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AGENDA

OXNARD CITY COUNCIL

Special Meeting

City Council Chambers, 305 West Third Street, Oxnard

May 17, 2011

5:30 p.m.

A. ROLL CALL/POSTING OF AGENDA

B. PUBLIC COMMENTS

At a special meeting, a person may address the legislative body only on matters on the agenda. The presiding officer shall limit public comments to three minutes. Public comments will be heard during City Council consideration of the item on the agenda.

C. REPORTS

Public Works/City Attorney

1. **SUBJECT:** Appeal Hearing Regarding Compliance with the City's Water Use Neutrality Policy by Southern California Edison for New Water Service to the Proposed McGrath Peaker Facility at 251 North Harbor Boulevard.

RECOMMENDATION: Adopt a resolution denying the appeal by Southern California Edison ("SCE") and affirm staff's determination that SCE's offer to pay the City to pre-purchase 728 acre-feet of water from Calleguas Municipal Water District ("CMWD") to meet the lifecycle water needs of the proposed McGrath Peaker Project ("Project") does not satisfy the requirements of the City's Water Neutrality Policy ("Policy").

Legislative Body: CC Contact: Alan Holmberg

Phone: 385-7483

D. ADJOURNMENT

In compliance with the Americans with Disabilities Act, if you require special assistance to participate in a meeting, please contact the City Clerk's Office at 385-7803. Notice at least 72 hours prior to the meeting will enable the City to reasonably arrange for your accessibility to the meeting.

City of Oxnard internet address: www.ci.oxnard.ca.us.



Meeting Date: 5/17/2011

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input checked="" type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Anthony Emmert Agenda Item No. _____

Reviewed By: City Manager City Attorney Finance Public Works

DATE: May 11, 2011

TO: City Council

FROM: Rob Roshanian, Interim Public Works Director
Alan Holmberg, City Attorney

SUBJECT: Appeal Hearing Regarding Compliance with the City's Water Use Neutrality Policy by Southern California Edison for New Water Service to the Proposed McGrath Peaker Facility at 251 North Harbor Boulevard

RECOMMENDATION

That the City Council adopt a resolution denying the appeal by Southern California Edison ("SCE") and affirm staff's determination that SCE's offer to pay the City to pre-purchase 728 acre-feet of water from Calleguas Municipal Water District ("CMWD") to meet the lifecycle water needs of the proposed McGrath Peaker Project ("Project") does not satisfy the requirements of the City's Water Neutrality Policy.

DISCUSSION

Water Use Neutrality Policy

The City's Urban Water Management Plan ("UWMP 2005") (adopted by the City Council by Resolution No. 13,015 on March 14, 2006, and on file with the City Clerk) analyzed existing water demands and estimated the water demands of potential development and redevelopment projects generally anticipated within the build out of the 2020 General Plan. Due to the limitations on then existing and planned water supplies, the UWMP 2005 confirmed the need for the City to: 1) continue to improve its water efficiency through its Water Conservation Program; 2) continue to cooperate with other agencies to develop regional water transfer and reliability programs, such as the Municipal & Industrial Supplemental Water Program; and 3) develop recycled water as a new local water source, through the City's Groundwater Recovery, Enhancement and Treatment Program ("GREAT Program"). GREAT Program recycled water facilities are currently under construction and scheduled to produce recycled water by the end of 2011. The Draft 2030 General Plan contains water conservation, recycled water, and related water policies and programs.

At its January 15, 2008 meeting, the City Council, partly in response to the *Vineyard v. Rancho Cordova* decision regarding long-term sustainable water supply, directed staff to require that all new projects of significant size be water neutral to the City's water system, through the establishment of a "Water Use Neutrality Policy" that augments the existing "Water Shortage Contingency Plan" (Attachment #2). The adoption of this Water Use Neutrality Policy was based on concerns over reliability of existing and planned water supplies assumed in the UWMP 2005, including reliability of supplies of imported water from the State Water Project received through the Calleguas Municipal Water District ("CMWD"), a member agency of the Metropolitan Water District of Southern California ("MWDSC"), and groundwater supplies from the United Water Conservation District ("UWCD") and City wells, regulated by the Fox Canyon Groundwater Management Agency ("FCGMA"). These concerns proved well founded. In May 2009, the City received notice from CMWD and MWDSC that allocations of imported State Water Project water received through these agencies was being substantially curtailed to all retail municipal water suppliers served by these agencies, as a result of various factors affecting the state water supply (Attachment #3). The initial allocation for the City of Oxnard amounted to an approximately 23% reduction from the City's planned purchases of CMWD water. Imported state water purchased from CMWD over the last two decades has averaged approximately 50% of the City's total water supply. Since July 1, 2009, the FCGMA has imposed an additional 10% reduction on groundwater allocations within its jurisdiction, in addition to previous restrictions. This reduction affected both groundwater produced by City wells and by UWCD wells. Groundwater produced by City and UWCD wells has recently constituted approximately 50% of the City's total water supply. In response to these and other events, the City Council reviewed and reaffirmed the Water Use Neutrality Policy at its October 27, 2009 meeting (Attachment #4).

Following the October 27, 2009 City Council meeting, the City Public Works and Development Services Departments directed Kennedy/Jenks Consultants to prepare an updated analysis of projected City water supplies and demand through 2030 (Attachment #5). The study indicated that absent development controls such as the Water Use Neutrality Policy, the City faced potentially serious water supply shortages (up to 7,780 acre-feet per year, or 9,320 acre-feet per year with drought conditions) in the years 2010 to 2014. While recent Sierra Nevada snowpack conditions have increased projected State Water Project deliveries and have led CMWD to lift the mandatory allocation restrictions at its May 4, 2011 Board meeting, continued physical, environmental and legal issues in the Sacramento-San Joaquin Delta will limit the quantity and reliability of future deliveries of State Water Project water. Local groundwater sources continue to be challenged by heavy pumping by agricultural and municipal users, and environmental issues in the Santa Clara River Watershed threaten to reduce the amount available for recharge of regional groundwater aquifers, thus potentially limiting the quantity and reliability of future groundwater pumping.

The Water Use Neutrality Policy is designed to avoid both short-term and long-term water supply shortages in the city by limiting demand. The Water Use Neutrality Policy has the following components:

New water service requests are divided into two groups:

A. New users anticipated by the UWMP 2005; and

B. New users not anticipated by the UWMP 2005.

Current water users are not affected unless they propose a new use and/or a significant increase in their current use to a level exceeding the water service anticipated by the UWMP 2005 and their development proposals would trigger review under the California Environmental Quality Act (CEQA), in which case water supply would be reviewed according to the Water Use Neutrality Policy.

A. New users anticipated by the City and included in the UWMP 2005 have three options:

1. Agree to phased development based on a pro rata share of water supply growth.
2. Participate in program(s) developed by the Water Resources Division that offset existing water demand (permanent, verifiable, and quantifiable), and then be entitled to the amount of the offset.
3. Be managed by a water supply allocation formula developed by the Development Services and Public Works Directors.

B. New users not anticipated by the City and not included in the UWMP 2005 have three options:

1. Small new water users, defined as projects exempt from CEQA review, would be exempt from the mitigation program and receive water service as requested.
2. Large new water users, defined as discretionary projects requiring CEQA review, must provide offsets for all new water use associated with the project. The primary source of offsets anticipated by the Water Use Neutrality Policy is participation in program(s) developed by the Water Resources Division that will provide permanent, verifiable, and quantifiable offsets to existing water demands. However, staff has interpreted the Water Use Neutrality Policy to allow acceptance of other forms of offset that provide permanent, enforceable and quantifiable reductions in existing uses of City potable water supplies or offsets in the form of new, independent water supplies that do not draw in existing City water sources.
3. Suspend project approval and/or development until availability of reliable water supplies is confirmed.

The proposed Project was not anticipated by the City and was therefore not included in the UWMP 2005. As it requires CEQA review, the Project meets the definition of a "large new water user" in the City's Water Use Neutrality Policy; therefore, SCE's options to comply with the Water Use Neutrality Policy are to: 1) provide offsets consistent with the Water Use Neutrality Policy; or 2) suspend project approval and/or development until availability of reliable water supplies is confirmed. SCE has

expressed a desire to move forward with the Project now, so participation in a water demands offset program is the only available option, at this time.

SCE's Proposal

SCE expects a 25 to 50-year lifecycle for the Project, with 50-year total water demand of 127 to 728 acre-feet. For planning purposes, the City has assumed a 50-year project lifecycle and the maximum water usage of 728 acre-feet.

City staff first raised the issue of Project compliance with the Water Use Neutrality Policy in July 2008. No proposals for compliance with the Water Use Neutrality Policy were forthcoming from SCE at that time. In August 2009, the California Coastal Commission approved the coastal development permit for the Project. In November 2009, SCE attempted to obtain an injunction against enforcement of the Water Use Neutrality Policy against the Project in the Los Angeles Superior Court. This request was denied following a formal hearing on December 14, 2009. The Court advised that its decision was without prejudice to SCE's right to file a petition for writ of mandate seeking relief from application of the Water Use Neutrality Policy, but also noted that with respect to the adequacy of water supply, SCE's legal papers did "not reveal any reason why the City does not have the discretion to determine whether the power plant will be able to operate before it permits the plant to be built." Since 2009, City staff has been working with SCE staff to determine an appropriate approach to satisfying the Water Use Neutrality Policy via a new water supply.

Initially, SCE pursued securing imported State Water Project water for the Project via CMWD. The City rejected this proposal as not meeting the requirements of the Water Use Neutrality Policy. State Water Project water does not represent a new source of supply, and it is well known that State Water Project supplies were experiencing long-term quantity and reliability challenges due to the Endangered Species Act issues in the Sacramento-San Joaquin Delta area. Next, SCE pursued a potential transfer of FCGMA groundwater allocations. City staff worked with SCE staff and FCGMA staff to develop this option in late 2009 and into 2010. Ultimately, SCE chose to abandon this option, as its groundwater allocations were for agricultural irrigation, and could not easily be converted to municipal and industrial allocations, without a permanent fallowing of agricultural acreage.

SCE's Current Proposal and Appeal

In its March 14, 2011 letter, SCE proposed to pay the City now for the pre-purchase of 728 acre-feet of water from CMWD (Attachment #6). CMWD staff has confirmed that this water is available now. Under SCE's proposal, the City could either use the water now or bank the water. SCE would pay for the full cost of the water, including the purchase price and any incremental costs and/or penalties. SCE would also purchase from the City all the water that the Project actually uses at the designated meter at the Project site at the generally-applicable retail rate. At the cessation of the Project operations, the City would retain title to any unused water from the 728 acre-feet. The SCE offer is contingent upon the Project becoming operational. If the Project does not become operational, the City would agree to return the purchase price of the water to SCE.

City staff has found SCE's offer to be inconsistent with the Water Use Neutrality Policy, as it proposes to simply purchase additional water from one of the City's current water sources, not a new source. The City Manager rejected SCE's proposal by a letter dated April 13, 2011 (Attachment #7). The proposal does not include providing a corresponding reduction in demand by existing City water users, and thus is not demand neutral. Staff is also concerned with the precedent that would be set by allowing the water use neutrality requirement to be avoided by simply paying for supplies in advance, since payment alone cannot guarantee that water will be available to the City in the future when actual demand is made. In addition, substantial feasibility and environmental analysis would be required if the Water Use Neutrality Policy is amended or reinterpreted to provide for advance receipt and storage of water supplies against future demand, as the City currently has very limited storage options. Acceptance of the SCE proposal would benefit the City now, but would not help to meet its overall water demands in the future. Therefore, staff finds the current SCE offer to be inconsistent with the Water Use Neutrality Policy, and recommends denial of SCE's appeal. If the City Council affirms staff's recommendation, City Development Services Department staff will continue to withhold issuance of pending permits until the applicant satisfies all City requirements, including the Water Use Neutrality Policy, as is typical.

Attachments Number 8 through 21 are documents that reflect the history and implementation of the Water Use Neutrality Policy and the history of the City's discussions with SCE concerning compliance with the Policy.

FINANCIAL IMPACT

The proposal by SCE does not take into consideration the cost of developing long-term storage that would ensure the availability of supply over the expected Project life.

- Attachment 1 - Resolution Denying Appeal
- Attachment 2 - Agenda Staff Report from Development Services Director for January 15, 2008 City Council.
- Attachment 3 - Letter from CMWD & MWDSC to City dated May 28, 2009.
- Attachment 4 - Agenda Staff Report from Assistant Public Works Director for October 27, 2009 City Council.
- Attachment 5 - Water Supply & Demand Technical Memorandum by Kennedy/Jenks Consultants.
- Attachment 6 - Letter from Mark Nelson, SCE, dated March 14, 2011, to Alan Holmberg, City Attorney, without attachments.
- Attachment 7 - Letter from Edmund F. Sotelo, City Manager, dated April 13, 2011 to Mark Nelson, SCE.
- Attachment 8 - Declaration of Ken Ortega dated November 23, 2009.
- Attachment 9 - Declaration of Chris Williamson dated November 25, 2009.
- Attachment 10 - Section 4.3 (Utilities), Recirculated Draft Program EIR for City of Oxnard 2030 General Plan, dated November 23, 2009.
- Attachment 11 - Declaration of Mark E. Nelson in Support of Real Party in Interest SCE's Reply in Support of Motion for Preliminary Injunction.

- Attachment 12 - Minutes Order re Real Party in Interest, SCE's Motion for Preliminary Injunction dated December 14, 2009.
- Attachment 13 - Declaration of Chris Williamson dated May 24, 2010.
- Attachment 14 - Declaration of Anthony Emmert dated July 2, 2010.
- Attachment 15 - Letter from Matthew Winegar, Development Services Director, to SCE re Permit Application for Peaker Plant dated September 23, 2009.
- Attachment 16 - Letter from Damon Mamalakis to Phil Seymour re Additional Request for Documentation dated October 5, 2009.
- Attachment 17 - Letter from Phil Seymour to Damon Mamalakis re SCE Peaker Plant Permitting Issues dated October 13, 2009.
- Attachment 18 - Oxnard Village Specific Plan Project EIR, excerpts.
- Attachment 19 - Ormond Beach Specific Plan Recirculated DEIR, excerpt, July 2008.
- Attachment 20 - Development Agreement; Oxnard Village Specific Plan.
- Attachment 21 - Letter from Phil Seymour to Damon Mamalaskis re SCE Peaker Plant Permitting Issues dated November 2, 2009.

Note: Attachments Nos. 5, 10, 13 and 20 have been provided to the City Council under separate cover. Copies for review are available at the Help Desk in the library after 6:00 p.m. on Thursday prior to the Council meeting and at the City Clerk's Office after 8:00 a.m. the Monday prior to the Council meeting.



**THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**



May 28, 2009

The Honorable Thomas E. Holden
Mayor, City of Oxnard
305 W. Third Street
Oxnard, CA 93030

Dear Mayor Holden:

This is an historic time in state water policy with Californians - up and down the state - in the midst of one of the deepest and most complex water crises in modern times. The state is in its third year of drought and the Sacramento-San Joaquin Delta, one of the nation's most important estuaries and the hub of California's water system, is at great risk.

At its meeting on April 14th, the Board of Directors of the Metropolitan Water District of Southern California voted to implement the District's Water Supply Allocation Plan (Plan). Implementation of the Plan will reduce water supplies to Metropolitan's member agencies, including the Calleguas Municipal Water District, for the first time since 1991. On May 27th, Calleguas' Board of Directors passed a resolution to carry through the shortage to its retail-level cities and agencies by means of a closely coordinated allocation method. The impact of the shortage to your city or community will depend upon who provides water supplies to your community.

These allocation plans help ensure an equitable distribution of imported water deliveries throughout Metropolitan's 5,200-square-mile service area, and among Calleguas' customers, in response to the state's worsening water supply situation. The allocation will be effective July 1st and includes mechanisms to balance many considerations and help alleviate disparate impacts at the retail level.

To help preserve the region's water storage reserves, Metropolitan's Board, in June 2008, declared a Water Supply Alert throughout the region, urging cities, counties, local public water agencies and retailer water agencies to achieve extraordinary conservation by adopting and enforcing drought ordinances, developing additional local supplies and accelerating public education and outreach efforts.

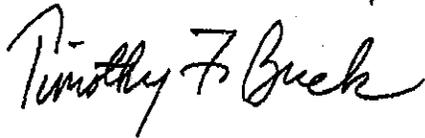
We also have developed and established an aggressive region-wide public education and advertising campaign aimed at informing residents and businesses about the serious water supply situation. This comprehensive outreach effort provides information and tips about what each and every one of us can do on a daily basis to address the current water situation.

The Honorable Thomas E. Holden
May 28th, 2009 Page 2

In recent weeks, Calleguas has been working collaboratively with members of your staff gathering imported and local supply water use data and forecasts to develop an allocation for your agency. Over the twelve month allocation period, Calleguas will continue to closely coordinate with its purveyors to monitor water demand and make any necessary and valid allocation adjustments as provided for in the Plan.

We thank you for your cooperation as we collectively address the very serious water supply and delivery challenges affecting not just our region but the entire state's health and economy. For further information about draft model ordinances, local resource, public education and outreach programs, or to schedule a briefing regarding the water supply conditions and the Plan, please contact Eric Bergh of Calleguas at 805-579-7128 or ebergh@calleguas.com.

Sincerely,



Timothy F. Brick
Chairman, Metropolitan Water District
of Southern California



Ted Grandsen
President, Calleguas Municipal
Water District

cc: Metropolitan Water District Board of Directors
Calleguas MWD Board of Directors



Meeting Date: 10/27/2009

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input checked="" type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Study Session

Prepared By: Anthony Emmert

Agenda Item No. 0-1

Reviewed By: City Manager *[Signature]*

City Attorney *[Signature]*

Finance *[Signature]*

Public Works *[Signature]*

DATE: October 19, 2009

TO: City Council

FROM: Mark S. Norris, Assistant Public Works Director
Public Works Department, Utilities Services Branch *[Signature]*

SUBJECT: Water Supply Outlook and Confirmation of Polices Regarding Projects
Creating New Water Demands

RECOMMENDATION

That City Council:

1. Consider a presentation on the current status of statewide and water supplies, long-term water planning, the Groundwater Recovery Enhancement and Treatment (GREAT) Program and the Water Conservation Program;
2. Affirm the January 15, 2008 policy regarding new water supplies for proposed development projects and provide direction regarding strengthening the policy through modification of the City's Water Shortage Emergency Ordinance,
3. Consider and provide direction regarding intensification of the City's response to the current water supply shortage, as per the Water Shortage Contingency Plan:

SUMMARY

Lower than average precipitation over the past few years, conveyance and storage deficiencies in the State Water Project system, and court decisions regarding endangered species in the San Francisco Bay-Sacramento-San Joaquin Delta (Bay-Delta) have led to reductions in imported water deliveries to the City of Oxnard. Efforts to protect endangered species on the Santa Clara River, intensification of water use by agricultural pumpers, and difficulty to recharge some groundwater basins ^{has} strained local groundwater resources used by the City. In response to this, the City is enhancing its Water Conservation Program, in order to assist residents and businesses improve their water efficiency, and working to implement the first phase of the GREAT Program recycled water system, which will produce a new highly-treated water source suitable for landscape irrigation, industrial processes, future agricultural irrigation and future groundwater recharge. As the City can no longer expect to receive additional imported water to meet the needs of new development and redevelopment projects, the City

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is also conditioning proposed new projects to be water neutral. Project proponents must provide water rights, water supplies, or financial or physical offsets equal to the projected water needs of their projects. Staff recommends that Council consider strengthening this policy by adoption of an ordinance. In anticipation of future potential imported water allocation reductions, staff recommends that Council consider mandatory water budgets for its customers and provide guidance on the methodology for creating the water budgets. In the long-term, the City will still be able to meet its water needs if it continues to actively pursue increased water use efficiency, regional cooperation and implementation of the GREAT Program. However, the dramatic recent reduction in the reliability of its imported water source will likely require decisive action by the City in the short-term.

DISCUSSION

Water Outlook

Water Sources. The City of Oxnard currently receives its drinking water supplies from three sources: 1) Northern California rainfall and snowmelt runoff derived from the State Water Project and purchased from the Calleguas Municipal Water District (CMWD), a member agency of the Metropolitan Water District of Southern California (MWDSC); 2) local groundwater purchased from the United Water Conservation District (UWCD), derived from Santa Clara River diversions and the operation of the Freeman Diversion, El Rio Spreading Basins and Wellfield, and Oxnard-Hueneme Pipeline System; and 3) local groundwater pumped from City-owned wells.

Imported Water. The imported water purchased from CMWD has historically made up approximately 50% of the City's total water supply. Lower than average precipitation over the last several years, conveyance and storage deficiencies in the State Water Project system, and court decisions regarding endangered species in the San Francisco Bay-Sacramento-San Joaquin Delta (Bay-Delta) area have led to reduced imported water deliveries. These reduced State Water Project deliveries led MWDSC in mid-2009 to reduce water deliveries to its member agencies, including CMWD, and consequently retail water purveyors, including the City of Oxnard. As the City of Oxnard and Port Hueneme Water Agency share the same CMWD turnout, the two agencies must reduce their usage of imported water by approximately 23 percent during the Fiscal Year 2009 – 2010 period, or face a fine of up to \$5 million in mid-2010. Due to the very long time and large expense it will take to solve the State Water Project problems, the City no longer expects to receive its full contracted amount of imported water, but must produce or purchase additional water to meet its projected demands.

Groundwater. The groundwater purchased from UWCD has historically made up approximately 25% of the City's water supply, and the groundwater pumped from City wells has historically made up approximately the other 25% of the City's total water supply. Lower than average precipitation over the last several years, efforts to protect endangered species on the Santa Clara River, intensification of water use by agricultural pumpers, and difficulty to recharge some groundwater basins have strained local groundwater resources. Both agricultural and municipal groundwater pumpers have implemented significant conservation measures, and the Fox Canyon Groundwater Management Agency (FCGMA) continues to refine its regulatory practices, in order to maintain the long-term integrity of our local groundwater resources. However, the general regional consensus is that some additional efficiency improvements must be made and that recycled water use should be expanded. The City's GREAT Program is one of the most significant regional projects that will expand recycled water use, and is supported in the FCGMA's Groundwater Management Plan.

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Water Conservation. In response to the constraints upon its water supplies, the City of Oxnard continues to develop and refine its Water Conservation Program. The City's work on this Program includes developing a Water Conservation Master Plan, updating the City Code regarding water waste and implementing all of the Best Management Practices (BMPs) of the California Urban Water Conservation Council. Staff expects the City's consultant to complete the administrative draft of the Water Conservation Master Plan in the very near future. The Plan will analyze a suite of cost-effective program elements that could be reasonably implemented over time to produce water savings. Staff plans to present the Plan to the Utilities Task Force in an upcoming meeting and then to the City Council. In June 2009, the City updated its Water Conservation Ordinance, strengthening its water waste prohibition provisions. Staff has been actively educating its residents and businesses regarding water waste by numerous means, including patrols. In general, reaction to the education effort has been positive. City staff has continued to work toward full implementation of the Best Management Practices of the California Urban Water Conservation Council.

GREAT Program Recycled Water. The City also continues to implement its GREAT Program, primarily developing the first phase of the recycled water component. The first phase of the GREAT Program's recycled water system is sized to make up for the FCGMA groundwater pumping cutbacks over the last 20 years to meet the needs of existing water customers. Subsequent phases of the recycled water system will generate new groundwater pumping credits to meet new demands for approved development projects.

The Advanced Water Purification Facility (AWPF) Phase I Project will treat secondary-treated wastewater from the City's Wastewater Treatment Plant using microfiltration, reverse osmosis and advanced oxidation to produce 6.25 million gallons per day of purified recycled water that will be used for landscape irrigation, industrial processes and future groundwater recharge. Using the recycled water for these non-potable purposes will allow the City to stretch its drinking water resources further. The project is currently out to bid. Staff is currently negotiating with the recommended consultant for construction management services. The City expects to start construction on the AWPF Phase I Project before the end of the year. Due to the requirements of the \$20 million dollar U.S. Bureau of Reclamation (USBR) grant, the project must be completed and delivering recycled water by September 2011.

Staff and consultants are also working on the design of the Recycled Water Backbone Pipeline Phase 1, which will deliver the recycled water to future recycled water customers along the Hueneme Road and Ventura Road corridors. The City expects to complete design work within the next few months and to start construction in early 2010. In order to meet the terms of the USBR grant, the pipeline projects also must be completed by September 2011.

Additionally, the City must work with potential recycled water customers to evaluate their on-site recycled water needs and to design and construct retrofits to their existing on-site water systems, in order to allow the use of recycled water. Staff is currently working on developing a request for proposals to select an engineering design firm to assist with the retrofits work. Discussions with potential recycled water customers are ongoing. This effort will need to intensify over the next few months, in order to have customers ready to receive recycled water when it becomes available.

Staff and consultants are currently working with the California Regional Water Quality Control Board to modify the City's existing National Pollutant Discharge Elimination System (NPDES) permit to

Water Supply Outlook and Confirmation of Policies Regarding Projects Creating New Water Demands

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allow for the AWP's membrane concentrate discharge to the Pacific Ocean and with the California Department of Health Services (CDPH) to permit the use of recycled water. CDPH permitting requires significant effort, including an administrative & user permitting plan, operations & maintenance plan, staffing plan and training plan for City staff and future recycled water customers. These plans must be completed within the next few months.

Water Planning in Support of City's General Plan. In support of its General Plan, the City's blueprint for future growth, staff conducts both short- and long-term water planning, in order to ensure that the water will be available to meet the needs of both existing and future water customers. The City's Urban Water Management Plan (UWMP) 2005 analyzed existing water demands and estimated the water demands of potential development and redevelopment projects known at the time, including some that were not included in the General Plan 2020. Due to the limitations on existing water supplies, the UWMP 2005 confirmed the need for the City to continue to improve its water efficiency through its Water Conservation Program and to develop recycled water as a new water source. Recycled water can be either used to directly offset potable water demands by using it for landscape irrigation or industrial processes, or to gain groundwater pumping credits by delivering it to agricultural irrigators or by using it to recharge groundwater aquifers. The City plans to issue a request for proposals in the very near future to prepare an updated UWMP, in support of the General Plan 2030. Staff expects that the updated UWMP will be completed in fall 2010.

In addition to the UWMP, staff reviews the projected water demands of all significant development and redevelopment projects and prepares Water Supply Assessments. Staff also confirms any FCGMA groundwater allocations that may be available for transfer to the City if the project is approved. If the proposed project can use recycled water and a connection to the City's recycled water backbone is feasible, then the City requires the project proponent to design and construct the project to use recycled water, in order to reduce potable water demands. Historically, if a proposed project could not provide a transfer of adequate groundwater allocations to meet its projected water demands, then the City purchased additional imported water to make up the difference. Due to the serious constraints upon the State Water Project, the City is no longer able to count on any additional imported water. New water sources must be developed to meet the increased water needs of proposed development projects.

Policy Regarding New Water Supplies for Proposed Development Projects

Because of the reduced reliability of the State Water Project and unavailability of any new imported water, the City Council, at its January 15, 2008 meeting, directed staff to require that all new projects of significant size be water neutral to the City water system. Project proponents can contribute water rights, water supplies, or financial or physical offsets to achieve this. Typical options open to project proponents to do so include transfers of FCGMA groundwater allocations to the City, participation in expansions of the City's GREAT Program recycled water system through physical or financial contributions, and participation in water conservation projects that produce measurable sustainable water savings. Several proponents of significant projects have complied with this requirement and several others are currently in negotiations with the City. Very small projects, such as single family residential projects or business tenant improvements have been exempted from this requirement, to date. Staff recommends that the City affirm this policy through an amendment to the existing Water Shortage Emergency Ordinance, as it has been effective at protecting existing utility customers while accommodating future growth if new water supplies can be developed.

Water Supply Outlook and Confirmation of Policies Regarding Projects Creating New Water Demands

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Staff recommends that the following policy principles be included in the revised Ordinance:

- All proposed projects should either contribute water supplies or the financial or physical equivalent to offset the full estimated project demand. For example, a 200 acre agricultural property on which a development is proposed requiring 500 acre-feet per year of water would be granted 400 acre-feet of groundwater pumping allocation by the FCGMA. The 400 acre-feet per year would be reduced to 300 acre-feet per year by the FCGMA's 25% groundwater pumping cutbacks. The project proponent could transfer the 300 acre-feet per year allocation to the City. Under the proposed policy, the City would condition the project proponent to provide offset for the 200 acre-feet per year of project water demand that could not be met by the transfer.
- The policy would apply to all proposed projects, whether or not they were included in the existing General Plan or UWMP. Staff recommends that very small projects, such as home renovations or business tenant improvements be exempted.
- The City would develop a menu of mitigation options that may include:
 - Financial contribution toward the GREAT Program's recycled water facilities.
 - Financial contribution toward a City-controlled water conservation project or program that would generate verifiable long-term water savings.
 - Implementation of a developer-initiated water conservation project or program that would generate verifiable long-term water savings.
 - Contribution of any other additional water rights or water supplies.

Water Shortage Response Options

If the 2009 – 2010 northern and central Sierra Nevada Mountains snowpack is below average and if the State of California and other Bay-Delta stakeholders cannot quickly come to a temporary solution regarding State Water Project pumping, then MWDSC may further reduce the City's allocation of imported water for the 2010 – 2011 fiscal year. MWDSC would likely take this action in April or May 2010. If MWDSC makes further reductions, the City will likely not be able to balance its water budget by continuing its current effort of active education of its water customers and enforcement of water waste prohibitions. The City has three options to keep its water budget in balance: 1) dramatically increase its Water Conservation Program's scope and budget, 2) establish mandatory water budgets for all customers and enforce those budgets, and 3) draw down the City's emergency water reserve.

A Water Conservation Program is most effective as a sustained effort over many years to retrofit existing irrigation systems, plumbing systems, and industrial processes and to change customers' behavior. Santa Rosa, California, a city of similar size, demographics, conditions, and water portfolio to the City of Oxnard, has achieved approximately 25% water savings over the past 20 years through a sustained Water Conservation Program. It is unlikely that the City of Oxnard can achieve similar water savings within a one- or two-year period, even with dramatic increases in both the operating budget of the Water Conservation Program and a capital improvement budget to retrofit both public and private facilities. However, staff recommends that the City continue to develop and improve its Program, and to consider establishing a capital improvement program for water conservation retrofits.

The City could fairly quickly balance its water budget by establishing water budgets for all of its customers. Baselines for customers can be set using records of historical usage or by more in-depth

Water Supply Outlook and Confirmation of Policies Regarding Projects Creating New Water Demands

October 19, 2009

Page 6

analysis. Across-the-board percentage reductions based upon historical usage are easier to implement; however, they tend to penalize water customers who have been efficient in their water usage and reward those that were less efficient during the baseline period. Because of this equity problem, staff discourages setting water budgets based solely upon straight historical usage. The other common method of establishing water budgets is to analyze each customer's water needs and then set a customized water budget. For example, a single-family residence on a large lot may have a fairly high historical water usage, due to a significant amount of water being used for irrigation. The City could establish a water budget that would allow this customer a reasonable indoors water budget, but would require a significant reduction in the outdoor usage for irrigation. This method is much more equitable and rewards those who have been efficient, but will take much more time to prepare. It would require several months work and consultant assistance to analyze existing geographical information and utility billing database data and reprogram the utility billing system. Utilizing any type of mandatory water budgets will require that the City step-up its customer education, establish procedures and an appeal process, and dedicate significant staff time toward implementation and administration.

The City maintains an unofficial emergency water reserve, equal to approximately one year's worth of water demand. This reserve is primarily to ensure that the City can meet its water demands in the event of an emergency that would reduce or eliminate one of its water sources. For example, if the Bay-Delta experienced a significant earthquake and consequent levee failure, the resultant flooding of one or more delta islands with seawater could result in a shutdown of the State Water Project for up to two years. In that case, the City could draw-down its water reserve until such time as the Bay-Delta system could be repaired and the State Water Project reactivated. Dependent upon the final MWDSC allocation reduction for the current fiscal year, the City may end up drawing-down its reserve by approximately 5,000 to 10,000 acre-feet this fiscal year. The City could continue to draw down the reserve in ensuing years. Staff recommends retaining all or most of the reserve, as it may be needed to provide minimal water service during an emergency.

In the long-term, the City will still be able to meet its water needs if it continues to actively pursue increased water use efficiency, regional cooperation and implementation of the GREAT Program. However, the dramatic recent reduction in the reliability of its imported water source will likely require decisive action by the City in the short-term.

FINANCIAL IMPACT

None.

(AAE)

March 14, 2011

Mr. Alan Holmberg
Office of the City Attorney
300 West Third Street, Third Floor
Oxnard, CA 93030

Dear Mr. Holmberg:

Thank you for taking the time to meet with Southern California Edison's (SCE) McGrath peaker project (Project) team on Friday, November 19, 2010. On that day, the following people met at the City's offices in Oxnard: Russell Archer (SCE attorney for the Project), Mark Nelson (SCE Director of Generation Planning and Strategy), Raffi Minasian (SCE Project Manager – Generation), Paul Phelan (SCE Manager – Construction), Mike Montoya (SCE Local Public Affairs – Ventura Region), Nancy Williams (SCE Local Public Affairs – Ventura Region), Alan Holmberg (Oxnard City Attorney), Rob Roshanian (Oxnard Interim Public Works Director), Matthew Winegar (Oxnard Development Services Director), Anthony Emmert (Oxnard Water Resources Manager) and Christopher Williamson (Oxnard Principal Planner). Since that meeting we have worked to resolve the City's remaining issues, which the following demonstrates.

As you know, SCE submitted the Project's ministerial grading permit package to the City, which we understand based on our discussions with City staff includes all of the permits, plans, clearances and other approvals that SCE needs to commence Project construction.¹ In addition, SCE is ready to pay \$174,000 to the City based on the Project's Improvement Plan Cost Estimate (the "Construction Fee"). We understand that the City is ready to approve the grading permit package and to accept the Construction Fee, subject to resolution of three outstanding issues addressed below. We also understand that once the City approves the grading permit package and accepts the Construction Fee, SCE will have complied with all of the City's ministerial requirements for SCE to commence Project construction. Please let us know if that understanding is inconsistent with the City's understanding.

During our November 19th meeting, we discussed three outstanding items the City believes must be resolved for the City to approve the Project's grading permit package, each of which is discussed in more detail below: the reciprocal access agreement with GenOn Energy; the City's right to access the proposed deceleration lane

¹ The grading permit package includes the following permits, plans/drawings, clearances and other approvals that the City must approve or issue for SCE to commence Project construction: Master Drawing Set, Storm Water Covenant (revised copy to be submitted on our final plan check), Water Tapping Card Forms (Domestic, Irrigation and Fireline), Improvement Plan Cost Estimate, SQUIMP, SWPPP, Hydrology Report, Construction Engineering Form and Employment Acknowledgement Form.

adjacent to the Project site; and the satisfaction of the City's "water neutrality" policy. I am pleased to report that we have resolved each of those three items and therefore believe that SCE has now completed all outstanding items needed for the City to approve the Project's grading permit package. Accordingly, we expect that the City will approve the Project's grading permit package (including SCE contractor Southern California Gas Company's related encroachment permit), and accept SCE's Construction Fee immediately following the City's next City Council meeting, which is scheduled for March 22, 2011.

Below, I have set forth a more detailed explanation of how SCE has completed the three items needed for the City to approve the Project's grading permit package.

Reciprocal Access Agreement with GenOn Energy

As you are aware, GenOn Energy (formerly RRI Energy) is the owner and operator of the Mandalay Generating Station, which is located on property adjacent to the Project site. The City of Oxnard Fire Department has requested that GenOn Energy and SCE provide reciprocal access for emergency vehicles to each other's property. Accordingly, GenOn Energy and SCE have negotiated and executed a Reciprocal Access Agreement (RAA). A conformed copy of the recorded RAA is attached as Exhibit A to this letter.

City Right of Access to the Proposed Deceleration Lane

The Project plans call for a deceleration lane on the west side of Harbor Boulevard to allow trucks approaching the Project site from the north to safely egress from the main roadway and decelerate as they prepare to turn into the site. At our November 19th meeting, we discussed the appropriate legal form of City access to that deceleration lane. We all agreed that if SCE owns Harbor Boulevard in fee simple and has granted the City an easement for the street itself, SCE should correspondingly continue to own the deceleration lane in fee simple and grant the City an easement in the deceleration lane. Conversely, we agreed that if the City owns Harbor Boulevard in fee simple, SCE should correspondingly grant to the City fee title to the deceleration lane. SCE has confirmed that SCE owns Harbor Boulevard in fee simple. Accordingly, SCE has granted to the City and executed an easement for the deceleration lane. A conformed copy of the recorded easement is attached as Exhibit B to this letter.

Compliance with the City's Water Policy

It has been the City's position that in order for the City to issue a water connection (and to issue the broader set of permits, plans, clearances and other approvals in the grading permit package), SCE must satisfy the City's water neutrality policy. As you know, we disagree with the City's position for a variety of legal and policy reasons. Nevertheless, SCE has repeatedly pledged to the City to make the Project 100 percent water neutral. At our November 19th meeting, when reading from a copy of a letter the City drafted to respond to Mr. Nelson's October 26, 2010 letter, but still has not sent, the City concurred that SCE's offer to provide "at least" 100 acre-feet of water would satisfy the City's water neutrality policy. However, City staff explained at the meeting that because there have been recent political changes with the election of two new City Council members in November 2010, the City was not prepared to definitively

agree that the water neutrality policy had been satisfied and issue the Project's ministerial grading permit package without first consulting the new Council members. SCE disagrees that satisfying the water neutrality policy should be a "political" decision: the City must as a matter of law issue ministerial permits if all applicable standards have been satisfied. The very essence of a ministerial permit is that it must issue if the applicant meets the non-discretionary standards related to the permit.

The City's water neutrality policy, which was presented in a report to the Oxnard City Council on January 15, 2008, was designed to augment the City's 2005 Urban Water Management Plan's (UWMP) Water Shortage Contingency Plan. The water neutrality policy regulates new water use requests within the City by dividing new requests into two categories: (1) projects included in the 2005 UWMP's water supply and demand projections and (2) projects that were not included. New water users not included in the 2005 UWMP are further divided into "small new water users" and "large new water users," although thresholds for those categories have yet to be defined. Those projects that are considered small new water users are exempt from the water neutrality policy's mitigation obligations and will receive water service as requested. Large new water users, on the other hand, must either participate in programs developed by the Water Department that offset existing water demand, or suspend project approval until the user can demonstrate the availability of reliable water supplies for its project.

The City has classified the Project, which has a maximum water demand of 24 to 27 acre-feet of water per year in emergency scenarios and an actual water demand in non-emergency times of only 2 to 4 acre-feet of water per year, as a "large new water user." In Rob Roshanian's letter dated October 7, 2010, the City also stated that it believes the Project's maximum lifetime water use is 728 acre-feet, a figure that SCE believes is many times higher than the Project's anticipated actual lifetime water use. In a final effort to be cooperative, SCE makes the following offer to the City to comply with the water neutrality policy by demonstrating the availability of reliable water supplies for the Project. This offer goes above and beyond SCE's previous offers, which indisputably complied with any reasonable interpretation of the City's water neutrality policy.

Final SCE Water Offer: On February 11, 2011, SCE met with the Board of Directors of Calleguas Water District (Calleguas), the City's imported freshwater supplier. Calleguas confirmed the current availability of up to 728 additional acre-feet of water that the City can purchase now. According to the City, 728 acre-feet is the Project's maximum lifetime potential water use. SCE is offering to pay the City up-front for the full cost of purchasing this 728 acre-feet, subject to the terms of this paragraph, so that the City may purchase this water now. In order to accomplish this transaction, the City would need to contact Calleguas and order the 728 acre-feet for immediate delivery. The City could then take delivery of the water at the normal delivery point for Calleguas-provided water, and may use or bank the water at the City's discretion. SCE would pay for the entire cost of this water, including the purchase price (paid by SCE up-front) and any incremental costs/penalties attributable to the water (which SCE would pay to the City at the end of the fiscal year in the unlikely event that the delivery of this additional water to the City exposes the City to additional costs/penalties for deliveries beyond what the City would otherwise take). Title to this 728 acre-feet of water would immediately transfer to

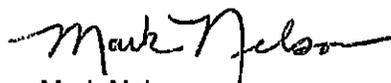
the City. SCE would also "re-purchase" from the City all the water that the Project actually uses at the designated meter at the Project site at the generally-applicable retail rate (thus paying for the water twice). At the cessation of Project operations, the City would retain title to any unused water from the 728 acre-feet. Like all of SCE's previous offers, this offer is contingent upon the Project becoming operational (*i.e.*, it makes no sense for SCE to provide water for a project that will never use water). Accordingly, if the Project does not become operational, the City would agree to return the purchase price of the water to SCE.

Please formally present this letter to the City Council for consideration at its scheduled meeting on March 22, 2011. Please inform us in writing regarding the Council's decision on March 23, 2011. If the City Council decides to accept our offer, we will enter into an agreement with the City for the purchase of the 728-acre feet of water, subject to the terms of this letter. We expect the City to accept SCE's Construction Fee and approve the Project's grading permit package on the date that agreement is executed.

If the City Council decides to reject our offer, we will be forced to sue the City for unlawfully failing to approve and issue Project permits, plans, clearances and other approvals contained in the Project's ministerial grading permit package. Please note that our lawsuit will challenge the legality of the City's water policy, as well as its applicability to SCE, and if the Court agrees with SCE's position, SCE will not be required to provide the City with *any* water for the Project. If the City Council rejects our offer, we will consider your letter of March 23, 2011 as the formal rejection of our grading permit package. We understand that pursuant to Oxnard Municipal Code Section 22-6, "[a]ny person aggrieved by any act, determination, rule or regulation of the water division or city manager may appeal therefrom to the city council by filing a written notice of appeal with the city clerk within 30 days after receiving notice of such act or determination, rule or regulation." Should the City Council reject our offer at its March 22, 2011 meeting, please consider this letter our appeal under Municipal Code Section 22-6 and expeditiously schedule an appeal hearing for the Project before the Council. The Oxnard Municipal Code does not appear to require appeals for rejections of the other components of SCE's ministerial grading permit package. Should the City Council reject our offer, in your letter of March 23, 2011, please indicate if you believe there are City appellate procedures SCE must undertake to exhaust its administrative remedies for the other components of the Project's ministerial grading permit package before filing our lawsuit.

We remain hopeful that the City Council accepts our offer and that the parties can avoid additional litigation. We must caution, however, that we are ready to proceed with litigation, and the City should take the necessary steps to retain all documents and other information potentially relevant to the subject matter of the potential litigation.

Very truly yours,



Mark Nelson
Director, Generation Planning & Strategy

Attachments

cc: Thomas E. Holden, Mayor
Irene G. Pinkard, Mayor Pro Tem
Tim Flynn, Councilmember
Carmen Ramirez, Councilwoman
Bryan A. MacDonald, Councilman
Edmund Sotelo, City Manager
Rob Roshanian, Interim Public Works Director
Matthew Winegar, Development Services Director
Christopher Williamson, Principal Planner
Anthony Emmert, Water Resources Manager
Russell Archer, Attorney, SCE
Raffi Minasian, Project Manager, SCE
Paul Phelan, Manager, SCE
Mike D. Montoya, Manager, SCE
Nancy Williams, Ventura Region Manager, SCE



EDMUND F. SOTELO
City Manager

CITY MANAGER'S OFFICE
305 West Third Street • Oxnard, CA 93030 • (805) 385-7430 • Fax (805) 385-7595

April 13, 2011

Mark Nelson
Director, Generation Planning & Strategy
Southern California Edison
831 Rush Street
Rosemead, California 91770

Re: Proposed Southern California Edison McGrath Peaker Plant, Oxnard,
California

Dear Mr. Nelson:

This letter is a response to your letter to Alan Holmberg dated March 14, 2011, ("March 14 letter"), concerning the Southern California Edison McGrath peaker project, proposed for location in the City's coastal zone. This letter addresses the issue of compliance with the City's Water Use Neutrality Policy, adopted in January, 2008. This appears to be the major outstanding issue between Southern California Edison and the City.

After full consideration, the City Council has indicated staff should apply the City's Water Use Neutrality Policy as it would in any permitting decision. City staff's conclusion is that Southern California Edison's proposal is not consistent with the Water Use Neutrality Policy, for reasons discussed below. Consistent with the request stated in your March 14 letter and with the provisions of Section 22-6 of the Oxnard Municipal Code, staff intends to set this matter for an appeal hearing before the City Council. Staff anticipates a lengthy hearing, and proposes to Southern California Edison that it provide to us several dates in early May on which a special City Council meeting can be set in the evening to consider the appeal. This provides an opportunity for a full, complete and formal hearing on the issue.

The fundamental problem City staff has with Southern California Edison's proposal is that it is in fact not water use neutral, and does not offset the increased demand the peaker plant project will place on City water supplies. Notwithstanding Southern California Edison's contentions that the water demand of this project is relatively limited, staff must be consistent in its interpretation and application of the Water Use Neutrality Policy, and cannot make a decision that would effectively open the door to similar proposals that also do not meet the basic requirements of the Water Use Neutrality Policy.

Mark Nelson
April 13, 2011
Page 2

The Water Use Neutrality Policy requires that new water users not accounted for in the 2005 Urban Water Management Plan either provide offsets for increased water use associated with their projects, resulting in no net increase in demand within the City, or await development of new reliable water supplies by the City. City staff has interpreted the Policy to also allow development that could provide its own new, independent water supply, i.e. a supply that does not generate additional demand on any existing or planned City water supplies. (City staff has in fact previously explored several possibilities of this latter type with you, but none have proven viable or been pursued to a final determination by Southern California Edison.) It is not the intent of the Water Use Neutrality Policy that new water users can satisfy the Policy simply by obtaining water from the City's existing sources of supply, e.g., the imported state water supply the City receives through the Calleguas Municipal Water District, or the groundwater resources currently relied on by the City. Such a proposal would not be demand-neutral. It would simply increase demand on existing supplies, unless offset by some legally enforceable countervailing reduction in water use by some other user within the City. Southern California Edison to date has not proposed any actual offsets of this type.

In light of the terms and intent of the Water Use Neutrality Policy, staff is unable to discern how your current proposal can be considered demand-neutral, or to provide either an independent new source of water or offsets against existing water use. The proposal is that you will pay in advance for water the City obtains from one of its existing sources, i.e. the Calleguas Municipal Water District. The financial aspects of the proposal are not the issue. Indeed, in some respects they are attractive, although there is some question as to the extent that the funds could be subject to refund. The problem is that the proposal does not address the basic problem of overall City water supply and demand neutrality. With respect to these considerations, there is nothing to distinguish the peaker project from any other new development project that might propose to simply pay for water from existing City water sources, either in advance or otherwise, while leaving the problem of securing adequate long-term water supplies for all City water users unresolved. If this proposal were deemed consistent with the Water Use Neutrality Policy, the City would be equally obligated to accept payment-only proposals from vastly larger future projects, regardless of the increased net long-term water demand these projects would generate. This result simply cannot be reconciled with the terms or intent of the Water Use Neutrality Policy.

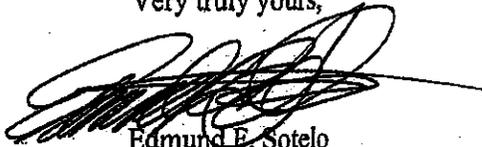
At the appeal hearing, Southern California Edison will be afforded a full opportunity to persuade the City Council that City staff has misconstrued the Water Use Neutrality Policy, or that there are some compelling practical or policy reasons for interpreting the Policy to allow acceptance of your current proposal. Although the City Council ultimately cannot allow threats of litigation to affect its interpretation and application of adopted City policies, the Council is certainly sensitive to the situation and the issues that your proposal raises.

In closing, I note that your recent email of April 6, 2011, to Alan Holmberg suggests that Southern California Edison might wish to bypass the City appeal procedure and proceed

Mark Nelson
April 13, 2011
Page 3

directly to litigation. I am advised that California law clearly requires permit applicants in this situation to exhaust available administrative remedies, including all administrative appeal rights. It also appears ill-advised, however, as a matter of public relations and the long-standing good relationship between the City and Southern California Edison on most matters. The issues raised by your proposal can and should be considered and fairly decided in an open hearing where all points of view may be discussed and all interested parties may be heard. Please call Alan Holmberg at (805) 385-7483 to set a time and date for a hearing.

Very truly yours,



Edmund E. Sotelo
City Manager

EFS:rs

cc: Thomas E. Holden, Mayor
Dr. Irene Pinkard, Mayor Pro Tem
Bryan A. MacDonald, Councilman
Tim Flynn, Councilman
Carmen Ramirez, Councilmember
Karen Burnham, Assistant City Manager
Alan Holmberg, City Attorney
Russell Archer, Attorney, Southern California Edison

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2 ALAN HOLMBERG, City Attorney, State Bar No. 66216
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4 Oxnard, California 93030
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22 Attorneys for Petitioners
23 CITY OF OXNARD and CHRIS WILLIAMSON

24 SUPERIOR COURT OF THE STATE CALIFORNIA
25 FOR THE COUNTY OF LOS ANGELES

26 CITY OF OXNARD and CHRIS
27 WILLIAMSON,
28
29 Petitioners,
30
31 v.
32 CALIFORNIA COASTAL COMMISSION,
33
34 Respondent,
35
36 and
37 SOUTHERN CALIFORNIA EDISON, and
38 DOES 1 through 25
39
40 Real Parties in Interest.

CASE NO.: BS 122248
Action Filed: May 22, 2009
Hearing on Writ Petition:
**DECLARATION OF KEN ORTEGA IN
SUPPORT OF CITY OF OXNARD'S
OPPOSITION TO REAL PARTY'S
MOTION FOR PRELIMINARY
INJUNCTION**
(CEQA Matter Under Public Resources Code
§§ 21000, et seq.)
Time: 9:30 a.m.
Date: December 14, 2009
Dept: 86
Judge: Hon. David Yaffe

DECLARATION OF KEN ORTEGA

I, Ken Ortega, declare:

1. I am the Director of the Public Works Department of the City of Oxnard (“City”). I have held this position since 2005.

2. I make this Declaration in support of the City’s Opposition to the Motion for Preliminary Injunction filed by Southern California Edison. I have personal knowledge of the matters stated herein and could and would competently testify thereto if called upon to do so. As to those matters reflecting matters of professional opinion or belief, I believe them to be true.

3. The City of Oxnard, through the Water Resources Division of the Public Works Department, provides all water for residential, commercial, industrial and institutional uses (e.g., schools, parks, hospitals) and for some agricultural use within the territory of the City and some adjoining areas.

4. The City receives its water supplies from three major sources. The first source is imported water which is received from the Calleguas Municipal Water District (“CMWD”). CMWD is a member agency of the Metropolitan Water District of Southern California “MWD”) and receives its imported water supplies from MWD. The principal sources of supply for the MWD are water imported from northern California through the state water project and water from the Colorado River. Both of these sources are subject to variations and limitations due to such factors as annual rainfall, demands from other users, environmental factors, and, in recent years, litigation. CMWD provides water to the City and its other customers on a wholesale basis. CMWD does not provide any water directly to consumers either in the City of Oxnard or elsewhere.

5. In recent decades the City has received approximately 50% of its water from CMWD. The amount of water the City receives from CMWD is governed by contract, and is subject to reduction when supplies available to MWD and CMWD are curtailed. As discussed below, the supply of imported water available to the City through the CMWD was drastically reduced in June 2009.

1 6. The second major source of water for the City is groundwater pumped by City-
2 owned wells in the Oxnard Plain Groundwater Basin. This Basin is part of a larger aquifer
3 (the Fox Canyon Aquifer) that is managed by the Fox Canyon Groundwater Management
4 Agency ("Fox Canyon GMA"). The Fox Canyon GMA determines the amount of water
5 from the aquifer that is available for each major user, including the City.

6 7. The third major source is groundwater which is purchased from the United
7 Water Conservation District ("United WCD"). [Much of this groundwater originates as
8 water diverted from the Santa Clara River and stored in recharge basins by the United WCD.]
9 The United WCD provides water to the City under contract subject to availability.
10 Availability from this source is determined, in part, by the Fox Canyon GMA which
11 regulates the groundwater basin pumped by the United WCD.

12 8. The City adopted its current (2005) Urban Water Management Plan
13 ("UWMP") in early 2006. At the time the UWMP was adopted it was projected that the City
14 had adequate water supplies for existing users but that additional sources would have to be
15 developed to supply additional development allowed by the City's General Plan through
16 2030. As a result, the City has embarked on a number of programs to increase the quantity,
17 reliability, and sustainability of its long term water supplies. These include conservation
18 programs and the Groundwater Recovery Enhancement and Treatment Program ("GREAT
19 Program") discussed below.

20 9. The GREAT Program is the City's principal means of attempting to ensure
21 adequate water supplies for existing and anticipated future development in the City. The
22 primary goal of the GREAT Program is to create a system for collecting, treating and
23 recycling wastewater and distributing the treated water for non-potable water uses in the
24 City. Reclaimed water from this program will be used to provide a replacement supply for
25 such uses as parks, landscaping, golf courses, and agricultural irrigation, thus freeing potable
26 water now used for these purposes to be utilized for residential, commercial, and industrial
27 use. Unfortunately, due to the complexities of planning, funding, and developing the
28

1 necessary infrastructure, substantial water is not expected to be available from the GREAT
2 Program until 2015.

3 10. By late 2007 the City was forced to reevaluate the near-term reliability of some
4 critical components of the City's water supply. Below-average rainfall for several
5 consecutive years, increased pumping by agricultural use, and efforts to reduce impacts on
6 endangered species habitats were reducing the amount of available groundwater. One result
7 of this was that in 2006, and in response to actions by the Fox Canyon GMA, the United
8 WCD reduced the City's water allocation from its sources from 9,070 acre feet per year
9 ("AFY") to 7,709 AFY. The Public Works Department was also aware of looming problems
10 with the City's imported water supplies from CMWD and MWD resulting from, among other
11 things, reduced rainfall and snowpack conditions in the Sierras, environmental issues, and
12 litigation affecting the amount of water imported from northern California.

13 11. In response to the emerging water situation, the City Council adopted a Water
14 Use Neutrality Policy on January 15, 2008. This Policy was recently reviewed and
15 reaffirmed by the Oxnard City Council in October 2009. The Water Use Neutrality Policy
16 basically requires that new development not create any net increase in water supply demands
17 beyond those anticipated and accounted for in the 2005 UWMP. To achieve this,
18 development projects that would otherwise increase demand must achieve water neutrality,
19 i.e., not net increase in demand, by one or more of the following methods:

- 20 a. Reducing demand through built-in conservation measures or other
- 21 enforceable limitations on water use;
- 22 b. obtaining required water supply from non-City sources; and/or
- 23 c. providing offsets in the form of alternate water supplies or enforceable
- 24 reductions in water use by existing water users in the City.

25 12. Offsets may take any number of forms, providing that the offset results in a
26 real, quantifiable and enforceable reductions in water use by other water users. The primary
27 offset opportunity offered by the City is participation in the GREAT Program. Developers
28 may acquire offset credits by participating with funds or in-kind contributions towards actual

1 construction of the GREAT water recycling facilities and distribution system. There is no
2 fixed fee for offset credits through the GREAT Program because the actual amount of credits
3 obtainable depends upon a number of variable factors, i.e., the location of sites where
4 conversion from potable water use to GREAT-supplied reclaimed water use will occur; the
5 amount of water savings at the converted sites, and; the cost of extending pipelines and
6 providing any other necessary infrastructure to the converted sites. Because of these
7 variables, offset credits and contributions to the GREAT Program must be determined on a
8 case-by-case basis. The developer's participation in the GREAT Program is typically
9 ensured through a Development Agreement with the City. An example of such a
10 Development Agreement is the Development Agreement for the Oxnard Village Specific
11 Plan, a true and correct copy of which appears as Exhibit N to the Declaration of D. J. Moore
12 submitted with Southern California Edison's Motion for Preliminary Injunction. The City is
13 currently in the process of discussing a similar Development Agreement with proponents of
14 the Ormond Beach Specific Plan and has discussed participation in the program with the
15 proponents of the Jones Ranch project, which has not been formally submitted to the City for
16 application processing at this time.

17 13. Unfortunately, the facilities for treating and distributing reclaimed water
18 through the GREAT Program are not expected to begin coming on-line until 2012, and will
19 not provide full benefits before 2015, due to the extensive time necessary to plan, fund,
20 permit, build and test these facilities before actual use. As a result, offset credits through the
21 GREAT Program are not an immediately available option for development that will occur in
22 the next few years.

23 14. The Water Use Neutrality Policy has been applied to all major new
24 development proposals considered by the City since January 2008. I have directly
25 participated in discussions with most, or all, applicants who are subject to the offset
26 requirements. Generally, despite understandable initial reservations, all the developers I have
27 dealt with, other than Southern California Edison, have cooperated willingly in providing the
28 required offsets.

1 **WATER SHORTAGE CONDITIONS**

2 15. At the time the Water Use Neutrality Policy was adopted in January 2008, the
3 Public Works staff was concerned about potential near term water shortages, but cautiously
4 optimistic that an actual water shortage emergency could be avoided through compliance
5 with the Water Use Neutrality Policy and increased conservation efforts. Since that time,
6 however, a number of events have occurred which have drastically altered the City's water
7 supply situation for the worse.

8 16. The most serious impact has been a 23% reduction in available water supply of
9 imported water from CMWD. This reduction was imposed by CMWD in June 2009 as a
10 result of reductions in its supplies from MWD. As a result of these cutbacks, the City's
11 annual water supply from CMWD has been reduced to 11,420 AFY. If the City takes water
12 from CMWD in excess of the ceiling of this allocation, it is subject to penalties of up to \$ 5
13 million dollars.

14 17. The City has also suffered substantial reductions in its allocations of available
15 groundwater from the Oxnard Plain Groundwater Basin and in water available from the
16 United WCD. Specifically, on July 1, 2009 the Fox Canyon GMA imposed a 20% reduction
17 on the City's (and other municipal users') allocation of local groundwater. It is expected that
18 a further 5% cutback will be imposed on January 1, 2010. The United WCD has also
19 imposed a further cutback on the City's allocation of water from 7,709 AFY to 6,800 AFY,
20 effective as of January 1, 2010. The City has thus suffered an overall reduction of 25% of its
21 allocation of United WCD water since 2006. In addition, since 2005 the City has received
22 approximately 4,000 AFY from United WCD through the M & I Supplemental Water
23 Program. However, the United WCD has tentatively announced that it will suspend
24 deliveries of M & I Supplemental Water in 2010 due to groundwater conditions in the
25 Oxnard Plain Forebay area of the Fox Canyon aquifer.

26 18. The City is attempting to reduce the impacts of this water supply shortage by
27 several means. The City itself has undertaken comprehensive conservation efforts to reduce
28 water use at all City owned facilities, i.e., parks, buildings and City-owned housing. In June,

1 2009 the City Council adopted Ordinance No. 2810 which updates various provisions of the
2 City's Municipal Code governing water use, water shortage emergencies and mandatory
3 participation in water recycling. A true and correct copy of Ordinance No. 2810 is attached
4 as Exhibit 1 to this Declaration. The City has since implemented active patrolling by City
5 personal to monitor and issue warnings or citations for wasteful water use by City residents
6 and businesses. In addition, a Water Conservation Master Plan is under preparation and a
7 draft is expected shortly. This Plan is intended to identify additional water savings and
8 conservation measures which may be implemented in the City to reduce demand.

9 19. The City has also attempted to increase its immediately available water
10 supplies by negotiating with MWD for an increase in its allocation of water which would
11 offset some of the recent reductions in availability of imported water. So far, these
12 discussions have not produced any result.

13 20. The City has also attempted to avoid further impacts to its water supply by
14 continuing to vigorously apply the Water Use Neutrality Policy to all new development
15 projects in the City as discussed above.

16 21. As the foregoing events have developed, the Public Works Department has
17 continued to closely monitor the water supply and demand situation. On October 27, 2009
18 Anthony Emmert, the Water Resources Manager of the Water Resources Division of the
19 Department of Public Works, reported to the City Council on the City's declining water
20 supplies. A true and correct copy of the staff report prepared by the Public Works
21 Department for this City Council hearing is attached as Exhibit 2 to this Declaration. A copy
22 of the transcript of the October 27 hearing is attached as Exhibit P to the Declaration of D.J.
23 Moore filed with SCE's motion for a preliminary injunction. As the staff report and
24 transcript indicate, Mr. Emmert advised the City Council that although projections of water
25 demand remain reasonably consistent with the forecasts in the 2005 UWMP, reductions in
26 supplies will result in a water deficit of up to 5,000 AFY this year, and in continuing major
27 deficits in coming years. (See SCE Exhibit P, pp. 228-231.)
28

1 22. At the October 27, 2009 hearing the City Council reaffirmed the January 2008
2 Water Use Neutrality Policy and indicated its support for all ongoing efforts by City Public
3 Works and Development Services staff to resolve the water shortage issue.

4 23. Since the October 27, 2009 hearing the City's water planning consultants
5 (Kennedy Jenks) have conducted a further detailed review of projected available water
6 supply and demands confronting the City. Exhibit 3 is a true and correct copy of the
7 November 17, 2009 Technical Memorandum prepared by Kennedy Jenks detailing the
8 current situation. As this report indicates, implementation of the GREAT Program and
9 continued implementation of water conservation efforts are expected to overcome the City's
10 water shortage during 2015. In the interim years, however, the City faces continued major
11 shortages of water. The projected shortage for 2010 is 590 acre feet. This projection,
12 however, assumes delivery of 5,000 acre feet of M & I Supplemental Water from United
13 WCD. Actual delivery of this water is uncertain at this time. (See Exhibit 3, Table 1, p. 23
14 Table 4, p. 29.) For the years 2011 through 2014 the water supply deficit is expected to
15 range from 5,350 to 7,780 AFY. (Exhibit 3, p. 29, Table 4.) If below-average rainfall
16 continues to occur, these deficits will range from 2,400 acre feet in 2010 to 9,290 acre feet in
17 2014. (Exhibit 3, p. 31, Table 7.) While the City presently has some reserve water supply in
18 the form of groundwater pumping credits with the Fox Canyon GMA and United WCD, the
19 projected water supply shortages will substantially deplete or completely exhaust all credits
20 by 2014. (See Exhibit 3, Table 4, p.29; Table 7, p. 31.) A substantial reduction or
21 exhaustion of these reserves would leave the City with no emergency supplies in the event of
22 further cutbacks of imported water, groundwater allocations from the Fox Canyon GMA or
23 United WCD, or interruptions of imported water supplies. This is not considered an
24 acceptable option by the Public Works Department.

25 24. At the present time the conditions already exist for declaration of a formal
26 water shortage emergency. The City's Public Works and planning staff are now attempting
27 to evaluate all potential alternatives available to avoid this emergency, including further
28 conservation efforts, possible augmentation of existing supplies, and use of emergency water

1 reserves to the extent that this can be done without creating unacceptable risks in the event of
2 further reductions in existing supplies from the City's available sources.

3 25. One of the critical policies for avoiding a full scale water emergency, if one
4 can be avoided, is continued enforcement of the Water Use Neutrality Policy. This Policy is
5 absolutely necessary to secure developer participation in improvement of City long-term
6 water supplies and to avoid further increases in the existing deficit of water supply versus
7 demand. It is also essential for the success of this Policy that it be applied equally to all new
8 development in the City which generates any significant water demand. To date, and with
9 the sole exception of the Southern California Edison Peaker Plant project, the City has been
10 able to secure the compliance of all major new development with the Policy, notwithstanding
11 objections to the expenses and additional complexities imposed by the offset requirement on
12 the development projects. I believe it would be far more difficult to successfully implement
13 the water use neutrality requirement with developers if ad hoc exceptions were made for
14 individual projects such as the Peaker Plant, and adverse precedents thus established.

15
16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct. Executed this 23rd day of November 2009, at Oxnard,
18 California.

19 
20 _____
Ken Ortega

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Attorneys for Petitioners
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SUPERIOR COURT OF THE STATE CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CITY OF OXNARD and CHRIS WILLIAMSON,
Petitioners,
v.
CALIFORNIA COASTAL COMMISSION,
Respondent,
and
SOUTHERN CALIFORNIA EDISON, and
DOES 1 through 25
Real Parties in Interest.

CASE NO.: BS 122248

Action Filed: May 22, 2009
Hearing on Writ Petition:

DECLARATION OF CHRIS WILLIAMSON IN SUPPORT OF PETITIONERS' OPPOSITION TO REAL PARTY'S MOTION FOR PRELIMINARY INJUNCTION

(CEQA Matter Under Public Resources Code §§ 21000, et seq.)

Time: 9:30 a.m.
Date: December 14, 2009
Dept: 86
Judge: Hon. David Yaffe

DECLARATION OF CHRIS WILLIAMSON

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DECLARATION OF CHRIS WILLIAMSON

I, Chris Williamson, declare:

1. I am a Principal Planner in the Development Services Department of the City of Oxnard ("City"). I have held this position since 2004, and have 9 previous years of direct experience in the field of California municipal planning and environmental analysis. I hold a doctoral degree in the field of Urban Planning and am certified as an urban planner by the American Institute of Certified Planners ("AICP").

2. I make this Declaration in support of the City's opposition to the Motion for Preliminary Injunction filed by Southern California Edison ("SCE"). I have personal knowledge of the matters stated herein and could and would competently testify thereto if called upon to do so. In particular, I am familiar with the factual and policy background for City water planning and have been directly responsible for preparing water demand projections for the 2005 Urban Water Management Plan, the City's Draft 2030 General Plan, and as part of CEQA Environmental Impact Reports. As to those matters reflecting matters of professional opinion or belief, I believe them to be true.

THE CITY'S WATER USE NEUTRALITY POLICY

3. The Water Use Neutrality Policy was adopted by the Oxnard City Council on January 15, 2008. The basic elements of the policy are set forth in the staff report for the January 15, 2008 hearing. A true and correct copy of the report is attached as Exhibit C to the Declaration of D.J. Moore submitted with Southern California Edison's Motion for Preliminary Injunction.

a. Generally, new water users that were anticipated in the City's 2005 Urban Water Management Plan ("UWMP") are allowed to proceed as long as their net water demand remains within the demand anticipated in the UWMP. Generally, the projects anticipated in the UWMP are those anticipated in the City's 2020 General Plan. In some cases, i.e., where the calculated water use of a proposed project exceeds the demand forecast in the UWMP, compliance with the Policy may require phasing of development to avoid exceeding

1 available water supplies, or providing offsets in the form of alternate water
2 supplies or permanent, verifiable, and quantifiable reductions of existing water
3 use elsewhere in the City.

4 b. Projects that are not anticipated in the 2005 UWMP must either
5 provide offsets for their water use, or be suspended until adequate City-
6 provided water supplies are available. The only exceptions to these
7 requirements are very small projects that may be exempted due to their small
8 water use under the standards discussed in the next paragraph.

9 4. As the staff report also indicates, the Water Use Neutrality Policy was
10 intended to be implemented in conjunction with the environmental review process
11 mandated by the California Environmental Quality Act ("CEQA"), meaning that water
12 demand for each project would be assessed in connection with CEQA review, and
13 measures necessary to ensure water neutrality identified in this process. Small projects
14 which are exempt from CEQA under one or more of the CEQA categorical exemptions
15 are considered small projects and are exempt from the policy. Most or all of these types
16 of projects (e.g., minor expansion of existing facilities, construction and operation of
17 limited new structures such as accessory buildings, single family residences or duplexes,
18 apartment projects with six or less dwelling units and commercial projects under 10,000
19 square feet – see 14 Cal.Code Regs. §§ 15301-15304) would be the type already
20 anticipated in the 2005 UWMP, and would, in any case, be small in terms of water
21 consumption.

22 5. Since January 2008 the Water Use Neutrality Policy has been consistently
23 applied to all new development projects which are not exempt from the Policy by virtue
24 of their small size. Examples of this are discussed below.

25 6. The Water Use Neutrality Policy is discussed in the Final EIR for the
26 Oxnard Village Specific Plan (aka "Wagon Wheel project") which was released in
27 August 2008. A true and correct copy of the section of the EIR discussing the Policy is
28 attached as Exhibit I to the Declaration of D. J. Moore filed in support of SCE's motion

1 for a preliminary injunction. The Oxnard Village Specific Plan was approved by the
2 Oxnard City Council in January 2009. The Water Use Neutrality Policy is implemented
3 for this project in provisions of the project Development Agreement which appears as
4 Exhibit N to the Declaration of D. J. Moore filed in support of SCE's motion for a
5 preliminary injunction. This project was anticipated in the 2005 UWMP, but was
6 determined during environmental review to have the potential to demand more water than
7 projected in the UWMP. Consequently, Section 3.6 of the Agreement, entitled "Water
8 Supply Reliability," provides that development of the project will be phased to avoid
9 outstripping water supplies actually available to the City, including those expected
10 through implementation of the Groundwater Recovery Enhancement and Treatment
11 Program ("GREAT Program"). Section 3.6 also reserves the City's authority to further
12 restrict issuance of building permits and occupancy permits or to prohibit construction of
13 portions of the project altogether if necessary water supplies do not become available.
14 Sections 4.1 – 4.8 require the project developer to participate in funding of the GREAT
15 Program and other off-site improvements necessary to create and guarantee water supply.

16 7. The Water Use Neutrality Policy is also discussed in the Recirculated Draft
17 EIR for Ormond Beach Specific Plan, which was released in July, 2008. A true and
18 correct copy of the section of the Draft EIR discussing the Policy is attached as Exhibit
19 M to the Declaration of D. J. Moore filed in support of SCE's motion for a preliminary
20 injunction. The Final EIR for the project is expected to be presented to the Oxnard City
21 Council for certification in January 2010. It is anticipated that the Water Use Neutrality
22 Policy will be implemented for this project through a Development Agreement and
23 project conditions that require the developer to build (or fund) an extension of the
24 GREAT recycled water system to the locations of the Oxnard Community College, the
25 City-operated College Park, and a nearby high school where the recycled water will
26 replace use of potable water for irrigation of landscaping, recreational fields and other
27 open space.

1 8. The City has also been involved in pre-application discussions for another
2 major development project known as the Jones Ranch Specific Plan project. This project,
3 as currently contemplated, involves phased construction of 2,500 residential units,
4 approximately 50,000 square feet of commercial uses, and supporting public facilities
5 (e.g., streets, schools, parks, and utilities). The proposed project site consists of
6 approximately 165 acres of agricultural land that would be annexed to the City. This
7 project was not anticipated in the 2005 UWMP and will be required to provide full
8 offsets for its water use.

9 9. I have been present at many meetings between the project proponents and
10 representatives of the City Development Services Division and Public Works Department
11 concerning these projects, and have also been kept apprised of other communications
12 with project proponents. The project proponents have been consistently advised in all
13 meetings where the subject was discussed that they will be required to provide offsets for
14 project water consumption not anticipated in the 2005 UWMP in compliance with the
15 Water Use Neutrality Policy.

16 10. The City has also been involved with discussions of the Oxnard Union
17 High School District concerning development of a new 2,500 student high school on
18 Wooley Road. This high school was not anticipated in the 2005 UWMP. School district
19 representatives have also been advised that they will be required to provide water offsets
20 in compliance with the Water Use Neutrality Policy.

21 11. The City is in the process of preparing a 2030 General Plan to replace its
22 2020 General Plan. The Water Use Neutrality Policy is one of the essential policies
23 incorporated into the estimates for future water supplies and demands being used in the
24 general plan update process. The Water Use Neutrality Policy is discussed in the Re-
25 circulated Draft 2030 General Plan Program Environmental Impact Report released on
26 November 23, 2009 for public review. A true and correct copy of the chapter of the
27 Recirculated Draft EIR addressing water issues is also attached as Exhibit 4 to this
28 declaration. I am currently in the process of drafting revised language which will

1 formally incorporate the Water Use Neutrality Policy and various implementing
2 measures into the 2030 General Plan. The Final EIR is expected to be reviewed and
3 certified by the City Council as early as January, 2010.

4 12. On October 27, 2009, the City Council conducted another hearing on the
5 Water Use Neutrality Policy and on water supply issues facing the City. At this hearing
6 the City Council reaffirmed the Policy. The City Council concluded that it was not
7 necessary to codify the Policy by ordinance at this time as the Policy has been working
8 satisfactorily to date.

9 **APPLICATION OF THE WATER USE NEUTRALITY POLICY TO SOUTHERN**
10 **CALIFORNIA EDISON**

11 13. SCE's Peaker Plant project is a proposal to construct a 45 megawatt
12 electrical gas-turbine generating plant on vacant land adjacent to Mandalay Beach State
13 Park in the coastal zone of the City of Oxnard. SCE originally applied to the City for
14 approval of a Coastal Development Permit (Public Resources Code § 30600 et seq.) for
15 the project in 2007. The Coastal Development Permit ("CDP") was denied by the City
16 Planning Commission and by the City Council on appeal because the project was
17 determined to be inconsistent with the zoning established for the project site in the City's
18 certified Local Coastal Program ("LCP").

19 14. SCE appealed the decision of the City Council to the California Coastal
20 Commission. In the Coastal Commission proceedings the City consistently raised the
21 issue of compliance with the City's Water Use Neutrality Policy. For example, on
22 December 16, 2008, the City advised the Commission that if the Peaker Plant project
23 were approved at all by the Coastal Commission, SCE would be required to identify an
24 appropriate new water supply, i.e., provide offsets for the project's water use
25 incompliance with the Policy. A true and correct copy of the text of the December 16,
26 2008 letter is attached as Exhibit 5 to this Declaration.

27 15. As indicated in the Coastal Commission's Revised Findings on Appeal, the
28 Peaker Plant operating at its permitted capacity "would require nearly 27 acre feet of

1 water per year for the first two years of operation and approximately 25 acre feet in years
2 three and four and 24 acre fee in each subsequent year of operation.” (See page 75 of
3 Exhibit B to Declaration of D.J. Moore filed in support of SCE’s Motion for Preliminary
4 Injunction.) These figures are generally consistent with the City’s own evaluation of
5 water demand for the project. Approximately 3 acre feet of water per year would be
6 utilized for landscaping in the first two years of the project, and 1 acre foot of water per
7 year for the next year. All other water use is for operation of the Peaker Plant, primarily
8 as cooling water. Although SCE has maintained that the Peaker Plant will normally
9 operate at as little as 10% of its full operating capacity, the City has never been provided
10 any information to substantiate this claim nor received any proposal from SCE to limit
11 operating hours and resulting water consumption accordingly. As the provider of
12 domestic water service for all consumers in the City, the City must be prepared to supply
13 the full amount of water required by the operating license to serve the project if the
14 project is built.

15 16. One acre foot of water is enough to supply two traditional single family
16 homes with water for a year. The twenty-seven acre feet of water per year required to
17 serve the Peaker Plant in full operation is enough to supply a traditional subdivision of 54
18 homes and about 200 persons using the historical average occupancy rates in Oxnard.
19 The number of residences and residents served would be four and two times higher,
20 respectively, for apartments or other multiple-unit housing projects, which typically
21 utilize about 50% of the amount of water per person as single family homes.

22 17. At the request of SCE, and without consultation with the City of Oxnard,
23 the Calleguas Municipal Water District (“Calleguas”) issued a letter to the Coastal
24 Commission stating that “Calleguas warrants that it can provide additional water to the
25 City of Oxnard to service Edison’s proposed facility.” A true and correct copy of this
26 letter, along with the cover letter and attachments provided by SCE to the Coastal
27 Commission, is attached as Exhibit 6 to this Declaration. This letter is misleading in
28 several respects. First, the letter assumed that actual usage of the project would be 1 to 2

1 acre feet per year, which is patently inconsistent with the potential demand determined by
2 the City and Coastal Commission based on information provided by SCE. As the letter
3 itself acknowledges, Calleguas does not provide any retail service within the City's
4 territory and has no means of supplying water directly to the Peaker Plant project or any
5 other water user in the City. Calleguas also has absolutely no authority to determine how
6 water delivered to the City is allocated, nor to guarantee that water will be available for a
7 particular project despite demand by other users. Second, it is now apparent that even at
8 the time the Calleguas letter was issued in January 2009, Calleguas must have been aware
9 that it would likely be faced, in the near future, with major cutbacks in water supply to
10 the City and all its other wholesale water customers. The City was formally notified
11 several months later, in May, 2009 that its supply of imported water from Calleguas was
12 being cut back. A true and correct copy of the notification letter from Calleguas is
13 attached as Exhibit 7 to this declaration. The actual cutbacks have now been determined
14 to amount to 23% of the amount of water delivered to the City in prior years. The
15 cutback remains in place at this time and is not expected to be rescinded in the near
16 future.

17 18. Notwithstanding the foregoing and a number of additional issues, the
18 Coastal Commission ultimately granted SCE's appeal and agreed to issue a CDP for the
19 Peaker Plant. The City believes the CDP is inconsistent with the City's certified Local
20 Coastal Program in several respects, and has filed a petition for writ of mandate asking
21 that the decision be overturned.

22 19. After the Coastal Commission decision, City representatives met with
23 representatives concerning permits for the Peaker Plant project in May 2009. I was
24 present at that meeting along with Ken Ortega, the City's Director of Public Works, and
25 Matthew Winegar, Director of the City's Development Services Department. At the
26 meeting SCE's representatives were advised that they would have to comply with the
27 Water Use Neutrality Policy in order to obtain construction permits from the City.
28

1 20. On September 9, 2009 the City issued a permit (09-3756) for installation of
2 two groundwater monitoring wells on the proposed Peaker Plant Site. Installation of
3 these wells and testing of groundwater is required by Condition 3.e of the CDP issued for
4 the project by the Coastal Commission. (See SCE Exhibit B, pp. 25-26, 59-60.) The
5 purpose of this testing is to confirm the level of existing groundwater around the project
6 site. This testing is required because the project will require pumping of approximately
7 25 million gallons of groundwater per day from the site in order to lower the groundwater
8 level sufficiently to install foundations for the Peaker Plant. [This extracted groundwater
9 will be pumped into the adjacent Mandalay Canal, a manmade navigable channel that
10 connects with the Pacific Ocean. A discharge permit has been issued by the Regional
11 Water Quality Control Board in Los Angeles.] The monitoring is necessary to ensure
12 that this pumping does not impact wetlands near the project site. The City issued the
13 permit for installation of the monitoring wells because installation of the wells does not
14 commit SCE or the City to any actual development on the project site or any significant
15 consumption of water.

16 21. SCE submitted applications for a grading permit and for a site improvement
17 plan for the Peaker Plant on September 15, 2009. These applications were accepted for
18 processing and have been subjected to technical review in the normal manner by City
19 staff.

20 22. On September 23, 2009 Matthew Winegar, Director of Development
21 Services Department that includes the Planning Division, issued a letter to SCE advising
22 SCE that it must comply with the Water Use Neutrality Policy. A true and correct copy
23 of this letter is attached as Exhibit D to the Declaration of D.J. Moore submitted in
24 support of SCE's motion for a preliminary injunction.

25 23. Despite the letter of September 23, 2009, the City has at no time received
26 any proposal from SCE regarding compliance with the Water Use Neutrality Policy. To
27 my knowledge, no representative of SCE has ever called or requested a meeting with City
28 staff to discuss possible means of satisfying the Water Use Neutrality Policy since the

1 September 23, 2009 notification letter. I am aware of, and have been copied with,
2 correspondence between litigation counsel for SCE (the law firm of Latham & Watkins)
3 and the City's litigation counsel concerning application of the Water Use Neutrality
4 Policy to the Peaker Plant project. (See SCE Exhibits E, G, H, Q and R.)
5 Notwithstanding this detailed correspondence, no concrete proposal for complying with
6 the Water Use Neutrality Policy has been presented by SCE or its legal representatives.

7 24. Acceptable means of satisfying the Water Use Neutrality Policy would
8 include the provision of an independent water supply that did not depend upon City
9 sources and/or offsets provided by ensuring actual or enforceable reductions in use by
10 other existing water users in the City. These could be combined with enforceable
11 limitations on maximum water use by the proposed project to guarantee a zero increase in
12 net demand from the project.

13 25. On October 27, 2009, staff from the City Development Services
14 Department and Public Works Department met with representatives of SCE to review
15 various deficiencies in SCE site improvement plan and grading permit applications and
16 associated plans. As the plans and supporting information were incomplete in a number
17 of respects, SCE was directed to make various corrections to the plans and provide
18 various additional information. As of the date of execution of this Declaration, some of
19 the required corrections and additional information have been received, but the site plan
20 improvement and grading permit applications are still not complete.

21 26. In addition to obtaining site improvement plan approval, a grading permit,
22 and building permits, SCE must comply with all conditions imposed on the project by
23 the Coastal Commission in its Coastal Development Permit before beginning grading and
24 construction. Exhibit 8 is a true and correct copy of the final Coastal Development
25 Permit which was obtained by counsel for the City from the Coastal Commission. The
26 CDP conditions include the following:

27 a. Prior to construction, SCE must submit a revised Landscaping and
28 Restoration Plan to the Coastal Commission. (Condition 3.b, Exhibit 8, p. 59.)

1 b. Prior to grading, SCE must conduct a survey for burrowing owls on the
2 project site and submit a report to the Coastal Commission. (Condition 3.c,
3 Exhibit 8, p. 59.)

4 c. SCE must deposit \$ 500,000 in a trust account maintained by the City,
5 County of Ventura, California Department of Parks and Recreation, or qualified
6 non-profit corporation for improvement of passive public recreational facilities on
7 adjacent park lands. (Conditions 10.c, Exhibit 8, p. 62.)

8 d. SCE must comply with additional conditions set forth in an uncertified
9 Mitigated Negative Declaration prepared by the City. (Condition 2, Exhibit 8, p.
10 58; see SCE Exhibit B, p. 24.) The conditions include the following:

- 11 • SCE must contract for a Native American monitoring of grading and
12 construction activities on the site to mitigate potential cultural impacts.
13 The contract must be approved by the City Planning Department.
14 (Condition CUL-1, Exhibit 11, p. 122.)
- 15 • SCE must prepare and the City must approve a Traffic Control Plan
16 prior to commencement of work on the gas pipeline to the project site.
17 (Condition TT-2, Exhibit 11, p. 124.)

18 27. SCE has not at this time submitted either the contract for Native American
19 monitoring nor the Traffic Control Plan required by the CDP conditions. I am also
20 informed that SCE has not at this time satisfied the other conditions listed in paragraph
21 26 above. Absent compliance with all of the foregoing conditions, SCE cannot lawfully
22 proceed with the project.

23 **CPUC ORDER AND NEED FOR THE PROJECT**

24 28. Both in its application to the City and in its appeal to the Coastal
25 Commission SCE has sought to justify construction of the Peaker Plant in the coastal
26 zone on the ground that the project is needed to supply back-up electrical generating
27 capacity during peak periods of energy use (typically in the summer months) when the
28 statewide energy system would otherwise be unable to meet demands. SCE has

1 specifically relied on an Order issued by an Assigned Commissioner of the California
2 Public Utilities Commission ("CPUC") in 2006 concerning potential emergency capacity
3 needs believed to exist at that time. A true and correct copy of this Order is attached as
4 Exhibit A to the Declaration of D.J. Moore filed in support of SCE's motion for a
5 preliminary injunction.

6 29. The Order mandating construction of new peaker plants was specifically
7 intended to address possible shortfall of emergency generating capacity beginning in the
8 summer of 2007. As noted in the Order, there does not appear to be any actual or
9 anticipated long term shortage of electrical generating capacity. The Order references the
10 general regulatory and planning process conducted by the CPUC and concludes that "the
11 adopted procurement regime, described above, is successfully meeting California's
12 electric system needs and will continue to do so." (SEC Exh. A, pp. 7-8.)

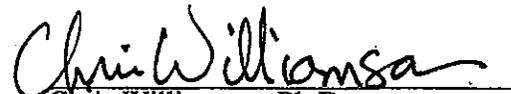
13 30. The Order nevertheless directed the expedited construction of up to five
14 new peaker plants with a total capacity of not more than 250 megawatts in order to
15 address possible peak demands in 2007 in the event of a recurrence of the extraordinary
16 "heat storm" and resulting surge in demand in the summer of 2006. (Order, pp. 2-7; SCE
17 Exh. A, pp. 7-12.) As further indicated in the Order, the period of exceedingly high
18 temperatures or "heat storm" was an extraordinary event which, in the words of the
19 Assigned Commissioner, has not been experienced in "recent history," including the last
20 30 years of recording by the California Independent System Operator ("CAISO"). (See
21 Order, p. 4, SCE Exhibit A, p. 9.) Notwithstanding the extreme nature of the heat wave,
22 the state electrical system "has been able to meet the resulting reliability challenge" and
23 did not suffer any significant outages.

24 31. Notwithstanding the low likelihood of any near-term recurrence and the
25 system's demonstrated capacity to continue functioning in such emergency conditions,
26 the Assigned Commissioner ordered SCE to construct "*not more than five*" small, black-
27 start-capable generating facilities with a total capacity of not more than 250 megawatts
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1 for the summer of 2007. (Order, pp. 2, 6; SCE Exhibit A, pp. 7, 11.) The Order did not
2 specify any location for development of these new facilities.

3 32. I am informed that, as stated in the Coastal Commission staff report for
4 SCE's appeal to the Coastal Commission, that four of the five possible new peaker plants
5 authorized by the Order were subsequently completed by SCE elsewhere in Southern
6 California. I am also informed that there has been no recurrence of the "heat storm"
7 conditions that occurred in 2006 and no time since 2006 when there has been any need for
8 additional generating capacity either in the Southern California region or in the State of
9 California as a whole. The City of Oxnard has not experienced any significant power
10 outages at any time since issuance of the PUC Order in 2006.

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12
13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct. Executed this 25th day of November 2009, at
15 Oxnard, California.


Chris Williamson, Ph.D

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LATHAM & WATKINS LLP
James L. Arnone (Cal. Bar No. 150606)
Damon P. Mamalakis (Cal. Bar No. 184489)
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355 South Grand Avenue
Los Angeles, California 90071-1560
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Email : damon.mamalakis@lw.com
dj.moore@lw.com

Attorneys for Real Party in Interest,
SOUTHERN CALIFORNIA EDISON

CONFIRMED COPY
OF ORIGINAL FILED
Superior Court of California
County of Los Angeles

DEC 07 2009

John A. Clarke, Executive Officer/Clerk
By Berta Jauregui Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

CITY OF OXNARD and CHRIS
WILLIAMSON,

Petitioners,

v.

CALIFORNIA COASTAL COMMISSION,

Respondent,

and

SOUTHERN CALIFORNIA EDISON, and
DOES 1 through 25,

Real Parties in Interest.

CASE NO.: BS 122248

Assigned to the Honorable David Yaffe
(LASC Department 86)

**DECLARATION OF MARK E. NELSON IN
SUPPORT OF REAL PARTY IN INTEREST
SOUTHERN CALIFORNIA EDISON'S
REPLY IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

Petition Filed: May 22, 2009

Hearing Date: December 14, 2009
Time: 9:30 a.m.
Place: Department 86

1 **DECLARATION OF MARK E. NELSON**

2 I, Mark E. Nelson, declare as follows:

3 1. I am the Director of Generation Planning and Strategy in the Generation
4 Business Unit at Southern California Edison ("SCE"). My present responsibility includes the
5 broad support of generation initiatives and regulatory efforts and management of the Project
6 Development Division. As such, I have first-hand knowledge of all matters referred to herein
7 and, if called upon to do so, could and would testify competently thereto under oath.

8 2. I have reviewed the City of Oxnard's ("City") Opposition to SCE's
9 Motion for Preliminary Injunction and the accompanying declarations, in particular the
10 declaration of Chris Williamson and Ken Ortega. I am responding to the allegations contained in
11 the City's Opposition (at page 5) and Mr. Williamson's declaration (at paragraphs 13-23).

12 3. I have been responsible for negotiating mitigation with the City during the
13 permitting of the McGrath Peaker project ("Project") from 2006 until the present. During the
14 three- year environmental review period, I met with the Mayor, members of the City Council,
15 and/or the City Manager on several different occasions to discuss City requests for mitigation. In
16 addition, I provided direction to members of my staff, our local public affairs department, and
17 other relevant SCE departments in the conduct of internal and external mitigation meetings
18 during this time period. I am also aware of a meeting that occurred between members of the City
19 Council and SCE Chief Executive Officer John Bryson during 2007 related to potential
20 mitigation. I attended all public hearings related to the California Coastal Commission ("CCC")
21 appeal for the Project.

22 4. The City's request for water offsets was first made in a City letter to the
23 CCC dated July 18, 2008. (A true and correct copy of the July 18, 2008 letter is attached hereto
24 as Exhibit (1).) During the initial CCC appeal hearing that occurred on August 8, 2008, several
25 Commissioners made reference to both this letter and a previous letter dated May 6, 2008, that
26 also made mitigation requests. At the hearing, several Commissioners stated they would be
27 favorably disposed to grant SCE's appeal if SCE provided the City's requested mitigation. I
28

1 provided direction to our spokesperson, David Kay, to agree to the City's request for mitigation.
2 However, during SCE's discussion with the CCC about the specific terms of the mitigation
3 conditions that would be required, Oxnard City councilman John Zaragoza intervened and
4 withdrew the City's request, stating that he did not believe the City Council would accept the
5 mitigation conditions they themselves had proposed due to their opposition to the Project.

6 5. The August 8, 2008 hearing was continued until a later date, and CCC
7 Executive Director Peter Douglas requested SCE work with the City on a joint mitigation
8 proposal which included the water supply issue. Consequently, on October 6, 2008, I met with
9 Mayor Tom Holden and City Manager Ed Sotelo to discuss this matter. At that meeting I
10 requested the City Council members provide SCE with all environmental mitigation requests that
11 they would like SCE to consider and they agreed to do so.

12 6. On or about October 14, 2008, I was informed that the CCC staff had
13 notified SCE that the CCC had provided direction to them to defer to the City on the water issue
14 and that the water offsets would be a required mitigation condition unless a different mitigation
15 agreement was reached with the City. CCC staff informed SCE that the City had requested SCE
16 to discuss an efficiency project to obtain water rights from Proctor & Gamble ("P&G"). SCE
17 responded that it would comply with the CCC's request and would contact P&G to obtain water
18 offsets. SCE was informed that the City did not have an offset program and SCE would need to
19 obtain water rights or offsets on its own.

20 7. As requested by the City, my staff contacted P&G on October 16, 2008, to
21 discuss the potential to obtain water offsets and was informed that P&G was not interested in
22 giving up its water rights or otherwise providing offsets to SCE. I then instructed my staff to
23 pursue other avenues to procure water rights as mitigation and retained water attorneys and other
24 experts through Latham & Watkins ("L&W") to assist SCE to locate and procure either water
25 rights or offsets. L&W contacted several potential sources of water rights and offsets
26 confidentially on SCE's behalf, including both the City and the Calleguas Municipal Water
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1 District ("Calleguas"), and found that water rights in this area were very difficult to obtain and
2 there was no offset market.

3 8. As a follow-up to this contact, my staff wrote to Calleguas on January 6,
4 2009, to determine if it would be willing to supply water to the project. (See Exhibit 6 to
5 Petitioners' Opposition, p. 51-52). Calleguas responded by letter on January 15, 2009 stating
6 that "Calleguas warrants that it can provide additional water to the City of Oxnard to service
7 Edison's proposed facility." (See Exhibit 6 to Petitioners' Opposition, p. 50).

8 9. During this same period of time, I requested my local public affairs
9 representatives to contact Mayor Holden and City Manager Sotelo several times to try and obtain
10 the list of mitigation requests we had been promised in order to further discuss this matter. The
11 City did not provide its mitigation requests to SCE.

12 10. On January 9, 2009 I was informed by my staff that the CCC had
13 contacted SCE to tell SCE that the City would not work with SCE or provide a list of mitigation
14 measures, nor would the City accept any mitigation as part of the Project's Coastal Development
15 Permit ("CDP") issuance. In response, I sent a letter to the City that same day to seek
16 confirmation of the information we had received from the CCC and to indicate my strong desire
17 to work with the City and be responsive to the City's request for mitigation. (A true and correct
18 copy of the January 9, 2009 letter to the City is attached hereto as Exhibit (2).) I requested that
19 the City reconsider and contact me to discuss a joint mitigation proposal. The City did not
20 respond.

21 11. Shortly thereafter, I instructed my staff to suspend its search for water
22 rights since the CCC staff informed us that the CCC would no longer require water offsets as a
23 mitigation measure since they were no longer specifically being requested by the City; however,
24 SCE would still need to provide evidence that an adequate water supply was available for them
25 to assure compliance with Local Coastal Program, Policy 42.

26 12. Several times between January 2009 and the April 9, 2009, hearing at
27 which the final mitigation package was adopted by the CCC, I instructed my local public affairs
28

1 managers to attempt to contact the City to see if it would be willing to discuss mitigation with
2 me. The Mayor, City Manager, and City Council were all contacted repeatedly during the
3 period; however, they either chose not respond or indicated they would not discuss specific
4 mitigation with SCE further. Consequently, I worked directly with the CCC on the mitigation
5 package that it felt was appropriate. The City did not request water offsets as part of this final
6 mitigation package and specifically informed the CCC that it would not accept mitigation from
7 SCE as part of its overhead presentation at the April 9, 2009, hearing. (A true and correct copy
8 of page 6 of the City's presentation at the April 9, 2009 hearing that I was handed by a City
9 representative at the hearing is attached hereto as Exhibit (3)).

10 13. Upon review of Mr. Williamson's Declaration, I note that while he
11 provides detailed information about many of the meetings held between SCE and the City, Mr.
12 Williamson fails to specifically mention the May 26, 2009 meeting between SCE and the City
13 where the City's Purported Water Policy was addressed. Present at that meeting was my staff
14 and other SCE personnel – Rudy Gonzales, Paul Phelan and Michelle Nuttall – and the City –
15 Chris Williamson, Ken Ortega and Anthony Emmert, the Water Division Manager. This meeting
16 was at the request of the City to discuss SCE's eventual application for a water connection and
17 SCE's compliance with the City's Purported Policy.

18 14. In response to the City's questioning of Calleguas' warrant to provide
19 water for the Project to the City (see paragraph 8 above), I had my staff meet with Calleguas in
20 October of 2009 to discuss water availability under the current water supply situation. If water
21 was not available, I instructed my staff to determine whether an alternate water supply could be
22 purchased, as suggested by the City. As a result, Calleguas has reaffirmed its commitment to be
23 able to supply sufficient water to the City to serve the Project, even under the reduced allocation.
24 A true and correct copy of Calleguas' letter to SCE dated December 3, 2009 is attached hereto as
25 Exhibit 4.

26 15. I have worked diligently during this period to satisfy the City's request for
27 water offsets. However, the City was unresponsive and unwilling to work with us on this matter
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1 during the project's environmental review period, the appropriate time to discuss such
 2 mitigation. For the City to now state that they have been willing to accepted mitigation from
 3 SCE particularly regarding water offsets, but that SCE has not been willing to discuss mitigation
 4 is false. Rather, while the City initially requested mitigation from SCE -- which SCE was willing
 5 to consider and adopt within reasonable parameters -- the City subsequently stated to the CCC
 6 and SCE that it would not accept any mitigation regarding the Project; water offsets or otherwise.

7 I declare under penalty of perjury under the laws of the State of California that the
 8 foregoing is true and correct.

9 Executed on this 7 day of December 2009, at Rosemead, California.

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 12 Mark E. Nelson
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EXHIBIT 1



DR. THOMAS E. HOLDEN
Mayor

OFFICE OF THE MAYOR
305 West Third Street • Oxnard, CA 93030 • (805) 385-7435 • Fax (805) 385-7595
E-mail: drtomholden@aol.com

July 18, 2008

Mr. Patriok Kruer, Chair
California Coastal Commissioners
c/o California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

**RE: Appeal of the City of Oxnard's Denial of the Edison Peaker Plant Proposal
Appeal No. A-4-oxn-07-096**

Dear Chair Kruer and Commissioners:

On July 24, 2007, the City of Oxnard City Council unanimously denied the Coastal Development Permit requested by Southern California Edison (SCE) to develop a 45-MW "peaker" electrical generation facility on the grounds that the project does not conform to the project site's Energy Coastal (EC) zone designation. The Coastal Act defines coastal dependent as a development or use which requires a site on, or adjacent to, the sea to be able to function at all (PRC §30101). SCE readily concedes that the proposed peaker project is not coastal dependent, but argues that a narrow reading of a subsection under the "Energy Coastal" heading within the City's certified Local Coastal Plan (LCP) allows a non-coastal dependent energy facility. We were very disappointed when Commission staff agreed with SCE's narrow reading opinion and ignored the entirety and intent of our certified LCP, as applied by the City of Oxnard. The entire City Council requested the appeal be denied in its letter of May 6, 2008, which is included as Attachment 1.

I am writing again on behalf of the entire City Council and apologize for not contacting you earlier as, in the last month, the City Council has dealt with a number of pressing matters. Last year about this time, our residents were attending the State Lands Commission and Coastal Commission hearings to defeat the BHP Billiton Cabrillo Port LNG project. Many of the LNG opponents also oppose the SCE project and plan to attend the Commission hearing.

EXHIBIT 1

Page 7

Letter to Mr. Patrick Krueer
RE: Edison Peaker Plant Proposal
July 18, 2008
Page 2

Nevertheless, the SCE appeal is before you, and the City of Oxnard urges you to deny the appeal for the following nine reasons:

1. Not Consistent with the Oxnard Certified LCP

The Mandalay Power Plant was originally developed in the late 1950's when few people cared about the then largely empty Oxnard coast. The power plant, now owned by Reliant Energy, uses ocean water for cooling and discharges directly over the sand into the surf. In the late 1980's when the Oxnard Local Coastal Program (LCP) was developed, the peaker plant site was the oil tank farm for the then SCE-owned power plant. The LCP recognized what was already there, a coastal dependent power plant that could be expanded as long as it still needed ocean water for cooling. It is a "necessary evil" coastal land use, along with the Ormond Beach power plant. There was no anticipation that the SCE power plants would later be sold off to private companies, the land split into separate parcels, and a non-coastal power plant developed. The Commission staff cited (page 13) another EC zone that is not on the coast, the SCE substation at the corner of Victoria Avenue and Hemlock Street, as rationale supporting their narrow reading conclusion. That substation was built long before the LCP was developed and is considered legal non-conforming; that argument is irrelevant. The Oxnard City Council's longstanding intent is that the EC zone allows only coastal-dependent energy facilities, and we disagree with the Coastal Commission staff's interpretation. We ask that the Coastal Commission defer interpretation of intent to the legislative body that originally adopted the coastal program.

2. There does not exist a CPUC Ruling to Install the Fifth Turbine At This Time

The CPUC Assigned Commissioner's order can not now be used to justify the proposed peaker plant on an "emergency" basis: the emergency need is not in the record. The Commission staff report is in error on page 54 where it states, "...the CPUC directive requires 250 MW of new SCE-owned generation." The CPUC emergency order clearly states on page 2 "...SCE should pursue the development and installation of up to 250 MW...for summer 2007 operation" and on page 6 "...SCE should pursue development of no more than five non-RFO generation units" by August 2007 (emphasis added). The CPUC order has been satisfied as SCE developed four inland peaker plants that are all operational. SCE is now just enhancing their local network and providing a method of black-starting the Reliant plant. While that is an understandable goal, they cannot use the emergency CPUC order which has been satisfied to ignore the comprehensive competitive procurement practices regulated by the CPUC. There is nothing in the record showing that the order which has been satisfied to ignore the comprehensive competitive procurement practices regulated by the CPUC. There is nothing in the record showing that the CPUC supports/approves the installation of the fifth turbine under the non-emergency conditions that now exist.

3. There are Other Suitable Sites that Need to Be Evaluated

Even if you assume a continued need to have Edison continue in its effort to site a fifth turbine now, the SCE analysis of alternative sites is unnecessarily restricted. The restriction to sites that will allow the black start of Mandalay and that contribute to solving an undefined future need to re-enforce the local transmission system is inappropriate (see Attachment 2). Even if the universe of sites evaluated are restricted to those SCE felt appropriate to meet the 2007 emergency, the SCE analysis indicates sites are available that meet all their goals except the goal of timing. These sites are suitable alternatives to the proposed project site that eliminate the significant environmental impacts on the coast and preserve the site for future coastal access, but require some additional site preparation and network enhancements which SCE claims they cannot do because of the "emergency" nature of the CPUC order. Since the CPUC order is not relevant, it is not germane that alternative sites require additional site preparation or development time. On page 52, the staff report states, "...each of the three customer owned substation sites within the Goleta area appear[s] to meet most of SCE's site selection criteria." The Commission should not allow SCE to end-run appropriate and long-established site selection procedures under the cover of a CPUC emergency order.

4. Prevents Consideration of Expanded Coastal Access and Remediation

Oxnard and Ventura County need more coastal access as our populations grow. After we complete our 2030 General Plan Update later this year, Oxnard will begin to update the LCP for the Commission's consideration. The City is already considering designating the SCE and Reliant sites for coastal dune preserve and access and recreation, thereby creating a 2.5 mile beach and back dunes resource by connecting the Mandalay Beach back dunes preserve to the south of the power plant to the remediation area and McGrath State Beach Park to the north. Staff is considering incentives, such as transferable development rights, that could lead to the eventual decommissioning of the Reliant plant which is technologically obsolete. An aerial photo of the surrounding existing dunes preserves parkland and beaches park is attached (Attachment 3) showing how the power plant is an unfortunate island in what would otherwise be a unique stretch of natural coastline. By approving the peaker plant, the Commission effectively prevents Oxnard and the Commission from the opportunity to even explore the feasibility of this concept. The SCE site could also be earmarked for remediation credits and eventually purchased by another energy or coastal project that needs to offset loss of coastal dune habitat.

5. Inadequate Environmental Justice Analysis

The environmental justice (EJ) analysis in the staff report is inadequate. By purposely choosing a turbine plant that is less than 50MW and restricting the siting to only one turbine to a site, SCE has bypassed the siting authority of the California Energy Commission's (CEC). Although that may be justified for the "emergency" that existed in 2007, it is the responsibility of the Coastal Commission to follow a similar EJ review process used by the

Letter to Mr. Patrick Kruer
RE: Edison Peaker Plant Proposal
July 18, 2008
Page 4

CBC that is conforming to the U.S. EPA 1998 Guidance. The geographic extent of the staff report's EJ analysis is too small as the Oxnard beaches serve all of Ventura County. Oxnard is a minority-majority community (68% Hispanic) that already has the largest number of undesirable land uses than any other city in the area: two power plants, two closed land fills, and one EPA-superfund site. Approving a third power plant is a potentially discriminatory action under State and/or Federal law and denies us the opportunity of expanding coastal access to our growing population, especially our youngest residents who are majority Hispanic.

6. Inadequate Cumulative Projects Analysis

The staff report's cumulative project's analysis is inadequate under CEQA. The analysis omits the pending Clearwater Port LNG proposal that would bring the LNG offshore terminal's gas pipeline on shore at the Reliant and/or SCE power plant sites. Permitting the SCE plant only encourages the obsolete Reliant plant to rebuild and encourages LNG developers to use these two sites for their pipeline landfall. The Clearwater Port LNG proposal will soon come to the Commission and Oxnard will once again face the possibility of 30-inch high pressure gas lines running under our streets past high schools and hospitals. Under CEQA, the Clearwater Port LNG proposal should have been included in the cumulative analysis as it is a proposed project at this exact location. A map of the proposed LNG pipeline is attached as Attachment 4.

7. Creates Several Significant Unmitigatable Impacts

The proposed project 80 foot stack will be visible from many areas along the coast, especially when it is in operation and creates a large vapor plume which was not addressed in the impact analysis. The new stack and plume, when combined with the existing and larger Reliant stack and plume, together will dominate the western horizon of the entire county. This cumulative impact was not addressed and is considered significant by the City. Special Condition 6 removes the screening trees that the City had requested along Harbor Boulevard to screen the peaker plant from the 292-unit Northshore residential development immediately to the southeast of the project site. This is another unmitigated negative impact created by the project. A photo simulation of the stacks and plumes is attached (Attachment 5).

8. Water Supply is Not Available

On January 15, 2008, the City Council adopted a water supply policy in response to concerns over the City's ability to serve planned development and anticipated further reductions in water supply from the State Water Project due to drought and other restrictions. The policy basically states that any large water user that was not anticipated in the 2005 Urban Water Management Plan (UWMP) will have to provide a new source for its water or create water use credits by offsetting existing water use in a credible permanent manner. The peaker plant would use an estimated 9.4 million

Letter to Mr. Patrick Krueger
RE: Edison Peaker Plant Proposal
July 18, 2008
Page 5

gallons per year, about 28.8 acre feet, or roughly the equivalent of 50 single-family homes. Unless SCE provides verifiable permanent offsets to existing water users, the City Council's policy precludes providing City water to the facility. This topic was not addressed in the staff report, and SCE should be required to arrange for the offset water credits before the project is even considered for approval.

9. Located in the Preliminary FEMA 100-Year Flood Zone

The preliminary FEMA flood zone map shows the peaker site in the 100-year flood zone (see Attachment 6). In 1969, the Reliant plant was flooded and out of operation for several days. This topic was not addressed in the staff report.

In the alternative, should the Commission elect to override the City's action and grant the appeal, we ask that you instead postpone your action until the October meeting in the Los Angeles/Orange County area so that more of our residents will have an opportunity to be heard, the several omitted issues raised above can be addressed by Commission staff, and we can meet with SCE to discuss mitigations. City-requested mitigations could include, but are not limited to, the following:

1. Prevent the possible future expansion of energy facility uses on the site by creating a larger buffer to the adjoining residential and park sites and parceling off the unused southernmost portion of their parcel and dedicating it to the City.
2. Contribute towards the planning and development of coastal access and back dunes preservation at the Mandalay Beach park site that orientates the park use away from the SCE facility and implements the LCP for that area.
3. Identify verifiable and permanent water use offsets equal to the anticipated water demand of the peaker plant.

Although we fully support SCE's efforts to meet current and future electricity demand and are more than willing to work with them in many ways, the City continues to oppose this particular project on this particular coastal site. If it does not need to be on the coast, it should not be on the coast. We are on the front lines – literally on the beach in a manner of speaking - in trying to keep land uses that do not need to be on the coast, off the coast.

EXHIBIT 1

Page 11

Letter to Mr. Patrick Kruer
RE: Edison Peaker Plant Proposal
July 18, 2008
Page 6

Once more, we urge the Commission to affirm the City Council's denial of this permit.

Very truly yours,



Dr. Thomas E. Holden
Mayor

Attachments:

1. City Council Letter, May 6, 2008
2. Expert Rebuttal to SCE Technical Siting Criteria and Conclusions
3. Potential Coastal Access and Dunes Preservation Expansion
4. Clearwater Port Proposed Landfall and Pipeline Routes
5. Simulation of the Two Stacks and Plumes
6. FEMA Flood Map, March 2008

cc: Dianne Feinstein, United States Senator
Barbara Boxer, United States Senator
Lois Capps, Member of Congress, 23rd District
Joe Coto, California State Assembly
Sheila Kuehl, California State Senator, 23rd District
Fran Pavley, California Assembly Member, 41st District
Pedro Nava, California Assembly Member, 35th District
Members of the Ventura County Board of Supervisors
Edmund F. Sotelo, Oxnard City Manager
Marty Robinson, Ventura County Chief Executive Officer

EXHIBIT 1

Page 12

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/14/09

DEPT. 86

HONORABLE DAVID P. YAFFE

JUDGE

C. HUDSON

DEPUTY CLERK

HONORABLE
9.

JUDGE PRO TEM

B. JAUREGUI, COURTROOM ASST.

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

C. CRUZ, CSR# 9095

Reporter

9:30 am BS122248

Plaintiff PHILIP A. SEYMOUR (X)
Counsel ARTHUR B. WALSH (X)

CITY OF OXNARD ET AL
VS
CALIFORNIA COASTAL COMMISSION

Defendant DAMON P. MAMALAKIS (X)
Counsel TERRY T. FUJIMOTO (X)

170.6 JAMES C. CHALFANT

NATURE OF PROCEEDINGS:

REAL PARTY IN INTEREST, SOUTHERN CALIFORNIA EDISON'S,
MOTION FOR PRELIMINARY INJUNCTION;

STATUS CONFERENCE;

The matter is called for hearing.

Motion by Southern California Edison (SCE) for a preliminary injunction is denied without prejudice.

This proceeding is a petition for writ of mandate brought by the City of Oxnard (City) to challenge an administrative decision made by the California Coastal Commission (CCC) to issue a coastal development permit to SCE to build a power plant in a portion of the coastal zone that is within the City of Oxnard.

SCE is named as a real party in interest in the proceeding, but seeks no relief other than to defeat the petition brought by the City and uphold the administrative decision made by the CCC. SCE is joined herein as real party in interest because it was the true adversary of the City in administrative proceeding before the CCC.

Despite the cuteness with which it is worded, the motion by SCE that is before the court seeks a mandatory injunction to compel the City of Oxnard to

MINUTES ENTERED 12/14/09 COUNTY CLERK

12/14/09

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/14/09

DEPT. 86

HONORABLE DAVID P. YAFFE

JUDGE

C. HUDSON

DEPUTY CLERK

HONORABLE
9.

JUDGE PRO TEM

B. JAUREGUI, COURTROOM ASST.

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

C. CRUZ, CSR# 9095

Reporter

9:30 am

BS122248

Plaintiff

PHILIP A. SEYMOUR (X)

Counsel

ARTHUR B. WALSH (X)

CITY OF OXNARD ET AL

VS

Defendant

DAMON P. MAMALAKIS (X)

CALIFORNIA COASTAL COMMISSION

Counsel

TERRY T. FUJIMOTO (X)

170.6 JAMES C. CHALFANT

NATURE OF PROCEEDINGS:

issue the subordinate permits that it needs to construct the power plant in the City of Oxnard. The appropriate remedy to obtain a mandatory injunction against a public official is by a petition for ordinary mandate, pursuant to section 1085 of the Code of Civil Procedure, to compel the City to perform an allegedly ministerial act. The real issue raised by such petition, if and when it is filed, will be whether or not the City has discretion to determine whether the power plant will have available to it sufficient water to generate power, before it issues the subordinate building permits that will allow the power plant to be built.

By attempting to obtain such relief by a motion for provisional remedy, SCE obscures the central issue raised by its motion and fails to plead the facts that are necessary to constitute a cause of action to obtain the permanent relief that it needs. The moving papers do not reveal any reason why the City does not have the discretion to determine whether the power plant will be able to operate before it permits the plant to be built.

The motion for preliminary injunction is therefore denied, but the denial is without prejudice to whatever right SCE would otherwise have to seek and obtain a writ of mandate to compel the appropriate city officials of the City of Oxnard to issue the permits that SCE seeks, as "a duty resulting from their office" or as a "right to which SCE is entitled"

12/14/09

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/14/09

DEPT. 86

HONORABLE DAVID P. YAFFE

JUDGE

C. HUDSON

DEPUTY CLERK

HONORABLE
9.

JUDGE PRO TEM

B. JAUREGUI, COURTROOM ASST.

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

C. CRUZ, CSR# 9095

Reporter

9:30 am

BS122248

Plaintiff

PHILIP A. SEYMOUR (X)

Counsel

ARTHUR B. WALSH (X)

CITY OF OXNARD ET AL

VS

Defendant

DAMON P. MAMALAKIS (X)

CALIFORNIA COASTAL COMMISSION

Counsel

TERRY T. FUJIMOTO (X)

170.6 JAMES C. CHALFANT

NATURE OF PROCEEDINGS:

as those phrases are used in section 1085 of the Code of Civil Procedure.

Status conference is held.

Petitioner shall file and serve an opening brief on or before May 17, 2010.

Respondent shall file and serve an opposing brief on or before June 14, 2010.

Petitioner may file and serve a reply brief on or before June 24, 2010.

All briefs to be served by hand delivery or facsimile.

The Administrative Record is to be lodged in Department 86 on June 24, 2010.

A hearing on the merits is set for July 8, 2010 at 9:30 a.m. in this department.

Notice is waived.

<p align="center">MINUTES ENTERED 12/14/09 COUNTY CLERK</p>
--

12/14/09

1 CITY OF OXNARD, OFFICE OF THE CITY ATTORNEY
2 ALAN HOLMBERG, City Attorney, State Bar No. 66216
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23 CITY OF OXNARD and CHRIS WILLIAMSON

24 SUPERIOR COURT OF THE STATE CALIFORNIA

25 FOR THE COUNTY OF LOS ANGELES

26 CITY OF OXNARD and CHRIS
27 WILLIAMSON,

28 Petitioners,

v.

CALIFORNIA COASTAL COMMISSION,

Respondent,

and

SOUTHERN CALIFORNIA EDISON, and
DOES 1 through 25

Real Parties in Interest.

CASE NO.: BS 122248

Action Filed: May 22, 2009
Hearing on Writ Petition:

**DECLARATION OF ANTHONY
EMMERT IN SUPPORT OF
PETITIONERS' MOTION FOR
PEREMPTORY WRIT OF MANDATE**

(CEQA Matter Under Public Resources Code
§§ 21000, et seq.)

Time: 9:30 a.m.
Date: July 20, 2010
Dept: 86
Judge: Hon. David Yaffe

DECLARATION OF ANTHONY EMMERT

1 DECLARATION OF ANTHONY EMMERT

2 I, Anthony A. Emmert, declare:

3 1. I am the Water Resources Manager of the Water Resources Division of the
4 Public Works Department of the City of Oxnard ("City") and have held this position since
5 2004. The Water Resources Division is responsible for the City's water, wastewater,
6 recycled water and stormwater systems, including procuring, producing, treating and
7 delivering water supplies for all water consumers in the City of Oxnard, and for planning,
8 developing, administering, operating and maintaining the City's water supply, treatment
9 and distribution systems. I have personal knowledge of the matters stated herein and
10 could and would competently testify thereto if called upon to do so.

11 2. I make this declaration in support of the City's Motion for Peremptory Writ
12 of Mandate, and specifically in response to the Declaration of Mark E. Nelson filed by
13 real party in interest Southern California Edison ("SCE") in support of its Opposition to
14 Petitioners' Request for Consideration of New Evidence.

15 3. As part of my responsibilities as Water Resources Manager, I have been the
16 representative of the Public Works Department primarily responsible for communications
17 with SCE concerning water supply proposals for SCE's proposed McGrath Peaker Plant and
18 for compliance with the Water Use Neutrality Policy adopted by the Oxnard City Council in
19 January, 2008. Other City representatives who have participated in evaluation and
20 discussions of SCE's water supply proposals include Ken Ortega, former City Public Works
21 Director, Dr. Chris Williamson, Senior Planner of the City's Development Services
22 Department, and counsel from the office of the City Attorney.

23 4. I have reviewed the Declaration of Mark E. Nelson In Support of Real Party's
24 Opposition to Petitioners' Request for Consideration of New Evidence executed on June 24,
25 2010. Although Mr. Nelson indicates that he is the Director of Generation Planning and
26 Strategy for SCE's Generation Business Unit, he has not been routinely involved in
27 discussions with the City regarding water supply for the SCE's proposed McGrath Peaker
28 Plant. It is apparent that Mr. Nelson either is not fully aware of the current facts concerning

I
DECLARATION OF ANTHONY EMMERT

1 SCE's water supply proposals, or has not been allowed by counsel to disclose critical facts in
2 his declaration.

3 5. The lead person for SCE in discussions with the City has been Ms. Michele
4 Nuttall, the SCE project manager for the McGrath Peaker Plant Project. I have been in
5 regular communication with Ms. Nuttall by telephone, email and several face to face
6 meetings since SCE first apparently became serious about complying with the City's Water
7 Use Neutrality Policy in late 2009.

8 PROPOSED IMPORTED WATER SUPPLY

9 6. I have reviewed Exhibit B to the Declaration of Mark E. Nelson, which is a
10 letter dated March 19, 2010 to Ms. Nuttall from the managers of the Metropolitan Water
11 District of Southern California ("MWD") and Calleguas Municipal Water District
12 ("CMWD"), and have previously discussed the conceptual proposal outlined in that letter
13 with Ms. Nuttall.

14 7. From the City's perspective, the special arrangement that SCE suggested in the
15 March 19, 2010 letter is problematic for a number of reasons. First and foremost, the letter
16 indicates that imported water from the State Water Project (SWP) would be used to supply
17 the McGrath Peaker Plant. Notwithstanding the stated willingness of MWD and CMWD
18 staff to commit water from the SWP, the current problems of the SWP and uncertainty of
19 future supplies from this source are well known to everyone informed on the water supply in
20 the State. The unreliability of the system is perhaps best illustrated by the fact that the City's
21 allocation of imported state water, which is received through CMWD, a member agency of
22 MWD, was cut back by CMWD in mid-2009, and remains cut back by 15% to the present
23 day. This is despite an above-average precipitation year in Northern California and a
24 temporary lifting of federal courts restrictions on SWP pumping from the Sacramento-San
25 Joaquin Delta. Based on these facts, the City would not regard a paper commitment by
26 CMWD to provide additional water for SCE's exclusive use as a safe or reliable guarantee
27 that the McGrath Peaker Plant would create no net increase in demand on City water
28 supplies.

1 8. A second major problem with the March 19, 2010 conceptual proposal is that
2 if allocations of additional SWP water were in fact available from CMWD and MWD, the
3 City's first priorities would be to apply this water to the deficit in City supplies which already
4 exists due to the major cutbacks in imported water supplies and local groundwater supplies
5 suffered by the City in 2009, and thus assure that this water remained available for use by the
6 City's existing users and development projects already planned in the City's General Plan
7 and accounted for in the City's 2005 Urban Water Management Plan. When the Water Use
8 Neutrality Policy was adopted in January, 2008, it was contemplated that new water users
9 that were required to obtain offsets for their projected water use would do so by securing
10 reductions in use by other existing water users within the City, either directly or through
11 participation in a City program established for that purpose. Although a new water user
12 could theoretically also satisfy the Water Use Neutrality Policy by obtaining an entirely new,
13 independent source of water, it was *not* contemplated that the new user could comply by
14 simply placing itself in line ahead of other users already anticipated in the 2005 UWMP who
15 might benefit from an increase in available water supplies obtained from the City's existing
16 sources, e.g. imported water from CMWD. From a policy perspective (and potentially a legal
17 perspective), it would be extremely difficult for the City to allow certain developers to obtain
18 priority over other, already planned uses simply because the developer received special
19 treatment from CMWD or MWD staff, while all other users are limited by the cutbacks
20 recently imposed by CMWD on the City's imported water supply.

21 9. As a final matter, there is no certainty that the conceptual proposal set out in
22 the March 19, 2010 would actually be approved by the decisionmaking boards of MWD and
23 CMWD. As the discussion of the SCE's proposed transfer of Fox Canyon Groundwater
24 Management Agency groundwater pumping rights illustrates, the City has learned from
25 lengthy experience that letters prepared by agency staff at SCE's request do not necessarily
26 take into account all of the legal or practical intricacies that will actually be involved in
27 implementing the proposal, nor do they necessarily take into account all of the policy
28 implications that might ultimately be considered by agency decisionmakers. For example,

1 although SCE apparently enjoys a good relationship with MWD and CMWD staff, it is by no
2 means clear that the decisionmaking boards of these agencies would wish to set a precedent
3 by making special arrangements for new water supplies for SCE while supplies available to
4 all of CMWD's wholesale water customers have been cut back due to shortages in the state
5 water system for an indefinite amount of time.

6 PROPOSED TRANSFER OF GROUNDWATER PUMPING RIGHTS

7 10. In light of the foregoing concerns, discussions between the City and SCE since
8 March, 2009 have focused on a proposed transfer to the City of groundwater pumping rights
9 possessed by SCE in the groundwater basin managed by the Fox Canyon Groundwater
10 Management Agency ("Fox Canyon GMA"). In a letter dated March 26, 2010 (Exhibit C to
11 the declaration of Mark Nelsen), staff of the Fox Canyon GMA informed representatives of
12 SCE that such a transfer was theoretically possible. Based on this representation, the City
13 undertook a good faith evaluation of the proposed transfer of pumping rights as a means of
14 satisfying the Water Use Neutrality Policy. Subsequent events, however, have shown that
15 this proposal faces serious challenges.

16 11. After City staff conducted further discussions with SCE and identified a
17 number of questions and issues that needed to be resolved concerning the proposed transfer
18 of groundwater pumping rights, I personally met with Ms. Nuttall, Gerhardt Hubner, Deputy
19 Director of the Fox Canyon GMA, and Curtis Hopkins, Principle, Hopkins Groundwater
20 Consultants, a consultant to the City, on June 22, 2010 to discuss the proposal. At this
21 meeting Deputy Director Hubner advised us that at the time he signed the March 26, 2010
22 letter on behalf of Fox Canyon GMA, he had not been advised by Fox Canyon GMA staff
23 that the groundwater pumping rights (Historic Extraction Allocation in Fox Canyon GMA
24 nomenclature) that SCE was proposing to transfer to the City were for agricultural use, not
25 for municipal use. Because the transfer would involve a net reduction in water available for
26 agricultural uses, it is highly uncertain that the Fox Canyon GMA would actually approve the
27 transfer. If the Fox Canyon GMA Board of Directors were to approve the transfer, SCE
28 would have to ensure that any agricultural activity currently supported by pumping from

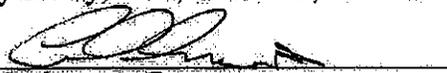
1 SCE's allocation would be permanently terminated, i.e. for each 2 acre feet of historic
2 extraction allocation pumping rights transferred to the City, a corresponding acre of
3 agricultural land would have to be enforceably and permanently withdrawn from production
4 in order to compensate for the net reduction in groundwater remaining available for
5 agricultural uses. Ms. Nuttall indicated at the meeting that the SCE-owned parcel associated
6 with the groundwater pumping rights is currently being farmed under a long-term lease, and
7 that she would need to research whether it would be feasible to renegotiate the lease and
8 permanently fallow a portion of the parcel.

9 12. Because of the potential problems with transferring agricultural pumping
10 allocations, the balance of the meeting focused on potential transfers of municipal &
11 industrial allocations earned (e.g. substations that had previously used groundwater for fire
12 suppression systems that were no longer doing so) or pumping allocations from land that had
13 earned an agricultural pumping allocation during the 1985 to 1990 Fox Canyon GMA
14 historical period, but had been developed by SCE as a municipal & industrial use (e.g.
15 substations, transmission tower bases). Deputy Director Hubner agreed that this approach
16 would be best, but expressed concern that it should be fully researched. Ms. Nuttall
17 presented two substations that had earned a small amount of groundwater allocation for fire
18 suppression purposes that had terminated water use, and therefore could potentially be
19 transferred to the City; however, the amount was not enough to cover the projected project
20 water demand. The meeting concluded with Ms. Nuttall agreeing to conduct further
21 investigation to determine if any agricultural land owned by SCE that had historical pumping
22 allocation had been taken out of agricultural production and converted to municipal &
23 industrial usage. As of this date, Ms. Nuttall has not yet provided further information as to
24 her findings.

25 13. As a net result of the foregoing discussions and events, SCE has not at this
26 time presented any proposal for offsets or an independent water supply that would satisfy the
27 City's Water Use Neutrality Policy. Based on current information, it is unknown whether
28 SCE will in fact be able to present such a proposal.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 2nd day of July, 2010, at Oxnard, California.


Anthony A. Emmert

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MATTHEW G. WINEGAR, AICP
Development Services Director

Development Services Department
214 South C Street • Oxnard, CA 93030 • (805) 385-7896 • Fax (805) 385-7417

September 23, 2009

Southern California Edison
2244 Walnut Grove Avenue
Rosemead, CA 91770
Attn: Sumner J. Koch

Southern California Edison
300 North Lone Hill Avenue
San Dimas, CA 91773
Attn: Larry Johnson

The Gas Company
555 West 5th Street
Los Angeles, CA 90013
Attn: Boramy Ith

Cable Engineering Services
10640 Sepulveda Blvd. Suite 1
Mission Hills, CA 91345
Attn: Manuel Ponce

RE: Permit Applications for the Proposed 45 MW Southern California Edison (SCE) Peaker Plant Located at 251 North Harbor Blvd, Oxnard, CA

Dear Mssrs Koch and Johnson, and SCE Contractors:

The Development Services Department of the City of Oxnard is in receipt of a grading and site improvement plan submittal (9/15/2009), a gas line encroachment request and plan (5/6/2009), and has received inquiries regarding a cable encroachment permit along Harbor Boulevard. This letter serves as a notification to SCE, its contractors, and other parties seeking to develop a 45 megawatt "peaker plant" at 251 North Harbor Boulevard, Oxnard, CA, that the Development Services Department will not issue any permits related to this project until SCE has secured a water supply in compliance with the City's policy regarding a new project not included in the 2005 Urban Water Management Plan (UWMP).

The Coastal Commission revised findings for Appeal A-4-OXN-07-096, dated August 13, 2009, state on page 62 that the proposed peaker plant "...would require 27 acre feet of water per year for the first two years of operation and approximately 25 acre feet in years three and four, and 24 acre feet in each subsequent year of operation." These estimates are based on the maximum licensed operating level of 2,000 hours per year. Since there is no guarantee that the peaker plant will not operate at maximum level, the Public Works Director establishes that the water need for the peaker is 27 acre feet per year, followed by 25 and 24 acre feet, respectively as stated above.

SCE proposed to the Coastal Commission that a letter from the Calleguas Municipal Water District (Calleguas), dated January 15, 2009, established a water supply for the peaker plant. The City of Oxnard, Public Works Department, Water Services Department, is the only

authorized water purveyor to the project site. The City is currently, and for the foreseeable future, pumping from back-up ground water credits as current demand exceeds available supply, including that portion of the City's supply delivered from Calleguas, which is fixed by Calleguas. The Public Works Director finds that the Calleguas letter is not adequate for purposes of water supply for the proposed SCE peaker plant.

In anticipation of a possible drought and other water supply issues, the City Council established a water supply policy on January 15, 2008 (cited in the Coastal Commission revised findings on page 63) that stipulates new large water users that were not included in the City's 2005 UWMP would need to either: (1) participate in a verifiable permanent water offset program, or (2) wait for water availability. The Public Works Director finds that the proposed SCE peaker plant is a large water user subject to this policy. Public Works is developing an offset program related to the GREAT Program (construction of the Advanced Water Treatment Facility that will generate groundwater credits and offset potable water with recycled water). New large water users may reserve future water supply by participating in up-front construction costs. However, the GREAT facilities will not be on-line until 2013 at the earliest and the peaker plant is proposed for operation in 2011. As a result, until and unless SCE provides another reliable verifiable source of water equivalent to 27 acre feet per year, the City will not issue any permits related to the peaker plant until permanent water supply is established.

Any peaker-related staging of equipment or building materials on the project site or another SCE site shall not be permitted, as it will be considered outside storage subject to zoning and other regulations.

If SCE and/or contractors desire to suspend plan checks or withdrawal plans, please contact Rob Roshanian, Development Services Director, at (805) 385-8903. For questions regarding the GREAT Program and water supply, contact the Public Works Director at (805) 385-8281.

Sincerely,


Matthew Winegar, AICP
Development Services Director

cc: Honorable Dr. Thomas E. Holden, Mayor
Edmund Sotelo, City Manager
Alan Holmberg, City Attorney
Ken Ortega, Public Works Director
Rob Roshanian, Development Services Director
Sue Martin, Planning Manager

Bonnie Neely, Chair, Coastal Commission
Peter Douglas, Executive Director, Coastal Commission
Michael Peevey, President, CPUC
Paul Clanon, Executive Director, CPUC

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October 5, 2009

VIA FEDEX

Phil Seymour
The Sohagi Law Group
11999 San Vicente Boulevard, Suite 150
Los Angeles, California 90049-5136

File No. 014098-0149

Re: Oxnard v. Coastal Commission: Additional Request for Documentation
Demonstrating the City's Water Supply Policy

Dear Phil:

This letter responds to your September 30, 2009 email regarding the documents that Southern California Edison ("SCE") has requested the City of Oxnard (the "City") provide it concerning the City's purported January 15, 2008 water policy (the "Water Policy"). As you know, on September 23, 2009, the City sent SCE a letter in which the City stated that it is refusing to issue any ministerial permits related to SCE's McGrath Peaker Project (the "Project"), which are wholly unrelated to the Project's water usage, until SCE complies with this purported Water Policy. However, the City has failed to provide SCE with a copy of such a policy, evidence that the City adopted such a policy, anything demonstrating that such a policy is applicable to the Project, or any documentation showing the purported Water Policy's specific requirements, applicability thresholds, definitions and compliance mechanisms. Without any of this information, it is not possible for SCE to confirm that such a policy exists, is applicable to the Project, and, assuming it applies, what SCE must do to comply.

You claimed in your email that SCE has been aware of the City's Water Policy for many months and has "chosen to ignore" it. That is incorrect. All that SCE knows about the purported Water Policy is that no such policy appears to exist. SCE is aware that a sample Water Policy was presented to the Oxnard City Council in a staff report on January 15, 2008. On that date, it appears from the hearing testimony that the City Council accepted the staff report, but that the Council did not take formal action adopting any Water Policy. In fact, the City Council could not have adopted the policy presented in the January 15, 2008 staff report because the sample policy omitted numerous key details (including but not limited to thresholds that distinguish the different obligations on City water users and methods for complying with the policy), and the City Council did not give City staff any direction on those issues.

Instead, based on the January 15, 2008 hearing testimony and staff report, it appears that City staff asked the Council for direction at that hearing on the preparation of a future Water

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Policy and its requirements based on the sample staff provided. This is underscored by the fact that during City staff's presentation to the Council regarding the sample Water Policy, City staff made statements that such a policy could be implemented through an amendment to City Ordinance 2240, and/or included in the City's 2020 General Plan Update and its corresponding Environmental Impact Report. However, SCE has reviewed each of those documents and the City's Municipal Code (the "Code"), and has found no reference to or discussion of the purported Water Policy. Further, SCE has reviewed the publicly available information on the City's website concerning ordinances adopted by the City following January 15, 2008, and has found no evidence that the City has adopted such a policy.

Accordingly, there is nothing in City staff's January 15, 2008 staff report that constitutes a "policy" with sufficient requirements or details that would enable a water user in the City to comply with it, and there is nothing in the January 15, 2008 hearing testimony or the City Code that indicates the City Council formally adopted such a Water Policy. As a result, SCE has no guidance as to the purported Water Policy's terms, and has had no opportunity to confirm whether the City's claims about this supposed policy are accurate. A properly adopted policy would answer the following: (1) what does SCE need to do so that the Project complies with the policy (if anything); (2) if the policy requires the payment of an offset fee, what is the fee that would be assessed against the Project; (3) does the policy allow SCE to provide a water supply guarantee in lieu of an offset fee; and (4) if a water supply guarantee is permitted, what are the specific requirements for that guarantee?

In order to understand the City's claims about the purported Water Policy, SCE has requested that the City provide it both with documentation demonstrating that the City has approved such a Water Policy, and a copy of that policy containing its applicability thresholds, definitions, requirements and compliance mechanisms. To date, the City has supplied nothing to SCE. It should take no more than a few days for the City to provide SCE with the requested documentation. While SCE had hoped that the City would timely respond to its request and that the City would supply the requested information informally, that has not happened. Accordingly, on October 2, 2009, we served the City with a request under the California Public Records Act seeking documents related to the purported Water Policy. For your reference, a copy of that request is attached hereto as Exhibit A.

In addition, SCE has conducted a thorough review of the City's Code, and has found no existing regulation or other authority that entitles the City to withhold *any* ministerial permits on any basis related to water supply at this time. The sample Water Policy that City staff presented to the City Council on January 15, 2008 was intended to be a part of a contingency plan that would only apply in cases where the City has declared that a Water Shortage Emergency exists. SCE has investigated whether the City has declared a Water Shortage Emergency, and based upon calls to the City, City staff have confirmed that it has not.

As you know, the California Coastal Commission has already approved the Project, and although the City has appealed that approval in state court, the City has not sought an injunction to stop construction. Prior to its letter, the City had informed SCE that it would not issue ministerial permits because it did not want SCE constructing the Project prior to a decision on the City's lawsuit challenging the Coastal Commission approval. It was only after the City

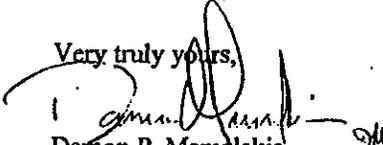
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rejected SCE's informal suggestion that the parties jointly stipulate to a preliminary injunction schedule that the City, for the first time, told SCE that its purported Water Policy prevents the issuance of the Project's ministerial permits. Given this, it appears to SCE that the City's refusal to issue the Project's ministerial permits is simply the City impermissibly engaging in "self-help" to stop a project it does not like.

If the City intends to deny SCE's ministerial permit requests and plan approvals, then we request written confirmation of the basis for the denial, and, if the City believes administrative appeals are necessary before a court challenge to such a denial, specific information regarding the means to administratively appeal any such denial the City intends to make. Further, SCE reminds the City that a regulated utility project is exempt from obtaining discretionary city permits and is only required to seek engineering review and associated permits for strictly ministerial actions. To the extent that the City has determined that any permit can be withheld or denied at its discretion, SCE is not required to obtain it prior to construction.

SCE wants the City to be aware that it fully intends to continue pursuing its rights concerning the permits for its Project, and to ensure that the City lawfully conducts its ministerial duties. Please do not hesitate to contact me if you have any questions or if you would like to discuss these issues.

Very truly yours,



Damon P. Marmalakis
of LATHAM & WATKINS LLP

Attachment

cc: Southern California Edison

MARGARET MOORE SOHAGI

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October 13, 2009

Damon Mamalakis, Esq.
Latham & Watkins LLP
355 South Grand Avenue
Los Angeles, CA 90071-1560

VIA EMAIL

Re: SCE Peaker Plant Permitting Issues

Dear Damon:

This is a response to your letter of October 5, 2009. I have been out of the office most of the time since receiving the letter. Since the City is in the process of responding to your Public Records Act request of October 2, 2009, I will not attempt to attach complete documentation concerning the City's water policy to this letter. However, I believe the attachments will be sufficient to document that City's basic position.

The basic water policy at issue is set forth in the staff report for the January 15, 2008 City Council meeting. I believe you have a copy of this report as you have made reference to it, and it is available on the City's website. However, I am also sending a copy with this letter. The relevant options for the SCE Peaker Plant project are the B-2 and B-3 options set forth on page 2 of the report. These options are (1) participate in a City program to provide new water supplies to offset project use; or (2) provide a confirmed alternate water supply. Since the City programs contemplated (e.g. the GREAT program) will not provide actual new water supplies for several years, SCE's short term options are realistically limited to securing a new non-City water supply or securing offsets of existing City water use to compensate for its new use of City water.

It is understood that further actions were contemplated to implement the basic policies set forth in the report. However, it was and is City staff's understanding of the City Council

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Attachment No. 17
Page 1 of 4

Damon Mamalakis
October 13, 2009
Page 2

hearing that the basic policy was endorsed by City Council and staff authorized to apply it. This is reflected in both the actions of the City and documentation such as Environmental Impact Reports prepared by the City since adoption of the policy. Attached for your reference are excerpts from the Oxnard Village Specific Plan Final EIR (August 2008) and Ormond Beach Specific Plan Recirculated Draft EIR (July 2008) specifically referring to the policy. (Attachments 2, 3.) The Oxnard Village project has since been approved by the City, and the policy implemented in the Development Agreement for the project. (Attachment 4; see sections 3.6, 4.2-4.5.) At the present time the policy is also being applied to the proposed Jones Ranch project. Although this project is still in the pre-application planning phase, the project sponsors have been fully informed of the applicability of the January 15, 2008 water policy and will be required to provide offsets, most likely in the form of contributions to the City's long-range plans to develop offsetting water supplies. This option is, of course, open to SCE if it can modify its development schedule to pace the development of the offset supplies. Other projects have also been required to incorporate mitigation measures that will ensure adequate City water supplies even those these projects were anticipated in the City's 2005 Urban Water Management Plan.

Your letter expresses concern that the City has not yet adopted formal criteria for determining which new water users are considered "large" water users and which may qualify for an exemption as "small" water users. With all due respect, the issue seems academic with respect to the Peaker Plant and its projected usage in excess of 20 acre feet of water per year. We are not dealing with a single family dwelling here, or small in-fill commercial or apartment project. The City, which is responsible for the ensuring reliable water supplies for all existing users, has made a determination that the project falls outside any reasonable conception of a "small" water user, and informed your client of this determination in writing. Although I sense you are attempting to set up some sort of void-for-vagueness argument here, the claim simply is not well-taken on the facts presented.

Your letter also expresses concern over a lack of "guidance" as to the policy's full terms and implications. The questions posed are obviously rhetorical. Were SCE sincerely interested in learning how to comply with the policy, I'm sure its representatives would have gone in and talked to City staff as they have been invited to do. This is hardly a matter that requires formal correspondence between lawyers. In any event, I believe that it is reasonably clear that all the policy requires SCE to do is demonstrate that its water consumption will not result in a net reduction of existing City water supplies. This may be done in the short term by supplying water from an independent source, or arranging

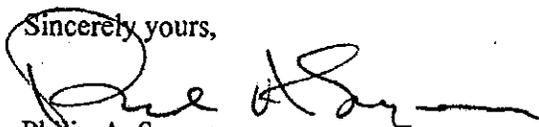
Damon Marmalakis
October 13, 2009
Page 3

for reductions in use by existing City water users which may be credited as offsets to SCE. There is no fee program per se, but financial or in-kind contributions toward City offset programs (e.g. the GREAT program) are the most obvious method by which offset credit may be gained. The amount of the contribution must be determined from estimated water usage and projected City project costs, technical matters which the City is prepared to discuss with SCE at any time.

As for the issue of withholding permits, I believe you are missing the big picture. The City is the supplier of municipal water within the City, and is not prepared to commit to supply water for the Peaker Plant project or other unanticipated water-consuming projects when this supply cannot be guaranteed from existing sources. Absent a water supply, the project cannot operate and issuance of permits would essentially be pointless, except perhaps to encourage false expectations or subsequent litigation by SCE when water service proves unavailable.

As a final matter, I believe the attachments more than adequately demonstrate that the water policy is not illusory, nor manufactured to thwart SCE's development plans. The policy has been and is being applied to other projects, although most projects fall within the category A recognized by the policy, i.e. new water users anticipated and accounted for in the existing City Urban Water Management Plan ("UWMP"). The policy is being applied to the Jones Ranch project, the other major new project that is not anticipated in the UWMP. It will be fairly applied to SCE, assuming there is any desire at all on the part of SCE to cooperate. You may also reasonably anticipate that further steps will be taken to refine and implement the policy as discussed in the January, 2008 report. These further steps should alleviate SCE's alleged concerns about lack of adequate formality or guidelines for application and implementation. In the meantime, however, the City does not agree with your apparent position that the policy cannot be enforced or applied because it lacks the detail or formality you believe is necessary to constitute grounds for denying or delaying issuance of building permits.

Sincerely yours,



Philip A. Seymour
Special Counsel for City of Oxnard

Attachments (separate by email)

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Damon Mamalakis
October 13, 2009
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cc. Alan Holmberg
Dr. Chris Williamson
Ken Ortega
Anthony Emmert

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City of Oxnard

Oxnard Village Specific Plan Project

Final

Environmental Impact Report

SCH # 2006101099

Volume I

August 2008

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City Council Policy Regarding Development Approval

On January 15, 2008, the City Council adopted a policy that ensures mitigation measures are imposed within the approval of new development so that the associated demand remains consistent with available supplies.¹²⁹ This policy and the manner in which the applicant is implementing regarding the allocation program ensures that development approval will take place at the pace anticipated in the 2005 UWMP (and likewise, the analysis within this document) so that the growth in water demand does not exceed available supply. The net result of this policy will ensure that project approvals include conditions that: a) control pace of construction of any given project (and thus controls the pace at which water demand increases), b) allows participation in the contribution toward the development of additional water supplies that offsets the demand associated with the project, or c) suspends project approval until sufficient supplies are available to support the anticipated project demand.

Water Supply Reliability

Based on the detailed analysis contained in the WSA as summarized above, the facts are sufficient for the City to conclude that it will have a reliable portfolio of water supplies to meet anticipated demand for both the project and the presumed cumulative development anticipated under the City's current General Plan. Based on the facts and analysis included in the WSA and summarized above, there is a reasonable likelihood these supplies will be available within the timeframe necessary to meet projected demands through 2030.

However, as acknowledged above, if completion of the GREAT Program facilities and Augmented M&I Supplemental Program are delayed or if development proceeds more quickly than is reasonably anticipated, a short-term demand could exceed supply. The City has anticipated this potential impact on water supply reliability and adopted the policy referenced above that includes in every project approval conditions and mitigation measures that will ensure supply will be available to serve future demands. These and other water supply conditions and mitigation measures are described below.

Water Transmission and Distribution Infrastructure. The City's water transmission and distribution system consists of a wide variety of pipe types and sizes. Asbestos cement pipe (ACP), polyvinyl chloride (PVC) pipe, and cast iron pipe (CIP) are the most common types of pipe. More than 60% of the system consists of pipes ranging from 6 to 8 inches in diameter.

Pipelines in the vicinity of the Oxnard Village Specific Plan area include a 12-inch pipeline along the southern boundary of the Plan area under the Southern Pacific Railroad tracks, a 12-inch pipeline spanning from the Esplanade Shopping Center to Oxnard Boulevard and an 18-inch pipeline along Wagon Wheel Road.

The primary sources of water for the project would be Blending Station Nos. 1 and 3, located to the south, approximately 2.85 miles and 3.5 miles from the Oxnard Village Specific Plan area,

¹²⁹ City of Oxnard, "Report and Direction to Staff re: Water Supply Management," November 30, 2007. A copy of "Report and Direction to Staff re: Water Supply Management," is available for review at the City of Oxnard Planning and Environmental Services Division located at 214 South C Street Oxnard, California.

ORMOND BEACH SPECIFIC PLAN RECIRCULATED DEIR



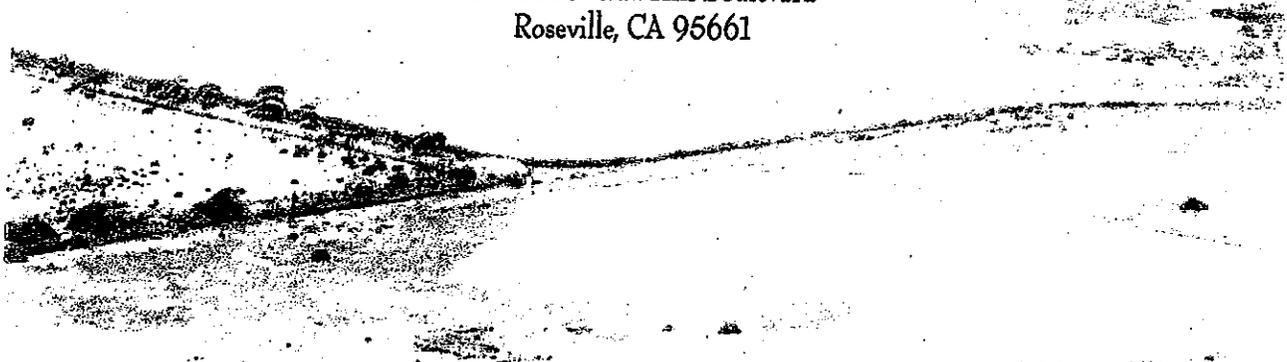
Submitted to:

City of Oxnard Development Services
214 South C Street
Oxnard, CA 93030

Submitted by:



URS Corporation
1380 Lead Hill Boulevard
Roseville, CA 95661



July 2008

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Attachment No. 19
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shift its reliance between its local sources and its purchase of imported water. In California, it is relatively common for the northern region of the state to experience differing amounts of rainfall than the southern regions. In other words, the northern part of the state may have a series of very wet years, while the southern portion may have very dry years. In other years, the reverse may be true. Since the City's imported water derives primarily from Lake Oroville, which is dependent on hydrologic conditions in the northern part of the state, this source is "immune" from the conditions in the south. In contrast, the City's local supplies (groundwater) are dependent on the hydrologic conditions in the southern portion of the state. The City has the capability to alter its proportional reliance on these two sources based on hydrologic conditions. This same diversity of sources allows the City to respond to emergency conditions as well. For example, in prior years, the City's access to imported water has been temporarily suspended either for maintenance or as a result of earthquake damage. Between the City's groundwater wells and its access to local water through UWCD, the City has local infrastructure capable of meeting the entirety of the City's supply needs. Locally, the City's access to groundwater through both the UWCD and City facilities creates redundancy should a local emergency impact one system or the other. Certainly, the City could dramatically increase its reliance on imported water for temporary periods, should local conditions warrant.

Water Shortage Emergencies: Reductions in Water Use. The Oxnard Municipal Code grants the City Council the authority to impose voluntary or mandatory reductions on water use throughout the City. These Code provisions provide a high degree of flexibility to control customer demand based on emergency water shortage conditions.

City Council Policy Regarding Development Approval

On January 15, 2008, the City Council adopted a policy that ensures mitigation measures are imposed within the approval of new development so that the associated demand remains consistent with available supplies. This policy and the manner in which the applicants are approaching their projects ensure that development approval will take place at the pace anticipated in the 2005 UWMP (and likewise, the analysis within this document) so that the growth in water demand does not exceed available supply. The net result of this policy will ensure that project approvals include conditions that a) control the pace of construction of any given project (and thus controls the pace at which water demand increases); b) allows participation in the contribution toward the development of additional water supplies that offsets the demand associated with the project; or c) suspends project approval until sufficient supplies are available to support the anticipated project demand.

Water Supply Reliability

Based on the detailed analysis contained in the Ormond Beach WSAs as summarized above, the facts are sufficient for the City to conclude that it will have a reliable portfolio of water

MARGARET MOORE SOHAGI

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November 2, 2009

Damon Mamalakis
Latham & Watkins LLP
355 South Grand Avenue
Los Angeles, CA 90071-1560

Re: *City of Oxnard, et al. v. California Coastal Commission, et al.*
SCE Peaker Plant Permitting Issues – Response to Your Letters of 10/22/09
and 10/28/09

Dear Damon:

This letter responds to your letters of October 22 and October 28, 2009. I will not attempt to respond to all points raised in your letters, but only those that appear material to the current differences of opinion between the City and Southern California Edison (“SCE”) concerning application of the City’s water policy to SCE’s Peaker Plant project.

October 27, 2009 City Council Hearing

At its hearing on October 27, 2009, the City Council reaffirmed and provided further direction to City staff concerning implementation of the water use policy previously adopted on January 15, 2008. Notwithstanding your interpretation of various statements made by staff during the hearing, it is clear that the City Council reaffirmed policy already adopted in 2008 and did not adopt the water-use neutrality policy for the first time. The City Council also expanded the policy to require water use neutrality – i.e. no net increase in water consumption – for all new development projects in the City, including those already accounted for in the 2005 Urban Water Management Plan (“UWMP”). This expansion of the policy is based on new information showing that the shortfall on available water supplies will be substantially greater than anticipated when the policy was first adopted in 2008. The additional circumstances include cutbacks in supplies from the Calleguas Municipal Water District (“Calleguas”) and ongoing drought affecting groundwater sources.

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November 2, 2009
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There was also discussion at the hearing as to whether an ordinance codifying the water policy should be adopted by the City Council. The City Council concluded that this is not necessary. The water policy has been successfully applied to date without substantial difficulties or objections other than from your client. It is also anticipated that the water supply shortage currently facing the City will not be a permanent phenomenon in light of City programs such as the GREAT program which are being implemented to augment City water supplies. In addition, both the City's general plan and Urban Water Management Plan will be updated in the near future to address water supply issues in light of current and anticipated future conditions. It is expected that broad consideration will be given to all possible solutions to the water shortage problem, as well as to competing policy considerations, in these processes. While the decision to forego a formal ordinance is, of course, subject to revisitation, the City Council does not believe in light of this background that the adoption of an interim ordinance codifying the water neutrality policy is necessary at the present time. This does not mean that there is no official water policy, nor that City staff will disregard the City Council's stated policy for SCE or for any other pending projects.

Threshold for Application of the Policy

The water neutrality policy was designed to be implemented in conjunction with CEQA review requirements. Projects that meet the standards for a categorical exemption from CEQA are also exempt from the offset requirements of the water neutrality policy. As you are aware, the Peaker Plant project did not qualify for a categorical exemption, and does not fall within any of the thresholds for new structures or expansion of existing uses that are subject to categorical exemptions under CEQA.

Voluntary Water Use Limitations

You have suggested that the Peaker Plant project could qualify for exclusion from the water use neutrality policy by voluntarily agreeing to water use restrictions that would place it below the threshold for applicability of the policy. The City agrees that voluntary (but legally enforceable) reductions in maximum water use could be part of a package of measures satisfying the water use neutrality policy. However, the City does not believe that projects otherwise subject to the policy can claim an outright exemption simply by partially reducing their water use. Projects which do not fall within the exempt category must still provide offsets for their actual water use.

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There also appear to be some substantial obstacles to any actual agreement with SCE as to how compliance with the water policy would be achieved. As an initial matter, it is a bit troubling that you take the position in your letters that application of any and all "discretionary" City policies to the project is pre-empted by an order of the Public Utilities Commission. The City does not agree with this view. Nevertheless your raising of the issues opens the question of whether SCE would consider any negotiated limitation on water consumption legally enforceable, whether voluntarily agreed to or not.

There also appears to be substantial disagreement over what the actual maximum water use of the Peaker Plant will be. The Coastal Commission findings, which your client apparently feels are authoritative on all other issues, state that water use will be up to 27 acre feet per year ("AFY"). Granted that all estimates of water usage are necessarily mere estimates, the City has been provided with no sound reason for disregarding the demand figures presented to the Coastal Commission. The figure of 1 - 2 AFY that you apparently propose appears preposterous. Even assuming that a ceiling of 1 - 2 AFY could be set for use of water for electrical generating operations without simultaneously undermining the entire rationale for the project, several AFY will be required to establish and maintain landscaping, and this usage will be greatest in the years immediately following construction when the City's water shortage will be most acute. If SCE does wish to have a water use limitation considered as a partial means of satisfying the City's water use neutrality policy, I would suggest that appropriate technical information be presented to the City to show that the proposed voluntary limitations will be actual, achievable, feasible and enforceable. Offsets will still be required for the expected use. As you stress in your own letters, the City must apply the water policy evenly and fairly to all proposed projects in the City. So far this has been done. The City cannot afford to make special exceptions for SCE without risking more serious consequences for the policy as a whole.

PUC Pre-Emption

You contend that application of the City's water policy is "discretionary" and therefore pre-empted by PUC Order No. 131-D, Section XIV(B). No other authority is cited for the pre-emption argument. There is some question, which I will not explore here, as to whether Order No. 131-D applies to the Peaker Plant project, which has a generating capacity of less than 50 megawatts. (See Order, § III.A.) But in any event, we disagree that the decision at issue here is "discretionary." As you make out in your letters, building permits and grading permits are generally considered "ministerial,"

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meaning that the permit will normally issue so long as the relevant plans comply with specified criteria, however complex these criteria may be. We know of no principle of law that converts a "ministerial permit" to a "discretionary" one simply because one of the criteria adopted for approval involves a determination of adequate water supply.

Other Issues

The City disagrees that there has been any selective or inequitable application of the water policy to pending development projects. There appears to some effort in your letter of October 22, 2009 to cherry pick facts and statistics from past environmental impact reports and other documents. Leaving aside the issue of accuracy for the moment, what your letter fails to acknowledge is that the available information has changed quite a bit over time. The most important recent development was Calleguas' announcement last spring that it was cutting back water deliveries to the City by 23% for the fiscal year 2009-2010. Drought related pressure on groundwater supplies has also continued to darken the water supply picture. In all instances, however, the City has attempted, and will continue to attempt, to apply its water neutrality policy evenhandedly based on the information available at the time of each decision.

It also appears from your letters that City staff and your client have somewhat different recollections of various past communications. This may well be inevitable. The simple fact, however, is that SCE has been advised on several occasions, including notification in writing on September 23, 2009, of the requirement that water use for the project be offset by 100%. SCE has yet to put forward any proposal for complying, as opposed to sidestepping, the water use neutrality requirement. The City continues to await such a proposal.

As a final matter, your letters appear to complain of alleged "inconsistencies" in the City's responses to various SCE permit applications. There has been no inconsistency. Permits were issued for the monitoring wells because the permits did not authorize any actual development that would commit SCE or the City to water consumption. The other permits requested to date are for development intrinsically related to construction of the Peaker Plant itself. The Peaker Plant will consume substantial amounts of water from construction onward. In the interests of minimizing delays and in anticipation that SCE will eventually submit plans to comply with the water use neutrality policy, City staff has continued to review and advise SCE of other deficiencies in its building and grading applications. I am utterly amazed that you find

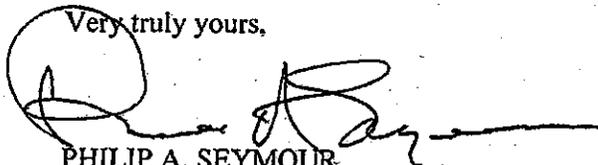
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this objectionable. I assume that your client would find it far more objectionable if the City ceased processing its applications altogether until the water supply issue is resolved. If that is your client's preference, however, please notify me (or City staff directly) so that we can stop expending staff time and accruing processing fees on these applications.

As indicated above, the City does intend to apply and enforce its water neutrality policy with respect to the SCE Peaker Plant project, along with all other pending projects in the City. At this point, before you rush off to Court, I might also remind you that SCE must comply with all other requirements for obtaining City permits, as well as with the terms and conditions of the Coastal Development Permit issued by the Coastal Commission. I hope your next communication will indicate that SCE does intend to comply with all of these requirements, and that SCE will submit a concrete proposal for achieving water use neutrality in the near future.

Very truly yours,



PHILIP A. SEYMOUR
for THE SOHAGI LAW GROUP, PLC

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