



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

DOCKET

09-AFC-4

DATE Feb 18 2011

RECD Feb 18 2011

APPLICATION FOR CERTIFICATION
for the *OAKLEY GENERATING STATION*
PROJECT

Docket No. 09-AFC-4

**NOTICE OF PREHEARING CONFERENCE AND EVIDENTIARY HEARING
AND
PREHEARING CONFERENCE/HEARING ORDER**

PLEASE TAKE NOTICE that the Committee designated by the Energy Commission to conduct proceedings on the Application for Certification (AFC) for the **OAKLEY GENERATING STATION PROJECT** has scheduled the Prehearing Conference and Evidentiary Hearing as follows:

The PREHEARING CONFERENCE, to be immediately followed by the EVIDENTIARY HEARING, will be conducted on:

***Tuesday, March 15, 2011
Beginning at 10:00 a.m.***

**Oakley City Hall
3231 Main Street
Oakley, California 94561
(Map Attached)**

If necessary, the EVIDENTIARY HEARING will continue on:

***Friday, March 25, 2011
Beginning at 10:00 a.m.***

**California Energy Commission
Hearing Room A
1516 Ninth Street
Sacramento, California 95814**

Teleconference Option

Members of the public may participate in the March 15, 2011, Prehearing Conference and Evidentiary Hearing by telephone and/or by computer via our "WebEx" web conferencing system. For details on how to participate, please see the "Participation in the Prehearing Conference and Evidentiary Hearing Through WebEx" section at the end of this Notice.

PLEASE TAKE NOTICE that the Committee has established the following filing schedule:

| <u>EVENT</u> | <u>DATE</u> |
|---|--|
| Publish Final Staff Assessment | On or about 2/28/11 |
| Applicant Files Testimony | 3/4/11 |
| Staff and Intervenors File Testimony | 3/9/11 |
| All Parties File Prehearing Conference Statements, Exhibits, Witness Lists, and Exhibit Lists | 3/9/11 |
| All Parties File Rebuttal Testimony | 3/14/11, <u>by noon</u> |
| Prehearing Conference and Evidentiary Hearing | 3/15/11 (possibly continued on 3/25/11) |
| Post-Hearing Briefing | To be determined |

Purpose of Prehearing Conference

The Prehearing Conference is a public forum where the Committee will assess the parties' readiness for an Evidentiary Hearing, identify areas of agreement or dispute, and discuss the remaining schedule and procedures necessary to conclude the certification process. (Cal. Code Regs., tit. 20, § 1718.5.)

At the Prehearing Conference, all parties (Staff, Applicant, and Intervenors) shall present their respective positions regarding: 1) the substantive topic areas ready for Evidentiary Hearing; 2) those topics that require further analysis, including the nature of, and time frame for, any such analysis; 3) the topic areas that have been resolved; and 4) the topic areas that are disputed and require adjudication, and topic areas where a party seeks an overriding finding of public necessity and convenience. (Pub. Res. Code § 25525.) The parties shall also identify proposed witnesses, as well as the time required for direct testimony and/or cross-examination.

Local, state, and federal governmental agencies may participate at the Prehearing Conference and Evidentiary Hearing, as necessary. (Cal. Code Regs., tit. 20, §

1714.5.) Elected officials and members of the public may present public comments at these events and/or submit written comments to the Energy Commission's Docket Unit. Please include "**Oakley Generating Station Project, Docket No. 09-AFC-4**" on any written comments.

Prehearing Conference Statements

To facilitate the process, each party shall serve and file a Prehearing Conference Statement. Each party's Prehearing Conference Statement shall be provided to and received by the other parties and the Commission's Docket Unit, 1516 9th Street, MS-4, Sacramento, California 95814-5512, **no later than Wednesday, March 9, 2011**. The parties shall e-mail their statements to the Hearing Adviser as well as to the Docket Unit and the parties as indicated on the Proof of Service List.

FAILURE TO FILE A TIMELY PREHEARING CONFERENCE STATEMENT MAY PRECLUDE A PARTY FROM PARTICIPATING AT THE HEARING.

Each statement shall discuss each of the following items under a separate heading:

- a) The topic areas that are complete and ready to proceed to Evidentiary Hearing;
- b) The topic areas that are not complete and not yet ready to proceed to Evidentiary Hearing, and the reasons therefor;
- c) The topic areas that remain disputed and require adjudication, and the precise nature of the dispute for each topic;
- d) The identity of each witness sponsored by each party (***note***: witnesses must have professional expertise in the discipline of their testimony); the topic area(s) which each witness will present; a brief summary of the testimony to be offered by each witness; qualifications of each witness; the time required to present direct testimony by each witness; and whether the party seeks to have the witness testify in person or telephonically;
- e) Topic areas upon which a party desires to cross-examine witnesses, a summary of the scope of each such cross-examination (including voir dire of any witness' qualifications), and the time desired for each such cross-examination;
- f) An exhibit list identifying exhibits and declarations that each party intends to offer into evidence (**see attached sample for required format**). The Hearing Office will provide the parties with a **Word version of the Exhibit List template**);
- g) Topic areas for which the Applicant will seek a commission override due to public necessity and convenience pursuant to Public Resources Code section 25525;
- h) Proposals for briefing deadlines, impact of vacation schedules, and other scheduling matters; and

- i) For all topics, any proposed modifications to the proposed Conditions of Certification listed in the Final Staff Assessment (FSA) based upon enforceability, ease of comprehension, and consistency with the evidence.

Format for Presenting Evidence

Printed, pre-marked copies of the exhibits shall be provided to the Hearing Adviser and other parties on the date set forth in the filing schedule table, above. By this deadline, each party shall also provide the Hearing Adviser and Committee with a compact disc containing all of the party's exhibits. Failure to timely exchange exhibits may result in exclusion of evidence.

Each party's exhibits shall be numbered (i.e., pre-marked) and identified on the party's **Exhibit List**. The Hearing Office shall provide each party with the Exhibit List template in Word format. The parties shall electronically submit the completed Exhibit List (in Word format) to the Hearing Adviser on the date set forth in the filing schedule table, above.

- Applicant's exhibits shall be numbered consecutively as **Exhibits 1 through 299**.
- Staff's exhibits shall be numbered consecutively as **Exhibits 300 through 399**.
- Intervenor Robert Sarvey's exhibits shall be numbered consecutively as **Exhibits 400 through 499**.

Presenting Evidence and Argument Regarding Public Convenience and Necessity

Under Public Resources Code section 25525, the Commission may certify an Application for Certification even if it finds that the facility does not conform to any applicable state, local, or regional standards, ordinances, or laws or has unmitigable significant environmental impacts. To do so, the Commission must determine that the facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving public convenience and necessity. Parties' opening testimony and presentation of evidence should address the application of Public Resources Code section 25525.

Notice of Committee's Intention to Use Informal Hearing Procedures

Pursuant to Government Code section 11445.10 et seq., and section 1217 of the Commission's regulations, the Committee may conduct all or portions of the Evidentiary Hearings in an informal manner in which, for example but not by way of limitation, a panel of witnesses sponsored by a single party or by multiple parties testify at one time, with an exchange of questions and responses between the witnesses and counsel for the various parties substituting for formal direct and cross-examination. Any objections to the taking of testimony in an informal manner shall be filed on or before the deadline

for filing Prehearing Conference Statements (Wednesday, March 9, 2011). The parties are encouraged to comment on the appropriate format for informal hearings and identify the topics for which informal hearings are appropriate, in their Prehearing Conference Statements.

Petitions to Intervene to Become a Formal Party

Only formal parties (Applicant, Staff, or Intervenors) may present evidence and cross-examine witnesses at the Evidentiary Hearing. The Energy Commission's Presiding Member's Proposed Decision (PMPD) on the Oakley Generating Station Project will be based solely upon the official evidentiary record developed at the Evidentiary Hearing.

The deadline to file a Petition to Intervene in this case was February 14, 2011. [20 Cal. Code Regs., § 1203(f).] Petitions filed after that date may be granted only upon a showing of good cause.

Anyone with an appropriate interest in the Oakley Generating Station Project may file a Petition to Intervene and become a formal party. At the Evidentiary Hearing, the formal parties may offer testimony and documentary evidence, receive documents filed by other parties, and cross-examine witnesses. However, a formal party must also comply with all Committee orders, procedures, and filing requirements, and is subject to discovery and having its own witnesses cross-examined by other parties.

Public Adviser and Public Participation

The Energy Commission Public Adviser is available to assist the public in participating in the application review process. For those individuals who require general information on how to participate, please contact the Public Adviser's Office at (916) 654-4489 or (800) 822-6228 or e-mail: [\[publicadviser@energy.state.ca.us\]](mailto:publicadviser@energy.state.ca.us).

If you have a disability and need assistance to participate in any scheduled event, contact Lourdes Quiroz no less than five days prior to the hearing at 916-654-5146 or e-mail: [\[lquiroz@energy.state.ca.us\]](mailto:lquiroz@energy.state.ca.us).

Information

Questions of a legal or procedural nature should be directed to Kourtney Vaccaro, the Hearing Adviser, at (916) 654-4328, or e-mail: [\[kvaccaro@energy.state.ca.us\]](mailto:kvaccaro@energy.state.ca.us).

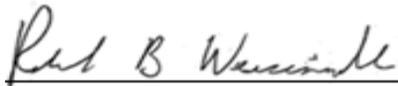
Technical questions concerning the project should be addressed to Pierre Martinez, Staff Project Manager, at (916) 651-3765, or e-mail: [\[pmartine@energy.state.ca.us\]](mailto:pmartine@energy.state.ca.us). Media inquiries should be directed to the Office of Media and Public Communications at (916) 654-4989 or e-mail: [\[mediaoffice@energy.state.ca.us\]](mailto:mediaoffice@energy.state.ca.us).

Information concerning the status of this project, as well as notices and other relevant documents pertaining to this proceeding, may be viewed on the Energy Commission's Internet web page at: [www.energy.ca.gov/sitingcases/oakley/index.html].

Dated: February 18, 2011 at Sacramento, California.

A handwritten signature in black ink, appearing to read "Jim Boyd", written over a horizontal line.

JIM BOYD
Vice Chair and Presiding Member
Oakley Generating Station AFC Committee

A handwritten signature in black ink, appearing to read "Robert B. Weisenmiller", written over a horizontal line.

ROBERT B. WEISENMILLER
Chair and Associate Member
Oakley Generating Station AFC Committee

Mailed to Lists: POS, 7207, 7208, 7209, 7210

PARTICIPATION IN THE PREHEARING CONFERENCE AND EVIDENTIARY HEARING
THROUGH WEBEX
THE ENERGY COMMISSION'S ON-LINE MEETING SERVICE

1. COMPUTER LOG-ON WITH A DIRECT PHONE NUMBER:

- Please go to <https://energy.webex.com> and enter the meeting number unique to the specific hearing date:

➤ 3/15/11 - meeting number: **922 772 964**

When prompted, enter your information and the meeting password: **oakley#1**

After you login, a prompt will appear on-screen for you to provide your phone number. In the **Number box**, type your area code and phone number and click OK. **You will receive a call back on your phone for the audio of the meeting.** International callers can use the "Country/Region" button to help make their connection.

2. COMPUTER LOG-ON FOR CALLERS WITH AN EXTENSION PHONE NUMBER, ETC:

- Please go to <https://energy.webex.com> and enter the unique meeting number.
- 3/15/11 - meeting number: **922 772 964**

When prompted, enter your information and the meeting password: **oakley#1**

After you login, a prompt will ask for your phone number. Click "CANCEL."

- ***Instead** call 1-866-469-3239 (toll-free in the U.S. and Canada). When prompted, enter the meeting number above and your unique Attendee ID number which is listed in the top left area of your screen after you login.*

3. TELEPHONE ONLY (NO COMPUTER ACCESS):

- *Call 1-866-469-3239 (toll-free in the U.S. and Canada) and when prompted enter the meeting number:*
- 3/15/11 - meeting number: **922 772 964**

If you have difficulty joining the meeting, please call the WebEx Technical Support number at 1-866-229-3239. To see if your computer is compatible, visit [<http://support.webex.com/support/system-requirements.html>].

Please be aware that the meeting's WebEx audio and on-screen activity may be recorded.



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 1516 NINTH STREET, SACRAMENTO, CA 95814 - 1-800-822-6228 - WWW.ENERGY.CA.GOV

Docket Number: 09-AFC-04_____

Date:_____

Project Name: Oakley Generating Station Project

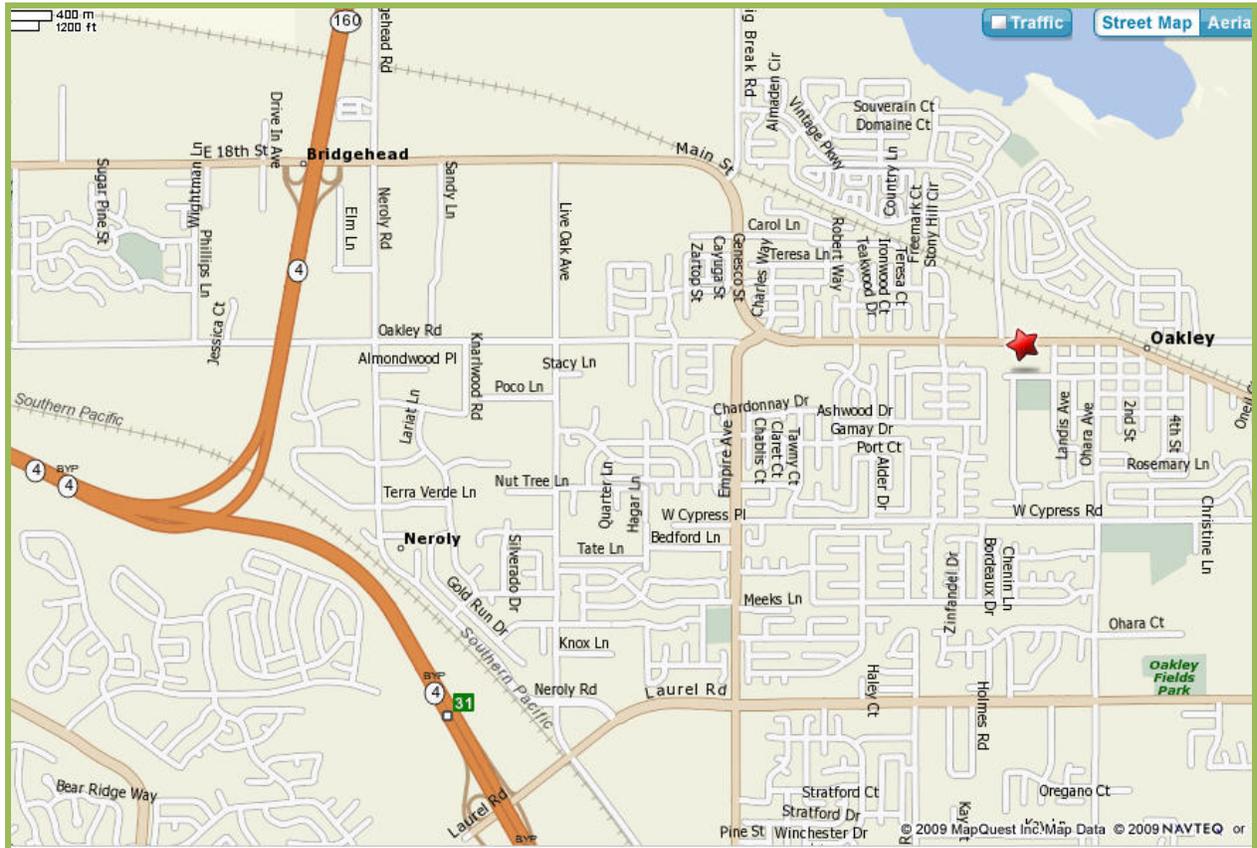
TENTATIVE EXHIBIT LIST

NOTE: The format of the samples provided below is equally applicable to all parties. However, given the likely differences in the documentary evidence submitted by the parties, the samples illustrate how to address specific types of evidence that might be unique to each party. **SUBMIT ALL EXHIBIT LISTS IN WORD FORMAT.**

| Exhibit | Docket Information | Brief Description | Stipulation | Offered | Admitted | Refused |
|--|--------------------|--|-------------|---------|----------|---------|
| APPLICANT'S EXHIBITS | | | | | | |
| 1 | Trans #: 52219; | Application for Certification (AFC); dated [month, day, year], and docketed on [month, day, year]. | | | | |
| 2 | Trans #: 53784; | Supplemental AFC | | | | |
| | | | | | | |
| COMMISSION STAFF'S EXHIBITS | | | | | | |
| 300 | | Final Staff Assessment | | | | |
| | | | | | | |
| INTERVENOR ROBERT SARVEY'S EXHIBITS | | | | | | |
| 400 | | Declaration of _____ re _____ | | | | |
| | | | | | | |

Tuesday, March 15, 2011

**Oakley City Hall
3231 Main Street
Oakley, California 94561
(925) 625-7000**



From West (Sacramento): Take I-5 South, Take exit 485 towards Rio Vista; Merge onto CA-12/State Route 12 continue to follow CA-12; Turn left at CA-160/River Road continue to follow CA-160; Take the exit towards Brentwood/CA-4/Stockton; Turn Right at E 18th Street/CA-4 (signs for Brentwood/Stockton/CA-4/Oakley/Bethel Is.); continue to follow CA-4 (destination will be on the right).

From East: Take Hwy 680 towards Concord Sacramento; Keep left at the fork to continue toward I-680 N and merge onto I-680 N; Slight right at CA-242 N (signs Pittsburg/CA-242/Concord); Take exit 3C to merge onto CA-4 E towards Pittsburg/Stockton; Take CA-4 to exit toward Stockton/Brentwood; Turn right at CA-4/Main St. (signs for Oakley/Bethel Is. destination will be on the right).

From South: Take CA-4; Turn right at Brentwood Blvd.; continue on Main St. (destination will be on the left).