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## CALIFORNIA ENERGY COMMISSION

In the matter of:

Willow Rock Energy Storage Center ) Docket No. 21-AFC-02  
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PREHEARING CONFERENCE

REMOTE VIA ZOOM

FRIDAY, AUGUST 15, 2025

10:00 A.M.

Reported by:  
Elise Hicks

APPEARANCES

HEARING OFFICER

Renee Webster-Hawkins, Attorney IV, Hearing Officer

COMMISSIONER

Andrew McAllister, Presiding Member

COMMISSIONER ADVISOR

Maggie Dang, Advisor to Commissioner McAllister

James Qaqundah, Advisor to Commissioner Gallardo

CEC STAFF

Eric Veerkamp, Project Manager, STEP Division

Eric Knight, Branch Chief, STEP Division

Erika Giorgi, Staff Counsel, CCO ACU

Jared Babula, Senior Staff Counsel, CCO ACU

Mariah Ponce, Staff Counsel, CCO ACU

PUBLIC ADVISOR

Ryan Young, Deputy Public Advisor, CEC

APPLICANT - GAME A-CAES LLC / HYDROSTOR

Curt Hildebrand, Senior Vice President with Hydrostor

Laurel Lees, Director of Environmental and Permitting

Jeff Harris, Attorney with the firm Climate Edge Law Group

APPEARANCES (cont'd)

APPLICANT - GAME A-CAES LLC / HYDROSTOR (cont'd)

Samantha Neumyer, Attorney with the firm Climate Edge Law Group

INTERVENORS

Richard Franco, Attorney, California Unions for Reliable Energy (CURE)/Adams Broadwell et al

Zeynep Graves, Attorney, Center for Biological Diversity

GOVERNMENT AGENCIES AND TRIBES

Jeremy Pohlman, California Department of Fish and Wildlife

Lena Germinario, California Department of Fish and Wildlife

Miguel Sandoval, Air Quality Engineer, East Kern Air Pollution Control District

P R O C E E D I N G S

10:02 a.m.

FRIDAY, AUGUST 15, 2025

HEARING OFFICER WEBSTER-HAWKINS: Welcome. The time is 10:02 on August 15th, 2025. And this is the California Energy Commission's Prehearing Conference for the Willow Rock Energy Storage Center, Docket Number 21-AFC-02.

I'm Renee Webster-Hawkins, the Hearing Officer for the Committee that the CEC assigned to oversee this proceeding. And I hereby open the prehearing conference on the application for certification or AFC as noticed for this proceeding.

Today's prehearing conference is being conducted remotely via Zoom with the assigned Committee, representatives of the parties, staff from the Public Advisor's Officer, the Hearing Officer, and the public appearing remotely.

For everyone's awareness, the event is being recorded via Zoom and all statements are being transcribed by a certified court reporter. The recording will be available on the project webpage and the court transcription will be available in the docket following the event. To ensure an accurate transcript, please be sure to state your name each time you speak, spelling it out before

1 the first time you speak. And also please do not interrupt  
2 or speak over others.

3 I want to thank our Office of the Public Advisor,  
4 Energy, Equity, and Tribal Affairs, our CEC Information  
5 Technology Division, and the Legal Support Unit of the CEC  
6 Chief Counsel's Office for the support to make this event  
7 possible.

8 We are offering -- next slide, please. We're  
9 offering Spanish interpretation for this hearing on Zoom.

10 And may I kindly ask the Deputy Public Advisor to  
11 provide the instructions for accessing the Spanish  
12 interpretation on Zoom?

13 MR. YOUNG: Back to you, Hearing Officer.

14 HEARING OFFICER WEBSTER-HAWKINS: Gracias.

15 Next slide, please.

16 So here's the schedule for this morning's  
17 conference. But before we review it, I want to take a  
18 moment on behalf of the Committee and the entire CEC and  
19 acknowledge the loss and grief that the Applicant's team is  
20 living through today given the unexpected passing of their  
21 Visual Resources Expert, Mr. Daryl Harrison. Commissioner  
22 Gallardo specifically asked me to convey her sympathy.

23 While we respectfully address any evidentiary  
24 issues related to his loss a bit later in this conference,  
25 I would like to create a moment of silence for all of us to

1 reflect on Mr. Harrison, to honor his work and spirit and  
2 transmit our compassion to his family, friends and  
3 colleagues.

4 (Whereupon a moment of silence is observed)

5 HEARING OFFICER WEBSTER-HAWKINS: And so now we  
6 will begin with introductions. We will review the dates  
7 and deadlines provided in the fifth revised schedule.  
8 We'll review the parties' prehearing conference statements,  
9 identify any additional evidence needed for a complete  
10 record and discuss the planned schedule for the evidentiary  
11 hearings next week, including the oral testimony to be  
12 presented. The Committee may take recess if needed before  
13 we close today. And lastly, we will have an opportunity  
14 for public comment and final remarks by the Committee.

15 Next slide, please.

16 So let's turn to the introductions. And on  
17 behalf of the Committee, we want to officially welcome all  
18 of your participation.

19 First, I want to introduce the Committee. We  
20 have Commissioner Andrew McAllister, the Presiding Member  
21 of the Committee and his advisor, Ms. Maggie Dang.  
22 Commissioner Noemi Gallardo, the Associate Member, is  
23 traveling today out of country on business, so she is  
24 likely not able to join us. Her Advisor, Mr. James  
25 Qaundah, is present with us today. Welcome. And myself,

1 I'm Renee Webster-Hawkins, the Hearing Officer. Our Public  
2 Advisor's Office, who you've met already, is represented by  
3 Mr. Ryan Young, the Deputy Public Advisor.

4 And now I'd like the Applicants to introduce  
5 themselves and the other parties as well, and the  
6 representatives starting with the Applicant.

7 MR. HARRIS: Good morning. Hi, it's Jeff Harris  
8 on behalf of the Applicant. Thank you to the Committee for  
9 that very nice opening. Appreciate that on our side.

10 I'm here also with my colleague, partner, and the  
11 smarter one of the two of us, Samantha Neumyer, who is here  
12 and available as well. And I will actually let Curt and  
13 Laurel introduce themselves too, if they would, please.

14 MR. HILDEBRAND: Good morning. Curt Hildebrand,  
15 Senior Vice president with Hydrostor. I'm located in the  
16 Bay Area and spearheading our development efforts. And I'd  
17 like to turn it over to Laurel Lees.

18 MS. LEES: Hi, thank you. I'm Laurel Lees. I am  
19 based out of Carpinteria, California, and I head up the  
20 permitting efforts and supporting Curt and the team.

21 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

22 Now, if we could turn to CEC Staff?

23 MR. BABULA: Yeah, hello, my name is Jared  
24 Babula. I'm Senior Attorney for Staff. And with me, I  
25 have Erika Giorgi, who is also Senior Attorney, Mariah



1 Ponce, who's an Attorney, and then the Project Manager for  
2 Staff on this project is Eric Veerkamp.

3 Thank you.

4 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

5 And turning to the intervenors, beginning with  
6 the California Unions for Reliable Energy, CURE. Do we  
7 have a representative from CURE today?

8 MR. FRANCO: Yes, good morning. I'm Rick Franco.  
9 I represent California Unions for Reliable Energy, or CURE,  
10 one of the intervenors in this action.

11 HEARING OFFICER WEBSTER-HAWKINS: Welcome.

12 And do we have a representative from the Center  
13 for Biological Diversity? I don't see a familiar name in  
14 our panelist list. Is it possible that either -- that Ms.  
15 Graves might be in the attendees list? I see a hand  
16 raised. Let's see. Is that a -- I see a phone number.  
17 I'm wondering if the call-in is from -- is it possible to  
18 quickly enable the 1310 number to see whether or not that  
19 is the representative from the Center?

20 MS. GRAVES: Good morning, this is Zeynep Graves,  
21 representative of the Center for Biological Diversity. My  
22 apologies. I was having difficulty with the Zoom this  
23 morning, and I'm joining by phone.

24 HEARING OFFICER WEBSTER-HAWKINS: Wonderful,  
25 okay, I'm glad we found you. And I don't know if it's

1 possible to our Zoom pilots if we can include this number  
2 as a panelist, and it may not be possible, but we will keep  
3 an eye on this phone number for your contributions as we  
4 move through the conference.

5 MS. GRAVES: Much appreciated. Thank you.

6 HEARING OFFICER WEBSTER-HAWKINS: You're welcome.

7 All right, now I'd like to ask if there are any  
8 representatives from government agencies or California  
9 Native American tribes. And if so, and you would like to  
10 introduce yourself if you could raise your hand? And we  
11 would like to be able to at least introduce you and welcome  
12 you. I don't see any raised hands at the moment. But we  
13 just did want to give that opportunity to -- I do see  
14 someone, Pohlman. Can we enable the line of J. Pohlman to  
15 introduce themselves?

16 MR. POHLMAN: Yeah, hi, this is Jeremy Pohlman  
17 with the California Department of Fish and Wildlife,  
18 Central Region. Just wanted to raise my hand and say good  
19 morning and that we are here today just listening in.  
20 Thanks.

21 HEARING OFFICER WEBSTER-HAWKINS: Thank you very  
22 much. Welcome.

23 Are there any other representatives from  
24 government agencies or California Native American tribes  
25 with us this morning? Seeing none, we will move on.

1           But before we continue, I would like to afford  
2 Commissioner McAllister, our Presiding Member to offer any  
3 opening remarks for the conference.

4           COMMISSIONER MCALLISTER: Thank you, Hearing  
5 Officer Webster-Hawkins, really appreciate it. And great  
6 job to you and the team setting up this conference.  
7 Looking forward to a productive session here today and  
8 making sure we have everything distilled for the actual  
9 hearing, and which is coming up, coming up quickly as you  
10 all know.

11           I want to, well, thank everyone. But first of  
12 all, offer condolences for Mr. Harrison's family and his  
13 friends and colleagues, certainly the Applicant team.  
14 Never an easy time and we wanted just to afford space and  
15 support as needed today and moving towards the hearing  
16 itself. So thanks for the moment of silence. That was  
17 very meaningful. Thanks for doing that, Renee.

18           Let's see, so just you, the Hearing Officer team,  
19 the Applicant Staff, agencies, county, and all the rest of  
20 the parties, intervenors, thanks for all of your submittals  
21 and your work up to today. I know there's been a lot of  
22 meeting and consultation and negotiation and we'll hear  
23 about that today. So looking forward to sort of getting a  
24 status report and getting us fully up to speed so we can  
25 make sure to inform the hearing appropriately.

1 (Clears throat.) Excuse me.

2 And so we do have a lot to get through today.

3 And I want to appreciate everyone's just hard work and  
4 respectful engagement. I think this is really a model of  
5 civility in a process that, you know, often has some rough  
6 edges that have to be sanded down and work through issues  
7 that have to be worked through and some of them are tricky.  
8 So we'll talk to you guys today, of course, and make sure  
9 we're teeing up the right expertise in discussion at the  
10 hearing itself.

11 I think we've been pretty successful up to now in  
12 being flexible as needed. You know, reality intervenes  
13 often to make us think about how to proceed and I think  
14 we've done a good job of that, we being sort of all the  
15 participants and while keeping on track to get to a final  
16 decision by the end of the year. And that's still job one.  
17 We need to keep moving forward. And I just want to  
18 encourage everyone to keep that in mind and try to keep at  
19 it to get to that, to keep to the timeline. That's  
20 important. I think it's an obligation of us as the primary  
21 state agency here in these siting cases. And we just need  
22 to really keep that track record of efficiency and  
23 effectiveness going, you know, just can't delay.

24 The project has seen some significant changes  
25 since the last time we convened. And I think, you know,

1 most notably a new site and, you know, looking forward to  
2 hearing about some of those details, maybe not so much  
3 today, but certainly at the hearing and we'll talk about  
4 how to make sure we can do that, changes or progress on  
5 some issues and potential dispute, you know, not all of  
6 them. And I look forward to kind of helping figure out  
7 which are the ones that really persist that we need to  
8 drill in on, pun intended, I suppose, and, you know, really  
9 hammering out a solid plan for the hearing itself.

10 And then perhaps we have some changes or a change  
11 at least in party status potentially. So I want to make  
12 sure that we're all clear on the path forward there.

13 So let's get to work, working through the issues  
14 and, you know, really appreciate, again, everyone's  
15 attention today. And thanks again for the sort of earnest  
16 efforts that everyone's engaged in to try to make progress  
17 on this and get us to the finish line.

18 So back to you, Hearing Officer. Thanks a lot.

19 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

20 COMMISSIONER MCALLISTER: Looking forward to  
21 kicking off.

22 HEARING OFFICER WEBSTER-HAWKINS: Thank you,  
23 Commissioner. And I will be mowing us through the weeds  
24 for most of this conference, but Commissioner, please feel  
25 free to raise up the level at any point --

1 COMMISSIONER MCALLISTER: Absolutely.

2 HEARING OFFICER WEBSTER-HAWKINS: -- if you need  
3 to.

4 COMMISSIONER MCALLISTER: I will assert myself  
5 and raise my hand and I want to encourage, also just  
6 acknowledging that Commissioner Gallardo is over on another  
7 continent, in Africa, this week, doing some pretty great  
8 stuff on behalf of California together with other agency  
9 leads from the state. So her Advisor, Jimmy, James  
10 Qaqundah, for being here. And actually, Jimmy, I don't  
11 know if you have any words you want to convey on  
12 Commissioner Gallardo's behalf?

13 MR. QAQUNDAH: Thank you, Commissioner.  
14 Commissioner Gallardo just sends her regrets for not being  
15 able to be here today. She will be here -- she will be at  
16 the evidentiary hearings next week. As Hearing Officer  
17 Webster-Hawkins mentioned before, she does send her deep  
18 condolences to the Applicant's team for their loss. And  
19 I'd like to just echo that as well. But thank you.

20 COMMISSIONER MCALLISTER: Thank you.

21 All right, back to you, Renee.

22 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

23 All right, so here, just to begin the conference  
24 very briefly, I want to refresh the fifth revised schedule  
25 as set out in the July 17th notice. These are the dates

1 that were provided in that notice.

2 The Committee acknowledges that the Applicant has  
3 indicated the desire for legal briefing on water resources  
4 and land use and possibly Visual Resources, and for the  
5 opening briefs to occur seven days, and we assume that's  
6 calendar days after the publication of the transcripts and  
7 reply briefs seven days thereafter. Staff in its  
8 prehearing conference statement doesn't believe that post-  
9 hearing briefing is needed, but doesn't have an issue with  
10 the schedule if it is needed.

11 So as we move through the topics today that are  
12 remaining in dispute, I encourage the parties to consider  
13 whether there are ways to resolve the water resources, land  
14 use issues, and visual resource issues without the need for  
15 post-hearing briefing, primarily as Commissioner McAllister  
16 said, to keep us focused on the schedule for a final  
17 decision before the end of 2025. But obviously, if legal  
18 briefing is necessary, we will build that in.

19 So before we move on, are there any questions or  
20 comments from the parties on the fifth revised schedule,  
21 starting with Applicant?

22 MR. HARRIS: No questions.

23 HEARING OFFICER WEBSTER-HAWKINS: Hearing none --

24 MR. HARRIS: Oh, sorry about that. I just  
25 couldn't get my finger to work. No problems with the

1 schedule. We understand the deadlines. We can talk more  
2 about briefing and schedule, but our monomaniacal focus is  
3 on finishing this year, so -- for a whole bunch of reasons,  
4 which I think we all know about. So whatever gets us to  
5 that end will be our prime directive, so from our company,  
6 so --

7 HEARING OFFICER WEBSTER-HAWKINS: Perfect, and  
8 thank you for that. And just to forewarn all of the  
9 parties, throughout this conference today, I'm going to be  
10 polling each of the parties frequently. So do be prepared  
11 for me to make sure that I'm checking in with all the  
12 parties and you're ready to respond.

13 So turning to Staff, do you have any questions or  
14 comments on the schedule?

15 MR. BABULA: Yeah, the schedule is fine as  
16 presented here. Thanks.

17 HEARING OFFICER WEBSTER-HAWKINS: Thank you.  
18 CURE?

19 MR. FRANCO: No questions or comments on the  
20 schedule from CURE.

21 HEARING OFFICER WEBSTER-HAWKINS: Thank you.  
22 And the Center?

23 MS. GRAVES: No questions or comments from the  
24 Center on the schedule.

25 HEARING OFFICER WEBSTER-HAWKINS: Great. Thank



1 you.

2           Okay, moving to the next slide, this lists the  
3 topics we're going to cover in review of the party's  
4 prehearing conference statements. As explained in the  
5 notice for this hearing, the basic purposes of the  
6 prehearing conference are to hear any prehearing  
7 evidentiary or other motions, to assess the project's  
8 readiness for the hearings, to identify witnesses and  
9 exhibits, to clarify areas of agreement or dispute, to  
10 determine upon which topic areas the parties want to  
11 question the other parties' witnesses, to identify topics  
12 on which the Committee is requiring or requesting expert  
13 testimony, including from other state or local agencies,  
14 and to identify Committee requests for further evidence and  
15 exhibits.

16           So to achieve these purposes, we required that  
17 all parties file a prehearing conference statement by  
18 August 11th, 2025. Those statements were timely filed by  
19 all parties. To summarize them for the record, Staff  
20 published its Final Staff Assessment, or FSA, on July 16th,  
21 2025. And the FSA serves as Staff's opening testimony on  
22 all subject matter areas. The FSA has been marked for  
23 identification as Exhibit 2000. Staff's rebuttal testimony  
24 was filed on August 6th, 2025, and is marked for  
25 identification as Exhibit 2001.

1           Timely opening and rebuttal testimony was filed  
2 by the Applicant on July 30th, 2025, and August 6th, 2025,  
3 respectively. These exhibits have been marked for  
4 identification as Exhibits 1233 and 1234, respectively.  
5 Applicants' prehearing conference statement also identifies  
6 numerous other documents in the docket for evidence marked  
7 as Exhibits 1000 through 1323, omitting 1049, and I note  
8 that 162 of these items are marked confidential.

9           Intervenor, The Center, timely filed opening and  
10 rebuttal testimony on July 30th and August 6th,  
11 respectively. And these exhibits have been marked for  
12 identification as Exhibits 4000 and 4001.

13           And Intervenor CURE did not file any opening or  
14 rebuttal testimony. On August 7th, CURE and the Applicant  
15 filed a joint statement, including agreements on certain  
16 Conditions of Certification, and this has been identified  
17 by the Applicant as Exhibit 1323.

18           Next slide, please.

19           So as just stated, CURE did not file any opening  
20 or rebuttal testimony. And additionally, in its prehearing  
21 conference statement, CURE identified no exhibits and  
22 indicated that it will not introduce testimony or evidence  
23 at the evidentiary hearing. Further, its prehearing  
24 conference statement did not address the questions posed in  
25 the notice, including any areas CURE believes are still in

1 dispute or subject areas on which it desires to question  
2 the other party's witnesses.

3 As indicated here on the slide, the notice states  
4 that failure by a party to comply with the filing  
5 requirements stated in the notice may preclude that party  
6 from participating in the evidentiary hearing.

7 So at this time, we want to ask whether there's  
8 any objection to the Committee's proposed order to  
9 terminate further participation by a CURE in these  
10 hearings, namely that CURE will not be able to submit any  
11 further written or oral testimony or evidence, that CURE  
12 will not be able to question any of the other party's  
13 witnesses, and that CURE will not be able to submit further  
14 legal argument, including if the Committee permits  
15 briefings from the other parties after the evidentiary  
16 hearing on legal matters?

17 The Committee wants to affirm that it is not  
18 bound by the joint statement that reflects a compromise  
19 between CURE and the Applicant. Practically speaking, this  
20 means that if the Committee does not adopt any or all of  
21 the proposed additional or modifications to Conditions of  
22 Certification based on the joint statement, that CURE would  
23 have no recourse as a party to object to the Committee's  
24 proposed decision on those matters.

25 CURE, can you affirm on behalf of your client

1 that you understand what the Committee's order will be?  
2 And if so, do you have any objections to the order? Mr.  
3 Franco?

4 MR. FRANCO: Thank you. As an initial note, I  
5 just wanted to say that our client CURE greatly appreciates  
6 the opportunity to participate in these proceedings. And I  
7 wanted to acknowledge our appreciation for the Applicant's  
8 willingness to engage with us and discuss and address the  
9 issues that we raised. And, yeah, it's correct that we do  
10 not intend, based on, you know, the filing of our joint  
11 statement, and the fact that we did not file testimony or  
12 evidence, we did not intend to participate in the  
13 evidentiary hearings, and obviously we'll not do so. We do  
14 intend to, you know, continue to monitor the proceedings,  
15 you know, going forward, but not directly participate.

16 I understand the statement of the proposed order  
17 and do not have any objections as stated. We do not intend  
18 to offer written or oral testimony of evidence, cross-  
19 examine witnesses, or offer any legal argument. We'll  
20 continue to be in touch, I think, with the Applicant, as  
21 well as to, as I said, kind of monitor the proceedings  
22 going forward.

23 HEARING OFFICER WEBSTER-HAWKINS: Thank you for  
24 that, Mr. Franco. And I appreciate CURE's engagement, and  
25 obviously CURE would be welcome to offer comment in the

1 record during the remainder of the proceedings, but the  
2 status as a party would end.

3 MR. FRANCO: That's understood.

4 HEARING OFFICER WEBSTER-HAWKINS: So we will  
5 proceed through the remainder of this conference.

6 MR. HARRIS: I'm sorry --

7 HEARING OFFICER WEBSTER-HAWKINS: Yes?

8 MR. HARRIS: -- Hearing Officer, if I may? I  
9 guess I'm a little surprised by the complete termination of  
10 status. I don't see that, and I'll use the word  
11 sanctioned, in the language in the order. We're in very  
12 good shape with CURE. And, you know, I haven't gone  
13 through the looking glass, up here sort of defending them,  
14 you know, Rick and his group has been fantastic with us.  
15 And, you know, I think I would not have read what he filed  
16 on Friday as a relegation of their party status, frankly.

17 So I think the Committee has a sort of an  
18 intermediary ability, and you've done this in the past, to  
19 limit people's participation to certain subject matters or  
20 certain types of things. And to me, that seems to be a  
21 more appropriate outcome for this kind of thing. I  
22 appreciate the streamlining of the process, but I think  
23 that complete termination of party status is probably a  
24 little bit more farther than the Committee needs to go, and  
25 would suggest something as intermediary and an opportunity

1 for everybody to review and comment on your final order.

2 But I'd strongly recommend that they keep their  
3 party status, but that you just limit it in the ways you've  
4 set forth. I think that will really -- to me, that feels  
5 right. Okay. And I am talking off the top of my bald head  
6 here. So, anyway, and maybe the Commissioner's comments  
7 about civility have put me awash in a new frame here, but  
8 those are my thoughts on this matter. And obviously, you  
9 don't need to decide today, but I wanted to share those.

10  
11 HEARING OFFICER WEBSTER-HAWKINS: Thank you for that,  
12 Mr. Harris.

13 Turning to Staff, do you have any comments on the  
14 proposed order?

15 MR. BABULA: I sort of agree with Mr. Harris in  
16 some ways, that as long as it's clear that CURE is not  
17 going to be showing up and offering testimony and cross-  
18 examining witnesses, whether they're still held as a party  
19 or not is less material in the sense of the actual process.

20 And I would note that Staff, in our prehearing  
21 conference statement, was trying to get an understanding of  
22 what was the intent with the agreement between the  
23 Applicant and CURE, because there was an inference that  
24 there was a hope or a desire for it to be integrated into  
25 the Conditions of Certification. And so we did invite the

1 Applicant to make -- like offer a draft, especially, it  
2 really only covers three conditions. You have a bio, bio  
3 condition, there's some bio-related stuff, and then Worker  
4 Safety and noise.

5 HEARING OFFICER WEBSTER-HAWKINS: Yes.

6 MR. BABULA: And so we offered that up. Now they  
7 didn't do it and we're kind of running out of time.

8 So probably the best scenario would be just to  
9 have that as a side agreement between the Applicant and  
10 CURE and not to try to integrate into our conditions.  
11 Because I can tell you some of that language we wouldn't  
12 accept, because it's not really conditioned language. But  
13 the broader question of CURE's participation, as long as  
14 it's clear, they're not going to be making any statements  
15 and they could have public comment, that's fine with me.

16 HEARING OFFICER WEBSTER-HAWKINS: Mr. Franco, do  
17 you have any --

18 MR. FRANCO: Yeah. I mean, we definitely, as I  
19 said, want to remain engaged with the Applicant. And to  
20 the extent that we were to be precluded from weighing in on  
21 or sort of effectuating our agreement, I would object to  
22 termination of the status. We certainly, as I said, are  
23 not -- you know, we're not going to be participating in the  
24 evidentiary hearing at all. And, you know, I think it does  
25 make sense if we sort of hang around the margins of the

1 proceeding without directly participating. That will help  
2 us to, I think, you know, make sure that we can stay  
3 engaged with the Applicant and, you know, effectuate our  
4 agreement. So that would be our request.

5 HEARING OFFICER WEBSTER-HAWKINS: So perhaps I  
6 can offer a modification to the final point that rather  
7 than termination of CURE and their party status, that they  
8 remain a party for the sole purpose of attempting to  
9 resolve the issues related to the three areas as noted by  
10 Staff, the Biological Resources compromises, the noise  
11 compromises, and the air quality related to Valley Fever.  
12 And that attempt to resolve or clarify the intent would be  
13 limited to supplemental evidence or statements in the  
14 record as long as the record is open.

15 MR. FRANCO: Okay, yes, so we would remain a  
16 party for those limited purposes?

17 HEARING OFFICER WEBSTER-HAWKINS: Yes.

18 MR. HARRIS: Yeah, I would agree with that  
19 approach, Hearing Officer. I think, you know, the  
20 Committee has plenary authority to conduct the proceedings  
21 in any way they've seen that consistent with, you know, the  
22 constitutional principles. And you guys are very  
23 judicious, so I don't have any problem with that at all.

24 And just to be 100 percent clear, we, Rick and I,  
25 were never operating under the illusion that we could bind



1 the Committee, but we're committed to each other for the  
2 things that we've agreed to do together. So I don't want  
3 the Committee to think we were trying to step on anybody's  
4 toes or jurisdiction or whatever the appropriate metaphor  
5 is, if I had more coffee. But anyway, I think that's, to  
6 me, a pretty good result, so thank you.

7 COMMISSIONER MCALLISTER: Great. Hearing Officer  
8 Webster-Hawkins, maybe I'll just step in. And I think just  
9 from a structural perspective, I think we're all on the  
10 same page, but, you know, the agreement is great. And I'm  
11 very happy to see just the collaboration with CURE and  
12 working through those issues in earnest and good faith.  
13 And I think the agreement sort of transmits that clearly.

14 For CURE, though, it means that, you know, they  
15 have an agreement with you and they're sort of depending on  
16 you to implement that agreement as the Applicant and as  
17 primary party, you know, speaking for both of you; right?  
18 And so I think it -- and it sounds like you have a great  
19 relationship and that's -- so there's no reason to believe  
20 it wouldn't work out that way. But I think from -- if I'm  
21 CURE, I kind of, you know, want to make sure that you  
22 implement the agreement and try to sort of help that get  
23 into the final decision; right? So I think it is  
24 appropriate if -- well, not making decisions on behalf of  
25 either of you, right, but I'm okay having CURE be able to

1 sort of keep an eye on how that goes going forward. I  
2 mean, rather than just sort of relinquishing any voice at  
3 all. So I think where we're landing here seems fine.

4 MR. FRANCO: Thank you. Much appreciated.

5 MR. QAQUNDAH: Can I ask you a quick  
6 clarification?

7 HEARING OFFICER WEBSTER-HAWKINS: Yeah.

8 MR. QAQUNDAH: If CURE would stay as a party with  
9 these limitations, would they be bound by any orders,  
10 Committee orders on the parties or can we clarify that they  
11 wouldn't be, if that's not already contemplated?

12 HEARING OFFICER WEBSTER-HAWKINS: I believe that  
13 the orders on -- that would be addressing further oral  
14 testimony or written testimony, cross-examination or  
15 further legal argument, it would be clear that those would  
16 not be applicable to CURE.

17 So they wouldn't be bound to perform or abide by  
18 those orders that they're -- but that they would have leave  
19 to be able to supplement evidence if necessary into the  
20 record to help the point identified by Mr. Babula, which  
21 is, you know, to what extent is it appropriate, to what  
22 extent do those compromises have a nexus to any required  
23 mitigation or compliance with laws or should those  
24 compromises be part of an agreement external to the  
25 jurisdiction of the CEC?

1           MR. BABULA: I would suggest that that type of  
2 thing flow through the Applicant. And so if CURE has a  
3 particular area that they really would like to be added to  
4 a condition of certification, I think it would be easiest  
5 if they communicate that with the Applicant and the  
6 Applicant is the sort of front-facing entity that would  
7 propose that.           So I think that would be cleaner  
8 and that would be more consistent with the way I think CURE  
9 wants to operate, which is sort of behind the scenes. And  
10 that way we can just have one point of contact where we're  
11 just going to be responding to the Applicant's proposal.

12           HEARING OFFICER WEBSTER-HAWKINS: That would be  
13 consistent with the Applicant's identification of the joint  
14 statement as --

15           MR. BABULA: Yeah.

16           HEARING OFFICER WEBSTER-HAWKINS: -- an  
17 evidentiary exhibit.

18           MR. BABULA: Right.

19           HEARING OFFICER WEBSTER-HAWKINS: Is that  
20 acceptable to Applicant and CURE?

21           MR. FRANCO: That is --

22           MR. HARRIS: Yeah.

23           MR. FRANCO: Sorry, Jeff.

24           That is acceptable, yeah. I've been and I expect  
25 I'll continue to be in close contact with Jeff on these

1 issues, so it's acceptable to CURE.

2 MR. HARRIS: Yeah, and I was just going to say,  
3 we are committed to each other to make these things happen.  
4 You know, how we paper it up inside or out, frankly, it's  
5 not going to change our commitment to each other on this  
6 stuff. So this is going to happen. And I realize it's a  
7 sort of unusual, it's sort of extra process here, but  
8 however you want to paper it up, Hearing Officer,  
9 Commissioner, I think we're going to be fine with it, so --

10 HEARING OFFICER WEBSTER-HAWKINS: Good. Thank  
11 you all for engaging in that discussion. It took a bit of  
12 time, but it's sensitive and important, so thank you all.

13 And I think we are ready to move on to the next  
14 slide, which is just to review the evidence and exhibits.

15 I want to confirm first that I did docket a  
16 notice of ex parte communications into the docket this  
17 morning, TN-265606. And it reported my conversation with  
18 Mr. Harris about the sudden passing of Mr. Daryl Harrison,  
19 the Applicant's Visual Resources expert. The notice was  
20 filed pursuant to Government Code section 11430.50 to  
21 memorialize the conversation and provide the parties an  
22 opportunity to comment. And although the statute gives the  
23 parties 10 days to comment, I wanted to open the floor now  
24 to allow the parties to make any comment or statement about  
25 the matter at hand, which is the impact of Mr. Harrison's

1 loss on the Visual Resources evidence and testimony to be  
2 introduced next week.

3 I have some of my own thoughts, but first I'd  
4 like to open it up to the parties to offer their comments  
5 on the evidentiary impact of Mr. Harrison's passing, so  
6 starting first with Mr. Harris.

7 MR. HARRIS: Thank you, Hearing Officer. First  
8 off, thank you for your filing today. I think technically  
9 it wasn't an ex parte communication, but it's really  
10 important. What you do is very important. And it was very  
11 well-written, so thank you for that. We're very much  
12 appreciative of your statement.

13 So in terms of evidentiary value, what we have  
14 talked -- what I have talked to each of the parties  
15 individually about, not collectively at all, is treating  
16 Visual Resources the same way we're going to treat pretty  
17 much everything, not pretty much, every other subject  
18 matter, except the ones where there are live witness  
19 testimony. And I think we're down to Biological Resources  
20 as being the one area where there's be live witness  
21 testimony.

22 And so our conversation sort of resulted in this,  
23 and obviously the other parties can confirm, deny or  
24 whatever they need to do. But basically, I think where we  
25 end up on this is the idea we will treat visual like every

1 other subject matter that doesn't have live witness  
2 testimony. At the hearing, we'll want to move everybody's  
3 evidence into the record, so their exhibits become part of  
4 the hearing record. And we will not be seeking cross-  
5 examination of Staff's witness. That's just right and  
6 fair, we think, and Mark's a great guy, as we all know.

7 So on the procedural aspect of how we create the  
8 record for this Commission, that's our proposal, that we  
9 accept Visual Resources through declarations, just like  
10 we're doing with every other subject except biology.

11 In terms of the ultimate decision of the  
12 Commission, to begin, we're not really far off from Staff.  
13 And I don't want to go into the merits too much because I  
14 think that's not what you want. But we have talked with  
15 Staff, and basically the shorthand of this is we're going  
16 to stand on our testimony, which means we have a slightly  
17 different take on this than Staff about significance and  
18 whether KOP -- or whether VIS-1 mitigates less than  
19 significant or not. So we're going to be able to continue  
20 to draw that distinction between our testimony and our  
21 methodology and that of Staff, so that would remain.  
22 Probably the issue would be briefing on this, is that very  
23 narrow difference on sort of conclusion on significant or  
24 not.

25 But that's sort of how we've tried to come to an

1 accommodation that allows everybody to feel like the record  
2 before the Commission will satisfy your statutory  
3 requirements, allow us to move forward, and recognize the  
4 deeply saddened project circumstances that kind of put us  
5 into this posture.

6 So let me stop there and make myself available  
7 after you either ask me questions or talk to other parties,  
8 so --

9 HEARING OFFICER WEBSTER-HAWKINS: Thank you, Mr.  
10 Harris.

11 Turning to Mr. Babula.

12 MR. BABULA: Yeah, Staff has no objection with  
13 the plan laid out and to have the Visual Resources section  
14 just done by the written testimony. In the case for Staff,  
15 we've got the Final Staff Assessment plus Response to  
16 Comments in the Final Staff Assessment cover that topic.  
17 And then we also have rebuttal testimony covering that  
18 topic. So we think that the record is robust and that the  
19 Committee can make a decision with that written stuff  
20 without the need for any additional oral testimony.

21 Also, we are in agreement with the Applicant in  
22 the sense of an end point, where although we are finding  
23 that certain KOPs, there's a significant unmitigable  
24 impact, we're recommending an override. And then we  
25 believe there's enough evidence to support that, especially

1 if you look at the Executive Summary 1.4, Section 1.4 of  
2 the Executive Summary in the FSA, we identify all the  
3 benefits of the project or cite to other sections where the  
4 benefits are described in detail.

5 So there's enough in the record as is to get to  
6 that end point of overriding, or if you go with the  
7 Applicant's position, there's no significant impact in the  
8 first place. So yeah, we would agree with that process.

9 HEARING OFFICER WEBSTER-HAWKINS: Thank you. And  
10 I will offer an opportunity for the Center to comment. You  
11 haven't placed Visual Resources in dispute, but do you have  
12 any comment?

13 MS. GRAVES: No comment from the Center for  
14 Visual Resources.

15 HEARING OFFICER WEBSTER-HAWKINS: Okay. Thank  
16 you. So I appreciate that. I will admit that the  
17 Committee was interested in the oral testimony on Visual  
18 Resources, as you will soon learn, is interested in hearing  
19 about -- more about the project because of the novel  
20 application of the A-CAES technology in California. And so  
21 the issue of Visual Resources in the existing setting was  
22 one of interest to the Committee.

23 But given the circumstances, I do want to  
24 acknowledge that the Rules of Evidence do permit the  
25 admission of the reports of a deceased expert witness, as



1 long as there's proper foundational testimony. As has been  
2 mentioned, I note that the Applicant's opening testimony at  
3 TN-265170 contains the written testimony prepared by Mr.  
4 Harrison and his colleague, Ms. Laurel Lees, in Section  
5 4.14, and also includes a declaration attesting to Mr.  
6 Harrison's qualifications and the validity and accuracy of  
7 the report at page 323 of that exhibit. The appendix to  
8 that document also contains the qualifications for Ms. Lees  
9 as the co-author of that testimony at page 289, and her  
10 declaration is at page 330 of that exhibit.

11           The Rules of Evidence, Section 801 also permit  
12 the introduction of hearsay of deceased experts, provided  
13 that the hearsay is that of a reasonably relied upon by  
14 experts in the field. And this rule would permit an expert  
15 such as Ms. Lees to rely on any written testimony prepared  
16 by Mr. Harrison to form her own independent opinion on the  
17 validity and accuracy of Mr. Harrison's testimony. And  
18 because Ms. Lees has already attested to the testimony in  
19 Section 4.14, based on her own independent analysis, I'm  
20 not sure that we even need any additional declarations, but  
21 I did want to point out that rule 801 is available if the  
22 parties feel the need to shore up the admissibility of Mr.  
23 Harrison's testimony.

24           And then lastly, I would note that in these  
25 unfortunate circumstances, the Rules of Evidence

1 acknowledge the role of establishing the reliability and  
2 trustworthiness of the report, how close in time the report  
3 was prepared to the hearing or event, and the ability of  
4 adverse parties to cross-examine the witness if desired.  
5 Staff did include substantive rebuttal testimony to Visual  
6 Resources from Mr. Mark Hamblin, and that's at page 50 of  
7 TN-265268.

8           So at this point, does Staff have any objection  
9 to admitting the testimony prepared jointly by Mr. Harrison  
10 and Ms. Lees based on their declarations already in the  
11 record, even if you're not able to cross-examine Mr.  
12 Harrison?

13           MR. BABULA: Yeah, we have no objection to that.

14           HEARING OFFICER WEBSTER-HAWKINS: Thank you. All  
15 right, with that, I would concur that the record is solid  
16 regarding the evidence, authenticating the evidence, and we  
17 will be prepared to hear the motion to move that testimony  
18 into evidence when we get to the evidentiary hearing next  
19 week.

20           So with that, the Committee confirms there are  
21 currently no evidentiary motions, either to exclude nor to  
22 challenge the qualifications of any other party's expert  
23 witnesses. And I do want to poll the parties regarding  
24 their plans to file any evidentiary motions objecting to or  
25 limiting evidence, including the objections to the

1 qualifications of another party's expert witness as far as  
2 you know right now.

3 So starting with Applicant, do you plan any  
4 motions in limine or evidentiary motions?

5 MR. HARRIS: Well, I was thinking about making a  
6 motion to approve the entire project today, but I'm pretty  
7 sure I can't. I don't have the votes on that, so I won't  
8 go there.

9 No, I'm following just in case Ms. Neumyer wants  
10 to jump in and tell me I'm wrong, but, no, we don't have  
11 any objections to witness qualifications. We won't be  
12 making any evidentiary motions either now or at the  
13 prehearing conference, so --

14 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

15 And Mr. Babula?

16 MR. BABULA: Same. We don't have any objections  
17 with the Applicant's experts.

18 HEARING OFFICER WEBSTER-HAWKINS: Okay. Thank  
19 you.

20 And Ms. Graves?

21 MS. GRAVES: Yeah, same. No plans for any  
22 motions in limine or evidentiary motions.

23 HEARING OFFICER WEBSTER-HAWKINS: Thank you all.

24 So confirming the exhibits that have been  
25 identified so far as identified in your prehearing

1 conference statements, the Hearing Office did generate  
2 exhibit lists in the Docket Number 21-AFC-02 based on those  
3 submittals. Just for everyone's awareness, the links and  
4 images on this slide indicate how the parties and the  
5 public can access the current exhibit list. You can go to  
6 the Willow Rock Project webpage at the first link in orange  
7 and then access the exhibit list by clicking on the  
8 hyperlink circled in red here when you get to that webpage.

9 And I did want to ask the parties whether there's  
10 any corrections to the exhibit list at this time, including  
11 the gap identified in the Applicant's exhibit list? And  
12 additionally, if you're able to summarize what additional  
13 exhibits you may be identifying before Thursday, starting  
14 with Applicant?

15 MR. HARRIS: Yeah, I think I'm going to defer to  
16 Ms. Neumyer who just had a chance to take a look at that  
17 list. So could I ask my colleague, Sam, sorry to do that  
18 on the fly with you, but --

19 MS. NEUMYER: No problem. Thank you.

20 Thank you, Hearing Officer. We've reviewed at  
21 least during -- seeing what we can during the course of the  
22 discussions, and I think the gap was simply an error and  
23 not an omission of an actual exhibit. I would ask that we  
24 be given the chance to confirm this and we will have any  
25 corrections identified at the evidentiary hearing.

1           HEARING OFFICER WEBSTER-HAWKINS: Thank you. And  
2 does Applicant anticipate identifying any additional  
3 evidence prior to the start of the evidentiary hearing?

4           MR. HARRIS: I didn't know we had that  
5 opportunity.

6           Sam, I can't think of anything else we'd be  
7 adding at this point. I think we give a very thorough  
8 attachment to our prehearing conference statement, but we  
9 will check our work twice and make sure nothing was  
10 omitted. And Sam, anything else you think we might have  
11 out there?

12          MS. NEUMYER: No, I'd just like to echo what Mr.  
13 Harris said. I think to the extent anything new is  
14 identified at evidentiary hearings, it would just be  
15 something that was missed. You'll notice there are a lot  
16 of exhibits and we did our best to put our arms around  
17 everything in the record. We want to make sure that we're  
18 thorough and we're correct. But I think at this time, to  
19 the extent that anything new is identified at the  
20 evidentiary hearings, it will be something that's already  
21 in the record and just was not included on the exhibit list  
22 for human reasons.

23          HEARING OFFICER WEBSTER-HAWKINS: Thank you.  
24 Turning to Staff.

25          MR. BABULA: Yeah, thank you. So the numbering,

1 obviously, is correct. We only have two exhibits right  
2 now. We are planning to file a supplemental filing, which  
3 would be Exhibit 2002. And this document's being worked on  
4 as we speak. And it's to really basically clarify and make  
5 some changes to a few conditions that we've noticed had  
6 some ambiguities. And in the case of -- and I'll just  
7 quickly check them off for transparency here.

8           So we will be revising Land-1. We reviewed the  
9 Applicant's position on that and their information they  
10 provided in their opening testimony. And this reflects the  
11 sites that are within the project site that are designated  
12 as P1, P2 North, P2 South, and the question of the  
13 Commission's jurisdiction. We do agree with the Applicant,  
14 and so we will be adjusting Land-1 to incorporate their  
15 suggested tax and to clarify the jurisdiction over those  
16 site components.

17           Bio-7, it's a rather long condition, so there's  
18 just one subsection, Subsection (7) of Bio-7 that deals  
19 with the Reservoir Management Plan. There's some  
20 ambiguities in there we discovered. So we're working right  
21 now to just clarify that.

22           Bio-12, which deals with the Western Joshua Tree  
23 mitigation, there's a -- it's another longer condition, but  
24 there's a Subsection (1)(h), and there's some, again, like  
25 ambiguity in their sort of surveys and stuff that we had

1 added text in Response to Comments or from CBD. And so on  
2 further review of it, it's again -- the clarification would  
3 be helpful, so we want to make sure that's clear.

4 And then there's a smaller errata in Water-2  
5 that -- in the verification where we -- there was a prior  
6 language that was removed from the condition and from the  
7 analysis regarding the State Water Resources Control Board  
8 order. It should say Waste Discharge Requirements. So we  
9 just want to clarify that in the verification.

10 So those are -- so we will have a single document  
11 that will make those changes. And we'll get those -- we're  
12 targeting no later than mid-Tuesday, but most likely we'll  
13 get it out Monday.

14 HEARING OFFICER WEBSTER-HAWKINS: Mr. Babula, a  
15 lot of that is music to my ears. And we'll talk about that  
16 in a moment, but thank you for that detail.

17 MR. BABULA: Okay.

18 HEARING OFFICER WEBSTER-HAWKINS: And then asking  
19 the same question to the Center.

20 MS. GRAVES: The exhibit list looks complete from  
21 the Center's perspective.

22 HEARING OFFICER WEBSTER-HAWKINS: And do you  
23 anticipate introducing any additional evidence before the  
24 hearing?

25 MS. GRAVES: No, not at this time.

1 HEARING OFFICER WEBSTER-HAWKINS: Okay. Thank  
2 you.

3 Okay, so for the additional evidence --

4 MR. BABULA: Samantha has her hand up --

5 HEARING OFFICER WEBSTER-HAWKINS: Oh, hello, Ms.  
6 Neumyer.

7 MR. BABULA: -- Hearing Officer.

8 HEARING OFFICER WEBSTER-HAWKINS: Yeah.

9 MS. NEUMYER: Apologies, Hearing Officer. We  
10 just wanted to add, too, in response to what Mr. Babula  
11 said, I think it is possible that we will be filing another  
12 exhibit with modified condition and certification language,  
13 as well, that responds to either the joint statement  
14 submitted on behalf of CURE and the Applicant. And then  
15 just kind of as we're trying to, I think, work closely with  
16 other parties to have as complete and comprehensive a  
17 proposal with respect to Conditions of Certification as  
18 possible, so we're continually trying to find ways where we  
19 can demonstrate the agreement and make everybody's lives as  
20 easy as possible at evidentiary hearings.

21 So I'm glad Jared brought that up because that is  
22 something that we might be filing prior to evidentiary  
23 hearings.

24 HEARING OFFICER WEBSTER-HAWKINS: Thank you.  
25 Good. So --



1 MR. BABULA: Yeah, let me just add --

2 HEARING OFFICER WEBSTER-HAWKINS: Sure.

3 MR. BABULA: -- that would be -- so yeah, if  
4 you're going to file some effort to try to integrate your  
5 agreement with CURE in the Bio, that's -- if you can give  
6 us -- that would take a little bit more lead time for us to  
7 review, because we do want to consult with CDFW. Although  
8 in general, what you are proposing, that seems like we can  
9 integrate it, except for the areas where the, like CURE, to  
10 the discretion of CURE, the language where it's either CURE  
11 or the Applicant will have some decision-making power, like  
12 that's not necessarily a condition-condition, condition  
13 language, but ---

14 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

15 MR. BABULA: -- certainly we would like to try to  
16 integrate. And we think some of the refinements we're  
17 making actually may already cover some of the information  
18 that some of the agreement you had with CURE, so --

19 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

20 MR. BABULA: -- that may actually already be  
21 happening as we speak. So --

22 HEARING OFFICER WEBSTER-HAWKINS: Okay.

23 MR. BABULA: -- but yeah, we'll work together to  
24 try to get these last issues resolved to streamline the  
25 evidentiary part as much as possible.

1           Thanks.

2           MS. NEUMYER: I think we agree with that approach  
3 and we'll just continue to do our best to meet and  
4 coordinate and result -- you know, with the timing that  
5 we're working under, I think we're all just trying to do  
6 our best to make sure nobody is caught by surprise and  
7 we're working together with everyone to accomplish the goal  
8 of getting this over the line.

9           So thank you, Jared, and thank you Hearing  
10 Officer for your time.

11           HEARING OFFICER WEBSTER-HAWKINS: You're welcome.  
12 And I was planning to address this in a little bit, but  
13 since we're on topic, it's customary for, at this point,  
14 for the Committee to ask the parties to submit a compendium  
15 of all of the Conditions of Certification to the extent  
16 that they are either static right now -- I want to  
17 acknowledge the red line strikeout that Staff has included  
18 in their rebuttal testimony to address some of the other  
19 parties proposed revisions to the COCs. And it would be  
20 extremely helpful for the Committee and I think all the  
21 parties at the evidentiary hearing to have a single  
22 document that shows, to the extent that we know now, the  
23 revisions to the COCs -- well, that contains an entire set  
24 of the COCs, including any proposed and acceptable  
25 revisions, and also that might flag the points where

1     there's still some dispute.

2                 So we will be asking the parties in just a little  
3     bit about the best way to share the labor to prepare that  
4     compendium and provide that before the start of the  
5     evidentiary hearing as well. So I think all of this  
6     discussion is right on target for the Committee's desire  
7     for a single document that reflects updates and existing  
8     points of disagreement.

9                 MR. BABULA: Great. I have a question Hearing  
10    Officer.

11                HEARING OFFICER WEBSTER-HAWKINS: Sure.

12                MR. BABULA: And this might be the right place to  
13    do it, or if not, we can go wait until that time. But I  
14    noticed that the Committee filed in the docket a request  
15    for some -- like with the Air District for an FDOC.

16                HEARING OFFICER WEBSTER-HAWKINS: Yes.

17                MR. BABULA: And so I just want to point out that  
18    this project doesn't require emission offsets and --

19                HEARING OFFICER WEBSTER-HAWKINS: That's correct.

20                MR. BABULA: And so it wasn't --

21                HEARING OFFICER WEBSTER-HAWKINS: Well --

22                MR. BABULA: -- exactly clear --

23                HEARING OFFICER WEBSTER-HAWKINS: Right.

24                MR. BABULA: -- what they would be offering. But  
25    we do in our, of course, in the FSA, we identify all the

1 LORS and --

2 HEARING OFFICER WEBSTER-HAWKINS: Right.

3 MR. BABULA: -- how they're being met. So I was  
4 just kind of wondering if that -- sort of what the purpose  
5 is, and if there's a mechanism to get what the Committee  
6 needs, maybe with a letter from the District to just  
7 confirm, as opposed to showing up and saying, well, this  
8 doesn't -- emission offsets aren't a component of this  
9 project, So there's nothing for us to confirm that they  
10 have those credits.

11 HEARING OFFICER WEBSTER-HAWKINS: Right. The  
12 statute and the regulations also require just an  
13 affirmation that the project is consistent with any  
14 district rules and regulations. So we do have a  
15 representative who will show up --

16 MR. BABULA: Okay.

17 HEARING OFFICER WEBSTER-HAWKINS: -- to make that  
18 quick certification on the record.

19 MR. BABULA: Okay, that's fine.

20 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

21 MR. BABULA: I was just kind of --

22 HEARING OFFICER WEBSTER-HAWKINS: Yeah.

23 MR. BABULA: -- we were a little puzzled by that  
24 because it's like --

25 HEARING OFFICER WEBSTER-HAWKINS: Yeah.

1           MR. BABULA:  -- well, there are no emissions  
2 offsets for them to confirm --

3           HEARING OFFICER WEBSTER-HAWKINS:  No.  Right.

4           MR. BABULA:  -- which is, you're right,  
5 technically the 25523(d)(2) --

6           HEARING OFFICER WEBSTER-HAWKINS:  Yeah.

7           MR. BABULA:  -- is focused on the emissions  
8 offsets and to say that they've identified those.  The reg  
9 itself, our regulations has it a little bit broader.

10          HEARING OFFICER WEBSTER-HAWKINS:  Yes.

11          MR. BABULA:  But that's equivalent information is  
12 in the FSA.  Okay.

13          HEARING OFFICER WEBSTER-HAWKINS:  Yes.

14          MR. BABULA:  Then I would just -- yeah, I don't  
15 think -- I don't know if Mr. Harris has a comment on that.

16          MR. HARRIS:  Yeah, this seems that's the deal.  I  
17 think it was a bigger issue with large natural gas power  
18 plants.

19          HEARING OFFICER WEBSTER-HAWKINS:  Yes.

20          MR. HARRIS:  And the question was:  At what point  
21 do you have to identify your ERCs with specificity and  
22 that --

23          HEARING OFFICER WEBSTER-HAWKINS:  Yeah.

24          MR. HARRIS:  -- this particular part of the  
25 Public Resources Code sets that demarcation, basically,

1 before you can have a decision. So I wasn't troubled by  
2 the memo the Hearing Officer had filed and the issue with  
3 checking that box, so I'm all good, so --

4 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

5 All right, so before we turn to topics in  
6 dispute, I do want to observe that 162 of Applicant's  
7 exhibits are marked confidential, meaning that the parties  
8 outside the Energy Commission do not have access to them,  
9 nor do other state and local agencies, nor the public.

10 So my first question to Applicant is: Do you in  
11 fact intend to request that each and every one of these  
12 confidentiality documents be admitted into evidence to  
13 provide a factual foundation for any other evidence,  
14 testimony or legal argument?

15 MR. HARRIS: Thank you. It's a large number  
16 because this is a big case. I do sort of feel the need to  
17 clarify a couple of things.

18 Number one, a lot of these documents have to be  
19 filed confidentially. There is a statute, particularly  
20 like in coastal resources, that requires confidential  
21 designation for those things. We have no choice. That's  
22 by statute.

23 Another set are required to be confidential as a  
24 matter of regulation. So once again, nothing that we can  
25 control. We'd be violating the law if we did not file them

1 confidentially.

2           And so I am a little sensitive to the suggestion  
3 that we're hiding things, since I'm not good with subtle.  
4 We're not. We're following the law. I'm not saying you're  
5 suggesting that, but I've had conversations, especially in  
6 the legislative setting recently, about these confidential  
7 documents. And so I really think when people start  
8 throwing stones, they need to pick them up. And no one's  
9 throwing stones here. I'm, again, at the legislature where  
10 the merits don't count. You know, they need to pick them  
11 up and figure out whether there's statute or regulation  
12 that requires confidential filing.

13           And then there's a third category of documents  
14 that are filed confidentially, which are things that Staff  
15 prefers that we file confidentially. And I'm thinking  
16 specifically about maps that show endangered species and  
17 other resources at a certain scale. There is not a  
18 regulation that requires. I think it's one to 24,000 maps  
19 we filed confidentially. But we do that because CDFW tells  
20 the Commission they want those filed confidentially.

21           So I think if you eliminate things that are  
22 required by statute and regulation and practice, you're  
23 down to one document in that list, and that's called a heat  
24 mass balance, which could be used to back calculate our  
25 efficiency and some other things.

1           So didn't mean to make it as defensive as it  
2 sounds, but we are a little defensive about that. We've  
3 actually had people drag us into the legislature, not this  
4 client, but trade associations I work with and say, what  
5 are you guys hiding? We're not hiding anything. So one  
6 document --

7           HEARING OFFICER WEBSTER-HAWKINS: If I can  
8 clarify, Mr. Harris --

9           MR. HARRIS: Yeah.

10          HEARING OFFICER WEBSTER-HAWKINS: -- so that's  
11 not the purpose behind this. The purpose behind this  
12 questioning is to ensure that for those documents, which  
13 are justifiably marked confidential, what is the practical  
14 arrangement that the Applicant has made to ensure that all  
15 parties have access to all of those documents, including,  
16 you know, namely the Center as an active party and that  
17 that access has been provided prior to the evidentiary  
18 hearing?

19          MR. HARRIS: Yeah, I'll let Ms. Neumyer handle  
20 that in a second. But I do just want to kind of finish  
21 that off and say, we're not seeking any variance from the  
22 Commission's 30-plus years of practice here. Whatever you  
23 have done in every case before with confidential documents  
24 is what we would be agreeable to hear as well.

25          So, Sam, can you answer the specific questions



1 about our cooperation with CURE and with the Center on  
2 making sure that they as parties had access to documents?

3 MS. NEUMYER: Yes. I was just trying to provide  
4 the citation in our rebuttal testimony where we noted  
5 specifically the dates that the Center for Biological  
6 Diversity was provided access to certain files that were  
7 submitted confidentially with respect to KiteWorks.

8 And so with respect to cultural resources, those  
9 confidential files, for the most part, if you were a  
10 qualified cultural resources professional, you have the  
11 ability to also request those records and results of those  
12 literature searches through CHRIS as well. We were not in  
13 a position in this proceeding where other parties requested  
14 access to those cultural resources files. And to the  
15 extent if somebody had requested those files, I think we  
16 would have worked to see if there was some sort of  
17 compromise. That wasn't the case here. So I think right  
18 now we're probably limited in focus to Biological Resources  
19 and those files.

20 We worked with our expert consultants to create a  
21 ShareFile site so that the Center could access the  
22 confidential cultural resources files and so they could  
23 access those GIS.

24 And the other aspect we wanted to make sure of as  
25 well, just to address the applicable regulatory agency

1 concerns regarding access to this information is to ensure  
2 that qualified individuals were the entities who were  
3 provided that information. And as I'm trying to filibuster  
4 here and pull up information at the same time, so we have  
5 the rebuttal testimony.

6 I will also note that we did our best to also  
7 file public versions of the information to the extent  
8 possible, and so that as much of the information, so we had  
9 both a public version, for example, of our Joshua Tree  
10 Report, as well as a confidential version that had very  
11 specific locational information.

12 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

13 MS. NEUMYER: But I think also from a public  
14 access perspective, the information is there. It is  
15 there --

16 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

17 MS. NEUMYER: -- in large part in the public  
18 filings that we've made, the public versions of these  
19 reports, and public versions of the maps and figures  
20 that --

21 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

22 MS. NEUMYER: -- for the resource agencies in  
23 particular who had jurisdiction over that subject area then  
24 had access to the specific locational information. But at  
25 least with respect to members of the public and also other

1 parties as well, there were both versions available.

2 I am pulling up our rebuttal testimony, which is  
3 submitted at TN Number 265265. And in response to --  
4 excuse me, on pages, for example, 4 and 5 of our testimony,  
5 we noted that,

6 "Access to all Biological Resources information  
7 relating to the Western Joshua Tree, including  
8 confidential figures was provided to the Center for  
9 Biological Diversity, including access," and we  
10 identified specific files.

11 But that is, I think, just a general statement --

12 HEARING OFFICER WEBSTER-HAWKINS: Yeah.

13 MS. NEUMYER: -- to at least alleviate --

14 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

15 MS. NEUMYER: -- the Committee's concerns.

16 Access to all files requested by other parties --

17 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

18 MS. NEUMYER: -- was provided here as well.

19 And so we really, again, we try to take that  
20 collaborative and that model of civility --

21 HEARING OFFICER WEBSTER-HAWKINS: Yeah.

22 MS. NEUMYER: -- I think that Commissioner  
23 McAllister said, and make sure that all parties were  
24 provided information upon request to the extent we were  
25 able to.

1 HEARING OFFICER WEBSTER-HAWKINS: Yeah.

2 MS. NEUMYER: Yeah.

3 HEARING OFFICER WEBSTER-HAWKINS: Thank you.  
4 Thank you for that detail, Ms. Neumyer.

5 Ms. Graves, are you in agreement that the Center  
6 has been provided access to any of the confidential  
7 documents that have been identified as exhibits in this  
8 proceeding?

9 MS. GRAVES: Yes, I will echo what Ms. Neumyer  
10 said. So the Applicant was pretty easy to work with in  
11 providing the information that has been designated as  
12 confidential upon request by the Center, so we have  
13 received that information. We didn't receive it like a  
14 second time after it was designated as an exhibit, but we  
15 received the information like during --

16 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

17 MS. GRAVES: -- the course of discovery --

18 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

19 MS. GRAVES: -- after filing.

20 HEARING OFFICER WEBSTER-HAWKINS: Thank you for  
21 that.

22 Mr. Babula, do you have any comments on this  
23 topic of the confidential documents?

24 MR. BABULA: Yeah. Thank you. I understand it  
25 may look intimidating because there was an awful lot of

1 documents that were popping up in the docket. A lot of  
2 those are cultural reports from other activities within the  
3 region going out several miles. And so it's like Caltrans  
4 does some work and a report is generated and that gets put  
5 into the system or you have some other work going on. So a  
6 lot of it could be reports from 10, 20, 30 years ago. So  
7 that's one thing.

8 And as Ms. Neumyer acknowledged, there's public  
9 sort of descriptions of what these things are. And so the  
10 FSA, of course, has a long list of sort of summaries of the  
11 information as well. And so as to the cultural stuff, I  
12 think it's reflected to give the public the transparency  
13 needed to understand the impacts, as well as the Committee.

14 And then for the biological maps, just some  
15 context. The way this works is there's this database that  
16 CDFW has that allows for the user to zone in and see where  
17 the locations are, if they have access to it. There's like  
18 a licensing agreement. And in the licensing agreement to  
19 access these maps at high resolution, where you can  
20 identify where nests are and so forth, there's a  
21 requirement that you not provide these things, make them  
22 public unless they're at such a level, like 36,000 to one  
23 or something where it's sort of zoned out.

24 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

25 MR. BABULA: And so what we do is we require when

1 those maps come to us, they are initially filed as  
2 confidential to give us an opportunity to ground truth with  
3 CDFW if they have concerns about that specific map. And  
4 they may say, oh, no, that can go out and then we would  
5 make it public. Or they will say, no, there's a risk to  
6 the resource, which is what we're trying to do is ensure  
7 that there's not a collection of nests and eggs and things  
8 like that.

9 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

10 MR. BABULA: And so we would then say, okay, then  
11 we'll keep it confidential, but there'll be a public  
12 version, a higher or, you know, the higher resolution.

13 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

14 MR. BABULA: But in this case, the parties have  
15 access to it. So for purposes of the evidentiary hearing  
16 and transparency, I think we're in a good place and the  
17 information's there.

18 MR. HARRIS: Hearing Officer, can I --

19 HEARING OFFICER WEBSTER-HAWKINS: Yes?

20 MR. HARRIS: -- can I offer one more thing? I  
21 used to teach public speaking and said never start with an  
22 apology, but I'll apologize for my legislative scar tissue  
23 spilling over into this proceeding.

24 But I will make a sincere offer to the Commission  
25 to work with you all outside of this proceeding after we

1 have a decision before the end of the year, after I  
2 collapse on the floor of the pool of whatever, when we get  
3 to the end, to talk about this issue, because I think it's  
4 actually defamatory to the Commission's process, some of  
5 the things I'm hearing over in that building, because  
6 you're very open. And the suggestion that we're hiding the  
7 ball and you're allowing us to hide the ball is just simply  
8 wrong.

9 So I will work with you pro bono, how about that,  
10 probably after the first of the year when I'm able to  
11 regather myself, because I do think it's unfair to all of  
12 us.

13 So I'll stop there with my apology. So thank you  
14 for that soapbox moment.

15 HEARING OFFICER WEBSTER-HAWKINS: Thank you. I  
16 think we've addressed the issue and we can move on to the  
17 next slide.

18 So these are the topics in dispute that have been  
19 identified by the parties. As has been mentioned,  
20 Biological Resources, all, the Applicant, Staff, and the  
21 Center concur about the disputes. Just as a high-level  
22 summary, there's disputes over the mitigation acreage for  
23 both permanent and temporary losses for burrowing owl and  
24 Crotch's bumblebee, perhaps Western Joshua Tree.

25 There's also a question about the identification

1 of Western Joshua Tree and whether or not there's any  
2 woodlands to be identified. The Center has raised  
3 questions about what the requirements are for an incidental  
4 take permit issuance.

5 So that's just sort of a thumbnail sketch of the  
6 subtopics within Biological Resources.

7 We've discussed the dispute over Visual Resources  
8 being the methodology between the parties' experts.

9 We've mentioned the dispute over Land Use,  
10 particularly around the CEC's jurisdiction over the lay  
11 down areas, the parking and the potential architectural  
12 berm. And I acknowledge the pending proposed revision to  
13 Land 1 mentioned by Mr. Babula.

14 There's dispute over Water Resources regarding,  
15 you know, either dispute or clarification needed around the  
16 role of the Division of Safety of Dams and their role in  
17 approving and reviewing design to the reservoir, which has  
18 been classified as a dam. And then also as Staff has  
19 discussed, there's concerns over the negotiated language  
20 between the Applicant and CURE on those three resource  
21 areas and whether or not they're appropriate for COCs.

22 So I just wanted to capture the disputes that  
23 have been mentioned so far by the parties.

24 And then moving to the next slide, expanding --

25 MR. BABULA: Oh --



1 HEARING OFFICER WEBSTER-HAWKINS: Oh, go ahead.

2 Yeah.

3 MR. BABULA: -- excuse me, yeah --

4 HEARING OFFICER WEBSTER-HAWKINS: Yeah.

5 MR. BABULA: -- I just want to get back. So I  
6 don't -- I kind of would like to modify this. I don't  
7 think --

8 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

9 MR. BABULA: -- I think land use is not going to  
10 be in dispute.

11 HEARING OFFICER WEBSTER-HAWKINS: Okay.

12 MR. BABULA: And even if there's a slight dispute  
13 is probably more for briefing if we get there. But I think  
14 on that condition, our proposed changes should address that  
15 issue.

16 And then for Water Resources, I don't really see  
17 it as a dispute. We are working -- so we did in our  
18 rebuttal testimony, add clarification to the conditions,  
19 mainly Water-6 and 7, I believe it is, that laid out the  
20 Commission's, it is the Commission's jurisdiction and it's  
21 our entitlement and our certification, so I think we're  
22 clear there.

23 The real sort of what we're trying to work out  
24 with the Applicant and DSOD is the application fee concept.  
25 How do you -- how is -- what's DSOD's role? Because

1 they're the experts. And so for purposes of the dam  
2 component of the project, they're going to need to be  
3 engaged and be part of the design development of it, and so  
4 they will need to be compensated. And so we did have a  
5 meeting with the Applicant and DSOD's attorney to see if  
6 there's a pathway forward.

7           So a lot of that, again, isn't something where  
8 there's going to be testimony by experts at an evidentiary  
9 hearing. It's more trying to figure out how this thing can  
10 move forward and how DSOD is going to be engaged. So it's  
11 probably not -- I don't know if we need to have it on the  
12 list necessarily, but I will see if Jeff wants to, or Mr.  
13 Harris wants to add anything to that. But we are making  
14 efforts to try to get clarity and work towards a real  
15 understanding of how this is going to work in the  
16 compliance, the construction compliance phase of the  
17 project if it's approved.

18           Mr. Harris, go ahead.

19           MR. HARRIS: Yeah, I understood the slide to be  
20 talking about issues where we might see briefing. And so  
21 in that sense, I think it's accurate, although I think  
22 you're right about Land Use. I think that one we may have  
23 already clarified to be done with.

24           We will still have briefing on Visual Resources,  
25 as I mentioned at the top.

1           Now Water Resources, we appreciate what the Staff  
2 has done to date. Pulling the curtain back a little bit,  
3 we've had further discussions with Staff and DSOD. At the  
4 highest level, I think we're in agreement. We would love  
5 and welcome DSOD's expertise in the proceedings. And we  
6 also think that they should be fairly compensated for that  
7 expertise, just like we would for the DCBO. But I don't  
8 think we're there yet on the language or maybe in some of  
9 the concepts.

10           And I would like the Commission to continue to be  
11 very active in -- I don't think it's fair to just say the  
12 Applicant and DSOD are going to have to figure this out. I  
13 think we all need to figure it out together. And we are  
14 trying to do that together. I think we had very productive  
15 meetings the other day. And it might be the case where the  
16 Committee or the Hearing Officer needs to be flexible about  
17 receiving a joint stipulation from the parties, which we  
18 would try to get done before hearings. But there would be  
19 plenty of other writing that can happen, I'm sure, in  
20 between that as well. So I'd like to get to a place where  
21 we have complete agreement on the language and the  
22 concepts.

23           But I guess I want to say one more time for the  
24 record that we are -- we welcome DSOD's expertise. They  
25 are, I think, the best in the world in what they do. And

1 we're not looking to get a free ride on somebody else's  
2 fees. It's just the idea, and I'm not saying you're  
3 suggesting this, of putting us into a second state law  
4 process and making a second state law fee. Just at the  
5 highest levels, doesn't seem right to us, given your  
6 exclusive jurisdiction. I mean, the Commission has  
7 jurisdiction over thermal power plants, even when it's  
8 hard, and this one's kind of hard. So let's work through  
9 the hard stuff and get there, so --

10 COMMISSIONER MCALLISTER: Maybe I'll just step  
11 in. This is Commissioner McAllister.

12 So I really appreciate the thoughtfulness of both  
13 Staff, thanks Jared, and Mr. Harris as well. I just want  
14 to make sure that we get to a point where we're not  
15 leaving -- where we're not sort of having to deal with  
16 ambiguity in the implementation phase if the project is  
17 approved. And so to the extent -- so the process and sort  
18 of the details, to some extent, they're going to matter to  
19 get hammered out before, during the hearing or, you know,  
20 or before, so that we understand, so the Staff, you know,  
21 oversight has detailed marching orders that there's no  
22 ambiguity about and, you know, what exactly is the  
23 expectation for implementation? And if compensation is  
24 going to still be a sticking point, then we need to kind of  
25 work that out during this process.

1           So I don't know, Hearing Officer, if you have a  
2   kind of an idea of what sorts of, you know, maybe  
3   additional sort of detail in filings leading up to the  
4   hearing or discussion during the hearing? I'm less  
5   concerned about whether it's on this table.

6           HEARING OFFICER WEBSTER-HAWKINS: Right. Yeah.  
7   And if we can just hold off a bit, because I do -- I did  
8   plan to sort of address that level of detail next.

9           COMMISSIONER MCALLISTER: Yeah. Gotcha. Okay.

10          HEARING OFFICER WEBSTER-HAWKINS: You know,  
11   again, the point of this was just to sort of capture those  
12   areas that the parties have identified are in dispute. And  
13   just to clarify the term dispute, you know, unresolved, you  
14   know --

15          COMMISSIONER MCALLISTER: Yeah.

16          HEARING OFFICER WEBSTER-HAWKINS: -- and  
17   unresolved, either a factual dispute, legal dispute, or,  
18   you know, to the, as we're discussing now, sort of the  
19   crystallization of how --

20          COMMISSIONER MCALLISTER: Yeah.

21          HEARING OFFICER WEBSTER-HAWKINS: -- how it's  
22   articulated. So definitely areas that need resolution, to  
23   Commissioner's point, so that by the time the Committee is  
24   proposing its decision to the full Commission, hopefully  
25   the recommendations are consistent with the parties' hopes

1 and expectations rather than having to define our own  
2 definitive requirements.

3           So that would be the goal here, but we can -- I  
4 think we can move on to the next slide so we can get to  
5 that level of planning, because the next slide expands upon  
6 these topics and includes areas that the Committee is very  
7 interested in hearing more about. And this is the slide  
8 that may be somewhat of a surprise to the parties.

9           Again, because of the novelty and potential  
10 benefit of the Applicant introducing this new technology,  
11 the A-CAES technology into the clean energy space in  
12 California, there's interest in having oral testimony on  
13 some of the key aspects of the project, even if they're not  
14 in dispute, but to ensure that the Committee and the record  
15 is solid on some of the construction and operational  
16 features of this project, really to lift them up at this  
17 evidentiary hearing. So that's a little bit of a preamble.

18           You know, as we mentioned, we will have Mr.  
19 Sandoval from Eastern Kern Air Pollution Control District  
20 appearing and appearing very briefly, but to just to meet  
21 that statutory and regulatory requirement for appearance at  
22 the evidentiary hearing. So that is an area identified by  
23 the Committee.

24           We did want to clarify from the Applicant's  
25 viewpoint and Staff's viewpoint, whether or not there's

1 actually -- you know, to the extent that there's any  
2 dispute again, you know, factual or legal about whether  
3 it's appropriate to include the Worker Safety-7 and Public  
4 Health-1 modifications recommended by the joint statement  
5 between the parties, you know, is this in dispute? If so,  
6 will there be additional written evidence or testimony on  
7 that issue? Will it be oral?

8 We just wanted to -- we just want to, you know,  
9 clear through all of these issues to make sure we're  
10 capturing a clear pathway for making sure that at the end  
11 of the day, the evidentiary record is solid to support  
12 anything that the parties are seeking to include into the  
13 proposed decision.

14 So in this one, I think I'll start with the  
15 Applicant since it's the Applicant's agreement with CURE.

16 MR. HARRIS: I'm sorry, I'm sort of trying to  
17 track here.

18 HEARING OFFICER WEBSTER-HAWKINS: Sure. Sure.

19 MR. HARRIS: So these slides, these are issues  
20 beyond what was on the previous slide, obviously.

21 HEARING OFFICER WEBSTER-HAWKINS: That's right.

22 MR. HARRIS: Is the --

23 HEARING OFFICER WEBSTER-HAWKINS: That's right.

24 MR. HARRIS: -- is the suggestion that there  
25 would be -- these would be part of the hearing or is that

1 the issue you're trying to get to?

2 HEARING OFFICER WEBSTER-HAWKINS: That's the  
3 question.

4 MR. HARRIS: Okay.

5 HEARING OFFICER WEBSTER-HAWKINS: The question  
6 is, especially in light of Staff's comment that some of the  
7 areas of compromise in the joint statement may or may not  
8 be appropriate to include in the Conditions of  
9 Certification, maybe more amenable to a side condition, a  
10 side agreement, or if it is intended to be included in the  
11 Conditions of Certification, how would it be worded? And  
12 then if so, is there evidence to support the necessity of  
13 these in the COCs?

14 MR. HARRIS: All right. I assume Rick is still  
15 around. But, you know, my view on these things is that I  
16 don't know that -- let me put it in the positive. I don't  
17 think they have to be in the Conditions of Certification  
18 necessarily.

19 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

20 MR. HARRIS: Some of them are certainly not  
21 appropriate for the Conditions of Certification. The  
22 Swainson's hawk payment, for example, is not tied to any  
23 environmental issues, in my view anyway, and can be done  
24 outside.

25 So if the question is, does the Commission need



1 to enforce the agreement that the Applicant's reached with  
2 CURE, I think the answer to that is no. We have agreement.  
3 I think from our perspective, we're sufficiently  
4 comfortable that it's legally binding and that we will not  
5 only do it because we've committed to it, but that CURE  
6 would have recourse if we did not.

7 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

8 MR. HARRIS: So I'm not even sure -- well, let me  
9 back up. I am sure that all of it doesn't need to be in  
10 the conditions. I'm not sure whether any of it does, but I  
11 have caught Rick flat-footed, so I should let him jump in  
12 if I can do that, please, so --

13 HEARING OFFICER WEBSTER-HAWKINS: Sure.

14 MR. FRANCO: Thanks, Jeff.

15 I mean, you know, our position, I think, aligns  
16 with Jeff's. But, you know, to the extent that it would be  
17 possible to include provisions that are in our agreement in  
18 conditions of approval, and I mean, Conditions of  
19 Certification, and that it's appropriate to do so, you  
20 know, unless it's not going to create a massive amount of  
21 additional work for everybody, then that's -- you know,  
22 that was our intent in discussing, negotiating this  
23 agreement with the Applicant was that we would propose  
24 certain additional measures to be incorporated as COCs.

25 I also agree with Jeff to the extent that, you

1 know, not all of them are incorporated, you know, we do  
2 have a binding agreement. And I think Jeff and I are on  
3 the same page on that.

4 HEARING OFFICER WEBSTER-HAWKINS: Okay.

5 Mr. Babula, do you have any comment on the narrow  
6 procedural question of whether or not there's any need to  
7 provide a pathway for additional evidence or argument on  
8 the air quality conditions in the joint statement?

9 MR. BABULA: Yeah, so with the -- specific to the  
10 air quality, which is actually really a Worker Safety,  
11 yeah, so the Worker Safety-7 --

12 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm. Mm-  
13 hmm.

14 MR. BABULA: -- I would agree right now, given  
15 sort of we have enough stuff on our table that we're trying  
16 to do, so Staff does not have the bandwidth to try to  
17 integrate the Applicant in the CURE's agreement into our  
18 conditions.

19 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

20 MR. BABULA: I did offer the Applicant to do  
21 that, and we could look at it. I did talk to our Staff  
22 about the different sections of that agreement and what we  
23 potentially could accept. And in talking with Dr. Alvin  
24 Greenberg, he wasn't -- he said he wouldn't accept Worker  
25 Safety-7. Although he applauded CURE and the Applicant for

1 agreeing to these additional things, these additional  
2 measures, the way it's written wouldn't be appropriate for  
3 addition. So for that specific one, I could tell you now  
4 that we --

5 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

6 MR. BABULA: -- we wouldn't be accepting it. And  
7 we don't really have time to get into like rewriting it and  
8 trying to do it. So I think it's best to leave it, at  
9 least this one, as a --

10 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

11 MR. BABULA: -- side agreement between CURE and  
12 the Applicant, but an enforceable side agreement between  
13 the two of those parties.

14 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm. So I  
15 would propose based on this discussion, as well as the  
16 representation that, from the Applicant and CURE, that your  
17 binding agreement means that the compromises do not have to  
18 be in the COCs just to -- you know, again, from the  
19 Committee and the Commission's viewpoint, we're focused on  
20 necessary mitigation or conditions to either comply with  
21 LORS or reduce impacts below significant. And if there's  
22 not a nexus, and if it's not necessary to meet those legal  
23 standards, you know, I would propose that this topic not be  
24 subject to further evidentiary or legal briefing.

25 MR. BABULA: Yeah, I would like to add, I agree.

1 Like we consider the mitigation as we proposed as Staff as  
2 being what is necessary to mitigate below significance and  
3 do all the things you're required to do. And so certainly  
4 if the Applicant agrees to other things, whether like  
5 not -- whether it's in addition to or it's just a different  
6 type of mitigation, that could be folded in. But again,  
7 that just means work and trying to get it integrated. And  
8 so I don't think given the timelines we're on it would be  
9 very feasible to really get that --

10 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

11 MR. BABULA: -- before the evidentiary hearing  
12 and get it all integrated.

13 HEARING OFFICER WEBSTER-HAWKINS: Right.

14 MR. BABULA: And then when, as I said, there are  
15 certain ones, we can tell you right now, we wouldn't put  
16 in, in there, as is.

17 MR. HARRIS: So, Jared, gave me homework. I want  
18 to give him some back. Obviously, Dr. Greenberg doesn't  
19 like 7. If you have any other ones that you could identify  
20 would be a non-starter for Staff, you know, not now, you  
21 don't have to right now --

22 MR. BABULA: Yeah. Right.

23 MR. HARRIS: -- but let us know. And then I'd  
24 recommend that, if Rick's amenable, he and I talk offline  
25 and we provide some kind of communication back to the

1 Committee about whether things go in or out of conditions.  
2 We are committed to these measures and legally and morally  
3 and otherwise. So there's not a question they're going to  
4 happen. Again, it's just a matter of papering it up.

5 So, but to your specific question, I think the  
6 purpose of the slide as I'm starting to understand, we --  
7 this isn't disputed in my view, and I don't think we need  
8 an additional written oral testimony next Friday on these.

9 MR. BABULA: That works. I can commit that  
10 Noise, Staff is okay with your Noise proposal.

11 MR. HARRIS: Okay, no quiet riot --

12 MR. BABULA: Yeah.

13 MR. HARRIS: -- if you want to hear the noise.

14 HEARING OFFICER WEBSTER-HAWKINS: Good. Thank  
15 you for that.

16 So moving to Biological Resources, this was an  
17 area in dispute by all parties and it's certainly one that  
18 the Committee is interested in having a panel, including  
19 representatives from the Applicant, Staff, the Center, and  
20 CDFW to provide direct opening statements on the topics in  
21 dispute, and also to be available for cross-examination and  
22 questions from the Committee and from the other parties.  
23 So I don't think there's probably much more to say about  
24 this.

25 I did acknowledge the Staff's request that the

1 Biological Resources panel be scheduled early to  
2 accommodate the schedule of the CDFW representatives, and  
3 we'll certainly honor that in the scheduling. We'll talk  
4 about that in just a bit.

5 MR. BABULA: Hearing Officer, I have a question  
6 on that. So just to be clear --

7 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

8 MR. BABULA: -- because we weren't initially  
9 thinking CDFW would be on the panel, they would be present  
10 in the room --

11 HEARING OFFICER WEBSTER-HAWKINS: Yes. Yes.

12 MR. BABULA: -- and be available to address  
13 questions that the Committee had, or just to say they hear  
14 something that they want to clarify. So were you thinking  
15 they would actually be subject to cross-examination and  
16 questions from the Applicant or the parties? Because that  
17 wasn't -- I'm not 100 percent sure if CDFW would be open to  
18 that. I think they're more want to be sort of advisory and  
19 available for Committee questions to ensure a Committee has  
20 what it needs to render a decision.

21 HEARING OFFICER WEBSTER-HAWKINS: The statements  
22 at the evidentiary hearing in order to be considered as  
23 evidence need to be sworn in. So, you know, I'm not sure  
24 what role they would play if they were not sworn in to  
25 provide the Committee response to these questions.

1           MR. BABULA: Right. So in the past, it hasn't  
2 always been consistent. Sometimes they're sworn in.  
3 Sometimes other agencies just don't want to be sworn in and  
4 they're just there and they're going to provide their  
5 information and as to sort of supplement the primary  
6 witness, which would be Chris Huntley in our case for the  
7 Biological Resources. And so that was sort of the plan, is  
8 he would be on the panel with the Applicant's biologist.

9           And then there would be some hybrid sort of  
10 process where Mr. Harris could ask questions of his witness  
11 and our witness and so forth, and the Committee could ask  
12 questions, and then CDFW could be available if there's  
13 something that comes up specifically kind of in their realm  
14 to provide feedback or a concurrence with what was said,  
15 something like that. So that was kind of the way I was  
16 envisioning like what we've done in other cases.

17           HEARING OFFICER WEBSTER-HAWKINS: In this case,  
18 given the relevant -- or the recent policy adopted in the  
19 Western Joshua Tree Protection Act and the rising concern  
20 around the status around burrowing owl, I think the  
21 Committee is interested in hearing from the wildlife  
22 experts what their processes, their protocols, and their  
23 standards for ITPs and mitigation would be. And their  
24 input is important to making -- to having in the evidence.

25           What I would like to say is that the Committee's

1 preference is that they be sworn in and provide opening  
2 statement if they like, and also be amenable to civil  
3 questioning from the Committees and the parties. If there  
4 is, you know, an objection to that from CDFW, the Committee  
5 would be open to receiving that, you know, in writing next  
6 week prior to the evidentiary hearing or at the evidentiary  
7 hearing. But I would like to communicate the strong  
8 preference that they be sworn in so that the wildlife  
9 experts' statements can be considered evidence in the  
10 record.

11 MR. BABULA: Okay, so that's good to know. I  
12 will reach out to see. Actually, well, since we're doing  
13 this live, I'll just -- I know that Eric Knight, you're on  
14 the line. Can you reach out to the CDFW and provide --  
15 given that what Hearing Officer Webster-Hawkins just  
16 informed us so we can loop them in?

17 But yeah, we'll reach out to them and make sure  
18 that we're all on clear on what their role would be, so  
19 thank you for that.

20 HEARING OFFICER WEBSTER-HAWKINS: Yes.

21 MR. BABULA: And if there's any concerns, I will  
22 advise the Hearing Officer and the parties.

23 HEARING OFFICER WEBSTER-HAWKINS: Yes. Thank you  
24 so much for that.

25 MR. BABULA: Okay.



1           HEARING OFFICER WEBSTER-HAWKINS: So we have a  
2 similar issue with Water Resources. And I'm hearing that,  
3 you know, there's maybe different ways of describing, you  
4 know, either what the dispute or the differences between  
5 the parties in the wording regarding the delegation or  
6 authority between the CEC and DSOD. And then there's the  
7 issue of fees.

8           Again, because this is a novel component in an  
9 energy facility certified by the Energy Commission, and  
10 there's strong interest in understanding and welcoming the  
11 role of DSOD and their expertise in, you know, the design,  
12 the construction and implementation of the project, we  
13 would like to host a panel on this topic.

14           You know, and again, it may not be because it's  
15 necessarily in dispute but for full explanation and, you  
16 know, transparency at the hearing for the Committee so that  
17 the Committee is very clear on, you know, and almost  
18 educated, if you will, on DSOD and their view about how the  
19 iterative review and approval would happen. And then from  
20 Staff's perspective and the Applicant's perspective, how  
21 that should all align with our traditional CEC standards  
22 and DCBO structure and oversight of the jurisdictional  
23 elements of the project.

24           So we would like to convene a panel on the dam  
25 safety and the delegation. It would be, also, probably

1 good to discuss the -- at least to lay out the fees issue  
2 as well.

3 Is there any concern by the parties in being able  
4 to have a representative from DSOD on the panel and having  
5 your own experts present as well to speak to this?

6 We'll start with Applicant.

7 MR. HARRIS: I think it's unusual in the sense  
8 that there's no pre-filed testimony. Typically I would be  
9 preparing for a panel by reviewing that party's testimony  
10 and moving forward. I'm not sure whether a panelist in  
11 DSOD is going to be able to speak for the agency or behind  
12 the agency either. So I'm a little concerned about not  
13 knowing what the questions might be or what the subjects  
14 might be, candidly.

15 Staff, do you have any perspective on this?

16 MR. BABULA: Yeah, I -- this feels so -- this  
17 feels very open-ended in the sense of it's just going to be  
18 sort of discussion and I'm not really sure how it would be  
19 effective use of time.

20 I will say that we're -- the way we envision  
21 this, how it would work with DSOD is they would be the DCBO  
22 for that portion of the project. So there wouldn't be --  
23 so normally just for context, the way these things are done  
24 is the Energy Commission uses a delegated chief building  
25 officer who's on the ground, that's checking plans and the

1 engineering and design and is involved in that component,  
2 and so that person would be doing all the construction  
3 related work. But in this case, because of the unique  
4 feature with the dam, that role of working on designing and  
5 checking things would be DSOD. And so that's sort of the  
6 overarching thing. And then part of it is understanding  
7 exactly the fees and what we talked about before.

8 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

9 MR. BABULA: And we try to -- I agree, there's no  
10 like pre -- you know, there's no testimony that's been  
11 filed, or exactly on this issue, and so it would sort of be  
12 amorphous exactly on what the end point necessarily is.

13 And I agree, I'm not sure what -- we haven't had  
14 discussions with DSOD. Like we know they're going to be  
15 there to just sort of offer some type of -- be available  
16 for answering questions. But it wasn't clear like whether  
17 you need a DSOD attorney or do you need the engineering  
18 person. Like what part of DSOD would be most useful for  
19 this sort of open-ended dialogue?

20 COMMISSIONER MCALLISTER: Let me sort of frame  
21 this a little bit. So I agree, it's kind of open-ended,  
22 but the actual scope of the project seems kind of open-  
23 ended as well, right, so just designating them as the chief  
24 building official for that portion of the project.

25 This portion of the project does potentially

1    imply significant costs. And to the extent -- so the  
2    boundary of the project, the scope of the project are  
3    fuzzy, that makes me a little bit nervous. So the goal  
4    would be to kind of get clarity on what implementation and,  
5    you know, and the process around it for that portion of the  
6    project, you know, the dam, which is a significant feature,  
7    are understood enough that we can comfortably create sort  
8    of, you know, Conditions of Certification and be  
9    comfortable approving the project. You know, that portion  
10   of the project, you know, aligns with an approval and the  
11   LORS issues.

12                So it seems like we need some conversation to  
13   define this portion of the project more specifically. And  
14   I guess I don't know another way to do it than to have, you  
15   know, the division -- a division representative that can  
16   speak for the agency at the hearing.

17                MR. HARRIS: If I --

18                COMMISSIONER MCALLISTER: Are we able to make  
19   that happen, I guess is my question, or is that something  
20   that everyone would be comfortable with?

21                MR. HARRIS: Well, Commissioner, if I could drill  
22   down a little bit on your use of the word fuzzy. I think  
23   the project is pretty well defined, but obviously you have  
24   a question in mind. And I'm sorry to pick on your  
25   language. I don't mean to do that. But what specifically

1 are you looking for additional understanding about?

2 COMMISSIONER MCALLISTER: Well, I mean, it sounds  
3 like we don't have agreement on sort of whether -- on the  
4 jurisdictional issue, and maybe I'm wrong there. You know,  
5 CEC, whether CEC's primary jurisdiction is, you know,  
6 really complete around the dam portion. But also it seems  
7 like the role of DSOD is not defined enough that -- at  
8 least it doesn't seem to me. I mean, if the Applicant and  
9 the other parties are comfortable with it being defined,  
10 you know, enough, then that would be good to know. But it  
11 seems like there's sort of some open-endedness in the  
12 actual implementation, whereas insofar as the CEC oversight  
13 might not be sufficiently clear.

14 MR. HARRIS: Well, I'll jump in since I asked the  
15 question. I don't think there's any question about  
16 jurisdiction that the Commission has exclusive state law  
17 authority over thermal power plants and related facilities.  
18 This is part of the proposals in that bailiwick. So maybe  
19 we haven't made that clear enough, and we've kind of gone  
20 past that to the implementation.

21 I think your question about implementation are  
22 exactly the things we're talking about here. How does this  
23 get implemented as between these two agencies? And I see  
24 the Hearing Officer throw, you know, an MOU between CEC and  
25 DWR into the matrix there. And in my view, that is getting

1 to the thing we're all trying to get to. How do we get  
2 DSOD's expertise and make that available to the Commission?  
3 The Commission can delegate verification of compliance, but  
4 the compliance clearly remains with the Commission.

5 And so what we've been all working through, and  
6 this is -- what's novel about this is not the technology or  
7 the construction techniques. What's novel about it is the  
8 interplay between your exclusive authority and really  
9 making available to all of us the expertise of DSOD. Like  
10 I said, they're the best in the world at what they do,  
11 right, so we all want that.

12 So we've all been focusing on the question of  
13 that implementation, but if you have further questions on  
14 that threshold matter that we're all kind of way past,  
15 let's stop and focus on that for a minute, please, so --

16 COMMISSIONER MCALLISTER: Well, I guess I just  
17 want to -- you know, the subject of today's prehearing  
18 conference is who needs to be at the hearing to discuss  
19 what issues; right? And so --

20 MR. HARRIS: Mm-hmm.

21 COMMISSIONER MCALLISTER: -- I guess, you know,  
22 what is -- who do we need from DSOD to talk about these  
23 issues and at what level of formalities, whether they get  
24 sworn in and that sort of thing? I think that's what  
25 Hearing Officer is trying to get at.

1           Anyway, I'll pass it back to Renee.

2           MR. BABULA: Yeah, let me just jump in really  
3 quick. So, yeah, I agree with Jeff. The issue of  
4 jurisdiction is it's the Energy Commission's jurisdiction.  
5 So the way it normally would work if this was not an Energy  
6 Commission project is for a dam, the Applicant would file  
7 with DSOD, like here's all the information and then DSOD  
8 would issue the permit; right? And they would have a  
9 filing fee and take this process.

10           So here, because it's Energy Commission, the  
11 entitlement to build that dam is the Energy Commission  
12 certification, but the actual design and approval, in a  
13 sense, and when we say approval, it's not approving that  
14 you can do the dam, but it's really approving that it meets  
15 the requirements. So who's going to confirm that the dam  
16 is built correctly?

17           And so the Energy Commission, we don't have  
18 someone to do that. And DSOD, that's their role and so we  
19 want to utilize that. And so the real mechanism would be  
20 bringing them in and having them review design and do the  
21 other things they need to do.

22           So possibly what might be helpful for this is  
23 someone from DSOD who can explain that process and say,  
24 yeah, this is what we would do is we'd go out on site and  
25 we would make sure that based on the geotech, we would

1 start to look at the -- and they would bring in soil  
2 samples and compaction and go through these steps. And  
3 then we would get to a point where we would sign off and  
4 they can start to fill the reservoir; right?

5 So I think that might be helpful to get context  
6 of what they would do and then how they imagine doing it in  
7 our process. And so that might be the person and may be  
8 more of a technical project person from DSOD who is  
9 involved in design construction of dams.

10 HEARING OFFICER WEBSTER-HAWKINS: I think that's  
11 a good framing, Mr. Babula, that what -- it's this very  
12 conversation that for me is underscores the need for this  
13 conversation to occur on the record with the experts  
14 involved, so that both we're hearing directly from the dam  
15 design experts, what their role is, not only in design  
16 approval but, you know, construction inspections through  
17 constructions and operational safety, which we know is a  
18 very significant responsibility of that division. So how  
19 is all of that retained appropriately with the state's  
20 experts in this area while also threading it, you know, and  
21 for the CEC for the first time with this sister agency,  
22 threading it with our exclusive jurisdiction.

23 And I think it really does -- would benefit more  
24 of a conversation of the experts, including hopefully some  
25 further clarification from Staff about the precise nature



1 in which that relationship between our role, the CEC's role  
2 as DCBO, and DSOD will be memorialized. And so in that, I  
3 think that that would be the end goal is some -- a little  
4 bit more clarity and affirmation of that memorialization of  
5 that role.

6 MR. BABULA: Right. It sounds like, too, it  
7 might be helpful for from the Energy Commission to  
8 potentially have like a CPM who can talk about that --

9 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

10 MR. BABULA: -- what happens in the compliance.  
11 Because certainly we also, if you look at the way the  
12 conditions are framed, we are including DSOD in the  
13 compliance phase of the annual inspection. In fact,  
14 there's an annual fee that we've identified so that they  
15 could get funding to do annual dam inspections.

16 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

17 MR. BABULA: So that is built in, but that might  
18 be something that would also help --

19 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

20 MR. BABULA: -- facilitate understanding from the  
21 Committee's perspective is having --

22 HEARING OFFICER WEBSTER-HAWKINS: Right.

23 MR. BABULA: -- someone from a CPM role from the  
24 Commission to be there. Okay.

25 HEARING OFFICER WEBSTER-HAWKINS: Good. Good.

1           MR. HARRIS: And if I could just -- I'm sorry, I  
2 don't want to leave the topic, but just real quickly, too,  
3 just the way the construction schedule works out here,  
4 there's a lot of construction involving removal of rock  
5 that occurs before we start in earnest to actually build  
6 structures that would retain water. So we do have the  
7 advantage of having that period to kind of work through  
8 some of these. I know we have to have the process in  
9 place, but I just want to make -- assure people that it's  
10 not going to be a rush in the actual review of the  
11 integrity of that facility.

12           And the other thing I would note is that the  
13 Commission Staff and DSOD have landed on the determination  
14 that they believe it's a jurisdictional facility. You  
15 know, that issue is a question of law, but we've chosen to  
16 kind of move forward past it. But this facility will not  
17 be holding a whole lot of water. This is not Oroville.  
18 It's nothing along those lines. It's much more akin to a  
19 wastewater treatment plant project. And there's a facility  
20 in San Diego County that holds way more water than this  
21 facility will above ground and it's not DSOD  
22 jurisdictional.

23           And so but what we want to do is to get everybody  
24 comfortable with the fact that there is a process that we  
25 all agree on before approval, right, that will result in a

1 robust engineering review. And so I just, I guess I really  
2 want to sort of put this facility, its size, its role and  
3 context. The jurisdictional question is settled. It  
4 really is a matter of getting DSOD expertise and making  
5 sure that they're fairly compensated for it. That's kind  
6 of where we are, so --

7 HEARING OFFICER WEBSTER-HAWKINS: Good. If  
8 there's any, you know, like with the CDFW representatives,  
9 if there's any concerns about having someone willing to be  
10 part of the panel from DSOD, please let the Committee know.

11 MR. BABULA: Yeah, we'll reach out. And we're in  
12 contact with them --

13 HEARING OFFICER WEBSTER-HAWKINS: Good.

14 MR. BABULA: -- pretty regularly right now, so --

15 HEARING OFFICER WEBSTER-HAWKINS: Okay.

16 MR. BABULA: -- we will check in.

17 HEARING OFFICER WEBSTER-HAWKINS: This last area  
18 on this slide, Geological Resources, is one that the  
19 Committee has identified, again because of the unique  
20 feature of this energy storage facility being the purpose-  
21 built cavern and really wanting to ensure that the  
22 Committee is well-informed about the manner in which the  
23 facility is going to be constructed.

24 Questions that the Committee has raised include,  
25 you know, the characteristics of the subsurface geological

1 resources in this new site that provide the confidence that  
2 this new site in fact is optimized to hold this cavern and  
3 A-CAES facility, how regional seismicity has -- plays into  
4 potential contingencies, a little bit more explanation on  
5 the record about the controlled blasting plan, and other  
6 construction techniques that support the FSA's conclusions  
7 that the project design is feasible and safe at the current  
8 site, and the reliability of the facility's operations over  
9 the 50-year lifespan of the project.

10 So those are a lot of topics, but obviously the  
11 cavern is, and the building and maintenance of it and  
12 operation of it, is germane to many of the resource areas  
13 analyzed in the FSA.

14 So even though the parties have not identified a  
15 dispute with this evidence or resource analysis, the  
16 Committee does request testimony of experts to ensure the  
17 substantial evidence in the record for the first-of-its-  
18 kind technology in California in the areas of project  
19 design, project reliability, worker safety, geology,  
20 minerals and hazards, and hazards and materials waste.

21 And again, I know that's a lot and I will, you  
22 know, again invite Commissioner McAllister, and I see Mr.  
23 Qaqundah on camera to underscore the desire of the  
24 Committee to have a panel at least addressing some of these  
25 characteristics and design features.

1           COMMISSIONER MCALLISTER: Thanks. Thanks Hearing  
2 Officer.

3           So, yeah, I guess, you know, you'll all remember,  
4 those of you who were at the hearing we had some time ago,  
5 you know, in person at the site and the site visit we did,  
6 you know, we did discuss some of the technical issues  
7 around the site, you know, and since then we've had a  
8 change in site.

9           So, you know, I think we're interested, I'm  
10 interested in kind of understanding what's different,  
11 what's changed, why this site is better and, you know,  
12 everyone is confident, you know, the Applicant is confident  
13 that it will do what it's expected to do and it will have  
14 the lifetime expected to have and that all the technical,  
15 you know, conditions are there, and just have a -- have the  
16 chance to have a conversation about that and sort of really  
17 understand in some additional detail the characteristics of  
18 the site and the project that -- and maybe even some of the  
19 sort of contingencies during development that might come  
20 up.

21           So that's kind of the idea is to, you know,  
22 understand the features of the project at this new site and  
23 then, you know, in some detail, but to develop some further  
24 understanding and comfort.

25           MR. QAQUNDAH: And Hearing Officer -- thank you,

1 Commissioner -- I just want to point out also that I think  
2 it's Jeremy Pohlman has his hand up from CDFW. I'm not  
3 sure --

4 COMMISSIONER MCALLISTER: Oh, there he goes.

5 MR. QAQUNDAH: -- if he's intending to speak.

6 HEARING OFFICER WEBSTER-HAWKINS: Yeah. Thank  
7 you. And I will -- let's circle back to Mr. Pohlman after  
8 we've finished the geological discussion.

9 MR. QAQUNDAH: Okay. Just wanted to make sure  
10 you were aware.

11 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

12 MR. QAQUNDAH: Thank you.

13 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

14 MR. HARRIS: So I'm sorry, do you want me to go,  
15 Hearing Officer?

16 HEARING OFFICER WEBSTER-HAWKINS: Yes, please.

17 MR. HARRIS: I thought I was recognized, but I  
18 don't recognize myself at this point two hours in.

19 So I understand the interest in this. So let me  
20 tell you what I'm concerned about from an evidentiary  
21 perspective and let me offer an alternative that I think  
22 will cover the concerns here.

23 So, you know, I -- clearly these issues, even  
24 though it's listed as Geological Resources, most of the  
25 issues listed on the slide are not at issue. I mean, we

1 certainly don't need the paleontologist to be available for  
2 this discussion. And I think we have a very solid  
3 evidentiary record on the remaining topics listed here,  
4 including Geology, by the way. There aren't any disputes,  
5 the record is clear. I am candidly, from an evidentiary  
6 perspective, very concerned about muddying waters that are  
7 very clear right now for these topic areas. And so that's  
8 my evidentiary concern.

9           My alternative would be that this may fall more  
10 under the issue of project description. I actually would  
11 like to start the hearing with a project description panel.  
12 I think that's very important to lay the groundwork for  
13 those of us -- those who are not us, I've been living this  
14 for the 18 months since the new site was identified, but to  
15 understand the project.

16           And I just, cards on the table, would also like  
17 the opportunity with an introductory project description  
18 panel to have Mr. Hildebrand not only explain the  
19 technology but explain the project benefits, which will  
20 help us with the record if this Commission decides it needs  
21 to do an override.

22           And so, I think, I don't want to take any of the  
23 issues off the table that we just talked about. I do think  
24 I want to change the focus to more broadly project  
25 description, technology description. Mr. Hildebrand is

1    amazing at this.  He has talked to every chamber of  
2    commerce within the 700-mile area seven times and can do a  
3    very good presentation of the technology.  And with the  
4    rest of our project description panel, including Mr. Stein  
5    and some other folks, I think we can answer all the  
6    questions that would be appropriate for that sort of a  
7    project level, project description level analysis of the  
8    project.

9                Because I would like the opportunity to brag  
10   about this technology.  It is not new.  That compressed air  
11   has been done in salt caverns forever.  What's new about  
12   this technology is the combination of existing  
13   technologies, the combination of the salt cavern  
14   technology, it's a combination of the reservoir with the  
15   air turbines.

16               And so a very long discussion here, but I really  
17   would like to not open the record, evidentiary record on  
18   all these other topics.  I would like to recommend that we  
19   put this into a project description and keep it at a high  
20   level because there shouldn't be any new information about  
21   geology or water reliability, worker safety or these other  
22   issues.  And so I, just frankly, think it will mean a  
23   better administration of the proceedings if we start out  
24   with maybe taking more time than we normally would on the  
25   project description section to sort of lay out the entire



1 thing, answer the questions people have. And maybe, you  
2 know, if you want to add some panelists at the more general  
3 level, as well, on the big project description.

4 And so I am now becoming redundant, repetitive,  
5 and saying the same thing over and over again, but I do  
6 think that we should add to this project description. And  
7 I think that's a really good idea, actually, so --

8 HEARING OFFICER WEBSTER-HAWKINS: Mr. Harris,  
9 thank you for that proposal. And there could be some merit  
10 to that. A project description panel could also describe  
11 the decision points that are foreseeable regarding the  
12 project options, the with and with berm -- without berm  
13 options and the transmission Gen-Tie alignments. So I  
14 think that there's some opportunity there to lay out the  
15 current thinking around those decision points.

16 I will say, respectfully, that in addition to,  
17 you know, we've had the pleasure of hearing from Mr.  
18 Hildebrand at a high level about the project's benefits.  
19 The Committee is interested in hearing also from the  
20 subject matter experts, the geologists, the construction  
21 engineers, the, you know, the actual -- the engineers and  
22 technical experts with regards to some of these specific  
23 questions. And so it would be important in convening a  
24 panel to ensure that those subject matter experts can be  
25 available to answer the questions from the Committee about

1 these siting feasibility and construction aspects of the  
2 project.

3 Would that be acceptable in your proposal?

4 MR. HARRIS: Again, I'm kind of back to my thing  
5 about no pre-filed testimony. I don't know what questions  
6 there are that are unanswered.

7 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

8 MR. HARRIS: I don't think there are any  
9 unanswered questions from an evidentiary perspective. I  
10 certainly don't have any concerns about people becoming  
11 better educated about the technology and the benefits  
12 because I think we should have more of these, not fewer.

13 But I really am concerned about our due process  
14 rights or without some pre-filed testimony if we're willing  
15 to reopen evidentiary matters that I think are answered in  
16 the record. They may not be, you know, right on the  
17 surface that people can pull them easily into their head.  
18 And they may have interesting questions about the  
19 technology, but I don't see an evidentiary gap.

20 I don't mind an informational kind of session, I  
21 guess, as I said. But if there are specific questions, I  
22 mean, if you have specific questions for our experts about  
23 packer testing, which I only know by name, I don't even  
24 know what it is, you know, we can get people here to answer  
25 those kinds of questions. But I really am concerned about

1 unfair surprise on a subject that we ought to have the  
2 right to know before the hearing what kind of questions are  
3 going to be asked if they are, in fact, evidentiary in  
4 nature, so --

5 COMMISSIONER MCALLISTER: Okay, I wonder if Staff  
6 has any view of this?

7 And, you know, I really appreciate your sort of  
8 trying to parse the sort of issue between -- parse out, you  
9 know, what's informational and just sort of like technical  
10 curiosity versus something that's relevant on an  
11 evidentiary basis. And, you know, certainly we will  
12 have --- you know, we appreciate all the evidence that's  
13 been submitted regarding the new site and the technology.

14 So I suppose I'm open to having sort of an  
15 informational, not -- an informational sort of panel that  
16 sort of takes some of these issues and, you know, puts them  
17 in a more discussion mode upfront in terms of a project  
18 description, like an updated project description. You  
19 know, the fact is we have a new site and the fact that the  
20 other site didn't work out and this site does, you know, I  
21 want to kind of have the opportunity to probe that a little  
22 bit, not necessarily open new avenues of, you know,  
23 evidentiary, you know, on an evidentiary basis, but I'm  
24 interested in what Staff thinks about that.

25 Let's see. We've got a hand up.

1 MR. BABULA: Oh, yeah, I think I can go in now  
2 if --

3 HEARING OFFICER WEBSTER-HAWKINS: Yes.

4 MR. BABULA: -- unless there's a hand. Okay.

5 COMMISSIONER MCALLISTER: Yeah, go ahead, Jared.

6 MR. BABULA: Yeah, a couple of things, so a  
7 couple of things.

8 First, it is -- like this list of issues, these  
9 are like a lot of different people. And so it is a big  
10 effort to get the right people there and get them prepped  
11 and have them review stuff, so we want to make sure we're  
12 efficient and we're really getting what the Committee  
13 needs. And so I kind of have some of the same concerns Mr.  
14 Harris raised.

15 And I see a lot of the -- a lot of kind of where  
16 I think the Committee is going with just wanting to really  
17 understand that the technical geotech components as being  
18 really in the purview of the Applicant. Like this is their  
19 project, this is their burden and they have the most  
20 intimate knowledge of the technical issues. So it would  
21 primarily be their team that would be addressing your  
22 questions.

23 If you have specific questions, I would support  
24 having those submitted to the parties in advance so we can  
25 either write written responses or at least be better

1 prepared than just sort of general topic areas of  
2 seismicity and integrity of the cavern which, again, I  
3 think is really the Applicant's expertise and their  
4 purview. So the idea of a project description panel where  
5 the Applicant can kind of do a little educational tour of  
6 the differences perhaps with the, or why this site is  
7 better or some of those features and some of the issues of  
8 safety that can allay any concerns that is workable, I  
9 think that's something that could be at the beginning.

10 But just for us right now, I'm thinking of like  
11 how I would manage this with our Staff and I'd have to kind  
12 of figure out, okay, who can talk about each one of these  
13 things and have them ready and prepped and get them there.  
14 So it would be just a lot of process and I don't know if  
15 that necessarily gets to where we are.

16 So I'm open to this project description concept  
17 if that's a good vehicle to get the information in there,  
18 at a level there, not just high level project description,  
19 but some of the more specific stuff, especially if the  
20 Committee could issue some core questions or categories of  
21 concerns that -- then that will help the Applicant better  
22 understand, okay, this is the technical person who needs to  
23 be there. And then we can see if we have someone who could  
24 be present to fill in and provide Staff's position or view.

25 But I agree, the record has -- we have detailed

1 assessments on liquefaction and seismic activity and floods  
2 and so forth. So that's all in the record right now and  
3 there was no dispute there.

4 COMMISSIONER MCALLISTER: Thanks, Jared, that  
5 makes a lot of sense. And, you know, I want to just  
6 acknowledge that the risk, the project risk, you know, if  
7 it does go forward and the development and, you know, all  
8 the commercial aspects of the project, that risk is on the  
9 Applicant; right? So I just, I don't want to create any  
10 confusion there. Let's see.

11 MR. HARRIS: Yeah. And I'm sorry, Commissioner.

12 COMMISSIONER MCALLISTER: (CROSS TALK)

13 MR. HARRIS: I know I'm being a little too  
14 defensive in this thing. I mean, we definitely want to  
15 answer your questions. And I think Jared did a better job  
16 than I did of kind of summarizing where we are. If we can  
17 identify who the people are who need to be there and some  
18 general subjects, I think it would make it much more  
19 productive.

20 COMMISSIONER MCALLISTER: Yeah.

21 MR. HARRIS: I just -- that's a long list on this  
22 slide, right, of people.

23 COMMISSIONER MCALLISTER: Okay, so I'll ask the  
24 Hearing Officer to work with the Committee going forward.

25 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

1           COMMISSIONER MCALLISTER: And if we do have  
2 specific questions that we can develop, we'll submit those  
3 to the docket, or we'll give the parties the heads up  
4 before the hearing. Obviously there's not much time for  
5 that, but we can do that.

6           Ms. Germinario, is her hand up?

7           HEARING OFFICER WEBSTER-HAWKINS: Yeah. Sorry,  
8 we missed a couple of individuals from CDFW during the  
9 Biological Resources discussion.

10          Ms. Germinario, are you, would you like to  
11 comment on the prior discussion?

12          MS. GERMINARIO: Yes, thank you very much. So  
13 yeah, my name is Lena Germinario. I'm an attorney for  
14 CDFW. And, yeah, we do have some concerns about the  
15 proposal to have CDFW, our representatives sworn in and  
16 made available for questions by the other parties.

17          You know, we wanted to clarify, CDFW is not a  
18 party to this proceeding, and we have not provided and  
19 don't plan to provide expert testimony in this matter.  
20 That being said, we have been coordinating with CEC Staff  
21 on specific biological resource issues, but that's in the  
22 context of our responsible agency role, so it's a narrow  
23 role. And, you know, the CEC Staff testimony is the work  
24 product of their experts.

25          And so, you know, furthermore, our reading of the

1 hearing order was that examination would be limited to  
2 designated experts, and there would be an opportunity for  
3 comment by public agency representatives that wouldn't  
4 require swearing in.

5           So, yeah, we certainly understand the importance  
6 of the Western Joshua Tree issues and entirely agree about  
7 that, as the Hearing Officer flagged earlier. But if, you  
8 know, the Hearing Officer or the Committee has specific  
9 questions during the course of the hearing that are within  
10 our expertise and role, we'd be, you know, very happy to  
11 weigh in at that point.

12           But, again, don't think it's appropriate or  
13 necessary for CDFW Staff to be put on the spot, basically  
14 as expert witnesses more or less, because that would go  
15 beyond our role as a responsible agency and the  
16 expectations in the hearing order and CEC regulations.

17           So I hope that helps just clarify our perspective  
18 on that.

19           HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm. I  
20 appreciate you joining us and providing that perspective.

21           I think I'd like to ask Mr. Babula procedurally,  
22 if we were to find it important for input from CDFW as the  
23 biology experts for the state on these issues regarding  
24 impacts and mitigation and we asked them questions, how  
25 would their information get into evidence?



1 MR. BABULA: Well, in the past, Committees have  
2 accepted other agencies statements into the record --

3 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

4 MR. BABULA: and given it the weight --

5 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

6 MR. BABULA: -- that they want to attribute to  
7 it. And so it hasn't been necessarily an issue, especially  
8 when those statements are sort of supplemental to our  
9 technical expert --

10 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

11 MR. BABULA: -- who has already testified.

12 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

13 MR. BABULA: And so it's sort of collaboration  
14 and evidencing our collaboration with that agency.

15 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

16 MR. BABULA: So I don't think it's been a problem  
17 and I don't think the Applicant would be objecting. So --

18 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

19 MR. BABULA: -- there shouldn't be a problem with  
20 that as part of just the ability to take in information --

21 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

22 MR. BABULA: -- during the proceeding.

23 HEARING OFFICER WEBSTER-HAWKINS: And give it  
24 weight, the due deference --

25 MR. BABULA: Right.

1           HEARING OFFICER WEBSTER-HAWKINS:  -- to this  
2 agency.

3           Just logistically, for an efficient and  
4 productive conversation, would it be acceptable -- and I'm  
5 sorry, Miss -- now you're -- I'm sorry, your last name  
6 escapes me and it's not on my participant list anymore.  
7 Germania [sic]?  I am so sorry.

8           MS. GERMINARIO:  That's okay.

9           HEARING OFFICER WEBSTER-HAWKINS:  From CDFW.

10          MS. GERMINARIO:  I know it's tough one,  
11 Germinario.

12          HEARING OFFICER WEBSTER-HAWKINS:  Thank you.  
13 Would it be acceptable for a representative from CDFW to be  
14 part of the panel, perhaps not sworn in along with the  
15 actual expert witnesses, but to participate in the panel to  
16 be able to, in a flow basis, respond to questions that are  
17 appropriate to the CDFW's jurisdiction and expertise?

18          MS. GERMINARIO:  May I ask, would that mean  
19 questioning by the Hearing Officer and the Committee or  
20 would that be sort of open field for questions by any  
21 party?

22          HEARING OFFICER WEBSTER-HAWKINS:  It would  
23 certainly be for questions from the Committee and the  
24 Hearing Officer.  Would there be an objection to having  
25 clarifying questions from the other parties?

1 MS. GERMINARIO: I would appreciate the chance to  
2 confer with my client on that --

3 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

4 MS. GERMINARIO: -- if possible.

5 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm. Okay.

6 MS. GERMINARIO: I think certainly questions, you  
7 know, by the Committee and Hearing Officer are, you know,  
8 no objection to that.

9 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

10 MS. GERMINARIO: You know, if there were very  
11 narrow questions that were within our expertise and role  
12 otherwise, it may be -- it may be not a problem, but I  
13 think I'd want to --

14 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

15 MS. GERMINARIO: -- check with our client.

16 HEARING OFFICER WEBSTER-HAWKINS: That's  
17 understood and respected. And I think that it would be  
18 entirely feasible to ensure that any questions directed  
19 towards the CDFW representative would come from the  
20 Committee and the -- or the Hearing Officer rather than  
21 direct questions from other parties.

22 MS. GERMINARIO: Thank you so much. That should  
23 be entirely acceptable to us. And we really appreciate you  
24 coordinating and, you know, working something out. Thank  
25 you.

1 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

2 And I'd seen Mr. Pohlman had also raised his  
3 hand. I don't know if Ms. Germinario covered his concern.  
4 I'd give him a chance to raise his hand if he would like  
5 while we're on this issue. But I think that was good  
6 clarification on the role because I think it would be very  
7 productive to have good input from the experts at CDFW  
8 within a role that they can feel comfortable contributing  
9 to.

10 And then as you said, Mr. Babula, the Staff  
11 expert would also be available to testify to similar  
12 questions as appropriate.

13 MR. BABULA: Correct.

14 MR. HARRIS: I guess I don't object to -- I  
15 don't want to object, but I do want to note that I remain  
16 substantially concerned that we're opening evidentiary  
17 issues that are closed and may potentially not affording an  
18 opportunity to respond to those things. And this sort of  
19 falls somewhere in the weird netherworld between public  
20 comment and testimony.

21 And so the FSA is quite detailed and I just don't  
22 know what gaps we're trying to close here. And if we're  
23 going to take a bunch of non-sworn testimony, then I guess  
24 I want to be very clear about its evidentiary value --

25 HEARING OFFICER WEBSTER-HAWKINS: And we can be

1 clear --

2 MR. HARRIS: -- Hearing Officer.

3 HEARING OFFICER WEBSTER-HAWKINS: -- on the  
4 record about that, providing the clear demarcation between  
5 sworn testimony and comment from other agencies and the  
6 relative weight that are given to both.

7 MR. HARRIS: I think that's going to be important  
8 if we start opening things up.

9 HEARING OFFICER WEBSTER-HAWKINS: So returning to  
10 the Geological Resources, as the Commissioner suggested, we  
11 will work, the Committee will work to frame some questions  
12 that we would like to have the parties present on and we'll  
13 consider the alternatives that have been suggested here.

14 My sense is that we wouldn't add a project  
15 description panel per se, because we do want to focus this  
16 on the evidence. And to the extent that a project  
17 description is really just a roll-up of all the resource  
18 areas, it would probably be more efficient to be more clear  
19 about which resource areas the Committee's interested in  
20 hearing about.

21 But it would be -- at this point, I would ask the  
22 parties to be prepared to have your lead experts on some of  
23 these topics, sort of waiting in the wings for the  
24 Committee questions to emerge early next week.

25 MR. HARRIS: We'll be prepared for that. I

1 really do think the label matters to us. So I don't think  
2 geological resources is a dispute. And I'm concerned that  
3 if we don't sort of carefully craft this, that it will  
4 create the public perception that maybe there are  
5 geological issues that are unresolved and there aren't.

6 So that's why I keep running back to project  
7 description, but just, you know, please be mindful of that  
8 label because I think it's incorrect. And that's probably  
9 more than anything else that I'm concerned about, so -- but  
10 we'd really welcome the opportunity to brag about this  
11 great technology. So give it to us, we'll take it.

12 HEARING OFFICER WEBSTER-HAWKINS: Understood.  
13 Okay.

14 MR. BABULA: I would just like to add just one  
15 more thing on this --

16 HEARING OFFICER WEBSTER-HAWKINS: Yes.

17 MR. BABULA: -- just to kind of point this out,  
18 but I'm looking at the list of different categories and  
19 it's pretty broad, right, because Hazardous Waste Materials  
20 is very different from Paleontology and Minerals and Worker  
21 Safety, Project Design. So definitely, if that could be  
22 narrowed with specific questions --

23 HEARING OFFICER WEBSTER-HAWKINS: Yes.

24 MR. BABULA: -- that would be very helpful,  
25 because that's a lot of different people that then I have

1 to prep and --

2 HEARING OFFICER WEBSTER-HAWKINS: Right.

3 MR. BABULA: -- so forth, so thanks.

4 HEARING OFFICER WEBSTER-HAWKINS: Yep,  
5 understood. Thank you.

6 Moving to the next slide, and this should  
7 hopefully be quick, we've already discussed Visual Impacts  
8 and how we're going to address that and not with a panel at  
9 the evidentiary hearing. Similarly, I'm hearing the same  
10 is being proposed for the Land Use issues. Are we in  
11 agreement on that, Mr. Harris and Mr. Babula, that the Land  
12 Use issues are likely to be resolved through supplemental  
13 evidence?

14 MR. BABULA: Yeah, I mean --

15 MR. HARRIS: (CROSS TALK)

16 MR. BABULA: Oh, go ahead, Jeff.

17 MR. HARRIS: No, I missed the punchline on Visual  
18 Resources. I guess I was trying to multitask.

19 But let me answer your question you just ask. On  
20 Land Use, yeah, I don't see a need for any oral testimony  
21 or witnesses to be available if that's the question.

22 HEARING OFFICER WEBSTER-HAWKINS: Okay.

23 MR. BABULA: Yeah, I agree on Land Use.

24 HEARING OFFICER WEBSTER-HAWKINS: Good.

25 MR. BABULA: And then for Visual, Mr. Harris,

1 it's just what we said, it's going to be just submitted on  
2 the papers.

3 HEARING OFFICER WEBSTER-HAWKINS: Right.

4 MR. HARRIS: Correct. Yeah, that's my  
5 recollection.

6 HEARING OFFICER WEBSTER-HAWKINS: Right.

7 MR. HARRIS: I was afraid I missed something.

8 HEARING OFFICER WEBSTER-HAWKINS: No. No, that's  
9 correct.

10 MR. HARRIS: I guess I will work on my blood  
11 sugar and my listening. I apologize, so --

12 HEARING OFFICER WEBSTER-HAWKINS: Now, Noise, we  
13 added to the list, again, just because it was part of the  
14 joint statement between CURE and the Applicant. And I did  
15 hear a statement from Mr. Babula that the Staff supports  
16 that revision to the condition.

17 MR. BABULA: That's correct. Staff doesn't have  
18 any issues with that Noise-4 language that --

19 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

20 MR. BABULA: -- CURE and the Applicant agreed to,  
21 to be integrated into the condition.

22 HEARING OFFICER WEBSTER-HAWKINS: Good. Great.

23 And then lastly, we've talked a little bit about  
24 the desire for a compendium of the COCs. Is that doable?  
25 I know that time is running short, but how feasible is it



1 that the Applicant and Staff can work together to prepare a  
2 single document for the Committee's and party's benefit for  
3 the evidentiary hearing?

4 MR. BABULA: Yeah, it's definitely needed, I  
5 agree. We were trying to as we went through iterations, to  
6 try to sort of maintain and have the most recent ones so it  
7 could be captured.

8 I do have a question, though, for purposes of --

9 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

10 MR. BABULA: -- like how do you want it  
11 displayed? Do you want it changed like as to what the FSA  
12 said if there's a strikeout, or do you just want it to be a  
13 clean copy of like this is the final one? Is there a  
14 specific preference?

15 HEARING OFFICER WEBSTER-HAWKINS: If it's  
16 possible, it would be nice to have, you know, the -- have  
17 it be redline strikeout building upon what the FSA  
18 presented, so as Staff did in the rebuttal testimony,  
19 showing the strikeout that's acceptable and those that are  
20 not, or the areas that are still unresolved.

21 MR. BABULA: Okay, yeah, that makes sense. And  
22 we'll kind of think, because part of this depends on what  
23 questions the Committee asks on the other topics that we  
24 need to review. But, yeah, we can --

25 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

1           MR. BABULA: -- make an attempt to start to put  
2 that together --

3           HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

4           MR. BABULA: -- and then send that to the parties  
5 to review so that we can get moving on that, and because we  
6 are working currently on these iterations of the conditions  
7 I mentioned --

8           HEARING OFFICER WEBSTER-HAWKINS: Right.

9           MR. BABULA: -- so we'll be filing anyway. So  
10 since we have that, it makes more sense for us to start the  
11 process.

12          HEARING OFFICER WEBSTER-HAWKINS: Right.

13          The last --

14          MR. HARRIS: Yeah, I think it would --

15          HEARING OFFICER WEBSTER-HAWKINS: Go ahead.

16          MR. HARRIS: -- I think it would be easy to  
17 identify the issues that are definitely in dispute. There  
18 are --

19          HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

20          MR. HARRIS: -- a few conditions we don't know by  
21 number --

22          HEARING OFFICER WEBSTER-HAWKINS: Right.

23          MR. HARRIS: -- at this point. There's some  
24 minor things, too, like 30 days and 90 days and that kind  
25 of thing, but we'll try to work with Staff with those kinds

1 of minor change things. And some of those we don't have  
2 agreement on, but they're not necessarily -- I want to be  
3 real clear, we would probably still ask the Committee for,  
4 in most cases, the longer or shorter numbers on days on  
5 some of these things, but it doesn't require adjudication.

6 HEARING OFFICER WEBSTER-HAWKINS: No.

7 MR. HARRIS: And I don't know that it makes the  
8 conditions disputed necessarily, but we'll work with Staff  
9 to try to at least identify the universe, so --

10 HEARING OFFICER WEBSTER-HAWKINS: Right. And  
11 again, you know, that these items are -- that they're  
12 unresolved, you know, not, again, that they're necessarily  
13 in dispute, but at least based on the record that the  
14 Committee sees right now, they don't appear to be resolved.

15 And that leads me into this last topic, which is  
16 ambiguous timelines. And you just touched on that, Mr.  
17 Harris, that we noticed that throughout the document, there  
18 does seem to be some ambiguity with timelines. And I don't  
19 know if it's because of the unique construction timeline  
20 associated with this project, both unique and extended,  
21 that there's a five-year construction timeline. And I  
22 think it's Table 3-3 that identifies, and this is in the  
23 FSA, identifies the major project milestones that includes  
24 the site prep and mobilization, topside insulation, shaft  
25 excavation, transmission line construction, cavern

1 construction. And then throughout the document, there's  
2 oftentimes references to construction without specifying  
3 which one of those phases. So those are -- and I think  
4 there's some circularity at places in the FSA with the use  
5 of the term mobilization.

6 So all of that together, you know, is just, I  
7 think probably just needs a fine tooth edit to ensure that,  
8 again, I hope that it's not about there being a dispute,  
9 but that it really just needs crystallized references and  
10 alignment, particularly in the COCs.

11 And I think it's --where it's most pressing might  
12 be the pre-construction compliance matrix that's called for  
13 in COM-4 for the tasks required prior to the start of  
14 construction. The Committee recognizes that the Applicant  
15 is trying to front load as much as it can prior to  
16 certification so it can hit the ground running and  
17 appreciates the anticipation of some pre-certification  
18 verifications, approvals, coordinations with Staff in order  
19 to do that.

20 But that said, it's -- I think it's all the more  
21 important to have that matrix for the pre-construction,  
22 pre-certification tasks delineated with a little bit of  
23 clarity, preferably earlier rather than later.

24 And so I did want to ask the Applicant the  
25 feasibility of advancing the preparation of that pre-

1 construction matrix for tasks so that it's available for  
2 the Committee and the record.

3 MR. HARRIS: The COM-4 matrix?

4 HEARING OFFICER WEBSTER-HAWKINS: Yes.

5 MR. HARRIS: There are a lot of things that are  
6 in process right now. We are trying to get ahead of the  
7 construction schedule. And so we were preparing, on the  
8 call the other day, Worker Safety Program --

9 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

10 MR. HARRIS: -- plans and those kind of things.  
11 There's a lot of stuff in -- already in process on the  
12 theory that we're going to hit the ground running. And a  
13 lot of these conditions have things that have to be 90 days  
14 before site mobilization and those kind of things. So  
15 there's a lot of stuff going on there. I don't know that  
16 we will -- I'm sure we already have a high-level document,  
17 but whether that's something we want to share at this  
18 point, I don't know. We're also, I'm a little concerned  
19 that we not get held to date if we can better them, for  
20 example.

21 So let me go -- I understand the request. We can  
22 look at COM-4.

23 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

24 MR. HARRIS: Let me go back and talk to my team  
25 about advancing that. And maybe that's something we can

1 advance in parallel during the drafting of the PMPD with a  
2 little more certainty than we have today. So --

3 HEARING OFFICER WEBSTER-HAWKINS: Yeah.

4 MR. HARRIS: -- you know --

5 HEARING OFFICER WEBSTER-HAWKINS: Thank you for  
6 considering that. We'll probably touch on the status of  
7 that during the evidentiary hearing, just to see if you had  
8 any further thinking about when it might be able to be  
9 delivered, because it would be helpful for the preparation  
10 of the PMPD to have a little more certainty on some of  
11 those timelines and deliverables.

12 MR. HARRIS: And Hearing Officer, it may be that  
13 they're in this vast record. I think one of the things  
14 we're running up against --

15 HEARING OFFICER WEBSTER-HAWKINS: Yeah.

16 MR. HARRIS: -- in the last hour is the vastness  
17 of the record. There may be things we can point you to --

18 HEARING OFFICER WEBSTER-HAWKINS: Yeah.

19 MR. HARRIS: -- that would be useful for your  
20 PMPD, you know? And these are all our best estimate of how  
21 things are going to go forward.

22 HEARING OFFICER WEBSTER-HAWKINS: Yes.

23 MR. HARRIS: I would be shocked if there's  
24 nothing in the record that would satisfy you on this, but I  
25 would be -- it would be impossible for me to point to it

1 right now, so obviously --

2 HEARING OFFICER WEBSTER-HAWKINS: Right, and it's  
3 stitching it together, and also combined with a little bit  
4 of the ambiguity in the use of terms, I think, is making it  
5 sometimes a little difficult to be clear, to be concrete.

6 MR. HARRIS: Yeah, that term ambiguity is  
7 pervasive in every decision in the Commission, site  
8 mobilization, groundbreaking, ground disturbance, there's a  
9 whole -- the COM conditions do a good job of trying to  
10 standardize those. And I just think it's an alligator the  
11 Staff continues to try to wrestle to the ground, but I  
12 understand the issue.

13 HEARING OFFICER WEBSTER-HAWKINS: Okay, so in the  
14 interest of time, we do want to move forward. I think we  
15 have a fairly good sense that the Committee will generate a  
16 proposed schedule.

17 If we can go to slide 14? This was the straw  
18 proposal before we started talking today. We're going to  
19 generate a straw proposal for the schedule for the  
20 evidentiary hearing. And obviously, some of these will  
21 fall off because we've agreed that we don't need to have  
22 panels on them.

23 But the timing for what we do have left, I mean,  
24 I think just going down the list pretty quickly, we will be  
25 having a panel on Biological Resources, also discussion on

1 the Water Resources. We will definitely have a session on  
2 issues related to the Cavern Construction. And I will  
3 modify the reference to Geological Resources in light of  
4 Mr. Harris's request about that, but -- and we will frame  
5 what those questions will be. We've agreed we don't need a  
6 panel on Land Use. We will not be holding the panel on  
7 Visual Resources. We will not be having a panel on Noise.

8 So the key takeaway here is, I think is, do we  
9 need two days if -- or do we want to still keep the two  
10 days to give ourselves ample time for quality and  
11 productive discussion? And I think the most robust  
12 discussions will be Biological Resources, Water Resources  
13 with relationship to the dam, and then the Cavern  
14 Construction. I don't know if anyone has any quick  
15 comments on that. I am mindful of the time.

16 MR. BABULA: Sure, I have a quick comment.

17 HEARING OFFICER WEBSTER-HAWKINS: Sure.

18 MR. BABULA: First, just to be clear on Water  
19 Resources --

20 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

21 MR. BABULA: -- it would be good if you could  
22 like maybe be more specific with that title, because  
23 that -- Water Resources is broader than just the dam and  
24 DSOD; right?

25 HEARING OFFICER WEBSTER-HAWKINS: Yeah.



1 MR. BABULA: You have like --

2 HEARING OFFICER WEBSTER-HAWKINS: Yes.

3 MR. BABULA: -- Waste Discharge Requirements and  
4 other stuff.

5 HEARING OFFICER WEBSTER-HAWKINS: Right.

6 MR. BABULA: So if we can be clear about that,  
7 that would be helpful.

8 HEARING OFFICER WEBSTER-HAWKINS: Absolutely.

9 MR. BABULA: And I would prefer to try to do it  
10 in one day, just because it makes it sort of just nice to  
11 get it all done in one day --

12 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

13 MR. BABULA: -- and not have carryover.

14 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

15 MR. BABULA: So that would be my preference.

16 HEARING OFFICER WEBSTER-HAWKINS: Okay.

17 MR. BABULA: And I think it's doable, given that  
18 what we've been able to address.

19 MR. HARRIS: Yeah, I agree with Jared. I think  
20 it can probably be done in a day.

21 I would take specific times off anything you put  
22 out in the public, because I've actually been in hearings  
23 where we had to wait, you know, because we didn't want to  
24 do the 10:30 thing --

25 HEARING OFFICER WEBSTER-HAWKINS: Right.

1 MR. HARRIS: -- until 10:30. So I think, as  
2 difficult as it is for people generally to be here  
3 anyway --

4 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

5 MR. HARRIS: -- you know, and maybe the exception  
6 to that is maybe have time certain public comment.

7 HEARING OFFICER WEBSTER-HAWKINS: Yes.

8 MR. HARRIS: But we have been in that trap  
9 before, especially in a contentious case, which is not this  
10 case, where people have basically we've --

11 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

12 MR. HARRIS: -- stood around and twiddled our  
13 thumbs since it wasn't 11:30 yet.

14 So those are kind of my two comments. I'm very  
15 interested in seeing how you reorder the names and all that  
16 kind of stuff, but I'm hopeful we'll be able to get through  
17 this in a day, but --

18 HEARING OFFICER WEBSTER-HAWKINS: And --

19 MR. HARRIS: So that would be my recommendations.

20 HEARING OFFICER WEBSTER-HAWKINS: And to that  
21 end, would the parties and their experts be able to stay  
22 later into the evening, you know, to 6:00 or 7:00 p.m., if  
23 that meant concluding the hearing in a single day, or, you  
24 know, that would be an important, out of respect, it would  
25 be important for all the participants to have advanced

1 warning that it might flow into the evening, depending on  
2 the robustness of the discussion.

3 MR. HARRIS: Yeah, we're willing to go later --

4 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

5 MR. HARRIS: -- especially if it means, if it's  
6 the difference between one day and two days, I think that's  
7 a good reason to do that.

8 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

9 MR. HARRIS: So we think, yes.

10 HEARING OFFICER WEBSTER-HAWKINS: Oh, good.

11 MR. BABULA: Yeah, I'll commit that we can have  
12 experts. But --

13 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

14 MR. BABULA: -- if for some reason there's an  
15 issue, I will let the parties in the Committee know.

16 HEARING OFFICER WEBSTER-HAWKINS: Okay. Thank  
17 you.

18 Okay, then with all the input from the parties,  
19 we will issue a revised proposed schedule, and as well as  
20 the questions that we discussed earlier.

21 With that --

22 MR. BABULA: Well, just really quick --

23 HEARING OFFICER WEBSTER-HAWKINS: Yes?

24 MR. BABULA: -- is this little presentation going  
25 to be docketed?

1 HEARING OFFICER WEBSTER-HAWKINS: Yes, it will.

2 MR. BABULA: Okay. Great.

3 HEARING OFFICER WEBSTER-HAWKINS: It will.

4 So for a discussion of the informal procedure, is  
5 that something that the parties would like some clarity on?

6 MR. HARRIS: Yes --

7 HEARING OFFICER WEBSTER-HAWKINS: Okay.

8 MR. HARRIS: -- we would.

9 HEARING OFFICER WEBSTER-HAWKINS: Okay. All  
10 right.

11 So regarding direct examination within the  
12 framework of an evidentiary proceeding, we will deem all  
13 parties opening statements and rebuttal testimony as their  
14 direct testimony. So there's no need to discuss any  
15 experts resumes if we have them in writing and we've heard  
16 no objections planned to the qualification of the witnesses  
17 as experts.

18 If you have witnesses testify who have not filed  
19 written testimony, then we'll have them identify themselves  
20 by name, their title and employer. If you have any  
21 objection at the time to a witness's qualifications, please  
22 be prepared to state the objection first and its basis  
23 during the evidentiary hearing and then the objections will  
24 either be decided on the spot or taken under submission.

25 But rather than taking time with the usual formal

1 Q&A, we're going to call all witnesses per topic to testify  
2 as a panel. Each witness, if they have one, will present  
3 their prepared opening statements. Not all witnesses may  
4 have one. We understand that. But then the testimony will  
5 include a discussion among the panel with the Committee  
6 taking the lead, asking the questions of the panel  
7 initially. And then the Committee will allow the parties  
8 to essentially cross-examine the questioning of the panel.

9 We do note that the Committee and the Hearing  
10 Officer will remain in control of the questioning just to  
11 make sure that it's all happening orderly and that it's not  
12 unduly confrontational or combative or unproductive. The  
13 discussion will continue until the Committee determines  
14 that it's heard enough evidence or it becomes duplicative.

15 For cross-examination of the other parties'  
16 witnesses, please make sure you've taken the time to write  
17 out your cross-examination first and be prepared to tell  
18 the Committee in advance how many questions you may have  
19 before your cross. Also, if you're going to be asking a  
20 witness about specific written testimony, please be  
21 prepared to have the exhibit number, the page number, the  
22 line of any testimony that you want to cross-examine them  
23 about. And then always allow the witnesses to finish their  
24 answers.

25 So regarding the admissibility of evidence, the

1 technical Rules of Evidence may be relied upon as guidance,  
2 but relevant non-cumulative evidence will be admitted if  
3 it's the sort of evidence upon which responsible persons  
4 are accustomed to rely upon in the conduct of their  
5 affairs. The questions of relevance will be decided by the  
6 Committee. Hearsay evidence may be used to supplement or  
7 explain other evidence, but is not sufficient by itself to  
8 support a finding. The Committee can rule on motions and  
9 objections, and also take official notice of other matters  
10 as long as there are matters within the Energy Commission's  
11 field of competence.

12 So essentially for the flow of each panel, we'll  
13 call in the panel. We'll swear in the panel with the  
14 caveat that if we have agency representatives that are not  
15 going to be sworn in, they will be called as part of the  
16 panel, but not themselves have to be sworn in, but they  
17 will participate in the discussion as we've discussed.

18 Each of the witnesses will deliver their opening  
19 testimony on the topic or subtopic if they have any. The  
20 Committee and Hearing Officer will ask the first round of  
21 questions, then the Applicant, then the Staff on Biological  
22 Resources, then the Intervenor. And then after each of the  
23 parties have had their opportunity to ask questions, we'll  
24 ask again if each of the parties has any further non-  
25 redundant questions to clarify the testimony. Finally, the

1 Committee will ask the final questions and then we'll move  
2 on to the next topic.

3 Is that a sufficient description for how these  
4 panels will be convened, Applicant?

5 MR. HARRIS: A couple of questions.

6 HEARING OFFICER WEBSTER-HAWKINS: Sure.

7 MR. HARRIS: A couple of questions, please, yes.

8 So prepared opening statements, it may be that  
9 some people are more comfortable with sort of a direct  
10 testimony process as opposed to a monologue. Let me talk  
11 to my witnesses, but if for that opening, a witness would  
12 prefer a Q&A as opposed to just a monologue, is that okay  
13 with the Committee if we do it sort of more like  
14 traditional direct?

15 HEARING OFFICER WEBSTER-HAWKINS: The preference  
16 of the Committee is for a prepared opening statement, if  
17 possible. You know, if the Applicant would like to prompt  
18 their witnesses, that, you know, that may be fine, but we  
19 really want to avoid the sort of the direct cross redirect  
20 formality.

21 MR. HARRIS: Okay. Okay.

22 HEARING OFFICER WEBSTER-HAWKINS: Is there any --

23 MR. HARRIS: I just, I thought it might be easier  
24 on some of our witnesses to if they've got that crutch of I  
25 think I'm done; right? But I don't think it's a big deal.

1 We've got great witnesses.

2 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

3 MR. HARRIS: So I do think the one substantive  
4 thing on that process is that I think the prepared opening  
5 statement should only come from sworn witnesses. So if  
6 we're not going to swear in the Department, I would object  
7 if they started providing direct testimony, non-pre-filed  
8 direct testimony. I don't mind them being available to  
9 answer questions on the panel, participating on the panel,  
10 but I would consider it to be unfair if there was an  
11 opening set of testimony from somebody that wasn't pre-  
12 filed, so that limitation.

13 I think you've given me the hybrid I asked for,  
14 so thank you, with the Committee starting and then parties  
15 doing cross at the end. I understand that the Committee  
16 controls that. I also heard the Commissioner very clear  
17 about civility and I heard your admonition now and we'll  
18 proceed accordingly. We will have questions for people,  
19 but life's too short to be weird.

20 So thank you. I think this is a long way of  
21 saying, I think this can work out well. You and I may have  
22 different views of what's productive or not, but that's  
23 because we're lawyers and we can talk about it some other  
24 time. So anyway, thank you. I think we're good with that,  
25 so --



1 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

2 Mr. Babula, do you have any questions or comments  
3 on the procedure?

4 MR. BABULA: Just a couple. So, yeah, we -- our  
5 primary Biological witness will definitely have an opening  
6 statement. It will be a monologue, but it will be focused  
7 on really addressing the crux of the dispute, so we'll want  
8 to set the table there.

9 I just want to have clarity that there's an  
10 opportunity in this dynamic for a redirect. If I need,  
11 like if I want my witness to clarify something or there's  
12 some issue to kind of further explore so that's part of  
13 this process.

14 HEARING OFFICER WEBSTER-HAWKINS: Absolutely.  
15 And that's part of the -- when we turn to the parties to  
16 have questions for the panel, it can include their own  
17 witness.

18 MR. BABULA: Okay.

19 HEARING OFFICER WEBSTER-HAWKINS: Yes.

20 MR. BABULA: Great. And I think that the CDFW  
21 would be happy to not have an opening statement, so I think  
22 that is fine, I think, and comports with Mr. Harris's  
23 concerns.

24 HEARING OFFICER WEBSTER-HAWKINS: Right.

25 MR. BABULA: Okay. Thank you.

1 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

2 MR. HARRIS: Just one more point of  
3 clarification. I assume no one's going to bring a  
4 slideshow or a PowerPoint or anything like that as part of  
5 their opening. We've had that issue before. So we're not  
6 intending to do that. And if we did, we would ask -- we  
7 would pre-file it and ask for the Committee's relief on  
8 that. But I don't think a PowerPoint is going to be  
9 necessary. We're all sick of that at this point, so --

10 MR. BABULA: Yeah. No, we're not intending to do  
11 a PowerPoint. Maybe an interpretive dance, but not a  
12 PowerPoint.

13 MR. HARRIS: I've seen that before and I would  
14 object to it.

15 HEARING OFFICER WEBSTER-HAWKINS: Ms. Graves?  
16 Ms. Graves, can I ask if you have any questions or comments  
17 on the process for the evidentiary hearing?

18 MS. GRAVES: No questions. Thank you for that  
19 overview. That's very helpful.

20 HEARING OFFICER WEBSTER-HAWKINS: Great.

21 MS. GRAVES: And our witness will be prepared to  
22 make the opening statement and we'll participate  
23 accordingly.

24 HEARING OFFICER WEBSTER-HAWKINS: Thank you.  
25 Good.

1           Okay, let's turn to public comment. I don't know  
2 if Mr. Young is still with us. I know he had a one o'clock  
3 public meeting to go to. Let's see here.

4           Mr. Young?

5           MR. YOUNG: Hearing Officer, thank you.

6           HEARING OFFICER WEBSTER-HAWKINS: Thank you.

7           MR. YOUNG: Can I go ahead and proceed?

8           HEARING OFFICER WEBSTER-HAWKINS: Yes.

9           MR. YOUNG: The CEC now welcomes public comment.  
10 All comments will become part of the public record. Please  
11 let us know if you'd like to make a comment so that we can  
12 call on you. And the public comment period is an  
13 opportunity for attendees to give comments regarding this  
14 proceeding and prehearing conference.

15           If you want to make remarks on behalf of a  
16 California Native American tribe or government entity, your  
17 comment will be taken first and without a timer.  
18 Otherwise, comments are limited to three minutes and one  
19 speaker per organization. We'll show a timer on the screen  
20 and we'll alert you when your time is up. Again, all  
21 comments will be part of the public record. So again, if  
22 you were speaking on behalf of a tribe or a government  
23 entity, please let us know you'd like to make a comment so  
24 that we can call on you.

25           For those online, you're going to use the raised-

1 hand feature that looks like an open palm. For those of  
2 you joining by phone, please press star nine and to raise  
3 your hand, and then press star six to unmute -- to mute and  
4 unmute. And we will open the lines for those that are  
5 seeking to become a public comment there.

6 So again, are there any representatives from  
7 California Native American tribes or government entities  
8 that wish to make a comment? Okay, I'm seeing none. We  
9 can come back to this if needed.

10 For other interested members of the public, we're  
11 going to open your lines. Please let us know if you'd like  
12 to make a public comment. Again, you're going to use the  
13 raised-hand feature that looks like an open palm, or those  
14 of you joining on the phone, please press star nine to  
15 raise your hand and then star six to mute and unmute.

16 Seeing none, Hearing Officer Webster-Hawkins,  
17 it's back to you.

18 HEARING OFFICER WEBSTER-HAWKINS: Thank you very  
19 much, Mr. Young.

20 So with that, we can move on to closing remarks.

21 Commissioner McAllister, do you have any final  
22 comments? I know you are due elsewhere very soon.

23 COMMISSIONER MCALLISTER: No worries. Thanks,  
24 Hearing Officer and everyone. This has been a great  
25 discussion. I think the time was warranted and we hashed

1 out sort of the process, I think certainly to my  
2 satisfaction.

3 And just to be clear, my comment about civility  
4 was not an admonition. I don't think it hasn't been civil.  
5 I think it's been great. And I just actually was kind of  
6 giving kudos to everyone involved, and certainly the  
7 Applicant and the parties for just the positive engagement  
8 and very substantive focus along the process. So I really  
9 appreciate that.

10 Looking forward to seeing many of you in Mojave  
11 very soon, in just a few days. And I think we have a good  
12 sense of the remaining issues.

13 I do want to just acknowledge, you know, part of  
14 my nature is to be curious and to kind of dig into details  
15 and satisfy my own kind of need for grounded understanding  
16 of a project. And I acknowledge, a lot of that is on the  
17 record already and, you know, but there is kind of no  
18 substitute for being able to have a bit of a dialogue, an  
19 iterative dialogue to flesh out sort of kind of understand  
20 those details. So that's kind of the purpose, not to  
21 necessarily open unless it comes up, unless it becomes -- I  
22 don't anticipate it's happening, but don't anticipate  
23 opening up new evidentiary themes. And so I just want to  
24 sort of provide some comfort there.

25 This is a new project. This is innovative. And

1 I think there's a certain justification for having that  
2 dialogue about it to help this process inform our broader  
3 conversations about how we meet our climate and energy  
4 goals with clean storage and, you know, many, many other  
5 technologies that were under development and that the  
6 Energy Commission is supporting and doing R&D on. So  
7 there's a broader conversation that I think it's helpful to  
8 sort of locate this process within, but not derailing this  
9 process and not creating uncertainty within the strict  
10 process itself.

11 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

12 COMMISSIONER MCALLISTER: So just wanted to kind  
13 of cop to being a curious person. And, you know, I think  
14 that, certainly in my case, manifests some excitement about  
15 the technology, obviously not prejudging whether, you know,  
16 we get a positive vote, you know, or any sort of particular  
17 outcome on it. But certainly just wanted to put that out  
18 there and just sort of thank everyone for contributing to  
19 building a knowledge along the way here.

20 I want to also acknowledge my co-Committee  
21 member, Commissioner Gallardo, who will be there in person,  
22 God willing, and to thank Jimmy Qaqundah for being here  
23 with us today and asking Jimmy if he has any comments to  
24 me.

25 MR. QAQUNDAH: Yeah, thank you very much, and

1 I'll be quick. Just wanted to echo that, thank the parties  
2 for coming, too, in a robust discussion to work through  
3 those issues, as well as CDFW for coming, you know, to  
4 participate next week as well. And to Hearing Officer  
5 Webster-Hawkins for facilitating that. I think it was very  
6 helpful and helpful for me to be able to be involved, so  
7 thank you.

8 COMMISSIONER MCALLISTER: Great. And I want to  
9 also thank Mr. Babula for your thoughtfulness. I think you  
10 really contributed in a very positive way today, so thanks  
11 for that help with clarity.

12 And Mr. Harris and the whole team for the  
13 Applicant, thanks for all the back and forth and iteration,  
14 very helpful. And looking forward to continuing the  
15 conversation at the hearing itself.

16 So with that, back to you, Hearing Officer  
17 Webster-Hawkins.

18 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

19 COMMISSIONER MCALLISTER: Thanks for your  
20 leadership here today.

21 HEARING OFFICER WEBSTER-HAWKINS: Sure. And, you  
22 know, and I also want to acknowledge the schedule and its  
23 impact on all of us. And I think the attention that the  
24 Committee and all the parties are affording to the schedule  
25 and how breathless it's leaving all of us, it also

1 underscores the importance of this proceeding to the Energy  
2 Commission. But also just want to express thanks and that  
3 we have -- I appreciate the grace that we have with each  
4 other to get all of this accomplished. It does feel like a  
5 horse race.

6 So we will be --

7 COMMISSIONER MCALLISTER: Right.

8 HEARING OFFICER WEBSTER-HAWKINS: -- seeing  
9 everyone at 10:00 a.m. in Mojave and looking forward to  
10 that. But then in the meantime, be looking to the docket  
11 for the activity that we've all discussed and any  
12 prehearing filings.

13 And with that, it is now 12:58 and the prehearing  
14 conference is adjourned.

15 COMMISSIONER MCALLISTER: Thanks everyone.

16 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

17 (The prehearing conference adjourned at 12:58 p.m.)  
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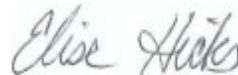


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I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of August, 2025.



ELISE HICKS, IAPRT CERT\*\*2176

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And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



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MARTHA L. NELSON, CERT\*\*367

August 18, 2025