

## DOCKETED

<b>Docket Number:</b>	97-AFC-01C
<b>Project Title:</b>	High Desert Power Plant (COMPLIANCE)
<b>TN #:</b>	210479
<b>Document Title:</b>	Notice of Postponed Prehearing Conference and Evidentiary Hearing, Revised Committee Schedule, and Further Orders
<b>Description:</b>	March 15, 2016 9:30 am High Desert Prehearing Conference & Evidentiary Hearing
<b>Filer:</b>	Maggie Read
<b>Organization:</b>	Energy Commission Hearing Office
<b>Submitter Role:</b>	Committee
<b>Submission Date:</b>	2/19/2016 4:52:42 PM
<b>Docketed Date:</b>	2/19/2016



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

**PETITION TO AMEND THE  
HIGH DESERT POWER PLANT**

**Docket No. 97-AFC-01C**

**NOTICE OF POSTPONED PREHEARING CONFERENCE AND  
EVIDENTIARY HEARING, REVISED COMMITTEE SCHEDULE, AND  
FURTHER ORDERS**

**PLEASE TAKE NOTICE** that the Energy Commission Committee<sup>1</sup> (Committee) assigned to conduct proceedings on the Project Owner's Petition for Modification to Drought-Proof the High Desert Power Plant (HDPP or Petitioner) (Petition)<sup>2</sup> has postponed the **Prehearing Conference and Evidentiary Hearing**<sup>3</sup> previously scheduled on February 22, 2016, to:

**TUESDAY, MARCH 15, 2016**

**Beginning at 9:30 a.m.**

**California Energy Commission  
Charles Imbrecht Room (Hearing Room B)  
1516 Ninth Street  
Sacramento, CA 95814  
(see map below)  
(Wheelchair Accessible)**

The **Committee Conference (Closed Session)** previously continued to February 19, 2016, is **cancelled**. The previously announced deadline for filing responses to the Committee Questions for Parties and Other Interested Persons (TN 210315) is extended from February 18 to **March 1, 2016**. We are canceling the continued Committee Conference and postponing the Prehearing Conference and Evidentiary Hearing in order to allow the California Department of Fish and Wildlife (CDFW) time to review the proposed project changes and offer evidence and comment on potential

<sup>1</sup> The Committee consists of Commissioner Karen Douglas, Presiding Member, and Commissioner Janea A. Scott, Associate Member. The full Commission made this Committee assignment at an Energy Commission Business Meeting on January 13, 2016.

<sup>2</sup> TN 206468.

<sup>3</sup> The Prehearing Conference will take place first, followed immediately thereafter by the Evidentiary Hearing.

biological resource impacts that may arise from the proposed change in water supply and other issues it identifies, and for the parties to offer rebuttal evidence in response to CDFW's evidence.<sup>4</sup>



**TELECONFERENCE OPTION:** *You may participate in the Prehearing Conference and Evidentiary Hearing either in person, by telephone, and/or by computer via the "WebEx" conferencing system. Please see the "INSTRUCTIONS FOR USING WEBEX TELECONFERRING USING YOUR COMPUTER AND/OR TELEPHONE" section attached to this notice.*

**SCHEDULING ORDER**

**PLEASE TAKE NOTICE** that the Committee has revised the schedule for this proceeding:

<u>EVENT</u>	<u>DATE</u> <sup>5</sup>
Petitioner and Commission Staff File Opening Testimony	January 29, 2016
Other Parties File Opening Testimony	February 5, 2016
All Parties File Rebuttal Testimony <sup>6</sup>	February 12, 2016
California Department of Fish and Wildlife (CDFW) files Testimony	March 1, 2016
Parties File Responses to the Committee Questions for Parties and Other Interested Persons (TN 210315)	March 1, 2016
All Parties File Rebuttal Testimony to the CDFW Testimony <sup>7</sup>	March 8, 2016
All Parties File Prehearing Conference Statements with Exhibit Lists	<del>February 17, 2016</del> March 8, 2016

<sup>4</sup> TN 210355.

<sup>5</sup> All deadlines stated in this Notice are at 5:00 p.m., local time in Sacramento, California, on the specified date, unless another specific time is provided.

<sup>6</sup> Rebuttal testimony 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 on the motion of a party or the Committee's own initiative.

<sup>7</sup> This postponement does not alter the previously established deadlines for filing opening and rebuttal testimony, which have passed. The only additional evidence or testimony that will be accepted without a showing of good cause for late filing is the evidence and comment from the CDFW and any rebuttal evidence or testimony responding to the CDFW's evidence or comment or another party's responses to the Committee Questions. Testimony which could have, with reasonable diligence, been filed as opening or previous rebuttal testimony, may be subject to exclusion on the motion of a party or the Committee's own initiative.

<u>EVENT</u>	<u>DATE</u>
Prehearing Conference and Evidentiary Hearing (EH)	February 22, 2016 March 15, 2016
All Parties File Briefs, if determined to be necessary by the Committee	5 days after the hearing transcripts are filed
Presiding Member's Proposed Decision (PMPD) filed	TBD
Final Adoption Hearing by the California Energy Commission	TBD

\*TBD = To Be Determined

## Background

The HDPP was certified by the Energy Commission on May 3, 2000. It began commercial operation in April, 2003. The HDPP is a 830 Megawatt (MW) natural gas fired, combined-cycle electric generating facility located in the City of Victorville in San Bernardino County.

When originally approved, the HDPP was limited to using State Water Project water for cooling purposes; the use of this water also required HDPP to bank State Water Project water for use in dry years.<sup>8</sup> On September 10, 2014, the Energy Commission approved an amendment request from HDPP allowing them to consume no more than 2,000 AFY of water supplies other than State Water Project Water or recycled water from the Victor Valley Wastewater Reclamation Authority and the city of Victorville's Industrial Wastewater Treatment Plant. The Commission also ordered HDPP to file a recycled-water feasibility study by November 1, 2014, and to file a Petition to Amend by November 1, 2015. Any such Petition to Amend would either need to identify reliable primary and backup water supplies for HDPP that are consistent with state policies water policies or propose an alternate cooling system. HDPP filed the Water Feasibility study on November 3, 2014,<sup>9</sup> and the Petition to Amend on October 30, 2015.<sup>10</sup>

The Petition proposes a "Loading Sequence" for the sources of water to be blended with recycled water at the facility, maximizing the use of recycled water as the primary supply, in order to operate the facility reliably. The other water sources are water directly from the State Water Project, banked State Water Project water, and adjudicated groundwater from the Mojave River Basin. They would be blended in that order of preference.

The Petition may be viewed at:

<https://efiling.energy.ca.gov/getdocument.aspx?tn=206468>

<sup>8</sup> The Original Decision can be found at:

[http://www.energy.ca.gov/sitingcases/highdesert/documents/2000-05-03\\_HD\\_DECISION.PDF](http://www.energy.ca.gov/sitingcases/highdesert/documents/2000-05-03_HD_DECISION.PDF)

<sup>9</sup> TN 203306.

<sup>10</sup> TN 206468.

## Expedited Proceeding; Formal Intervention Not Required

HDPP requests expedited processing of its Petition, citing a need to resolve its water supply situation by February, 2016. Its current access to Mojave River Basin adjudicated groundwater expires at the close of the 2015/2016 Water Year on September 30, 2016 and it must plan for future supplies sufficient to allow the project to operate reliably. At the November 12, 2015, Business Meeting, HDPP asked for the immediate appointment of a Committee and expedited review of the Petition, citing Governor Brown's Executive Order B-29-15 (Executive Order), relating to the drought and directing that the Energy Commission "expedite the processing of all applications or petitions for amendments to power plant certifications issued by the Energy Commission for the purpose of securing alternate water supply necessary for continued power plant operation."<sup>11</sup>

It is not clear that the Executive Order applies to this Petition. Staff's comments during the November 12, 2015, Business Meeting imply that staff does not think it applies in this situation.<sup>12</sup> The other grounds offered by HDPP are sufficient to justify an expedited review.

In light of the expedited review, the Committee is waiving the requirement that persons desiring to present evidence or ask questions of other parties' witnesses in this proceeding first petition for and be granted status as an Intervenor. **However, persons desiring to exercise the rights afforded to Intervenors must file any proposed evidence, testimony or answers to the Committee's questions by the deadlines set forth in the schedule above, and a Prehearing Conference statement as described below.** Such a person's Prehearing Conference statement must also include a statement of the nature of his or her interest in the proceeding. Persons who file a complete Prehearing Conference statement by the stated deadline will be considered as Intervenors and parties for purposes of the requirements and stipulations that follow below. The Committee reserves the right to impose conditions on parties' participation in the hearing in order to promote the orderly conduct of these proceedings.

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<sup>11</sup> TN 206534, citing [https://www.gov.ca.gov/docs/4.1.15\\_Executive\\_Order.pdf](https://www.gov.ca.gov/docs/4.1.15_Executive_Order.pdf)

<sup>12</sup> While the Executive Order was not specifically mentioned, Roger Johnson, Deputy Director, Siting Division, said "I don't see the urgency, this is for an emergency backup supply, it's not their water supply, it's for an emergency." Transcript of November 12, 2015 Business Meeting, p. 20, lines 13-15. <https://efiling.energy.ca.gov/getdocument.aspx?tn=206706>

## Purpose of Prehearing Conference

The Prehearing Conference is a public forum where the Committee will assess the parties' (Applicant, Energy Commission Staff, Intervenors) readiness for an evidentiary hearing, identify areas of agreement or dispute, and discuss the remaining schedule and procedures necessary to conclude the amendment process.

## ORDER REGARDING PREHEARING CONFERENCE STATEMENTS AND EXHIBIT LISTS

All parties are **ORDERED** to file a Prehearing Conference Statement and Exhibit List on or before March 8, 2016, unless otherwise directed by the Committee. Failure to timely file a Prehearing Conference Statement and Exhibit List may result in the exclusion of evidence and limitation of cross-examination.

The Prehearing Conference Statement must specify under separate headings:

1. The subject areas that are complete and ready to proceed to Evidentiary Hearing;
2. The subject areas upon which any party proposes to introduce testimony in writing rather than through oral testimony;
3. The subject areas that are not complete and not yet ready to proceed to Evidentiary Hearing, and the reasons therefor;
4. The subject areas that remain disputed and require adjudication, and the precise nature of the dispute for each issue;
5. The identity of each witness the party intends to sponsor at the Evidentiary Hearing, the subject area(s) about which the witness(es) will offer testimony, whether the testimony will be oral or in writing, 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;
6. 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 (*NOTE*: a party who fails to provide, with specificity, the scope, relevance and time for questioning other parties' witness(es) risks preclusion from questioning on that subject area);
7. A list identifying exhibits with transaction numbers (TN) that the party intends to offer into evidence during the Evidentiary Hearing and the technical subject areas to which they apply (see below for further details on Exhibit Lists);
8. Proposals for briefing deadlines, impact of scheduling conflicts, or other scheduling matters; and
9. If the party is not the Petitioner or Commission Staff and wants to be considered an Intervenor for purposes of this Petition, a statement of the nature of the party's interest in the proceeding.

All parties intending to submit documentary evidence for consideration at the hearing are **ORDERED** to docket such exhibits, and an Exhibit List with their Prehearing Conference Statements on or before 5:00 p.m. on the dates specified in the above schedule.

**All documentary evidence and written testimony must be docketed in this proceeding's docket (97-AFC-01C) and have a transaction number (TN)** assigned by the Energy Commission Dockets Unit. Exhibits without a TN, or not docketed in this proceeding's docket, will not be received into evidence absent a showing of good cause. If the document is already docketed, it need not be refiled; simply provide the TN number on the Exhibit List.

The parties shall exchange documentary evidence, including written testimony, by filing an **Exhibit List**. Each document shall be numbered and identified on the Exhibit List as follows:

- Petitioner's exhibits shall be numbered *consecutively* as **Exhibits 1000 through 1999**;
- Staff's exhibits shall be numbered *consecutively* as **Exhibits 2000 through 2999**; and
- Intervenors shall contact the Hearing Officer, Susan Cochran, to obtain an Exhibit number range for their exhibits.

The Exhibit Lists shall be formatted as four columns. The first column shall list the proposed Exhibit Number. The second column shall contain the TN of the corresponding document. The third column shall state the title of the document as shown in the docket. The fourth column shall state the subject area(s) to which the exhibit applies. Hearing Office staff will then add the Exhibit Number information to the e-filing system. An exhibit list may be generated by clicking on the Exhibit List link on the project web page.

***Failure of any party to comply with the filing requirements stated in this Order may preclude that party from participating in the Evidentiary Hearing.***

### **Purpose of Evidentiary Hearing**

The Evidentiary Hearing is a public forum where the Committee will receive evidence from all parties (Applicant, Energy Commission Staff, Intervenors) regarding the merits of the Petition, including, but not limited to, the impacts that proposed modifications may have on the environment, how they would affect the public and nearby property owners, and how they would impact the facility's ability to comply with applicable laws, ordinances, regulations, and standards. (Cal. Code Regs., tit. 20, § 1769.)

Local, state, federal, and tribal governmental agencies may participate in the Prehearing Conference and Evidentiary Hearing. (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 via the Energy Commission's e-Commenting system at:

<https://efiling.energy.ca.gov/Ecomment/Ecomment.aspx?docketnumber=97-AFC-01C>

### **Formal and Informal Hearing Procedures**

Pursuant to California Government Code section 11445.10 et seq., and the Commission's regulations (Cal. Code Regs., tit. 20, § 1210), the Committee may conduct all or portions of the evidentiary hearing using an informal procedure. At the Prehearing Conference and Evidentiary Hearing, the Committee will discuss with the parties the use of informal and formal procedures.

The informal hearing process would generally proceed in the following order:

1. All parties' experts on the subject area at hand are sworn in as a panel;
2. Petitioner's experts would provide a brief opening statement summarizing the key points and conclusions of their testimony;
3. Staff's experts would provide a brief opening statement summarizing the key points and conclusions of their testimony;
4. Intervenors' experts would provide a brief opening statement summarizing the key points and conclusions of their testimony;
5. Open discussion among the expert panelists led by the Committee;
6. Attorneys may follow up with questions of their own or other expert witnesses to the extent the Committee finds the questioning productive; and
7. At the conclusion of the attorneys' examination of the experts, the Committee may ask witnesses additional questions or allow panelists to ask additional questions of each other and to offer follow-up answers.

The formal hearing process would generally proceed as follows:

1. A party asks direct questions of its witnesses on the topic at hand, either one at a time or seated as a panel.
2. The other parties then, in turn, ask cross-examination questions of the witness or panel who just testified.
3. The offering party can ask re-direct questions.
4. The other parties can ask re-cross questions.
5. Repeat the above steps for the witnesses offered by the other parties.

### **Notice of Closed Session Deliberations**

At any time during the conference or hearing, the Committee may adjourn to a closed session in accordance with California Government Code section 11126, subdivision (c)(3), which allows a state body, including a delegated committee, to hold a closed session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct.



## Transcripts

Parties are responsible for identifying errors in the transcripts of the proceedings. Corrections to the transcripts must be filed within 30 days of the filing of a transcript.

## Public Adviser and Public Participation

Members of the public are welcome to attend and offer oral or written comments at the prehearing conference and at the evidentiary hearing. It is not necessary to be an Intervenor to participate in the public process. Interested members of the public are encouraged to submit written comments using the e-commenting system described above. Otherwise, written comments may be submitted for posting on the proceeding docket by handing them directly to the Public Adviser, e-mailing them to [docket@energy.ca.gov](mailto:docket@energy.ca.gov), or by U.S. Mail to:

California Energy Commission  
Docket Unit  
Docket number: 97-AFC-01C  
1516 Ninth Street, MS-4  
Sacramento, CA 95614

For all comments, please include the docket number and proceeding name, "Docket No. 97-AFC-01C, High Desert Power Plant Project", in the subject line and on the cover page.

**PLEASE NOTE:** Your written and oral comments, attachments, and associated contact information (e.g., your address, phone, e-mail, etc.) become part of the viewable public record. Additionally, this information may become available via Google, Yahoo, and other search engines.

The Energy Commission Public Adviser's Office is available to assist the public with understanding the proceedings and to facilitate meaningful participation. If you want information on how to participate in this forum, please contact the Public Adviser, Alana Mathews, at [PublicAdviser@energy.ca.gov](mailto:PublicAdviser@energy.ca.gov) or (916) 654-4489, or toll free at (800) 822-6228.

If you have a disability and require assistance to participate, please contact Lou Quiroz at [lquiroz@energy.ca.gov](mailto:lquiroz@energy.ca.gov) or (916) 654-5146 at least five days in advance.

## Contact Information

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

Technical questions concerning the project should be addressed to Joseph Douglas, the Staff Project Manager, by e-mail at [joseph.douglas@energy.ca.gov](mailto:joseph.douglas@energy.ca.gov) or (916) 653-4677.

Media inquiries should be sent to the Media and Public Communications Office at [mediaoffice@energy.ca.gov](mailto:mediaoffice@energy.ca.gov) or (916) 654-4989.

Information regarding the status of the 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 <http://www.energy.ca.gov/sitingcases/highdesert/index.html>.

Dated: February 19, 2016, at Sacramento, California

Original signed by  
\_\_\_\_\_  
KAREN DOUGLAS  
Commissioner and Presiding Member  
High Desert Amendment Committee

Original signed by  
\_\_\_\_\_  
JANEA A. SCOTT  
Commissioner and Associate Member  
High Desert Amendment Committee

Mailed to list: 707



**INSTRUCTIONS FOR USING WEBEX TELECONFERENCING  
USING YOUR COMPUTER AND/OR TELEPHONE**



<b>EVENT</b>	<b>DATE</b>	<b>MEETING NUMBER</b>	<b>PASSWORD</b>
<b>Prehearing Conference and Evidentiary Hearing</b>	<b>Tuesday, March 15, 2016, 9:30 a.m.</b>	<b>920 184 150</b>	<b>pwd#1516</b>

**Using Your Computer:**

1. Go to <https://energy.webex.com> and enter the above meeting number.
2. When prompted, enter your name, e-mail address, and the meeting password above.
3. After a moment, an Audio Conference Box will offer you a choice of audio connections:
  - a) To have WebEx call you back: Type your area code and phone number into the drop down box and click “Call Me” (Click on “Use Phone” if you do not see the drop down box.)
  - b) To call into the teleconference from your phone (if, for example, your phone is an extension or you are an international caller): Use the drop-down box to select “I will Call in” and follow the on-screen directions. Click “All global call-in numbers” if you need to look up an international call-in number.
  - c) To listen and talk over your computer: If you have the needed equipment and your computer is configured, click the “Call Using Computer” button. (You may need to click “Use Computer for Audio” to make the button visible.)

**Telephone Only:**

1. Call 1 (866) 469-3239 (toll-free in the U.S. and Canada. International Callers can select a global call-in number at <https://energy.webex.com/energy/globalcallin.php>.)
2. When prompted enter the meeting number above.

Please be aware that WebEx audio and on-screen activity may be recorded. WebEx Technical Support is available at 1 (866) 229-3239.

**High Desert Power Plant Project 97-AFC-01C  
Meeting Agenda – Prehearing Conference and  
Evidentiary Hearing  
Tuesday, March 15, 2016, 9:30 a.m.**

**California Energy Commission  
Charles Imbrecht Room (Hearing Room B)  
1516 Ninth Street  
Sacramento, CA 95814  
(See Map Below)**

1. Call to Order
2. Prehearing Conference
3. Evidentiary Hearing  
Receipt of evidence from Petitioner, Staff and Intervenors on the Petition for Modification to Drought-Proof the High Desert Power Project. Topic and testimony orders will be determined at the Prehearing Conference.
4. Public Comment  
Members of the public and other interested persons and entities may speak up to three minutes on a matter appearing on this agenda. Public comments may be accepted during appropriate breaks between topic area testimony.
5. Closed Session (if necessary)  
Committee closed session consideration of the following item:

***PETITION FOR MODIFICATION TO DROUGHT-PROOF THE HIGH DESERT  
POWER PROJECT.***

Deliberation by the Committee on any matters submitted for decision by the Committee including, but not limited to, pending motions and scheduling.

The Committee will adjourn to closed session in accordance with Government Code section 11126, subdivision (c)(3), which allows a state body, including a delegated committee, to hold a closed session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct.

6. Adjourn  
Agency Contact: Susan Cochran, Hearing Officer, phone: (916) 654-3965, or e-mail: [susan.cochran@energy.ca.gov](mailto:susan.cochran@energy.ca.gov).

**Evidentiary Hearing at the California Energy Commission  
Charles Imbrecht Room (Hearing Room B)  
1516 Ninth Street  
Sacramento, CA 95814**

