

DOCKETED

Docket Number:	08-AFC-09C
Project Title:	Palmdale Energy Project (Formerly Palmdale Hybrid Power Plant) - Compliance
TN #:	216723
Document Title:	Transcript of 03/22/2017 Evidentiary Hearing
Description:	N/A
Filer:	Cody Goldthrite
Organization:	California Energy Commission
Submitter Role:	Committee
Submission Date:	3/28/2017 8:34:48 AM
Docketed Date:	3/28/2017

BEFORE THE CALIFORNIA ENERGY COMMISSION
PREHEARING CONFERENCE AND EVIDENTIARY HEARING,
SCHEDULING ORDER, AND FURTHER ORDERS

In the Matter of:)
) Docket No. 08-AFC-09C
PALMDALE ENERGY PROJECT)
_____)

CITY OF PALMDALE CITY HALL
38300 SIERRA HIGHWAY
PALMDALE, CALIFORNIA

WEDNESDAY, MARCH 22, 2017

11:00 A.M.

Reported by:
Martha Nelson

APPEARANCES

COMMISSIONERS

Janea Scott, Associate Member

ADVISERS

Jennifer Nelson, Adviser to Commissioner Douglas

Le-Quyen Nguyen, Adviser to Commissioner Douglas

Matthew Coldwell, Adviser to Commissioner Scott

Rhetta DeMesa, Adviser to Commissioner Scott

Kristy Chew, Technical Adviser on Siting Matters

HEARING OFFICER

Kenneth Celli

PUBLIC ADVISER

Rene Macleay Santiago

STAFF

Lisa DeCarlo, Staff Counsel

Eric Veerkamp, Compliance Project Manager

Christopher Dennis, Engineering Geologist

Mark Hesters, Senior Transmission Planner

Eric Knight, Environmental Office Manager

PALMDALE ENERGY CENTER

Scott Galati, Galati & Blek

Thomas Cameron, Palmdale Energy, LLC

Thomas Johns, Palmdale Energy, LLC

APPEARANCES

ALSO PRESENT

Alan De Salvio, Mojave Desert Air Quality Management
District

Vickie Rausch, Antelope Valley Air Quality Management
District

Mike Mischel, City of Palmdale

EXHIBITS

<u>EXHIBIT NO.</u>	<u>MARKED</u>	<u>RECEIVED</u>
<u>APPLICANT</u>		
Exhibits 1-57		9
<u>STAFF</u>		
Exhibits 500-507, 509		12
Exhibit 508	11	50

P R O C E E D I N G S

11:00 A.M.

PALMDALE, CALIFORNIA, WEDNESDAY, MARCH 22, 2017

COMMITTEE MEMBER SCOTT: Welcome to the evidentiary hearing on the proposed Palmdale Energy Project. Before we begin, I would like to introduce the Committee. And then I'll ask that the parties identify themselves for the record.

I am Commissioner Janea Scott. I am the Associate Member on this case. Commissioner Douglas is sorry that she couldn't make it here today. Her Advisers are here, though, Jennifer Nelson and Le-Quyen Nguyen. They're over here to my right. To my immediate right is Hearing Office Ken Celli. And to my left are my two Advisers, Rhetta DeMesa and Matt Coldwell. And we've also got, on the very end, on the very right side here, Kristy Chew, who is our Technical Adviser.

So now I'd like to ask the parties to please introduce themselves and their representatives, and I'll start with the Petitioner.

MR. GALATI: Scott Galati, representing Palmdale Energy, LLC. And to my right are Tom Johns and Tom Cameron, also from -- excuse me, from Palmdale Energy, LLC.

COMMITTEE MEMBER SCOTT: Great. Good morning.

1 And Staff, please?

2 MS. DECARLO: Good morning. Lisa DeCarlo, Energy
3 Commissioner Staff Counsel. To my right is Eric Veerkamp,
4 Energy Commission project -- sorry, Compliance Project
5 Manager. And we also have a few Staff online to answer any
6 questions that may arise.

7 COMMITTEE MEMBER SCOTT: Okay. Good morning.

8 I have here our Public Adviser, Rene Macleay. And
9 he's right here on the backside of the room. He's got blue
10 cards. So anyone here from the public who would like to
11 make a comment, please fill out a blue card for him. That's
12 how we know that you'd like to speak. He also has some
13 materials there with him about the hearing and can answer
14 questions that you may have.

15 And then let me check to see if we have any
16 agencies here. Do we have any elected officials or
17 representatives from the federal government? Okay.

18 Seeing none, any state agencies, any agencies from
19 the State of California here in the room, or on the WebEx?
20 Okay.

21 Native American tribes? All right.

22 Anyone from Antelope Valley Air Quality Management
23 District in the room or on the WebEx?

24 MR. DE SALVIO: Yes.

25 COMMITTEE MEMBER SCOTT: Oh, yes, will you please

1 step up to the microphone and introduce yourself?

2 MR. DE SALVIO: Alan De Salvio with the Antelope
3 Valley AQMD.

4 COMMITTEE MEMBER SCOTT: Good morning. Welcome.

5 MR. DE SALVIO: Thank you.

6 COMMITTEE MEMBER SCOTT: And I saw you raise your
7 hand, as well. Please come up and introduce yourself?

8 MS. RAUSCH: Vickie Rausch, Antelope Valley AQMD.

9 COMMITTEE MEMBER SCOTT: Good morning.

10 HEARING OFFICER CELLI: Could you spell your last
11 name, please, on the --

12 MS. RAUSCH: R-A-U-S-C-H.

13 HEARING OFFICER CELLI: Rausch. Thank you.

14 COMMITTEE MEMBER SCOTT: Great. Welcome.

15 Anyone from Los Angeles County, or any other
16 nearby cities or towns? Yes. Please come on up to the mike
17 and introduce yourself?

18 MR. MISCHEL: I'm Mike Mischel with the City of
19 Palmdale. That last name is spelled M-I-S-C-H-E-L. And
20 also in the room is Ben Lucha and Arista Hennessey.

21 COMMITTEE MEMBER SCOTT: Great. Welcome.

22 MR. MISCHEL: Thank you.

23 COMMITTEE MEMBER SCOTT: And any other nearby
24 cities or towns or other agencies on the WebEx that would
25 like to introduce themselves? If so, please speak up.

1 Are they un-muted so that they could introduce
2 themselves if they'd like?

3 HEARING OFFICER CELLI: Yes.

4 COMMITTEE MEMBER SCOTT: Okay. Excellent. So
5 hearing none, no additional introductions, at this time I
6 will hand the conduct of this hearing over to our Hearing
7 Officer, Ken Celli.

8 HEARING OFFICER CELLI: Thank you, Commissioner
9 Scott.

10 Good morning everybody. The Committee noticed
11 today's Evidentiary Hearing in the Notice of Prehearing
12 Conference and Evidentiary Hearings, which was issued on
13 February 17th, 2017. We have copies of that notice, if
14 anybody needs to see it, back with the Public Adviser. Rene
15 has them.

16 The evidentiary hearing is an administrative
17 adjudicatory proceeding to receive evidence into the formal
18 evidentiary record from the parties. Only the parties, and
19 in this case we only have two parties, the Applicant,
20 Palmdale, LLC, and Staff, the California Energy Commission
21 Staff, only the parties may present evidence for
22 introduction into the formal evidentiary record, which is
23 the only evidence upon which the Commission may base its
24 decision under the law.

25 Technical Rules of Evidence may be relied upon as

1 guidance. However, any relevant non-cumulative evidence may
2 be admitted if it is the sort of evidence upon which
3 responsible persons are accustomed to rely in the conduct of
4 serious affairs.

5 The testimony offered by parties shall be under
6 oath. Each party has the right to present witnesses,
7 introduce exhibits and rebut evidence of another party. The
8 questions of relevance will be decided by the Committee.
9 Hearsay evidence may be used to supplement or explain other
10 evidence, but shall not be sufficient in itself to support a
11 finding.

12 The Committee will rule on motions and objections.
13 The Committee may take official notice of matters within the
14 Energy Commission's field of competence and of any fact that
15 may be judicially noticed by the California courts.

16 The hearing record of this proceeding includes
17 sworn testimony of the parties' witnesses, the reporter's
18 transcript of the evidentiary hearing, the exhibits received
19 into evidence, any matters officially noticed, and comments
20 submitted by members of the public. The Committee's
21 decision will be based solely on the record of competent
22 evidence in order to determine whether the project complies
23 with applicable law.

24 Members of the public who are not parties are
25 welcome and invited to observe the proceedings, either in

1 person or via the WebEx teleconferencing that we're using.
2 There will also be an opportunity for the public to provide
3 comment after the record is closed at about noon today,
4 assuming we can close the record before noon. If we go
5 over, we will break at noon, take public comment, and then
6 resume until the record is closed.

7 The public comment period is intended to provide
8 an opportunity for persons who attend the hearing to address
9 the Committee about the project. It is not an opportunity
10 to present supplemental written, recorded or documentary
11 materials. However, such materials may be docketed and
12 submitted to the Energy Commission for inclusion in the
13 administrative record.

14 Members of the public may submit written comments,
15 if they would prefer that to speaking directly to the
16 Committee. And as I said, you don't have to identify
17 yourself if you don't want to. If you would prefer not to
18 speak publicly but would like to submit a written comment,
19 the blue card that Rene Macleay has, the Public Adviser has,
20 has a space for you to do that.

21 And just a quick note. Folks, if you're going to
22 make a comment, I'm going to need people to come up. We
23 can't hear you and you won't make your way into the
24 transcript if you call out from your seat. So if you're
25 going to make a statement, we're going to need you to come

1 up to this podium and use the microphone and speak directly
2 into the microphone.

3 Now I'm going to talk about exhibits. The Exhibit
4 List has been made available to the parties through the
5 website. And the parties all have a copy for their use
6 today. There are extra copies back with the Public Adviser
7 if you want to see what the evidence is or the proposed
8 evidence that's been identified. We will use this list to
9 organize the receipt of evidence into the record. The
10 parties indicated at the Prehearing Conference that no live
11 witness testimony was needed, so there is no witness list,
12 per se. However, the Commission -- or rather the Committee
13 may have some questions, and there are witnesses available
14 who can respond to questions.

15 I'm going to talk a little bit now about the
16 schedule for today, today's agenda. We started right on
17 time at 11 o'clock, and I want to thank Amanda and Armando
18 and all the people who have supported the room, because we
19 were on time today, which is great. It doesn't necessarily
20 always happen.

21 We started at 11 o'clock. We heard the welcome
22 from the Associate Member. I'm in the middle of explaining
23 our procedures. And if there are any motions in limine, we
24 will take motions in limine after that. And after that,
25 we're going to take in evidence. At noon we're going to

1 break for public comment, then finish taking evidence, if we
2 need to, if we haven't already. And then we would adjourn
3 immediately following the public comment. The times I'm
4 giving you right now are approximate, except that we will
5 not start the public comment until noon o'clock -- 12
6 o'clock noon, meaning that we won't do it before then.

7 The Committee has some questions regarding the
8 source of the project's potable water, and also the status
9 of the transmission lines. There were two alternatives. We
10 have some questions with regard to the Southwester Willow
11 flycatchers.

12 But first, what we will do is have the parties
13 move their exhibits into evidence, and then provide answers
14 to these questions by witnesses under oath. So we want to
15 hear it from witnesses, not from the attorneys.

16 If there are no questions at this time, we will
17 proceed through the uncontested topics and start with the
18 Applicant's motion to enter its evidence into the record. So
19 before we begin, any question from Applicant?

20 MR. GALATI: No.

21 HEARING OFFICER CELLI: Staff?

22 MS. DECARLO: No questions.

23 HEARING OFFICER CELLI: Okay. Good. Then what I
24 think I'll do first is receive -- take your motion on your
25 hard evidence. And then we'll swear in witnesses after I

1 take in all of documentary evidence.

2 Mr. Galati?

3 MR. GALATI: At this time I'd like to move in
4 Exhibits 1 through 57 into the record. I'd like the record
5 to reflect that we are withdrawing Exhibit 58 and not
6 offering it as evidence.

7 HEARING OFFICER CELLI: Any objection by Staff?

8 MS. DECARLO: No objection.

9 HEARING OFFICER CELLI: Okay. Exhibits 1 through
10 57 are received. Exhibit 58 is withdrawn.

11 (Applicant's Exhibits 1 through 57 are received.)

12 HEARING OFFICER CELLI: Staff, any motion?

13 MS. DECARLO: I have a few modifications to the
14 Exhibit List, if you'd like me to --

15 HEARING OFFICER CELLI: I would.

16 MS. DECARLO: -- go through those before I make my
17 motion?

18 HEARING OFFICER CELLI: I would, please.

19 MS. DECARLO: It seems like Exhibit 506 has been
20 dropped off this list. I don't know if it was just dropped
21 off the printed version. But we initially identified that
22 in our Prehearing Conference Statement. That is the
23 Declaration of Christopher Dennis, TN Number 216419.

24 HEARING OFFICER CELLI: 206?

25 MS. DECARLO: 216419.

1 HEARING OFFICER CELLI: 419, Declaration of --

2 MS. DECARLO: Christopher Dennis.

3 HEARING OFFICER CELLI: Okay. And just this
4 morning we docketed one final document, which is the -- it's
5 entitled "Eric Knight Declaration and Bio" -- sorry, "Eric
6 Knight Declaration and Resume for Bio Resources." And we
7 would like to identify that as Exhibit Number 509. And the
8 TN Number for that is 216646.

9 HEARING OFFICER CELLI: So the motion would be to
10 move into evidence Exhibits 500 through 509, including
11 consecutive and inclusive.

12 Any objection from the Applicant?

13 MR. GALATI: I would ask if we could make one
14 modification to that, and that is Exhibit 508 is a
15 compendium of conditions --

16 HEARING OFFICER CELLI: Yes.

17 MR. GALATI: -- that I haven't had a chance to
18 take a look at to see if they reflect the conditions. And I
19 was wondering if we could not move that as an exhibit, but
20 try to treat that afterwards as a stipulation? Once I
21 review it and can determine that it accurately reflects all
22 the conditions in all the other exhibits, then we can just
23 do a stipulation saying you may use 508. So I'd rather it
24 not be moved into evidence at this point, or if you would
25 move it into evidence with that agreement with Staff, that I

1 get a chance to take a closer look at it.

2 HEARING OFFICER CELLI: What we'll do is we'll
3 just continue to have it be marked for identification as
4 508. And we would receive into evidence 500 through 507 and
5 509, but we would require a motion.

6 (Staff's Exhibit 508 is marked for identification.)

7 So mark on your to-do list that you need to move
8 508 in after the Applicant has had a chance to see it, and
9 then we'll hear the motion on that exhibit.

10 I just wanted to ask, with regard to Exhibit 509,
11 have you seen 509?

12 MR. GALATI: Yes. It's a declaration, and we're
13 fine.

14 HEARING OFFICER CELLI: Okay. So no objection to
15 that?

16 MR. GALATI: The reason for that 508 is all of the
17 conditions and they're clean, they're not like redlined
18 again --

19 HEARING OFFICER CELLI: Right.

20 MR. GALATI: -- so I need to compare them.

21 HEARING OFFICER CELLI: Okay. Good.

22 MS. DECARLO: And 508 wasn't really intended to be
23 a new document, per se. It was really for administrative
24 purposes for the convenience of the Committee. It's not
25 intended to be anything new that hasn't already been

1 contained in these other exhibits. So I don't know to what
2 extent the Committee really needs us to move it in as an
3 official document, into the record.

4 HEARING OFFICER CELLI: Yes. For the record, the
5 Committee asked the parties to put the compendium together,
6 and I greatly appreciate that you did and would like it to
7 be part -- I don't really care which party moved it in. I
8 just added it to Staff. But I want it to be in evidence, so
9 I would like to have it be moved in as soon as we get the
10 chance to do that.

11 (Staff's Exhibits 500 through 507 and 509 are
12 received.)

13 MR. GALATI: I will get a motion over to Staff
14 after I take a chance to take a look at it early next week
15 and we can get it moved in. I'm sure it's correct, I just
16 haven't been able to verify that it is.

17 HEARING OFFICER CELLI: Okay. No problem. Excuse
18 me.

19 Okay, Ladies and Gentlemen, what we're going to do
20 next then is ask some questions that the Committee has, some
21 specific questions. The way I think we should proceed,
22 because I need to swear some witnesses in, is I can tell you
23 that the questions have to do with the flycatcher, they have
24 to do with the transmission lines, and they have to do with
25 the water.

1 So if you can tell me, Staff, what witnesses do
2 you need to have sworn for these three subject areas?

3 MS. DECARLO: Christopher Dennis is available to
4 discuss Soil and Water Resources. Mark Hesters is available
5 to discuss any technical issues concerning the transmission
6 lines. And Eric Knight is available to discuss Biological
7 Resources.

8 HEARING OFFICER CELLI: All right. Thank you.

9 And then the Applicant's witnesses?

10 MR. GALATI: First, for any project description-
11 related question associated with transmission or water use
12 or transmission lines themselves, we have Tom Johns, and I
13 probably would swear in Tom Cameron, just in case. They
14 could testify as a panel.

15 We have no witness for Biology. And if I could
16 have a moment to explain why, is we believe that while we
17 may disagree with all of the numbers Staff may have
18 calculated, we agreed to a mitigation scenario that allows
19 the wildlife agencies to determine the potential take. And
20 we have a condition that has it mitigated, depending on the
21 final numbers. So we don't have -- as you know, this issue
22 came up very, very late. And Staff's analysis of the
23 numbers just came out last week, so we don't have a
24 biological witness to answer the Willow flycatcher.

25 What we proposed to do was to adopt a series of

1 conditions that would allow the wildlife agencies to develop
2 their methodology, and that that would be fully mitigated
3 under those conditions, we're supportive of.

4 HEARING OFFICER CELLI: Thank you. I have the
5 feeling the questions that the Committee has are probably
6 going to be sufficiently answered by Staff's witnesses.
7 Because if you're in agreement, then these aren't
8 particularly controversial. But the Committee felt that a
9 record needed to be made to deepen our understanding of
10 these areas. And so we'll see how that goes, and then if
11 you have a problem, we will cross that bridge when we get to
12 it.

13 MR. GALATI: Okay.

14 HEARING OFFICER CELLI: Okay. So with that,
15 let's -- I'm going to ask Christopher Dennis and Mark
16 Hester's and Eric Knight, can you hear me on the phone?

17 MR. DENNIS: Yes, I can hear you.

18 HEARING OFFICER CELLI: And who -- and please
19 identify yourself when you speak. Who was that?

20 MR. DENNIS: This is Christopher Dennis.

21 HEARING OFFICER CELLI: Okay. Thank you.

22 And Mark Hesters, are you on the phone? Can you
23 hear me?

24 MR. HESTERS: This is Mark Hesters.

25 HEARING OFFICER CELLI: Okay. And Eric Knight,

1 can you hear me?

2 MR. KNIGHT: I can. This is Eric Knight.

3 HEARING OFFICER CELLI: Okay. Thank you. Please
4 rise and raise your right hand.

5 Do you solemnly swear or affirm to tell the truth,
6 the whole truth and nothing but the truth under penalty of
7 perjury under the laws of the State of California?

8 Mr. Dennis?

9 MR. DENNIS: I do.

10 HEARING OFFICER CELLI: Mr. Hesters?

11 MR. HESTERS: I do.

12 HEARING OFFICER CELLI: Mr. Knight?

13 MR. KNIGHT: I do.

14 HEARING OFFICER CELLI: Thank you. Please be
15 seated.

16 And then, Mr. Johns and Mr. Cameron, please stand
17 and raise your right hand.

18 MR. CAMERON: At the same time?

19 HEARING OFFICER CELLI: Yes.

20 Do you solemnly swear or affirm to tell the truth,
21 the whole truth and nothing but the truth under penalty of
22 perjury under the laws of the State of California?

23 Mr. Johns?

24 HEARING OFFICER CELLI: Mr. Cameron?

25 MR. CAMERON: I do.

1 HEARING OFFICER CELLI: Thank you. Please be
2 seated.

3 So the way I'd like to proceed with these
4 questions is I'm going to ask these questions. These were
5 written out. And I'm going to turn to Applicant first and
6 let them respond. And then I will turn to Staff and ask if
7 their witness wants to respond. And if the witnesses want
8 to engage in a discussion, that's perfectly fine. But let's
9 first hear from the parties in order, and then we'll kind of
10 open it up, as needed.

11 First question with regard to potable water is
12 what is the current status of obtaining a Will Serve Letter
13 to provide potable water needs for the plant? And that's
14 for the Applicant's witness.

15 MR. JOHNS: Yes. This is Tom Johns for Palmdale
16 Energy.

17 We believe we have a valid Will Serve Letter that
18 was issued for the original project. In our discussions
19 with L.A. County, we originally were told that the letter is
20 still valid. And then there seemed to be some confusion
21 that maybe it is not. So it's really -- it comes down to an
22 economic issue of whether we will have to pay additional
23 impact fees, or whether our existing Will Serve Letter is
24 valid. But there has never been any issue about the county
25 being able to provide the limit amount, about three acre

1 feet a year of potable water that the project needs.

2 HEARING OFFICER CELLI: Staff, your witness was --
3 is this Eric Knight on this?

4 MS. DECARLO: Christopher Dennis.

5 HEARING OFFICER CELLI: Christopher Dennis.

6 Mr. Dennis, anything on that?

7 MR. DENNIS: Yes. In part, I agree with the
8 Applicant, that it's an economic issue. However, we were
9 told by L.A. County that the Will Serve Letter that's being
10 referenced by the Applicant isn't considered valid by them
11 for several reasons that we outlined in our analysis.
12 However, we realize that the amount of water is small, and
13 it's likely that the L.A. County has the water. But
14 currently, there's no commitment for that water by L.A.
15 County.

16 HEARING OFFICER CELLI: That was -- that is -- and
17 that, what you just said, is reflected in the FSA, is it
18 not?

19 MR. KNIGHT: It is, and in our supplemental
20 analysis. And that, further, L.A. County receives its water
21 as a retailer from a wholesaler, Antelope Valley-East Kern
22 Water District. They're a State Water Project water
23 contractor. So in order -- this basin has been adjudicated.
24 And in order to get new additional water, L.A. County needs
25 to go through East Kern -- Antelope Valley-East Kern Water

1 District to get the new water from State Water Project
2 water, which that supply could be in question, you know,
3 during times of drought and, you know, as we've seen just
4 recently.

5 So, you know, like -- as I said before, the amount
6 of water is small and it's likely that, you know, that Los
7 Angeles County can get the water and will get the water, but
8 there's no commitment at this point.

9 HEARING OFFICER CELLI: Okay. Now assuming, I'm
10 going back to the Applicant's side, so assuming that L.A.
11 County is correct and the will-serve is no longer valid,
12 then what steps are going to be taken to obtain a Will Serve
13 Letter?

14 MR. GALATI: Since this is a legal question, may I
15 respond instead of my witness?

16 HEARING OFFICER CELLI: Okay. It's just that
17 you're not under oath and I'm not going to put you under
18 oath.

19 MR. GALATI: I think there's some context that
20 needs to be provided here --

21 HEARING OFFICER CELLI: Go ahead.

22 MR. GALATI: -- to provide the context.

23 The context here is whether the adjudication
24 actually accounted for our water, which has already been
25 paid for. And it's not just a Will Serve Letter. We

1 believe there's a valid contract.

2 To solve this problem with Staff, rather than have
3 a long dispute in this scenario over the complexities of
4 Water Law that can't be adjudicated by the Energy
5 Commission, we proposed a change which Staff agreed to in
6 its condition saying prior to construction we shall bring a
7 valid, existing contract. We believe we have one. If that
8 is ultimately determined, either through a court or someone
9 else at L.A. County -- L.A. County is very large. I don't
10 know which person Staff is talking to or which person we're
11 talking to.

12 But eventually we will have to provide proof from
13 L.A. County that they treat the existing contract as valid,
14 or we will have to bring a new contract to the Energy
15 Commission for the exact same amount of potable water that
16 was approved the first time. We haven't changed anything in
17 this amendment. So we chose to solve it by making sure the
18 Condition of Certification would ensure that prior to, and I
19 believe it's construction, prior to construction, that there
20 would be a valid, existing contract. If Staff, the CPM,
21 believes that that contract is not valid, we'll have to
22 provide proof that it is, or a new one.

23 But there's never been any question that L.A.
24 County can serve us the limited amount of potable water that
25 was approved last time and this time.

1 HEARING OFFICER CELLI: I see that. That's clear
2 I the FSA and in the AFC.

3 I wonder, Ms. DeCarlo, if you could comment on the
4 necessity for the Will Serve Letter for these three acre
5 feet a year of potable water, and how does Staff intend to
6 deal with that? Is there some accommodation in the
7 condition about -- because my most recent view of the
8 compendium of conditions shows that the whole concept of a
9 Will Serve Letter in the context of potable was stricken.

10 MS. DECARLO: No. We still have the requirement
11 in Soil and Water 4 that requires, 90 days prior to start of
12 construction, the Applicant to provide a valid Will Serve
13 Letter. Now if they can provide proof that the one they
14 currently have is indeed valid and the project manager at
15 the Energy Commission concurs with that conclusion, then
16 that would be acceptable. If not, then they would be
17 providing us something new. In either event, the Condition
18 of Certification allows for either of those options.

19 MR. DENNIS: This is Chris Dennis. May I
20 interject something really quick?

21 HEARING OFFICER CELLI: Please.

22 MR. DENNIS: The condition does stricken the part
23 about a Will Serve Letter. But we did come to an agreement
24 saying a valid Water Supply Agreement. So the Will Serve
25 Letter part, it has been removed. And we were looking for a

1 valid Water Supply Agreement. So we came to an agreement
2 with the Applicant on that since, basically, Los Angeles
3 County had outlined a specific scenario to come up with a
4 Water Supply Agreement. We agreed with the Applicant's
5 broadening that, rather than identifying a specific
6 procedure, saying if there is a valid Water Supply
7 Agreement, we will -- before construction, that's fine for
8 us.

9 HEARING OFFICER CELLI: And, Ms. DeCarlo, is there
10 a requirement? Do we require a Will Serve Letter
11 specifically or --

12 MS. DECARLO: Well, and I apologize, I was using
13 the Will Serve Letter in the general term, basically
14 something that proves that they are -- they do have access
15 to water for the project. I do believe historically we do
16 require it, because we want to make sure that the plant is
17 going to be able to operate.

18 HEARING OFFICER CELLI: Right.

19 MS. DECARLO: Now this is potable water we're
20 talking about, so it's not necessarily necessary for the
21 operation of the facility. Nevertheless, it's something
22 that's a part that the facility is going to require for its
23 employees and for certain uses. So we want to make sure
24 that that's going to be available before they break ground
25 and do any forward movement on the project itself.

1 HEARING OFFICER CELLI: And, Staff, you're
2 satisfied with the -- instead of calling it a Will Serve
3 Letter, that we're calling it a contract?

4 MS. DECARLO: We're calling it a valid, let's see,
5 a valid Potential Water Supply Agreement.

6 HEARING OFFICER CELLI: That that is evidence of a
7 commitment sufficient to show that we're in compliance with
8 LORS in that regard?

9 MS. DECARLO: We believe so, yes.

10 MR. DENNIS: Yes. Yes. Yes, we're satisfied with
11 that.

12 HEARING OFFICER CELLI: And just for the record,
13 that was Mr. Dennis?

14 MR. DENNIS: I'm sorry. Yes, this is Mr. Dennis.

15 HEARING OFFICER CELLI: Okay. Thank you. Thank
16 you.

17 Let's move on to the Southwestern Willow
18 flycatcher then.

19 MR. GALATI: Can I just add something to that last
20 discussion?

21 HEARING OFFICER CELLI: Go ahead, Mr. Galati.

22 MR. GALATI: Typically an Applicant gets a Will
23 Serve Letter because they're not ready to sign a contract.
24 And a Will Serve Letter is a we will serve you if you sign a
25 contract. And typically what Energy Commission Staff does

1 is ask for that at the beginning of a project. And then
2 typically what they do is they ask for that Will Serve
3 Letter to be finalized into an agreement and that the
4 agreement be provided.

5 And so that's what we were doing here is, in this
6 condition, is taking reference to the Will Serve Letter out,
7 since that might be in dispute, and just going right to an
8 agreement. And so that's why you might see the interplay
9 between the Will Serve Letter and agreement. And agreement
10 comes later.

11 We believe the Applicant has an agreement. And if
12 Staff doesn't agree, it will provide an agreement which is
13 much demonstrable of a commitment than a Will Serve Letter.

14 HEARING OFFICER CELLI: All right. So, Mr.
15 Dennis, it seems as though the language you're using now is
16 evidence of an even stronger commitment from the county; is
17 that right?

18 MR. DENNIS: Yes, it is.

19 HEARING OFFICER CELLI: Than a Will Serve Letter?

20 MR. DENNIS: Yes.

21 HEARING OFFICER CELLI: Okay. Good. Thank you.

22 Anything further from Staff or Applicant?

23 MS. DECARLO: No.

24 HEARING OFFICER CELLI: Okay. Then let's talk
25 about Southwestern Willow flycatcher. In Staff's

1 supplemental testimony on Biological Resources filed on
2 March 16th, 2017, Staff states that,

3 "It is Staff's recommendation that the project owner
4 consider building the shorter of the two approved
5 alternative transmission line routes."

6 Just a little background. When the original
7 Palmdale Hybrid Power Plant was certified, it was certified
8 with two possible transmission line routes, Alternative 1
9 and 2. One of them had an underground component, the other
10 did not.

11 Does Staff have more to add to that
12 recommendation, or does the Applicant have a response to
13 that recommendation?

14 I'm going to start with the Applicant first.

15 MR. JOHNS: Right. So this is Tom Johns for
16 Palmdale again.

17 Mr. Celli, you're correct. The original decision
18 approved two different routes. And with the exception of a
19 minor change of essentially one tower location because of a
20 change in the location of the switchyard, there were no
21 changes proposed to either of those transmission routes in
22 our amendment. So we believe that we, before construction,
23 will make our decision on which route to construct, based on
24 technical and economic considerations, and have not made a
25 decision to which route we would use at this point in time.

1 HEARING OFFICER CELLI: Okay. Staff, anything
2 further on that?

3 MS. DECARLO: Eric, do you have anything to add?

4 MR. KNIGHT: Not from a Biological perspective,
5 no.

6 HEARING OFFICER CELLI: Okay. Good.

7 MR. HESTERS: This is Mark Hesters with Staff.

8 I was just looking through the original decision
9 and noticed that one of our conditions, our TSA-5, doesn't
10 mention Geo-128 which is general -- CPUC's General Order 128
11 which has to do with the construction of underground lines.
12 And we probably need to modify it to add that to it, just to
13 cover the alternative route.

14 HEARING OFFICER CELLI: Well, so I'm interested to
15 know whether the current FSA reflects the change in the law
16 in terms of the LORS described within the FSA?

17 Mr. Hesters, did you write the FSA section?

18 MR. HESTERS: I did not. I just supervised the
19 person who did.

20 HEARING OFFICER CELLI: Okay.

21 MR. HESTERS: But my name is on it.

22 HEARING OFFICER CELLI: And I'd be very interested
23 to know that, if you could take a quick look at the LORS and
24 make sure that -- Geo, which number did you give?

25 MR. HESTERS: We have 95. Geo-95 covers the

1 overhead construction.

2 MR. CAMERON: Okay.

3 MR. HESTERS: Geo-128 covers underground. We
4 usually -- we have both in there, and then -- but for some
5 reason it doesn't appear to be in this testimony.

6 HEARING OFFICER CELLI: Okay. If it's not there,
7 then it sounds like we're going to need to put it in.

8 MR. HESTERS: I agree.

9 MR. CAMERON: And I guess the way we're going to
10 have to do that is some sort of supplemental testimony,
11 which we could talk about.

12 Mr. Galati?

13 MR. GALATI: Yeah. I think I understand what
14 Mark -- what Mr. Hesters is saying, and I agree with him,
15 that those LORS should be, and I think we all missed it.
16 We'll be preparing that stipulation of all the Conditions of
17 Certification. And I'm happy to include that reference in
18 that compendium of conditions.

19 HEARING OFFICER CELLI: Well, actually, see, this,
20 while there may or may not be a condition, because we don't
21 necessarily say -- create a condition that says you must
22 comply with such and such LORS, because as I'm imagining
23 this, I think that the FSA section has, usually, a table of
24 what all of the applicable LORS are, and that they just
25 omitted to put in a couple of rows, one that says Geo-95,

1 the other says Geo-128.

2 So I'm thinking what would need to happen, just to
3 have it into the record, is whatever language they want to
4 put in, in the FSA. So I'm thinking that's like
5 supplemental testimony.

6 So maybe, Mr. Hesters, while you're listening to
7 this you could be putting your head together with whoever
8 the author was and maybe come up with whatever it is we need
9 to see in your LORS table that reflects Geo-95 and Geo-128.
10 Can you do that?

11 MR. HESTERS: I will say -- so I'm looking through
12 the original decision.

13 HEARING OFFICER CELLI: Uh-huh.

14 MR. HESTERS: And Geo-128 is mentioned in the
15 decision, it just didn't get carried forward to the
16 conditions.

17 HEARING OFFICER CELLI: Is there -- so was there a
18 condition in the original?

19 MR. HESTERS: Our TSA-5 usually lists all the LORS
20 and it includes Geo-95, it just doesn't include 128.

21 HEARING OFFICER CELLI: I see. So it really is a
22 COC it is a condition, and therefore we would need you all
23 to, when you get your chance to talk about it, add into TSE-
24 5, Geo-95 and Geo-128. Okay. So we'll just pass it back.

25 MR. GALATI: Yeah. And I think we can do it with

1 what was previously marked as 508 and we can make a change
2 to it. Counsel and I can stipulate to it and we can have it
3 come in that way.

4 HEARING OFFICER CELLI: Okay. Great. And so,
5 just to be clear for the record, we're speaking with Mark
6 Hesters when we're talking about transmission line.

7 And if you're on the phone, please remember to
8 identify yourself before you speak, if you would.

9 So Staff estimates that the longer of the two
10 transmission line routes may take up to 598 Willow
11 flycatchers. Condition Bio-26 states that the Incidental
12 Take Permit/Consistency Determination will require five
13 acres of compensation or compensatory nesting habitat.

14 Is it possible that there could be more or less
15 than five acres? And also, is it known how much nesting
16 habitat is available in California?

17 I think that who I would ask that of is our Bio
18 person. Is that Eric Knight?

19 MS. DECARLO: Yes.

20 MR. KNIGHT: Yes, it would be. This is Eric
21 Knight.

22 You know, in speaking with the U.S. Fish &
23 Wildlife Service and the California Department of Fish and
24 Wildlife, it sounded like that five acre per bird taken was
25 the number. We didn't -- we don't expect it to be

1 increased.

2 HEARING OFFICER CELLI: Okay. But if it -- here's
3 the question.

4 MR. KNIGHT: But that number came -- that number
5 came out of the Desert Renewable Energy Conservation Plan
6 prepared by the BLM and the biological opinion prepared by
7 the Fish and Wildlife Service. So we felt confident that
8 that number would be the number, and got confirmation of
9 that from speaking with U.S. Fish & Wildlife Service.

10 HEARING OFFICER CELLI: Okay. So hypothetically, if
11 for some reason we impose a condition that is predicated
12 upon five acres, and somehow that ratio goes up or down
13 because the USFWS and the CF&W decide to change that, it
14 wouldn't change our condition. And so I guess I want to
15 know that the parties can live with that.

16 Mr. Galati?

17 MR. GALATI: Nobody likes to take an open-ended
18 Condition of Certification. We didn't think that the
19 mitigation ratio was likely to change. What we thought was
20 likely to change was the methodology by which they determine
21 potential take.

22 We'd just like to make sure we're on the record as
23 we disagree with Staff's prediction of how much that take
24 will be. We think it will be far, far, far less, and we're
25 using an approved methodology for that, as well.

1 Understanding that it's a developing evaluation on
2 how to predict take of the Willow flycatcher from a
3 transmission line, that's why we left that ultimate
4 determination of the amount up to the wildlife agencies.
5 But we haven't heard, nor believe, that the ratio of nesting
6 habitat would likely change based on this analysis, because
7 the way that the nesting habitat was calculated was if you
8 take one bird, how many acres does it create to create one
9 bird? So we didn't think that that was changing. What we
10 thought was changing was the way in which somebody predicts
11 how many Willow flycatchers will be taken by a transmission
12 line.

13 So we're comfortable with the risk on the number.
14 And we don't think that it's likely to change the mitigation
15 ratio.

16 HEARING OFFICER CELLI: Okay. Anything further on
17 that, Mr. Knight?

18 MR. KNIGHT: I guess the only -- this is Eric
19 Knight.

20 I guess the only thing I'd just add is, I mean,
21 ultimately what will dictate the, you know, the ultimate
22 determination of the mitigation will be in the Incidental
23 Take Permit. So I suppose if it went up, the obligation,
24 obviously, because the Department of Fish and Game would be
25 issuing the permit, the Applicant would be required to

1 provide whatever the Department required. So maybe it's a
2 possibility our requirement could be less, but it would be
3 met, obviously, with whatever the Department required.

4 HEARING OFFICER CELLI: Thank you, Mr. Knight.

5 Ms. DeCarlo, I just have a legal query, which is
6 what about the one-stop shop? What about the plenary
7 jurisdiction of the Energy Commission over a power plant and
8 our sort of handing over this permit to CF&W?

9 MS. DECARLO: Right. I mean, the one-stop shop is
10 certainly the ideal. That's what we always strive for.
11 Circumstances change. And it's certainly the Committee's
12 determination whether or not they want to hand over this
13 piece. Ordinarily we would have time to fully vet an issue,
14 a biological issue, and receive input from CDFW. However,
15 in this instance, because the issue came up so late because
16 the science is so new on this particular impact, we didn't
17 have the luxury prior to evidentiary hearings.

18 It is at the Committee's discretion, certainly, to
19 decide to say, hey, we want this permit to be fully
20 inclusive and not defer to CDFW for this part, and hold off
21 final issuing the Energy Commission's permit until we're
22 received input from CDFW. That probably won't occur until
23 the U.S. Fish & Wildlife Service has issued their biological
24 opinion, which won't be until later this year at the
25 earliest, towards the tail-end of this year. So it would be

1 a considerable amount of time to wait for the Energy
2 Commission permit.

3 Staff is comfortable at this point with this
4 proposal. We feel that the conditions we've suggested for
5 approval fully mitigate the potential impact, and they
6 incorporate at the end U.S. Fish & Wildlife's input and
7 CDFW's input. But as you mention, it does -- these
8 conditions do allow for CDFW to issue their own permit under
9 a project that's before the Energy Commission.

10 HEARING OFFICER CELLI: And who is going to be
11 conducting the surveys of the -- for the carcass surveys?

12 MR. GALATI: I can speak to that. We agreed and
13 Bio-24 requires us to submit a monitoring plan, and that
14 that monitoring plan, just like many other projects do, the
15 monitoring plan is approved by U.S. Fish & Wildlife Service,
16 CDFW and the Energy Commission.

17 HEARING OFFICER CELLI: Uh-huh.

18 MR. GALATI: And then that monitoring plan, that
19 information is reported to the Energy Commission and the
20 wildlife agencies.

21 I'd also like to point out that prior to 2009 the
22 Commission never issued a Take Permit. We always got a Take
23 Permit from the local agencies. It wasn't until the ARRA
24 funded projects came that the Energy Commission actually
25 exercised its plenary authority. We always went to CDFG and

1 gave them an independent check, filed an independent
2 application for a 2081 permit and got a separate 2081
3 permit.

4 So in this case, that's why we agreed to that, as
5 well, is we believe it wasn't noncompliance with any LORS.
6 And we do believe that the condition sets forth an
7 appropriate performance standard under CEQA for the
8 Commission to be able to go forward while the wildlife
9 agencies go ahead and conduct tests like that, it says go
10 get a Take Permit. So that's basically what we have here,
11 except with Energy Commission oversight because all of the
12 Take Permit Information would need to be put into the
13 BRMIMP, which is part of the Energy Commission conditions.
14 It would all have to be reflected in the Willow Flycatcher
15 Monitoring Plan. So the Energy Commission would have access
16 to all of the information that ultimately the U.S. Fish &
17 Wildlife Service and CDFW, when they work out those details.

18 HEARING OFFICER CELLI: Thank you. Thanks for
19 that information.

20 I have a question here from one of the
21 Commissioners regarding just a question as to whether at
22 Bio-24 -- I'm looking at Bio-24. I'm not sure whether this
23 is so or not. But the verification that I'm looking at from
24 the compendium says, "No more than 60 days prior to the" --
25 this is the verification,

1 "No more than 60 days prior to ground disturbance the
2 project owner shall submit to the CPM, USFWS and CDF&W
3 a Willow Flycatcher Monitoring Plan," et cetera.

4 And the question was whether this should be no
5 more than 60 days or no less than 60 days? I'm thinking no
6 more makes sense, but --

7 MR. KNIGHT: This is Eric Knight.

8 I think "no more" makes -- is okay. I mean, the
9 monitoring is really going to be taking place during the
10 operation of the line. That's what we're monitoring, right,
11 is, you know, bird collisions with an operating transmission
12 line. So I think that timing is okay.

13 HEARING OFFICER CELLI: Okay. Okay. Well, those
14 are all of the questions from the Committee. Wait one
15 moment.

16 (Colloquy Between Hearing Officer Celli and
17 Commissioner Scott)

18 HEARING OFFICER CELLI: There is another question
19 with regard to the Southwestern Willow flycatcher and the
20 Willow flycatcher.

21 MR. GALATI: Mr. Celli, could I just put on the
22 record that if the Committee wanted to take out "no more" or
23 change it to no less, the Applicant would agree to both of
24 those changes --

25 HEARING OFFICER CELLI: Okay.

1 MR. GALATI: -- or leaving it at "no more." I
2 just wanted to say 60 days prior or not less than 60 days
3 prior or leave it at no more. We're fine with it. We think
4 we're going to be doing it 60 days prior.

5 HEARING OFFICER CELLI: Okay. Staff estimates
6 that the longer of the two transmission lines may take up to
7 598 Willow flycatchers. Bio-26 states the Incidental Take
8 Permit -- yes.

9 The question was if there's going to be 5 acres
10 times 598 Willow flycatchers, is it known how much nesting
11 habitat is available in California? That's a question.

12 I guess since we only have one Bio expert, Mr.
13 Knight, I'm going to ask you first.

14 MR. KNIGHT: This is Eric Knight.

15 I don't know the answer to that question. And,
16 you know, again, you know, because the science is early on
17 this, I mean, that was the numbers that we came up looking
18 at, one other example of a transmission line. You know,
19 that's not a lot of data points. So I think we're all
20 hopeful it wouldn't be that high. But, you know, obviously
21 we don't know that, so we gave that as the upper bound.

22 But, no, I don't know the answer the question of
23 how much is within California.

24 HEARING OFFICER CELLI: Just if I may confer with
25 the Commissioner for a moment.

1 (Colloquy Between Hearing Officer Celli and
2 Commissioner Scott)

3 HEARING OFFICER CELLI: Thanks, Ladies and
4 Gentlemen. From time to time, we confer. So forgive us for
5 those little gaps in the entertainment aspect of this, but
6 we do that.

7 So with that, we have no further questions. I
8 wonder if -- we have 10 minutes before, well, 12 minutes
9 before we take public comment -- whether the Applicant and
10 Staff need to confer regarding the conditions, the
11 compendium?

12 MR. GALATI: No, I don't think we did. But I
13 would ask the Committee to -- not aware of the questions
14 that the Commission would have about Staff's analysis, if I
15 could break from protocol and ask for five minutes of cross
16 examination of Eric Knight to get some points across
17 about --

18 HEARING OFFICER CELLI: Sure.

19 MR. GALATI: -- that would enlighten this
20 estimate? Because I don't have a witness prepared.

21 Our approach was not to have a fight with Staff
22 over the numbers if we agreed on the conditions, and that
23 was in the spirit of cooperation, considering that this
24 issue was raised in like the last month of the project
25 that's been going on for 18 months.

1 So can I just have a few minutes of cross
2 examination?

3 HEARING OFFICER CELLI: Mr. Knight, are you still
4 there?

5 MR. KNIGHT: I am.

6 HEARING OFFICER CELLI: Okay. So Mr. Galati has a
7 few questions for you.

8 MR. KNIGHT: Okay.

9 HEARING OFFICER CELLI: Go ahead, Mr. Galati.

10 MR. GALATI: Mr. Knight, do you know the size of
11 the Sunrise Powerlink, what the voltage is on that
12 transmission line?

13 MR. KNIGHT: I believe it's 500 kV.

14 MR. GALATI: And do you know the voltage line --
15 the voltage on our transmission line?

16 MR. KNIGHT: I'm going to say 230.

17 MR. GALATI: So is a 500 kV transmission line much
18 larger, both, are there larger structures and is the
19 physical cable bigger and thicker?

20 MR. KNIGHT: My -- yes. My limited understanding
21 of the engineering of a transmission line, yes, I would say
22 it's bigger.

23 MR. GALATI: Is it also fair --

24 HEARING OFFICER CELLI: And I just want to -- I'm
25 just going to say, you have the right to lead and that's

1 fine, but that was a compound question. And we just want to
2 know that when he says yes, which question he's saying yes
3 to. Go ahead.

4 MR. KNIGHT: I was saying, yes, the 500 kV line
5 would have bigger conductors and towers than a 230 kV.

6 MR. GALATI: And, Mr. Knight, is it fair to
7 characterize the Sunrise Powerlink as sort of bisecting the
8 state in an east to west direction?

9 MR. KNIGHT: That's my understanding, yes.

10 MR. GALATI: And it's further south and closer to
11 the United States and Mexican border?

12 MR. KNIGHT: That's correct.

13 MR. GALATI: And the Willow flycatchers migrate
14 from South Mexico, north through California?

15 MR. KNIGHT: I'm not an expert on their migration
16 patterns.

17 MR. GALATI: Did you, in your analysis and your
18 estimate, using the number of mortalities predicted at the
19 Sunrise Powerlink, did you take into account how close to
20 Sunrise Powerlink sections were to nesting habitat for the
21 Willow flycatcher?

22 MR. KNIGHT: No. And I, you know, the -- I think
23 that it was basically taking the number that -- of mortality
24 associated with that transmission line, the southwest
25 power -- or Sunrise Powerlink and then extrapolating based

1 on just the mileage of the two lines. So there really is not
2 an apples to apples comparison here about the habitat types
3 along the Palmdale transmission line as it compares to the
4 Sunrise Powerlink. They're just sort of -- it was generally
5 used as an indicator, I should say, of what potential
6 mortality could be associated with the Palmdale power line.

7 That's why I think we felt more comfortable -- we
8 felt like we had to identify a potential range of impact
9 under CEQA. We can defer a determination of what the impact
10 would be. But we really don't know precisely what the
11 impacts would be. And that's why we thought it prudent to
12 allow the proponent to go through the Incidental Take Permit
13 process with the Fish and Wildlife Service and the
14 California Department of Fish and Wildlife. Part of that
15 assessment -- part of that process will be the development
16 of the Biological Assessment.

17 So I think some of the questions that Mr. Galati
18 is asking me right now about the habitat types along the
19 Palmdale line, and what that may mean in terms of impacts to
20 the Southeastern Willow flycatcher will be much more precise
21 at that point, and it will be a better predictor of what the
22 potential take would be.

23 MR. GALATI: Thank you, Mr. Knight. And what was
24 the estimate, the lower bound estimate, based on the
25 Desert -- the DRECP?

1 MR. KNIGHT: It was -- I think we came up with
2 four Willow flycatchers that the -- the DRECP predicted
3 three Willow flycatchers per 10,000 acres of renewable
4 development. And our approach came up with the Palmdale
5 line over the life of the line was four Willow flycatchers.

6 MR. GALATI: Thank you. Would you agree that this
7 issue came up, primarily raised by Ray Bransfield at U.S.
8 Fish & Wildlife Service because of monitoring data he had
9 seen in the Palmdale-Lancaster area of Willow flycatcher
10 mortality?

11 MR. KNIGHT: I would agree with that, yes.

12 MR. GALATI: And would you agree that the
13 biological assessment would be looking at the actual
14 mortality that's being reported in the Palmdale-Lancaster
15 area as some of its basis for predicting the transmission
16 line from this project's potential mortality?

17 MR. KNIGHT: I would agree with that.

18 MR. GALATI: Do you recall, when you looked at
19 that data, did you see hundreds of sightings or did you see
20 tens of sightings of Willow flycatchers in the Palmdale --

21 MR. KNIGHT: Yes, I believe it was in the tens.
22 And that may be, actually, even higher than what -- I recall
23 it was in the few, but --

24 MR. GALATI: Okay. And would you also agree that
25 the Biological Assessment would take into account that much

1 of the transmission line is going through an urban area in
2 Palmdale?

3 MR. KNIGHT: Well, I don't have a lot of
4 familiarity with the exact nature of that entire 36-mile
5 line. I do know that, yeah, some of it is within urban --
6 and urbanized area. But there's quite a bit of more kind of
7 rural areas, as well.

8 MR. GALATI: I have no further questions. Thank
9 you to the Committee for that, since I said I wasn't going
10 to cross examine, so I did keep it to five minutes though.

11 HEARING OFFICER CELLI: Before -- Staff, I'm going
12 to give you a chance to redirect. But before you do, I'm
13 going to ask some questions, also, and then you can redirect
14 and we'll take it back.

15 The first question, I just want to know that we're
16 comparing apples to apples. The 36-mile -- the Palmdale
17 transmission line, the longer of the two is the 36 miles.

18 What is the length of the Sunrise Powerlink that
19 they used as the standard?

20 MR. KNIGHT: The Sunrise Powerlink is 117 miles
21 long.

22 HEARING OFFICER CELLI: Okay. So you basically
23 reduced by a third, is that the calculation?

24 MR. KNIGHT: We provided in the appendix the
25 calculations that explains how we did it. But, yeah, it's

1 basically a proportion of --

2 HEARING OFFICER CELLI: And the way --

3 MR. KNIGHT: -- (indiscernible).

4 HEARING OFFICER CELLI: -- that they came up with
5 these numbers, Mr. Knight, was essentially going to be the
6 same methodology that Palmdale plans to use, which is
7 counting carcasses of dead birds, depending on -- you know,
8 I don't know whether they're going to use dogs or how
9 they're going to count it, but is that the basis for the
10 numbers that we got out of the Sunrise Powerlink?

11 MR. KNIGHT: That was. Their numbers came from
12 systematic monitoring studies. I don't know the details of
13 those, how they actually conducted them. I do know it was
14 not for the entire length of the 117-mile long line. They
15 selected certain areas. My guess is they picked those areas
16 because they thought they were representative, and then they
17 extrapolated from those using sophisticated techniques that
18 I'm not really, you know, knowledgeable about.

19 But it sounds very similar to how the monitoring
20 studies that have been done on some of the big solar
21 projects that the Commission has licensed, like Ivanpah,
22 where the entirety of the facility is not surveyed. There
23 are select areas that are surveyed, and then what
24 mathematical equations, extrapolated across the entirety of
25 the site.

1 HEARING OFFICER CELLI: So --

2 MR. KNIGHT: But, yeah.

3 HEARING OFFICER CELLI: -- Mr. Knight, what is the
4 expectation with regard to USFWS and CDF&W's analysis?
5 They're going to -- you're going to get a BO.

6 And do you have -- what I'm trying to get at is,
7 do you have some expectation that these numbers are going to
8 decrease when we get some definitive numbers? And also, are
9 they going to be basing their numbers on the Palmdale-
10 Lancaster area?

11 MR. KNIGHT: My belief is they would be basing it
12 on the Palmdale area. And so it's kind of hard for me to
13 say, do I think I think it's going to be less? It's
14 possible. I don't -- we don't think it will be greater.

15 HEARING OFFICER CELLI: Okay. That's all I had.
16 I'm going to turn it over to Ms. DeCarlo.

17 Go ahead.

18 MS. DECARLO: Just a few questions.

19 Mr. Knight, does Bio-26 require the project owner
20 to secure compensatory lands to mitigate for impacts to the
21 Southwestern Willow flycatcher?

22 MR. KNIGHT: It does.

23 MS. DECARLO: And do they -- does Bio-26 require
24 the project owner to identify in the Biological Resources
25 Mitigation and Monitoring Plan what lands they are going to

1 require or the availability of those lands?

2 MR. KNIGHT: Could you repeat your questions?

3 MS. DECARLO: Sure. Does Bio-26 require the
4 project owner to identify how they are going to go about
5 acquiring those lands in the BRMIMP?

6 MR. KNIGHT: The condition is not as explicit as
7 that. But -- so because they're required to go through the
8 Incidental Take Permit process with California Department of
9 Fish and Wildlife, the California Department of Fish and
10 Wildlife will require that information. They always require
11 financial assurances for ensuring the mitigation is
12 accomplished. And so I do know that they'll require -- you
13 know, they'll need to know what land are being offered for
14 mitigation, and the financial assurances that those lands
15 will be acquired.

16 MS. DECARLO: And does Bio-26 require the
17 Applicant to fold that information into the Biological
18 Resources Monitoring and Mitigation Plan?

19 MR. KNIGHT: It does, yes.

20 MS. DECARLO: And is that plan required to be
21 approved by the Energy Commission prior to start of
22 construction?

23 MR. KNIGHT: It does.

24 MS. DECARLO: Okay. Thank you.

25 That's all the questions I had.

1 HEARING OFFICER CELLI: anything further from
2 Applicant?

3 MR. GALATI: No, thank you.

4 HEARING OFFICER CELLI: Well, thank you very much.

5
6 So it's now noon. We're going to take public
7 comment.

8 I wonder if, while we're doing this, if Staff and
9 Applicant need to confer on Exhibit 508, I think it is.

10 MR. GALATI: I don't think I'm going to be able to
11 review them in that amount of time, but I appreciate you
12 thinking I have that capability.

13 I think that what I would propose is that we would
14 take -- that I would take a look at the compendium and all
15 the conditions, that I would add a reference to Geo-128 into
16 TSE-4.

17 HEARING OFFICER CELLI: Uh-huh.

18 MR. GALATI: I would then give that to Counsel.
19 And if Counsel agrees, if I didn't catch any changes and
20 minor corrections, that we would enter it as a stipulation
21 and that that could come into the record as Exhibit 508.
22 But I don't think I can get that done until next week.

23 HEARING OFFICER CELLI: Okay. The problem is that
24 we wanted to close the record today, if there wasn't any
25 further. And it kind of begs whether we need to have a

1 subsequent evidentiary hearing, just to take this last piece
2 of evidence in.

3 MR. GALATI: I have another proposal --

4 HEARING OFFICER CELLI: Let's hear it.

5 MR. GALATI: -- since we want to avoid that.

6 The purpose of 508 is just to put the conditions
7 in one location. They're in other exhibits. So I have a
8 proposal that we ask Mr. Hesters to read into the record
9 what TSE-5 needs to have it in, and then we close the
10 record. And then if we come up with a compendium, that
11 would be an administrative document provided to you. It
12 doesn't have to be used as evidence because you will have
13 all the conditions in the record --

14 HEARING OFFICER CELLI: That's true.

15 MR. GALATI: -- without this compendium. It's
16 just a compilation for your use.

17 HEARING OFFICER CELLI: That's true. I'm looking
18 at TSE-5 right now. It's several paragraphs long. It
19 mentions CPUC General Order 95, Title 8, Articles 35 and 36
20 and 37.

21 Mr. Hesters, are you on the line?

22 MR. HESTERS: This is Mark Hester. Yes, I am.

23 HEARING OFFICER CELLI: Okay. So I'm looking at
24 TSE-5 right now. Do you have that in front of you?

25 MR. HESTERS: I have both the original decision

1 and our testimony on the amendment. Which one would you
2 like me to look at?

3 HEARING OFFICER CELLI: Well, the one I'm looking
4 at, the second paragraph that begins,

5 "The power plant outline shall meet or exceed the
6 electrical, mechanical, civil and structural
7 requirements of CPUC General Order 85 or" -- and then
8 it lists other standards.

9 MR. HESTERS: I would -- the only change I would
10 make is say "CPUC General Order 95 and CPUC General Order
11 128."

12 HEARING OFFICER CELLI: So just --

13 MR. HESTERS: And then just go on from there.

14 HEARING OFFICER CELLI: -- just add insertion?
15 You're just talking about inserting "General Order 128" --

16 MR. HESTERS: Yes.

17 HEARING OFFICER CELLI: -- the word "and" and
18 "General Order 128" in that second paragraph?

19 MR. HESTERS: Right. It's also in the
20 verification A for TSE-5.

21 HEARING OFFICER CELLI: That's correct.
22 Verification A, you would probably -- you'd want to add "and
23 128" after "95"?

24 MR. HESTERS: That would work.

25 HEARING OFFICER CELLI: It's also in B. Would we

1 need to add it in B? If you look one, two, three, four, the
2 fifth sentence down?

3 MR. HESTERS: Yes. Pretty much any -- where it
4 says "General Order 95," it would also need to say "General
5 Order 128."

6 HEARING OFFICER CELLI: So where it says "General
7 Order 95," we would say "General Order 95 and 128" in TSE-5?

8 MR. HESTERS: Yes.

9 HEARING OFFICER CELLI: Okay. Any objection to
10 that from the Applicant?

11 MR. GALATI: No. We agree to that.

12 HEARING OFFICER CELLI: Staff, anything?

13 MS. DECARLO: That's fine.

14 HEARING OFFICER CELLI: Okay. You need to say yes
15 or no, because --

16 MS. DECARLO: No. No changes to that. That's
17 acceptable.

18 HEARING OFFICER CELLI: Okay. The record should
19 reflect that Ms. DeCarlo was shaking her head in the
20 negative, but we have clarity on that now. Okay.

21 So I tend to agree that we have all of the
22 conditions already in the record because we have the FSAs
23 proposed conditions, we have some testimony from the
24 Applicant in the form of supplemental, and I think it was
25 called rebuttal testimony, opening testimony and rebuttal

1 testimony that had changes.

2 And we have this compendium. And the purpose of
3 this compendium, Ladies and Gentlemen, just so everyone's on
4 the same page, was that the Committee had requested that the
5 parties put their heads together and provide the Committee
6 with one place where all the conditions were, so that we
7 could count on these conditions as being accurate so that we
8 don't publish and then have to revise because we got some
9 condition wrong. So that was the original idea.

10 It seems as though we could go with the record as
11 it stands. I'm concerned that if the Applicant or Staff
12 finds something that's questionable or requires debate, that
13 we would have to reopen the record in order to resolve an
14 issue.

15 MR. GALATI: Yeah. The only thing that hasn't
16 been reviewed is the compendium, which is now -- everything
17 was done in redline strikeout throughout the record, and now
18 the compendium is clean.

19 HEARING OFFICER CELLI: Right.

20 MR. GALATI: So whether all the changes were
21 accepted, it would take some time to review that.

22 But again, I don't believe that you need the
23 compendium as evidence --

24 HEARING OFFICER CELLI: No, I --

25 MR. GALATI: -- because you have all of the

1 conditions in.

2 HEARING OFFICER CELLI: Right.

3 MR. GALATI: And we have in the past provided to
4 the Committee a joint stipulation between Staff and
5 Applicant that here's a word document that you can use that
6 we both attest to and agree reflects the conditions in the
7 record.

8 So that's all I wanted to do with the compendium,
9 is to review it so to make sure that when we tell you to use
10 it, we don't end up having comments on the PMPD because
11 there's typographical errors or one item was accepted that
12 should have been deleted.

13 HEARING OFFICER CELLI: Right. So here's what I'm
14 thinking, I'd like to, now that we've been talking about it
15 and our record is filled with Exhibit 508, I'd like to
16 receive into the record, subject to subsequent changes
17 between the Applicant and Staff, as agreed upon by the two
18 parties unanimously. So you would submit some -- basically
19 and errata, if that is acceptable to Applicant and Staff.

20 Is that okay with the Applicant?

21 MR. GALATI: Yeah.

22 HEARING OFFICER CELLI: And Staff?

23 MS. DECARLO: Yes.

24 HEARING OFFICER CELLI: Okay. So a joint errata
25 that we could use. So really, we're just doing this so

1 (Staff's Exhibit 508 is received.)

2 HEARING OFFICER CELLI: So then with that, unless
3 there's anything further, we would close the evidentiary
4 record in the Palmdale Energy Project.

5
6 Anything further from the Applicant?

7 MR. GALATI: No, thank you.

8 HEARING OFFICER CELLI: And Staff?

9 MS. DECARLO: No.

10 HEARING OFFICER CELLI: Great. Thank you.

11 Then let us go now to public comment. So, Ladies
12 and Gentlemen, this is the opportunity for members of the
13 public to speak to the Committee. Everything will be taken
14 down. We have a court reporter, so we have a transcript.
15 Your comments will be addressed and considered in the PMPD.

16 And so I'm going to ask whether we have any blue
17 cards?

18 Mr. Macleay is shaking his head, no.

19 If you want to make a public comment, we need you
20 to go to the Public Adviser and he'll have these blue cards,
21 which Rene Macleay is holding up. You just fill out your
22 name, and that's how we know that you want to make a
23 comment. We'll call your name, you come to the podium and
24 make a comment. So if anyone would like to do that who's in
25 the room, please go see Mr. Macleay right away and we will

1 call your name as soon as we get the blue card.

2 For the moment the record should reflect that Mr.
3 Macleay is shaking his head in the negative, that there is
4 nobody here today in the room, a member of the public or
5 otherwise, who wishes to make a comment.

6 So therefore, we're going to go next to the
7 telephone and ask if there's anyone on the phone who would
8 like to make a comment? Please speak up.

9 Are they all un-muted? Yes, everybody's un-muted.

10 So if you're on the phone and you wish to make a
11 comment, please speak now. Go ahead. Anyone? We are, the
12 record should reflect, dead air. We're not getting any
13 response.

14 And the record should also reflect that there are
15 one, two, three, four, five, six, seven, eight, nine, ten
16 people who appear to be on the phone right now.

17 Are there more, Amanda, than that? Okay.

18 So just who's showing to the screen. The last
19 person is Sarah Head. So all of these people seem to be
20 associated either with Staff or the Applicant, and so we
21 have no comments on the phone.

22 Then I'm going to ask if someone from the AVAQMD,
23 the Antelope Valley Air Quality Management District could
24 please come up to the podium. We just need someone to
25 certify the FDOC please.

1 MR. DE SALVIO: Alan De Salvio, Antelope Valley
2 AQMD, by contract.

3 HEARING OFFICER CELLI: Say again?

4 MR. DE SALVIO: Mojave Desert AQMD staff,
5 functioning of the AVAQMD contract.

6 HEARING OFFICER CELLI: And with regard to the
7 FDOC, do you certify it?

8 MR. DE SALVIO: I so certify.

9 HEARING OFFICER CELLI: Thank you.

10 (Colloquy Between Hearing Officer Celli and
11 Commissioner Scott)

12 HEARING OFFICER CELLI: I'll reopen the record,
13 just to allow that certification.

14 If you wouldn't mind saying that again, with the
15 record open again. The evidentiary record is reopened, just
16 for this purpose.

17 MR. DE SALVIO: Alan De Salvio, speaking for the
18 Antelope Valley AQMD, A-L-A-N D-E S-A-L-V-I-O. I certify
19 the FDOC. I think it's Item of Evidence 53.

20 HEARING OFFICER CELLI: Thank you.

21 Okay, then, anything further? Any other -- have
22 you gotten any blue cards? We have not. Okay.

23 Then with that, we are going to close the
24 evidentiary record.

25 And I'm going to hand the meeting back to

1 Commissioner Scott.

2 COMMITTEE MEMBER SCOTT: I'd like to say thank you
3 so much to everyone for being here today, and I think that's
4 it. Okay.

5 HEARING OFFICER CELLI: We are adjourned.

6 COMMITTEE MEMBER SCOTT: Okay. We are adjourned.

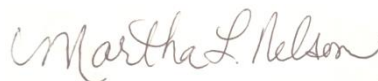
7 (The hearing adjourned at 12:12 p.m.)
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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of March, 2017.



MARTHA L. NELSON, CERT**367

CERTIFICATE OF TRANSCRIBER

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 transcribed by me, a certified transcriber 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.

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



MARTHA L. NELSON, CERT**367

March 27, 2017