

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF CALIFORNIA**

<b>In the Matter of:</b>	)	<b>Docket No. 00-AFC-12</b>
	)	
<b>Application for Certification of Duke Energy for the Morro Bay Power Plant Project</b>	)	<b>NOTICE OF FOURTH SET OF EVIDENTIARY HEARINGS, -and- FOURTH HEARING ORDER</b>
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**I. BACKGROUND**

The Committee has considered the progress made in developing relevant information in this case and the representations of the parties at the March 14, 2002 Scheduling Conference. We have balanced competing considerations (including availability of witnesses and hearing dates) in what we view to be a reasonable manner, and will continue 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 IV" topic areas. Group IV topics are Biological Resources (including cooling options) and Alternatives.**

**II. NOTICE OF EVIDENTIARY HEARINGS**

We will conduct formal evidentiary hearings as follows:

**TUESDAY through FRIDAY, JUNE 4, through 7, 2002<sup>1</sup>.**

Each session beginning at 9:00 a.m. and continuing as necessary at:

**Veterans Memorial Building  
209 Surf Street  
Morro Bay, CA 93442  
[Wheelchair Accessible]  
[Map Attached]**

***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.

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<sup>1</sup> The Committee anticipates concluding the Evidentiary Hearings by Thursday, June 6, 2002, but has reserved the following day in the event that additional time is required.

## **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 through the pre-filed 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 in advance** 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 pre-filed written testimony.

*Please note that the Committee will not allow "surprise documents" offered without advance notice to opposing parties. To the extent that such documents contain information not previously filed, they may be subject to a motion to strike.*

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 public comments upon the matters discussed. These public comments will be entered into the record of the proceeding and the Committee may rely on them to supplement or explain the sworn testimony given by parties in the case. Public comments by themselves, however, are not sufficient to support a Committee finding of fact or a decision on an issue.

Public comments at the evidentiary hearings may be restricted to only specified matters covered at the hearing. Comments of a general nature may be allowed as time permits. However, you may send written comments to the Committee at any

time. Written comments must identify the case as "Docket No. 00-AFC-12", and be sent to the Commission's Docket Unit MS-4, 1516 Ninth Street, Sacramento, CA 95814

The Commission's Public Adviser, Roberta Mendonca, can provide information or assistance to 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 have a disability and need assistance to participate in the hearing(s), please contact Lourdes Quiroz at (916) 654-5146 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: **energja@energy.state.ca.gov**

Marc Pryor, the Commission's Project Manager, will respond to technical questions concerning the Morro Bay Power Plant Project at (916) 653-0159, or by e-mail at: **mpryor@energy.state.ca.us** Notices, hearing transcripts, and other relevant documents, concerning this project are posted on the Energy Commission's Internet home page at:

**[www.energy.ca.gov/sitingcases/morrobay/index.html](http://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.

## **III. HEARING ORDER**

The following filing schedule shall apply for the fourth set of evidentiary hearings in June 2002.

Submittals must 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. All briefs shall also be served electronically to each party showing an email address on the proof of service list. 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."

In addition, all parties are ordered to review the attached *Topic and Witness Schedule* (Attachment A). Each party shall make additions and/or deletions of witnesses names as appropriate. In addition, parties must indicate their best estimate of the time required: 1.) to present the direct testimony of their witness or panel and, 2.) to conduct their cross examination of each party's direct presentation of evidence. This information shall be noted on a copy of Attachment A and submitted to the Hearing Officer for receipt by close of business on Wednesday, May 22, 2002. Any revised time estimates based on review of rebuttal testimony, shall be sent to the Hearing Officer by email no later than noon on Wednesday, May 29, 2002.

<b>DATE</b>	<b>EVENT</b>
<b>5/13/02</b>	<b>All non-CEC parties file direct testimony and rebuttal to FSA, Part 3.</b>
<b>5/24/02</b>	<b>All parties file rebuttal to non-CEC testimony<sup>2</sup>.</b>
<b>6/4/02 – 6/7/02</b>	<b>Evidentiary Hearings on Group IV topics<sup>3</sup>.</b>
<b>6/28/02</b>	<b>All parties file opening briefs on Group IV topics.</b>
<b>7/12/02</b>	<b>All parties file reply briefs on Group IV topics</b>

Dated: May 13, 2002

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

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JAMES D. BOYD  
Commissioner and Associate Member  
Morro Bay AFC Committee

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<sup>2</sup> Group IV topics include: Alternatives and Biological Resources, (including cooling options for mitigation).

<sup>3</sup> The Committee anticipates concluding the Evidentiary Hearings by Thursday, June 6, 2002, but has reserved the following day in the event that additional time is required. The Committee will order expedited transcripts for the June evidentiary hearings.

**ATTACHMENT A**

**TOPIC and WITNESS SCHEDULE**

Revised on May 8, 2002

**June 2002 - EVIDENTIARY HEARINGS  
GROUP IV TOPICS**

<b>TOPIC</b>	<b>WITNESSES and ESTIMATED TIME (Direct and Rebuttal Testimony)</b>	<b>ESTIMATED TIME for YOUR CROSS EXAMINATION of EACH PARTY LISTED BELOW</b>
Alternatives	<ul style="list-style-type: none"> <li>• Applicant: Mason/Trump/Poquette/ Pollack/ Marckwald/Blau</li> <li>• Staff: Lee</li> <li>• City: Schultz/Ortiz/Dohn/Rohrer/Jones/ Clay/Brown</li> </ul>	<ul style="list-style-type: none"> <li>• Applicant</li> <li>• Staff</li> <li>• CAPE</li> <li>• City</li> </ul>
Terrestrial Biology	<ul style="list-style-type: none"> <li>• Applicant: Huffman/Pollack</li> <li>• Staff: Anderson/ Erichsen</li> <li>• City: Brown/Schultz</li> </ul>	<ul style="list-style-type: none"> <li>• Applicant</li> <li>• Staff</li> <li>• CAPE</li> <li>• City</li> </ul>
Aquatic Biology	<ul style="list-style-type: none"> <li>• Applicant: Waters/Hoffman/Cowan/ Mayer/Grimm/Rosegay/Jay</li> <li>• Staff: Andrson/Erichsen/Foster</li> <li>• CAPE: Laurie/Wagner/Stevens/ Henderson</li> <li>• City: Brown/Schultz</li> <li>• Regional Water Quality Control Board: Thomas/Raimondi</li> </ul>	<ul style="list-style-type: none"> <li>• Applicant</li> <li>• Staff</li> <li>• CAPE</li> <li>• City</li> </ul>
Cooling Options	<ul style="list-style-type: none"> <li>• Applicant: Poquette/Mantey/Marckwald/ Huffman/Trump/Pollack/Rosegay/ Ortega/Saldingar</li> <li>• Staff: Lee/Henneforth, (and in individual environmental areas: Buntin–noise; Layton–air; Clayton-visual, Erichsen- bio, Torres/Reinoehl – cultural;Hamblin- land use)</li> <li>• CAPE: Powers</li> </ul>	<ul style="list-style-type: none"> <li>• Applicant</li> <li>• Staff</li> <li>• CAPE</li> <li>• City</li> </ul>