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BEFORE THE
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of: ) Docket No.
REDONDO BEACH ENERGY PROJECT ) 12-AFC-03
_______________________________ ) Status Conference

CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Hearing Room B
Sacramento, California

THURSDAY, AUGUST 7, 2014
8:30 A.M.

Reported by Adrian Edler
APPEARANCES

COMMITTEE:
Karen Douglas, Presiding Commissioner
Janea A. Scott, Associate Commissioner

HEARING OFFICER:
Susan Cochran, California Energy Commission

ADVISORS:
Jennifer Nelson, Advisor to Commissioner Douglas
Eli Harland, Advisor to Commissioner Douglas
Jim Bartridge, Advisor to Commissioner Scott

CEC STAFF:
Pat Kelly, Project Manager
Kerry Willis, Senior Staff Counsel

APPLICANT:
Greggory Wheatland, Attorney for AES Southland LLC
Samantha Pottenger, Attorney for AES Southland LLC
Steven O’Kane

INTERVENORS:
John Welner, Attorney, City of Redondo Beach
Shahiedah Coates, Attorney, City of Hermosa Beach

(petition pending)
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COMMISSIONER DOUGLAS: Good morning, everybody. Welcome to the status conference for the Redondo project. My name is Commissioner Karen Douglas, I’m the presiding member of this committee. To my left is our Hearing Officer, Susan Cochran. To her left, Commissioner Janea Scott, she’s the associate member on this committee. And to her left is Jim Bartridge, Commissioner Scott’s advisor.

Let me ask the parties to introduce themselves, beginning with the applicant. And please remember both to turn your mikes off and then to turn them back -- turn them on when you speak and turn them off when you’re done, because we can’t have more than two mikes on at the same time.

MR. WHEATLAND: I think I’m on now. Greg Wheatland for the applicant. With me is Samantha Pottenger and Steven O’Kane.

COMMISSIONER DOUGLAS: Welcome, thank you. Staff.

MS. WILLIS: Good morning. My name is Kerry Willis, I’m Senior Staff Counsel, and with me is Pat Kelly, Project Manager.

COMMISSIONER DOUGLAS: All right.
Intervenor, City of Redondo Beach, could you introduce yourself.

MR. WELNER: Thank you. I’m Jon Welner, here for the City of Redondo Beach.

COMMISSIONER DOUGLAS: Thank you very much. Do we have any other -- we don’t have any other parties in the room, for the record, so do we have any other intervenors who are on the phone, or on the WebEx? If there are, you might be muted but we’re working on unmuting you and we’ll just ask you to speak up.

Building a Better Redondo?

All right, I don’t hear anybody from Building a Better Redondo.

Is City of Hermosa Beach on the line?

MS. COATES: Hi, good morning. This is Shahiedah Coates, Assistant City Attorney for the City of Hermosa Beach.

COMMISSIONER DOUGLAS: Thank you very much. Okay. At the moment -- oh, public advisor’s office, is anyone here from the public advisor’s office? Not yet.

I think we really threw people for a loop starting at 8:30, but it was for scheduling reasons necessary to do so.
At this point we don’t have any members of the public in the room. We’ll take public comment after the status conference concludes.
Let me ask now if there are any state, federal or local government agencies on the line who have not yet spoken?
MR. NAZEMI: Good morning, this is Mohsen Nazemi, Deputy Executive Officer with South Coast Air Quality Management District.
COMMISSIONER DOUGLAS: Excellent. Thank you, Mohsen.
Anyone else?
All right. With that, I’ll turn this over to the hearing officer.
HEARING OFFICER COCHRAN: As set forth in the order calling for the status conference today, we’re here to discuss the effect of the potential land use initiative being presented by AES to the City of Redondo Beach and to determine what effect that should have on the proceedings currently before us on the AFC.
We’ve read the status report statements that you all submitted, thank you very much. I think that at this point we’d like to hear from applicant first because it seemed that your status report said “let’s
talk” and then “times are uncertain” and then “full speed ahead” so if you could give us a little bit more input into what the status is of the initiative as well as how you see the AFC proceeding from this point forward.

MR. WHEATLAND: Okay. Well, thank you very much, Commissioners and Hearing Officer Cochran. Thank you for calling the status conference and we’re very happy to answer the questions you have posed today.

As to the status of the initiative, on July 23rd of 2014 the parent company of Redondo Beach Energy Project filed with the City of Redondo Beach a Notice of Intent to begin gathering signatures for an initiative measure for the local ballot, and this measure would establish as an alternative to a generating plant at that site a new land use plan for the site and it would provide a feasible economic path for the elimination of power generation and industrial uses at the site.

The filing of the Notice of Intent was the result of AES’s efforts to consider the land use concerns that were raised by the City of Redondo Beach and to address potential alternative uses of the site. The notice that was filed is the first step in what’s
going to be a lengthy process for determining whether the residents of Redondo Beach share our vision for an alternative use of the site.

Later today, the City Attorney is expected to issue a ballot title and summary. This document will allow AES to begin the process of gathering signatures for an initiative. If sufficient signatures are gathered, the initiative then would be voted upon by the residents of Redondo Beach in an election that we would expect to occur in March of 2015. If the initiative passes, as we hope it will, it will give legal form to a vision of the project site that would not involve electric generation.

Also, we understand that on August 19th the Redondo Beach City Council will consider a resolution of support for the initiative.

The question of whether the applicant should request suspension of the AFC proceeding, as you mentioned, Hearing Officer Cochran, is complicated. On a strictly legal basis, the proposed initiative measure would have no impact on the processing of the AFC. The initiative process is a local land use process separate from the conditioned certification under the Warren Alquist Act.

But there are, of course, practical
considerations that need to be discussed. This is
dependent upon a number of factors, many of which are
outside the applicant’s control.

As you know, the AFC was filed in November of
2012 and was found data adequate on August 27th, 2013.
So we are already one year into the proceeding and we
have made very substantial progress.

A PSA has been issued now in this proceeding
that is -- represents a bulk of the staff’s workload,
and the remaining steps of the proceeding are not as
onerous as what we’ve already been through this last
year.

The applicant has already invested millions
of dollars to design the project, to conduct
environmental studies and to prepare the AFC, not to
mention the $500,000-plus filing fee.

We recognize also that the Commission and
other parties have also made a substantial investment
in time and resources to participate in this
proceeding. Certainly no one, including the
applicant, would want to devote unnecessary resources
to this proceeding if, as we hope and expect, the
initiative will be successful. In just a few weeks --
however, it’s still slightly premature to assess the
likely success of that initiative.
In just a few weeks, following issuance of the ballot title and summary and after consideration of a resolution by the Redondo Beach City Council on August 19th, we’re going to have a much better idea whether the City shares our vision for alternative uses of the project site, and we will be in a much better position to advise you whether the applicant would be able to request suspension of the proceeding. So at this point in the proceeding what I would recommend to you is three things.

First of all, the committee -- we would recommend that the committee extend for 30 days the deadline for filing comments on the PSA, which I understand is now scheduled to be August 27th, so that no party would need to prepare comments on the PSA while the question of suspension is pending.

Second of all, I’d recommend to you that the committee direct the parties to update the committee on their positions on suspension in the next regularly scheduled status update, which would be on September 1st. This would follow the City Council’s meeting of August 19th.

And third, we’d recommend to you that the committee defer until after September 1st any further ruling on the scheduling or suspension of this
proceeding. In particular, this will allow all parties to see the ballot title and summary and will allow the Redondo Beach City Council to consider their support for the initiative. I think that would put us in a much better position to make a recommendation to you, and that would be our recommendation to you today.

HEARING OFFICER COCHRAN: Okay, thank you. Let’s turn now to staff. Do you have -- in your status report you made a suggestion of at a minimum reopening discovery to allow some discussion then in the alternatives section an analysis as it relates to this sort of newly proposed land use. And you’ve heard Mr. Wheatland’s suggestions regarding further actions. Do you concur, do you have different ideas? Where do we stand?

MS. WILLIS: Well, this is the first time we’ve heard the proposed recommendations. Once again, good morning. My name is Kelly Willis, Senior Staff Counsel. We also want to thank you for the opportunity to address the status of these proceedings.

We only found out about the Harbor Village proposed project through the media. AES had not contacted us nor its attorneys, so we were quite
surprised by the news, and that was only just a few
days before we published our over a thousand page
preliminary staff assessment.

It was staff’s goal to publish a complete PSA
in a timely manner, so the PSA includes all technical
sections and was published on July 28th, 45 days after
the preliminary determination of compliance was issued
by South Coast Air District.

There remains a few areas where we would
still need to workshop. That would be (inaudible)
mitigation and staff’s proposed use of recycled water.

In addition, staff -- the applicant still
needs to provide an air quality cumulative impact
assessment. In addition, staff had planned on a meet-
and-confer with the City on the urgency ordinance on
the building moratorium on the site, and staff found
that it was not an applicable LORS and we assumed that
the City would disagree with that -- with that
determination.

Prior to July 23rd when we first found out
about the Harbor Village, Ms. Kelly had contacted AES
and AES had said that they would want to hold
workshops during early and mid September, so this is
all news to us that we want to put this all on, you
know, hold for 30 days.
As you mentioned, if the proposed project moves forward, the power plant project, staff would need additional information on the project description of Harbor Village, the environmental impacts and any other information that we might need to go forward.

The PSA, in the PSA staff determined no project alternative would be the current power plant as it exists but nonoperational after 2020. Obviously, if this Harbor Village is in the picture, it would also become another option for the no project alternative, which would cause a delay in getting the FSA out.

At this point in time, we don’t have specific comments on this because we just heard about it just moments ago, but it would make some sense to delay if this is going to go -- if this eventually is going to go into suspension.

Staff’s put an enormous amount of work into getting this, you know, thousand-page document out and it clearly was AES already knew that they were going forward with the Harbor Village plan, so it was a little shocking to find this out.

HEARING OFFICER COCHRAN: If the committee were going to provide additional time for discovery, what timeframe are you looking for, how much time
would be necessary?

    MS. WILLIS:  Well, it would mostly depend on how fast the applicant would give us the information that we requested. Ms. Kelly talked to Mr. O’Kane about, what, three weeks ago? Two or three weeks ago, and he said he was going to be sending her the plans. We have yet to receive any of that information. So it’s basically in the applicant’s court on how fast they would get that information to us, and then I would imagine that we’d need probably an additional probably 30 days to evaluate it, because it is quite -- it appears to be, at least from what minimal information that we’ve received, a complex development.

    HEARING OFFICER COCHRAN:  I have to write my notes before I forget them.

    Let’s turn now then to the City of Redondo Beach as an intervenor as well as, obviously, the land use planning agency in this, and what’s your position regarding the further processing of the AFC?

    MR. WELNER:  Well, thank you for the opportunity to -- to comment on this. I think first, first let me quickly address the proposal that was just put on the table by AES.

    I think I’m going to discuss our preferred
approach, but with regard to their specific proposal, I would say that the City doesn’t have any objection to this kind of idea of a 30-day delay (inaudible) issue. However, the one adjustment we would make to that is that we think that there should be a specific date after September 1st when comments are received about next steps, to again have a status conference or some equivalent meeting to make sure that this issue is again addressed.

So I guess what I’m saying is, I don’t know if we can schedule that date altogether here or shortly after this meeting, but if that’s the route that the committee chooses to take, we just want to make sure that there’s a time certain when we’d be back here to discuss what’s happened since.

With regard the City’s preferred approach, we submitted comments suggesting an immediate suspension until the initiative issue is resolved. We disagree with AES that it’s -- it would not be legal to impose the suspension. We think that the Commission and the committee certainly has the discretion for a number of reasons I’ll describe to husband both the Commission’s and the intervenor’s resources to suspend the process.

There are two ways to approach it. We could delay doing -- delay suspension and then we meet and
then issue a suspension. Or the flip side is we can suspend the process now, and if the initiative doesn’t work out, then we can unsuspend.

To me it seems more efficient to suspend the process now and see. I think we all expect the initiative to move forward positively, and so this additional 30-day period seems unnecessary.

The second comment is with regard to the staff, staff comments that were made. We didn’t make this point but we thought staff made really excellent points with regard to the no project alternative and the impact that this proposal has in terms of a real analysis of the no project alternative and we fully support staff’s view that if there isn’t a suspension, at a minimum that issue needs to be revisited, there needs to be time allocated for that and discovery should be reopened.

In addition to that, if that is the route that the committee takes, we recommend that it not just be the no project alternative that is revisited, but actually the entire alternatives section, and the reason for that is that it’s become clear in the course of the Public Utility Commission’s long-term procurement planning process that there have been changes in the analysis of California ISO with regard
to what they call the locational effectiveness factor calculations in the L.A. basin area.

That’s a complicated way of saying that it appears and it’s coming out in that PUC process that there may be a strong preference for facilities further south than Redondo Beach in a way that wasn’t fully available to folks to analyze earlier. So to the extent that the project -- to the extent that this process is reopened for the no project alternative, we actually just suggest that it be reopened for the no project alternative and alternatives in general because of this new information that’s come to light.

The last point I would make, I just want to respond directly to the comment that was made by AES about whether or not this proposed initiative has a legal impact on the AFC process. The comment that was made essentially dismissed this as a local, this is just a local process, how could it affect the AFC process? I think there are at least three things to consider in that regard.

One is that this obviously generates a new potential and potentially very serious LORS conflict, and it seems to me that the Commission not only can but should suspend the proceedings until it’s clear whether or not that LORS conflict is real.
Secondly, again, the staff’s no project alternative comment we think is quite valid. This creates a new opportunity to look at a different no project alternative, and not only should it be looked at but it must be looked at.

And then finally, we would simply reiterate the point that, while we’ve never seen it litigated, certainly the Commission has in the past exercised discretion to address changing circumstances in the course of an application process and to conserve its resources and the resources of involved parties when it appears that moving forward with the process might be a waste of peoples’ time and resources.

So that’s the extent of our comments. We’re available to answer any questions that the committee has.

HEARING OFFICER COCHRAN: I do have a question for you. You mentioned a couple of times that you believe that the committee has the independent legal authority to suspend the proceedings. Can you tell me what the genesis of that authority is?

MR. WELNER: Well, the -- and I don’t have specific past examples in front of me, but the -- the committee and the Commission always have the
discretion to manage proceedings in a way that is most
efficient and doesn’t waste resources, particularly
when it appears that a project may not go forward at
all. And so in our view, that’s the kind of
discretion we can’t imagine that would be challenged
if it were exercised.

HEARING OFFICER COCHRAN: Okay, thank you.

I believe it’s Ms. Coates from the City of
Hermosa Beach.

MS. COATES: Hi. Yes, thank you for the
opportunity to comment.

HEARING OFFICER COCHRAN: Just as a preface.

Even though the committee has not yet acted upon your
petition to intervene, we would still like to hear
your comments and position on this matter.

MS. COATES: Thank you. And as you know, our
petition to intervene is still pending and the City is
at the very early stages of analyzing the potential
impacts to the city and this new information regarding
the Harbor Village project will impact the City’s
analysis.

And we don’t have a formal position regarding
extension of the proceedings, but you know, of course,
an extension of time to respond to the PSA would
provide some additional time for the City to conduct
its analysis.

And we’ll look forward to the Commission’s
determination on our petition to intervene.

HEARING OFFICER COCHRAN: Okay, thank you
very much.

I’ll turn back to the applicant now so you
get the last bite of the apple regarding the comments
that have been made so far.

MR. WHEATLAND: Well, thank you for the last
bite, but I don’t think I will bite. There are a
number of substantive things that were discussed, but
I just, in terms of whether there’s a LORS conflict or
what we would need to do in terms of evaluation of the
no project alternative, but I don’t think there’s a
need here today to engage in those substantive
discussions. I would prefer to defer that until we
can address the procedural issues. But just for the
record, we disagree.

HEARING OFFICER COCHRAN: Thank you. Is
there anything further that anyone would like to say?

Turning now then to public comment, are there
any members of the public who would like to address
the committee regarding the pendency of this matter?

Okay, seeing none, we are now going to retire
to closed session as set forth in the agenda notice.
We are off the record.

(OFF THE RECORD FOR CLOSED SESSION AT 9:01)

HEARING OFFICER COCHRAN: We are back on the record on the Redondo Beach matter for the status conference.

I will report out of closed session that the committee has opted to extend the PSA comment period until Monday, September 29th, 2014. The committee would ask that you update it on the status of the matter in your normally scheduled status conference statements on 9/1/2014, and that there will be a subsequent status conference held in the latter part of September after we have received the information and hopefully before the comment deadline period for the PSA.

And with that we’re adjourned.

(ADJOURNED AT 9:14 A.M.)

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