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December 8, 2006

Bill Pfanner, Siting Project Manager  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814-5512

Re: CURE's Preliminary Issue Identification For the South Bay  
Replacement Project

Dear Mr. Pfanner:

On behalf of Intervenor California Unions for Reliable Energy ("CURE"), we write to identify some concerns with the present state of the permitting and environmental review for the South Bay Power Plant ("SBPP"). Our initial concerns fall into three categories: (1) unresolved public health impacts due to contamination of soil and groundwater; (2) unresolved Clean Air Act compliance issues; and (3) unresolved land use consistency issues. The CEC process requires that these issues be resolved in order to complete the analysis and permitting for this project.

## A. UNRESOLVED PUBLIC HEALTH IMPACTS

### 1. Full Extent of Soil and Groundwater Contamination Must Be Investigated and Disclosed

As discussed in the Staff's issue identification report, initial investigation of the existing power plant site has revealed significant soil and groundwater contamination issues. Issue Identification Report, page 7. That report further states "DTSC is currently the lead agency overseeing the investigation and remediation of the existing facility site. LSP South Bay LLC, SDG&E and the Port are responsible parties for further investigation and cleanup activities." *Id.*

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As a preliminary matter, there is no clear characterization of the level of contamination of the soil and groundwater at the project site in the AFC in this case. A full and clear characterization of the existing contamination at the project site is an essential first step to any environmental analysis under the California Environmental Quality Act (“CEQA”).

Next, there seems to be confusion about which agency will comply with the obligations of CEQA to evaluate and mitigate the contamination of the site. In contrast to Staff’s assertion that the San Diego Port District and LSP South Bay LLC are responsible parties for “further investigation and cleanup activities,” the Port District’s Draft EIR for the Bayfront Master Plan (“DEIR”) states “relocation of the existing energy power plant and SDG&E switchyard (subject to the California Energy Commission [CEC] and California Public Utilities Commission [CPUC] actions), are being separately addressed by the regulatory agencies responsible for their review and approval.” Chula Vista Bayfront Master Plan DEIR, p. 3-19. In other words, neither the CEC licensing process nor the Bayfront Master Plan approval process will fully disclose or mitigate the environmental impacts associated with the known contamination of the power plant demolition and relocation activities. Each CEQA process seems to be relying on the other, with neither agency complying with its obligations. In fact, none of the mitigation measures in the hazardous materials/public health section of the DEIR even mention the power plant site, let alone prescribe specific mitigation for cleaning up contamination there. This is a serious concern given the potential impacts of this contamination on the San Diego Bay and given the proximity of sensitive receptors.

## **2. Specific Examples of Contamination That Must Be Fully Disclosed and Mitigated**

The DEIR for the Bayfront Master Plan lists ten areas of environmental concern with contamination impacts to soil, groundwater, or both, at the power plant site. (DEIR, Table 4.12-2, p. 4.12-14). Five of these areas have yet to be remediated (two of which are impacting groundwater). Four of these areas are described as “unauthorized releases,” of which only one has closure status. The following is a summary of each of these releases with non-closure status:

a. Unauthorized Release:

This unauthorized release is associated with the two 500-gallon USTs. Detections of TPHd and TPHg have impacted soils. The DEIR states: "No closure documentation was noted in DEH documents reviewed."

b. Two Unauthorized Releases:

The Environmental Database Report for the SBPP reported the occurrence of two additional unauthorized releases. Of the files reviewed in preparation of the DEIR, no additional documentation was found for these unauthorized releases.

Until all of the contamination at the site is investigated and clearly described, the full human health and environmental impacts of them cannot be determined, let alone mitigated. The environmental and human health impacts of these releases must be fully studied for the CEC to comply with its CEQA obligations.

**B. UNRESOLVED CLEAN AIR ACT COMPLIANCE ISSUES**

**1. Offsets**

The project's air quality impacts are also a major concern here. As discussed in the DEIR for the Bayfront Master Plan, the San Diego Air Basin (including Chula Vista) has not attained national air quality standards for ozone and particulate matter. DEIR, p. 4.6-15 to 4.6-16. Under the Clean Air Act, all new major sources of these types of pollution must obtain emission offsets to ensure that those new facilities do not further degrade air quality with respect to that nonattainment pollutant. Here, the new power plant intends to rely on shutdown of the existing power plant to offset its pollution. Yet, the applicant intends to overlap operation of the existing power plant with the new one. In other words, the existing power plant will not be shut down before the new one begins operation.

As discussed in the Staff's issue identification report, offsets are a preconstruction review requirement for new sources under the Clean Air Act's New Source Review provisions. In other words, the new power plant would not be eligible for a permit to construct and/or operate before procuring all offsets required by the federal Clean Air Act's New Source Review provisions. Until the Applicant

complies with these federal requirements, neither a DOC nor permit to construct can be issued.

## **2. PSD Applicability**

In its Data Responses, Set IA, General Data Response 18, the Applicant claims that the project is exempt from a Clean Air Act Prevention of Significant Deterioration (“PSD”) analysis for two reasons, both of which are illogical. First, the Applicant claims that closing the existing power plant will constitute a “contemporaneous” reduction that allows the company to “net” out of PSD. This first claim is incorrect because the existing power plant will be operating simultaneously with the new one for an undefined period of time. Thus, the emissions from the existing power plant do not meet the definition of “contemporaneous” reductions for PSD purposes under the Clean Air Act.

The Applicant next claims, without explanation, that the combined emissions from simultaneously operating both plants will not exceed the maximum potential emissions from the new power plant. This is illogical and requires further explanation. This issue must be resolved before the plant is eligible for a permit to construct under the federal Clean Air Act’s New Source Review provisions.

## **C. UNRESOLVED LAND USE COMPATIBILITY ISSUES**

### **1. LORS Analysis Requires An Approved New Master Plan**

As discussed by the Staff’s issue identification report, the Chula Vista Bayfront Master Plan planning process is in progress. The report states that “[u]ntil the CVBMP is implemented, there is no local or state land use plan that controls and guides the planning and development of the site. Without local or state agency land use plan guidance, the staff analysis for land use cannot reach an affirmative conclusion that the project conforms with land use LORS.” Issue Identification Report, p. 6. The Master Plan implementation process is still at an early stage, with the Draft EIR having been released for public comment. This environmental review phase is merely the beginning of an implementation process that may last many more months than currently anticipated by CEC staff. The lengthy approval process is as follows:

Once the Port's Final Environmental Impact Report for the CVBMP is certified, a series of discretionary actions will have to occur for implementation of the CVBMP. Implementation of the CVBMP will require discretionary actions by the Board of Port Commissioners, Chula Vista City Council/Redevelopment Agency, and other agencies. Such discretionary actions include: amendments to the Port Master Plan, City of Chula Vista General Plan, and local coastal program; coastal development permits; a land exchange; a financial participation agreement between the Port and the City and other related agreements; associated development permits; and State/Federal permits, actions, and approvals.

*Id.* This process is not likely to be complete in merely a "few months," as estimated by CEC Staff. Rather, the Bayfront Master Plan process has been the subject of substantial controversy among environmental and other types of community groups in the San Diego area. The Bayfront area is an ecologically sensitive zone inhabited by rare bird species and extensive wetlands. Furthermore, just west of the power plant site, the downwind impact region includes schools and housing, as discussed below.

Proper disclosure and mitigation of the power plant site is further complicated by the fact that the AFC does not acknowledge the Master Plan's proposed redevelopment of the current power plant site for residential uses. The Master Plan DEIR states:

The existing power plant and switchyard would be relocated as separate projects subject to the exclusive jurisdiction and proceedings of the CEC, and the existing switchyard easement removed, prior to redevelopment of the affected parcels. Proposed development consists of a mixed residential development with a combination of high-rise, mid-rise, low-rise, and garden style residential development with a maximum of 70 units, and up to 5,000 square feet of supporting ancillary retail uses. . . . An RV Park containing between 175 and 236 RV parking spaces is proposed in Phase II on a 14-acre parcel currently occupied by the SDG&E electrical switchyard and a portion of the SBPP." Bayfront Draft EIR, pp. 3-47 to 3-48.

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Thus, any environmental impact analysis conducted by the CEC will not properly address all potential human health impacts if it assumes that no residential uses will exist in the vicinity of the new power plant site. In fact, the AFC does not even mention the proposed residential and retail uses of the existing SBPP site, even though they will be adjacent to the new power plant. The proximity of these future residences will affect the health risk assessment, hazardous materials business plan, risk management plan and any other strategies for controlling the risk to the public due to upset or accidental release of hazardous materials from the project. In short, an adequate environmental review of the project must necessarily be predicated on a clear understanding of the surrounding environment and land uses. Until such land uses are decided, environmental review of the power plant would be incomplete.

Finally, the Draft EIR for the Bayfront Master Plan states that demolition of the SBPP and the construction of a new power plant and the relocation of the SDG&E switchyard are separate projects from the Bayfront Master Plan. The Draft EIR goes on to state that it “discusses the effects associated with the Energy Utility Zone land use designation *only*.” Bayfront Master Plan Draft EIR, p. 6-5 (emphasis added). Yet, the AFC for the power plant project does not include demolition of the power plant’s substation as part of the project currently before the CEC. In fact, the AFC states that

After the new SDG&E substation construction is completed and operational, and the SBRP generator leads are attached to the new facilities, SDG&E could then initiate demolition activities on the South Bay Substation, located north of the SBRP Project site. ***These demolition activities, however, are not part of the scope of this Application for Certification (AFC). They are part of a separate project of unknown timing and scope.***

See, e.g., 8.12-1(emphasis added). The impacts of these demolition activities are not being addressed in either the CEC licensing process nor the Bayfront Master Plan environmental review process. Obviously, the proximity of residences and other sensitive receptors makes a full discussion of these impacts necessary at this time.

## **2. Proximity to Sensitive Receptors Violates General Plan**

Chula Vista's General Plan states that placement of a sensitive receptor within 1,000 feet of a major toxic emitter is to be avoided. Chula Vista General Plan policy EE 6.4. The purpose of this restriction is to avoid adverse human health impacts. Yet, as explained by the DEIR for the Bayfront Master Plan, "residential uses proposed for the Otay District would be within 1,000 [feet] of the existing interim power plant location." DEIR, p. 4.6-34. Although the DEIR correctly identifies the proximity of the existing power plant to residences as a significant impact, the only mitigation it offers is that "no residential uses shall be permitted in the Otay District until such time as SBPP ceases operation at its current location." DEIR, p. 4.6-41. Unfortunately, this mitigation measure conflicts with the project description for Phase II of the Master Plan's implementation, which specifically contemplates residential uses of those parcels of land. In other words, the mitigation is meaningless and carries potentially adverse health impacts to residents living within 1,000 feet of the power plant.

The DEIR further fails to mention the existing residential uses within 1,000 feet of the proposed power plant site, which conflicts with the General Plan. The Staff's issue identification report states that "[t]he immediate area around the project site is industrial in nature, with some residential housing approximately 1,000 feet to the southeast and east of the project site." *See* September 2006 Issue Identification Report, p. 3. The AFC confirms this finding with more specificity. The AFC identifies the nearest residential use as a mobile home. According to the AFC, "[t]he mobile home is approximately . . . 775 feet east of the Project's east property boundary." AFC, p. 8.6-5. Thus, the applicant, LSP South Bay, LLC, itself acknowledges the existence of sensitive receptors within the 1000-foot buffer zone required by the General Plan. This inconsistency with the General Plan poses a risk to human health for residents in the vicinity of the project site. The inconsistency must be resolved before the project is eligible for land use permits.

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**Conclusion**

While CURE expects to submit data requests to better understand the environmental and public health implications of the SBPP project, we submit this letter to raise a few of our preliminary concerns about this project, including its potential failure to comply with CEQA and federal Clean Air Act and the land use issues unlikely to be resolved on the current schedule.

Thank you for your kind attention to this matter.

Sincerely,

Suma Peesapati

SP:cnh