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

Application for Certification for the  
ALAMITOS ENERGY CENTER

Docket No. 13-AFC-01

**APPLICANT'S RESPONSE  
IN OPPOSITION TO MOTION TO STAY PROCEEDINGS**

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Pursuant to Section 1211.5(a) of the California Energy Commission’s (“Commission’s”) regulations<sup>1</sup>, AES Alamitos Energy, LLC (the “Applicant”) files this response in opposition to the Los Cerritos Wetlands Land Trust’s (“Trust”) *Motion to Stay Proceedings* (“Motion”) submitted on November 2, 2016.

**INTRODUCTION**

On August 31, 2016, Commission Staff filed a *Motion for Summary Adjudication*. The *Motion for Summary Adjudication* requested that the Alamitos Energy Center (“AEC”) Committee (“Committee”) issue an order adjudicating the following two issues:

- 1) Proper scope of Staff’s environmental review under the California Environmental Quality Act (CEQA) and the Commission’s certified regulatory program regarding potential decommissioning or demolition of the existing Alamitos Generating Station (AGS) units 1-6.
- 2) The scope of any direct or rebuttal testimony offered by the parties at the evidentiary hearing relating to decommissioning or demolition of AGS.

Both the Applicant and the Trust filed responses to the *Motion for Summary Adjudication*.

On September 28, 2016, the Committee issued a tentative ruling on the *Motion for Summary Adjudication*, affirming the Staff’s legal arguments as supported by the Applicant. Thereafter, on October 7, 2016, the Trust filed a *Memo on Upcoming Status Conference Subjects* (“Memo”), admitting that the Trust had erred in arguing that the MOU between the City and the Applicant required demolition of the existing units as a condition of approval.<sup>2</sup>

We deeply regret the time and effort this error has caused. In that spirit, and with the intent to avoid any further delays finalizing the

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<sup>1</sup> California Code of Regulations, Title 20, Division 2, Chapter 2, Article 3, § 1211.5.

<sup>2</sup> TN# 213929-1.

Committee's ruling on the Staff Motion, we are willing to accept the Tentative Ruling if the Committee sees no benefit in reconsideration. (Trust Memo, pdf p. 3; emphasis in original.)

The tentative ruling was made final on October 14, 2016, after significant discussion by all parties and the Committee at the October 10<sup>th</sup> Status Conference.<sup>3</sup> The Committee ruled 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.<sup>4</sup>

On October 14, 2016, the Committee issued a comprehensive *Notice of Prehearing Conference and Evidentiary Hearing, Scheduling Order, and Further Orders* ("Scheduling Order").<sup>5</sup> The Scheduling Order provided for the publication of the Final Staff Assessment ("FSA") in two parts. The Scheduling Order also provided dates for filing testimony and evidentiary hearings on the FSA Part 1. The Scheduling Order further provided for publication of the second part of the FSA, and the filing of testimony and evidentiary hearings on the second part of the FSA, on dates to be determined following receipt of the Final Determination of Compliance from the South Coast Air Quality Management District.

Significantly, the Trust did not file an appeal of the Scheduling Order. Instead, the Trust submitted testimony on the FSA Part 1 "under protest".<sup>6</sup> On November 2, 2016, the Trust filed the Motion, raising the same issues regarding the demolition of the Alamitos Generating Station that had already been considered and decided by the Committee, and "accepted" by the Trust.

## **DISCUSSION**

### **I. The Trust's Motion Was Not Submitted by the Person Authorized to Represent the Trust.**

As a preliminary matter, the Motion was not submitted by the person designated to represent the Trust. The Trust's Petition for Intervention, filed October 1, 2014, stated that "Petitioner will be represented in the above captioned proceeding by Elizabeth Lambe, P.O. Box 30165, Long Beach, California 90853."<sup>7</sup>

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<sup>3</sup> Final Ruling, TN# 214007.

<sup>4</sup> Tentative Ruling p. 8. TN# 213827.

<sup>5</sup> TN# 214014.

<sup>6</sup> Geever's Testimony, p. 1; TN# 214162.

<sup>7</sup> TN# 203145.

The Motion was submitted not by Ms. Lambe, but by another person: “Joe Geever, P.O. Box 41033, Long Beach, CA 90853.”<sup>8</sup> While Mr. Geever has been identified as a witness for the Trust,<sup>9</sup> he is not a member of the Trust,<sup>10</sup> and there has been no assertion, much less verification, that Mr. Geever is authorized to represent the Trust and file motions on its behalf. Although Mr. Geever invokes the Trust’s name in this pleading, the address on the cover page is not the address of the Trust. Mr. Geever, as an individual, is not an intervenor in this proceeding. Therefore, in the absence of evidence that the Motion was submitted by a person authorized to represent the Trust, the Motion should be summarily dismissed.

## **II. The Trust’s Motion is Unfounded, Vexatious and Frivolous.**

The Trust’s Motion should be summarily dismissed by the Committee for three reasons.

First, the Trust’s Motion should be summarily dismissed as unfounded because it argues, without any citation to authority, that approval of the Alamitos Energy Center by the Energy Commission is somehow in conflict with unspecified provisions of the Public Utilities Code and an unspecified order of the California Public Utilities Commission (“CPUC”).

Second, the Trust’s Motion should be summarily dismissed as vexatious because it argues for a stay of the proceedings based on the premise that the Committee’s October 14, 2016 ruling was wrongly decided. This argument is nothing more than a collateral attack on a ruling that is already final. The Trust has previously acknowledged its error and expressed contrition for the time and effort expended to resolve the issues already litigated and decided in the October 14<sup>th</sup> Ruling. The Trust stated its intent to avoid “any further delays finalizing the Committee’s ruling on the Staff Motion” by accepting the tentative ruling.<sup>11</sup> The Trust has now reversed course, and is attempting to create delays by contesting a ruling it had previously accepted. The Trust should not be permitted to attack collaterally the final ruling under the guise of a motion to stay the proceedings.

Third, the Trust’s Motion should be summarily dismissed as frivolous because it ignores the orders issued by the Committee regarding the publication of the FSA. The Trust asserts that the FSA is incomplete without the subject of Air Quality.<sup>12</sup> However, the Committee has expressly authorized the FSA to be issued in two separate parts, with publication of the subject of Air Quality as part of the FSA Part 2. The Committee has also allowed a full opportunity for testimony on the FSA Part 2 subjects, including the conduct of evidentiary hearings at the appropriate time.

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<sup>8</sup> Motion, Cover Page, TN# 214345.

<sup>9</sup> TN# 214348-1.

<sup>10</sup> TN#203151.

<sup>11</sup> Memo, pdf p. 3.

<sup>12</sup> Trust Motion, pdf pp. 6-7.

**A. There is No Conflict Between the California Public Utilities Commission and the California Energy Commission.**

The first argument in support of the Motion to defer the evidentiary hearings is that the project proposed in this Application for Certification is larger than the project approved by the California Public Utilities Commission (“CPUC”).<sup>13</sup> However the Motion cites no authority for the proposition that there is a conflict between the CPUC and the Commission proceedings.

In Decision 15-11-041 (Application 14-11-012), the CPUC authorized the results of Southern California Edison’s Request for Offers for the Western LA Basin, including the Alamitos Energy Center.<sup>14</sup> That decision expressly rejected the Trust’s argument that the CPUC cannot approve a contract until the Commission completes its environmental review of the project.<sup>15</sup> The CPUC decision held that the CPUC contract approval process and the Commission’s site certification process were independent and distinct.<sup>16</sup>

Similarly, the Commission has ruled that the approval of an application for certification is not dependent upon the existence of a power purchase agreement approved by the CPUC. In its Decision approving the Carlsbad Energy Center, the Commission ruled that possession of a PPA “to sell a facility’s generation is not a prerequisite for approval of an Energy Commission license to construct the facility...the Energy Commission and the CPUC, make complementary decisions regarding power plants, subject to different standards. No law or rule requires that the Energy Commission approve only the capacity for which the CPUC has approved contracts. The bidding for those contracts will be more competitive—to the ratepayers’ benefit—if more shovel-ready projects are available to compete.”<sup>17</sup>

The Trust further argues that Alternatives were wrongly analyzed or were dismissed as infeasible.” However, the fact that the Trust disagrees with the Staff’s analysis of alternatives is not cause to delay the evidentiary hearings on this topic. The only proper course for the Committee is for the Trust to submit testimony on this topic, as it has already done, and allow all the evidence on this topic to be considered by the Committee.

**B. The Trust’s Collateral Attack on the Committee’s Ruling is Without Merit.**

The second argument raised in the Trust’s Motion is that the Committee’s final ruling of October 14, 2016 “failed to take into consideration the Air District’s requirement that AGS be decommissioned”. In undertaking a collateral attack on a ruling that is now final, the Trust has again confused “decommissioning” and demolition.

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<sup>13</sup> The Trust does not cite this CPUC Decision, but we presume that the Trust is referring to Decision 15-11-041.

<sup>14</sup> See, D.15-11-041 (A.14-11-012), available at: <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M156/K064/156064924.PDF> .

<sup>15</sup> D.15-11-041 (A.14-11-012), mimeo pp. 29-30; <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M156/K064/156064924.PDF>.

<sup>16</sup> Id.

<sup>17</sup> Carlsbad Amendment Final Commission Decision (TN# 205625), p. 3-6.

Decommissioning means that the project ceases operation. It does not mean that a project will be demolished. As the Memorandum of Understanding (“MOU”) between the City and AES makes clear, there are a number of steps that may need to take place before a decommissioned plant can be demolished, including approvals by the California Independent System Operator, the California Public Utilities Commission and the California Water Resources Control Board.<sup>18</sup>

The Trust further argues in support of its argument that evidentiary hearings should be postponed that the Commission should consider the evidence offered in the Trust’s prefiled testimony. This argument underscores the absurdity of the Trust’s motion. Rather than delay the evidentiary hearings, the Committee should proceed with its consideration of the evidence put forward by all parties.

### **C. The Trust’s Motion Ignores the Order Issued by the Committee regarding the Publication of the FSA.**

The third argument raised in the Trust’s motion is that the FSA is incomplete without the subject of Air Quality.<sup>19</sup> This is incorrect. The Committee’s Scheduling Order<sup>20</sup> expressly authorized the FSA to be issued in two separate parts, with publication of the subjects of Air Quality and Public Health as part of the FSA Part 2. Therefore, the FSA Part 1 is not incomplete, and the evidentiary hearing process should move forward for the subject areas encompassed in the FSA Part 1. The Committee’s Scheduling Order provides a full opportunity for testimony on the FSA Part 2 subjects, including the conduct of evidentiary hearings at the appropriate time. Therefore, the Trust’s Motion should be summarily dismissed as frivolous, because the FSA Part 1 was published in accordance with the Committee’s orders.

### **III. Mere Disagreement with the Contents and Conclusions of the FSA Part 1 Does Not Constitute Grounds to Stay this Proceeding.**

The underlying premise of the Motion is that the author of the Motion disagrees with the contents of the FSA Part 1. The author of the Motion believes that evidentiary hearings should be postponed until the FSA conforms to his view of the scope of the project. This argument reflects a fundamental misunderstanding of the Energy Commission’s siting process.

The FSA represents the Staff’s independent assessment of the project.<sup>21</sup> If another party disagrees with the conclusions set forth in the FSA, the remedy is not to revise the FSA to conform to the other party’s view of the evidence. Instead, if a party disagrees with the FSA, that party’s remedy is to submit testimony to contest the Staff’s findings in the FSA or the evidence offered by other parties -- as the Trust has already done.<sup>22</sup> The Trust has already filed numerous exhibits, opening testimony, and rebuttal testimony, which are referenced in the

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<sup>18</sup> TN# 206920, p. 2.

<sup>19</sup> Trust Motion, pdf pp. 6-7.

<sup>20</sup> TN# 214014.

<sup>21</sup> Cal. Code of Regulations, Title 20, Division 2, Chapter 2, Article 3, §§ 1710, 1742(b).

<sup>22</sup> Cal. Code of Regulations, Title 20, Division 2, Chapter 2, Article 3, § 1745.


Motion. One party's disagreement with the testimony of another is not grounds to delays these proceedings.

**IV. Conclusion**

For the reasons set forth above, the Trust's *Motion to Stay Proceedings* should be summarily dismissed.

November 8, 2016

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