

Staff Report 45

Assignment of Lease

LESSEE/ASSIGNOR:

NRG California South LP

APPLICANT/ASSIGNEE:

Ormond Beach Power, LLC, a subsidiary of GenOn Holdings, Inc.

EXISTING LEASE:

AREA, LAND TYPE, AND LOCATION

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

AUTHORIZED USE:

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

TERM:

8 years, beginning April 24, 2017.

CONSIDERATION:

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

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Surety bond or other security in an amount of \$1,000,000.
- 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).

- 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, 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.
- No other use of the improvements under Lease PRC 4196 is allowed without the prior approval of the Commission.
- 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 Los Angeles Regional Water Quality Control Board (RWQCB).

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

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

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On June 22, 2017, the Commission authorized an 8-year General Lease – Industrial Use to NRG California South LP for the use and maintenance of one existing 14-foot-diameter seawater intake conduit extending approximately 2,499 feet offshore, and one existing 14-foot-diameter discharge cooling water conduit extending approximately 1,789 feet offshore ([Item C56, June 22, 2017](#)). The lease will expire on April 23, 2025.

On May 21, 2020, staff received notification of an internal reorganization resulting in a newly created entity, Ormond Beach Power, LLC, a subsidiary of GenOn Holdings, Inc. The Lessee is now applying for an assignment of the lease from NRG California South LP to Ormond Beach Power, LLC, effective August 20, 2020. Both NRG California South LP and Ormond Beach Power, LLC, are subsidiaries of GenOn Holdings, Inc., and the proposed lease assignment would not change the use authorized by the lease or otherwise affect the lessee's obligations. The Lessee is in compliance with all of the lease terms and conditions. The Lessee holds a Coastal Development Permit with the California Coastal Commission and a NPDES permit with the RWQCB. These agencies report no violations by the Lessee. Additionally, the Lease requires the Lessee to comply with all federal, state, and local agencies having jurisdiction over the operating facilities.

The assignment of the lease is an administrative action and will not result in a change in the use of, or impacts to, Public Trust resources. The conduits are utilized as components of a once-through cooling (OTC) system associated with the Ormond Beach Generating Station. The seawater intake conduit draws water from the Pacific Ocean to OBGS's steam turbine electric generating unit and the discharge water cooling conduit discharges OTC water back into the Pacific Ocean from the electric generating unit. The OBGS is required to comply with the State Water Resources Control Board's (SWRCB's) OTC policy and the operator was expected to retire the OBGS facility by December 31, 2020.

Pursuant to a provision in the lease, 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 OBGS. In October 2019, staff received and reviewed the OBGS Conduit Closure Plan required by the lease. The closure plan provided several alternatives to remove the offshore improvements. The proposed alternatives were to completely remove all offshore and onshore conduits, risers, and terminal structures; remove offshore conduits, risers and terminal structures and exposed onshore risers; remove exposed structures and place offshore terminal structures on seafloor; and abandon ocean conduits and other ancillary facilities in place with no further action.

In late fall 2019 and through January 2020, staff began to analyze the alternatives provided in the closure plan and to develop the proposed action plan for CEQA document development. Concurrent with staff's activities, and as part of broader proposed amendments to SWRCB's OTC policy, in January 2020 the Statewide Advisory Committee on Cooling Water Intake Structures recommended to SWRCB that the Ormond Beach Generating Station receive an extended compliance deadline of 3 years to protect grid reliability in times of peak energy demand. SWRCB staff held public meetings for the proposed extension in May 2020 and subsequently circulated amended language for public review. The SWRCB will consider the proposed 3-year extension on September 1, 2020. The proposed lease assignment would not impact or be affected by the proposed compliance extension. If an amendment to the OTC policy requires the lessee to amend the lease, the lessee will be required to submit an application for such an amendment and the Commission would consider that application at a properly noticed, public meeting.

The lease states that the Commission's approval of assignment of the lease shall not be unreasonably withheld, and the assignment is occurring as part of an internal reorganization, such that the lease will remain within the same corporate family. The assignment of the lease will not affect the terms of the lease or Ormond Beach Power, LLC's obligation. However, because Ormond Beach Power, LLC is a new subsidiary entity under GenOn Holdings, Inc., staff is recommending to the Commission to

include a performance parent guaranty for additional security. Staff will conduct a full analysis of future decommissioning activities once a Commission application is received by the Lessee for decommissioning.

CLIMATE CHANGE:

Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The lease area is located in the Pacific Ocean, offshore Ormond Beach and near the city of Oxnard, Ventura County, which is a tidally influenced site.

The California Ocean Protection Council updated the State of California Sea-Level Rise Guidance in 2018 to provide a synthesis of the best available science on sea-level rise projections and rates. Commission staff evaluated the “high emissions,” “low risk aversion” scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The Santa Barbara tide gauge was used for the projected sea-level rise scenario for the region as listed in Table 1.

Table 1. Projected Sea-Level Rise for Santa Barbara¹

Year	Projection (feet)
2030	0.4
2040	0.7
2050	1.0
2100	3.1

Source: Table 22, State of California Sea-Level Rise Guidance: 2018 Update

Note: ¹ Projections are with respect to a 1991 to 2009 baseline.

As stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms (especially when coupled with sea-level rise). The combination of these conditions will likely result in increased wave run-up, storm surge, and flooding in coastal and near coastal areas. In tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Climate change and sea-level rise will further influence coastal areas by changing erosion and sedimentation rates. Beaches and coastal landscapes will be exposed to increased wave force and run-up, potentially resulting in greater beach erosion than previously experienced.

Rising sea levels can lead to increased flooding through regular inundation and larger flooding events, when combined with tidal events and storm surges. These climate change and sea-level rise impacts can also affect erosion and sedimentation rates

through increased wave action and scour, which in turn can lead to decreased shoreline stability and structure.

The lease is an 8-year General Lease – Industrial Use that began on April 24, 2017 and may be subject to the climate change effects of the projected sea-level rise scenario provided above. Regular maintenance and implementing best management practices, as required by the terms of the lease, will help reduce the likelihood of severe structural degradation and dislodgement. Further climate change impact analyses on the facilities within the lease area will be assessed at the time the Commission considers a lease amendment or an application regarding the final disposition of the conduits, and will be based on projected sea-level rise scenarios at that time.

ENVIRONMENTAL JUSTICE:

Staff reviewed environmental justice data that indicated existing high pollution burdens to the surrounding communities. These burdens may result in impacts to health such as asthma, low birth weight, and cardiovascular disease. In addition, the same data showed high burdens from diesel, toxic releases, and cleanups, and to groundwater. Staff believes that the assignment of the lease for the existing facilities does not create any additional burdens to the public. As part of an environmental justice outreach effort, staff contacted environmental justice communities in Ventura County, providing notification of the proposed administrative action, which included a brief description of the lease and observed that the scope of the Commission's consideration of the assignment is limited to approving or denying the assignment of the lease, and not modification to the existing use at this time. The letter also provided a 30-day comment period and listed a staff person as a point of contact to discuss any concerns. No comments have been received.

CONCLUSION:

Approval of this lease assignment will not result in a change in the use of, or impacts to, Public Trust resources at this location, at this time, and for the foreseeable term of the lease. For this reason, staff recommends finding that approval of this assignment will not substantially interfere with the common law Public Trust Doctrine and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application for assignment is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of

the State's Public Trust lands as authorized by law. Upon expiration or prior termination of the lease, the lessee has no right to a new lease or to renewal of any previous lease.

2. 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, preservations, and responsible economic use of the lands and resources under the Commission's jurisdiction.
3. Assignment of the lease is not a project as defined by CEQA because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

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

AUTHORIZATION:

Authorize assignment of Lease PRC 4196, a General Lease – Industrial Use, of sovereign land, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof, from NRG California South LP to Ormond Beach Power, LLC, a subsidiary of GenOn Holdings, Inc.; effective August 20, 2020.

EXHIBIT A

PRC 4196

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.

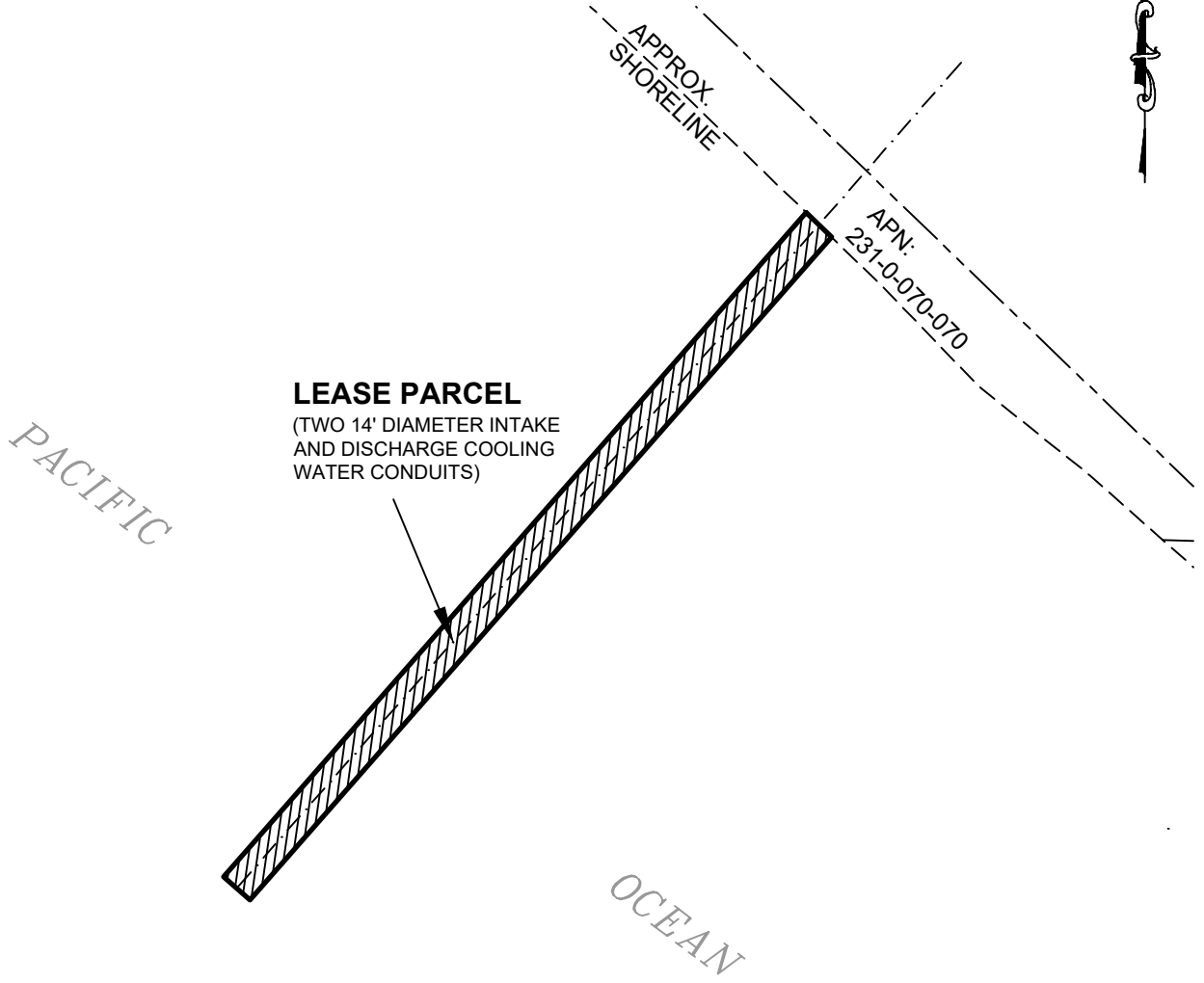
EXCEPTING THEREFROM that portion thereof lying within the land conveyed to Southern California Edison Company by Corporation Quitclaim Deed recorded March 24, 1965 in Book 2756, Page 416 of Official Records of the County Recorder of said County.

END OF DESCRIPTION

REVISED NOVEMBER 18, 1988 BY BIU 1.

NO SCALE

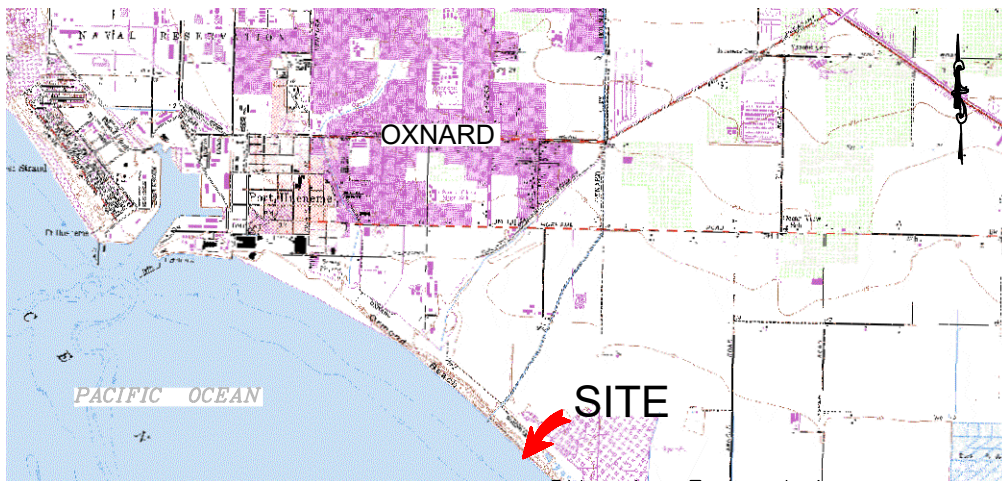
SITE



PACIFIC OCEAN, ORMOND BEACH NEAR OXNARD

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 4196
 ORMOND BEACH POWER, LLC
 APN 231-0-070-070
 GENERAL LEASE -
 INDUSTRIAL USE
 VENTURA COUNTY



JAK 06/20

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.