

DOCKETED

Docket Number:	97-AFC-01C
Project Title:	High Desert Power Plant
TN #:	210804
Document Title:	ORDERS AFTER MARCH 16, 2016 PREHEARING CONFERENCE
Description:	N/A
Filer:	Maggie Read
Organization:	Energy Commission Hearing Office
Submitter Role:	Committee
Submission Date:	3/22/2016 11:34:47 AM
Docketed Date:	3/22/2016



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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***PETITION TO AMEND THE
HIGH DESERT POWER PLANT***

Docket No. 97-AFC-01C

ORDERS AFTER MARCH 16, 2016 PREHEARING CONFERENCE

Background

The High Desert Power Plant (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. At the time of its certification in 2000, the HDPP was limited to using water obtained from the State Water Project (SWP) for plant cooling requirements.

As it relates to groundwater, the HDPP is located within the Alto Subarea of the Mojave Basin—one of five such Subareas. The Mojave Basin was the subject of litigation that resulted in an adjudication of individual water production rights within the Mojave Basin (the Judgment) that was affirmed by the California Supreme Court in 2000. The Mojave Water Agency (MWA) serves as Watermaster under the Judgment, ensuring that proper water balances are maintained in each Subarea through a combination of natural supply, imported water (e.g., from SWP), water conservation, water reuse, and transfers of production allowances between producers.¹

In 2008, the Petitioner submitted a petition to the Energy Commission to amend the original conditions of certification to allow it to use reclaimed water for a portion of its water needs.² The Energy Commission granted the request on November 18, 2009, authorizing HDPP to use reclaimed water to meet up to one-third of its project cooling water needs. As part of this approval, the Energy Commission further required the Petitioner to provide, by December 31, 2011, a study analyzing the feasibility of converting HDPP to 100 percent reclaimed water use.³ This December deadline was later extended to November 2014 to allow for adequate testing at the facility based on the source of the reclaimed water (treated wastewater from the City of Victorville's industrial plant or from the Victor Valley Water Reclamation Authority's (VWRA)

¹ TN 206468.

² TN 47547.

³ TN 54277.

domestic treatment plant).⁴ The feasibility study was ultimately provided to the Energy Commission on November 3, 2014.⁵

In April of 2014, Petitioner submitted an “Amendment Petition for Alternative Water Supplies to Address Drought-related Reliability Impacts” (2014 Amendment Petition) to modify the conditions of certification. First, the 2014 Amendment Petition requested the ability to send backwash streams to the City of Victorville industrial wastewater treatment plant in order to improve the water quality of the reclaimed water received from that plant. Second, the HDPP sought authority to use water rights consistent with the Judgment.⁶

On September 10, 2014, the Energy Commission partially granted the 2014 Amendment Petition. The Energy Commission modified Condition of Certification SOIL&WATER-1, allowing HDPP to use no more than 2,000 acre feet of adjudicated groundwater from the Mojave River Basin. The use of groundwater was limited to times when reclaimed water of sufficient quantity or quality was not available. The Energy Commission further limited HDPP to 2000 AFY and that use of such water was limited to water years 2014/2015 and 2015/2016, subject to conformity with the Judgment.⁷ The Commission further ordered HDPP to file by November 1, 2015 a petition to amend that would implement reliable primary and backup water supplies that are consistent with state water policies or an alternate cooling system like dry cooling⁸.

HDPP filed the Petition on October 30, 2015 that proposes a “Loading Sequence” for the sources of water to be blended with reclaimed water at the facility, maximizing the use of reclaimed water as the primary supply, in order to operate the facility reliably. The other sources are 1) water directly from the SWP; 2) banked SWP water; and 3) adjudicated groundwater from the Mojave Basin; they would be blended in that order of preference.⁹

In response to the November 2014 feasibility study and the Petition, Energy Commission staff’s (Staff) analysis shows that, in most cases, there is sufficient reclaimed water available to meet the cooling requirements of the HDPP and that use of reclaimed water from VVWRA would mitigate the potential impacts of pumping groundwater from the adjudicated basin. Staff further argues that groundwater of up to 1600 AFY for emergency backup would be acceptable.¹⁰

Intervenor California Department of Fish and Wildlife (CDFW) disagrees with both Staff and the Petitioner. First, CDFW disputes that the Alto Subarea is not in a condition of groundwater “overdraft” or groundwater “sustainability”. Second, CDFW argues that the proposed use of over 3,090 AFY of reclaimed water could have a detrimental effect on

⁴ TN 60649, 62362.

⁵ TN 203306.

⁶ TN 202211.

⁷ The water year runs from October 1 to September 30. (TN 203108.)

⁸ TN 203108.

⁹ TN 206468.

¹⁰ TN 206321, 210083.

the Alto Subarea through a reduction in groundwater recharge in the Transition Zone. CDFW further asserts that SWP water should continue to make up the majority of water used for plant cooling purposes.¹¹

March 15, 2016, Prehearing Conference

On March 15, 2016, the Committee held a Prehearing Conference on the 2015 Petition and heard from the Petitioner, Staff, and Intervenor CDFW.¹² The topics discussed included:

1. Whether the evidentiary hearing on the Petition should be conducted under a formal process, informal process, or a hybrid thereof;
2. Whether the Petition was a “project” as defined by the California Environmental Quality Act (CEQA);
3. Whether the 2003 Integrated Energy Policy Report (IEPR) applied to the Petition, particularly as it relates to the use of groundwater for use in power plant cooling;
4. If the Committee requires financial information from the Petitioner in order to address whether Staff’s proposal to use all reclaimed water is economically feasible, what process should be used to protect its confidentiality;
5. What is the process and timing to receive a water balance calculation from the MWA, the Watermaster under the Judgment that adjudicated rights to the groundwater basin from which HDPP would draw water for cooling purposes under the Petition;
6. Which party bears the burden of proof on whether the HDPP may be required to use 100 percent reclaimed water for plant cooling purposes and whether this change in use is an alternative under CEQA or an alternative condition proposed by Staff under the Energy Commission’s regulations (California Code of Regulations, title 20, section 1745); and
7. Whether interim water supply relief could be granted to the Petitioner, pending hearing and decision on the merits of the Petition, and the process for granting that relief.

¹¹ TN 210565.

¹² In the “the Notice of Postponed Prehearing Conference and Evidentiary Hearing, Revised Committee Schedule, and Further Orders”, docketed on February 19, 2016 (TN 210479) the Committee set forth the steps necessary for a person or entity to be granted the rights equivalent to those of an intervenor (in the interest of expediency, the Committee dispensed with formal intervention in this proceeding). CDFW has satisfied those requirements.

ORDERS

As a result of the discussions at the March 15, 2016, Prehearing Conference, the Committee makes the following orders:

1. STAFF WORKSHOP

Staff shall, in consultation with the other parties to the proceedings, schedule and conduct a staff workshop in or near Victorville, California (the location of the HDPP), as soon as possible. The Committee believes the following topics, at a minimum, should be addressed during the workshop:

- a. Is interim relief from the 2014 Commission order limiting HDPP to use no more than 2,000 acre feet of adjudicated groundwater from the Mojave River Basin after September 30, 2016 needed? If yes, what are the options available to the Energy Commission for providing interim relief to the Petitioner? What level of authority can and should provide such relief in this situation? Which conditions of certification, if any, require change to provide the relief? What length of time is necessary for such interim relief?
- b. What process and procedure should the Committee use to protect confidential data that may be needed in addressing the Petition, including the staff analysis of the feasibility study?
- c. How does the 2003 Memorandum of Understanding (2003 MOU) between CDFW and VVWRA affect the analysis of the Petition? What agreements can the parties reach on the effect of the 2003 MOU?
- d. What needs to be done to obtain a water balance calculation from MWA? What is the timing to receive such a calculation? Is there a cost? Who would bear the cost?
- e. What has been the historic water demand and usage of the HDPP? What future assumptions are appropriate regarding capacity factors for the plant, water quality and quantity, and weather, as they relate to the Petition?

A report on the outcome of the discussions of these and other topics discussed at the staff workshop will be received and discussed during the April 20, 2016, Status Conference.

2. LEGAL BRIEFING

The Petitioner and Staff shall, and CDFW may, docket briefs responding to the following questions. The facts contained in previously filed testimony or exhibits shall only be minimally cited; the focus should be on the legal points and authorities supporting a party's position.

- a. In analyzing the Petition, what is the role of adopted laws, ordinances, regulations, and standards (LORS) adopted after the original approval of the HDPP in 2000, such as the 2003 IEPR? Were there other LORS already in place at the time of the original approval of the HDPP in 2000 that apply to the analysis of the Petition?
- b. At the Prehearing Conference, the Petitioner argued that the Petition does not constitute a project under CEQA. Discuss.
- c. After reviewing Petitioner's proposed 2015 Petition to Amend, Staff has proposed that the HDPP use reclaimed water exclusively for cooling purposes. Is Staff's proposal an alternative under CEQA, or is it an alternative condition under the Energy Commission's regulations (California Code of Regulations, title 20, section 1745)? How does this affect who bears the burden of proof and persuasion?
- d. What are the options to grant interim water supply relief to the Petitioner during the pendency of the proceedings?

Opening briefs on these issues shall be docketed no later than April 1, 2016. Reply briefs, if desired, shall be docketed no later than April 8, 2016.

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 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 or (916) 653-4677.

Media inquiries should be sent to the Media and Public Communications Office at 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: March 21, 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