

**CALENDAR ITEM**

**43**

A 67  
S 35

02/05/07  
WP 1980.1  
S. Young

**GENERAL LEASE - INDUSTRIAL USE**

**APPLICANT:**

AES Huntington Beach, LLC  
21730 Newland Street  
Huntington Beach, CA 92646

**AREA, LAND TYPE, AND LOCATION:**

11.78 acres, more or less, of tide and submerged lands in the Pacific Ocean, offshore of Huntington Beach State Park, near the city of Huntington Beach, Orange County.

**AUTHORIZED USE:**

Continued use and maintenance of one 14-foot diameter seawater intake pipeline extending offshore approximately 1,650 feet and one 14-foot diameter discharge pipeline extending approximately 1,500 feet offshore. The pipelines are utilized as components of a once through cooling system associated with the AES upland Huntington Beach Generating Station.

**LEASE TERM:**

20 years, beginning August 8, 2006.

**CONSIDERATION:**

First year rent of \$82,000, which is referenced as the "Base Rent", effective August 8, 2006. The "Base Rent" to be adjusted annually by the Consumer Price Index (CPI) for all Urban Consumers, Los Angeles-Riverside-Orange County, CA. The State reserves the right to fix a different "Base Rent" periodically during the lease term, as provided in the lease.

**SPECIFIC LEASE PROVISIONS:**

Insurance:

Combined single limit coverage of no less than \$2,000,000

Bond:

\$500,000

Revised 02/02/07

-1-

CALENDAR PAGE
MINUTE PAGE

CALENDAR ITEM NO. 43 (CONT'D)

Other:

- 1) Any proposed lease assignment, sub-lease agreement or use of the existing facilities for other than cooling water for an electric generating plant requires prior authorization of the Commission.
- 2) The Commission reserves the right to modify the Lease to require the Applicant to implement an alternative, environmentally superior technology, such as an alternative cooling system, should such system become feasible and be required by another permitting Federal or State agency.
- 3) The Applicant is required to provide an annual detailed written report to the Commission identifying conditions imposed upon it by other agencies pursuant to Federal and State laws including the Federal Clean Water Act, section 316(b) and California's Porter-Cologne Water Quality Act. The report shall indicate and provide evidence of Applicant's full compliance or engagement in an agency-directed process to achieve full compliance with the identified imposed conditions. The Commission will conduct a public hearing five years after the effective date of the lease in order to publicly review and evaluate the Applicant's compliance with the terms of the lease.
- 4) The annual reports will be available to the public on the Commission's website.

**OTHER PERTINENT INFORMATION:**

1. Applicant has the right to use the uplands adjoining the lease premises.
2. On August 8, 1957, the Commission authorized the issuance of a 49-year General Lease - Right of Way Use to Southern California Edison (SCE) for the construction, use and maintenance of a 14-foot diameter cooling water intake pipeline and a 14-foot diameter discharge pipeline extending offshore of Huntington Beach State Park and serving the upland SCE electric generating station. The consideration for the lease was a one-time payment of \$6,553.12. Subsequently, on February 27, 1998, the Commission approved the assignment of the lease from SCE to AES Huntington Beach, LLC (AES).
3. The lease expired August 7, 2006, and AES has applied for a new lease.
4. The intake and outfall structures are used for the intake and return of sea water for use in a once through cooling (OTC) system for the existing

CALENDAR ITEM NO. **43** (CONT'D)

upland electric generating station. The proposed lease contains language which prohibits the use of the structures for any use other than OTC and specifically prohibits the use of the structures for a desalination facility, unless prior approval of the Commission is received.

**5. California Energy Commission:**

The California Energy Commission (CEC) is the State's primary energy policy and planning agency. In addition to forecasting energy needs, developing energy technologies and promoting energy efficiency, the CEC licenses thermal power plants having a capacity of 50 megawatts or more. The upland power plant facility was licensed by the CEC by an emergency proceeding consistent with an Executive Order from the Governor (CEC Order, Docket No. 00-AFA-13C), during the energy crisis of 2001. The CEC's 2001 approval of AES's retooling and restarting of Units 3 and 4 of the upland generating station included Conditions of Certification to identify and mitigate significant impacts that could not be effectively evaluated during the emergency certification. OTC systems that use ocean water expose marine organisms to the impacts of entrainment and impingement. In order to address this issue, AES funded a one-year study of the impacts of entrainment and impingement of the OTC system. The study found that entrainment of marine organisms at the facility represented a substantial degradation of the quality of the marine environment. CEC staff considers the entrainment losses due to water withdrawal for Units 3 and 4 to be significant. The commenting resource agencies, including the California Department of Fish and Game, Coastal Commission, the Santa Ana Regional Water Quality Control Board, and the National Marine Fisheries Service, agreed with the CEC's determination that the losses of marine resources caused by the intake of cooling water are significant and require mitigation. To mitigate for the impacts, AES has provided \$5,511,000 mitigation funding to the Huntington Beach Wetlands Conservancy for the purchase, restoration and maintenance, for ten years, of 66.8 acres of tidal wetlands.

**6. State Water Resources Control Board and the Regional Water Quality Control Board:**

The State Water Resources Control Board (SWRCB) is developing a Statewide 316(b) Policy (Policy) with requirements for both new and existing OTC power plants. The requirements will be implemented through the National Pollutant Discharge Elimination System (NPDES) permitting process enforced by the SWRCB's Regional Water Quality

CALENDAR ITEM NO. 43 (CONT'D)

Control Boards (Boards). The proposed Policy will be implemented on a statewide basis in order to assure consistency throughout the various Boards.

An NPDES Permit was recently issued to AES by the Santa Ana Regional Water Quality Control Board (Board) that requires compliance with section 316 (b) of the Federal Clean Water Act. The Board adopted Order No. R8-2006-0011, NPDES No. CA 0001163, on August 25, 2006, authorizing the issuance of the permit to AES with provisions. The Board's permit includes a number of Special Provisions including, but not limited to:

- That AES will conduct quarterly stakeholder meetings during the conduct of a Comprehensive Demonstration Study to discuss progress of issues pertaining to Permit compliance and implementation of the Clean Water Act Section 316(b) Phase 2.
- A Re-opener Provision that allows the Permit Order to be reopened to address any changes in State or federal plans, polices or regulations that would affect the water quality requirements for the discharges.
- That AES will implement a Best Management Practices and Pollution Prevention.

7. Under the provisions of the proposed Lease, any revisions of the State's 316(b) Policy or further action by the SWRCB or the RWQCB requires that AES comply with the revised 316(b) Policy.

8. **Desalination:**

On September 6, 2005, the city of Huntington Beach certified an Environmental Impact Report (EIR) for Poseidon Resources Corporation's proposed Huntington Beach Seawater Desalination Facility to be located adjacent to the AES facility in Huntington Beach. Poseidon Resources proposes to utilize AES's existing seawater intake and outfall pipelines as components of the proposed upland desalination facility. The Santa Ana RWQCB has issued an NPDES Permit to Poseidon. Poseidon's Coastal Development Permit application is pending before the Coastal Commission. Under the terms of the proposed lease, any sub-lease agreement or use of the existing facilities for any use other than for cooling water for the upland electric generating plant requires prior

CALENDAR ITEM NO. 43 (CONT'D)

authorization of the Commission. To date, Poseidon has not submitted an application to the Commission for a lease, sublease, or other authorization in connection with the proposed co-use of the facilities on State lands.

9. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a statutorily exempt project. The project is exempt because it involves emergency repairs to public service facilities necessary to maintain service.

Authority: Public Resources Code section 21080 (b) (2) and Title 14, California Code of Regulations, section 15269 (b).

10. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370, et seq. Based upon the staff's analysis of the project, consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

**APPROVALS OBTAINED:**

California Energy Commission  
Regional Water Quality Control Board

**EXHIBITS:**

- A. Location and Site Map
- B. Land Description

**RECOMMENDED ACTION:**

IT IS RECOMMENDED THAT THE COMMISSION:

**CEQA FINDING:**

FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO PUBLIC RESOURCES CODE SECTION 21080 (b) (1) AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15269 (b), EMERGENCY REPAIRS TO PUBLIC SERVICE FACILITIES NECESSARY TO MAINTAIN SERVICE.

Revised 02/02/07

-5-

CALENDAR PAGE
MINUTE PAGE

CALENDAR ITEM NO. 43 (CONT'D)

**SIGNIFICANT LANDS INVENTORY FINDING:**

FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

**AUTHORIZATION:**

AUTHORIZE ISSUANCE TO AES HUNTINGTON BEACH, LLC OF A GENERAL LEASE - INDUSTRIAL USE, BEGINNING AUGUST 8, 2006, FOR A TERM OF 20 YEARS, FOR CONTINUED USE AND MAINTENANCE OF ONE 14-FOOT DIAMETER SEAWATER INTAKE PIPELINE AND ONE 14-FOOT DIAMETER DISCHARGE PIPELINE AS SET FORTH IN THE LEASE ON FILE IN THE SACRAMENTO OFFICE OF THE STATE LAND COMMISSION, ON LANDS AS SHOWN ON EXHIBIT A AND AS DESCRIBED ON EXHIBIT B ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF; A BASE RENT FOR THE FIRST YEAR IN THE AMOUNT OF \$82,000 EFFECTIVE AUGUST 8, 2006, WITH THE STATE RESERVING THE RIGHT TO ADJUST THE BASE RENT ANNUALLY BASED ON THE CONSUMER PRICE INDEX AND FURTHER RESERVING THE RIGHT TO PERIODICALLY FIX A NEW BASE RENT DURING THE TERM OF THE LEASE, AS PROVIDED IN THE LEASE; LIABILITY INSURANCE WITH COVERAGE OF NO LESS THAN \$2,000,000 COMBINED SINGLE LIMIT; SURETY BOND IN THE AMOUNT OF \$500,000.