

DOCKETED

Docket Number:	13-AFC-01
Project Title:	Alamitos Energy Center
TN #:	214733
Document Title:	Los Cerritos Wetlands Land Trust Rebuttal of Applicant and Staff Part 1 Briefs final
Description:	N/A
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Organization:	Los Cerritos Wetlands Land Trust
Submitter Role:	Intervenor
Submission Date:	12/9/2016 4:04:41 PM
Docketed Date:	12/9/2016

Alamitos Energy Center
AFC-13-01

Intervenor's Rebuttal of Applicant & Staff Part One Briefs

Presented to California Energy Commission

On Behalf of Los Cerritos Wetlands Land Trust

December 9, 2016

The Los Cerritos Wetlands Land Trust (Trust) submits the rebuttal to the Staff Brief on Part One of the Final Staff Assessment – Number 1 below. Included is the Trust’s rebuttal of the Applicant’s Brief – Number 2 below.

We are also submitting evidence to corroborate the Trust’s rebuttal.

We very much appreciate the Committee’s careful consideration of the Trust’s rebuttal, and your recognition of the Trust’s concern for continued adverse impacts to Los Cerritos Wetlands – a rare and precious remnant of past coastal estuarine wetlands in Southern California.

1. Rebuttal of Staff’s Brief

a. Project Description and Alternatives Analysis are Wrong Regarding Project Size

Staff asserts that, because “The currently proposed AEC project is over 900 MW smaller than the originally proposed, 1995 MW project, and the existing Alamitos Generating Station (AGS), which is 1950 MW . . . a reduction in power generation already occurred and a smaller project is being proposed.” (Staff Brief at p. 2)

The fact that the applicant initially applied for a different gas-fired power plant of any different size is irrelevant here. The fact that an old power plant must be shut down pursuant to state law because it is highly destructive to the environment is also irrelevant in this application for a new plant. The only relevant facts regarding the size of the plant are 1. The CPUC approved no more than 640 MW for this plant and 2. The Applicant, with no explanation for the discrepancy, has applied for a 1040 MW plant.

Staff asserts that there are no requirements “...that an applicant obtain a power purchase agreement (PPA) in order for the Commission to evaluate the proposed project and issue a decision on the application.” (Staff Brief at p. 2) While this may be true, it is irrelevant for this project. The proposed project is not a circumstance where there is no PPA – just the opposite. The Commission is evaluating a proposed project whereby the applicant’s bid for a power purchase agreement was reviewed and approved by the CPUC under their mandate to enforce State laws, regulations and standards.

In this case, the CPUC found that 640 MW was the maximum amount of gas-fired generation allowed at this site. As explained further below, the Staff persists in only discussing the LTPP as if the CPUC decision, D.15-11-041 never happened, when in fact, D.15-11-041 specifically addresses new gas-fired generation at Alamitos. The Commission must deny a project with greater gas-fired generation capacity than 640 MW as inconsistent with LORS applied to this site, specifically the laws, regulations and standards requiring action to reduce GHG emissions and to utilize the preferred resources loading order, as interpreted by the CPUC in its order approving a maximum of 640 MW at Alamitos.

The Commission must find that any proposed project must be consistent with applicable State laws, ordinances and standards – or the Commission must clearly articulate the rationale for overriding those laws. The statutory language cited by staff on page 3 of the Brief does not relieve the Commission of the duty to ensure projects are consistent with LORS.

By law, greenhouse gas (GHG) emissions are significant, and the State has already adopted laws, regulations and standards to reduce GHG emissions. This is the LORS the Commission must be consistent with, not simply relying on after-the-fact mitigation. And it is now clear that approving the proposed project at the proposed generating capacity is adding GHG emissions to the environment – by definition a significant impact.

At the very least, a 640 MW project should have been analyzed as an alternative. Were a 640 MW project analyzed as an alternative, a 1040 MW could not have possibly been selected as environmentally preferable.

Further, the Staff asserts this “...siting process is not designed to determine regional demand, grid constraints or develop regional reliability analysis. Such analysis is not necessary as it would be duplicative of the LTPP process.” (Staff Brief at p. 3.)

Yet Staff is doing just that. The determinations staff lists are the basis of the “objectives” in the Applicant’s SAFC. And Staff is ignoring the CPUC determinations of these exact same matters whereby it approved 640 MW at Alamitos, not 1040 MW. Further, the Commission is simultaneously considering approval of additional gas-fired generation at Huntington Beach that is greater capacity than approved by the CPUC in the regional reliability analysis. **So, in some ways we agree the Staff Assessment need not be “duplicative” of the LTPP -- but it must be consistent with the CPUC order approving 640 MW at Alamitos, not 1040 MW.**

b. Alternatives Analysis is Inadequate

Staff asserts that the FSA Part One analyzed alternative “generating technologies, energy efficiency, demand response, and energy storage...” and a “no project alternative.” (Staff Brief at p. 2) As the Trust has pointed out repeatedly, pursuant to CEQA it is not adequate to analyze each of those alternatives in isolation. It is unreasonable to not analyze an alternative that is the portfolio of preferred resources, as it is embodied in the spirit and the letter of state law requiring a decrease in greenhouse gas emissions and increase in use of preferred resources.

The “basic objective” of the project is clearly attaining “grid reliability.” Any additional language in the “objectives” described in the Supplemental AFC are ancillary to that basic objective, and/or are objectionable for being so narrow that the objectives preclude any alternative but the project itself. More importantly, these alternatives to meeting the basic objective of the proposed project – that is, grid reliability – have already been considered and mandated in the CPUC decision minimizing GHG emissions.

Staff also asserts that, because the FSA Part One concluded there were no significant adverse impacts, there is no mandate to consider alternatives that include a facility with a smaller generating capacity and reduced impacts on the environment and surrounding community. The Trust disagrees.

First, the bifurcation of the FSA into Part One and Part Two has not allowed thorough cumulative impacts analyses. It is premature and without foundation to presume there are no cumulative impacts. As noted in our Part One brief, we reserve the right to open up any or all subject areas reviewed in the Part One Evidentiary Hearing once the full FSA is available.

As for the No Project alternative, the FSA Part One is inadequate in that it was reviewed in the absence of air quality degradation and the compounding effect degraded air quality may have on several other subject areas. Further, evidence in the record shows that preferred resources combined with the extended availability of the La Paloma facility (gas-fired generation also located on an industrial site) make the addition of gas-fired generation at Alamitos unnecessary.

c. LTPP and this Proposed Project are the Same “Basic Objectives”

Staff describes the LTPP as a regional planning process that defines the type and amount of power generation necessary to ensure grid reliability over a number of years. (Staff Brief at p. 3) Staff’s somewhat simplified description of the LTPP purpose is, in effect, the same as the proposed project objectives, and is consequently relevant to this Commission’s licensing process.

However, importantly for this Energy Commission decision, the CPUC is no longer simply acting to ensure ratepayer protections when deciding the type and amount of power generation needed, the CPUC is now acting to enforce State laws to reduce GHG emissions.

Staff then states that this Commission’s duty differs from the CPUC in that the charge is to focus “on the significant environmental impacts, appropriate mitigation, and compliance with all laws and regulations (of)¹ a specific facility.” Further, Staff argues that it would be “duplicative” for this Commission to “determine regional demand, grid constraints or develop regional reliability analysis.”

But staff fails to state that the LTPP process led to a CPUC decision that gas-fired generation must be limited to no more than 640 MW at this specific site, and any more gas-fired generation at this site would not be consistent with State laws to reduce GHG emissions. To avoid what staff describes as a potentially “duplicative” assessment of means to meet the “basic objectives” of the proposed project, and simultaneously avoid inconsistency with State law, the Commission would have to find the allowable capacity of the facility is no more than 640 MW, as prescribed in the CPUC decision. The irony is inescapable: staff suggests the Commission must focus on compliance with all laws and regulations, yet ignore state laws to reduce GHG emissions as those laws were applied to this specific site in the LTPP process and final CPUC decision.

Finally, Staff concludes that “any issue the Trust has with findings made in the LTPP process needs to be addressed in that forum”, not in this proceeding. The Trust has never asserted any “issues with the LTPP process” in this forum.

d. Staff Analyses of Cumulative Impacts is Incomplete and Inadequate

Finally, Staff briefly restates their conclusions that the FSA Part One adequately assessed the cumulative impacts from the demolition of AGS, and goes on to summarily describe the analyses of Dust, Noise, Traffic & Transportation and Soil & Water.

The Trust has submitted a brief articulating the CEQA standards as they apply to this case, herein incorporated by reference. (See: TN 214629-1 thru 3) The Trust Brief articulates a standard for review of “cumulatively considerable” impacts where “past projects” have significantly degraded the environment, as is the case here – a heightened standard than applied in the FSA.

Further, we disagree that Part One adequately assessed the cumulative impacts in the absence of an analysis of air quality degradation, and the compounding effect of air pollution on the environment and surrounding community.

As for the specific subject areas highlighted in the Staff brief, we once again note that Staff has not responded to our concerns about Hazardous Materials and Materials Handling attributable to demolition of AGS, and the cumulative impact of handling and potential release of Hazardous Materials during demolition of AGS and

¹ We think staff means “applicable to”, not “of”

simultaneous operation of the proposed project. These concerns were included in our Opening Statement for Part One and there was no Staff rebuttal of those concerns.

As for the subject areas mentioned in this Staff brief, we restate that the Trust did not suggest that demolition of AGS will be accomplished through implosion. We offered the video of implosion, and all the other evidence attached to our Part One writings, simply as “examples” of the complexity and potential adverse impacts from demolition of power plants of this vintage.

We oppose the implication that it is the Trust’s burden to more thoroughly define the adverse impacts from demolition: while implosion is one option for AGS demolition, it is the Commission’s duty, not intervenors, to identify and analyze the methods that will be used for AGS removal. The Applicant will eventually have to supply a plan for demolition pursuant to an MOU with the City of Long Beach and the Air District permit, yet the Staff has failed to require that information for this proceeding. If, for example, as staff asserts on page 5 of their Brief, that “...it is questionable that implosion would be the means of demolition...”, then it is incumbent on staff to provide facts and analysis of the manner of demolition that will be used, and whether the extended timeline for demolition is more or less significant than implosion.

In failing to provide facts and data for demolition of the AGS, the environmental assessment is impermissibly speculative. As the Trust described in the brief, CEQA requires quantitative analyses based on facts in the record when it is “reasonable and practical” for the agency to obtain those data.

The Commission cannot conclude there are no significant cumulative impacts, without having any information or quantitative analysis of demolition upon which to base such a conclusion. For example, if demolition includes implosion of structures, the impacts are greater but for a shorter period of time. In contrast, demolition “piece by piece” may reduce the “temporary” noise, dust and other adverse impacts, but the duration of impacts may be much longer and consequently more significant.

- e. The Staff has failed to provide required information and analysis for many critical topics.

DUST

Staff has not adequately addressed the cumulatively considerable contribution of dust from operation of the proposed project to the foreseeable significant dust from demolition. In testimony at the Evidentiary Hearing, staff summarized the impacts of dust on vegetation as interfering with a plant’s photosynthesis. Wetlands vegetation is critical to wetlands ecosystem health. And staff admitted not knowing

if PM10 has been documented as having any adverse impacts that would contribute to the known adverse impacts of dust.

It is not reasonable to assume that the adverse impacts of dust emissions from simultaneous construction of the proposed project and operation of the AGS is comparable to simultaneous operation of the proposed project and demolition of AGS. Clearly demolition of the AGS will include disturbance and emissions of dust from demolishing the vintage AGS structures, and there is no comparable disturbances and emissions associated with constructing the AEC. Further, it is reasonable and practical to avoid these speculative assumptions by simply requiring the Applicant to submit a demolition plan prior to the Commission finalizing the FSA.

Further, numerous past projects, including the operation of AGS, have had substantial impacts on the health of the wetlands for decades, requiring a different analysis of past, present and future "cumulatively significant" impacts than offered in the FSA. As the Trust explained in the Part One Brief:

Communities for a Better Environment v. California Resources Agency [(2002) 103 Cal. App. 4th 98, 126 Cal. Rptr. 2d 441 ("*Communities for a Better Environment*")], invalidated certain CEQA provisions and clarified the seminal appellate decision on cumulative impacts analysis, *Kings County Farm Bureau v. City of Hanford* [(1990) 221 Cal. App. 3d 692, 270 Cal. Rptr. 650]. In *Kings County*, the court rejected the cumulative analysis prepared for a proposed coal-fired cogeneration plant in which the lead agency determined the project's impact on air quality was not cumulatively considerable because it would contribute less than one percent of area emissions for all criteria pollutants. [221 Cal. App. 3d at 718-719.] The court criticized the lead agency's focus on the ratio between the project's impacts and the overall environmental problem, rather than on the combined effect of the project in addition to already adverse conditions. Under this (impermissible) approach, which the court dubbed the "ratio theory", "the greater the overall problem, the less significance a project has in a cumulative impact analysis." [221 Cal. App. 3d at 721.] Instead of trivializing a project's impacts by comparing them to the impacts of other past, present, and probable future projects, CEQA requires the lead agency to first combine the impacts. When this is done properly, the FSA may find that the scope of the environmental problem is so severe that even a minuscule incremental change would be cumulatively considerable and thus significant.

The *Communities for a Better Environment* decision built upon and expanded the analysis in *Kings County*. In *Communities for a Better Environment*, the court invalidated an amendment to the CEQA Guidelines enacted in 1998 that permitted an EIR to find a project's contribution to a significant cumulative impact "de minimis" if the environmental conditions would be the same whether or not the proposed project is implemented.

[Communities for a Better Environment, 103 Cal. App. 4th at 117-118.] The court found this approach counter to the *Kings County* decision, as well as other decisions rejecting the "ratio theory", e.g., *City of Long Beach v. Los Angeles Unified School Dist.* [(2009) 176 Cal. App. 4th 889, 98 Cal. Rptr. 3d 137 ("*Los Angeles Unified*") (EIR improperly relied on a ratio theory to conclude that a project's relatively small contribution to noise impacts were not significant)].

The relevant question, as set forth by the court, is whether any additional amount of effect is significant (i.e., cumulatively considerable) **in the context of the existing cumulative effect.** [103 Cal. App. 4th at 119.] In other words, "the greater the existing environmental problems are, the lower the threshold should be for treating a contribution to cumulative impacts as significant." [103 Cal. App. 4th at 119.] Although stating the "one additional molecule rule" is not the law," the court provided no further guidance on when a very small incremental contribution to an existing environmental problem would be significant, i.e., cumulatively considerable. [103 Cal. App. 4th at 119.]

The impact of dust from demolition needs to be addressed more thoroughly. The FSA must also include a more robust analysis of "cumulatively considerable" impacts from operation of the proposed AEC.

PM10 is "dust." The proposed AEC will emit PM10 and PM2.5 simultaneous with demolition of the AGS. And the area, including the wetlands, is already significantly impacted by dust, as is apparent in the area's non-attainment status. And coastal estuarine wetlands include vegetation that is rare itself, and habitat for numerous listed species. Clearly the emission of tons of PM10 from the proposed AEC, into a non-attainment area for PM10, that includes wetlands vegetation, is cumulatively considerable.

Therefore, a more thorough alternatives analysis is required. And clearly a 640 MW gas-fired generation facility would mitigate the significant cumulative impacts of dust emissions – as well as ensure consistency with LORS. And a thorough analysis of preferred resources and/or reliance on the La Paloma facility to reduce the proposed facility's gas-fired generation would further reduce cumulative impacts on rare coastal estuarine wetlands habitat.

NOISE

It is not reasonable to assume that the noise impacts from simultaneous construction of the proposed project and operation of the AGS is comparable to simultaneous operation of the proposed project and demolition of AGS. In fact, it is reasonable and practical to avoid these unnecessary assumptions by simply requiring the Applicant to submit a demolition plan prior to the Commission finalizing the FSA.

As noted above, the use of explosive devices is only one method of demolishing parts of the AGS. And the “temporary” impacts from the implosion event are only one part of the longer-term demolition. And when combined in time with operation of the proposed AEC and other demolition and construction projects in the vicinity of the wetlands, the noise impacts will likely be significant for years.

Further, in analyzing the South Bay Power Plant demolition, the Coastal Commission found that the temporary significant impacts of implosion were preferable to long-term impacts of alternative demolition techniques. Of course, this case requires more thorough consideration because in the South Bay Power Plant case there were not several other major demolition and construction projects in such close proximity, both in space and time, as is the case here.

Further, the differences in construction of the proposed AEC and demolition of the AGS include the removal of significant amounts of Hazardous Materials over a long-period of time. The FSA fails to document the noise from the truck traffic necessary to remove the hazardous materials from the site for safe disposal elsewhere. And, as noted in the citations and analysis of CEQA case law above, in areas where there are already significant impacts from noise, even a miniscule contribution of noise from the proposed AEC would be “cumulatively considerable.”

Finally, numerous past projects, including the operation of AGS, have had substantial impacts on the health of the wetlands for decades. Further, the Commission’s regulations recognize coastal estuarine wetlands as sensitive habitat deserving special protection. These two factors require a more robust analysis of past, present and future significant and “cumulatively considerable” impacts than offered in the FSA.

The operation of the AGS has been sporadic over the past several years, and now the AEC may run more consistently than before. This change in the constancy of significant noise from operation of a power plant, and the adverse impacts on the wetlands in terms of “past, present and future” impacts, has not been adequately described and analyzed in the FSA.

Therefore, a more thorough alternatives analysis is required. And clearly a 640 MW gas-fired generation facility would mitigate the significant cumulative impacts of noise – as well as ensure consistency with LORS. And a thorough analysis of preferred resources and/or reliance on the La Paloma facility to reduce the proposed facility’s gas-fired generation would further reduce cumulative impacts on rare coastal estuarine wetlands habitat.

TRAFFIC AND TRANSPORTATION

The summary conclusion that traffic from the proposed AEC is not “cumulatively considerable” is not based on any facts and data in evidence. Existing traffic at

numerous points in the subject area are already considered congested (See: Southeast Area Specific Plan DEIR http://www.lbds.info/planning/environmental_planning/environmental_reports.asp and attached Trust's expert comments on DEIR).

For example: Table 5.16-10 shows the increase in V/C due to the Project, which determines if a significant impact would occur according to the applicable agency thresholds for significance. As shown in Table 5.16-10, all 15 study intersections are forecast to result in a significant impact for 2035 With Project Conditions:

- ♣ Studebaker Road & SR-22 Westbound Ramps (Caltrans): AM Peak Hour (LOS D), PM Peak Hour (LOS F)
- ♣ Ximeno Avenue & 7th Street: AM Peak Hour (LOS E), PM Peak Hour (LOS F)
- ♣ Pacific Coast Highway & 7th Street (Caltrans): AM Peak Hour (LOS F), PM Peak Hour (LOS F)
- ♣ Bellflower Boulevard & 7th Street (Caltrans): AM Peak Hour (LOS E), PM Peak Hour (LOS E)
- ♣ Channel Drive & 7th Street (Caltrans): PM Peak Hour (LOS F)
- ♣ Campus Drive & 7th Street (Caltrans): AM Peak Hour (LOS D)
- ♣ Studebaker Rd & SR-22 Eastbound Ramps (Caltrans): PM Peak Hour (LOS D)
- ♣ Pacific Coast Highway & Loynes Drive (Caltrans): PM Peak Hour (LOS F)
- ♣ Studebaker Road & Loynes Drive: PM Peak Hour (LOS E)
- ♣ Marina Drive & 2nd Street: PM Peak Hour (LOS E)
- ♣ Pacific Coast Highway & 2nd Street (Caltrans): AM Peak Hour (LOS F), PM Peak Hour (LOS F)
- ♣ Shopkeeper Road & 2nd Street: PM Peak Hour (LOS F)
- ♣ Studebaker Road & 2nd Street: PM Peak Hour (LOS E)
- ♣ Seal Beach Boulevard & 2nd St/Westminster Boulevard (City of Seal Beach): PM Peak Hour (LOS F)
- ♣ Pacific Coast Highway & Studebaker Road (Caltrans): PM Peak Hour (LOS E)

(DEIR pp. 5.16-37 and 38)

And evidence already in the record suggests that demolition of the AGS and the need for 10 heavy truck trips a day to remove waste, in combination with workers coming and leaving the site, will include significant traffic impacts beyond what is analyzed in the Southeast Area Specific Plan DEIR. As noted above, how much traffic demolition will add to the existing circumstances, and how long that additional traffic impact will last are estimates from other projects and demolition industry document in the record. More specific data is required in a demolition plan for this project.

As noted above and in the Trust's Brief, adding to an already degraded environment lowers the threshold for "cumulatively considerable" impacts of traffic on sensitive habitats like the Los Cerritos Wetlands. The FSA must include a more thorough description of demolition as well as a more adequate analysis of the cumulatively considerable impacts of operating the proposed facility in combination with consecutive and/or concurrent demolition of the AGS and other foreseeable projects' impacts in the subject area.

Therefore, a more thorough alternatives analysis is required. And clearly a 640 MW gas-fired generation facility would mitigate the significant

cumulative impacts of traffic during construction and operation of the proposed facility – as well as ensure consistency with LORS. And a thorough analysis of preferred resources and/or reliance on the La Paloma facility to reduce the proposed facility’s gas-fired generation would further reduce cumulative impacts on rare coastal estuarine wetlands habitat.

SOIL AND WATER

Staff’s Brief mischaracterizes the Trust’s concerns about adverse impacts to Soil and Water. In the evidence the Trust provided to illustrate the potential impacts of demolishing power plants of this vintage, a major concern is the careful removal, storage and disposal of hazardous materials. There are similar concerns in the FSA for the handling, storage and use of hazardous materials for the proposed AEC.

While some of the materials of concern will be similar, others are different. For example, demolition will require removal, storage and disposal of solvents and oil, lead, asbestos, PCB, mercury, etc. Some of these materials will also be used in construction and/or operation of the proposed AEC, like oils and solvents and mercury. And other hazardous materials, like ammonia, will be routinely stored and used in operation. And lead emissions from operation of the proposed project are reasonably foreseeable. Therefore, the potential for spills, leaks or emissions of different hazardous materials like ammonia and lead can still have a “cumulative considerable” impact on leaks and unmitigated releases of hazardous materials from demolition. And all these potential spills and emissions will adversely impacts the soil and water in nearby sensitive aquatic habitats – including the rivers and wetlands adjacent to the site.

Demolition AGS and operation of the proposed AEC will have compounded adverse impacts on polluted stormwater runoff and deposition of airborne materials. But staff may be confused about the nature of the concerns. The Staff Brief inadequately concludes that “...there are no similar impacts from AEC to combine with potential water quality impacts from demolition of AGS because wastewater from the operation of AEC will be sent to the City treatment plant.....” Wastewater management will not resolve runoff and deposition of airborne materials into the soil and water.

Because of the sensitive nature of coastal estuarine wetlands, and the impacts to these wetlands from past degradation, the FSA must provide a more robust analysis of the potential risk of future releases of hazardous materials from demolition of AGS, and the cumulatively considerable impacts of releasing similar materials into the environment during simultaneous operation of the proposed AEC.

Therefore, a more thorough alternatives analysis is required. And clearly a 640 MW gas-fired generation facility would mitigate the significant cumulative impacts of the release of hazardous materials into the soil and water during construction and operation of the proposed facility – as well as

ensure consistency with LORS. And a thorough analysis of preferred resources and/or reliance on the La Paloma facility to reduce the proposed facility's gas-fired generation would further reduce cumulative impacts on rare coastal estuarine wetlands habitat.

2. Applicant's Brief

Introduction

Applicant restates the argued premise that, absent the showing of significant impacts, alternatives analyses are not required.

First the Trust's Brief summarizes the totality of evidence in the record that shows the FSA fails for not having included demolition as part of the project. Second, alternatively, the Trust's Brief summarizes the law, as applied to these circumstances, that requires a more detailed and thorough analysis of cumulative impacts and the standards for finding the proposed project contributes "cumulatively considerable" impacts in combination with past, present and future degradation to the environment.

Therefore, the Applicant's opposition to a more robust analysis of alternatives that can minimize the cumulative adverse impacts of the proposed project is wrong.

For clarity, the Trust has argued, and continues to argue, that the proposed project cannot exceed generating capacity of 640 MW without being inconsistent with State laws, regulations and standards to minimize greenhouse gas emissions, as applied to this site in the CPUC decision. The Trust also argues that the 640 MW maximum alternative can be further reduced by greater reliance on a portfolio of efficiency, demand response and battery storage. These alternatives, like the Battery Energy Storage Project the Applicant is planning, can reduce the demand for 640 MW of gas-fired generation and still meet the "basic" objective of local grid reliability. These are all alternatives that would reduce greenhouse gas emissions and other adverse impacts from a large gas-fired generating station in the midst of sensitive coastal estuarine wetlands that are degraded from past and present projects like the proposed AEC. Further, the Trust has illustrated that existing facilities, like La Paloma, also located on sites currently used for power generation, can fill the "basic" objective of grid reliability in the LA Basin, and reduce the adverse impacts of the project on sensitive coastal estuarine wetlands.

In sum, and as rebutted below, the Applicants' arguments are self-serving and flawed.

A. Substantial Evidence in the Record Confirms Alternatives Satisfy the "Basic" Objective of the Proposed Project

Applicant's Brief asserts alternatives suggested by the Trust cannot meet the basic objectives of "providing energy, generating capacity, and ancillary electrical services

to satisfy the LA Basin Reliability Area requirements and grid support, particularly in the western sub-area of the LA Basin.” (Applicant Brief at p. 9)

Ironically, these are the same basic objectives of the LA Basin LTPP. And the CPUC found that 640 MW at this site satisfied those basic objectives. Clearly a smaller facility of a maximum of 640 MW from gas-fired generation is an alternative that meets the basic objectives of the project, but does so in a way that minimizes adverse impacts from construction and operation of the proposed 1040 MW project.

Further, despite being located in Kern County, the alternative of continued operation of the La Paloma power plant would adequately meet the LA Basin reliability objectives.

The Applicant goes on to suggest the alternative of preferred resources would not “provide fast starting and stopping, flexible, controllable generation with the ability to ramp up and down... [to] allow the integration of the renewable energy into the electrical grid in satisfaction of California’s RPS, displacing older less efficient generation.” (Ibid) The Applicant goes on to list other ancillary objectives in their application.

First, the objective of integrating renewable energy into the grid can be accomplished with battery storage. And integration of renewable energy into the LA Basin is arguably the “basic” objective that can be met with alternatives.

Importantly, ancillary objectives that specifically call for “generation” of electricity, that would use this specific site, using the infrastructure on this site, and a requirement to use the South Coast AQMD rule allowing credit for replacement of old inefficient generators with new more efficient generators – are objectives written so narrowly as to preclude any reasonable alternative to meet the “basic objective” of grid reliability.

The State has already found that 640 MW is the maximum of gas-fired generation needed at this site. And although the State didn’t consider the application for certification before this Commission, the CPUC made that decision to meet the basic objectives of the project, and to simultaneously limit excessive greenhouse gas emissions.

Therefore, the CPUC decision has effectively defined the significant impact to be avoided, considered alternatives for this site that will lessen the significant impact of greenhouse gas emissions, and chosen a maximum of 640 MW of gas-fired generation and 100 MW of battery storage. The CPUC has also mandated that any future grid reliability must come from additional preferred resources – not an additional 400 MW of gas-fired generation. Applicant’s reliance on “future needs” to justify licensing more gas-fired generation than what was identified in the LTPP process, especially given the directive to fill any demand gap with preferred

resources, would undermine State laws, regulations and standards to minimize greenhouse gas emissions.

And importantly, the CPUC relied on this Commission to enforce the mandates of CEQA after they found the maximum gas-fired capacity allowed at this site, implicitly relying on this Commission to review alternatives that could reduce adverse impacts to less than what would occur from constructing and operating a 640 MW gas-fired generation facility.

In conclusion, not only do the alternatives suggested by the Trust meet the basic objectives of the proposed project, in many ways the State has already considered the question and found a 640 MW facility feasible and otherwise required by State law.

B. Alternatives Are “Feasible” and Mandatory

Applicant states that alternatives to the proposed project are not feasible because: “For example, neither demand response, energy efficiency nor battery storage can provide gas-fired generation needed to ‘ensure reliability under the most stringent criteria’ established in the CPUC’s 2012 LTPP.” (Applicant’s Brief at p. 11)

As stated in “A” above, the State, through the CPUC decision, has already ruled that a smaller gas-fired generation capacity at this site is “feasible.” In fact, the Applicant rightly implies the “objectives” of the CPUC LTPP are the same as the “basic objectives” of this proposed project. However, the Applicant fails to state that the LTPP process resulted in a PPA of 640 MW of gas-fired generation at this site – not the 1040 MW of gas-fired generation the Applicant argues is necessary to meet the basic objectives. Further, as this Committee is aware, this Applicant is also proposing a project at their Huntington Beach site that is approximately 200 MW more gas-fired generation than what was found necessary by the CPUC to meet regional grid reliability – one more reason 640 MW is more than needed to meet the similar “basic” objective of the proposed AEC.

The State has already found a smaller facility is feasible and meets the basic objectives of the proposed project. The Commission should not only consider that alternative as a “reasonable” approach to meet the mandates of CEQA, but the Commission is required to license no more than 640 MW of gas-fired generation, or supply a rationale for overriding state LORS.

C. Relationship to the Site Does Not Preclude Alternative Sites Analysis

The Applicant argues sites without a relationship to this specific site, should not be considered as alternatives by this Commission. Specifically, the Applicant argues that because the proposed “...AEC will be located within the boundaries of an existing power plant property (the Alamitos Generating Station) with operating power plant units, a discussion of site alternatives is not required for any decision the Commission must make in this decision.” (Applicant Brief at p. 11)

The Applicant goes on to cite the regulations that state the Commission “may” “accept an application” and decline an alternative sites analysis – if the Commission finds “it is reasonable” not to consider alternative sites. (Ibid) This is far from language absolutely precluding an alternative sites analysis. The Commission must first find that it is “reasonable” to preclude an assessment of alternative sites for the proposed project.

But it is important to note that the Trust has never suggested the need for considering alternative sites for the proposed facility. The Trust has argued for consideration of an alternative to the project that would be built on this site – a 640 MW facility that is consistent with State LORS. And we have argued that the FSA include analysis of additional energy efficiency, demand response and energy storage that would reduce the need for gas-fired generation of 640 MW – an alternative to further reduce adverse impacts from construction and operation of the proposed facility. And finally, the Trust has argued that the Commission should consider continued operation of the La Paloma combined-cycle units to ensure grid reliability in the western LA Basin, which would meet the basic objectives of the proposed AEC and simultaneously reduce construction and operational impacts on sensitive coastal estuarine habitat. The Trust now asserts that the Commission should consider the proposed Huntington Beach Energy Center as another alternative to the need for 640 MW at Alamitos.

None of what the Trust has suggested as alternatives to minimize adverse impacts and/or to ensure consistency with State LORS requires analyzing an alternative site for this proposed project.

Nonetheless, should a member of the public suggest such an alternative site analysis, the Trust does not agree that the Commission is precluded from considering the proposal – at least not without first finding it is reasonable not to analyze alternative sites.

Therefore, the Commission must reject the Applicant’s recommended “Finding of Fact and corresponding Conclusion of Law” because it is not based on any recommendation of alternative sites for the project, so it is without any foundation that such an analysis is not reasonable. Further, the Commission must reject the Applicant’s “alternative Finding and Conclusion” recommendation because it relies on “conclusions” in the Part One analysis that are still open to reconsideration in Part Two, and because it relies on a mischaracterization of what is legitimately “basic objectives” of the project – as noted above.

3. Bio-8 Condition is Reasonable

The Trust opposes Applicants opposition to the Staff’s recommended Condition of Certification Bio-8.

The potential for the occurrence of burrowing owls on the site is clear from the record. And Staff's Bio-8 is a minor obligation on the Applicant given the importance of protecting endangered species.