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3 **STATE OF CALIFORNIA**
4 **California Energy Commission**

5 **In the Matter of:**

6 **REDONDO BEACH ENERGY PROJECT**

Docket No. 12-AFC-03

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8 **APPLICATION FOR CERTIFICATION**
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11 **INTERVENOR CITY OF REDONDO BEACH'S**
12 **STATUS REPORT**

13
14 August 4, 2015

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18 JEFFER MANGELS BUTLER & MITCHELL LLP
19 JON WELNER (Bar No. 178578), jwelner@jmbm.com
20 KIMBERLY A. HUANGFU (Bar No. 242251), khuangfu@jmbm.com
21 Two Embarcadero Center, Fifth Floor
22 San Francisco, CA 94111
23 Telephone: (415) 398-8080
24 Facsimile: (415) 398-5584

25
26
27
28 Attorneys for Intervenor CITY OF REDONDO BEACH

1 STATE OF CALIFORNIA
2 California Energy Commission

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Docket No. 12-AFC-03

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9 **INTERVENOR CITY OF REDONDO BEACH'S**
10 **STATUS REPORT**

11 Intervenor City of Redondo Beach ("City") hereby submits this Status Report
12 pursuant to the Revised Committee Scheduling Order issued on May 7, 2015, and the Order
13 Directing Parties to Respond to Identified Issues and Questions issued on July 23, 2014. The City
14 has comments on three of the issues identified by the Committee: Noise, Land Use, and Schedule.

15 **I. NOISE**

16 The City has filed a Motion to Compel Production of Technical Noise Data by AES.
17 The City has repeatedly asked AES to produce the technical data underlying its assertions about the
18 noise impacts of its proposed project, but AES has delayed production of this data and then
19 provided only a small part of what was requested. The data is necessary for the City and the
20 Commission to properly evaluate AES' claims regarding the noise impacts of the RBEP.

21 Charles Salter, the City's noise consultant, will be present at the Committee
22 Conference on the Preliminary Staff Assessment ("Conference") on August 5, 2015, to answer
23 questions from the Committee.

24 **II. LAND USE**

25 **A. Moratorium Adopted on December 3, 2013**

26 On December 3, 2013, the City passed an Urgency Ordinance prohibiting for a
27 period of 45 days the approval of any permit for "the construction, expansion, replacement,
28 modification or alteration of any facilities for the on-site generation of electricity on any property

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1 located within the coastal zone." On January 14, 2014, the City extended the prohibition for an
2 additional 22 months and 15 days. (The Urgency Ordinance and the Extension are referred to
3 collectively herein as the "Moratorium.")

4 The Moratorium is still in effect and constitutes a direct conflict with Laws,
5 Ordinances, Rules or Standards ("LORS"). As explained by the City in prior filings, the
6 Moratorium does not require Coastal Commission approval. (*Letter from City Attorney Michael*
7 *Webb 03-03-14; City of Redondo Beach-Preliminary Staff Assessment Workshop-Land Use*
8 *Presentation*, filed on 05-27-15.)

9 **B. Prohibition Adopted on July 7, 2015**

10 In addition, on July 7, 2015, the City Council unanimously adopted Ordinance
11 No. 3134-15 (filed in the docket on 07-31-15). The Ordinance prohibits the construction or
12 modification in the City of any electricity generating power plant subject to Energy Commission
13 jurisdiction. (The Ordinance is referred to herein as the "Prohibition.") The Prohibition constitutes
14 a direct and unavoidable conflict with LORS.

15 On July 17, 2015, the Coastal Commission sent a letter to the Energy Commission
16 confirming that the Prohibition does not require Coastal Commission approval: "[T]his ordinance
17 does not amend the City's LCP and need not be submitted to the Coastal Commission as an LCP
18 amendment." (Filed in the docket on 7-24-15.)

19 **C. LORS Conflict Requires Finding of "Public Convenience and Necessity"**

20 Public Resource Code Section 25525 provides:

21 The commission may not certify a facility contained in the application
22 when it finds, pursuant to subdivision (d) of Section 25523, that the
23 facility does not conform with any applicable state, local, or regional
24 standards, ordinances, or laws, *unless the commission determines that*
25 *the facility is required for public convenience and necessity and that*
26 *there are not more prudent and feasible means of achieving public*
convenience and necessity. In making the determination, the
commission shall consider the entire record of the proceeding,
including, but not limited to, the impacts of the facility on the
environment, consumer benefits, and electric system reliability.

27 Thus—since there is a direct and obvious LORS conflict in this case—the Commission cannot
28 approve the proposed facility unless it first determines "that the facility is required for public

1 convenience and necessity and that there are not more prudent and feasible means of achieving
2 public convenience and necessity."

3 There is no way to determine whether the facility is "required for public convenience
4 and necessity" without determining if the facility is needed. "Public necessity" is synonymous with
5 "need." Therefore, the Commission must perform a needs assessment before it can approve the
6 proposed facility.

7 **III. SCHEDULE**

8 There are two key pieces of information that remain missing at this time: (1) the
9 South Coast Air Quality Management District's issuance of a decision regarding a Final
10 Determination of Compliance ("FDOC"); and (2) production by AES of the technical data
11 underlying its noise analysis. The Final Staff Assessment cannot and should not be issued by Staff
12 prior to receiving these items and allowing the parties a reasonable period of time to review and
13 comment on them.

14 With regard to issuance of the FDOC decision, the Committee has stated that
15 issuance of the FDOC decision is "essential to the complete review and analysis of this project."
16 (*Notice of Committee Conference on Preliminary Staff Assessment at 2.*)

17 With regard to the AES noise data, the City and its noise consultant have provided a
18 detailed analysis of why missing data is essential for a valid analysis of the project's potential noise
19 impacts. (*See Motion to Compel Production of AES Noise Data.*)

20 The City therefore respectfully requests that the schedule be modified as follows
21 (changes in italics):

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<u>Activity</u>	<u>Schedule</u>
PSA New Comment Period Closes	June 4, 2015
SCAQMD Issues Final Determination of Compliance (FDOC)	TBD
<i>Production of AES Noise Data</i>	<i>TBD</i>
<i>PSA Extended Comment Period Closes (to enable comments on FDOC decision and AES noise data)</i>	<i>(30 days following issuance of the FDOC and production of AES noise data, whichever occurs later)</i>
Final Staff Assessment Published (FSA)	<i>(30 days following close of PSA Extended Comment Period)</i>
<i>[All Subsequent Dates Shall Follow the Intervals Set Forth in the Revised Committee Scheduling Order]</i>	

DATED: August 4, 2015

JEFFER MANGELS BUTLER & MITCHELL LLP

By: _____

JON WELNER

Attorneys for Intervenor CITY OF REDONDO
BEACH