

DOCKETED

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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 Comments on Proposed Commission Adoption Order and Errata
to the Presiding Member's Proposed Decision**

Dear Commissioners and Hearing Officer Cochran:

Project Owner AES Huntington Beach Energy, LLC ("Project Owner") herein provides the following comments on the Proposed Commission Adoption Order (TN #216932) and the Errata to the Presiding Member's Proposed Decision ("Errata") (TN #216931).

Proposed Commission Adoption Order

Ordering Paragraph number 4 states, "This Order is adopted, issued, effective, and final on April 17, 2017." Project Owner hereby urges the Commission to make the Order effective immediately upon approval (anticipated to be April 12, 2017). There is no reason to delay the effective date of the Order and, as Project Owner has made clear throughout this proceeding, time is of the essence and Project Owner must have a final decision as soon as possible.

In the original proceeding for the Huntington Beach Energy Project, the Order was effective on the date of approval. (Huntington Beach Energy Project Commission Adoption Order (Oct. 29, 2014) TN #203271.) There is no basis for varying from that practice for this Amendment.

Errata to the Presiding Member's Proposed Decision

- 1. The Errata Fails to Address Project Owner's Comments on Condition of Certification GEO-3**

Project Owner has consistently objected to Condition of Certification GEO-3 (See, e.g., Project Owner's Post Evidentiary Hearing Opening Brief, TN #215249) including in comments on the Presiding Member's Proposed Decision ("PMPD") and at the March 9, 2017 PMPD Conference. (Project Owner's Initial Comments on the Presiding Member's Proposed Decision, TN #216394; Project Owner's Additional Comments on the Presiding Member's Proposed Decision, TN #216614.) The Errata, however, fails to even acknowledge Project Owner's comments on and objections to GEO-3 made after release of the PMPD. (*Id.*)

Project Owner hereby reiterates its request that GEO-3 be deleted from the final decision, or that any tsunami hazard be addressed in a manner consistent with the proposed decision in the Alamitos Energy Center ("AEC") proceeding, through modifications to Conditions of Certification Worker Safety-1 and Worker Safety-2 as described below.¹

The PMPD includes a new Condition of Certification, GEO-3, proposed by Staff during the PTA proceedings. GEO-3 should be removed because there is no significant impact justifying implementation of this condition and because there are no LORS requiring its adoption. The Hazard Mitigation Plan referenced in the PMPD as the basis for GEO-3 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 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

¹ This same information is set forth in Project Owner's Additional Comments on the Presiding Member's Proposed Decision docketed on March 20, 2017 (TN# 216614).

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, 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.

Consistent with the treatment of tsunami planning in AEC, Project Owner is willing to accept revisions to **WORKER SAFETY-1** and **WORKER SAFETY-2** to reference the specific tsunami-related aspects that must be covered by the Construction Emergency Action Plan and Emergency Action Plan for Operations, respectively, as set forth below and as previously discussed at the March 9 PMPD Conference. The information set forth below is also contained in Project Owner’s Additional Comments on the Presiding Member’s Proposed Decision docketed on March 20, 2017. (TN# 216614.)

WORKER SAFETY-1 PROJECT CONSTRUCTION SAFETY AND HEALTH PROGRAM

The project owner shall submit to the compliance project manager (CPM) a copy of the Project Construction Safety and Health Program containing the following:

- Construction Personal Protective Equipment Program;
- Construction Exposure Monitoring Program;
- Construction Injury and Illness Prevention Program;
- Construction Emergency Action Plan; and
- Construction Fire Prevention Plan.

The Personal Protective Equipment Program, the Exposure Monitoring Program, and the Injury and Illness Prevention Program shall be submitted to the CPM for review and approval concerning compliance of the program with all applicable safety orders. The Construction Emergency Action Plan and the Fire Prevention Plan shall be submitted to the Huntington Beach Fire Department for review and comment prior to submittal to the CPM for approval.

The Construction Emergency Action Plan must include a Tsunami Mitigation Plan that explains evacuation routes and offsite refuge, the local tsunami warning system adopted by the City of Huntington Beach, and information on tsunami safety and preparedness.

Verification: At least 30 days prior to the start of construction, the project owner shall submit to the CPM for review and approval a copy of the Project Construction Safety and Health Program. The project owner shall provide to the CPM a copy of the letter from the Huntington Beach Fire Department stating the fire department's comments, if and when any are received, on the Construction Fire Prevention Plan and Emergency Action Plan.

WORKER SAFETY-2 PROJECT OPERATIONS AND MAINTENANCE SAFETY AND HEALTH PROGRAM

The project owner shall submit to the CPM a copy of the Project Operations and Maintenance Safety and Health Program containing the following:

- an Operation Injury and Illness Prevention Plan;
- an Emergency Action Plan;
- Hazardous Materials Management Program;
- Fire Prevention Plan (8 Cal Code Regs. § 3221); and
- Personal Protective Equipment Program (8 Cal Code Regs, §§ 3401—3411).

The Operation Injury and Illness Prevention Plan, Emergency Action Plan, and Personal Protective Equipment Program shall be submitted to the CPM for review and approval concerning compliance of the programs with all applicable safety orders. The Fire Prevention Plan and the Emergency Action Plan shall also be submitted to the Huntington Beach Fire Department for review and comment.

The Emergency Action Plan must include a Tsunami Mitigation Plan that explains evacuation routes and offsite refuge, the local tsunami warning

system adopted by the City of Huntington Beach, and information on tsunami safety and preparedness.

Verification: At least 30 days prior to the start of first-fire or commissioning, the project owner shall submit to the CPM for approval a copy of the Project Operations and Maintenance Safety and Health Program. The project owner shall provide a copy of a letter to the CPM from the Huntington Beach Fire Department stating the fire department's comments, if and when any comments are received, on the Operations Fire Prevention Plan and Emergency Action Plan.

2. Timing of Verification for Condition of Certification GEO-3 Requires Revision

If Condition of Certification GEO-3 remains in the Final Decision as proposed, the timing of verification for GEO-3 must be revised. The Verification for GEO-3 provides, "The project owner shall submit the THMP **60 days prior to ground disturbance** for CPM review and approval. The project owner shall submit any subsequent updates to the THMP to the CPM within 90 days of an update to an applicable THMP." (Emphasis added.)

It is impossible for Project Owner to comply with this timing trigger. This timing requirement must be revised in order to maintain the extremely tight project schedule. The timing trigger in the Verification should be revised to be, at most, consistent with Worker Safety-1, which is "**30 days prior to construction.**"

Conclusion

Project owner reiterates that the project schedule is extremely tight and maintaining schedule is critical to maintaining energy stability and reliability in the Los Angeles Basin. Project Owner appreciates the Commission's attention to these issues and looks forward to a favorable decision and project implementation.

Respectfully submitted,



Melissa A. Foster