

STATE OF CALIFORNIA

Energy Resources Conservation  
and Development Commission

In the Matter of: ) Docket No. 00-AFC-12  
)  
Application for Certification )  
of Duke Energy for the ) NOTICE OF FIRST SET OF EVIDENTIARY  
Morro Bay Power Plant Project ) HEARINGS and INITIAL HEARING ORDER  
) -and- NOTICE OF SCHEDULING  
) CONFERENCE  
)  
\_\_\_\_\_)

I. BACKGROUND

The Committee has considered the progress made in developing relevant information in this case, and the representations of the parties at the November 29, 2001 Prehearing Conference. We have balanced all competing considerations in what we view to be a reasonable manner, and will therefore commence evidentiary hearings as specified below. **The hearing and filing dates in this Notice and Order pertain to only the topic areas reflected in ATTACHMENT A. These topic areas may be referred to as "GROUP I". We will issue a subsequent Notice and Order containing filing and hearing dates for the "GROUP II" (Land Use, Noise and Vibration, Traffic and Transportation, Waste Management, Hazardous Materials/Worker Safety, Socioeconomics, Air Quality, Public Health) topic areas and for the "GROUP III" (Biological Resources, Visual Resources, Cultural Resources, Soil and Water Resources, Alternatives) areas after the Scheduling Conference noticed below.**

The parties should further note that scheduling discussions on the "Group II" and "Group III" topic areas will be held following conclusion of the evidentiary presentations at the December 17, 2001 session scheduled below.

II. NOTICE OF EVIDENTIARY HEARINGS

We will conduct formal evidentiary hearings as follows:

**MONDAY, DECEMBER 17, 2001**  
**Session beginning at 10:00 a.m. at**  
**1055 Morro Ave**  
**Morro Bay, CA 93442**  
[Wheelchair Accessible]

**and continuing to TUESDAY, DECEMBER 18, 2001**  
**at 10:00 a.m. if necessary.**

**TOPICS MAY BE CONTINUED FROM ONE DAY TO THE NEXT AS NECESSARY**

At the evidentiary hearings, the parties (Applicant, Staff, Intervenors) will present evidence consisting of sworn testimony and exhibits on each topic area. Presentations will follow the agenda reflected in ATTACHMENT A.

Parties should be aware that additional evidentiary hearings will be held in the January 24-30, 2002 time frame for the topic areas characterized as "GROUP II" and likely in February 2002 for the "Group III" areas. We will schedule the topics, locations, and filing dates for these hearings in subsequent notices.

#### **A. Formal Evidentiary Hearing Procedures**

The purpose of these formal evidentiary hearings is to establish the factual record necessary to reach a decision in this case. This is done through the taking of written and oral testimony as well as exhibits from the parties. These hearings are more structured than the Committee Conferences and the informal Staff workshops which have already occurred. A party proposing to sponsor witnesses must file a written version of the witnesses' testimony and a statement of the witnesses' qualifications to testify upon the topic area(s) according to the schedule below. Witnesses will testify under oath or affirmation and be subject to cross-examination by other parties who have intervened in the case. Parties intending to offer documentary exhibits (including declarations) as evidence (other than the Staff Assessment, the Application for Certification document, or portions of either) shall also include a copy of such materials with their written testimony.

At the evidentiary hearings, a party sponsoring a witness shall briefly establish the witness' qualifications and have the witness orally summarize the prepared testimony before requesting that the testimony be moved into evidence. Relevant exhibits may be offered into evidence at that time as well. At the conclusion of a witness' direct testimony, the Committee will provide the other parties an opportunity for cross-examination, followed by redirect and recross examination as appropriate. Declarations on a particular topic area will be received only if there are no credible objections by the other parties.

Parties are encouraged to consolidate presentations by witnesses and/or cross-examination to the greatest extent possible in order to minimize duplication and conserve hearing time.

**FAILURE TO PRESENT WITNESSES AS SCHEDULED, OR TO CROSS-EXAMINE ON THE TOPICS AS SCHEDULED, CAN CONSTITUTE A WAIVER OF THESE RIGHTS.**

#### **B. Public Participation**

Members of the public and interested governmental agencies are invited to attend these hearings, and may offer unsworn public comment upon the matters discussed. These public comments will be entered into the record of the proceeding and may be used to supplement or explain the evidence of record. Public comments by

themselves, however, are not sufficient to support a finding of fact or a decision on an issue.

Public comment at the evidentiary hearings may be restricted to only specified matters covered at the hearing. Comment of a general nature may be limited as time permits.

The Commission's Public Adviser, Roberta Mendonca, is available to provide information or to assist those interested in participating at these hearings. She may be reached at (916) 654-4489 or, toll free, at 1-800-822-6228; her e-mail address is: **pao@energy.state.ca.us**

### **C. Further Information**

If you require special accommodations, contact Priscilla Ross at (916) 653-6631 at least five days prior to the hearing(s) you wish to attend. News media inquiries should be directed to Assistant Director, Claudia Chandler at (916) 654-4989, or e-mail: **energia@energy.state.ca.gov**

Kae Lewis, the Commission's Project Manager, will respond to technical questions concerning the Morro Bay Power Plant Project at (916) 654-4176, or by e-mail at: **klewis@energy.state.ca.us** Information concerning the status of the project, as well as notices and other relevant documents, is also available on the Energy Commission's Internet home page at: **www.energy.ca.gov/sitingcases/morrobay/index.html**

Questions of a legal or procedural nature should be directed to the Hearing Officer, Gary Fay at (916) 654-3893 or, if Mr. Fay is unavailable, to Stanley W. Valkosky at the same number.

## **III. HEARING ORDER**

The following filing schedule shall apply for the first set of evidentiary hearings in December 2001.

Submittals shall be served upon all parties to this proceeding and one original and eleven (11) copies to the Commission's Docket Unit, MS-4, 1516 Ninth Street, Sacramento, CA 95814. Each party is responsible for ensuring that its respective submissions are received no later than 3:00 p.m. on the dates indicated. Identify all documents with "Docket No. 00-AFC-12."

<b>DATE</b>	<b>EVENT</b>
<b>December 11, 2001</b>	<b>All parties serve and file declarations and prepared testimony and exhibits for Topic Areas scheduled for hearing on December 17, 2001</b>
<b>December 14, 2001</b>	<b>Staff files Part 2 of the Final Staff Assessment covering areas of Cultural Resources, Soil and Water Resources, and Land Use</b>

December 17, 2001 (continuing to December 18, if necessary)	Evidentiary Hearing on Topic Areas (Group I) identified in Attachment A, followed by Scheduling Conference
January 3, 2002	Parties file Opening Briefs on Group I Topics
January 10, 2002	Parties file Reply Briefs on Group I Topics

#### IV. SCHEDULING CONFERENCE

NOTICE is hereby given that matters pertinent to the "Group II" (Noise and Vibration, Traffic and Transportation, Waste Management, Hazardous Materials/Worker Safety, Socioeconomics, Public Health, Air Quality, Land Use) and "Group III" (Biological Resources, Cultural Resources, Visual Resources, Soil and Water Resources, Alternatives) topics will be discussed following conclusion of the December 17, 2001 Evidentiary Hearing. At the discretion of the Committee, discussion on these matters may be continued to December 18, 2001, beginning at 10:00 a.m., at the same location as the evidentiary hearing.

The purposes of this discussion are the same as those specified in the November 9, 2001 Notice of Prehearing Conference. The difference is that discussions will be limited to the topics identified above and related matters. Parties need not file additional Statements. Parties desiring to participate at hearings on these topics shall be prepared to identify any proposed witnesses, the nature of direct testimony, the time required for direct examination, the time desired for cross-examination and the nature thereof, and related matters.

Parties shall also be prepared to update the Committee on the progress in obtaining necessary information and performing any additional analysis on matters pertinent to any of the "Group II" or "Group III" topics. This shall specifically include the time required to prepare Applicant's analysis of the feasibility of visually enclosing the proposed facility, as well as the time required for review of such analysis, or the time required to prepare an independent analysis by Staff.

Dated: December 4, 2001

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MICHAL C. MOORE  
Commissioner and Presiding Member  
Morro Bay AFC Committee

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WILLIAM J. KEESE  
Chairman and Associate Member  
Morro Bay AFC Committee

**ATTACHMENT A  
 TOPIC and WITNESS SCHEDULE  
 December 17, 2001 - EVIDENTIARY HEARING  
 (Topics may be continued to December 18, 2001 if necessary)**

TOPIC	WITNESSES (Direct Testimony)	CROSS EXAMINATION
Facility Design	<ul style="list-style-type: none"> <li>• Applicant: Declaration</li> <li>• Staff: Declaration</li> </ul>	<ul style="list-style-type: none"> <li>• NONE</li> </ul>
Reliability	<ul style="list-style-type: none"> <li>• Applicant: Declaration</li> <li>• Staff: Declaration</li> </ul>	<ul style="list-style-type: none"> <li>• NONE</li> </ul>
Geology and Paleontology	<ul style="list-style-type: none"> <li>• Applicant: Declaration</li> <li>• Staff: Declaration</li> </ul>	<ul style="list-style-type: none"> <li>• NONE</li> </ul>
Project Description	<ul style="list-style-type: none"> <li>• Applicant: Trump/Cochran</li> <li>• Staff: Lewis</li> <li>• City: unidentified</li> </ul>	<ul style="list-style-type: none"> <li>• Applicant</li> <li>• Staff</li> <li>• CAPE</li> <li>• City</li> </ul>
Compliance	<ul style="list-style-type: none"> <li>• Applicant: Trump/Hoffman</li> <li>• Staff: Bruins</li> <li>• CAPE: unidentified</li> <li>• City: unidentified</li> </ul>	<ul style="list-style-type: none"> <li>• Applicant</li> <li>• Staff</li> <li>• CAPE</li> <li>• City</li> </ul>
Efficiency	<ul style="list-style-type: none"> <li>• Applicant: Poquette/Cochran</li> <li>• Staff: Baker/Minetto</li> </ul>	<ul style="list-style-type: none"> <li>• CAPE</li> </ul>
Transmission Line Safety and Nuisance	<ul style="list-style-type: none"> <li>• Applicant: Barreno/Wybuerala</li> <li>• Staff: Odoemelam</li> </ul>	<ul style="list-style-type: none"> <li>• CAPE</li> </ul>
Transmission System Engineering	<ul style="list-style-type: none"> <li>• Applicant: Barreno/Wybuerala</li> <li>• Staff: Minetto/Ng</li> <li>• CAPE: Boatman</li> </ul>	<ul style="list-style-type: none"> <li>• Applicant</li> <li>• Staff</li> <li>• CAPE</li> </ul>

**Corrections to these items and/or witnesses shall be submitted to the Hearing Officer no later than Wednesday, December 12, 2001.**