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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

STAFF'S REPLY BRIEF

I. Introduction

In accordance with the Committee for the Huntington Beach Energy Project (HBEP) Petition to Amend (Committee) Order regarding schedule and procedure for briefs in the proceeding, docketed on January 5, 2017, Energy Commission Staff's (Staff) submits its reply brief responding to assertions made in opening briefs by AES Huntington Beach, LLC (Petitioner) and Helping Hand Tools and Robert Simpson (Intervenor).

II. Condition of Certification GEO-3 is a Prudent Measure That Should Be Imposed.

Petitioner disputes the legal basis and necessity for Staff's proposed Condition of Certification GEO-3 regarding a Tsunami Hazard Mitigation Plan (THMP). Staff disagrees and offers the following counterpoints to Petitioner's claims.

First, Petitioner argues that no existing or new laws, ordinances, regulations, or standards (LORS) require the inclusion of Condition of Certification GEO-3 and no significant environmental impact has been identified which requires mitigation (Petitioner's Opening Brief, p. 4-5). The focus of GEO-3 is the protection of public health and safety consistent with the Warren-Alquist Act, specifically, Public Resources Code sections 25511 and 25520(b), as well as Title 20 sections 1742(b), which address "public health and safety" (Exh. 6001, Staff's Rebuttal Testimony, p. 6). The inclusion of GEO-3 is consistent with recently proposed conditions of certification for other projects and reflects current sea level rise science and projections, which led Staff to conclude that additional measures may be needed to ensure that all workers and site visitors are safe from an event in a tsunami zone (Exh. 6000, FSA Part 1, p.

5.2-3). Staff considers preparation and implementation of a THMP an essential element for ensuring public safety (Exh. 6001, p. 6).

Second, Petitioner argues that existing Conditions of Certification WORKER SAFETY-1 and -2 ensure that the project will comply with all emergency action planning LORS (Petitioner's Opening Brief, p. 5). The worker safety conditions of certification in the Final Staff Assessment, Part 1 are designed to comply with existing LORS and to protect workers during the construction, operation, and demolition of HBEP. WORKER SAFETY-1 and -2 do not include language requiring incorporation of tsunami hazard mitigation, as Petitioner has proposed (Petitioner's Opening Brief, p. 5). The nature of the tsunami hazard is different than other hazards encountered by workers and visitors at the project site; therefore, planning to protect workers and visitors from this hazard is different from other safety hazards. It is not redundant to require a THMP in conjunction with other safety planning efforts. With the inclusion of GEO-3, Staff is ensuring adequate planning is conducted to mitigate tsunami hazards and provides the opportunity for the Petitioner to include training with the plans for WORKER SAFETY-1 and -2, if desired.

Third, Petitioner states GEO-3 is "unnecessary, onerous, and contains requirements that should not be applied to a private entity" (Petitioner's Opening Brief, p. 4). Staff intends to ensure that workers and visitors are adequately protected from tsunami hazards and envisions that tsunami information could be incorporated with other safety training programs, such as those required in WORKER SAFETY-1 and -2 (Exh. 6000, pp. 4.15-4 and 4.15-5). Petitioner already plans to incorporate applicable tsunami recommendations and procedures into the Emergency Action Plans specified in WORKER SAFETY-1 and -2, which support Staff's effort (Petitioner's Opening Brief, p. 5). Condition of Certification GEO-3 is the least burdensome and most effective way to develop a site specific plan which takes into consideration the activities of emergency personnel and nearby evacuation protocols.

III. The Petition to Amend Has Properly Proceeded Under Section 1769.

Intervenor, Helping Hands Tools and Robert Simpson, states the Petition to Amend should be treated as a new Application for Certification (AFC) based on the extent of proposed changes to HBEP, and that the Petition to Amend does not meet the requirements of California Code of Regulations, title 20, section 1769 (Opening Brief by Intervenor, p. 1-5).

The threshold for determining whether a project is subject to the amendment process, as set forth in Title 20 section 1769, is not the extent of the proposed changes, but whether a license exists. If a license does exist, then any proposed project changes to the design, operation or performance are submitted to the Commission as a petition in accordance with section 1769:

After the final decision is effective . . . the applicant shall file with the commission a petition for any modifications it proposes to the project design, operation, or performance requirements (Cal. Code Regs., tit. 20, § 1769(a)(1)).

The legislature confirmed the Energy Commission's post-certification amendment process under section 1769 as the appropriate mechanism for reviewing significant project changes when it approved the use of section 1769 for reviewing licensed solar thermal projects that desired to convert to solar photo-voltaic (Public Resources Code section 25500.1(d)). HBEP was granted a license for operation in a 2014 Final Decision by the Energy Commission, and the requested change to project design and operation has rightfully proceeded in accordance with section 1769(a)(3).

The fact that the amendment is being processed under section 1769 does not limit the Energy Commission from imposing many of the procedural features found in the AFC process such as the issuance of a Preliminary and Final Staff Assessment, the use of a committee, the granting of intervention, and the holding of workshops and evidentiary hearings. In this case, all such AFC elements have been integrated into the amendment proceeding (Cal. Code Regs., tit. 20, §§ 1203,1210; See Govt. Code §11445.10).

IV. Energy Commission Properly Collaborated with the California Coastal Commission.

Intervenor argues in its opening brief that the Energy Commission is not properly considering input from the California Coastal Commission (CCC) and that the provisions of Public Resource Code sections 25523(b) and 30413(d) apply to amendments filed under California Code of Regulations, Title 20, section 1769, thereby requiring a Coastal Commission Report (Opening Brief by Intervenor, pp. 9-10).

The CCC is an important partner when evaluating coastal facilities. The relationship between the two agencies is governed by a complex set of statutory and regulatory provisions as well as a 2005 Memorandum of Agreement (Pub. Resources Code, § 25523; Cal. Code Regs, title 20, §§ 1745.5(b)(3)(C) and (D); California Coastal Act, §§ 30413(d) and (e)). However, neither

statutory nor regulatory provisions provide for the development of a coastal report for an amendment under section 1769. Additionally, the Memorandum of Agreement addresses the AFC process and not amendments filed under section 1769 (See also Exh. 6000, pp. 1-5 to 1-7).

In accordance with the statutory framework, the CCC issues a report on the suitability of a proposed site under section 30413(d) for Notices of Intent (see Pub. Resources Code, § 25510). For other proceedings, such as hearings and workshops on AFCs or amendments, section 30413(e) holds that the CCC may participate and will be afforded full opportunity to present evidence. However, there is no authority for a report under sections 25523 or 30413(d) for an amendment to an existing license. Likewise, the 2005 Memorandum of Agreement is exclusive to the AFC process.

Furthermore, the engagement between the Energy Commission and the CCC on this project was consistent with additional regulatory provisions governing the relationship between the Energy Commission and other state agencies. Under California Code of Regulations, title 20, sections 1742(a) and 1744(e), Staff affirmatively seeks guidance and input from other agencies and gives due deference to other expert agencies when developing its environmental analysis and mitigation. In this case, Staff carefully reviewed the detailed comments provided by the CCC on the project and provided extensive responses to those comments, identifying where changes were made or could not be made based on CCC comments (See Exh. 6000, pp. 4.2-8 to 4.2-9; 4.9-11 to 4.9-13; 4.10-6 to 4.10-7; 5.2-4 to 5.2-8). Any characterization by Intervenor that there is a statutory requirement for the CCC to issue a report on the project amendment or that Staff did not appropriately consider CCC input is simply not true.

V. No Additional Analysis is Necessary for An Informed Committee Decision.

Intervenor makes several claims seeking alternatives or additional analysis, with little factual or legal support (Opening Brief by Intervenor, pp. 13, 14, 16, 18, 22, 25 and 29). The purpose of alternatives analysis is to identify feasible ways to substantially lessen the significant environmental effects of a project. An alternatives analysis need not consider every conceivable alternative to a project (Cal. Code Regs., tit. 14, § 15126.6, subd. (b); see also Pub. Resources Code, § 21002.1, subds. (a), (b); Cal. Code Regs., tit. 14, § 15002, subd. (a)(3)). The California Environmental Quality Act (CEQA) establishes no legal imperative as to the scope of

alternatives to be analyzed (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 566).

In this case, Staff found that the proposed project did not have any unmitigated significant impacts or potentially significant impacts (Exh. 6000, p. 1-11 and Exh. 6003, p. 1-7). Regardless, Staff considered a number of alternatives including: no project, site configurations, sites, generation technology and equipment (Exh. 6000, pp. 1-9 to 1-11). However, because there were no significant project impacts, no alternative project considered under an alternatives analysis could offer any environmental advantages over the proposed project.

In response to Intervenor's request for additional analysis and information regarding Air Quality/Greenhouse Gases, Biological Resources, Power Plant Reliability, Project Description, Soil and Water Resources, and Traffic and Transportation, Staff notes that the evidentiary record is closed. Furthermore, Staff concluded in the FSA Parts 1 and 2 that the proposed modifications to the project do not include substantial changes that would result in any new significant environmental impacts or a substantial increase in the severity of previously identified significant effects requiring additional analysis. At this stage, the Committee has sufficient information to reach an informed decision on the Petition to Amend.

Finally, Intervenor requests that an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) be prepared (Opening Brief by Intervenor, p. 18). An EIS is prepared by a federal agency related to actions under the jurisdiction of that federal agency. As a state agency with a certified regulatory program, the Energy Commission prepares an iterative set of environmental documents including a Preliminary Staff Assessment, Final Staff Assessment, Presiding Members Proposed Decision and Final Decision (42 USC §§ 4321-4347; Cal. Code Regs., tit. 20, §§ 1742, 1745.5, 1748).

VI. Staff Recommends Changes to AQ-SC1 and AQ-2.

Staff would like to offer modest changes to Conditions of Certification AQ-SC1 and AQ-2. Staff recommends modifying AQ-SC1 from the 2014 Final Decision on HBEP to ensure consistency in the conditions of certification between this project and the Alamos Energy Center project. Additionally, Staff recommends modifying AQ-2 to reflect the agreement reached at the

Evidentiary Hearing between Petitioner, the South Coast Air Quality Management District (SCAQMD), and Staff, regarding the date that the existing Huntington Beach Boiler 1 and Redondo Beach Boiler 7 would be permanently shut down. The listed parties tentatively agreed to change the date from November 1, 2019 to January 15, 2020, with SCAQMD staff needing additional time to confirm the change with their management. Since the Evidentiary Hearing, confirmation has been obtained by SCAQMD, and the proposed condition of certification should be modified to reflect the parties' agreement. Please see the attachment for the proposed modifications to the language of AQ-SC1 and AQ-2.

VII. Conclusion

Staff appreciates the opportunity to offer the Committee additional clarification on information already contained in the evidentiary record. The issues identified by Intervenor have either already been thoroughly assessed in the FSA or have no basis in law or fact and should be rejected by the Committee. The hearing record is sufficient for an informed decision by the Committee.

Dated: January 18, 2017

Respectfully submitted,

Original signed by
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*[Condition of Certification AQ-SC1 should be modified as follows. The proposed changes to AQ-SC1 are shown in comparison to the original 2014 Final Decision for the Huntington Beach Energy Project. Deleted text is in strikethrough and new text is **bold and underlined**.]*

AQ-SC1 Air Quality Construction/**Demolition** Mitigation Manager (AQCMM):

The project owner shall designate and ~~have~~ retain an on-site during construction/demolition activities an AQCMM who shall be responsible for directing and documenting compliance with conditions **AQ-SC3**, **AQ-SC4**, and **AQ-SC5** for the entire duration of project site construction/**demolition**. The project owner may elect to assign one or more alternate AQCMMs as well. The on-site AQCMM may delegate responsibilities to one or more AQCMM Delegates. The AQCMM and AQCMM Delegates shall have full access to all areas of construction on the project site, and shall have the authority to stop any or all construction/**demolition** activities as warranted by applicable construction/**demolition** mitigation conditions. The AQCMM and AQCMM Delegates may have other responsibilities in addition to those described in this condition. ~~The AQCMM may be replaced only after compliance with the selection process outlined below.~~ of the Compliance Project Manager (CPM).

Verification: At least 60 days prior to the start of ground disturbance, the project owner shall submit to the CPM for approval the name, resume, qualifications, and contact information for the first on-site AQCMM to be assigned and all AQCMM Delegates. The AQCMM and all AQCMM Delegates must be approved by the CPM before the start of ground disturbance. An AQCMM could be replaced after ground disturbance if the replacement AQCMM has been approved by the CPM.

[Condition of Certification AQ-2 was not contained in the original 2014 Final Decision. The language from Staff's Final Staff Assessment should be modified as follows, with ~~double strikethrough~~ and double underline signifying Staff's latest proposed changes.]

AQ-2 This facility is subject to the applicable requirements of the following rules or regulation(s):

The facility shall submit a detailed retirement plan for the permanent shutdown of Huntington Beach (HB) Boilers 1 and 2 and Redondo Beach (RB) Boiler 7 describing in detail the steps and schedule that will be taken to render the boilers permanently inoperable. The retirement plan shall be submitted to SCAQMD within 60 days after the Permits to Construct are issued for gas turbines CCTG 1, CCTG 2, SCTG 1, and SCTG 2.

AES shall not commence any construction of HB Boilers 1 and 2 and RB Boiler 7 repowering project equipment including gas turbines CCTG 1, CCTG 2, SCTG 1, SCTG 2, Auxiliary Boiler, ammonia storage tanks, or the oil water separators, 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, or by no later than ~~November 1, 2019~~ January 15, 2020, AES shall provide SCAQMD with a notarized statement that HB ~~Beach~~ Boiler 1 and RB Boiler 7 are permanently shutdown and that any restart or operation of the units shall require new Permits to Construct and be subject to all requirements of non-attainment new source review and the prevention of significant deterioration program.

Within 30 calendar days of actual shutdown, or by no later than December 31, 2020, AES shall provide SCAQMD with a notarized statement that HB ~~Beach~~ Boiler 2 is permanently shutdown and that any restart or operation of the unit shall require a new Permit to Construct and be subject to all requirements of non-attainment 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 HB Boiler 1 and RB Boiler 7, or advise SCAQMD as soon practicable should AES undertake permanent shutdown prior to ~~November 1, 2019~~ January 15, 2020.

AES shall notify SCAQMD 30 days prior to the implementation of the approved retirement plan for permanent shutdown of HB Boiler 2, or advise SCAQMD as soon practicable should AES undertake permanent shutdown prior to December 31, 2020.

AES shall cease operation of HB Boiler 1 within 90 calendar days of the first fire of either CCTG 1 or CCTG 2, whichever is earlier. AES shall cease operation of HB Boiler 2 within 90 calendar days of the first fire of either SCTG 1 or SCTG 2, whichever is earlier. AES shall cease operation of RB Boiler 7 prior to the first fire of either CCTG 1 or CCTG 2, whichever is earlier.

At least 6 months prior to ~~November 1, 2019~~ January 15, 2020, AES may submit a permit modification application requesting the permission to shutdown a combination of boilers other than HB Boiler 1, HB Boiler 2, and RB Boiler 7 to offset the increases for this project. The other boilers must be located at AES facilities Huntington Beach GS (Generating Station), Redondo Beach GS, or Alamitos GS, and approval of the application must be received prior to any changes being made to the shutdowns outlined in this condition.

Verification: The project owner shall submit the retirement plan and any modifications to the plan to the CPM within five working days of its submittal to or from the District, either by: 1) sending a copy of project owner's submittal to District, or 2) receipt of proposed modifications from District. The project owner shall make the site available for inspection of records by representatives of the District, ARB, and the Energy Commission.