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STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of
The Application for
Certification

For the
ALAMITOS ENERGY CENTER
Docket No: 13-AFC-01

Motion to Stay Proceedings

Prepared for Los Cerritos Wetlands Land Trust
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The Trust moves that these proceedings be stayed pending the issuance of properly noticed revised Preliminary and Final Staff Assessments informed by public comment: 1) based upon a project description that takes into account the PUC's order approving only 640 MW of gas-fired generation at Alamitos, 400 MW less than the 1040 MW facility applicant has proposed in this proceeding; 2) including analysis of Air Quality and AGS demolition impacts; 3) providing complete cumulative impacts analyses that take into account AGS demolition, and; 4) analysis of preferred resources alternatives.

1. Flawed Project Description

Staff review was based upon a project description of a 1040 MW gas-fired facility that failed to take into account the PUC decisions that authorized only 640 MW of gas-fired generation. At the same time, Staff has dismissed alternatives purportedly based upon the terms of the Power Purchase Agreement as approved by the CPUC.

The CPUC LTPP process analyzed alternatives to meet objectives similar to the "purpose" of the proposed AEC, and found a need for no more than 640MW. Yet, neither the Preliminary Staff Assessment, nor the so-called Final Staff Assessment, provides a rationale for approval of a 1040MW gas-fired generating station when it is clear the purposes of the project can be met with, at the very most, 640MW, as ruled by the CPUC.

The people of California have called upon the State to be a leader in combating climate change and, in recent years, the California Legislature has passed stronger and stronger laws requiring reductions in fossil-fuel consumption and increased reliance on clean energy alternatives. The approval of this project would be in violation of the requirement that preferred resources be utilized prior to fossil fueled generation, as was concluded in the CPUC enforcement of the loading order.

Additionally, there is evidence in the CPUC record that 1.) The 640 MW is part of an overestimate of the need for the LA Basin, a matter which is currently before the Courts and 2.) any such need can be met with preferred resources, as required by state law.

Yet, the Staff Assessment fails to document the loading order under the LORS analysis, nor is the proposed project's inconsistency with the statutorily mandate preferred resources loading order documented. The FSA did not adequately consider the CPUC's order that no more than 640MW gas-fired generation at Alamitos was consistent with the loading order. The CPUC considered alternatives for grid reliability and made decisions based on the loading order. And that loading order must be considered by the Commission as LORS. To approve the project as defined in the "Project Description" as 1040 MW, the Commission would have to override both the Public Utilities Code and CPUC order. The Commission has not, and cannot, justify such an override.

Alternatives were wrongly analyzed or were dismissed as infeasible measured against a project of 1040 MW.

Further, the FSA analysis of different preferred resources was inadequate and clearly done summarily. All preferred resources are dismissed in the exact same manner, with a statement that while the resource “can provide local capacity, reducing the need to build and operate local natural gas-fired generation, such as the AEC” that resource, including energy efficiency, demand response, energy storage, and utility scale and distributed renewable generation, “cannot eliminate the need for all natural gas generation such as AEC because some level of reliable energy is necessary to ensure adequate supply through a range of conditions.” (See FSA at p. 6-13.) There is not “some level” of energy that is needed, there is an exact amount measured and modeled and the Staff needs to provide an actual assessment with demonstrated calculations that show why they believe the CEC can and should override the Public Utilities Code preferred resources loading order based upon claims of not enough preferred resources. When measured against need of 0-640 MW, preferred resources can and must be utilized as most environmentally friendly alternatives that meet the project objectives.

2. Permanent Shutdown and Demolition of AGS is Part of the Project

In its ruling on a motion by staff for summary adjudication regarding the analysis of the demolition, the Committee does not mention the South Coast Air Quality District Preliminary Determination of Compliance (PDOC), thus reaching faulty conclusions. Further, new evidence introduced by the Trust shows the Commission has treated demolition of retired facilities part of a replacement project in the past, setting precedent for this decision.

The Committee ruled that: “Based upon the foregoing, we confirm the Tentative Ruling and find that the demolition of AGS units 1-6 is not a reasonably foreseeable *consequence* of the AEC. Therefore, the demolition of AGS units 1-6 is not a part of the whole of the AEC project. However, the demolition of the AGS units is reasonably foreseeable and therefore, must be analyzed as a future project in the cumulative analyses of the Energy Commission’s environmental analysis documents.” (Committee Ruling Re: Staff’s Motion For Summary Adjudication, Docket No. 13-AFC-01.)

First, this conclusion was based on flawed analysis that failed to take into consideration the Air District’s requirement that AGS be decommissioned as part of this project.

Pursuant to South Coast Air Quality Management District requirements, “permanent shutdown” of AGS is a logical and *required* part of this project. The District permit would require:

The facility shall submit a detailed retirement plan for the permanent shutdown of Boilers Nos. 1, 2, 5 and 3 (Devices D39, D42, D51, and D45, respectively), describing in detail the steps and schedule that will be taken to render Boilers Nos. 1, 2, 5, and 3 permanently inoperable. The retirement plan shall be submitted to SCAQMD within 60 days after Permits to Construct for Combined-Cycle Turbines Nos. CCGT-1 and CCGT-2 (Devices D165 and D173, respectively),

common Steam Turbine Generator, and Simple-Cycle Turbines Nos. SCGT-1, SCGT-2, SCGT-3, and SCGT-4 (Devices D185, D191, D197, and D203 respectively) are issued. AES shall not commence any construction of the Alamitos Energy Project including Gas Turbines Nos. CCGT-1, CCGT-2, SCGT-1, SCGT-2, SCGT-3, and SCGT-4, unless the retirement plan is approved in writing by SCAQMD. If SCAQMD notifies AES that the plan is not approvable, AES shall submit a revised plan addressing SCAQMD's concerns within 30 days. Within 30 calendar days of actual shutdown but no later than December 29, 2019, AES shall provide SCAQMD with a notarized statement that Boilers Nos. 1, 2, and 5 are permanently shut down and that any re-start or operation of the boilers shall require new Permits to Construct and be subject to all requirements of Nonattainment New Source Review and the Prevention Of Significant Deterioration Program. AES shall notify SCAQMD 30 days prior to the implementation of the approved retirement plan for permanent shutdown of Boilers Nos. 1, 2, and 5, or advise SCAQMD as soon as practicable should AES undertake permanent shutdown prior to December 29, 2019. AES shall cease operation of Boilers Nos. 1, 2, and 5 within 90 calendar days of the first fire of Gas Turbines No. CCGT-1 or CCGT-2, whichever is earlier. Within 30 calendar days of actual shutdown but no later than December 31, 2020, AES shall provide SCAQMD with a notarized statement that Boiler No. 3 is permanently shut down and that any re-start or operation of the boiler shall require a new Permit to Construct and be subject to all requirements of [sic]. (PDOC at p. 26-27.)

Unlike the staff analysis and Applicant's position that the existing AGS Units 1-6 must be left available for future need, the Air Quality District mandates immediate shut down, triggering the MOU signed by the Applicant and the City of Long Beach.

Further, regardless of the timing of the shut-down and demolition of the existing AGS Units 1-6, the Committee's position here is in contradiction to previous CEC legal opinion regarding the relationship between demolition and construction of a replacement gas power plant. Evidence provided in the Trust's Opening Testimony demonstrated that the Commission should treat the demolition of the AGS as part of the proposed project as it has in the past. As stated in the CEC Lead Counsel Memo re: South Bay Power Plant: "Because the demolition is part of a master plan to build a replacement plant at another location, however, the Energy Commission staff plans to assess the environmental impacts of the demolition in its environmental assessment of the proposed replacement plant. Actually, all foreseeable activities related to the proposed replacement power plant will be covered in the Commission staff's environmental assessment."

As in the South Bay Power Plant case, demolition of the AGS and construction and construction/operation of the proposed AEC are part of the same plan. In this case, the plan is to replace AGS with AEC so as to comply with the OTC Policy that calls for permanent decommissioning or complete overhaul for OTC plants. The Air District's permit requirements also makes it very clear that this is all part of one project and should be analyzed as such.

Second, the Committee's ruling on the Staff motion is correct that the cumulative impacts of demolition needs to be fully analyzed -- but this has not happened.

At the heart of the conclusion in the PSA that cumulative impacts will be less than significant, and erroneously carried through all staff's documentation, is the assumption that the cumulative impacts from construction of the proposed AEC simultaneous with the operation of the existing AGS can be mitigated to less than significant. The analysis goes on to assume that demolition of the AGS and operation of the proposed AEC will create similar cumulative impacts, and consequently that scenario will also have less than significant impacts by virtue of the same mitigation measures. But those assumptions and conclusions are not substantiated anywhere in the record.

While operation of the AGS and operation of the proposed AEC may be comparable, the impacts are not the same. And it is now clear that construction of the proposed AEC and demolition of the AGS are not even comparable. The demolition noise, traffic, air emissions (including dust), volume and types of hazardous materials, and other differences between construction and demolition activities clearly create different impacts, different severity of impacts, and/or a prolonged timeline for the impacts. The assumptions and conclusions in the PSA are inadequate and must be revised.

The as-yet undocumented impacts from demolition of the AGS will affect the analyses of Air Quality, Noise, Water Resources, Hazardous Materials, and more. The cumulative impacts analyses must include a description of vintage power plant demolition, and the foreseeable cumulative impacts of demolishing the AGS.

Further, the absence of Air Quality analyses in the so-called Final Staff Assessment, including the dust and potential for air-borne hazardous materials from demolition of AGS as well as the additional truck trips during demolition activities, precludes a thorough review of the adverse impacts of air quality degradation on several other subject areas in the Staff Assessment. Clearly the proposed AEC will have adverse impacts on air quality, and those impacts will in turn impact nearby Water Resources and Biological Resources. The Staff Assessment must quantify both the adverse impacts of the AEC, and the cumulative impacts on air quality degradation from simultaneous operation of the proposed AEC and demolition of the AGS.

To properly document and analyze the cumulative impacts, the Preliminary Staff Assessment must be rewritten to include detailed analyses of demolition of the Alamitos Generating Station, the cumulative impacts of this and other projects on subject areas, and alternatives to the proposed Alamitos Energy Center that would minimize those impacts.

3. FSA Must Include Air Quality Impacts

The Evidentiary Hearing and all proceedings must be stayed until the revised Final Staff Assessment is circulated for public comment that includes analysis of air quality impacts for a project of no more than 640 MW with all cumulative impacts including demolition

of AGS analyzed and mitigated for. A Revised Final Staff Assessment, informed by public comment, should be made publicly available prior to scheduling Opening Testimony, Rebuttal and the rest of the process.

Air Quality impacts of this projects cannot be analyzed in a vacuum as air quality emissions impact most all other subject areas of concern. For example, nitrogen deposition on sensitive wetlands habitat threatens native species and overall ecosystems health by providing opportunities for non-native invasive species to exploit fertilized soil, human health is greatly impacts by emissions such as particulate matter and VOC's, and viewsheds are ruined by haze created by SOx and NOx emissions.

It is unclear why the standard procedure has been deviated from here and the FSA published without air quality analysis. The Trust urges the Committee to get this proceeding back on track by staying proceedings until a full and complete FSA that includes analysis of air quality impacts is noticed and public and parties be given opportunity to submit additional comment and evidence in Opening Testimony and/or public comment. The evidentiary hearings should thus be postponed until completion of the FSA has been accepted and parties given the opportunity to present further evidence. It is premature to hold an Evidentiary Hearing on some aspects of the proposed AEC without the Air Quality analyses, especially given the importance of air quality analyses, in and of itself and in reference to other subject areas.

5. Conclusion

A revised PSA is needed so that that parties and Commission can be informed by Staff analysis based upon a proper project description, full cumulative impacts analyses, air quality analysis, and proper consideration of alternatives pursuant to the preferred resources loading order. These disputes cannot be resolved in an Evidentiary Hearing as they are problems of a lack of adherence to applicable law, including LORS consistency, not questions of fact.

6. Recommended Order

Los Cerritos Wetlands Land Trust moves that the Committee issue an order making the following findings under its authority to manage proceedings as set forth in Title 20 section 1203:

- 1) The Preliminary Staff Assessment must be modified to take into account proper project description, to include analysis of air quality and demotion of AGS impacts, and to properly analyze cumulative impacts and alternatives;
- 2) The Preliminary Staff Assessment must be modified to include an adequate analysis of “need” for gas-fired generation above the 640MW considered by the CPUC to meet the objectives of the project, and consistency with the State’s loading order;
- 3) The Preliminary Staff Assessment must be modified to include an analysis of Alternatives that could reasonably meet the “purpose” of the project while minimizing adverse environmental impacts – the “superior environmental

- alternative” including alternatives that offer a portfolio of preferred resources in the loading order;
- 4) The Scheduling Order is rescinded and the approval process is stayed until the Preliminary Staff Assessment is modified and re-circulated for public comment, and a complete Final Staff Assessment is approved.
 - 5) Evidentiary hearing will be rescheduled following issuance of new PSA and FSA

The Trust believes that the issuance of the FSA without Air Quality analysis is procedurally flawed and prejudicial to its and the public’s interests, and urges the Commission, at the very least, to stay these proceedings until Air Quality analysis is included in the FSA, and parties can submit Opening Testimony and evidence on air quality in combination with the other relevant subject areas so that the proceeding can move forward again on one track. There is no prejudice to the Applicant as it is clear now that a second hearing is required and there are no additional delays associated with waiting for the Final Staff Assessment to consider all the relevant subject areas as a whole.