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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

***PETITION FOR AMENDMENT FOR THE:
PALMDALE ENERGY PROJECT***

Docket No. 08-AFC-09C

ENERGY COMMISSION STAFF'S PREHEARING CONFERENCE STATEMENT

On February 17, 2017, the Palmdale Energy Project Petition for Amendment Committee issued a scheduling order requiring parties to file a Prehearing Conference Statement, Witness Lists, and Exhibit Lists by March 3, 2017. The requested information is presented below.

1. The subject areas that are complete and ready to proceed to Evidentiary Hearing.

Staff believes that all subject areas are complete and ready to proceed to evidentiary hearing, with the exception of one issue in Biological Resources that staff hopes can be resolved and finalized through discussions with the petitioner during the Prehearing Conference.

In the technical area of Biological Resources, as staff noted in its response to the project owner's opening testimony, the United States Fish and Wildlife Service (USFWS) has indicated that they are going to request the United States Environmental Protection Agency to reinstate consultation with regard to potential impacts to the Southwestern willow flycatcher. The proposed Palmdale Energy Project (PEP), known formerly as the Palmdale Hybrid Power Project (PHPP), will require an amended Air Quality permit, which falls under the authority of the Environmental Protection Agency (EPA), because the project emissions exceed the Potential for Significant Deterioration (PSD) threshold. As part of this review, EPA has to consider the impacts of the Air Quality permit on special status wildlife species, which requires agency-to-agency consultation between EPA and USFWS pursuant to Section 7 of the US Endangered Species Act. USFWS has noted that potential Southwestern willow flycatcher (a federally-listed and state-listed endangered species) mortality from collisions with transmission lines during nocturnal migration is a concern, based on information derived from monitoring studies on other sites that were completed since the PHPP was approved. On February 10, 2017, USFWS informed staff that a new Section 7 consultation from EPA will be required, and this information has been conveyed to the applicant.

The consultation process will require that EPA prepare a Biological Assessment (BA) of the potential impacts from transmission line collision to Southwestern willow flycatcher (which the EPA will require the applicant to commission and prepare). Once EPA is satisfied with the BA, they will submit it for review by the USFWS. The USFWS has 135-days to issue a Biological Opinion (BO), that either the project will or will not jeopardize a listed species' continued existence or destroy its habitat. A "Non-Jeopardy" determination would yield an Incidental Take Permit (ITP), a permit specifying a specific number of deaths (or units of habitat) for a species that can occur over the life of the project, and other conditions that would need to be followed by the permit holder to minimize the impact of the incidental take on the species. If a "Jeopardy" determination is made the USFWS would include Reasonable and Prudent Alternatives (RPA) that if adopted would insure that the project would not jeopardize the species. The BO would also have an ITP that would be valid with the adoption of the RPA.

Staff has solicited input from both the California Department of Fish and Wildlife (CDFW) and USFWS regarding transmission line impacts to willow flycatcher (main species, state-listed endangered species) and Southwestern willow flycatcher (subspecies, federally-listed and state-listed endangered species). Both agencies suggested staff analyze the degree of impact to the flycatcher (combined willow and Southwestern willow flycatcher) over the 30-year life of the project. The analysis could utilize impact metrics contained in the adopted Desert Renewable energy Conservation Plan (DRECP), or an extrapolation of estimated avian impacts based on monitoring done for similar transmission line projects in the area, such as the Sunrise Powerlink Transmission and Desert Sunlight projects. The proposed mitigation would also require the project owner to file an application for an Incidental Take Permit with CDFW. Staff intends to file supplemental testimony before the Evidentiary Hearing that contains the necessary analysis of this issue and recommended mitigation measures to reduce project transmission lines impacts to willow and Southwestern willow flycatcher to less than significant.

Based on discussions with these agencies, and staff's independent evaluation, staff concludes that the project's impact with regard to this species and subspecies is significant, but with feasible mitigation can be reduced to less than significant. Staff believes this determination can be made without having to wait for the Biological Opinion.

In addition to developing a new mitigation measure focused specifically on compensating for the potential take of this species and subspecies, which staff hopes to work out with the applicant at the Prehearing Conference, staff is also now recommending the retention of Condition of Certification BIO-24 from the previous Commission decision on the PHPP, with modified language to specifically address transmission line impacts to avian wildlife as follows:

AVIAN AND BAT PROTECTION PLAN / MONITORING BIRD AND BAT IMPACTS FROM TRANSMISSION LINES AND PROJECT BUILDINGS

BIO-24 The project owner shall prepare and implement an Avian and Bat Protection Plan to monitor bird and bat collisions with facility features (study described below). The Project owner shall use the monitoring data to inform and develop an adaptive management program that would avoid and minimize Project-related avian and bat impacts. Project-related bird and bat deaths or injuries shall be reported to the CPM, CDFWG and USFWS. The CPM, in consultation with CDFWG and USFWS, shall determine if the Project-related bird or bat deaths or injuries warrant implementation of adaptive management measures contained in the Avian and Bat Protection Plan. The study design for the Avian and Bat Protection Plan shall be approved by the CPM in consultation with CDFWG and USFWS, and, once approved, shall be incorporated into the project's BRMIMP and implemented. The Plan shall include adaptive management strategies that include the placement of bird flight diverters, aerial markers, or other strategies to minimize collisions with the ~~solar array~~ **transmission lines and project buildings**. The Avian and Bat Protection Plan shall include a Bird and Bat Monitoring Study to monitor the death and injury of birds from collisions with **the transmission lines and project buildings** ~~facility features such as reflective mirror-like surfaces~~. The study 7.1-103 Biological Resources design shall be approved by the CPM in consultation with CDFWG and USFWS, and shall be incorporated into the project's BRMIMP and implemented. The Bird Monitoring Study shall be based upon **recent avian monitoring studies conducted at energy facilities** ~~prior studies by McCrary et al. (1986)~~ or other applicable literature, and shall include detailed specifications on data and carcass collection protocol and a rationale justifying the proposed schedule of carcass searches. The study shall also include seasonal trials to assess bias from carcass removal by scavengers as well as searcher bias and proposed disposition of dead or injured birds.

Verification: No more than 60 days prior to ground disturbance the project owner shall submit to the CPM, USFWS and CDFWG a final Avian and Bat Protection Plan. Modifications to the Avian Protection Plan shall be made only after approval from the CPM. For one year following the beginning of power plant operation, the Designated Biologist shall submit quarterly reports to the CPM, CDFWG, and USFWS describing the methods, dates, durations, and results of monitoring. The quarterly reports shall provide a detailed description of any project-related bird or wildlife deaths or injuries detected during the monitoring study or at any other time. Following the completion of the fourth quarter of monitoring the Designated Biologist shall prepare an Annual Report that summarizes the year's data, analyzes any project-related bird fatalities or injuries detected, and provides recommendations for future monitoring and any adaptive management actions needed. The Annual Report shall be provided to the CPM, CDFWG, and USFWS. Quarterly reporting shall

continue until the CPM, in consultation with CDFWG and USFWS determine whether more years of monitoring are needed, and whether mitigation and adaptive management measures are necessary. After the Bird and Bat Monitoring Study is determined by the CPM to be complete, the project owner or contractor shall prepare a paper that describes the study design and monitoring results to be submitted to the CPM, CDFWG, USFWS, and a peer-reviewed scientific journal. Proof of submittal shall be provided to the CPM within one year of concluding the monitoring study.

2. The subject areas upon which staff proposes to introduce testimony in writing rather than through oral testimony.

On September 12, 2016, staff issued its Final Staff Assessment (FSA), which staff provides as written testimony along with staff’s Traffic and Transportation Supplemental Testimony, published on December 29, 2016. The technical area, witness(es), and section number in the FSA where a summary of the testimony can be found are listed in the table below. Staff’s qualifications and declarations are contained in section 8.1 of the FSA (Exhibit 500) and in exhibit 505 and soon to be filed exhibit 506 .

Technical Area	Witness(es)	Summary
Air Quality	Nancy Fletcher	Exhibit 500, section 4.1
Biological Resources	Tia Mia Taylor, Eric Knight	Exhibit 500, section 4.2
Cultural Resources	Matthew Braun, Melissa Mourkas	Exhibit 500, section 4.3
Hazardous Materials Management	Alvin Greenberg, Ph. D.	Exhibit 500, section 4.4
Land Use	Steven Kerr	Exhibit 500, section 4.5
Noise and Vibration	Shahab Koshmashrab	Exhibit 500, section 4.6
Public Health	Huei-An (Ann) Chu, Ph. D., Alvin Greenberg, Ph. D.	Exhibit 500, section 4.7
Socioeconomics	Ellen LeFevre	Exhibit 500, section 4.8
Soil and Water Resources	Christopher Dennis, P.G., C.Hg.	Exhibit 500, section 4.9
Traffic and Transportation	James Adams, Eric Knight	Exhibit 500, section 4.10
Traffic and Transportation Supplemental Analysis	James Adams, Nancy Fletcher	Exhibit 501
Transmission Line Safety and Nuisance	Obed Odoemelam, Ph. D.	Exhibit 500, section 4.11
Visual Resources	Mark R. Hamblin	Exhibit 500, section 4.12
Waste Management	Ellen Townsend-Hough	Exhibit 500, section 4.13
Worker Safety/Fire Protection	Alvin Greenberg, Ph. D.	Exhibit 500, section 4.14
Facility Design	Edward Brady, Shahab Koshmashrab	Exhibit 500, section 5.1
Geology and Paleontology	Christopher Dennis, P.G., C.Hg.	Exhibit 500, section 5.2

Power Plant Efficiency	Shahab Koshmashrab	Exhibit 500, section 5.3
Power Plant Reliability	Shahab Koshmashrab	Exhibit 500, section 5.4
Transmission System Engineering	Laiping Ng, Mark Hesters	Exhibit 500, section 5.5
Alternatives	John Hope, David Vidaver	Exhibit 500, section 6
Compliance Conditions and Monitoring Plan	Eric Veerkamp	Exhibit 500, section 7.1, 7.2

3. Subject areas that are not complete and not yet ready to proceed to the Evidentiary Hearing, and the reasons therefor.

Staff does not believe there are any technical areas that are not ready to proceed to evidentiary hearing.

4. Subject areas that remain disputed and require adjudication, the issues in dispute, and the precise nature of the dispute for each issue.

Other than the item discussed above, staff is not aware of any technical areas that remain in dispute.

5. Identity of each witness staff intends to sponsor at the Evidentiary Hearing, the subject areas about which the witnesses will offer testimony, whether the testimony will be oral or in writing, a brief summary of the testimony to be offered by the witnesses, qualifications of each witness, the time required to present testimony by each witness, and whether the witness seeks to testify telephonically.

Staff does not intend to offer any oral testimony at the Evidentiary Hearing, unless the Biological Resources issue mentioned above is not resolved. In that case, Tia Mia Taylor and Eric Knight would sponsor staff's testimony in the area of Biological Resources. The oral testimony would be specific to the project's potential impact to the Southwestern willow flycatcher and the willow flycatcher and mitigation to reduce that impact. A summary of the testimony is presented above. Representatives from the United States Fish and Wildlife Service and California Department of Fish and Game may also be present. The witnesses' qualifications are contained in the Final Staff Assessment and staff anticipates needing 20 minutes to present its testimony. In the event oral testimony is necessary, staff would like to reserve the option to appear telephonically.

6. Subject areas upon which staff desires to question the other parties' witnesses, a summary of the scope of the questions (including witness qualifications), the issues to which the questions pertain, and the time desired to question each witness.

At this time, staff does not propose to question any of petitioner's witnesses.

7. A list identifying exhibits with transaction numbers that the party intends to offer into evidence during the Evidentiary Hearing and the technical subject areas to which they apply.

Proposed Exhibit Number	Document TN	Title of the Document as shown in the docket	Subject area
500	213623	Final Staff Assessment	All
501	215118	Palmdale Energy Project Traffic and Transportation Supplemental Testimony	Traffic and Transportation
502	216180	Energy Commission Staff's Response to Palmdale Energy, LLC's Opening Testimony	Air Quality, Biological Resources, Traffic and Transportation, Soil and Water Resources
503	216277	Email from J. Cagle Regarding Air Force Plant 42	Traffic and Transportation
504	212458	Antelope Valley Air Quality Management District's Final Determination of Compliance	Air Quality
505	216354	Additional Staff Declarations	Air Quality, Traffic and Transportation, Facility Design, and Public Health
506	TBD (document will be filed on Tuesday)	Declaration of Christopher Dennis, P.G., C. Hg	Geology and Paleontology

507	TBD (document will be filed sometime after prehearing conference)	Biological Resources Supplemental Testimony	Biological Resources
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8. Proposals for briefing deadlines or other scheduling matters

At this time staff does not believe briefing will be necessary.

DATED: March 3, 2017

Respectfully submitted,

Original signed by _____
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