

Poseidon's Suggested Additional Steps To Be Taken By Board As Part Of Its Hearing On Agenda Item No. 6 To Make A Final Decision On February 11th.

The Board has the authority, upon the motion of one of its members and a majority vote of the Board, to hear additional testimony and evidence beyond that allowed by the suggested hearing procedures provided by your staff for this matter. This action would be especially helpful if the Board wishes to make a final decision on February 11th, rather than postponing the matter for further submittals and hearings.

Poseidon suggests that the Board vote to add the following additional steps to the Item No. 6 at the February 11th hearing. (This procedure will not give Poseidon the procedures that it has requested for the hearing, but would give the Board sufficient evidence to make a final decision on the submittal).

This could be done by the following motion of a Board member, approved by the Board:

I move that we add the following hearing procedures to our hearing for Board Agenda Item No. 6, in addition to those suggested by staff:

1. Poseidon, the applicant, shall be designated as a party and allowed to present the following evidence in support of its submittal and requested action by the Board:

(1) A twenty minute opening statement by Poseidon after the staff report Poseidon would provide an overview of its project, its work on the Flow, Entrainment and Impingement Minimization ("FEIM") Plan, and on the Marine Life Mitigation Plan ("MLMP") that was required as an amendment to the FEIM Plan

After Poseidon's opening statement, and at the conclusion of an additional staff report and public comment from any other person appearing to speak on this matter, Poseidon shall be allowed the opportunity to submit the following additional evidence and argument, with a response from Regional Board staff

(2) 15 Minutes On "Specific Proposal" Issue Fifteen minutes presentation (testimony of experts and argument) from Poseidon supporting the applicant's position that its MLMP submittal is "an amendment to the [Flow, Entrainment and Impingement Minimization] Plan that includes a specific proposal for mitigation of impacts" as required by Condition 3 of Resolution No. R9-2008-0039 and the appropriateness of final agency action on February 11th by the Board, and a staff response of equal length on this issue.

(3) 10 Minutes On "Interagency Coordination" Issue Ten minutes presentation (testimony of experts and argument) from Poseidon concerning the interagency process that was used to develop and approve the MLMP, (under Water Code Section 13225 and as required by Condition 3(c) of the Resolution) and the inappropriateness of the Regional Board staff rejection of this Plan approved by both the Coastal Commission and the State Lands Commission, , and a staff response of equal length

(4) 10 Minutes On "Impingement" Issue Ten minute presentation (testimony of experts and argument) by Poseidon concerning adequacy of mitigation for impingement impacts and the question regarding staff access to "adequate" impingement data, and a staff response of equal length.

(5) 20 Minutes On "Adequacy of Mitigation For Entrainment" Issue Twenty minute presentation (testimony of experts and argument) by Poseidon concerning the adequacy of mitigation presented in the MLMP for entrainment impacts, including a staff response of equal length

(6) 5 Minutes On the Timing of Poseidon's MLMP Submittal Five minute presentation by Poseidon regarding Poseidon's efforts to coordinate with staff on the submittal of the MLMP so that staff would receive the version of the MLMP it desired in an acceptable time frame, and a staff response of equal length

(7) Cross-Examination Counsel for Poseidon and counsel for staff each would have up to 30 minutes for cross-examination, which may occur as the issues are presented, with the balance available after presentation of the issues, (1) through (6) hereinabove, is completed

(8) Closing Statements Both Poseidon and staff would have up to 10 minutes to make a closing statement after making the above presentations.