

DOCKETED

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Project Title:	High Desert Power Plant
TN #:	216506
Document Title:	Order Regarding Use of Prior Advisors and Notice of March 21, 2017 Committee Conference
Description:	Notice
Filer:	Darlene Burgess
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**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

**ORDER REGARDING USE OF PRIOR ADVISORS AND
NOTICE OF MARCH 21, 2017 COMMITTEE CONFERENCE**

BACKGROUND

The High Desert Power Plant (HDPP) was certified by the Energy Commission on May 3, 2000, and began commercial operation in April 2003. The HDPP is an 830 megawatt (MW) natural-gas-fired, combined-cycle electric generating facility located in the City of Victorville in San Bernardino County that uses water for cooling purposes. The HDPP's use of water has the potential to affect a unique location where faulting has lifted the bedrock base of the groundwater system to land surface and forces groundwater to discharge to the Mojave River channel. This area, known as the Transition Zone, contains a mesquite bosque that serves as habitat for a variety of species.

In 2015, High Desert Power Project, LLC (Petitioner) filed a "Petition for Modification to Drought-Proof the High Desert Power Plant" (Petition).¹ The Energy Commission assigned a Committee² to conduct proceedings on the Petition. For a comprehensive review of the proceedings on the Petition, please see the "Committee Orders Regarding the Scope of Future Proceedings" filed July 12, 2016 (Scoping Order).³ Additional information on the HDPP, its water usage, and the current proceedings may also be found in the "Commission Adoption Order- Commission Decision Granting Interim Relief" (Interim Relief Decision).⁴

On June 1, 2016, the Committee filed a memo outlining its consultation with certain staff experts and counsel (Linda Bond, Caryn Holmes, and Paul Kramer) (June 1 Memo).⁵ Following the initial HDPP certification proceeding and before the current Petition, Ms. Bond assisted the Energy Commission in the creation of the water model used for the

¹ The Petition may be viewed at: <https://efiling.energy.ca.gov/getdocument.aspx?tn=206468>.

² The Committee consists of Commissioner Karen Douglas, Presiding Member, and Commissioner Janea A. Scott, Associate Member. The full Energy Commission made this Committee assignment at an Energy Commission Business Meeting on January 13, 2016.

³ TN 212262.

⁴ TN 212052.

⁵ TN 211693.

HDPP to account for water “banked” by the HDPP through injection. Ms. Holmes and Mr. Kramer served as counsel for Energy Commission staff (Staff) in prior proceedings. The June 1 Memo indicated that the Committee would disclose “any information upon which it bases a decision which is not otherwise in the record of this proceeding.”

On August 11, 2016, the Committee held a status conference (August Status Conference). The notice of the August Status Conference stated its purpose was to discuss the issues raised by the Scoping Order and the Interim Relief Decision, and included specific questions to be addressed.⁶ During the August Status Conference, Petitioner raised concerns for the first time about information the Committee may have received from Ms. Bond, Ms. Holmes, and Mr. Kramer. Petitioner subsequently filed additional information regarding its position about the Committee’s use of information that it had received from these individuals.⁷

The Committee filed disclosures on November 21, 2016, that reported non-privileged communications between the Committee members and Ms. Bond, Ms. Holmes, and Mr. Kramer (the Disclosure). Excluded from the Disclosure is any legal advice that may have been received from Ms. Holmes or Mr. Kramer. The Disclosure provided the parties with 10 days to address them in writing; in specific, the Committee requested the parties to state in writing whether they waive the right to challenge the proceedings based on the disclosures made.⁸

Staff responded by waiving objections to the inclusion of the non-privileged communications in the record for these proceedings.⁹ Intervenor California Department of Fish and Wildlife did not file any response to the Disclosure.

On November 30, 2016, Petitioner filed its response in which it did not waive objections to use of the information contained in the Disclosure. Petitioner stated that it was reserving its rights, even though it did not have a present intent to advance these claims. Petitioner also stated that it believed the Committee needed to discontinue consulting with Ms. Bond, Ms. Holmes, and Mr. Kramer.¹⁰

On January 13, 2017, Petitioner filed additional comments on the Disclosure. This second filing offered suggestions for the further processing of the Petition. Petitioner stated that it had no objections to the Committee (as currently constituted) and the Hearing Officer, Susan Cochran, from continuing to process the Petition. However, Petitioner continued its assertion that Ms. Bond, Ms. Holmes, and Mr. Kramer be disqualified from further work with the Committee and the Hearing Officer. While Petitioner maintained its general objections to the information in the Disclosure, Petitioner stated that its concerns in this regard did not apply to the Hearing Officer or to the Committee and further stated its belief that the information in the Disclosure would

⁶ TN 212263.

⁷ TN 212984.

⁸ TN 214534.

⁹ TN 214598.

¹⁰ TN 214594.

not affect the ability of the Committee or the Hearing Officer to hear the Petition in a fair, impartial and informed manner going forward. Petitioner also indicated that it would be filing a compromise proposal to bring the proceeding to an expeditious end.¹¹

ORDER

After reviewing the responses from Staff and Petitioner, the Committee agrees with Petitioner regarding the future conduct of proceedings in this case. The Committee and the Hearing Officer have had no communications with Ms. Bond other than those contained in the Disclosure. The Committee and the Hearing Officer have had no other privileged or non-privileged communications with Ms. Holmes or Mr. Kramer in this matter since the Disclosure. The Committee and the Hearing Officer will not consult with Ms. Bond, Ms. Holmes, and Mr. Kramer regarding the Petition in the future and will not rely on the information in the Disclosure from Ms. Bond, Ms. Holmes, or Mr. Kramer or on any undisclosed privileged communications from Ms. Holmes or Mr. Kramer in this proceeding.

NOTICE

PLEASE TAKE NOTICE that the Committee has scheduled a public Committee Conference to discuss the further proceedings on this matter on:

**Tuesday, March 21, 2017
9:00 a.m.**

**California Energy Commission
Charles Imbrecht Room (Hearing Room B)
1516 Ninth Street
Sacramento, CA 95814
(Wheelchair accessible)**

TELECONFERENCE OPTION: You may participate in the Committee Conference either in person, by telephone, and/or by computer via the “WebEx” conferencing system. Please see the **Remote Attendance** section on page 5, below.

Purpose of the Committee Conference

The purpose of the Committee Conference is to allow the Committee, the parties, and the public the opportunity to discuss the status of the proceedings, to identify the issues remaining to be decided, to consider the best process to resolve the Petition, and to confer about future scheduling.

Notice of Closed Session Deliberations

At any time during the Committee Conference, the Committee may adjourn to a closed session in accordance with California Government Code section 11126, subdivision

¹¹ TN 215332.

(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 Participation

Members of the public are welcome to attend and offer oral or written comments at the Committee Conference. It is not necessary to be an intervenor to participate in the public process. Written comments may also be submitted electronically by visiting the website at:

<http://www.energy.ca.gov/sitingcases/highdesert/index.html>

and clicking on the “Submit e-Comment” link in the “2015 Amendment Proceeding” box. Otherwise, written comments may be submitted by e-mailing them to docket@energy.ca.gov, or by mailing them by U.S. Mail to:

California Energy Commission
Docket Unit
Docket No. 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 search engines, such as Google and Yahoo.

Public Adviser and Other Commission Contacts

The Energy Commission’s Public Adviser’s Office provides the public assistance in participating in Energy Commission proceedings. If you want information on how to participate in this forum, please contact Alana Mathews, the Public Adviser, at PublicAdviser@energy.ca.gov or (916) 654-4489, or toll free at (800) 822-6228.

If you have a disability and need assistance to participate in the Committee Conference, contact Poneh Jones at least five days prior to the event at (916) 654-4425, or by e-mail at poneh.jones@energy.ca.gov.

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

Technical questions concerning the Proposed Project should be addressed to Joe Douglas, Project Manager, by email at joe.douglas@energy.ca.gov or at (916) 653-4677.

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

Remote Attendance

You may participate in this meeting through WebEx™, the Energy Commission's online meeting service. Any presentations will appear on your computer screen, and you may listen to audio via your computer or telephone. Please be aware that the meeting may be recorded.

To join a meeting:

VIA COMPUTER: Go to <https://energy.webex.com> and enter the unique meeting number: **920 195 719**. When prompted, enter your name and email address. No meeting password is needed.

The “Join Conference” menu will offer you a choice of audio connections:

1. To call into the meeting: Select "I will call in" and follow the on-screen directions.
2. International Attendees: Click on the "Global call-in number" link.
3. To have WebEx call you: Enter your phone number and click "Call Me.”
4. To listen over the computer: If you have a broadband connection, and a headset or a computer microphone and speakers, you may use VoIP (Internet audio) by going to the Audio menu, clicking on “Use Computer Headset,” then “Call Using Computer.”

VIA TELEPHONE ONLY (no visual presentation): Call 1-866-469-3239 (toll-free in the U.S. and Canada). When prompted, enter the unique meeting number: **920 195 719**. International callers may select their number from:

<https://energy.webex.com/energy/globalcallin.php>.

VIA MOBILE ACCESS: Access to WebEx meetings is now available from your mobile device. To download an app, go to:

www.webex.com/products/web-conferencing/mobile.html.

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

Muting:

We greatly appreciate your cooperation in reducing unwanted noise on the audio connection by muting your line when you are not speaking. Mute your line rather than placing your phone on hold. Using WebEx, you may mute yourself by right clicking on your name in the panelists or attendees list and selecting "Mute." If you are only using a telephone connection, press "*6" once to mute and again to unmute.

Availability of Documents

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/highdesert/index.html>.

Dated: March 10, 2017, at Sacramento, California

ORIGINAL SIGNED BY:

ORIGINAL SIGNED BY:

KAREN DOUGLAS
Commissioner and Presiding Member
High Desert Amendment Committee

JANEA A. SCOTT
Commissioner and Associate Member
High Desert Amendment Committee

High Desert Power Plant Project (97-AFC-01C)
Committee Conference Agenda
Tuesday, March 21, 2017

9:00 a.m.

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

1. Call to Order
2. Committee Conference
3. 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.

4. Closed Session (if necessary)¹²
Committee closed session consideration of the following item:

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

Deliberation on matters submitted to the Committee including, but not limited to, scheduling.

5. Adjourn

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

¹² The Committee may 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.