

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	Docket No. 01-AFC-24
)	
Application For Certification of the)	COMMISSION STAFF'S
Palomar Energy Project)	PREHEARING CONFERENCE
)	STATEMENT
)	(March 13, 2003, 2:30 P.M.)
_____)	

The Energy Commission Staff ("Staff") offers the following Prehearing Conference Statement. Responses are numbered according to the order provided in the Notice of Site Visit and Prehearing Conference.

- 1, 2. All topic areas are complete and ready to proceed to evidentiary hearings.
3. The only issue that remains in dispute is the choice of cooling method for the project. Intervenor Bill Powers argues that dry cooling should be chosen. The Applicant and Staff believe that wet cooling using recycled water provided by the City of Escondido, is appropriate. Mr. Powers' arguments in favor of dry cooling touch upon aspects of the Air Quality, Public Health, Soil and Water Resources and Visual Resources topics. Staff suggests that this issue would be most efficiently presented by hearing the dry cooling aspects of those areas together rather than separately. We understand that the Applicant and the Intervenor favor this approach as well. If the issues cannot be heard in combination, we request that they be heard consecutively, beginning with Soil and Water Resources for the convenience of the Intervenor.

We understand that the Committee wishes to receive live testimony on the Land Use topic. Staff will provide its witnesses and, along with the Applicant, a witness from the City of Escondido.

As to all other topic areas and the portions of the Public Health, Soil and Water Resources and Visual Resources topics unrelated to the wet vs. dry cooling issue, Staff proposes that the testimony be submitted by declaration and written testimony on the stipulation of the parties. While uncontested except as to the dry cooling debate, it may benefit the public and the Committee to present abbreviated live testimony regarding Air Quality. If the Committee finds it helpful, we are willing to work with the Applicant and Intervenor on a form of written stipulation to make the entry of evidence regarding the uncontested areas into the record as expeditious as possible. Staff does not request the presence of any witnesses on the uncontested topic areas and, unless directed otherwise, does not plan to present witnesses on those areas at the evidentiary hearing.

4. Staff will sponsor the testimony of the following witnesses. Their qualifications were filed with the Final Staff Assessment. They will testify about the information, methodologies and resulting conclusions and recommendations regarding the wet vs. dry cooling issue as presented in the Air Quality, Soil and Water Resources and Visual Resources sections of the Final Staff Assessment. We estimate that their direct testimony will take no more than one hour.

Air Quality witness: Brewster Birdsall

Land Use witness: Amanda Stennick

Public Health witness: Alvin J. Greenberg, Ph.D.

Soil and Water Resources witnesses: Joe Crea, Jim Schoonmaker, Richard Latteri and Jim Buntin

Visual Resources witnesses: Michael Clayton and Will Walters

5. At present Staff has not had the benefit of a review of the Applicant's or Intervenor's pre-filed testimony. It is therefore difficult to describe the scope of cross-examination or estimate the time desired. At this point, however, we have no reason to believe that our cross-examination will require more than one hour.

6. Staff offers the following Exhibit List:

Exhibit 50-- Final Staff Assessment, dated January 25, 2003, which is intended to include, by reference, the documents referred to therein. Applies to all topics.

Exhibit 51-- Addendum to Final Staff Assessment, to be filed shortly. Applies to Air Quality, Biological Resources, Cultural Resources, Soil and Water Resources and Traffic and Transportation.

Exhibit 52-- Final Determination of Compliance, dated December 6, 2002, for the Palomar Energy Center. Applies to Air Quality.

Exhibit 53-- Supplement to Final Determination of Compliance Concerning Prevention of Significant Deterioration (PSD) Requirements, dated February 27, 2003. Applies to Air Quality.

Exhibit 54-- February 27, 2003 letter from Gerardo C. Rios, Chief, Permits Office, Air Division, United States Environmental Protection Agency Region IX to Mike Lake, Sand Diego County Air Pollution Control District. Applies to Air Quality.

Exhibit 55-- February 27, 2003 letter from Haissam Y. Salloum, P.E., Department of Toxic Substances Control to Bob Eller. Applies to Hazardous Materials and Waste Management.

Staff, after reviewing the prefiled testimony of the parties, may wish to introduce additional documents in rebuttal. Staff will identify any such documents at the time of filing its rebuttal testimony.

7. Staff requests that the hearings scheduled no sooner than April 8 and not during the week of April 14 as to the contested topics due to the following schedule conflicts.

March 24-28 (Staff's counsel on vacation out of the country)

April 1-3 (Staff's counsel coordinating the installation of new computers in the Chief Counsel's Office)

April 4 (Staff's counsel chairing a California State Bar committee meeting in Los Angeles)

April 14-18 (Staff's Water witness Latteri unavailable)

April 16 (Water witness Buntin unavailable)

The Staff wishes to minimize its travel expenses during this time of budgetary distress. To that end, staff recommends that hearing on the uncontested items be held in Sacramento, or that staff witnesses be allowed to participate via telephone in any hearing on those items held in Escondido. The hearings on the cooling system issues and presentation regarding Air Quality should, however, be held in Escondido in order to satisfy the requirement of Public Resources Code Section 25521 that at least one hearing be held in the vicinity of the proposed project.

Staff recommends that the Applicant and Intervenor file their pre-filed testimony on or before March 26 and that Staff file any rebuttal testimony on or before April 3.

Staff requests approximately three weeks following the close of the Evidentiary Hearings in which to prepare its initial brief and an additional two weeks thereafter in which to file a responsive brief. This request assumes that hearing transcripts will be made available within ten days of the close of the hearings.

8.d. Staff has reviewed the Committee's comments regarding the Soil and Water conditions of certification and, as part of its response to various condition amendments proposed by the Applicant, has revised some of those conditions. Those revisions will be contained in the Addendum to the Final Staff Assessment, which will be filed prior to the Prehearing Conference. Among those responses, a new proposed condition Soil & Water 7 has been added in response to the Committee's request for a condition regarding wastewater discharge.

9. One of the goals of the internal review of the Final Staff Assessment prior to its publication was to determine whether the proposed conditions of certification were supported by the narratives in each of the FSA sections. The Commission's Compliance Unit participated in that review process.

In response to the Applicant's suggested amendments to the conditions, Staff has agreed to revise some of the conditions. Further, Staff has revised the Soil and Water conditions in response to comments from the Committee as described above.

Staff believes that the evidence it will introduce provides substantial evidence to support its proposed conditions. We do not expect that conclusion to change following the presentation of evidence and closure of the record. The Applicant and Staff are now in agreement regarding the conditions of certification. In any even, the exhaustion of administrative remedies doctrine will generally preclude a later challenge to the decision or a condition on a ground that was not raised before the administrative tribunal.

DATED: March 6, 2003

Respectfully submitted,

PAUL A. KRAMER JR
Staff Counsel