COMMITTEE MEMBERS PRESENT
Jeffrey Byron, Associate Member

HEARING OFFICER AND ADVISERS
Kenneth Celli, Hearing Officer
Kristy Chew, Adviser
Galen Lemei, Adviser

STAFF AND CONSULTANTS PRESENT
Rod Jones, Project Manager
Melanie Moultry, Staff Counsel
Rosemary Avalos
Brewster Birdsall
Aspen Environmental Group

PUBLIC ADVISER
Joelle Kelly

APPLICANT
Robert Gladden, Attorney
Galati and Blek
Edward Warner, Project Manager
Northern California Power Agency

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ASSOCIATE MEMBER BYRON: Good morning, everyone, and welcome. I'm Commissioner Jeff Byron. And welcome to the Lodi Energy Center prehearing conference. I am the Associate Member of this Committee. As I recall, the Chairman is the Presiding Member. However we let her take a week's vacation this year, and that'll be it. And so I've agreed to cover this meeting for her.

And if I may continue with introductions, to my left is my Adviser, Ms. Kristy Chew. And all the way to my right is Chairman Douglas' Adviser, and that would be Galen Lemei. And our Hearing Officer is Mr. Ken Celli.

I'm going to turn it over to him who will be conducting the prehearing conference. If all goes well, I understand that we will likely step right into our evidentiary hearing for this case. Mr. Celli.

HEARING OFFICER CELLI: Thank you, Commissioner. First I'd like to have the Public Adviser introduce herself. Please come forward And whenever anybody speaks on the record, you need to come forward and speak into
the microphone. Because everything that's being said is being taken down by the court reporter, or recorded by the court reporter, and will later be in a transcript. So, please come forward; speak directly into the podium mic. You need to press the button and turn it on so the green light comes on.

MS. KELLY: Hi, I'm Joelle Kelly with the Public Adviser's Office. If you'd like to make a comment, please raise your hand, I'll bring you a blue card. And I'll collect them and turn them in to the dais.

HEARING OFFICER CELLI: Thank you. So if anyone wants to make -- if there are any members of the public who are here today who would like to make a comment, either written or verbal, please see the Public Adviser.

Next, applicant, please introduce yourself. For the applicant.

MR. GLADDEN: Commissioner Celli, Robert Gladden representing NCPA on behalf of Galati/Blek.

MR. WARNER: Ed Warner, Project Manager for NCPA.

HEARING OFFICER CELLI: Thank you. And
for -- and by the way, I'm the Hearing Adviser, not the Commissioner. But I appreciate the promotion.

(Laughter.)

HEARING OFFICER CELLI: Staff, Ms. Moultry, please.

MS. MOULTRY: Melanie Moultry, Staff Counsel.

MR. JONES: Good morning, Rod Jones, Project Manager.

HEARING OFFICER CELLI: Thank you. Is there anyone here from the County of San Joaquin? City of Lodi? Any representatives from the City of Lodi or the City of Stockton?

Seeing none, San Joaquin Air Pollution Control District, any representatives? None.

Central Valley Regional Water Control Board? None.

Any state government representatives or local government representatives who have come today? We have none.

Do we know who's on the phone, Ms. Avalos?

MS. AVALOS: And they're not answering.

I can ask again. For those who have only called...
in and are not online, could you please give your name? Okay.

HEARING OFFICER CELLI: They're un-muted, yes. People are just calling in and lurking.

So without anything further I just would say for the record that we have WebEx up on the monitor today. You can see that there are a couple of people who have called in. And when people call in without using their computers they show up as call-in user-one, -two, -three, et cetera.

We have a call-in user-one and a call-in user-four. We don't know who they are, but if you wanted to speak up and identify yourself, now would be the time. Okay, that would be that.

So, moving right along. The Committee scheduled this prehearing conference in a notice filed November 24, 2009. As explained in the notice the basic purpose of the prehearing conference, the purposes are to assess the parties' readiness for the hearing; to clarify areas of agreement or dispute; to identify witnesses and exhibits; to determine upon which areas parties desire to cross-examine witnesses;
and to discuss associated procedural matters.

To achieve these purposes we required in the notice that any party desiring to examine witnesses at future evidentiary hearings file a prehearing conference statement by December 28, 2009.

Timely prehearing conference statements were filed by applicant and staff. There is no intervenor in this case.

As to procedure, first we will discuss the various options for proceeding with this case with regard to air quality. After that we will discuss matters contained in the prehearing conference statements. And finally, we will provide an opportunity for the public to comment.

With regard to options to proceed, the applicant and staff have informed the Committee that the final determination of compliance, or FDOC, has not been finalized by the San Joaquin Air Pollution Control District.

At this point the Committee would like to hear each party's position on options to proceed, indicating its preference and rationale for proceeding or not proceeding, and how to handle exhibits.
So, with that, applicant, please.

MR. GLADDEN: Hearing Officer Celli, we have been informed just recently, this morning in fact, that the likelihood of the FDOC being published will be probably around the 22nd. So we would prefer to keep our client, the NCPA, on track, that we actually schedule a continued hearing or trailed air matters until the last week of January.

Because since all other matters are, as you'll see later, are going to be uncontested, we believe that with what has been presented by comment to the district through CEC Staff and public comment, that those matters will be summary. And there shouldn't be too many outstanding issues that need to be dealt with.

But to give staff a chance to comment on the FDOC, I think, you know, a couple days, if it does come out on the 22nd, should be sufficient. And if we do a date certain, such as the 27th, the Commission would not be required to re-notice anything for an unknown continued date.

And so in that regard we'd like the air matters all pushed over to the 27th of January.

HEARING OFFICER CELLI: Okay, let's hear
from staff. If there's any --

MS. MOULTRY: Staff concurs.

HEARING OFFICER CELLI: Thank you. Go ahead. Ms. Moultry, I talked over you, so I'm trying to keep the record clear.

MS. MOULTRY: Staff concurs with the 27th.

HEARING OFFICER CELLI: Okay. The problem I have is that Commissioner Douglas, the Chairman, isn't here. And I don't know if her Advisers are in a position to be able to schedule. I will try to get as close to the 27th as I can, and see what I can accomplish with the two Commissioners' schedule. They're busy, and sometimes it's hard to put them on. But, January 27th is the date.

Let me ask you this. Is that the earliest date?

MR. GLADDEN: That would probably be the earliest date, if it does come out the -- the 22nd is a Friday, so if it does come out that week, it will give staff's air expert sufficient time to review it, make any subsequent comments, and who knows, maybe everything will be resolved as far as air goes, by that time, as well.
HEARING OFFICER CELLI: You know what would be helpful is if you could give me a range of dates between --

MR. GLADDEN: Okay.

HEARING OFFICER CELLI: -- such and such dates, and then I can see what we can do. I see the 27th was a Wednesday.

MR. GLADDEN: It is a Wednesday, so --

HEARING OFFICER CELLI: And I don't even know if that's a business meeting. It's a business meeting, so that means that we couldn't hear it in the morning because the Commissioners are busy.

MR. GLADDEN: The 25th through 29th will be the range.

MS. MOULTRY: Are you open to early February, just in case there's a delay in issuing the FDOC?

MR. GLADDEN: We're not quite open yet. We really -- and we appreciate the Committee entertaining this matter so quickly. We want to try to stay on our construction schedule. That is paramount; and I want to thank the Committee and staff for facilitating that.

But every week is going to cost the
public money. And so if we can get the end of
January that would be great.

ASSOCIATE MEMBER BYRON: Mr. Celli, you
know, if this is relying upon the FDOC to be
completed by January 22nd, based upon applicant's
information, we're hopeful that that's indeed the
case --

HEARING OFFICER CELLI: Correct, and if
we find out --

ASSOCIATE MEMBER BYRON: I can tell you
that --

HEARING OFFICER CELLI: -- something
different, we will inform the Committee and
counsel, as well.

ASSOCIATE MEMBER BYRON: I can tell you,
based upon the Associate Member being here, when
one of my fellow Commissioner is on vacation, we
will conduct a hearing, whether or not both of us
are available. As long as one is available, we
will conduct that hearing.

But I think the best we can do at this
point is to say we'll schedule as soon as we can,
based upon the Commission and staff availability
after January 25th -- I'm sorry, you said 27th --
January 27th or after.
MR. GLADDEN: 25th through 29th will be great.

ASSOCIATE MEMBER BYRON: Okay.

HEARING OFFICER CELLI: We will file a notice of hearing.

MR. GLADDEN: Okay.

HEARING OFFICER CELLI: And do our best to get that week.

MR. GLADDEN: And if we can update you in the interim before that notice comes out, we will.

HEARING OFFICER CELLI: Okay. With regard to air quality, then, do you want to withhold your exhibits today, or put them in? Let me just say this. We've already received the FSA, which is exhibit 300, or we will be probably receiving it today.

We've already received whatever exhibits that the applicant has submitted --

MR. GLADDEN: Correct, --

HEARING OFFICER CELLI: I suspect that there will be --

MR. GLADDEN: One through 49. And there will probably be a couple more.

HEARING OFFICER CELLI: Yes.
MR. GLADDEN: The certification letter from the district, as well as the FDOC and any comments on the FDOC.

HEARING OFFICER CELLI: Okay, well, we can certainly take in whatever you've got so far. And then we can take in anything else subsequently.

MR. GLADDEN: That would be fine, thank you.

HEARING OFFICER CELLI: Very good. So, next we will turn our attention to prehearing conference statements. The applicant states that all topic areas are complete and ready to proceed to evidentiary hearings, including air quality.

The staff says that all topic areas are complete and ready to proceed to evidentiary hearings with the exception of air quality and cultural resources.

So it appears that both parties agree that, excluding air quality, there are no disputes on any topic areas except cultural resources. Do I have that right?

MR. GLADDEN: That is mostly right, however we have come to an agreement on cultural, so that the applicant, NCPA, is consenting to all
conditions as written in the staff assessment. And we want to allow the caveat so an amendment won't be needed in the future. So that staff's expert can submit errata or we can submit a stipulation or comments that will more than likely result in a reduction of the conditions that have been stated in cultural-1 through cultural-10.

There is also a chance that we may have some major discovery which would refine the conditions. But I think it's more likely than not that we will be reducing the conditions. And in this way, in compliance there won't be any problems with the applicant fulfilling the conditions.

HEARING OFFICER CELLI: So we would probably then need to keep the record open on cultural, along with air quality?

MR. GLADDEN: Actually, on cultural, I think we have agreement that there will be no need, because the likelihood is, is that will be a reduction in the conditions required. And we will submit by comment, stipulation or errata.

HEARING OFFICER CELLI: Very well.

Staff, any comment?

MS. MOULTRY: I mostly agree. I just
wanted to add that cultural resources staff is awaiting the results of an archeological study. And that, as the applicant states, there may be some need for an errata, just to make you aware.

HEARING OFFICER CELLI: Thank you. So then, excluding air quality, there's no dispute on any topic areas except cultural at all at this point, is that correct, staff?

MS. MOULTRY: That's correct.

HEARING OFFICER CELLI: Thank you. Now, the Committee sent a copy of the witness and exhibit lists to the parties yesterday afternoon. Are there any changes to the exhibits list, Mr. Gladden?

MR. GLADDEN: I want to call you Your Honor or Commissioner -- Hearing Officer Celli, there are no changes to the exhibit list. However, with air being out there and because there could be minor modifications that would reflect on the exhibits that we've proffered already, I would request that we not submit the air exhibits into the record today, but defer that to the air hearing.

HEARING OFFICER CELLI: Any objection, staff?
MS. MOULTRY: No objection.

HEARING OFFICER CELLI: Okay, thank you.

Any changes to the witness lists, applicant?

MR. GLADDEN: No changes to the witness list.

HEARING OFFICER CELLI: Or staff?

MS. MOULTRY: There are changes to the witness list. I believe that Rod Jones forwarded the changes?

MR. JONES: Yes, I forwarded the revised list to you, Mr. Celli.

HEARING OFFICER CELLI: Yes, I did -- and I think that I put those changes in the witness list --

MR. JONES: Yes, that's correct.

HEARING OFFICER CELLI: -- that was presented to everyone this morning. So, with that, we have no further changes to the exhibits list or the witness list?

MR. JONES: No.

HEARING OFFICER CELLI: Thank you. And exhibit 302 contains four conditions of certification that needed resolution under the topic areas biological resources and soil and
Applicant, if you would please indicate for the Committee whether you agree or disagree with the conditions of certification proposed in exhibit 302, and what action you intend to take, if any, to resolve the conflict.

MR. GLADDEN: On exhibit 302 sponsored by staff, we consent to those non-changes. And do not object to the admission of 302 into evidence at the proper time.

HEARING OFFICER CELLI: Thank you.

Finally, so just to be clear, staff proposes to identify the final staff assessment as exhibit 300. And will offer exhibits 301 and 302 into evidence. The declarations of all staff were prepared, who prepared the FSA, are included as part of exhibit 300.

MS. MOULTRY: That is correct.

HEARING OFFICER CELLI: And applicant provides a list of applicant's exhibits 1 through 49. And at this time there are no further exhibits?

MR. GLADDEN: Correct.

HEARING OFFICER CELLI: Okay. And that's your understanding, as well, staff?
MS. MOULTRY: Yes.

HEARING OFFICER CELLI: Thank you, Ms. Moultry.

Lastly then I want to talk about the schedule. Staff and applicant both seek to dispense with the briefing schedule as unnecessary. I just wanted to confirm that. Mr. Gladden, is that true?

MR. GLADDEN: Correct, Your Honor.

HEARING OFFICER CELLI: And Ms. Moultry?

MS. MOULTRY: Yes, that is correct.

HEARING OFFICER CELLI: Thank you. At this time we have concluded the prehearing conference. We're ready to proceed with the evidentiary hearing, but this would be the opportunity for the public to make a comment on any matters having to do with the prehearing conference.

As I'm looking around the room, what people who are present here today, are there any members of the public who would like to make a comment on the record to the Committee?

Seeing none, are there any members of the public who are on the telephone or on WebEx who would like to make a comment?
Hearing none, we will then proceed with the evidentiary hearing.

(Whereupon the prehearing conference was concluded at 10:23 a.m.)

--o0o--
PROCEEDINGS

HEARING OFFICER CELLI: The evidentiary hearing is a formal adjudicatory proceeding to receive evidence into the formal evidentiary record from the parties. Only the parties, who in this case are the applicant and the California Energy Commission Staff, may present evidence for introduction into the formal evidentiary record, which is the only evidence upon which the Commission may base its decision under the law.

Technical rules of evidence are generally followed; however, any relevant, non-cumulative evidence may be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs.

Testimony offered by the parties shall be under oath. Each party has the right to present and cross-examine witnesses, introduce exhibits, and to rebut evidence of the other party.

Questions of relevance will be decided by the Committee. Hearsay evidence may be used to supplement or explain other evidence which shall
not be sufficient, in itself, to support a
finding.

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

The official record of the proceeding
includes sworn testimony of the parties'
witnesses; the reporter's transcript of the
evidentiary hearing; the exhibits received into
evidence; briefs, pleadings, orders, notices and
comments submitted by members of the public.

The Committee's decision will be based
solely on the record of competent evidence in
order to determine whether the project complies
with the applicable law.

Members of the public who are not
parties are welcome and invited to observe the
proceedings. There will also be an opportunity
for the public to provide comments before we close
this hearing.

Depending on the number of persons who
wish to speak, the Committee may limit the time
allowed for each speaker.
The public comment period is intended to provide an opportunity for persons who attended the hearing in person or by telephone to address the Committee. It is not an opportunity to present written, recorded or documentary materials. However, such materials may be docketed and submitted to the Energy Commission for inclusion in the administrative record.

Members of the public who wish to speak should fill out a blue card provided by the Public Adviser, who's in the back of the room. If you would prefer not to speak, but would like to submit a written comment, you may do so, as well.

The witness lists and exhibits lists have been distributed to the parties electronically. And copies were made available on the table at the entrance. We'll use these lists to organize the receipt of evidence into the record.

There are several uncontested topics identified in the topic and witness lists, and possibly all may be uncontested today. Neither party has filed an objection to submittal of these topics by declaration.

First, we will allow applicant to offer
into evidence the relevant sections of the AFC,
which is the application for certification,
relevant supplements and testimony in support of
the uncontested topics.

Then we will ask staff to offer those
sections of the FSA and supplemental testimony
which constitutes staff's testimony in support of
the uncontested topics.

In addition, the parties may offer into
evidence any other listed exhibits relevant to the
uncontested topics.

The applicant's and staff's project
managers and environmental consultants will now be
sworn. We will proceed through the uncontested
topics at this time. Mr. Petty, if you would,
please. Please rise.

THE REPORTER: All potential witnesses
please rise and raise your right hands. I'm going
to swear you in en masse.

Whereupon,

ALL POTENTIAL WITNESSES
were called as witnesses herein, and after first
having been duly sworn, were examined and
testified as follows:

THE REPORTER: Consider yourselves
HEARING OFFICER CELLI: Thank you, Mr. Petty.

At this time the parties agree to the following topics, as set forth in the application for certification and the final staff analysis are undisputed and that evidence and testimony on these topics shall be solely received by declaration.

The way I would like to proceed today is the numbering that we used in the witness lists. So the first would be executive summary and project description, followed by cultural, hazardous materials, et cetera.

So, applicant, you have the burden, so please proceed.

MR. GLADDEN: Commissioner Celli, at this time in the executive summary and project description, we would offer the testimony that was docketed with the Commission on December 22nd, that testimony of Edward Warner. And ask that that be admitted into the evidence, and that the sponsored exhibits by Mr. Warner also be entered.

HEARING OFFICER CELLI: I need you to identify the exhibits, please, by exhibit number.
MR. GLADDEN: Okay. Exhibit 1 is the application for certification, volumes 1 and 2.

Exhibit 3 -- I'm sorry, Hearing Officer Celli, would you like me to state the item, or just the exhibit number?

HEARING OFFICER CELLI: I would like you to say exhibit 1 is the testimony of --

MR. GLADDEN: Okay.

HEARING OFFICER CELLI: -- so-and-so.

Exhibit 2 is appendix something.

MR. GLADDEN: Okay.

HEARING OFFICER CELLI: Just enough description so we understand what the exhibit is.

MR. GLADDEN: Okay. Exhibit 3 is a figure identifying the LEC general arrangement.

Exhibit 30 next listed is supplement C. It's the natural gasline -- gas-supplied line of route change.

Exhibit 28 is the comment from the Lodi Unified School District regarding the Lodi Energy Project. In our testimony we offer exhibit 30 again, so I won't repeat it. And exhibit 41, which is supplement B, the data adequacy response.

With those exhibits, and the Committee will note that in the testimony of Mr. Warner
there were global corrections that needed to be
made to the staff assessment that we incorporated
into Mr. Warner's testimony here, as well as some
specific changes to the project description
section of the staff assessment.

And with that, Your Honor -- excuse me,
Hearing Officer Celli, we would submit our project
design testimony and exhibits into evidence.

HEARING OFFICER CELLI: So that was
exhibit 1, 3, 30, 28 and 41.

MR. GLADDEN: Correct.

HEARING OFFICER CELLI: And I had, in my
notes, gone through the -- I have the exhibits
list numerically, and I have the exhibits lists by
topic submitted by Mr. Galati.

I also show that exhibit 2 and 49 were
to be included as executive summary and project
description. I wonder if you could take a moment
and take a look at that.

(Pause.)

MR. GLADDEN: 2, 10 and 49?

HEARING OFFICER CELLI: 2, 10, 49 and
did you say exhibit 28 or 38?

MR. GLADDEN: 28.

HEARING OFFICER CELLI: Thank you.
MR. GLADDEN: Oh, 38, it should be 38.

HEARING OFFICER CELLI: 38. Thank you.

MR. GLADDEN: As to 2 and 10, they're being specifically offered in relation to air-2, air quality and visual resources. And 10 is a host of subjects not including project design.

HEARING OFFICER CELLI: Okay.

MR. GLADDEN: So 10 will be offered into evidence, but not in this section.

HEARING OFFICER CELLI: Very good. Any objection from staff?

MS. MOULTRY: No objection.

HEARING OFFICER CELLI: Thank you. 1, 3, 30, 38 and 41. And did you want to introduce 49, also?

MR. GLADDEN: We can, Hearing Officer Celli. We'll offer 49 and that will be a standing offer for all, since it's inclusive.

HEARING OFFICER CELLI: Okay.

MR. GLADDEN: All testimony.

HEARING OFFICER CELLI: 1, 3, 30, 38, 41 and 49 are received into evidence. And since they're received into evidence, you won't have to reintroduce them with each topic, if you have exhibits that have cross-over topics.
Next I have cultural resources.

MR. GLADDEN: On cultural resources we have an offer of proof by way of testimony and sponsored exhibits given by W. Geoffrey Spaulding and Clint Helton.

And their testimony is sponsoring exhibits 10, 21 and 26, 32, 35. Exhibit 10 is NCPA's comments on the staff assessment. Exhibit 21 is the applicant data response set 6. Responses to CEC request 1 and 2. Exhibit 26 is objection by NCPA to CEC's data request set 3.

Exhibit 32 is NCPA's data response set 1B to staff data request 13 and 37. And exhibit 35, data response set 1A, 1 through 56. And the standing offer of exhibit 49.

HEARING OFFICER CELLI: Any objection from staff?

MS. MOULTERY: No objection.

HEARING OFFICER CELLI: So exhibits 10, 21, 26, 35, --

MR. SPEAKER: -- if we can. Thank you.

THE OPERATOR: Record your message at the tone. When you are finished recording press pound; to cancel, press star.

HEARING OFFICER CELLI: Thank you.
you could mute all callers. Will be received.

That was 10, 21, 26, 35, 32, 49 was already

received into evidence. I also made a note that I

had -- now, 1 is already received. I had, in my

notes, 13 and 14, 37, 41 and 42 as being

associated with cultural.

MR. GLADDEN: We're offering 13, 14 for

biological resources. And 37, you said, as well?

HEARING OFFICER CELLI: 37, 41 and 42.

MR. GLADDEN: 37, biological. 41 should

be part of the cultural submission. Pardon my

error there.

HEARING OFFICER CELLI: Any objection to

receiving 41 into evidence from staff?

MS. MOULTRY: No objection.

HEARING OFFICER CELLI: Okay. And

applicant is offering 41 in for identification as

exhibit 41? Is that a yes, Mr. Gladden?

MR. GLADDEN: Yes.

HEARING OFFICER CELLI: Thank you. Then

exhibit 41 will be received.

And lastly we had 42 on that list.

MR. GLADDEN: 42 is going to be offered

with biological resources, as well.

HEARING OFFICER CELLI: Thank you.
Next, hazardous materials.

MR. GLADDEN: For hazardous materials NCPA offers the testimony, by way of declaration, of Steve Blue. And Mr. Blue is sponsoring two exhibits, exhibit 10 and exhibit 34, 10 already being admitted. We submit on that, Your Honor, for hazardous materials.

HEARING OFFICER CELLI: Any objection from staff on exhibit 34?

MS. MOULTRY: No objection.

THE REPORTER: Your microphone?

MS. MOULTRY: No objection.

HEARING OFFICER CELLI: Thank you.

Exhibit 34 will be received into evidence.

Next is soil and water resources.

MR. GLADDEN: NCPA would like to offer the testimony, by way of declaration, of Michael DeBortoli, as well as the exhibits he has requested to sponsor in soil and water resources, being 10, already submitted, 15, 28, 29, 32, already admitted into evidence, 33, 34, 35, 40 and 43. And I'll go through those.

Exhibit 10 was NCPA's comments on the staff assessment. Exhibit 15 is the United States Environmental Protection Agency public notice of
intent to issue the UIC permit.

Exhibit 28 is the U.S. ACE finding of no
discharge to waters of the United States. Exhibit
29 is data response set 3, responses to CEC staff
workshop inquiries 3 through 27.

Exhibit 32 is NCPA's data response set
1B to staff data request 13 and 37. Exhibit 33 is
the San Joaquin County Environmental Health
Department comments regarding notice of public
site visit.

Exhibit 34, NCPA's data response set 2,
responses to CEC's Staff data request 56B through
74. Exhibit 35 is data response set 1A, 1 through
56. Exhibit 40 is the U.S. ACE finding of no
discharge to waters of the U.S. Exhibit 43, the
permit application for Class 1 underground
injection well.

HEARING OFFICER CELLI: Any objection by
staff?

MS. MOULTRY: No objection.

HEARING OFFICER CELLI: Very well.

Exhibits 15, 28, 29, 33, 35, 40 and 43 are
received into evidence.

Next is traffic and transportation.

MR. GLADDEN: NCPA would offer the
testimony of Sarah Madams, by way of declaration.

Ms. Madams will be sponsoring one exhibit in this
topic, and that is exhibit 10, the NCPA's comments
on the staff assessment, which has already been
admitted into evidence.

HEARING OFFICER CELLI: Thank you.

Transmission line safety and nuisance. I show as
10 and 49.

MR. GLADDEN: Both of those have already
been admitted, and we submit the testimony, by way
of declaration, of Michael DeBortoli on
transmission line safety and nuisance.

HEARING OFFICER CELLI: That was exhibit
which, the testimony of DeBortoli?

MR. GLADDEN: 10 and 49.

HEARING OFFICER CELLI: Thank you.

Those have been admitted.

Next, waste management.

MR. GLADDEN: NCPA offers the testimony
of Sarah Madams, by way of declaration, as well as
the exhibits sponsored in her testimony. And that
is exhibit 7, 8, 9, 10, which has already been
admitted, 16, 24, 31, 35, which has already been
admitted, and 44.

Exhibit 7 is the preliminary
endangerment assessment. Exhibit 8 is the preliminary endangerment workplan. Exhibit 9 is the letter from Department of Toxic Substances Control determination of no further action for the LEC site.

Exhibit 10 is NCPA's comments on the staff assessment. Exhibit 16 is the Department of Toxic Substances Control's approval of final workplan for the preliminary endangerment assessment.

Exhibit 24 is the meeting agenda for the NCPA voluntary clean-up agreement. Exhibit 31 is data responses set 1C, data requests 52 and 56. Exhibit 33 is data response set 1A, 1 through 56. And exhibit 44 is email regarding San Joaquin County Environmental Health Department.

HEARING OFFICER CELLI: Is there any objection from staff to any of those exhibits?

MS. MOULTRY: No objection.

HEARING OFFICER CELLI: Well, exhibits 7, 8, 9, 16, 24, 31 and 44 are received into evidence.

MR. GLADDEN: Did you get 35, as well.

HEARING OFFICER CELLI: And 35 was received into evidence --
MR. GLADDEN: Okay.

HEARING OFFICER CELLI: -- in association with soil and water resources. But we will receive it again, as part of the record with regard to waste management.

MR. GLADDEN: Hearing Officer Celli, --

HEARING OFFICER CELLI: Yes.

MR. GLADDEN: -- there are several categories for these. And with your permission I'll just keep repeating them so I don't accidentally forget anything.

HEARING OFFICER CELLI: I would appreciate that. Actually, what we're striving for is a clean record so that we know exactly what exhibits are to be applied to what topic areas.

MR. GLADDEN: Okay.

HEARING OFFICER CELLI: That's why we're doing it. So, thank you.

Next we're on to facility design.

MR. GLADDEN: NCPA would like to offer the testimony of Michael DeBortoli, by way of declaration, as well as the exhibits sponsored in that testimony, being exhibit 10, the NCPA's comments on staff assessment.

HEARING OFFICER CELLI: Thank you.
Exhibit 10 has been received into evidence.

Next we're on to geology and paleontology.

MR. GLADDEN: I'm not in the same order as you, so please bear with me.

HEARING OFFICER CELLI: Just to be clear, we are proceeding in the same order as the witness list that was put out, so that's why we're going in the order that we're proceeding in.

MR. GLADDEN: NCPA, in the topic of geology and paleontology, would like to offer the testimony of Geoffrey Spaulding. And the sponsored exhibits within that testimony being exhibit 10, NCPA's comments on the staff assessment. And exhibit 35, data response set 1A, 1 through 56.

HEARING OFFICER CELLI: And exhibits 10 and 35 have already been received into evidence. We will next -- any objection by staff? Actually it occurs to me that staff might have an objection as to 1, you know, the same evidence being applied to a different topic area. But since everything's under stipulation, I can't imagine that you would now, but we're going to give you that opportunity. Any objection?
MS. MOULTRY: No.


MR. GLADDEN: Yes, NCPA would like to offer the testimony of Edward Warner in that topic, by way of declaration. And submit on that testimony that has been docketed with the Commission.

HEARING OFFICER CELLI: That would be exhibit 49, is that correct?

MR. GLADDEN: That is correct.

HEARING OFFICER CELLI: Thank you. 49 has been received.

General conditions, compliance monitoring and facility closure. I just have as exhibit 1 from the topic that was provided by the applicant with their exhibits.

MR. GLADDEN: I'm sorry --

HEARING OFFICER CELLI: General conditions, compliance monitoring and facility closure. And when I was -- when applicant submitted their exhibits, as required, they also have attached a list of exhibits numerically and a list of exhibits by topic.

And under that topic I only have exhibit
MR. GLADDEN: On power plant efficiency?

HEARING OFFICER CELLI: This is general conditions, compliance monitoring and facility closure. Exhibit 1 would be, I believe, the testimony of -- is that Mr. Warner's testimony?

MR. GLADDEN: Yes.

HEARING OFFICER CELLI: So, is exhibit 1 -- exhibit 1 has already been received. Okay. And so you're offering exhibit 1 for general conditions, compliance monitoring and facility closure, Mr. Gladden?

MR. GLADDEN: Yes.

HEARING OFFICER CELLI: Any objection from staff?

MS. MOULTRY: No objection.

HEARING OFFICER CELLI: Exhibit 1 has already been received.

Public health. Here again I have exhibit 1 and 49, according to the list that was provided to me by applicant.

MR. GLADDEN: Yes, and NCPA is offering the testimony of Jeffrey Adkins on that topic, public health, by way of declaration. And those exhibits referenced that have already been
admitted into evidence.

HEARING OFFICER CELLI: Exhibits 1 and 49?

MR. GLADDEN: Correct.

HEARING OFFICER CELLI: Any objection, staff?

MS. MOULTRY: No objection.

HEARING OFFICER CELLI: 1 and 49 have been received.

Socioeconomic resources.

MR. GLADDEN: NCPA offers the testimony of Sarah Madams by way of declaration, and sponsoring exhibits 1 and 49, as well.

HEARING OFFICER CELLI: Now, according to my notes, I have also 38 and 41 being attributed to socioeconomic resources. Do I have that right? Or are you going to put those in in association with a different --

MR. GLADDEN: 38 is, in fact, and I'm sorry it's not on the testimony list of specific sponsored. 41 also contains, which has already been offered into evidence. 38 and 41 would be specific to those.

HEARING OFFICER CELLI: So, exhibits 1, 38, 41 and 49 are being offered into evidence by

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the applicant. Is there any objection by staff?

MS. MOULTRY: No objection.

HEARING OFFICER CELLI: Very well, 1, 38, 41 and 49 are received into evidence if they haven't been already.

Next we have biological resources.

MR. GLADDEN: NCPA offers the testimony of Russell Huddleston in the topic area of biological resources, by way of testimony (sic), and ask that the exhibits listed in that testimony, as well, be entered into the evidence.

Being exhibit 10, NCPA's comments on the staff assessment. Exhibit 13, San Joaquin Council of Government's Minute Resolution. Exhibit 14, the USFWS response to NCPA's request for project inclusion under the interservice biological and conference opinion on issuance of a section 10(a)(1)(B).

Exhibit 35, which is data response set 1A. Exhibit 37, which is wetland concerns technical memorandum. Exhibit 42, which is the SJM SCP response to lead agency advisory agency notice to SJCOG, Inc.

HEARING OFFICER CELLI: And that's all?

MR. GLADDEN: And that's all.
HEARING OFFICER CELLI: Okay, so as to biological resources, the applicant is offering exhibits 1, 10, 13, 14, 35, 37 and 42. Any objection by staff?

MS. MOULTRY: No objection.

HEARING OFFICER CELLI: Those exhibits are now received into evidence.

Noise and vibration.

MR. GLADDEN: NCPA would offer the testimony of Sarah Madams, by way of declaration, and include as exhibits 1 and 49.

HEARING OFFICER CELLI: Which have already been received into evidence. Any objection by staff?

MS. MOULTRY: No objection.

HEARING OFFICER CELLI: Very well, 1 and 49 are received.

Transmission systems engineering.

MR. GLADDEN: NCPA would like to offer the testimony of Michael DeBortoli, by way of declaration, as well as sponsoring the exhibits listed in that testimony, being exhibit 10, NCPA's comments on the staff assessment, and exhibit 35, data response set 1A. And again, the general offer of 1 and 49.
HEARING OFFICER CELLI: Any objection by staff?

MS. MOULTRY: No objection.

HEARING OFFICER CELLI: Exhibits 1, 10, 35 and 49 are received into evidence.

Power plant reliability.

MR. GLADDEN: NCPA would offer the testimony of Edward Warner, by way of declaration. And ask that exhibit 35 be also included as part of that testimony, as well as the general offer of exhibits 1 and 49. Exhibit 35 already being admitted into evidence, being data response set 1A, 1 through 56.

HEARING OFFICER CELLI: Any objection by staff?

MS. MOULTRY: No objection.

HEARING OFFICER CELLI: Exhibits 1, 35 and 49 will be received as to power plant reliability.

Visual resources is the next topic.

MR. GLADDEN: NCPA would like to offer the testimony of Joshua Hohn, by way of declaration. As well as offering the exhibits listed in that testimony, being exhibits 2, 4, 5, 10, 29, 34, 35.

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Exhibit 2 being table DR71-1, the cooling tower parameters. Exhibit 4 being the letter from the City of Lodi regarding removal of condition vis-2.

Exhibit 5 being the fogging frequency curve. Exhibit 10, NCPA's comment on the staff assessment. Exhibit 29, data response set 3, responses to CEC Staff workshop inquiries 3 through 27.

Exhibit 34, NCPA's data response set 2, responses to CEC Staff data request 56B through 74. Exhibit 35 being data response set 1A, 1 through 56.

And with that, and the general offer of 1 and 49, we submit that testimony.

HEARING OFFICER CELLI: Any objection by staff?

MS. MOULTERY: No objection.

HEARING OFFICER CELLI: Evidence then exhibits 1, 2, 4, 5, 10, 29, 34, 35, 49 are received into evidence in regard to visual resources.

Next topic worker safety and fire protection.

MR. GLADDEN: Yes, NCPA would like to
offer the testimony of Sarah Madams, by way of
declaration, and the sponsoring of the exhibits
listed in that declaration being exhibits 23 and
27.

23 being data response set 5, revised
responses to CEC Staff data requests 75 and 78.
And exhibit 27, applicant data responses set 4.
And along with the general offer of 1 and 49,
offer Ms. Madams' testimony into evidence.

HEARING OFFICER CELLI: Any objection by
staff?

MS. MOULTRY: No objection.

HEARING OFFICER CELLI: Exhibits 23 and
27 will be received into evidence.

Next we have land use.

MR. GLADDEN: NCPA offers the testimony
of Sarah Madams, by way of declaration, as well as
sponsoring the exhibits listed in that written
declaration, being exhibit 10, 29 and 39.

Exhibit 10, the NCPA's comments on the
staff assessment. Exhibit 29, data response set
1A, 1 through 56. Exhibit 39, San Joaquin County
Community Development letter.

HEARING OFFICER CELLI: Any objection by
staff?
MS. MOULTRY: No objection.

HEARING OFFICER CELLI: Exhibits 10, 29 and 39 will be received into evidence.

Next we have --

MR. GLADDEN: Commissioner Celli, I'd like to make a correction to that. Exhibit 29 should be corrected to be exhibit 35.

HEARING OFFICER CELLI: You want me to strike 29 in relation to land use --

MR. GLADDEN: If you could, please. Exhibit 35 is subject matter related, not 29.

HEARING OFFICER CELLI: For land use what my notes showed was exhibit 1, 10, 35, 39, 44 and 49. Again, just taking --

MR. GLADDEN: Yes.

HEARING OFFICER CELLI: -- those topics off of your exhibits list that the applicant provided.

MR. GLADDEN: Yes, 44, as well.

HEARING OFFICER CELLI: Any objection by staff?

MS. MOULTRY: No objection.

HEARING OFFICER CELLI: So, again, 1, 10, 35, 39, 44 and 49 will be received into evidence.
And lastly we have alternatives.

MR. GLADDEN: NCPA would offer the testimony of Edward Warner in this topic area; and offer the general exhibits of 1 and 49.

HEARING OFFICER CELLI: Okay, any objection by staff?

MS. MOULTRY: No objection.

HEARING OFFICER CELLI: 1 and 49 are received.

Ladies and gentlemen, just so you're clear, the parties have already exchanged their exhibits weeks ago. And so the applicant has provided 1 through 49 to staff. And staff has received exhibits 1 through 49, isn't that correct?

MS. MOULTRY: Yes.

HEARING OFFICER CELLI: And before I get to staff's exhibits, which we will do next, I just wanted to ask again, I think that we might avoid some confusion if we admit exhibits 1 through 49, even though some of those exhibits have to do with air quality. Because the air quality will remain open and we can take in any other exhibits, as needed, at the subsequent evidentiary hearing.

But I just want to make sure that we
didn't drop something out and later find that there's no record of admitting any exhibits. Does that pose a problem for staff?

MS. MOULTRY: No.

HEARING OFFICER CELLI: And applicant?

MR. GLADDEN: No, it doesn't pose a problem, but with the caveat that in case something changes in the FDOC, or the comments thereto, we may supplant the import of a currently admitted exhibit for a subsequent one.

HEARING OFFICER CELLI: That reservation of rights is completely acceptable.

And so with that, I wonder if applicant would then move 1 through 49?

MR. GLADDEN: We would move 1 through 49.

HEARING OFFICER CELLI: Any objection by staff?

MS. MOULTRY: No objection.

HEARING OFFICER CELLI: Very well. Applicant's exhibits 1 through 49 are received into evidence. And thank you for your explanation.

We have Lastly the topic of air quality.

MR. GLADDEN: Hearing Officer Celli,
there are a couple clarifications I'd like to make regarding the evidence list that was submitted, in that I may have made a clerical error. And I wanted to make sure that exhibit 19, which is supplement D, changes to equipment and project fenceline. That that be admitted as part of Ed Warner's testimony on project description.

HEARING OFFICER CELLI: Any objection by staff?

MS. MOULTRY: No objection.

HEARING OFFICER CELLI: That will be admitted and is received.

MR. GLADDEN: There's actually a couple other that I would like to clarify. And that is exhibit 40 being included in the soil and water resources testimony, which is the USACE finding of no discharge to waters of the U.S. I didn't check it off, and I wanted to make sure that we --

HEARING OFFICER CELLI: Thank you, 40 was received with soil and water.

MR. GLADDEN: Okay. And on 45, which was listed in our submission being the compliance statement, exhibit 45, our topic area we listed as air quality. We'd like that actually submitted under project description as part of the testimony.
of Mr. Warner.

HEARING OFFICER CELLI: Any objection by staff?

MS. MOULTRY: No objection.

HEARING OFFICER CELLI: Okay, that'll be received, 45.

 Anything further, Mr. Gladden?

MR. GLADDEN: I think we've got all the exhibits in, and in the right topics, thank you.

HEARING OFFICER CELLI: Very good. And I just want to, for my housekeeping, to mention that under air quality we have 1, --

MR. GLADDEN: Yes.

HEARING OFFICER CELLI: -- 1, 2, 5, 6, 10, 11, 12, 17, 18, 19, 20, 22, 25, 36, 45, 46, 47 and that's all that I have.

MR. GLADDEN: 48, and then, of course, the general 49, as well; 48 and 49.

HEARING OFFICER CELLI: Those have all been received. And I just wanted to make sure that we are applying the right exhibit to the right topic area.

Go ahead.

MR. GLADDEN: Just for clarification I don't believe that you did read exhibit 29 as part
of air, but it will be.

HEARING OFFICER CELLI: Okay. Thank you
for that clarification. Anything further from the
applicant?

MR. GLADDEN: Having submitted on
everything, nothing further, other than leaving
the air date open. And we appreciate everything
the Committee and staff has done to accommodate
the expedited procedure here.

HEARING OFFICER CELLI: Thank you.

Next we have staff. Staff, you have a
motion with regard to evidence?

MS. MOULTRY: Staff offers into evidence
exhibits 300, the staff assessment, exhibit 301,
changes to conditions of certification accepted by
staff, and exhibit 302, changes to conditions of
certification not accepted by staff.

HEARING OFFICER CELLI: Thank you. Mr.
Gladden, any objection to 300 through 302?

MR. GLADDEN: NCPA has no objections to
those three exhibits.

HEARING OFFICER CELLI: Therefore
exhibits 300 through 302, for identification, are
received as exhibits 300 through 302.

This, normally we would close the
record, but we're going to leave the record open
because we've got the air quality evidentiary
hearing that's going to have to come up hopefully
in the last week of January.

I just wanted to be clear that all of
the exhibits on cultural that are in the record
now are all the exhibits that we're going to
receive on cultural resources, is that correct,
Mr. Gladden?

MR. GLADDEN: That is correct. The only
thing that we anticipate is potentially if there
may be some change, probably a reduction, as a
result of the archeological -- geoarcheological
study that is being conducted even at this moment.
And that would be by way of errata or stipulation.
It will be nonsubstantive; probably procedural.

HEARING OFFICER CELLI: And do you agree
with that?

MS. MOULTRY: That is correct.

HEARING OFFICER CELLI: Okay. Very
good. So essentially we're waiting on a
stipulation as a strictly legal matter; no further
evidence on cultural?

MR. GLADDEN: That is correct.

MS. MOULTRY: That's correct.
HEARING OFFICER CELLI: Okay. Let's
turn now to -- actually, if I can just go off the
record for one moment.

(Off the record.)

HEARING OFFICER CELLI: Let's go back on
the record, and, Mr. Gladden, if you wouldn't mind
making a record again about what is the status of
the FDOC.

MR. GLADDEN: The public comment period
has ended on the FDOC and it is currently out for
EPA comment, which should be ending this week.

MS. MOULTRY: Staff would like to add
that the FDOC that was released was a draft FDOC.

MR. GLADDEN: Yes.

MS. MOULTRY: And not the final FDOC.

HEARING OFFICER CELLI: So there is not
a final FDOC?

MS. MOULTRY: There is not a final FDOC.

HEARING OFFICER CELLI: And what --

MR. GLADDEN: It's a draft final.

HEARING OFFICER CELLI: You know, we've
encountered draft finals in the past, usually in
the context of ERCs not being identified or
something like that.

What is it going to take to make the
draft final, an F-FDOC, a final-final?

(Laughter.)

MR. GLADDEN: That's going to take a
couple workers coming back from personal time or
vacation time at the district, and completing
their assimilation of what comments have been
received. Right now there's only been one public
comment, and staff has commented to the district,
as well.

HEARING OFFICER CELLI: So there's no
further comment on the final-final?

MR. GLADDEN: That's no further comment
on the final-final.

HEARING OFFICER CELLI: Okay. And,
staff, do you agree with that?

MS. MOULTRY: I do.

HEARING OFFICER CELLI: Very good. Go
ahead, Commissioner.

ASSOCIATE MEMBER BYRON: Just with
regard to this FDOC and the time necessary to
review it on the part of staff, I'm not sure we
really addressed that. We're trying to rush to
completing this evidentiary hearing.

Ms. Moultry, Mr. Jones, can you give me
an indication of the amount of time staff may need
to review the FDOC?

HEARING OFFICER CELLI: Mr. Birdsall, if you
would just go to the --

ASSOCIATE MEMBER BYRON: You can go to
the podium.

HEARING OFFICER CELLI: -- podium and
speak in -- and identify yourself for the record.

MR. BIRDSALL: Hi, good morning. My
name is Brewster Birdsall, and I am an employee of
Aspen Environmental Group, a long-time contractor
for the Energy Commission and staff, preparing the
air quality assessment here.

I've been sworn in. The district is, as
the counsel for the applicant has pointed out, the
district has yet to respond to Energy Commission
Staff comments that were filed on that draft final
DOC. And so we're awaiting those responses.

Because we received the draft FDOC
early, before it was released in a preliminary
form, and because we've been working very closely
with the district, I do have a good idea of how my
staff assessment will need to be updated.

So, where I'm headed with this is that I
think that the changes to my staff assessment have
already been essentially incorporated internally
by myself. And so I have an idea of how my staff
assessment, I think, will be changing in the
final-final DOC comes out.

And what that means is I think I can
turn around my testimony very quickly when the
FDOC is finalized.

ASSOCIATE MEMBER BYRON: I appreciate
that detail. That was the answer I was hoping
for.

My only other comment before I turn it
back to Mr. Celli for close -- thank you, Mr.
Birdsall --

MR. BIRDSALL: Thank you, Commissioner.

ASSOCIATE MEMBER BYRON: -- is that I
want to make sure that you all understand the
Committee recognizes the tremendous amount of
effort and work that goes into producing these
documents. And the efforts that have also gone
into resolving the compliance requirements at this
point.

We go through an evidentiary hearing
like this and all we do is enter evidence into the
record. Seems like there's not enough
recognition. I just want to let you all know we
do appreciate the efforts that have gone into
closing these issues out in a very timely way.
And we will conduct the final
evidentiary hearing on this air quality issue as
soon as we can, given the production of the FDOC
and staff review.

HEARING OFFICER CELLI: Thank you,
Commissioner.

So with that, and with the understanding
that there will be no briefing schedule, we will
have an evidentiary hearing. The evidentiary
hearing will be continued. Of course, we'll
notice the hearing for hopefully sometime the week
of the 25th of January.

Without any further ado, then I think
it's time for us to take public comment. If there
are any members of the public who are present in
the room and wish to comment on any of the
evidence or anything having to do with the Lodi
Energy Center, please come forward.

Seeing none, I'm going to now go to the
phone. It looks like we have nobody on the phone,
is that correct? Okay, there's nobody on the
phone. It's a shame that the public doesn't
participate more, at least in this case, but in
any event --
MR. GLADDEN: The public wants this.

They didn't need to chime in.

(Laughter.)

HEARING OFFICER CELLI: With that, then,

I would hand it over to Commissioner Byron who can

adjourn the evidentiary hearing.

ASSOCIATE MEMBER BYRON: It's my

pleasure. Thank you all for being here this

morning. We're adjourned.

HEARING OFFICER CELLI: Thank you.

(Whereupon, at 11:10 a.m., the hearing

was adjourned.)
CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of January, 2010.

PETER PETTY
AAERT CER**D-493

CERTIFICATE OF TRANSCRIBER

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

January 7, 2010

Margo D. Hewitt,
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