

# DOCKET

09-AFC-4

DATE	MAR 09 2011
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## STATE OF CALIFORNIA

Energy Resources Conservation  
And Development Commission

In the Matter of:

Application for Certification  
for the Oakley Generating Station

Docket No. 09-AFC-4

### **Energy Commission Staff's Pre-Hearing Conference Statement**

On January 25, 2011, the Committee assigned to this proceeding issued a Notice of Prehearing Conference and Evidentiary Hearing (Notice). In that document, the Committee requested that parties file Prehearing Conference Statements no later than March 9, 2011. Energy Commission staff hereby files the following in response to the information requested in the Notice.

Staff has completed its analysis in all subject areas, with the exception of Appendix A to the Transmission System Engineering Section, and is ready to proceed to evidentiary hearings set for March 15, 2011. Staff has concluded that, with the conditions of certification and related impact mitigation proposed in the Final Staff Assessment (FSA), no significant adverse impact to the environment or public health will result from the construction or operation of the Oakley Generating Station (OGS), and that the proposed project will comply with all applicable laws, ordinances, regulations and standards.

As noted above, Energy Commission staff is preparing (and in the process of finalizing) Appendix A to the Transmission System Engineering section of the FSA. Appendix A will discuss transmission system impacts beyond the first point of interconnection. This appendix will discuss the potential indirect impacts of future

reconductoring of transmission line upgrades that may be required as a result of the OGS. Because the line segments to be reconducted lie beyond the first point of interconnection with the grid and because they will be carried out by a separate entity, PG&E, at a future time and under the permitting jurisdiction of a separate authorizing agency (the CPUC), the information contained in Appendix A will merely provide an overview of potential project impacts. Furthermore, it is important to note that because the reconductoring is beyond the jurisdiction of the Energy Commission, the information in Appendix A cannot commit the project to specific mitigation. The final assignment of mitigation measures must take place as part of the California Public Utilities Commission's CEQA analysis. Staff therefore does not believe that any of the information that is contained in Appendix A will be subject to dispute in these proceedings.

Staff has received the applicant's testimony, but has not received any testimony from the intervenor, and thus cannot conclusively determine every area subject to dispute. However, based on previous discussions with the applicant and intervenor, staff believes that there may be disagreement in relatively few areas. Staff and applicant have some disagreement over staff's recommendation that the project switch from potable water to reclaimed water at such time that it becomes available and economically feasible, or in the alternative the recommendation that the applicant adopt a water conservation plan. The nature of this disagreement and the supporting testimony is contained in both the Final Staff Assessment (Exhibit 300) and applicant's testimony filed on March 4, 2011. Intervenor Robert Sarvey has identified other areas of contention, namely Air Quality, Noise, Biological Resources, Environmental Justice, and Alternatives, but has not yet specified the exact nature of his concerns.

For Soil and Water Resources, staff requests 30 minutes to present the direct testimony of staff's expert witnesses, Mark Lindley and Paul Marshall. Their written testimony and statements of their qualifications are contained in the FSA (Exh. 300). Staff further requests 30 minutes for cross examination of Applicant's witnesses in the area of Soil and Water Resources, James McKucan and Doug Davy, specifically on the

subjects of the conversion to and use of reclaimed water, and the adoption of a water conservation plan.

For Air Quality, staff requests 30 minutes to present the direct testimony of staff's expert witnesses, Joseph Hughes and Brewster Birdsall. Their written testimony and statements of their qualifications are contained in the FSA (Exh. 300). In support of this testimony, staff will offer into evidence the Final Determination of Compliance submitted by the Bay Area Air Quality Management District (Exh. 301).

For Noise, staff requests 10 minutes to present the direct testimony of staff's expert witnesses, Erin Bright and Shahab Koshmashrab. Their written testimony and statements of their qualifications are contained in the FSA (Exh. 300).

For Biological Resources, staff requests 30 minutes to present the direct testimony of staff's expert witnesses, Ann Crisp and Heather Blair. Their written testimony and statements of their qualifications are contained in the FSA (Exh. 300).

For Environmental Justice, staff requests 10 minutes to present the direct testimony of any witness identified within the FSA (Exh. 300) that has provided a written analysis on areas that may include the subject of Environmental Justice. Intervenor Sarvey has not identified the exact nature of what he believes the issues to be, and therefore staff cannot anticipate the nature of his concerns, nor the witnesses necessary to address those concerns.

For Alternatives, staff requests 10 minutes to present the direct testimony of staff's expert witness, Suzanne Phinney. Her written testimony and a statement of his qualifications are contained in the FSA (Exh. 300).

Because staff has not yet reviewed all testimony that may be filed, specifically by intervenor Sarvey, staff respectfully reserves the right to augment the proposed exhibit list and the time requested for direct or cross-examination depending on the testimony filed by the applicant and any other parties, their Prehearing Conference Statements,

and comments made at the Prehearing Conference. Should any matter need briefing after evidentiary hearings, assuming the transcript is expedited, staff proposes that Opening Briefs be filed by April 15, 2011, with Reply Briefs, if any, due on April 25, 2011.<sup>1</sup>

For those matters not subject to dispute by the applicant or the intervenor, staff proposes to enter testimony into the record by declaration. The testimony and the respective authors are identified below and declarations have been included in the FSA:

Executive Summary .....	Pierre Martinez, AICP
Introduction .....	Pierre Martinez, AICP
Project Description .....	Pierre Martinez, AICP
Cultural Resources .....	Kathleen Forrest
Hazardous Materials Management .....	Geoff Lesh, P.E., Rick Tyler
Land Use .....	Negar Vahidi and Susanne Huerta
Public Health .....	Obed Odoemelam, Ph.D.
Socioeconomics .....	Kristin Ford
Traffic and Transportation .....	Scott Debauche
Transmission Line Safety and Nuisance .....	Obed Odoemelam, Ph.D.
Visual Resources .....	Melissa Mourkas
Waste Management .....	Ellie Townsend-Hough, REA
Worker Safety .....	Geoff Lesh, P.E., Rick Tyler
Facility Design .....	Erin Bright
Geology and Paleontology .....	Patrick Pilling, Ph.D., P.E., G.E., D.GE.
Power Plant Efficiency .....	Shahab Koshmashrab
Power Plant Reliability .....	Shahab Koshmashrab
Transmission System Engineering .....	Laiping Ng and Mark Hesters
General Conditions .....	Craig Hoffman

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<sup>1</sup> I will be out of the state between April 2, and April 9, 2011, and unavailable to respond by way of briefing or personal appearance. I will be on vacation with my family in Hawaii that week, but could be reachable via my state issued Blackberry in case of an emergency.

## Exhibit List

- Exh. 300            Final Staff Assessment
- Exh. 301            Final Determination of Compliance submitted by the Bay Area Air  
Quality Management District
- Exh. 302            Appendix A to the Transmission System Engineering Section

DATED: March 9, 2011

Respectfully submitted,

/s/ Kevin W. Bell

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**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
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**APPLICATION FOR CERTIFICATION  
FOR THE *OAKLEY GENERATING STATION***

**Docket No. 09-AFC-4  
PROOF OF SERVICE  
(Revised 3/3/2011)**

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**INTERESTED AGENCIES**

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DECLARATION OF SERVICE

I, Rhea Moyer, declare that on March 9, 2011, I served and filed copies of the attached Energy Commission Staff's Pre-Hearing Conference Statement, dated March 9, 2011. The original document filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [\[http://www.energy.ca.gov/sitingcases/oakley/index.html\]](http://www.energy.ca.gov/sitingcases/oakley/index.html).

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

*(Check all that Apply)*

FOR SERVICE TO ALL OTHER PARTIES:

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery;
- by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses NOT marked "email preferred."

**AND**

FOR FILING WITH THE ENERGY COMMISSION:

- sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);

**OR**

- depositing in the mail an original and 12 paper copies, as follows:

**CALIFORNIA ENERGY COMMISSION**

Attn: Docket No. 09-AFC-4  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

\_\_\_\_\_  
/s/ Rhea Moyer