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Docket Number:	12-AFC-02C
Project Title:	Huntington Beach Energy Project - Compliance
TN #:	214451
Document Title:	Energy Commission Staff's Pre-hearing Conference Statement
Description:	N/A
Filer:	Liza Lopez
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	11/9/2016 3:58:06 PM
Docketed Date:	11/9/2016



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
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PETITION TO AMEND THE:

HUNTINGTON BEACH ENERGY PROJECT

Docket No. 12-AFC-02C

**ENERGY COMMISSION STAFF'S PRE-HEARING
CONFERENCE STATEMENT**

On October 21, 2016, the Committee assigned to this proceeding issued a Notice of Prehearing Conference and Evidentiary Hearing, Scheduling Order, and Further Orders (Notice). In that document, the Committee requested that parties file Prehearing Conference Statements no later than November 9, 2016¹. 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 in Part A of the Final Staff Assessment (FSA) and is ready to proceed to evidentiary hearings set for November 30, 2016. Staff has concluded that, with the conditions of certification and related impact mitigation proposed in the FSA, no significant adverse impact to the environment or public health will result from the construction or operation of the Huntington Beach Energy Project (HBEP) as amended, and that the proposed project will comply with all applicable laws, ordinances, regulations and standards.

¹ On page 2 of the Notice, the schedule notes that all parties are to file a Pre-hearing Conference Statement and Exhibit List on Thursday, November 10, 2016. However, on page 3 of the Notice the parties are specifically ordered to docket a Pre-hearing Conference Statement and Exhibit List "no later than 5:00 p.m. on Wednesday, November 9, 2016." In filing this Pre-hearing Conference Statement on November 9, staff errs on the side of caution.

Staff has received the testimony of AES Huntington Beach Energy, LLC (petitioner) filed on October 27, 2016. Based on a review of the documents received thus far, staff believes that there remains disagreement in several technical areas: Biological Resources, Cultural Resources, Geology and Paleontological Resources, Visual Resources, and Compliance.

1. The issues that are complete and ready to proceed to hearing.

For those matters not subject to dispute between the parties, 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	John Heiser
Introduction.....	John Heiser
Project Description.....	John Heiser
Socioeconomics	Lisa Worrall
Traffic and Transportation	John Hope
Land Use	Steven Kerr
Transmission Line Safety and Nuisance.....	Obed Odoemelam, Ph.D.
Facility Design	Shahab Koshmashrab
Soil and Water Resources	Mike Conway
Power Plant Efficiency	Edward James Brady
Noise and Vibration	Edward James Brady
Power Plant Reliability	Edward James Brady
Transmission System Engineering.....	Laiping Ng and Mark Hesters
Worker Safety and Fire Protection	Geoff Lesh / Brett Fooks
Alternatives	Matthew Layton, P.E. / David Vidaver

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2. **The issues that are not complete and not yet ready to proceed to evidentiary hearing, and the reasons therefore.**

The Committee assigned to the proceeding filed an Order on October 11, 2016, directing staff to “publish all portions of the FSA not reliant on the FDOC no later than October 17, 2016.” Staff awaits the Final Determination of Compliance, the publication of which has been delayed by the South Coast Air Quality Management District. The technical areas of Air Quality and Public Health are reliant on the Final Determination of Compliance, and are not complete and not ready to proceed to hearing.

3. **The issues that remain disputed and require adjudication, and the precise nature of the disputes for each issue.**

Staff have identified the following issues as either remaining in dispute and requiring adjudication, or having been previously identified as being in dispute but have since been resolved.

a. Biological Resources

Staff does not agree with the petitioner’s suggested revisions to **BIO-1**. The truncated time for CPM review and approval of the recommended Designated Biologist as proposed by the petitioner is insufficient for CPM review, even for a candidate who has served as Designated Biologist on a prior project. While staff understands the petitioner’s stated concern regarding their preferred schedule, there is nothing to suggest that the CPM or staff could not - or would not - provide timely review of the Designated Biologist’s qualifications in the regular course of business. Staff is always keenly aware of scheduling issues, and routinely works with project owners to ensure that all of the technical areas of each facility are reviewed in a timely manner. There are no facts to indicate the Amended HBEP project needs a special

condition in how biological resource personnel are approved or that as written **BIO-1** will delay project construction. Staff and the petitioner are otherwise in agreement regarding the conclusions in the Biological Resources section of the FSA that the project will comply with all applicable laws, ordinances, regulations, and standards (LORS).

b. Cultural Resources

Staff does not agree with the petitioner's suggested revisions to **CUL-1**. The truncated time for CPM review and approval of the recommended Designated Cultural Resource Specialist (CRS) as proposed by the petitioner is insufficient for CPM review, even for a candidate who has served as CRS on a prior project. As stated above, staff is always keenly aware of scheduling issues, and routinely works with project owners to ensure that all of the technical areas of each facility are reviewed in a timely manner. There are no facts to indicate the Amended HBEP needs a special condition in how cultural resource personnel are approved or that as written **CUL-1** will delay project construction. Staff and the petitioner are otherwise in agreement regarding the conclusions in the Cultural Resources section of the FSA that the project will comply with all applicable LORS.

c. Geology and Paleontology Resources

Staff and petitioner disagree on the inclusion of Condition of Certification **GEO-3**. Staff concluded that the hazard to public health and safety from tsunami inundation is significant and requires mitigation, and considers preparation and implementation of a Tsunami Hazard Mitigation Plan to be an essential element for ensuring public safety. Staff modified **GEO-3** to require the petitioner to conduct regular tsunami evacuation drills. This modification will improve the effectiveness of **GEO-3** and make the condition consistent with recently proposed conditions for other projects.

The petitioner also requested a change to **PAL-1** that would add additional language to the condition's verification. Staff declines to revise **PAL-1** in the manner requested because prior performance as a Paleontological Resource Specialist (PRS) on other Energy Commission projects may have no bearing on an individual's qualifications to do so for the Amended HBEP. Each proposed project is located in a unique environmental setting that requires an original evaluation of the professional qualifications requirements for a PRS. Therefore, a blanket approval process, based solely on prior acceptance within the last 5 years, is not appropriate for the Amended HBEP.

Staff and the petitioner are otherwise in agreement regarding the conclusions in the Geology and Paleontology Resources section of the FSA that the project will comply with all applicable LORS.

d. Land Use

Staff agrees with petitioner's recommended changes to Condition of Certification **LAND-1**. It therefore does not appear that there are any disputed issues remaining in the technical area of Land Use. Staff and petitioner are in agreement regarding the conclusions in the Land Use section of the FSA that the project will comply with all applicable LORS and will not result in significant adverse impacts to the environment.

e. Soil and Water Resources

It does not appear that there are any disputed issues remaining in the technical area of Soil and Water Resources. Staff and petitioner are in agreement regarding the conclusions in the Soil and Water section of the FSA that the project will comply with all applicable LORS and will not result in significant adverse impacts to the environment.

f. Visual Resources

Staff and applicant are not in agreement regarding Visual Resources, specifically the underlying analysis and conclusions regarding the impacts to visual resources. Staff also opposes the proposed changes to Condition of Certification VIS-1 as to the timing element, which the petitioner asserts is “infeasible,” an assertion that is without support.

g. Waste Management

It does not appear that there are any disputed issues remaining in the technical area of Waste Management. Staff and applicant are in agreement regarding the conclusions in the Waste Management section of the FSA that the project will comply with all applicable LORS and will not result in significant adverse impacts to the environment. Staff agrees with the modification to Condition of Certification **WASTE-5**.

h. Transmission Line Safety and Nuisance.

It does not appear that there are any disputed issues remaining in the technical area of Transmission Line Safety and Nuisance. Staff agrees with the petitioner’s testimony that staff’s recommended Conditions of Certification TLSN-1 and TLSN-2 for the amended HBEP do not reflect the language in the Decision for the Licensed HBEP. The versions of TLSN-1 and TLSN-2 as presented by the petitioner are correct, and staff therefore recommends these for the Amended HBEP.

i. Compliance Conditions

Staff has reviewed the petitioner’s opening testimony related to the compliance conditions for the Huntington Beach Energy Project Petition to

Amend. In developing compliance conditions, staff seeks consistency with other similarly situated projects while acknowledging the need for unique conditions in certain circumstances. Keeping this in mind, staff agrees with certain suggested changes set forth in the petitioner's testimony as to Condition of Certification **COM-11**, **COM-13**, **COM-14**, and **COM-15** (with the exception of the last paragraph).

Staff disagrees with certain suggested changes set forth in the petitioner's testimony, and declines to adopt the petitioner's proposed language revisions to Conditions of Certification **COM-3**, **COM-4**, and to the last paragraph of **COM-15**.

Additionally, staff is providing corrected language as a result of an updated California Code of Regulations section pertaining to power plant siting. Incorrect language was erroneously left in the Final Staff Assessment; the corrected language is below.

INVESTIGATION REQUESTS AND COMPLAINT PROCEDURES

Any person or agency may file a complaint alleging noncompliance with the conditions of certification. Such a complaint will be subject to review by the Energy Commission pursuant to Title 20, California Code of Regulations, sections 1230 through 1232.5, but, in many instances, the issue(s) can be resolved by using an informal dispute resolution process. Both the informal and formal complaint procedures, as described in current state law and regulations, are summarized below. Energy Commission staff will follow these provisions unless superseded by future law or regulations. The California Office of Administrative Law provides on-line access to the California Code of Regulations at <http://www.oal.ca.gov/>.

Any person may file a Request for Investigation alleging noncompliance with the conditions of certification, Energy Commission regulations, or orders. Such a request shall be filed with and reviewed by the Executive Director. The provisions setting forth the Request for Investigation process can be found in Title 20, California Code of Regulations, sections 1230 through 1232.5. The Request for Investigation may result in the Executive Director bringing a complaint against the alleged violator under section 1233 and seeking administrative penalties. The California Office of Administrative Law provides on-line access to the California Code of Regulations at <http://www.oal.ca.gov/>.

Staff and the petitioner are otherwise in agreement regarding the Compliance Conditions in the FSA that the project will comply with all applicable LORS.

- 4. The identity of each witness that the party intends to sponsor, the subject area(s) about which the witness(es) will testify, a brief summary of the testimony to be offered by the witness(es), qualifications of each witness, the time required to present testimony by each witness, and whether the witness seeks to testify telephonically.**

For Biological Resources, staff requests 15 minutes to present the direct testimony of staff's expert witnesses, Tim Singer and Heather Blair. Their written testimony and statements of their qualifications are contained in the FSA (Exh. 6000).

For Cultural Resources, staff requests 15 minutes to present the direct testimony of staff's expert witness, Gabriel Roark. His written testimony and statement of his qualifications are contained in the FSA (Exh. 6000).

For Geology and Paleontology Resources, staff requests 15 minutes to present the direct testimony of staff's expert witness, Mike Conway, P.G.. His written testimony and statement of his qualifications are contained in the FSA (Exh. 6000).

For Visual Resources, staff requests 15 minutes to present the direct testimony of staff's expert witness, Jeanine Hinde. Her written testimony and statement of her qualifications are contained in the FSA (Exh. 6000).

For Compliance, staff requests 15 minutes to present the direct testimony of staff's expert witness, Eric Veerkamp. His written testimony and statement of his qualifications are contained in the FSA (Exh. 6000).

5. Subject areas upon which the party desires to question the other parties' witness(es), a summary of the scope of the questions (including witness qualifications), the issue(s) to which the questions pertain, and the time desired to question each witness.

For Biological Resources, staff requests to reserve up to 30 minutes to cross examine applicant's witness, Stephen O'Kane, specifically as to timing issues related to the approval of a Designated Biologist. .

For Cultural Resources, staff requests to reserve up to 30 minutes to cross examine applicant's witness, Stephen O'Kane, specifically as to timing issues related to the approval of a Designated Cultural Resource Specialist.

For Visual Resources, staff requests to reserve up to 30 minutes to cross examine applicant's witness, Stephen O'Kane, specifically as to his analysis and conclusions related to his belief that the visual impacts caused by the HBEP would be "less than significant" and that "no mitigation is required," and the timing for the implementation of the architectural screening plan as recommended by the city of Huntington Beach and agreed to by the petitioner.

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6. A list identifying exhibits with transaction numbers (TN) that the party intends to offer into evidence and the technical subject areas to which they apply.

Exhibit No.	TN	Name of Document	Subject Area
6000	214025	Final Staff Assessment, Part 1	All
6001	214358	Energy Commission Staff's Rebuttal Testimony	Biological Resources, Cultural Resources, Water Resources, Geology and Paleontological Resources, Visual Resources, Transmission Line Safety and Nuisance, Waste Management

7. Proposals for briefing deadlines, impact of scheduling conflicts, or other scheduling matters.

Staff appreciates the willingness of the Committee assigned to hear this matter to allow for the bifurcation of these proceedings to allow for the South Coast Air Quality Management District to complete their work on the FDOC, and for staff to in turn complete the analysis in the Air Quality and Public Health sections.

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.

Staff recommends that the Committee allow for the filing of Errata prior to the close of the evidentiary record.

Should any matter need briefing after evidentiary hearings, assuming the transcript is expedited, staff proposes that Opening Briefs and Reply Briefs be filed as currently scheduled.

DATED: November 9, 2016

Respectfully submitted,

Original signed by: _____
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