

## DOCKETED

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**STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

In the Matter of:

**Docket No. 12-AFC-02**

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

**ENERGY COMMISSION STAFF'S REPLY BRIEF**

**I.  
INTRODUCTION**

On August 20, 2014, the parties in the above entitled matter filed Opening Briefs as directed by the Committee. In addition to discussing the positions of the parties with respect to the factual and legal issues presented in this proceeding, the briefs provided each of the parties' responses to questions as posed by the Committee related to the role of the California Coastal Commission in this proceeding and the manner in which the Coastal Commission's report should be addressed. Nothing in the opening briefs filed by the other parties, however, particularly the claims of intervenor Rudman, compel changing the conclusion that the Commission should approve the Huntington Beach Energy Project.

## II STAFF RESPONSE

### **1. Coastal Commission Report**

#### **A. Due Deference Should be Given to the Coastal Commission's Report**

Applicant notes correctly the differences in the language between §30414(d), which mandates the participation of the Coastal Commission in NOI proceedings, or under 30413(e), which provides that the Coastal Commission “may, at its discretion, participate fully in other proceedings conducted by the State Energy Resources Conservation and Development Commission pursuant to its powerplant siting authority.”<sup>1</sup> As explained in staff’s opening brief, this is a distinction without a difference, as the Coastal Commission has indeed submitted a report pursuant to the Memorandum of Agreement (MOA). Now that the Committee has the Coastal Commission’s report before it, the relevant question is how the Committee should treat the information contained in that report. The MOA reflects the fact that pursuant to title 20, California Code of Regulations section 1752, the Presiding Member’s Proposed Decision must contain the specific provisions to meet the objectives of the California Coastal Act, as specified in the report submitted to the Energy Commission by the Coastal Commission, unless the commission finds that such provisions would result in greater adverse effect on the environment or would be infeasible.

Coastal Commission staff submitted their report after the Final Staff Analysis was published, but did not attend either evidentiary hearing to sponsor that report into the record or answer questions about the report, as provided for in the MOA.<sup>2</sup> Since our regulation regarding evidence requires that testimony must be under oath, the Coastal Commission report is hearsay evidence which is

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<sup>1</sup> Pub. Resources Code § 30413(e)

<sup>2</sup> “D. Upon approval by the Coastal Commission of a 30413(d) report, Coastal Commission staff will submit the report to the Energy Commission. *A representative of the Coastal Commission or its staff will sponsor the report into the Energy Commission’s evidentiary record and be available at appropriate Energy Commission workshop(s) and hearing(s) to answer any questions about the report.*” [Emphasis added]

not sufficient in itself to support a finding unless it would be admissible over objections in civil actions.<sup>3</sup>

Here, the Coastal Commission made recommendations that the Commission's Final Decision on the Huntington Beach Energy Project include additional or modified conditions of certification. Energy Commission staff have accepted the recommendations of the Coastal Commission where supported by the Energy Commission's evidentiary record.

**B. The Committee Should Accept the Recommendations of the Coastal Commission that are Supported by the Evidentiary Record, Feasible, and Would Cause No Further Harm to the Environment**

Staff have recommended that the Committee accept those recommendations made by the Coastal Commission where such recommendations are both feasible and would result in no greater adverse effects on the environment, and where supported by the evidentiary record.

Section 25523 of the Commission's regulations requires the inclusion of specific provisions of the Coastal Commission's 30413(d) report "unless the commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effects on the environment or that the provisions proposed in the report would not be feasible."

**1. Land Use**

The Coastal Commission's maintains that the combined properties of the HBEP - over which the Energy Commission has jurisdiction – and the proposed Poseidon Desalinization project and the Plains of America Tank Farm - over which the Energy Commission has no jurisdiction – constitute the project site that should be analyzed by the Energy Commission in the FSA. There is no evidence in the record that AES would be able to use all of the property described by the Coastal Commission for additional project-related construction parking. Staff analyzed that alternative but decided that it was not feasible.

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<sup>3</sup> Tit.20, California Code of Regulations §§ 1212(b), 1212(d)

## **2. Biological Resources**

### a) 100 ft buffer

The Coastal Commission recommends that condition of Certification **BIO-7** be modified to require that “AES move all project-related development to be at least 100 feet, *and further*, if feasible, from nearby areas that meet the Coastal Commission’s definition of wetlands or ESHA.” [Emphasis added] As noted in the FSA, the project generation equipment will be located 100 feet from the portion of Magnolia Marsh that is designated as an ESHA. (Ex 2000, Sections 3-1, 4.2-1, 4.5-1) The evidence demonstrates that the Huntington Beach Energy Project complies with this requirement. Additionally, in order to comply with this requirement, the constraints on the site because of limited space make it infeasible to require project-related developments to be located “further” than the 100-ft buffer. No further modifications to the Biological Resources conditions of certification are warranted in this regard.

### b) Noise and Vibration effects on biological resources

The Coastal Commission report also recommended a prohibition on pile driving activities during nesting seasons. The report acknowledges that Energy Commission staff have listed pile driving avoidance as one of several feasible noise reduction techniques that AES could implement in order to reduce adverse noise impacts to less than significant if its activities exceed the noise threshold.

Additionally, were pile driving to be prohibited through nesting seasons, such a prohibition would have the effect of prolonging an already lengthy 7.5 year construction period, thereby increasing the potential for greater adverse effects on the environment. Not only is this recommendation unnecessary since all potential impacts would be mitigated to a level of less than significant, but would do more harm than good by extending the construction period.

## **2. Intervenor Rudman’s Brief**

On August 20, 2014, intervenor Rudman timely filed her opening brief as directed by the committee. The brief is largely a restatement of the positions and beliefs held by intervenor Rudman throughout these proceedings: there is

nothing contained in her submission that changes the analysis or conclusions of commission staff as set forth in the Final Staff Assessment. In her arguments, intervenor Rudman focuses on the impacts identified by staff, but ignores the measures proposed to mitigate those impacts to a level of significance. As to compliance with Laws, Ordinances, Regulations, and Standards (LORS), intervenor Rudman simply misreads or misinterprets the applicable LORS that apply to the project. Specific areas of analysis are discussed below.

### **A. Air Quality Impacts**

Intervenor Rudman state that “according to the South Coast Air Quality Management District’s (SCAQMD) Revised Preliminary Determination of Compliance (PDOC), PM10 emissions from operating 6 turbines at the new HBEP, as permitted, will be 198,654 pounds a year. In fact, both SCAQMD and California Energy Commission (Energy Commission) staff agree that all project emissions of nonattainment criteria pollutants and their precursors (NOx, VOC, PM10, PM2.5, and SOx)” must be mitigated if significant.

As set forth in Final Staff Assessment,<sup>4</sup> the air quality modeling shows that only annual PM10 will cause a significant impact: all other criteria pollutants will not cause significant impacts as can be seen by comparing impacts to the most stringent air quality standards. Staff have demonstrated that HBEP would qualify for the SCAQMD Rule 1304 (a)(2) exemption. Therefore, PM10 and PM2.5 emissions of the new gas turbines would be fully offset with credits from SCAQMD’s internal account. In addition, HBEP would also pay electrical generating fees under Rule 1304.1 in order to use the offset exemption. The fees would be used to fund air quality improvement projects consistent with SCAQMD’s Air Quality Management Plan, with a priority for air quality improvement projects located in communities surrounding the HBEP site; however, the timing of the air quality improvement projects is uncertain. Similarly, VOC emissions will also be fully offset with credits from SCAQMD’s internal account under Rule 1304.1. Furthermore, NOx and SOx emissions would be fully

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<sup>4</sup> Exhibit 2000

offset by RECLAIM Trading Credits. Intervenor Rudman's position does acknowledge that the impacts will be reduced to a level of less than significant.

Intervenor Rudman also argues that the "principle is that shutting down the old inefficient power plants and replacing them with new ones would result in air quality improvements. However, this doesn't hold when the old power plants are rarely operated. So even though it uses newer technologies, HBEP would result in a massive increase in emissions... Emission reductions generated by acquiring SCAQMD credits will result in offsetting reductions of emissions somewhere in the South Coast air basin... It doesn't seem fair that people in Huntington Beach will continue to be disproportionately impacted by electricity generation even though the benefits from power generated in Huntington Beach accrue to people living throughout the entire Southern California area."

The Committee should note that the emissions reported in the district's FDOC and staff's FSA are based on the facility's potential to emit (PTE), which represents the worst case emission scenario and are used in air quality modeling to estimate worst case impacts. These are permitted emission levels which allow the maximum operation flexibility. The actual emissions during project operation would be lower than the PTE. In addition, since the new HBEP units are much more fuel efficient, they will burn less fuel and generate fewer emissions than the current utility boilers when generating the same amount of electricity.

Rule 1304 (a)(2) offset exemption is a basin wide program developed by SCAQMD. It is beneficial to air quality in the basin as a whole. The federal Clean Air Act allows the use of emission reduction credits which are generated at one location to offset emission increases at another location, consistent with the local region's State Implementation Plan required by the federal government to meet federal ambient air quality standards, including a showing of "reasonable further progress" towards meeting the federal ozone standard. Similarly, the California Air Resources Board requires that any offsets allowed do not impede progress towards attaining state ambient air quality standards. Similar to other forms of emissions offsets, Rule 1304 (a)(2) offsets are valid mitigation measures that can

be used to offset project emissions. Intervenor Rudman's position therefore lacks merit.

## **B. Weather Data**

Intervenor Rudman states: "I believe that the modeling of impacts underestimates the effects because the weather data used does not accurately represent the weather found in Huntington Beach's coastal subclimate. Because of lack of alternative data, the air quality modeling uses weather data from the station near John Wayne Airport. However, the weather there is not similar enough to weather conditions in Huntington Beach to be accurate."

As set forth in the Air Quality section in the FSA, the operating monitoring station closest to the proposed site is North Coastal Orange County (Costa Mesa) station. Pursuant to normal modeling protocol, however, the data from the John Wayne Airport station was chosen by SCAQMD and staff for air quality modeling inputs because of the following factors: 1) surface characteristics at John Wayne Airport are more similar to the project site, 2) John Wayne Airport data are more current, 3) John Wayne Airport has fewer missing data and 4) the Costa Mesa data provide inconsistent results because of a high incidence of reported calm wind conditions, with the clam winds percentage varying from 0 percent to 38 percent depending on the data processing method used. Intervenor Rudman's concerns are therefore without merit.

## **C. GHG/Heat Rate**

Intervenor Rudman asserts that the "HBEP will emit a staggering amount of greenhouse gasses," and argues that the project heat rate is higher than the current electricity system average heat rate, stating that "California has established a greenhouse gas emission performance standard of 1,100 pounds of CO<sub>2</sub> per net Megawatt hour. SQAQMD PDOC says that initially HBEP meets the standard, but with equipment degradation it will not meet the standard. The FSA also says that the standard will be revised downward and HBEP does not meet the lower revised standard."



Staff notes that a facility's carbon dioxide emission rate and its thermal efficiency are interrelated. The operation of HBEP would balance thermal efficiency and facility flexibility across a wide range of operating load points, as indicated by its design as a multi-stage power generating facility and its operation in a high renewable / low GHG electricity system. HBEP would be designed and operated to achieve more flexibility to meet the electrical needs of a wind and solar renewable system. Highly efficient power plants do not have the flexibility inherent in the HBEP design. HBEP meets the current standards

The estimated annual GHG performance of HBEP is 1,053.7 lb CO<sub>2</sub>e/net MW, which exceeds US EPA proposed New Source Performance Standard (NSPS) for GHG emissions. The rule is currently in draft form and during the public comments period. Once the rule is finalized, HBEP may be required to limit its operation profile in order to meet federal GHG NSPS. Through the imposition of the recommended Conditions of Certification, all potentially significant adverse environmental impacts will be reduced to a level of less than significant.

#### **D. Geology and Public Safety**

Intervenor Rudman raised the issue of fracking, and asserted that this activity "increases the risks that HBEP's structures will be adversely affected." Intervenor Rudman provides no evidence to support this position. As stated by Staff at the August 6 continued evidentiary hearing: "I looked at the seismic issues, the tectonic seismicity in the area and how it related to the design and siting of the project. Fracking is a minor element of that. Yes, fracking does induce seismicity in the nature of its development. *But the amount of energy released during fracking is far less significant than the tectonic seismicity in the region.*" (RT.73, Ins.1-7, emphasis added.) Staff's analysis has already accounted for seismic activity at a level beyond which would be expected from the fracking of oil wells. Intervenor Rudman's concerns therefore are without merit.

## **E. Visual Resources**

Intervenor Rudman suggests that the HBEP should be considered as a Class I “wilderness area” for purposes of the Visual Resources analysis. Huntington State Beach is a Class II area: a Class I analysis is not warranted.

## **F. Land Use**

Intervenor Rudman states that the Huntington Beach General Plan allows only for coastal-dependent facilities on the project site and argues that since the HBEP would not use ocean water for cooling that it would not be a coastal dependent facility, and would not be allowed under the Huntington Beach General Plan. This is an incorrect statement because the Huntington Beach General Plan does not specify if only coastal-dependent facilities are allowed on the project site.

While the California Coastal Act gives priority to coastal-dependent developments,<sup>5</sup> it does not preclude the siting of developments that are not coastal-dependent, such as the HBEP. Additionally, as noted on pages 6-7 through 6-8 of the Alternatives section in the FSA and reiterated in the July 10, 2014, Coastal Commission letter (TN 202628), the project site has been designated by both the Energy Commission and Coastal Commission as suitable for energy facility expansion.

As noted on page 4.5-7 of the Land Use section in the FSA, the HBEP site is designated by the Huntington Beach General Plan as Public (P). The Huntington Beach General Plan states that typical permitted uses include governmental administrative and related facilities, such as public utilities, schools, public parking lots, infrastructure, religious and similar uses. Additionally, the HBEP site is within Subarea 4G “Edison Plant”. Land use categories within Subarea 4G include Public (P) and Conservation (OS-C) with permitted uses of wetlands conservation and utility uses. The HBEP would be a utility use, which would be consistent with the Public land use designation of the Huntington Beach General Plan.

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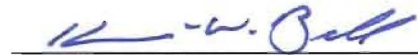
<sup>5</sup> Public Resources Code Section 30255

### III. CONCLUSION

By law, the Commission is required to make its findings and conclusions on whether the proposed Huntington Beach Energy Project will cause a significant adverse impact on the environment or public health and safety based on substantial evidence offered into the hearing record by the parties. Staff and the Applicant offered substantial evidence in their written testimonies and orally during the evidentiary hearings, clearly demonstrating that the proposed project, with the recommended mitigation, would not cause a significant adverse impact on the environment, public health, or safety, and the project would be in compliance with all LORS. Intervenor Rudman, on the other hand, has not provided substantial evidence to support her claims that the project should not be permitted. Therefore, Staff recommends that the Commission approve the Huntington Beach Energy Project's Application for Certification.

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Respectfully submitted,



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