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Comments of AES on Power Plant Compliance Enforcement (18-SIT-02)

Additional submitted attachment is included below.



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June 5, 2018

Ms. Christine Root
Compliance Office Manager
S.T.E.P. Division
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

RE: Comments of AES: Power Plant Compliance Petition to Amend Screening Form and Compliance Enforcement (18-SIT-01 and 18-SIT-02)

Dear Ms. Root,

The AES Corporation and its affiliated companies ("AES") are pleased to provide comments on the above-referenced Staff proceedings.

AES provides affordable, sustainable energy to 15 countries through a diverse portfolio of distribution businesses, thermal and renewable generation facilities, and battery energy storage systems. Two facilities approved by the California Energy Commission ("Commission"), the Huntington Beach Energy Project and Alamitos Energy Center, are under construction and will efficiently and reliably provide crucial services to meet Southern California's electricity needs.

AES has reviewed Staff's proposed voluntary Petition to Amend Screening Form¹ and proposal to use Compliance Advice Letters and Notices of Violation "to help with power plant compliance enforcement."² AES offers the following comments on both proposals.

As to the first matter, AES has not needed to amend the license for either facility. Accordingly, AES has no opinion on Staff's proposed form, though AES appreciates any efforts to streamline the review and modification process.

With respect to the second matter, AES understand that Staff proposes to use both "Compliance Advice Letters" and "Notices of Violation" as compliance and enforcement "tools". Of most concern to AES is the suggestion that Staff may use the Notices of Violation ("NOVs") to impose fines on projects or change conditions of certification.³

Public Resources Code Sections 25534(b) and 25534.1 clearly provide that only the Commission may impose fines. Moreover, the Commission may only impose fines after the filing of a complaint and a

¹ April 10, 2018, CEC Staff Letter to Project Owners and Interested Parties, p. 1.

² *Id.*, p. 2.

³ *Id.*, p. 3.

hearing before the full Commission. Public Resources Code Sections 25534(b) and 25534.1 do not allow Staff to impose penalties or change conditions of certification through a NOV or any other process.

AES is also troubled by the use of a letter to “Project Owners and Interested Parties” to introduce these newly proposed compliance tools, particularly given the importance of the issues addressed. Allegations that a facility is not in compliance with applicable laws or with the terms of its license are serious matters, especially if civil penalties or fines are proposed to be associated with the allegations.

Matters of such importance should not be relegated to a summary “letter” published by Staff, particularly as there are no clear guidelines as to the respective rights and responsibilities of either project owners or Staff. AES respectfully submits that Staff cannot, through a letter to project owners, create new compliance devices and obligations for project owners without going through a formal rulemaking proceeding that reflects, and does not purport to expand, existing statutory authorities.

Finally, AES questions the need for the proposed compliance tools. Mechanisms to address compliance issues are already provided for in both a facility’s license and in the Commission’s regulations.⁴ It is unclear why the new compliance mechanisms are now being proposed, or when these mechanisms would be used in lieu of the dispute resolution procedures set forth in a facility’s license.

In summary, the existing compliance processes and procedures are well-thought out, have been adopted through a public process pursuant to the Commission’s statutory authority, and, significantly, they are working as they Legislature intended. There is no need for additional processes. The compliance enforcement proposals should be retracted, and the existing, vetted compliance tools should continue to be utilized to address compliance concerns.

Thank you for the opportunity to share our concerns on these important issues.

Sincerely

A handwritten signature in black ink, appearing to read "S. O'Kane", with a stylized, cursive script.

Stephen O’Kane
President
AES Alamos Energy, LLC
Vice-President
AES Huntington Beach Energy, LLC

⁴ The Commission’s Final Decision approving the Alamos Energy Center is just one example:

The Commission hereby adopts the Conditions of Certification, Compliance Verifications, and associated dispute resolution procedures set forth in the Commission Decision as its mitigation monitoring program required by Public Resources Code section 25532. (TN #: 217416, Alamos Energy Center, Final Commission Decision, Order No. 17-0412-3, Docket No. 13-AFC-01, Commission Adoption Order, p. 4, Ordering Paragraph #7. Emphasis added.)