



500 Capitol Mall, Suite 1600  
Sacramento, California 95814  
main 916 447 0700  
fax 916 447 4781  
www.stoel.com

September 6, 2012

MELISSA A. FOSTER  
Direct (916) 319-4673  
maloster@stoel.com

**VIA EMAIL**

The Honorable Andrew McAllister, Presiding Member  
The Honorable Karen Douglas, Associate Member  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814



**Re: Huntington Beach Energy Project (12-AFC-02)  
Applicant's Comments on the Staff's Issues Identification Report**

Dear Commissioners:

On August 31, 2012, Energy Commission Staff docketed its Issues Identification Report ("IIR") for the Huntington Beach Energy Project ("HBEP"). Applicant, AES Southland Development, LLC ("Applicant"), has reviewed Staff's IIR and provides the following comments related thereto.

**ALTERNATIVES**

Applicant supports Staff's position that HBEP meets the intent of Public Resources Code section 25540.6(b) with regard to consideration of offsite alternatives. Offsite alternatives or alternative locations to the HBEP site are not be feasible due to the highly developed area, the critical energy need and grid reliability requirements in this area of the Los Angeles basin, and the availability of existing infrastructure to serve the project. Applicant is confident that the alternatives analysis conducted by Staff throughout this proceeding will confirm that the HBEP site is the best site for the HBEP.

**TRANSMISSION SYSTEM ENGINEERING**

At this time, Applicant has no comments on this topic. Applicant will respond as appropriate to any Data Requests on this topic issued throughout the AFC proceeding.



The Honorable Andrew McAllister, Presiding Member

September 6, 2012

Page 2

## WASTE MANAGEMENT

At this time, Applicant has no comments on this topic. Applicant will respond as appropriate to any Data Requests on this topic issued throughout the AFC proceeding and will assist Staff and any other relevant agencies as necessary related to waste management issues.

## CALIFORNIA COASTAL COMMISSION

Applicant wishes to clarify the potential role of the California Coastal Commission in this proceeding. In the IIR, Staff states that the “HBEP project . . . falls within the jurisdiction of the California Coastal Commission.” (IIR at p. 4.) Applicant believes this might be construed to overstate the function or authority of the California Coastal Commission in a California Energy Commission Application for Certification (“AFC”) proceeding. HBEP, as an AFC, is under the exclusive jurisdiction of the California Energy Commission (Pub. Resources Code § 25500) and the California Coastal Commission may participate in CEC AFC proceedings related to the HBEP. (Pub. Resources Code § 30413(e) (“The [California Coastal Commission] may, at its discretion, participate fully in other proceedings conducted by the [CEC] pursuant to its powerplant siting authority. In the event the commission participates in any public hearings held by the [CEC], it shall be afforded full opportunity to present evidence and examine and cross-examine witnesses”).)

The IIR cites Public Resources Code section 30413(d) and suggests that the California Coastal Commission is required to prepare a report regarding HBEP. Section 30413(d) provides:

Whenever the [CEC] exercises its siting authority and undertakes proceedings pursuant to the provisions of Chapter 6 (commencing with Section 25500) of Division 15 with respect to any thermal powerplant or transmission line to be located, in whole or in part, within the coastal zone, the commission shall participate in those proceedings and shall receive from the [CEC] any notice of intention to file an application for certification of a site and related facilities within the coastal zone. The commission shall analyze each notice of intention and shall, prior to completion of the preliminary report required by Section 25510, forward to the [CEC] a written report on the suitability of the proposed site and related facilities specified in that notice.

(Pub. Resources Code § 30413(d) (emphasis added).) The language of section 30413(d) is abundantly clear that the requirements for a “report” from the Coastal Commission involve “notices of intent” (“NOI”) proceedings. While NOI proceedings are required for certain kinds of powerplant siting (*e.g.*, nuclear facilities or coal plants), new thermal natural-gas fired



The Honorable Andrew McAllister, Presiding Member

September 6, 2012

Page 3

powerplant facilities are statutorily exempt from the NOI process. (Pub. Resources Code § 25540.6(a)(1).)

The IIR also cites a 2005 Memorandum of Agreement (“MOA”) as part of the assertion that the California Coastal Commission is required to prepare a report pursuant to section 30413(d). Such an interagency agreement does not change existing statutory law, or create new statutory duties. Applicant does not believe that the MOA legally binds the California Coastal Commission to participate or the California Energy Commission to receive a report pursuant to section 30143(d).

For the reasons set forth above, Applicant believes that the California Coastal Commission’s involvement in this AFC-only proceeding is discretionary and the California Coastal Commission is not required by law to provide a 30413(d) report. If the California Coastal Commission chooses to exercise its discretionary right to participate in the HBEP AFC proceeding, Applicant will work with CEC Staff and the California Coastal Commission to provide responses to Data Requests as appropriate.

#### **SCHEDULING**

Applicant concurs with Staff’s Proposed Schedule set forth on pp. 5-6 of the IIR.

#### **WARWA CONCLUSION**

Applicant wishes to thank Staff for its hard work to date in this proceeding. Applicant looks forward to presenting the HBEP to the Siting Committee, Staff, and the public at the Site Visit and Informational Hearing scheduled for September 10, 2012.

Respectfully submitted,

Melissa A. Foster

MAF:jmw

cc: Proof of Service List



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
1-800-822-6228 – WWW.ENERGY.CA.GOV

**APPLICATION FOR CERTIFICATION FOR THE  
HUNTINGTON BEACH ENERGY PROJECT**

**Docket No. 12-AFC-02**  
**(Revised 8/21/12)**

**APPLICANT**

Stephen O'Kane  
AES Southland, LLC  
690 Studebaker Road  
Long Beach, CA 90803  
[Stephen.Okane@aes.com](mailto:Stephen.Okane@aes.com)

\*Jennifer Didlo  
AES Southland LLC  
690 Studebaker Road  
Long Beach, CA 90803  
[Jennifer.Didlo@aes.com](mailto:Jennifer.Didlo@aes.com)

**APPLICANT'S CONSULTANT**

Robert Mason  
Project Manager  
CH2MHill  
6 Hutton Centre Drive, Suite 700  
Santa Ana, CA 92707  
[Robert.Mason@CH2M.com](mailto:Robert.Mason@CH2M.com)

**COUNSEL FOR APPLICANT**

Melissa A. Foster  
Stoel Rives, LLP  
500 Capitol Mall, Suite 1600  
Sacramento, CA 95814  
[mafoster@stoel.com](mailto:mafoster@stoel.com)

John A. McKinsey, Esq.  
Stoel Rives, LLP  
500 Capitol Mall, Suite 1600  
Sacramento, CA 95814  
[jamckinsey@stoel.com](mailto:jamckinsey@stoel.com)

**INTERESTED AGENCIES**

California ISO  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)

\*Tom Luster  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219  
[tluster@coastal.ca.gov](mailto:tluster@coastal.ca.gov)

\*Brian Ketterer  
California State Parks  
Huntington State Beach  
21601 Pacific Coast Highway  
Huntington Beach, CA 92646  
[bketterer@parks.ca.gov](mailto:bketterer@parks.ca.gov)

\*Jane James/Scott Heff  
City of Huntington Beach  
Planning & Bldg. Department  
2000 Main Street, 3<sup>rd</sup> floor  
Huntington Beach, CA 92648  
[jjames@surfcity-hb.org](mailto:jjames@surfcity-hb.org)  
[sheff@surfcity-hb.org](mailto:sheff@surfcity-hb.org)

\*Cathy Fikes  
Johanna Stephenson  
City of Huntington Beach  
City Council  
2000 Main Street, 4<sup>th</sup> floor  
Huntington Beach, CA 92648  
[cfikes@surfcity-hb.org](mailto:cfikes@surfcity-hb.org)  
[johanna.stephenson@surfcity-hb.org](mailto:johanna.stephenson@surfcity-hb.org)

\*Gary Stewart  
Santa Ana Regional Water Quality  
Board  
3737 Main Street, Suite 500  
Riverside, CA 92501-3339  
[gstewart@waterboards.ca.gov](mailto:gstewart@waterboards.ca.gov)

**ENERGY COMMISSION –  
DECISIONMAKERS**

ANDREW MCALLISTER  
Commissioner and Presiding Member  
[andrew.mcallister@energy.ca.gov](mailto:andrew.mcallister@energy.ca.gov)

KAREN DOUGLAS  
Commissioner and Associate Member  
[karen.douglas@energy.ca.gov](mailto:karen.douglas@energy.ca.gov)

Raoul Renaud  
Hearing Adviser  
[raoul.renaud@energy.ca.gov](mailto:raoul.renaud@energy.ca.gov)

David Hungerford  
Advisor to Commissioner McAllister  
[david.hungerford@energy.ca.gov](mailto:david.hungerford@energy.ca.gov)

Galen Lemei  
Advisor to Commissioner Douglas  
[galen.lemei@energy.ca.gov](mailto:galen.lemei@energy.ca.gov)

Jennifer Nelson  
Advisor to Commissioner Douglas  
[jennifer.nelson@energy.ca.gov](mailto:jennifer.nelson@energy.ca.gov)

**STAFF**

Felicia Miller  
Project Manager  
[felicia.miller@energy.ca.gov](mailto:felicia.miller@energy.ca.gov)

Kevin W. Bell  
Staff Counsel  
[Kevin.W.Bell@energy.ca.gov](mailto:Kevin.W.Bell@energy.ca.gov)

Eileen Allen  
Commissioners' Technical  
Advisor for Facility Siting  
[eileen.allen@energy.ca.gov](mailto:eileen.allen@energy.ca.gov)

**ENERGY COMMISSION –  
PUBLIC ADVISER**

Jennifer Jennings  
Public Adviser's Office  
[publicadviser@energy.ca.gov](mailto:publicadviser@energy.ca.gov)

\*indicates change

72405680.1 0043653-00005

DECLARATION OF SERVICE

I, Judith M. Warmuth, declare that on September 6, 2012, I served and filed a copy of the attached APPLICANT'S COMMENTS ON THE STAFF'S ISSUES IDENTIFICATION REPORT, dated September 6, 2012. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at: [http://www.energy.ca.gov/sitingcases/huntington\\_beach\\_energy/index.html](http://www.energy.ca.gov/sitingcases/huntington_beach_energy/index.html).

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

**(Check all that Apply)**

**For service to all other parties:**

- Served electronically to all e-mail addresses on the Proof of Service list;
- \_\_\_\_\_ Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses marked **"hard copy required"** or where no e-mail address is provided.

**AND**

**For filing with the Docket Unit at the Energy Commission:**

- by sending one electronic copy to the e-mail address below (preferred method); OR
- \_\_\_\_\_ by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

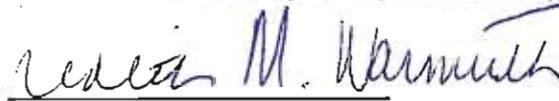
**CALIFORNIA ENERGY COMMISSION – DOCKET UNIT**  
Attn: Docket No. 12-AFC-02  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.ca.gov](mailto:docket@energy.ca.gov)

**OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:**

- \_\_\_\_\_ Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission  
Michael J. Levy, Chief Counsel  
1516 Ninth Street MS-14  
Sacramento, CA 95814  
[michael.levy@energy.ca.gov](mailto:michael.levy@energy.ca.gov)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

  
\_\_\_\_\_  
JUDITH M. WARMUTH