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Memorandum

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Subject: Basis for CEQA Findings: Basis for finding that adoption by the California Energy Commission (CEC) of the corrective actions identified in the joint agency investigation report and delegation of authority to the Executive Director, are not projects and not subject to the California Environmental Quality Act (CEQA).

I. Introduction.

CEQA requires state agencies to assess and prepare environmental documents disclosing any significant adverse environmental impacts of discretionary project approvals. (Pub. Resources Code, § 21000 et seq.; see also CEQA Guidelines, Cal. Code Regs., tit. 14, § 15000 et seq.) Discretionary approvals that do not fit the definition of a “project” are not subject to CEQA, and additionally, CEQA designates certain projects exempt from its requirements. As discussed below, the adoption of the corrective actions and delegation to the Executive Director are not projects under CEQA because they will not result in a direct or reasonably foreseeable indirect physical change in the environment. (Cal. Code Regs., tit. 14, §§ 15060(c)(2)-(3) and 15378(a) & (b)(5).) In addition, the Class 1, Class 2 and Class 21 exemptions (Cal. Code Regs., tit. 14, §§ 15301, 15302 and 15321; see also 15061(b)(2)), and the common-sense exemption also apply. (Cal. Code Regs., tit. 14, § 15061(b)(3).)

II. The adoption of the corrective actions and delegation are not a project.

CEQA applies to discretionary project approvals, and although a vote to adopt the corrective actions and delegate to the Executive Director would be a discretionary act, the corrective actions and delegation do not meet the definition of a “project” under the CEQA Guidelines. (See Cal. Code Regs., tit. 14, § 15378.) Under CEQA, the definition of “[p]roject does not include . . . administrative activities of governments that will not result in direct or indirect physical changes in the environment.” (Cal. Code Regs., tit. 14, § 15378(b)(5).) CEQA Guidelines sections 15060(c)(2)-(3) and 15378(a) further reinforce that CEQA does not apply to activities that will not result in a direct or reasonably foreseeable indirect physical change in the environment.

Adoption of the corrective actions and delegation do not meet the definition of a project because they do not have the potential to result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. (Cal. Code Regs. tit. 14, § 15378(a).) The corrective actions entail implementation of the following:

- Preventative maintenance and monitoring programs;
- Revising operations procedures;
- Synchronizing control systems;
- Consolidating the alarms generated by the control systems;
- Reducing the occurrence of nuisance/false alarms;
- Providing an ASME TDP-1-2013 conformance analysis;
- Re-configuring the CRH stop valve to allow it to close based on its actuator torque value; and
- Converting the HRH stop/check valve from manually operated to electrically actuated.

These corrective actions reflect process and procedural changes along with some reprogramming of monitoring systems and modification of existing equipment. The delegation provides authority for the Executive Director to acknowledge when the corrective actions are complete, and the facility can return to its combined cycle operations consistent with the facility's existing certification. Accordingly, it is evident that adoption of corrective actions and delegation of authority do not directly result in any physical change in the environment or any reasonably foreseeable indirect impacts.

III. Even if adoption of the corrective actions and delegation were a project, the Class 1, 2, and 21 exemption and the common-sense exemption would apply.

California Code of Regulations, title 14, sections 15301, 15302 and 15321, also referred to as the Class 1, Class 2, and Class 21 exemptions, set forth specific classes of projects that have been determined to not have a significant effect on the environment and which shall be exempt from the provisions of CEQA. (Cal. Code Regs., tit. 14, § 15300.)

Class 1 exempts the operation, repair, maintenance, or minor alteration of existing structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. This includes the addition of safety or health protection devices in conjunction with existing structures, facilities, or mechanical equipment. The key consideration for Class 1 exemptions is whether the project involves negligible or no expansion of use. The corrective actions include procedural changes in monitoring the facility along with some equipment upgrades, but there is no expansion in the size, footprint, or licensed capacity of the project.

Class 2 exempts the replacement or reconstruction of existing structures and facilities when the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. This includes replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity. (Cal. Code Regs., tit. 14, § 15302.) At most, the corrective actions will entail some equipment enhancements and addition or replacement of sensors.

The Class 21 exemption includes the "adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective." (Cal. Code Regs., tit. 14, § 15321.) This exemption is directly applicable because the CEC's decision to adopt corrective actions and delegate authority to the Executive Director relates to the CEC's powerplant licensing and compliance authority. The

action would be an administrative order adopted for the purpose of exercising its authority over the powerplant's license. For these reasons, this project is exempt from CEQA.

Approval of the corrective actions and delegation would also be exempt from CEQA under the common-sense exemption. (Cal. Code Regs., tit. 14, § 15061(b)(3).) As noted above in Section II, CEQA only applies to projects that have the potential to cause a significant effect on the environment. A significant effect on the environment is defined as a substantial, or a potentially substantial, adverse change in the environment, and does not include an economic change by itself or beneficial changes to the environment. (Pub. Resources Code, § 21068; Cal. Code Regs., tit. 14, § 15382.) The adoption of the corrective actions and delegation relate to safety procedures at the facility, some existing equipment reprogramming, and other upgrades within the existing footprint that do not provide for any possibility of a significant effect on the environment.

Finally, none of the exceptions to exemptions listed in CEQA Guidelines section 15300.2 apply here. The project creates no cumulative impacts, has no significant effect on the environment, and is not designated as a scenic highway, hazardous waste site or historical resource. (Cal. Code Regs., tit. 14, § 15300.2, subds. (b)-(f).)

IV. Conclusion.

As shown, adoption of the corrective actions and delegation to the Executive Director do not constitute projects under CEQA and, in the alternative, are exempt from CEQA under Class 1, Class 2, and Class 21 exemptions, as well as the common-sense exemption. For these reasons, adoption of the corrective actions and delegation by the CEC are exempt from CEQA and a Notice of Exemption may be filed with the Office of Planning and Research.