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VIA ELECTRONIC FILING

The Honorable Andrew McAllister, Presiding Member
The Honorable Karen Douglas, Associate Member
Hearing Adviser Susan Cochran
1516 Ninth Street
Sacramento, CA 95814

**Re: Huntington Beach Energy Project (12-AFC-02C)
Project Owner's Initial Comments on the Presiding Member's Proposed Decision**

Dear Commissioners and Hearing Officer Cochran:

Pursuant to the Committee's February 24, 2017 Notice of Availability of the Presiding Member's Proposed Decision ("PMPD"); Notice of Committee Conference on the PMPD on March 8, 2017 ("PMPD Conference"); and Notice of Full Commission Hearing on April 12, 2017 (collectively referred to herein as "Notice"), Project Owner AES Huntington Beach Energy, LLC ("Project Owner") herein provides the following initial comments ("Project Owner's Initial Comments") on the PMPD for the Huntington Beach Energy Project ("HBEP") Petition to Amend ("PTA"). These initial comments focus primarily on Condition GEO-3 and minor language corrections to the proposed Conditions of Certification set forth in Appendix A of the PMPD to reflect language that Staff and Project Owner agreed to after Staff's issuance of their Final Staff Assessment ("FSA").¹ Project Owner reserves the right to provide additional comments on the PMPD, including the Conditions of Certification set forth therein, on or before March 27, 2017.

I. PROJECT DESCRIPTION

Page 2-6 (Construction Laydown and Parking) of the PMPD contains an inaccurate statement regarding the use of the Alamitos Generation Station site for construction laydown. The PMPD incorrectly states that "[i]nstead of using the Alamitos Generating Station site in Long Beach, the Amended Project intends to use the Plains site for construction laydown and some construction parking." As has been discussed and analyzed throughout the PTA proceeding, the construction laydown areas consist of six acres at HBGS, 22 acres of combined parking and laydown at the

¹ Project Owner provides these initial comments on the Conditions of Certification in an effort to facilitate productive discussion at the PMPD Conference and in response to such request in the Notice.

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Plains All American Tank Farm, and 16 acres at the Alamitos Generating Status (“AGS”) in Long Beach. (*See, e.g.*, Exhibit 5001, *passim*; Exhibit 5032 at pp. 2-3; Exhibit 6000 at p. 3-8; Exhibit 6003 at p. 3-8.) Project Owner did not remove any laydown areas from the Project Description of the PTA, but the use of the Plains site was added. As presented in the record, the 16 acres at the AGS would be used for temporary equipment storage and truck parking when heavy haul deliveries traveling from the Port of Long Beach cannot immediately be accommodated at the HBEP site. (*Id.*) Therefore, Project Owner requests that the Final Decision correctly reflect the construction laydown areas at AGS, HBGS, and the Plains site.

II. GEO-3

The PMPD includes a new Condition of Certification, GEO-3, proposed by Staff during the PTA proceedings. For the reasons stated previously and below, GEO-3 should be removed. The Hazard Mitigation Plan referenced in the PMPD as the basis for GEO-3 “includes resources and information to assist residents, public and private sector organizations, and others interested in participating in mitigation planning for natural hazards” (Plan Introduction at p. 1-2.) Further, the Plan acknowledges that “significant overlap appropriately exists between the General Plan and the Mitigation Sections of the two City Emergency Operations Plans” and “relevant maps and excerpts were taken from the General Plans for later integration into the Hazard Mitigation Plan.” (Plan, Risk Assessment, at pp. 3 of 41). The Plan expressly notes where the City of Huntington Beach’s General Plan reflects the mitigation strategies outlined in the Plan. The Hazard Mitigation Plan is not a LORS applicable to the project. While the City of Huntington Beach has adopted the Hazard Mitigation Plan, the plan contains no rules, requirements or regulations that apply to HBEP. Rather, the plan includes two suggested strategies for the City to pursue and to incorporate into their local planning regulations, such as the City of Huntington Beach’s General Plan. (Plan, Part IV-B, Tsunami Plan, pp. 24-25.)

Staff proposed a similar condition for the Alamitos Energy Center (“AEC”) project, citing to a similar hazard mitigation plan adopted by Los Angeles County as Staff’s basis for the new condition. The Presiding Member in the AEC proceeding, however, determined that existing Conditions of Certification WORKER SAFETY-1 and WORKER SAFETY-2, along with Condition COM-12, adequately address any potential tsunami risk:

Staff recommended Condition of Certification **GEO-2** which would require a Tsunami Hazard Mitigation Plan (THMP). The THMP would include among other things a discussion of criteria for a response to ensure public safety for a tsunami event, show where on and offsite refuge can be accessed, and provide detailed evacuation routes. The THMP would also include a training program for workers. The Applicant objected to Condition **GEO-2** arguing, *inter alia*, that it would be duplicative of construction and operations Emergency Action Plans

required by Conditions **WORKER SAFETY-1** and **2**. We agree with Applicant in this regard and further note that Condition **COM-12** will also ensure public safety by requiring the project owner to submit an Emergency Response Site Contingency Plan 60 days before start of construction. Therefore, we will not impose Condition of Certification **GEO-2**.”

(AEC PMPD at p. 7.4-10, Alamitos Energy Center, TN # 315975 (Feb. 13, 2017.) This reasoning from the AEC PMPD is equally applicable to HBEP. Project Owner does not dispute that a hazard mitigation plan for Huntington Beach exists and that the City has adopted certain plan elements into its General Plan. Project Owner stresses, however, that like in AEC, existing Conditions of Certification **WORKER SAFETY-1**, **WORKER SAFETY-2**, and **COM-12**, as drafted already address the concerns that the PMPD is unnecessarily attempting to further address with the addition of **GEO-3**. For these reasons, **GEO-3** should not be included in the Final Decision for the Amended HBEP. Additionally, Finding of Fact #3 and Finding of Fact #4 in the Geological and Paleontological Resources section should be deleted.

III. VIS-3

Project Owner has the following comment on **VIS-3**. The fences associated with the parking areas requiring construction screening have existing fencing, which the Project Owner intends to install screening material consistent with **VIS-3** directly to this existing fencing. In the event the existing fencing is not exactly 6 feet tall, removal and installation of compliant fencing will be required. The Project Owner suggests the following changes to Condition **VIS-3**.

The screening fencing for the parking lots shall be ~~no less than~~ **approximately** 6 feet tall and shall meet the City of Huntington Beach corner lot visibility requirements specified in Title 23, Chapter 230, “Site Standards,” of the Huntington Beach Municipal Code (i.e., 25-foot by 25-foot corner visibility triangle).

IV. AGREED-UPON CHANGES TO CONDITIONS OF CERTIFICATION

During the December 21, 2016 Evidentiary Hearing, Project Owner, Staff, and the City of Huntington Beach agreed to changes to **NOISE-6**, **TRANS-3** and **TRANS-8** as previously proposed by Project Owner. Such changes are not completely reflected in the PMPD. In addition, other changes agreed upon between Staff and Project Owner prior to the December 21, 2016 Evidentiary Hearing, as set forth in Project Owner’s Comprehensive Prehearing Conference Statement (Exhibit 5121), are not reflected in the PMPD. These changes are discussed separately below.

A. NOISE-6

During the December 21, 2016 Evidentiary Hearing. Project Owner, Staff, and the City of Huntington Beach agreed to changes to NOISE-6 as previously proposed by Project Owner² to clarify that there are no restrictions on workers parking at the project site or the offsite laydown areas prior to 7:00am. These changes are not reflected in the PMPD. Such changes are set forth below:

NOISE-6 CONSTRUCTION RESTRICTIONS

Heavy equipment operation and noisy construction work relating to any project features, **including noisy construction work relating to** construction staging and warm-up activities at the Plains All-American Tank Farm (Plains) site, and pile driving, shall be restricted to the times delineated below:

Mondays through Saturdays: 7:00 a.m. to 8:00 p.m.

Sundays and Federal Holidays: Construction not allowed

Limited construction activities may be performed outside of the above hours, with CPM approval as set forth below.

B. TRANS-3

The word "Beach" in **bold underline** below, was added by Staff in FSA, Part 2 (Exhibit 6003) and agreed to by the Project Owner. Condition TRANS-3 should be corrected accordingly:

11. Parking/Staging Plan for all phases of project construction and operation to require all project-related parking to be on-site or in designated off-site parking areas. The Parking/Staging Plan shall identify operation time(s) and route(s) for shuttle(s) from offsite parking areas. The Parking/Staging Plan shall prohibit use of the Huntington Beach City **Beach** parking area unless the CPM determines that there are insufficient parking spaces available at the other parking facilities identified in this Decision.

² See Exhibits 5113 and 5119.

C. TRANS-8

During the December 21, 2016 Evidentiary Hearing, Project Owner, Staff, and the City of Huntington Beach agreed to changes to the Verification language of TRANS-8 as previously proposed by Project Owner. These changes are not reflected in the PMPD. Such changes are set forth below:

TRANS-8 Construction Worker Parking/ Construction Laydown Access

Verification: At least three (3) months prior to construction of the intersection reconfiguration, the project owner shall provide the engineering plan/drawings for the design and reconfiguration of the Magnolia/Banning intersection and entrance road into the Plains site and the design and configuration of entrances to the City of Huntington Beach Public Works Department for review and comment. **At least 30 days prior to construction of the intersection reconfiguration, the project owner shall provide the engineering plan/drawings for the design and reconfiguration of the Magnolia/Banning intersection and entrance road into the Plains site and the design and configuration of entrances** and to the CBO for review and approval.

At least three (3) months prior to use of the Newland Street construction parking area, the project owner shall provide the engineering plan/drawings for the design and reconfiguration of the pedestrian crossing to the City of Huntington Beach Public Works Department for review and comment. **At least 30 days prior to use of the Newland Street construction parking area, the project owner shall provide the engineering plan/drawings for the design and reconfiguration of the pedestrian crossing** and to the CBO for review and approval.

D. CUL-2

Project Owner's testimony demonstrates that given the broad project area of analysis, without the clarification noted in CUL-2, below, the condition would be overly burdensome. Staff agreed to the additional language but the PMPD failed to include such language. The changes noted in bold underline should be included in the second paragraph of CUL-2.

CUL-2 INFORMATION TO BE PROVIDED TO CRS

Prior to the start of Cultural Resources Ground Disturbances , the project owner shall provide the CRS with copies of the AFC, data responses, confidential

cultural resources reports, all supplements, the Energy Commission staff's cultural resources FSA, and the cultural resources conditions of certification from the Final Decision for the project if the CRS has not previously worked on the project. The project owner shall also provide the CRS and the CPM with maps and drawings showing the footprints of the power plant, all linear facility routes, all access roads, and all laydown areas. Maps shall include the appropriate USGS quadrangles and a map at an appropriate scale (e.g., 1:24,000 and 1 inch = 200 feet, respectively) for plotting cultural features or materials. If the CRS requests enlargements or strip maps for linear facility routes, the project owner shall provide copies to the CRS and CPM. The CPM shall review map submittals and, in consultation with the CRS, approve those that are appropriate for use in cultural resources planning activities. No ground disturbance shall occur prior to CPM approval of maps and drawings, unless such activities are specifically approved by the CPM.

Maps shall include any NRHP/CRHR-eligible historic built environment resources identified in the FSA's **archaeological project area of analysis**.

E. VIS-1

The changes noted in bold underline should be included in the sixth paragraph of the Verification of VIS-1.

Verification: The Plan elements pertaining to screening and enhancement of the CCGT units, **including the easternmost and middle screens**, shall be implemented within 12 months of **completing** demolition of **the HBGS** Units 1 and 2. The Plan elements pertaining to screening and enhancement of the simple-cycle gas turbine (SCGT) units shall be implemented within 12 months of beginning commercial operation of the SCGT units.

F. SOIL&WATER-3

The PMPD added language regarding payment of fees to the end of the Verification of SOIL&WATER-3 as agreed upon by Staff and Project Owner. The PMPD, however, fails to delete the same language from the text of the Condition. The following deleted language reflected in **~~bold strikethrough~~** should be deleted from the proposed decision:

SOIL&WATER-3: Prior to any groundwater dewatering, the project owner shall submit a dewatering plan to the CPM for review and approval. The dewatering plan shall include maximum daily and average daily pumping rates, and total volume expected to be pumped during dewatering, as well as the dates expected to be used for dewatering. The plan shall also include estimates of drawdown that may occur at the adjacent marsh land, and identify potential mitigation, as needed, as well as describe under what circumstances such mitigation would be implemented.

Discharge of dewatering water shall comply with the Santa Ana Regional Water Quality Control Board (RWQCB) and State Water Resources Control Board regulatory requirements. The project owner shall submit a Report of Waste Discharge (RWD) to the CPM and RWQCB for determination of which regulatory waiver or permit applies to the proposed discharges. ~~The project owner shall pay all necessary fees for filing and review of the RWD and all other related fees. Checks for such fees shall be submitted to the RWQCB and shall be payable to the State Water Resources Control Board.~~ The project owner shall ensure compliance with the provisions of the waiver or permit applicable to the discharge. Where the regulatory requirements are not applied pursuant to a National Pollutant Discharge Elimination System permit, it is the Commission's intent that the requirements of the applicable waiver or permit be enforceable by both the Commission and the RWQCB. In furtherance of that objective, the Commission hereby delegates the enforcement of the waiver or permit requirements, and associated monitoring, inspection, and annual fee collection authority, to the RWQCB. Accordingly, the Commission and the RWQCB shall confer with each other and coordinate, as needed, in the enforcement of the requirements.

V. GENERAL COMMENTS

A. PMPD Signature Page

The PMPD signature page refers to an “Application for Certification of the Amended Project.” Project Owner filed a Petition to Amend the existing license on September 9, 2015. Project Owner requests that the proposed decision reflect that this is an amendment proceeding, an example of which is set forth below.

“The Committee recommends that the ~~Application for Certification of the Amended Project~~ Amended Project be approved, subject to the conditions of certification set

forth in **Appendix A**, and that the Energy Commission grant the project owner an **amended** license to construct and operate the Amended Project.”

B. Air Quality

On page 4.2-12, Finding of Fact #4: South Coast Air Quality Management District Rule 404 limits on particulate matter concentrations is applicable only to the auxiliary boiler stack as the combustion turbines are exempt from this rule (404c). The Project Owner suggests adding the words “auxiliary boiler” as suggested below.

4. South Coast Air Quality Management District Rule 404 limits the particulate matter concentration based on the **auxiliary boiler** stack flow to 0.073 grains per cubic foot.

C. Cultural Resources

On page 5.3-7 of the PMPD, the fourth paragraph includes an incomplete citation to an appendix. The “dash” should be replaced with Appendix “A”.

D. Typographical Errors

Project Owner respectfully requests that certain minor typographical errors (*see, e.g.*, LAND-1 (“relate facilities”; “withal”) be corrected in the Final Decision. In addition, certain language set forth in Conditions of Certification in strikethrough format should be deleted (*see, e.g.*, COM-13 (item 2, “~~property damage off site~~”), VIS-1 (“~~monopoles~~”), etc).

VI. CONCLUSION

Project Owner looks forward to discussing the corrections and proposed revisions set forth herein during the PMPD Conference and appreciates the Committee’s prompt attention to these issues.

Respectfully submitted,



Melissa A. Foster