

DOCKETED

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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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PETITION TO AMEND THE:

HUNTINGTON BEACH ENERGY PROJECT

Docket No. 12-AFC-02C

**NOTICE OF CANCELLATION OF NOVEMBER 30, 2016 EVIDENTIARY
HEARING; ORDERS AFTER PREHEARING CONFERENCE**

PLEASE TAKE NOTICE that the Energy Commission Committee¹(Committee) assigned to conduct proceedings on the Petition to Amend (Petition) the Huntington Beach Energy Project (Project) has **CANCELLED** the Evidentiary Hearing currently scheduled for November 30, 2016, and issues new orders as set forth below.

BACKGROUND

On September 9, 2015, AES Southland, LLC² (Petitioner) submitted the Petition seeking permission to amend the certified Huntington Beach Energy Project (HBEP).³ The Petition proposes to reduce the nominal generation capacity of the HBEP from 939 megawatts (MW) to 844 MW (644 MW generated from combined-cycle technology and 200 MW from simple-cycle technologies) (Proposed Project).⁴

During the pendency of the Petition, the Committee has issued several schedules, most predicated on having a single, integrated evidentiary hearing on all topics. However, on October 11, 2016, the Committee filed an order directing the Energy Commission Staff (Staff) to publish all portions of the Final Staff Assessment (FSA) by October 17, 2016, with the exception of those sections reliant on the permit (Final Determination of Compliance or FDOC) to be issued by the South Coast Air Quality Management District

¹ The Energy Commission, on October 14, 2015, designated Andrew McAllister, Commissioner and Presiding Member, and Karen Douglas, Commissioner and Associate Member, as the Committee to conduct proceedings on the Proposed Project.

² AES Southland, LLC, sought and obtained permission to transfer ownership of the Huntington Beach Energy Project to AES Huntington Beach Energy, LLC (TN 211856). For ease, we will refer to AES Huntington Beach Energy, LLC as "Petitioner."

³ The Energy Commission issued its Final Decision allowing Petitioner to construct and operate the HBEP on October 29, 2014 (the 2014 Decision). The 2014 Decision can be found at:

<https://efiling.energy.ca.gov/getdocument.aspx?tn=203309>.

⁴ Further details of the Proposed Project are contained in the Petition, which may be viewed at:

<https://efiling.energy.ca.gov/getdocument.aspx?tn=206087>

(SCAQMD).⁵ This October Order was issued in response to a motion by Petitioner⁶ and was premised on the lack of a firm deadline by which SCAQMD would issue the FDOC.

Staff filed Part 1 of the FSA on October 17, 2016.⁷ Thereafter, the Committee provided notice of a Prehearing Conference (PHC) on November 14, 2016, and an Evidentiary Hearing on November 30, 2016, with related deadlines for filing certain documents (PHC Notice).⁸ The PHC Notice also set forth a schedule for publication of Part 2 of the FSA to include those sections based on the FDOC.

During the PHC, SCAQMD stated that it was ready to release the FDOC during either the week of November 21, 2016, or November 28, 2016. While there were a few contested topics, Petitioner and Staff indicated that few issues would require live testimony. For example, on the issue of potential visual impacts from the revised Project, Staff contends there is a potentially significant impact from one key observation point and that, therefore, certain visual enhancements are required to mitigate the impact to a level of less than significant. Petitioner, on the other hand, contends that while there is no significant impact and thus no need for mitigation, it has already committed to the visual enhancements. However, both agree that the Committee could decide this issue on the declarations they already filed. Similarly, Staff and Petitioner both agree that live testimony may not be required to resolve the method for approval and appointment of certain monitors, as set forth in proposed Conditions of Certification BIO-1, CUL-1, and PAL-1.

The Committee identified specific issues on which additional testimony might be required. For example, the proposed roadway intersection modifications at Magnolia Street and Banning Avenue in the city of Huntington Beach have been confirmed as being part of the Project. The proposed roadway intersection modifications would allow access to the Plains All American Tank Farm (Tank Farm) that is planned to be used for construction laydown and worker parking. The Tank Farm is the subject of an existing Coastal Development Permit. The Committee also discussed the need to ensure that the Project phasing in the conditions of certification continue to be appropriate based on changes to the HBEP outlined in the Petition. The Committee also discussed the need for greater specificity of the assurances contained in Condition of Certification TRANS-9.

Jane James, Community Development Director for the city of Huntington Beach, participated in the PHC. Ms. James raised several concerns regarding some of the analysis contained in the FSA. First, she echoed the concerns the Committee had raised regarding the intersection modifications and the analysis of the impacts from those modifications. She also discussed the timing of certain conditions of certification, including the visual screening of the facility. Ms. James further commented on the interplay between the Tank Farm's permit and the actions requested in the Petition, such as potential impacts to neighbors regarding potential noise impacts from

⁵ TN 213967, referred to as the October Order in this document.

⁶ TN 213812.

⁷ TN 214025.

⁸ TN 214127.

construction worker parking. Ms. James concluded her remarks by stating that these issues and concerns, as well as others not summarized in this document, would be presented in writing.

ORDERS

Order Granting Supplemental Testimony

On November 10, 2016, Petitioner filed a “Motion to Submit Supplemental Testimony and Supplemental Testimony of Stephen O’Kane” (Motion to Supplement).⁹ The Motion to Supplement sought to admit additional testimony on the topic of land use. During the November 14, 2016 PHC, Staff stated that it had no objection to the granting of the motion, but noted that it had not had time to fully analyze the issues in the supplemental testimony. Therefore, Staff asked for permission to present additional evidence as necessary.

The Committee hereby GRANTS the Motion to Supplement. Staff shall include any additional information necessary to respond to the testimony in the Motion to Supplement in Part 2 of the FSA, as set forth below.

Scheduling Order

Throughout the proceeding, the Committee has stated its desire to hold a single evidentiary hearing on all issues presented by the Petition. With the issuance of the FDOC on November 21, 2016¹⁰, the Committee desires to revert to a single evidentiary hearing and has developed the following schedule for the remainder of the proceeding. The Committee encourages the parties to consider this schedule an outer boundary and make their best efforts to complete the milestones ahead of these dates.

PLEASE TAKE NOTICE that the Committee has established the following schedule for the Petition which **supersedes** all prior schedules.

⁹ TN 214455.

¹⁰ TN 214533.

<u>EVENT</u>	<u>DUE DATE</u>
Final Staff Assessment (FSA) Part 1	10/17/16
All Parties File Opening Evidence ¹¹ , Part 1	10/27/16
Last Day to File Petition to Intervene	10/31/16
All Parties File Rebuttal Evidence, Part 1 ¹²	11/3/16
Final Determination of Compliance	11/21/16
Final Staff Assessment, Part 2 ¹³	12/16/16
All Parties File Opening Evidence, Part 2	12/23/16
All Parties File Rebuttal Evidence, Part 2	12/30/16
All Parties File Prehearing Conference Statements and Exhibit Lists, Part 2	1/3/17
Prehearing Conference and Evidentiary Hearing ¹⁴	1/9/17
Presiding Members Proposed Decision (PMPD) Published	Week of 1/30/17
Committee Conference on PMPD	Within 30 days of the publication of the PMPD
Close of public comment period on PMPD	30 days after publication of the PMPD
Errata/Revisions to PMPD	TBD
Final Adoption Hearing by the California Energy Commission	March/April 2017

Order for Contents of Part 2 of the FSA

Staff is ORDERED to prepare Part 2 of the FSA to include the following:

1. All topics and issues related to the FDOC;
2. Responses to all PSA comments made by the Hearing Officer during the November 16, 2016, PHC related to the Preliminary Staff Assessment;
3. Responses to all comments made by the city of Huntington Beach during the November 16, 2016, PHC, as well as any written comments from the city of Huntington Beach received on or before December 2, 2016; and

¹¹ Evidence means both testimony and any documents a party wishes to offer at the Evidentiary Hearing.

¹² Rebuttal evidence is in response to an issue first raised in opening testimony. Testimony which could have, with reasonable diligence, been filed as opening testimony, may be subject to exclusion from rebuttal on the motion of a party or the Committee's own initiative.

¹³ Part 2 of the FSA shall include both the previously unpublished portions of the FSA related to the FDOC, as well as any additional information in response to the issues raised during the November 14, 2016, PHC, as set forth below.

¹⁴ Formal notice of the date for the Prehearing Conference and Evidentiary Hearing will be separately filed.

4. Any response from Staff to the supplemental rebuttal testimony filed by Petitioner.¹⁵

Pre-hearing Briefing

During the November 14, 2016 PHC, two legal issues were discussed:

1. The applicable statutes under which the Report from the Coastal Commission¹⁶ should be considered by the Committee; and
2. Whether Water Code section 10910, subdivision (h) applies to the Project's Water Supply Assessment.

Staff and Petitioner are hereby ORDERED to submit legal analysis on these topics with their Prehearing Conference Statements and Exhibit Lists, Part 2.

Public Adviser and Public Participation

The Energy Commission's Public Adviser's Office is available to assist the public in participating in the proceedings. For assistance, contact Alana Mathews, Public Adviser, at (916) 654-4489 or (800) 822-6228, or by e-mail at publicadviser@energy.ca.gov.

Contact Information

Questions of a legal or procedural nature should be directed to Susan Cochran, Hearing Officer, at (916) 654-3965, or by e-mail at susan.cochran@energy.ca.gov.

Technical questions concerning the Project should be addressed to John Heiser, Project Manager, at (916) 653-8236, or by email at john.heiser@energy.ca.gov.

Media inquiries should be directed to the Office of Media and Public Communications at (916) 654-4989, or by e-mail at mediaoffice@energy.ca.gov.

¹⁵ TN 214455.

¹⁶ TNs 212797-1, 212797-2.

Information concerning the status of the proposed amended Project, as well as notices and other relevant documents, may be viewed on the Energy Commission's web page at:

http://www.energy.ca.gov/sitingcases/huntington_beach_energy/

Dated: November 29, 2016, at Sacramento, California

ORIGINAL SIGNED BY:

J. ANDREW McALLISTER, Ph.D.
Commissioner and Presiding Member
Huntington Beach Energy Project
Amendment Committee

ORIGINAL SIGNED BY:

KAREN DOUGLAS
Commissioner and Associate Member
Huntington Beach Energy Project
Amendment Committee