1, VIS-2, VIS-3 and VIS-5 set forth in **Exhibit I** attached hereto.

10. Waste Management

Applicant has reviewed the Waste Management section of the FSA and agrees that HBEP will comply with all applicable LORS and will not result in significant adverse impacts to the environment. Applicant, however, requests certain changes to Condition of Certifications WASTE-1 and WASTE-2 as set forth in Applicant's testimony related to Waste Management, attached as **Exhibit J** hereto.

11. Worker Safety & Fire Protection

Applicant has reviewed the Worker Safety section of the FSA and agrees that HBEP will comply with all applicable LORS and will not result in significant adverse impacts to the environment. Applicant, however, disagrees with Staff's statement that all power plants are required to have more than one point of access. Further, Applicant wishes to reduce the timeframe within which the automatic external defibrillator shall exist at the HBEP site. Applicant's testimony in support of Worker Safety & Fire Protection is attached as **Exhibit K** hereto.

12. Compliance Conditions

Applicant has reviewed the Compliance Conditions and generally concurs with the content of the same, with the exception of a few minor changes to Conditions COM-13 and COM-15. Applicant's testimony regarding Staff's proposed Compliance Conditions is set forth in **Exhibit L** hereto.

II. APPLICANT'S WITNESSES

As noted in Part I, *supra*, written testimony of the witnesses listed below is attached hereto as Exhibits A through L. Unless otherwise noted, the witnesses identified below will also be available for cross-examination in their respective areas at the evidentiary hearing, should the parties wish to conduct cross-examination. In some cases, there is more than one witness for a particular subject matter.¹

EXHIBIT	TOPIC	WITNESS(ES)
A	Air Quality	Jerry Salamy Stephen O'Kane
B	Alternatives	Stephen O'Kane
C	Biological Resources	Melissa Fowler Mark Bastasch Robert Dooling, Ph.D. ²
D	Cultural Resources	Clint Helton
E	Hazardous Materials	Sarah Madams ³
F	Land Use	Robert Mason
G	Noise & Vibration	Mark Bastasch, P.E.
H	Soils & Water Resources	Matthew Franck
I	Visual Resources	Thomas Priestley, Ph.D.
J	Waste Management	Sarah Madams

¹ In addition to the testimony provided by these witnesses as set forth in the exhibits attached hereto, witnesses identified in this table (Section II of Applicant's Opening Testimony) have provided a declaration to sponsor documents related to his/her discipline of expertise. Such declarations have been docketed in this proceeding and are set forth in Applicant's Proposed Exhibit List, also attached hereto.

² Dr. Dooling is available for cross-examination by phone and only **after** 3:00 p.m. (PDT) on July 21, 2014.

³ Ms. Madams is not available for cross-examination on July 21, 2014. However, Applicant will have available for cross-examination the appropriate witness(es) for topics to which Ms. Madams has provided testimony. Such witness(es) will be identified and noted in Applicant's Prehearing Conference Statement, due on July 7, 2014.

EXHIBIT	TOPIC	WITNESS(ES)
K	Worker Safety & Fire Protection	Sarah Madams
L	Compliance Conditions of Certification	Stephen O’Kane

III. APPLICANT’S EXHIBITS

Applicant presents a list of preliminarily identified exhibits in **Exhibit M** hereto. Each exhibit and its assigned CEC Transaction Number (TN#) are identified therein. Applicant will provide an updated Exhibit List as an attachment to Applicant’s Prehearing Conference Statement on July 7, with a final Exhibit List to follow with rebuttal testimony on July 11, 2014.

IV. CONCLUSION

Applicant is confident that the HBEP AFC proceeding is ready for evidentiary hearings. Applicant looks forward to the conclusion of the hearings and a favorable decision by the Commission approving this important project.

Date: June 30, 2014

Stoel Rives LLP



Melissa A. Foster, Esq.
 Kristen Castaños, Esq.
 Attorneys for Applicant
 AES SOUTHLAND DEVELOPMENT, LLC

EXHIBIT A
APPLICANT'S OPENING TESTIMONY FOR AIR QUALITY

**Opening Testimony of AES Southland Development, LLC
in the Huntington Beach Energy Project Proceeding (12-AFC-02)**

Applicant's Witness: **Jerry Salamy**

Date: **June 30, 2014**

Topic: **Air Quality**

Applicant concurs with Staff's conclusions in the Air Quality section of the Final Staff Assessment ("FSA") and agrees with the Conditions of Certification set forth in the FSA pertaining to Air Quality. Applicant wishes to address two corrections to the text of the FSA. On page 4.1-100 (Appendix Air-1) of the FSA, Staff's analysis includes multiple references to the El Segundo Energy Center ("ESEC"), which the Applicant believes should reference the Huntington Beach Energy Project ("HBEP"). Also, Staff's response to comment number 7 on page 431-50 of the FSA is incomplete.

In the Applicant's comments (TN #201969) on the Preliminary Staff Assessment Part B (TN #201839), Applicant described three specific facts as evidence to support Applicant's belief that the HBEP's construction air quality impacts either already are or would be mitigated to less than significant levels after implementation of measures required by the SCAQMD Permit to Construct for the project. These facts included: 1) HBEP's construction emissions are less than the South Coast Air Quality Management District's ("SCAQMD") California Environmental Quality Act ("CEQA") construction thresholds; 2) the payment of the SCAQMD Rule 1304.1 offset fees would provide some level of emission reductions in the area of HBEP construction/demolition impacts; and 3) the shutdown of the Huntington Beach Generating Station Units 1 and 2 results in emission reductions in excess of the amount required under New Source Review for the operation of new generating units, that will, or already have been realized. Staff addressed Applicant's first measure by declaring that the use and results from a numerical dispersion model analysis of emissions resulting from construction activity compared with ambient air quality standards is the appropriate CEQA threshold. (FSA at p. 4.1-49.)

In responding to the Applicant's second measure, Staff concluded that "Rule 1304.1 fees paid may not be used to generate air quality benefits in the vicinity of the project nor in the time frame associated with HBEP construction." Staff's concerns that the Rule 1304.1 fees being paid by the Applicant may not be used to generate air quality benefits in the project vicinity is in direct contradiction to the language of Rule 1304.1(d)(1), which states that "[p]riority shall be given to funding air quality improvement projects in impacted surrounding communities where the repowering [electrical generating facility] EGF projects are located." The SCAQMD reiterates this point in its response to the City of Huntington Beach comments on the Preliminary Determination of Compliance (TN #202452) where it stated that "[t]he last sentence of Paragraph (d)(1) [of Rule 1304.1] to give priority to funding air quality improvement projects in the impacted surrounding communities where the repowering EGF project are located was included to acknowledge that the area where the EGF project is to be located should be mitigated with these air quality improvement projects to help offset emission impacts by the new project." Staff is rightly concerned about the Rule 1304.1 fees resulting in air quality improvement projects during HBEP's construction. However, considering that Rule 1304.1 requires the fees be provided prior to the SCAQMD's issuance of a Permit to Construct (and prior to being authorized to commence construction by the California Energy Commission [CEC]) and that HBEP's construction is expected to take 7.5 years, it

is reasonable to assume some portion of the Applicant-provided Rule 1304.1 fees will result in actual emission reductions within the vicinity of HBEP during the construction period.

Further, Applicant contends that the shutdown of Huntington Beach Generating Station Units 1 and 2 results in actual, permanent, and quantifiable emission reductions that provide additional air quality mitigation, further reducing HBEP construction and operational air quality impacts to less than significant levels.

Lastly, as Staff noted in its discussion of Condition of Certification AQ-SC6 on page 4.1-23 of the FSA, the logistics associated with street sweeping may provide significant challenges to achieving the necessary emission reductions required by AQ-SC6. Therefore, Applicant proposes minor changes to AQ-SC6 to include flexibility in the methods used to achieve the required emission reductions.

AQ-SC6 ~~During the construction phase of this project, the project owner shall conduct a local street sweeping program to provide at least 8.26 lbs/day PM10 and 0.79 lbs/day PM2.5 of emissions reductions. The project owner shall provide, for approval, a Construction Particulate Matter Mitigation Plan (CPMMP) that details the steps to be taken and the reporting requirements necessary to~~ **provide the equivalent of at least 8.26 lbs/day PM10 and 0.79 lbs/day PM2.5 of emissions reductions during the construction phase of the project.** ~~ensure the implementation of the local street sweeping program.~~ **Construction emission reduction measures can include: localized street sweepers or programs; local ban of leaf blowing or blowers; sodding of local parks or playfields; fireplace or woodstove replacements; offsets or emission reduction credits; or other measures that can provide local emission reductions coincident with construction emissions.**

Verification: At least 90 days prior to the start of any ground disturbance, the project owner shall submit the CPMMP to the CPM for approval. The CPM will notify the project owner of any necessary modifications to the plan within 30 days from the date of receipt. The CPMMP must be approved by the CPM before the start of ground disturbance. During construction the project owner shall provide the records of the ~~sweeping program~~ **CPMMP** in the Monthly Compliance Report.

EXHIBIT B
APPLICANT'S OPENING TESTIMONY FOR ALTERNATIVES

**Opening Testimony of AES Southland Development, LLC
in the Huntington Beach Energy Project Proceeding (12-AFC-02)**

Applicant's Witness: **Stephen O'Kane**

Date: **June 30, 2014**

Topic: **Alternatives**

Applicant agrees with the overall conclusions in the Alternatives section of the FSA, as further discussed and supported below. However, a number of details in the Alternatives analysis require correction or clarification, and the analysis of the No Project alternatives understates some of the impacts of the No Project alternatives and mischaracterizes the comparison of those impacts to HBEP.

In particular, the Alternatives analysis in the FSA states that the impact of the Retrofit Wet Cooling alternative to the state's water supplies would be similar to HBEP because it would reduce reliance on fresh water for cooling. (FSA, p. 6-34 and Alternatives Table 1.) This conclusion fails to acknowledge that HBEP would require significantly less water use than the Retrofit Wet Cooling alternative. (See FSA, p. 4.9-15 -- 4.9-16.) If recycled water were available¹, that water would be better used for other purposes and, therefore, HBEP has significantly less impact to local water supplies than the Retrofit Wet Cooling alternative. (*Id.*) Additional specific areas where impacts of the No Project alternatives are understated are identified in TN# 201969, and incorporated herein. (See TN# 201969, p. 5 (Socioeconomics), p. 5 (Soil and Water).)

In addition, although the FSA understates the relative impacts of the No Project alternatives, the FSA correctly dismisses all other alternatives and correctly concludes that HBEP is the environmentally superior alternative. (FSA, p. 6-40 -- 6-41.) Staff's Conclusion is supported by the following evidence set forth in various places within the FSA:

- HBEP has a strong relationship to the existing project site and there are no alternative sites that could achieve the project objectives. (FSA, pp. 6-6 -- 6-10.)
- Alternative site configurations would not significantly lessen or avoid visual, noise or coastal impacts as compared to HBEP. (FSA, pp. 6-10 -- 6-11.)
- Generation technology alternatives utilizing conventional boiler and steam turbine technology are legally infeasible because they do not meet SCAQMD's Rule 1304. (FSA, pp. 6-11 -- 6-12.)
- Generation technology alternative utilizing simple-cycle combustion turbine is not a viable alternative because it would not reduce or avoid any of the impacts of HBEP. (FSA, pp. 6-12 -- 6-15.)

¹ As demonstrated by evidence docketed in this proceeding, including pp. 4.9-15 - 4.9-16 of the FSA, and as noted herein, recycled water is not available for HBEP.

- The use of recycled water at HBEP is economically, socially and technologically infeasible because there is no currently available recycled water for the project, new recycled water made available in the future would likely be utilized for groundwater injection to prevent salt water intrusion, and there is no reasonable means of delivering recycled water to the project site. (FSA, pp. 4.9-15 -- 4.9-16, 6-15.) Additionally, use of recycled water is not superior because HBEP would significantly reduce water use as compared to baseline and would avoid significant construction impacts that would result from the facilities necessary to supply recycled water. (FSA, p. 4.9-19.)
- A traditional No Project alternative (i.e., HBGS continues to operate without retrofit) is not feasible for legal, social and other reasons. Specifically, continuing once-through-cooling at HBGS is legally infeasible under current requirements. (FSA, pp. 4.9-5, 4.9-22, 6-22.) While an extension of the deadline to eliminate once-through-cooling could be adopted, once-through-cooling at HBGS is not a legally feasible long-term solution. (FSA, p. 6-22.)
- A No Project scenario contemplating retirement of HBGS is not feasible for economic, social and other reasons as it would significantly and negatively impact grid reliability, would not meet any of the project objectives and would be counter to CAISO's projection of the need for replacement generation. (FSA, pp. 6-9 -- 6-10.)
- The No Project retrofit with wet cooling towers is legally and technologically infeasible because continued use of ocean water is legally infeasible (FSA, pp. 6-22), use of potable water for cooling is infeasible for social and policy reasons (FSA, p. 6-22), and use of recycled water for cooling is infeasible because there is no currently available recycled water to supply the project and there is no reasonable means of delivering recycled water to the project site (FSA, pp. 4.9-15 -- 4.9-16, 6-15.)
- Neither No Project alternative would meet the objectives of providing efficient, reliable and flexible generation. (FSA, pp. 6-24, Alternatives Table 2.)
- Both No Project alternatives would be significantly less efficient than HBEP. (TN# 201969, pp. 1-2.)
- For the reasons stated in the FSA and as corrected above, the No Project alternatives would result in similar or greater impacts on several environmental resource areas (FSA, Alternatives Table 1; TN# 201969, pp. 3-6), without meeting many of the project objectives (FSA, Alternatives Table 2, p. 6-40 -- 6-41.)

EXHIBIT C-1

APPLICANT'S OPENING TESTIMONY FOR BIOLOGICAL RESOURCES
TESTIMONY OF MESLISSA FOWLER, M.S., CERTIFIED ECOLOGIST

**Opening Testimony of AES Southland Development, LLC
in the Huntington Beach Energy Project Proceeding (12-AFC-02)**

Date: **June 30, 2014**

Applicant's Witness: **Melissa Fowler, M.S., Certified Ecologist, Ecological Society of America**

Topic: **Biological Resources**

Applicant's testimony regarding Staff's Final Staff Assessment of HBEP's impacts to Biological Resources is provided below. Specifically, Applicant has concerns with Staff's analysis related to construction, demolition and operational impacts on the federally listed light-footed clapper rail, classifying the Wetlands and Wildlife Care Center as a sensitive biological resource, and the implied requirement for HBEP to employ a full-time Designated Biologist and Biological Monitor(s). As discussed below, Staff's conclusions and recommendations related to these issues are not supported. Moreover, construction and operation of HBEP will comply with all LORS related to biological resources, including the City of Huntington Beach General Plan/Local Coastal Plan/Coastal Element ("LCP") as it relates to setbacks from wetland areas.¹ Applicant provides the following testimony and revisions to Staff's Conditions of Certification.

Staff's Analysis Improperly States that the Light-footed Clapper Rail has been Documented Breeding within the Brookhurst Marsh

On pages 4.2-5 and 4.2-26 of the FSA, Staff indicates that light-footed clapper rail (*Rallus longirostris levipes*) was recently documented breeding in the Brookhurst Marsh (approximately 3,000 feet from the HBEP boundary). However, as stated in *Applicant's Follow-Up to PSA Part A Workshop* dated December 13, 2013 (TN #201437), breeding has ***not been confirmed*** within the Brookhurst Marsh (Zemmel and Hoffman, 2012).² As stated in Zemmel and Hoffman (2012):

Restoration of the Huntington Beach Wetlands is continuing and one of the pairs [of light-footed clapper rails] counted in the tally for this marsh complex was actually in the Brookhurst Marsh in 2010. Lena Hyashi reported a pair on April 19, 2010 vocalizing and observed along the larger stand of Spiny Rush (*Juncus acutus*) near the dunes and [Pacific Coast Highway]. This was the first record for Clapper Rails potentially breeding in the [Huntington Beach Wetlands] Complex outside the Santa Ana River Marsh since the 1970s. Unfortunately, late in the 2010 season and in 2011 we were only able to elicit "kecking" from a male, so

¹ The LCP states that new development projects that are contiguous to wetlands or environmentally sensitive habitat areas must include a minimum of one hundred feet setback from the landward edge of the wetland. The LCP dictates that, in some instances, a lesser buffer may be permitted if existing development or site configuration precludes the minimum buffer area. As set forth in this proceeding, construction and operation of HBEP will comply with all LORS. (See, e.g., *Application for Certification* at Tables 5.6-6 and 5.6-8 (TN #66003) and *Final Staff Assessment* at p. 4.5-17 (TN #202405).)

² Zemmel, R. and S.M. Hoffman. 2012. Status and Distribution of the Light-footed Clapper Rail in California, 2012. California Department of Fish and Game, Wildlife Branch, Nongame Wildlife Program Report, 2012-02, Sacramento, CA. 20 pp.

breeding was not confirmed. A pair was back again in the Brookhurst Marsh in 2012. [Emphasis added].

In addition, Applicant's *Supplemental Responses to Data Requests #31 (Biological Resources)*, dated March 7, 2013, docketed March 11, 2013 (TN #69888) and *Applicant's Follow-Up to PSA Part A Workshop* (TN #201437) evaluated the light-footed clapper rail habitat preferences, particularly for nesting. Light-footed clapper rails have a preference for tall (greater than 70 cm), dense stands of Pacific cordgrass (*Spartina foliosa*) in the low littoral zone for nesting (Massey et al., 1984).³ Although this species prefers tall, dense stands of cordgrass, other nesting habitat including cattail- (*Typha* spp.) and bulrush- (*Scirpus* spp.) dominated systems to expanses of pickleweed (Zemal and Massey, 1983)⁴ benefit the species. As previously noted, the light-footed clapper rail were observed within a large stand of spiny rush, near Pacific Coast Highway (PCH) (Zemal and Hoffman, 2012). According to *Huntington Beach Wetlands Restoration Project: Monitoring Program Final Report* (CSULB et al., 2013)⁵, rush (*Juncus* sp.) habitat is located within the central portion of the Brookhurst Marsh, which is over 3,000 feet southeast of the HBEP. California State University Long Beach (CSULB) et al. (2013) mapped vegetation communities within the Magnolia Marsh, which is comprised of bare salt panne, exposed upland, intertidal mudflat and vegetated salt marsh. These vegetation communities within the Magnolia Marsh are not high-quality nesting habitat and are relatively common throughout the HBW. Furthermore, the majority of the northern half of the Magnolia Marsh is primarily bare salt panne and intertidal mudflat, which is not expected to support nesting light-footed clapper rail because there is a lack of dense vegetation that is necessary for cover and nest building.

Staff's Analysis Regarding Light-footed Clapper Rail Impacts within the Upper Magnolia and Magnolia Marshes is Speculative

In Biological Resources Table 2 (page 4.2-20) and on page 4.2-26 of the FSA, Staff indicates that the light-footed clapper rail is expected to forage within the Magnolia Marsh⁶; however, this species has not been documented within the Magnolia Marsh. Since the Magnolia Marshes are still being restored and suitable nesting habitat does not currently exist within these marshes [see *Supplemental Responses to Data Requests #31*, dated March 7, 2013 (TN #69888) and *Applicant's Follow-Up to PSA Part A Workshop* (TN #201437)], a clear impact to this species has not been identified and is speculative.

³ Massey, B. W., R. Zemal and P. D. Jorgensen. 1984. Nesting habitat of the light-footed clapper rail in southern California. *Journal of Field Ornithology* 55(1):67-80.

⁴ Zemal, R., and B. W. Massey. 1983. The light-footed clapper rail: distribution, nesting strategies, and management. *California-Nevada Wildlife Transactions* 97-103.

⁵ California State University Long Beach (CSULB), C. Whitcraft, B. Allen, and C. Lowe. 2013. *Huntington Beach Wetlands Restoration Project: Monitoring Program Final Report*. Prepared for the Huntington Beach Wetlands Conservancy and the National Oceanic and Atmospheric Administration. October.

⁶ Zemal, R. 2013. Richard Zemal, Natural Resources Director for the Orange County Water District. Personal communication to Heather Blair of Aspen Environmental Group. September 24, 2013.

As previously noted in *Applicant's Follow-Up to PSA Part A Workshop* (TN #201437), the following points should be considered regarding the potential use of the Upper Magnolia and Magnolia Marshes by the light-footed clapper rail:

- 1) Breeding was not confirmed within the Brookhurst Marsh.
- 2) No observations of the species have been documented within the Magnolia Marsh;
- 3) The Brookhurst Marsh restoration was completed in 2009; however, this marsh's pre-restoration conditions differ from those of the Magnolia Marsh.

The first point above was discussed in detail in the preceding discussion regarding habitat preferences and suitability for the light-footed clapper rail. The pre-restoration conditions of the Brookhurst Marsh and Magnolia Marsh vary dramatically in both form and function. Prior to restoration activities, the Brookhurst Marsh predominantly consisted of relic salt marsh, with some alkali marsh, disturbed habitat, coastal scrub, mule fat scrub, salt panne and southern willow scrub (Merkel & Associates, 2004).⁷ Conversely, Merkel & Associates (2004) indicated that the majority of the Magnolia Marsh was comprised of salt panne, with some alkali marsh, disturbed habitat, mule fat scrub and southern willow scrub. Furthermore, the western portion of the Magnolia Marsh was degraded and contained various invasive iceplant species (*Mesembryanthemum* spp.), unauthorized recreational use, and discarded fill and concrete scraps further degrading the area (Merkel & Associates, 2004). These attributes were not documented within the Brookhurst Marsh.

The differences in pre-restoration site conditions for the Magnolia Marsh and Brookhurst Marsh are depicted more clearly in restoration monitoring results (see CSULB et al., 2013). The vegetated marsh habitat has increased within both the Brookhurst and Magnolia Marshes; however, the majority of the salt panne area within the HBW (area not conducive to nesting light-footed clapper rail) is within the Magnolia Marsh (CSULB et al., 2013). Additionally, CSULB et al. (2013) indicated that there was a significant increase in vegetated salt marsh within the Brookhurst Marsh as evidenced by the documentation of seablite (*Sueda esteroa*), woolly seablite (*Suaeda taxifolia*), turtleweed (*Batis maritima*), dwarf saltwort (*Salicornia bigelovii*), but these species are still absent within the Magnolia Marsh. Thus, the Magnolia Marsh's restoration efforts are progressing differently in form and function than conditions at the Brookhurst Marsh.

Furthermore, cordgrass transplantation experiments are also ongoing within the HBW. In 2011, cordgrass was only present within the Talbert Marsh and transplanting experiments began in spring 2012 (CSULB et al., 2013). According to CSULB et al. (2013), nutrient additions did not seem to significantly influence cordgrass transplantations, rather transplantation success appeared to be dependent on the amount of inundation and location of plots. The vast majority of plantings, especially Pacific cordgrass, within the Upper Magnolia Marsh perished because they were beyond the extent of tidal reach (CSULB et al., 2013), which most likely would require additional construction to modify tidal flow. As previously noted in the Applicant's *Supplemental Data Response, DR31* (TN #69888) and the *Huntington Beach Energy Project (12-AFC-02) Applicant's Comments on the Preliminary Staff Assessment (Part A)* (TN #201142), restoring salt marsh

⁷ Merkel & Associates, Inc. 2004. *Huntington Beach Wetlands Habitats and Sensitive Species*. August 18.

structure and function requires significant time to develop to resemble natural and/or desired conditions. Magnolia Marsh has not been successfully re-vegetated with cordgrass and it is speculative to assert that the necessary steps to do so will be attempted and, if they are, that they will be successful. Salt marsh restoration can be very challenging and takes many years before desired conditions are *potentially* realized. For example, within smooth cordgrass marshes (*Spartina alterniflora*) restored conditions began to resemble natural construction for primary producers and heterotrophic activity (i.e., cordgrass and benthic invertebrates) within 5 to 15 years post-construction and soil organic carbon and nitrogen levels did not reach equivalence within the first 28 years (Craft et al., 2003).⁸ For Pacific cordgrass (*Spartina foliosa*), a San Diego Bay mitigation site failed to produce plants of sufficient height after 13 years, including multiple fertilization experiments, and the cordgrass canopy is not expected to become suitable nesting habitat for the light-footed clapper rail (Trnka and Zedler, 2000⁹; Zedler and Callaway, 1999¹⁰; Boyer and Zedler, 1998¹¹). Therefore, it will likely take many years for the Magnolia Marsh to develop suitable habitat for light-footed clapper rails and it is speculative to assert that suitable nesting habitat may establish in the Magnolia Marsh subunit of the HBW because other similar efforts have been unsuccessful.

Lastly, light-footed clapper rails have been found to habituate to human presence (Zembal et al., 1989).¹² The Tijuana Slough National Wildlife Refuge (Tijuana Marsh) is one of the most important breeding areas for this species. As previously noted in the Applicant's *Supplemental Data Response, DR31 (Biological Resources)* (TN #69888) general land use and significant noise sources within the vicinity of Tijuana Marsh include the Imperial Beach Naval Air Station, Brown Field Municipal Airport, Tijuana International Airport, Interstate 5, and Customs and Border Patrol vehicles where ambient sound levels were documented above 60 dBA (Kimley-Horn and Associates, 2005).¹³

To conclude and reiterate, construction- and demolition-related noise is not expected to significantly impact light-footed clapper rail because this species has not been documented within the adjacent Magnolia Marsh. Although a pair was observed within the Brookhurst Marsh, the vegetation community they were found in differs significantly from the Magnolia Marsh. The Brookhurst Marsh observation was located over 3,000 feet away from HBEP and is not expected to be impacted by project-related noise. Furthermore, pre-restoration and current site conditions vary between the Magnolia and Brookhurst Marshes. The Magnolia Marsh was substantially more degraded and

⁸ Craft, C., P. Megonigal, S. Broome, J. Stevenson, R. Freese, J. Cornell, L. Zheng, and J. Sacco. 2003. The pace of ecosystem development of constructed *Spartina alterniflora* marshes. *Ecological Applications* 13(5): 1417-1432.

⁹ Trnka, S., and J. B. Zedler. 2000. Site conditions, not parental phenotype, determine the height of *Spartina foliosa*. *Estuaries* 23(4): 572-582.

¹⁰ Zedler, J. B. and J. C. Callaway. 1999. Tracking wetland restoration: do mitigation sites follow desired trajectories? *Restoration Ecology* 7(1): 69-73.

¹¹ Boyer, K. E., and J. B. Zedler. 1998. Effects of nitrogen additions on the vertical structure of a constructed cordgrass marsh. *Ecological Applications* 8(3): 692-705.

¹² Zembal, R., B.W. Massey, and J.M. Fancher. 1989. Movements and activity patterns of the light-footed clapper rail. *Journal of Wildlife Management*. 53(1):39-42.

¹³ Kimley-Horn and Associates, Inc. 2005. *Noise Analysis Report: Tijuana River Valley Regional Park Trails and Enhancement Project*. Prepared for Environmental Services Unit, San Diego Department of Public Works. July 28.

currently contains the most salt panne habitat within the HBW. The Magnolia Marsh is not a pristine area and has historically been subject to more sound and other disturbances than other subunits within the HBW.

Therefore, although Staff proposed focused surveys for light-footed clapper rail, this species has not been documented within the Upper Magnolia and Magnolia Marshes. Furthermore, as Applicant has previously noted, there is lack of suitable nesting habitat located within the Upper Magnolia and Magnolia Marshes.¹⁴ Contrary to Staff's assertion on page 4.2-32 of the FSA, an identifiable impact from the construction, demolition, and operation of HBEP has not been demonstrated. Therefore, the two preconstruction surveys for nesting birds that will be completed prior to the start of project construction are sufficient to detect any nesting species within 300 feet of the project boundary and focused surveys for light-footed clapper rail are overly burdensome and unnecessary.

Staff's Analysis Improperly Identifies Construction Noise As Causing "Take of Nests"

The FSA incorrectly states the following:

Sudden loud noises such as the ones resulting from pile driving or other loud construction activities could cause birds to flush. Flushing of nesting birds could increase the risk of predation or cause nest failure if birds repeatedly leave the nest and eggs are not properly incubated, or eggs or nestlings are knocked from the nest by a flushing parent. Foraging birds are expected to have more flexibility in avoiding areas with disruptive noise, but nesting birds would be vulnerable to these effects and take of nests protected under the MBTA and California Fish and Game Code could occur.

(FSA at p. 4.2-35.) Staff assumes that construction and demolition noise could result in "take of nests", which would violate the Migratory Bird Treaty Act (MBTA) and Fish and Game Code provisions (p. 4.2-35). However, this assessment is incorrect because "noise" does constitute take of a nest. Furthermore, flushing birds from nests is not considered "take" under the MBTA¹⁵ and Fish and Game Code.¹⁶

¹⁴ See *Applicant's Comments on PSA, Part A* (TN #201142), *Applicant's Follow-Up to PSA Part A Workshop* (TN #201437), *Supplemental Responses to Data Requests #31* ((TN #69888), *Applicant's Comments on Staff's PSA Part A Supplemental Focused Analysis* ((TN #201582).

¹⁵ Take under the MBTA "means to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect." (50 C.F.R. § 10.12.)

¹⁶ Section 2080 of the Fish and Game Code prohibits "take" of any species that the commission determines to be an endangered species or a threatened species. Take is defined in Section 86 of the Fish and Game Code in a similar manner as in the MBTA, specifically as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."

Staff's Analysis Improperly Characterizes the Wetlands and Wildlife Care Center as a Sensitive Biological Resource

The FSA improperly characterizes the Wetlands and Wildlife Care Center (“WCC”) and the species being rehabilitated therein as sensitive biological resources (FSA pp. 4.2-1, 4.2-40, 4.2-53.) As previously noted in *Applicant's Comments on PSA, Part A* (TN #201142) the WCC has been open since 1998 and has been situated between an operational power plant site and a major state highway for more than fifteen years. Additionally, the WCC is located in a General Industrial zoning district. In fact, the initial Conditional Use Permit for the WCC identified the WCC as an animal hospital located in a Heavy Industrial – Oil - Floodplain - Coastal Zone (M2-O-FP2-CZ), a zone that allows for the full range of manufacturing, industrial processing, resource and energy production, general service and distribution uses. (See Zoning Code § 204.12.) Moreover, the WCC is not and should not be considered a sensitive biological resource on the basis that wildlife species are being rehabilitated within the facility. If noise was a concern for the rehabilitating wildlife, then the WCC should have been located in an area with less auditory disturbances. As previously stated, the WCC is located between PCH and a historically industrial use, an operational power plant, which are sources of both continuous and intermittent noise. While there is a concrete fence/wall between the WCC and the PCH, it has been designed with equally-spaced gaps that negate its acoustical effectiveness, allowing for views of the beach. If noise was a concern for the WCC, then a very tall solid block wall would be more effective and suitable for buffering PCH traffic-related noise from the facility.

As noted above, the facility is located within a General Industrial zone, and therefore species are most likely acclimated to high levels of noise since ambient conditions exceeded 69 dBA (Location HHM 02 in Figure DR Pyle 7-1, *Additional Responses to Jason Pyle's Data Request, Set 1*, TN #69180, January 17, 2013 and Location M1, AFC Table 5.7A-1). Even though the project will not have any significant construction or operational noise impacts on the WCC, Applicant has committed to installing temporary noise shielding at the WCC to reduce construction noise impacts as well as an 8-foot masonry wall that will be built along the project boundary adjacent to the WCC and Magnolia Marsh.

Furthermore, CEQA Appendix G and p. 4.2-29 of FSA provide the method and thresholds for determining what would constitute a significant impact to biological resources. The WCC does not match up with any CEQA threshold. Although Staff are concerned about construction- and demolition-related noise impacts on rehabilitating wildlife, this alleged impact does not relate to any threshold. Therefore, a conclusion of “impact” based on the thresholds is not supported.

Conditions of Certification

Staff recommends that HBEP employ a Designated Biologist and a Biological Monitor(s). While Staff does not state specifically that full-time biological monitoring is required, the analysis and conditions imply that a full-time biologist be employed. As stated on page 4.2-30 of the FSA, “In order to avoid or minimize potentially adverse impacts to biological resources, staff recommends that a Designated Biologist and Biological Monitor(s) be employed to ensure impact avoidance and minimization measures described below and protection of sensitive biological resources described above are implemented. “

Staff's analysis as quoted above appears to imply that both a biological monitor and designated biologist are to be on-site at all times, which is overly burdensome considering the lack of sensitive biological resources located within the HBEP.

Based on the foregoing, Applicant proposes changes to Conditions of Certification BIO-2, BIO-5, and BIO-8 as set forth below.

BIO-2: Applicant proposes the following minor addition to Item 5 of BIO-2:

5. Inspect **or direct the site personnel how to inspect** active construction areas where animals may have become trapped prior to construction commencing each day. Inspect or direct the site personnel how to inspect the installation of structures that prevent entrapment or allow escape during periods of construction inactivity. Periodically inspect areas with high vehicle activity (e.g., parking lots) for animals in harm's way;

BIO-5: Applicant proposes the following minor revisions to Items 1 and 6 of BIO-5:

1. Be developed by or in consultation with the Designated Biologist and consist of an on-site or training center presentation in which supporting electronic media and written material, ~~including wallet-sized cards with summary information on special status species and sensitive biological resources~~, is made available to all participants;
6. ~~Present the meaning~~ **Include a discussion** of various temporary and permanent habitat protection measures **the biological resources conditions of certification**;

BIO-8 Pre-construction nest surveys shall be conducted if construction or demolition activities will occur from February 1 through August 31. The Designated Biologist or Biological Monitor shall perform surveys in accordance with the following guidelines:

1. Surveys shall cover all potential nesting habitat and substrate within the project site and areas surrounding the project site within 300 feet of the project boundary.
2. At least two pre-construction surveys shall be conducted, separated by a minimum 10-day interval. Pre-construction surveys shall be conducted no more than 14 days prior to initiation of construction activity. One survey needs to be conducted within the 3-day period preceding initiation of construction activity. Additional follow-up surveys may be required if periods of construction inactivity exceed three weeks **during February 1 through August 31** in any given area, an

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interval during which birds may establish a nesting territory and initiate egg laying and incubation.

3. If active nests are detected during the survey, a no-disturbance buffer zone (protected area surrounding the nest) shall be established around each nest. ~~Specific buffer distances are provided below for applicable avian groups (Biological Resources Table 5).~~ For special-status species, if an active nest is identified, the size of each buffer zone shall be determined by the Designated Biologist in consultation with the CPM (in coordination with CDFW and USFWS). Nest locations shall be mapped using GPS technology.

4. If active nests are detected during the survey, the Designated Biologist or Biological Monitor shall monitor all nests with buffers at least once per week, to determine whether birds are being disturbed. If signs of disturbance or distress are observed, the Designated Biologist or Biological Monitor shall immediately implement adaptive measures to reduce disturbance in coordination with the CPM. These measures could include, but are not limited to, increasing buffer size, halting disruptive construction activities in the vicinity of the nest until fledging is confirmed, or placement of visual screens or sound dampening structures between the nest and construction activity.

5. If active nests are detected during the survey, the Designated Biologist or Biological Monitor shall monitor the nest until he or she determines that nestlings have fledged and dispersed or the nest is no longer active. Activities that might, in the opinion of the Designated Biologist or Biological Monitor, disturb nesting activities (e.g., exposure to exhaust), shall be prohibited within the buffer zone until such a determination is made.

~~6. — Focused surveys for light-footed clapper rail will be conducted in Magnolia and Upper Magnolia Marshes by qualified biologists during the breeding season (March 1 to August 1) immediately preceding the commencement of construction and demolition activities. If breeding clapper rails are detected, the CPM will be notified and the project owner will consult with the USFWS for incidental take authorization, if required.~~

Verification: ~~The project owner shall provide notification to the CPM, CDFW, and USFWS at least 2 weeks prior to initiating surveys for light-footed clapper rail; notification will include the name and resume of the biologist(s) conducting the surveys and the timing of the surveys. Prior to the start of any pre-construction site mobilization, the project owner shall provide the CPM, CDFW, and USFWS a letter report describing the findings of the preconstruction nest surveys and the light-footed clapper rail survey, including the time, date, methods, and duration of the surveys; identity and qualifications of the surveyor(s); and a list of species~~

observed. If active nests are detected during the surveys, the reports shall include a map or aerial photo identifying the location of the nest(s) and shall depict the boundaries of the proposed no-disturbance buffer zone around the nest(s). Additionally, a nest monitoring plan shall be submitted to the CPM for review and approval. Additional copies shall be provided to the CDFW and USFWS for review and comment; agency comments on the nest monitoring plan must be provided to the CPM in a timely manner. If light-footed clapper rails are documented breeding in Upper Magnolia or Magnolia Marshes, the project owner will notify the CPM and will consult with the USFWS for incidental take authorization. Approval of the plan is required before construction may commence. **The project owner shall provide notification to the CPM prior to initiating preconstruction nest surveys; notification will include the name and resume of the biologist(s) conducting the surveys and the timing of the surveys. Prior to the start of any pre-construction site mobilization, the project owner shall provide the CPM a letter-report describing the findings of the preconstruction nest surveys, including the time, date, methods, and duration of the surveys; identity and qualifications of the surveyor(s); and a list of species observed. If active nests are detected during the surveys, the reports shall include a map or aerial photo identifying the location of the nest(s) and shall depict the boundaries of the proposed no disturbance buffer zone around the nest(s), consistent with Biological Resources Table 5.** All impact avoidance and minimization measures related to nesting birds shall be included in the BRMIMP and implemented. Implementation of the measures shall be reported in the monthly compliance reports by the Designated Biologist.

EXHIBIT C-2

APPLICANT'S OPENING TESTIMONY FOR BIOLOGICAL RESOURCES

TESTIMONY OF MARK BASTASCH, PE., INCE, CWRE

**Opening Testimony of AES Southland Development, LLC
in the Huntington Beach Energy Project Proceeding (12-AFC-02)**

Applicant's Witness: **Mark Bastasch, P.E., INCE, CWRE**

Date: **June 30, 2014**

Topic: **Biological Resources (Noise)**

Applicant's testimony regarding the Staff's Final Staff Assessment of the HBEP's impacts related to noise on biological resources follows. Applicant has concerns with Staff's conclusions in the noise portion of the Biological Resources section of the FSA. Specific recommendations for revisions to the Conditions of Certification are identified at the conclusion of this testimony.

Applicant has explained in various filings and workshops that the wetlands adjacent to the HBEP site are not acoustically pristine resources – these are urban wetlands in one of the most densely populated portions of America. (*See* TN #201437.) Moreover, Applicant's Biological Resources testimony filed herewith as well as the record in this proceeding also confirms and clarifies that specific noise sensitive species have not been documented within the adjacent wetlands and that the recently restored habitat is currently not suitable and may never be suitable for some of the potential species of concern identified by Staff.

While Applicant has consistently disagreed with Staff's conclusions with regard to the potential impact of noise on Biological Resources, in an effort to move past this issue area, the Applicant committed to measures to address the concerns Staff stated during the April 3, 2014 Workshop. (*See* TN# 202108). The concerns expressed by Staff at that time were focused on pile driving noise during the breeding season. Staff indicated that as there is no complaint resolution process for birds as there is for humans; they desired a mechanism to minimize potentially persistent or continuous disturbance. Applicant expressed concern over a firmly enforced numeric limit for construction noise, noting that both ambient noise and construction noise are highly variable and stated that avoiding pile driving for seven months of the year was neither feasible nor reasonable. At the Workshop, Staff agreed with an approach of identifying an "action level" that would trigger deploying additional reasonable and feasible noise reduction measures. Such measures are easily verified by the CPM and provide the Applicant and its contractor a manageable and predictable means to address cost and schedule concerns.

Applicant proposed a condition consistent with the agreement made at the Workshop on April 3, 2014. (TN# 202108.) The only portion of Applicant's proposed condition that Staff appears to have considered is the 8 dBA increment proposed by the Applicant, which I arbitrarily chose in response to Staff's suggestion that some level between 5 and 10 dBA would be acceptable. While Staff may not be aware of it, their proposed condition BIO-9 is contrary to what was discussed at the Workshop. In addition to requiring continuous sound monitoring at multiple locations, BIO-9 requires a firm numeric threshold or noise limit also be satisfied at multiple locations.

There are several challenges with the approach set forth in BIO-9 as proposed by Staff. First, as noted by Dr. Dooling's expert testimony filed herewith on behalf of Applicant, the sound level threshold identified by Staff is not well-supported. There is no clear indication that an exceedance of this arbitrary threshold for an arbitrary duration results in harm (particularly to species whose presence is speculative). Second, the overall sound level varies for a number of reasons. Is construction not going to be allowed on rainy days when the sound of the rain exceeds the threshold?

What about on windy days, high surf days or when motorcycles cruise the adjacent Pacific Coast Highway? It is not clear how the source of a potential exceedance will be attributed to the on-site construction activities or to non-project related activities. What happens when non-project related sounds combine with project related sounds to exceed Staff's arbitrary criteria (*i.e.*, 58 dBA from the project plus 58 dBA from other sources will yield 61 dBA)?

The compliance metrics proposed by Staff have also shifted over time from L_{max} (generally the loudest 1/8th of a second) in the PSA, which the Applicant pointed out was routinely already exceeded (TN #201142), to an hourly average with an allowance of between 5 and 10 dBA above existing levels. A firm biological basis has not been provided by Staff to support any of their proposed limits. Rather, Staff note that they are considering biological noise limits similar to how construction noise for humans was evaluated by Noise and Vibration Staff under CEQA. Dr. Dooling explains that bird and human hearing are not comparable - birds are substantially less sensitive to noise than humans.

In addition, some of the stated construction noise mitigation measures in Staff's proposed BIO-9 are contrary to best practices for managing construction noise. For example, Staff suggested that mitigation include "Reduce[ing] the number of noisy construction and demolition activities that occur simultaneously". This has the effect of extending the duration of construction activities. It is often preferred to conduct noisy activities simultaneously given the logarithmic nature of decibel addition, cumulative increases in sound levels are small. That is, is it truly best to conduct two month long activities that generate 70 dBA each sequentially, resulting in 70 dBA for two months? Or is it more beneficial to conduct such activities simultaneously which reduces the construction period to one month given the resulting sound level is only 3 dBA louder (*i.e.*, 70 dBA + 70 dBA = 73 dBA). In humans, 3 dBA is the threshold of perceivable difference.

Simply put, the proposed continuous long-term monitoring set forth in BIO-9 and data interpretation inherently required therein is fraught with potential complications that Staff appears to have not considered. It just is not clear that Staff's criteria would or even could be satisfied at all times. All of which adds uncertainty for Applicant and their construction contractor given that there is no clear end point to address a hypothetical and speculative impact.

Staff have not demonstrated that the substantial effort required to meet an arbitrary threshold or condition is warranted. The following facts must be kept in mind:

- No noise sensitive species have been identified in the marshes adjacent to the power plant. On the contrary, species that inhabit these urban marshes are more tolerant than species that are not able to reside within areas with so much human influence.
- The marsh complex is adjacent to both an existing power plant and a highway, historic uses that have been present for over 50 years.
- The adjacent marsh complex is man-made, recently restoring habitat that had been severely degraded for decades.
- Staff have not demonstrated that exceedance of any of the proposed metrics (L_{max} , L_{eq}) or time periods (hourly, 1-second, etc.) present a clear danger to the species that inhabit the area. Nor have Staff addressed the possibility that any bird that was disturbed could move to other habitat, further way from the border of the site.

- Applicant offered clear criteria for which clear actions would be taken and Staff have not identified that exceedance of Applicant's proposed criteria would result in irreparable harm (TN# 202108).

Although Applicant does not concur that HBEP's construction noise poses a significant impact to biological resources, it should be noted that BIO-8 as revised by Applicant in separate Biological Resources testimony filed herewith includes numerous protective measures such as pre-construction nest surveys, the establishment of nest buffer zones, nest monitoring and adaptive management based on any observed nest disturbance. Based on the foregoing, Applicant proposes that BIO-9 be deleted in its entirety. In the alternative, Applicant proposes the following changes to Conditions of Certification BIO-9, as set forth below and as set forth in Applicant's April 18, 2014 Follow-Up to PSA Part B Workshop - Part 1 of 2 (TN# 202108.).

BIO-9 The project owner shall prepare and implement a Wildlife Noise Monitoring Plan ~~when pile driving occurs during~~ throughout construction and demolition activities taking place during the bird breeding season (February 1 to August 31). Sound levels in Upper Magnolia and Magnolia marshes shall not exceed 8 dBA above ambient levels or 60 dBA (hourly average Leq), whichever is greater. Ambient levels will be established prior to initiation of construction and demolition, using the same methodology that will be used to take noise measurements during monitoring. The project owner shall document ambient noise conditions at three locations: the wetland pier in Magnolia Marsh (sound monitoring location M5), within the marsh (sound monitoring location M6), and an additional sound monitoring location to be established at the fence line between the project site and the western boundary of the Upper Magnolia Marsh. These and prior noise data will be included in the Wildlife Noise Monitoring Plan.

If periodic construction sound monitoring indicates that project-related sound levels in the Magnolia Marsh from February 1 through August 31 are anticipated to exceed the greater of: (1) the existing hourly Leq plus 8 dBA; or (2) an hourly Leq of 60 dBA for six (6) hours per day for five (5) or more continuous days during pile driving activities and pile driving is anticipated to occur for 30 or more days, additional pile driving noise reduction measures shall be implemented. Pile driving noise reduction measures could consist of (1) the use of pads, (2) the use of dampers, (3) if practicable, the use of vibratory pile driving, (4) temporary construction noise barrier either along the fence line or closer to the equipment or (5) other measures approved by the CPM.

~~Continuous noise monitoring devices will be established at each of the three (3) noise monitoring locations and will be checked daily by the Biological Monitor, Designated Biologist, or other monitor as approved by the CPM under the following conditions:~~

- ~~• During all construction and demolition occurring within 400 feet of the fence line separating the project site from Upper Magnolia and Magnolia Marshes, and~~
- ~~• During all pile driving activities at any location on the project site.~~

The monitor will review the data from each noise monitoring device daily during these times and will compare it to the project's construction schedule from the time period under review. If the hourly average noise threshold is exceeded at any of the three (3) monitoring locations, and the exceedance coincides with noisy project activities, the CPM will be notified immediately and additional noise reduction techniques shall be implemented as soon as possible, in coordination with the CPM, to reduce project noise below the thresholds. Additional noise monitoring will be conducted to verify the reduction of noise levels below the thresholds. Noise reduction techniques can include, but are not limited to:

- Temporary noise barriers, sound walls;
- Use of pads or dampers;
- Reduce speed limits;
- Replace and update noisy equipment;
- During the nesting season, avoid pile driving or confine pile driving to areas of the project site furthest from the marshes;
- Moveable task noise barriers;
- Queue trucks to distribute idling noise;
- Locate vehicle access points and loading and shipping facilities away from the southern and eastern project boundaries;
- Reduce the number of noisy construction and demolition activities that occur simultaneously;
- Place noisy stationary construction equipment in acoustically engineered enclosures or relocate them away from the southern and eastern project boundaries;
- Reorient or relocate construction equipment to minimize noise at the Magnolia Marsh; and
- Perform pile driving with quieter equipment.

Noise monitoring is not required outside of the bird nesting season. During the bird nesting season, noise monitoring is not required if (1) no pile driving is occurring anywhere on site, and (2) no construction or demolition activities are occurring within 400 feet of the fence line separating the project and the marshes.

Verification: At least fourteen (14) days prior to the start of production pile driving, a wildlife noise monitoring protocol will be submitted to the CPM that outlines the pile driving noise monitoring plan. Sound monitoring will initially be necessary over a period of two (2) days as piling activities commence and monitoring will be repeated when piling activities move closer to the Magnolia Marsh or as otherwise approved by the CPM. If required, pile driving noise reduction measures shall be implemented within 14 days or as otherwise approved by the CPM.

No fewer than thirty (30) days prior to the start of construction and demolition activities, the project owner shall provide the CPM with the final version of the Wildlife Noise Monitoring Plan as reviewed and approved by the CPM. The project owner shall implement the approved Wildlife Noise Monitoring Plan during the bird breeding season (February 1 to August 31) for the duration of construction and demolition activities, which will include documentation of the hourly average noise levels (Leq) at each of the three sound monitoring locations

during periods of noise monitoring. Methods, results, and any corrective measures implemented shall be reported in the monthly compliance reports by the Designated Biologist and submitted to the CPM, CDFW, and USFWS.

EXHIBIT C-3

APPLICANT'S OPENING TESTIMONY FOR BIOLOGICAL RESOURCES

TESTIMONY OF ROBERT J. DOOLING, PH.D.

**Opening Testimony of AES Southland Development, LLC
in the Huntington Beach Energy Project Proceeding (12-AFC-02)**

Applicant's Witness: **Robert J. Dooling, Ph. D.**

Date: **June 30, 2014**

Topic: **Biological Resources (Noise)**

The threshold level of 60 dBA at which anthropogenic noise may interfere with bird communication has been applied in a variety of settings over the past 25 years. As a bird hearing expert I can say that this criterion is a very crude estimate that would only apply in a narrow context in a relatively quiet rural environment without human or traffic activity (the north rim of the Grand Canyon may serve as one example). A precise answer to the question of how interfering any given noise is to birds and their acoustic communication would require information about the level and spectrum of the ambient noise, of the noise in question, and of the bird's vocalizations. This point was made by Dooling and Popper (2007) in a report for the California Department of Transportation (CALTRANS) which reviewed the effects of traffic noise on birds. Since this time, there is now additional evidence suggesting that the 60 dBA threshold is overly conservative when considering the effect of low frequency noise, such as construction noise, on birds. Below I review these previous arguments and provide new information in support of this conclusion.

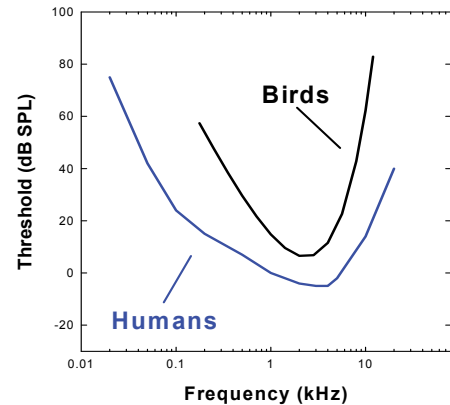
Birds are resistant to hearing loss from acoustic overexposure: It is unlikely that the off-site noise levels in the City of Huntington Beach can reach anywhere near the levels that are hazardous to either the human or avian auditory system. But it is worth noting there is now a wealth of recent laboratory research examining the effect of high levels of noise on the avian auditory system. Two conclusions from this work are: (1) that birds in general are less susceptible to hearing loss from noise exposure than are humans and other mammals, and (2) they have a much greater capability for hearing recovery following exposure to intense noise (Ryals, et al, 2013; Dooling, et al, 1997).

The use of A-weighted sound pressure levels is overly conservative for birds. The sound pressure levels referenced in most environmental impact reports are measured in decibels with an A-weighting filter network, called the A-scale. The A-scale de-emphasizes the very low (and very high frequency) components of a complex, broadband sound in a manner similar to the frequency response of the human ear. Sound levels measured using this A-scale generally correlate well with subjective reactions of humans to noise. For this reason, the A-scale has become the industrial, government, and environmental measurement standard for predicting and accommodating the psychological and auditory effects of noise on humans. But there is now an extensive body of work on over 50 species of birds showing that their hearing is substantially different than humans and using the A-scale to assess avian response to sounds is not appropriate.

Birds are less disturbed by low frequency noise than humans because they hear less well than humans at low frequencies. Birds hear best in a relatively narrow frequency region of about 1- 5 kHz (high or top C on a piano is 1.047 kHz and the 88th key is 4.186 kHz) while

humans hear better and over a much broader range (Dooling, et al, 2000). Audiograms for birds show that they are, on average, as much as 15-20 dB less sensitive than humans and many other mammals at frequencies below about 1 kHz. A 10 dB difference in humans is generally taken as a doubling or halving in loudness, a 20 dB difference would be 4 times or ¼ as loud and similar phenomena occurs in birds (Dent, et al, 2000). Thus, a 15 to 20 dB difference between birds and humans at low frequencies is substantial and significant since construction noise is predominantly low frequency.

Another way to look at this difference is to imagine that sound level meters had both an A-scale (modeled after human hearing) and a 'Bird' scale (modeled after bird hearing). If a construction noise measured with the A-scale gave a reading of 60 dBA, the same noise measured on the 'Bird' scale would register less than 50 and perhaps approaching even 40 dB. The difference between the human audiogram and that of the average bird audiogram is shown in the figure to the right. This difference is the primary reason an A-weighted criterion, such as the 60 dBA, is overly conservative in estimating effects of construction noise on birds. The differences between human and bird hearing suggest it is inappropriate to use what humans hear or consider loud (i.e. sound levels measured in dBA) to estimate what a bird may find disturbing.



Bird Hearing, Bird Vocalizations, and Masking: Aside from whether or not birds find construction noise loud or disturbing, there is the possibility that any increase in noise, above ambient, might affect the ability of birds to communicate with one another much like humans sometimes have trouble communicating in a noisy restaurant. But again, the low frequency nature of construction noise works in the bird's favor. Birds hear best in the same frequency region, not surprisingly, that contains most of the energy in their vocalizations, about 1-5 kHz (Dooling, et al, 2000). A large proportion of the energy in construction noise occurs at frequencies below this range. We know from masking studies in over 15 species of birds, and a variety of mammals including humans, that noise in the spectral region of the signal is most effective masking the signal, not noise below or above this range. Only when the contribution of construction noise in the region of 1-5 kHz exceeds the natural ambient noise levels is there the possibility that this noise will make it more difficult for one bird to hear the vocalizations of another bird. But, even if this were to occur, birds have developed mechanisms to adapt to noise in their environment as enumerated later.

The assertion above has been empirically verified. Work in my lab measured the perception of vocalizations by three different species of birds in two different noisy backgrounds both of which had the same overall dBA sound level. One noisy background had equal energy across a wide range of frequencies (broadband noise) while the other noisy background had a spectrum that was shaped like traffic (or construction) noise with more energy at lower frequencies and progressively less energy at higher frequencies. Birds were up to 10 dB better at hearing vocalizations in the low frequency dominated background noise than they were at hearing the same vocalizations in broadband noise (Lohr, et al, 2003) even though both noises had the same overall dBA level. These findings have important and practical implications. They suggest that

while a bird might hear the construction noise if it is loud enough, it is another matter entirely whether this construction noise would mask the birds' communication signals. An analogous human situation might be one of having a conversation indoors while still being able to clearly hear and identify the sound of a lawn mower (i.e. predominantly low frequency energy) outside in your backyard. The sound of the lawn mower is clearly audible and identifiable but does not interfere with speech communication.

We recently developed a model to quantify how ambient noise or anthropogenic noise such as traffic or construction noise limits or interferes with bird communication. This model that integrates the spectrum and level of the masking noise, the bird's hearing in quiet and noisy environments, the spectrum and level of a signaling bird's vocalizations, and the acoustic characteristics of the environment (Dooling and Blumenrath, 2013). We know that bird vocalizations can easily reach levels of 90-100 dB at the source and that they attenuate with distance (Brackenbury, 1979). The model assumes that the spectrum and amplitude level of the noise and of the signaler's vocalization are both known at the location of the receiver. Relying on parallels with human communication, the model also incorporates the notion that different auditory behaviors (e.g., communicating comfortably versus just being able to detect that a sound occurred) have different signal-to-noise ratios at threshold. A higher signal-to-noise ratio is needed to communicate comfortably in noise than is needed to just barely 'detect' that sound occurred.

In an open area against a generic background traffic/construction noise of 60 dBA with a sloping spectrum, the average bird can still comfortably communicate acoustically with another bird at a distance of a couple of hundred feet. The average bird can recognize the vocalizations of another bird at a distance well over 500 feet and it can discriminate between two vocalizations at a distance equal to about two and a half football fields. The model predicts that if the noise level were raised to 68 dBA, the average bird could still comfortably communicate acoustically with another bird at a distance just under 100 feet. The average bird could recognize the vocalizations of another bird at a distance of a little less than the length of a football field, and it could still discriminate between two vocalizations at a distance well over the length of a football field. Thus the model predicts that birds can still communicate effectively in a background of construction noise over rather large distances. These predictions support the fairly frequent anecdotal observations, and occasional field observation (Francis, et al, 2009), that birds may habituate, adapt, or even prefer to reside and breed in areas that sound noisy to human listeners (such as near highways and railroad tracks).

Finally, as pointed out in Dooling and Popper (2007), these experimentally determined signal-to-noise ratios and distances produced by the model also are very conservative and represent a worst case. This because the background noise used to determine these signal-to-noise ratios in the laboratory was continuous and the signal and the noise came from the same source (a loudspeaker). That is almost never the case in the real world where the noise levels fluctuate considerably throughout a day and the signal (i.e. another bird) comes from a different location than the noise. In addition, it has been demonstrated under controlled experimental conditions that birds have evolved many of the short term listening strategies that humans use to communicate better in noisy situations (e.g. a cocktail party) by raising their voices (Manabe, et al, 1998), turning their heads to hear better (Dent and Dooling, 2003a,b), moving to a better listening position, etc. And it is important to remember as well, that during the courtship and

nesting phase in birds, much of the acoustic communication is probably occurring at fairly close quarters (i.e. near the nest) as opposed to tens or hundreds of feet across a bird's territory.

In conclusion, the development and application of an A-weighted criteria, and 60 dBA in particular, for estimating the effect of construction noise on birds is not well supported by either previous or current data on hearing and vocal communication in birds. The literature in this area over the last several decades is fairly clear: birds are considerably less sensitive to low frequency sounds than are humans and their vocalizations tend to be in a higher frequency range than most of the noise produced by construction equipment. Quantitative estimates of communication distances between birds suggests such noise will not affect the bird's communicative behavior in a significant way.

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EXHIBIT D
APPLICANT'S OPENING TESTIMONY FOR CULTURAL RESOURCES

**Opening Testimony of AES Southland Development, LLC
in the Huntington Beach Energy Project Proceeding (12-AFC-02)**

Applicant's Witness: **Clint Helton**

Date: **June 30, 2014**

Topic: **Cultural Resources**

As documented in the records for this proceeding, no historical resources of any kind were found as a result of the comprehensive cultural resources analysis conducted for HBEP, nor were resources found during prior geotechnical testing or during any phase of previous construction. Additionally, no Native American sacred sites or areas of concern are located within or near the HBEP site and no individual, group, or tribe indicated such resources exist at HBEP.

CEQA defines a “substantial adverse change” as the physical demolition, destruction, relocation or alteration of the historical resource or its immediate surroundings such that the significance of an historical resource would be materially impaired. CEQA goes on to define “materially impaired” as work that materially alters, in an adverse manner, those physical characteristics that convey the resource’s historical significance and justify its inclusion in the California Register of Historic Places, a local register of historical resources, or an historical resource survey. None of these conditions exist for HBEP.

The HBEP project site is highly disturbed from decades of development and use. Anywhere from 2 to 23 feet of depth has been disturbed across the site. This highly disturbed condition is undisputed and has been described by the Applicant in multiple filings to-date. (TN #68366; TN #201142; TN #201437; and TN #201437.) For additional visual reference, several historic photographs of the Huntington Beach Generating Station under construction (circa. 1959) demonstrate the disturbance across the site. (TN #202535). These photographs clearly depict the scope and scale of both aerial and vertical disturbances resulting from massive earthmoving during original construction of the HBGS.

Therefore, the analysis of whether HBEP will have any “substantial adverse change” or will “materially impair” historical resources becomes one focused on whether there is a low, moderate, or high potential for subsurface archaeological resources to be found during below-surface construction activities. Mitigation, if any, should then be applied commensurately.

As discussed in Section 5.3.3.2 of the AFC, the original ground surface of the existing Huntington Beach Generating Station site was approximately level prior to plant construction with an 8 feet layer of clay situated over 200 feet of compact sand. The 8 feet of clay was removed and replaced with fill for construction. Excavation depths for the foundations of HBEP are expected to reach below the artificial fill placed as part of the construction of the existing Huntington Beach Generating Station and into the alluvial and estuarine deposits identified during the geotechnical investigation (Ninyo and Moore, 2011). Pile driving for the HBEP Power Block 1 will extend beneath the artificial fill and into the native compact sand strata. However, pile driving would not require monitoring, even though it could reach into the sand level as the nature of pile driving does not allow for the observation of the soils. No soil is

brought up to the surface during pile driving and thus, this activity does not warrant monitoring. The construction of HBEP Power Block 2 will use the existing concrete foundation (to the extent feasible) for existing Huntington Beach Generating Station's Units 3 and 4, therefore, excavation within the artificial fill or pile driving into native soil will be limited for HBEP Power Block 2 construction.

As previously stated, the Applicant continues to assert that a portion of the HBEP Block 2 foundation slab, measuring approximately 50 feet x 130 feet, is the primary component of the Project that has potential to impact previously undisturbed soils. Planned excavations in this small area are expected to be up to 9 feet deep. Up to 6 inches of soil at the bottom of these excavations could possibly intrude into undisturbed soils, however, this 6 inches lies beneath the 8-9 feet of overburden of disturbed soil and artificial fill, so that less than 5 percent of the total volume of soil that will be impacted is theoretically undisturbed. In addition, as discussed above, based on previous construction of the exiting Huntington Beach Generating Station, the 5 percent of soil has a very low potential of containing historical resources.

Additionally, Staff concluded, and the Applicant agrees, that "The likelihood that the proposed project would actually result in significant impacts to buried archaeological resources appears low, however."

In practical and simple terms, the net result of the analysis is that archaeological sensitivity in this location is low and the project's potential to affect undisturbed native soils having potential to impact buried archaeological resources is also low.

Even though the net result of the analysis is that archaeological sensitivity in this location is low and the project's potential to affect undisturbed native soils having potential to impact buried archaeological resources is also low, Staff nonetheless have proposed a monitoring condition consistent with a site with known or with a high probability of affecting historical resources. CUL-6 as proposed by Staff essentially requires full-time monitoring anywhere that it cannot be proven with 100 percent certainty that resources exist. Such a measure is inconsistent with Staff's findings, the traditional application of mitigation under CEQA, and is not commensurate with the actual site sensitivity resulting from the limited amount of undisturbed soils that could be impacted by a narrowly-defined set of construction activities combined with the low potential for historical resources to be impacted. Therefore, to impose automatic full-time monitoring as a mitigation measure would be to address a mere fraction of a percentage of sensitivity compared to the overall volume of soil to be impacted during construction of HBEP.

For a site such as HBEP and for sites with similar low potential for impacting historic resources, the CEC, through the licensing of numerous projects, has determined the preparation of a Cultural Resources Mitigation and Monitoring Plan ("CRMMP") with discovery plans and implementation of a Worker Environmental Awareness Program ("WEAP") is appropriate, adequate and commensurate mitigation; therefore, for HBEP the preparation of a CRMMP and WEAP for HBEP is the appropriate mitigation.

Based on the foregoing, Applicant proposes the following Condition of Certification CUL-6 in lieu of CUL-6 as proposed by Staff.

CUL-6

In the event that a CRHR eligible (as determined by the CPM) cultural resources is discovered, at the direction of the CPM, the project owner shall ensure that the CRS or alternate CRS monitor full time all ground disturbances in the area of the CRHR-eligible cultural resources discovery has been made. The level, duration, and spatial extent of monitoring shall be determined by the CPM. In the event that the CRS believes that a current level of monitoring is not appropriate, a letter or email detailing the justification for changing the level of monitoring shall be provided to the CPM for review and approval prior to any change in the level of monitoring.

Full-time archaeological monitoring for the project, if deemed necessary due to the discovery of a CRHR-eligible cultural resource, shall be the archaeological monitoring of all earth-moving activities in the areas specified in the previous paragraph, for as long as the CPM requires.

Where excavation equipment is actively removing dirt and hauling the excavated material to a location farther than fifty feet from the location of active excavation, full-time archaeological monitoring shall require at least two monitors per excavation area. In this circumstance, one monitor shall observe the location of active excavation and a second monitor shall inspect the disposal of the excavated soil. For excavation areas where the excavated soil is disposed of no farther than fifty feet from the location of active excavation, one monitor is sufficient to observe both the excavation and soil disposal.

The research design in the CRMMP shall govern the collection, treatment, retention/disposal, and curation of any archaeological materials encountered during archaeological monitoring.

If monitoring should be needed, as determined by the CPM, due to the discovery of a CRHR-eligible cultural resource, the CRS shall keep a daily log of any monitoring and other cultural resources activities and any instances of non-compliance with the Conditions and/or applicable LORS on forms provided by the CPM. Copies of the daily monitoring logs shall be provided by the CRS to the CPM, if requested by the CPM. From these logs, the CRS shall compile a monthly monitoring summary report to be included in the MCR. If there are no monitoring activities, the summary report shall specify why monitoring has been suspended.

The CRS, at his or her discretion, or at the request of the CPM, may informally discuss cultural resource monitoring and mitigation activities with Energy Commission technical staff.

Cultural resources monitoring activities are the responsibility of the CRS. Any interference with monitoring activities, removal of a monitor from duties assigned by the CRS, or direction to a monitor to relocate monitoring activities by anyone other than the CRS shall be considered non-compliance with these Conditions.

Upon becoming aware of any incidents of non-compliance with the Conditions and/or applicable LORS, the CRS and/or the project owner shall notify the CPM by telephone or e-mail within 24 hours. The CRS shall also recommend corrective action to resolve the problem or achieve compliance with the Conditions. When the issue is resolved, the CRS shall write a report describing the issue, the resolution of the issue, and the effectiveness of the resolution measures. This report shall be provided in the next MCR for the review of the CPM.

Verification:

- 1. At least 30 days prior to the start of ground disturbance, the CPM will provide to the CRS an electronic copy of a form to be used as a daily monitoring log.**
- 2. Monthly, while monitoring is on-going, the project owner shall include in each MCR a copy of the monthly summary report of cultural resources related monitoring prepared by the CRS and shall attach any new DPR 523A forms completed for finds treated prescriptively, as specified in the CRMMP.**
- 3. At least 24 hours prior to implementing a proposed change in monitoring level, the project owner shall submit to the CPM, for review and approval, a letter or email (or some other form of communication acceptable to the CPM) detailing the CRS's justification for changing the monitoring level.**
- 4. No later than 30 days following the discovery of any Native American cultural materials, the project owner shall submit to the CPM copies of the information transmittal letters sent to the Chairpersons of the Native American tribes or groups who requested the information. Additionally, the project owner shall submit to the CPM copies of letters of transmittal for all subsequent responses to Native American requests for notification, consultation, and reports and records.**
- 5. Within 15 days of receiving them, the project owner shall submit to the CPM copies of any comments or information provided by Native Americans in response to the project owner's transmittals of information.**

In addition to the proposed CUL-6 set forth above, Applicant proposes changes to Conditions of Certification CUL-1 and CUL-2. Regarding the proposed change to CUL-1, Staff's proposed CUL-1 does not follow the standard provisions or language. As worded, this unique provision

has the potential to delay construction and/or lead to increased costs if the CEC does not approve the CRS. In addition, the CEC's basic requirements for a CRS are already clearly defined in CUL-1 and the approval cannot be arbitrary. (See FSA at p. 4.3-60 (CUL-1 (citing the U.S. Secretary of the Interior's Professional Qualifications Standards, as published in Title 36, Code of Federal Regulations, part 61).) Contrary to the regulatory requirements, the language proposed by Staff in the fourth paragraph of CUL-1 essentially allows the CPM unlimited and un-checked authority to approve or deny a CRS for any reason. Applicant also proposes that additional language in CUL-1 be deleted as it is ambiguous. Each Condition expressly states the requirements for when the Condition applies and the blanket statement in CUL-1 is unnecessary (and, at times, may prove to be contrary to the express language of certain CUL Conditions).

CUL-1

Prior to the start of ground disturbance (as defined in the Compliance Conditions section); post-certification cultural resources activities (including but not limited to "survey", "in-field data recording," "surface collection," "testing," "data recovery" or "geoarchaeology"); or site preparation or subsurface soil work during pre-construction activities or site mobilization; the project owner shall obtain the services of a Cultural Resources Specialist (CRS) and one or more alternate CRS. The project owner shall submit the resumes and qualifications for the CRS, CRS alternates, and all technical specialists to the Compliance Project Manager (CPM) for review and approval.

The CRS shall manage all cultural resource monitoring, mitigation, curation, and reporting activities, and any post-certification cultural resource activities (as defined in the previous paragraph), unless management of these is otherwise provided for in accordance with the cultural resource conditions of certification (conditions). The CRS shall serve as the primary point of contact on all cultural resource matters for the Energy Commission. The CRS may elect to obtain the services of Cultural Resource Monitors (CRMs), Native American Monitors (NAMs), and other technical specialists, if needed, to assist in monitoring, mitigation, and curation activities. The project owner shall ensure that the CRS makes recommendations regarding the eligibility for listing in the California Register of Historical Resources (CRHR) of any cultural resources that are newly discovered or that may be affected in an unanticipated manner.

No construction-related ground disturbance or grading, boring, and trenching, as defined in the Compliance Conditions for this project; post-certification cultural resource activities (as defined in the first paragraph of this condition); or site preparation or subsurface soil work during pre-construction activities or site mobilization, shall occur prior to CPM approval of the CRS and alternates, unless such activities are specifically approved by the CPM.

~~Approval of a CRS may be denied or revoked for reasons including, but not limited to, non-compliance on this or other Energy Commission projects and for concurrent service as CRS on an unmanageable number of Energy Commission~~

~~projects, as determined by the CPM. After all ground disturbances is completed and the CRS has fulfilled all responsibilities specified in these cultural resources conditions, the project owner may discharge the CRS, after receiving approval from the CPM.~~

~~The staff recommended conditions described in this subsection of the FSA shall continue to apply during operation of the proposed power plant.~~

Regarding the Applicant's proposed changes to CUL-2, the project owner is already required to submit a monthly compliance report and should not be required to submit a separate "progress report." It is also unclear how the project owner would determine who is "interested" and should receive such a progress report, and what content the progress report should contain. Given that the MCR is publicly available and covers all topic areas, including cultural resources, this extra reporting requirement is superfluous and should be deleted. As recognized in CUL-1, there is a possibility of some lag time between termination, release, or resignation of a CRS and approval of a new CRS. It makes more sense to tie the notice requirement to approval of the new CRS. Therefore, Applicant proposes changes to Item 5 and Item 7 of the CUL-2 Verification.

CUL-2

Verification:

~~5. Monthly, during ground disturbance, email progress report to the CPM, interested Native Americans and other interested parties.~~

7. ~~At least 10 days prior to a termination or release of the CRS, or~~ **If a new CRS is approved by the CPM as provided for in CUL-1,** ~~or within 10 days after the resignation of a CRS,~~ the project owner shall provide the CPM notice that the AFC, data responses, confidential cultural resources documents, all supplements, FSA, Final Commission Decision, and maps and drawings have been provided to the new CRS **within 10 days of such approval.**

EXHIBIT E
APPLICANT'S OPENING TESTIMONY FOR HAZARDOUS MATERIALS HANDLING

**Opening Testimony of AES Southland Development, LLC
in the Huntington Beach Energy Project Proceeding (12-AFC-02)**

Applicant's Witness: **Sarah Madams**

Date: **June 30, 2014**

Topic: **Hazardous Materials Management**

Applicant agrees with Staff's statement in the FSA that "it is appropriate to rely upon the extensive regulatory program that applies to the shipment of hazardous materials on California highways to ensure safe handling in general transportation." (FSA, p. 4.4-12.) Applicant also agrees with the conclusion that "the risk of exposure to significant concentrations of aqueous ammonia during transportation to the facility is insignificant..." (FSA, p. 4.4-13), but acknowledges the concerns regarding transportation of aqueous ammonia. The FSA explains that HAZ-6 is intended to address the insignificant "risk of an accident involving the transport of aqueous ammonia." (FSA, p. 4.4-13.) Consistent with Staff's conclusions in the FSA, it is appropriate to limit HAZ-6 to the transport of aqueous ammonia. Based on the foregoing, Applicant requests the following modification to HAZ-6:

HAZ-6: The project owner shall direct all vendors delivering ~~any hazardous material~~ **aqueous ammonia** to the site to use only the route approved by the CPM (I-405 to Beach Boulevard (State Highway 39), south onto Pacific Coast Highway (State Highway 1), and left onto Newland Street, then right in the HBEP site). The project owner shall obtain approval of the CPM if an alternative route is desired.

Verification: At least sixty (60) days prior to receipt of ~~any hazardous materials~~ **aqueous ammonia** on site, the project owner shall submit copies of the required transportation route limitation direction to the CPM for review and approval.

EXHIBIT F
APPLICANT'S OPENING TESTIMONY FOR LAND USE

**Opening Testimony of AES Southland Development, LLC
in the Huntington Beach Energy Project Proceeding (12-AFC-02)**

Applicant's Witness: **Robert Mason**

Date: **June 30, 2014**

Topic: **Land Use**

Applicant proposes a minor modification to the verification for LAND-1. This modification is consistent with the requirements of Appendix B(g)(3)(c) of the Siting Regulations (Title 20, California Code of Regulations), which requires that a single parcel be established prior to construction, but does not require an additional time trigger. The requested modification is necessary to ensure that the schedule for approval of the lot line adjustment will not delay construction.

LAND-1

Verification: ~~At least 30 days p~~ **P**rior to construction of the first power block, the project owner shall submit evidence to the compliance project manager (CPM), indicating approval of a Lot Line Adjustment by the city of Huntington Beach, establishing a single parcel....

EXHIBIT G
APPLICANT'S OPENING TESTIMONY FOR NOISE & VIBRATION

**Opening Testimony of AES Southland Development, LLC
in the Huntington Beach Energy Project Proceeding (12-AFC-02)**

Applicant's Witness: **Mark Bastasch, P.E., INCE, CWRE**

Date: **June 30, 2014**

Topic: **Noise & Vibration**

Applicant concurs with Staff's conclusions in the Noise section of the FSA and agrees with the Conditions of Certification set forth in the FSA pertaining to Noise & Vibration with the incorporation of the minor clarifications set forth below to NOISE-2, NOISE-4 and NOISE-7.

NOISE-2. Applicant proposes one minor addition to the Verification in NOISE-2, as follows:

Verification: Within five days of receiving a **legitimate** noise complaint, the project owner shall file with the CPM a Noise Complaint Resolution Form, shown below, that documents the resolution of the complaint. If mitigation is required to resolve the complaint, and the complaint is not resolved within a three business-day period, the project owner shall submit an updated Noise Complaint Resolution Form when the mitigation is implemented.

NOISE-4. Applicant also proposes a minor change to NOISE-4. The first paragraph of NOISE-4 erroneously refers to a 61 dBA L_{eq} , which, pursuant to LORS, should be revised to 61 dBA L_{50} . In the same vein, the reference in the fourth paragraph to "include L_{eq} and L_{90} readings" should be revised to read "include L_{50} and L_{90} readings." These changes are noted in the partial text of NOISE-4 below.

NOISE-4 The project design and implementation shall include appropriate noise mitigation measures adequate to ensure that the operation of the project will not cause the noise levels due to normal steady-state plant operation alone, to exceed an hourly average of 61 dBA L_{50} ~~L_{eq}~~ , measured at or near monitoring location M2.

When the project first achieves a sustained output of 85 percent or greater of its rated capacity, the project owner shall conduct a 25-hour community noise survey at monitoring locations M2, M3 and M4, or at a closer location acceptable to the CPM and include L_{50} ~~L_{eq}~~ and L_{90} readings. This survey shall also include measurement of one-third octave band sound pressure levels to ensure that no new pure-tone noise components have been caused by the project.

NOISE-7. Applicant proposes minor changes to the text of NOISE-7 regarding the time for high-pressure steam blows. Applicant wishes to slightly extend the time for such high-pressure steam blows to occur until 6:00 p.m., which is within the time allowed pursuant to LORS. In order to support this change and to ensure compliance with this Condition, Applicant has also proposed language wherein Applicant will not initiate any new high-pressure steam blows after 5:00 p.m. Applicant does not propose any revisions to the Verification of NOISE-7.

NOISE-7 If a traditional, high-pressure steam blow process is used the project owner shall equip steam blow piping with a temporary silencer that quiets the noise of steam blows to no greater than 89 dBA measured at a distance of 50 feet. The steam blows shall be conducted between 8:00 a.m. and ~~6:00~~ 5:00 p.m. **A new high-pressure steam blow shall not be initiated after 5:00 p.m.** If a low-pressure, continuous steam blow process is used, the project owner shall submit to the CPM a description of the process, with expected noise levels and planned hours of steam blow operation.

EXHIBIT H
APPLICANT'S OPENING TESTIMONY FOR SOILS & WATER RESOURCES

**Opening Testimony of AES Southland Development, LLC
in the Huntington Beach Energy Project Proceeding (12-AFC-02)**

Applicant's Witness: **Matthew Franck**

Date: **June 30, 2014**

Topic: **Soil & Water Resources**

Applicant concurs with Staff's analysis and conclusions in the FSA. However, Applicant wishes to provide additional evidence in support of Staff's conclusions and a few clarifications to the FSA text.

The FSA discusses Water Supply Assessments starting on p. 4.9-20. Applicant agrees with Staff's conclusion that HBEP does not meet the definition of a "project" as set forth in sections 10910 through 10915 of the California Water Code and that HBEP provides a net reduction in water use. In addition to the information contained in the FSA, confirmation of water supply availability is provided by the City of Huntington Beach's 2010 Urban Water Management Plan ("UWMP") (TN #202479). Specifically, Table 6.1-1 of the UWMP presents information on current and projected water use in Huntington Beach, including demand from the existing HBGS facility (described as the "AES Power Plant"). (See TN #202479 at pp. 6-1.) The UWMP concludes that the City of Huntington Beach has sufficient water supplies to meet demands (including demands associated with an "AES Power Plant") in normal, single dry, and multiple dry years. As described elsewhere, HBEP water use (maximum of 134 acre-feet per year ("AFY")) would be far less than current HBGS use (290 AFY); therefore, there is adequate City supply for HBEP.

The FSA differentiates between 115 AFY ("typical water use" as reported in the AFC) and 134 AFY (maximum HBEP water use). However, there are inconsistencies in the references between the two amounts within the Soil & Water Resources section of the FSA. For example, the Summary of Conclusions (p. 4.9-2) and the overall Conclusion (p. 4.9-22) both incorrectly refer to 115 AFY regarding SOIL&WATER-6, which correctly refers to a 134 AFY maximum water use. At a minimum, these two references should be changed to 134 AFY.

Lastly, in several places, Staff cites the existing HBGS waste discharge order as SWRCB Order R8-2010-0062. (See, e.g., FSA at pp. 4.9-5, 4.9-11, 4.9-12, 4.9-13, and 4.9-26 (SOIL&WATER-4).) Order No. R8-2010-0062, however, is the Regional (MS4) Municipal Permit ("Waste Discharge Requirements for Areawide Urban Storm Water Runoff for the County of Orange, Orange County Flood Control District and the Incorporated cities of Orange County within the Santa Ana Region") and is not the correct reference for the existing HBGS discharge permit. Applicant does not take issue with Staff's description of the existing HBGS discharge permit in the FSA, but the correct order number – R8-2006-0011- needs to be used instead of the incorrect reference to the regional permit. Applicant wishes to note that although the FSA uses the incorrect Order No., Staff did incorporate the correct NPDES number into the FSA. (NPDES No. CA0001163.)

EXHIBIT I
APPLICANT'S OPENING TESTIMONY FOR VISUAL RESOURCES

**Opening Testimony of AES Southland Development, LLC
in the Huntington Beach Energy Project Proceeding (12-AFC-02)**

Applicant's Witness: **Thomas Priestley, Ph.D, AICP/ASLA**

Date: **June 30, 2014**

Topic: **Visual Resources**

I. INTRODUCTION

Contrary to Staff's conclusion on page 4.12-18 of the FSA that "...the proposed HBEP could slightly improve the overall visual quality at the project site even with little or no visual screening", overall visual quality will substantially improve with the Project. The evidence in this proceeding clearly demonstrates that replacement of the four large 1950's era power blocks and their massive, 214 foot high stacks that are now located on the project site with a modern power generation facility that will be smaller in scale and sleeker in design will bring about a substantial improvement in the site's appearance even with little or no visual screening. The flaw in Staff's analysis is that its conclusions are not based on a systematic comparison of the with-project visual conditions with the visual conditions that now exist on the site.

Applicant agrees with Staff's conclusions that in the views from KOPs 1, 2, 3, 6, and 7, the project will not substantially degrade the existing visual character or quality of the site and its surroundings. Applicant disagrees with Staff's conclusions that significant impacts would be created by:

- changes to the views from KOPs 4 and 5
- the process of demolishing the existing facility on the site and constructing the proposed project,
- the lighting that will be present on the site during project construction and during the project's operating period, and
- the project's cumulative effects.

Because the project will not result in significant impacts to visual resources, there is no basis for requiring mitigation measures for visual impacts. In particular, Condition of Certification VIS-1 requiring the additional architectural enhancements that the Applicant and the City of Huntington Beach have agreed upon, is not properly included as a mitigation measure because the project's impacts are less than significant without the implementation of these measures. That said, most of the Visual Resources Conditions of Certification confirm the implementation of measures that the Applicant intends to undertake. Accordingly, Applicant does not object to including these provisions as Conditions of Certification, but it should be clearly stated that these conditions are not required mitigation for any significant environmental impacts. Additionally, changes are required to ensure that the provisions are clearly stated, will achieve the intended effect, and will not create unwarranted burdens. Specific recommendations for revisions to the Conditions of Certification are identified at the conclusion of this testimony.

II. STAFF'S ANALYSIS INCORRECTLY CONCLUDES THAT THE CHANGES TO THE VIEW FROM KOP 4 WILL BE SIGNIFICANT

KOP 4 is the view from Magnolia Street, looking northwest across the Magnolia Marsh toward the project site (Figure 5.13-8R1). For this view, the FSA concludes that "...the overall visual change for the proposed HBEP compared to existing conditions with construction of the project is moderate." (FSA p. 4.12-23) This finding is consistent with the summary matrix presented in Visual Resources Appendix 3, which finds the levels of project contrast and dominance to be moderate, view blockage low to moderate, overall visual change moderate, and visual impact potentially significant. Even though the analysis determines that the visual change would be moderate, the text on FSA page 4.12-23 inexplicably concludes that "...implementation of the HBEP with no visual screening would substantially degrade the existing visual character of the site and its surroundings...", and goes on to state that "...the impact is considered adverse and potentially significant". In fact, the overall degree of visual change to this view is quite low.

The proposed project will have little to no adverse effect on the visual character and quality of the view from KOP 4. This is documented by the systematic comparison of the existing KOP 4 view with the view from KOP 4 as it would appear with the project, which was documented in Table Vis-Supp-1 (*Comments on Staff's Supplemental Focused Analysis, PSA Part A*, docketed January 21, 2014 (TN# 201582)). The with-project view used for this assessment is the one seen in Figure 5.13-8R1 (*Applicant's Response to Staff's Informal Requests (Visual Resources)*, June 19, 2013 (TN# 71338)), which depicts the project with an 8 foot high block wall on the site perimeter along the edge of the marsh, new on-site landscaping, and project structures with a neutral gray finish. As seen in the comparison of the existing and with-project views on Figure 5.13-8R1 and as documented in a systematic way in Table Vis-Supp-1, the marsh, which occupies much of the area seen in the view and is the key component of the view's visual quality, will not be affected in any way by the project. The only changes to the view will occur in the view's middleground/background zone. In this zone, the removal of Unit 1, 2, 3 and 4's tall stacks and massive, scaffold-covered boilers will eliminate the most visually discordant elements in the view. The uniform proportions and consistent, uncluttered surfaces of the new power plant components will create a high level of visual unity on the redeveloped site.

Although the project will entail replacement of the tanks now seen at the right side of the site with larger power block and air-cooled condenser ("ACC") structures, the overall mass of the structures on the site will be increased to only a moderate degree. When the with-project view is compared to the existing view, contrary to Staff's assertions, the changes in visual contrast and dominance are low, at-most. In this view, the view-blockage criteria is not relevant because the existing HBGS and the proposed HBEP do not and will not block views toward important landscape features. A key point to reiterate is that one of major flaws of Staff's analysis of this view is that it does not acknowledge the fact the most valued of this view's visual features – the marsh – will not be adversely affected in any way by the presence of the project. Rather than being moderate as Staff incorrectly asserts, the overall level of visual change the project will bring about in this view will be neutral to low. Given that the visual change to this view will be neutral to low, there is no basis for Staff's initial finding that the visual impact to this view would be potentially significant, and its later assertions that the impacts to this view would be significant and require mitigation.

III. STAFF'S ANALYSIS INCORRECTLY CONCLUDES THAT THE CHANGES TO THE VIEW FROM KOP 5 WILL BE SIGNIFICANT

KOP 5 is the view looking east from the driveway into and out of the Huntington-by-the-Sea Mobile Estates, which is located across Newland Street from the project site (Figure 5.13-9R1). In this view, as residents of the mobile home estates drive out of their community, they look directly into the HBGS site, where they see one of the existing power plant's massive stacks and scaffold-covered boilers, as well as a turbine unit, a large stationary crane, tanks, transmission lines, and a part of the SCE substation. Although the view will change with development of the project, resulting in the addition of building mass on the portion of the site across from the driveway, the FSA analysis is wrong when it concludes that "...with no visual screening, the HBEP would cause substantial degradation of the existing visual character of the site and its surroundings, and for views at or near KOP 5, the adverse impact is considered significant." (FSA p. 4.12-25)

The FSA's conclusion is not substantiated when subjected to the kind of close, systematic evaluation like that documented in the analysis of the visual changes to KOP 5 presented in Table Vis-Supp-1 (*Comments on Staff's Supplemental Focused Analysis, PSA Part A* (TN# 201582)). As a close comparison of the existing view of the simulated view with the project in place (Figures 5.13-9R1 and B) and review of Table Vis-Supp-1 indicate, there will be a slight but positive change in the overall visual character of this view. There will be no changes to the driveway bordered by palm trees that occupies the near foreground of the view. The fringe of landscaping that frames the street frontage of the power generation site will be reinforced, with layers of tall, dense vegetation that will extend across the entire mid-foreground of the view, creating a dense, highly textured tapestry that creates visual interest and increases the visual screening of the lower portions of the power generation facilities. The massive 1950's era stack and industrial-appearing boiler that currently occupy the right portion of the power generation site will be removed. They will be replaced by a lower, more compact power generation structure with low stacks and an adjacent air cooled condenser, which are located in the center of the view. Although the power generation site will appear to have a more dense level of development when seen from this viewpoint, the overall character of this view as a view toward a power generation facility will not be substantially altered.

Analysis of the changes to the visual quality of the view in terms of the visual evaluation criteria developed by the Federal Highway Administration¹ establish that with development of the proposed project, the overall visual quality of this view will be improved to a small degree. The vividness of this view, which is now low, will be slightly increased by the dense band of vegetation that will be created along the Newland Street frontage of the project site. The removal of Unit 1 and 4's tall stacks and scaffold-covered structures will eliminate the most visually discordant elements in the view, increasing the overall level of visual intactness. Because of the lower heights, more uniform proportions, and consistent surface treatments of the power plant components on the redeveloped site, and their integration into the view by the heavy landscaping

¹ Federal Highway Administration (FHWA). 1988. Visual Impact Assessment for Highway Projects. Publication No. FHWA-HI-88-054. United States Department of Transportation.

along the perimeter of the site, the level of visual unity of this view will be substantially increased.

In terms of the criteria the CEC uses to assess visual change (contrast, dominance, and view blockage) there would be little to no change in the visual conditions on the site. The FSA's existing conditions analysis for KOP 5 concludes that the visibility of the existing power plant is high and that the existing visual quality of the view is low (FSA p. 4.12-15). The FSA asserts that the level of visual contrast would be greater for this KOP than compared to existing conditions even though the FSA does not establish the existing level of visual contrast in this view. An objective comparison of the existing and with-project views would suggest that because of the more modern, compact, and less exposed appearance of the new power generation facilities, compared to those that are now on the site, the degree of visual contrast will not be increased. In terms of visual dominance, the structural mass on the project site will be shifted, with elimination of the existing tall, bulky boiler and stack now visible at the right side of the view, and the construction of the new power block and ACC in the center portion of the view. Because the proposed facilities will not be substantially more massive than those that are now on the site, and because their structures and equipment will be enclosed rather than exposed, the visual dominance of the power plant equipment visible in this view will not be substantially increased. Although Staff asserts that the project will bring about a moderate level of view blockage, this assertion is incorrect in that there are no views toward valued landscape features that would be blocked by the new structures on the site.

Given that there would be little to no change to the visual quality of this view, even taking into account the high sensitivity of this view to residents of Huntington-by-the-Sea Mobile Estates, the changes to this view do not constitute a "substantial degradation" of visual character or quality, and cannot be classified as a significant impact that requires mitigation.

IV. STAFF'S ANALYSIS INCORRECTLY CONCLUDES THAT THE VISUAL EFFECT OF DEMOLISHING THE EXISTING FACILITY AND CONSTRUCTING THE PROPOSED PROJECT WILL BE SIGNIFICANT

The FSA asserts that "Long-term construction impacts at the HBEP site would cause substantial degradation of the existing visual character of the site and its surroundings and such adverse impact is considered significant" (FSA p. 4.12-28). There is little tangible evidence to support this assertion. The FSA mentions two kinds of construction period impacts – those that are associated with the construction laydown areas, and those that are associated with the demolition and construction activities that take place on the project site.

The locations of the five construction parking areas are indicated on FSA Figure 19. The FSA correctly concludes that no visual impacts will occur from use of the existing developed and paved City of Huntington Beach parking lot west of Pacific Coast Highway ("PCH") and north of Beach Boulevard, as well as the 1.5 acre parking lot that will be in the center of the project site and the 1.9 acre parking lot on the Plains All American Tank Farm, both of which will not be visible in views from surrounding areas. The FSA incorrectly concludes, however, parking use of the 3 acre site along Newland Street and the 2.5 acre site along the east side of PCH south of Beach Boulevard "...could degrade the existing character of adjacent areas" through "...the introduction of what could appear to be ad hoc parking for trucks and other vehicles on

undeveloped or unimproved lots...” (FSA p. 4.12-19) This assessment does not account for the existing conditions in these two areas and what is likely to occur when they are used for project-related parking. The two photographs presented on Figure 5.13-3 R1 filed in response to Data Request 68 provide existing condition views looking toward these two areas (Viewpoint 3, the proposed parking area along Newland Street and Viewpoint 4, the proposed parking area along PCH). These two photos make clear that neither of these sites is pristine or the locus of important visual resources. The site along Newland Street is already fenced and graded. The site along PCH is both fenced and paved. There is no basis for Staff to assume that when project-related parking takes place on these two parcels, that the lots would be left unimproved and that the parking would be “ad hoc”. There are many practical and safety reasons why the Applicant will properly pave and arrange these lots for well-organized parking, which is most likely to be predominantly for the vehicles driven by workers commuting to the site as opposed to construction vehicles. Although the presence of parked vehicles on these sites will constitute a visual change, there is no basis for asserting that the presence of parked vehicles on these sites would constitute a “substantial degradation” of the visual character and visual quality of these sites that would require mitigation.

Based on brief and very vague, unspecific assertions about use and high visibility of heavy construction equipment on the site, large-scale demolition and construction work, creation of dust, impact on ground surfaces and damage to or destruction of landscaped areas, the FSA asserts that the visual impacts of construction on the site would be significant. No real evidence is provided to support this assertion. The project site is large, already has a heavily developed appearance, and to a substantial degree, views into the site are screened by structures on the site, industrial land uses to the north of the site, and a combination of walls and landscaping on the site’s other perimeters. Because of the site’s existing industrial appearance and because much of the construction activity will be taking place well within the site where it may be screened to some degree either by existing structures that have not yet been removed, or new structures that have been built on the site as part of the project development process, there is no basis for assuming that the construction activities will be so highly visible and will contrast so much with what is now visible on the site that they will create a substantial degradation of the site’s visual character and quality. Thus there is no basis for concluding that the construction period will lead to impacts that meet the CEQA standard for significance and require mitigation.

To mitigate the significant impacts that the FSA analysis alleges the construction process will create, Staff is proposing imposition of Condition of Certification VIS-3. Like most of the other Visual Resources Conditions of Certification, VIS-3 confirms the implementation of measures that the Applicant would be undertaking in any case. Accordingly, Applicant does not object to including VIS-3 as a condition, but it should be clearly stated that VIS-3 is not a required mitigation measure because there are no significant impacts requiring mitigation. In addition, changes are required to ensure that the provisions are clearly stated, will achieve the intended effect, and will not create unwarranted burdens. Specific recommendations for revisions to VIS-3 are identified at the end of this testimony.

V. STAFF’S ANALYSIS INCORRECTLY CONCLUDES THAT THE IMPACTS CREATED BY PROJECT LIGHTING WILL BE SIGNIFICANT

Based on a few sweeping assertions about lighting during the project construction period, the FSA states “...staff concludes that long-term lighting for demolition, construction, and commissioning activities would create a new source of substantial light or glare that *could* adversely affect nighttime glare in the area“ (FSA pp. 4-12.30 – 4-12.31, emphasis added). As staff has indicated with the use of the word “could”, there are several very tangible reasons why the construction period lighting does not have the potential to create a new source of light or glare that would adversely affect daytime or nighttime views in the area. First, it must be acknowledged that the site is now highly illuminated at nighttime. The nighttime photo of the existing view toward the project site from the Huntington State Beach submitted as Figure PSA Response VR-9 documents the extent and nature of the existing lighting. In this photo, the flashing aviation warning lights at the top of the stacks can be seen, as well as the extensive unshielded lighting on the scaffolding and exterior stairs on the power block structures. In addition, high mast lighting illuminating areas around the structures can be seen. As construction proceeds, the existing stacks and power blocks will be demolished and the extensive unshielded lighting associated with these features will be removed from the site, substantially reducing the overall level of light that is present. Additionally, the FSA analysis fails to acknowledge that the Applicant has committed to use construction lighting that is the minimum needed for the task and that is shielded and highly directed, and the use of this contemporary, low impact lighting for any nighttime construction activities will prevent the level of lighting on the site during the construction period from exceeding the amount of lighting that is now present on the site. An additional consideration is that as mentioned in regard to the visual impacts of the daytime construction, because much of the construction activity will be taking place well within the site where it may be screened to some degree either by existing structures that have not yet been removed, or new structures that have been built on the site as part of the project development process, the visibility of some of the nighttime construction lighting has the potential to be screened from view at offsite locations.

Staff’s analysis of lighting impacts during the project’s operational phase is also based on unsupported assertions and does not take into account either the existing lighting conditions on the site or the Applicant’s commitment to use contemporary, highly shielded and directed lighting on the site. Although Staff asserts that the Applicant has provided very little information on project operations lighting, sufficient information on project lighting issues has been submitted in this proceeding to support a finding that when the proposed project is complete and in operation, the total amount of light on the site will be less than at present. Figure PSA Response VR-9 referred to in the preceding paragraph documents the extensive amount of unshielded lighting on the scaffolding and exterior stairs on the power block structures and the exhaust stack catwalk, the red flashing aviation warning lighting on the top of the stacks, and the high mast lighting illuminating areas around the structures. With the proposed project, all of these existing lights on the power blocks and stacks would be removed. For the new project, no aviation safety lighting will be required on the stacks, and no lighting will be required on the enclosed sides of the HRSGs and ACCs, beyond those switched lights required for compliance with worker health and safety, LORs, and security requirements. Exterior lighting will be restricted to lighting of the tank and equipment areas on the tops of the HRSGs and any lighting needed in paved areas around the power blocks. The lighting at the tops of the HRSGs will be

turned on only for maintenance activities, and when on, will have a limited visual effect because they will be highly shielded and directed only where needed. Any lighting required to illuminate areas around the power blocks will be the minimum required for safety and security, and will be designed to be hooded and highly directed to minimize off-site visibility and light spill into off-site areas or into the sky. The FSA makes much of the lighting that would be associated with HBEP Power Block 1 that would be developed at the northeast corner of the site in an area now occupied by large tanks. The FSA states that development of Power Block 1 would "...introduce new lighting sources where there are currently no power generating facilities." (FSA p. 4.12-31)

Although it is not directly stated, the implication is that the lighting associated with Power Block 1 would be substantial and would adversely affect nighttime views in the area, contributing to creation of a significant visual impact. In fact, the area around the tanks at the northeast corner of the site is already heavily illuminated and the tank area is part of a larger site that is brightly lit. There is no basis for suggesting as the FSA appears to that the northeast corner of the site is a pristine dark area that deserves to be considered apart from its highly developed and brightly illuminated context. With development of the project, even with the lighting required by Power Block 1 (which will be dramatically less than that associated with the existing power blocks), the overall amount of lighting on the site will be considerably reduced compared to what it is now, and thus there is no basis for concluding that lighting on the site during the operational period would create a new source of substantial light or glare that would substantially affect nighttime views in the area.

In a single sentence, the FSA makes the sweeping and entirely unsubstantiated assertion that "The potential for glare from project structures to adversely affect daytime views in the project area is considered a significant impact of the HBEP." (FSA p. 4.12-31) There is no definition of what daytime "glare" is and how and why it could be a visual issue. In addition, there is no identification of what project features could be a potential source of glare, how big the reflective surfaces might be, and how, where and under what conditions light reflecting off project features might be perceived as glare that would be so substantial as to produce an adverse effect on views.

Because the FSA does not provide the analysis that supports a finding that the project would create a new source of substantial light or glare that would adversely affect daytime and nighttime views in the area, there is no basis for concluding that light and glare impacts would be significant and that mitigation measures are required to address these impacts.

To mitigate the significant light-related impacts that the FSA analysis asserts would be created during the project construction and operational periods, Staff proposes imposition of Conditions of Certification VIS-5 and VIS-6, and also proposes provisions to Condition of Certification VIS-1 to mitigate the significant glare impacts that it alleges the project will create for daytime views. Like most of the other Visual Resources Conditions of Certification VIS-1, VIS-5, and VIS-6 confirm the implementation of measures that the Applicant would be undertaking in any case. Accordingly, the Applicant does not object to including Conditions of Certification VIS-1, VIS-5, and VIS-6 so long as it is clearly stated that these are not mitigation measures required to mitigate any significant impacts of the project. Moreover, changes are required to ensure that the provisions are clearly stated, will achieve the intended effect, and will not create unwarranted

burdens. Specific recommendations for revisions to these COCs are identified at the end of this review.

VI. STAFF'S ANALYSIS INCORRECTLY CONCLUDES THAT THE PROJECT'S CUMULATIVE IMPACTS WILL BE SIGNIFICANT

The FSA correctly identifies the proposed project's context as an area of infrastructure and industrial facilities and identifies the Poseidon Seawater Desalinization Project site, the Ascon Landfill Remedial Action Plan, demolition of HBGS Units 3 and 4, and demolition of the Plains All American Pipeline Tank Farm as included in the cumulative environment. The FSA documents the findings of the environmental analyses prepared for projects proposed to develop or modify these facilities that conclude that these projects will not result in significant visual impacts.

The FSA analysis states that the existing Huntington Beach Generating Station is a part of the area's existing cumulative condition for visual resources. The assessment of the project's cumulative effects, however, does not sufficiently acknowledge that the proposed project will remove the existing facility and replace it with one that is substantially smaller in scale and inherently more attractive than what is now on the site.

In assessing the project's contribution to the cumulative visual impacts in the project area, the FSA's comes to the illogical conclusion that "...construction of a highly visible power plant with no visual screening or enhancement would continue to contribute considerably to the cumulatively significant effect for visual resources." (FSA p. 4.12-34) This makes absolutely no sense at all. Individually, none of the projects that have been approved for the sites in close proximity to the project (the Poseidon Seawater Desalinization facility, the Ascon Landfill Remedial Action Plan, demolition of HBGS Units 3 and 4, and demolition of the Plains All American Pipeline Tank Farm) would create significant visual impacts that would add to the baseline of visual impacts in the project area. Additionally and most importantly, development of the proposed project would remove the existing four large, 1950's era electrical generation power units, with their massive, 214 foot tall stacks and their 140 foot high, 300 foot wide boiler structures that are now on the site. The boilers that will be removed have a highly industrial appearance because of the dense webs of support scaffolding, stairways, pipes, tanks, and equipment that cover their exteriors. These massive and industrial appearing structures will be replaced with modern power generation facilities that are substantially shorter and less massive than those that are now on the site (the new stacks will be 120 feet high, the air cooled condensers 104 feet high, and the heat recovery steam generation (HRSG) units, 92 feet high). Thus, the overall visual effect of the Project will be to create a substantial visual improvement and enhancement that will decrease rather than add to the cumulative visual impacts that exist in the area. The improvement to the area's visual conditions that the proposed project will bring about is illustrated by Figure PSA Response VR-1, a simulation of the view toward the Project site from KOP 1 (Huntington State Beach) which depicts the Project on a photograph on which the existing power plant facilities have been retained but given a ghosted treatment. This image clearly shows the Project will substantially improve the views toward the site and result in an overall visual enhancement, because the new power plant facilities will be much smaller in comparison to those that are currently on the site. It also depicts that the Project will be less "industrial" in appearance, with smooth, enclosed surfaces with an absence of external support

scaffolding and a minimum of exposed pipes, tanks, and equipment. In light of the substantial, positive change and visual enhancement that the Project will make to the existing visual conditions on this existing power plant site, CEC staff's conclusion that the project would "...contribute considerably to the cumulatively significant effect for visual resources" (FSA page 4.12-34) is not supported. As a consequence, there are no grounds for Staff's conclusion that because of a significant cumulative impact it is necessary to implement all of its recommendations to reduce this impact to a level that is less than significant.

VII. THE PROJECT IS CONSISTENT WITH LORS

The analysis presented in Visual Resources Table 2 finds that with implementation of the proposed Conditions of Certification, the project will be consistent with laws, ordinances, regulations, and standards ("LORS"). Applicant agrees with the conclusion that the project will be consistent with LORS, and finds that adherence to the Conditions of Certification as revised below will provide assurance to all parties that the requirements of the LORS will be met. That stated, Staff's recommendations in the "Basis for Determination" column of Visual Resources Table 2 that plans be submitted to the California Coastal Commission for review and comment must be removed. Because the Coastal Commission's permitting authority is subject to the Energy Commission's jurisdiction over power plants (Pub. Resources Code §§ 25500, 30600.), the Energy Commission is charged with making its independent determination regarding project compliance with the Coastal Act and other LORS during review of the AFC. Thus, additional, post-approval review and comment by the Coastal Commission is not required nor warranted.

VIII. PROPOSED REVISIONS TO CONDITIONS OF CERTIFICATION

Based on the foregoing, Applicant proposes changes to Conditions of Certification VIS-1, VIS-2, VIS-3, VIS-5, and VIS-6 as set forth below.

VIS-1 Visual Screening and Enhancement Plan for Project Structures – Project Operation. Prior to submitting the master drawings and master specifications list for the project to the Chief Building Official (CBO) and the Compliance Project Manager (CPM), the project owner shall prepare and submit a Visual Screening and Enhancement Plan for Project Structures that includes methods and materials to visually screen and treat surfaces of publicly visible power plant structures. (Condition of Certification **GEN-2** in the **Facility Design** section of the Commission Decision addresses requirements pertaining to the master drawings and master specifications list.) The submitted plan will include evidence of review by a qualified structural or civil engineer and an assessment of the feasibility and structural integrity of the architectural and decorative screening elements contained in the plan. Any design changes recommended by the qualified structural or civil engineer to ensure the structural soundness and safety of the project and the architectural design elements shall be incorporated in the Visual Screening and Enhancement Plan for Project Structures *before* its submittal to the ~~Energy Commission CPM. for review and approval, and the City of Huntington~~

~~Beach and the Coastal Commission for timely review and comment. The plan must be implemented before commercial operation of Power Block 1.~~

~~The Visual Screening and Enhancement Plan for Project Structures shall be consistent with the architectural treatments and modifications recommended in Resolution No. 2014-18 adopted by the City of Huntington Beach City Council on April 7, 2014 (TN #202084). Consistent with Resolution No. 2014-18, all power plant structures that are 50 feet tall or taller from ground elevation shall be visually screened with architectural enhancements and other surface treatments to enhance public views of those structures. Surface treatments for all other publicly visible power plant structures shall be included in the plan. Proposed surface treatments shall minimize the potential visual effects of glare from project surfaces. Surface treatments (i.e., painting and/or texturing) alone are not considered adequate to visually screen and enhance the project. Methods to visually screen and enhance the project site shall visually unify the project so that proposed architectural screening and other enhancements for one air cooled condenser are similar to or the same for the other.~~

The monopoles for the on-site 230-kV transmission line shall have a surface treatment that enables them to blend with the environment to the greatest extent feasible, and the finish shall appear as a matte patina. Unpainted exposed lagging and surfaces of steel structures that are visible to the public shall be embossed or otherwise treated to reduce glare.

The Visual Screening and Enhancement Plan for Project Structures shall meet the following minimum content requirements:

- Inventory of major project structures and buildings specifying the proposed architectural and decorative screening structures and materials to visually screen and enhance those structures. The inventory shall specify height, length, and width or diameter for each major structure, and scale plans and elevation views shall be included in the plan with architectural and project structures clearly identified.
- List of colors and finishes that will be applied to architectural screening structures and directly to power plant structures (e.g., paint scheme and finish types for the air cooled condenser). Proposed colors must be identified by vendor, name, and number, or according to a universal designation system.
- Electronic files and a set of print copies of 11-inch by 17-inch (or larger, if necessary) color visual simulations at life-size scale showing the architectural screening structures and surface treatments proposed for the project. Key observation point (KOP) 1, KOP 4, and KOP 5 shall be used to prepare images showing the completed Visual Screening and Enhancement Plan for Project Structures. Colors must be identified by vendor, name, and number, or according to a universal designation system.

- Schedule for completing construction of architectural and decorative screening structures and the surface treatments for all publicly visible power plant structures.
- Procedure and maintenance schedule to ensure that all surface treatments and architectural structures are well maintained and consistent with the approved plan for the life of the project.

~~**Supplement to the Visual Screening and Enhancement Plan for Project Structures**—Prior to submitting instructions and orders for architectural screening materials, prefabricated project structures, and paints and other surface treatments to manufacturers or vendors of project structures, the project owner shall submit a Supplement to the Visual Screening and Enhancement Plan for Project Structures. The supplement shall include color brochures, color chips, and/or physical samples showing each proposed color and finish that will be applied to architectural screening structures and directly to power plant structures. Electronic files showing proposed colors may not be submitted in place of original samples. Colors must be identified by vendor, name, and number, or according to a universal designation system.~~

~~The project owner shall meet these plan review and approval requirements:~~

- ~~• The submitted Visual Screening and Enhancement Plan for Project Structures shall include evidence of review by a qualified structural or civil engineer and an assessment of the feasibility and structural integrity of the architectural and decorative screening elements contained in the plan. The qualified engineer's report and other comments shall be attached to the plan.~~
- ~~• The Visual Screening and Enhancement Plan for Project Structures shall be submitted to the CPM for review and approval, and to the City of Huntington Beach Planning and Building Department and the Executive Director of the Coastal Commission for timely review and comment. City staff requests seven sets of plans. Any comments on the plan from the City and the Coastal Commission shall be provided to the CPM. The project owner shall not submit instructions for architectural screens and other structures and colors and finishes to manufacturers or vendors of project structures, or perform final field treatment on any structures, until **the project owner receives** written approval **from the CPM that** of the final plan **complies with LORS** is received from the CPM. Modifications to the Visual Screening and Enhancement Plan for Project Structures are prohibited without the CPM's approval.~~

Verification: At least 30 calendar days before submitting the master drawings and master specifications list to the CBO (in accordance with the requirements of **GEN-2**), the project owner shall submit a Visual Screening and Enhancement Plan for Project Structures **simultaneously** to the CPM for review and approval, and to the City **of Huntington Beach**. Beach's Planning and Building Department and the Executive Director of the Coastal Commission for timely review and comment.

At least 60 calendar days before submitting ~~any~~ instructions or orders for architectural screening, prefabricated project structures, and paints and other surface treatment materials, the project owner shall submit a supplement to the Visual Screening and Enhancement Plan for Project Structures simultaneously to the CPM ~~for review and approval~~, and to the City of Huntington Beach's Planning and Building Department and the Executive Director of the Coastal Commission ~~for timely review and comment.~~

If the ~~CPM~~ City determines that the Visual Screening and Enhancement Plan for Project Structures and/or its supplement require revisions, the project owner shall provide a copy of the plan with the specified revision(s) ~~for review and approval by~~ to the CPM for review and confirmation that the plan complies with City of Huntington Beach Resolution No. 2014-18. ~~A copy of the revised plan shall be provided to the City and the Executive Director of the Coastal Commission for timely review and comment.~~

The project owner shall provide the CPM with copies of the transmittal letters submitted to the City ~~and the Coastal Commission~~ requesting the City's ~~those agencies' respective~~ timely reviews of the plan, the supplement, and any plan revisions.

At least 10 days Bbefore commercial operation of Power Block 1, the project owner shall notify the CPM in writing of the status of implementation of the requirements set forth in ~~that~~ the Visual Screening and Enhancement Plan for Project Structures. Such notification shall also include a schedule for completion of the requirements of Visual Screening and Enhancement Plan for Project Structures ~~are implemented and the facility is ready for inspection. The project owner shall obtain written confirmation from the CPM that the project complies with the Visual Screening and Enhancement Plan for Project Structures. This step shall be repeated before commercial operation of Power Block 2.~~

The project owner shall provide a status report regarding maintenance of the architectural screens and surface treatments in the Annual Compliance Report for the project. At a minimum, the report shall include:

- Descriptions of the condition of the architectural screening structures and treated surfaces of ~~all~~ publicly visible structures at the power plant site.
- Descriptions of major maintenance and painting work required to maintain the original condition of architectural screening structures and treated surfaces during the reporting year.
- Electronic photographs showing the results of maintenance and painting work.
- ~~Any scheduled maintenance activities pertaining to the Visual Screening and Enhancement Plan for Project Structures for the next year.~~

VIS-2 Perimeter Screening and On-site Landscape and Irrigation Plan – Project Operation. The project owner shall prepare and implement a Perimeter Screening and On-site Landscape and Irrigation Plan to substantially screen views of power plant structures. The plan shall achieve a goal to screen and soften views of the power plant from Magnolia Marsh, the Huntington Beach Wetlands & Wildlife Care Center, the Huntington By-The-Sea Mobile Estates and RV Park, and along Newland Street, Magnolia Street, and the segment of the Pacific Coast Highway in front of the Huntington Beach Wetlands & Wildlife Care Center facility. ~~The plan shall include new and replacement landscape plantings in all available on-site perimeter spaces along the northwest, southwest west, and southeast east boundaries.~~ The plan shall be prepared with the direct involvement of a qualified professional landscape architect familiar with local growing conditions, suitable native and noninvasive plant species, and local availability of proposed species. Any changes recommended by the qualified landscape architect shall be incorporated in the Perimeter Screening and On-site Landscape and Irrigation Plan *before* its submittal to the ~~Energy Commission Compliance Project Manager (CPM) for review and approval, and the City of Huntington Beach and the Coastal Commission for timely review and comment.~~ The submitted plan shall comply with the landscape and irrigation requirements of the City of Huntington Beach General Plan and the Huntington Beach Zoning & Subdivision Ordinance.

Design and submittal of the Perimeter Screening and On-site Landscape and Irrigation Plan shall occur *after* completion of the project's final general arrangement/site plan to accurately show all interior area constraints (e.g., paved interior site access and emergency response roads).

The Perimeter Screening and On-site Landscape and Irrigation Plan shall include construction of a solid 8-foot-tall decorative masonry wall ~~to extend along the site boundary adjacent to the~~ Magnolia Marsh and the approximately 285-foot segment of the site perimeter that extends along the southwestern boundary of the project site from the corner adjacent to the marsh to the structures housing the Huntington Beach Wetlands & Wildlife Care Center's operations. ~~Huntington Beach Wetlands & Wildlife Care Center and parking lot and along Magnolia Marsh (i.e., the southwest-west and southeast east boundaries).~~ In the segments of the project perimeter adjacent to the Huntington Beach Wetlands & Wildlife Care Center parking lot, and the area along Newland Street north of the project entrance, the All existing site perimeter chain-link fencing shall be replaced with a solid 8-foot tall decorative masonry wall with the exception of the site entrance gate where decorative wrought iron or steel decorative see-through security fencing may be used or in areas where decorative wrought iron or steel security fencing that will allows views into fully landscaped areas on the project site.

The Perimeter Screening and On-site Landscape and Irrigation Plan shall meet the following minimum requirements:

- Provide a detailed landscape and irrigation plan at a scale of 1 inch to 40 feet (1:40) (or similar scale) listing proposed plant species, and installation sizes, quantities, and spacing. The plan shall include expected heights at 10 years and maturity and expected growth rates to maturity. To achieve year-round screening, ~~only~~ **use of** evergreen species **is preferable** shall be used. ~~No new or replacement lawn areas shall be planted anywhere on the site interior.~~ **Any new or replacement lawn areas in the site's interior should be the minimum required to meet the recreational needs of on-site employees.**
- Proposed tree species shall be 24-inch box size unless the professional landscape architect recommends a different size for a species. Except for areas where planting of new or replacement trees at the site periphery is infeasible (based on the final general arrangement/site plan), spacing of trees shall be sufficiently dense to ensure maximum screening by the tree canopy at maturity. Faster-growing tree species shall be included provided that those species are non-invasive and suited to the coastal environment.
- Proposed shrub species shall be selected to achieve maximum screening effectiveness. Shrubs planted inside the 8-foot-tall masonry wall along Magnolia Marsh shall be selected to achieve a mature height of 12 feet to 15 feet, with a goal to increase the effectiveness of visual screening provided by the wall. Shrubs shall be installed at 5-gallon size unless the professional landscape architect recommends a different size for a species.
- Proposed tree species along the site boundary adjacent to Magnolia Marsh shall be selected with a goal to discourage perching by raptors and minimize predation on special-status birds. Tree species with droopy branches or dense foliage that would not attract perching raptors are preferred.
- Provide electronic files and sets of print copies of 11-inch by 17-inch (or larger, if necessary) color visual simulations at life-size scale showing the landscape plantings at the time of installation and 10 years after installation. Key observation point (KOP) 1, KOP 4, and KOP 5 shall be used to prepare the visual simulations.
- Provide discussions of plans and methods to efficiently irrigate landscape plantings to ensure their survival and maintain optimal growth rates.
- Provide a plan view of the project site that clearly shows the planting plan for the site and the existing and new solid ~~8-foot tall decorative masonry~~ **and see-through** walls along the site perimeter. Details on the materials and design of the masonry wall shall be included in the plan.
- Provide a detailed schedule for completing installation of landscape plantings during the project construction schedule and the masonry walls along the site perimeter.

- Provide a procedure for maintaining and monitoring the landscape and irrigation system and replacing all unsuccessful plantings for the life of the project.
- Provide a table summarizing the project's conformance with the City's landscape screening and irrigation regulations, including applicable goals, objectives, and policies in the Urban Design Element, Circulation Element, and Coastal Element of the General Plan, as identified in **VISUAL RESOURCES APPENDIX-4** of the Final Staff Assessment. The table shall include applicable chapters and sections of the Huntington Beach Zoning & Subdivision Ordinance.

The project owner shall meet these plan submittal and review requirements:

- The submitted Perimeter Screening and On-site Landscape and Irrigation Plan shall show evidence of participation by a qualified professional landscape architect familiar with local growing conditions, suitable native and non-invasive plant species for the project area, and local availability of proposed plant species. The landscape architect's report and other comments shall be attached to the plan.
- The submitted plan shall show evidence of participation by a wildlife biologist qualified to comment on tree species proposed for planting adjacent to Magnolia Marsh and confirm that those species will not introduce new opportunities for raptors to prey on special-status birds in the marsh.
- ~~The project owner shall request comments on the plant species proposed along Magnolia Marsh from the Director of the Huntington Beach Wetlands Conservancy. Any comments from the Director shall be attached to the submitted plan.~~
- The Perimeter Screening and On-site Landscape and Irrigation Plan shall be submitted to the CPM for review and approval. **Seven (7) copies of the Plan shall be provided** and to the City of Huntington Beach ~~Planning and Building Department and the Executive Director of the Coastal Commission~~ for timely review and comment. ~~City staff requests seven sets of plans. Any comments on the plan from the City and the Coastal Commission shall be provided to the CPM.~~ The project owner shall not purchase or order plants, landscape and irrigation supplies and materials, or construction materials for the masonry wall until written approval of the final plan is received from the CPM. Modifications to the Perimeter Screening and On-site Landscape and Irrigation Plan are prohibited without the CPM's approval.

Verification: At least 90 calendar days before site mobilization, the project owner shall submit the Perimeter Screening and On-site Landscape and Irrigation Plan to the CPM for review and approval, and **seven (7) copies shall be submitted** to the City of Huntington Beach ~~Planning and Building Department and the Executive Director of the Coastal Commission~~ for timely review and comment.

If the CPM determines that the plan requires revision, the project owner shall provide a plan with the specified revision(s) for review and approval by the CPM. **Seven (7) copies** ~~A copy~~ of the revised plan shall be provided to the City of Huntington Beach. ~~'s Planning and Building Department and the Executive Director of the Coastal Commission for timely review and comment.~~

The project owner shall provide the CPM with copies of the transmittal letters submitted to the City ~~and the Coastal Commission~~ requesting the City's ~~those agencies'~~ respective timely reviews of the plan and any plan revisions.

Prior to the start of commercial operation of Power Block 1, the project owner shall notify the CPM that some areas covered by the plan elements are finished and ready for inspection (~~i.e., areas where landscape plantings will not be disturbed by later construction phases~~). **Such notification shall also include a schedule for completion of any remaining plan requirements in the area of Power Block 1.** The project owner shall obtain written confirmation from the CPM that the project complies with the Perimeter Screening and On-site Landscape and Irrigation Plan. This step shall be repeated before commercial operation of Power Block 2.

The project owner shall provide a status report describing landscape maintenance activities in the Annual Compliance Report for the project. At a minimum, the report shall describe:

- Overall condition of the landscape areas and irrigation system at the power plant site.
- Major activities that occurred during the reporting year, including replacement of dead or dying vegetation.
- Maintenance of the site periphery masonry wall and any other elements included in the plan.

VIS-3 Long-term Construction Screening, Landscape Protection, and Site Restoration Plan – Project Demolition, Construction, and Commissioning. Prior to the start of site mobilization, the project owner shall prepare and implement a Construction Screening, landscape Protection, and Site Restoration Plan describing methods and materials that will be used during each project phase to screen project construction and parking areas and views of the project site from areas where construction activities have the potential to be visible during a phase. The plan will describe methods and materials to identify and protect existing landscape trees and shrubs that **will not be removed and replaced, and identify those that are not planned to be replaced.** ~~are not within areas affected by the project footprint.~~ The plan will include provisions to restore areas where ground disturbance occurred during construction.

To minimize the adverse visual impacts of project construction during each project phase, the project owner shall install and maintain construction screening fencing along the perimeters of the project site areas where there could be views from public use areas of construction activities during a phase. The **project owner will consult with the Compliance Project Manager (CPM), in consultation with the visual resources staff and the City of Huntington Beach, regarding** shall decide where screening fencing is required during a project phase or phases. Depending on the location of on-site construction work, the areas requiring screening **may** include the perimeter of the wetland along the southeast-east site boundary, the west side perimeter of the project site on Newland Street, and the **segments of the southwest-west perimeter of the site along the Huntington Beach Wetlands Conservancy property adjacent to the Pacific Coast Highway (PCH) where views into the project site are not already screened by Conservancy structures**. The screening fencing for the power plant site shall be no less than 12 feet tall.

Brightly-colored construction exclusion fencing shall be used on-site to clearly delineate areas where existing landscape plantings will be protected and retained.

Condition of Certification **VIS-2** includes construction of a solid 8-foot-tall decorative masonry wall to extend along the site boundary adjacent to the ~~Huntington Beach Wetlands & Wildlife Care Center and the wetland (i.e., **Magnolia Marsh and the segment of the project site's southwestern boundary that extends from the corner closest to the marsh to the point where views into the project site are screened by the structures on the**~~ Huntington Beach Wetlands & Wildlife Care Center and the wetland (i.e., the southwest-west and southeast-east boundaries) **site**. Upon completing installation of the masonry wall, the CPM shall allow the project owner to remove all construction screening fencing from those portions of the site boundary.

Screening fencing shall be installed to visually screen the open lots that will be used for parking on Newland Street across from the project site and along the PCH at Beach Boulevard. The screening fencing for the parking lots shall be no less than 6 feet tall and shall meet the City of Huntington Beach corner lot visibility requirements specified in Title 23, Chapter 230, "Site Standards," of the Huntington Beach Municipal Code (i.e., 25-foot by 25-foot corner visibility triangle).

The Construction Screening, Landscape Protection, and Site Restoration Plan shall provide images showing options for site perimeter screening materials; ~~examples shall include fencing materials in unobtrusive shades of green or brown as well as printed decorative designs. Possible options include knitted~~

~~polyethylene material, bottom locking fence slats with chainlink fencing, pre-printed mesh fabric, or printable mesh vinyl.~~ All site perimeter screening fencing and construction exclusion fencing shall be well maintained and repaired or replaced as necessary for the duration of project demolition, construction, and commissioning.

When construction is finished, all evidence of construction activities shall be removed—including ~~ground disturbance at staging, material storage, and construction worker parking areas~~—and **disturbed areas** restored to **its their** original or better condition. The Construction Screening, Landscape Protection, and Site Restoration Plan shall describe the methods and schedule for the restoration work to occur.

~~The Construction Screening, Landscape Protection, and Site Restoration Plan shall be submitted to the CPM for review and approval, and to the City of Huntington Beach Planning and Building Department and the Executive Director of the Coastal Commission for timely review and comment. City staff requests seven sets of plans. Any comments on the plan from the City and the Coastal Commission shall be provided to the CPM. The project owner shall not purchase or order any materials for site perimeter screening fencing until written approval of the final plan is received from the CPM. Modifications to the Construction Screening, Landscape Protection, and Site Restoration Plan are prohibited without the CPM's approval.~~

Verification: At least 60 calendar days before the start of site mobilization, the project owner shall submit a Construction Screening, Landscape Protection, and Site Restoration Plan to the CPM for review and approval, ~~and to the City of Huntington Beach Planning and Building Department and the Executive Director of the Coastal Commission for timely review and comment.~~ The project owner shall provide the CPM with a copy of the transmittal letters submitted to the City and the Coastal Commission requesting those agencies' respective timely reviews of the plan.

If the CPM determines that the plan requires revision, the project owner shall provide a plan with the specified revision(s) for review and approval by the CPM. A copy of the revised plan shall be provided to the City's Planning and Building Department and the Executive Director of the Coastal Commission for timely review and comment. The project owner shall provide the CPM with copies of the transmittal letters submitted to the City and the Coastal Commission requesting those agencies' respective timely reviews of the plan and any plan revisions.

~~The project owner shall install all site perimeters screening fencing and construction exclusion and parking area fencing~~ **Before** the start of ground disturbance at the project site, **the project owner shall install site perimeter screening fencing and construction exclusion and parking area fencing at**

the locations where the plan has identified that screening and fencing is required during the initial project development phase. The project owner shall notify the CPM within 7 calendar days of installing the screening and construction exclusion fencing that it is ready for inspection.

The project owner shall report any work required to repair or replace temporary screening and construction exclusion fencing in the Monthly Compliance Report for the project.

Within 10 calendar days of receipt of confirmation from the project owner that the permanent 8-foot-tall masonry wall has been completed, the CPM shall notify the project owner that construction screening fencing can be removed from the portions of the site boundaries where the masonry wall is erected.

Within 60 calendar days of completing construction of the HBEP power blocks and buildings, including demolition of HBGS Units 1 and 2, the project owner shall notify the CPM in writing of the status of complete site restoration, including what site restoration remains outstanding, as well as a schedule for completion of site restoration. The project owner shall notify the CPM within 7 calendar days of completing site restoration that restored areas are ready for inspection.

VIS-4 Long-term Lighting – Project Demolition, Construction, and Commissioning. Consistent with applicable worker safety regulations, the project owner shall ensure that lighting of on-site construction areas, construction worker parking lots, and construction laydown areas minimizes potential adverse night lighting impacts by implementing the following measures:

- All fixed-position lighting shall be hooded and shielded to direct light downward and toward the construction area to be illuminated to prevent illumination of the night sky and minimize light trespass (i.e., direct light extending beyond the boundaries of the construction worker parking lots and construction sites, including any security-related boundaries).
- Lighting of any tall construction equipment (e.g., scaffolding, derrick cranes, etc.) shall be directed toward areas requiring illumination and shielded to the maximum extent practicable.
- Task-specific lighting shall be used to the maximum extent practicable.
- Wherever and whenever feasible, lighting shall be kept off when not in use and motion sensors shall be used to the maximum extent practicable.
- The ~~Compliance Project Manager~~ (CPM) shall be notified of any construction-related lighting complaints. Complaints shall be documented using a form in the format shown in **Attachment 1**, and completed forms shall record resolution of each complaint. A copy of each completed complaint form shall be provided to the CPM. Records of lighting complaints shall also be kept in the compliance file at the project site.

Verification: Within 7 calendar days after the first use of fixed-position parking area and construction-related lighting for major HBEP construction milestones, the project owner shall notify the CPM that the lighting is ready for inspection. Verification is to be repeated for these three construction milestones:

- demolition of HBGS Unit 5 and east fuel oil tank and construction of Power Block 1,
- construction of Power Block 2, and
- demolition of HBGS Units 1 and 2 and construction of Buildings 33 and 34.

If the CPM determines that modifications to the lighting are needed for any construction milestone, within 14 calendar days of receiving that notification, the project owner shall correct the lighting and notify the CPM that modifications have been completed.

Within 48 hours of receiving a lighting complaint for any construction activity, the project owner shall provide to the CPM a copy of the complaint report and resolution form, including a schedule for implementing corrective measures to resolve the complaint.

The project owner shall report any lighting complaints and document their resolution in the Monthly Compliance Report for the project, accompanied by copies of completed complaint report and resolution forms for that month.

VIS-5 Lighting Management Plan – Project Operation. Prior to commercial operation of the HBEP Power Block 1, the project owner shall prepare and implement a comprehensive Lighting Management Plan for the HBEP.

Consistent with applicable worker safety regulations, the project owner shall ensure the design, installation, and maintenance of all permanent exterior lighting such that light sources are not directly visible from areas beyond the project site, reflected glare is avoided, and night lighting impacts are minimized or avoided to the maximum extent feasible. All lighting fixtures shall be selected to achieve high energy efficiency for the HBEP facility.

The project owner shall meet these requirements for permanent project lighting:

- ~~A~~ The Lighting Management Plan shall be prepared **that** with the direct involvement of a certified lighting professional trained to integrate efficient technologies and designs into lighting systems. ~~The plan shall include evidence of the certified lighting professional's participation in plan preparation.~~

- Exterior lights shall be hooded and shielded and directed downward or toward the area to be illuminated to prevent obtrusive spill light (i.e., light trespass) beyond the project site.
- Exterior lighting shall be designed to minimize backscatter to the night sky to the maximum extent feasible.
- Energy efficient lighting products and systems shall be used for all permanent new lighting installations. Smart bi-level exterior lighting using high efficiency directional LED fixtures shall be used as appropriate for exterior installations. The lighting system shall work in conjunction with occupancy sensors, photo sensors, wireless controls, and/or other scheduling or controls technologies to provide adequate light for security, **worker safety**, and ~~maximize~~ **maximization of** energy savings.
- Lighting fixtures shall be kept in good working order and continuously maintained according to the original design standards.
- The Compliance Project Manager (CPM) shall be notified of any complaints about permanent lighting at the project site. Complaints shall be documented using a form in the format shown in **Attachment 1**, and completed forms shall record resolution of each complaint. A copy of each completed complaint form shall be provided to the CPM. Records of lighting complaints shall also be kept in the compliance file at the project site.

The project owner shall meet these plan submittal and review requirements:

- The comprehensive Lighting Management Plan shall be submitted to the CPM for review and approval, ~~and to the City of Huntington Beach Planning and Building Department and the Executive Director of the Coastal Commission for timely review and comment. City staff requests seven sets of plans. Any comments on the plan from the City and the Coastal Commission shall be provided to the CPM.~~
- The project owner shall not purchase or order any lighting fixtures or apparatus until written approval of the final plan is received from the CPM. Modifications to the Lighting Management Plan are prohibited without the CPM's approval. Installation of lighting must be completed by the start of commercial operation of Power Block 1.

Verification: At least 90 calendar days before ordering any permanent lighting equipment for Power Block 1 and related facilities and structures, the project owner shall submit a comprehensive Lighting Management Plan to the CPM for review and approval, ~~and to the City of Huntington Beach Planning and Building Department and the Executive Director of the Coastal Commission for timely review and comment. The project owner shall provide the CPM with a copy of the transmittal letters submitted to the City and the Coastal Commission requesting those agencies' respective timely reviews of the Lighting Management Plan.~~

If the CPM determines that the plan requires revision, the project owner shall provide a plan with the specified revision(s) for review and approval by the

~~CPM. A copy of the revised plan shall be provided to the City's Planning and Building Department and the Executive Director of the Coastal Commission for timely review and comment.~~

~~The project owner shall provide the CPM with copies of the transmittal letters submitted to the City and the Coastal Commission requesting those agencies' respective timely reviews of the Lighting Management Plan and any plan revisions.~~

Prior to the start of commercial operation of Power Block 1, the project owner shall notify the CPM that installation of permanent lighting for Power Block 1 has been completed and that the lighting is ready for inspection. If the CPM notifies the project owner that modifications to the lighting system are required, within 30 days of receiving that notification, the project owner shall implement all specified changes and notify the CPM that the modified lighting system(s) is ready for inspection.

Within 48 hours of receiving a complaint about permanent project lighting, the project owner shall provide to the CPM a copy of the complaint report and resolution form, including a schedule for implementing corrective measures to resolve the complaint.

The project owner shall report any complaints about permanent lighting and document their resolution in the Annual Compliance Report for the project, accompanied by copies of completed complaint report and resolution forms for that year.

VIS-6 Lighting Management Plan, Review and Letter Report – Project Operation. Prior to commercial operation of the HBEP Power Block 2, the project owner shall conduct a full review of the approved Lighting Management Plan to determine whether updates to the plan are needed (e.g., to implement lighting technology changes). Review of the plan shall include preparation of a letter report summarizing conclusions and recommendations for the lighting plan. ~~The plan review shall be conducted with the direct involvement of a certified lighting professional trained to integrate efficient technologies and designs into lighting systems. The letter report shall include evidence of the certified lighting professional's participation in plan review.~~

~~The plan review and letter report shall be submitted to the Compliance Project Manager (CPM) for review and approval and the City of Huntington Beach Planning and Building Department for timely review and comment. Any comments on the letter report from the City shall be provided to the CPM.~~

The project owner shall not purchase or order any permanent lighting for Power Block 2 or new buildings (including administrative or maintenance buildings or warehouses) until written approval of the plan review and letter

report is received from the CPM. Installation of lighting must be completed by the start of commercial operation of Power Block 2.

Verification: At least 60 calendar days before ordering any permanent lighting for Power Block 2 and other buildings and structures, the project owner shall submit the plan review and letter report to the CPM for review and approval ~~and the City of Huntington Beach Planning and Building Department for timely review and comment. The project owner shall provide the CPM with a copy of the transmittal letter submitted to the City requesting the City's timely review of the letter report.~~

Prior to the start of commercial operation of Power Block 2, the project owner shall notify the CPM that installation of permanent lighting has been completed and that the lighting is ready for inspection. If the CPM notifies the project owner that modifications to the lighting system are required, within 30 days of receiving that notification, the project owner shall implement all specified changes and notify the CPM that the modified lighting system(s) is ready for inspection.

EXHIBIT J
APPLICANT'S OPENING TESTIMONY FOR WASTE MANAGEMENT

**Opening Testimony of AES Southland Development, LLC
in the Huntington Beach Energy Project Proceeding (12-AFC-02)**

Applicant's Witness: **Sarah Madams**

Date: **June 30, 2014**

Topic: **Waste Management**

Applicant requests that Condition of Certification (“COC”) WASTE-1 be simplified to more closely reflect the version proposed by Staff in PSA Part A, which focused on characterization and remediation activities that will occur as required by DTSC, the Huntington Beach Fire Department, and (if applicable) the Orange County Health Care Agency. DTSC is currently designated as the lead agency for site cleanup related to previous activities and has been working with the former property owner Southern California Edison (“SCE”) for characterization and cleanup. Simplifying the condition allows for this relationship to continue and for the CPM to review documentation concurrently with the DTSC and Huntington Beach Fire Department, with approval remaining with DTSC for closure. Revising the condition as detailed below still ensures that there would be no environmental impacts and worker safety would be maintained.

WASTE-1 The project owner shall ensure that the HBEP project site is properly characterized and remediated as necessary pursuant to the corrective action plans reviewed by DTSC, the Huntington Beach Fire Department and/or the Orange County Health Care Agency, ~~and approved by the Energy Commission CPM.~~ In no event shall project construction commence in areas requiring characterization and remediation until the CPM determines, with confirmation from the appropriate regulatory agency, that all necessary remediation has been accomplished.

~~All soils at the site shall conform to City of Huntington Beach's Specification # 431-92 Soil Clean-Up Standards. Soil testing for the contaminants identified in City Specification 431-92 and for Methane Gas, in accordance with City Specification 429, shall be completed as follows:~~

~~a. Soil Sampling Work Plan: A qualified environmental consultant shall prepare and submit a soil sampling work plan (for contaminants identified in City Specification 431-92 and for methane gas) to the CPM and the Huntington Beach Fire Department HBFD for review and timely comment. Once the HBFD reviews and the CPM approves the work plan, the sampling may commence.~~

~~Note: Soil shall not be exported to other City of Huntington Beach locations without first being demonstrated to comply with City Specification 431-92 Soil Clean Up Standards. Also, any soil proposed for import to the site shall first be demonstrated to comply with City Specification 431-92.~~

~~b. Soil Sampling Lab Results: Conduct the soil sampling in accordance with the HBFD approved work plan. After the sampling is conducted, the lab results (along with the Environmental Consultants summary report) for~~

WASTE MANAGEMENT-1

methane and 431-92 testing shall be submitted to the CPM and HBFD. for review.

~~c. Remediation Action Plan: If contamination is identified, provide a Fire Department approved Remediation Action Plan (RAP) based on requirements found in Huntington Beach City Specification #431-92, Soil Cleanup Standard. All soils shall conform to City Specification # 431-92 Soil Clean Up Standards prior to the issuance of a grading or building permit.~~

~~d. Prior to and during grading and construction, discovery of additional soil contamination **not previously identified or already included in corrective action plans, work plans or closure plans** or underground pipelines, etc., must be reported to the CPM, and the, **DTSC, and** HBFD immediately and the approved work plan modified accordingly in compliance with City Specification #431-92 Soil Clean Up Standards.~~

~~e. Outside City Consultants: The HBFD review of this project and subsequent plans will require the use of City consultants. The Huntington Beach City Council approved fee schedule allows the Fire Department to recover consultant fees from the applicant, developer or other responsible party.~~

~~The project owner shall furnish a final copy of. Items a. through e. to the Energy Commission CPM, DTSC, the Huntington Beach Fire Department and/or the Orange County Health Care Agency. An initial draft of the remedial documents shall be provided to the Energy Commission CPM, DTSC and the Huntington Beach Fire Department for review and timely comments. The final document shall be approved by the CPM. The final copy of the remedial plan shall reflect recommendations of the CPM, DTSC, and the Huntington Beach Fire Department, the project owner shall provide to the CPM for review and approval written notice from the appropriate regulatory agency that the HBEP site has been investigated and remediated as necessary in accordance with the corrective action plan.~~

~~**Verification:** At least ~~45~~ 30 days prior to **remediation** implementation the project owner shall submit the Soil Sampling Work Plan to the CPM **copies of remediation documentation such as, but not limited to, soil sample results, work plans, and agreements regarding the corrective action plan requirements and activities at the project site** for approval. Within 30 days of implementing the Soil Sampling Work Plan, the project owner shall submit copies of all soil sampling lab results with the summary report for review. At least 90 days prior to implementation the project owner shall submit the Remediation Action Plan to the CPM for review and approval.~~

~~**Pertinent correspondence such as, but not limited to, soil sample results, work plans, agreements, and authorizations involving DTSC, the Huntington Beach Fire Department, and/or (if applicable) the Orange County Health Care Agency regarding the corrective action plan**~~

requirements and activities at the project site will be provided to the CPM within 10 days of receipt.

At least 15 days prior to the start of site mobilization, the project owner shall provide to the CPM written notice from the appropriate regulatory agency that the HBEP site has been investigated and remediated as necessary in accordance with the corrective action plan.

If additional soil contamination **not previously identified or already included in corrective action plans, work plans or closure plans** is encountered prior to or during grading the project owner will shall **notify the CPM and DTSC** revise the approved work plan and submit it for **concurrent CPM, Huntington Beach Fire Department and DTSC review approval** within 30 days after contamination is identified. **Comments received within 30 days from all parties will be incorporated and provided to DTSC for approval.**

In addition to the foregoing revisions to WASTE-1, Applicant requests minor modifications to Condition of Certification WASTE-2. The Asbestos Notification Form referred to in WASTE-2 is not a permit per se, but is instead a notification to the South Coast Air Quality Management District (“SCAQMD”). Therefore, the Applicant requests the language be modified to reflect a concurrent submittal of the Notification Form to both the SCAQMD and CPM for their respective records.

WASTE-2 Prior to demolition of existing structures associated with Units 1, 2, and 5, the project owner shall complete and submit a ~~copy of a~~ SCAQMD Asbestos Demolition Notification Form to the CPM and to the SCAQMD ~~for approval~~. After receiving approval, **Once submitted**, the project owner shall remove all Asbestos Containing Material (ACM) from the site prior to demolition.

Verification: No less than sixty (60) days prior to commencement of structure demolition, the project owner shall provide the Asbestos Demolition Notification Form **and any updated notifications** to the CPM **and to the SCAQMD** ~~for review and approval~~. The project owner shall inform the CPM via the monthly compliance report, of the data when all ACM is removed from the site.

EXHIBIT K
APPLICANT'S OPENING TESTIMONY FOR WORKER SAFETY & FIRE PROTECTION

**Opening Testimony of AES Southland Development, LLC
in the Huntington Beach Energy Project Proceeding (12-AFC-02)**

Applicant's Witness: **Sarah Madams**

Date: **June 30, 2014**

Topic: **Worker Safety and Fire Protection**

While Applicant concurs with the findings and conclusions in the Worker Safety and Fire Protection section of the FSA, Applicant wishes to address an inaccurate statement in the text of the FSA. On page 4.14-12, Staff states that “[a]ll power plants licensed by the Energy Commission are required to have more than one access point to the power plant site.” This overarching generalization is inaccurate and such a requirement would be overly burdensome. Nowhere in the Warren-Alquist Act or CEC Siting Regulations is dual access required. Moreover, access requirements are based on local laws, ordinances, regulations, and standards (“LORS”), specifically local fire-related LORS. Importantly, there is no potentially significant environmental impact that supports such a general requirement for dual access as applied to every power plant site. Without substantial evidence of a nexus between some impact and a proposed condition, the condition is unlawful. (*Nollan v. California Coastal Commission* (1987) 483 US 825, 837; *Dolan v. City of Tigard* (1994) 512 US 374, 386; *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 880.)

While in some instances it may be appropriate to require more than one point of access to a power plant site, such an overarching general requirement has no justification. Without specific evidence to support such a requirement as determined on a case-by-case basis (including the consideration of local LORS), any efforts by the CEC to develop such a requirement addressing site access should be done through a regulatory process, with full notice and opportunity for all members of the public and all affected parties to participate.

Here, Applicant agreed to provide two access points to the HBEP site based on discussions with and specific input from the City of Huntington Beach Fire Department. For the reasons set forth herein, Applicant objects, however, to Staff’s general statement in the FSA that all power plants are required to have more than one access point. Including such a broad requirement in licensing cases without consideration of the LORS of the local jurisdiction and absent a regulation mandating such as a standard Condition of Certification in a CEC license is improper and rises to the level of an underground regulation.

In addition, the Applicant requests one minor change to the Verification of Condition of Certification WORKER SAFETY-5, reducing the timing for when the automatic external defibrillator (“AED”) must be brought onsite prior to mobilization.

WORKER SAFETY-5 The project owner shall ensure that a portable automatic external defibrillator (AED) is located on site during construction and operations and shall implement a program to ensure that workers are properly trained in its use and that the equipment is properly maintained and functioning at all times. During construction and commissioning, the following persons shall be trained in

its use and shall be on site whenever the workers that they supervise are on site: the Construction Project Manager or delegate, the Construction Safety Supervisor or delegate, and all shift foremen. During operations, all power plant employees shall be trained in its use. The training program shall be submitted to the CPM for review and approval.

Verification: At least ~~10~~ 60 days prior to the start of site mobilization, the project owner shall submit to the CPM proof that a portable automatic external defibrillator (AED) exists on site and a copy of the training and maintenance program for review and approval.

EXHIBIT L

APPLICANT'S OPENING TESTIMONY FOR COMPLIANCE CONDITIONS OF CERTIFICATION

**Opening Testimony of AES Southland Development, LLC
in the Huntington Beach Energy Project Proceeding (12-AFC-02)**

Applicant's Witness: **Stephen O'Kane**

Date: **June 30, 2014**

Topic: **Compliance Conditions**

Applicant provides the following testimony related to Compliance Conditions COM-13 and COM-15 and proposes minor changes to each Condition as discussed separately below.

COM-13

A minor modification to COM-13 is necessary to provide that, in the event of an incident requiring the project owner to file a detailed incident report, the report be filed within six (6) business days of the incident, rather than within one week of the incident. The reason for this change is to ensure sufficient time for preparation of the required report. If an event were to occur on a Sunday, for example, as currently drafted the report would be due no later than the next Friday ("within one week"), allowing only 4-5 days to complete this detailed report on an incident that may still be under investigation. Allowing the report to be submitted within six business days ensures sufficient time to complete the investigation and prepare the required report, and accounts for any intervening weekends or holidays that may otherwise reduce the time available to prepare the report.

In addition, Applicant also proposes that after the submittal of the initial report, copies be submitted within forty-eight hours of a request for a copy, rather than twenty-four hours of a request.

Applicant proposes such modest revisions to the reporting timelines in order to ensure compliance without compromising the timely delivery of reports to the CPM.

COM-13: Incident-Reporting Requirements. Within one hour after it is safe and feasible, the project owner shall notify the CPM or Compliance Office Manager, by telephone and e-mail, of any incident at the power plant or appurtenant facilities that results, or could result, in any of the following:

1. health and safety impacts on the surrounding population;
2. property damage off-site;
3. response by off-site emergency response agencies;
4. serious on-site injury;
5. serious environmental damage; or
6. emergency reporting to any federal, state, or local agency.

The notice shall describe the circumstances, status, and expected duration of the incident. If warranted, as soon as it is safe and feasible, the project owner shall implement the safe shutdown of any non-critical equipment and removal of any hazardous materials and waste that pose a threat to public health and safety and to

environmental quality (also, see specific conditions of certification for the technical areas of **HAZARDOUS MATERIALS MANAGEMENT** and **WASTE MANAGEMENT**).

Within ~~one week~~ **six (6) business days** of the incident, the project owner shall submit to the CPM a detailed incident report, which includes, as appropriate, the following information:

1. a brief description of the incident, including its date, time, and location;
2. a description of the cause of the incident, or likely causes if it is still under investigation;
3. the location of any off-site impacts;
4. description of any resultant impacts;
5. a description of emergency response actions associated with the incident;
6. identification of responding agencies;
7. identification of emergency notifications made to federal, state, and/or local agencies;
8. identification of any hazardous materials released and an estimate of the quantity released;
9. a description of any injuries, fatalities, or property damage that occurred as a result of the incident;
10. fines or violations assessed or being processed by other agencies;
11. name, phone number, and e-mail address of the appropriate facility contact person having knowledge of the event; and
12. corrective actions to prevent a recurrence of the incident.

The project owner shall maintain all incident report records for the life of the project, including closure. After the submittal of the initial report for any incident, the project owner shall submit to the CPM copies of incident reports within ~~twenty-four (24)~~ **forty-eight (48)** hours of a request.

COM-15

Two minor modifications to Part A of COM-15 are needed. First, the reference to “an independent third party” to carry out closure needs to be clarified to reflect closure will be carried out by “qualified personnel.” The reference to an independent third party suggests that the project owner will entirely turn over closure responsibility to a third party and that the project owner will not oversee and manage that closure. As the party responsible for compliance with the Conditions of Certification, Applicant intends for the project owner to maintain responsibility for closure. Applicant fully intends to ensure that qualified personnel, including third party contractors as necessary, conduct the required closure activities. The requested modification clarifies project owner’s on-going responsibility for managing closure, and ensures that closure will be conducted by qualified personnel.

The requirement that an updated Provisional Closure Plan and Cost Estimate be provided every fifth year should also be removed from Part A of COM-15. This requirement generates unnecessary work, time, and expense, not commensurate with any value the updates will provide. As required by COM-15, the Provisional Closure Plan and Cost Estimate will provide an initial plan for closure. The Final Closure Plan and Cost Estimate will be filed three years prior to closure and will provide the final details regarding closure, based on conditions and requirements at the time. Five year updates to the Provisional Closure Plan will no better reflect actual closure conditions and requirements than the original Provisional Closure Plan and, therefore, the five year updates are overly burdensome.

COM-15: Facility Closure Planning. To ensure that a facility's eventual permanent closure and long-term maintenance do not pose a threat to public health and safety and/or to environmental quality, the project owner shall coordinate with the Energy Commission to plan and prepare for eventual permanent closure.

A. Provisional Closure Plan and Estimate of Permanent Closure Costs

To assure satisfactory long-term site maintenance and adequate closure for “the whole of a project,” the project owner shall submit a Provisional Closure Plan and Cost Estimate for CPM review and approval within sixty (60) days after the start of commercial operation. The Provisional Closure Plan and Cost Estimate shall consider applicable final closure plan requirements, and reflect ~~the use of an independent third party to carry out the~~**that** permanent closure **will be carried out by qualified personnel.**

The Provisional Closure Plan and Cost Estimate shall provide for a phased closure process and include but not be limited to:

1. comprehensive scope of work and itemized budget;
2. closure plan development costs;
3. dismantling and demolition;
4. recycling and site clean-up;
5. mitigation and monitoring direct, indirect, and cumulative impacts;
6. site remediation and/or restoration;
7. interim and long term operation monitoring and maintenance, including long-term equipment replacement costs; and
8. contingencies.

~~The project owner shall include an updated Provisional Closure Plan and Cost Estimate in every fifth year ACR for CPM review and approval. Each updated Provisional Closure Plan and Cost Estimate shall reflect the most current regulatory standards, best management practices, and applicable LORS.~~

EXHIBIT M
APPLICANT'S PRELIMINARY EXHIBIT LIST

In the Matter of:

**The Application for Certification for the
HUNTINGTON BEACH ENERGY PROJECT**

Docket No. 12-AFC-02

**APPLICANT'S PRELIMINARY EXHIBIT LIST
AS OF JUNE 30, 2014**

TAB #	CEC TN #	BRIEF DESCRIPTION/DATE	TECHNICAL TOPIC(S)
1001	66003	Application for Certification (AFC) Volumes 1 and 2 and related cover letter and CEC Check Receipt for application fees (\$733,965); dated and docketed June 27, 2012	All Topics
1002	66006	Air Quality Air Dispersion Modeling Data (CD) and Air Quality Appendices 5.1A, dated and docketed June 27, 2012	Air Quality; Public Health
1003	66057	Application for Designation of Confidential Record re Cultural Resources Records, dated and docketed June 27, 2012	General; Cultural Resources
1004	66490	Applicant's Data Adequacy Supplement dated and docketed August 6, 2012	Air Quality; Biological Resources; Cultural Resources; Public Health; Transmission System Engineering
1005	66491	Applicant's Dispersion Modeling Files (Data Adequacy Response 24), dated August 2012; docketed August 6, 2012	Air Quality; Public Health
1006	66492	Applicant's Data Adequacy Supplement/Preliminary Geotechnical Report, dated and docketed August 6, 2012	Geological Resources
1007	66493	Applicant's Repeated Application for Confidential Designation – Cultural Resources, dated and docketed August 6, 2012	General; Cultural Resources
1008	66506	Applicant's Biological Resources page 5.2-2CR (to be included with Applicant's Data Adequacy Supplement) dated August 7, 2012; docketed August 8, 2012	Biological Resources
1009	66913	Applicant's Letter enclosing correspondence to the California Coastal Commission re HBEP, dated and docketed August 23, 2012	General; Biological Resources; Water

TAB #	CEC TN #	BRIEF DESCRIPTION/DATE	TECHNICAL TOPIC(S)
1010	67020	Applicant's Comments on the Issues Identification Report, dated and docketed September 6, 2012	Alternatives; Transmission System Engineering; Waste Management
1011	67110	Applicant's Letter to F. Miller, CEC, re Applicant's Site Visit & Informational Hearing Materials, dated and docketed September 13, 2012	General
1012	67316	AES (S. O'Kane) letter to D. Jordan, USEPA, re Application for Greenhouse Gas PSD Pre-Construction Permit, dated September 19, 2012; docketed September 26, 2012	Air Quality
1013	67317	AES (S. O'Kane) Response to South Coast Air Quality Management District's Air Application, dated September 20, 2012; docketed September 26, 2012	Air Quality
1014	67902	Request for Extension to Submit Data Responses, Set One (#1-72); Objections, dated and docketed October 22, 2012	General
1015	68070	Emails Between S. O'Kane, C. Perri, SCAQMD, and CH2M Hill re HBEP Emission Rates and Modeling Results, dated October 23, 2012; docketed October 24, 2012	Air Quality
1016	68208	Email re Huntington Beach Energy Project's Emission Rates and Modeling Results, dated October 25, 2012; docketed October 26, 2012	Air Quality
1017	68366	Applicant's Responses to Staff's Data Requests, Set 1A (#1-72), dated and docketed November 2, 2012	Air Quality; Biological Resources; Cultural Resources; Public Health; Socioeconomics; Soil & Water; Traffic & Transportation; Transmission System Engineering; Visual Resources; Waste Management; Worker Safety and Fire Protection
1018	68384	Applicant's Air Quality Modeling Files Related to CEC Staff's Data Request Two, dated and docketed November 5, 2012	Air Quality
1019	68416	Applicant's Letter to F. Miller, CEC, (enclosing correspondence to US EPA with document dated September 19, 2012 [disc included]), dated and docketed November 7, 2012	Air Quality

TAB #	CEC TN #	BRIEF DESCRIPTION/DATE	TECHNICAL TOPIC(S)
1020	68743	Applicant's Request for Additional Extension of Time to Submit Responses to Staff's Data Requests, Set 1A, dated and docketed December 3, 2012	General
1021	68796	Applicant's Letter to Jason Pyle and Commrs. McAllister and Douglas, re Request for Extension of Time to Submit Responses to Pyle's Data Requests, dated and docketed December 6, 2012	General
1022	68847	Applicant's Responses to Supplemental Data Response #36 (Cultural Resources), dated and docketed December 11, 2012	General; Cultural Resources
1023	68848	Applicant's Correspondence Related to Air Quality (various dates), docketed December 11, 2012	Air Quality
1024	68849	Applicant's Responses to Supplemental Data Response to Data Request #68 (Visual Resources), dated and docketed December 11, 2012	General; Visual Resources
1025	68850	Applicant's Response to SCAQMD's October 26, 2012 Email Request re Start/Stop Emissions and GHG Performance, dated December 7, 2012; docketed December 11, 2012	Air Quality
1026	68867	Applicant's (Jerry Salamy, CH2M Hill) correspondence to CEC Staff and South Coast Air Quality Management District, et al. re HBEP start/stop emissions and GHG Performance, dated and docketed December 12, 2012	Air Quality
1027	68876	Applicant's Responses to Intervenor Jason Pyle's Data Requests, Set 1 (#1-16), dated and docketed December 13, 2012	General; Noise & Vibration
1028	68934	Huntington Beach Energy Project Email to SCAQMD Regarding GHG Calculations and Heat Rates, dated December 19, 2012; docketed December 20, 2012	Air Quality
1029	69017	Applicant's Submittal of Email Correspondence Related to Air Quality (various dates); docketed January 3, 2013	Air Quality
1030	69020	Supplemental Response to Data Request #27 (Biological Resources), dated and docketed January 3, 2013	Biological Resources
1031	69074	Applicant's Request for Extension to Submit certain Data Responses Contained in CEC Staff's Data Responses Set Two (#73-98) and Objections, dated and docketed January 9, 2013	General
1032	69098	EPA's letter to S. O'Kane re Transfer of GHG PSD Permit Application to South Coast Air Quality Management District, dated January 10, 2013; docketed January 11, 2013	Air Quality

TAB #	CEC TN #	BRIEF DESCRIPTION/DATE	TECHNICAL TOPIC(S)
1033	69179	Air Quality Modeling Files Related to Applicant's Response to Staff's Data Request AQ-11, dated and docketed January 17, 2013	Air Quality
1034	69180	Additional Responses to Jason Pyle's Data Requests, Set 1 (#1-16), dated and docketed January 17, 2013	Noise & Vibration
1035	69182	Applicant's Responses to Staff's Data Requests, Set 1 (AQ-11; BIO-23 through BIO-26), dated January 16, 2013; docketed January 17, 2013	Air Quality; Biological Resources
1036	69206	Applicant's Status Report, dated and docketed January 22, 2013	General
1037	69208	Applicant's Responses to Staff's Data Requests, Set 2 (#73-98), dated and docketed January 22, 2013	Noise & Vibration; Public Health; Socioeconomics; Soil & Water; Traffic & Transportation; Visual Resources
1038	69214	Applicant's Supplemental Files in Response to Staff's Visual Resources Data Request (#97), dated and docketed January 22, 2013	Visual Resources
1039	69243	Chris Perri's (South Coast Air Quality Management District) email to S. O'Kane, et al., and Jerry Salamy's response re HBEP Commissioning Emissions, dated and docketed January 23, 2013	Air Quality
1040	69373	Applicant's Supplemental Files in Response to Staff's Informal Request (Visual Resources), dated and docketed February 4, 2013	Visual Resources
1041	69415	Applicant's Response to Staff's Data Requests, Set 1, Data Request #40 (SOCIO-40), dated and docketed February 6, 2013	Socioeconomics
1042	69422	Correspondence Related to Air Quality – Ammonia Emissions (various dates), docketed February 6, 2013	Air Quality
1043	69446	Request for Extension to Submit Responses to Staff's Data Requests, Set 2 (#74-77), dated and docketed February 8, 2013	Public Health
1044	69514	Email from Robert Mason, CH2M Hill, to Felicia Miller, CEC, re HBEP Existing Workforce Question, dated and docketed February 12, 2013	Worker Safety & Fire Protection
1045	69545	Applicant's Responses to Staff's Data Requests, Set 3 (#99-103), dated and docketed February 15, 2013	Soil & Water Resources

TAB #	CEC TN #	BRIEF DESCRIPTION/DATE	TECHNICAL TOPIC(S)
1046	69564	Applicant's Supplemental Responses to Staff's Data Requests, Set 2 (Water Resources #80-83 and Traffic and Transportation #92-94), dated and docketed February 15, 2013	Water Resources; Traffic & Transportation
1047	69631	Applicant's Responses to Staff's Data Requests, Set 2A (Public Health #74-77), dated and docketed February 22, 2013	Public Health
1048	69632	Air Quality Modeling Files Related to Applicant's Responses to Staff's Data Requests, Set 2A (Public Health #74-77) [disc included], dated and docketed February 22, 2013	Public Health
1049	69687	Letter from South Coast Air Quality Management District Requesting Additional Clarifying Information to Applicant dated February 19, 2013; docketed February 26, 2013	Air Quality
1050	69700	Applicant's Correspondence Related to Air Quality (January and February 2013); docketed February 27, 2013	Air Quality
1051	69878	Email to F. Miller from Robert Mason, CH2M Hill re Response to Email Request from CEC Staff on Use and Number of Stories for Specific HBEP Building, dated and docketed March 8, 2013	General; Project Description
1052	69888	Applicant's Supplemental Responses to Data Requests #31 (Biological Resources), dated and docketed March 11, 2013	Biological Resources
1053	69918	Applicant's Responses to Staff's Workshop Queries and Related Air Quality Modeling Files [disc included], dated and docketed March 14, 2013	Air Quality
1054	69919	Applicant's Response to Staff's Informal Inquiry Re HBGS Fuel Oil Tanks, dated March 13, 2013; docketed March 14, 2013	General; Project Description
1055	69920	Correspondence Related to Air Quality [Costa Mesa Meta Data and Related Files; disc included] (various dates); docketed March 14, 2013	Air Quality
1056	69921	Applicant's Correspondence Related to Existing HBGS Re Plot Plans [disc included], dated March 12, 2013; docketed March 14, 2013	Air Quality
1057	69947	Submittal of AutoCAD Files Related to Preliminary Grading and Drainage Plans (Water Resources) [disc included], dated and docketed March 18, 2013	Water Resources
1058	69948	Submittal of email correspondence re Tanks, dated March 9, 2013; docketed March 18, 2013	General; Project Description
1059	69961	Revision to Construction and Demolition Schedule, dated March 18, 2013; docketed March 19, 2013	General; Project Description

TAB #	CEC TN #	BRIEF DESCRIPTION/DATE	TECHNICAL TOPIC(S)
1060	69967	Additional Construction and Demolition Information, dated March 29, 2013; docketed March 20, 2013	General; Project Description
1061	69969	Applicant's Information regarding Construction Risk Value (Public Health) (various dates); docketed March 20, 2013	Public Health
1062	70167	Applicant's Submittal of Air Quality Correspondence [disc included] (various dates); docketed March 27, 2013	Air Quality
1063	70291	Applicant's Status Report, dated and docketed April 15, 2013	General
1064	70403	Geologic Resources: Final Site Investigation Report for Soil and Groundwater for HBGS, dated May 1998 [disc included]; docketed April 19, 2013	Geological Resources; Soil & Water Resources
1065	70762	Correspondence Related to Air Quality (various dates); docketed May 10, 2013	Air Quality
1066	70865	Applicant's Responses to Data Requests, Set 4, #104-106 Air Quality Modeling, dated and docketed May 17, 2013	Air Quality
1067	70870	Applicant's Responses to Data Requests, Set 5, #107-109 Public Health, dated and docketed May 17, 2013	Public Health
1068	70957	Applicant's Status Report dated and docketed May 24, 2013	General
1069	71338	Applicant's Responses to Staff's Informal Requests (Visual Resources), dated and docketed June 19, 2013	Visual Resources
1070	71513	Applicant's Correspondence Related to Air Quality (various dates), docketed July 3, 2013	Air Quality
1071	71529	Applicant's Status Report, dated and docketed July 8, 2013	General
1072	71601	Correspondence with CEC's F. Miller Re Cheng Cycle Technology Information, dated July 12, 2013; docketed July 15, 2013	Air Quality
1073	200042	Applicant's Correspondence to South Coast Air Quality Management District, dated July 17, 2013; docketed July 25, 2013	Air Quality
1074	200050	Applicant's Request for Scheduling Conference and/or Scheduling Order dated and docketed July 26, 2013	General
1075	200362	Applicant's Response to SCAQMD's June 7, 2013 Data Request, dated August 26, 2013; docketed August 28, 2013	Air Quality

TAB #	CEC TN #	BRIEF DESCRIPTION/DATE	TECHNICAL TOPIC(S)
1076	200363	Applicant's Offsite Consequence Analysis (Hazardous Materials Handling), dated August 27, 2013; docketed August 28, 2013	Hazardous Materials Handling
1077	200375	Correspondence re Air Quality (various dates); docketed August 29, 2013	Air Quality
1078	200380	Applicant's Status Report (September 2013), dated and docketed August 30, 2013	General
1079	200424	Applicant's Response to Staff's Status Report and Request for Status Conference, dated and docketed September 9, 2013	General
1080	200631	CAISO Phase I Interconnection Study Report Related to HBEP, dated January 31, 2013; docketed September 24, 2013	Transmission System Engineering
1081	200675	Applicant's Responses to Staff's Informal Data Requests re Alternatives/Water Resources, dated and docketed September 30, 2013	Alternatives; Soil & Water Resources
1082	200698	Applicant's Status Report, dated and docketed October 1, 2013	General
1083	200949	Applicant's 1-Hour NO ² Competing Source Inventory, dated and docketed October 18, 2013; <i>see also</i> , Letter from K. Hellwig to Felicia Miller dated December 11, 2013 transmitting related Modeling Files [3 discs]	Air Quality
1084	201096	Applicant's Status Report, dated and docketed November 1, 2013	General
1085	201106	Applicant's Resubmission of Data Responses, Set 1B, 4, and 5 to DR 23 to 26 (Biological Resources), 104 to 106 (Air Quality), and 107 to 109 (Public Health), dated and docketed November 4, 2013	Air Quality; Biological Resources; Public Health
1086	201109	Applicant's Letter to F. Miller re AQ Modeling Files Submitted with Revised Responses, Set 1B, 4, and 5, dated and docketed November 4, 2013	Air Quality
1087	201142	Applicant's Comments on PSA, Part A, dated and docketed November 7, 2013	Biological Resources; Land Use; Noise; Socioeconomics; Soil & Water Resources; Traffic & Transportation; Visual Resources; Waste Management
1088	201229	Applicant's Air Quality Correspondence and Emails (various dates), docketed November 15, 2013	Air Quality
1089	201352	Applicant's Status Report (December 2013), dated and docketed December 2, 2013	General

TAB #	CEC TN #	BRIEF DESCRIPTION/DATE	TECHNICAL TOPIC(S)
1090	201437	Applicant's Follow-up to PSA Part A Workshop, dated and docketed December 13, 2013	Biological Resources; Cultural Resources; Land Use; Noise; Socioeconomics; Soil & Water Resources; Traffic & Transportation; Compliance
1091	201471	Applicant's Letter re Receipt of Preliminary Staff Assessment - Part A, Supplemental Focused Analysis, dated and docketed December 23, 2013	General
1092	201469	CAISO Cluster 5 Phase II Interconnection Study (App. A, Att. #4 submitted separately), dated December 3, 2013; docketed December 23, 2013	Transmission System Engineering
1093	201501	Applicant's Status Report (January 2014), dated and docketed January 2, 2014	General
1094	201570	Applicant's Resubmission of Data Responses, Set 4 (Updated Response to Data Request 104 [Air Quality]), dated and docketed January 17, 2014	Air Quality
1095	201572	Discs Containing Air Modeling Files Related to Resubmission of Data Responses, Set 4, dated and docketed January 17, 2014	Air Quality
1096	201582	Applicant's Comments on Staff's Supplemental Focused Analysis, PSA Part A, dated and docketed January 21, 2014	Biological Resources; Cultural Resources; Soil & Water Resources; Visual Resources
1097	201632-1 ¹	Applicant's Status Report (February 2014), dated and docketed on February 3, 2013	General
1098	201820	Status Report (March 2014) and Request for Scheduling Order, dated and docketed March 3, 2014	General
1099	201840	Applicant's Comments on SCAQMD's Preliminary Determination of Compliance, dated and docketed March 7, 2014	Air Quality
1100	201938	Applicant's Status Report (April 2014), dated and docketed April 1, 2014	General
1101	201969	Applicant's Comments on Preliminary Staff Assessment, Part B, dated and docketed April 7, 2014	Alternatives; Soil & Water Resources; Air Quality; Public Health

¹ According to the CEC on 2/3/2014, there were problems with the docketing system and this docket number is a result of those problems.

TAB #	CEC TN #	BRIEF DESCRIPTION/DATE	TECHNICAL TOPIC(S)
1102	201970	Applicant's Status Conference Statement, dated and docketed April 7, 2014	General
1103	202003	Applicant's Transmittal of South Coast Air Quality Management District's Preliminary Determination of Compliance, dated April 1, 2014, docketed April 11, 2014	Air Quality
1104	202095	Applicant's Revised TSE Figure 3.1-1R dated April 15, 2014; docketed April 17, 2014	General
1105	202108	Applicant's Letter to F. Miller re Follow-up to PSA Part B Workshop, dated and docketed April 18, 2014	Biological Resources; Alternatives (Soil & Water Resources)
1106	202186	Applicant's Revised Data Responses 104 dated and docketed April 22, 2014	Air Quality
1107	202281	Applicant's Status Report (May 2014), dated and docketed May 1, 2014	General
1108	202292	Applicant's Comments on the PDOC dated and docketed May 5, 2014	Air Quality
1109	202414	Applicant's Status Report (June 2014), dated and docketed June 2, 2014	General
1110	202479	Applicant's Transmittal of the City of Huntington Beach Urban Water Management Plan, dated June 2011; docketed June 23, 2014	Alternatives; Water Resources
1111	202535	Applicant's Submittal of Historical HBGS Photographs (circa. 1959), dated and docketed June 23, 2014	Cultural Resources
1112	202598	Declaration of Lisa Valdez in Support of Applicant's Opening Testimony, dated June 24, 2014; docketed June 26, 2014	Traffic & Transportation
1113	202599	Declaration of Mark Bastasch in Support of Applicant's Opening Testimony, dated June 21, 2014; docketed June 26, 2014	Noise & Vibration
1114	202600	Declaration of Jennifer Krenz-Ruark in Support of Applicant's Opening Testimony, dated June 23, 2014; docketed June 26, 2014	
1115	202601	Declaration of Horacio Larios in Support of Applicant's Opening Testimony, dated June 10, 2014; docketed June 26, 2014	Facility Design; Project Description
1116	202602	Declaration of W. Geoffrey Spaulding, Ph.D. in Support of Applicant's Opening Testimony, dated June 15, 2014; docketed June 26, 2014	Paleontological Resources
1117	202603	Declaration of Futuma Yusuf, Ph.D. in Support of Applicant's Opening Testimony, dated June 23, 2014; docketed June 26, 2014	Socioeconomics

TAB #	CEC TN #	BRIEF DESCRIPTION/DATE	TECHNICAL TOPIC(S)
1118	202604	Applicant's Correspondence to SCAQMD re Class II Visibility, dated May 16, 2014; docketed June 26, 2014	Air Quality
1119	202605	Applicant's Correspondence to SCAQMD re Verification of PDOC Public Notice Distribution, dated June 18, 2014; docketed June 26, 2014	Air Quality
1120	202606	Declaration of Thomas Lae in Support of Applicant's Opening Testimony, dated June 10, 2014; docketed June 26, 2014	Geological Resources
1121	202607	Declaration of Robert Mason in Support of Applicant's Opening Testimony, dated June 24, 2014; docketed June 26, 2014	Alternatives; Land Use; Project Description
1122	202608	Declaration of Sarah Madams in Support of Applicant's Opening Testimony, dated June 25, 2014; docketed June 26, 2014	Hazardous Materials; Worker Safety & Fire Protection; Waste Management
1123	202609	Declaration of Melissa Fowler in Support of Applicant's Opening Testimony, dated June 16, 2014; docketed June 26, 2014	Biological Resources
1124	202610	Declaration of Matthew Franck in Support of Applicant's Opening Testimony, dated June 23, 2014; docketed June 26, 2014	Water Resources
1125	202611	Declaration of Thomas J. Priestley, Ph.D. in Support of Applicant's Opening Testimony, dated and docketed June 26, 2014	Visual Resources
1126	202613	Declaration of Robert Sims in Support of Applicant's Opening Testimony, dated June 25, 2014; docketed June 26, 2014	Transmission System Engineering; Transmission Line Safety & Nuisance
1127	202614	Declaration of Robert J. Dooling, Ph.D. in Support of Applicant's Opening Testimony, dated June 24, 2014; docketed June 26, 2014	Biological Resources (Noise)
1128	202615	Declaration of Clint Helton in Support of Applicant's Opening Testimony, dated June 25, 2014; docketed June 26, 2014	Cultural Resources
1129	202616	Declaration of Jerry Salamy in Support of Applicant's Opening Testimony, dated June 26, 2014; docketed June 26, 2014	Air Quality; Public Health; Alternatives
1130	202626	Declaration of Stephen O'Kane in Support of Applicant's Opening Testimony, dated and docketed June 26, 2014	General; Air Quality; Project Description; Facility Design