

PREHEARING CONFERENCE and EVIDENTIARY HEARING

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

DOCKET
08-AFC-10

DATE JAN 5 2010

RECD. JAN 25 2010

In the Matter of:)
)
Application for Certification for) Docket No.
The Lodi Energy Center) 08-AFC-10
Northern California Power Agency)
_____)

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

TUESDAY, JANUARY 5, 2010

10:05 A.M.

Reporter - Peter Petty, CER**D-493
Transcriber - Margo Hewitt, CET**00480
Contract No. 170-08-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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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P R O C E E D I N G S

10:05 a.m.

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

1 the microphone. Because everything that's being
2 said is being taken down by the court reporter, or
3 recorded by the court reporter, and will later be
4 in a transcript. So, please come forward; speak
5 directly into the podium mic. You need to press
6 the button and turn it on so the green light comes
7 on.

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

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

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

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

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

25 HEARING OFFICER CELLI: Thank you. And

1 for -- and by the way, I'm the Hearing Adviser,
2 not the Commissioner. But I appreciate the
3 promotion.

4 (Laughter.)

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

7 MS. MOULTRY: Melanie Moultry, Staff
8 Counsel.

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

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

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

17 Central Valley Regional Water Control
18 Board? None.

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

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

24 MS. AVALOS: And they're not answering.
25 I can ask again. For those who have only called

1 in and are not online, could you please give your
2 name? Okay.

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

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

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

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

1 and to discuss associated procedural matters.

2 To achieve these purposes we required in
3 the notice that any party desiring to examine
4 witnesses at future evidentiary hearings file a
5 prehearing conference statement by December 28,
6 2009.

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

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

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

21 At this point the Committee would like
22 to hear each party's position on options to
23 proceed, indicating its preference and rationale
24 for proceeding or not proceeding, and how to
25 handle exhibits.

1 So, with that, applicant, please.

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

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

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

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

25 HEARING OFFICER CELLI: Okay, let's hear

1 from staff. If there's any --

2 MS. MOULTRY: Staff concurs.

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

6 MS. MOULTRY: Staff concurs with the
7 27th.

8 HEARING OFFICER CELLI: Okay. The
9 problem I have is that Commissioner Douglas, the
10 Chairman, isn't here. And I don't know if her
11 Advisers are in a position to be able to schedule.

12 I will try to get as close to the 27th
13 as I can, and see what I can accomplish with the
14 two Commissioners' schedule. They're busy, and
15 sometimes it's hard to put them on. But, January
16 27th is the date.

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

19 MR. GLADDEN: That would probably be the
20 earliest date, if it does come out the -- the 22nd
21 is a Friday, so if it does come out that week, it
22 will give staff's air expert sufficient time to
23 review it, make any subsequent comments, and who
24 knows, maybe everything will be resolved as far as
25 air goes, by that time, as well.

1 HEARING OFFICER CELLI: You know what
2 would be helpful is if you could give me a range
3 of dates between --

4 MR. GLADDEN: Okay.

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

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

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

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

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

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

25 But every week is going to cost the

1 public money. And so if we can get the end of
2 January that would be great.

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

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

10 ASSOCIATE MEMBER BYRON: I can tell you
11 that --

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

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

21 But I think the best we can do at this
22 point is to say we'll schedule as soon as we can,
23 based upon the Commission and staff availability
24 after January 25th -- I'm sorry, you said 27th --
25 January 27th or after.

1 MR. GLADDEN: 25th through 29th will be
2 great.

3 ASSOCIATE MEMBER BYRON: Okay.

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

6 MR. GLADDEN: Okay.

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

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

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

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

20 MR. GLADDEN: Correct, --

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

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

25 HEARING OFFICER CELLI: Yes.

1 MR. GLADDEN: The certification letter
2 from the district, as well as the FDOC and any
3 comments on the FDOC.

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

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

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

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

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

23 MR. GLADDEN: That is mostly right,
24 however we have come to an agreement on cultural,
25 so that the applicant, NCPA, is consenting to all

1 conditions as written in the staff assessment.
2 And we want to allow the caveat so an amendment
3 won't be needed in the future. So that staff's
4 expert can submit errata or we can submit a
5 stipulation or comments that will more than likely
6 result in a reduction of the conditions that have
7 been stated in cultural-1 through cultural-10.

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

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

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

23 HEARING OFFICER CELLI: Very well.
24 Staff, any comment?

25 MS. MOULTRY: I mostly agree. I just

1 wanted to add that cultural resources staff is
2 awaiting the results of an archeological study.
3 And that, as the applicant states, there may be
4 some need for an errata, just to make you aware.

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

9 MS. MOULTRY: That's correct.

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

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

24 HEARING OFFICER CELLI: Any objection,
25 staff?

1 MS. MOULTRY: No objection.

2 HEARING OFFICER CELLI: Okay, thank you.

3 Any changes to the witness lists,
4 applicant?

5 MR. GLADDEN: No changes to the witness
6 list.

7 HEARING OFFICER CELLI: Or staff?

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

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

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

16 MR. JONES: Yes, that's correct.

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

21 MR. JONES: No.

22 HEARING OFFICER CELLI: Thank you. And
23 exhibit 302 contains four conditions of
24 certification that needed resolution under the
25 topic areas biological resources and soil and

1 water resources.

2 Applicant, if you would please indicate
3 for the Committee whether you agree or disagree
4 with the conditions of certification proposed in
5 exhibit 302, and what action you intend to take,
6 if any, to resolve the conflict.

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

11 HEARING OFFICER CELLI: Thank you.

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

18 MS. MOULTRY: That is correct.

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

23 MR. GLADDEN: Correct.

24 HEARING OFFICER CELLI: Okay. And
25 that's your understanding, as well, staff?

1 MS. MOULTRY: Yes.

2 HEARING OFFICER CELLI: Thank you, Ms.
3 Moultry.

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

9 MR. GLADDEN: Correct, Your Honor.

10 HEARING OFFICER CELLI: And Ms. Moultry?

11 MS. MOULTRY: Yes, that is correct.

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

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

23 Seeing none, are there any members of
24 the public who are on the telephone or on WebEx
25 who would like to make a comment?

1 Hearing none, we will then proceed with
2 the evidentiary hearing.

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

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P R O C E E D I N G S

10:23 a.m.

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

1 not be sufficient, in itself, to support a
2 finding.

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

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

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

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

23 Depending on the number of persons who
24 wish to speak, the Committee may limit the time
25 allowed for each speaker.

1 The public comment period is intended to
2 provide an opportunity for persons who attended
3 the hearing in person or by telephone to address
4 the Committee. It is not an opportunity to
5 present written, recorded or documentary
6 materials. However, such materials may be
7 docketed and submitted to the Energy Commission
8 for inclusion in the administrative record.

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

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

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

25 First, we will allow applicant to offer

1 into evidence the relevant sections of the AFC,
2 which is the application for certification,
3 relevant supplements and testimony in support of
4 the uncontested topics.

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

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

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

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

20 Whereupon,

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

25 THE REPORTER: Consider yourselves

1 sworn.

2 HEARING OFFICER CELLI: Thank you, Mr.
3 Petty.

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

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

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

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

24 HEARING OFFICER CELLI: I need you to
25 identify the exhibits, please, by exhibit number.

1 MR. GLADDEN: Okay. Exhibit 1 is the
2 application for certification, volumes 1 and 2.
3 Exhibit 3 -- I'm sorry, Hearing Officer Celli,
4 would you like me to state the item, or just the
5 exhibit number?

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

8 MR. GLADDEN: Okay.

9 HEARING OFFICER CELLI: -- so-and-so.
10 Exhibit 2 is appendix something.

11 MR. GLADDEN: Okay.

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

14 MR. GLADDEN: Okay. Exhibit 3 is a
15 figure identifying the LEC general arrangement.
16 Exhibit 30 next listed is supplement C. It's the
17 natural gasline -- gas-supplied line of route
18 change.

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

24 With those exhibits, and the Committee
25 will note that in the testimony of Mr. Warner

1 there were global corrections that needed to be
2 made to the staff assessment that we incorporated
3 into Mr. Warner's testimony here, as well as some
4 specific changes to the project description
5 section of the staff assessment.

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

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

11 MR. GLADDEN: Correct.

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

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

20 (Pause.)

21 MR. GLADDEN: 2, 10 and 49?

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

24 MR. GLADDEN: 28.

25 HEARING OFFICER CELLI: Thank you.

1 MR. GLADDEN: Oh, 38, it should be 38.

2 HEARING OFFICER CELLI: 38. Thank you.

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

7 HEARING OFFICER CELLI: Okay.

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

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

12 MS. MOULTRY: No objection.

13 HEARING OFFICER CELLI: Thank you. 1,
14 3, 30, 38 and 41. And did you want to introduce
15 49, also?

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

19 HEARING OFFICER CELLI: Okay.

20 MR. GLADDEN: All testimony.

21 HEARING OFFICER CELLI: 1, 3, 30,, 30,
22 41 and 49 are received into evidence. And since
23 they're received into evidence, you won't have to
24 reintroduce them with each topic, if you have
25 exhibits that have cross-over topics.

1 Next I have cultural resources.

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

6 And their testimony is sponsoring
7 exhibits 10, 21 and 26, 32, 35. Exhibit 10 is
8 NCPA's comments on the staff assessment. Exhibit
9 21 is the applicant data response set 6.
10 Responses to CEC request 1 and 2. Exhibit 26 is
11 objection by NCPA to CEC's data request set 3.

12 Exhibit 32 is NCPA's data response set
13 1B to staff data request 13 and 37. And exhibit
14 35, data response set 1A, 1 through 56. And the
15 standing offer of exhibit 49.

16 HEARING OFFICER CELLI: Any objection
17 from staff?

18 MS. MOULTRY: No objection.

19 HEARING OFFICER CELLI: So exhibits 10,
20 21, 26, 35, --

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

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

25 HEARING OFFICER CELLI: Thank you. If

1 you could mute all callers. Will be received.
2 That was 10, 21, 26, 35, 32, 49 was already
3 received into evidence. I also made a note that I
4 had -- now, 1 is already received. I had, in my
5 notes, 13 and 14, 37, 41 and 42 as being
6 associated with cultural.

7 MR. GLADDEN: We're offering 13, 14 for
8 biological resources. And 37, you said, as well?

9 HEARING OFFICER CELLI: 37, 41 and 42.

10 MR. GLADDEN: 37, biological. 41 should
11 be part of the cultural submission. Pardon my
12 error there.

13 HEARING OFFICER CELLI: Any objection to
14 receiving 41 into evidence from staff?

15 MS. MOULTRY: No objection.

16 HEARING OFFICER CELLI: Okay. And
17 applicant is offering 41 in for identification as
18 exhibit 41? Is that a yes, Mr. Gladden?

19 MR. GLADDEN: Yes.

20 HEARING OFFICER CELLI: Thank you. Then
21 exhibit 41 will be received.

22 And lastly we had 42 on that list.

23 MR. GLADDEN: 42 is going to be offered
24 with biological resources, as well.

25 HEARING OFFICER CELLI: Thank you.

1 Next, hazardous materials.

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

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

10 MS. MOULTRY: No objection.

11 THE REPORTER: Your microphone?

12 MS. MOULTRY: No objection.

13 HEARING OFFICER CELLI: Thank you.

14 Exhibit 34 will be received into evidence.

15 Next is soil and water resources.

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

23 Exhibit 10 was NCPA's comments on the
24 staff assessment. Exhibit 15 is the United States
25 Environmental Protection Agency public notice of

1 intent to issue the UIC permit.

2 Exhibit 28 is the U.S. ACE finding of no
3 discharge to waters of the United States. Exhibit
4 29 is data response set 3, responses to CEC staff
5 workshop inquiries 3 through 27.

6 Exhibit 32 is NCPA's data response set
7 1B to staff data request 13 and 37. Exhibit 33 is
8 the San Joaquin County Environmental Health
9 Department comments regarding notice of public
10 site visit.

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

18 HEARING OFFICER CELLI: Any objection by
19 staff?

20 MS. MOULTRY: No objection.

21 HEARING OFFICER CELLI: Very well.

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

24 Next is traffic and transportation.

25 MR. GLADDEN: NCPA would offer the

1 testimony of Sarah Madams, by way of declaration.
2 Ms. Madams will be sponsoring one exhibit in this
3 topic, and that is exhibit 10, the NCPA's comments
4 on the staff assessment, which has already been
5 admitted into evidence.

6 HEARING OFFICER CELLI: Thank you.
7 Transmission line safety and nuisance. I show as
8 10 and 49.

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

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

15 MR. GLADDEN: 10 and 49.

16 HEARING OFFICER CELLI: Thank you.
17 Those have been admitted.

18 Next, waste management.

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

25 Exhibit 7 is the preliminary

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

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

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

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

19 MS. MOULTRY: No objection.

20 HEARING OFFICER CELLI: Well, exhibits
21 7, 8, 9, 16, 24, 31 and 44 are received into
22 evidence.

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

24 HEARING OFFICER CELLI: And 35 was
25 received into evidence --

1 MR. GLADDEN: Okay.

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

6 MR. GLADDEN: Hearing Officer Celli, --

7 HEARING OFFICER CELLI: Yes.

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

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

16 MR. GLADDEN: Okay.

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

19 Next we're on to facility design.

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

25 HEARING OFFICER CELLI: Thank you.

1 Exhibit 10 has been received into evidence.

2 Next we're on to geology and
3 paleontology.

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

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

10 MR. GLADDEN: NCPA, in the topic of
11 geology and paleontology, would like to offer the
12 testimony of Geoffrey Spaulding. And the
13 sponsored exhibits within that testimony being
14 exhibit 10, NCPA's comments on the staff
15 assessment. And exhibit 35, data response set 1A,
16 1 through 56.

17 HEARING OFFICER CELLI: And exhibits 10
18 and 35 have already been received into evidence.

19 We will next -- any objection by staff?
20 Actually it occurs to me that staff might have an
21 objection as to 1, you know, the same evidence
22 being applied to a different topic area. But
23 since everything's under stipulation, I can't
24 imagine that you would now, but we're going to
25 give you that opportunity. Any objection?

1 MS. MOULTRY: No.

2 HEARING OFFICER CELLI: Okay. Power
3 plant efficiency.

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

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

11 MR. GLADDEN: That is correct.

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

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

18 MR. GLADDEN: I'm sorry --

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

25 And under that topic I only have exhibit

1 1.

2 MR. GLADDEN: On power plant efficiency?

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

7 MR. GLADDEN: Yes.

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

13 MR. GLADDEN: Yes.

14 HEARING OFFICER CELLI: Any objection
15 from staff?

16 MS. MOULTRY: No objection.

17 HEARING OFFICER CELLI: Exhibit 1 has
18 already been received.

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

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

1 admitted into evidence.

2 HEARING OFFICER CELLI: Exhibits 1 and
3 49?

4 MR. GLADDEN: Correct.

5 HEARING OFFICER CELLI: Any objection,
6 staff?

7 MS. MOULTRY: No objection.

8 HEARING OFFICER CELLI: 1 and 49 have
9 been received.

10 Socioeconomic resources.

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

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

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

24 HEARING OFFICER CELLI: So, exhibits 1,
25 38, 41 and 49 are being offered into evidence by

1 the applicant. Is there any objection by staff?

2 MS. MOULTRY: No objection.

3 HEARING OFFICER CELLI: Very well, 1,
4 38, 41 and 49 are received into evidence if they
5 haven't been already.

6 Next we have biological resources.

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

12 Being exhibit 10, NCPA's comments on the
13 staff assessment. Exhibit 13, San Joaquin Council
14 of Government's Minute Resolution. Exhibit 14,
15 the USFWS response to NCPA's request for project
16 inclusion under the interservice biological and
17 conference opinion on issuance of a section
18 10(a)(1)(B).

19 Exhibit 35, which is data response set
20 1A. Exhibit 37, which is wetland concerns
21 technical memorandum. Exhibit 42, which is the
22 SJM SCP response to lead agency advisory agency
23 notice to SJCOG, Inc.

24 HEARING OFFICER CELLI: And that's all?

25 MR. GLADDEN: And that's all.

1 HEARING OFFICER CELLI: Okay, so as to
2 biological resources, the applicant is offering
3 exhibits 1, 10, 13, 14, 35, 37 and 42. Any
4 objection by staff?

5 MS. MOULTRY: No objection.

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

8 Noise and vibration.

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

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

15 MS. MOULTRY: No objection.

16 HEARING OFFICER CELLI: Very well, 1 and
17 49 are received.

18 Transmission systems engineering.

19 MR. GLADDEN: NCPA would like to offer
20 the testimony of Michael DeBortoli, by way of
21 declaration, as well as sponsoring the exhibits
22 listed in that testimony, being exhibit 10, NCPA's
23 comments on the staff assessment, and exhibit 35,
24 data response set 1A. And again, the general
25 offer of 1 and 49.

1 HEARING OFFICER CELLI: Any objection by
2 staff?

3 MS. MOULTRY: No objection.

4 HEARING OFFICER CELLI: Exhibits 1, 10,
5 35 and 49 are received into evidence.

6 Power plant reliability.

7 MR. GLADDEN: NCPA would offer the
8 testimony of Edward Warner, by way of declaration.
9 And ask that exhibit 35 be also included as part
10 of that testimony, as well as the general offer of
11 exhibits 1 and 49. Exhibit 35 already being
12 admitted into evidence, being data response set
13 1A, 1 through 56.

14 HEARING OFFICER CELLI: Any objection by
15 staff?

16 MS. MOULTRY: No objection.

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

20 Visual resources is the next topic.

21 MR. GLADDEN: NCPA would like to offer
22 the testimony of Joshua Hohn, by way of
23 declaration. As well as offering the exhibits
24 listed in that testimony, being exhibits 2, 4, 5,
25 10, 29, 34, 35.

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

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

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

14 And with that, and the general offer of
15 1 and 49, we submit that testimony.

16 HEARING OFFICER CELLI: Any objection by
17 staff?

18 MS. MOULTRY: No objection.

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

23 Next topic worker safety and fire
24 protection.

25 MR. GLADDEN: Yes, NCPA would like to

1 offer the testimony of Sarah Madams, by way of
2 declaration, and the sponsoring of the exhibits
3 listed in that declaration being exhibits 23 and
4 27.

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

10 HEARING OFFICER CELLI: Any objection by
11 staff?

12 MS. MOULTRY: No objection.

13 HEARING OFFICER CELLI: Exhibits 23 and
14 27 will be received into evidence.

15 Next we have land use.

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

20 Exhibit 10, the NCPA's comments on the
21 staff assessment. Exhibit 29, data response set
22 1A, 1 through 56. Exhibit 39, San Joaquin County
23 Community Development letter.

24 HEARING OFFICER CELLI: Any objection by
25 staff?

1 MS. MOULTRY: No objection.

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

4 Next we have --

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

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

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

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

15 MR. GLADDEN: Yes.

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

19 MR. GLADDEN: Yes, 44, as well.

20 HEARING OFFICER CELLI: Any objection by
21 staff?

22 MS. MOULTRY: No objection.

23 HEARING OFFICER CELLI: So, again, 1,
24 10, 35, 39, 44 and 49 will be received into
25 evidence.

1 And lastly we have alternatives.

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

5 HEARING OFFICER CELLI: Okay, any
6 objection by staff?

7 MS. MOULTRY: No objection.

8 HEARING OFFICER CELLI: 1 and 49 are
9 received.

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

16 MS. MOULTRY: Yes.

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

25 But I just want to make sure that we

1 didn't drop something out and later find that
2 there's no record of admitting any exhibits. Does
3 that pose a problem for staff?

4 MS. MOULTRY: No.

5 HEARING OFFICER CELLI: And applicant?

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

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

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

15 MR. GLADDEN: We would move 1 through
16 49.

17 HEARING OFFICER CELLI: Any objection by
18 staff?

19 MS. MOULTRY: No objection.

20 HEARING OFFICER CELLI: Very well.

21 Applicant's exhibits 1 through 49 are received
22 into evidence. And thank you for your
23 explanation.

24 We have lastly the topic of air quality.

25 MR. GLADDEN: Hearing Officer Celli,

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

8 HEARING OFFICER CELLI: Any objection by
9 staff?

10 MS. MOULTRY: No objection.

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

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

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

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

1 of Mr. Warner.

2 HEARING OFFICER CELLI: Any objection by
3 staff?

4 MS. MOULTRY: No objection.

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

7 Anything further, Mr. Gladden?

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

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

13 MR. GLADDEN: Yes.

14 HEARING OFFICER CELLI: -- 1, 2, 5, 6,
15 10, 11, 12, 17, 18, 19, 20, 22, 25, 36, 45, 46, 47
16 and that's all that I have.

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

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

23 Go ahead.

24 MR. GLADDEN: Just for clarification I
25 don't believe that you did read exhibit 29 as part

1 of air, but it will be.

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

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

10 HEARING OFFICER CELLI: Thank you.

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

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

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

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

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

25 This, normally we would close the

1 record, but we're going to leave the record open
2 because we've got the air quality evidentiary
3 hearing that's going to have to come up hopefully
4 in the last week of January.

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

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

17 HEARING OFFICER CELLI: And do you agree
18 with that?

19 MS. MOULTRY: That is correct.

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

24 MR. GLADDEN: That is correct.

25 MS. MOULTRY: That's correct.

1 HEARING OFFICER CELLI: Okay. Let's
2 turn now to -- actually, if I can just go off the
3 record for one moment.

4 (Off the record.)

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

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

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

14 MR. GLADDEN: Yes.

15 MS. MOULTRY: And not the final FDOC.

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

18 MS. MOULTRY: There is not a final FDOC.

19 HEARING OFFICER CELLI: And what --

20 MR. GLADDEN: It's a draft final.

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

25 What is it going to take to make the

1 draft final, an F-FDOC, a final-final?

2 (Laughter.)

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

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

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

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

16 MS. MOULTRY: I do.

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

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

24 Ms. Moultry, Mr. Jones, can you give me
25 an indication of the amount of time staff may need

1 to review the FDOC?

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

4 ASSOCIATE MEMBER BYRON: You can go to
5 the podium.

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

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

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

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

23 So, where I'm headed with this is that I
24 think that the changes to my staff assessment have
25 already been essentially incorporated internally

1 by myself. And so I have an idea of how my staff
2 assessment, I think, will be changing in the
3 final-final DOC comes out.

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

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

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

13 MR. BIRDSALL: Thank you, Commissioner.

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

21 We go through an evidentiary hearing
22 like this and all we do is enter evidence into the
23 record. Seems like there's not enough
24 recognition. I just want to let you all know we
25 do appreciate the efforts that have gone into

1 closing these issues out in a very timely way.

2 And we will conduct the final
3 evidentiary hearing on this air quality issue as
4 soon as we can, given the production of the FDOC
5 and staff review.

6 HEARING OFFICER CELLI: Thank you,
7 Commissioner.

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

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

20 Seeing none, I'm going to now go to the
21 phone. It looks like we have nobody on the phone,
22 is that correct? Okay, there's nobody on the
23 phone. It's a shame that the public doesn't
24 participate more, at least in this case, but in
25 any event --

1 MR. GLADDEN: The public wants this.

2 They didn't need to chime in.

3 (Laughter.)

4 HEARING OFFICER CELLI: With that, then,
5 I would hand it over to Commissioner Byron who can
6 adjourn the evidentiary hearing.

7 ASSOCIATE MEMBER BYRON: It's my
8 pleasure. Thank you all for being here this
9 morning. We're adjourned.

10 HEARING OFFICER CELLI: Thank you.

11 (Whereupon, at 11:10 a.m., the hearing
12 was adjourned.)

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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

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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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