

MANDATORY STATUS CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification for) Docket No. 09-AFC-2
the Almond 2 Power Plant Project)
-----)

CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

THURSDAY, SEPTEMBER 16, 2010
1:36 P.M.

Reported by:
Peter Petty

Transcribed by:
Diana Sasseen

APPEARANCES

HEARING OFFICER

Kourtney Vaccaro

COMMITTEE MEMBERS

Karen Douglas, Chair and Presiding Member

Lorraine White, Advisor to Commissioner Eggert

STAFF

Kerry Willis, Staff Counsel

Robin Mayer, Staff Counsel

Felicia Miller, Siting Project Manager

APPLICANT

Jeffrey Harris, Esq., Ellison, Schneider & Harris

Brian S. Biering, Esq., Ellison, Schneider & Harris

Brian L. LaFollette, PE, TID Water & Power

George A. Davies, IV, TID Water & Power

Susan Strachan, Strachan Consulting

Sarah Madams, CH2MHILL

Stephanie Moore, CH2WMHILL

Greg Tucker

Geof Spaulding

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EXHIBITS

(None)

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1 MR. HARRIS: Okay. Can't guarantee I'll get
2 titles correct, but I'm Jeff Harris here on behalf of the
3 applicant, Turlock Irrigation District. To my far right
4 is Mr. Brian LaFollette, who is the, I think, AGM; is that
5 right, for power management or --

6 MR. LaFOLLETTE: Power supply.

7 MR. HARRIS: -- power supply, AGM, assistant
8 general manager. To my right is Susan Strachan with
9 Strachan Consulting, the environmental consultant for the
10 project. And to my left is Sarah Madams, who is the lead
11 for CH2MHILL. And to her left is Stephanie Moore, who is
12 also with CH2MHILL, jack of all trades. Next table over,
13 Brian Biering with my office here on behalf of the
14 applicant as well. And then George Davies, with Turlock
15 Irrigation District. And George's title is director --

16 MR. DAVIES: Combustion turbine department
17 manager.

18 MR. HARRIS: -- combustion turbine department
19 manager.

20 And then behind me is Greg Tucker, electrical
21 engineer. And then in the audience as well, trying to
22 hide, is Dr. Geof Spaulding, who is a cultural resource
23 specialist among other many talents, paleontology, and
24 other good stuff.

25 HEARING OFFICER VACCARO: Okay. Thank you.

1 Staff?

2 MS. WILLIS: Good afternoon. My name is
3 Kerry Willis. I'm senior staff counsel. And with me is
4 Felicia Miller, the project manager, and Robin Mayer, of
5 staff counsel. We also have cultural staff in the
6 audience.

7 HEARING OFFICER VACCARO: Okay. Great. Thank
8 you.

9 Do we have anyone else on the telephone
10 representing any state, local, any agencies or entities
11 that are not parties to this action?

12 Do we have anyone on the phone at all?

13 Okay. Doesn't sound like it.

14 So I think without much more intro, I think we
15 probably should hear from the parties.

16 I think the two primary topics on readiness are
17 what's ready to go and what isn't and why not, and were
18 you able to resolve everything that needed to be resolved
19 today in the workshop to ensure that you are ready to move
20 forward?

21 I think what we'll do, we'll hear from the
22 applicant first on those topics, then we'll hear from
23 staff. And then we'll move on to the housekeeping issues
24 that the Committee has.

25 MR. HARRIS: Thank you, Hearing Officer.

1 We are ready to move forward on everything. We
2 had a very productive workshop this morning. We literally
3 projected up on the wall the language of the conditions
4 that were still outstanding, and walked through those and
5 red line, strike out; and those are before you. I think
6 the staff's prepared clean and red-line versions of those
7 I think five conditions, about five conditions where we
8 were working through language. I can represent that we've
9 reached agreement on that language, and we are ready to go
10 to hearing on every issue.

11 I don't think we're going to need hearings. I
12 think we're going to need an hour or so of the Committee's
13 time to create the evidentiary record, but we're not
14 anticipating the need for any live witness testimony at
15 this point and would enter into a stipulation or whatever
16 mechanics that staff counsel wants to use to get the
17 record before you.

18 But as I told Ms. White, we love seeing you all,
19 but we don't really want to take any of your time. We
20 don't think we have to at this point. Things are moving
21 along very well.

22 That is not happenstance, as you know. The
23 district and the staff have worked very close together,
24 been very, very I think -- good working relationship. The
25 workshop today was evidence of that. There was only one,

1 you know, horrible remark, and that was from me; I took it
2 back later. So things are moving along very well
3 actually, I think. And we are very interested in seeing
4 if there's ways to help you at the hearing office put
5 together a decision in a timely manner.

6 And I can represent on behalf of the district
7 that we'll provide whatever resources are necessary and
8 reasonable to you all to help move things along.

9 As I said, this is not happenstance that we are
10 where we are. The district has made some tough choices.
11 There are some things that, you know, if time was a
12 luxury, we would have probably spent a little more time on
13 and thought on, but schedules, schedules, schedules;
14 you've heard that before, I'm sure, Commissioner Douglas.

15 We're not 2010, but we are important, it is
16 important to get this project online. It's, as we put in
17 all our status reports, the keystone for our renewable
18 portfolio standard and being able to reach 28 percent.
19 It's also a keystone for the district, who is its own
20 balancing authority.

21 It's going to allow us to more efficiently
22 operate the Walnut Energy Center, the existing facility
23 that you permitted a few years ago, which is a great asset
24 to the district. We'll be able to really optimize that
25 district asset as well.

1 And so while we're not under the ARRA gun, we are
2 under the, you know, ratepayer owner gun, which is every
3 dime we spend is a dime we have to collect from our
4 ratepayer owners. We don't have shareholders, but we have
5 folks who have to pick up those costs.

6 So I'm going to go ahead and stop there. But I
7 really do think we're in great shape. I don't think there
8 are any issues left in this case. And we're prepared to
9 move forward.

10 HEARING OFFICER VACCARO: Okay. Thank you.

11 Before we hear from staff, I have a question
12 about the handouts, just to ensure that I understand
13 what's before us.

14 I see there's a red-line version and there's a
15 clean document. This is then the product of the
16 discussions today at the workshop. And so these were the
17 only conditions of certification that applicant had
18 concern with; so otherwise, what we're seeing in the
19 revised staff assessment, notwithstanding these changes
20 here, these together with what's in the RSA are what
21 applicant is agreeing to as the conditions of
22 certification.

23 MR. HARRIS: That is correct, yes.

24 HEARING OFFICER VACCARO: Okay. With that then,
25 I think either applicant or staff needs to make sure that

1 this is identified as an exhibit, identified on the
2 exhibit list and submitted that way as part of the record.
3 We could certainly do it other ways; I think that ensures
4 that we have a very clean and easy to follow evidentiary
5 record to ensure that we've captured all the changes.

6 MS. WILLIS: If I may, we also need to file a
7 supplement, because we discovered that the declarations in
8 the revised staff assessment were unsigned, so we have the
9 signed declaration. So what I thought we could do is add
10 this as part of that supplement and file and serve it, and
11 then we would include that as part of an exhibit.

12 HEARING OFFICER VACCARO: Okay. Perfect.

13 So then, I think -- thank you, applicant.

14 Now, let's hear from staff, whether or not you
15 share the views and if you think there's anything at all
16 that's left undone that needs to be addressed before
17 October 1st.

18 MS. WILLIS: Well, I was going to say, the
19 only -- we had a very productive several-hour workshop as
20 was represented. We went through word by word of the
21 concerns of the applicant, had our cultural staff and our
22 land use staff present and compliance staff available, and
23 worked through, I think, everything quite successfully.
24 So in our opinion, we are ready to go.

25 And besides filing and filing and serving this

1 document along with our revised declarations, I believe we
2 are ready to move forward.

3 HEARING OFFICER VACCARO: Okay. That's very good
4 news.

5 I think everyone has seen at this point the
6 notice for the prehearing conference of the evidentiary
7 hearing. You're well aware of what the briefing schedule
8 is and the expectations for getting all of that prehearing
9 documentation to one another and the Committee.

10 Any concerns or issues with that?

11 MR. HARRIS: Not on our behalf. No, we're ready
12 to have our testimony filed on time and be available for
13 those dates. I think there won't be a need for rebuttal
14 testimony. Obviously I don't know if that affects the
15 hearing date, I don't think we'll move up. It sounds like
16 the schedule is pretty jammed as it is, but we are
17 prepared to go. And we have -- I've been receiving
18 e-mails as we've been sitting here of people working on
19 their testimony, so we're going to be ready for the 20th,
20 which is Monday, right?

21 HEARING OFFICER VACCARO: Okay. Staff, any
22 concerns with the briefing schedule?

23 MS. MAYER: I'm sorry, I just want to clarify,
24 you're talking about the testimony or briefing that's --

25 HEARING OFFICER VACCARO: Okay, briefing as a

1 very colloquial generalized term.

2 MS. MAYER: Okay. Thank you.

3 HEARING OFFICER VACCARO: Yes, opening testimony,
4 prehearing conference statements, supplemental testimony,
5 that type of thing.

6 MS. MAYER: Thank you. That relieves my mind
7 greatly. Thank you.

8 HEARING OFFICER VACCARO: Good. No, we're hoping
9 not to receive, I think, actual legal briefing.

10 MS. WILLIS: Yeah, we're fine with that schedule.

11 HEARING OFFICER VACCARO: Okay. So let's move on
12 to some of the housekeeping.

13 Again, the goal as we move swiftly is to not cut
14 corners and to not move so quickly that we fail to hit
15 some important targets. So, staff, in particular with
16 respect to air quality, we would like you to ensure that
17 there is someone on the phone and available on October 1st
18 to discuss air quality. You know, we have their
19 requirement under the Warren-Alquist Act, 25523, that we
20 need to always cover. It's much easier -- much more
21 easily accomplished when we have somebody from the air
22 district on the phone, especially here, we would like to
23 hear about the ERCs. I think that would put that to rest.
24 So please make sure someone is available by telephone. We
25 don't expect in-person testimony.

1 As far as the sufficiency of the evidence in the
2 record, I think the parties are satisfied that you've
3 submitted enough information at this point, but I would
4 submit to both applicant and staff that you take a look at
5 the RSA and the AFC with respect to the water that is
6 coming from the Ceres Wastewater Treatment Plant and the
7 discharge facts.

8 Staff had indicated some concerns with respect to
9 the possible change by the regional board with respect to
10 the waste discharge requirements and indicated that that
11 might happen during the life of the project, and if so,
12 there might be some concern there. I think maybe the
13 parties should consider augmenting what's already been
14 submitted to give us a sense of how that's going to be
15 addressed if, in fact, something does change during the
16 life of the project, whether it's by way of a condition of
17 certification, further supplemental testimony; but I would
18 encourage you to take a look and really make that a little
19 more robust because it seems to drop off by alerting us to
20 a potential issue but not giving the Committee a sense of
21 how that issue is going to be addressed.

22 Yes.

23 MR. HARRIS: Do you want some feedback on that
24 now?

25 HEARING OFFICER VACCARO: Well, you can certainly

1 give it to us now if you'd like, but what I really need is
2 to see it in the form of admissible evidence that can go
3 into the record that allows the Committee to prepare the
4 PMPD in a manner that I think is consistent with the
5 evidence. The Committee could certainly make some
6 decisions based on what it has now; I think it would be to
7 everyone's advantage though to get it into the evidentiary
8 record.

9 MR. HARRIS: The reason I ask is I'm a bit
10 concerned about creating an evidentiary record about a
11 speculative future event by another regulatory agency. We
12 are a customer of the city, the DWR's supply to the city.
13 If there's a change in the regional board's position on
14 these issues, and nobody's certain that there will be or
15 when it will happen, but if it does occur, that will
16 affect the permitted entity, which is the City of Ceres,
17 and we will be standing in the same shoes as everybody
18 else in the city of Ceres as a customer of that facility.
19 And whether or not that would require an amendment down
20 the road, I don't know that it would, but until we see
21 specifically what the board action is, we won't be able to
22 make a determination on that.

23 And so I raise it now, not to argue the point,
24 although I just did, but more to ask the question of -- or
25 to make the statement, I don't think there's a way to show

1 an evidentiary record for something that might happen in
2 the future. I'm not certain how we satisfy the request.

3 HEARING OFFICER VACCARO: I think in a way that's
4 fair, except that staff did specifically state staff is
5 concerned and then goes on to explain what the concern is.
6 And staff has indicated that the regional board is
7 currently in the process of revising the WDRs, but that
8 the actual end date is unknown, but that it will happen
9 during the life of the project and it's possible that this
10 will impact the ability of this project to discharge that
11 wastewater.

12 So let's just say in the realm of hypothetical,
13 because I don't think it is truly speculative, I think the
14 only thing we don't know is the when; and maybe it won't
15 affect you, but let's just assume that it will. Then how
16 are you going to get rid of that wastewater? And I think
17 that's something -- a proposal, suggestions, how that
18 might be done. I don't think those are unique or new
19 issues in the context of power plant siting, and those are
20 certainly things that I think the applicant or staff could
21 respond to or that a condition of certification could be
22 built in that addresses that contingency.

23 Does that give you a bit more clarification as to
24 what it is that I'm speaking of?

25 MR. HARRIS: I was fine until you said condition

1 of certification, because the same -- the same argument
2 could be made for the air district. During the 30-year
3 life of this project, the air district rules will change,
4 and we will have to adapt the project to meet those rule
5 changes as well. I don't know how -- it would be no
6 easier for me today to sit here and tell you what the air
7 board's going to do in the next ten years when it updates
8 its SIP compliance that it is to know what the regional
9 board might do.

10 But, here, I understand what you want. I think
11 we can put together a set of contingencies. I don't think
12 a condition of certification is warranted on that basis
13 because there are other, you know, federal actions that
14 might occur as well. And without knowing exactly what
15 "it" is, I think it's difficult to write a condition
16 around that.

17 HEARING OFFICER VACCARO: I think that's fair
18 enough. I think you've made it clear it you understand
19 where the Committee is coming from, and we are inviting
20 you in the way that you deem best to submit something to
21 the Committee, and we're inviting both the applicant and
22 staff to do that so that that aspect of the record is more
23 fully fleshed out and allows the Committee to prepare the
24 PMPD in a commensurate fashion.

25 MR. HARRIS: Okay. Thank you. We'll do that.

1 HEARING OFFICER VACCARO: Speaking of unknowns,
2 is there any current information, any change with respect
3 to the EIR for the TID'S other project? I don't know how
4 the correct pronunciation is, is it Hughson? The Hughson
5 Grayson project. Because it's referenced within the
6 documents, it's explained that that's going through the
7 EIR process. It's not this project, but it is related to
8 this project. What's the status? Are you going to submit
9 anything else into the record with respect to that
10 project?

11 MS. STRACHAN: I'm Susan Strachan. The EIR,
12 the -- we did a -- there was a revised recirculated EIR
13 done. The comment period for that closed on August --
14 September 7th. I'm sorry, I'm getting my dates wrong.
15 And right now we're in the process of doing the response
16 to comments for that document. It's anticipated that that
17 will be out in October with a schedule date of going to
18 the board for certification and consideration of the
19 project in November.

20 HEARING OFFICER VACCARO: Okay. Thank you.

21 I mean, so there is the possibility, I'm not sure
22 exactly as we sit here how we might address that, but I
23 think to the extent that we can ensure that the record is
24 clear and we have as much information as possible on that
25 EIR before the PMPD is issued, the better. So I think we

1 just need to be mindful of the dates and looking at
2 potentially on that topic holding the record open if it
3 looks like we might be able to bring more in before the --
4 by the time it's certified, if it's certified by TID.

5 And exhibits. It's another big one. It sounds
6 as though -- what I'm hearing is we can come in on the
7 1st, and you're not planning on oral testimony, that
8 everything would be submitted on the papers. And I think
9 in theory that's always a good idea. The devil is in the
10 detail of course. In order to do that, it is much cleaner
11 and easier if we know by topic what the exhibits are.
12 There are several different ways of doing it.

13 Mr. Harris, I know you've gone through this
14 process before. I would suggest to you that one way that
15 works was the manner in which it was handled by your
16 colleague, Mr. Ellison in the Abengoa matter; it made it
17 very easy, he provided a road map early on, it was
18 submitted in the opening testimony. Staff was able to
19 review it in advance, and we were very efficiently able to
20 bring the exhibits in on the various technical areas. I'm
21 not saying you have to do it that way, but it will make
22 the morning go by, I think, far more efficiently if you're
23 prepared to identify per technical area the corresponding
24 exhibits.

25 MR. HARRIS: Yeah, thank you. Mr. Ellison is a

1 pretty good lawyer, so I'll follow his lead.

2 Sarah has already been -- Sarah and Stephanie
3 have actually been putting together our exhibit list. So
4 thank you for the direction and the order. Do you want us
5 to tell you a little bit about where we are in that
6 process, or do you have any questions?

7 I think we're understanding what you want; the
8 two different sets of files. The only question Sarah did
9 ask me; the two boxes are for you all, it's not for -- we
10 don't to provide that to the staff and to the other
11 parties, right? Those are hearing office boxes by subject
12 and by number.

13 HEARING OFFICER VACCARO: Certainly format two is
14 what the hearing office would like to see, format two
15 being two formats referenced in the prehearing conference
16 notice and evidentiary hearing notice.

17 Format one, I mean, staff should have -- know
18 what exhibits are being relied on and used by the
19 applicant, because that's the only way we can ensure when
20 these things are admitted into the record that they've
21 been able to review them and whether or not they have any
22 objection. So it's important that they also have a
23 complete set of copies of what it is that you're planning
24 to introduce as exhibits.

25 MR. HARRIS: What we'll do in each section of our

1 testimony, section 1C has a listing called "Prior
2 filings," and we will list out in bullet point each one of
3 those documents and give an exhibit number starting with
4 air quality and working our way through. They'll be
5 roughly chronological, but inevitably you'll find
6 something air-quality-wise when you get to the end, so it
7 will be one through 30 plus, you know, 75 or something.
8 But we'll number all those things, we'll give them to you
9 in the both sets, and we'll also provide an da Excel
10 spreadsheet that they'll be able to word search and
11 cross-reference.

12 HEARING OFFICER VACCARO: Okay. Good. Thank
13 you.

14 And, staff, you understand as well, I mean,
15 primarily the RSA is going to be your testimony, but it
16 sounds as though you might have potentially supplemental
17 testimony as well, and just as long as the applicant is
18 aware of what your exhibits are in advance, I think that
19 streamlines the process as well.

20 MS. WILLIS: That should be it. We should have
21 the revised staff assessment, the supplement or errata, as
22 it may be, and I would imagine the FDOC.

23 HEARING OFFICER VACCARO: Okay. I think the
24 final topic I had for housekeeping is that in reviewing
25 all the submissions so far it doesn't appear that there

1 are any overrides issues for the Committee to consider or
2 none that have been raised directly by other party; is
3 that correct?

4 MR. HARRIS: That's correct. You're talking
5 about either CEQA overrides or LORS overrides?

6 HEARING OFFICER VACCARO: Correct.

7 MR. HARRIS: We are in compliance with CEQA, and
8 we don't have any LORS issues, so we're in good shape
9 there.

10 MS. WILLIS: That's correct.

11 HEARING OFFICER VACCARO: Okay. Great. So, I
12 think at this point I'll open it up for any questions that
13 the Committee might have.

14 Applicant?

15 MR. HARRIS: I have one question on process.

16 I've done these before where the day of the
17 hearing you read into the record, you know, Kerry says
18 here's my air quality person, it's this evidence, and we
19 accept it, and then you move to us.

20 Are you envisioning, Kerry, a stipulation,
21 something written ahead of time to avoid having to march
22 through each one of those and put them in the record? Or
23 what's the mechanics of having to getting the
24 uncontroverted evidence into the record?

25 MS. WILLIS: In other cases, I mean, we've done

1 it quite a few different ways. In some hearings the
2 hearing officer goes through each section. And in the
3 last one I did they -- Mr. Kramer took in the whole entire
4 staff -- revised staff assessment just as a whole and said
5 were there any objections. So it was rather quick.

6 HEARING OFFICER VACCARO: I think that's probably
7 an efficient way of doing the staff assessments. And
8 again, if you have a pretty good road map and you are sure
9 that what you're submitting to us really reflects the
10 exhibits that support the testimony, then we really could
11 be referring to that road map as the basis for the
12 admission of the information into the record.

13 MR. HARRIS: Okay. Again, I'll talk to
14 Mr. Ellison. And we'll also put together kind of a
15 covering Excel spreadsheet by topic that has all of our
16 lists, and maybe we can use that to reference things. I
17 want to be mindful of your time. And I've done it the
18 first way Kerry describes it where you go through each
19 subject matter and mark the exhibits, and it's mind
20 numbing for everybody, so we're glad to avoid that if we
21 can.

22 HEARING OFFICER VACCARO: It's just a matter of
23 how prepared the parties are before we get to that stage.

24 Are there any other comments, questions that
25 anybody might have?

1 Okay. I think with that we'll find out, are
2 there any members of the public who are now on the
3 telephone line who might wish to speak?

4 Okay. I don't hear any.

5 It doesn't appear that we have any members of the
6 public present in the room either.

7 So thank you all for your preparedness and for
8 being ready to proceed on the 1st. Look forward to seeing
9 you then.

10 (Thereupon the California Energy Commission,
11 Almond 2 Power Plant Project Mandatory Status
12 Conference adjourned at 2:00 p.m.)

CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Mandatory Status Conference; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of September 2010.

PETER PETTY