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STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of: )
Prehearing Conference for the )
Application for Certification ) Docket No. 12-AFC-02
For the Huntington Beach )
Energy Project )

CEC BUILDING
1516 9TH STREET
HEARING ROOM B
SACRAMENTO, CALIFORNIA

THURSDAY, JULY 10, 2014

3:00 P.M.

Reported by:
Peter Petty
APPEARANCES

COMMISSIONERS
Andrew McAllister, Presiding Member
Karen Douglas, Associate Member

ADVISERS
Pat Saxton, Adviser to Commissioner McAllister
Eli Harland, Adviser to Commissioner Douglas
Jennifer Nelson, Adviser to Commissioner Douglas
Eileen Allen, Commissioners’ Technical Adviser

HEARING OFFICERS
Paul Kramer, Chief Hearing Officer
Susan Cochran, Hearing Officer

STAFF
Felicia Miller, Project Manager
Kevin Bell, Staff Counsel

PUBLIC ADVISER
Alana Matthews, Public Adviser
Blake Roberts, Assistant Public Adviser

APPLICANT
Stephen O’Kane, AES Southland Development, LLC
APPEARANCES (CONT.)

APPLICANT (CONT.)
Kristen Castanos, Stoel Rives
Kimberly Hellwig, Stoel Rives
Jerry Salamy, CH2M Hill

INTERVENERS
Monica Rudman
# EXHIBITS

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<td><strong>STAFF’STS</strong></td>
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<tr>
<td>Final Staff Assessment</td>
<td>2000</td>
<td>10</td>
</tr>
<tr>
<td>FDOC</td>
<td>2001</td>
<td>10</td>
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<tr>
<td><strong>APPLICANT’S</strong></td>
<td></td>
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<tr>
<td>AFC and Testimony</td>
<td>1000-1130</td>
<td>11</td>
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<tr>
<td><strong>INTERVENER RUDMAN</strong></td>
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<td>Testimony</td>
<td>4000-4012</td>
<td>11</td>
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PROCEEDINGS

9:08 a.m.

PROCEEDINGS BEGIN AT 9:08 A.M.

(The meeting was called to order at 9:08 A.M.)

SACRAMENTO, CALIFORNIA, THURSDAY, JULY 10, 2014

MEETING BEGINS AT 9:08 A.M.

PRESIDING MEMBER MCALLISTER: We’re going to get started on the prehearing conference for the Huntington Beach Project, 12-AFC-02. My name is Andrew McAllister. I’m the Presiding Member of the Committee here at the Energy Commission. And the other member is two seats to my right, Commissioner Douglas the hearing officer is Susan Cochran. And we will be largely managing the proceedings today. And I just want to point out a few people who are the dais before we get started. Just from one end, Eli Harland and Jennifer Nelson who are Commissioner Douglas’s Advisers. Next to me on my right is Susan Cochran, the Hearing Officer. And to my left Pat Saxton who is my Siting Adviser. And Eileen Allen who is the Siting Adviser for the commissioners of the Commission.

And with that I want to thank everybody for coming. It looks like we have all the relative parties in the room. We have, I think, just one person on the phone. It’s looks like somebody from REACH (phonetic), as far as I can tell. And from here I will pass it on to Susan.
HEARING OFFICER COCHRAN: Thank you, Commissioner McAllister. One thing I would advise you all is that only two microphones can be live at any one time in the room. So if you could turn your microphone off if you’re not actively speaking, that would very helpful.

I would also like to introduce Blake Roberts who is the Assistant Public Adviser.

Oh, I’m sorry, I didn’t see you, Alana. I’m so sorry. I am so sorry. Mr. Bell was blocking my view here.

If you need help in participating in our proceedings the Public Adviser’s Office is here to do that for you. I don’t know if they’re going to have the formal blue cards. But if you do and you wish to speak during the public comment portion of this prehearing conference today, please approach them and they’ll let us know that you wish to speak to the committee as we’re moving forward.

Is there anything else you’d like to say? Thank you.

I would like at this point for the parties to identify themselves, starting with the applicant.

MR. O’KANE: I’m Stephen O’Kane, Vice President for AES Southland Development, the applicant for Huntington Beach Energy Project.

MS. CASTANOS: Kristen Castanos with Stoel Rives. I’m counsel for the applicant. And also from my office is
Kim Hellwig, my energy regulatory specialist. And we also have a representative from CH2M Hill, Jerry Salamy, with us.

MR. BELL: Kevin Bell, Senior Staff Counsel on behalf of Staff. With me here today is Felicia Miller, Project Manager.

HEARING OFFICER COCHRAN: I believe we also have one our interveners in the room. If you could identify yourself for the record.

MS. RUDMAN: I need a microphone.

HEARING OFFICER COCHRAN: Oh, I’m sorry.

MS. RUDMAN: It doesn’t seem to work.

PRESIDING MEMBER MCALLISTER: Did the red light go on?

MS. RUDMAN: Yeah. Oh.

(Colloquy between Energy Commission Staff and Ms. Rudman)

MS. RUDMAN: My name is Monica Rudman. I am -- grew up in Huntington Beach. My mother still lives in Huntington Beach. While I am employed as an energy specialist at the Energy Commission, I’ve worked at the Energy Commission for 20 years and have extensive experience in energy, I am not representing the Energy Commission in this proceeding. I’m representing myself and the people of Huntington Beach.

HEARING OFFICER COCHRAN: Thank you. Jason Pyle,
is Mr. Pyle here? There is only one other person online, and that’s not identified as Mr. Pyle. Mr. Pyle, if you are online would you identify yourself please?

PRESIDING MEMBER MCALLISTER: I believe you --

HEARING OFFICER COCHRAN: Oh, I’m sorry. AV is not our job description, and I think I’ve established that clearly now.

Mr. Pyle, if you are online or available, if you could state your appearance please?

Are there any representatives from the federal governmental agencies present? Don’t rush the microphone. Any officials representing Native American tribes or nations? Seeing none, are there any other state, county, regional, local jurisdictions, specifically either the South Coast Air Quality Management District or the California Coastal Commission? Okay.

Seeing none, let’s move on now to things that are much more exciting. The Committee provided notice of today’s prehearing conference in the Notice of Prehearing Conference and Evidentiary Hearing Scheduling Order and further orders submitted and docketed on June 9, 2014, the June 9th notice specifying that the Evidentiary Hearing, will be held on July 21st of this year at the Hilton Waterfront Huntington Beach located at 21100 Pacific Coast Highway in the City of Huntington Beach.
Before I go much further I have a question of the applicant. What is the earliest that we can access the room for use, do you know?

MR. O’KANE: We don’t have an accurate answer for you, but we will --

HEARING OFFICER COCHRAN: Okay.

MR. O’KANE: -- get that for you. Yeah. It will be -- we’re scheduled to start at noon, I believe. But we’ll -- we’ll make sure we get in there to make sure there’s appropriate time for testing all the AV equipment.

HEARING OFFICER COCHRAN: Okay. I would request that we would have, is that if we can have the room starting at ten o’clock, that would be very helpful. And I need to know as soon as possible in the event -- in any event, no later than tomorrow. Part of what’s happening is we are considering having a closed session before the start of the Evidentiary Hearing. The Evidentiary Hearing itself would still not be starting until 12:30. But that would give the Committee some time to get down and get their feet on the ground and ready for what is probably going to be a very intense Evidentiary Hearing, given the sort of brief amount of time. And we’ll talk a little bit more about that in a minute.

As we explained in the June 9th notice, the basic purpose of today’s prehearing conference is to, first,
assess the project’s readiness for hearing, to clarify areas of agreement or dispute, to identify witnesses and exhibits, to discuss the method by which parties will be able to question the other parties’ witnesses in light of our more recent move to sort of more informal processes, and to discuss associated procedural matters.

To achieve these purposes we require that any party seeking to participate in this conference or to present evidence or question a witness is at the -- at any future Evidentiary Hearings file a Prehearing Conference Statement by July 7, 2014. We received a timely Prehearing Conference Statement for all parties except for Intervener Jason Pyle.

You’ll note today that I redistributed Ms. Rudman’s referenced Prehearing Conference Statement. The reason for that is that there was a technical issue with the mail server at the Energy Commission which resulted in it being timely in the docket but not necessarily distributed to everybody who may be interested in it. So again, AV technical issues are not my, you know, core competency. So I’m just repeating to you what others told me. So the Energy Commission apologizes for any confusion that that may have caused. But hopefully everyone now knows and everyone has all the documents that were properly docketed. Intervener Jason Pyle did not provide us a Prehearing
Conference Statement.

Staff published a Final Staff Assessment, the FSA, on May 30, 2014. This serves as Staff’s testimony in all separate areas. The FSA has been marked for identification as Exhibit 2000.

The South Coast Air Quality Management District has not been completed in the Final Determination of Compliance, the FDOC, for risks to the air quality issue. However, Staff has pre-marked the FDOC as Exhibit 2001. In a few minutes we will talk about how the parties would like to proceed on the air quality issue. And it might have some of the timing restrictions on there.

Timely testimony was filed by the applicant including the AFC testimony and exhibits on June 20, 2013, including exhibits marked for identification as Exhibits 1000 through 1130, inclusive. Is that correct?

MS. CASTANOS: Yes, that’s right.

HEARING OFFICER COCHRAN: Okay. I got a nod. I’ll take a nod.

Intervener Jason Pyle filed no testimony and is offering no exhibits.

I am going in this order because the Commission has a practice of taking interveners by the date they intervene, and Mr. Pyle intervened before Ms. Rudman.

Intervener Monica Rudman timely filed and marked
for identification Exhibits 4000 through 4012. Ms. Rudman
timely filed testimony on June 30, 2013 as transaction
number 202631.

Rebuttal testimony is due tomorrow, July 11, 2014.
A note on that, you will see that in the notice,
the June 9th notice that set for the date for this, the
filing deadline is at three o’clock as opposed to five
o’clock. The reason for that is that when you submit an
item to docket, dockets has to review it and approve it
before it is formally accepted and docketed. If a party
waits until 4:30, quarter to 5:00, 5 o’clock, your document
may or may not make it to docket that same day. It may then
happen on the next business day. Given the abbreviated
schedule that we set for ourselves back in April, it’s very
important, therefore, that the parties respect the three
o’clock cutoff so that everyone gets the documents at the
same time.

Today’s agenda is divided into five parts. First
we will discuss the issues that are not ready to proceed
based on the parties’ Prehearing Conference Statements, as
well as issues where there may be no need for additional
testimony or evidence. Next we will discuss the informal
process that the committee will utilize in conducting the
Evidentiary Hearing. Then we’ll discuss the parties’
evidence, both in terms of testimony and exhibit lists. And
after that we will discuss the briefing schedule. And finally, we will provide an opportunity for public comment. There is also the potential for a closed session at the end of this meeting or at any time the Committee wishes to call a closed session. We will inform you if we’re going to do that and give you some timeframes.

So let’s first talk about the topics not ready to proceed. I’m going to skip over Mr. Pyle’s position because in the absence of a Prehearing Conference Statement I don’t know about any of the topics we’re going to discuss.

Neither the applicant nor the staff identified any topics that are not ready to proceed.

Ms. Rudman identified what I believe are five -- these are my characterizations, not necessarily hers -- climate change, project definition, other compliance conditions, impact of oil well fracking, and project alternatives.

Ms. Rudman, have I properly captured what you think are the areas that are not ready to proceed on July 21?

MS. RUDMAN: Yes. Thank you.

HEARING OFFICER COCHRAN: Okay. Can you -- let’s take them one by one. And can you tell us with some specificity which topic areas you think are not ready to proceed and whether you -- it’s that they’re not ready to
proceed or that you wish to have them be disputed at an Evidentiary Hearing?

So let’s talk first about climate change.

MS. RUDMAN: Okay. I was assuming that when a topic is ready to proceed that there has been, you know, a complete analysis of the topic. So that was my criteria in identifying topics that are not ready to proceed. And I believe climate change, that there was just a very cursory review of climate change impacts by Staff. And I believe that certain aspects of climate change were not even discussed at all. So I’m willing to say either -- I’m willing to say that there could be more evidence that -- or more discussion of this topic that could be brought to bear, because there’s no discussion of like the climate change impacts on supporting structures. So that’s what’s my criteria. Otherwise, I would say it would be in dispute.

So --

MR. BELL: My response for this one globally which will cover the five areas that Intervener Rudman has identified as needing more information is this, that Ms. Rudman has an accredited intervener status. As such, she has all the rights of a party in this proceeding. However, she also has all the same responsibilities of a party. If a party wants information produced in this proceeding it’s that party’s responsibility to produce that information. If
Intervener Rudman feels that more information is needed for each of these, climate change, project definition, other compliance conditions, impact of oil well fracking, and project alternatives, she’s free to issue evidence in this proceeding.

I can say that on each of these areas Staff has already considered the Application for Certification. Staff has done a complete and thorough review of all topic matters. And I can say that this is ready to proceed to hearing on all five of these areas that Intervener Rudman has identified.

HEARING OFFICER COCHRAN: Thank you, Mr. Bell.

Does the applicant have a position and wish to speak?

MS. CASTANOS: We agree with Staff. We don’t have anything to add.

HEARING OFFICER COCHRAN: Okay. So you had a global answer to a very specific question that I asked you, Ms. Rudman, on the other areas do you have a different position of what you said about the lack of complete analysis in that your belief that there could be more evidence on a given topic?

MS. RUDMAN: Yes. So for project definition, I don’t see in any documents any discussion of demolition plans. I don’t see a discussion of or an agreement from the
person or the party that is in charge, basically, of Units 3 and 4 that they agree that those units may be demolished. I don’t see any type of discussion really that’s legally binding, from what I can tell, about whether the synchronous -- synchronous condensers projects will remain. So from that perspective I don’t believe that there is a complete definition of a project, particularly when you look at the impacts on air quality, there very, very tied to the demolition of the power plants because it creates particulate matter. So if there isn’t a clear and binding project demolition plan, I don’t see how the project is fully designed at this point.

HEARING OFFICER COCHRAN: And so really then the only one in which the general statement that we just had doesn’t apply are specifically with project definition?

MS. RUDMAN: No. I’m going one by one. So that -- that would be --

HEARING OFFICER COCHRAN: Okay.

MS. RUDMAN: -- for the project definition. So for the other compliance conditions, there’s no mention anywhere of enforceable prohibitions against market manipulation and the form of the pricing for the power.

In the proceeding for the Huntington Beach Generating Station, one of the issues at that time was whether it was appropriate to continue these power plants on
a coast that’s national and statewide and very important
importance. And one of the issues that was discussed at
that time was that there should be a prohibition against
manipulating the market that didn’t get adopted. As it
turns out, AES is involved in schemes to manipulate the
energy market at a cost to California. And I want to make
sure that doesn’t again, and that’s not discussed.

So other compliance conditions or other areas
where there’s more information, the California Coastal
Commission has identified wells outside of -- outside of
Huntington Beach that have permits to frack, and on certain
wells they have been fracking. And there’s evidence that
fracking can lead to increased seismic activity. We know
that the site where the energy -- Huntington Beach Energy
Project is located is located over and very close to a
variety of different earthquake faults. So we don’t know --
and there has been no exploration of the potential for
increased seismic activity due to oil well fracking that
know is going on.

The other thing that has not been developed at
all, in fact the staff has admitted this, there is not CEQA
equivalent discussion of project alternatives. The project
alternative that is discussed is assuming that they can get
some kind of recycled water and then retool the existing
power plants as they are. This is really not equivalent to
a CEQA, you know, project alternative. The other project alternative that has not been discussed is the environmentally preferred project alternative. And I’ve provided some documentation on known ways that -- demand response, energy efficiency, energy storage that can provide feasible, easily implementable if there are alternatives to the project.

HEARING OFFICER COCHRAN: Okay. Thank you.

Staff, do you have anything other than what you originally said, Mr. Bell, about rights and responsibilities and her need to provide more information if she wants to introduce those? I don’t want this to be kind of a substitute for an Evidentiary Hearing when we start, then saying, oh, I’m on page 4.5-3 we talk about this, and on page 8.4-4 we’ve talk about -- you know, I’m not looking for that. I’m looking --

MR. BELL: Oh, no. I wouldn’t -- I wouldn’t be that specific here for our purposes. I would just want to point out that although there’s been a suggestion that project definition is not included in this, I would -- I’d point Intervener Rudman and the committee to sections -- section 3.1 -- I’m sorry, pages 3.1 through 3.6, which is project definition where project is fully defined.

For the compliance conditions that Intervener Rudman is bringing up, those are outside our purview. We do
not -- this commission doesn’t -- doesn’t concern itself with things such as the market manipulation. I believe that’s within the CPUC’s purview, not -- not the Energy Commission. And that’s something that the CPUC, I’m assuming, would be overseeing.

And project alternatives, again I would point to pages 6-1 through 6-44 where alternatives for the project are fully analyzed by Staff. Staff has looked at several different scenarios. And just because we haven’t chosen something else or found something to be superior to this project doesn’t mean that the analysis wasn’t done.

HEARING OFFICER COCHRAN: Thank you. Thank you.

Applicant?

MS. CASTANOS: The only thing I would add with respect to alternatives is that we believe that the no project alternative that’s identified in the FSA does comply with CEQA.

HEARING OFFICER COCHRAN: Thank you. I think that it’s the feeling of the committee that we are ready to proceed to Evidentiary Hearing on all topics on Monday, July 21. And that the issues that you raised, Ms. Rudman, should be brought up during that Evidentiary Hearing with the proof that you have that the conclusions that were reached during an effort that there’s an insufficient amount of evidence to support the conclusions reached in the FSA, in other words,
the rights and views and responsibilities of a party to this proceeding. But that doesn’t mean that the issues isn’t ready for discussion and for hearing on July 21st.

So let’s turn now to topics in dispute that need adjudication. I have gone through the Prehearing Statements and it appears -- we’ll start with the applicant. I believe that the applicant has identified the following areas that need adjudication: Air quality, biological resources, cultural resources, hazardous materials, land use, noise and vibration, soil and water resources, visual resources, waste management, (inaudible) safety and fire protections, compliance conditions, and alternatives; is that correct?

MS. CASTANOS: That is correct based on our Prehearing Conference Statement. I do think that based on Staff’s Prehearing Conference Statement that we think some of the issues may no longer be contested.

HEARING OFFICER COCHRAN: Okay. I know that when I was sort of doing comparing and contrast and trying to track through, it seems as though everyone agreed that there would be a necessity for Evidentiary Hearing time for air quality, biological resources, cultural resources, visual -- and visual resources. Are there any other topics for which we will need Evidentiary Hearing time? And some of that appears to be a discussion, some of this specifically with conditions of approval and other times it was much more
about the analysis that Staff had. (Inaudible.)

Let’s start with the applicant. I did not say noise. Do I hear noise? Does anyone vote for noise?

MS. RUDMAN: I’m sorry, yeah, I do.

MR. BELL: Go ahead.

MS. RUDMAN: Oh.

HEARING OFFICER COCHRAN: Please, go ahead.

MS. RUDMAN: Yeah. I recently got an email from a biologist at the Department of Fish and Game that does think that there would be some noise issues, yes.

HEARING OFFICER COCHRAN: There is a discussion in biological resources regarding the impact of noise on the biological resources. I think I was talking more generally about the noise for -- that is other than biological resources covered, say, by the Huntington Beach Noise Ordinance or things of that nature.

MS. RUDMAN: Uh-huh.

HEARING OFFICER COCHRAN: So I’m looking more broadly at that, not as it relates to specific noise and perhaps some specific species. What will we need to -- what will we need to set aside Evidentiary Hearing time for -- for broader noise issues?

MS. CASTANOS: The applicant does not believe we do.

HEARING OFFICER COCHRAN: Thank you. Staff?
MR. BELL: I don’t believe we do either, no.

HEARING OFFICER COCHRAN: Ms. Rudman, in light of

the explanation that I made can you --

MS. RUDMAN: Yeah. I’m going to -- well, I’ll

stay focused on the issue -- on the other issues.

HEARING OFFICER COCHRAN: Okay. Obviously, not

having the FDOC from the Air Quality District is -- is a

little bit daunting in terms of knowing if we’re going to be

able to close the evidentiary record.

MS. RUDMAN: I’m sorry. I’m sorry.

HEARING OFFICER COCHRAN: Thank you. So other --

so now that we’ve talked about noise and bio, would we agree

that these are the topic areas that we’ll need evidentiary

time on, air quality, biological resources, cultural

resources, and visual resources?

MS. CASTANOS: The applicant believes we may also

need to time at the Evidentiary Hearing for hazardous

materials, land use, waste management, and compliance

sanctions.

MR. BELL: I can say with the land use. We don’t

think that there’s a dispute. We agree with the applicant’s

proposed change to the Condition of Certification. There --

there are other areas, as well.

I guess this is a good time to talk about

scheduling. We’re -- I don’t think there’s any dispute, for
example, waste management, I don’t think there’s any dispute as to the actual evidence that has been presented by both the applicant and by staff. The dispute actually is what do we do with the Condition of Certification? Applicant has -- just wording the condition itself. Applicant has proposed some changes to the condition that Staff has agreed -- or is opposed to. I suppose we could have testimony from Applicant and Staff on -- on that issue if the Committee wants to hear that. But it’s not really a factual issue, it’s an application issue. How do we -- how do we -- how do we apply the facts to what we want to see as an end result?

HEARING OFFICER COCHRAN: Okay. Ms. Rudman?

MS. RUDMAN: I suppose along those lines I think parties seem to agree that soils and geology presents certain hazards. But we probably would be working on compliance conditions.

Since everyone has brought up compliance conditions I would like to take this time to talk about the language on the compliance conditions that we have so far. And I have gone through several sections of the compliance conditions. And my overall sense of them is a little bit of concern as it relates to how they have been drafted. There are lots of condition that deal with the preparation of plans or the submission of names to act in certain capacities that you’re looking to appoint, a designated
biologist or a cultural resources specialist. And there is
not consistency within the conditions as to how that should
be accomplished.

I think that the Committee is looking for
conditions relating to those types of ideas, preparation
plans, the submittal of resumes for these personnel, that
should be consistent between the various technical areas,
and should be consistent regarding the time of providing the
draft information on the initial information, how long would
the Energy Commission and its designated personnel have to
respond to those drafts and those remedies that are
provided. If there are additional agencies outside of the
Energy Commission, U.S. Fish and Wildlife Service or the
California Department of Fish and Wildlife, how do we get --
how do we solicit their comments? What’s the effect if that
agency either doesn’t respond or fails to respond in a
timely manner? And how do we resolve conflicts that, say,
that Fish and Wildlife comes up with a condition that is in-
amicable to what the conclusions of the decision are, how --
how is that going to be resolved?

In addition, given that this is going to be a
project carried out over a long period of time, 90 months
roughly, how are we going to deal with the metrics and what
are the reporting requirements going to look like? In other
words, this is a long-term project that has a lot or moving
pieces in it, really, and things are going to change as time goes on. The future comes too early in the wrong order. And I think the conditions to the best of their ability should probably try to address that as much as possible.

I’m sorry, I meant the plan, not the decision.

So -- so let’s take, for example, a condition like Bio 1, that’s the designated biologist selection. As you read through it the question that I have is that it -- the information is presented to the compliance project manager here at the CEC. And then that person is supposed to obtain approval in order to approve the document, in consultation with CDFW and U.S. Fish and Wildlife. What do the mechanics of that look like? How does that work in the real world? And what are the timeframes for that? We don’t want to overly delay the applicant. On the other hand, the conditions of approval are supposed to serve either as the mitigation monitoring plan for those issues that are identified as being significant under CEQA, and that we’ll be using a Condition of Certification as a mitigation measure to reduce the impacts to a level of less than significance. Ultimately, it’s to ensure that we are compliant with LORS, the Laws, Ordinances, Regulations and Standards. And understanding that we don’t have control over CDFW and U.S. Fish and Wildlife. So what -- how are we going to work together to do that?
If the CPM is going to approve this person then, you know, the qualifications need to be specifically stated without a lot of wiggle room. What I can cite the parties to is a condition that I do think is well drafted, which is Visual-1. And it is very specific, what I would call performance standards that in the verification can then be measured against what’s actually happening on the ground. And the Committee would hope that either in rebuttal testimony, which is probably the original thought, but definitely before the Evidentiary Hearing, that some of these hearings and some of this approach can be discussed and resolved sooner rather than later.

In the Prehearing Conference Statements the applicant and staff specifically addressed various -- most of the dispute for the Evidentiary Hearing was going to be as to the Condition of Certification, not necessarily as conclusions reached in the document. So that means the conditions add even more importance than I think would normally occur.

MR. BELL: I do have -- I do have a recommendation as to timing, that is we do have a rather tight schedule for the proceeding. We are going to have the opportunity to file briefs after the Evidentiary Hearing. At that -- would it help at that time, after the hearing, after we’ve heard all the evidence and considered all the different opinions,
would it help if at that time we were to file a clean set of
Conditions of Certification cleaning up some of -- some of
the issues that you’ve identified?

HEARING OFFICER COCHRAN: I think so. But
obviously I only have about a month to right the PMPD, so --
given the schedule that we’ve adopted in order to have this
on a business meeting on October 2nd. So there’s not a lot
of room for slippage in that schedule. I mean, it is a
tight schedule, and we knew that back in April when we set
it up that way. So --

MS. RUDMAN: Can I --

HEARING OFFICER COCHRAN: -- the sooner it’s
wrapped up --

MS. RUDMAN: I would be concerned with that.
Because it seems like what happens is you would go to the
Evidentiary Hearing, and then later another document would
be written that basically would be written by Staff. What
would the process for review of that document?

HEARING OFFICER COCHRAN: Actually, there will
always be reply briefs, first of all.

MS. RUDMAN: There will be --

HEARING OFFICER COCHRAN: Second, the document --
reply briefs. So you’ll have an opening brief, and then you
will -- so if we were to follow this path then the reply
brief -- the opening brief would be the place to put the
sort of clean conditions. But ultimately the committee will
prepare proposed -- the Presiding Members Proposed Decision,
and then there will be an additional Final Decision by the
Commission as a whole. So that would be where the public
vetting of that information would come because people
continue to have the ability to review those documents, to
make comments, and to have those comments acted on.

So it’s -- it’s not just the receipt of the
evidence, it is how that evidence is then presented and how
we make sure that the project is built consistent with the
decision. And that’s another thing is that there are times
that there are discussions about modification to mitigation
measures. If that’s the kind of language that makes me
nervous because it sounds as though it is modifying the
decision as opposed to modifying the approach as to how
we’re going to meet a goal or an objective or a standard.
We’re trying to be as objective as possible in the
conditions so that there are measurable outcomes that the
public can rely on in the decisions that are -- that are
rendered by the Commission.

And so, therefore, sometime will have to be
devoted during the evidentiary hearing to -- to resolving
some of these issues and -- and to provide maybe some
additional direction to everyone about what the committee
is -- is looking for.
So I want to make sure -- I sort of lost myself in my train of thought again. I want to make sure that I understand exactly which areas we’re going to have testimony and/or time at the Evidentiary Hearing. Air quality, bio resources, cultural resources, hazmat, land use, visual resources, waste management, and compliance conditions. Did I miss one? I’m sorry. I think I missed one.

MS. RUDMAN: Yeah. I think you missed a couple.

MR. BELL: And land use.

HEARING OFFICER COCHRAN: Well, I have a question on land use, actually.

MS. RUDMAN: Yeah. You missed water resources.

HEARING OFFICER COCHRAN: Oh, water resources?

Thank you.

MS. RUDMAN: And then I still believe that the Committee should get a full hearing about all the hazards, earthquake hazards and other hazards on the site.

HEARING OFFICER COCHRAN: So that’s -- is that a geo-paleo?

MS. CASTANOS: It is.

MR. BELL: It is. The staff has already prepared an analysis. And I’m going to reiterate again, if Intervener Rudman wants to introduce additional evidence she is free to do that.

HEARING OFFICER COCHRAN: Okay. So we will carve
out hearing time for geo-paleo. So again, I want to run
through the list. Air quality, bio resources, cultural
resources, hazmat, land use, water resources, visual
resources, waste management, compliance conditions, and geo-
paleo as it relates to seismic.

MS. RUDMAN: And then are greenhouse gases
included in air quality? That would be part of the air
quality?

HEARING OFFICER COCHRAN: Greenhouse gases is part
of public health.

MS. RUDMAN: Okay. Well, we need to have that
discussion.

HEARING OFFICER COCHRAN: Anything else? Any
more?

MS. CASTANOS: Greenhouse gases is in air quality.

HEARING OFFICER COCHRAN: I’m sorry. Yes. Thank
you very, very much. We are cleared to have access to the
Hilton on July 21st. Thank you, Applicant, very much. So
we’ll talk about that when we get to schedule.

So greenhouse gas, public health, I will need to
confer --

MR. BELL: No, not public health.

MS. CASTANOS: Not public health.

HEARING OFFICER COCHRAN: I’m sorry.

MR. BELL: Air quality.
HEARING OFFICER COCHRAN: Air quality.

MS. CASTANOS: Correct.

MR. O’KANE: That’s within air quality, so --

MS. CASTANOS: Yeah.

HEARING OFFICER COCHRAN: So that’s within air quality, whenever we have time for air quality.

So now that we have our list, then my -- my question then now turns to, how should we handle air quality in light of the fact that the comment period on the PDOC does not close until next Thursday the 17th? How would the applicant like to handle this?

MS. CASTANOS: We understand from discussions with the Air District that if no comments are received they’re prepared to issue the FDOC, I believe the day after the comment period closes. And we are hoping that they will then be able to present the FDOC at the hearing on the 21st. So we -- we understand there’s a potential that they may not be able to present the FDOC at the hearing on the 21st. But we do think it’s appropriate to open the hearing, take the testimony on the issues that are on the table, and that -- and understand that the -- that this particular issue area may need to be left open at the hearing. The record may need to be left open until the we can close the loop on the Air District’s (inaudible) doc.

HEARING OFFICER COCHRAN: And Staff, what’s your
position?

MR. BELL: We agree with that. I believe we can get through the hearing on Staff’s and Applicant’s testimony with respect to the air quality section, leave the record open for the receipt of the PDOC at which time it becomes available.

HEARING OFFICER COCHRAN: Thank you. Ms. Rudman?

MS. RUDMAN: I’m okay.

HEARING OFFICER COCHRAN: Okay.

MS. CASTANOS: I would also note on behalf of the applicant that with respect to the issue that is still in dispute between the applicant and staff in the air quality section, we don’t feel the need to present direct testimony on that issue. We feel that the issue has been -- has been addressed in the record.

HEARING OFFICER COCHRAN: Okay.

PRESIDING MEMBER MCALLISTER: Do you think that’s ready for adjudication or do you need more in addition to that?

MS. CASTANOS: I believe it’s ready for adjudication.

PRESIDING MEMBER MCALLISTER: Okay. Let’s see. And I wanted to just ask (inaudible) conversation, but did the Staff feel like Ms. Cochran described some of the vagueness in the conditions that, you know, she had seen in
the -- in the staff work? Is that something you would be planning to bring more definition to when we get to the Evidentiary Hearing, or is there some process by which that happens?

MR. BELL: That would be my hope. And that’s actually my focus here at the Commission, working on some of the -- to try to -- try to clarify our conditions. We can now notice another discussion another time, if you’d like, about how conditions are written here at the Commission, but that’s an evolving process. I can tell you that each technical author presents their -- their conditions, and they have are very vested in some of the language in there based on their analysis. And there’s a balance between putting out a condition that we feel very strongly about and one that is objectively enforceable. And often times we look to the Committee and the hearing officer to -- to help smooth things over a little bit.

PRESIDING MEMBER MCALLISTER: Yeah. So that gets to the core of my -- my sort of concern here is that, you know, if we’re talking about what the Committee feels, you know, if I’m the presiding member I definitely feel that we sort of -- we have to keep it as real as possible so that it’s clear that down the road when something happens that we interpret it that that isn’t open too much to interpretation. And so we have to know what to expect and
have thought through some scenarios (inaudible) beforehand so that -- so that we can all sort -- so we don’t have to (inaudible) when something happens down the road.

MR. BELL: Right.

PRESIDING MEMBER MCALLISTER: So just sort of a general approach, I would suggestion, just a general sense (inaudible).

COMMISSIONER DOUGLAS: You know, just a couple -- a couple thoughts, and I am looking forward to hearing what Staff is able to bring to the Evidentiary Hearing or afterwards. But in addition to what Hearing Officer noted, specifying the process for modifications to these plans is going to be valuable if there’s some sort of vague language about, in some cases, you know, maybe the project owner needs to notify the CPM5 Division before a change is implemented. That’s not necessarily reflected in all the condition language.

But what -- what process do you want to propose when a plan has been approved and then afterwards needs to be modified? And just clarity on that would be helpful. Specificity around what individual or what role is responsible for what kind of determinations can be, and there are some places where that could be improved.

I’ll just draw attention to Bio 8. And I understand that we need -- we may need to spend some time
(inaudible) but -- on this. But I want to say there’s a lot of ideas in that condition. And that makes it then difficult from beginning to end and putting ideas together in a way that they might be most clearly and easily read. So -- so without going into the merit of the ideas in any way, shape or form, maybe you might (inaudible) or order the ideas in some way that (inaudible).

HEARING OFFICER COCHRAN: Actually, it’s -- COMMISSIONER DOUGLAS: I’m sorry?

HEARING OFFICER COCHRAN: It’s paragraph 8, Condition Bio 7.


And I’ll just give one more example, and this time it is Bio 8. I was confused looking at this about whether -- you know, given the long construction time and given the way the site is described as a site and we don’t really have identifying parts of the site, does this mean that theirs is (inaudible) pre-construction survey, and then if any construction is occurring at any part of the site there’s not a need for additional (inaudible) surveys? Or, you know, when you think about construction going on over years, what does that potentially mean for when some of these surveys might happen. So that’s an area that I could benefit from some explanation and clarity.
And there probably are other things that we could point out. But that might -- those are some examples that came to my attention.

MR. BELL: Well, I think I can -- the -- the question was multiple. I’ll do my best to try to answer that. And if I don’t cover it, please let me know.

Just a little history of condition writing. If you go back to the time of the Commission’s earliest projects, I know Eileen is familiar with these, conditions were written that said, basically, build it, fire it up and clean it up. And now our conditions are a little more lengthy and very -- and much more detailed. We always want to strike the balance between having enough detail in there to make sure that the environment is protected and that all orders are -- are complied with, but at the same time making it readable and understandable and accurate.

My preference is to get away from prescriptive type of conditions and use conditions that are much more user friendly. There are some considerations we do have, though, especially when dealing with other agencies. Keep in mind that the Commission maintains all ultimate approval authority over our facilities since we preempt all other governmental agencies. That doesn’t mean that other agencies don’t have a role in our approval process. Most agencies do get involved at some level. And we always
reserve for them if they want to stay involved the right to review and comment on documents that pertain to something that would otherwise be within their jurisdiction.

And if you note, going through the condition of certification, because I’m sure that both Commissioners read all of them so far or will very shortly, there’s a lot, those conditions where we involve other governmental agencies, you will see language that states that X document shall be provided to A, B and C governmental agencies for review and comment, and to the compliance project manager for review and approval. So some of those types of things we really can’t get around. I’m not sure that we can streamline that, other than to specify timeframes for those other governmental agencies to participate. But occasionally we’ll have a governmental agency that says we’re not interested. You guys got it and your Commission; we love the job you do, go ahead and do it, and -- and that’s fine. But otherwise we do want to reserve that for those agencies.

Now timing issues; normally we don’t like to have timing issues specified in the language of the condition itself or by the condition itself. We try to place timing issues that otherwise the statute would have mandated in the verification section. One of our colloquialisms here at the Commission is the condition might belong to the Committee,
but the verification belongs to Staff. So when it comes to timing issues that’s something that we -- we can modify, where if the timing says, you know, X documents shall be provided to the CPM 30 days before construction, but for some reason that document can’t get to the CPM in that time for the applicant, then the CPM has the discretion to say, well, give it to me just before you start, or give it to me shortly after as long as everything is under the procedure at your -- at your risk.

So those types of timing issues are one thing that we have tried very hard to move into verification to avoid the necessity to have the applicant come back in with the petition to amend. (Inaudible) it’s section 1769 of our regulations. A petition amendment has to be filed any time there’s a change to design, performance or operation of a facility. However, that amendment doesn’t have to go before the Commission if there’s no change -- no effect on LORS, if there’s no significant adverse environmental effect, or if there’s no change in the Conditions of Certification. So one way to streamline the process of making changes is to write the conditions in such a way that it gives some flexibility while still protecting the environment, while ensuring that the project is -- is being constructed per LORS.

Does that answer your question?
COMMISSIONER DOUGLAS: That’s all very helpful. I was -- thank you. I was just going to suggest that this is -- this is a project that’s -- that moving forward in terms of moving into Evidentiary Hearings, and from that, you know, briefing, and so we are on a schedule. I don’t think anyone here is asking for, you know, those (inaudible) and otherwise perfection in the conditions. I pointed out some areas where I think that basic clarity would be helpful. There are other areas where some consistency would be helpful. I’ll note again in this part 8 of Bio 7 there are some areas where other agencies might be informed of things, but it doesn’t call on the CPM to be informed of those things. I just think that there are some basic things that we might want to -- that we, the Committee, would like to see clarified.

But, you know, I’ll leave it to your discretion initially how -- how dramatic you think is needed to do that. From my point of view is as I’m looking at this I’m focusing really on is, is the process clear for what would happen here? No complaints about other agencies getting to look at things, but is this process laid out clearly? If there’s a change in one of these plans is the process laid out clearly? Is it consistent? And then there were just a couple that I looked at and thought could be clearer. So that’s just some items for the type of thing I might look --
look forward to hearing more at the hearing.

And again, on the focus on the conditions of the hearing, we -- just given that that’s largely the nature of the dispute between Staff and Applicant in many areas, we may, in fact, have additional questions as we start unpacking the conditions and trying to understand why -- you know, what’s driving the difference in language and what’s the understanding of the parties about what these conditions mean and how that relates to the record. So, you know, we’re happy to play a role in doing that.

MS. RUDMAN: Can I offer an observation? When I look at the conditions I would appreciate if they would be tied to mitigating an impact, as well, rather than developing a plan that is just sort of maybe information that can sit on a shelf.

HEARING OFFICER COCHRAN: That’s something else to be mindful of. Again, I want to bring up the fact that what we’re looking for is performance standards. And something to try to avoid is the appearance that you are creating a deferred mitigation measure, that you’re -- you’re putting so much deference in the preparation of a specific plan or a specific other agency action that the parties can’t really tell.

There’s a case out there called SunStrom that’s talks about that where, you know, they didn’t really come up
with a plan for sewer treatment, they just said go and get sewer permits. And it then talks about what was going to happen if they didn’t get the sewer permits, how (inaudible). And so that sort of deferred mitigation can be an issue when we’re not being clear about, as you were saying, Ms. Rudman, how to tie in a specific impact and what -- and how you’re going to do that in these conditions.

So -- and I wanted to talk a little bit about land use, as well. I was a city attorney for a long time before I came to the Energy Commission. And I lived and died on land use and CEQA issues. So one of the concerns I had in the land use issue is that as (inaudible) sort of the general practice in California land use planning, that there has to be consistency between the general planning and zoning ordinance. However, when you’re dealing with charter cities like Huntington Beach and Long Beach, there they have a different set of rules.

And so I would like to encourage someone to provide me with evidence as to whether -- consistent with Government Code section 65803, there are provisions in their charters that require their zoning ordinances to be consistent with the general plan, instead of throwing out the sort of generic discussion that they are consistent and that’s (inaudible).

The other thing that would be helpful for me is
when you’re dealing with an official action by another entity, especially where we’re going to be deferring to actions by that (inaudible) entity, that you give me a resolution number. So if we’re -- if we’re relying on the design guidelines of the City of Huntington Beach to prove that we are consistent with them, then we need to say that’s, you know, Resolution 2000-87.

Also, I don’t know that anyone has indicated that they are going to have the resolution from the City of Huntington Beach where they endorse the approach relating to some of the visual screening. I may have just overlooked it. But I’d like to make sure that that does, in fact, get into evidence for everyone. I know it’s docketed, but that doesn’t necessarily mean it’s in evidence. So it is -- you know, closing the loop on that stuff would -- would make me happier.

One of the questions that also has come -- that has come up is if during the 90-month construction period is that if best available retrofit control technologies and or best available control technologies change, specifically as it relates to air quality, how would such a change be made? Who would, you know, sort of originate that change? And what would the role of the Air District be, specifically in relation to the CEC staff? So that if there’s a change in technology or a change in the rules, how do we -- how do we
handle that? I want to make sure that the conditions, again, relate to that so that we know how this all actions, how this all acts together (inaudible).

Let’s talk a little bit about issues relating to the California Coastal Commission. I want to see if anyone has any comments about that. And just this is -- this is supposed to be a dialogue.

MR. BELL: That’s a matter that we can address at the hearing with the Air Quality staff present.

HEARING OFFICER COCHRAN: Okay.

MR. BELL: I can’t answer those questions.

HEARING OFFICER COCHRAN: Thank you very much.

That would be helpful.

Let’s talk then about the California Coastal Commission. I understand that the Coast Commission is meeting tomorrow.

MS. CASTANOS: They met this morning. They --

HEARING OFFICER COCHRAN: Okay.

MS. CASTANOS: And they approved Staff’s recommended comments with some modifications the staff provided in an addendum late yesterday.

HEARING OFFICER COCHRAN: Did -- I know that -- that Applicant had put in revisions that asked that those be treated as comments and not the specific report. Which way did they -- you’re -- is that -- is evidence of that going
to be presented?

MS. CASTANOS: I don’t know what the Coastal Commission is going to -- I assume the Coastal Commission will docket their final approved letter.

HEARING OFFICER COCHRAN: Okay.

MS. CASTANOS: I was not at the hearing.

HEARING OFFICER COCHRAN: Okay.

MS. CASTANOS: I just know that they approved Staff’s recommendation --

HEARING OFFICER COCHRAN: Okay.

MS. CASTANOS: -- with the modifications in the addendum.

HEARING OFFICER COCHRAN: At this point this appears to me to be a legal issue with maybe a little bit of official notice taken of whatever the formal action of the Coastal Commission is. If the parties agree to that I’d like to move that into an undisputed area holding pen as opposed to being the area that can take up time on the evidentiary hearing. Is there any objection to that?

MS. RUDMAN: Can you clearly describe the issue for me please?

HEARING OFFICER COCHRAN: The question is whether a California Coastal Commission specific report is required before the Energy Commission can take action or whether they are merely going to comment on specific language in our
regs. It’s -- it’s a legal issue about what do various statutes mean and how do they relate to one another. If I’m misstating Staff and Applicant’s position, let me know. But it seems to me that this is a legal issue.

MS. CASTANOS: Yeah, we -- we agree it’s a legal issue.

HEARING OFFICER COCHRAN: Then I would anticipate that this is a matter that will be handled when we -- when we talk about the briefing schedule a little bit later.

Are there any other substantive issues that need to be answered by the parties during the Evidentiary Hearing in light of this whole long dialogue that just happened? Speak now.

MS. RUDMAN: I don’t think you covered alternatives. You know, you went -- you went through the list of areas of dispute.

HEARING OFFICER COCHRAN: Alternatives was not on the list for time in the Evidentiary Hearing, correct.

MS. RUDMAN: Right. And that was one area that I was in dispute. I feel like there needs to be a fuller discussion of the alternatives to the project.

HEARING OFFICER COCHRAN: Will you have evidence to present at the evidentiary hearing on that topic?

MS. RUDMAN: Can -- is it evidence that’s currently docketed or can I provide --
HEARING OFFICER COCHRAN: If it’s evidence that is currently in the record, then that’s -- that’s an issue for argument. It should be contained in your brief, not necessarily -- it’s not -- in other words, are you bringing in new facts that aren’t in the evidentiary record?

MS. RUDMAN: It’s -- it’s facts that I brought in my opening testimony. And so I have reference to -- yeah, it’s actually in the docket, as well. I have references to existing studies that discuss alternatives to power plants.

HEARING OFFICER COCHRAN: Do either Staff or Applicant feel the need to address that testimony or is it more in the nature of argument to include it in the brief?

MR. BELL: Staff sees it as an argument. There’s nothing new to come in.

MS. CASTANOS: We agree.

HEARING OFFICER COCHRAN: Then it seems as though the alternative evidence is sufficient at this point, and that that will be subject then to argument and should be answered or addressed in the briefs that will follow the Evidentiary Hearing.

MS. RUDMAN: Okay.

HEARING OFFICER COCHRAN: So now what I’d like to do is then go through a list of issues that appear as though we don’t need time, that are not in dispute for needing adjudication, well, in terms of the adjudicatory time at the
hearing. I have facility design, paleontological
resources -- easy for me to say -- project description,
public health, socioeconomics, soils, traffic and
transportation, transmission system engineering,
transmission line safety and nuisance, efficiency, and
reliability.

    MS. RUDMAN: These are topics that you’ve
considered not --

    HEARING OFFICER COCHRAN: There is no need to
spend time on them at the Evidentiary Hearing.

    MS. RUDMAN: Okay.

    HEARING OFFICER COCHRAN: But the state of the
record today is all of the information that the Committee
needs in order -- that none of the parties have said that
the Committee needs additional hearing time in order to be
able to resolve these.

    MS. RUDMAN: I do have -- yeah, I do have issues
with efficiency and reliability due to the lack of -- lack
of compliance condition. And I disagree with the staff that
that’s something that would be appropriate here. You know,
if -- if they participated in manipulating the market or
something like that they would lose the license. That was
something that was considered for Huntington Beach
Generating Station and was not adopted. So --

    HEARING OFFICER COCHRAN: Again, are there
specific questions that you need to have answered at the
Evidentiary Hearing or is this more in the nature of -- of,
you know, arguing what the -- the facts as they exist and
your interpretation? What questions would you want to ask
about efficiency or reliability?

MS. RUDMAN: Okay. I see your point. I guess --
I guess it would be something that I could add to the brief,
you know, because it’s something that -- so, you know,
forget me. I mean, this -- I’m kind of learning the
process. This is a new process for me.

HEARING OFFICER COCHRAN: That’s okay.

MS. RUDMAN: So the standard or whatever you’re
using right now to determine what would go to the hearings
would be issues where we need additional evidence and
discussion? And so --

HEARING OFFICER COCHRAN: Correct.

MS. RUDMAN: Okay. So it’s not like the issue is
off the table, it’s just -- okay.

COMMISSIONER DOUGLAS: That’s correct. It’s not
that you’re not disputing the issue or the conclusions. If
you were to say to us, we have questions, we didn’t -- I
didn’t entirely understand this aspect in the staff’s
analysis in the section, I’m not sure what they’re relying
on --

MS. RUDMAN: Uh-huh.
COMMISSIONER DOUGLAS: -- (inaudible) basis and conclusions, that this is the sort of thing that you should tell us now.

MS. RUDMAN: Uh-huh.

COMMISSIONER DOUGLAS: And then we can set aside some time at the hearing. And Staff will know to have their witness available to answer questions of that nature. But if you don’t really have questions about what they did, you want to argue that you believe it wasn’t adequate, it wasn’t sufficient, that’s not the sort of thing that we would do at a hearing. That’s the sort of thing that we -- you would do in your brief.

MS. RUDMAN: Okay. And then after the briefs are submitted then there’s still an opportunity for the public to respond to the other parties’ briefs? I mean, there’s not -- there’s not like a public forum again? This all happens through writing and --

HEARING OFFICER COCHRAN: There’s -- there are additional public forum. You have -- the public has a right to comment on the proposed -- the Presiding Members Proposed Decision, as well as commenting on the decision that goes to the Commission as a whole. So there are two additional comment opportunities after the close of the Evidentiary Hearings. In addition, not only will you have your opening
brief where you get to put your position forward, but you’ll have the opportunity to provide a reply brief where you can address arguments, issues, contentions raised by other parties in their opening briefs.

MS. RUDMAN: Okay. Thank you. I appreciate your patience. I mean, this is kind of --

HEARING OFFICER COCHRAN: Yeah. It’s quite all right.

MS. RUDMAN: -- a learning process. Yeah.

HEARING OFFICER COCHRAN: So do the parties agree that in the areas that I have just listed that all testimony will be submitted by declaration and that live witnesses need not be present and subject to direct and cross examination?

MR. BELL: So stipulated.

MS. CASTANOS: Yes.

MS. RUDMAN: And could you repeat the question?

HEARING OFFICER COCHRAN: Do you agree that the areas that we just listed that all testimony will be submitted by declaration and that live witnesses need not be present and subject to direct and cross examination?

MS. RUDMAN: Oh, yeah.

HEARING OFFICER COCHRAN: Okay.

MR. BELL: Yes?

MS. RUDMAN: Yes.
HEARING OFFICER COCHRAN: Okay. Thank you. As in the topics that we’ve just discussed for the last too long, we expect that the parties will work together to determine when -- what -- that any of these topics may be moved into the undiscussed column between now and the Evidentiary Hearing. The parties are welcome to conduct a workshop immediately after this Prehearing Conference if you’d like to stay and talk. The room is yours. What I would like to ask, though, is that if the parties come to some sort of decision or that there is a settlement, can I get a volunteer to let the Committee know the outcome of any discussions that you have?

MR. BELL: I see Madame Hearing Officer looking at me and she’s saying that I’ll volunteer.

HEARING OFFICER COCHRAN: Don’t -- don’t take my look at you -- so Staff will inform me. And obviously we’ll inform the Committee. And obviously the sooner that we can do this the better so that we have a better sense then of how much time we’re going to need (inaudible) Huntington Beach, which -- well, let’s now talk -- I’m sorry, were you going to (inaudible)?

MS. CASTANOS: I was just going to ask if there would be an ongoing opportunity for parties to discuss between now and hearing?

HEARING OFFICER COCHRAN: Absolutely. But please
make sure you include the intervener in your discussions there. You know, this is a multi-party show. And again, let’s not forget that there’s a public out there, too, who’s watching this and may have issues and would like -- it shouldn’t be a black-box decision. It should be open and transparent, what we’re doing now (inaudible).

So now let’s discuss the informal procedure that the Committee intends to use at the hearing on the 21st. To save time it’s not necessary to describe the exhibits that will be moved into evidence, or to describe the topics that are covered by a declaration.

Regarding direct examination, we will deal with all parties’ opening and rebuttal testimony as their direct examination. There is no need to discuss an expert’s qualifications so long as we have expert resumes or CVs, and unless a party objects to a characterization of any witness as an expert. If you do state an objection we’d like you to be very specific as to why that is and (inaudible) just sort of talking broadly, being very focused. This person (inaudible) expert under whatever authority that you have for that. And if you wish to then question the expert you’ll be given an opportunity very briefly to conduct (inaudible) voir dire, because we like to be fancy and French.

Rather than taking time with the usual formal
question and answer direct cross-examination process that
you’d expect in a Perry Mason moment or Matlock or -- I
don’t know how old you all are -- L.A. Law, the Committee
will call all witnesses to testify as a panel. So on any
given subject matter all of the witnesses will come up
for -- for all parties and be sworn. Then the testimony may
include discussion among the panel without the lawyers
asking questions. Instead, the Committee will ask questions
of the panel so that we can focus in on those issues that
having reviewed the documentation thus far the Committee has
issues about.

The Committee will allow questioning of the panels
by the parties. If this process proves difficult or
unproductive the Committee may revert to its standard formal
examination at its discretion. We would like to encourage
you, however, to prepare your questions for the other
parties’ witnesses ahead of time. In using the informal
hearing procedure we have found that it is counterproductive
to have long, complicated questions that invite objections
from the other parties. To that end, you might find it
helpful if you write your questions out ahead of time. What
we found, too, is that when you start getting into sort of,
well, that’s not what that person said before, it takes time
from getting the actual evidence that you want as opposed to
the argument of lawyers. And while I like to listen to
lawyers argue, that’s not evidence.

To that end, we would also like you to give us an indication of about how long you think you’re going to take before you begin your questioning. And by having written out your questions ahead of time that -- you may be able to give us a more coherent estimate of that. But I know, this is live theater and (inaudible), so let’s be prepared to do that.

If you’re going to try to get a witness to talk about something specific in their testimony please be ready to give a citation to a page and a line number, if there is one. I don’t recall anybody giving in their declarations (inaudible) page 3, line 13. But be able to at least give them a general sense of where your question is about.

If you spend more than a moment thinking of your question the Committee may limit your ability to ask questions. The legal definition of a moment is ten seconds.

Also, it is common courtesy to allow witnesses to finish their answers before asking the next question. And the discussion on a particular topic will continue until the Committee determines that it has heard enough evidence.

Are there any issues where the parties believe that the traditional format of direct, cross, reply, surrebuttal, on and on, may be helpful, and if so, why?

We’ll start with the applicant.
MS. CASTANOS: No, we’re fine with the -- with the procedure you’ve outlined.

HEARING OFFICER COCHRAN: Thank you.

MS. RUDMAN: Yeah.

HEARING OFFICER COCHRAN: Staff?

MR. BELL: I know that Madame Hearing Officer is not inviting philosophical discussions. But I know that the (inaudible).

HEARING OFFICER COCHRAN: Ms. Rudman?

MS. RUDMAN: Yeah, that sounds fine.

HEARING OFFICER COCHRAN: Thank you. I’d now like to have a discussion of the exhibits. I sent a copy of the current exhibit list. I actually did it last night, but it didn’t go out until this morning because I violated the after five o’clock rule myself. And on that memo that I sent you there’s also a link that will allow you to generate your own up-to-the-minute exhibits because we like to do that.

At this point I’m going to ask for corrections from any of the parties. And understand, too, that again this will be live theater on the 21st, so there may be additional exhibits at that time. And if you can docket them ahead in terms of if you have TN numbers it makes it much easier for us to then create those exhibit lists.

Applicant, are you aware of any corrections to
your exhibits at this time?

MS. CASTANOS: No corrections, but there will be additions on our rebuttal testimony.

HEARING OFFICER COCHRAN: And in this discussion we’re excluding rebuttal testimony at this time. This is only --

MS. CASTANOS: Okay.

HEARING OFFICER COCHRAN: -- as of 4:15 on Thursday.

Staff?

MR. BELL: No corrections.

HEARING OFFICER COCHRAN: Ms. Rudman, I have some that I’d like to talk with you, and then I’ll -- and the I’ll invite you to do that. Your testimony was not -- was not treated as an exhibit, and your testimony needs to be treated as an exhibit.

MS. RUDMAN: Right. Okay.

HEARING OFFICER COCHRAN: So what I would like to do is to have your testimony then placed as item 4013. So 4013 will be TN 202631, and that’s your direct testimony.

MS. RUDMAN: And then some of the references that I had in there --

HEARING OFFICER COCHRAN: Your microphone.

MS. RUDMAN: Oh, I’m sorry. Some of the references that I had in there were for documents that
exceeded the allowable limit on the e-filing, and so I couldn’t get them in. But are they allowed to be considered by reference to the fact that they (inaudible)?

HEARING OFFICER COCHRAN: You read my mind. That was the very next thing --

MS. RUDMAN: Oh.

HEARING OFFICER COCHRAN: -- we’re going to talk about.

MS. RUDMAN: Okay.

HEARING OFFICER COCHRAN: The system has some limits so that an exhibit number can only relate to one TN. So what we need to do with what you have identified as exhibit -- it is a group exhibit. What we’ll need to do is to treat that as a series of exhibits, and I’d like to have them be consecutive. So it will be -- for some reason it didn’t print your multiple exhibits. We’ll -- I’ll deal with this. There will be separate -- it will be 4014 through however many for that exhibit that had to be broken up in order to meet the filing restrictions.

MS. RUDMAN: That one was not, honestly, an exhibit that needed to be broken up. It was my last minute kind of panic to get something in. But there were exhibits that did exceed that I just was not able to get in that are referenced in my -- in my --

HEARING OFFICER COCHRAN: So -- so you have un-
docketed exhibits at this point?

    MS. RUDMAN: Well, they’re -- they’re not exhibits, I suppose. But I’m just asking if the fact that they were docketed in my opening testimony and their referenced --

    MR. BELL: They’re cited

    MS. RUDMAN: -- they’re cited --

    HEARING OFFICER COCHRAN: They were cited?

    MS. RUDMAN: -- they’re cited --

    HEARING OFFICER COCHRAN: Okay.

    MS. RUDMAN: -- what the rule is about that, because I was not able to actually separately get them into the e-filing system because they exceeded the allowable length, and I didn’t know until too late.

    HEARING OFFICER COCHRAN: What -- I’m going to sort of turn this to the parties as to if you have an objection to her placing them onto the docket now. And I would advise you all to talk to the public adviser. They may be able to assist you in handling this docket question.

    MR. BELL: I don’t have any problems with it.

    MS. CASTANOS: Yeah, we don’t object to them being docketed now.

    HEARING OFFICER COCHRAN: Thank you very much. I see Staff is saying they don’t have an objection.

    MR. BELL: No.
HEARING OFFICER COCHRAN: So as quickly as possible let’s try to get them officially docketed, either like right here and now into the appropriate size. And again, I would advise to the Public Adviser’s Office. They can help you more than I can. That’s outside of my expertise.

MS. RUDMAN: I did discuss it with the public adviser. And the assistance they can offer is to let me know that there -- I mean, in due respect -- that there are programs that you can Google search to help you break down documents which, you know, on my Mac I had -- I just wasn’t able to do it.

HEARING OFFICER COCHRAN: All right. Well, let me --

MS. RUDMAN: And I still have tried and I’m not -- I’ll do my best, but --

HEARING OFFICER COCHRAN: One request I would make is that if you are breaking a document down try to break it down in sort of like -- if it’s a chapter document do, you know, each chapter or a sort of logical break, not just, well, here’s the first 14 pages and here’s 15 through 30. Try to just have it be a break --

MS. RUDMAN: Right. Yeah. I mean, if I could maybe just even like submit the executive summaries, in some cases I think that would be sufficient. But I don’t have --
right now I’d have to figure out how to do that.

HEARING OFFICER COCHRAN: Okay.

MS. RUDMAN: It’s surprisingly hard.

HEARING OFFICER COCHRAN: And that’s a problem with -- with our system accepting documents only with certain size. And so that’s a limitation and we recognize that.

Also, exhibits 4001 and 4008 refer to the same TN, which is 202655. I understand that an exhibit can be for more than one subject matter area. So you don’t necessarily --

MS. RUDMAN: Oh.

HEARING OFFICER COCHRAN: -- have to -- if you have the same piece of evidence that’s going to be used for air quality and greenhouse gases and alternatives, you only have to have that be in an exhibit once.

MS. RUDMAN: Okay.

HEARING OFFICER COCHRAN: So if you can let me know which exhibit -- we’re just going to eliminate one --

MS. RUDMAN: Okay.

HEARING OFFICER COCHRAN: -- (inaudible).

MS. RUDMAN: All right. Okay.

HEARING OFFICER COCHRAN: And that brings me to my next point. In order to speed the Evidentiary Hearing along, because we’re going to -- once we’re in the
Evidentiary Hearing we’re going to go through (inaudible) areas, if the parties would be able to identify which exhibits relate to which topic areas, then as we move those in to evidence that way we’ll (inaudible). I know Staff’s would probably be pretty easy (inaudible) 2000. This is much more directed to Ms. Rudman and the applicant to be able to break that down for me. And again, an exhibit may relate to more than one topic area, but it should still be moved into evidence for each topic area that it relates to.

So that way we make sure that we’re closing that (inaudible).

MS. RUDMAN: Okay. So I thought I understood what you wanted me to do exactly. And I thought that what you wanted me to do is in the case where I have an exhibit listed twice and I have different topics, that you wanted me to combine them and put slash for different topics. But now I’m a little confused.

HEARING OFFICER COCHRAN: If you can do it in writing before the hearing, I know that Ms. Rudman has actually done that. In your -- in your Prehearing Conference Statement, you had listed the exhibits and what areas you thought it related to. So --

MS. CASTANOS: And we’ll do that, as well.

HEARING OFFICER COCHRAN: Okay.

MS. CASTANOS: It’s Exhibit M to our Prehearing
Conference Statement.

HEARING OFFICER COCHRAN: Thank you.

MR. BELL: And Staff has a suggestion as to timing that --

MS. CASTANOS: The opening testimony. I’m sorry.

HEARING OFFICER COCHRAN: That’s all right.

MR. BELL: -- that Intervener Rudman is having issues with. If that document were to be placed on a CD and provided to the parties and to the hearing officer, and then a placeholder docketed indicating that the CD has been admitted into evidence, hard evidence rather than documentary evidence, would that help to track it?

MS. RUDMAN: That’s actually -- I don’t have a CD writer, and that’s an added expense to buy CDs, and I’m paying for everything out of pocket.

MR. BELL: Uh-huh.

MS. RUDMAN: Yeah.

HEARING OFFICER COCHRAN: I don’t know enough about the eCRMS system. I’m looking at my supervisor in the corner.

MR. KRAMER: Yes, this is Paul Kramer. You really want to get all this stuff stored electronically. You know, that’s our new -- that’s our new way of doing business. And also then we have all these things. So we have a 50 megabyte limit. That’s -- that’s where you hit the wall.
So I’m really wondering how are you getting over 50 megabytes for some of this stuff?

MS. RUDMAN: I don’t know. I know the one -- the documents that I tried to submit, for example, would be the CPUC decision on the long-term procurement planning, so that was several hundred pages. I don’t know why I couldn’t get that --

MR. KRAMER: Oh, and they must have scanned it instead printed it directly to a .pdf as we prefer. Well, we can try to work with --

MS. RUDMAN: Maybe that’s why I couldn’t work with it either.

PRESIDING MEMBER MCALLISTER: That sounds like --

MR. KRAMER: If --

PRESIDING MEMBER MCALLISTER: That sounds like there -- there must be something else going on. Because the PUC certainly has their .pdfs scanned directly by (inaudible).

MS. RUDMAN: Okay.

PRESIDING MEMBER MCALLISTER: So I’m wondering if there’s just an issue uploading or something like that --

MS. RUDMAN: Okay.

PRESIDING MEMBER MCALLISTER: -- and not actually on the limit itself.

MR. KRAMER: It’s also why we don’t like to just
post a link to a document, because those things break over
time. And two years from now you may go back to that link
and get, you know, find an error message, or even find out
that the website is now available for purchase.

HEARING OFFICER COCHRAN: Right.

MS. RUDMAN: Okay. Well, I’ll try to be creative.
Maybe I could hire a college student or something to do this
so, you know, on their PC and then get it over. So, you
know, give me a few days. I’ll have to try to work that
out.

PRESIDING MEMBER MCALLISTER: Is there any -- is
there any (inaudible)?

MS. MATTHEWS: We don’t give technical assistance.
But we have provided resources that will help break the
document down, and that’s pretty much technical assistance.
So we’ve offered suggestions in doing that. But other than
that, I mean, that’s -- that -- that document limit is
pretty much a large limit. And so I personally have cut and
paste with .pdfs to break them down. So that was actually a
suggestion that was given, as well. If you’re unable to
perhaps write the CD, perhaps a flash drive. Those are
pretty cheap, if you can somehow copy onto that. Is the
applicant and staff willing to accept that, then perhaps a
cheaper alternative. But it is a matter of, I think, being
consistent with making sure all the information is provided.
HEARING OFFICER COCHRAN: I think as Mr. Kramer said the big issue is going to be that we’re now keeping these records electronically. And if it’s on a flash, how do we make sure that it meets that transition from the flash drive to our electronic (inaudible)?

MS. RUDMAN: Yeah.

PRESIDING MEMBER MCALLISTER: I guess that’s -- I mean, we don’t want to belabor this --

MS. RUDMAN: I apologize.

PRESIDING MEMBER MCALLISTER: -- too much. I mean, but if there is a true technical issue then maybe, you know, a flash drive, handing it off and getting our docket office to submit everything to the docket might work because the work the system every day. So maybe that’s the solution.

HEARING OFFICER COCHRAN: So now I’d like to talk about a discussion of the actual hearing and the time that it’s going to go. There will be a new Notice of Evidentiary Hearing going out tomorrow. And the big -- the only change is that there’s now going to be a closed -- I’m not commenting, I’m telling you this -- the big change is that there will be a closed session starting at 10:30. However, the Evidentiary Hearing will not start until 12:30. So you all don’t have to worry about being there at 10:30. We will open the public hearing -- I mean, we will open the meeting,
and then go into closed session. The Evidentiary Hearing will start at 12:30, again, at the Hilton Waterfront.

The Committee is committed to keeping the public comment portion open until at least 5:30 in order to maximize public participation and ability to address the Committee. Because there’s a business meeting the next day, the Committee Members will need to leave Monday evening, and the last flight out, I believe, is 8:15. So we’re looking 7:00, 7:30 as the absolute end of the Evidentiary Hearing in order in Huntington Beach.

After receiving the estimates from Staff and Applicant we have about four-and-a-half hours of hearing time, it’s safe to say. And by the time we do some of the preliminary -- you know, all of the introduction of the undisputed areas portion of the proceedings, that’s going to leave us with about four-and-a-half hours of hearing time. We know that there’s an issue with one of the bio experts not being available until 3:00. We will do bio then at three o’clock -- after three o’clock, however, we’re working that out.

Do you have a sense of how you would like the rest of the time -- are there other issues that you would like to have first? One of the -- one of the concerns, too, is that we’re not sure that there will be additional time for another hearing in Sacramento given the, you know,
difficulty of calendaring that time. That’s how we wound up with this compressed schedule to begin with. So there may be some tradeoffs if -- if we have to go more than one day in Huntington Beach. I think we can make it if we stay focused. But, you know, it may be that we will have to then schedule another day of hearings here in Sacramento. So I think that the Committee’s preference would be to handle those things that are unique for the area such as noise and visual, those types of issue that we sort of need to be onsite. Something like an air quality where it’s so driven by the FDOC could potentially be handled at a later hearing.

So my suggestion would be that we start with visual, go then through cultural and bio, and sort of have air quality fill in, so there’s a gap between (inaudible) and air quality. Do we know when a representative from South Coast is going to be there? Do we need to work around that person’s schedule?

MS. CASTANOS: No.

HEARING OFFICER COCHRAN: Okay. And talk about water resources, and then compliance at the end, and the conditions. Well, certainly we can talk about the conditions as we talk about the technical areas. What’s the preference? But I definitely think we should start with visual.

MR. BELL: Staff really doesn’t have a preference
as to order.

HEARING OFFICER COCHRAN: Okay.

MR. BELL: All witnesses will be present and prepared to testify any time.

HEARING OFFICER COCHRAN: And so we’ll just then -- we’ll just make sure that bio happens after 3:00.

MR. BELL: But we did have one question and it goes back to the Coastal Commission’s submission. I realize that it ends up being a new issue that we will be briefing again. But does the Committee intend on treating that submission as evidence, actual evidence that would need to be refuted or rebutted in some way?

HEARING OFFICER COCHRAN: I don’t know because I don’t know what it is yet. I don’t know what they adopted, so it’s (inaudible). I think that that may be a topic that we’ll have to address.

PRESIDING MEMBER MCALLISTER: And kind of the same question would apply to Staff.

HEARING OFFICER COCHRAN: Right.

PRESIDING MEMBER MCALLISTER: (Inaudible.)

MR. BELL: Well, we’ve seen a draft of the -- the proposed resolution. And my understanding is that --

PRESIDING MEMBER MCALLISTER: (Inaudible.)

MR. BELL: Well, my understand is that -- that it was adopted --
HEARING OFFICER COCHRAN: Today.

MR. BELL: -- today for the most part as written with some deletions. And the deletions, of course, we don’t have to address. But there are some other mention in there that our staff disagrees with as contrary to our -- our analysis, and it would also be contrary to the information that’s been provided by the applicant.

And my question is, is that will the Committee -- would the Committee require rebuttal, either argument or evidence, as to what’s contained in that letter?

PRESIDING MEMBER MCALLISTER: I mean, if there are disagreements it seems like that’s -- and that’s -- and they’re an agency, and if there are disagreements between our staff and an agency in our nation, that seems like that has to be treated and aired out, then that requires it to be (inaudible).

HEARING OFFICER COCHRAN: Yeah. So --

MR. BELL: I mean (inaudible) when we file tomorrow.

HEARING OFFICER COCHRAN: Okay. Applicant, do you have a position?

MS. CASTANOS: Yeah. We -- we intend to address our disagreements to the Coastal Commission’s comments in our rebuttal.

HEARING OFFICER COCHRAN: Okay. So then, yes, it
will be evidence. Okay.

Finally, our favorite topic, briefing. The current schedule calls for opening briefs two weeks after the notice of --

PRESIDING MEMBER MCALLISTER: Opening briefs.

HEARING OFFICER COCHRAN: Sorry. Someday I’ll learn. The current schedule calls for opening briefs two weeks after the notice of availability of the hearing transcript as docketed. I believe we’ve asked for a three to five day turnaround on the transcripts. I’d also like to remind you that under the general orders it is the requirement of the parties to cite errors in the transcript within 30 days, so we’ve got that.

Reply briefs are then due three weeks after the hearing transcript is docketed, or basically one week after the opening briefs are provided. If there needs to be a change in that schedule we’ll deal with that when someone makes that request.

Is there anything else that I should have talked about that I didn’t talk about? Are there any questions, comments, protests?

Seeing none, shall we turn to public comment? Is there any member of the public (inaudible)?

MR. BELL: Actually, I do have one. I know that in the Prehearing Conference order that the Committee
indicated that all witnesses will be presenting an opening
statement. I also know in the past that sometimes parties
have waived that, or the Committee had just said we’ve ready
and considered your testimony. We know what the gravamen of
your issues are. Let’s just get it in cross examination for
scheduling concerns, and also so that we can move that
hearing forward as quickly as possible. Is the AQMD
requiring those opening statements, or what are you -- what
are your thoughts on this? Are we going to do that topic by
topic?

HEARING OFFICER COCHRAN: I don’t know. It will
probably be topic by topic.

Does the applicant have --

MS. CASTANOS: We don’t have a preference. I
think it may depend on the topic area.

HEARING OFFICER COCHRAN: Ms. Rudman?

MS. RUDMAN: I have -- certainly would like to
read my opening statements.

HEARING OFFICER COCHRAN: Anything else
(inaudible)?

MS. RUDMAN: Yeah. I’m really not quite clear on
the -- handling the exhibit list, like what, you know, what
exactly you wanted me to do. So I don’t want to take any
more time, but how do I file?

HEARING OFFICER COCHRAN: I will -- I will contact
MS. RUDMAN: Okay.

HEARING OFFICER COCHRAN: -- on this procedural matter.

MS. RUDMAN: Okay.

HEARING OFFICER COCHRAN: And there will then be a memorialization of it that will be sent to all parties.

MS. RUDMAN: Okay. Thank you.

HEARING OFFICER COCHRAN: Public comment. Are there any members of the public who would like to address the Committee on this matter before us today? Anyone on the phone, raise your hand, un-mute yourself.

What is the pleasure of the Committee regarding the closed session?

(Colloquy Between the Hearing Officer and Commissioners)

HEARING OFFICER COCHRAN: So there will be no closed session.

(Colloquy Between the Hearing Officer and Commissioners)

HEARING OFFICER COCHRAN: Okay. I was incorrect. We will be -- we’ll be now adjourning into closed session.

And I will come back and report when it’s -- when the meeting has adjourned. It will be brief. Thank you.

(Whereupon the Committee went into Closed Session)
HEARING OFFICER COCHRAN: There was no action taken in closed session. And I am now going to adjourn the meeting at 5:07 p.m. Thank you all very much for participating.

MR. BELL: Thank you.

MS. RUDMAN: Thanks.

(The Commission meeting adjourned at 5:07 p.m.)

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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 Prehearing Conference; that it was thereafter transcribed.

I further certify that I am not of counsel or attorney for any of the parties to said conference, or in any way interested in the outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of July, 2014.

/s/ Peter Petty
PETER PETTY

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.

/s/ Martha L. Nelson
MARTHA L. NELSON, CERT**367

July 15, 2014