

DOCKETED

Docket Number:	15-AFC-01
Project Title:	Puente Power Project
TN #:	217520
Document Title:	Transcript of 04/28/2017 Committee Conference
Description:	N/A
Filer:	Cody Goldthrite
Organization:	California Energy Commission
Submitter Role:	Committee
Submission Date:	5/10/2017 12:28:30 PM
Docketed Date:	5/10/2017

CALIFORNIA ENERGY COMMISSION

In the Matter of:

Docket 15-AFC-01

PUENTE POWER PROJECT

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COMMITTEE CONFERENCE

CALIFORNIA ENERGY COMMISSION

ART ROSENFELD HEARING ROOM

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

FRIDAY, April 28, 2017

9:30 A.M.

Reported by
Peter Petty

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Karen Douglas, Associate Member

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Matthew Coldwell, for Commissioner Scott

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Dawn Gleiter, NRG Energy, Inc.

Michael Carroll, Esq., Lathan & Watkins LLP

INTERVENERS

Lisa Belenky, Center for Biological Diversity

Ellison Folk, City of Oxnard

Alicia Roessler, Environmental Defense Center

SPANISH WEBEX OPERATOR

Raj Dixit

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P R O C E E D I N G S

April 28, 2017 9:30 A.M.

HEARING OFFICER KRAMER: So this is Paul Kramer, the hearing officer for the Puente Power Project AFC proceeding.

Our Spanish interpreter has not arrived yet, but my colleague, Raj Dixit, who is manning the WebEx controls for the Spanish WebEx, says that nobody is on that, is that correct? Okay, he says that's correct. And let me ask one more time, does anybody in the room want to avail themselves of a Spanish interpreter? Okay, looks like we can go ahead. As soon as anybody comes on the WebEx, Mr. Dixit, please let us know so we make sure and account for that.

Did you want to get started?

COMMISSIONER SCOTT: Okay. So with that, good morning. This is Commissioner Janea Scott. We will go ahead and get started.

Welcome to the committee conference on the Puente Power Project. I am Commissioner Janea Scott, I'm the presiding member. I am joined here in the dais to my left by the associate member, Commissioner Karen Douglas.

To my right are my advisers, Rhetta DeMesa

1 and Matt Coldwell. And to Commissioner Douglas's
2 left are her advisers, Jennifer Nelson and Le-Quyen
3 Nguyen.

4 And to my immediate left is our hearing
5 officer, Paul Kramer.

6 So now I'd like to go through and ask the
7 parties to introduce themselves, and I will start
8 with the applicant. Good morning.

9 MR. PIANTKA: Good morning. This is George
10 Piantka, Senior Director for Environmental for NRG
11 and representing the applicant.

12 MS. GLEITER: Good morning. Dawn Gleiter,
13 Development Director or Energy's Western Region,
14 also here representing the applicant.

15 COMMISSIONER SCOTT: Mm-hm.

16 MR. CARROLL: And Michael Carroll with
17 Latham & Watkins, outside counsel for the applicant,
18 participating by WebEx.

19 COMMISSIONER SCOTT: Good morning. I'll
20 now turn to CEC staff.

21 MS. WILLIS: Good morning, Kerry Willis,
22 and I'm with Michelle Chester and we're representing
23 staff.

24 MR. PITTARD: And Shawn Pittard.

25 COMMISSIONER SCOTT: Good morning. I will

1 now turn to our interveners, starting with the City
2 of Oxnard.

3 MS. FOLK: Good morning, Ellison Folk on
4 behalf of the City of Oxnard.

5 COMMISSIONER SCOTT: Morning. And
6 Environmental Coalition, Environmental Defense
7 Center and Sierra Club?

8 MR. ROESSLER: Yes, good morning. This is
9 Alicia Roessler from Environmental Defense Center,
10 here via WebEx.

11 COMMISSIONER SCOTT: Great, good morning.
12 How about intervener Bob Sarvey? Hold on just a
13 moment. So I'll try again. Intervener Bob Sarvey,
14 if you are there please speak up and introduce
15 yourself.

16 Okay. Next I will turn to California
17 Environmental Justice Alliance. If you are there
18 please go ahead and introduce yourself.

19 Okay. How about Center for Biological
20 Diversity?

21 MS. BELENKY: Yes, good morning. This is
22 Lisa Belenky for the Center for Biological
23 Diversity.

24 COMMISSIONER SCOTT: Good morning, Lisa.
25 How about FFIERCE? Okay.

1 Let me then turn to see whether we have
2 anyone from the California Coastal Commission?

3 How about any other state or federal
4 wildlife agencies?

5 Okay. And let me just check to see if we
6 have any other local, state, local or federal
7 agencies that would like to introduce themselves,
8 please go ahead.

9 Okay. And then I'd also like to introduce
10 to you our public adviser, Rosemary Avalos, and
11 she's waving to you from the back of the room. If
12 you have any questions about the proceeding she will
13 be able to help you.

14 And with that, I will turn this over to --
15 conduct of this over to our Hearing Officer Paul
16 Kramer.

17 HEARING OFFICER KRAMER: Thank you and good
18 morning, everyone. We're going to follow the agenda
19 that we published pretty much in order.

20 First item was the status of the
21 proceeding, and we have some specific questions but
22 you may also have some other things you want to tell
23 us. So we'll go in order and at the end we'll pick
24 up anything we didn't cover.

25 So first item was the topic of the

1 biological surveys. Have they begun? Mr. Piantka,
2 you seem like a good first source for that.

3 MR. PIANTKA: Yes, George Piantka for the
4 applicant. The surveys have begun. We had
5 completed our survey methodology and the final was
6 on April 10, and then we proceeded on April 11, so
7 we've completed two weeks of surveys. I guess that
8 would be three weeks counting today.

9 HEARING OFFICER KRAMER: So they're all
10 done as of today?

11 MR. PIANTKA: No, no, they're not done. I
12 mean, they're done weekly.

13 HEARING OFFICER KRAMER: Okay.

14 MR. PIANTKA: We've shared a schedule with
15 staff, and so they're still proceeding.

16 HEARING OFFICER KRAMER: Okay. When will
17 they be completed?

18 MR. PIANTKA: The schedule now puts us into
19 June, and our report would be prepared on June 23rd,
20 I think is the date.

21 HEARING OFFICER KRAMER: Okay. And I think
22 that date was in your proposed schedule that was in
23 your response to staff's proposal.

24 MR. PIANTKA: That's correct.

25 HEARING OFFICER KRAMER: Okay. Does anyone

1 else want to comment on the biological surveys?
2 We'll get to the merits of the intervener's motion
3 later, so if that helps you filter your comments.

4 Ms. Folk?

5 MS. FOLK: Is it possible to clarify which
6 surveys are going at this point?

7 HEARING OFFICER KRAMER: Sure.

8 MR. PIANTKA: If you could just give me a
9 moment, I'm going to go to the schedule.

10 So the surveys that we're doing include
11 each of the nine species that were identified in the
12 order and then, of course, intervener's request and
13 then we adopted that into our survey.

14 Methodology, the globose dune beetle
15 survey, the burrowing owl, the legless lizard, two
16 stripe garter snake, Orcutt's pinchushion, the salt
17 marsh bird's beak.

18 We've done reference surveys for the vetch
19 surveys that were coordinated with the Ventura marsh
20 milkvetch survey reference sites. We found
21 coordinated locations with California Department of
22 Fish and Wildlife.

23 And also the various bird surveys along the
24 shoreline surveys that were required, or requested.
25 Specifically the least tern and snowy plover.

1 MR. CARROLL: This is Mike Carroll. I
2 would just add that in the final survey methodology
3 that was docketed on April 10th there is a Section 3
4 of that document that includes the survey schedule
5 that has very specific dates for the conduct of the
6 surveys for each of the species, and we are on
7 schedule in accordance with what's contained in
8 Table 1 of Section 3, so those very specific dates
9 for the surveys are what has been conducted and what
10 is currently being conducted.

11 HEARING OFFICER KRAMER: Ms. Folk, does
12 that answer your question?

13 MS. FOLK: Yes, it does. Thank you.

14 HEARING OFFICER KRAMER: Okay, thank you.
15 Okay. Any other comments on biological
16 surveys?

17 Next topic was the coastal flooding
18 modeling. Could somebody summarize the results of
19 the staff workshop?

20 MR. PITTARD: We'll ask our lead staff
21 person to summarize this, Marylou Taylor.

22 MS. TAYLOR: Good morning. This is Marylou
23 Taylor with staff. We had our staff workshop in the
24 city of Oxnard to discuss the items that were listed
25 in the committee order, and the agencies which we

1 were asked to invite, fortunately all of them were
2 able to participate, which we were very thankful
3 for.

4 We discussed all of the items within the
5 order, and I personally think it was a very
6 productive workshop and we heard from the different
7 modelers who produced the coastal modeling programs.
8 And we also heard from the Coastal Commission,
9 Coastal Conservancy, the Ocean Protection Council,
10 and from people of the general public.

11 HEARING OFFICER KRAMER: Were there any
12 conclusions drawn and any points of agreement?

13 MS. TAYLOR: We discussed all the different
14 options and the pros and cons of the modeling that
15 was presented, and I think staff is still waiting
16 for a couple pieces of information, one from the
17 Coastal Conservancy, and we're also waiting for the
18 finalized version of the CoSMoS program, which is
19 expected to be released probably next week. They're
20 still in their official data release process under
21 USGS, their process to QA/QC everything and I was
22 told that it should be done by the end of this
23 month, so probably next week.

24 HEARING OFFICER KRAMER: So once it's done
25 then you could run the model right away?

1 MS. TAYLOR: Yes. Yes, the results should
2 be completed by then.

3 HEARING OFFICER KRAMER: So that would be a
4 couple days?

5 MS. TAYLOR: Hopefully.

6 HEARING OFFICER KRAMER: Yeah, okay. Do
7 you need this other information that you said you
8 were waiting for in order to run the model?

9 MS. TAYLOR: No. The other information is
10 for the supplemental coastal analysis that was
11 requested that staff perform. So looking at the
12 model was one aspect of that analysis, and then
13 other information would include the analysis of the
14 FEMA maps with incorporating future sea level rise.
15 That was another item that was on the committee
16 order that is another piece of the analysis that is
17 part of the supplemental analysis.

18 And we also attended the Ocean Protection
19 Council meeting. They had a business meeting
20 Wednesday that they presented their just recently
21 published scientific report that they would base the
22 upcoming state guidance documents for sea level rise
23 for state agencies.

24 And we also intend to participate in the
25 upcoming workshops that they are conducting for

1 stakeholder input.

2 HEARING OFFICER KRAMER: So is there any
3 reason to think that the arrival of this information
4 will prevent you from filing your testimony on June
5 15 as staff had proposed in its schedule?

6 MS. WILLIS: This is Kerry Willis, staff
7 counsel. The original schedule that we created was
8 based on, started with the applicant's original
9 filing that they would be providing biological
10 surveys by May 30th, so that date's been moved.

11 So because we found out that the CoSMoS
12 upgrade was coming out, we would prefer to wait for
13 that to come out and then have enough time to
14 actually do the analysis that they need to do.

15 It's not just getting the model and then
16 spitting something out; they're going to actually
17 need to do an analysis, so we would prefer to
18 postpone that to at least the end of June when the
19 biological surveys would be completed.

20 HEARING OFFICER KRAMER: Okay. And I have
21 some other questions when we talk about schedule
22 that'll get to that again. I think you may have
23 answered one of them more or less.

24 Okay.

25 MR. CARROLL: Mr. Kramer?

1 HEARING OFFICER KRAMER: Go ahead, Mr.
2 Carroll.

3 MR. CARROLL: Thank you. Mike Carroll for
4 the applicant. I just wanted to add one thing with
5 respect to the workshop on coastal hazards, which I
6 agree was very productive. And I thought in
7 particular the participation of the US Geological
8 Survey was extremely helpful as the developer of the
9 CoSMoS 3 model they're obviously in a very good
10 position to explain the model. And they've also
11 done some modeling of the project site using the
12 model, and they were able to present that.

13 It was, frankly, somewhat unfortunate that
14 it wasn't a committee conference because I think the
15 committee would have also found that very helpful.

16 And they have docketed their presentation
17 on April 24th, so it's available, but I think it
18 would be very helpful for USGS to participate in the
19 future hearings, and so I don't know if that's best
20 accomplished through staff communication or request
21 from the committee, but I thought that that was a
22 very helpful aspect of the workshop and something
23 that I think would be helpful for the committee to
24 have the benefit of hearing that presentation or one
25 similar to it and being able to ask questions of

1 USGS.

2 HEARING OFFICER KRAMER: Yeah, you've
3 anticipated another one of my later questions.

4 Do you have a sense about whether they
5 would be willing to participate or might they be in
6 a position similar to the Coastal Commission where
7 they are rather, let's just use the word
8 constrained?

9 MS. TAYLOR: When I spoke to the technical
10 project manager for the CoSMoS program, he made it
11 clear that he and USGS has no position about the
12 project in particular but he was happy to explain
13 the background and everything for the CoSMoS
14 program.

15 HEARING OFFICER KRAMER: So he might be
16 willing to explain what the model tells us about
17 where the water will and will not be.

18 MS. TAYLOR: I have a sense that he
19 probably will. I'm sure it would depend on schedule
20 and a lot of other different things, but I think he
21 would probably be able to share some informational
22 presentation for you.

23 HEARING OFFICER KRAMER: Okay. Can we ask
24 staff to reach out to them and see if they're
25 willing. And if you need somebody with a little

1 bigger title to ask them, let us know.

2 MS. TAYLOR: I'll do that, thanks.

3 HEARING OFFICER KRAMER: Anyone else want
4 to comment on the coastal flooding issue?

5 MS. FOLK: The only thing I'd add there is
6 on the USGS with the CoSMoS 3.0 is that if they are
7 to appear and testify on how they use the model, we
8 would like to be able to get the underlying data
9 that they relied on in order to reach their
10 assumptions, which is something we haven't yet been
11 presented with here.

12 MS. TAYLOR: When I contact USGS, I will
13 ask if that's available and if we can make that
14 available to the City.

15 HEARING OFFICER KRAMER: So you're talking
16 basically about the modeling inputs.

17 MS. FOLK: Yes.

18 HEARING OFFICER KRAMER: Okay. The next
19 topic, we combined the last two, was the information
20 we requested relating to alternatives, and also the
21 compliance and closure questions. Any comments on
22 the status of those, especially anything that might
23 make it difficult for you to present your testimony
24 at the same time as the other topics?

25 MR. PIANTKA: George Piantka, the

1 applicant. No difficulties. We're looking through
2 and will honor the June 15th deadline for the other
3 areas of evidence but we're still evaluating and
4 determining what we would present, but that's a
5 schedule we're going to stick to.

6 HEARING OFFICER KRAMER: Okay, thank you.
7 Ms. Willis.

8 MS. WILLIS: Thank you. As far as the
9 alternatives, staff is on schedule to produce that.
10 We would prefer to just put everything into probably
11 one at one point in time, so the end of June or
12 whatever date is chosen.

13 As far as the compliance and closure, staff
14 is somewhat confused about the questioning of
15 looking at a future CEQA situation and 30-year
16 closure plan.

17 At this point we have Condition 15 that
18 does cover quite a bit of the information that
19 you're requesting. We weren't sure if there was
20 some issue with that condition that hadn't been
21 reviewed or if there were questions on it.

22 And also, as far as the financial
23 assurances, we can provide a narrative of what the
24 Commission has done in the past and why or why not
25 we are requiring it at this point in time.

1 HEARING OFFICER KRAMER: Let me maybe
2 expand on the environmental aspect.

3 If the committee were to impose a condition
4 that said that they have to remove this new plant at
5 the end of its useful life when it's retired, then
6 that's now a part of the project, and so we were
7 wondering if there was anything that needed to be
8 added to the existing environmental analysis because
9 of that, thinking though, that because you're
10 already analyzing the demolition of the currently
11 existing plant, that quite possibly all the work
12 you've done there would just extrapolate to cover
13 this new removal.

14 MS. WILLIS: Except for the fact that the
15 environmental baseline would be quite different in
16 30 years than it is now. I mean, we see the city,
17 as they have mentioned throughout the proceedings,
18 growing and wanting to use that area for other
19 things, tourism and such. It would create issues of
20 like transportation, are there going to be
21 strawberry fields still there, are there going to
22 still be farmworkers? We wouldn't have any idea
23 about that, how the situation would be in 30 years.

24 In our Condition 15, though, we do require
25 at least a year before the power plant closes for

1 them to discuss the dismantling and demolition,
2 recycling, site cleanup remediation, and we do an
3 environmental analysis. So that is already present
4 in that condition but it isn't required 30 years in
5 advance, it's required more closely to the time that
6 the actions would take place.

7 HEARING OFFICER KRAMER: Okay. Well, we
8 recognize that you cannot predict the future and
9 what the neighborhood is going to look like, but to
10 the extent that you can speak to the topic and what
11 any potential impacts might be and how they could be
12 mitigated, that would be something we would like to
13 see.

14 Ms. Folk?

15 MS. FOLK: Sure. I just wanted to add
16 something on the alternatives issue, which is that
17 one of the things the committee asked for was an
18 analysis of an inland project that was a smaller
19 peaker. And the city just yesterday filed a report
20 that goes to the issue of alternatives and the
21 feasibility of a smaller facility at an inland site.

22 Because one of the things that we don't
23 want to have happen is to have that analysis done
24 and have staff reject it as infeasible because it's
25 not big enough, and so this report discusses the

1 ability to meet the identified LCR need without
2 building a project of 262 megawatts, and which
3 assumes the retirement of Mandalay III and the
4 Elwood project within the next five years. So I
5 just want to highlight that as something that should
6 be part of the mix when they're looking at
7 alternatives.

8 HEARING OFFICER KRAMER: Okay. Well, it
9 sounds like staff may come to a different conclusion
10 than you do, but we've been through that once
11 already.

12 MS. FOLK: It is a slightly different issue
13 and it does go to the inland.

14 HEARING OFFICER KRAMER: Well, there's all
15 kinds of scenarios that people could pitch. We were
16 looking for specifically about what a smaller
17 project and would it -- there may be other issues
18 I'm forgetting, but one of the key points was is it
19 going to solve the aviation issues, for instance, at
20 those other sites if it were a smaller machine.

21 Okay. So anything else on the status?

22 Okay. Let's turn then to the intervener's
23 joint motion.

24 We'll note that we already provided the
25 relief from the need to file briefs on the land use

1 topics, so that's taken care of.

2 The applicant has agreed to many, although
3 not all of the requests that the other parties made
4 regarding the content of the biological surveys.

5 We don't have any specific questions, I
6 don't think. Oh, we do have one actually. The
7 other issue was granting the interveners access to
8 the site.

9 Ms. Folk, I think that was -- did you join
10 in that motion?

11 MS. FOLK: Yes.

12 HEARING OFFICER KRAMER: Yes, okay. So
13 what is that going to accomplish, what would it
14 accomplish if we allowed that?

15 MS. FOLK: Well, I was going to let the EDC
16 discuss that, but I would, from the City's
17 perspective. I mean, this is a project within the
18 jurisdiction of the City. If the City were
19 reviewing the project it would be able to have its
20 consultants go out there and look at the site, and
21 you do see differences in results depending on how
22 closely people are looking.

23 HEARING OFFICER KRAMER: Are you saying --

24 MR. CARROLL: May I just say I find that --
25 Mike Carroll on behalf of the applicant -- I find

1 that last statement offensive, frankly. We have
2 qualified experts conducting these surveys under the
3 supervision of three different agencies. Any
4 suggestion that they're being done in any way less
5 than according to protocol is incorrect and
6 offensive.

7 MS. FOLK: It wasn't my intention to
8 (inaudible) the integrity of the consultants. I
9 just know from experience that it can help to have
10 more than one perspective.

11 MS. ROESSLER: This is Alicia Roessler, may
12 I add as well?

13 HEARING OFFICER KRAMER: Yes.

14 MS. ROESSLER: Thank you. Just to address
15 what Ms. Folk raised about having different
16 biologists onsite.

17 One of the whole reasons that we're here a
18 second time around is because the applicant had not
19 performed protocol level surveys in the first place.
20 So one of the reasons now why we're here and there's
21 a delay in the process is to allow more independent
22 and objective biologists onsite.

23 So one of the things we're asking, we're
24 really pleased that the agencies are more involved,
25 and we don't see the harm in asking for, for

1 example, Lawrence Hunt, our biologist, is used and
2 referred by many of the agencies. And if the site
3 is being opened up to the Coastal Commission and Cal
4 Fish and Wildlife, why is there any objection to
5 Lawrence Hunt accompanying at least the public
6 agencies in the site visit?

7 Had that been done perhaps the first time,
8 then maybe we wouldn't be here, because as we
9 understand, the first time when the public agencies
10 came onsite they were only viewed part of the site
11 and had not been able to actually conduct the
12 entirety of the surveys and observations that needed
13 to be collected, so in order to promote an open
14 transparent process.

15 I'm not asking for myself or anyone else to
16 come onsite, just our biologist.

17 HEARING OFFICER KRAMER: And Mr. Carroll
18 and Ms. Belenky, I think you wanted to say
19 something.

20 MS. BELENKY: Yeah, I wanted to just add
21 one thing. At the earlier hearings there were
22 questions of our biologists that specifically asked
23 if they had been to the site, implying that somehow
24 by not being at the site their opinions were
25 therefore lesser. And so to the extent that that's

1 become an issue here, if the applicant would refuse
2 to have the biologists or the committee would not
3 allow our biologists on the site, then we need to
4 make sure that there can be no implication later on
5 that their opinion is somehow less important or less
6 based on science than the people who were able to go
7 there. That's just pure fairness argument there.

8 HEARING OFFICER KRAMER: Mr. Carroll or Mr.
9 Piantka, is there any way that you could structure
10 this participation that would address your concerns
11 about them coming on the site?

12 MR. CARROLL: Mike Carroll on behalf of the
13 applicant. Let me just respond to a couple of the
14 statements that were made.

15 First of all, there has not been any
16 question -- or the reason that additional surveys
17 are being undertaken is not based on any question
18 about whether or not the previous surveys were
19 conducted properly or that there was a lack of
20 transparency with respect to the conduct of the
21 previous surveys.

22 I would say that there is a professional
23 difference of opinion among the biologists as to
24 whether or not protocol level surveys were
25 necessary, and our expert biologists concluded,

1 based on what they saw in the reconnaissance level
2 surveys, that it was not necessary to conduct
3 protocol level surveys, and the CEC staff biologists
4 concurred in that view, and that continues to be our
5 view.

6 We understand that the committee has
7 directed us to conduct the protocol level surveys,
8 which of course we are doing, but the absence of the
9 protocol level surveys in the first instance wasn't
10 based on a lack of transparency or a "not looking
11 hard enough" sort of situation; it was based on the
12 professional opinion of our biologists that they
13 weren't called for.

14 We are now up there conducting those
15 protocol level surveys. We responded to the motion
16 in every respect save this particular issue. We
17 agreed to include all of the additional wildlife
18 species and all of the additional plant species that
19 the interveners requested.

20 We included to expand the survey area to
21 include the project site, the outfall area, the
22 construction lay-down parking and storage areas, and
23 an appropriate buffer area around all of those
24 areas, and we've responded to the questions and the
25 comments from the agencies with respect to that

1 methodology.

2 So we are out there with an expert team of
3 biologists conducting these surveys pursuant to
4 protocols that have been reviewed by the agencies
5 and we have oversight of the Coastal Commission, the
6 California Department of Fish and Wildlife, and the
7 CEC biologists, and under those circumstances we
8 don't see any need for the intervener's experts to
9 be onsite. It's highly unusual.

10 Typically, the applicant under the
11 oversight of the agencies conducts the biological
12 resource surveys. The intervener's experts and
13 consultants aren't involved in that process.

14 We have a lot of activity going on at the
15 site right now and it's all being done in a very
16 coordinated fashion by a team and we have concerns
17 about disruption and interference with that process
18 of having somebody onsite who is not a member of the
19 team, and we have concerns about potential delays in
20 terms of coordinating having a non-team member on
21 the site.

22 For all of those reasons we feel very
23 strongly that it's not necessary or appropriate for
24 the intervener's experts to be on the site.

25 MS. ROESSLER: May I respond to those

1 comments? This is Alicia Roessler.

2 HEARING OFFICER KRAMER: Go ahead.

3 MS. ROESSLER: In terms of delays, we have
4 simply made a request certainly just to ask that our
5 experts correspond a site visit with the agency site
6 visit. We've been in contact with the Coastal
7 Commission, staff biologists, as well as Fish and
8 Wildlife. They have no objections and welcome our
9 experts to accompany them on a site visit.

10 In terms of access to the site, all the
11 parties are allowed, and according to the handbook,
12 at different points in time to be permitted onsite
13 as part of a site visit, part of full public
14 disclosure to have the applicant explain the
15 project, so there's nothing inordinate about our
16 request for intervener and a party to ask for a site
17 visit, which is all that we're asking.

18 And in terms of expanding the site area,
19 the orders are specific to conduct on the project
20 site. The project site has a significant legal
21 definition, so saying you're expanding the
22 biological survey area to include the project site
23 is not a concession, it's what it should have been
24 in the first place.

25 We appreciate expanding EDC's list to

1 include all of the species that there's evidence on,
2 and the same evidence and the same criteria for
3 having surrounding habitat on and off site. In
4 terms of adding to that, we do have some issues with
5 biologically appropriate survey times left.

6 But all of that aside, just requesting that
7 our biologists be allowed to go onsite with the
8 agencies and not pose any delays is a very simple
9 request.

10 MR. CARROLL: I would simply add that there
11 are very specific timing requirements associated
12 with the site visit. There was a site visit
13 conducted according to those time requirements. The
14 interveners and any of their consultants and experts
15 were free to visit the site at that time, but that
16 is not an open ended invitation to the public for
17 the duration of the process. And the authority that
18 is granted to the committee and the Commission
19 related to access to the site is very specific and
20 those requirements have been complied with and there
21 isn't any authority that goes beyond that.

22 HEARING OFFICER KRAMER: Okay, let me ask
23 this. When is the next agency site visit?

24 MR. PIANTKA: George Piantka, the
25 applicant. Communication with staff, the next visit

1 would be May 3rd and that would be Energy Commission
2 staff as well as Coastal Commission staff biologist
3 Dr. Jonna Engel. And then CEC staff would come
4 onsite on the 10th and 11th, that's my
5 understanding.

6 HEARING OFFICER KRAMER: Okay. Does anyone
7 have anything else on this topic, on the topic of
8 the motion?

9 MS. ROESSLER: I do in terms of in addition
10 to the site visit in requesting that our biologist
11 accompany the agencies. We do have some other
12 issues in terms of the survey methodology within the
13 context of the motion.

14 In addition to adding additional species,
15 we also requested that the surveys be conducted at
16 the biologically appropriate time, and one in
17 particular is the burrowing owl. Cal Fish and
18 Wildlife did submit comments that the timing for the
19 borrowing owl surveys should be conducted in
20 accordance with their protocol and that that
21 protocol requires that those surveys be timed
22 between December and January 31st. And applicant in
23 their reply to our motion agreed to conduct all the
24 surveys at the biologically appropriate time.

25 HEARING OFFICER KRAMER: Mr. Carroll?

1 MS. ROESSLER: The borrowing owl survey is
2 supposed to be done in mid June.

3 MR. CARROLL: And what I would say is that
4 we agreed to conduct the surveys during the
5 appropriate time period within the constraints
6 imposed by the committee, which is that all of the
7 surveys be concluded by the end of July. And this
8 is the only outstanding issue, as I understand it,
9 interveners have with respect to the methodology.

10 It's clearly not conceivable for us to
11 maintain the current status until the end of the
12 year to conduct additional biological surveys. We
13 are doing surveys for burrowing owls now. We did
14 surveys for burrowing owls prior to submission of
15 the application. There has been no evidence
16 whatsoever, no owls, no burrows, no waste, nothing
17 to indicate that there are burrowing owls or
18 burrowing owl habitat anywhere near the vicinity of
19 this project. And so the notion that we would
20 continue doing burrowing owl surveys for the next
21 six or seven months, based on the information that
22 has already been collected and the information
23 that's being collected now, we just don't think
24 makes any sense and is frankly just intended to
25 result in further delay.

1 MS. ROESSLER: May I respond?

2 HEARING OFFICER KRAMER: Well, let me ask
3 Mr. Carroll first. Are you planning on offering
4 those previous surveys into evidence?

5 MR. CARROLL: They already are.

6 HEARING OFFICER KRAMER: Okay.

7 MR. CARROLL: The previous surveys are all
8 in evidence. And I would also add that there is a
9 condition that requires pre-construction surveys, so
10 there will be additional surveys post-certification
11 and pre-construction.

12 MS. ROESSLER: If I might add, there were
13 no protocol surveys for the burrowing owl conducted
14 on the site ever. Your own biologist testified to
15 that fact. There may have been reconnaissance
16 surveys but it's very different than doing a species
17 specific survey to detect a, by definition, rare
18 species.

19 And those surveys, according to Fish and
20 Wildlife who submitted comments on the survey
21 methodology in addition to ours, specify that those
22 owls need to be surveyed for at a very specific
23 time; otherwise, you will not find any evidence of
24 them.

25 There have been burrowing owls right around

1 the perimeter of your site that have been found.
2 There is also habitat in terms of burrows onsite.
3 Burrowing owls come in and they use all the squirrel
4 and ground burrows. There actually is some suitable
5 habitat onsite.

6 I'm not a biologist, I'm just repeating
7 what has been submitted.

8 MR. CARROLL: No, you're not. You're not a
9 biologist and what you just said is not supported by
10 anything in the record. And based on the nature of
11 the site and based on the information that was
12 gathered during the reconnaissance level surveys,
13 the conclusion was that there was absolutely no
14 basis whatsoever to do protocol level surveys for
15 burrowing owls, and that's why the decision was made
16 and there needs to be some degree of professional
17 judgment and logic, frankly, inserted into this
18 process, and when the experts conclude that there's
19 no basis for continuing the surveys, that should be
20 respected.

21 That all having been said, we are now out
22 there doing protocol level surveys since that's what
23 the interveners requested and that's what the
24 committee directed, and so we are doing it, but the
25 notion that we would continue doing it through the

1 end of this year, we don't see any basis for that
2 based on the information that has been gathered to
3 date.

4 HEARING OFFICER KRAMER: Okay. Well --

5 MS. ROESSLER: The experts have actually
6 said -- I just want to correct that statement.

7 COMMISSIONER DOUGLAS: So the committee,
8 we're not taking evidence.

9 MS. ROESSLER: Okay.

10 COMMISSIONER DOUGLAS: We encourage the
11 parties not to get into detailed arguments. None of
12 this dialog is going to be in our decision in any
13 way, shape or form. Save it for the evidentiary
14 hearing please, and we're going to move on. Thanks.

15 HEARING OFFICER KRAMER: Okay. Anything
16 else on other aspects of the motion?

17 MS. ROESSLER: I do have a question, just
18 more of a procedural. I know in the recent order
19 that came out the committee had stated that it may
20 not rule on the order until late May, and in terms
21 of the site visit obviously with it coming up we
22 just urge the committee to rule prior to that date
23 so that there is an opportunity, if authorized, to
24 take advantage of an agency site visit.

25 HEARING OFFICER KRAMER: That's why I asked

1 for the dates in case we decide to go that way.

2 MS. ROESSLER: Thank you.

3 HEARING OFFICER KRAMER: Okay, let's move
4 on. There were no other pending motions, so let's
5 talk about the schedule, which is one of the main
6 goals of today's meeting. I have a series of
7 questions.

8 The first one was, in effect, would staff
9 need some time to prepare its testimony after it
10 receives the applicant's survey results, and Ms.
11 Willis basically said yes to that.

12 MS. WILLIS: Well, actually I didn't say
13 yes as to the biological surveys, I just said that
14 we wanted to file other analyses that were ordered
15 by the committee at the time in the same timeframe.

16 Staff may or may not file anything
17 additional based on the surveys. I mean, if the
18 surveys actually agree with what we've already said,
19 we're not going to file anything additional.

20 If there's something that requires that,
21 staff would be willing to go ahead and revamp the
22 FSA section accordingly. But at this point in time
23 we do not have a plan to file testimony in biology.

24 In fact, that was one of my questions. The
25 order wasn't very clear about what happens after the

1 surveys were submitted, but some folks assumed
2 workshops and other things. We have not assumed
3 further workshops or testimony in this matter.

4 HEARING OFFICER KRAMER: Okay. And that's
5 on my list of things to resolve as well.

6 MS. WILLIS: And Mr. Kramer, may I also --
7 I don't know if this is the time to talk about, but
8 also the Coastal Commission has indicated that if
9 they need to redo their report, that would not be
10 until the meeting in August that they would have to
11 do that, so I wanted just to throw that date into
12 the schedule.

13 HEARING OFFICER KRAMER: Yeah, and when we
14 saw that we looked at their schedule online and saw
15 that they also had meetings in July, so do you have
16 any idea why they picked August?

17 MS. WILLIS: No, I'm just sure that that's
18 their agency has made that decision.

19 HEARING OFFICER KRAMER: Okay.

20 MS. ROESSLER: If I may add, we've been in
21 discussions and touch with the Coastal Commission,
22 and I think that it was due to allowing their staff
23 time to review the information and prepare a staff
24 report in order to have time to actually present it
25 to the Commission, which they didn't think they'd be

1 able to do until August.

2 HEARING OFFICER KRAMER: Okay. I notice
3 that neither the staff's nor the applicant's
4 proposed schedule explicitly mentioned rebuttal
5 testimony, but it does seem that the other parties
6 are going to need an opportunity to review what
7 staff and the applicant have filed, including this
8 biological survey results report.

9 So does any party object to the concept of
10 including two rounds of testimony, opening testimony
11 and then rebuttal testimony?

12 MS. WILLIS: Kerry Willis for staff
13 counsel. We don't have an objection to it. It's
14 just the order wasn't clear to us that we were being
15 asked to do more testimony and rebuttal testimony,
16 so we were kind of surprised we were also having to
17 go first before we got more information from the
18 applicant.

19 So our schedule is off. I mean, it
20 obviously doesn't meet what the other parties had
21 requested. I don't have an issue with that, but we
22 were just confused that all the parties had to write
23 testimony. I didn't think that's what the
24 committee's questions were, but if that's the desire
25 we don't have an issue with adding time to that.

1 HEARING OFFICER KRAMER: Well, all parties
2 clearly can provide testimony, and we're not saying
3 that they have to come up with something but we
4 expect that most of them will.

5 MR. CARROLL: Mr. Kramer.

6 HEARING OFFICER KRAMER: Go ahead.

7 MR. CARROLL: Thank you. Mike Carroll for
8 the applicant. So this is clearly the area where
9 the schedules proposed by the applicant and the
10 staff, which are actually quite close to each other,
11 and the schedules proposed by the interveners
12 diverged.

13 I mean, there is some difference of opinion
14 over the deadline for submitting additional
15 information, but it seems as though the parties that
16 have been directed to provide additional information
17 have indicated that they can get that in by June
18 30th.

19 And at the back end of the process there
20 seems to be general consensus that only one day of
21 evidentiary hearings is required, and there's some
22 discrepancy between whether opening briefs should be
23 15 days or 30 days.

24 But the crux of the divergence in the
25 schedules is really what occurs during the period of

1 time between submission of the evidence that was
2 requested under the March 10th order and the
3 evidentiary hearing.

4 And our view of the March 10th order is
5 that it was directing the applicant and the staff to
6 develop specific additional evidence for the
7 consideration of the committee, and it was giving
8 the other parties the opportunity to do that if they
9 so chose.

10 We did not contemplate and we have serious
11 concerns about the submission of that evidence not
12 being a fulfillment of the directives of the order,
13 which is what we had understood, but being only the
14 starting point for which there would be one or two
15 or three additional rounds of testimony.

16 The interveners contemplate that the
17 evidence would come in and then there would be a
18 supplement to the FSA, that would be round two.
19 That there would then be opening testimony from the
20 parties, that would be round three. And then there
21 would be rebuttal testimony from the parties, that
22 would be round four.

23 We understood the order to require one
24 additional round of evidence development that would
25 be provided to the committee for its consideration,

1 and we have very serious concerns about the schedule
2 implications of what has been suggested by the
3 interveners or even what I think you're suggesting,
4 which is somewhat less burdensome than that, and
5 staff has indicated that they don't necessarily
6 intend to provide a supplement to the FSA on bio
7 issues, and of course their revised coastal hazard
8 will be the supplement to the FSA on the coastal
9 issues.

10 So we had understood that we would develop
11 this information, the staff would develop this
12 information, the parties would develop whatever
13 information they wanted and submit that to the
14 committee, and then we would move shortly thereafter
15 to an evidentiary hearing during which that
16 information either would or would not be moved into
17 the evidentiary record.

18 In our schedule there is about a two-week
19 period between the submission of the information and
20 the evidentiary hearing to give parties an
21 opportunity prior to the hearing to review that
22 information. But building in two or three months
23 into the process for additional rounds of testimony
24 is very problematic for us.

25 And if you want to understand why that is,

1 Dawn Gleiter can speak to our contractual
2 obligations and the extent to which we are now up
3 against those contractual obligations for getting
4 the plant online.

5 HEARING OFFICER KRAMER: Okay, Ms. Gleiter,
6 go ahead.

7 MS. GLEITER: Yeah, absolutely. So this
8 facility is being built for a very specific purpose
9 with a contract for Southern California Edison, and
10 under that contract we are required to be online by
11 June 1st of 2020.

12 We have just recently completed a round of
13 bids with our engineering and procurement
14 construction contractors and we now have better
15 understanding of the construction schedule, and this
16 plant will take about 28 to 30 months to procure the
17 equipment, finance and construct. And the
18 construction of the facility really can't begin
19 until a decision here at the Energy Commission is
20 final and nonappealable.

21 And so when you add the 28 months plus the
22 final decision, we really are kind of looking at a
23 scenario where a decision post November becomes very
24 problematic for us to actually have the facility
25 online to meet our contractual obligations.

1 HEARING OFFICER KRAMER: So in regard to --

2 MS. FOLK: May I respond to that, please?

3 HEARING OFFICER KRAMER: Well, and then let
4 me ask you also since I think you're the
5 spokesperson for the interveners at this point,
6 well, one of them.

7 We want to hear -- we want you to sell to
8 us the idea that staff needs to prepare a draft
9 revised FSA, have a workshop, and then prepare a
10 final FSA before we can go to hearings. The aspect
11 that Mr. Carroll was complaining about just now.

12 MS. FOLK: All right. But first on the
13 issue of contractual obligations, I would point out
14 that one of the issues that we've had with this
15 project from the beginning is that NRG first decided
16 to get a contract approved by the PUC before doing
17 environmental review, and it can't then turn that
18 contract into a reason why the environmental review
19 process should be cut short.

20 That was our primary concern. We argued it
21 in the PUC, and they said getting this contract
22 approval is not going to influence the environmental
23 review, so that was their decision.

24 And then as to the timing here, I think the
25 critical issue is that the public and interveners

1 deserve to see the analysis that results from this
2 additional work. That's the whole purpose of doing
3 the additional review on the sea level rise analysis
4 and the biological resources.

5 Right now we don't even know if staff's
6 going to do something more on the biological
7 resources or not because they want to wait to see
8 what the surveys say.

9 But in any event, I think from the City's
10 perspective, we want to see the analysis and have
11 enough time to respond and put in our evidence,
12 which is typically how the process works, and then
13 the parties can do rebuttal evidence and then we can
14 have the evidentiary hearings.

15 But we can't anticipate what the results of
16 all this work will be. We need to see it and then
17 be able to put in our response. And if you look at
18 our schedule, we have four weeks after whatever
19 staff does in terms of its response to the evidence
20 and additional surveys that are done, the City and
21 the other parties would be able to submit their
22 opening testimony, then you would have rebuttal
23 testimony.

24 The issue of workshops I think is more
25 something the environmental interveners have raised,

1 but it does go to what the evidence shows at that
2 time.

3 MS. GLEITER: This is Dawn Gleiter. Just
4 one point of clarification, I want to make sure that
5 we don't have misinformation.

6 So the applicant actually has started these
7 processes almost simultaneously. I think Ms. Folk
8 said earlier that we decided to get a contract
9 approved before we began the process, but I just
10 wanted to point of clarification that we did start
11 our AFC during the PUC approval process.

12 I'll certainly let my lawyer speak to
13 whether or not there's any sort of prejudices, but
14 I'm just merely communicating kind of that as a
15 developer you look at both processes and that we
16 can't begin construction until we have a final
17 nonappealable permit.

18 HEARING OFFICER KRAMER: Okay.

19 MS. ROESSLER: I'd like an opportunity to
20 address as well.

21 HEARING OFFICER KRAMER: Go ahead.

22 MS. ROESSLER: Alicia Roessler for
23 Environmental Defense Center and interveners. I
24 just wanted to add in addition to what Ms. Folk had
25 already stated that in terms of the public workshop

1 and just having this be a public and open and
2 transparent process, the community, as you've seen
3 from other prior public workshops and public
4 meetings, is incredibly galvanized and interested
5 around this particular project and would want an
6 opportunity, does want an opportunity to hear what
7 came out of this process, and to deny that to the
8 community would really be a slight that would have a
9 lot of repercussions.

10 HEARING OFFICER KRAMER: Okay.

11 MS. ROESSLER: As we've seen, there has
12 been a lot of just community outcry for public
13 hearings all to be held in Oxnard and all to be kept
14 abreast of what is happening on this project, and
15 there were quite a few issues where additional
16 evidence was ordered. And like Ms. Folk said, we
17 don't know what that evidence is going to say, and
18 parties as well as the public need that opportunity.

19 HEARING OFFICER KRAMER: Okay. What is it
20 about the evidentiary hearing -- and there will be
21 an additional one -- that does not achieve that
22 public education purpose?

23 MS. ROESSLER: One is because in terms --
24 you know, the evidentiary hearing process is really
25 kind of aimed at more toward the parties in terms of

1 hearing different witnesses. There is no summary of
2 the evidence. There's no presentation of what's in
3 the FSA, are there additional impacts in terms of
4 the CEQA process and compliance.

5 If additional evidence is collected and
6 it's turned out that that additional evidence
7 results in an increased impact from the project,
8 that would be disclosed in at least an addendum to
9 the EIR, in this case an FSA, and then that would be
10 disclosed to the public with an opportunity.

11 So in terms of just public information, the
12 context of an evidentiary hearing process is just
13 very specific. It's really much more akin to
14 putting on different witnesses. There's no summary
15 of what the FSA says in that process like there is,
16 say, at a public workshop.

17 MR. CARROLL: This is Mr. Carroll, may I
18 reply?

19 HEARING OFFICER KRAMER: Briefly, please.

20 MR. CARROLL: So I think that the
21 evidentiary hearing does provide an opportunity for
22 the public to participate in the process. I would
23 also remind everyone that there will be a public
24 comment period on the PMPD, which is another
25 opportunity for the public to review all of the

1 evidence and to participate.

2 And the submission of the information by
3 the end of June will be the summary of the new
4 evidence to which Ms. Roessler is referring.

5 And I would also just point out that the
6 interveners are talking about what typically happens
7 or the normal process. We are outside of the normal
8 process to some extent. A directive from the
9 committee post evidentiary hearing to collect
10 additional evidence is a very different context than
11 the traditional preparation of an FSA and then a
12 workshop and then opening testimony and closing
13 testimony, so while that lengthy process may be
14 typical for the creation of the overall record, we
15 now focused on a handful of very focused limited
16 areas upon which the committee has asked for
17 additional evidence and it's not necessarily
18 appropriate or needed that all of that additional
19 process be associated.

20 And I would just finally say I think the
21 suggestions that are being made that the
22 environmental review or any type of review of this
23 project has been given short shrift or cut short are
24 just not at all supported by the facts. This
25 application was deemed complete two years ago. The

1 project has been analyzed exhaustively. There have
2 been multiple requests for additional workshops, for
3 extension of comment periods, almost all of which
4 have been granted and the public has had ample
5 opportunity and the parties have had ample
6 opportunity to review this project and to
7 participate in that process. So any suggestion that
8 this has been a short shrift review or expedited
9 review or anything of that nature is just not
10 accurate.

11 MS. BELENKY: Excuse me, this is Lisa
12 Belenky on the phone. I just had one additional
13 point.

14 HEARING OFFICER KRAMER: Go ahead.

15 MS. BELENKY: Thank you. I'm a little bit
16 confused with the discussion because part of what's
17 going to be submitted at the end of June is also the
18 staff's additional alternatives work analysis, and
19 so to me that is a very critical piece of an FSA or
20 revised FSA or whatever you want to call it, and so
21 not having some process after that for us to provide
22 additional testimony if needed seems to me very
23 unusual.

24 And I have been through several of these
25 processes where additional information was needed

1 later and there was a revised staff assessment.

2 So if it was only the biology and for some
3 reason the survey showed absolutely no change, then
4 that would be a different situation. But you've
5 also asked for additional analysis of alternatives,
6 which is a key piece of the whole way of looking at
7 the project, so it seems to me a staff analysis must
8 be revised here. Thank you.

9 MR. CARROLL: Mr. Kramer, this is Mr.
10 Carroll. I'm sorry to interrupt. There was just
11 one more point that I wanted to make before we moved
12 away from this with respect to the Coastal
13 Commission.

14 We have very serious concerns about a
15 reinitiation of the 30413(d) process at the Coastal
16 Commission. That is a process that occurs in a
17 particular sequence within the CEC licensing process
18 and to go back and revisit that process at this
19 stage, we think it not required and is not necessary
20 and we think that it has serious potential to delay
21 the schedule.

22 We know that people will object to that
23 hearing being held in August because of vacations.
24 We know that people will object to that hearing
25 being held in southern California where it is

1 currently scheduled to be held. And the upshot of
2 that will likely be that it gets pushed off to a
3 later hearing.

4 The Commission is scheduled to meet a
5 couple months after that in the Ventura area, and we
6 can anticipate that people will say, well, it should
7 be put on the agenda for that meeting.

8 And so the notion of going back to the
9 Coastal Commission for a revised 30413(d) report, we
10 think is very, very troubling and has potential to
11 do severe damage to the schedule, and it's not
12 necessary.

13 30413(e) of the Public Resources Code
14 grants the Coastal Commission authority to
15 participate in the Energy Commission process. If
16 they have views on the new information or they have
17 additional recommendations, they're free to make
18 those without going through the additional process
19 of a revised 30413(d) report.

20 I'll simply add that we actually had
21 litigation over the location and the timing
22 associated with the initial 30413(d) report filed by
23 Mr. Simpson's organization that we just resolved.
24 And so the notion that we would step back into that
25 is very problematic from the applicant's perspective

1 and something that I hope the committee would give
2 very serious consideration to before accommodating
3 the Coastal Commission's request.

4 MS. ROESSLER: This is Ms. Roessler, I'd
5 like to respond to that.

6 HEARING OFFICER KRAMER: I think we've
7 heard enough on that point. So I'm looking through
8 my questions here to see which ones we still have.
9 In your wrap-up maybe, Ms. Roessler, you could
10 briefly speak to that point, so hold onto it.

11 Is it realistic to think that we can
12 complete these four topics on one day of hearings?

13 MR. CARROLL: Yes. I don't want to
14 prejudge, and maybe I shouldn't even say this
15 because I don't think we want to get into the
16 substance, but we are not finding anything
17 surprising so far in the biological resource
18 surveys, and so our view is that that is not going
19 to require extensive discussion.

20 HEARING OFFICER KRAMER: Anyone else want
21 to comment on that?

22 MS. FOLK: Just based on the way the last
23 set of hearings went, I can't imagine we'd be done
24 in one day. You know, the biological resource issue
25 is just one of four issues, I believe, that were --

1 HEARING OFFICER KRAMER: Right.

2 MS. FOLK: I think we should be realistic.

3 HEARING OFFICER KRAMER: And in your mind
4 is realistic two days?

5 MS. FOLK: Two to three.

6 HEARING OFFICER KRAMER: Two to three.

7 MS. FOLK: Definitely two.

8 HEARING OFFICER KRAMER: Okay. Did you
9 have something, Ms. Willis?

10 MS. WILLIS: Yes, I would probably agree
11 with at least two days. I think we spent about four
12 straight hours just on the modeling in the workshop
13 and I think that's an area where probably the
14 committee may want to hear more information maybe in
15 more of a workshop type setting from USGS, so that
16 would be my suggestion. And also based on the last
17 set of hearings, I'd hate to rush them.

18 HEARING OFFICER KRAMER: Ms. Roessler or
19 Ms. Belenky?

20 MS. ROESSLER: This is Ms. Roessler. I
21 would concur that at least two to three days would
22 be necessary, particularly just given what happened
23 with bio alone we'll probably consume a day
24 considering we really are redoing all of the
25 biological evidence. I would say two to three for

1 certain.

2 HEARING OFFICER KRAMER: And Ms. Belenky?

3 MS. BELENKY: I concur with what Ms.
4 Roessler just said as well, two to three days seems
5 minimum.

6 HEARING OFFICER KRAMER: Okay. That leads
7 perfectly into my next question, which is, we tried
8 formal testimony style the last time, and several
9 members of the public came up to me after the
10 hearings and complimented us on our patience. So
11 I'm wondering if an informal style where all the
12 experts are sitting together as a group and having
13 useful, meaningful, informative conversations back
14 and forth between them with some prodding by the
15 lawyers would not be a better approach this time
16 around. Any thoughts on that?

17 MS. ROESSLER: I have a question on that in
18 terms of having not sat through an informal style,
19 would that include questioning, would we get an
20 opportunity to question each of the witnesses, or
21 can you explain how that might actually work?

22 HEARING OFFICER KRAMER: Yeah, I think it
23 was described in the prehearing conference notice
24 from a while ago. Yeah, it would have been in the
25 notice asking you to comment on that.

1 Yeah, it's more informal. The lawyers are
2 not completely cut out of it, but for instance, we
3 ask a particular question of all the experts at once
4 and then they each answer in turn and maybe, you
5 know, politely disagree with each other.

6 Rather than ask Expert A in hour one about
7 something and then sometimes have three questions in
8 hour three of another witness just trying to make
9 sure we properly have characterized what Expert A
10 said in hour one. Of course with a few objections
11 thrown in just to make the transcript even more
12 impenetrable.

13 So we're just trying to make it go quicker
14 and be better for everyone. I would think the
15 public would be especially well served by that, but
16 I'm just asking for thoughts.

17 MR. PIANTKA: This is George Piantka with
18 the applicant and having participated in a number of
19 siting cases. We've done panel testimony in the
20 past. It's been efficient, worked well, and didn't
21 feel that any of the witnesses had any shortchange
22 of their input, so I'm in favor of that.

23 MR. CARROLL: And I would just add that's
24 essentially the way the workshop on coastal hazards
25 was handled. I mean, it was essentially a dialog

1 among the experts but the lawyers were there and
2 they asked questions when they felt the need to, and
3 I thought, and it seems like there's consensus that
4 that worked well and was productive, so I would
5 agree that I think, given the nature of these
6 topics, that approach makes sense.

7 MS. FOLK: This is Ellison Folk. I guess
8 my main concern would be that whatever format we use
9 that the parties are given an adequate opportunity
10 to ask questions of the experts, because I don't
11 want a situation where they are all up there and
12 then you get five minutes at the end to ask a
13 question, because sometimes you do really need to
14 get into the background and what they're relying on
15 in order to understand why they got to the
16 conclusion that they did.

17 MS. WILLIS: This is Kerry Willis for
18 staff. I do think that, because we have specific
19 areas and we're not looking at an entire record,
20 that it would be more beneficial to do an informal
21 process, but that would mean really not the cross-
22 examination that we had during the hearings as
23 opposed to, because I think that would take it all
24 back to we might as well just do a formal process
25 then if we're allowing for a lot of cross-

1 examination.

2 I think, as Mr. Carroll said, that during
3 the workshop it worked very well and people actually
4 talked and we got a clear understanding of some of
5 the issues.

6 Also, we'd want to make sure we're
7 specifically focusing on only the topics that are
8 additional and not going back and talking about all
9 the other things or rehashing other things.

10 MS. FOLK: One other thing I would ask then
11 is that for the people who are testifying that we
12 have actual written testimony from them if they're
13 going to be on the panel so that we have something
14 to look at and respond to and not just have someone
15 up there saying what they think without any ability
16 to ask them meaningful questions.

17 HEARING OFFICER KRAMER: Well, I don't know
18 if that'll always be possible but -- go ahead, Ms.
19 Belenky.

20 MS. BELENKY: Thank you. Unfortunately, I
21 have been at several hearings using the informal
22 method where it did cut off the ability of the
23 parties to ask questions, and it also has a tendency
24 to let some people have more time than others in a
25 very heavy handed way.

1 I would object to using that unless it was
2 very clear that we could cross-examine if needed, I
3 would object to it very strongly, having seen how it
4 has played out in the past.

5 HEARING OFFICER KRAMER: Well, you can
6 clearly ask questions, and I think in this context
7 that's the equivalent of cross-examination. There
8 are no direct and there are no specific cross-
9 examination questions, there are just questions.

10 MS. BELENKY: I think that that's an
11 ambiguous statement. This is a quasi-judicial
12 proceeding and I do think it is important that all
13 of the parties get to be able to raise the issues
14 that they need to raise and to ask the experts the
15 questions they need to ask. And I have personally
16 experienced the informal used as a way to cut short
17 that discussion and I would object to it.

18 MS. ROESSLER: I would like to add a
19 comment if possible.

20 HEARING OFFICER KRAMER: Go ahead.

21 MS. ROESSLER: I just wanted to add that
22 whatever method we use, I would definitely like to
23 retain the ability to ask questions and cross-exam
24 to the extent necessary.

25 I'd just like to highlight in this instance

1 the reason in part why we're here today is because
2 of extensive testimony and examination of the
3 applicant's biologists, for example, that led us to
4 actually find out the specifics of the surveys done
5 onsite, and that was something that didn't come out
6 except during the evidentiary hearing process, and
7 that came out from the ability of the lawyers to
8 directly question in a very specific manner the
9 biologists.

10 So here we are again, we're going to be
11 going through the whole survey process again, just
12 to be able to ask those questions, like I said, if
13 they're necessary. If they're not, it'll obviously
14 go much faster.

15 HEARING OFFICER KRAMER: Okay. Well, two
16 comments.

17 The committee and the Commission are trying
18 to get to the truth, and so one of the things we
19 don't have that much patience for are lawyer's
20 games. You know, lawyers trying to disrupt other
21 lawyers, the flow of their presentation of points
22 with objections, etcetera.

23 But also, when the questioner, whether it's
24 a lawyer or, say, a member of a panel, appears to be
25 just fishing around without any real sense of where

1 they're going or whether there is anything to be
2 developed, we do tend to cut that somewhat short in
3 the interest of everyone's time, the committee's,
4 the other parties and the public.

5 Okay. So we'll take that under submission
6 what format we use, but we'll be clear in the notice
7 of the hearing how that's going to work. We have a
8 boilerplate we use to describe it. I think you'll
9 probably find it, as I said, in the notice of the
10 prehearing conference.

11 But speaking of prehearing conferences,
12 some of the parties wanted to have both statements
13 and a prehearing conference. I think we see some
14 value in having prehearing statements so that the
15 parties identify their witnesses so you know who's
16 coming. We get some rough time estimates. I don't
17 know that it went terribly well, our organization of
18 the four days down in Oxnard, but we take a stab at
19 it and we can't do that unless we have those raw
20 materials.

21 So please speak to the value of a
22 prehearing statement and what a prehearing
23 conference would add to that at this point in the
24 proceeding. We'll begin with Mr. Carroll or Mr.
25 Piantka.

1 MR. CARROLL: Sure. I certainly think
2 prehearing conference statements are a useful tool,
3 particularly perhaps for the committee to be able to
4 structure the day if we end up with two days of
5 hearings so that it moves in an ordered fashion, so
6 we certainly think that makes sense and included
7 that in our schedule.

8 Given the relatively limited number of
9 topics that we have here relative to what we were
10 dealing with the last time around or relative to
11 what you're typically dealing with moving into
12 evidentiary hearings, we don't really see the need
13 to assemble all the parties for a prehearing
14 conference. I would think that providing written
15 statements would suffice and that there really isn't
16 a need for a prehearing conference, and to the
17 extent that there is any coordination that needs to
18 be made following submission of the statements, some
19 time can be reserved at the very beginning of the
20 evidentiary hearing to get those issues resolved and
21 then move forward.

22 HEARING OFFICER KRAMER: Staff, any
23 thoughts about that?

24 MS. WILLIS: Kerry Willis, staff counsel.
25 I agree with Mr. Carroll. I don't think there's

1 really a need for a prehearing conference. I do
2 think that the parties need to be clear, or clearer
3 about how much time they're going to put witnesses
4 on for if the committee is going to do a panel, then
5 that would be the committee's choice. But for
6 cross-examination it seemed like it was going quite
7 longer than a lot of the parties had indicated.

8 HEARING OFFICER KRAMER: Ms. Folk?

9 MS. FOLK: Yes. So the one benefit I think
10 to doing the prehearing conference is that we
11 frontload a little bit of that work so we're not
12 taking up time on the days of the evidentiary
13 hearing. And I did find it helpful to know who was
14 available and when and have us all in the same place
15 at the same time trying to figure out what the
16 schedule would look like, so I do think there's a
17 benefit to it. If you want to incorporate it into
18 the evidentiary hearing, then it just means those
19 days might be longer, and I don't know that that
20 worked out so well last time.

21 HEARING OFFICER KRAMER: But definitely a
22 prehearing conference statement.

23 MS. FOLK: Yes. Yes.

24 HEARING OFFICER KRAMER: Okay. Ms.
25 Roessler?

1 MS. ROESSLER: I agree with what Ms. Folk
2 said, I don't really have anything else to add. It
3 was invaluable, I think, just to go over the
4 scheduling part in the prehearing conference as
5 tedious as it was, it seemed a very necessary part.

6 HEARING OFFICER KRAMER: Okay. Well, we
7 will certainly be asking for time constraints on
8 witnesses regardless.

9 And then Ms. Belenky?

10 MS. BELENKY: I certainly agree that a
11 prehearing conference statement is necessary and I
12 do think that the conference itself is very helpful
13 with getting the scheduling nailed down. It can be
14 done where most parties can join by WebEx and it can
15 be relatively quick. I think skipping that step
16 will make the hearings take longer.

17 MS. FOLK: Can I just add one thing about
18 doing it in advance, is it does help with travel
19 plans for people so that they know before you end up
20 on the day of the hearing saying, okay, we're going
21 to do this person then and so it is beneficial in
22 that way. And Oxnard requires a lot of people to
23 travel to get there.

24 HEARING OFFICER KRAMER: Well, we're fairly
25 open to the use of WebEx. I wasn't on WebEx so I

1 don't know how well the audio worked for those who
2 were on it the last time.

3 MS. FOLK: I don't think it works as well
4 for evidentiary hearings, though.

5 HEARING OFFICER KRAMER: Okay. Mr.
6 Carroll, though you have big booming voice, we can
7 definitely hear you.

8 MR. CARROLL: That's good. And I meant to
9 apologize at the beginning for not being there in
10 person today because I know it's not ideal. I have
11 some medical issues that temporarily restrict my
12 ability to travel, so I apologize for not being
13 there in person today but I'm glad that it's working
14 out okay or seems to be.

15 HEARING OFFICER KRAMER: And are you
16 hearing us okay?

17 MR. CARROLL: Yes.

18 HEARING OFFICER KRAMER: Okay, good.

19 MR. CARROLL: I am, but I agree, I think
20 there are sometimes constraints in a larger room
21 with a larger group of people that make it more
22 difficult.

23 HEARING OFFICER KRAMER: Yeah, and that
24 auditorium was not idea from an audio perspective.
25 It's convenient for every other reason but the audio

1 wasn't great.

2 Okay, Ms. Belenky, you're last on this
3 topic, I think. I don't think anyone else has
4 joined us. Oh, she already did, okay.

5 Let me see if I have any others.

6 MR. CARROLL: Mr. Kramer, one additional
7 point, and it's a detail but we're getting into some
8 level of detail and it is potentially very important
9 on the schedule, and that's the transcripts. The
10 transcripts for the February round of hearings were
11 very slow in coming, and I don't know if that was a
12 function of there wasn't a sense of urgency because
13 of the committee's intention to request additional
14 evidence, but I'd like to have some agreement in
15 place or some mechanism in place to assure that the
16 transcripts can be produced.

17 In my experience, we typically get rough
18 drafts within hours of the close of the hearing and
19 final drafts within a couple of days. And so having
20 a lag of two or three weeks for transcripts before
21 briefs can be completed seems unnecessary and
22 problematic, so I just wanted to mention that detail
23 before we moved away from scheduling.

24 HEARING OFFICER KRAMER: Okay. No, we
25 would order a quick turnaround on those. One of the

1 problems is we have to basically listen to it to,
2 because there are a lot of mistakes in the rough
3 draft. And as a couple of you have noticed and
4 pointed out to us, we didn't catch all of them in
5 our review.

6 The last point I'll just make, and Mr.
7 Carroll, in your schedule you had the PMPD
8 conference in the middle of the comment period, and
9 it's been my experience that having it, say, in the
10 last week is the most effective because it gives
11 everyone a better opportunity to have read the PMPD
12 and they come armed with better comments.

13 Because again, in my opinion, one of the
14 main purposes for having it as a face-to-face
15 meeting is to iron out differences on, especially
16 for instance the language of conditions, it's much
17 more effective to have a dialog face-to-face than to
18 try to guess at what you really mean or what would
19 really be acceptable when you have an exchange of
20 written comments.

21 MR. CARROLL: Sure. We have no objection
22 to holding the conference later in the comment
23 period.

24 HEARING OFFICER KRAMER: Okay. I think
25 that does it for -- do you have any questions?

1 Okay. So we're going to take public
2 comment.

3 MS. WILLIS: Mr. Kramer, before we move on
4 -- this is Kerry Willis -- I was wondering if there
5 were additional questions for briefing that aren't
6 in the topics that we've been requested to provide
7 additional evidence that the committee is asking for
8 briefing, because we could start on that before if
9 that's something that the committee has questions
10 on.

11 HEARING OFFICER KRAMER: Okay. Thanks for
12 the invitation. We'll have to think about that, but
13 the land use ones certainly have not changed, so
14 you've got that. We'll see if we can identify any
15 others. It's been a long time since I looked at
16 that document so I can't -- or my draft. I can't
17 remember if we had some others that we just decided
18 were somewhat intertwined with the ones we wanted
19 more information that it didn't make sense to ask at
20 that point. But we can certainly put out just a
21 heads up if it helps you plan your weeks.

22 Ms. Roessler, you wanted to make some last
23 brief rejoinder to one of Mr. Carroll's points. If
24 you want to do that now before we go into public
25 comment.

1 MS. ROESSLER: Yes, thank you, I appreciate
2 the opportunity. I just wanted to add in terms of
3 the Coastal Commission 30413(d) process, that it is
4 in large part up to the Coastal Commission whether
5 or not they feel under the 2005 Memorandum of
6 Agreement and the Coastal Act and the Warren-Alquist
7 Act whether or not there is new information that
8 triggers a revised 30413(d) report. And it seems
9 their intention in writing the letter was to say
10 that they suspected that was evident and then
11 requested the opportunity to be able to hold another
12 hearing.

13 So I just wanted to sort of inject some of
14 the process in there, that it is up to, despite what
15 applicant's feelings are on the process, there
16 actually is a set process in place through that 2005
17 Memorandum of Agreement between the Energy
18 Commission and the Coastal Commission. And that's
19 all.

20 HEARING OFFICER KRAMER: Okay. I wouldn't
21 say that's a topic for briefing on our list yet, but
22 if you all are disagreeing about whether it's
23 mandatory for us to get a revised report from the
24 Coastal Commission, that may become a topic for
25 briefing down the road.

1 MS. ROESSLER: I think it is more of a
2 procedural issue in terms of whether or not if there
3 is new information, then according to the applicable
4 laws, the Coastal Commission, in order to fulfill
5 their role, needs another opportunity to do a
6 revised 30413D report, which is instrumental in
7 guiding alternatives that can be adopted by the
8 Energy Commission. So there is a joint agency
9 process.

10 It wasn't a briefing topic, it's just a
11 procedural topic given new evidence.

12 HEARING OFFICER KRAMER: Okay. Well, I
13 don't want to get into the details at this point,
14 but all I'm saying is that may be something that the
15 parties should be ready to brief, because I'm almost
16 certain that not everybody shares your view of what
17 is mandated from the Coastal Commission.

18 Okay, public comment. Mr. Dixit, do we
19 have anyone on the Spanish WebEx? He says no, he's
20 not near a microphone. Have we ever had anyone
21 visit us even temporarily? You need to refresh the
22 list just to be sure.

23 MR. DIXIT: I have just refreshed the list,
24 Hearing Officer Kramer. There are no Spanish
25 attendees.

1 HEARING OFFICER KRAMER: Okay, thank you.

2 MR. DIXIT: We have confirmed that the
3 system is working and that it is audible, we are
4 live.

5 HEARING OFFICER KRAMER: Okay, good. Does
6 anyone in the room here wish to make a public
7 comment? Okay, does anyone on the telephone wish to
8 make a public comment?

9 Okay, hearing none, we will close the
10 public comment. And we are going to adjourn to a
11 closed session. There's a possibility we may have
12 something to report out, so we're not going to
13 excuse the court reporter or tell you you shouldn't
14 hang around.

15 Let me see if I can figure out a good time
16 to come back.

17 Okay, so that you don't have sit around on
18 pins and needles wondering when we're going to come
19 back, we will endeavor to come back at 12:15. We
20 won't be earlier. If we're a little bit late, at
21 least you had basically an hour to do other things.

22 So we'll leave the WebEx open and we are
23 adjourning pursuant to Government Code Section
24 11126(c)(3), which allows a state body, including a
25 delegated committee such as this, to hold a closed

1 session to deliberate on a decision to be reached in
2 a proceeding the state body was required by law to
3 conduct. So we'll see you at 12:15 or thereabouts.

4 (Adjourned to closed session at 11:09 a.m.)

5 (Reconvened at 12:16 p.m.)

6 HEARING OFFICER KRAMER: Back on the
7 record. This is Paul Kramer, the hearing adviser
8 for the Puente committee reporting back at 12:15.

9 The committee conducted a closed session
10 that finished about ten minutes ago, and most of
11 what we will ultimately decide will be reflected in
12 a written order, but there are a couple things to
13 report or comment on.

14 First being that we decided that we won't
15 require the applicant to permit access to the
16 intervener's experts, and we wanted to tell you that
17 right away because some of those potential
18 opportunities for that to occur were going to be in
19 the next few weeks. That'll also be in the order
20 but that's the decision on that part of the
21 intervener's motion.

22 As far as, Ms. Willis, your earlier
23 question about the compliance and closure and the
24 analysis of the potential environmental effects, if
25 there were a requirement that the new plant not yet

1 built were to be demolished when it was
2 decommissioned or whatever the terminology ends up
3 being, we would like staff to do whatever it can to
4 provide us a framework to be able to make
5 environmental findings with regard to that.

6 Again, what we're presuming is that,
7 because you've analyzed demolition of the currently
8 existing plant as a part of this project, and there
9 really shouldn't be much substantive difference in
10 the demolition of this new plant down the road, that
11 chances are the information that's in the record
12 already will provide us with what we need, but it's
13 good to have somebody discuss that as a question and
14 kind of put a period on it.

15 MS. WILLIS: Mr. Kramer, would kind of a
16 comparison of the current demolition with a
17 potential Puente project demolition be what you're
18 looking for?

19 HEARING OFFICER KRAMER: That would be part
20 of it. Would it differ? Obviously you can't be
21 very definitive about, for instance, the capacity of
22 solid waste sites to accept waste 30 or 40 years
23 down the road, but you can tell us what you know,
24 and I think that's all that CEQA requires of us.

25 MS. WILLIS: Well CEQA actually doesn't

1 require us to be speculative, and I think that's
2 where our concern is that looking at 30 years down
3 the road legally would be speculative, but we can do
4 a factual comparison of the size and such of the
5 current project and what the demolition is including
6 and what a future Puente project as proposed would
7 require, but we would not be able to do like the
8 impacts on farmworkers because we don't know if
9 they're going to be there or not or if traffic. I
10 mean, there's quite a lot of areas that would be an
11 environmental baseline that we can't foresee.

12 HEARING OFFICER KRAMER: But you could ask
13 yourself the question, is there any reason to think
14 that the results of your analysis for the demolition
15 of the current facility are going to significantly
16 vary with regard to the new one.

17 MS. WILLIS: That would be a comparison,
18 like a more or less.

19 HEARING OFFICER KRAMER: Okay. That's what
20 you meant, yeah.

21 MS. WILLIS: Okay. Thank you.

22 HEARING OFFICER KRAMER: Whatever you can
23 do on that score to help us.

24 Okay. So that is the extent of our report.
25 Look for an order in the next week or two along with

1 a separate schedule.

2 Thank you. We're adjourned then.

3 (Adjourned at 12:20 p.m.)

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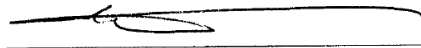
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