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<td>Ken Celli</td>
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PREHEARING CONFERENCE
BEFORE THE
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the:  
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)  
Generating System Amendment  ) 09-AFC-07C  
_______________________________)  

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

THURSDAY, OCTOBER 24, 2013
10:05 A.M.

Reported by:
Peter Petty
Contract No. 170-09-002
COMMITTEE MEMBERS PRESENT
Karen Douglas, Presiding Member
David Hochschild, Associate Member

HEARING OFFICER, ADVISORS PRESENT
Kenneth Celli, Hearing Officer
Gabe Taylor, Advisor to Commissioner Hochschild
Eileen Allen, Commissioners' Technical Advisor for Siting

CEC STAFF PRESENT
Christine Stora, Project Manager
Jennifer Martin Gallardo, Staff Counsel
David Flores, Planner 3 Supervisor

OFFICE OF THE PUBLIC ADVISER
Blake Roberts, Assistant Public Adviser

APPLICANT
Scott Galati, Attorney
Galati/Blek, LLP
Matt Stucky, PE Abengoa Solar
Andrea Grenier, Centerline

INTERVENORS
Lisa T. Belenky
Ileene Anderson (via WebEx)
Center for Biological Diversity  
Kevin Emmerich (via WebEx)  
Basin and Range Watch  

Sara Clark  
Doug Bonamici (via WebEx)  
Nancy Jascula (via WebEx)  
Colorado River Indian Tribes (CRIT)  

Seth Shteir  
National Parks Conservation Association  

INTERESTED GOVERNMENT AGENCIES  

Tiffany North (via WebEx)  
County of Riverside  

Rebecca Forbes  
Caltrans
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PRESIDING MEMBER DOUGLAS: Before we begin I’d like to introduce the Committee and then ask the parties to introduce themselves for the record. My name’s Karen Douglas, I’m the Presiding Commissioner on this siting case.

And to my immediate left is our hearing officer, Ken Celli. To his left is Commissioner David Hochschild, the Associate Member on this case and to Commissioner Hochschild's left, Gabe Taylor, his Advisor. To Gabe Taylor's left is Eileen Allen, she's the Technical Advisor on Siting for Commissioners.

Let’s see now, we’ve got the Public Advisor’s Office in the room. Blake if you could identify yourself, so Blake is here. And let me ask the petitioner if you could introduce yourselves for the record?

MR. GALATI: This is Scott Galati, Counsel to Palen Solar Holdings.

MR. STUCKY: This is Matt Stucky, I’m with Abengoa Solar. We are a member of the project company, Palen Solar Holdings.

MS. GRENIER: Andrea Grenier, Permitting Consultant with Centerline.
PRESIDING MEMBER DOUGLAS: Thank you, staff?

MS. MARTIN-GALLARDO: Yes, this is Jennifer Martin-Gallardo, Staff Attorney.

MS. STORA: And Christine Stora, Compliance Project Manager on the Palen Solar Project.

PRESIDING MEMBER DOUGLAS: Thank you. All right, let me turn now to the intervenors.

Intervenor, Center for Biological Diversity? Are they muted?

HEARING OFFICER CELLI: Everybody should be unmuted, but let me make sure. Oh, I have somebody.

PRESIDING MEMBER DOUGLAS: Hang on, we’re making sure.

HEARING OFFICER CELLI: I just lost Matt Miller.

PRESIDING MEMBER DOUGLAS: We’re making sure that people are not muted.

HEARING OFFICER CELLI: Let’s see, all right. Yeah, everybody is unmuted, which is unusual because you’d think by now we’d start hearing somebody making noise.

PRESIDING MEMBER DOUGLAS: Right, all right so --

FEMALE SPEAKER: (Inaudible) up there.

FEMALE SPEAKER: No, she’s on there.
PRESIDING MEMBER DOUGLAS: Intervenor, let’s see Lisa Belenky or Ileene Anderson from the Center for Biological Diversity.

MS. ANDERSON: Yes, this is Ileene Anderson on the phone, can you hear me?

PRESIDING MEMBER DOUGLAS: Yes, we can. Thanks.

MS. ANDERSON: Great, I believe my colleague Ms. Belenky was going to swing by there, but evidently she may be running a little bit late.

PRESIDING MEMBER DOUGLAS: Okay.

HEARING OFFICER CELLI: As we all are.

PRESIDING MEMBER DOUGLAS: Great, thanks. There was a bit of an echo there, hopefully we --

HEARING OFFICER CELLI: That was a fellow named Peter. Peter I’m going to, depending on who Peter is, I’m going to mute him. He’s just on the computer anyway.

PRESIDING MEMBER DOUGLAS: Got it.

Intervenor Kevin Emmerich with Basin and Range Watch?

MR. EMMERICH: Hello, can you hear me?

PRESIDING MEMBER DOUGLAS: Yes, we can. Thank you.

MR. EMMERICH: Okay, we’re here.

PRESIDING MEMBER DOUGLAS: Intervenor Alfredo
Figueroa from Californians for Renewable Energy are you on line? Alfredo Figueroa, Californians for Renewable Energy? Okay, not yet.

Intervenor for CURE, Tanya Gulessarian or Elizabeth Klebaner?

All right, Intervenors for LiUNA, Hildeberto Sanchez or Eddie Simons?

MALE SPEAKER: (Inaudible)

PRESIDING MEMBER DOUGLAS: All right, Intervenor Rebecca Loudbear, Colorado River Indian Tribes?

MS. CLARK: This is Sarah Clark, Counsel for Colorado River Indian Tribes. Joining me on the phone is Doug Bonamici and Nancy Jasculca who’s in the Attorney General’s Office at CRIT.

PRESIDING MEMBER DOUGLAS: Great, thank you. Did you pick that up?

FEMALE SPEAKER: (Inaudible)

PRESIDING MEMBER DOUGLAS: All right, public agencies. Are there any -- Lisa Belenky, welcome. Lisa Belenky is here for the record and Ileene Anderson is on the phone.

Are there any representatives here today from federal government agencies? Here in the room or --

VOICE MAIL FOR MS. MARSDEN: You have reached
the desk of Kim Marsden, Natural Resource Specialist at the California Desert District of BLM. I’m unavailable to answer your call.

HEARING OFFICER CELLI: Boy!

PRESIDING MEMBER DOUGLAS: All right, well BLM is apparently trying to call in.

HEARING OFFICER CELLI: I can’t figure out which one I’m muting from. I’m happy to mute from this one and work off of this one, but is it going to work for me if I do?

PRESIDING MEMBER DOUGLAS: We’ll survey later for federal government agencies as well.

Are there any officials representing Native American tribes or nations besides the Colorado River Indian Tribes? They’ve already been introduced.

Okay, are there any elected officials here from state, county or at the local level? Any local government agencies?

MS. NORTH: Tiffany North, the Deputy County Counsel, County of Riverside.

MS. FORBES: This is Rebecca Forbes from the California Department of Transportation, Caltrans.

PRESIDING MEMBER DOUGLAS: Great, thank you. Anyone else? All right, with that I’ll turn this over.
MS. FORBES: And I’m --

PRESIDING MEMBER DOUGLAS: Oh, go ahead.

MS. FORBES: I’m sorry, this is Rebecca. Again, Kim is that your name or anyways I’m not sure how long this is going to be, but we have an all-staff meeting starting at 10:00. So I was wondering if there was any way we could address the transportation issues at the beginning or do we have to follow the, I don’t know if there was an agenda.

HEARING OFFICER CELLI: No, it’s just comment. We’ll have comment at the end, so if they’re available to make comment we’ll let them. But right now we’re not doing transportation.

MS. FORBES: Oh, you’re not doing transportation?

HEARING OFFICER CELLI: Not at the moment, we’ve got that’s a little further down in the agenda. So if you’ve got a meeting why don’t you do your meeting and come back. We’ll probably be hitting transportation right about when you’re done.

MS. FORBES: Well, it’s going to be an all-day. It’s an all-day staff thing, I mean literally like yours it’s from like 10:00 to probably 2:00.

HEARING OFFICER CELLI: Okay, Caltrans what I’m going to ask you to do is perhaps let me ask
staff. Can we get an offline phone call and they can speak to Christine or someone and staff can represent Caltrans position regarding transportation?

MS. MARTIN-GALLARDO: I think that that sounds workable.

HEARING OFFICER CELLI: Let’s do that and then this way whatever it is you needed to tell the Committee, the information will be received and you can have your meeting.

MS. FORBES: Okay, right because there was issues and David Flores had called me about them, about the issues.

HEARING OFFICER CELLI: Well, David Flores is here nodding his head in the affirmative. And so maybe David, do you have a cell phone? Perhaps you can have an offline phone call and then when we get around to traffic and transportation you can come up and tell us what Caltrans had to say? Great, that solves that problem. Thank you.

MS. FORBES: Okay, great. So then I will hang up and wait for the call I guess.

HEARING OFFICER CELLI: Thank you for cooperating.

MS. FORBES: Okay, thank you.

MR. SHTEIR: Commissioner Douglas, I just
wanted to let you know my name is Seth Shteir and I’m here representing the National Parks Conservation Association. And we petitioned to be an intervenor.

PRESIDING MEMBER DOUGLAS: Great, thank you. All right, so with that I think we’re through introductions. I’ll turn this over to the hearing officer.

HEARING OFFICER CELLI: Thank you, Commissioner Douglas, good morning everybody.

The Committee noticed today’s prehearing conference in a notice of prehearing conference and evidentiary hearings issued on October 7th, 2013. Prior to that on October 3rd I personally sent out a memo to all the parties giving them a heads up, so that we could work out a schedule as early as possible.

I just want to remind everybody that we had noticed in October 28th, 29th and 30th as evidentiary hearing dates. That’s next Monday, Tuesday and if necessary Wednesday. It’s going to be at the UC Riverside Palm Desert Campus. And due to delays in the publication of the determination of compliance by South Coast Air Quality Management District we scheduled a November 1st date as the publication date for the air quality section of the final staff
assessment, which we will refer to throughout these
hearings as FSA, Final Staff Assessment.

And on November 14th we set the evidentiary
hearing on air quality only, but I wanted to give all
of the parties a heads up that that date’s not going
to work. I don’t have a date right now, probably
within a week of that date we will set one as soon as
I can get a date when all the commissioners can be
here. We would have it in Sacramento. It would be on
air quality only. And I’m going to try to get it to
be hopefully the week of the 18th, somewhere in there.

But the fact is I’m not going to notice it
until the FSA section comes off, because we need the
time, so just this is a preview of coming attractions.
You’ll be getting a notice on this one when we have
some certainty as to what the dates are.

MS. BELENKY: November.

HEARING OFFICER CELLI: Yes?

MS. BELENKY: Oh, I think you said October
18th and you meant November.

HEARING OFFICER CELLI: You’re right,
Ms. Belenky. I mean, November. I’m talking about
November 1st was supposed to be the FSA publication
date. November was supposed to be --

And I’m just going to say, Matt Miller if
you’re listening in I could use you in the room, because I need to get the -- oh wait a minute. Never mind, I got it. I’m sorry ladies and gentlemen I’m working on this technical stuff and as people cough and things I try to mute them and stay on top of it. But if you’re listening in on the telephone and you’re not a party or someone from the National Parks Conservation Center it would be useful to us if you would please mute your phone on your side until you have something to say. And then we will call on you when it’s time, but we get some background noise and I’m trying to avoid that.

Excuse me one second, I think I’m going to need to (inaudible) host or presenter rather, thanks. Okay, I’m back.

So as explained in the notice the basic purpose of a prehearing conference is to assess the project’s readiness for hearings to clarify areas of agreement or dispute amongst the parties. To identify witnesses and exhibits, to determine upon which areas parties need to question the other party’s witnesses. And to discuss associated procedural matter such as scheduling, etcetera.

To achieve these purposes we require that any party seeking to participate at this conference or
present evidence or wish to question witnesses at evidentiary hearings file a prehearing conference statement by October 22nd, 2013. Timely prehearing conference statements were filed by all parties except the Intervenor California for Renewable Energies, Californians for Renewable Energy, Intervenor TIER CURE California -- let me step back.

We received prehearing conference statements from everybody except Californians for Renewable Energy, California Unions for Reliable Energy and LiUNA, which is the Labors International Union National; I forget what A stands for, LiUNA.

Staff published its Final Staff Assessment Part One, on September 11th, 2013 and Part Two on September 23rd, 2013. And the air quality section, which would include the greenhouse gases section, will be Part Three is still pending. And again we’ve said that would be due out November 1st, 2013. The FSA serves as staff’s testimony on all subject areas. The FSA has been marked for identification as Exhibits 2000 and 2001.

Staff’s rebuttal testimony was filed on October 21st, 2013 as Exhibit 2003. And the South Coast Air Quality Management District’s PDOC, which is the Preliminary Determination of Compliance is marked
as for identification as Exhibit 2006. That was filed on October 18th, 2013.

The timely testimony was filed by Petitioner Palen Solar Holdings. That included the petition, testimony and exhibits, and that was on September 30th, 2013. That included efficiency, facility design compliance, hazardous materials, land use, noise and vibration, reliability, power plant reliability, socioeconomics, transmission line safety and nuisance, transmission systems engineering, visual resources, waste management, soil and water.

And then on October 9th, 2013 petitioner filed Batch Two, which included alternatives, biological resources, cultural resources, geology, paleontology, project description, public health, traffic and transportation, worker safety and fire protection.

These exhibits have been marked for identification as Exhibits 1001 through 1081. I may be wrong about that, because I understand there were some changes that had to be made to accommodate the e-filing system.

The Intervenor Center for Biological Diversity’s evidence was timely filed and marked for identification as 3000 through 3062.
Intervenor Basic and Range Watch filed Exhibit 4000.

MS. BELENKY: Excuse me?

HEARING OFFICER CELLI: Yes?

MS. BELENKY: We added the 3063 when you split up that other exhibit.

HEARING OFFICER CELLI: Oh yes, that’s right. Thank you. You know, ladies and gentlemen just so you know, we’re doing this new e-filing system. It required four digits and it has to be numeric only and we can’t have alpha, which has created all kinds of interesting creative workarounds that we’ve had to come up with. And I do appreciate everybody’s indulgence on that.

So we’re going to talk about exhibits in a little while anyway, just to get some clarity on that. But Basic-Basin and Range Watch did file a timely prehearing conference statement. They only have the one exhibit, 4000.

Californians for Renewable Energy has not filed any exhibits, nor did CURE, nor did LiUNA.

Intervenor Colorado River Indian Tribes filed a timely prehearing conference statement and marked for identification Exhibits 8000 through 8020. They were timely filed. We will talk later also about the
Today’s agenda is divided into six parts. First, we will discuss the petition to intervene by National Parks Conservation Association.

Second, we will discuss scheduling of the hearings and when I say scheduling of the hearings I’m talking about what’s going to occur when on Monday and Tuesday. In what order are we going to take the topics.

Thirdly, we will discuss the parties witness lists.

Fourth, we will discuss the parties’ exhibit lists and confidentiality requests.

Fifth we will discuss the formal and informal process that the Committee will utilize in the conduct of the evidentiary hearings.

Sixth we will discuss the briefing schedule and finally we will provide an opportunity for the public to make public comment.

So let us begin. We have Seth Shteir?

MR. SHTEIR: Yes, that’s correct, uh-huh.

HEARING OFFICER CELLI: Is that how I pronounce it, Mr. Shteir?

Mr. SHTEIR: Shtire (phonetic), but that’s okay.
HEARING OFFICER CELLI: Shteir?

MR. SHTEIR: Yeah.

HEARING OFFICER CELLI: It’s not okay with me, because I make everybody pronounce my name Chelli (phonetic) even though there’s no h. So I’m a real stickler for pronouncing people’s names right, so Mr. Shteir.

MR. SHTEIR: Okay, yes sir.

HEARING OFFICER CELLI: We received your petition to intervene and the Presiding Member had a chance to look at it. And the ruling is as follows. The ruling on the petition to intervene by National Parks Conservation Association is as follows. The petition is denied and the Committee makes the following findings on the petition.

The petition: one, the petition is untimely. As directed in our October 7th, 2013 notice of prehearing conference and evidentiary hearing, and pursuant to Title 20 Section 1207(b) of the California Code of Regulations, the deadline to file a petition to intervene must be filed 30 days prior to the evidentiary hearing. Or at the time of the prehearing conference, whichever date is earlier. Thirty days prior to the evidentiary hearings in this case was September 28th, 2013.
The Committee does not find good cause, two. The petition states that its late filing was caused by the inability to gather information from the federal websites due to the federal government shutdown. However, the government shutdown occurred on September 30th, 2013 two days after the deadline to file a petition, which was September 28th in this case.

Three, the National Parks Conservation Association’s concerns regarding visual, biological or cultural impacts are adequately represented by existing intervenors and parties and staff.

So finally, the National Parks Conservation Association petition to intervene is denied; anything further on that, Mr. Shteir?

MR. SHTEIR: Well, just to put I think there was a representation in one of the follow-ups that the concerns about Joshua Tree National Park had already been represented by the National Parks Service. But for the record I would like to point out that we are a little bit different than the National Parks Service in that we’re a membership-based organization that has 800,000 active members and supporters and 100,000 in California.

So just to think about that a little more, we
connect people who have previously not been represented in a lot of the renewable energy conservation process, then also people who are park lovers, so I think there’s a little bit of a distinction made.

HEARING OFFICER CELLI: Thank you, the Committee understands that. And I appreciate your attempts and in the future way, we do everything at the Energy Commission to allow and encourage participation from intervenors and members of the public. But in this the application came in just too late, so we encourage you in the future to please try to come in sooner and you wouldn’t run into that problem. So thank you very much.

PRESIDING MEMBER DOUGLAS: And just one more comment --

MS. BELENKY: Oh, sorry.

PRESIDING MEMBER DOUGLAS: Oh, go ahead.

MS. BELENKY: Oh, go ahead.

PRESIDING MEMBER DOUGLAS: All right, just one more comment Mr. Shteir. I’m also very familiar with the National Parks Conservation Association. I think it’s a really strong organization. I think it has an important mission and I would want to recommend that you make comment in the proceeding to that to the
extent that you have specific questions or concerns, that you talk to staff and potentially other parties. And just ensure that we thoroughly vet and raise the issues that you have. Comment letters can be sent in really at any time and so you’re welcome to send one in.

The issue was -- but, you know, so I think that there’s a lot that you can add to the proceeding. I don’t think you need to be a party necessarily to do it and given the timing of your petition I’d recommend that you, as I said talk to staff, potentially talk to other intervenors or parties. And make public comment and just be a -- you do represent an important perspective. And we’d like to and we certainly will listen to it.

MR. SHTEIR: Well, thank you very much for your consideration. And we’ll continue to do that.

HEARING OFFICER CELLI: Thank you, Mr. Shteir. CBD?

MS. BELENKY: Yes, I had a question and after their petition came in I did go back and look at the rule. And, you know, not at all disputing the decision except to the extent that it relies on this timeliness question. It seems to me there’s a gap, because it says that you can petition to intervene 30
days before the hearings. Or by the time of the prehearing conference and then but if the hearings aren’t noticed before the 30 days before them, there seems to be a gap there in the way the rule is written. And so I am concerned. It sounds like that’s not the only basis for your ruling, which is fine but I am concerned about that as a structural matter if that were the main basis for the ruling.

HEARING OFFICER CELLI: And I appreciate that and I personally am partially to blame for that. And the problem stems from the fact that I had put together a schedule long before the notice came out, but delayed the notice because we were waiting for this PDOC to come out if you recall. And it finally, it just got to the point where we just needed to move on. So we’ll talk some more about that.

Let’s talk now about the prehearing conference statements and the topics that the parties consider to be not ready to proceed. Both petitioner and staff noted that air quality and GHG or greenhouse gases, which is a subset of the air quality section, have not been published. So clearly they’re not ready to proceed.

According to the Center for Biological Diversity the issues are, or the topic areas that are
not ready to proceed would be the project description, alternatives, biological resources, soil and water resources, air quality and greenhouse gases and purpose and need. And I take it Ms. Belenky, that purpose and need would be going to what I think is the override section, because I’m trying to slot that in the usual topic areas that we have. And I was, you know, need really doesn’t come into play unless public convenience and necessity becomes an important topic. So can I say that that would in the override section’s purpose and need; is that what you had in mind?

MS. BELENKY: Well, I think that may be fine. It may more go to alternatives. It’s sort of like why are you even looking at this project or whatever. So I would think it goes more into alternatives, but I don’t we actually had a separate hearing section on override before.

HEARING OFFICER CELLI: That’s true. And I think you’re absolutely right. You know, the thing about alternatives is it really is hand in hand with the override’s consideration. So I’m going to lump them all together. I just wanted to make sure, you know, in times past as you call them silos. We talk about something and then we have to change silos on you and I want to avoid that to the extent I can.
MS. BELENKY: Thank you.

HEARING OFFICER CELLI: Then let’s see the Basin and Range Watch had considered all topics ready to proceed. The Colorado River Indian Tribes, and Ms. Clark you’re here to represent them?

MS. CLARK: Yes.

HEARING OFFICER CELLI: Your folks say that cultural is not ready to proceed. And then as I mentioned earlier I did not get a prehearing conference statement from CARE, CURE or LiUNA. So those are the topics that the parties claim are not ready to proceed, but then of course all of the parties say, “But if you’re going to proceed then these are areas that we consider to be in dispute.”

The areas that are in dispute according to the petitioner would be the override section or override statement is really how it shakes out, biological resources, cultural resources, worker safety and fire protection, traffic and transportation, geology and paleontology and visual.

Staff’s topics that are in dispute are alternatives, biology, cultural, worker safety, geo and paleo, traffic compliance and visual.

MR. GALATI: Mr. Celli, our prehearing conference statement removed visual with staff’s
errata, so we don’t believe that visual’s in dispute.

HEARING OFFICER CELLI: Thank you, that may save us some time. CBD finds the following to be in dispute: project description, alternatives, biological resources, soil and water and air quality. And I take it also that since air quality hasn’t been published yet that that sort of is a placeholder for the moment. Basin and Range Watch considers visual, bio and cultural to be in need of adjudication. The Colorado River Indian Tribes believe that cultural, visual, alternatives and environmental justice are in need adjudication and I thought that was interesting.

In our normal topic areas EJ is sort of split first in socio-economics. That’s where they look to see where the EJ communities would normally be within the project area, but then each section that may have an impact if there were to be found an EJ community then addresses the EJ community problem. In this case I’m taking it that the EJ, because I think you said that it was a cultural?

MS. CLARK: That’s correct, so it can be subsumed into cultural resources.

HEARING OFFICER CELLI: I think that, I really do because I don’t see anybody opening up the window on socio-economics.
MS. CLARK: That’s correct.

HEARING OFFICER CELLI: And I would really like to keep it closed if we don’t have to, so and that takes care of all of the parties in terms of what they believe are in dispute. So that is what we have to talk about on Monday through Tuesday would be alternatives, cultural, bio, geo-paleo, the EJ of cultural that I get to take that one out, so basically cultural again with an eye towards the environmental justice problem, soil and water, project description, air quality, visual resources, workers, worker safety, fire protection, traffic and transportation, compliance and the override.

And I just wanted to ask Ms. Belenky, with regard to soil and water in the FSA, because typically your concern is with things like the sand transport and stuff like that. Sand transport was dealt with in bio. It got mentioned in soils and water, but then it was really dealt with in depth as a bio issue. The whole sand transport, which would seem like it would be a kind of a soils issue, but it was dealt with in bio.

MS. BELENKY: The sand was dealt with in bio, but there are other issues. There’s the cryptobiotic soils issues, there are water use, the amount of water
use, which seems to be different than earlier proposals and the surface hydrology as well.

HEARING OFFICER CELLI: So water use and surface hydrology would definitely be soils and water. The cryptobiotic soils I believe were raised in bio, so...

MS. BELENKY: Okay, so we’d put sand and cryptobiotic soils into bio?

HEARING OFFICER CELLI: Yeah.

MS. BELENKY: Okay, but water use and surface hydrology are soils and water?

HEARING OFFICER CELLI: Yeah, so I’m going to keep soils and water as a disputed topic then.

MR. GALATI: Mr. Celli, if I could add another correction?

HEARING OFFICER CELLI: Yes.

MR. GALATI: Compliance, which was originally in our prehearing conference is not disputed. I think the only people disputing compliance was the applicant, so I don’t see that as a disputed item.

HEARING OFFICER CELLI: And just because we’re not, so we’re not going crazy, the applicant -- this is an amendment to an already certified project. And so as such there is a petition to amend and I’m trying to be good about calling what would normally be
the applicant, the petitioner in this case, so in case
I fall back and forth and I’m talking about the
applicant/petitioner to my way of thinking that’s the
same person. So the petitioner is the former
applicant who’s now petitioning to amend their
certification, okay?

So that means that the parties have indicated
in their prehearing conference statements that the
following topics are not in issue: land use, although
the Committee has some questions about land use and
I’ll point that out in a little bit, hazardous
materials, transmission line, safety and nuisance,
public health, waste management facility design, noise
and vibration, power plant efficiency, power plant
reliability, transmission systems engineering and now
compliance.

So that’s now 11 topic areas that should be
submitted by declaration and we no longer need live
testimony, live witnesses on those 11 topics. Do I
have that right, Mr. Galati?

MR. GALATI: That is correct from the
petitioner’s perspective.

HEARING OFFICER CELLI: And staff, are you
willing to allow those 11 topics that I just listed to
be submitted by declaration and therefore not by way
of live testimony?

   MS. MARTIN-GALLARDO: Yes.

   HEARING OFFICER CELLI: And Ms. Belenky?

   MS. BELENKY: Yes, to the extent that what we’re saying, I just want to be really clear for the record, is that we don’t have an evidentiary issue with these sections. And that obviously we do have disputes as to various matters within these sections, particularly land use and what is the land use determinations of this area. But those are not necessarily factually disputes, they may be legal disputes.

   HEARING OFFICER CELLI: You have it exactly right and, of course, we’ll talk about briefing later and a lot of this is going to show up in your briefs. But what the question, what I’m asking now Ms. Clark just so you know, is whether you feel that any of the 11 topics I just listed really call for or need live witnesses rather than the written testimony we’ve already received. So do you agree that we can submit those 11 topic areas by way of written testimony rather than live testimony?

   MS. CLARK: (Inaudible)

   HEARING OFFICER CELLI: Okay, thank you. And now Mr. -- he’s with Range Watch, thanks.
Mr. Emmerich, are you on the phone,
Mr. Emmerich? Did he call, did you speak with him earlier?

MR. GALATI: Yeah, he might be muted.
HEARING OFFICER CELLI: He might be.
MR. EMMERICH: I’m sorry, could you ask that question again?

HEARING OFFICER CELLI: Thank you, Mr. Emmerich. Just I’m going to give you a list of topics that appear to be areas where the testimony will be submitted by declaration and that live testimony of witnesses will be unnecessary. And I just want to clear that you agree that we can, we do not have to take up evidentiary hearing time on the following 11 topics: land use, hazardous materials, transmission line safety and nuisance, public health, waste management, facility design, noise and vibration, power plant efficiency, power plant reliability, transmission systems, engineering and compliance.

MS. MARTIN-GALLARDO: Would that also include socio-economics, would we want to add that to the list?

HEARING OFFICER CELLI: Yeah, I think I’d better add socio-economics, because the EJ question is
really a cultural question. So there’s actually 12 topics now and I’ll go around and make sure that the rest of the parties don’t mind. But I’m asking you Mr. Emmerich, whether you agree that the above topic areas that I just read will be submitted by declaration. And that live testimony of witnesses is unnecessary.

MR. EMMERICH: Well, I would say live testimony and witnesses is unnecessary, but I’m going to confess that these hearing procedures are somewhat confusing to us. We do have disputes with some of those issues, however we didn’t put that in our prehearing conference statement. I mean, I guess I would agree to that yeah.

HEARING OFFICER CELLI: Thank you. Just to be clear you’re always going to have the ability to address any legal issue in your briefs on any subject. But what we’re trying to do right now is see what areas we need to spend evidentiary hearing time on. And that’s really where the question goes.

MS. CLARK: If I could make a brief comment on that point?

HEARING OFFICER CELLI: Ms. Clark?

MS. CLARK: I think it would be very helpful for the public siting guide to make that more clear
than the way it’s written. It currently indicates that if you wish to dispute an issue on any point you need to submit testimony about it and it needs to be heard in evidentiary hearings. And so I think some of the confusion that has come from us and perhaps other intervenors would be remedied by more clarification.

HEARING OFFICER CELLI: Appreciate that, we’ll have a word with the public advisor on that who’s nodding his head. And Dr. Roberts is here and he acknowledges that.

So and then Ms. Clark, we added socio-economics. Did you agree that we don’t need live testimony on that?

MS. CLARK: Live testimony is needed.

HEARING OFFICER CELLI: And Ms. Belenky, on socio-economics?

MS. BELENKY: No, not needed, thank you.

HEARING OFFICER CELLI: Thank you, so then as to the topics any party claims that are incomplete or are in dispute we expect the parties to work together to determine whether or not any of these topics can be moved into the undisputed column between now and the evidentiary hearing, which is Monday.

The parties are welcome to conduct a workshop immediately following this prehearing conference if...
you’re interested in speaking together. We would leave the WebEx on, so that people could participate if the parties want to talk. This is a noticed hearing or conference.

Can the petitioner inform the Committee whether they have settled any -- well, I guess I’ve talked to you and you basically stated that compliance was out of that column.

So let’s talk next about the exhibit lists. This is a new system where you --

MS. BELENKY: Mr. Celli, I’m sorry to interrupt, but I thought we were going to schedule these?

HEARING OFFICER CELLI: Yes.

MS. BELENKY: Or I just want to make sure we’re on the same number.

HEARING OFFICER CELLI: We are, I’m coming around to the scheduling after I get to the exhibit list and witnesses.

MS. BELENKY: Okay, because we did have a question about how the day will go and we have had several members of the public contact us about, you know, about what time the public comment periods will be. And is it going to be a set time, so they can come and, you know, things like that. So I didn’t
want to leave scheduling too fast.

HEARING OFFICER CELLI: We will, I’ll come around to it, but just because you raised it and people are listening public comment will be at 6:00 p.m. on Monday and Tuesday.

MS. BELENKY: Only, and not during the day? Because some people are going to come during the day and I think in the last set of hearings we did, we did like just before lunch each day we had like 20 minutes or something?

HEARING OFFICER CELLI: We just did it, we can probably do that too.

MS. BELENKY: Okay, well I guess we’ll talk about it later this morning.

HEARING OFFICER CELLI: But we just --

MS. BELENKY: But it is important, because there’s a lot of people who are very interested who live in the area. And if they come and sit through the whole day and then have to wait until 6:00 o’clock, I mean that’s a very long time for people to wait to say anything. And I do believe we did midday before, so we would just ask the Committee to consider that.

HEARING OFFICER CELLI: That’s true, it’s a work day Monday and Tuesday. So that’s why 6:00 p.m.
seemed like a good idea, but if people are there who can only make a comment at noon then we’ll have the public advisor who will be there.

MR. GALATI: Mr. Celli, if I could weigh in here, because I actually think something we’ve done in other projects that have been very, very helpful is you set aside a time like 6:00 o’clock for public comment. But at the end of every topic area if people are there and want to comment on that topic area you allow them, the public, to comment on it. And if they’ve heard what they need to do they may not have to wait until 6:00.

That way the areas that are disputed you hear the comment right after you heard the testimony if people are there or you can listen to it all at 6:00 o’clock. That way there’s lots of opportunities for public comment as opposed to specified times, because my recollection is we never can break at the right time in the middle of a hearing to give public comment. But we can at the end of the night when we’ve scheduled it. That would give more opportunity for public involvement in my opinion.

MR. EMMERICH: Hello, this is Kevin Emmerich. Can I make a comment on that?

HEARING OFFICER CELLI: Sure.
MR. EMMERICH: The public comments are I mean I’m going to echo what Lisa said, the public does not follow these hearings closely. It’s confusing enough to me as an intervenor, let alone the public. So I believe that a fixed time announced ahead of the hearing is really a good idea, whether it’s at 6:00 p.m. or noon or whatever. But that way the people will know when to call in and or show up and make that comment. But if they’re sitting there waiting you’re going to lose people. They’re just going to zone out, they’re going to drift off and they’re not going to be able to follow this like the rest of us are. So that’s my comment, thank you.

HEARING OFFICER CELLI: Thank you, Mr. Emmerich. And I agree and I think the approach of this Committee is going to be a sort of a hybrid where I’m pretty sure we’re going to have a 6:00 p.m. public comment, because that’s about when we break for dinner. And we will be flexible and try to accommodate people who are there during the day and maybe pre-lunch if there’s a lunch break we can ask for comments. So we’ll do what we can to accommodate everybody and again, we’re going to have the public advisor there and it’s always good to have the public advisor to communicate to the Committee who’s here and
who needs to make a comment.

So back to the discussion of the publics’ witness list or the parties’ witness list we will be in the auditorium at Building B at US Riverside’s Palm Desert Campus in Palm Desert. That’s on October 28th and 29th, Monday and Tuesday. And we’d still have the room for the 30th if we can’t finish our business by Tuesday.

The evidentiary hearings start each day at 10:00 a.m. Evidentiary hearings will go as late into the evening as the Committee deems necessary. The Committee will hear public comment starting at about 6:00 p.m. each evening except Wednesday. If we do go into Wednesday it’s possible that we may finish, may not finish on Tuesday, so if we do finish on Tuesday there will be no public comment on Wednesday. Let’s be clear about that. If we need to extend hearings into Wednesday we will take public comment at noon, so that I can get the commissioners to the airport on time for their flights.

After receiving the undisputed evidence and then accounting for breaks, interruptions and public comment we really have generally about six hours of productive hearing time per day. Twelve hours is almost a third, a little less than a third of the time...
that the parties estimated we needed to examine witnesses. The total estimated time for examination of the parties’ witnesses is 26 hours or 26.2 according to our calculations: 14.1 hours on Monday and 12.1 hours on Tuesday.

Obviously we don’t have 26.2 hours for hearings and it was staff’s recommendations that we proceed as follows: that on Monday we start with alternatives, we then go to visual, we would then go to geo-paleo followed by cultural. Now that part of the prehearing conference that staff submitted did not account for project description or soil and water, so we need to put those in. And it would go in on Monday I believe. And then on Tuesday staff recommended cultural and worker safety and fire protection and we would probably do it in that order.

MS. CLARK: Can you repeat that, what you just said then?

HEARING OFFICER CELLI: Right, so we were going to do -- I’m sorry, I’ve got that wrong. I said cultural, I meant bio on Tuesday. That was at the request of CBD, because CBD’s witnesses could only come on Tuesday. So we devoted Tuesday to biological resources. Also petitioner’s witnesses couldn’t come on worker safety and fire protection except for on
Tuesday, so we have to do those two on Tuesday.

So as you know, what I would like to do is try to get everything done on Monday, but the remaining bio which is going to take a lot of time, and worker safety. But we may have some spillage there, but that is right now sort of my working generalized view of how the day should go.

So let me hear from the parties on that.

Let’s start with the petitioner.

MR. GALATI: I think that’s way too much time and we don’t need that much time. I think that there might have been some double counting of the hours accidentally. The --

HEARING OFFICER CELLI: Can I interrupt you for one second, because I just want to point something else out. We’re going to talk about the way that we’re going to proceed by way of formal or informal. I ask the parties to give me direct and cross-examination times, which is the old style, the old model. And it doesn’t really translate very well to the informal and we found at least in the Hidden Hills case, that the informal process really streamlined things. And when I have a panel of everybody’s witness sitting there at once it seems to go much faster.
So I’m pretty confident that we’re going to be able to do this in the two days, but I just want to talk about what days we do what topics on. So in terms of your witnesses that’s what I want to address Mr. Galati.

MR. GALATI: I think all of the topics can be completed on Monday pretty handily with moving and doing worker safety and biology on Tuesday. I don’t believe we’ll need Wednesday. One of the things I’d like to note is that it really depends on the Committee’s determination of which witnesses will be allowed to testify. I’m assuming that the Committee would invoke the rule that the witnesses we’re talking about are the witnesses who have filed previously written testimony.

So anyone who hasn’t filed testimony shouldn’t be able to testify unless they were specifically requested to be there for cross-examination for something that they did. So in that case that person’s not giving direct testimony. They’re sitting on the panel in case somebody has a question. And then --

HEARING OFFICER CELLI: For about a witness?

MR. GALATI: -- so in that case most of the witnesses that the intervenors have cited are biology
and cultural. And I don’t believe that there are witnesses for visual or traffic or alternatives that have filed previously written testimony. So the intervenors are intending to cross-examine, so it probably makes sense for scheduling whether or not you’re going to allow cross-examination. And probably the only time you’ll hear Ms. Belenky and I agree on something is we both would like cross-examination. So we would like you to not limit our ability to do so, but I think that ruling needs to be done first before we can schedule the hearing. Because I think it really affects how much time is needed.

HEARING OFFICER CELLI: Let’s hear from staff on that, please.

MS. MARTIN-GALLARDO: I think that there are, as noted in our prehearing conference on visual resources there was one issue raised, I believe by CRIT, as far as the project complying with federal LORS. In response to that comment staff provided a response to that comment, I do believe in its rebuttal testimony. And we fill that this issue is mainly a legal issue, that we could address in briefing correct?

HEARING OFFICER CELLI: On visual?

MS. MARTIN-GALLARDO: Correct, on that LORS
compliance issue raised by CRIT. And we did make that comment in our prehearing conference statement and left it up to the Committee for their decision whether or not it could be submitted as is.

HEARING OFFICER CELLI: Yeah, let’s hear from, do you go by CRIT? Can we call them CRIT?

MS. CLARK: Fine, yes.

HEARING OFFICER CELLI: Okay, CRIT being the Colorado River Indian Tribes, go ahead.

MS. CLARK: We are in agreement that visual resources doesn’t need live adjudication. We have a dispute, a legal dispute, regarding the adequacy of the FSA but it’s not anything that we intend to provide testimony regarding. So we’re happy to remove that from the list.

HEARING OFFICER CELLI: Thank you.

MS. CLARK: However, and I know that other parties do have concerns about visual resources and so I don’t want to preclude any from Basis Range Watch or any other intervenors.

HEARING OFFICER CELLI: Okay.

MS. MARTIN-GALLARDO: I should go back and respond to your actual question, I’m sorry. I misunderstood what your question --

HEARING OFFICER CELLI: For people on the
phone, this is Ms. Martin-Gallardo speaking, go ahead.

MS. MARTIN-GALLARDO: Thank you, as far as the ability to have those individuals who -- for those subject matter areas that are in controversy, that the parties feel cross-examination would get to issues that were not covered through the informal process, staff does support that opportunity for providing cross-examining.

HEARING OFFICER CELLI: Let me just mute this one guy, there we go. Thank you, so I have two in favor of some limited cross-examination yes. Let’s hear from Ms. Belenky on this.

MS. BELENKY: I’m sorry, if we’re only talking about visual we’re not involved in that. But I did notice that other people did ask to cross-examine witnesses for visual. There are some other topic areas that seem to be missing from your list, but we could finish this.

HEARING OFFICER CELLI: For cross-examination?

MS. BELENKY: For the hearings, you don’t have soil and water, you don’t have project description?

HEARING OFFICER CELLI: Right, my intention was I did say that we didn’t account for project
description and soil and water in staff’s list. So the way that, so far the way I read it is Monday would be alternatives, visual to the extent it needs to be heard, geo-paleo, cultural, soil and water and project description. Is there any other topic area that I’m -- this is for Monday.

MS. BELENKY: I think that transportation and --

HEARING OFFICER CELLI: Traffic and transportation.

MS. BELENKY: -- override are both not in here.

HEARING OFFICER CELLI: That’s right. You know, he override --

MS. BELENKY: Well, you put it on, I didn’t.

HEARING OFFICER CELLI: That’s right, it’s really --

MS. BELENKY: And they put it on I think.

HEARING OFFICER CELLI: MS. BELENKY: Right now socio’s off the books, it’s off the table. So that’s right, traffic and transportation and the override. The issues as they relate to override are tied to the individual topic where the impacts are significant. And if they’re to be deemed immitigable or unmitigated, then that is where we would expect the
parties to bring forth any evidence on the need that
either supports or doesn’t support an override. So
I’m --

MS. BELENKY: I don’t want to derail where
you’re going, but that is not what we did in the last
set of hearings at which we were told that no legal
argument was allowed. And I believe that arguing
about override would be a legal argument.

HEARING OFFICER CELLI: That’s true, I’m
talking about just evidence. So for instance, you
know you have to put on say benefits of the project or
something like that. If there’s some evidence on that
and let’s just use visual. If there were some
benefits to the visual then that would the time to put
on evidence of benefits vis-à-vis the visual topic
when we’re talking about visual, okay? I don’t mean
to confuse anybody with this, but that’s I don’t see
override as a separate thing is what I’m saying.

Okay, so --

MR. GALATI: Mr. Celli, I wanted to make
another point here, because I think that what I was
trying to convey I didn’t convey effectively. In
order to schedule the hearings I think the Committee
would want to know who’s going to do direct
examination and how many witnesses are on the panel.
MHEARING OFFICER CELLI: Yeah, hold the thought, because I’m going to get to that.

Mr. Emmerich, are you still on the phone?

MR. EMMERICH: Yeah.

MHEARING OFFICER CELLI: Okay, so tentatively in general we’re speaking about on Monday doing alternatives, visual, geo-paleo, cultural resources, soil and water, project description, traffic and transportation, did I forget anything, yeah and traffic and transportation. And then on Tuesday worker safety and biological resources and probably anything that spills over from Monday that we can’t finish. So that’s in general how we’re planning to proceed; do you follow that?

MR. EMMERICH: Yeah, I follow that. What’s the question?

MHEARING OFFICER CELLI: Well, I just wanted if you had any point to make on that like a problem. I realize actually that you’re not calling any witnesses, so it doesn’t matter. I’m mostly trying to hear from the parties whether there was a glitch or a problem.

MR. EMMERICH: Well, yeah I’ll just throw in I mean I was planning to do a visual witness and I missed the deadline due to some medical issues. But
what I wanted to know is can you clarify what you were saying about the cross-examining of the visual witness?

HEARING OFFICER CELLI: Yes, thank you.

MR. EMMERICH: I wasn’t quite following what that was about.

HEARING OFFICER CELLI: Great, that’s perfect, because that segues into my next little blurb here, the discussion of the informal procedures. To save time we will not take time to describe the exhibits that are moved into evidence or to describe topics covered by declaration. Regarding direct examination we will deem all parties opening and rebuttal testimony as their direct examination that you’ve already submitted. There’s no need to discuss experts resumes if we have them in writing and there’s no objection to that witness testifying as an expert.

If you have an objection, please state the objection first and avoid speaking objections. The lawyers know what I’m talking about, but if you’re not a lawyer we don’t want you to start arguing, we want you to basically say “objection relevance, objection hearsay, objection” whatever the general basis of your objection is. And then the Committee can inquire further if we want to hear from you on the point.
So rather than taking time with the usual formal questioning and answering, the Committee may call all witnesses to testify as a panel. And we notice in the notice of prehearing conference and evidentiary hearing where it says, “Notice of intent to proceed by way of informal hearing.”

The testimony may include discussions among the panel without the lawyers asking questions. Instead the Committee would ask questions of the panel and if time permits the Committee may allow questioning of the panel by the parties. But if the parties appear to be unduly confrontational, combative or otherwise unproductive the Committee will take over the question. The discussion will continue until the Committee determines that it has heard enough evidence and if this process proves difficult or unproductive the Committee may revert to standard formal examination at their discretion.

If we allow cross-examination there will be no time for thinking on the fly. If you can’t come up with good cross-examination in the quiet of your workspace you will not do any better in the heat of the hearing. Have your cross-examination ready and written out and be prepared to tell the Committee how many questions you have before you begin your cross-
examination. There will be no time for floundering or fishing expeditions. And if the Committee sees that we will curtail any cross-examination.

   Again, the legal definition of a moment is about ten seconds, so please be ready to state the page number and the line of any testimony you seek to cross-examine any witness about. And remember to allow your witnesses to finish their answer.

   Now, I just read that from my outline, but I would like to just speak extemporaneously and sort of describe the vision we have of an informal hearing as we did it in Hidden Hills. Which is all of the parties’ witnesses are called up at the same time to sit on a panel together. Typically depending on the issues we’ll either have petitioner, because they have the burden, we’ll have the petitioner’s witnesses say basically this is our, if you will an opening statement. “This is our position, this is where we’re going, this is what our testimony is as a summary.”

   Then we would usually go down the line and say, “Okay, staff’s witnesses, do you agree with that? Let’s hear from that panel,” and they would have their presentation and they would describe whatever their position is about whatever the issue is. Then I would turn to the next witness and say,
“CRIT’s witnesses, what’s your take on this?” CBD’s witnesses and we do it that way.

And then, and this is very helpful to the Committee, after we’ve heard from all of the parties, discussion ensues. And the parties say, “Well, we feel this way or that way or we don’t agree with that,” or whatever. And that discussion is thoroughly informed and it’s very helpful. I don’t get a transcript with 20 pages of lawyers arguing over the form and of the question. I get nothing, but expert testimony in the transcript. It’s a real efficient way to go. It isn’t perfect, it may have some problems, it’s a lot of the times we need to guide it.

But usually the way that we did this in Hidden Hills is after the parties peter out if you will, we go to the parties and say, “Okay, are you satisfied? Is there any further question you need to ask?” Then the parties get to, basically this is your cross-examination, but this is all about informing the Committee. So we’re not interested in that your Matlock TV cross-examination.

We want it, basically we’re interested in follow-up questions, so that we can be informed if there’s more. Or there’s something that needs to be filled out let’s get that information. And if it
starts getting like that, the Committee’s likely to say, “You know, Mr. Galati where are you going with this, what is it you’re asking?” And you’ll say, “You know, what I’m trying to get to is this.” And then we would turn to the panel and say, “Well, what about that?” And let the panel flesh it out.

So that is the way that it has worked and it’s been very -- it worked at least in Hidden Hills, I thought, pretty well. So that is my description, apart from what I’ve written, of the way that that would work; I’m not depriving the parties of cross-examination. And as you know due process requires that if I let one party ask questions I’m going to let all the parties ask the questions. So that’s the way we’re going to proceed probably, in most of these instances.

In some of these, like for instance fire and water, you’ve got only two parties are really fighting it out. It seems to me there’s only two parties with a dog in that fight and so we’ll let them -- that’s probably a little more susceptible to direct and cross if it’s just one party asking questions. So we’re flexible on this and we’ll see how it goes, but that’s really the way we envision the proceeding to go. And if there’s a problem I’m sure I’ll hear from the
parties and your counsel and you’ll tell me that something needs more and you’ll inform us.

MR. GALATI: Yeah, on behalf of the petitioner we think that sounds perfect. We have no problem with that. We can make our offer of proof of why we need to do cross-examination. If the Committee doesn’t believe that that cross-examination, that we’ve met any -- we don’t get to ask any questions, that’s fine. If we go overboard or badgering a witness that’s fine, we’re not seeking to do that. We just know that we may know a point that you may not ask.

MR. EMMERICH: That’s true.

MR. GALATI: And so we want that capability. And the reason I bring it up now is there are many parties who want to cross-examine witnesses in subject areas and that’s their only participation other than legal briefs. And so it’ depends, that’s why I think if the Committee’s doing an informal process this 18, 26 hours that you have listed here is far too much, because you may not limit, you may not allow a lot of cross-examination in those instances.

HEARING OFFICER CELLI: I can tell you as a veteran of working with this Committee in other matters I can say that this Committee is interested in
more information. They really want to understand what’s going on, so if somebody has a question area we’re not likely to cut it off unless it’s completely irrelevant or something like that. So or duplicative or, you know, needlessly cumulative, so but that’s really the way that the Committee intends to proceed. Let’s hear from staff, anything on that, just so we can?

MS. MARTIN-GALLARDO: I think that satisfies our concerns about making sure that you hear everything that you need to hear.

HEARING OFFICER CELLI: Okay, and CRIT do you understand, because I know Ms. Belenky and everyone else has kind of done something like this before, but do you have any questions about the informal process?

MS. CLARK: No, I think that works well for us.

HEARING OFFICER CELLI: Okay, Ms. Belenky, you’re a veteran of the informal process.

MS. BELENKY: I am, and I have no objection to the process itself. I do want to raise an issue that we had actually in several hearings that I’ve been to. What happens is the applicant has a long time on the panel, their witnesses, and then the staff has a long time. And then maybe it’s an hour or maybe
it’s noon and we all wish we were having lunch. And you say, “Let’s just try and finish up everybody else now really quick.” And that’s not okay with me and I don’t want to see that happen again, because what happens is our witnesses feel upset and intimidated that they can’t finish saying what they’re saying. Everybody’s cranky and wishing they had lunch or a break and I don’t think that’s okay and I just don’t want to see that.

HEARING OFFICER CELLI: Well, what would you do, how would you have us handle that situation?

MS. BELENKY: Then you have a break and you come back and you finish. You can’t just run people into the edges. Or run people so late at night that people are leaving and we saw that during several of the panels. People, public members came who wanted to speak or wanted to hear the discussion. And people started floating away, because it just takes so long to get through the applicant and the staff dominate.

So it’s not really a panel discussion, it’s that the applicant and staff dominate and then you let the intervenors have a minute at the end. And that to me isn’t okay. If we’re going to do real panels that’s fine, but I think we need to be cognizant of this pushing people up against meal times and breaks
and as I said people start to float away. And it’s really unfair.

HEARING OFFICER CELLI: That’s a point well taken and I think that will happen then on Monday. So what I’m thinking of doing is specifically with regard with bio I would like to start with bio on Tuesday, so that we don’t run into that problem. If we start at 10:00 o’clock on bio and hopefully we can get through all of it, but if we don’t then if it’s 12:00, 12:30, 1:00 o’clock and everybody’s hungry and spacey then let’s just we’ll break. Bring it to our attention, you know, and we’ll take a break and then come back and resume the panel after everybody’s had something to eat.

MR. GALATI: The applicant does not object to CBD or staff going first. However you want to run the hearing to hear from everybody we don’t have a dog in that fight. So what we don’t want is at the end feel like a party didn’t have an opportunity to present their evidence. So if you want it switched around every subject area or you want to break bio into pieces we have the avian issue, we have desert tortoise issue or whatever. And switch it around we’re fine with that, we’ll accommodate that.

HEARING OFFICER CELLI: I appreciate that.
Generally just so you know what I think determines the order is who has the burden. But if there’s a dispute or if there’s not a dispute say with petitioner and staff, and petitioner has the burden and I will often go with staff, because they wrote the FSA. And that’s basically the basis of a lot of the decisions, so that’s great.

Anything from Mr. Emmerich, did you want to speak about this process, any questions?

MR. EMMERICH: Just that we’d like to be able to ask questions.

HEARING OFFICER CELLI: And you will be able to. Now, if it’s possible Mr. Emmerich, because this has happened in the past where if the questions seem a little too pinpoint and we think we can get more information out of the panel by asking a more general question, that’s the sort of thing that the Committee will do. But other than that absolutely you’re going, that’s why you’re an intervenor. You will have the right to ask questions.

MR. EMMERICH: Thank you.

HEARING OFFICER CELLI: Thank you.

MR. GALATI: Mr. Celli, I have another question about the process and I don’t know if now is a good time?
HEARING OFFICER CELLI: Now is a great time, because I’m about to -- the next thing I’m going to talk about is briefing schedule, so let’s talk about the process.

MR. GALATI: I recognize that the lawyers representing the CRIT, this is the first time I’ve seen them in a case. And their testimony reads very much like a brief and it might be because of the direction on the siting guide. But I would like to understand if Ms. Clark or Ms. King or Ms. Loudbear is actually going to be sitting on a panel as a expert on the subject matter?

For me, I object to that as an objective or I’d like to be sworn in on every panel since this last projected the permitted about 10,000 megawatts. So I think I want to be on every panel, so those are your two choices from my perspective. I know either is a good one.

HEARING OFFICER CELLI: Thank you for raising that point. Ms. Clark?

MS. CLARK: Yes?

HEARING OFFICER CELLI: There’s been a problem with your exhibits, because I believe they were all or almost all of them, sought to be confidential.
MS. CLARK: I don’t believe it’s all or most, but certain ones were yes.

HEARING OFFICER CELLI: Okay, and then I got an email on was it yesterday or the day before that basically there was a termination by Chief Counsel’s Office that they were ineligible.

MS. CLARK: Yes.

HEARING OFFICER CELLI: I just want you to know that this Committee in particular has a real sensitivity to the Native American issues and the cultural. And so I understand, and this Committee understands, that there may be things in declarations that you’ve submitted that at first blush don’t look like something that would be a sensitive or problematical, okay? But and maybe worthy of confidentiality protections even if there was a prima facie determination by staff that there wasn’t.

So but let’s just start from the position right now that right as of now can you tell us what’s happening with those?

MS. CLARK: Yes, can I first address Mr. Galati’s question and then move to that?

HEARING OFFICER CELLI: Please, yes. Oh, and by the way, lawyers are not witnesses and we would not empanel lawyers.
MS. CLARK: So the specific issues that we would like to bring to the Commission’s attention are not legal issues at this time. We understand that that will be reserved for legal briefing. There are factual issues related to our experience at the Genesis Project and the application of certain conditions of certification and mitigation measures. That the best witness are the people who dealt with those and that’s the Attorney General’s Office and our office. There’s also issues related to consultation and the ethnographic study, which again were primarily handled by the Attorney General’s Office and our office.

And so our intent in the evidentiary process is to bring those factual issues to the Commission’s attention. CRIT does not have an archeologist on staff that can present these issues and has not been able to retain one in the short period of time that this process has allowed us. And so it’s either that the Commission can hear those factual concerns or if you agree with Mr. Galati’s objection then you won’t.

And I understand the concern about having lawyers testify as experts, but I think with respect to these particular factual issues that the Attorney General’s Office and our office are in the best
HEARING OFFICER CELLI: And when you say Attorney General’s Office you’re talking about who’s Attorney General?

MS. CLARK: The Colorado River Indian Tribes Attorney General’s Office.

HEARING OFFICER CELLI: Let Mr. Galati go ahead.

MR. GALATI: Let me clarify, I don’t think we’re talking past each other. I don’t mind if the Committee thinks it’s relevant to hear about what happened at Genesis in the legal proceedings. In the legal proceedings they can do that. They could’ve brought the witnesses and I think they did brought the witnesses who signed the declarations, who actually witnessed what happened on the ground. Those are witnesses that I can cross-examine or those are witnesses that are providing factual evidence.

But the factual evidence of, “Yes, we filed a motion, this was the disposition of the motion, this was the temporary restraining order.” I don’t mind if the witnesses testify to that, they’re the ones that did it, I don’t have a problem with that. But the opening testimony from the lawyers is very much like a legal brief of why you did not meet CEQA, because you
didn’t do this analysis this way. They are not
exerts from that perspective to determine the factual
basis. They can certainly take the factual basis that
staff and applicant have testified to and make that
argument in their brief.

That’s my point is, because the adequacy of
CEQA, the adequacy of consultation, you certainly can
put up a person who said, “They contacted me nine
times or they didn’t contact me at all,” that’s fact.
But that’s not what their testimony really does and
that’s what I want to make sure that we don’t get in
to. “You violated land use policy, because you didn’t
do X.” They don’t have a land use expert to do that
and so it’s not in subject. So that’s what I’m
objecting to.

HEARING OFFICER CELLI: Okay, and let me ask
you this Ms. Clark, because I haven’t read those
declarations and I don’t know what’s in them yet,
okay? But I would say that I agree. You understand
that we do not allow lawyers to come in as legal
experts to talk something that is the law.

MS. CLARK: I understand that now, yeah.

HEARING OFFICER CELLI: That’s all brief.

MS. CLARK: Yes.

MR. GALATI: I understand that if
consultation, if the adequacy of the consultation is an issue, and the person, the office, the DOJ of the Colorado River Indian Tribes is the appropriate office who should have received contacts from petitioner or whatever who can come in and testify that, “We never got any,” I mean that’s a factual call, okay? That is the kind of thing that I think probably should or could have been done unless it’s in dispute, on paper. I don’t object to the testimony of Doug Bonamici, he is the individual that was there and he wrote that. I’m not objecting to that, that entire thing can come in, you can ask him questions on the panel.

There was just the testimony of Ms. King, Ms. Clark and Ms. Loudbear that read to me very much brief-like. And there was rebuttal testimony very much brief-like and those I’m objecting to them being called as experts on each individual panel to be able to talk about that.

HEARING OFFICER CELLI: Right, and that objection would be sustained, Ms. Clark.

MS. CLARK: That’s fine, we’re not disputing that. I do agree, so.

HEARING OFFICER CELLI: Okay, so --

MS. CLARK: But can I address the confidentiality issue?
HEARING OFFICER CELLI: Yes, please.

MS. CLARK: So as you know, we filed an application for confidentiality with respect to the testimony of Wilene Fisher-Holt who is one of the individuals that we intend to call as a factual witness. She’s the CRIT museum director and has much experience with cultural resource issues. In addition to her testimony she collected statements from four tribal elders related to their concerns about the project. And we received the determination from CEC staff that these statements and the testimony of Wilene are not properly considered confidential under the Public Records Act and other various federal law.

We disagree with that determination. We understand that the main focus of those laws is on specific archeological sites, however the ambit of those laws is to focus on protecting sensitive cultural resource information. And that includes statements related to keeping information private that relates to those concerns.

And so we would also mention that the information contained in these statements is information that could have come out had CRIT been properly included in the ethnographic study and had CRIT been properly consulted. But because neither of
those things happened this is the form that we’re now in. Had the process happened by those means they would’ve been kept confidential. And so I understand the concern that this process is typically a public forum and the goals of having informed public comment. It’s what I do and I appreciate that.

However, I hope that we can reach a middle ground here and so what we’re willing to offer is that we never intended for these statements to be kept from the parties of this proceeding. The real concern for the tribal elders in particular is putting this information up on the web. And so we don’t want the statements to be available to the public at large.

HEARING OFFICER CELLI: Let me ask you about that okay, because I have a couple -- confidentiality presents a real problem in this forum. Because we have cross and confront, we are a very public agency, and our laws require that our decision be based upon substantial evidence. And if the substantial evidence is resolved by one of these declarations or facts contained therein and nowhere else, that’s going to be in the decision. And that supporting evidence has to be in the record, it is public. And people have asked in the past for in-camera hearings and that sort of thing, but again that poses a problem, because it puts
a damper on our ability to discuss these things openly on the record.

MS. CLARK: We’re not requesting in-camera hearings. The testimony of Wilene Fisher-Holt, the live testimony, she’s comfortable having that be in the public process and will make statements that she’s comfortable making. And if she’s asked questions that present invasions into her privacy or into the confidential information then she won’t answer them. And I don’t think that the Commission hopefully will force that to happen.

With respect to your question about well what if there’s some substantial evidence? If that information is included in sort of in the decision in a way that it doesn’t reveal who made the statement on what grounds right, I don’t, the tribal elders would be fine with that. It’s just it has to be done in such a way that it protects direct quotation, that sort of thing.

HEARING OFFICER CELLI: Let me just say that okay in lieu of submitting, so at this time you have the ability to withdraw --

MS. CLARK: We will if this is not --

HEARING OFFICER CELLI: -- the evidence that you apply for confidentiality are denied, okay? Now
you could perhaps resubmit it in a redacted way if that would make things easier.

MS. CLARK: Redaction doesn’t really address our concerns. The issue is for the individuals that made those statements is tying their name and their culture to the stories and narratives that are contained within. And I understand that this is not something that is well represented in the law on confidentiality. However, those are the concerns that they have and I can’t waive that for them.

HEARING OFFICER CELLI: Well, if anyone appears and testifies on the record their name’s going to be in the transcript and they have to be under oath.

MS. CLARK: So there are two different sets of documents. There’s the testimony of Wilene Fisher-Holt, which she has indicated she is okay with. I wouldn’t say entirely comfortable with disclosing to the public as standard testimony. We will submit that if we don’t address this confidentiality issue the way we requested.

The statements of the tribal elders, which are included as exhibits, they are not going to be testifying. Those are only submitted as written testimony and in the event that the application for
confidentiality is denied if we can’t reach some
different agreement about those we will withdraw those
and not present them as evidence.

HEARING OFFICER CELLI: You know, our regs
allow hearsay is admissible in our proceedings. And
experts have the right to rely on hearsay in their
testimony under oath and if Ms. Fisher-Holt could
testify that, “I spoke to seven people and all seven
of them feel this way or that,” or something to that
effect without attributing who the person is -- let me
hear from petitioner really, because I think you
really have the biggest problem with that.

MR. GALATI: No, I don’t have a problem as
long as the Commission weighs hearsay and otherwise
inadmissible evidence with appropriate weight.

HEARING OFFICER CELLI: Right, and the rule
is basically this: that hearsay is admissible, but
isn’t sufficient in itself to support a finding. So
there would have to be other competent evidence in the
record upon which the Committee could make a finding.
But then it would be supplemental to that.

What I’m trying to do, I’m just trying to
find a way, so that CRIT’s case can be made. They
can, apparently Ms. Fisher-Holt is willing to come in
and testify. She can be under oath, she can be asked,
you know, crossed. And she could testify to
statements of other people without even attributing
who the statement is. She can say, “I spoke to,”
okay, “I spoke with a tribal elder and the tribal
elder said the following.” And I mean, I’m hoping
that this might avoid the need for any sort of
designation of confidentiality, going off the record,
all that in-camera business.

MS. CLARK: My concern about this is that the
tribal elders -- I realize that this is a difficult
situation. We’re asking to be heard, but we’re asking
to be heard in a limited forum. The tribal elders
very much want to make their statements to the
Commission. And so to the extent that we can just
have those four exhibits considered confidential I
think that would be a mechanism by which the
Commission can hear those concerns directly from them
without going into the confidential issues. And so
that’s our request.

HEARING OFFICER CELLI: We’re going to go off
the record, but in the meanwhile I just want to throw
out the idea that we have had nondisclosure agreements
in the past for certain sensitive topics. But we’re
off the record for a moment.

(Off the record.)
We’re doing really well here folks and I’m just saying that we should be finishing up pretty soon, so we’re at least getting to public comment. No telling how long that’ll go. But maybe we’ll take a break if need be for then. And the record shall reflect that the Committee had an off-the-record conversation as noticed in our prehearing, our notice of prehearing conference and evidentiary hearing.

And I want to throw this -- before I ask all of the other parties I want to talk to Ms. Clark about this, because what the Committee would be willing to do, the Committee would be willing to make a finding of confidentiality or have these documents deemed confidential, so that we would prevent them from being made public. If the parties wanted to see any of these documents the parties would have to sign a nondisclosure agreement. If they don’t sign it or if they don’t need to see it then they don’t have to sign it. And this way we don’t need unanimous nondisclosure agreements. So it would be voluntary only on the part of those parties that need to see it.

But then the Committee would treat this information as hearsay. It would not be a basis for a finding.

MS. CLARK: That’s fine.
HEARING OFFICER CELLI: And I’m hoping that that covers everything. Does that?

MS. CLARK: I think that does.

HEARING OFFICER CELLI: Okay, now --

MS. CLARK: And so --

HEARING OFFICER CELLI: Go ahead.

MS. CLARK: -- with respect to Wilene Fisher-Holt’s testimony we can have that put into the record as public as all of the other testimony. And she will be there to testify on Monday.

HEARING OFFICER CELLI: Thank you, so Mr. Galati did you understand what the Committee is proposing to do? Do you have any questions or comments?

MR. GALATI: No, just the form of the nondisclosure agreement, I’d like it to cover myself and my cultural person and that’s it.

HEARING OFFICER CELLI: And the full Commission staff if staff are going to be a party to this nondisclosure agreement.

MS. MARTIN-GALLARDO: Correct.

HEARING OFFICER CELLI: So do you have anything to add to this work-around that we’re trying to come up with here?

MS. MARTIN-GALLARDO: Staff has nothing to
HEARING OFFICER CELLI: Okay, Ms. Belenky?
MS. BELENKY: No, thank you.

HEARING OFFICER CELLI: Mr. Emmerich, anything on this confidentiality process that we’re proposing?

MR. EMMERICH: No, thank you.

HEARING OFFICER CELLI: Thank you. Okay, then that would be --

MR. GALATI: I also just wanted to make a comment on the testimony of Wilene Fisher-Holt. We waive any objection. The fact that we haven’t yet seen it, Counsel is going to make it available to us since it will be in public and we’ll be prepared to go on Tuesday.

HEARING OFFICER CELLI: Okay.

MR. GALATI: Monday, and we’ll even be prepared to do it on Monday if you want.

HEARING OFFICER CELLI: Very good, thank you all. I appreciate the spirit of cooperation that the parties have exhibited in this case. It’s refreshing.

Then so we’ve talked about confidentiality. We’ve talked about the way that we’re going to probably proceed by way of an informal hearing. There was the confidentiality issues. The -- oh, there was
an issue about staff did you intend to call someone
that you did include in your prehearing conference who
was a Quechan witness?

MS. MARTIN-GALLARDO: So last evening staff
did docket a revised identification of witnesses to
add Lorey Cachora, tribal member of the Quechan Tribe.
And he holds a special position as a consultant to the
Quechan Tribe appointed by their tribal counsel. And
he was -- I provided the revised prehearing conference
statement with his name and also docketed his CV, his
bio and his declaration. And that was docketed last
night.

HEARING OFFICER CELLI: Okay, so petitioner
any objection or problem with that?

MR. GALATI: Yeah, I have an objection of a
new witness who’s going to testify about something
that I don’t know, because he hasn’t filed any
prewritten testimony. If he’s available there just
for cross-examine. Well, again, cross-examination
about what? I’m not sure what he prepared, what he
did, other than he talked to the Energy Commission
staff during the ethnography. So I do object to that,
because I don’t know how to prepare for a witness that
I don’t know what they’re going to say.

MS. MARTIN-GALLARDO: I did, just to clarify
this is Jennifer Martin-Gallardo for staff, to clarify
in his declaration it does state that he was a consultant to staff. And the testimony that he’d be providing would be corroborative of staff’s testimony filed in the FSA. And that is what we, because our ethnographer Tom Gates consulted with him in the creation of that you’d see some quotes and guidance on tribal, you know, traditional cultural issues attributed to Mr. Cachora. He’s going to be there to corroborate and to confirm that those statements that he made were indeed, and to be there also if any rebuttal testimony needs to be offered.

HEARING OFFICER CELLI: Mr. Galati, go ahead.

MR. GALATI: I’m the one that’s primarily objecting to how CUL-1 is being done in the analysis. I haven’t objected to a single comment. I’m not even sure what comments that we’re talking about. I think it’s redundant. I’m not claiming that Mr. Cachora did not tell staff something or that staff didn’t believe what Mr. Cachora said. So to me I’m not sure what the purpose is. And so I think the purpose obviously is something different than that, because I’m not claiming that Mr. Cachora didn’t say what he said.

So I don’t know what he’s there for. I suppose he’s there to say, “I agree with staff, you
should make the applicant do X.” He has the ability

to do that in public comment, but that doesn’t make

him an expert witness on staff without filing
testimony. If he is going to say, “I agree with staff

and here’s why,” I think he should’ve written it into
testimony, so I can prepare for it and offer rebuttal.

Which I do not now know what he’s going to do, so I

will stipulate.

MALE SPEAKER: (Inaudible)

HEARING OFFICER CELLI: Who’s speaking? Go

ahead, I just need to mute somebody.

MR. GALATI: So I’ll stipulate that what

Mr. Cachora said to staff was, is it’s an adequate.

But they believed it, that it is an adequate

representation and that their ethnography can be based

on what Mr. Cachora said. Otherwise I don’t know why

he’s there.

HEARING OFFICER CELLI: Really at this point,

it’s about the un-timeliness that we’re really talking

about. CRIT, do you have a position on this one way

or the other?

MS. CLARK: Well, we would welcome the

participation of Mr. Cachora. And I would note that,

perhaps so it’s not in his voice, there is significant

information from him contained in the FSA. And I
would imagine, perhaps staff could clarify, that that would be the basis of his testimony.

HEARING OFFICER CELLI: I just want to get a, I’m just pulling the parties to see where everybody stands on this. Where is CBD on this late file testifying?

MS. BELENKY: We take no position on cultural issues.

HEARING OFFICER CELLI: Do you have a position, Mr. Emmerich?

MR. EMMERICH: Hello, can you hear me?

HEARING OFFICER CELLI: Yes, go ahead. The question is do you have -- okay, staff filed testimony last night to enable Lorey Cachora to participate on the panel as a witness for cultural. And I’m just trying to get a sense of whether -- and the petitioner is objecting and I want to know whether you have a position one way or the other, on the participation of Lorey Cachora?

MR. EMMERICH: No, no. We support her participation.

HEARING OFFICER CELLI: Okay.

MR. GALATI: Again, my objection is not on timeliness. My objection is there’s no pre-filed testimony for me to prepare. Their testimony was due
on the 9th like mine. If not, if they rebutted what I did, then it was due on the 16th and I could’ve prepared by making sure that my witnesses are prepared to talk about what Mr. Cachora might have said or agreed. So if they had done that I would have no objection whatsoever.

HEARING OFFICER CELLI: Right, so when I talk about timeliness just so you know, I’m thinking did they file a prehearing conference statement? Did everything to rebuttal in the testimony come in timely, so this is outside of those time frames.

We’re going to just go off the record for one moment here.

(Off the record.)

HEARING OFFICER CELLI: We’re doing really well here, folks, and I’m just saying that we should be finishing up pretty soon, or at least getting to public comment. No telling how long that’ll go. And then we’ll take a break if need be before then.

Okay. And the record should reflect that the Committee had a off-the-record conversation, as noticed in our Notice of Pre-Hearing Conference and Evidentiary Hearing, and I want to throw this -- before I ask all of the other parties, I want to talk to you, Ms. Clark, about this, because what the
Committee would be willing to do, the Committee would be willing to make a finding of confidentiality or have these documents deemed confidential so that we would prevent them from being made public. If the parties wanted to see any of these documents, the parties would have to sign a non-disclosure agreement. If they don’t sign it or if they don’t need to see it, then they don’t have to sign it. And this way we don’t need unanimous non-disclosure agreements, so it would be voluntary only the part of those parties that need to see it.

But then the Committee would treat this information as hearsay. It would not be a basis for a finding.

MS. CLARK: That’s fine.

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HEARING OFFICER CELLI: Thank you.
So Mr. Galati, you understand that what the Committee is proposing to do, do you have any questions or comments?

MR. GALATI: No, just the form of the non-disclosure agreement, I’d like it to cover myself and my cultural person, and that’s it.

HEARING OFFICER CELLI: And the full Commission staff wouldn’t be a party to this non-disclosure agreement.

MS. MARTIN-GALLARDO: Correct.

HEARING OFFICER CELLI: So do you have anything to add to this workaround that we’re trying to come up with here?

MS. MARTIN-GALLARDO: Staff has nothing to add.

HEARING OFFICER CELLI: Okay. Ms. Belenky?

MS. BELENKY: No, thank you.

HEARING OFFICER CELLI: Mr. Emmerich, anything on this confidentiality process that we’re proposing?

MR. EMMERICH: No, thank you.

HEARING OFFICER CELLI: Thank you.

MR. GALATI: I just wanted to make a comment on the testimony, we waive any objection the fact that we haven’t yet seen it. Counsel is going to make it
available to us since it will be in public and then we’ll be prepared to go on Tuesday.

HEARING OFFICER CELLI: Okay. Monday.

MR. GALATI: And we’ll even be prepared to do it on Monday if you want.

HEARING OFFICER CELLI: Very good. Thank you all, I appreciate the spirit of cooperation that the parties have exhibited in this case, it’s refreshing.

So we’ve talked about confidentiality. We’ve talked about the way that we’re going to probably proceed by way of an informal hearing. There was the confidentiality issues.

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HEARING OFFICER CELLI: Okay. So,
petitioner, any objection or problem with that?

MR. GALATI: Yeah, I have an objection of a new witness who’s going to testify about something that I don't know because he hasn’t filed any pre-written testimony. If he’s available there just for cross -- well, again, cross-examination about what? I’m not sure what he prepared, what he did, other than he talked to the Energy Commission staff during the ethnography, so I do object to that, because I don't know how to prepare for a witness that I don't know what they’re going to say.

MS. MARTIN-GALLARDO: I did, just to clarify -- this is Jennifer Martin Gallardo for staff -- to clarify, in his declaration it does state that he was a consultant to staff and the testimony that he would be providing would be corroborative of staff’s testimony filed in the FSA, and that is what we -- because our ethnographer Tom Gates consulted with him in the creation of that, you’d see some quotes and guidance on traditional cultural issues attributed to Mr. Cachora. He’s going to be there to corroborate and to confirm that those statements that he made were indeed and to be there also if any rebuttal testimony needs to be offered.

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So to me, I’m not sure what the purpose is, and so I think the purpose obviously is something different than that, because I’m not claiming that Mr. Cachora didn’t say what he said. So I don’t know what he’s there for. I suppose he’s there to say I agree with staff, you should make the applicant do this. He ability to do that in public comment. That doesn’t make him an expert witness on staff without filing testimony.

If he is going to say I agree with staff and here’s why, I think he should have written it in testimony so I can prepare for it and offer rebuttal, which I do not now know what he’s going to do. So I will --

MALE VOICE: You’re losing a lot of friends, Scott.

MR. GALATI: So I’ll stipulate that what Mr. Cachora said to staff was that staff, it’s inadequate that they believed, that it was an adequate representation and that their ethnography can be based on what Mr. Cachora said. Otherwise, I don't know why he’s there.

HEARING OFFICER CELLI: Really, at this point it’s about the untimeliness we’re really talking about.

Ms. Clark, do you have a position on this one way or the other?

MS. CLARK: We would welcome the participation of Mr. Cachora. And I would note that, perhaps though it’s not in his voice, there is significant information from him contained in the FSA, and I would imagine -- perhaps staff could clarify -- that that would be the basis of his testimony.

HEARING OFFICER CELLI: I’m just polling the parties to see where everybody stands on this.

Where is CBD on this late file?

MS. BELENKY: We take no position on cultural issues.

HEARING OFFICER CELLI: Do you have a position, Mr. Emmerich?

MR. EMMERICH: Hello, can you hear me?
HEARING OFFICER CELLI: Yes, go ahead. The question is do you have -- okay, staff filed testimony last night to enable Lorey Cachora to participate on the panel as a witness for cultural, and I’m just trying to get a sense of whether -- and the petitioner is objecting and I want to know whether you have a position one way or the other on the participation of Lorey Cachora.

MR. EMMERICH: No, no, we support her participation.

MR. GALATI: Again, my objection is not on timeliness. My objection is there’s no pre-filed testimony for me to prepare. Their testimony was due on the 9th like mine. If not, if they rebutted what I did, then it was due on the 16th and I could have prepared by making sure that my witnesses are prepared to talk about what Mr. Cachora might have said or agree. If they had done that, I would have no objection whatsoever,

HEARING OFFICER CELLI: Right. So when I talk about timeliness, I’m thinking did they file a pre-hearing conference date and did everything and rebuttal and the testimony come in timely, so this is outside of those timeframes.

We’re going to just go off the record for one
moment here.

(Off the record at 10:39 a.m.)

HEARING OFFICER CELLI: So Ms. Martin-Gallardo, we’re interested in what is staff’s showing of good cause for the late filing, if any?

MS. MARTIN-GALLARDO: I think staff needs to clarify first that we do not anticipate Mr. Cachora’s testimony extending beyond the bounds of what exists in the FSA.

To the extent that he was Tom Gates’ consultant to cultural traditional cultural issues, that is why we would provide Lorey Cachora should the Committee have any questions for him related to the things that Mr. Gates attributed to him as far as his support.

We do acknowledge that hearsay is accepted in these proceedings, so Tom Gates could speak to what Lorey Cachora had told him, but we do believe that issues coming from a Native American perspective are sensitive and are best represented by a Native American as opposed to someone with a Eurocentric perspective.

That said, as far as the timeliness, in our experience in past hearings, there are agencies such as California Department of Fish and Wildlife that
come and sit at the panel to do just such a thing, corroborate what staff did say in their testimony to support staff in that way. And my understanding is that oftentimes the CVs and declarations and things of that sort are not even provided until the evidentiary hearings.

So what I believe that staff actually, instead of going that method, we were actually trying to be as forthright as possible. Get this information out as soon as possible, hence, filing it last night. I do acknowledge that it did follow the pre-hearing conference statement the day before and I do apologize for that.

HEARING OFFICER CELLI: Okay, we’re on the record again.

MR. GALATI: Mr. Celli, I have a compromise proposal if you’d like to hear it before you rule.

HEARING OFFICER CELLI: Sure.

MR. GALATI: Okay. Understand the bind that staff may have put themselves in or got put in, I don't know exactly what happened. I’d be happy to let Mr. Cachora come to the hearing, the Committee ask him questions, if you let me have an opportunity to think about those questions and conduct cross-examination.

But I don’t want him giving direct testimony,
but if the Committee sees something that they think
that Mr. Cachora is the only person that can answer
the question, I don’t want him sitting on the panel.
You can bring him up separately and you can ask him
whatever questions that the Committee things are
relevant.

I would like to take ten minutes to walk
outside, collect my thoughts, talk to my expert, come
back in and cross, if that’s helpful.

HEARING OFFICER CELLI: That is helpful. The
Committee’s inclination is as follows. That, really
since staff says that his testimony doesn’t really
exist beyond the FSA’s testimony, basically it’s what
he’s already testified to, that’s already in the
record. We don’t really need him to rehash that which
we already have.

He could sit in. Therefore, because of the
lateness, he would not be allowed to be part of the
panel unless the Committee wanted -- something came in
that appeared to be an issue that only he could
resolve, it would be nice to have him there so that
the Committee—or if others wanted to ask
questions, the Committee could call him forward, ask
him to join the panel.

So what we’re proposing is sort of what
Mr. Galati was suggesting, which is he be available, that he’s there at the Committee’s disposal if the Committee has questions or wants further information. But the Committee would not allow him to make an opening statement or be a part of the case in chief, if you will, of staff when the cultural comes on. So he would be available, let’s say as rebuttal as needed if the Committee deems it necessary.

The parties would have an opportunity, of course, as they always do, to ask questions. But then he would also have the ability to speak as a commenter. So I think it would be useful to have him there but I don’t think that at this late date it's appropriate to put him on the panel unless something comes up that renders his testimony in issue.

Any question about that?

MS. MARTIN-GALLARDO: I think we understand.

HEARING OFFICER CELLI: Okay, great. So that is how we will deal with Lorey Cachora then as a witness.

Did we cover all of the -- I want to say a few things also. I want to raise something that no one else has raised yet, which is, I saw a lot of evidence coming in from CBD on the Desert tortoise, a lot of things relevant to the Desert tortoise. I
haven't had a chance to read it so I don't know what
the content is, and I just want to say, though, that I
want to reiterate to all of the parties that this is
an amendment, this is not an AFC, and it seems to me
that for the bulk of the changes to this project is
the verticality of these towers going up.

I don't know what the evidence will be, but
I'm just going to give you heads up that the
testimony, if there is any, relevant to Desert
tortoise has to speak to the change of the project.
We're not going to readjudicate the old Palin Solar
Power Plant.

So I want to put that out to all of the
parties, that we're looking at the modifications only
because this is an amendment. We're not looking at
everything from scratch. So I hope that says enough.

Ms. Belenky.

MS. BELENKY: Well, I mean, I think that we
may have to discuss that further during the hearings,
but I did have another question about a timeliness of
some information.

And I must say, although we are not involved
in the cultural issue, both staff and the applicant
have put in things up to the hearing in other matters,
so I don't really see why suddenly this becomes such a
big issue. Only if you don’t like what they put in, I supposed.

But staff also put in a new, I think they called it an appendix or something to the FSA on Tuesday night, I believe it was, with new information about the project description and a very long specific section on the Desert tortoise fencing. And there are issues here about Desert tortoise habitat and connectivity, and I am not certain if staff believes that these issues, that any issues we may have about that testimony, that new part of the FSA is now going to be heard next Monday and Tuesday when we only got it on Tuesday, and certainly it was way after rebuttal was Monday.

HEARING OFFICER CELLI: Staff, can you explain what we’re talking about here, please?

MS. MARTIN-GALLARDO: Sure, I can. The supplement that was provided on Tuesday was basically done to accommodate a request by Caltrans. Caltrans will have to provide an encroachment permit in order for the project owner to do the Desert tortoise exclusion fencing required by Bio 9, and that exclusion fencing happens within the Caltrans corridor.

What staff did to accommodate this request
was basically provide a standalone document for Caltrans to be to reference when they need to do their environmental review. And this document does not provide new information; this is information that we had for the project repackaged into a document that can be used by them.

We do add on, I believe only bio and cultural sections, a further requirement to assist Caltrans in getting further -- I apologize -- surveys as it goes forward, so we don’t believe that this is something that, when the parties review it, one, we don’t imagine that anyone would have a problem with the document itself. But two, the fact that this information is in the FSA basically repackaged for Caltrans purposes, that was the intent there.

We wanted to do it in the process as opposed to doing it later.

HEARING OFFICER CELLI: Somebody’s on the phone and we’re hearing a lot of background that you probably don’t want us to hear. And I can’t figure out who that is.

MALE VOICE: It’s user 18.

HEARING OFFICER CELLI: User 18, thank you. Sorry about that. Can you kind of step back and bring us...
MS. MARTIN-GALLARDO: Sure. I’m not sure where I should start again, but the purpose of this document is to support Caltrans environmental analysis when they do that. We did it at this point as opposed to doing it at some later date in order to avoid having to do some kind of amendment process.

We recognize it’s late. We do recognize that, although we don’t see that there would be any issue to be taken with this as far as the encroachment being done through the Caltrans process and we’re facilitating their environmental review by doing this.

HEARING OFFICER CELLI: So there are no conditions?

MS. MARTIN-GALLARDO: The conditions do not change. What we did is a thorough document that covers all areas, and when you see that every single subject area said no problem, the existing condition XYZ will address this issue.

And when it came to bio and cultural, they wanted to do a significant section pulling from the FSA just the I-10 corridor specific discussion. And I do believe that those are the only sections that had an additional statement under, I believe Bio 9 requiring the project owner to do anything further that Caltrans wants, being like surveys. It’s just
basically a catch-all in our condition Bio 9 that requires this Desert tortoise fencing, that they follow any requirements that Caltrans may have as they put that Desert tortoise fencing in.

HEARING OFFICER CELLI: Okay.

MS. STORA: I think I need to -- this is Christine Stora, the compliance project manager. I think I do need to make a statement here that there is a new condition for cultural, I believe it’s Cultural 18, that staff wrote for the installation of the Desert tortoise fencing.

We also need some clarification and some other conditions requiring things like a defibrillator be available during the, for Worker Safety 5.

So there were a couple of minor modifications made on a few conditions for Worker Safety 5 and then several bio ones and then the Cul 18 I believe is new.

MR. GALATI: If I could just provide some color.

HEARING OFFICER CELLI: Please.

MR. GALATI: You know how long we’ve been planning to do that Desert tortoise connectivity fence, since 2009 when staff presented it to us in a staff assessment on the first project. The Commission adopted a decision that says thou shalt connect from
ten to thirteen the different washes, to maintain connectivity so that we would direct the tortoises to the washes.

And the project was licensed last time with that requirement with no further analysis that stands alone on the Desert tortoise project description. CBD was part of that. Nobody raised the issue that somehow the Desert tortoise fencing needed to have its own evaluation. I contend that it’s exempt under CEQA, but staff, to accommodate Caltrans, put together what looks like a mini CEQA analysis for the fence.

Again, nothing this project has done is changing the location or the extent of the fence, this amendment.

HEARING OFFICER CELLI: Okay.

MR. GALATI: And so staff came out with new conditions and probably to the great chagrin of every client of mine, we have agreed to, okay, because I’m trying to get the thing done as opposed to fighting the concept that it didn’t need to be done in the first place.

The last part that is raised in Ms. Belenky’s pre-hearing conference is that the project description was somehow not appropriate, because staff asked me to describe exactly the fence that they’re prescribing
that I do. So I went over the weekend and pulled out everything I could find about Desert tortoise fences and put together a project description to help staff, and submit it to them. And then they did an analysis on that to satisfy Caltrans.

Please, do not penalize this client for, number one, agreeing to do the Desert tortoise fencing twice, and three, providing a document to help staff do something that’s not necessary to help another agency.

So that’s the last bit that I would love to say here. Can we please move on? We’re accepting the conditions. There’s no new analysis that needs to be heard in hearings.

HEARING OFFICER CELLI: Okay, but the question was on timeliness, I believe. But go ahead, Ms. Belenky, why don’t you...

MS. BELENKY: Yes, the question was on timeliness. And the center has in fact objected in the earlier proceeding as well as in this one to the fact that these plans are not provided during the public hearing period. So having one provided is perhaps a good thing, however, it was untimely.

In fact, the center did have issues with the tortoise fencing in the original proceeding,
particularly that the way the original design, and I believe this one is too, it funnels tortoises across under the road and then they have to run into another fence and then they have to go down like a bowling alley and then go under another road.

We have had issues with the connectivity issues for Desert tortoise from the original proceeding and we still have them here. We never -- those issues did not disappear because you redesigned the project. We have always had those issues.

HEARING OFFICER CELLI: So it essentially reopens the question, if we have new analysis.

MS. MARTIN-GALLARDO: I don’t see it as reopening the question. The decision did address these --

HEARING OFFICER CELLI: Right, I remember reading that there was Desert tortoise fencing, but then I also noted that we got new evidence that came in after the fact, which I frankly haven’t read so I don’t -- I’m not making any representations that it’s a full analysis of the Desert tortoise fencing that was going to already be there anyway.

MR. GALATI: Connectivity was fully adjudicated. The fence locations have not changed from the first project. Both the outer fence of the
project and the fence along I-10, both fences along I-10. The issues been adjudicated.

The evidence that you see in front of you now is simply something to accommodate Caltrans so that they can feel that they have something, so when they issue the encroachment permit that it was addressed. And staff felt the need to put in three new conditions, modify one with worker safety, making sure that everything we do in worker safety covers this, and a new biology condition and a new cultural condition, of which we have accepted.

HEARING OFFICER CELLI: As a public agency, we are deferential to other public agencies. If we allow the late filed analysis of the tortoise fencing, then it seems to the Committee that CBD would have the ability then to ask questions about the new analysis. She’s been deprived of an opportunity to review it and submit comments on it, and so we think that it would be appropriate, if need be, that she have the opportunity to do so during the bio section on Tuesday.

MR. GALATI: I agree and I support that. That wasn’t my argument, but I agree and support that we can talk about it in evidentiary hearings.

HEARING OFFICER CELLI: Right, that’s the
point.

I mean, Ms. Belenky, I understand you’re making the point that we’re trying to draw black lines here and say what can and cannot come in. There are always extraordinary circumstances in these cases, this sounds like one of them. But in an effort to give you as much process as possible, we would enable CBD to treat it as basically an area in dispute.

MS. BELENKY: Thank you.

HEARING OFFICER CELLI: Yes. Thank you.

MR. GALATI: I have one more thing. You know, staff filed in their rebuttal testimony, which we got on Monday, a bunch of new change conditions, completely timely filed. We’re prepared to talk about them at the hearing. If the parties don’t object, and only do this if the Committee wants it, might be easier to follow along and the parties might like to know what our position is on those. I could docket a one-page summary of what we agree with, what we don’t agree with, and why, or we can just do it orally.

But if the Committee would like something in writing, if the parties would like to see it before they hear it, I’d be happy to docket it later today or first thing in the morning.

HEARING OFFICER CELLI: Well, you can docket
it. Doesn’t sound like it needs to be evidence.

MR. GALATI: It’s a summary of, you know, we
put in our pre-hearing conference sort of a preview of
what you’ll hear.

HEARING OFFICER CELLI: Right.

MR. GALATI: But, as is our style, if we can
change some language that make it acceptable, we’re
trying to do that in a couple of cases, but it might
be helpful to have a road map of where we’re going,
because there were a lot of changes to the conditions
in the supplement.

HEARING OFFICER CELLI: That would be
helpful.

MR. GALATI: It’s already contested, and then
the parties could see where we’re coming before they
hear it.

HEARING OFFICER CELLI: Sure. That’s
helpful. Doesn’t sound like evidence to me, it
doesn’t sound like anything that needs to come in.
It’s basically a road map, and that’s helpful to the
Committee, so I don’t see, unless other parties,
staff, you have a problem with that?

MS. MARTIN-GALLARDO: No, no problem with
that.

HEARING OFFICER CELLI: CRIT?
MS. CLARK: No problem.

HEARING OFFICER CELLI: Ms. CBD?

MS. BELENKY: No problem, but we reserve the right to also put in additional drafting on the conditions, which we have reserved in our pre-hearing conference statement and throughout the process.

HEARING OFFICER CELLI: Right, I saw that, so you did reserve that right.

And then Mr. Emmerich, do you have a problem with the petitioner providing us a summary of their positions on the various conditions?

MR. EMMERICH: No, we don’t, thank you.

HEARING OFFICER CELLI: Thank you. And again, it doesn’t sound to me like that would be something offered in as evidence, it’s just helpful to the Committee in terms of just following along.

Okay, I think we’ve covered all the sort of procedural issues that we have. Apparently not, I’ve got everybody looking beseechingly towards the dais, so I’m going to go around.

I wanted to talk about briefing schedule next, but before I do let me just see, is there anything we need to cover from the petitioner before we get to the briefing schedule?

MR. GALATI: No, thank you.
HEARING OFFICER CELLI: Staff?

MS. MARTIN-GALLARDO: Have we left the issue of the hearing schedule, what will be held on which days?

HEARING OFFICER CELLI: What we plan to do -- let me go back to that -- is -- here’s the easy way to say it. Bio and worker safety and fire protection are on Tuesday. Everything else is on Monday, if we can get it done. And if that which we cannot finish on Monday would roll over into Tuesday.

MS. MARTIN-GALLARDO: I just wanted to raise a question for Tiffany North. I did receive an email from her on the schedule in question. I wanted to open perhaps the phone for her to explain a situation that she has for worker safety.

HEARING OFFICER CELLI: Tiffany North, can you speak up, please. I see you have your hand up there.

MS. NORTH: Yeah, good morning. The County of Riverside had previously been told that worker safety and fire protection would be on Monday. Deputy Chief Dorian Cooley is nothing available Tuesday morning, and it sounds like so long as we can set a time for worker safety and fire protection to take place on Tuesday afternoon, that it won’t start any
sooner than Tuesday afternoon, then that would be fine. I just want to confirm.

HEARING OFFICER CELLI: Absolutely. So worker safety and fire protection would follow cultural. We would start Tuesday morning with cultural.

MS. MARTIN-GALLARDO: With biology.

HEARING OFFICER CELLI: I am so sorry, strike that. Let me start all over again.

Tuesday we’re doing bio, cultural we’re doing on day one. The two big ones here are cultural and bio and I keep confusing them in my head. Monday is cultural, Tuesday is bio. We would start with bio and do worker safety and fire protection after we finish bio on Tuesday.

MS. NORTH: Okay, I just want to confirm that it won’t happen any time before noon that day.

HEARING OFFICER CELLI: Oh, it will not. Certainly not.

FEMALE: The one last thing that I want to bring up is the timing of alternatives on Monday. We have biological staff going to be participating on Tuesday, but that may want to be available on Monday for the alternatives section. And I wanted to see if we couldn’t -- maybe this is premature, maybe we can’t
get into this type of detail as far as timing.

If alternatives could go in the afternoon, that would give time for bio staff to be travelling. Otherwise, if we did alternatives first thing in the morning, they could be available to testify by telephone.

HEARING OFFICER CELLI: Is there a problem with having alternatives later in the day?

MS. CLARK: We would welcome the opportunity for cultural to go in the morning. We’re just worried about the time crunch at the end of the day to the extent that big issue could be handled first and alternatives could be handled later, we would welcome that.

HEARING OFFICER CELLI: I really see it like that. I think that we really need to kick off with cultural on Monday and take as much time as we need to to finish cultural, and then -- because cultural is the big one, and the other issues like alternatives, the only people interested in alternatives that I recall are staff applicant and CBD.

MR. GALATI: We’re only bringing our witnesses for cross-examination purposes. That’s why I brought that up early on.

HEARING OFFICER CELLI: Yeah.
MR. GALATI: Traffic and transportation, the only issue we have with staff is probably a 15-minute discussion and anyone else who wants to ask our people questions. And same thing like, for example, visual or project description. Project description we’re only bringing because Ms. Belenky asked for cross-examination time.

So again, it depends on how the Committee -- I think we can run through so I think it’s a good idea to start with cultural. I do not see us spending a lot of time on the other issues, they are generally cross-examine issues.

HEARING OFFICER CELLI: Okay. And you know, ladies and gentlemen, we do everything we can to give the parties as much certainty as we can. The level at which we’re speaking about, what we’re going to be able to accomplish on Monday and Tuesday is about as much detail as I can give you because these are all elastic examinations. We don’t know how long or short they’re going to go. They always vary, there’s always something that comes up and you just have to deal with things as they happen. But the plan would be to take care of the big ones first. Cultural on Monday, bio on Tuesday, everything else would follow, so that’s the plan.
And then, Ms. Belenky, I get you out of there early because you like to leave early. You’re not interested in staying all night, so we’ll do bio first.

MR. GALATI: And along those lines, I thought I heard CRIT say that they no longer want to cross-examine on visual resources because it was a legal issue. Is there anyone who needs my visual resources witnesses, because I’ll tell them not to come?

HEARING OFFICER CELLI: Well, let’s ask Mr. Emmerich, because he called out visual in particular.

Mr. Emmerich, do you need to cross-examine -- what’s the name of your visual witness?

MR. GALATI: We have Andre Grenier and Tim Zack. Tim did all the analysis. He didn’t file testimony because we don’t have any, but if somebody wants to ask on his documents, they can.

HEARING OFFICER CELLI: Let me ask you this, just to kind of get to the heart of it. My sense in reading the documents is that visual is not in dispute between staff and applicant.

MR. GALATI: Not at all, including the fact that there’s a significant unmitigable impact.

HEARING OFFICER CELLI: Right, so are we
beating a dead horse here? I’m trying to understand what do we need to do in visual if there’s an immitigable significant impact? That’s as much as we can do as a Committee is make that finding, that’s the worst thing we can do here.

So Mr. Emmerich, what’s your intent with regard to cross-examination on visual?

MR. EMMERICH: Well, you’re not giving me too much of an opportunity here to even answer. You’re telling me you all agree that the Palen Solar Energy Project will significantly damage visual resources, so if it’s not really going to be a subject we’re talking about in the hearing, I’m not really sure, I mean, I feel like I’m being put on the spot here.

I did want to bring up some issues on visual resources, so I’m not really sure what to say to that. I would like to ask both the applicant or the petitioner or whatever you’re calling it and the CEC about visual resources.

MR. GALATI: That’s all I was wondering. If someone still wants to, we’ll bring our witness.

MR. EMMERICH: Okay, yeah.

HEARING OFFICER CELLI: Go ahead, Mr. Emmerich.

MR. EMMERICH: I said yes, we would like to.
HEARING OFFICER CELLI: Okay, so be it. We’ll hear what he has to ask, that’s fine.

Okay, so where was I with regard to visual, who raised that question?

MS. MARTIN-GALLARDO: I was wondering if we could make our witness available by phone given the distance to travel. It’s not from Sacramento, actually.

HEARING OFFICER CELLI: Let me ask you. Petitioner’s witnesses will be there in person.

MR. GALATI: We’ll have one in person and one by telephone. Again, not knowing exactly what the questions are going to be, if the issue was LORS related and the issue was do we agree with impacts related, Andre Grenier will be personally present.

If it is, how did you take this photograph or something like that, if you allow that cross-examination, our witness intended to call in by telephone.

HEARING OFFICER CELLI: Okay. So Mr. Emmerich, you’re going to be there in person, aren’t you?

MR. EMMERICH: Yes, that’s correct, both myself and Laura Cunningham will be there.

HEARING OFFICER CELLI: Okay. So you heard
that petitioner in this case is trying to -- wants to call -- will have one live witness there for you and one telephonic witness there for you.

MR. EMMERICH: That would be fine.

HEARING OFFICER CELLI: Okay. And now staff is asking if they can have their witnesses appear with regard to visual, their visual witnesses appear telephonically. Do you have a problem with that or a question?

MR. EMMERICH: No, I don’t have a problem with that.

HEARING OFFICER CELLI: Okay so staff’s visual witnesses can appear telephonically, then.

MS. MARTIN-GALLARDO: Thank you.

HEARING OFFICER CELLI: That’s convenient. Okay, anything further from staff before we talk about briefing schedules?

MS. MARTIN-GALLARDO: No, go ahead. I thank you very much.

HEARING OFFICER CELLI: Thank you. Let’s hear from Ms. Clark regarding representing CRIT.

MS. CLARK: I had just one issue I’d like to circle back to in response to Mr. Galati’s point. We had not named Doug Bonamici as a witness, but given your concern about the hearsay issues and wanting to
hear it from the horse’s mouth, I will discuss with
him the possibility of testifying. And so I am
curious to hear if that’s okay with other parties and
commission to do so at this late time.

MR. GALATI: He filed testimony.

HEARING OFFICER CELLI: You know,

Mr. Bonamici --

MS. CLARK: He filed testimony, he filed a
written testimony.

HEARING OFFICER CELLI: Okay.

MS. CLARK: But we had not named him as a
witness.

HEARING OFFICER CELLI: All right. So we are
on notice that he’s there and that he’s available.

MR. GALATI: I’m fine with him testifying
although he wasn’t in your pre-hearing conference
statement. Because he filed written testimony, I know
what he’s going to say.

HEARING OFFICER CELLI: Good. All right, so
then that’s not a problem. Anything further from

CRIT?

MS. CLARK: No, that’s it.

HEARING OFFICER CELLI: Okay, Ms. Belenky.

MS. BELENKY: Assuming what we’re doing is
talking about what’s going to happen on the different
days, I did want to say that Bill Powers submitted testimony in the original proceeding and his testimony would be largely the same. I don’t know that that part of the testimony is something that, you know, we would rely on it. I don’t know how the Committee feels. I think the Committee has changed since the original proceeding, would rather hear his full testimony, which he would be appearing by telephone, or we can -- maybe people have questions, I just don’t know.

This is the distributed alternative that was not prepared by staff or was, you know, whatever, considered and rejected. So that, you know, that may be a time saver, it’s something to consider. You don’t have to necessarily decide now, because he would appear by phone.

HEARING OFFICER CELLI: I’m not sure I understand. Are you asking whether he can or cannot appear by telephone, or whether he --

MS. BELENKY: We would ask that he appear by telephones, so I’m hoping that he could.

HEARING OFFICER CELLI: Okay. Any objection from any of the parties?

MR. GALATI: Well, again, it sounds like that was adjudicated in the first project, and they
certainly can use his testimony to make a brief that you should select that.

HEARING OFFICER CELLI: Okay, my question is do you mind if he appears by telephone?

MR. GALATI: I mind him appearing as a witness. He hasn’t previously filed testimony in this matter. He has in the old matter. If his testimony is already in the record and the Commission already made a decision on that point, why do they need new testimony from him?

MS. BELENKY: Because the staff, once again, failed to look a distributed alternative in light of this new alternative that was never even discussed in the original, so I do think it is relevant, the same testimony is relevant.

We did put in an additional exhibit because it was a contended issue before the duck chart issue as to, you know, what time of day -- there’s a big issue in the California grid as to what time of day becomes the big issue that you have to track for to get a lot of redundant energy on line and so that you never have any -- so that at that time of day you never have any loss, you know, everybody has all the energy they could possibly want, and there’s a whole redundancy problem in our system that actually, you
know, he testified about how a distributor can actually help with that.

Anyway, that had been a contended issue.

There is new information on it. The whole question of distributed and whether it should have been considered as alternative again comes up here because alternatives were again considered. So it is not that he hasn’t submitted testimony. Yes, it’s the same testimony because it’s the same issue. It was again summarily rejected by staff and we think it’s a contended issue.

HEARING OFFICER CELLI: Let me, I want to sort of draw some distinctions here so we know what we’re talking about. First, is it true that you have not submitted any testimony from Bill Powers so far in the PSAGS matter? In other words, in this --

MS. BELENKY: That means we haven’t submitted it on the amendment. We specifically said that we were resubmitting it. In our opening testimony we said resubmitted as though fully contained herein, I believe, so we did say that it was resubmitted on this matter.

HEARING OFFICER CELLI: Okay, so basically you’re incorporating by reference testimony that was submitted in the original approved project, which we
call the PSPP, and the amended project is the PSAGS, or the Palen, and they’ve got different names. Okay, so that’s what I was talking about. We don’t have new evidence from Mr. Powers in the amended project, in the amended proceedings, okay.

Now, if CBD wants to rely on testimony that was already there, the problem with that is that that’s been adjudicated, and the Committee’s interested in making a determination whether the amendment, which are the changes, have impacts, etcetera --

MS. BELENKY: Yes, that’s right, and the change --

HEARING OFFICER CELLI: -- or that the alternatives are considered.

MS. BELENKY: It’s the change that -- first of all, it’s three years later. And the change, again we needed to look at alternatives, and again the staff did not, as far as I can tell.

HEARING OFFICER CELLI: It sounds to me entirely illegal. I mean, if it’s not there, if they didn’t do an analysis of distributed generation and it’s not there, then that’s a fact that we don’t need any testimony on, but the absence of it has a legal effect which is the whole point I think that you want
to make. So I don’t think we really need him to come in.

MS. BELENKY: Okay.

HEARING OFFICER CELLI: That’s just me, and I’ll throw that to the other parties here.

MS. BELENKY: But we can rely on his earlier testimony in our argument.

HEARING OFFICER CELLI: Right, but you’re going to have to make the case how it relates to the amendment, that this is somehow new information, okay, because we’re just looking at the amendment here.

MS. BELENKY: Yes, I understand how you’re trying to cut that, and I think it doesn’t always slice so finely, that’s the problem.

HEARING OFFICER CELLI: But you’re on notice, you understand what we’re asking.

MS. BELENKY: Okay, maybe.

HEARING OFFICER CELLI: Okay, so I’m trying to be helpful in the determination do you need to call him or not. You said you have the testimony you want already. We can take an official notice of that if we wanted to

MS. BELENKY: Yes.

MALE VOICE: Your mic is off.

MS. BELENKY: Oh, sorry. You could take
official notice of his earlier testimony --

HEARING OFFICER CELLI: All right.

MS. BELENKY: -- and that it’s relevant to this matter.

HEARING OFFICER CELLI: All right, so this all sounds to me like legal.

MS. BELENKY: I don’t know.

HEARING OFFICER CELLI: Yes, it doesn’t sound like a factual thing. And it sounds to me like there was no testimony put in for the amendment, new testimony put in for Mr. Powers for the amendment, so if we don’t have that, then we’ll just go with what you’ve already got.

MS. BELENKY: I think, okay. I’ll have to think about this. Thank you.

HEARING OFFICER CELLI: Okay. Let me ask Mr. Emmerich if there’s anything else we need to talk about before we get to the briefing schedule.

MR. EMMERICH: Oh gosh, not that I can think of now, thank you.

HEARING OFFICER CELLI: Okay, thank you.

So with that, ladies and gentlemen, I want to just say that the current schedule that we put out called for an opening brief on November 15th and rebuttal briefs on November 21st. The petitioner in
their pre-hearing conference statement sought to dispense with the debriefing altogether. Let me know if I’m misrepresenting anybody’s position. CRIT asks --

MR. GALATI: You’ve taken that position for a long time, please summarily deny it.

HEARING OFFICER CELLI: CRIT asks for more time for rebuttal briefs.

MS. CLARK: Yes.

HEARING OFFICER CELLI: And CBD specifically asked for the following dates: November 28th for opening briefs and December 12th for rebuttal briefs.

Now, I just want to harken back to our most recent status conference, which was several months ago, because I’d asked the petitioner what’s the rush, why do we have to go so fast. And the petitioner made the case that there had to be a December PMPD, and if there is to be a December PMPD, I can’t have a December 12th rebuttal briefs date.

MR. GALATI: I would like to once again address the idea about going too fast. We’re a year into the process for an amendment, so I’m tired of everybody saying it’s rushed. It’s always rushed when you have a deadline. If you have four weeks out for the deadline, it’s never good. If you have two weeks
out for the deadline, it’s never good.

The bottom line is, and that’s why I asked for real direction from the Commission, and I think I got it in the hearing office. This is an amendment, we should be focusing on the changes. So when we’re thinking about the changes, we have far less issues to brief, far less issues to go to evidentiary hearing about, and I think that we should proceed quickly. And we do want a decision by the full Commission in January, which means a PMPD needs to come out in December.

HEARING OFFICER CELLI: Okay, but my problem now with that is that the PDOC just came off, we don’t have an FDOC. I understand that there was something filed that addressed an impending FDOC, but we have to have a hearing on air quality somewhere.

I just found out, by the way, and I want everybody to know that the date that we originally picked, which was the 15th, isn’t available, we can’t get the hearing room. And I had the 18th, but that date went away, and right now I don’t know what the date will be, but the later that goes, the longer I have to give parties an opportunity to do their briefs, and I have to be able to get that PMPD done.

MR. GALATI: I agree, and I recognize that
the FDOC and PDOC have been delayed. I would remind the Committee that it’s a renewable energy project with two small boilers. There are significant greenhouse gas emission savings. What the FDOC and PDOC do are the very, very technical conditions on what your NOX limits are and what your PM10 limits are. We already know all the other issues for environmental impacts, they’ve been submitted in the petition for amendment.

So I don’t anticipate a lengthy hearing on air quality, just like we didn’t have a lengthy hearing on the first project, which had boilers, on air quality, it was actually submitted on declaration. So I’m just not anticipating the kinds of, you know, I’m hoping we come here for air quality for the purpose of marking and identifying the exhibits at the hearing and not having much discussion, it’s possible.

All the construction emissions and construction stuff has already been identified and put in the PSA, and we’ve already agreed to the conditions of certification for those.

So I recognize that we’ve got a time delay, but I’d like to keep moving forward. If it all falls in place, it will be able to get us a PMPD in December, even with a PDOC and FDOC coming in late.
HEARING OFFICER CELLI: So let’s just look at a calendar for a minute, because if I have a December 12th rebuttal brief -- just so you know, the Committee relies on those rebuttal briefs.

MR. GALATI: Yes, we object to the December 12th rebuttal brief.

HEARING OFFICER CELLI: That’s a very important part of these proceedings, though. Normally the usual sort of flow is that we have transcripts that come off three days, we have expedited transcripts in this case, I mean, we have transcripts three days after the hearing. That takes us really to the first week of November. Then we have an opening brief within about ten days of the date we anticipate that the transcripts are available, and then we have rebuttal briefs a week or ten days after that. That’s the kind of rule of thumb that we usually follow.

The wrench in the works is air quality, unless we bifurcate briefing basically, which it sounds like we may have to do.

MR. GALATI: I think we should. I think we could easily do one week after the transcripts are available for opening brief and one week for rebuttal briefs.

Again, they’re not the range of issues.
Every counselor here already knows most of what’s going in their brief. They’ve seen the written testimony. The only thing we’re going to hear about is whether or not we get out on cross-examination the points we want to make, that’s it.

HEARING OFFICER CELLI: Yes.

MR. GALATI: So we know what the issues are, and the briefs should be far easier to prepare than if you didn’t know what the issues were. And they are limited to the petition for amendment.

HEARING OFFICER CELLI: Right. And staff says that you are going to make every effort to get that FSA section done by the first of November, but any news on that?

MS. MARTIN-GALLARDO: I think that stands. Yes, the last I checked in, they’re very, very aware of this. They’re working overtime, they’re working weekends, and they’re doing everything that they can. November 1st is definitely the target.

HEARING OFFICER CELLI: Okay, that’s saying something from staff, I guess, in light of our history schedules.

So really CBD, you’re the only, Ms. Belenky, you’re the only one with an issue, articulated air quality is an issue, and I got the sense from reading
your papers that it was more about reserving the right because you don’t know what’s coming.

MS. BELENKY: We certainly don’t know what’s coming. I just, I really do object to less than ten days, which is now what’s being suggested. I personally have a conflict the 13th, 14th and 15th.

HEARING OFFICER CELLI: For an evidentiary hearing?

MS. BELENKY: So I had hoped to see all of these things by now, and since we haven’t it makes it difficult.

HEARING OFFICER CELLI: Your conflict, let me, just to be clear. Your conflict is that you can’t make an evidentiary hearing on the 13th, 14th and 15th?

MS. BELENKY: Well, for the evidentiary hearing, Ileen Anderson was prepared to be there, but now you’re putting that down into the 18th or later.

I guess I have a procedural question, whether it really makes sense. We’ve objected throughout the process to separating our pieces of this, and we still object to that. I do feel like it’s rushed. I think ten days would be absolutely minimum from the time we get the transcripts, and two weeks is much fairer, and at least a full week, which I believe CRIT has also
HEARING OFFICER CELLI: CRIT was asking for a full extra week, actually.

MS. CLARK: No, no, we were just asking for one week, which is not included. It sounds like --

HEARING OFFICER CELLI: Oh I see, because it was six days, not seven. Okay, I’ve got you.

MS. BELENKY: It does make a difference.

HEARING OFFICER CELLI: Yes. Let me do this, then. Let’s keep the current schedule for briefing, and then I would add an extra day or two even for rebuttal, because the air quality really throws a wrench in the works. So currently we have -- now wasn’t the 15th a Friday, as I recall? Why don’t we do this? Let’s say opening briefs are due that Monday, so that would take us to 11/18.

MALE VOICE: (Inaudible)


MS. BELENKY: 11/18.

HEARING OFFICER CELLI: I’m sorry, 11/18.

And then rebuttal I have as 11/21, so really it would be to the 25th. Is the 25th a weekend day? Does anyone have a calendar?

FEMALE: That would be a Monday.
HEARING OFFICER CELLI: That’s a Monday?
Okay, so rebuttal is 11/25.

Now, clearly we are having to bifurcate because we’re going to have -- I mean, this is a solar power plant, you know. It’s not like we’re going to have plumes of emissions. I understand that there’s always issues with regard to the vehicles and the various things, but I think that the parties are going to, we’re going to have to come up with a briefing schedule specific to the air quality at the hearing, whenever that is. So at the hearing we’ll say, okay, we’ve heard the evidence, transcripts will be off on such an such a date, opening briefs will be due on such and such a date, and rebuttal briefs will be due on such and such a date.

My sense of air quality as it relates to solar power plants, it’s usually not that big a deal. If it isn’t, then we can get that out in a reasonably quick time turnaround, attach it to the rest of the PMPD and try to make this time line that we’ve set out. So I think that’s the best I can do right now for in terms of giving you some certainty as to the air quality briefing schedule.

MS. BELENKY: It might help if we could clarify what you’re bifurcating. Air quality is not
just the emissions from these two boilers. There are significant particulate matter issues in this basin that are new since the original application was adopted, you know. There have been a lot of incidents with particulate matter from the grading, etcetera, that were not really analyzed in the original one at all, and there has been new information. So that whole part of air quality --

HEARING OFFICER CELLI: Well, the grading goes away in a way, in this case. As I understood it from my reading, there were four and a half million cubic feet of ground disturbance, and now it’s down to like two hundred thousand because they’re not grading. They don’t have to grade for the heliostats.

MS. BELENKY: I do understand that that’s the position --

HEARING OFFICER CELLI: Which would be a big reduction.

MS. BELENKY: -- and this goes also to some of the crypto biotic soil issues, because they will be driving all over the whole site pretty much. So even if you don’t grade, physically grade, you’re still going creating a PM situation. Are you saying that any issues about air quality should be bifurcated? I just want it clarified, is that what you’re saying?
HEARING OFFICER CELLI: Yes, I just want to be clear that crypto biotic soils are a bio issue, not an air quality issue.

MS. BELENKY: Well, they relate to each other.

HEARING OFFICER CELLI: Right, and as they relate -- I’m sure you can, I’m sure, put that in your air quality later if we get to that. But the question of crypto biotic soils, we intended to tackle under bio on Tuesday. So that --

MR. EMMERICH: This is Kevin Emmerich. Can I make a comment?

HEARING OFFICER CELLI: Yes, let me just finish saying the one thing. I just want to say yes, air quality, which also includes greenhouse gases, then you asked about what’s the bifurcation. Basically, the briefing would be on all subject areas except air quality and greenhouse gases on the dates that I just said, 11/18 for opening, and 11/25 would be on all topics except air quality and GHG. So that is to your question, Ms. Belenky.

Go ahead, Mr. Emmerich.

MR. EMMERICH: I’m just going to back up what Lisa said. I think you are undermining the fugitive dust issues, even though they’ve got a different
project footprint, there still will be dust, and I just want to point out that these issues have not been resolved with other nearby large utility scale projects. And the dust issues can actually branch over into public health issues, so let’s not take that lightly, thank you.

HEARING OFFICER CELLI: Thank you. So the public health is going to be an issue tackled. If you’re going to submit a brief, and you can elect to submit a brief or not. We’re not requiring briefs, but they’re always helpful. They would be due on the -- everything except air quality and GHG would be due on November 18th for an opening brief, and your rebuttal briefs would be due on November 25th, 2013 for everything except air quality and GHG. And the Committee will give direction on what the briefing schedule will be on air quality and GHG at the evidentiary hearing when we handle air quality and GHG. Okay, so that’s briefing.

MR. GALATI: One last point on that is I do want the Committee to know that the staff prepared a preliminary staff assessment about all the fugitive dust, included all the changes to conditions for specifically this project. They didn’t bifurcate and prepare that part of the FSA. I didn’t see any
comments from CBD on the preliminary staff assessment which related to construction fugitive dust. It was a crypto biotic soils, which has been moved, and it was soil and water, which has been moved in soil and water, but not on air quality emissions from construction.

The comments that did come in were related to Valley Fever, which had been addressed in worker safety, and public health which had been addressed in public health.

As far as I’m concerned, I’m not anticipating that the FSA would change significantly from the PSA when it comes to all of the construction emissions.

The second part of the emissions are largely the conditions of certification from the PDOC, which it is out now for public review docketed at the commission. If anybody wants to see what the conditions are likely to look like ahead of time, the staff has routinely for a long time copied them directly in and added a verification. So nobody should be surprised by this. I don’t believe we’ll need any air quality briefs.

HEARING OFFICER CELLI: Well, you always think that. You don’t believe in briefing matters.

MR. GALATI: Certainly there are no legal
issues with air.

HEARING OFFICER CELLI: Well, if there are, and we’re going to give the parties an opportunity to put them in their briefs, and we’ll figure that out.

So I think I’ve heard from everybody now on the briefing schedule. If there’s nothing else, I’d like to go to public comment. Anything further from petitioner?

MR. GALATI: No, thank you,

HEARING OFFICER CELLI: Staff?

MS. MARTIN-GALLARDO: No, not at this time.

HEARING OFFICER CELLI: CRIT?

MS. CLARK: No, thank you.

HEARING OFFICER CELLI: CBD?

MS. BELENKY: No, thank you.

HEARING OFFICER CELLI: Mr. Emmerich?

MR. EMMERICH: No.

HEARING OFFICER CELLI: Thank you all very much, this has been very productive. I think we’re going to have a very efficient evidentiary hearing.

I’m going to go now and un-mute; I have to do it on this computer. I’m now going to un-mute everybody on the phones because I have the public advisor is here, Dr. Roberts. Do we have any members of the public who wish to make a comment here today?
He’s shaking his head in the negative, so we’ll go to the phones and un-mute everybody. How do I do that, I need un-mute all.

Okay. Now, the way I’m going to proceed, ladies and gentlemen who are on the telephone, is I’m first going to call the people by name, and then once I’ve covered all the people who are called by name -- there we go. Electronics, you’ve just got to love it. Okay, I’m going to first call the people by name who have put in their name, and then when I’ve finished calling all the people by name, then I’m going to call the people who are calling in who are not identified. And then it’s really whoever speaks up first, we let them go and we’ll proceed that way.

So Andrea Compton, did you wish to make a comment?

MS. COMPTON: Not at this time, thank you.

HEARING OFFICER CELLI: Thank you. And if somebody is associated with staff or applicant, would you just shout out and let me know so I could, if they’re not going to make a comment.

Ann Crisp.

MS. MARTIN-GALLARDO: That’s staff.

HEARING OFFICER CELLI: Okay. I have anonymous, I’ll get to you. I’ve got a bunch of call-
in users. Carol Watson?

   MS. MARTIN-GALLARDO: Also staff.

HEARING OFFICER CELLI: CEC Jay Fong?

MS. MARTIN-GALLARDO: Also staff.

HEARING OFFICER CELLI: Doug Bonamici seems to have hung up.

MS. CLARK: He’s CRIT.

HEARING OFFICER CELLI: And he hung up anyway, I think he doesn’t have an icon.

Jerry Bemis is with staff. Gregg Irvin is with staff, right?

MS. MARTIN-GALLARDO: Correct.

HEARING OFFICER CELLI: Ileen Anderson, any comment from Ileen Anderson?

MS. ANDERSON: No, thank you.

HEARING OFFICER CELLI: Okay, Janine Hind is with staff?

MS. MARTIN-GALLARDO: Correct.

HEARING OFFICER CELLI: Kim Marsden?

MS. MARSDEN: I have no comment at this time.

HEARING OFFICER CELLI: Thank you. Lisa Worrell.

MS. MARTIN-GALLARDO: She’s staff.

HEARING OFFICER CELLI: Staff, okay. Marie Fleming.
MR. HOCHSCHILD: Office.

HEARING OFFICER CELLI: Okay, Mark Hesters is with staff. Marylou Taylor?

MS. MARTIN-GALLARDO: Also staff.

HEARING OFFICER CELLI: Matt Layton is with staff.

Nancy Jasculca.

MS. CLARK: Jasculca, she’s with CRIT.

HEARING OFFICER CELLI: Okay. Just because they’re with you doesn’t mean they can’t make a comment. Typically staff.

MS. CLARK: That’s true.

MS. JASCULCA: Oh, and I don’t have any comment at this time, thank you.

HEARING OFFICER CELLI: Thank you. Scott Bleck is with the applicant.

MR. GALATI: Correct.

HEARING OFFICER CELLI: Tiffany North?

MS. NORTH: I’m Tiffany North with the County of Riverside, just a few quick comments. I first want to say thank you for accommodating our schedule for Tuesday with the workers safety and fire protection for Tuesday afternoon.

And I just wanted to confirm that the county doesn’t have many comments on any of the other
sections. Most of the issues have been addressed. But I wanted to make certain that we can give public comment. It sounded like during the discussion earlier that you will allow some public comment on each of those sections as they come up.

HEARING OFFICER CELLI: Usually. You know, when we talk about public comment, there’s really sort of two parts to it. There’s the agency comment and then there’s the general public at large comment. And we try to accommodate the agencies first to the extent that we can.

And sometimes, Ms. North, it’s more efficient to hold off on comment until like noon time. In other words, if I knock out three topic areas and we can take comments on all three areas by lunch, that might be one way we will do it. No matter what, we will give you an opportunity to comment on everything. I’m just not sure, it depends on the flow of the day whether we’re going to do it immediately following the close of each topic area.

MS. NORTH: Okay, understood, thank you.

HEARING OFFICER CELLI: Thank you very much, thanks for being part of this.

So now I have called on everybody who identified themselves on the phone. Oh, there’s a
person named anonymous, did you wish to make a comment anonymous? Okay, I’m hearing none. Then I’m just going to un-mute the phone with regard to the remaining callers and whoever is on the phone and who wants to make a comment to the Committee, please speak up now.

MR. BONAMICI: Hi, if you can hear me, this is Doug Bonamici. I am on the phone but on direct line. Thank you for hearing us, and I’ll be happy to testify. If so, call to do so.

HEARING OFFICER CELLI: Thank you very much. Anyone else on the telephone who would like to make a comment at this time, please speak up. The record should reflect I have one, two, three, four, five, six, seven, eight active call-in users right now that are not identified as anything other than a call-in user and a number. Any of you who wish to speak, please do so now. Any comments, go ahead.

Okay, hearing none, then I’m going to turn the meeting back to Commissioner Douglas for adjournment.

MS. STORA: Actually we do have another comment out here in the audience. We have a follow-up with Caltrans. I’d like David Flores to relay their comments that we collected earlier.
HEARING OFFICER CELLI: Oh yes, thank you.

Mr. Flores, would you please come to the podium and use the microphone so you can get in the record. And I forgot the woman’s name who spoke, if you could please re-identify her.

MR. FLORES: Yes, Commissioners, Dave Flores. I supervise the traffic and visual unit. Rebecca Forbes, with Caltrans District Eight, their concern was under Trans One which identifies that I-10 should remain at LOSC. Their concern was the response back from the applicant, the petitioner, that they would like to have that struck from the conditions.

From what Ms. Forbes had indicated is that I-10 is part of North American Free Trade Agreement. This is an interconnection route between the ports and to back east. This is a four lane interstate, two lanes in each direction, and their major concern is the traffic that could occur off their off-ramps and could occur, stacking could occur off their I-10. Because they’re concerned that this is a major route for truck traffic that they don’t want any interruption in their interstate at this point.

HEARING OFFICER CELLI: Just for (inaudible) text, can I just --

MR. FLORES: Yes.
HEARING OFFICER CELLI: So does the condition say something like there’s no impact unless you get to LOSC or worse?

MR. FLORES: Yes, the way the condition reads is that I-10 always shall operate at a level of service C or better when no such requirement existed in the original condition. This was what the applicant had indicated. And so the applicant has disagreed with that LOSC performance standard for the following reason, and they indicate that there are already conditions in place.

Caltrans has indicated that they’re willing to go to LOSD if possible, but that they would have to be notified and mitigation be in place if that was to occur. And so they’ve indicated that they’re willing to go down to an LOSD, but they would prefer, of course, that it remain at LOSC, the level of service. And so I believe we can work as to maybe crafting the conditions of certification for Trans One that maybe satisfies all parties.

HEARING OFFICER CELLI: Okay. So thank you on behalf of Rebecca Forbes for the comment. I just want to ask, because I’m not clear. In other words, from Caltrans point of view, was Trans One acceptable as it was and then the new amendment added the
language with regard to LOSC?

MR. FLORES: That’s correct.

HEARING OFFICER CELLI: They want it the old way.

MR. FLORES: No.

HEARING OFFICER CELLI: No.

MR. FLORES: We had added to the level of service C because this was per a letter that Caltrans on August 12th provided to the CEC which identified that they would like to have an LOSC level of service at a minimum.

HEARING OFFICER CELLI: Okay, I got it. So we’re going to talk about traffic and transportation in the evidentiary hearing and we’ll hear about it then.

Any other comments, anyone else on the phone wishing to make a comment at this time? Hearing none, then Commissioner Douglas, please.

COMMISSIONER DOUGLAS: All right, well thank you. We look forward to seeing all of you at the hearing, and for now we’re adjourned.

(ADJOURNED)

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