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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 )

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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, CH2MHill

INTERVENERS

Monica Rudman

EXHIBITS

|                          | <u>EXHIBIT</u> | <u>MARKED</u> |
|--------------------------|----------------|---------------|
| <u>STAFF'S</u>           |                |               |
| Final Staff Assessment   | 2000           | 10            |
| FDOC                     | 2001           | 10            |
| <u>APPLICANT'S</u>       |                |               |
| AFC and Testimony        | 1000-1130      | 11            |
| <u>INTERVENER RUDMAN</u> |                |               |
| Testimony                | 4000-4012      | 11            |

P R O C E E D I N G S

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.

1 HEARING OFFICER COCHRAN: Thank you, Commissioner  
2 McAllister. One thing I would advise you all is that only  
3 two microphones can be live at any one time in the room. So  
4 if you could turn your microphone off if you're not actively  
5 speaking, that would very helpful.

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

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

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

17 Is there anything else you'd like to say? Thank  
18 you.

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

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

24 MS. CASTANOS: Kristen Castanos with Stoel Rives.  
25 I'm counsel for the applicant. And also from my office is

1 Kim Hellwig, my energy regulatory specialist. And we also  
2 have a representative from CH2M Hill, Jerry Salamy, with us.

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

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

9 MS. RUDMAN: I need a microphone.

10 HEARING OFFICER COCHRAN: Oh, I'm sorry.

11 MS. RUDMAN: It doesn't seem to work.

12 PRESIDING MEMBER MCALLISTER: Did the red light go  
13 on?

14 MS. RUDMAN: Yeah. Oh.

15 (Colloquy between Energy Commission Staff and  
16 Ms. Rudman)

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

25 HEARING OFFICER COCHRAN: Thank you. Jason Pyle,



1 is Mr. Pyle here? There is only one other person online,  
2 and that's not identified as Mr. Pyle. Mr. Pyle, if you are  
3 online would you identify yourself please?

4 PRESIDING MEMBER MCALLISTER: I believe you --

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

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

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

17 Seeing none, let's move on now to things that are  
18 much more exciting. The Committee provided notice of  
19 today's prehearing conference in the Notice of Prehearing  
20 Conference and Evidentiary Hearing Scheduling Order and  
21 further orders submitted and docketed on June 9, 2014, the  
22 June 9th notice specifying that the Evidentiary Hearing,  
23 will be held on July 21st of this year at the Hilton  
24 Waterfront Huntington Beach located at 21100 Pacific Coast  
25 Highway in the City of Huntington Beach.

1           Before I go much further I have a question of the  
2 applicant. What is the earliest that we can access the room  
3 for use, do you know?

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

6           HEARING OFFICER COCHRAN: Okay.

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

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

24          As we explained in the June 9th notice, the basic  
25 purpose of today's prehearing conference is to, first,

1 assess the project's readiness for hearing, to clarify areas  
2 of agreement or dispute, to identify witnesses and exhibits,  
3 to discuss the method by which parties will be able to  
4 question the other parties' witnesses in light of our more  
5 recent move to sort of more informal processes, and to  
6 discuss associated procedural matters.

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

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

1 Conference Statement.

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

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

13 Timely testimony was filed by the applicant  
14 including the AFC testimony and exhibits on June 20, 2013,  
15 including exhibits marked for identification as Exhibits  
16 1000 through 1130, inclusive. Is that correct?

17 MS. CASTANOS: Yes, that's right.

18 HEARING OFFICER COCHRAN: Okay. I got a nod.  
19 I'll take a nod.

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

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

25 Intervener Monica Rudman timely filed and marked

1 for identification Exhibits 4000 through 4012. Ms. Rudman  
2 timely filed testimony on June 30, 2013 as transaction  
3 number 202631.

4 Rebuttal testimony is due tomorrow, July 11, 2014.

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

18 Today's agenda is divided into five parts. First  
19 we will discuss the issues that are not ready to proceed  
20 based on the parties' Prehearing Conference Statements, as  
21 well as issues where there may be no need for additional  
22 testimony or evidence. Next we will discuss the informal  
23 process that the committee will utilize in conducting the  
24 Evidentiary Hearing. Then we'll discuss the parties'  
25 evidence, both in terms of testimony and exhibit lists. And

1 after that we will discuss the briefing schedule. And  
2 finally, we will provide an opportunity for public comment.

3 There is also the potential for a closed session at the end  
4 of this meeting or at any time the Committee wishes to call  
5 a closed session. We will inform you if we're going to do  
6 that and give you some timeframes.

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

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

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

18 Ms. Rudman, have I properly captured what you  
19 think are the areas that are not ready to proceed on July  
20 21?

21 MS. RUDMAN: Yes. Thank you.

22 HEARING OFFICER COCHRAN: Okay. Can you -- let's  
23 take them one by one. And can you tell us with some  
24 specificity which topic areas you think are not ready to  
25 proceed and whether you -- it's that they're not ready to

1 proceed or that you wish to have them be disputed at an  
2 Evidentiary Hearing?

3           So let's talk first about climate change.

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

18           MR. BELL: My response for this one globally which  
19 will cover the five areas that Intervener Rudman has  
20 identified as needing more information is this, that Ms.  
21 Rudman has an accredited intervener status. As such, she  
22 has all the rights of a party in this proceeding. However,  
23 she also has all the same responsibilities of a party. If a  
24 party wants information produced in this proceeding it's  
25 that party's responsibility to produce that information. If

1 Intervener Rudman feels that more information is needed for  
2 each of these, climate change, project definition, other  
3 compliance conditions, impact of oil well fracking, and  
4 project alternatives, she's free to issue evidence in this  
5 proceeding.

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

12 HEARING OFFICER COCHRAN: Thank you, Mr. Bell.

13 Does the applicant have a position and wish to  
14 speak?

15 MS. CASTANOS: We agree with Staff. We don't have  
16 anything to add.

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

23 MS. RUDMAN: Yes. So for project definition, I  
24 don't see in any documents any discussion of demolition  
25 plans. I don't see a discussion of or an agreement from the



1 person or the party that is in charge, basically, of Units 3  
2 and 4 that they agree that those units may be demolished. I  
3 don't see any type of discussion really that's legally  
4 binding, from what I can tell, about whether the  
5 synchronous -- synchronous condensers projects will remain.  
6 So from that perspective I don't believe that there is a  
7 complete definition of a project, particularly when you look  
8 at the impacts on air quality, there very, very tied to the  
9 demolition of the power plants because it creates  
10 particulate matter. So if there isn't a clear and binding  
11 project demolition plan, I don't see how the project is  
12 fully designed at this point.

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

16 MS. RUDMAN: No. I'm going one by one. So  
17 that -- that would be --

18 HEARING OFFICER COCHRAN: Okay.

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

23 In the proceeding for the Huntington Beach  
24 Generating Station, one of the issues at that time was  
25 whether it was appropriate to continue these power plants on

1 a coast that's national and statewide and very important  
2 importance. And one of the issues that was discussed at  
3 that time was that there should be a prohibition against  
4 manipulating the market that didn't get adopted. As it  
5 turns out, AES is involved in schemes to manipulate the  
6 energy market at a cost to California. And I want to make  
7 sure that doesn't again, and that's not discussed.

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

20           The other thing that has not been developed at  
21 all, in fact the staff has admitted this, there is not CEQA  
22 equivalent discussion of project alternatives. The project  
23 alternative that is discussed is assuming that they can get  
24 some kind of recycled water and then retool the existing  
25 power plants as they are. This is really not equivalent to

1 a CEQA, you know, project alternative.

2           The other project alternative that has not been  
3 discussed is the environmentally preferred project  
4 alternative. And I've provided some documentation on known  
5 ways that -- demand response, energy efficiency, energy  
6 storage that can provide feasible, easily implementable if  
7 there are alternatives to the project.

8           HEARING OFFICER COCHRAN: Okay. Thank you.

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

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

24           For the compliance conditions that Intervener  
25 Rudman is bringing up, those are outside our purview. We do

1 not -- this commission doesn't -- doesn't concern itself  
2 with things such as the market manipulation. I believe  
3 that's within the CPUC's purview, not -- not the Energy  
4 Commission. And that's something that the CPUC, I'm  
5 assuming, would be overseeing.

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

12           HEARING OFFICER COCHRAN: Thank you. Thank you.  
13           Applicant?

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

18           HEARING OFFICER COCHRAN: Thank you. I think that  
19 it's the feeling of the committee that we are ready to  
20 proceed to Evidentiary Hearing on all topics on Monday, July  
21 21. And that the issues that you raised, Ms. Rudman, should  
22 be brought up during that Evidentiary Hearing with the proof  
23 that you have that the conclusions that were reached during  
24 an effort that there's an insufficient amount of evidence to  
25 support the conclusions reached in the FSA, in other words,

1 the rights and views and responsibilities of a party to this  
2 proceeding. But that doesn't mean that the issues isn't  
3 ready for discussion and for hearing on July 21st.

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

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

17           HEARING OFFICER COCHRAN: Okay. I know that when  
18 I was sort of doing comparing and contrast and trying to  
19 track through, it seems as though everyone agreed that there  
20 would be a necessity for Evidentiary Hearing time for air  
21 quality, biological resources, cultural resources, visual --  
22 and visual resources. Are there any other topics for which  
23 we will need Evidentiary Hearing time? And some of that  
24 appears to be a discussion, some of this specifically with  
25 conditions of approval and other times it was much more

1 about the analysis that Staff had. (Inaudible.)

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

4 MS. RUDMAN: I'm sorry, yeah, I do.

5 MR. BELL: Go ahead.

6 MS. RUDMAN: Oh.

7 HEARING OFFICER COCHRAN: Please, go ahead.

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

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

17 MS. RUDMAN: Uh-huh.

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

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

25 HEARING OFFICER COCHRAN: Thank you. Staff?

1 MR. BELL: I don't believe we do either, no.

2 HEARING OFFICER COCHRAN: Ms. Rudman, in light of  
3 the explanation that I made can you --

4 MS. RUDMAN: Yeah. I'm going to -- well, I'll  
5 stay focused on the issue -- on the other issues.

6 HEARING OFFICER COCHRAN: Okay. Obviously, not  
7 having the FDOC from the Air Quality District is -- is a  
8 little bit daunting in terms of knowing if we're going to be  
9 able to close the evidentiary record.

10 MS. RUDMAN: I'm sorry. I'm sorry.

11 HEARING OFFICER COCHRAN: Thank you. So other --  
12 so now that we've talked about noise and bio, would we agree  
13 that these are the topic areas that we'll need evidentiary  
14 time on, air quality, biological resources, cultural  
15 resources, and visual resources?

16 MS. CASTANOS: The applicant believes we may also  
17 need to time at the Evidentiary Hearing for hazardous  
18 materials, land use, waste management, and compliance  
19 sanctions.

20 MR. BELL: I can say with the land use. We don't  
21 think that there's a dispute. We agree with the applicant's  
22 proposed change to the Condition of Certification. There --  
23 there are other areas, as well.

24 I guess this is a good time to talk about  
25 scheduling. We're -- I don't think there's any dispute, for

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

12 HEARING OFFICER COCHRAN: Okay. Ms. Rudman?

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

17 Since everyone has brought up compliance  
18 conditions I would like to take this time to talk about the  
19 language on the compliance conditions that we have so far.  
20 And I have gone through several sections of the compliance  
21 conditions. And my overall sense of them is a little bit of  
22 concern as it relates to how they have been drafted. There  
23 are lots of condition that deal with the preparation of  
24 plans or the submission of names to act in certain  
25 capacities that you're looking to appoint, a designated



1 biologist or a cultural resources specialist. And there is  
2 not consistency within the conditions as to how that should  
3 be accomplished.

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

21 In addition, given that this is going to be a  
22 project carried out over a long period of time, 90 months  
23 roughly, how are we going to deal with the metrics and what  
24 are the reporting requirements going to look like? In other  
25 words, this is a long-term project that has a lot or moving

1 pieces in it, really, and things are going to change as time  
2 goes on. The future comes too early in the wrong order.  
3 And I think the conditions to the best of their ability  
4 should probably try to address that as much as possible.  
5 I'm sorry, I meant the plan, not the decision.

6           So -- so let's take, for example, a condition like  
7 Bio 1, that's the designated biologist selection. As you  
8 read through it the question that I have is that it -- the  
9 information is presented to the compliance project manager  
10 here at the CEC. And then that person is supposed to obtain  
11 approval in order to approve the document, in consultation  
12 with CDFW and U.S. Fish and Wildlife. What do the mechanics  
13 of that look like? How does that work in the real world?  
14 And what are the timeframes for that? We don't want to  
15 overly delay the applicant. On the other hand, the  
16 conditions of approval are supposed to serve either as the  
17 mitigation monitoring plan for those issues that are  
18 identified as being significant under CEQA, and that we'll  
19 be using a Condition of Certification as a mitigation  
20 measure to reduce the impacts to a level of less than  
21 significance. Ultimately, it's to ensure that we are  
22 compliant with LORS, the Laws, Ordinances, Regulations and  
23 Standards. And understanding that we don't have control  
24 over CDFW and U.S. Fish and Wildlife. So what -- how are we  
25 going to work together to do that?

1           If the CPM is going to approve this person then,  
2 you know, the qualifications need to be specifically stated  
3 without a lot of wiggle room. What I can cite the parties  
4 to is a condition that I do think is well drafted, which is  
5 Visual-1. And it is very specific, what I would call  
6 performance standards that in the verification can then be  
7 measured against what's actually happening on the ground.  
8 And the Committee would hope that either in rebuttal  
9 testimony, which is probably the original thought, but  
10 definitely before the Evidentiary Hearing, that some of  
11 these hearings and some of this approach can be discussed  
12 and resolved sooner rather than later.

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

20           MR. BELL: I do have -- I do have a recommendation  
21 as to timing, that is we do have a rather tight schedule for  
22 the proceeding. We are going to have the opportunity to  
23 file briefs after the Evidentiary Hearing. At that -- would  
24 it help at that time, after the hearing, after we've heard  
25 all the evidence and considered all the different opinions,

1 would it help if at that time we were to file a clean set of  
2 Conditions of Certification cleaning up some of -- some of  
3 the issues that you've identified?

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

11 MS. RUDMAN: Can I --

12 HEARING OFFICER COCHRAN: -- the sooner it's  
13 wrapped up --

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

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

21 MS. RUDMAN: There will be --

22 HEARING OFFICER COCHRAN: Second, the document --  
23 reply briefs. So you'll have an opening brief, and then you  
24 will -- so if we were to follow this path then the reply  
25 brief -- the opening brief would be the place to put the

1 sort of clean conditions. But ultimately the committee will  
2 prepare proposed -- the Presiding Members Proposed Decision,  
3 and then there will be an additional Final Decision by the  
4 Commission as a whole. So that would be where the public  
5 vetting of that information would come because people  
6 continue to have the ability to review those documents, to  
7 make comments, and to have those comments acted on.

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

21           And so, therefore, sometime will have to be  
22 devoted during the evidentiary hearing to -- to resolving  
23 some of these issues and -- and to provide maybe some  
24 additional direction to everyone about what the committee  
25 is -- is looking for.

1           So I want to make sure -- I sort of lost myself in  
2 my train of thought again. I want to make sure that I  
3 understand exactly which areas we're going to have testimony  
4 and/or time at the Evidentiary Hearing. Air quality, bio  
5 resources, cultural resources, hazmat, land use, visual  
6 resources, waste management, and compliance conditions. Did  
7 I miss one? I'm sorry. I think I missed one.

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

9           MR. BELL: And land use.

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

12          MS. RUDMAN: Yeah. You missed water resources.

13          HEARING OFFICER COCHRAN: Oh, water resources?  
14 Thank you.

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

18          HEARING OFFICER COCHRAN: So that's -- is that a  
19 geo-paleo?

20          MS. CASTANOS: It is.

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

25          HEARING OFFICER COCHRAN: Okay. So we will carve

1 out hearing time for geo-paleo. So again, I want to run  
2 through the list. Air quality, bio resources, cultural  
3 resources, hazmat, land use, water resources, visual  
4 resources, waste management, compliance conditions, and geo-  
5 paleo as it relates to seismic.

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

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

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

13 HEARING OFFICER COCHRAN: Anything else? Any  
14 more?

15 MS. CASTANOS: Greenhouse gases is in air quality.

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

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

22 MR. BELL: No, not public health.

23 MS. CASTANOS: Not public health.

24 HEARING OFFICER COCHRAN: I'm sorry.

25 MR. BELL: Air quality.

1 HEARING OFFICER COCHRAN: Air quality.

2 MS. CASTANOS: Correct.

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

4 MS. CASTANOS: Yeah.

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

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

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

25 HEARING OFFICER COCHRAN: And Staff, what's your



1 position?

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

7 HEARING OFFICER COCHRAN: Thank you. Ms. Rudman?

8 MS. RUDMAN: I'm okay.

9 HEARING OFFICER COCHRAN: Okay.

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

16 HEARING OFFICER COCHRAN: Okay.

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

20 MS. CASTANOS: I believe it's ready for  
21 adjudication.

22 PRESIDING MEMBER MCALLISTER: Okay. Let's see.  
23 And I wanted to just ask (inaudible) conversation, but did  
24 the Staff feel like Ms. Cochran described some of the  
25 vagueness in the conditions that, you know, she had seen in

1 the -- in the staff work? Is that something you would be  
2 planning to bring more definition to when we get to the  
3 Evidentiary Hearing, or is there some process by which that  
4 happens?

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

18 PRESIDING MEMBER MCALLISTER: Yeah. So that gets  
19 to the core of my -- my sort of concern here is that, you  
20 know, if we're talking about what the Committee feels, you  
21 know, if I'm the presiding member I definitely feel that we  
22 sort of -- we have to keep it as real as possible so that  
23 it's clear that down the road when something happens that we  
24 interpret it that that isn't open too much to  
25 interpretation. And so we have to know what to expect and

1 have thought through some scenarios (inaudible) beforehand  
2 so that -- so that we can all sort -- so we don't have to  
3 (inaudible) when something happens down the road.

4 MR. BELL: Right.

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

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

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

24 I'll just draw attention to Bio 8. And I  
25 understand that we need -- we may need to spend some time

1 (inaudible) but -- on this. But I want to say there's a lot  
2 of ideas in that condition. And that makes it then  
3 difficult from beginning to end and putting ideas together  
4 in a way that they might be most clearly and easily read.  
5 So -- so without going into the merit of the ideas in any  
6 way, shape or form, maybe you might (inaudible) or order the  
7 ideas in some way that (inaudible).

8 HEARING OFFICER COCHRAN: Actually, it's --

9 COMMISSIONER DOUGLAS: I'm sorry?

10 HEARING OFFICER COCHRAN: It's paragraph 8,  
11 Condition Bio 7.

12 COMMISSIONER DOUGLAS: Thank you. Paragraph 8,  
13 Bio 7.

14 And I'll just give one more example, and this time  
15 it is Bio 8. I was confused looking at this about  
16 whether -- you know, given the long construction time and  
17 given the way the site is described as a site and we don't  
18 really have identifying parts of the site, does this mean  
19 that theirs is (inaudible) pre-construction survey, and then  
20 if any construction is occurring at any part of the site  
21 there's not a need for additional (inaudible) surveys? Or,  
22 you know, when you think about construction going on over  
23 years, what does that potentially mean for when some of  
24 these surveys might happen. So that's an area that I could  
25 benefit from some explanation and clarity.

1           And there probably are other things that we could  
2 point out. But that might -- those are some examples that  
3 came to my attention.

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

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

17           My preference is to get away from prescriptive  
18 type of conditions and use conditions that are much more  
19 user friendly. There are some considerations we do have,  
20 though, especially when dealing with other agencies. Keep  
21 in mind that the Commission maintains all ultimate approval  
22 authority over our facilities since we preempt all other  
23 governmental agencies. That doesn't mean that other  
24 agencies don't have a role in our approval process. Most  
25 agencies do get involved at some level. And we always

1 reserve for them if they want to stay involved the right to  
2 review and comment on documents that pertain to something  
3 that would otherwise be within their jurisdiction.

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

20           Now timing issues; normally we don't like to have  
21 timing issues specified in the language of the condition  
22 itself or by the condition itself. We try to place timing  
23 issues that otherwise the statute would have mandated in the  
24 verification section. One of our colloquialisms here at the  
25 Commission is the condition might belong to the Committee,

1 but the verification belongs to Staff. So when it comes to  
2 timing issues that's something that we -- we can modify,  
3 where if the timing says, you know, X documents shall be  
4 provided to the CPM 30 days before construction, but for  
5 some reason that document can't get to the CPM in that time  
6 for the applicant, then the CPM has the discretion to say,  
7 well, give it to me just before you start, or give it to me  
8 shortly after as long as everything is under the procedure  
9 at your -- at your risk.

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

25           Does that answer your question?

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

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



1 look forward to hearing more at the hearing.

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

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

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

24           There's a case out there called SunStrom that's  
25 talks about that where, you know, they didn't really come up

1 with a plan for sewer treatment, they just said go and get  
2 sewer permits. And it then talks about what was going to  
3 happen if they didn't get the sewer permits, how  
4 (inaudible). And so that sort of deferred mitigation can be  
5 an issue when we're not being clear about, as you were  
6 saying, Ms. Rudman, how to tie in a specific impact and  
7 what -- and how you're going to do that in these conditions.

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

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

25           The other thing that would be helpful for me is

1 when you're dealing with an official action by another  
2 entity, especially where we're going to be deferring to  
3 actions by that (inaudible) entity, that you give me a  
4 resolution number. So if we're -- if we're relying on the  
5 design guidelines of the City of Huntington Beach to prove  
6 that we are consistent with them, then we need to say  
7 that's, you know, Resolution 2000-87.

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

17           One of the questions that also has come -- that  
18 has come up is if during the 90-month construction period is  
19 that if best available retrofit control technologies and or  
20 best available control technologies change, specifically as  
21 it relates to air quality, how would such a change be made?  
22 Who would, you know, sort of originate that change? And  
23 what would the role of the Air District be, specifically in  
24 relation to the CEC staff? So that if there's a change in  
25 technology or a change in the rules, how do we -- how do we

1 handle that? I want to make sure that the conditions,  
2 again, relate to that so that we know how this all actions,  
3 how this all acts together (inaudible).

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

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

10 HEARING OFFICER COCHRAN: Okay.

11 MR. BELL: I can't answer those questions.

12 HEARING OFFICER COCHRAN: Thank you very much.  
13 That would be helpful.

14 Let's talk then about the California Coastal  
15 Commission. I understand that the Coast Commission is  
16 meeting tomorrow.

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

18 HEARING OFFICER COCHRAN: Okay.

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

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

1 to be presented?

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

5 HEARING OFFICER COCHRAN: Okay.

6 MS. CASTANOS: I was not at the hearing.

7 HEARING OFFICER COCHRAN: Okay.

8 MS. CASTANOS: I just know that they approved  
9 Staff's recommendation --

10 HEARING OFFICER COCHRAN: Okay.

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

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

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

22 HEARING OFFICER COCHRAN: The question is whether  
23 a California Coastal Commission specific report is required  
24 before the Energy Commission can take action or whether they  
25 are merely going to comment on specific language in our

1 regs. It's -- it's a legal issue about what do various  
2 statutes mean and how do they relate to one another. If I'm  
3 misstating Staff and Applicant's position, let me know. But  
4 it seems to me that this is a legal issue.

5 MS. CASTANOS: Yeah, we -- we agree it's a legal  
6 issue.

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

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

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

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

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

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

24 MS. RUDMAN: Can -- is it evidence that's  
25 currently docketed or can I provide --

1 HEARING OFFICER COCHRAN: If it's evidence that is  
2 currently in the record, then that's -- that's an issue for  
3 argument. It should be contained in your brief, not  
4 necessarily -- it's not -- in other words, are you bringing  
5 in new facts that aren't in the evidentiary record?

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

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

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

15 MS. CASTANOS: We agree.

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

21 MS. RUDMAN: Okay.

22 HEARING OFFICER COCHRAN: So now what I'd like to  
23 do is then go through a list of issues that appear as though  
24 we don't need time, that are not in dispute for needing  
25 adjudication, well, in terms of the adjudicatory time at the

1 hearing. I have facility design, paleontological  
2 resources -- easy for me to say -- project description,  
3 public health, socioeconomics, soils, traffic and  
4 transportation, transmission system engineering,  
5 transmission line safety and nuisance, efficiency, and  
6 reliability.

7 MS. RUDMAN: These are topics that you've  
8 considered not --

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

11 MS. RUDMAN: Okay.

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

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

25 HEARING OFFICER COCHRAN: Again, are there



1 specific questions that you need to have answered at the  
2 Evidentiary Hearing or is this more in the nature of -- of,  
3 you know, arguing what the -- the facts as they exist and  
4 your interpretation? What questions would you want to ask  
5 about efficiency or reliability?

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

11 HEARING OFFICER COCHRAN: That's okay.

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

16 HEARING OFFICER COCHRAN: Correct.

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

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

25 MS. RUDMAN: Uh-huh.

1                   COMMISSIONER DOUGLAS:    -- (inaudible) basis and  
2 conclusions, that this is the sort of thing that you should  
3 tell us now.

4                   MS. RUDMAN:    Uh-huh.

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

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

18  
19                   HEARING OFFICER COCHRAN:    There's -- there are  
20 additional public forum.  You have -- the public has a right  
21 to comment on the proposed -- the Presiding Members Proposed  
22 Decision, as well as commenting on the decision that goes to  
23 the Commission as a whole.  So there are two additional  
24 comment opportunities after the close of the Evidentiary  
25 Hearings.  In addition, not only will you have your opening

1 brief where you get to put your position forward, but you'll  
2 have the opportunity to provide a reply brief where you can  
3 address arguments, issues, contentions raised by other  
4 parties in their opening briefs.

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

7 HEARING OFFICER COCHRAN: Yeah. It's quite all  
8 right.

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

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

15 MR. BELL: So stipulated.

16 MS. CASTANOS: Yes.

17 MS. RUDMAN: And could you repeat the question?

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

22 MS. RUDMAN: Oh, yeah.

23 HEARING OFFICER COCHRAN: Okay.

24 MR. BELL: Yes?

25 MS. RUDMAN: Yes.

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

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

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

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

25 HEARING OFFICER COCHRAN: Absolutely. But please

1 make sure you include the intervener in your discussions  
2 there. You know, this is a multi-party show. And again,  
3 let's not forget that there's a public out there, too, who's  
4 watching this and may have issues and would like -- it  
5 shouldn't be a black-box decision. It should be open and  
6 transparent, what we're doing now (inaudible).

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

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

25           Rather than taking time with the usual formal

1 question and answer direct cross-examination process that  
2 you'd expect in a Perry Mason moment or Matlock or -- I  
3 don't know how old you all are -- L.A. Law, the Committee  
4 will call all witnesses to testify as a panel. So on any  
5 given subject matter all of the witnesses will come up  
6 for -- for all parties and be sworn. Then the testimony may  
7 include discussion among the panel without the lawyers  
8 asking questions. Instead, the Committee will ask questions  
9 of the panel so that we can focus in on those issues that  
10 having reviewed the documentation thus far the Committee has  
11 issues about.

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

1 lawyers argue, that's not evidence.

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

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

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

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

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

25 We'll start with the applicant.

1 MS. CASTANOS: No, we're fine with the -- with the  
2 procedure you've outlined.

3 HEARING OFFICER COCHRAN: Thank you.

4 MS. RUDMAN: Yeah.

5 HEARING OFFICER COCHRAN: Staff?

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

9 HEARING OFFICER COCHRAN: Ms. Rudman?

10 MS. RUDMAN: Yeah, that sounds fine.

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

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

25 Applicant, are you aware of any corrections to



1 your exhibits at this time?

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

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

7 MS. CASTANOS: Okay.

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

10 Staff?

11 MR. BELL: No corrections.

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

17 MS. RUDMAN: Right. Okay.

18 HEARING OFFICER COCHRAN: So what I would like to  
19 do is to have your testimony then placed as item 4013. So  
20 4013 will be TN 202631, and that's your direct testimony.

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

23 HEARING OFFICER COCHRAN: Your microphone.

24 MS. RUDMAN: Oh, I'm sorry. Some of the  
25 references that I had in there were for documents that

1 exceeded the allowable limit on the e-filing, and so I  
2 couldn't get them in. But are they allowed to be considered  
3 by reference to the fact that they (inaudible)?

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

6 MS. RUDMAN: Oh.

7 HEARING OFFICER COCHRAN: -- we're going to talk  
8 about.

9 MS. RUDMAN: Okay.

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

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

25 HEARING OFFICER COCHRAN: So -- so you have un-

1 docketed exhibits at this point?

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

6 MR. BELL: They're cited

7 MS. RUDMAN: -- they're cited --

8 HEARING OFFICER COCHRAN: They were cited?

9 MS. RUDMAN: -- they're cited --

10 HEARING OFFICER COCHRAN: Okay.

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

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

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

21 MS. CASTANOS: Yeah, we don't object to them being  
22 docketed now.

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

25 MR. BELL: No.

1 HEARING OFFICER COCHRAN: So as quickly as  
2 possible let's try to get them officially docketed, either  
3 like right here and now into the appropriate size. And  
4 again, I would advise to the Public Adviser's Office. They  
5 can help you more than I can. That's outside of my  
6 expertise.

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

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

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

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

23 MS. RUDMAN: Right. Yeah. I mean, if I could  
24 maybe just even like submit the executive summaries, in some  
25 cases I think that would be sufficient. But I don't have --

1 right now I'd have to figure out how to do that.

2 HEARING OFFICER COCHRAN: Okay.

3 MS. RUDMAN: It's surprisingly hard.

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

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

12 MS. RUDMAN: Oh.

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

17 MS. RUDMAN: Okay.

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

20 MS. RUDMAN: Okay.

21 HEARING OFFICER COCHRAN: -- (inaudible).

22 MS. RUDMAN: All right. Okay.

23 HEARING OFFICER COCHRAN: And that brings me to my  
24 next point. In order to speed the Evidentiary Hearing  
25 along, because we're going to -- once we're in the

1 Evidentiary Hearing we're going to go through (inaudible)  
2 areas, if the parties would be able to identify which  
3 exhibits relate to which topic areas, then as we move those  
4 in to evidence that way we'll (inaudible). I know Staff's  
5 would probably be pretty easy (inaudible) 2000. This is  
6 much more directed to Ms. Rudman and the applicant to be  
7 able to break that down for me. And again, an exhibit may  
8 relate to more than one topic area, but it should still be  
9 moved into evidence for each topic area that it relates to.  
10 So that way we make sure that we're closing that  
11 (inaudible).

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

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

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

24 HEARING OFFICER COCHRAN: Okay.

25 MS. CASTANOS: It's Exhibit M to our Prehearing

1 Conference Statement.

2 HEARING OFFICER COCHRAN: Thank you.

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

5 MS. CASTANOS: The opening testimony. I'm sorry.

6 HEARING OFFICER COCHRAN: That's all right.

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

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

16 MR. BELL: Uh-huh.

17 MS. RUDMAN: Yeah.

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

21 MR. KRAMER: Yes, this is Paul Kramer. You really  
22 want to get all this stuff stored electronically. You know,  
23 that's our new -- that's our new way of doing business. And  
24 also then we have all these things. So we have a 50  
25 megabyte limit. That's -- that's where you hit the wall.

1 So I'm really wondering how are you getting over 50  
2 megabytes for some of this stuff?

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

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

11 MS. RUDMAN: Maybe that's why I couldn't work with  
12 it either.

13 PRESIDING MEMBER MCALLISTER: That sounds like --

14 MR. KRAMER: If --

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

19 MS. RUDMAN: Okay.

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

22 MS. RUDMAN: Okay.

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

25 MR. KRAMER: It's also why we don't like to just



1 post a link to a document, because those things break over  
2 time. And two years from now you may go back to that link  
3 and get, you know, find an error message, or even find out  
4 that the website is now available for purchase.

5 HEARING OFFICER COCHRAN: Right.

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

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

13 MS. MATTHEWS: We don't give technical assistance.  
14 But we have provided resources that will help break the  
15 document down, and that's pretty much technical assistance.  
16 So we've offered suggestions in doing that. But other than  
17 that, I mean, that's -- that -- that document limit is  
18 pretty much a large limit. And so I personally have cut and  
19 paste with .pdfs to break them down. So that was actually a  
20 suggestion that was given, as well. If you're unable to  
21 perhaps write the CD, perhaps a flash drive. Those are  
22 pretty cheap, if you can somehow copy onto that. Is the  
23 applicant and staff willing to accept that, then perhaps a  
24 cheaper alternative. But it is a matter of, I think, being  
25 consistent with making sure all the information is provided.

1 HEARING OFFICER COCHRAN: I think as Mr. Kramer  
2 said the big issue is going to be that we're now keeping  
3 these records electronically. And if it's on a flash, how  
4 do we make sure that it meets that transition from the flash  
5 drive to our electronic (inaudible)?

6 MS. RUDMAN: Yeah.

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

9 MS. RUDMAN: I apologize.

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

16 HEARING OFFICER COCHRAN: So now I'd like to talk  
17 about a discussion of the actual hearing and the time that  
18 it's going to go. There will be a new Notice of Evidentiary  
19 Hearing going out tomorrow. And the big -- the only change  
20 is that there's now going to be a closed -- I'm not  
21 commenting, I'm telling you this -- the big change is that  
22 there will be a closed session starting at 10:30. However,  
23 the Evidentiary Hearing will not start until 12:30. So you  
24 all don't have to worry about being there at 10:30. We will  
25 open the public hearing -- I mean, we will open the meeting,

1 and then go into closed session. The Evidentiary Hearing  
2 will start at 12:30, again, at the Hilton Waterfront.

3 The Committee is committed to keeping the public  
4 comment portion open until at least 5:30 in order to  
5 maximize public participation and ability to address the  
6 Committee. Because there's a business meeting the next day,  
7 the Committee Members will need to leave Monday evening, and  
8 the last flight out, I believe, is 8:15. So we're looking  
9 7:00, 7:30 as the absolute end of the Evidentiary Hearing in  
10 order in Huntington Beach.

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

21 Do you have a sense of how you would like the rest  
22 of the time -- are there other issues that you would like to  
23 have first? One of the -- one of the concerns, too, is that  
24 we're not sure that there will be additional time for  
25 another hearing in Sacramento given the, you know,

1 difficulty of calendaring that time. That's how we wound up  
2 with this compressed schedule to begin with. So there may  
3 be some tradeoffs if -- if we have to go more than one day  
4 in Huntington Beach. I think we can make it if we stay  
5 focused. But, you know, it may be that we will have to then  
6 schedule another day of hearings here in Sacramento. So I  
7 think that the Committee's preference would be to handle  
8 those things that are unique for the area such as noise and  
9 visual, those types of issue that we sort of need to be  
10 onsite. Something like an air quality where it's so driven  
11 by the FDOC could potentially be handled at a later hearing.

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

18           MS. CASTANOS: No.

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

25           MR. BELL: Staff really doesn't have a preference

1 as to order.

2 HEARING OFFICER COCHRAN: Okay.

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

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

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

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

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

19 HEARING OFFICER COCHRAN: Right.

20 PRESIDING MEMBER MCALLISTER: (Inaudible.)

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

23 PRESIDING MEMBER MCALLISTER: (Inaudible.)

24 MR. BELL: Well, my understand is that -- that it  
25 was adopted --

1 HEARING OFFICER COCHRAN: Today.

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

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

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

17 HEARING OFFICER COCHRAN: Yeah. So --

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

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

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

25 HEARING OFFICER COCHRAN: Okay. So then, yes, it

1 will be evidence. Okay.

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

5           PRESIDING MEMBER MCALLISTER: Opening briefs.

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

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

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

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

24           MR. BELL: Actually, I do have one. I know that  
25 in the Prehearing Conference order that the Committee

1 indicated that all witnesses will be presenting an opening  
2 statement. I also know in the past that sometimes parties  
3 have waived that, or the Committee had just said we've ready  
4 and considered your testimony. We know what the gravamen of  
5 your issues are. Let's just get it in cross examination for  
6 scheduling concerns, and also so that we can move that  
7 hearing forward as quickly as possible. Is the AQMD  
8 requiring those opening statements, or what are you -- what  
9 are your thoughts on this? Are we going to do that topic by  
10 topic?

11 HEARING OFFICER COCHRAN: I don't know. It will  
12 probably be topic by topic.

13 Does the applicant have --

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

16 HEARING OFFICER COCHRAN: Ms. Rudman?

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

19 HEARING OFFICER COCHRAN: Anything else  
20 (inaudible)?

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

25 HEARING OFFICER COCHRAN: I will -- I will contact



1 you directly --

2 MS. RUDMAN: Okay.

3 HEARING OFFICER COCHRAN: -- on this procedural  
4 matter.

5 MS. RUDMAN: Okay.

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

8 MS. RUDMAN: Okay. Thank you.

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

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

15 (Colloquy Between the Hearing Officer and  
16 Commissioners)

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

19 (Colloquy Between the Hearing Officer and  
20 Commissioners)

21 HEARING OFFICER COCHRAN: Okay. I was incorrect.  
22 We will be -- we'll be now adjourning into closed session.  
23 And I will come back and report when it's -- when the  
24 meeting has adjourned. It will be brief. Thank you.

25 (Whereupon the Committee went into Closed Session

1 from 4:41 p.m., until 5:06 p.m.)

2 HEARING OFFICER COCHRAN: There was no action  
3 taken in closed session. And I am now going to adjourn the  
4 meeting at 5:07 p.m. Thank you all very much for  
5 participating.

6 MR. BELL: Thank you.

7 MS. RUDMAN: Thanks.

8 (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