

**CALENDAR ITEM  
C56**

A 19  
S 44

06/22/17  
PRC 4196.1  
C. Hudson

**GENERAL LEASE – INDUSTRIAL USE**

**APPLICANT:**

NRG California South LP

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

5.74 acres, more or less, of tide and submerged land in the Pacific Ocean, near the city of Oxnard, offshore Ormond Beach, Ventura County.

*AUTHORIZED USE:*

Use and maintenance of one 14-foot-diameter seawater intake conduit and one 14-foot-diameter discharge cooling water conduit.

*LEASE TERM:*

8 years, beginning April 24, 2017.

*CONSIDERATION:*

\$47,250 per year, with an annual Consumer Price Index adjustment.

*SPECIFIC LEASE PROVISIONS:*

**Insurance:** Liability insurance in an amount no less than \$1,000,000 per occurrence, or equivalent staff-approved self-insurance program.

**Bond:** \$1,000,000.

**Other:**

1. On or before December 31, 2018, Lessee shall submit a detailed plan for Commission review and approval for the removal or other disposition of all existing offshore site improvements associated with the Ormond Beach Generating Station (OBGS).
2. Lessee shall provide all funds necessary to pay for any and all reasonable costs and expenditures paid or incurred by the Commission, its staff, or both for review and approval of any plan or related materials required under this lease,

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including but not limited to any review or preparation of reports, documents or other actions as required pursuant to the California Environmental Quality Act (CEQA), plan reviews, and/or amendments.

3. Lessee shall conduct external inspections of the lease facilities using diver/ROV video or high resolution side-scan sonar on a biannual basis, on or before December 31, on each odd year of the lease term, and when warranted by extraordinary circumstances such as an accident or a significant seismic event, unless the schedule is modified by mutual agreement.
4. Lessee shall submit current internal inspection reports of the conduits, including an integrity assessment of the facilities, prepared by a California Registered Civil/Structural Engineer, by December 31, 2017, and when warranted by extraordinary circumstances, such as an accident or a significant seismic event, unless the schedule is modified by mutual agreement.
5. No other use of the improvements under Lease No. PRC 4196.1 is allowed without the prior approval of the Commission.
6. Lessee's use of the 14-foot-diameter discharge cooling water conduit as a wastewater outfall shall adhere to the terms and conditions of Lessee's National Pollution Discharge Elimination System (NPDES) permit, as such permit may be amended, extended, or revised by the California Los Angeles Regional Water Quality Control Board (RWQCB). Specifically, the Lessee shall comply with the State Water Resources Board Once-Through-Cooling Policy, including Section 2.C(3).

**BACKGROUND:**

On April 28, 1969 ([Calendar Item C34, April 28, 1969](#)), the Commission authorized a 20-year term with two 14-year renewal options for a General Lease – Industrial Use. The lease was issued to Southern California Edison Company (SCE) for the construction and operation of one 14-foot-diameter seawater intake conduit extending approximately 2,499 feet offshore and one 14-foot-diameter discharge cooling water conduit extending approximately 1,789 feet offshore.

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The conduits were constructed and are utilized as components of a once-through cooling (OTC) system associated with the OBGS.

The first 14-year renewal was authorized by the Commission on April 26, 1989 ([Calendar Item C13, April 26, 1989](#)). The Commission authorized an assignment of lease from SCE to Ormond Beach Power Generation, LLC, (OBPG) on December 16, 1998 ([Calendar Item C24, December 16, 1998](#)). In 1999, OBPG changed its name to Reliant Energy Ormond Beach, LLC (Reliant) and subsequently converted from a limited liability company to a corporation in March 2002. That lease expired on April 23, 2003.

On August 19, 2003, the Commission authorized the last 14-year term to Reliant ([Calendar Item C18, August 19, 2003](#)). Prior to the lease expiring, Reliant changed its name to NRG California South LP. Commission authorization for the name change was not required because ownership did not change. That lease expired on April 23, 2017.

NRG California South LP is now applying for a short-term lease. The Applicant intends to retire the facility in accordance with the State Water Resources Control Board's OTC compliance deadline of December 31, 2020. The additional term of the lease beyond this deadline is to allow the Applicant sufficient time to determine and execute the removal or other disposition of all existing offshore site improvements.

### **STAFF ANALYSIS AND RECOMMENDATION:**

#### **Authority:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 30001.2; California Code of Regulations, title 2, sections 2000 and 2003.

#### **Public Trust and State's Best Interests Analysis:**

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. Pursuant to the common law Public Trust Doctrine, the State holds these lands and resources for the benefit of all people of the State for statewide Public Trust purposes and needs that include, but are not limited to, water-dependent commerce, navigation, fisheries, water-related recreation, habitat preservation, open space. Uses that otherwise do not fit squarely into the tradition Public Trust purposes identified by the common law, but that do not significantly interfere with the trusts upon which such lands and resources are held, are water-dependent, and otherwise are in the best interests of the State, are generally consistent with the common law Public Trust Doctrine and the Commission's responsibilities, as trustee, under

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that doctrine. In *Marks v. Whitney*, the court emphasized that “the public uses to which tidelands are subject are sufficiently flexible to state encompass changing public needs. In administering the trust the state is not burdened with an outmoded classification favoring one mode of utilization over another.” In administering its responsibilities and exercising its discretionary authority, the Commission applies the principles of the Public Trust Doctrine in harmony with other legal requirements and policy objectives, with consideration given to the specific factual context of the proposal and the needs and values of a healthy California society.

OBGS is a natural-gas-fired steam electric generating facility that was constructed in 1968 and is located onshore in the city of Oxnard, Ventura County. OBGS currently operates two conventional steam turbine units with a combined generating capacity of 1,500 megawatts of electrical power serving the general public in the Southern California region.

The seawater intake conduit extending approximately 2,499 feet offshore draws water from the Pacific Ocean to the electric generating unit and the discharge conduit extending approximately 1,789 feet offshore discharges OTC water back into the Pacific Ocean from the electric generating unit. The conduits are utilized as components of an OTC system associated with OBGS. The surface water withdrawals and discharges are regulated by a NPDES permit approved by the Los Angeles RWQCB.

OBGS maintains a total pumping capacity rated at 685 million gallons per day, with a condenser flow rating of 654 million gallons per day. On an annual basis, OBGS withdraws substantially less than its design capacity due to its low generating capacity utilization. When in operation and generating the maximum load, OBGS can be expected to withdraw water from the Pacific Ocean at a rate approaching its maximum capacity.

In 2010, the State Water Resources Control Board (State Water Board) adopted a Statewide Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling (OTC Policy). Specifically, through the process of drawing millions of gallons of water every day to cool steam for generating electricity, facilities that utilize OTC as part of their facility operation, such as the OBGS, kill millions of fish, larvae, eggs, and other creatures. The OTC Policy establishes uniform, technology-based standards to implement federal Clean Water Act section 316(b), which requires that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse impacts associated with the cooling water intakes on life in the ocean and estuaries. The OTC Policy included recommendations made by the

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California Independent System Operator, California Energy Commission, and the California Public Utilities Commission to achieve water quality goals, including protection of public trust resources, while ensuring electrical grid reliability.

The OBGS is required to be in compliance with the OTC Policy by December 31, 2020 and has committed to retiring the OBGS facility by that date. Section 2.C(3) of the OTC Policy requires operators of existing plants to implement measures to mitigate the interim impingement and entrainment impacts resulting from their cooling water intake structures. OBGS is required to either implement a mitigation project that fully mitigates the impacts from the interim impingement and entrainment or pay a per-gallon-fee starting in October of 2015. In 2014, based on a settlement agreement between NRG and the State Water Board, NRG agreed to comply with the interim mitigation requirements by paying a per-gallon-fee. The fee is paid to the Coastal Conservancy, working with the Ocean Protection Council, for mitigation projects directed towards increasing marine life within the marine protected areas in the geographic region of the facility. The State Water Resources Control Board is currently developing the invoices, based on the fee calculation methodology adopted by the State Water Board and consistent with the 2014 settlement agreement. According to the State Water Board, the OBGS is currently in compliance with the OTC Policy's interim mitigation requirements.

The existing offshore water conduits have existed on state land for over 40 years. These facilities support the OBGS, providing an important public purpose by generating electrical power for the people of Southern California. While there are documented impacts to marine life due to the impingement and entrainment associated with once through cooling technology, the OTC Policy enforced by the State, through State Water Board and the NPDES permit, appropriately regulates these impacts, protecting Public Trust resources. Weighing these existing, baseline impacts in the context of the OTC Policy, staff believes that the approval of the proposed limited-term lease for the existing facilities will not significantly interfere with the trusts upon which such lands are held or substantially impair the public rights to navigation, fisheries, or other Public Trust needs and values at this time, at this location, and for the limited-term proposed lease.

Further, staff believes a short-term lease for the existing offshore water conduits is in the best interests of the State because it facilitates the decommissioning and removal of the OBGS improvements on state

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sovereign land. Staff recommends the Applicant prepare a detailed plan for Commission review and approval for the removal or other disposition of all existing offshore site improvements associated with the OBGS by December 31, 2018. Depending on the additional information and potential work involved, further environmental analysis may also be necessary. Any proposed action for the disposition of the existing conduits would be considered by the Commission at a future meeting.

**Climate Change:**

Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect open coastal areas in California. By 2030, the region could see up to 1 foot of sea-level rise (from year 2000 levels), 2 feet by 2050, and possibly over 5 feet by 2100 (National Research Council 2012). Rising sea levels can lead to increased flooding and larger tidal events, and can affect erosion and sedimentation rates.

The lease area consists of tide and submerged lands located in the Pacific Ocean, offshore Ormond Beach, within the city of Oxnard in Ventura County. The existing seawater intake and discharge conduits extend approximately 2,499 feet (at a depth of 35 feet) and approximately 1,789 feet (at a depth of 20 feet) offshore, respectively. The conduits are completely submerged, and the locations of the structures are clearly marked with buoys visible from onshore and offshore locations. Adjacent to the offshore lease area, the offshore conduits pass onshore, beneath Ormond Beach, and tie in to the OBGS facility. These conduits are scheduled to be retired by December 31, 2020, pursuant to the Use of Coastal and Estuarine Water for Power Plant Policy and California Water Code section 13383. Due to the offshore nature of the conduits and marker buoys and the current sea-level rise predictions provided above, these structures are not likely to be highly vulnerable to sea-level rise impacts prior to their retirement by 2020. Further climate change impact analyses would occur during the consideration of the conduits' final disposition.

**Conclusion:**

For all the reasons above, Commission staff believes the issuance of this lease will not substantially interfere with the Public Trust needs and values at this location, at this time, or for the foreseeable term of the proposed lease and is in the best interests of the State.

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**OTHER PERTINENT INFORMATION:**

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
  
2. Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

3. This activity involves lands which have NOT been identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq.; however, the Commission has declared that all lands are significant by nature of their public ownership (as opposed to environmentally significant). Since such declaration of significance is not based upon the requirements and criteria of Public Resources Code section 6370 et seq., use classifications for such lands have not been designated. Therefore, the finding of the project's consistency with the use classification as required by California Code of Regulations, title 2, section 2954 is not applicable.

**EXHIBITS:**

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

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the proposed lease will not substantially interfere with the Public Trust needs and values at this location, at this time, or for the foreseeable term of the lease and is in the best interests of the State.

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**AUTHORIZATION:**

Authorize issuance of a General Lease – Industrial Use to NRG California South LP beginning April 24, 2017, for a term of 8 years for the use and maintenance of one existing 14-foot-diameter seawater intake conduit and one existing 14-foot-diameter discharge cooling water conduit, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent of \$47,250, with an annual Consumer Price Index adjustment; liability insurance in an amount no less than \$1,000,000 per occurrence, or equivalent staff-approved self-insurance program; and surety bond in an amount of \$1,000,000.



**EXHIBIT "A"**

**PRC 4196.1**

**LAND DESCRIPTION**

A strip of tide and submerged land in Ventura County, California, said strip lying 50 feet on each side of the following described centerline:

BEGINNING at a point in that certain course in the southwesterly line of parcel 1, shown on Record of Survey Map, filed for record September 18, 1967 in Book 36, Page 22 of Records of Surveys, in the office of the County Recorder of said County, said certain course is shown on said map as having a bearing of "North 45° 58' 16" West" and a length of "799.29 feet", said point being North 45° 58' 16" West, 248.18 feet, from the Southeasterly terminus of said certain course; thence South 41° 15' 36" West, 2498.87 feet.

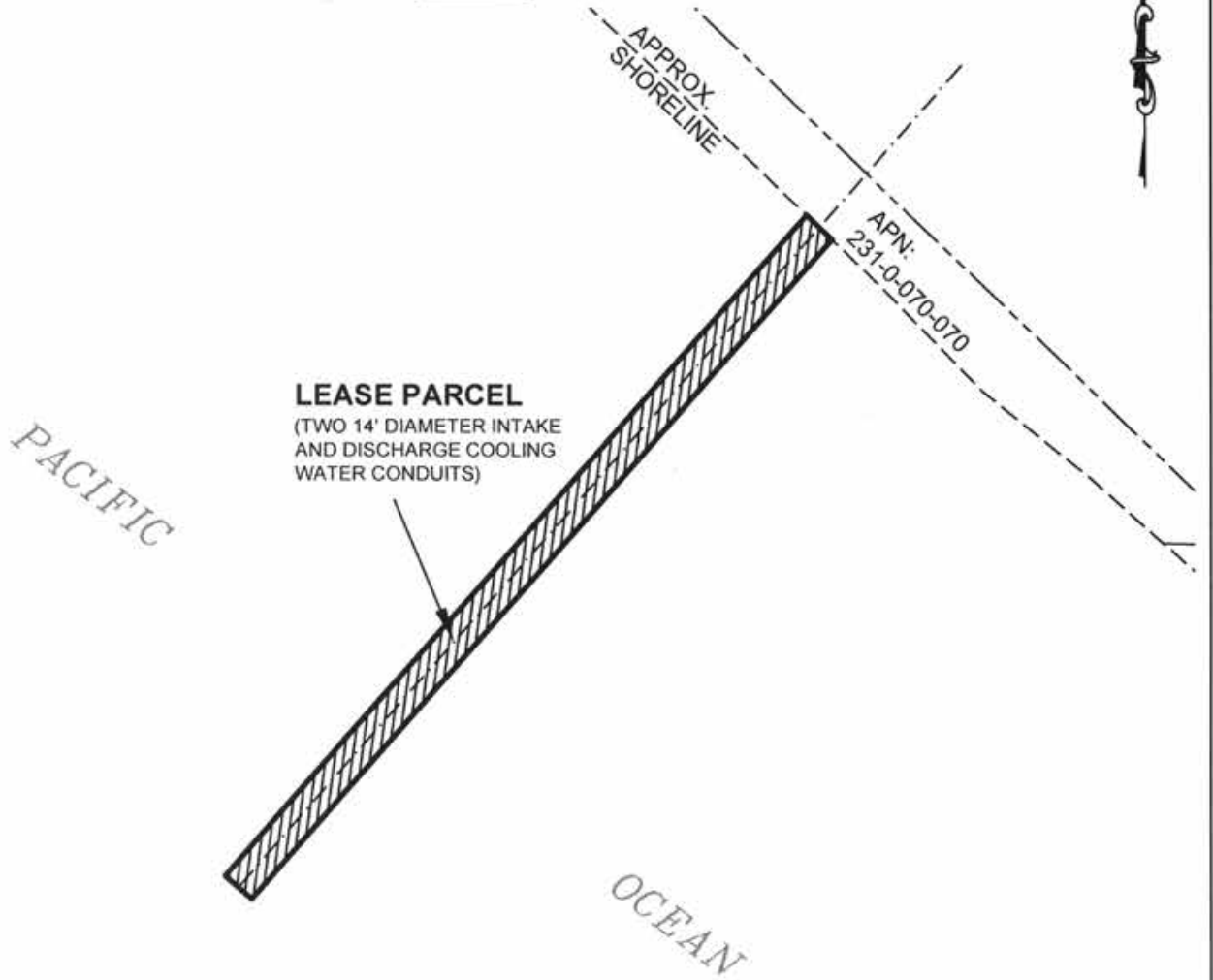
EXCEPTING THEREFROM that portion thereof lying within the land conveyed to Southern California Edison Company by Corporation Quitclaim Deed recorded March 24, 1965 in Book 2756, Page 416 of Official Records of the County Recorder of said County.

**END OF DESCRIPTION**

**REVISED NOVEMBER 18, 1988 BY BIU 1.**

NO SCALE

### SITE



PACIFIC OCEAN, ORMOND BEACH NEAR OXNARD

NO SCALE

### LOCATION



MAP SOURCE: USGS QUAD

### **Exhibit B**

PRC 4196.1  
 NRG CALIFORNIA SOUTH LP  
 APN 231-0-070-070  
 GENERAL LEASE -  
 INDUSTRIAL USE  
 OXNARD COUNTY



RPF 05/03/17

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.