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Bob Sarvey

PUBLIC SPEAKERS:

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SACRAMENTO, CALIFORNIA

THURSDAY, OCTOBER 23, 2014 10:35 A.M.

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PRESIDING MEMBER DOUGLAS: Welcome, everybody, to the Committee conference for the Carlsbad Energy Center Amendments Committee hearing and conference. I'm Karen Douglas. I'm a Presiding Member assigned to this committee. To my right is Hearing Officer Paul Kramer. To his right is Commissioner McAllister. He's an associate member of the Committee. To Commissioner McAllister's right is Eileen Allen. She's a technical advisor to commissioners on siting, and on my left are my two advisors, Jennifer Nelson and Christine Stora.

I would like to start by having the parties introduce themselves beginning with the applicant.

MR. MCKINSEY: John McKinsey, counsel for the project owner, Carlsbad Energy Center, LLC.

MS. WILLIS: And Kerry Willis, Senior Staff Counsel representing staff. With me is Mike Monasmith, Project Manager.

PRESIDING MEMBER DOUGLAS: Thank you. Let's go through the intervenors now. Is anyone on the phone from Terramar Association?

HEARING OFFICER KRAMER: Let me unmute everyone.

PRESIDING MEMBER DOUGLAS: Hang on just a

1 moment.

2 Anyone on the phone from Terramar Association?

3 Any one from Power of Vision?

4 MS. ALLEN: Arnold Roe is on the line.

5 PRESIDING MEMBER DOUGLAS: Arnold Roe, your name
6 is here. We're not hearing you if you're trying to
7 speak.

8 Power of Vision? I see Rob Simpson's name.

9 Mr. Simpson, are you on the line?

10 MR. SIMPSON: This is Rob Simpson. I'm on the
11 line. Can you hear me?

12 PRESIDING MEMBER DOUGLAS: Yes, I can. Thank
13 you. Robert Sarvey has a petition pending.

14 Bob Sarvey, are you on you line?

15 MR. SARVEY: I'm on the phone, yes.

16 PRESIDING MEMBER DOUGLAS: Thank you very much.
17 Our Public Advisor is here, Alana Mathews.

18 Let me ask now representatives of the City of
19 Carlsbad if you can introduce yourself.

20 MR. THERKELSEN: Bob Therkelsen is here
21 representing the City of Carlsbad.

22 PRESIDING MEMBER DOUGLAS: Thank you. Is anyone
23 here from the California ISO?

24 Is anyone here or on the line from the Air
25 Pollution Control District or the Coastal Commission or

1 any State, local or Federal government agency?

2 MS. WILLIS: Steve Moore is supposed to be here
3 from the District.

4 PRESIDING MEMBER DOUGLAS: Okay. All right.
5 We'll check for him. We'll check for him later.

6 All right. So I'll hand this over to the
7 hearing officer at this point.

8 HEARING OFFICER KRAMER: Thank you. Good
9 morning everyone. I apologize for my voice. I hope I'm
10 on the downside of a cold or the flu. I feel better
11 today, but my voice sounds very deep to me. Hopefully
12 you can make it out.

13 First order of business today is to rule on
14 Mr. Simpson's various motions and requests. In his
15 document that was filed on October 6th he basically has
16 six items. One of them was an appeal to the Full
17 Commission of the Committee's previous order granting
18 him limited intervention in this proceeding. That's
19 going to be heard by the full Energy Commission at its
20 October 29th business meeting next week. So there's
21 nothing for us to do about that. That wasn't really
22 addressed to this committee.

23 Another item was a motion for reconsideration
24 that he filed, and we believe that was directed to that
25 same committee decision. However, let me mute everyone.

1 Okay. That will help protect from some of the
2 noises cutting out my voice. The motion for
3 reconsideration, there is no right of reconsideration
4 for committee decisions. In fact, that's appealable to
5 the Full Commission, they are, and since Mr. Simpson did
6 that there is nothing to do about the motion for
7 reconsideration. I think he would know this because in
8 the Quail Brush case he filed a motion for
9 reconsideration of a committee decision and was
10 ultimately told that the position of the Commission was
11 that there is no reconsideration of committee decisions.
12 So we're not going to take any further action on that.

13

14 Then Mr. Simpson also filed a petition to
15 request a rule making to change the Compliance
16 Regulation 1769, that is he served it on the executive
17 director after he was asked to do so, and that will also
18 be the subject of an item on the October 29th business
19 meeting agenda. It's not really business for this
20 committee. It's more of a general Energy Commission
21 item.

22 So there are three remaining aspects to his
23 filing. One was entitled: "An objection to committee
24 prejudice of my petition to intervene," then the second
25 was: "Petition to fully intervene," and then finally:

1 "Petitioner's further motion and a specific showing of a
2 compelling interest in the other areas considered in
3 this proceeding."

4 We interpret all of those as basically being a
5 request that he be allowed expanded intervention powers,
6 and that is what we are going to discuss right now. So
7 before the Committee asks questions, we note that the
8 Applicant has objected to that. Staff took a neutral
9 position, and I believe that's all we have in the
10 filings.

11 Mr. Simpson, do you want to speak to your
12 motion? Let me unmute you. Go ahead.

13 MR. SIMPSON: Sure. Part of that motion is in
14 response to the order that this limitation is subject to
15 review upon petitioner's further motion of showing of
16 compelling interest. So that's the order that I'm
17 responding to.

18 HEARING OFFICER KRAMER: That's fine. We
19 appreciate you taking, again, so to speak and if you
20 wanted to have more rights to request them. So I didn't
21 see a whole lot of new information, though, in all your
22 filings by way of, you know, an argument in favor of
23 granting you the right to intervene and more of the
24 topic areas. So we're hoping you could expand upon
25 that.

1 On the one hand, you said words to the effect
2 that, "Well, I've always gotten full rights with those
3 same words before." I think it's fair to say that the
4 Committee is now looking prospectively in this case for
5 the future to be a little bit more careful about
6 granting intervention rights in an unlimited sort of
7 way. So we don't necessarily find the argument that it
8 worked the last time to be terribly compelling.

9 So what can you say, you know, by way of
10 justifying granting you further rights? Our rationale
11 the first time around was, you know, you're from outside
12 the area, and many of the potential impacts of this
13 project are not conceivably ever going to fall upon you
14 as somebody living in Northern California. For
15 instance, things like visual effects, traffic, noise,
16 you're just not going to experience those, and we do
17 have intervenors already approved who are from the area
18 who represent Homeowner's Associations and groups of
19 interested citizens.

20 So what is it that you would add to the review
21 of this process in light of all that?

22 MR. SIMPSON: Well, briefly I will be effected
23 by those things when I visit that area, but the
24 underlying issue is how I get kicked out of being an
25 intervenor in this first place. This is not a new

1 proceeding. It's an amendment to the existing
2 proceeding. There's no basis to kick out the intervenor
3 every time you change a number on the project. So it's
4 not correct that I don't have an interest in the rest of
5 the proceeding.

6 There was no objection to my petition to
7 intervene, and there was no contention that I didn't
8 fully participate last time. So I don't see anything
9 that provides a basis for kicking out the existing
10 intervenor and not giving a notice of what's going on.
11 I mean, this decision was made without notice in a
12 closed meeting, which I also take issue with. It was a
13 closed meeting. I didn't have the opportunity to
14 express anything. So, no, I'm trying to unwind this
15 process that's somehow restarted without half the
16 players. So unless there's some contention that I
17 should be kicked out of being intervenor, I still
18 consider myself an intervenor from the original
19 proceedings.

20 HEARING OFFICER KRAMER: The way the Commission
21 works is you must know if you perused our website at
22 all, and you've been involved enough that I can't
23 imagine you don't know this, is that we create a
24 separate docket for the compliance phase of a power
25 plant proceeding, and that is a different animal. We

1 don't assume that everybody who is involved in the
2 original proceeding wants to be involved to the same
3 degree in the compliance proceeding, and, in fact, there
4 is no proof of service list.

5 There are no parties in a compliance proceeding
6 until for some reason, such as these major amendments
7 that were filed here, a new committee is created to
8 consider those things. If there are no committee
9 activities in the compliance proceeding there is no
10 proof of service.

11 So let me try again.

12 ASSOCIATE MEMBER McALLISTER: I'll point out I
13 was not on the original committee.

14 HEARING OFFICER KRAMER: For instance,
15 Commissioner McAllister was not on the original
16 committee.

17 So if you can describe for us your expertise
18 that you would bring to the role of an intervenor,
19 because we recognize that you can always file public
20 comments, anybody can do that. Being approved or only
21 partially or being denied intervention status does not
22 prevent you from filing public comments.

23 What is it about being an intervenor that is
24 necessary for you, but also from our standpoint, what is
25 the value you can add to our process by intervening on

1 topics beyond those that you've already been admitted to
2 intervene in?

3 MR. SIMPSON: Well, lets back up the assumption
4 that the people that participated in this proceeding
5 don't want notice of the amendment of compliance
6 proceeding. Yes, if people have opted to be off the
7 interested party's list that's one thing, but if you
8 just kick the people off that have expressed agreements
9 with this project and you change the project that's not
10 due process.

11 Nobody asked me if I wanted to be left off the
12 list, and if this is a compliance proceeding, well, I'm
13 happy to argue that this project is not complying with
14 this license. This is not a compliance proceeding.
15 This is an amendment. This is an amendment to the
16 original action that I was a party. So I still haven't
17 heard a basis of why I should be excluded as a party
18 when we're not looking at new projects here.

19 But to answer your question what expertise I
20 bring to this, I think that's been demonstrated
21 throughout this proceeding. I think I cognitively
22 participated throughout the proceedings in Carlsbad. I
23 raised issues to the biological issues. I raised issues
24 of the project being nonconforming with federal law,
25 which was ignored. So I took this issue to the EPA

1 which is why this project is really being amended
2 because they can't get a PSD permit.

3 If they paid attention to the original
4 proceeding, well, this project didn't need a PSD permit.
5 So I came to the table and demonstrated, yes, it does
6 need a PSD permit. I went around, around on that, got
7 licensed any way, and low and behold not only does it
8 need a PSD permit but couldn't get one. So now it's
9 being processed as a simple cycle so it can escape the
10 PSD threshold.

11 HEARING OFFICER KRAMER: You're admitted as an
12 intervenor on the topic of air quality and greenhouse
13 gases. So I guess I'm looking for expertise in areas,
14 other areas where you're asking to have your scope
15 expanded to.

16 MR. SIMPSON: Well, CEQA identifies the duties
17 of all Californians. It's all of our duty to protect
18 the environment. So this is how I accept that duty. I
19 participated in biological sections. I bring in experts
20 when necessary. It's -- we brought in expert testimony
21 so there's not -- there's not a question for do I have
22 to reprove that I can participate in this thing.

23 Nobody has made a contention that I didn't fully
24 participate in all aspects. So how am I on trial to
25 stay in this proceeding when I started it six years ago?

1 My attorney David Zizmor is also on the line. He
2 may want to speak to this issue.

3 HEARING OFFICER KRAMER: Let me unmute him.
4 That does raise a question that I'm actually a bit
5 confused about who's representing you and also where
6 Helping Hand Tools fits into this because you use their
7 names sometimes and sometimes you don't, and currently
8 we only have you in here as an individual.

9 So anyway, Mr. Zizmor, are you Mr. Simpson's
10 representative in this proceeding?

11 MR. ZIZMOR: Yes, I am.

12 HEARING OFFICER KRAMER: Okay. Go ahead if you
13 wanted to add something.

14 MR. ZIZMOR: First I would add that you
15 mentioned that Mr. Simpson doesn't necessarily live in
16 the Carlsbad area and that other people do. Section
17 1207 of the California Code of Regulations doesn't have
18 any requirement that people intervening be within the
19 region that is being discussed.

20 I understand that living nearby or being nearby
21 certainly makes it more relevant, makes it relevant for
22 those people, but that's not a requirement. It's just a
23 reasonableness requirement and relevance requirement,
24 and as Mr. Simpson already said, you know, he's
25 participated extensively in this proceeding, and, you

1 know, I don't quite understand what the value of
2 precedent is. If you're going to change it, you kind of
3 undermine the entire value of precedence.

4 He participated fully using the same intervenor
5 status and same intervenor petition, and you get one
6 result from one where you got full access for full
7 rights and using the same petition he would be given
8 limited rights.

9 In a proceeding that's essentially the same
10 proceeding, that's on the same site involving the same
11 issues, he really -- the only reason that he's not being
12 granted full status is kind of unclear here. I would
13 kind of wonder what the purpose is of the Commission
14 denying him access when he had full access before.

15 HEARING OFFICER KRAMER: Well, we're looking at
16 being a little more careful about focussing people,
17 learning what their focus is. The same regulation you
18 quoted you basically hit on the two relevant words,
19 which were reasonable and relevant, and I think it's
20 fair to say that this committee is perhaps refining its
21 notion of what is reasonable for intervenors, and we're
22 here today to have a dialogue about that.

23 MR. ZIZMOR: I understand you would want to
24 limit it as much as possible, but, you know, we're not
25 talking about a completely brand new case here. We're

1 talking about a continuation of an existing case that
2 Mr. Simpson has been a part of since 2008 when you
3 initially granted intervenor status.

4 You know, it's one thing if it's a new person
5 that's trying to intervene. It would be another thing
6 if it was a completely separate case to say Bakersfield
7 or Lake Tahoe or somewhere else, but we're talking about
8 someone who has already demonstrated a willingness in
9 their ability to comment on all matters of issues
10 involving the Carlsbad project. I think that given
11 that, he should be given the benefit of the doubt.

12 You know, if you want to -- if there's a
13 reasonableness, you know, in a future case, then that's
14 a separate issue, but we're talking about a case here
15 where he's been involved. He's not an unknown entity
16 here. He's someone that has been involved in the
17 Carlsbad process for so long that in and of itself
18 should weigh in his favor in terms of reasonableness
19 under 1207. You know, we're talking about the same
20 project, and I think that it would be fair for him to
21 contribute just as he had before for the same reasons he
22 was approved previously.

23 HEARING OFFICER KRAMER: Okay. Thank you.
24 Let's move to the other parties to see if they have any
25 comment.

1 Mr. McKinsey.

2 MR. MCKINSEY: Thank you. One thing I've been
3 hearing that I think is a misunderstanding that actually
4 we've been dealing with in other aspects of this
5 proceeding as well, is that the proceeding that we're
6 engaged in right now we should understand is a entirely
7 separate and distinct proceeding from the original AFC.
8 The AFC process resulted in a decision, and that
9 decision document is in the compliance phase. There is
10 a petition to amend, and this is a petition to amend
11 proceeding. So I don't think it's accurate that anyone
12 was kicked out. Instead, each proceeding has to take on
13 its own procedural aspects, and this is a petition
14 amendment that happens to have a committee assigned to
15 it and is conducting itself in a very thorough manner of
16 the valuation of the petition to amend, but it's still a
17 separate entirely unique and new proceeding.

18 Second point I would make is that while I think
19 historically, and I think there's been this presumption
20 for a long time, that there is a right to intervene, and
21 indeed the Energy Commission historically has pretty
22 much let anyone intervene for a long time, and only
23 occasionally have they exercised some discretion that I
24 think over the last decade we've seen some of that
25 become abused and overused. So the Commission's

1 direction that they've been taking in recent years of
2 actually exercising the discretion that they've always
3 had to decide whether an intervention is correct or not
4 is a demonstration that an intervention isn't a right.
5 It's a permission, and it's a permission where the
6 Presiding Member of the Committee has practically
7 untethered discretion.

8 If you read 1207 it's pretty clear that the
9 Commission, the Presiding Member can make a decision
10 based on their judgment as to whether or not they think
11 it's reasonable and relevant to allow somebody to
12 participate as a party.

13 The third thing I would say that I see all the
14 time is a misunderstanding not only about the fact that
15 somebody doesn't have a right to be a party member to a
16 proceeding and intervenor, but that they often use that
17 proceeding much as a public comment forum and not as an
18 actual party, that they're also duties of parties, and
19 too often an entity or person will be allowed as an
20 intervenor but not conduct themselves as a party to the
21 proceeding, and often that is where you see a lot of
22 problems, and so there's nothing that prevents anybody
23 from participating in the Energy Commission process, and
24 it's a very robust process that encourages significant
25 participation.

1 The status to be a party and to intervene is a
2 very important one that has to be managed carefully, and
3 we think that the decision that the Presiding Member and
4 the Committee made to limit Mr. Simpson's intervention
5 was appropriate, and that's why we supported it.

6 HEARING OFFICER KRAMER: Ms. Willis.

7 MS. WILLIS: As we stated in our filing that
8 staff is neutral to Mr. Simpson's appeal, though we do
9 believe that the Committee has the authority to exercise
10 its discretion in limiting or regulating intervention.

11 HEARING OFFICER KRAMER: Thank you. Let's see.

12 Doctor Roe, I don't know if you have any
13 comments. Let me unmute you. You're another party.

14 Go ahead, Doctor Roe. Can you hear us?

15 DOCTOR ROE: Hello.

16 HEARING OFFICER KRAMER: Is that you, Arnold?

17 DOCTOR ROE: Yes.

18 THE COURT: Did you have any comments on
19 Mr. Simpson's petition?

20 DOCTOR ROE: No. Thank you for asking.

21 HEARING OFFICER KRAMER: While I have you, do
22 you intend to comment on Mr. Sarvey at all either?

23 DOCTOR ROE: Possibly.

24 HEARING OFFICER KRAMER: Okay. We'll come back
25 to you then.

1 DOCTOR ROE: Thank you.

2 HEARING OFFICER KRAMER: Thank you.

3 Then, Mr. Simpson, if you or Mr. Zizmor want to
4 wrap it up. We still haven't heard any suggestions from
5 you about additional areas that you want to participate
6 beyond all of them. So if you have a more limited set
7 of special interests you can mention that now. This
8 would be the time.

9 MR. SIMPSON: I'm not sure if I heard the
10 previous figure say that I didn't act as an intervenor
11 or was that a general statement that they may happen on
12 occasions?

13 HEARING OFFICER KRAMER: Mr. McKinsey, were you
14 speaking specifically to Mr. Simpson or in general?

15 MR. MCKINSEY: I made a comment that was general
16 and not specific to Mr. Simpson's past performance in
17 this or any of the other proceedings where I've seen him
18 act as intervenor.

19 MR. SIMPSON: Thank you.

20 MR. MCKINSEY: That also does not mean that I
21 was suggesting -- I made no comment whatsoever about the
22 character of Mr. Simpson's intervention.

23 MR. SIMPSON: Yeah, I've had plenty of
24 experience with these issues. My perspective is
25 slightly different than the people that live near the

1 project, which is probably an important prospective to
2 have. Their position may be more myopic than the
3 wholistic look that I try to take in these projects, but
4 the Committee has to do what the Committee has to do.

5 I believe I have adequate expertise and
6 experience in all issues of the proceeding. I would
7 like to participate in all issues of the proceeding. So
8 that's what I have to say.

9 HEARING OFFICER KRAMER: Okay. Thank you. So
10 we will close then.

11 Do we have anymore questions?

12 PRESIDING MEMBER DOUGLAS: No.

13 HEARING OFFICER KRAMER: Okay. We're going to
14 close the matter of Mr. Simpson's petition, and we will
15 deliberate and issue an order in response.

16 Now we have Mr. Sarvey's petition to intervene
17 filed October 26th.

18 Mr. Sarvey, you provided very little specific
19 information, maybe none is more appropriate, about
20 specific topic areas that you were interested in.
21 You've been listening to this previous conversation so
22 information about what value it is that you would bring
23 to the proceeding as an intervenor. Can you speak to
24 that, please? I probably have to unmute you so hold on.

25 There you go, Mr. Sarvey.

1 PRESIDING MEMBER DOUGLAS: Mr. Sarvey, your
2 voice is not coming across. Are you speaking?
3 HEARING OFFICER KRAMER: You sort of disappeared
4 into the background there.
5 PRESIDING MEMBER DOUGLAS: Mr. Sarvey, we're not
6 hearing you.
7 HEARING OFFICER KRAMER: Are you using a
8 speakerphone by chance?
9 MR. SARVEY: No, I'm on a regular phone.
10 HEARING OFFICER KRAMER: Sounds like the
11 microphone is drifting away from you. Are you using
12 Skype?
13 MR. SARVEY: No, regular phone.
14 HEARING OFFICER KRAMER: It sounds really bad.
15 Go ahead and try -- we're not getting you.
16 PRESIDING MEMBER DOUGLAS: Go ahead and call
17 back.
18 MR. SARVEY: I'll call back.
19 HEARING OFFICER KRAMER: Should we move on to
20 the next item?
21 PRESIDING MEMBER DOUGLAS: (Nods head.)
22 HEARING OFFICER KRAMER: Okay. Doctor Roe,
23 while Mr. Sarvey comes back we're going to move on to
24 the third item, which is Power of Vision's request to
25 extend the discovery cut off. Are you there?

1 DOCTOR ROE: Yes.

2 HEARING OFFICER KRAMER: Okay. As Mr. McKinsey
3 noted in, I think, his filing objecting to your request
4 of the City, the data request regulation only allows the
5 data request to be made of parties, and the City and
6 Mr. McKinsey's document, he pointed out, was not a
7 party, but also neither are the Air District or the
8 Coastal Commission. So I wanted to ask you how you
9 think that you could get around that aspect of the
10 regulation. That was a technical legal term, "get
11 around," of course.

12 DOCTOR ROE: I'm glad you use those legal
13 technical terms. Yes, I've already found it this
14 morning, a response to a data request. The City and
15 their representatives were very gracious in responding
16 kindly for the information that I requested.

17 As far as the San Diego Air Pollution Control
18 District, it seems that it does come under review
19 certainly by the staff because they're not going to make
20 their assessment until 45 days after they receive the
21 POD and seeing that there should be a item in there that
22 we should have an opportunity to discuss as happened in
23 the original proceedings.

24 In the original proceedings we tried to offer
25 comments through the POD, through the Air Pollution

1 Control District, and we were told that there was no
2 mechanism for doing it through the Air Pollution Control
3 District, and it would be done in a workshop or
4 elsewhere in the original hearings, which did occur.

5 We did have an opportunity to discuss POD before
6 staff made their final -- their initial -- preliminary
7 recommendations, and so it seems appropriate that in
8 this proceeding that we have a similar opportunity to
9 review and comment on the findings. I don't anticipate
10 there's going to be any serious objections, but one
11 never knows until one sees the document, and that's why
12 I requested it in this limited case. I'm not asking for
13 a general extension of the cutoff state for a data
14 request but in this limited case POD I so requested.

15 I would like to make a comment on a further
16 issue that may require an individual extension of the
17 cutoff.

18 HEARING OFFICER KRAMER: Before you do that let
19 me ask you: How are data requests part of -- you're
20 talking about a discussion that's more in the line of
21 having a workshop or something, am I wrong?

22 DOCTOR ROE: There should be some forum for
23 discussing both commenting on the POD since the
24 timeframe did not allow the POD to present in time for
25 the previous workshop, and there's none scheduled in the

1 immediate future. It seems appropriate that in this
2 limited case this would be an opportunity to some forum,
3 and that's the only forum remaining, data request, and
4 that's the way it should be done.

5 HEARING OFFICER KRAMER: You can always submit
6 written comments to the staff. That sounds like what
7 you're talking about rather than asking for data because
8 data is just going to get you information. In essence,
9 you're asking the recipient of the data request to give
10 you information. It sounds as if you want to convey
11 information in the form of your comments to the staff,
12 am I wrong?

13 DOCTOR ROE: Well, an opportunity not to comment
14 but to make inquiries because the relevance of a comment
15 depends on the knowledge that one has to put forth, and
16 sometimes it isn't that we want to comment, but we want
17 to know more about what document says so that we can
18 comment appropriately. So there has to be a way in
19 which we can raise questions.

20 HEARING OFFICER KRAMER: Okay. All right. I
21 think I understand. I'm still not sure you're talking
22 about the right tool for what you want to do, but I
23 think I understand where you're coming from.

24 So do you have -- why don't you mention that
25 other item, then we'll go around to the other parties

25

1 and see what they have to say.

2 DOCTOR ROE: All right. A similar situation is
3 occurring with NRG's statement at the September 24, 25th
4 workshop here in Carlsbad that they were modifying their
5 transmission line plans and that they would submit the
6 drawings to the Commission within ten days. Well,
7 30 days have gone by now, and they have still not
8 submitted their new proposal for the location of some of
9 the transmission power poles, and we need the
10 opportunity when we do see what they propose to make
11 further inquiries on how this will effect particularly
12 the visual aspects of the project.

13 By NRG continuing with delaying, providing
14 information that they say is part of their PTA, we won't
15 have an opportunity to make inquiries, data requests
16 relevant to their new proposed transmission line, and so
17 I just would like to bring up that we would like to
18 request a similar extension for the data cutoff date for
19 the change, the major change that they propose to make
20 in the visual aspects of the transmission, get a very
21 limited extension, not pushing the entire date for data
22 request back.

23 HEARING OFFICER KRAMER: Okay. Let's go around
24 and see what the other parties have to say.

25 Mr. McKinsey.

1 MR. McKINSEY: Thank you. Let me first begin by
2 addressing Mr. Roe's comment about the transmission line
3 movement. It's something really the Committee hasn't
4 seen per se because it occurred in September. It was
5 brought up at the workshop, and actually there's
6 something a little disappointing in Mr. Roe's comments,
7 which is that what's actually changed came about from a
8 series of meetings that NRG executives had with members
9 of the community including Power of Vision and Mr. Roe
10 and is a concession to move, where we could, the
11 generator connection transmission poles down into the
12 bowl instead of up on the ridge reducing their
13 visibility, and it's close to, if not one of the
14 suggestions that Mr. Roe had had in earlier filings that
15 he made, comments.

16 ASSOCIATE MEMBER McALLISTER: This is the
17 generator intertie?

18 MR. McKINSEY: Yes, these are the generator
19 intertie lines that run from the transformers that run
20 to the substation. So there's two lines, and we realize
21 we can move the northern two poles down to the bowl, but
22 by the time we get to the third of the three poles that
23 run along the east side, because they all have to now
24 connect and turn, it wasn't possible to move the third
25 pole.

1 So that's a concession we agreed to right before
2 the workshop, and we announced it at the workshop,
3 though I think Mr. Roe knew about it a day or two before
4 that, and that requires that we modify a few of the site
5 plans to show these new locations, and it coincided
6 really well with the fact that we were modifying the
7 visual renderings of the project anyway to update them
8 to new photos. That's something we agreed to do at the
9 workshop. So the documents that we're struggling to
10 finish filling are all new renderings using new current
11 photos because there had been some dead tree pruning
12 removal, and we were still using the old photos that the
13 renderings were based on and then also showing this
14 improved reduced visibility of these transmission lines,
15 and they're just about done.

16 We didn't actually say we were going to get that
17 particular thing in ten days. We pledged -- we had a
18 deadline that we had been posed for certain of our data
19 responses and we did get that done. We ended up asking
20 for a slight extension on one particular one which was
21 visual renderings because we had just thrown another
22 layer on it which was moving the poles, which required
23 we first get the new plans done so that they could be
24 put in. So all that said, the change is a positive
25 concession and enhancement. It's not some change that

1 we announced, you know, to modify the project.

2 Secondly, to Mr. Roe's comment about extending
3 the deadline for discovery and discovery in general, I
4 do think that it's relevant, and this, again, is one of
5 the big challenges of being a party to understand the
6 different procedural mechanisms that are available and
7 what they are and also understanding the process enough,
8 and so the Air District's process is a separate process
9 from the Energy Commission process, and their initial
10 document, the preliminary determination of compliance
11 certainly feeds into the Energy Commission's analysis,
12 but they're conducting their own air analysis, and we
13 definitely don't think it would be appropriate to extend
14 a discovery deadline based on another process.

15 We didn't oppose his request for discovery
16 extension in particular because even if the deadline has
17 expired, a party can always still submit a data request
18 asking either the party to agree to answer it anyway or
19 asking the Committee to order us in lieu of the
20 deadline. So the fact the deadline comes and passes
21 really doesn't change a party's ability if they have a
22 meaningful question.

23 We're not opposed if a party says there's a
24 particular piece of data that we want from you and we
25 think it's relevant and worth while providing and we can

1 do it. I think we'd do it up to the last second without
2 an issue. So we're not so worried about exactly where
3 that discovery deadline falls.

4 With that said, we just objected to all of Power
5 of Visions new set data requests which is a sign that we
6 think there is some issues going on between asking data
7 requests that are either useful and relevant or are not,
8 and so it may be that whatever data requests that Power
9 of Vision want to submit based on what they see in the
10 renderings either, A, won't be a data request and we'll
11 have to say, look, that's not really a data request.
12 It's a comment or it's a desire for something or it's
13 something that we don't think is a legitimate data
14 request, but we're not opposed to getting those and
15 dealing with them.

16 But we do think that you have to tell the
17 parties there's a deadline, and we don't have an issue
18 with the Commission, you know, saying, you know, this is
19 the discovery cutoff, but we completely understand Power
20 of Vision's comment that we are adjusting a few things.
21 We're providing some new renderings and moving these
22 lines, and if the parties look at that and say, hey,
23 there's a problem here, you know, we want you to do X,
24 they're not silenced from asking for that even if a
25 discovery deadline has passed.

1 HEARING OFFICER KRAMER: Yeah, and there's a
2 corollary provision in 1716 that allows requests to be
3 submitted if they show good cause.

4 So what you're suggesting is they should ask you
5 first and if you say, "Yeah, no problem. I'm willing to
6 answer that," then they don't even have to apply to the
7 Commission. They can just make an informal request
8 perhaps.

9 MR. MCKINSEY: That's correct.

10 HEARING OFFICER KRAMER: Okay.

11 Ms. Willis.

12 MS. WILLIS: Yes, thank you.

13 As far as the PDOC request to have 30 days
14 following the issue of the PDOC to ask more data
15 requests, hopefully, and we're planning on having a PSA
16 workshop following, I would anticipate that the Air
17 Quality District would be there and present, as would
18 our air quality experts would be available to answer
19 questions, discuss issues. There's plenty of time
20 between that workshop and the final staff assessment to
21 address any of those issues. We didn't file an
22 objection to the request that I think there are other
23 avenues to provide information.

24 The second part of his request for extending the
25 deadline for the Coastal Commission comments, we're a

1 little more concerned about that just because at this
2 point in time we don't know the nature of the comments
3 or when they might be filed. I know we're working to
4 work closely with the Coastal Commission to have
5 comments earlier in the proceeding, which could be
6 following the PSA which would allow time to have those
7 workshops as well, but I think our concern mostly is
8 timing, and we're just not sure at this point how that
9 might effect the process.

10 HEARING OFFICER KRAMER: We were going to ask
11 you later, but since you mentioned it, this is a good
12 time.

13 Do you know if the Coastal Commission is
14 actually intending to make any comments? The last time
15 they didn't.

16 MS. WILLIS: I don't know that they will for
17 sure. I do know that we have our acting chief counsel
18 that will be discussing that with the Coastal Commission
19 shortly probably following the October 29th meeting.

20 HEARING OFFICER KRAMER: So can we give you the
21 homework of checking in with them and reporting in your
22 next status conference or status statement if you can
23 or --

24 MS. WILLIS: I check regularly and will continue
25 to do so.

1 HEARING OFFICER KRAMER: Okay.

2 MS. WILLIS: And report back.

3 PRESIDING MEMBER DOUGLAS: That's great. We
4 definitely want to encourage close coordination with the
5 Coastal Commission.

6 MS. WILLIS: Understood.

7 ASSOCIATE MEMBER McALLISTER: This site in
8 particular with the design plan next door they have
9 shown a lot of interest in this site, so I would expect
10 them to follow in compliance.

11 I did have a question, Mr. McKinsey. Is there
12 an ETA for the revised renderings?

13 MR. MCKINSEY: I think it's Monday or Tuesday.
14 I'm looking over at George Piantka who's here from NRG.
15 Maybe he can comment a little.

16 PRESIDING MEMBER DOUGLAS: You should come by a
17 mic.

18 MR. PIANTKA: This is George Piantka with NRG,
19 and Data Set Three covered a number of visual aspects
20 that had a due date of October 31. We haven't
21 responded, submitted our Data Set Three, but in
22 particular in our visuals we think we're going to need a
23 couple extra days. So we're evaluating and would
24 respond with a November 3rd or 4th date to wrap up
25 visuals.

1 MR. MCKINSEY: To be clear, they ended up coming
2 out of the workshop. The staff issued a third set of
3 data requests, and one of those data requests is asking
4 specifically for these visual renderings using the new
5 photos, and the deadline for timely response on that
6 would be the 31st, and what he's indicating is we're
7 probably going to file a request for extension to
8 November 4th for that.

9 HEARING OFFICER KRAMER: Mr. Simpson, do you
10 have any comments on this?

11 MR. SIMPSON: Sure. I understand Doctor Roe's
12 motion for extension of time. I mean, it sounds like
13 you guys want to say it's something deciding what it is,
14 but this practice of holding discovery and adding vital
15 information to the record that should be subject to
16 discovery is backwards. The discovery shouldn't be
17 closed until the PDOC has been reviewed by the parties,
18 and this also speaks to my objection that's included in
19 my last filing that I've been put behind by, what, four
20 or five months on this.

21 So far I still don't have intervenor status. So
22 discovery should be put -- I should have received notice
23 when this proceeding started. I should have been an
24 intervenor when this proceeding started. So I shouldn't
25 be prejudiced by these actions to allow my intervenor

1 status after discovery closes. What I'm looking for is
2 the same discovery opportunity that I would have if I
3 was an intervenor on day one and had the same
4 opportunity that the parties received notice of this
5 proceeding here.

6 So whether you want to call it an additional
7 motion, which I'll call it an additional motion right
8 now, that discovery remains open for a period beyond my
9 entire approved intervention to what I would have
10 originally had or also to be considered within prospects
11 of my objection.

12 HEARING OFFICER KRAMER: We'll come back to
13 that, Mr. Simpson.

14 Mr. Zizmor, did you have any --

15 ASSOCIATE MEMBER McALLISTER: Can I ask one
16 question real quick?

17 Following up quickly with staff, are you saying
18 you see the Coastal Commission and both issues, both of
19 Mr. Roe's issues as similar in that neither is affected
20 by the close of discovery or are there still
21 opportunities to receive new information after this
22 deadline passes in terms of Coastal Commission comments
23 and the Air Districts evaluation?

24 MS. WILLIS: Well, in my experience we don't
25 usually issue data requests to the Coastal Commission,

1 but if they do participate, which we're hoping that they
2 will early, then there would be plenty of opportunity
3 for us to meet with them and have public meetings where
4 all parties in the public could be present. I don't see
5 that as being an issue for exchanging information.

6 ASSOCIATE MEMBER McALLISTER: So therefore in
7 your view it's not related to the main activities of
8 discovery and the deadline thereof?

9 MS. WILLIS: No. I mean in general the
10 discovery issue is usually with the applicant trying to
11 get as much information as we can about the project.

12 ASSOCIATE MEMBER McALLISTER: Thanks.

13 HEARING OFFICER KRAMER: Okay. Mr. Zizmor, did
14 you have anything to add to Mr. Simpson?

15 MR. ZIZMOR: Just to reiterate that --

16 HEARING OFFICER KRAMER: You don't need to
17 repeat what he said.

18 MR. ZIZMOR: I just would say that because his
19 intervenor status has been delayed we would support
20 extending the discovery date, and I think just in terms
21 of openness, I think we would support it, and, you know,
22 I think adding extra time to discovery doesn't hurt, and
23 I think being able to have the information prior to the
24 deadline and extend the deadline would help all parties.
25 I think it gives them a chance to intervenors and

1 everyone else a chance to at least get the information
2 out.

3 As Mr. Simpson said, you know, we've kind of
4 been behind the ball because the delays in our
5 intervenor status that we would certainly support
6 extending the deadline.

7 MR. SIMPSON: This is Rob Simpson speaking. Can
8 you hear me?

9 HEARING OFFICER KRAMER: Oh, yes. Go ahead.

10 MR. SIMPSON: Thank you. I would like to point
11 out that the Coastal Commission comments, the report,
12 whatever it turns out to be and the Air Districts PDOC
13 are not necessarily issues that we want discovery from
14 the Coastal Commission or the Air District, but the
15 Coastal Commission and the Air District are going to
16 raise issues that should result in discovery requests of
17 the applicant, of the Commission. So we don't have all
18 the information to know the questions to ask you.

19 HEARING OFFICER KRAMER: Okay. Doctor Roe --
20 well, hold on.

21 Mr. Horres, are you there? We unmuted you. Go
22 ahead, Mr. Horres from the Air District.

23 MR. WALTERS: This is Will Walters. I believe
24 you need to unmute them. I believe one of them is
25 Mr. Moore.

1 HEARING OFFICER KRAMER: Mr. Moore, are you
2 there?

3 MR. MOORE: This is Steve Moore.

4 HEARING OFFICER KRAMER: We had a question for
5 you. When you issued your PDOC, the Air District, is it
6 or is it not going to have a comment period?

7 MR. MOORE: It will have a 30-day comment
8 period.

9 HEARING OFFICER KRAMER: So Doctor Roe and
10 others could make their comments and ask for information
11 during that process, right?

12 MR. MOORE: Yes, they can, and they can ask for
13 information any time. Our records are public
14 information. So they can make information requests at
15 any time.

16 HEARING OFFICER KRAMER: Do you happen to know
17 the District rule number that requires that?

18 MR. MOORE: Requires the notice period?

19 HEARING OFFICER KRAMER: Yes.

20 MR. MOORE: It's rule 20.3 or 20.2 actually.

21 HEARING OFFICER KRAMER: Thank you. It saves me
22 having to look it up.

23 Okay. I didn't realize you were on there. Did
24 you have anything else to say?

25 MR. MOORE: Well, that's all I have in response

1 to what's been discussed right now.

2 HEARING OFFICER KRAMER: So would you be the
3 spokesperson for the District rather than Mr. Horres?

4 MR. MOORE: Well, Mr. Horres is working with me
5 on the project so we both can be spokesman, but I'm the
6 primary point of contact, yes.

7 HEARING OFFICER KRAMER: Please stick on the
8 line because we want to talk to you a little later when
9 we go to discuss the schedule.

10 MR. MOORE: Okay.

11 HEARING OFFICER KRAMER: I'll try to keep you
12 open unless we get a lot of noise on your line then
13 we'll mute you again.

14 MR. MOORE: Okay.

15 HEARING OFFICER KRAMER: Okay. So then I think
16 we've gone all the way around.

17 DOCTOR ROE: Do you want to come back?

18 HEARING OFFICER KRAMER: Yeah, your brief
19 comment, Mr. Roe.

20 DOCTOR ROE: Yes, I appreciate all the
21 information the participants and you have given me. I'm
22 quite satisfied, and we'll have an opportunity to look
23 at the POD and make comments, and I was also glad to
24 hear that will be discussed at a future workshop. So my
25 concerns have been laid to rest on that.

1 HEARING OFFICER KRAMER: Does that mean you no
2 longer need to advance your motion or do you need a
3 ruling still?

4 DOCTOR ROE: I don't know how to answer that
5 one. However, I do have a question. I want to thank
6 Mr. McKinsey and the people from the City who educated
7 me on Title 20, Section 1716, information unfortunately
8 that I was not able to get after months of inquiry from
9 our public advisor. So I now know what the Section 1716
10 says, and there is Section E of 1716 that says:

11 "Requests for information shall be submitted no later
12 than 180 days from the date the Commission determines an
13 application is complete." I don't recall seeing any
14 determination by the Commission that the PTA application
15 was complete.

16 Was there a date on which that occurred?

17 HEARING OFFICER KRAMER: There is no --
18 actually, there's no determination for that for
19 amendment. We use that as the date that is filed. In
20 any event, the Committee has the power to adjust
21 deadlines.

22 So you may remember at the informational hearing
23 we said we're largely using the processes that apply to
24 an AFC, so that was the committee's application of that
25 deadline that we set forth in the schedule. But the

1 other part of that, we want to make sure you know this,
2 is that you can file request after the deadline if you
3 show good cause for making it.

4 DOCTOR ROE: I'm pleased to hear that, so, yes,
5 you may remove my petition.

6 HEARING OFFICER KRAMER: Okay. We will note for
7 the record then that Power of Visions petition is
8 withdrawn, and we will not take further action on it.

9 Thank you.

10 DOCTOR ROE: Thank you.

11 HEARING OFFICER KRAMER: Now Mr. Simpson, he
12 made an oral motion to extend the discovery to
13 unspecified time.

14 Mr. Simpson, we generally require that motions
15 be accepted if they're made at the last moment, say in a
16 hearing, that they be written and, you know, the basis
17 for the decision including the law be explained but also
18 taking the motion on its merits without more specifics
19 about what exactly you would want to inquire about,
20 which I guess by definition you can't know at this time
21 as you described it because you haven't seen the
22 document.

23 It would be inappropriate to sort of give a
24 blanket extension of the discovery period, so your
25 motion is denied, but you are also free as is Doctor Roe

1 to make a request with a showing of good cause under
2 Section 1716(e) as in echo. So thank you.

3 We will now go back -- I'm going to mute
4 Mr. Simpson because he's giving us some background
5 noise, and we're going to open up Mr. Sarvey and go back
6 to his petition to intervene.

7 So first give us a sound check, Mr. Sarvey, to
8 see how you're doing.

9 MR. SARVEY: Can you hear me okay?

10 HEARING OFFICER KRAMER: Much better. So the
11 question on the table, as I recall, what is it that you
12 would bring to the consideration of this matter if you
13 were granted intervention privilege by way of expertise
14 or information that wouldn't be provided by others, and
15 also, do you have specific topic areas you wish to
16 participate in mind or are you asking to participate in
17 all topic areas?

18 MR. SARVEY: Generally, I would like to
19 participate in all the topic areas but specifically the
20 ones that I identified before reviewing all materials as
21 air quality, hazardous materials, land use, public
22 health, alternatives, biology, visual resources and
23 water resources.

24 As far as my expertise, I've filed previous
25 testimony. I was in Mariposa. For example,

1 Commissioner Douglas is familiar with that. I filed
2 testimony in land use. I filed air quality,
3 socioeconomics, alternatives, orchestrated product
4 protection, hazardous materials. I filed rebuttal
5 testimony as well.

6 When I don't have expertise I hire people. Like
7 in the past I've hired Shaun Smallwood (Phonetic).
8 I've hired other biologists, particularly biologists
9 where I would need some help. I will hire an expert in
10 any topic area that I don't have the ability to properly
11 present my case.

12 HEARING OFFICER KRAMER: Okay. So could you
13 give me the list again a little slower?

14 MR. SARVEY: Sure. This is initial without
15 reviewing all the material: air quality, hazardous
16 materials, land use, public health, alternatives,
17 biology, visual resources and water resources.

18 HEARING OFFICER KRAMER: Okay. You of course do
19 not reside in the area either, the project area. So
20 what is it that you bring that's not brought by Power of
21 Vision and Terramar, the two local groups that are
22 already intervenors?

23 MR. SARVEY: I don't know. I'm not familiar
24 with their capabilities, but what I've seen in the
25 past I haven't seen them provide much in the way of

1 air quality, hazardous materials or public health and
2 alternatives. So I haven't seen -- all of their work
3 that I've see from the previous siting case there was a
4 lot of areas they didn't cover.

5 PRESIDING MEMBER DOUGLAS: Mr. Sarvey, do you
6 have any specific statement you would like to make about
7 the nature of your interest in the subject matters that
8 you've listed?

9 MR. SARVEY: Do you want me to specify what my
10 issues are in the matters that I've listed?

11 PRESIDING MEMBER DOUGLAS: The high level, not
12 obviously with great specificity because you don't have
13 the PSA, for example, but at a high level, yes.

14 MR. SARVEY: Well, certainly air quality is an
15 issue. That's not just a local issue. That's an issue
16 throughout the State of California.

17 As far as alternatives, I support the initial
18 project, the simple cycle project because I believe it's
19 better for the environment and visual resources. I've
20 seen some of the presentations, and, you know, I'll have
21 to see the final presentation the staff gives and the
22 FSA to know. Land use, I see the issue of the height
23 restrictions, so I think that's an issue, and those are
24 some of the additional things that I see.

25 HEARING OFFICER KRAMER: Thank you.

1 Mr. McKinsey.

2 MR. MCKINSEY: Thank you. I think, again, one
3 of the most telling things that creates an issue with
4 intervention in a petition to amend is this difference
5 between a petition to amend an existing approved project
6 and an actual AFC proceeding. It's this topic of scope.
7 For instance, if this was a petition to make a really
8 small change to a project we wouldn't even bother to go
9 through the process that we're going through, but in any
10 case, there's always this question of now that we're
11 going through this petition process, you know, what is
12 the appropriate issue areas that are effected by the
13 change or not. And what I hear from Mr. Sarvey, even
14 though I think he recognizes there's an existing
15 decision, is essentially a desire to relitigate all
16 aspects of the project which is concerning.

17 Second, I think it's the same topic that I think
18 is key here. There's a big difference between
19 participating in a proceeding and becoming a party, and
20 the fact that somebody, for instance, "files testimony,"
21 quote, unquote, doesn't mean they really needed to be a
22 party.

23 You know, anything you file is considered in a
24 proceeding whether it's as a public comment or is
25 official evidence. Comments made, you know, when

1 they're made in a timely matter, the staff responds to
2 comments they receive from the public and their
3 assessment and their documents. So I don't think that
4 both from the very short document that he provided, the
5 two paragraphs saying, "I want to intervene," and what I
6 heard orally I hear any real interest. I heard these
7 are issues, but I don't hear the reasons why he's going
8 to add value to this proceeding and this process.

9 Instead I think I see distractions and perhaps
10 other things that don't really help the Committee reach
11 a decision on the petition, which should be the sole
12 purpose of having somebody become a party. So we remain
13 opposed to admitting him as a party.

14 HEARING OFFICER KRAMER: Thank you.

15 MR. SARVEY: May I respond to that?

16 HEARING OFFICER KRAMER: Wait. You'll get a
17 chance at the end.

18 Ms. Willis.

19 MS. WILLIS: As stated in our filing, staff is
20 not taking a position on Mr. Sarvey's intervention. We
21 do not have a neutral position on intervenors.

22 HEARING OFFICER KRAMER: Okay. Let's see.

23 Mr. Simpson, go ahead.

24 MR. SIMPSON: Oh, sure. I support Mr. Sarvey's
25 petition to intervene. The Committee should be honored

1 to have a man with his experience in these matters. To
2 try to limit the participation in these proceedings to
3 just local homeowners that don't necessarily have a
4 scope or interest in the biological resources or the
5 experience that Mr. Sarvey has would create a great
6 loss.

7 So the idea that it should just be the people
8 who live in the neighborhood who are allowed to
9 participate in the state proceeding, this is not a local
10 proceeding. This is not a city council meeting. The
11 state decided this was an issue of statewide importance.
12 So members of the state, regardless, should be able to
13 participate.

14 Thank you.

15 HEARING OFFICER KRAMER: Thank you.

16 Doctor Roe.

17 DOCTOR ROE: I don't know Mr. Sarvey nor his
18 organization, but he said something that was very
19 important to me, and that is, he said that if he doesn't
20 have the expertise he has the means and wherewithal to
21 bring in expert witnesses to discuss these issues,
22 something that neither Terramar or Power of Vision have.
23 We don't have the financial resource to bring in other
24 expert witnesses in some of the areas where we're not
25 competent. So I support Mr. Sarvey's petition to become

1 intervenor.

2 HEARING OFFICER KRAMER: Okay. Thank you.

3 Mr. Sarvey, one question for you. You said air
4 quality, but I presume you also include the category of
5 greenhouse gases; is that correct?

6 MR. SARVEY: Absolutely.

7 HEARING OFFICER KRAMER: Okay. Go ahead and
8 make your closing comments.

9 MR. SARVEY: Well, I just wanted to respond to
10 something that the Applicant said, that somehow my
11 participation would be frivolous or distracting. I
12 don't think I've ever heard that from any commissioner
13 when a proceeding is concluded. I take offense to that.

14 And I want to say that, you know, I've been
15 practicing before this Commission since 2001, longer
16 than most of the people, longer than all the
17 commissioners have been serving, and I've never seen an
18 issue denied for a timely filed petition to intervene.
19 So I think the practice you're trying to impose here
20 threatens the CEQA public process.

21 For example, I can file a protest to the
22 Carlsbad project. I would have full participation
23 rights by virtue of a simple protest. I don't have to
24 go to Carlsbad. I don't have to prove my qualifications
25 and my interests in the project. I just need to file a

1 protest of full rights in the proceeding. I'm a party
2 with full participation rights in all aspects.

3 If I wanted to participate in a PSD permit
4 proceeding all I have to do is appeal to the
5 environmental appeals board, show where the PSD permit
6 is lacking and I have full rights. So I don't
7 understand where the Commission is going with this, and
8 I don't think it's necessary, and I think it definitely
9 threatens your CEQA process and has ramifications that
10 you really don't want to have.

11 Thank you.

12 HEARING OFFICER KRAMER: Okay. Thank you.
13 We'll conclude that discussion then and take it under
14 submission.

15 That then brings us to the schedule because we
16 have no other motions that have been filed since. Right
17 now the schedule is indefinite. We received the City's
18 letter asking that the Committee try to take a little
19 more charge of things and get a more definitive
20 schedule. So let's begin with staff.

21 Ms. Willis, right now the whole thing is sort of
22 premised on the arrival of the PDOC, and maybe we could
23 ask Mr. Moore, it occurs to me, since this is sort of a
24 lynchpin rumor that the PDOC may come out tomorrow.

25 Is there anything to that?

1 MR. MOORE: There's nothing to do that. We plan
2 to have a draft by the end of this week or very early
3 next week. It will be internal review after that. So I
4 would guess it's probably another couple weeks before we
5 get it out. We do have a draft pretty much done. There
6 are a few loose ends of the air quality model we have to
7 tie up.

8 HEARING OFFICER KRAMER: Does any of that
9 require any information from the Applicant, or is it all
10 internal?

11 MR. MOORE: It's all internal. We would
12 certainly ask the Applicant when we need information.
13 We have had some recently actually.

14 HEARING OFFICER KRAMER: So then the PDOC may be
15 November, what's that, about the sixth, I think, Friday?

16 PRESIDING MEMBER DOUGLAS: Can you give us your
17 best possible date for the PDOC?

18 MR. MOORE: Probably I would guess November 10th
19 to give us the weekend.

20 HEARING OFFICER KRAMER: Okay. So then,
21 Ms. Willis for staff, it's starting to look like maybe
22 we need to get the other parts of the PSA out sooner
23 than the PDOC plus 45 days.

24 Is that possible?

25 MS. WILLIS: It would depend on what dates

1 we're looking at because staff, we have been working towards
2 the PDOC plus 45. I know at this point we were
3 thinking -- we'd been told that it was going to be out
4 the 24th. So we were looking at the first week of
5 December. Pushing it out two more weeks sounds like
6 we're at Christmas or pretty close to it, so I'm not
7 sure how the dates are lining up at this point.

8 HEARING OFFICER KRAMER: Okay.

9 MS. WILLIS: I can go back and talk to folks.
10 We were expecting sections to start coming in in the
11 next -- but I guess we're also waiting for the set three
12 responses that are now third or fourth of November. Set
13 four is supposed to go out this week, and that will be
14 another 40 days with responses to those if they're not
15 objected to.

16 HEARING OFFICER KRAMER: So that probably
17 doesn't effect every topic area?

18 MS. WILLIS: No, it does not.

19 HEARING OFFICER KRAMER: How many are discovery
20 dependent, would you say? Mr. Monasmith would know
21 better.

22 MS. WILLIS: Three topics.

23 HEARING OFFICER KRAMER: Which are those?

24 MR. MONASMITH: Cultural, water and TSE.

25 MS. WILLIS: And then visual would be the set

1 three sections.

2 HEARING OFFICER KRAMER: So it's four.

3 PRESIDING MEMBER DOUGLAS: But even then, that
4 information is coming in eminently, right?

5 MR. MCKINSEY: So one of the things we just did
6 yesterday was objected to staff's visual data request in
7 set three near the end of day. I don't know if staff's
8 seen this yet. It's probably lurking in an e-mail from
9 the docket system. So there could be, depending on how
10 they decide to respond to that objection, another issue
11 that the Committee may have to pay attention to, and it
12 relates frankly to the same kind of scope topic about
13 whether or not the data requests are relevant and
14 necessary to evaluate the PTA. Other than that,
15 everything else that staff has asked for we're producing
16 and pretty quickly, but if we get another set of data
17 request this week or next week there's only so fast that
18 we can move.

19 We might object to them, but we're not going to
20 object to them if they're obviously relevant data
21 requests.

22 ASSOCIATE MEMBER McALLISTER: That's about the
23 visual we talked about already?

24 MR. MCKINSEY: Yeah. It's questions asking
25 mostly about I-5 widening and the impacts I-5 widening

1 could have on the project and rendering some visual
2 characterizations and a lot of other things associated
3 with that.

4 With that being said, I don't think we have any
5 concerns. Staff is working very hard and we know that,
6 and there have been, up to this point, the need for data
7 which we've been producing as quick as we could. So if
8 you want, I'll make my comments about the topic of
9 schedule.

10 Where we see schedule slide in proceedings isn't
11 always just getting to the first staff point, but
12 sometimes we'll get to there and then just trying to
13 schedule things, set events and line them up to
14 everybody's calendar we can lose a lot of time, and so
15 the City's comment was useful to the point that having
16 some schedule, you know, rather than just say, "To be
17 determined," allows a lot of other things to start
18 happening.

19 If we had some tentative window for evidentiary
20 hearings we could be lining up people's calendars so we
21 know, because other times what will happen is we get to
22 where we get the final staff assessment and all of the
23 sudden trying to get the two committee members'
24 calendars lined up with the ALJ with available facility
25 just makes us lose another month or two. So making an

1 attempt to schedule that looks like everyone can start
2 planning around a little bit and maybe have to adjust it
3 as necessary, we think that's a good idea.

4 HEARING OFFICER KRAMER: Okay. So do you have
5 anything more, Ms. Willis?

6 MS. WILLIS: I do want to add something without
7 having seen Mr. McKinsey's filing. In regards to the
8 I-5 widening, staff is having a meeting with Caltrans on
9 Tuesday to have more discussion about that. So we might
10 have more information regardless of whether they
11 objected or answered to the request.

12 HEARING OFFICER KRAMER: So you may get it from
13 another source?

14 MS. WILLIS: We may. We're trying.

15 HEARING OFFICER KRAMER: Okay. So,
16 Mr. McKinsey, the date I think we're starting to think
17 about, that's working back from the date of adoption by
18 the Full Commission of a decision. Back for the
19 informational hearing you had us scheduled in June of
20 next year. Is that still the target you're hoping for?

21 MR. MCKINSEY: The second quarter is pretty
22 critical to ensure that the project is able to go
23 through all the other things it has to go through after
24 the decision to finance it and move it forward to come
25 in on a 2018 obligation. So the real key in all this is

1 I think getting a decision in that mid second quarter,
2 which is kind of where we're hoping we can get, and I
3 don't see anything that says we still can't get there
4 even if, you know, we're pushing out the staff
5 assessment because we have to get everything kind of
6 done right.

7 You know, I've seen projects, in fact I've moved
8 a few, where we went from, you know, preliminary staff
9 assessment to a final staff assessment pretty promptly
10 and quickly and right into evidentiary hearing, but it's
11 getting more like in order for us to accomplish it
12 that's what we're going to have to go and do to stay on
13 that schedule.

14 HEARING OFFICER KRAMER: Given the parties we
15 have, trying to do something like that, have the
16 prehearing conference and hearing on the same date don't seem
17 very workable to us. If that was one of the bits of
18 air that you were trying to squeeze out of the
19 schedule I don't see that as really workable.

20 How much time do you think we need between the
21 PSA and the FSA? You normally have a 30-day comment
22 period, and you need, what, a couple weeks to write, so
23 six weeks sounds tight but doable.

24 MS. WILLIS: I think a lot of it depends on the
25 PSA, if we have all the information in and we publish a

1 complete document as we did in the Redondo Beach where
2 we had completed all of our discovery and we were ready
3 to go, then getting probably six weeks or seven weeks
4 maybe for the FSA isn't unreasonable if there are not a
5 lot of issues that still remain outstanding. We would
6 also like to reschedule workshops during that thirty-day
7 comment period as well.

8 HEARING OFFICER KRAMER: Okay. So if you came
9 up with your PSA in early December, that doesn't make
10 for logical time for workshop.

11 MS. WILLIS: It would probably be mid December
12 if we're not seeing the PDOC until November 10th.

13 HEARING OFFICER KRAMER: Okay. So maybe --
14 let's see.

15 MS. WILLIS: Then also looking at the
16 Applicant's objections as well.

17 HEARING OFFICER KRAMER: Okay. Well, if you get
18 into a fight over those objections then that probably
19 blows everything up, right?

20 MS. WILLIS: It could.

21 HEARING OFFICER KRAMER: Mid December PSA due
22 proposal. That would make an FSA early February I
23 suppose. Is that about what you think?

24 MR. MONASMITH: Yeah, February.

25 MS. WILLIS: That would allow us to probably

1 have workshops the first part of January.

2 HEARING OFFICER KRAMER: Okay. And then are you
3 anticipating a need for additional comment period on the
4 FSA or just move to hearings?

5 MS. WILLIS: I wouldn't know at this point. I
6 don't anticipate an extra comment period. I think that
7 would be something that we'd probably know more after we
8 get the PSA out and figure out where the comments lie.

9 HEARING OFFICER KRAMER: So if we triggered a
10 prehearing conference estimated interval after the FSA,
11 does three weeks sound reasonable, four weeks and
12 another two weeks to the hearing? We're going to go
13 back and, you know, put all this on the calendar.

14 MS. WILLIS: It sounds reasonable to have at
15 least three weeks for folks to read the FSA and be ready
16 for the prehearing conference because I think it's
17 essential that we go into the prehearing conference and
18 everyone knows pretty much what positions they're
19 taking. If it comes out a little bit too early they may
20 not be ready.

21 HEARING OFFICER KRAMER: So maybe three to
22 four weeks is okay and another one to two weeks for
23 evidentiary hearings.

24 The other parties on the phone, we'll give you a
25 chance to comment in a moment. We're not cutting you

1 out. We're just trying to understand the proposal.

2 And then the Committee probably needs about four
3 weeks to publish the PMPD as negotiated against myself
4 there. I just want credit for doing that. Then we have
5 a 30-day comment period of course, etcetera. Hopefully
6 nothing on the order of revised PMPD and we go to
7 hearing.

8 Okay. Anything else from Applicant or staff
9 before we talk to the other parties?

10 MS. WILLIS: Nothing from staff.

11 MR. MCKINSEY: So one thing I want to bring up
12 is that for an AFC there is only one required staff
13 document, staff assessment. The regulations basically
14 allow for preliminary staff assessment. That's really
15 become now this set process for an AFC to go preliminary
16 staff assessment, final staff assessment.

17 HEARING OFFICER KRAMER: Except when we don't.

18 MR. MCKINSEY: Except when we don't, which is
19 not very often, but the other interesting thing has been
20 this nuance where recently there have been final staff
21 assessments that have had comments after them, which to
22 me is defeating the purpose of doing a preliminary staff
23 assessment in the first place.

24 So what I'm getting at is the comment you had
25 made about, you know, should we have comments on the

1 FSA. That's always bothered me procedurally because the
2 final staff assessment is the final staff assessment,
3 and it's supposed to then be if you have an issue with
4 it, you're a party, then you can take that up at the
5 hearings. If you're a member of the public you can
6 still file a comment but it isn't part of a process.

7 So two points I made is one, I definitely think
8 you should move from FSA directly to a preliminary
9 conference unless there's some issue where the staff
10 really didn't get something quite right or needs to
11 change something that, you know, often what they do is
12 revise testimony for their actual hearings, and the
13 second point is that the PSA is not a required step, but
14 what it does is it sets up with the FSA as being that
15 true final, this is our testimony, we heard comments,
16 we've done it.

17 So we think doing a good, solid PSA and giving
18 the staff the time and ability to do that is key because
19 then whatever comments they hear, that's it, and then
20 they do their final staff assessment based on that and
21 we don't have to worry about having comments afterwards.

22 HEARING OFFICER KRAMER: Yeah, I actually see a
23 complete PSA more of an outlier in recent history.
24 That's one of the reasons why I think sometimes there
25 have been -- I don't think -- there rarely has been

1 comment periods on FSA, but I seem to agree that parties
2 need a few weeks to read the FSA and organize their
3 thoughts and identify their witnesses.

4 MR. MCKINSEY: I disagree with a number of
5 weeks. One particular reason to understand is that a
6 large amount of the FSA is not different than the PSA,
7 so sometimes the FSA doesn't really change very much.
8 It has a few little new things, but largely it's been
9 what's been written.

10 So in this case, say Christmas Day is a gift.
11 We have the preliminary staff assessment, and between
12 then and then, you know, another seven weeks have gone
13 by and the FSA comes out adjusting a few things for a
14 few party's comments, but it's usually not starting
15 anything massively new. It's usually trying to resolve
16 some of the comments that they received, so it's usually
17 an improvement. So I don't know that we need three or
18 four weeks. I think two weeks is more than enough time
19 for that.

20 HEARING OFFICER KRAMER: Okay. We'll mark you
21 down as recommending the two weeks and we'll deliberate
22 on all that. Okay. Thank you.

23 PRESIDING MEMBER DOUGLAS: Let me ask one more
24 question --

25 Oh, Mr. Piantka.

1 MR. PIANTKA: George Piantka. I wanted to make
2 sure we heard reference to 2018 on schedule, but I don't
3 know if you heard me. November 1, 2017 was the schedule
4 we're working from.

5 HEARING OFFICER KRAMER: Thanks.

6 PRESIDING MEMBER DOUGLAS: Got it. I just
7 wanted to verify that we're talking about a mid December
8 PSA as the date for PSA. We had heard first week of
9 December. I understand that with the Air District maybe
10 being a little bit later on the PDOC that we might push
11 that a bit, but I do think it's very important for the
12 schedule to have a December PSA, and even if the air
13 quality section is delayed, which hopefully it is not,
14 having the rest of it in December would be very good.

15 HEARING OFFICER KRAMER: So please start writing
16 and don't wait for the PSA to start writing. I hope
17 people never do that, but this would be the best time.

18 MS. WILLIS: I can assure you everybody is
19 working on their sections. We did anticipate that we
20 would be seeing the PDOC sooner, and there are a few
21 between alternatives and public health and obviously air
22 quality.

23 HEARING OFFICER KRAMER: Okay. Mr. Simpson, any
24 comments on the schedule?

25 MR. SIMPSON: Oh, sure. And a couple of my

1 comments you couldn't hear at the end of Mr. Sarvey's
2 intervention was that it felt like the Commission has 20
3 interventions that they need to choose which ones are
4 the most appropriate. So I think that would be the
5 occasion that the Commission might exercise limitations
6 of intervenors, not when there's only a couple of
7 intervenors there.

8 A lot of agencies when they make their decisions
9 they'll set the legal basis and appeal opportunities for
10 the decision. It would be helpful if there's a contrary
11 decision made that intervenors can understand what the
12 legal basis for what the position is.

13 As far as the schedule, you know, I'm sure it's
14 nice to have staff and a team of attorneys to move this
15 thing forward, but this should proceed at a pace that
16 the public can participate. To have these schedules
17 over the holiday season, we just don't have the sort of
18 manpower that the Applicant and the CDC has to look at
19 these things.

20 So the time period from the FSA, for instance,
21 should be six or eight weeks, and, you know, we've all
22 been through so many of these scheduling sessions where
23 one thing doesn't come in on time or a couple things
24 don't come in time but the schedule doesn't adjust
25 easily for that. I think it's premature to do a lot of

1 scheduling until you've actually got these initial
2 documents in your hands.

3 HEARING OFFICER KRAMER: Okay. Thank you.

4 Doctor Roe.

5 DOCTOR ROE: No comment.

6 HEARING OFFICER KRAMER: Okay. We'll take that
7 under submission as well.

8 MR. THERKELSEN: Excuse me, Mr. Kramer. This is
9 Bob Therkelsen representing the City of Carlsbad.

10 First of all, the City would really like to
11 thank the commissioners for taking our comments
12 seriously. We appreciate that. The City obviously
13 wants to make sure that the proceeding is done properly,
14 all of the issues are considered but also recognizes the
15 importance of meeting deadlines, getting the electricity
16 to Southern California that's needed. So, again, we
17 thank you for your diligence and your efforts.

18 HEARING OFFICER KRAMER: Okay. While you're
19 here, I do have a question for you. The City recently
20 filed a status report updating us on the progress of the
21 general plan update and zoning and other changes.

22 MR. THERKELSEN: That's correct.

23 HEARING OFFICER KRAMER: It occurred to me
24 because you indicated that they were being staggered or
25 staged so that the final amendment of the local coastal

1 plan might not come until the third quarter of 2016. It
2 occurs to me that may mean that when the Commission is
3 asked to address this amendment, that the project will
4 perhaps still be out of conformance with some of the
5 local land use plans because they won't have yet been
6 updated to reflect the new agreement that the City has
7 for the Applicant to amend everything to make it
8 conform.

9 My question was partially answered by response
10 one of the City staffers made to staff indicating that
11 with regard to the height limitation of 35 feet in the
12 local plan, the City is expecting the Commission to
13 override that.

14 So is it fair to say that there's not a way that
15 the City is going to be able to speed up that process of
16 making all the conformity amendments and that we'll just
17 have to, to the extent they're still out of sync, adopt
18 overrides?

19 MR. THERKELSEN: All of the City's amendments
20 that are under the City's control are being done and
21 being done expeditiously because the City does not have
22 a local coastal development plan and authority to act on
23 its own. In some cases the Coastal Commission has to
24 act to make something final, and those are the instances
25 where we don't have control over the schedule. I assume

1 it's going to be later.

2 To the extent that we know specific items that
3 the staff may have concern about, and we'll have
4 discussions with staff about that, the City can say the
5 same kind of thing that it did in a height limitation
6 that the City does not have a problem with the
7 Commission taking action where the action is
8 appropriate.

9 HEARING OFFICER KRAMER: Okay. On the height
10 limit I just want to mention to staff that another
11 option, there might be a variance so please look into
12 that and see if that's appropriate.

13 MS. WILLIS: We have and apparently it's not.

14 HEARING OFFICER KRAMER: Okay.

15 MR. MCKINSEY: Can I make a comment on that?
16 It's a really good topic, which is in the original
17 decision there were overrides, and so I think you're
18 making the presumption that you would have to make the
19 override all over again as opposed to concluding that
20 the decision we made originally is still the correct
21 one, right, that, you know, an override is still
22 appropriate. So there was already a height override
23 made for the project, and that reflected the override
24 criteria.

25 So to me it would seem that an analysis that

1 says the override criteria that we had is still there,
2 perhaps even better or maybe decide it's worse, then you
3 have to reevaluate them, and if you look at the changes
4 proposed to the project and you conclude that it's
5 making it a better or equal case, if it hasn't really
6 negatively impacted the reasons you found an override in
7 the first place, then I don't think you have to then
8 redo all the overrides.

9 On the other hand, if you look and say, well,
10 it's gotten taller or something else has pushed the
11 envelope in a way that we have to reevaluate it, then
12 maybe we have to redo it, but I'm not convinced we
13 really have to redo them if you conclude that it's same
14 or less of an impact that had to be overwritten in the
15 first place.

16 HEARING OFFICER KRAMER: The case I'm aware of
17 suggests to me that whether the level of impacts are
18 more, less or the same, that every time you revisit the
19 project which require overrides, you need to
20 affirmatively make that decision again.

21 MR. MCKINSEY: The level of impact or the -- I
22 see what you're saying, then you have to make a new
23 override.

24 HEARING OFFICER KRAMER: You have to override
25 again. Now, the same evidence is there. We simply have

1 to revisit it because it's a value judgment on behalf of
2 the Commission, but we're equipped to do that if the
3 Commission decides that's appropriate.

4 MR. MCKINSEY: Here's my point to some extent.
5 You know, this is a significant change in that it's
6 removing the old building, which I think can be looked
7 at a lot of different ways. It has potential
8 construction impacts that is viewed by many as an
9 improvement to see the old building go away, but, again,
10 if you were doing a smaller change or any given change
11 you wouldn't necessary have to redo everything if it
12 wasn't affecting that area.

13 So in this case maybe the answer is it's
14 affecting all those override areas and so we need to
15 redo it. So what I'm asking is to take a look at the
16 scope. It would certainly save us some steps if you
17 conclude we don't have to because the scope of that
18 override has not been affected by this petition to
19 override.

20 HEARING OFFICER KRAMER: Okay. We will.

21 Now, let's see. A couple things to mention
22 going forward. We are considering having monthly status
23 conferences to just review the progress of things and
24 any issues that might come up. If nothing else, it
25 means that we, in accordance with what Mr. Therkelsen

1 suggested earlier, we reserve time on calendars in a
2 place, and so if somebody files a motion, you know, not
3 the day before necessarily but we have a monthly
4 opportunity to go over motions that are pending but also
5 more importantly to keep our eye as a committee on the
6 progress in the case because it's very important.

7 So we're wondering if anybody has any
8 suggestions for a particular time of the month, for
9 instance, that would seem to be more appropriate and how
10 soon we should start those. Should it be next month?
11 Maybe in December? Thoughts from anyone?

12 I'll reopen Mr. Simpson.

13 MR. MCKINSEY: I think that sooner rather than
14 later is a great idea and one in November in particular.
15 The Committee is only -- you know, once you get to the
16 FSAs we'll be taking over the process anyway. So it's
17 really just this winding down period of the staff's
18 function. So I think a November 1 and on makes sense.

19 HEARING OFFICER KRAMER: Okay. Early November,
20 early December, and I suppose perhaps January and we'll
21 go from there. We'll try to probably pre-pick dates and
22 put all of them into one notice. We'll keep issuing
23 notices and mail them to everyone. I think our mailing
24 list is over 1,000 for that kind of thing.

25 And the other thing to note, we're starting to

1 rethink the amount of how much we want to use informal
2 hearing process. So at this point what I can report to
3 you is that it's perhaps less certain than the last
4 scheduling order indicated that everything would be
5 informal, but what we're planning on doing is at the
6 prehearing conference, nailing down exactly which topics
7 will be informal and which aren't.

8 So among the things you should be thinking about
9 when you're designing your presentations and your
10 strategy and deciding which topics you need to
11 participate in are, you know, what your opinion would be
12 about whether that should be by way of informal or
13 formal hearings or some hybrid of the two. I think
14 that's everything except for our public comment period.

15 Wait. Hold on.

16 Mr. Moore?

17 MR. MOORE: Yes.

18 HEARING OFFICER KRAMER: We're especially
19 interested in how you're doing since you're a lynchpin
20 in the schedule. For this first early November
21 conference do you have any particular conflicts we
22 should take into account in calendaring that?

23 MR. MOORE: I would say probably the afternoons
24 and Tuesday mornings tend to be bad, but I could
25 probably make time whenever.

1 HEARING OFFICER KRAMER: Okay. Thank you.
2 That's helpful. So with that, we're going to go to the
3 public comment portion of our proceeding, then we'll be
4 going into closed session. So let me unmute everyone.

5 Does anybody wish to make a public comment?

6 MR. SIMPSON: Rob Simpson, no thank you.

7 HEARING OFFICER KRAMER: Okay. No public
8 comments in the room. I'm going to mute everyone again.

9 The Committee is going to go into closed session
10 pursuant to Government Code Section 11126 subdivision
11 (c)(3) which allows the state body including a delegated
12 committee such as this to hold a closed session to
13 deliberate on a decision or decisions to be reached in
14 the proceeding, a proceeding the state body was required
15 by law to conduct.

16 We are not planning on announcing any results at
17 the end of this closed session. Whatever we decide will
18 come out in the form of written orders. So what we are
19 going to do is excuse our court reporter, no reason for
20 her to stand around. What I will do is communicate to
21 her office the time that we come back and formally close
22 the hearing, then she can add that to her transcript of
23 this proceeding.

24 We will leave the WebEx open, and what will
25 happen is when we finish the closed session we'll come

1 back and just report that we have finished. So if you
2 want to stay on the line it's your choice.

3 And with that, any closing comments?

4 Then we are going into closed session, and we
5 thank you for your participation.

6

7 (ADJOURNED TO CLOSED SESSION AT 12:16 P.M.)

8 (HEARING ADJOURNED AT 1:15 P.M.)

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REPORTER'S CERTIFICATE

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 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 5th, day of November, 2014.

Marissa J. Contreras, CSR No. 13224
Certified Shorthand Reporter