

DOCKETED

Docket Number:	12-AFC-02C
Project Title:	Huntington Beach Energy Project - Compliance
TN #:	214627
Document Title:	Order Shortening Time; Order Granting Motion to Advance Date for Evidentiary Hearing, etc.
Description:	Orders regarding advancing date for Evidentiary Hearing; Scheduling Order
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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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PETITION TO AMEND THE:

HUNTINGTON BEACH ENERGY PROJECT

Docket No. 12-AFC-02C

**ORDER SHORTENING TIME; ORDER GRANTING MOTION TO
ADVANCE DATE FOR EVIDENTIARY HEARING; SCHEDULING ORDER**

The Energy Commission Committee¹(Committee) assigned to conduct proceedings on the Petition to Amend (Petition) the certified Huntington Beach Energy Project (HBEP) issues new orders as set forth below.

BACKGROUND

On September 9, 2015, AES Southland, LLC² (Petitioner) submitted the Petition seeking permission to amend the HBEP.³ The Petition proposes to reduce the nominal generation capacity of the HBEP from 939 megawatts (MW) to 844 MW (644 MW generated from combined-cycle technology and 200 MW from simple-cycle technologies) (Proposed Project).⁴

On November 14, 2016, the Committee held a Prehearing Conference (PHC) on the Proposed Project. At that time, an Evidentiary Hearing on Part 1 of the Final Staff Assessment (FSA)⁵ was scheduled for November 30, 2016. During the PHC, South Coast Air Quality Management District (SCAQMD) stated that it was ready to release the Final Determination of Compliance (FDOC) during either the week of November 21, 2016, or November 28, 2016.⁶ The Committee had, throughout the proceedings, indicated a preference for a single, integrated evidentiary hearing that addressed ALL topics, including those related to the FDOC. As such, on November 22, 2016, the

¹ The Energy Commission, on October 14, 2015, designated Andrew McAllister, Commissioner and Presiding Member, and Karen Douglas, Commissioner and Associate Member, as the Committee to conduct proceedings on the Proposed Project.

² AES Southland, LLC, sought and obtained permission to transfer ownership of the Huntington Beach Energy Project to AES Huntington Beach Energy, LLC (TN 211856). For ease, we will refer to AES Huntington Beach Energy, LLC as "Petitioner."

³ The Energy Commission issued its Final Decision allowing Petitioner to construct and operate the HBEP on October 29, 2014 (the 2014 Decision). The 2014 Decision can be found at: <https://efiling.energy.ca.gov/getdocument.aspx?tn=203309>.

⁴ Further details of the Proposed Project are contained in the Petition, which may be viewed at: <https://efiling.energy.ca.gov/getdocument.aspx?tn=206087>

⁵ Staff filed Part 1 of the FSA on October 17, 2016. (TN 214025)

⁶ In fact, SCAQMD filed the FDOC at approximately 5:30 p.m. on November 18; it was served on all parties on November 21, 2016. (TNs 214532, 214533)

Hearing Officer filed a memorandum indicating that the Committee would be cancelling the November 30, 2016, Evidentiary Hearing.⁷ The Committee then filed a formal notice cancelling the Evidentiary Hearing and setting out a new schedule (November Order).⁸

The chief hallmark of the November Order was to schedule the Evidentiary Hearing on January 9, 2017; all other dates for filing were predicated on that hearing date. In addition, the November Order required Energy Commission staff (Staff) to prepare Part 2 of the FSA as a single document that would include the sections related to the FDOC **and** responses to specific issues raised during the PHC by the Committee and by the city of Huntington Beach, as set forth below.⁹

In response to the Hearing Officer's memorandum and the November Order, both Staff and Petitioner have submitted multiple documents regarding alternate schedules.¹⁰ These filings culminated in Petitioner filing a "Motion to Advance the Evidentiary Hearing" (Hearing Motion).¹¹ The Hearing Motion sought to both advance the date for an evidentiary hearing and to shorten time for the Committee's consideration of the question of modifying the hearing date. Staff filed a joinder and concurrence in the Hearing Motion.¹² No comments on the Hearing Motion were received from interested agencies or the public.

ORDERS

Order Shortening Time

Pursuant to California Code of Regulations, Title 20, responses to motions must be filed within 14 days of the service of the motion, with action taken by the Presiding Member within 21 days of its filing.¹³ In applying that schedule to the Hearing Motion, a decision would occur after the requested date for the Evidentiary Hearing. Staff and Petitioner are the only parties in this proceeding. Therefore, Petitioner's request for an order shortening time for consideration of the Hearing Motion is **GRANTED**.

Scheduling Order

Throughout the proceeding, the Committee has stated its desire to hold a single evidentiary hearing on all issues presented by the Petition. With the issuance of the FDOC as described above, the Committee desires to continue with a single evidentiary hearing, but to advance its date, as requested by the Hearing Motion. Therefore, the portion of the Hearing Motion requesting an evidentiary hearing on December 21, 2016, is **GRANTED**.

⁷ TN 214549.

⁸ TN 214581.

⁹ *Id.* at pp. 2-3, 4-5.

¹⁰ TNs 214550, 214552, 214555, and 214565.

¹¹ TN 214604.

¹² TN 214614.

¹³ Cal. Code Regs., tit. 20, § 1211.5, subd. (a).

The Hearing Motion also includes a specific schedule for dates related to the Evidentiary Hearing. That portion of the Hearing Motion is **DENIED**. Instead, the Committee establishes the following schedule for the Petition which **supersedes** all prior schedules:

<u>EVENT</u>	<u>DUE DATE</u>
Final Staff Assessment (FSA) Part 1	10/17/16
All Parties File Opening Evidence ¹⁴ , Part 1	10/27/16
Last Day to File Petition to Intervene	10/31/16
All Parties File Rebuttal Evidence, Part 1 ¹⁵	11/3/16
Final Determination of Compliance	11/21/16
Final Staff Assessment, Part 2 ¹⁶	12/9/16
All Parties File Opening Evidence, Part 2	12/12/16
All Parties File Rebuttal Evidence, Part 2	12/14/16
All Parties File Prehearing Conference Statements and Exhibit Lists, Part 2	12/16/16
Prehearing Conference and Evidentiary Hearing ¹⁷	12/21/16
Presiding Members Proposed Decision (PMPD) Published	Week of 1/30/17
Committee Conference on PMPD	Within 30 days of the publication of the PMPD
Close of public comment period on PMPD	30 days after publication of the PMPD
Errata/Revisions to PMPD	TBD
Final Adoption Hearing by the California Energy Commission	March/April 2017

Order for Contents of Part 2 of the FSA

Staff is **ORDERED** to prepare Part 2 of the FSA as a single document to include the following:

¹⁴ Evidence means both testimony and any documents a party wishes to offer at the Evidentiary Hearing.

¹⁵ Rebuttal evidence is in response to an issue first raised in opening testimony. Testimony which could have, with reasonable diligence, been filed as opening testimony, may be subject to exclusion from rebuttal on the motion of a party or the Committee's own initiative.

¹⁶ Part 2 of the FSA shall include both the previously unpublished portions of the FSA related to the FDOC, as well as any additional information in response to the issues raised during the November 14, 2016, PHC, as set forth below.

¹⁷ Formal notice of the date for the Prehearing Conference and Evidentiary Hearing will be separately filed.

1. All topics and issues related to the FDOC;
2. Responses to all comments made by the Hearing Officer during the November 14, 2016, PHC related to the Part 1 of the FSA;
3. Responses to all comments regarding Part 1 of the FSA made by the city of Huntington Beach during the November 14, 2016, PHC, and in the written comments filed on December 2, 2016¹⁸; and
4. Any response from Staff to the supplemental rebuttal testimony filed by Petitioner.¹⁹

Order for Pre-hearing Briefing

During the November 14, 2016, PHC, two legal issues were discussed:

1. The applicable statutes under which the Report from the Coastal Commission²⁰ should be considered by the Committee; and
2. Whether Water Code section 10910, subdivision (h) applies to the Project's Water Supply Assessment.

Staff and Petitioner are hereby **ORDERED** to submit legal analysis on these topics with their Prehearing Conference Statements and Exhibit Lists, Part 2.

Public Adviser and Public Participation

The Energy Commission's Public Adviser's Office is available to assist the public in participating in the proceedings. For assistance, contact Alana Mathews, Public Adviser, at (916) 654-4489 or (800) 822-6228, or by e-mail at publicadviser@energy.ca.gov.

Contact Information

Questions of a legal or procedural nature should be directed to Susan Cochran, Hearing Officer, at (916) 654-3965, or by e-mail at susan.cochran@energy.ca.gov.

Technical questions concerning the Proposed Project should be addressed to John Heiser, Project Manager, at (916) 653-8236, or by email at john.heiser@energy.ca.gov.

Media inquiries should be directed to the Office of Media and Public Communications at (916) 654-4989, or by e-mail at mediaoffice@energy.ca.gov.

¹⁸ TN 214618.

¹⁹ TN 214455.

²⁰ TNs 212797-1, 212797-2.

Information concerning the status of the Proposed Project, as well as notices and other relevant documents, may be viewed on the Energy Commission's web page at:

http://www.energy.ca.gov/sitingcases/huntington_beach_energy/.

Dated: December 2, 2016, at Sacramento, California

ORIGINAL SIGNED BY:

ORIGINAL SIGNED BY:

J. ANDREW McALLISTER, Ph.D.
Commissioner and Presiding Member
Huntington Beach Energy Project
Amendment Committee

KAREN DOUGLAS
Commissioner and Associate Member
Huntington Beach Energy Project
Amendment Committee