STATUS CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:

Application for Certification
of Duke Energy for the
Moss Landing Power Project

) )
) Docket No. 99-AFC-4

HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

THURSDAY, FEBRUARY 24, 2000
2:00 p.m.

Reported By:
Debi Baker
Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
COMMITTEE MEMBERS PRESENT

Michael C. Moore, Commissioner
Shawn Pittard, Commissioner Advisor
Gary Fay, Hearing Officer

STAFF PRESENT
Cynthia Praul
Paul Richins
Jeffery Ogata

PUBLIC ADVISER
Roberta Mendonca

APPLICANT
Christopher Ellison
Ellison & Schneider, LLP

Jane E. Luckhardt
Downey, Brand, Seymour & Rohwer

Wayne J. Hoffman
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Mark A. Seedall
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
PROCEEDINGS

HEARING OFFICER FAY: Good afternoon.

This is a Status Conference in the Moss Landing Power Plant Project, AFC Case. It was noticed on February 14th by the Committee, to review some of the statements made by the Staff in their Status Report Number 5 regarding the schedule concerning the delivery of Section 316, Water Studies. And so we'd like the parties to address what effect that may have -- when the studies can be expected, and what effect it may have on the schedule.

I spoke to Mr. Ogata before the Status Conference and he indicated that -- that Staff and Applicant were either close to or had reached agreement on how to approach this.

So I'd like to start with the Applicant and ask you folks if you have something to tell us about this.

MR. ELLISON: Thank you, Mr. Fay, and Commissioner Moore.

Chris Ellison, Ellison and Schneider, representing the Applicant. To my right is Jane Luckhardt, Downey, Brand, Seymour and Rohwer, co-counsel for Duke on this project.
As you noted, we have met with the Staff this morning. We believe we do have a agreed upon schedule, which I'll describe momentarily.

To put this in -- in context, there are -- what I'd like to do first is to go to the back end of the process and talk about the two key dates that I think should be of concern to the Committee at the back end, and then talk about the front end of the process and the inputs that are necessary to -- to -- that are driving the schedule at this point, and then how we've proposed to resolve those with the Staff.

From Duke's perspective, and I would assume the Committee's, there are, I think, two key back end dates. The first, of course, is the 12-month deadline in the Warren-Alquist Act for processing these cases. That date is August 11th.

And the second one, from the standpoint of Duke, and -- and certainly we think the public, is the decision date which is necessary in order for the project to be online to meet the summer peak loads of 2002. And assuming a 20-month construction and testing schedule, which is what we need to do that, you're looking at the need for a decision by the end of September, essentially,
to accomplish that result.

So with those dates in mind, we have
gone back and looked at where we are on a couple
of key inputs into the Final Staff Assessment and
the Energy Commission process, and tried to devise
a schedule which comes as close as possible,
although not quite meeting the 12-month date, but
does meet the date necessary to enable the project
to be online for the peak -- for the summer of
2002.

The key inputs are first, of course, the
-- the Final Determination of Compliance on the
air issues. We expect that to be available by
early April. To be conservative, we've assumed
April 15th. That has been delayed by the fact
that the APCD feels that they need to re-notice
for a 30-day period the PDOC, and so that has
added 30 days to that schedule. But even with
that re-noticing, we believe that the FSA -- I'm
sorry, the FDOC should be available by April 15th.

Another key input is, of course, the
316A and B studies that lead to the draft NPDES
permit and associated staff report from the
Regional Water Quality Control Board. These are
the reports that address the water and marine
biology issues.

There was a meeting just yesterday of the technical team involving Energy Commission staff, Regional Water Board staff, Coastal Commission and other interested parties, including the Applicant, to talk -- these meetings occur periodically, to talk about the progress on the gathering of data for those reports.

The -- we can go into -- into more detail about where we are in that, but in summary, a great deal of information has been developed, interim reports have been provided, and this technical team is reviewing them.

The expectation that the Applicant has coming out of that meeting is that we will be able to provide a preliminary 316A and B level of data in mid-March that will be based upon 11 of the 12 months of the study, and which we believe will confirm the information that's already out there regarding the impacts. We've been characterizing that as a sort of 95 percent, or 98 percent level of information, and it would allow people to begin the drafting of the various reports that are necessary, subject to confirmation of that -- that last month's data.
That was the essence of the discussion, as I understand it, yesterday. Based on those discussions, we believe that a draft NPDES permit and a associated Staff Report and the 316A and B studies can be available by the end of April.

We also believe that what we're characterizing as a draft draft -- and let me stop for a moment and talk about terminology. The NPDES permit cannot actually be final until the Energy Commission CEQA documents are available to the Regional Water Board. So when I refer to a final NPDES permit, that's a back end of the process document which should be the same as the draft permit, subject only to the Regional Board's review of the Energy Commission CEQA product.

When I refer to the draft NPDES permit, therefore, what I'm talking about is a document which is, as far as the Regional Board and Staff are concerned, final, but for review of the CEQA documents. And when I refer to the draft draft, I'm referring to a draft of this report that would otherwise be final, subject to the CEQA review.

So with that explanation of terminology, what we expect to have happen is that there will be a draft draft permit and associated Staff
report that should be available in mid-April, and then the draft would be available at the end of April.

Based on that and discussions with the staff this morning, we agreed that Staff, assuming that those dates are met -- and let me reiterate, that's April 15th for the FDOC and the same date, April 15th, for the draft draft NPDES permit Staff report -- that Staff from that point would need 30 days to prepare their FSA. And based on that, we agreed that the Committee should adopt a calendar date for production of the FSA of May 15th. And I will talk in a moment about the downstream consequences of -- of that schedule.

But let me stop there for a moment and just say the other issue that we talked about with the Staff were -- would be if it turns out that one of these products is late, what would we do about that. And what we agreed with the Staff would be that if either of these April 15th products are late, or somehow inadequate, that we would slip the schedule day for day from that point, with the understanding that if it looked like there was going to be a substantial delay that the parties would meet and confer and try to
propose a new schedule back to the Committee. If
it's a short delay, we'll just -- we'll just do
the day for day slip.

Having said that, if there is a Final
Staff Assessment on May 15th, then we believe that
the hearings could take place in early June, and
provided that there is not the need for a revised
PMPD, which in this case we believe there is
likely not to be a need for, then we believe the
Committee can come to a final decision in this
matter in early September. And that would allow
the -- that avoids a bifurcation of the FSA, it
avoids shortening the Committee's time for writing
the decision, which we know that some applicants
have proposed in other cases.

It does ask the Committee to assume that
it will not have to revise the PMPD. And if that
assumption at that point in time proves to be
incorrect, then the Committee can slip the
schedule to allow for such a revision. But at
this point, we believe it's a reasonable
assumption in this case that the Committee will
not have to revise the PMPD.

This is a case where there is -- there
are not Intervenors, there is not significant
opposition, and, at least from Duke's perspective,
subject to the reports that we've just described,
there are not major unresolved issues. And that's
the reason that we are confident that the
Committee will be able to write a decision that
will not need to be revised. Write a proposed
decision that will not need to be revised.

So at that point, let me stop and see if
there are any questions or if you'd like to confer
with your Staff about this proposed schedule. But
just to -- to summarize it once again, it would be
slipping the Final Staff Assessment by
approximately 45 days. Under the current schedule
it's due at the end of March, under this revised
schedule it would be due May 15th; to recognize
that that date is -- assumes an FDOC on or before
April 15th; that it assumes a draft draft NPDES
permit by that same date; and that if those -- if
either or both of those documents are unavailable
there would be, in our proposed Committee order, a
day for day slip in the schedule.

And then beyond May 15th, we would
assume the normal Commission schedule except for
the assumption of no revision of the PMPD, which
we think can save 30 days at the end of the
HEARING OFFICER FAY: I just want to explore your comment, no Intervenors or opposition. CURE has intervened in this case, have they not? I don't recall, I -- can you help me there, Mr. Ellison?

MR. ELLISON: Yes.

HEARING OFFICER FAY: Okay. And you don't anticipate their opposition?

MR. ELLISON: We are optimistic that we will reach an agreement with them, that they will not -- not be opposed to this project.

HEARING OFFICER FAY: Okay. And how about some of the local environmental groups that have had an interest in this area for a long time. Have they -- have they not expressed opposition to the project?

MR. ELLISON: We have had no expressions of opposition from the project from any of those groups, and, in fact, at the informational hearing you may recall there was actually quite strong support from many of those local groups.

HEARING OFFICER FAY: And -- and that continues, as far as you're -- as far as you know?

MR. ELLISON: As far as I know. Let me
-- let me check first.

HEARING OFFICER FAY: Okay.

MR. ELLISON: I see nodding heads from the project managers.

HEARING OFFICER FAY: The reason I'm asking is that the schedule you've proposed assumes that the hearings will be very compact. Obviously, there's a big difference if we are all just entering evidence in the record, it's in full agreement, versus highly contested issues. So it looks to me like you've sort of assumed the whole record can be compiled in one week of hearings. Is that correct?

MR. ELLISON: We did not actually lay out specific dates. My assumption in putting the schedule together this morning was that the hearings would be compact. I think you could achieve the dates that we talked about even if you had to have, you know, a two-week allotment of hearings, as long as it was contiguous.

But the answer to your question is yes, we believe that the hearings will -- will -- that there will not be a need for extensive hearing time in this case.

HEARING OFFICER FAY: Okay.
COMMISSIONER MOORE: Chris, what -- what do you expect to happen if the NPDES doesn't happen on that schedule?

MR. ELLISON: If the --

COMMISSIONER MOORE: Give me -- let me re-ask it.

How much slippage would you expect under those circumstances?

MR. ELLISON: It depends upon how much delay there is in the -- in the permit. The agreement that we have with the Staff is that if the draft draft permit --

COMMISSIONER MOORE: Right.

MR. ELLISON: -- is not available on April 15th, that the FSA schedule and the rest of the downstream schedule, presumably, will slip day for day, subject to a meet and confer and propose a new schedule if it looks like a substantial delay.

So if the draft draft permit were to be two weeks late, then we would expect the rest of the schedule would slip two weeks.

COMMISSIONER MOORE: Isn't April 15th a Saturday?

MR. ELLISON: I don't know. We didn't
actually check the calendar, and if we need to
move it a day or two one way or the other, that's
not a problem.

COMMISSIONER MOORE: So what's your
worst case on that? How -- how bad could it get
on -- on that permit?

MR. ELLISON: Well, there's a
theoretical --

COMMISSIONER MOORE: Because I don't
know what their workload is.

MR. ELLISON: -- worst case, and then
there's the worst case that you think, you know,
is -- is possible in the real world.

The theoretical worst case is, of
course, who knows? I mean, you know, if -- if,
you know, if it took them two years to write it,
it would be two years.

But based upon, you know, there's a
substantial amount of data that's already been
submitted and collected and reviewed by the
technical team. And, you know, as I mentioned,
we're going to have 11 of the 12 months data
available next month. So we're, you know, we're
looking at the vast majority of the data already
being in the hands of the technical experts that
are looking at this.

And there's a very strong team, by the way, of experts that are looking at this on behalf of all the affected agencies, and they've been meeting regularly to look at this data and describe what needs they have for additional data and what issues they're spotting as we go along.

One of those meetings occurred just yesterday, and based upon all of the input that we got yesterday and in previous meetings, there is -- we have a high degree of confidence that the NPDES permit can be issued, you know, within either the timeframe that we've talked about, or something relatively close to it.

Let me talk for a moment, if I can, just about the philosophy that we have used in putting this schedule together.

On the one hand, we wanted to set a schedule which is realistic and can be met. We don't want to be coming back to the -- we don't want to come here and propose a schedule to you, and I know the Staff feels the same way, that we know cannot be met. So we believe that this schedule can be met, based upon meetings that occurred as recently as yesterday.
At the same time, we think one of the important functions that the Energy Commission provides is a schedule forcing function. So we have tried to adopt dates that are somewhat aggressive in that way, and not just to force the schedule, you know, for its own sake, but largely because of this concern about not being able to meet the summer peak in 2002.

And so the real question, from Duke's perspective, is what is the likelihood that there would be a slip in the -- in the NPDES permit of sufficient magnitude to affect that end date. And while I wish I could guarantee to my client and to you that that's impossible. I can't. But I can tell you that we are working extremely hard to make sure that doesn't happen. We believe we have the cooperation of other agencies that are involved in this process to make sure that doesn't happen.

But in order for that to happen, this -- this schedule, or something very close to it, has to -- has to occur. And so I think it's important, for that reason, for the Committee to adopt a schedule that has calendar dates in it that set reasonably aggressive but achievable
deadlines, and that's what we've tried to do.

And we met for, you know, a couple of hours this morning with the Staff, going over in detail -- and Staff, by the way, was represented at this meeting yesterday -- going over these inputs into the process, the reasonableness of the schedule. And I think, you know, Staff should speak for themselves, but I think they would agree that it is an aggressive schedule, but it's one that -- that has the, you know, that can be met if people continue working diligently, which they are.

COMMISSIONER MOORE: Thanks. Let me digress for just a second, then, and turn to the Public Adviser on the question of public involvement. And Roberta, if I could ask you to come up for a second and just tell us what you know about anything happening in the field, what -- what's the status of public involvement in this?

PUBLIC ADVISER MENDONCA: Well, I -- usually I bring a piece of paper so I can summarize, but I didn't bring that with me.

I made several visits early in the process to the community to attempt to locate some
type of interest group for public participation.
After the Informational Hearing, most of the
contacts that I made indicated that they were
primarily favorable to the project, and I have not
had any indication that any of that has changed or
that there would be any other people -- I will
once again be in the community before the next
workshop, and that will be an opportunity for --

COMMISSIONER MOORE: Good. Thank you.

REPORTER: Excuse me. I was having
trouble hearing from the mic that Roberta spoke
at.

COMMISSIONER MOORE: Did you get
everything she said?

REPORTER: I got a lot of feedback, and
it would be better if she repeated it into one of
these.

COMMISSIONER MOORE: Okay. And what
about the mic next to Chris, does that work?

PUBLIC ADVISER MENDONCA: My name is
Roberta Mendonca, and I'm the Public Adviser.

COMMISSIONER MOORE: No, use the other
microphone, Roberta. She's just interested in
your -- she knows who you are.

(Laughter.)
COMMISSIONER MOORE: She's interested in
the last --

PUBLIC ADVISER MENDONCA: I was trying
to give her a test.

COMMISSIONER MOORE: -- the last three
or four sentences that you said.

PUBLIC ADVISER MENDONCA: Okay. Sorry.
I was in the community as a part of my
initial outreach, and at that time -- followed
with the Informational Hearing. And at the
Informational Hearing most of the groups that I
had spoken with indicated that they were pretty
much in support of the project. And I've had no
information to disagree with that since that time.

I will be in the neighborhood for the
next workshop, which is next week, and that will
be an opportunity for me to revise that
information, but I don't foresee anything in
particular happening that would cause me to change
that.

COMMISSIONER MOORE: Thank you.

PUBLIC ADVISER MENDONCA: You're
welcome.

HEARING OFFICER FAY: Mr. Ogata, can
you, or Mr. Richins, can you add anything to what
we've heard so far?

MR. RICHINS: As it relates to public
comment, I have not received any phone calls or
any contact from the public expressing concerns
about the project. So to answer that question,
I'm not aware of anybody, other than the one
individual that spoke at our Informational Hearing
about the noise issue.

As it relates to Chris Ellison's
comments, I think that's a fair characterization
of our -- what we believe, or what we would
recommend for a schedule. Because of the
coordination with the various agencies and the
Staff and the workload here at the Energy
Commission, we're requesting 30 days from the
receipt of the last document to put together the
Final Staff Assessment.

And those two critical documents that
are still missing is the Final DOC from the Air
District, and the Preliminary Draft Permit from
the Regional Water Control Board.

There's one additional thing that I
would like to add, and that is the Coastal
Commission, there's a requirement for the Coastal
Commission to provide a report to the Energy
Commission as part of their review of the project. They, too -- it seems like they, too, need a period of time after the Regional Water permit comes out for them to complete their report. I was speaking to them over the phone just this afternoon, and I think they're comfortable with having a dialogue between their staff and our staff, and we can incorporate any issues that may have been missed into the Final Staff Assessment via telephone conversations, and maybe face to face meetings with them, if necessary.

But we do anticipate that the Preliminary Staff Assessment and the Final Staff Assessment, along with the Final DOC and the NPDES permit from the Regional Water Board will cover all the issues, and we're not anticipating any surprises from the Coastal Commission. However, if there are -- anything that is missed, we plan to coordinate closely with the Coastal Commission to get that into the Final Staff Assessment.

And to bring the document, their document into our process would be to bring it in at the time of the Evidentiary Hearings. And so that would be the only addition that I would add to what Chris Ellison spoke about.
HEARING OFFICER FAY: And they have a copy of the PSA?

MR. RICHINS: The PS --

HEARING OFFICER FAY: Or the PSA, rather?

MR. RICHINS: -- the PSA, right. And they -- they will be at our workshop on the first, and -- in which we'll be talking about land use issues, air quality, traffic and transportation, and some other issues of interest to them.

HEARING OFFICER FAY: So you don't anticipate the Coastal Commission slowing down the proposed schedule, it sounds like.

MR. RICHINS: Yeah, if you're comfortable and the Committee is comfortable with having the report instead of having the report in front of the Final Staff Assessment, and having their report come in almost concurrently with the Final Staff Assessment, we feel comfortable with that, because we'll -- we have regular communication and contact with them, and will continue to do that so that any of their concerns can be factored into Staff's assessment.

HEARING OFFICER FAY: Mr. Ogata, in your view will that meet the requirements of the

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statute that there be a report from the Coastal Commission and consultation?

MR. OGATA: I believe so, Mr. Fay, because, as you know, as you're aware, there's a little bit of a glitch in terms of the actual requirements of the statute, because the statute contemplated comments from the Coastal Commission with respect to an NOI, which this isn't. So there is a little glitch there. But to carry out the intent, which is to get Coastal Commission input, we have asked them to provide this report to us.

So I'm comfortable with the fact that because at this time it doesn't appear, from any of the information we have, that the Coastal Commission is going to have any serious problems with this project, maintaining telephone or face to face communication with them to get their input prior to getting a actual written report I think will serve all of our purposes and will work out quite well.

HEARING OFFICER FAY: So do you anticipate introducing the report at the Evidentiary Hearings, having already incorporated their comments into the FSA?
MR. OGATA: I don't think we've really thought about it that far in advance, because at this point, again, we're still speculating as to when it'll actually arrive. We hope it'll arrive in time for the FSA. If not, we'll have to see what the substance of the comments are. If it's just a letter that says we agree with everything you said, then I don't imagine we'll have to introduce it. So I think it's kind of premature to, you know, speculate as to how we'll handle it until we actually see it.

HEARING OFFICER FAY: One thing I wanted to explore is, is Staff amenable to -- and I understand you feel the need to have the FSA in a single document, but if, for instance, one or both of the critical documents are delayed, either the NPDES preliminary report or the final DOC, would it be possible to move forward on hearings with Staff essentially filing the sections, the appropriate sections of the FSA for a given hearing ten days before the hearing, and publishing the formal document at the time that they can complete the document so that we can begin establishing the record on schedule, and move to those trailing topics when we have the
information and still have a complete FSA, but not
hold up the beginning of Evidentiary Hearings to
do so?

                Just exploring that idea.

                MR. RICHINS: Yeah. We -- we've had a
lot of discussion about this in our office, as you
might imagine. From the standpoint of those areas
that we think will take -- well, a way of handling
the procedures that you might want to consider is
taking all areas by affidavit, other than those
areas that the county or agencies might have some
keen interest in.

                And right now, my guess is that Traffic,
Air Quality, Water, Biological Resources, and
maybe Land Use are probably the only areas that
are of interest to other agencies, other than the
Energy Commission. And so all of the rest of
those areas probably can be taken care of quite
easily.

                Back to the subject of -- of kind of
splitting up the FSA, we've had a lot of
discussions with Therkelsen, Bob Therkelsen in our
office, about that. And he has provided a letter
to the Siting Committee recommending that we don't
do that, from the standpoint of having a complete
record, complete document for the record. Also, it has implications for workload with the Staff at the Energy -- the Staff. And so he -- he would recommend that we not go down that route.

And so in our status report we did not suggest that, and we wanted to be consistent with the recommendation that we made to the Siting Committee, or that Bob Therkelsen made to the Siting Committee, and that was to come out with a single document.

HEARING OFFICER FAY: And what I was exploring wasn't to change that single document idea. It was just to, if you will, file chapters, and I would assume they'd be identical chapters from the FSA, file them in ten days prior to the Evidentiary Hearing on a given topic, even though you would be filing the -- you would be publishing the FSA as a single document at a later time, just to be able to keep moving on the hearings.

But, you know, that -- we're just exploring that, that doesn't need to be nailed down at this time, as a contingency plan possibility.

I don't anticipate that we'd be ruling on that particular question. But we throw it out
as something to think about. It's impossible to anticipate, from what you folks have told me, what, if any, delay will occur, and how long it might be. But if it's more than just a few days there might be an advantage in establishing as much of the record as we can, rather than have everything delayed until a single permit comes in. So we're just trying to respond to the concerns of the parties about keeping the schedule moving.

Any other comments on this?

I think we've pretty much heard the state of the record right now.

Nothing more? Okay.

Thank you. I anticipate that the Committee will respond with a revised scheduling order. And I appreciate your efforts in -- in trying to work out a realistic solution to what's going on.

Thank you. We're adjourned.

(Thereupon, the Status Conference was adjourned at 2:40 p.m.)
CERTIFICATE OF REPORTER

I, DEBI BAKER, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission 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 Status Conference, nor in any way interested in the outcome of said Status Conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of March, 2000.

DEBI BAKER

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