

DOCKETED

Docket Number:	12-AFC-02C
Project Title:	Huntington Beach Energy Project - Compliance
TN #:	215154
Document Title:	Transcript of 12/21/16 Prehearing Conference and Evidentiary Hearing
Description:	N/A
Filer:	Cody Goldthrite
Organization:	California Energy Commission
Submitter Role:	Committee
Submission Date:	1/4/2017 12:59:25 PM
Docketed Date:	1/4/2017

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA

Petition to Amend:)
) Docket No. 12-AFC-02C
HUNTINGTON BEACH ENERGY PROJECT)
_____)

CALIFORNIA ENERGY COMMISSION
ART ROSENFELD HEARING ROOM, FIRST FLOOR
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, DECEMBER 21, 2016

10:00 A.M.

Reported by:
Peter Petty

APPEARANCES

COMMISSIONERS

Andrew McAllister, Presiding Member

Brian Early, Adviser to Commissioner McAllister

Karen Douglas, Associate Member

Jennifer Nelson, Adviser to Commissioner Douglas

Le-Quyên Nguyen, Adviser to Commissioner Douglas

Kristy Chew, Technical Adviser on Siting Matters

PUBLIC ADVISER'S OFFICE

Alana Mathews, Public Adviser

HEARING OFFICER

Susan Cochran

STAFF

Kevin Bell, Staff Counsel

John Heiser, Project Manager

Michael Lewis, Director of Siting

John Hope

Wenjun Qian

Huei-An Chu

Ed Brady

Matthew Layton

Chris Davis

APPEARANCES

HUNTINGTON BEACH ENERGY CENTER

Stephen O'Kane, AES Huntington Beach Energy

Melissa Foster, Stoel Rives

Kristen Castanos, Stoel Rives

Jerry Salamy, CH2M Hill

Elyse Engel, CH2M Hill

INTERVENER

Robert Simpson (via WebEx), Helping Hand Tools

ALSO PRESENT

Bhaskar Chandan (via WebEx), South Coast Air Quality
Management District

Jane James, City of Huntington Beach Community Development
Department Planning Manager

PUBLIC COMMENT

Jason Pyle

Bob Sarvey

IndexPagePanels

Traffic and Transportation	64
Noise and Vibration	80
Air Quality	84
Greenhouse Gas	116
Public Health	121

ExhibitsMarkedReceivedWithdrawnStaff

6000	22	63
6001	23	63
6002	24	63

Applicant

5001-5012		64	
5013		64	24
5014-5090			
5091			25
5092-5121		64	
5122	27	64	
5123	28	64	

Intervener

7001	29
7002	29
7003	29

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

10:09 A.M.

SACRAMENTO, CALIFORNIA, WEDNESDAY, DECEMBER 21, 2016

COMMISSIONER MCALLISTER: We are ready to get started. So we have a couple of things going on today. We're here at this moment for the Huntington Beach Energy Project Amendment Prehearing Conference. Later in the day, I believe it was noticed at noon, we'll have an evidentiary hearing. That will come later. So for the moment, we are focusing on the prehearing conference.

I want to introduce the folks on the dais here. And then we'll ask for the parties to identify themselves for the record, as well.

So my name is Andrew McAllister, a Commissioner here at the Energy Commission and Presiding Member on this case. Commissioner Douglas is two to my right, who is the Associate Member. And then I'll just start at the far end there. Le-Quyen Nguyen and Jennifer Nelson are Commissioner Douglas's Advisers. Susan Cochran is the Hearing Adviser in the center who will be mostly running the show today. To my left is Brian Early, my Policy Adviser. And to his left is Kristy Chew, the Technical Adviser to the Commission on Siting Matters.

So let's go through the parties, and please

1 introduce yourselves and your representatives at this time,
2 starting with the Applicant.

3 MR. O'KANE: Hi. Good morning. This is Stephen
4 O'Kane, Vice President with AES Huntington Beach Energy, the
5 Applicant. I have my counsel and consultants here with me.
6 I'll let them introduce themselves.

7 COMMISSIONER MCALLISTER: Great.

8 MS. FOSTER: Melissa Foster with Stoel Rives,
9 Counsel for the Project Owner.

10 MS. CASTANOS: And Kristen Castanos with Stoel
11 Rives, Counsel for the Project Owner.

12 MR. SALAMY: Jerry Salamy with CH2M Hill.

13 COMMISSIONER MCALLISTER: Staff?

14 MR. BELL: Kevin W. Bell, Senior Staff Counsel,
15 appearing on behalf of Staff. With me at Counsel table is
16 Project Manager John Heiser. Also present in the audience
17 is Michael Lewis, Director of Siting. We also have Matthew
18 Layton and Chris Davis, Office Managers, as well as various
19 Staff.

20 COMMISSIONER MCALLISTER: Okay. Thanks.

21 So I guess that's it in terms of parties. Okay.

22 Okay, so we do have an Intervener now. And I'm
23 going to ask the Intervener, if they are present, to
24 introduce themselves. Do we have anyone on the phone?

25 HEARING OFFICER COCHRAN: Ralph, would you un-mute

1 everyone, please, so that if Mr. Simpson is on the phone, he
2 can be recognized?

3 MR. SIMPSON: Hello?

4 MR. BELL: And if I may, on behalf of Staff before
5 we go forward, I know, Mr. McAllister, you referred to him
6 as our Intervener. Has the Committee made a ruling on
7 whether or not intervention is going to be allowed?

8 HEARING OFFICER COCHRAN: It was granted yesterday
9 in an order docketed. I have copies of that, if anyone
10 wants it.

11 MR. SIMPSON: Hello?

12 COMMISSIONER MCALLISTER: Hold on just one second.
13 So, yeah --

14 MR. BELL: Okay.

15 COMMISSIONER MCALLISTER: -- it's official and we
16 do have an Intervener.

17 MR. BELL: Okay.

18 COMMISSIONER MCALLISTER: So go ahead, Mr. Simpson
19 or representative.

20 MR. SIMPSON: Thank you. Good morning. This is
21 Rob Simpson with Helping Hand Tools on the phone.

22 COMMISSIONER MCALLISTER: Okay. Thank you. All
23 right.

24 At this point I will -- well, actually, let's ask
25 for agencies. Are there any agencies in the room? Let's

1 see. We'll start.

2 Are there any agencies or elected officials or
3 representatives from agencies of the federal government?

4 State of California, other than those that you
5 have before us -- or before you here? Any state agencies?

6 Okay.

7 MR. CHANDAN: Hello. Good morning. This is
8 Bhaskar Chandan, last name is C-H-A-N-D-A-N, from South
9 Coast Air Quality Management District.

10 COMMISSIONER MCALLISTER: Great. Thank you for
11 being with us.

12 Do we have any representatives of Native American
13 tribes on the phone? I don't believe we do in the room.

14 No?

15 So AQMD, we got you. Thank you for being here.

16 Is there anyone from the City of Huntington Beach
17 or nearby towns? Could you introduce yourself? Come up to
18 the microphone. Yeah, we have to do everything on the
19 record here. Thank you. Thank you for being here.

20 MS. JAMES: It's that way in my city, too. Jane
21 James with the City of Huntington Beach, Planning Manager
22 for the Community Development Department.

23 COMMISSIONER MCALLISTER: Great. Thank you.

24 Are there any other public officials, agencies, on
25 the phone or in the room? Okay. Great. I think that

1 establishes.

2 I want to point out, also, the Public Adviser is
3 in the room to my left, in the back of the room.

4 Alana Mathews, raise your hand. Okay. Great.
5 Thank you very much.

6 And if you have any issues with access or any
7 questions about process, certainly refer to the Public
8 Adviser.

9 With that, I'll hand over the conduct of this
10 hearing to our Hearing Adviser Susan Cochran.

11 Susan?

12 HEARING OFFICER COCHRAN: Thank you so much, and
13 good morning. The Committee noticed today's prehearing
14 conference in the Notice of Prehearing Conference and
15 Evidentiary Hearing issued on December 7, 2016. Staff
16 published Part 1 of its Final Staff Analysis [sic] on
17 October 17, 2016. And the Committee held an initial
18 prehearing conference on Part 1 on November 14, 2016.

19 Today we are holding a second prehearing
20 conference to discuss Part 2 of the Final Staff Assessment,
21 filed on December 9th.

22 In a few moments, I will review what we discussed
23 at the November 14 prehearing conference. And then we will
24 discuss the evidentiary hearing scheduled for today,
25 beginning at noon.

1 Earlier this week, I had prepared a potential
2 agenda. However, we will be proceeding on the agenda that
3 was included in the December 7 notice, as shown on the
4 screen.

5 Ralph, if you could please share the screen?

6 Thank you.

7 So we're on item two right now, which is the
8 prehearing conference. As explained in the notice, the
9 basic purposes of the prehearing conference are to assess
10 the project's readiness for hearings, to clarify areas of
11 agreement or dispute, to identify witnesses and exhibits, to
12 determine upon which areas the parties need to question the
13 other parties' witnesses, and to discuss any associated
14 matter, including any motions that may be made.

15 Yesterday, Robert Simpson and Helping Hand Tools
16 were granted Intervener status. As set forth in the order
17 granting his Petition to Intervene, Intervener status was
18 granted only as to the following topic areas: Air Quality,
19 Greenhouse Gases and Public Health.

20 Are there any questions about the scope of Mr.
21 Simpson's participation?

22 Make sure that Mr. Simpson is un-muted please.

23 Okay.

24 Please remember that Mr. Simpson may still offer
25 public comment on any topic, even those not included in the

1 order granting his intervention.

2 At this point I will turn to each party and say,
3 are you ready to proceed today? And if you are not, please
4 explain why.

5 And I will start with Applicant. Are you ready to
6 proceed today?

7 MS. FOSTER: The Project Owner is ready to proceed
8 to hearing today.

9 HEARING OFFICER COCHRAN: Thank you.

10 Staff?

11 MR. BELL: Staff is ready.

12 HEARING OFFICER COCHRAN: Mr. Simpson, are you
13 ready to proceed today?

14 MR. SIMPSON: Hello, can you hear me? Can you
15 hear me?

16 HEARING OFFICER COCHRAN: Now we can.

17 MR. SIMPSON: Okay. No, you didn't hear me when I
18 had questions about the scope of my intervention. And, no,
19 I don't think anything is ready to proceed today --

20 HEARING OFFICER COCHRAN: Okay.

21 MR. SIMPSON: -- at this time.

22 HEARING OFFICER COCHRAN: What are your questions
23 concerning the scope of your intervention?

24 MR. SIMPSON: Well, I don't really see the basis
25 for my limitation on my participation. And I haven't had

1 adequate time to review the Final Staff Assessment.

2 HEARING OFFICER COCHRAN: Okay, Mr. Simpson, the
3 reason for your limited participation is, first, your own
4 petition identified those areas that are your areas of
5 interest, and by those areas, I mean Air Quality, Greenhouse
6 Gases and Public Health.

7 Second, there was an initial deadline for the
8 filing of petitions to intervene of October 31, which
9 followed the publication of Part 1 of the Final Staff
10 Assessment.

11 So at this point the only conceivable basis that
12 we can see to grant intervention was the fact that the Final
13 Staff Assessment dealing with Air Quality, Greenhouse Gas
14 and Public Health was published on December 9. And we felt
15 that it was possible that a person may not feel the need to
16 intervene until after having a chance to review that.

17 So having made your motion within a week after the
18 publication of that Part 2, we thought that it was
19 appropriate to allow you to intervene on those limited
20 bases.

21 In addition, I would recognize that you have
22 submitted comments to the Air District regarding both the
23 Preliminary Determination of Compliance and the Final
24 Determination of Compliance. And so I think that you are
25 well aware of the issues presented by Air Quality,

1 Greenhouse Gas and Public Health as further basis for
2 limiting your participation in this proceeding.

3 MR. SIMPSON: Well, the Final Staff Assessment
4 just came out, what, two weeks ago. I should at least get
5 30 days to review the thing before we're going to hearings
6 without the public being advised.

7 HEARING OFFICER COCHRAN: There is no -- first of
8 all, the public was advised. As always, the staff provided
9 notice of availability as set forth in the docket online
10 that shows that it was sent to libraries, as well as to
11 other public agencies. And you may review those as they are
12 available on the e-docket.

13 In addition, the public was advised of these
14 hearings and the deadlines, both by having this item
15 docketed, as well as by providing written notice by U.S.
16 Mail to property owners within 1,000 feet of the project
17 site at each step along the way.

18 So you will also recall that we had originally set
19 this matter for hearing on November 30, at which time we
20 were ready to proceed and decided to, I'll use the word, un-
21 bifurcate in order to provide a coherent hearing of the
22 entire FSA at today's evidentiary hearing.

23 So on that basis, that is why your Petition to
24 Intervene was granted and granted narrowly.

25 MR. SIMPSON: Well, I understand that you've

1 written some things that you call notices, but none of them
2 alerts the community to -- there's no notice from the CEC
3 that says anything about air quality. There's no disclosure
4 of any air quality impacts. There's no disclosure of any
5 impacts. All there is, is a bunch of jargon about what type
6 of equipment is being installed. There's nothing that even
7 says it's going to emit any emissions or any noise or have
8 any impacts. So there's no effective alert or notice to the
9 community on any of these issues.

10 There should be some notice that tells people that
11 there will be an air quality impact and what that air
12 quality impact means to them. There should be something
13 that alerts the community that calls them to action to
14 participate in this proceeding, but nothing like that has
15 occurred, as evidenced by the 150 or so local residents who
16 asked for a local hearing --

17 HEARING OFFICER COCHRAN: Okay.

18 MR. SIMPSON: -- which is on the docket now.

19 HEARING OFFICER COCHRAN: Be that as it -- your
20 comments are noted. Your participation and the order issued
21 by the Committee yesterday stands.

22 So let's now move -- so then tell me why you
23 aren't --

24 MR. SIMPSON: I'm sorry, can I -- can I finish my
25 comments?

1 HEARING OFFICER COCHRAN: Briefly.

2 MR. SIMPSON: Thank you. You had interveners and
3 participants in the first round of hearings for this
4 proposal that have been left off this service notice.
5 You've got the Department of Toxic Substances Control who
6 commented on the originally proceeding who haven't been
7 notified of this proceeding. You've got a whole notice list
8 from the original proceeding that's been thrown away. All
9 the commenters, all the interveners have been ignored in
10 this amendment. There's no way that this should proceed
11 without informing the people who have taken the time to
12 participate.

13 HEARING OFFICER COCHRAN: Again, Mr. Simpson, the
14 record reflects that notice was provided to all agencies,
15 including Fish and Wildlife, Department of Toxic Substances.

16
17 In addition, the interveners were notified. The
18 interveners from the first proceeding, which is an entirely
19 separate proceeding from this proceeding, were notified that
20 their participation was not automatic in this amendment
21 proceeding. That was a letter from the Hearing Office to
22 the interveners specifically, and neither of them chose to
23 intervene.

24 So, also, I don't know that you have standing in
25 order to present arguments of others. You may present your

1 own arguments.

2 The other thing I would note, in your original
3 comments you said you had not had time to review the FSA.
4 There is no minimum time required between the publication of
5 the FSA and when we may conduct evidentiary hearings.

6 So again, as set forth in the order granting your
7 intervention, you take the proceedings as you find them,
8 procedurally and substantively, meaning that today is the
9 day for the prehearing conference and the evidentiary
10 hearing.

11 MR. SIMPSON: You may not have a rule that
12 requires that you let people have a chance to look at the
13 FSA before you go hearings. But due process would require
14 that you give the public adequate time to consider your
15 final document before you go to hearings.

16 HEARING OFFICER COCHRAN: And due process has been
17 met.

18 So turning now, then, this morning, you mentioned
19 that we have, in fact, received petitions to conduct the
20 power plant hearings in Huntington Beach. You had also
21 filed, concurrently with your Petition to Intervene and your
22 proposed prehearing conference, a motion asking for a change
23 of venue, and for a continuation of the evidentiary hearing
24 scheduled today at 12 noon.

25 Your written motions cannot be addressed today

1 because they are not on the agenda. And there is no speedy,
2 quick way to add those items to the agenda with less than
3 ten days' notice. However, I would note that section 1211.5
4 of the Commission's Regulations state that oral motions are
5 always in order.

6 So at this point, do you have an oral motion that
7 you would like to make to the Committee regarding the
8 conduct of the proceedings today?

9 MR. SIMPSON: Sure. I'd like to make an oral
10 motion that you proceed consistent with the agenda that was
11 recently published that says Item 2, proposed consideration
12 of a motion by Robert Simpson to continue hearing dates and
13 change venue. I don't know what you're saying about it's
14 not on the agenda, because the agenda I'm looking at has me
15 as number two.

16 HEARING OFFICER COCHRAN: That is a proposed
17 revised agenda that has not been adopted by the Committee.

18 MR. SIMPSON: Okay. But it was -- it's on the
19 docket; right?

20 So I guess my motion would be that we proceed
21 consistent with the proposed revised agenda.

22 HEARING OFFICER COCHRAN: That motion is denied.
23 Any other motions that you would like to make?

24 MR. SIMPSON: Sure. I'd like to make a motion
25 that we consider the public petitions and my motions to

1 continue the hearing to be conducted in Huntington Beach.

2 HEARING OFFICER COCHRAN: Okay. And what is the
3 basis for your making that motion?

4 MR. SIMPSON: The basis is included in my written
5 motion and the 150 or so petitions from the public, and the
6 number of emails that the Commission has received, asking
7 for the hearings to be in the affected community. I think
8 that due process -- I think that any contention that the
9 Commission is seeking public participation requires that
10 this proceed like other proceedings and is conducted in the
11 affected community.

12 HEARING OFFICER COCHRAN: Okay. First of all --

13 MR. SIMPSON: So --

14 HEARING OFFICER COCHRAN: -- this is an amendment
15 proceeding. And so the regulations regarding the holding of
16 hearings for Applications for Certification do not apply to
17 an amendment.

18 In addition, I would note that the fact that the
19 hearing was to be held in Sacramento was noted on the
20 initial evidentiary hearing set for November 30, and there
21 were no objections at that time. And there have been no
22 objections until last Friday about holding it today.

23 Is there anything else?

24 MR. SIMPSON: Sure. I think you're wrong, that
25 the amendment proceeding can throw away the rule book. And

1 this is still an amendment to the AFC, so it's still an AFC.
2 Just because you put the word "amendment" in it doesn't mean
3 you get to ignore all the roles of an AFC.

4 And the fact that you didn't receive objections
5 until shortly after you provided notice of this hearing, I
6 think prior actions are irrelevant. You put out a notice
7 for this hearing in a timely fashion. You received
8 petitions and objections, motions regarding this hearing.
9 And I think that you need to proceed consistent with an AFC
10 proceeding. If there's no rule book, this is still an AFC.

11 Just because you add another word to the beginning of it
12 doesn't mean it's not an AFC anymore.

13 HEARING OFFICER COCHRAN: Would either Applicant
14 or Staff like to address this motion?

15 MS. FOSTER: Yes. The Project Owner would
16 reiterate its opposition to the motion that was -- the
17 written motion that was filed to change venue and to
18 continue the hearing for all the reasons stated therein. We
19 agree with the Hearing Officer's conclusion that an
20 amendment proceeding does not require the same procedural
21 requirements as an AFC. This is not an amendment -- this is
22 not an AFC proceeding, this is a PTA proceeding, and the
23 regulations have a different standard for hearings in such a
24 proceeding.

25 And we also agree that the public has been

1 provided ample notice and opportunity to participate,
2 including notice of the November 30th hearing venued in
3 Sacramento, which no one objected to.

4 HEARING OFFICER COCHRAN: Thank you.

5 Mr. Bell?

6 MR. BELL: Staff joins in the Applicant's
7 opposition.

8 HEARING OFFICER COCHRAN: Thank you.

9 Are there any persons online who would to speak to
10 this motion as a public comment?

11 Any members of the public wishing to express a
12 position on the motion to continue and to hold the hearings
13 in Huntington Beach?

14 Seeing none, at this point the Committee will be
15 retiring to --

16 MR. SIMPSON: (Indiscernible.)

17 HEARING OFFICER COCHRAN: I'm sorry? Okay.

18 At this time the Committee will retire to closed
19 session to deliberate on the motion pursuant to Government
20 Code section -- could you slide down just a little bit for
21 me, Ralph? -- 11126(c)(3) which allows a state body,
22 including a delegated committee, to hold a closed session.
23 And the notice of this meeting included the fact that the
24 Committee could retire to closed session.

25 With that, we're in closed session.

1 (Off the record at 10:29 p.m.)

2 (On the record at 10:50 a.m.)

3 HEARING OFFICER COCHRAN: We are reconvening from
4 closed session.

5 And before we discuss the Committee's decision on
6 the motion to continue and change venue, I wanted to ask the
7 Public Adviser, Alana Mathews, if she could step to the
8 podium and inform us of what outreach she did or her office
9 did prior to both the November 30 and this prehearing
10 conference and evidentiary hearing.

11 Ms. Mathews?

12 MS. MATHEWS: Yes, I'm happy to share that we did
13 outreach to -- we went through the list of any interveners
14 and people who had commented in the first proceeding to see
15 who had an interest. And we reached out to them through
16 email and let them know the potential dates and the venue to
17 see if anyone had any objections or concerns about the
18 hearing and the prehearing conference being held in
19 Sacramento, and also to find out if they were interested
20 in -- if they didn't have an objection but they were
21 interested in attending, was the time a convenient time for
22 them, as well as did they need assistance in how to
23 participate remotely so that we could provide that
24 information to them.

25 I do not have a list of names, but I -- a complete

1 list of who all we reached out to. But I do know that we
2 only received two responses back, and neither indicated that
3 they had any objections. And they were just thanking us
4 that we took the time to reach out to them.

5 HEARING OFFICER COCHRAN: Thank you very much.

6 And again, the Committee does appreciate public
7 participation and input into our process. And we appreciate
8 the public petitions that Mr. Simpson filed. And as this
9 process moves forward, we would like to remind folks that
10 this is not the end. This is sort of the beginning of the
11 end. Because after the evidentiary hearings the Committee
12 will be preparing a Presiding Member's Proposed Decision, or
13 PMPD. And that will be available 30 days for written
14 comments. In addition, the Committee will have a hearing on
15 that PMPD during those 30 days so people can comment orally
16 on that decision.

17 So if you have expressed an interest, we would
18 encourage you to continue to watch the electronic docket.
19 You can also sign up for the listserv so that you will
20 receive notifications more quickly than you would via the
21 U.S. Mail.

22 And again, before the Committee rules on the
23 motion to continue and change venue, I would once again
24 solicit any final comments from Mr. Simpson, either of the
25 parties, or any of the members of the public who have called

1 in who may not have been here when the motion was made.

2 MR. SIMPSON: Sure. This is Rob Simpson.

3 HEARING OFFICER COCHRAN: Please go ahead.

4 MR. SIMPSON: Can you hear me?

5 HEARING OFFICER COCHRAN: Yes.

6 MR. SIMPSON: Oh, thank you.

7 HEARING OFFICER COCHRAN: Thank you.

8 MR. SIMPSON: You know, I'd like to reiterate the
9 lack of public notification. I understand that papers are
10 going out from the CEC. But even the most basic of city
11 government, when you do -- this would be a variance, at
12 best. There would be a sign at the property. There would
13 be notifications for people who are near the property, that
14 they could look at the sign, they could figure out where to
15 go, who to talk to. There would be -- if the federal
16 government's involved there would be -- I doubt that there's
17 no -- you asked if there's any federal government
18 representation at the hearing, but there's been no notice to
19 any agency in the federal government, as far as the notice
20 list includes. I understand you said that DTSC was
21 notified, but it's not on the notice list.

22 And if you look at these notices, there's nothing
23 about health impacts. There's nothing about air quality
24 impacts. There's no -- there's not even a mention of air.
25 There's not even a mention of air pollution. There's no

1 mention of anything that would inspire someone to get
2 involved in this quagmire.

3 So I think that the CEC needs to do a better job
4 of notice and outreach, to at least put a sign on the
5 property, at least ensure that your notices have something
6 that alerts the public of the dangers.

7 And you need to have the hearings in the affected
8 community.

9 I guess that's the end of my comment.

10 HEARING OFFICER COCHRAN: Okay. Thank you.

11 Either Applicant or Staff?

12 MS. FOSTER: We would reiterate our prior
13 comments. And also note that all of the notices have been
14 distributed to the Energy Commission's agency distribution
15 list, as well.

16 MR. BELL: Nothing further on behalf of Staff.

17 HEARING OFFICER COCHRAN: Thank you.

18 At this time the motion to continue and change
19 venue is denied.

20 In denying the motion to continue and to change
21 venue, the Committee is trying to balance the interest of
22 the parties and the public. In this case we have seen few
23 folks at the hearings.

24 You will recall that in December of 2015 we had a
25 site visit and evidentiary hearing where I'm going to say

1 less than ten people attended that proceeding, which was
2 held in the City of Huntington Beach.

3 I would also note that the City of Huntington
4 Beach itself has adopted a resolution regarding this project
5 that went through a series of hearings on different boards,
6 commissions and the City Council before finally being
7 adopted.

8 Again, as we discussed previously, the prior
9 hearing on November 30th was in the same location, without
10 objection from anyone. Ms. Mathews has described the
11 outreach that her office did to solicit input regarding the
12 location and timing of this hearing. And as she stated, she
13 received two responses, neither of which contained any
14 objection to having the hearing here in Sacramento, the
15 timing of it, seeking additional information about
16 intervention or remote participation.

17 And again, I wrote a letter to the interveners
18 from the original proceeding, informing them that they were
19 not automatically parties, seeking their desire to
20 intervene, and I've heard nothing from either party.

21 So on that basis, we are going to deny the motion.

22 And I would also note that in the order granting
23 the Petition to Intervene, we specifically informed Mr.
24 Simpson that the deadlines for conducting discovery and
25 other matters, including the evidentiary hearing, shall not

1 be extended or changed by the granting of the Petition to
2 Intervene. And that's consistent with existing Regulations,
3 section 1211.7(d). And so the rules of the road were
4 published long ahead of this particular Petition to
5 Intervene.

6 And again, we appreciate trying to learn how to
7 better our processes. But in this case it seems that the
8 processes have worked the way they needed to.

9 So turning now then to the function that we
10 usually have at a prehearing conference, which is to make
11 sure that everyone knows what we're going to cover in the
12 evidentiary hearing, and to discuss the exhibits.

13 So in order to conduct the prehearing conference
14 efficiently, we require that any party seeking to
15 participate at this conference or present evidence or cross
16 examine witnesses at the evidentiary hearings, file a
17 Prehearing Conference Statement. We have Prehearing
18 Conference Statements from everyone, including Mr. Simpson.

19 So the first thing I wanted to talk about was
20 exhibits. And I would note that the Final Staff Assessment
21 serves as Staff's testimony on all subject areas. Part 1 of
22 the FSA has been marked for identification as Exhibit 6000.

23 (Whereupon, Staff Exhibit 6000 is marked.)

24 In its Prehearing Conference Statement for today's
25 prehearing conference, Staff identified Part 2 of the FSA as

1 Exhibit 6003. However, no transaction number is listed. My
2 read of the docket is that it should be TN 214732. Is that
3 the correct document for Exhibit 6003?

4 MR. BELL: I'm sorry, I'm looking that up now.

5 HEARING OFFICER COCHRAN: That's okay.

6 So that you can understand why -- so that the
7 audience and any members of the public listening can
8 understand why this is important, when we create the exhibit
9 list what happens is you have to identify the transaction
10 number, or TN, and we then create it as an exhibit. And
11 there can only be one exhibit number per TN. And each TN
12 can only have one exhibit number. So we need to be able to
13 connect all of those pieces in order to be able to have an
14 exhibit list that makes sense.

15 (Pause)

16 MR. BELL: Yes, I show that as Transaction Number
17 214732.

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

19 I would also note that Staff's rebuttal testimony
20 was filed on November 3, 2016, and marked for identification
21 as Exhibit 6001.

22 (Whereupon, Staff Exhibit 6001 is marked.)

23 Finally, Staff identified the Final Determination
24 of Compliance from South Coast Air Quality Management
25 District as Exhibit 6002. However, Applicant also

1 identified the FDOC as its Exhibit 5103. As I just
2 explained, a single TN can only be used for one Exhibit.

3 Will Applicant withdraw Exhibit 5103 to allow
4 Staff to use the FDOC, since that is the basis for its
5 analysis on the areas of Air Quality, Greenhouse Gas and
6 Public Health in Part 2 of the FSA?

7 MS. FOSTER: Yes. For TN number 214533, the
8 Project Owner is okay with it being labeled Exhibit Number
9 6002 instead of Project Owner's Exhibit 5103.

10 HEARING OFFICER COCHRAN: Okay. Thank you very
11 much.

12 (Whereupon, Staff Exhibit 6002 is marked.)

13 Turning now to the Applicant, the Prehearing
14 Conference Statement filed on December 16 identified
15 Exhibits 5001 to 5121. In addition to the withdrawal of
16 Exhibit 5013, as we just discussed, there is a duplication.

17

18 Is 5091 the same as 5024?

19 MS. FOSTER: Just a second.

20 HEARING OFFICER COCHRAN: That's okay. It's
21 easier for us to figure this duplication out, because when
22 we go to exhibit it again it says it's already exhibited.
23 It makes it easier. We cheat, in other words.

24 (Pause)

25 MS. FOSTER: Yes. It appears that TN number

1 211756 has been labeled twice as Exhibit 5024 and 5091.

2 HEARING OFFICER COCHRAN: Okay. So then we will
3 mark 5091 as skipped or withdrawn. Okay.

4 Mr. Simpson, I don't see any exhibits that were
5 identified in your prehearing conference; is that correct?

6 MR. SIMPSON: Well, I suppose, no, there's no
7 exhibits in there. But we could probably make those
8 petitions exhibits or -- I guess I've got a point of order
9 first, to try and determine what rules you're going to
10 proceed under. It seems that you go under the AFC rules
11 when convenient, when not, you say it's an amendment and AFC
12 rules don't apply. So it would be good for me to know,
13 moving forward, what rules govern this amendment.

14 HEARING OFFICER COCHRAN: I'm not sure I
15 understand your question, nor can I provide you with legal
16 advice.

17 MR. SIMPSON: Well, I'm not asking for legal
18 advice. I'm asking what rules the Commission will proceed
19 with? Because when discussing my motion, you said that the
20 AFC rules don't apply to an amendment. But when ruling on
21 my motion you cited an AFC rule to preclude the continuance.

22 HEARING OFFICER COCHRAN: Actually, section --

23 MR. SIMPSON: So --

24 HEARING OFFICER COCHRAN: Section 1211.7 does not
25 apply only to AFCs. It applies to any adversarial

1 proceeding in front of the Commission, including rulemaking
2 and things of that, so that's why that applies.

3 The rules regarding an amendment are found in
4 section 1769 of the Commission's Regulations, which is Title
5 20 of the Code of Regulations.

6 MR. SIMPSON: Okay. So you're -- so am I hearing
7 that you're not proceeding with AFC rules, you are
8 proceeding with rules that are outside of an AFC?

9 HEARING OFFICER COCHRAN: We're proceeding with
10 the Warren Alquist Act, the Commission's Regulations,
11 specifically as they relate to all adversarial procedures,
12 and section 1769 which specifically addresses amendments,
13 and the substantive requirements of CEQA as modified by our
14 Certified Regulatory Program.

15 MR. SIMPSON: Okay.

16 HEARING OFFICER COCHRAN: Okay. Witnesses'
17 statements were already previously identified in both the
18 Prehearing Conference Statements filed by Petitioner and
19 Applicant.

20 Mr. Simpson, I didn't see a list of witnesses that
21 you wish to offer on the topics of Air Quality, Greenhouse
22 Gas and Public Health, except for yourself; is that correct?

23 MR. SIMPSON: That's correct.

24 HEARING OFFICER COCHRAN: Thank you.

25 Let's talk now then about the specific topics that

1 we'll be -- I'm sorry, Ms. Foster?

2 MS. FOSTER: We have two additional exhibits we
3 wanted to add to the exhibit list since the filing of the
4 Prehearing Conference Statement, and those are the two
5 oppositions that were filed on December 19th.

6 HEARING OFFICER COCHRAN: Okay.

7 MS. FOSTER: And I can provide you with those
8 titles and TN numbers if you would like.

9 The first is Project Owner's opposition to Simpson
10 and Helping Hand Tools' Petition to Intervene. It's TN
11 number 214881.

12 HEARING OFFICER COCHRAN: And that would be
13 Exhibit 5122?

14 MS. FOSTER: It would be 5122, prior to the
15 revisions that we made earlier this morning.

16 HEARING OFFICER COCHRAN: We don't skip -- once
17 we've marked them, we don't skip them.

18 MS. FOSTER: Okay.

19 HEARING OFFICER COCHRAN: So we'll just add them
20 to the end.

21 MS. FOSTER: Perfect. That will be 5122.

22 HEARING OFFICER COCHRAN: Okay.

23 MS. FOSTER: And 5123 would be TN number 214887,
24 Project Owner's opposition to Simpson and Helping Hand
25 Tools' motion to continue hearing dates and motion for

1 change of venue.

2 HEARING OFFICER COCHRAN: Okay. Thank you.

3 Staff, were there other exhibits you wished to
4 identify?

5 MR. BELL: No.

6 HEARING OFFICER COCHRAN: Thank you.

7 MR. SIMPSON: And did my exhibits that I just
8 identified, the petitions, get a number?

9 HEARING OFFICER COCHRAN: Yes. If you will give
10 me the TN, we will start your exhibits' numbering at 7000.

11 MR. SIMPSON: Okay. The TN, huh?

12 HEARING OFFICER COCHRAN: Well, for example, one
13 petition bears TN 214963.

14 MR. SIMPSON: Okay.

15 HEARING OFFICER COCHRAN: Also, you can submit
16 this in writing.

17 MR. SIMPSON: Okay. You want me to read off the
18 TN numbers to you know or you have them there?

19 HEARING OFFICER COCHRAN: I'm sorry, Mr. Simpson.

20 MR. SIMPSON: TN 214965.

21 HEARING OFFICER COCHRAN: And what exhibit is
22 that?

23 MR. SIMPSON: 7001.

24 HEARING OFFICER COCHRAN: 7001? Okay.

25 MR. SIMPSON: Okay. TN 214964, TN 2 -- I'm sorry,

1 that last one would be 7002, I suppose. TN 214963.

2 HEARING OFFICER COCHRAN: Exhibit 7003?

3 MR. SIMPSON: Yes. And do I need to put my
4 motions and such as exhibits or they're already on the
5 record?

6 HEARING OFFICER COCHRAN: You can add them as
7 exhibits. That's up to you. And at this point, understand,
8 all we're doing is marking them for identification. Nothing
9 has been admitted yet.

10 MR. SIMPSON: Okay. Well, then, okay. That's all
11 for now, then.

12 HEARING OFFICER COCHRAN: Okay. Thank you.

13 In addition, the Committee notes that it has
14 identified an Exhibit 1000, which is the Final Decision from
15 2014, or did you already do that one?

16 MS. FOSTER: We've already identified that, as
17 well.

18 HEARING OFFICER COCHRAN: Okay.

19 MS. FOSTER: I can try to pull that up here.

20 HEARING OFFICER COCHRAN: I didn't see that, so --

21 MS. FOSTER: It's Exhibit Number 5114.

22 HEARING OFFICER COCHRAN: Perfect.

23 MS. FOSTER: TN number 214116.

24 HEARING OFFICER COCHRAN: Then ignore what I said
25 about Exhibit 1000.

1 MS. CASTANOS: Project Owner also has a comment
2 about witnesses.

3 HEARING OFFICER COCHRAN: Yes?

4 MS. CASTANOS: The prehearing conference filed by
5 Mr. Simpson and Helping Hand Tools identified no witnesses,
6 and only the request to cross examine the other parties'
7 witnesses. And I think I heard you say that Mr. Simpson
8 would be a witness in this case.

9 HEARING OFFICER COCHRAN: Yeah. Usually that's
10 how it works with an unrepresented intervener. You know, do
11 you want to challenge that?

12 MS. CASTANOS: I guess we would. Yes, we would
13 challenge his witness testimony.

14 HEARING OFFICER COCHRAN: On what basis?

15 MS. CASTANOS: The prehearing conference is
16 limited to cross examination of the other parties'
17 witnesses.

18 HEARING OFFICER COCHRAN: Mr. Simpson, what kind
19 of --

20 MR. SIMPSON: Yes?

21 HEARING OFFICER COCHRAN: -- testimony would you
22 want to put into the record, or do you seek only to cross
23 examine the other parties' witnesses?

24 MR. SIMPSON: I have written testimony I'd like to
25 submit.

1 HEARING OFFICER COCHRAN: Written? And when would
2 you be submitting that? It's -- yeah, the record -- well,
3 it's likely the record will close today.

4 MR. SIMPSON: I'll submit it today, then.

5 HEARING OFFICER COCHRAN: Okay. The problem is
6 that the time to submit testimony passed before your
7 petition to intervene. And it's one thing for you to make
8 statements of fact of which you have personal knowledge her
9 today when you're subject to cross examination. It's a
10 different issue when you submit written testimony that then
11 you cannot be cross examined on by the other parties.

12 So during the evidentiary hearing --

13 MR. SIMPSON: How about if I submit it before the
14 hearing? How's that?

15 HEARING OFFICER COCHRAN: I don't know that the
16 other parties would have time to develop their cross
17 examination. I think what we'll have to do is, during the
18 evidentiary hearing, we'll have to see -- I'll be looking
19 for an offer of proof from you as to what the nature of your
20 testimony is going to be, and then we'll have to rule on any
21 objections that the parties may make. But that is an area
22 that we usually handle during the evidentiary hearing.

23 So at this point, hold steady and we'll talk about
24 the best way.

25 I think Mr. Bell wanted to say something, or did I

1 misread your body language?

2 MR. BELL: You covered it.

3 HEARING OFFICER COCHRAN: Thank you. So -- I'm
4 sorry. Go ahead. Okay.

5 Now let's talk about evidentiary hearing topics.

6 Mr. Lee, if you could pull up the little handy
7 chart I made? Okay.

8 At the November 14 prehearing conference, we
9 identified some areas as being in dispute and some as not
10 being in dispute. And in addition, the parties have now
11 filed updated areas where they think there is dispute.

12 Specifically, at the prehearing conference the
13 following issues were identified as needing time, which is
14 not going to match the list that you see here, but we talked
15 about Traffic and Transportation, Soil and Water Resource,
16 pending the receipt of briefing on the issue relating to the
17 water supply assessment that has now been received, Land
18 Use, Visual Resources, Biological Resources, Cultural
19 Resources, and Geological and Paleontological Resources.

20 On those last three the question was specifically
21 related to three comparable Conditions of Certification,
22 Bio-1, Cul-1 and Pal-3, which related to the appointment of
23 monitors. And during the prehearing conference on November
24 14, there was discussion that the parties were willing to
25 submit on the written testimony already received. And I

1 believe that the Committee agrees and will not be requiring
2 live testimony on those subjects today.

3 So, Ralph, if you could -- however, there's one
4 caveat. On Paleontological Resources, there is still an
5 issue about, I believe it's Geo-1, which has to do with the
6 Tsunami Management Plan. And there is a specific question
7 the Committee has about whether that Tsunami Management Plan
8 is a law, ordinance, regulation or standard? And I thought
9 that there was some disagreement about that among the
10 parties. Am I correct about that, or has that issue been
11 resolved?

12 MS. FOSTER: This is Project Owner's
13 representative.

14 We still challenge Geo-3, I believe, as proposed
15 by Staff as not being required by LORS.

16 HEARING OFFICER COCHRAN: Okay. And, Staff, do
17 you --

18 MR. BELL: Yeah. That's Staff's recollection,
19 too. I note that in our Prehearing Conference Statement
20 that we identified Geo-3 as a matter that's still in
21 dispute.

22 HEARING OFFICER COCHRAN: Okay.

23 MR. BELL: You did have me scrambling, looking for
24 Geo-1. I thought I had missed something.

25 HEARING OFFICER COCHRAN: I'm sorry. That was --

1 I was misremembering, so --

2 MR. BELL: That's okay. No, Geo-3 does remain in
3 dispute.

4 HEARING OFFICER COCHRAN: They all blur in my
5 head, so --

6 MR. BELL: But I would say that that changes the
7 stance that we were prepared to submit on the documents that
8 have already been filed, on the testimony that's already
9 been filed, unless, of course, Applicant wants to cross
10 examine our witness. We could make that witness available
11 for that. But --

12 MS. FOSTER: Project Owner concurs that it can be
13 adjudicated on the written testimony that's already been
14 provided.

15 MR. BELL: There were two other matters, as well,
16 if I may, that are similarly situated but for different
17 reasons, Visual Resources and Compliance Conditions. I
18 believe that those two matters are where we can simply agree
19 to disagree. And Staff was prepared to submit those on the
20 pre-filed evidence, as well.

21 HEARING OFFICER COCHRAN: Applicant?

22 MS. FOSTER: Project Owner agrees with those, as
23 well.

24 And we would note that the list that's on the
25 screen does not show Compliance on the topics in dispute

1 side --

2 HEARING OFFICER COCHRAN: right.

3 MS. FOSTER: -- and Compliance should be over
4 there. But, yes, it's Com-4, Com-3 and Com --

5 HEARING OFFICER COCHRAN: Right. Which is why --

6 MR. BELL: 15.

7 MS. FOSTER: -- -15, I believe.

8 MR. BELL: Yes.

9 HEARING OFFICER COCHRAN: Which is why I put them
10 in the not disputed, because I thought that there had been
11 agreement on the proposed language changes last time.

12 MR. BELL: We did agree, but we agreed to
13 disagree.

14 HEARING OFFICER COCHRAN: Oh, okay. I had it just
15 that we were all agreeing. Okay.

16 COMMISSIONER MCALLISTER: This was the issue that
17 sort of the underlying reasons you disagreed on but the
18 outcome, you were all hunky-dory with?

19 MS. FOSTER: No. There are still proposed
20 changes.

21 COMMISSIONER MCALLISTER: That was Visual
22 Resources?

23 MS. FOSTER: That's Visual.

24 COMMISSIONER MCALLISTER: Okay.

25 MS. FOSTER: Vis-1 --

1 COMMISSIONER MCALLISTER: Okay.

2 MS. FOSTER: -- we agree on the language.

3 COMMISSIONER MCALLISTER: Okay. Right.

4 MS. FOSTER: But for Com-3, -4 and -15, there's
5 still some disagreement regarding language.

6 COMMISSIONER MCALLISTER: Okay.

7 MS. FOSTER: And it's set forth in our opening
8 testimony and Staff's rebuttal and Prehearing Conference
9 Statement.

10 COMMISSIONER MCALLISTER: Okay.

11 MS. FOSTER: So --

12 HEARING OFFICER COCHRAN: Okay.

13 MR. BELL: Of course, it would assist the
14 Committee to make a decision, we can always have our
15 witnesses available for questions in possibly a panel
16 format. But I'm not sure that Staff or the Applicant had
17 any cross examination for each other's witnesses.

18 COMMISSIONER MCALLISTER: Okay. So I just want to
19 make sure we have all the basis on the record for making a
20 decision and putting together the PMPD. So if you don't
21 need to bring to light new discussion, then that's fine.

22 HEARING OFFICER COCHRAN: So the, Mr. Lee, if you
23 could move Visual, Biological Resources and Cultural
24 Resources to the areas not in dispute? You see, I have Land
25 Use there twice because it's my favorite. You can eliminate

1 one of the Land Uses in the in dispute.

2 I also think that Land Use is no longer in
3 dispute; is that correct?

4 MS. FOSTER: That is correct. And we would like
5 to clarify.

6 The topics not in dispute list, do you mean that
7 these topics will not require live testimony, even though
8 some of them still remain --

9 HEARING OFFICER COCHRAN: Correct.

10 MS. FOSTER: -- in dispute? Okay.

11 HEARING OFFICER COCHRAN: Right.

12 MS. FOSTER: Yes, Land Use is no longer in
13 dispute, but Noise is now in dispute.

14 HEARING OFFICER COCHRAN: Right. I hadn't gotten
15 that far. I was -- because before, I don't think there was
16 an issue about Noise and now there is an issue about
17 Noise --

18 MS. FOSTER: That's correct.

19 HEARING OFFICER COCHRAN: -- based on what had
20 happened at the prehearing conference and some of the
21 answers to the comments submitted by the City of Huntington
22 Beach and the Committee during the prehearing conference on
23 the 14th. So we were going to be moving things back and
24 forth.

25 So if you could put Land Use and Geo/Paleo into

1 the not disputed?

2 I also believe that we have received all of the
3 information on Soil and Water so that Soil Water is no
4 longer in dispute; is that correct?

5 MS. FOSTER: That is correct.

6 MR. BELL: Correct.

7 HEARING OFFICER COCHRAN: Okay. However, Noise
8 and Vibration now need to move to topics in dispute because
9 of Condition of Certification Noise-6; is that correct?

10 MS. FOSTER: That is correct.

11 MR. BELL: Yes.

12 HEARING OFFICER COCHRAN: And then I believe that
13 Mr. Simpson identified Greenhouse Gas, Air Quality and
14 Public Health as being in dispute. And when we say in
15 dispute that is requiring live testimony; is that correct,
16 Mr. Simpson?

17 MR. SIMPSON: Yes. And I'm not sure if I have the
18 opportunity to opine on the other issues, but -- the other
19 issues that are in dispute also?

20 HEARING OFFICER COCHRAN: No, you do not. Your
21 participation is limited to Greenhouse Gas, Air Quality and
22 Public Health.

23 MR. SIMPSON: And do you consider Noise to be part
24 of the Public Health?

25 HEARING OFFICER COCHRAN: No. Noise is a separate

1 topic, Noise and Vibration.

2 MR. SIMPSON: If it doesn't affect Public Health,
3 what does it affect?

4 HEARING OFFICER COCHRAN: Well, Noise and
5 Vibration has to do with the project's potential to create
6 noise and vibration and how those are dealt with. Public
7 Health is a different area. And your Petition to Intervene
8 specified Greenhouse Gas, Air Quality and Public Health.
9 You can always offer public comment. But in terms of being
10 able to question witnesses or offer evidence, you are
11 limited to Greenhouse Gas, Air Quality and Public Health.

12 MR. SIMPSON: Okay. I guess my contention is
13 still that noise is a Public Health issue.

14 HEARING OFFICER COCHRAN: So noted, but it is
15 handled separately, and it is always handled separately in
16 the Presiding Member's Proposed Decisions that we issue,
17 so --

18 MR. SIMPSON: I'd like to make a motion. I'd like
19 to make a motion that Noise be included in my intervention
20 opportunity as it addresses Public Health.

21 HEARING OFFICER COCHRAN: Okay. And what is your
22 basis there?

23 MR. SIMPSON: Noise effects public health.

24 HEARING OFFICER COCHRAN: Okay. Public Health is
25 usually broader health. And thank you for your motion. But

1 Noise is usually much more limited in terms of it's the
2 neighbors near the project. And my understanding is that
3 you don't live near the project; is that correct?

4 MR. SIMPSON: No. But petitioners that signed my
5 petition live near the project. So my organization has
6 members in the area.

7 HEARING OFFICER COCHRAN: Do either Staff or
8 Applicant have a position?

9 MS. FOSTER: We would oppose expanding the
10 intervention to include Noise on the grounds that there's no
11 good cause for the late intervention on Noise as it was a
12 topic that was included in the Part 1 of the FSA. And the
13 Intervener had adequate opportunity to timely intervene with
14 respect to Part 1.

15 HEARING OFFICER COCHRAN: Sorry, Mr. Bell.

16 MR. BELL: Okay. Staff, likewise, opposes
17 allowing Intervener Simpson to broaden the scope of his
18 participation in these proceedings. We have a late-filed
19 Petition to Intervene that's been granted on a limited
20 basis. But just because he forgot to include another topic
21 area in his original petition, there's no reason on the day
22 of the hearing to allow him to expand the scope of his
23 participation.

24 MR. SIMPSON: And if I may respond?

25 HEARING OFFICER COCHRAN: Yes, please.

1 MR. SIMPSON: Thank you. Noise just became a
2 disputed issue. Just now, two minutes ago, it changed from
3 an issue that you're in agreement to a disputed issue. So I
4 don't know how I could have foreseen that --

5 HEARING OFFICER COCHRAN: Part 2 --

6 MR. SIMPSON: -- or how I could conceive that
7 Noise wouldn't be encompassing Public Health. I mean, we're
8 not talking about noise because it sounds pretty. We're
9 talking about noise because it would affect public health.
10 So it's not an expansion of my intervention, it's a
11 clarification, the admission that noise has an effect on
12 public health. Simple.

13 HEARING OFFICER COCHRAN: Is there anything else,
14 Mr. Simpson?

15 Is there any --

16 MR. SIMPSON: No.

17 HEARING OFFICER COCHRAN: -- public comment on
18 this issue?

19 Mr. Lee, if you could un-mute everyone?

20 Do I have any public comment on the issue of Mr.
21 Simpson's ability to intervene on the issue of Noise?

22 Seeing none, I think what the Committee is going
23 to allow is to allow Mr. Simpson to cross examine witnesses
24 on the Noise topics that are presented today. However, my
25 understanding is that the only issue in dispute regarding

1 Noise is new Condition of Certification Noise-6 which deals
2 specifically with construction worker noise at the Plains
3 All American Tank site in sort of preconstruction-hour
4 staging. I'm trying to frame the issue as best I can. And
5 that was included in Part 2 of the FSA because there was a
6 discussion, as well responses to comments received from the
7 City of Huntington Beach.

8 And so, Mr. Simpson, your participation is
9 granted, but only as to cross examination on the very narrow
10 issue before us today, which is Noise-6; do you understand?

11 MR. SIMPSON: Yes.

12 HEARING OFFICER COCHRAN: Okay. Thank you. And
13 again, I would reiterate that it is standard in Energy
14 Commission analyses, whether it's the Preliminary Staff
15 Assessment, the Final Staff Assessment, the Presiding
16 Member's Proposed Decision or the Final Decision by the
17 Commission, that Noise and Vibration are standalone
18 section -- is a standalone section from Public Health. It's
19 separate. So that's also part of the reason for denying
20 that motion. And again, we thank you for your
21 participation.

22 So is there a preference -- so the topics in
23 dispute now are Traffic and Transportation, Greenhouse
24 Gases, Air Quality, Public Health and Noise-6.

25 (Colloquy)

1 HEARING OFFICER COCHRAN: Ralph, if you could cut
2 Resources, which is the bullet under Traffic and Trans?

3 Does anyone have a preference as to the order in
4 which we take these?

5 MS. FOSTER: Project Owner identified in its
6 Prehearing Conference Statement the request for an informal
7 discussion, a panel discussion, with Noise-6 and Trans-3,
8 because the changes that were made in Staff's supplemental
9 testimony and FSA Part 2, and those two conditions are
10 similar. And we have witnesses that will be participating
11 via telephone.

12 HEARING OFFICER COCHRAN: Okay.

13 MS. FOSTER: So our request would be that when
14 those discussions are held, that they're held in tandem with
15 one another.

16 HEARING OFFICER COCHRAN: Okay. And I would note
17 that Traffic and Trans is beyond. I thought that Applicant
18 had identified both Condition of Certification Trans-3 and
19 Trans-8.

20 MS. FOSTER: Yes. Trans-8 also. It's a minor
21 additional change we've proposed. But the bulk of the
22 conversation, I believe, is going to relate to the changes
23 to Trans-3.

24 HEARING OFFICER COCHRAN: Okay. And so -- but
25 there are also some other, broader issues in Traffic and

1 Trans as set forth in the memo that the Committee issued
2 about the availability of witnesses to talk about the
3 intersection improvements at Magnolia and Banning.

4 So I understand that you want to take Traffic and
5 Trans and Noise together. But do you have a preference then
6 as to do you want to do those first, last?

7 MS. FOSTER: I think we would like to do those
8 first so that --

9 HEARING OFFICER COCHRAN: Okay.

10 MS. FOSTER: -- we can then release those
11 witnesses.

12 HEARING OFFICER COCHRAN: Okay. So we'll do
13 Traffic, Trans, Noise, and then Air Quality, Greenhouse Gas
14 and Public Health, in that order.

15 COMMISSIONER MCALLISTER: And, Ralph, just to
16 clean up, so that Resources at the very bottom of the not in
17 dispute is actually part of Paleontological -- Geological
18 and Paleontological Resources. Thank you.

19 HEARING OFFICER COCHRAN: Thank you. So --

20 MR. SIMPSON: This is Rob Simpson.

21 HEARING OFFICER COCHRAN: Yes?

22 MR. SIMPSON: If we can pull the areas that I'm
23 able to participate in together at a specific time, then
24 that would make it easier for me to participate.

25 HEARING OFFICER COCHRAN: Well, you have four out

1 of the five, so we will make it clear which topic area we're
2 on as we proceed.

3 (Colloquy)

4 COMMISSIONER MCALLISTER: But they are currently
5 consecutive. We're starting with Traffic and Trans, and
6 then after the four are following.

7 HEARING OFFICER COCHRAN: Correct.

8 MR. SIMPSON: Thank you.

9 HEARING OFFICER COCHRAN: And I want to make sure
10 that the parties understand that on those topic areas that
11 we have identified as being undisputed, that all testimony
12 will be submitted by declaration and that live testimony of
13 witnesses is unnecessary; is that -- does everyone
14 understand that?

15 MS. FOSTER: Submitted by written testimony and
16 declaration?

17 HEARING OFFICER COCHRAN: Correct.

18 MS. FOSTER: Yes.

19 MR. BELL: Yes.

20 HEARING OFFICER COCHRAN: Mr. Simpson?

21 MR. SIMPSON: You know, I didn't quite hear what
22 you said there.

23 HEARING OFFICER COCHRAN: Okay. So we have a
24 series of undisputed topics. All testimony will be
25 submitted by declaration and written testimony, and that

1 live testimony of the witnesses is unnecessary; do you
2 understand?

3 MR. SIMPSON: Well, of course, I'm disputing all
4 areas, but I can't control what you'll do.

5 HEARING OFFICER COCHRAN: Okay. So again, this
6 is -- your participation and intervention are to Noise-6,
7 Air Quality, Greenhouse Gases and Public Health.

8 So let's talk about the hearing procedure that we
9 will be using.

10 I'm sorry, Ms. Castanos?

11 MS. CASTANOS: Yes. Sorry. I just want to
12 clarify one more time for the record that when we say topics
13 not in dispute, it just means topics not requiring live
14 testimony?

15 HEARING OFFICER COCHRAN: Correct.

16 MS. CASTANOS: And so the nomenclature on the
17 chart that's on the screen is not --

18 HEARING OFFICER COCHRAN: Right.

19 MS. CASTANOS: -- exactly precise.

20 HEARING OFFICER COCHRAN: It just -- well, we talk
21 about in dispute as being requiring live testimony, that's
22 all. That's shorthand as opposed to writing all of that.
23 Okay.

24 As set forth in the notice for today's events and
25 as agreed to at the November 14th prehearing conference, the

1 informal hearing procedure will be used today. This means
2 that we will not take time to describe the exhibits that are
3 moved into evidence or to describe topics covered by
4 declaration or written testimony.

5 Regarding direct examination, we will deem all
6 parties' opening and rebuttal testimony as their direct
7 examination. There is no need to discuss experts' resumes
8 if we have them in writing and there's no objection to the
9 witness as an expert. If you do have an objection, please
10 state the objection first and avoid a speaking objection.
11 What a speaking objection is, is when you sort of walk your
12 way into the basis for why you think that that is
13 inappropriate evidence to be received by the Committee.

14 Rather than taking time with the usual question
15 and answer format, the Committee will call all witnesses to
16 testify as a panel. The testimony may include discussions
17 among the panel without the lawyers asking questions.
18 Instead, the Committee will ask the questions of the panel.

19 If time permits the Committee may allow
20 questioning of the panel by the parties. But if the parties
21 appear to be unduly confrontational, combative or otherwise
22 unproductive, the committee will take over the questioning.

23 The discussion will then continue until the
24 Committee determines that it has heard enough evidence. If
25 this process proves difficult or unproductive, the Committee

1 may revert to standard formal examination in their sole and
2 absolute discretion.

3 The Committee may allow cross examination, but
4 there will be no time for thinking on the fly. If you can't
5 come up with a good cross examination in the quiet of your
6 workspace, you will not be able to do any better in the heat
7 of the hearing today.

8 Have your cross examination written out and be
9 prepared to tell the Committee how many questions you have
10 before you begin your cross. No time for floundering, no
11 fishing, or else the Committee will curtail your cross
12 examination. The legal definition of a moment is ten
13 seconds. I didn't write that, but someone else did.

14 Be ready to state the page number and line of any
15 testimony you seek to cross examine the witness about.

16 Allow the witness to finish their answer before
17 you proceed to your next question. This is also not a time
18 to be argumentative with the witness. If you disagree, you
19 have a chance to do that later.

20 Admonish your witnesses not to talk over each
21 other for the benefit of the court reporter's transcript.

22 So what will happen then, to be clear, is that we
23 will call the panel, swear the panel. We'll ask Staff what
24 the factual disputes under this topic are and list any
25 subtopics. We'll seek then Applicant's list, as well as

1 Intervener's statement of issues. And then we'll talk about
2 each subtopic in order.

3 We will ask the panel to explain what the fact or
4 framing of the issue is, as well as determine whether the
5 other panelists agree or disagree. And then we'll ask for a
6 response from the other side's panel. We'll take questions
7 from the Committee, and then we'll get questions from the
8 lawyers or Mr. Simpson, and move on to the next topic.

9 Does everyone understand the procedure to be used
10 today?

11 MS. FOSTER: Yes.

12 MR. BELL: Yes. I did have one question on behalf
13 of Staff.

14 HEARING OFFICER COCHRAN: Yes.

15 MR. BELL: And that is will the Committee be
16 allowing Mr. Simpson to actually testify today?

17 HEARING OFFICER COCHRAN: I think that I can't
18 predict that because I don't know what he's going to try to
19 say. As we talked about previously, I think we're going to
20 have to kind of deal with that as it occurs, but not on
21 Noise-6. Noise-6 is a known quantity, that's only cross
22 examination. I mean, as you understand, Mr. Bell, when
23 we're dealing with a pro per intervener, it's more difficult
24 than with the trained attorneys in the room who know the
25 difference between asking a question and testifying

1 themselves. So it --

2 MR. BELL: Very well aware. It's only that, you
3 know, the Committee has conducted these proceedings thus far
4 in a very ordered fashion. The parties have been required
5 to submit their testimony far in advance.

6 I note that Madam Hearing Adviser has indicated
7 that the parties should say how many questions we have on
8 cross examination. And, well, not knowing what our
9 Intervener is going to say, I have no idea how many
10 questions on cross examination I may have for him, if in the
11 event he's allowed to testify. I can promise that you will
12 not hear me say, I have just one question.

13 HEARING OFFICER COCHRAN: I appreciate that, Mr.
14 Bell, nor would I expect any lawyer to ever say I only have
15 one question.

16 MR. BELL: Because it would be a lie.

17 HEARING OFFICER COCHRAN: There are always
18 subparts. It could still be one question with subparts,
19 so -- or it could be discuss, that's my favorite question.

20 So, Mr. Simpson, we will be looking, again as I
21 indicated previously, for an offer of proof from you. In
22 other words, we're going to need to hear from you what you
23 want to testify about. And then we will take any objections
24 from the other parties as to your ability to testify so that
25 we'll then be able to have a handle on sort of the scope of

1 cross examination.

2 When I'm talking about the number of questions you
3 might have, that's much more for the known testimony that
4 you already have, Mr. Bell. But I appreciate the
5 clarification.

6 MR. BELL: Thank you.

7 HEARING OFFICER COCHRAN: Thank you.

8 So, Mr. Simpson, did you understand the process
9 that will be used this afternoon during the evidentiary
10 hearing?

11 MR. SIMPSON: To some extent.

12 HEARING OFFICER COCHRAN: Okay. So --

13 (Colloquy)

14 HEARING OFFICER COCHRAN: So moving now, then the
15 final topic I wanted to touch on was briefing schedule. I
16 don't think that either Staff or Applicant had sought to
17 further brief the Committee. I know that we had some
18 prehearing briefing, as discussed, specifically as it
19 related to the Coastal Commission issue.

20 And so, Mr. Simpson, did you want to brief any of
21 the issues on Air Quality, Greenhouse Gas or Public Health?

22 MR. SIMPSON: Sure.

23 HEARING OFFICER COCHRAN: Okay. Do --

24 MR. SIMPSON: I'll also be briefing other issues,
25 as I see fit.

1 HEARING OFFICER COCHRAN: Well, your
2 participation, again, even in briefing is limited to Air
3 Quality, Greenhouse Gas and Public Health. You can make
4 comments, but that's not the same as legal briefing. And
5 usually we'll identify legal briefing as the application of
6 the law to the facts as developed in this case.

7 MR. SIMPSON: And how do you see that different as
8 comments?

9 (Off Microphone Colloquy)

10 COMMISSIONER MCALLISTER: Hang on just a minute.

11 MR. SIMPSON: Okay.

12 (Off Microphone Colloquy)

13 HEARING OFFICER COCHRAN: So if you choose to
14 write on other topics than are covered by your intervention,
15 Mr. Simpson, we'll obviously read it. But, you know, again,
16 legal briefing for us is a little bit different than the
17 comments that we normally get after the PMPD is published.

18 And so I think what we'll do is we'll hold off on
19 a discussion of briefing until after we hear the evidence
20 and find out what legal briefing might be required, so --

21 MR. SIMPSON: Okay. So you're saying you'll
22 further define what your distinction between legal briefing
23 and public comment is?

24 HEARING OFFICER COCHRAN: Well, I think what I'll
25 be asking for is an idea of what we think legal briefing

1 might be required for. Usually there are specific questions
2 that the parties and/or the Committee asks. So we'll ask
3 about the treatment of a report received from another
4 agency, or we'll ask what the law is regarding Tsunami
5 Management Plans, or whatever the issue is, and that's the
6 legal briefing, as opposed to comments which, you know, are
7 a little bit different.

8 But again, until we know what the actual issues
9 are, it's hard to sort of preordain what a briefing schedule
10 might look like. So we'll bring up briefing schedule again
11 during the evidentiary hearing.

12 At this point, are there any public comments?

13 We need to un-mute everyone.

14 Any public comments? Seeing none --

15 (Colloquy)

16 COMMISSIONER MCALLISTER: Okay. So this is
17 Commissioner McAllister. We're going to adjourn the
18 prehearing conference. We noticed the evidentiary hearing
19 for noon. We're going to actually push that to 12:15 to
20 give everybody a chance to get some lunch, if they need it
21 and need to leave the building. So that gives us about 35
22 minutes to get back here, and we will open the evidentiary
23 hearing then. Thanks everybody.

24 HEARING OFFICER COCHRAN: The WebEx will remain
25 open, so you don't have to hang up, sign in again, so you

1 can just do it that way.

2 (The prehearing conference concluded at 11:42 a.m.)

3 (The evidentiary hearing begins at 12:21 p.m.)

4 COMMISSIONER MCALLISTER: Thanks for bearing with
5 us, and hope everybody got a good lunch. And we are
6 beginning the evidentiary hearing on the Petition to Amend
7 the Huntington Beach Energy Project.

8 I want to just go through the formalities here of
9 introducing everyone. Same folks on the dais, minus Le-
10 Quyen Nguyen at the moment but she will be back. And I'll
11 just go from my right to my left. Le-Quyen Nguyen, who will
12 be showing up shortly, and Jennifer Nelson, Advisers to
13 Commissioner Douglas, Commissioner Karen Douglas, Hearing
14 Officer Susan Cochran, myself, Andrew McAllister, the
15 Presiding Member, Commissioner Douglas is the Associate
16 Member. To my left, Brian Early, my Adviser. And then
17 Kristy Chew at the far -- your far right, my far left, the
18 Technical Adviser to the Commission on Siting Matters.

19 And then I want to point out, back behind you to
20 my left is the Hearing Adviser Alana Mathews -- I'm sorry,
21 Public Adviser, definitely Public Adviser, although Alana
22 does have a legal background and understands the process.
23 And our newest addition Rene, who is on the -- who works
24 with Alana as a hearing adviser or as the -- oh, there I go
25 again -- as the Assistant Public Adviser. So please feel

1 free to use them as a resource for process questions and
2 participation and facilitation.

3 Let's see, let's go through the parties, starting
4 with the Applicant, if you can introduce yourself?

5 MR. O'KANE: Thank you. This is Stephen O'Kane,
6 Vice President for AES Huntington Beach Energy, the
7 Applicant. And I'll let my counsel and consultants
8 introduce themselves.

9 MS. FOSTER: Melissa Foster with Stoel Rives,
10 Counsel for Project Owner AES Huntington Beach Energy.

11 MS. CASTANOS: Kristen Castanos with Stoel Rives,
12 Counsel for the Project Owner.

13 MR. SALAMY: Jerry Salamy, CH2M Hill, Project
14 Manager.

15 COMMISSIONER MCALLISTER: Staff?

16 MR. BELL: Kevin W. Bell, Senior Staff Counsel on
17 behalf of Staff. John Heiser will be joining me shortly
18 here at counsel table.

19 COMMISSIONER MCALLISTER: Great. And we have one
20 Intervener.

21 Mr. Simpson, do you want to introduce yourself?
22 We'll still working through the WebEx, so hold on just a
23 second.

24 You should be -- is he un-muted?

25 You should be un-muted, Mr. Simpson. Go ahead and

1 introduce yourself.

2 MR. SIMPSON: Hi. This is Rob Simpson,
3 Intervener, with Helping Hand Tools.

4 COMMISSIONER MCALLISTER: Okay. Thanks for being
5 with us.

6 Are there -- let's see, is South Coast AQMD still
7 with us?

8 MR. CHANDAN: Yes, we are still here. This is
9 Bhaskar Chandan and Chris Perry.

10 COMMISSIONER MCALLISTER: Terrific. Thank you for
11 being with us.

12 Are there any representatives from the California
13 Coastal Commission?

14 Could we mute folks there?

15 Not hearing from the Coastal Commission.

16 Representative from the City of Huntington Beach,
17 could you introduce yourself?

18 MS. JAMES: Jane James, Planning Manager,
19 Community Development Department, City of Huntington Beach.

20 COMMISSIONER MCALLISTER: Thanks for being with
21 us.

22 Any other federal, state or local agencies
23 represented here in the room or on the phone?

24 Not hearing any, any Native American tribes or
25 nations?

1 Are there any other agencies or elected officials,
2 public officials of any sort, on the line or in the room?

3 Okay, I think we've taken account of everyone.
4 And I will take the opportunity to thank everybody for being
5 here, and also to pass the proceedings off the Hearing
6 Officer Susan Cochran.

7 HEARING OFFICER COCHRAN: Thank you and good
8 afternoon. Today's evidentiary hearing is an administrative
9 adjudicatory proceeding to receive evidence into the formal
10 evidentiary record from the parties.

11 The purpose of the hearing is to obtain evidence
12 on the Petition to Amend the Huntington Beach Energy
13 Project. This evidence should relate to disputed issues as
14 we've described them; in other words, those areas that we
15 identified during the prehearing conference as requiring
16 live testimony. It does not necessarily mean that the
17 parties are in concurrence on those topics we don't describe
18 or that we're not going to take evidence on today. It's
19 just that they have agreed to submit their dispute on the
20 basis of the written declarations and testimony previously
21 submitted by them.

22 Issues relating to the wording of Conditions of
23 Certifications may be disputed because of the connection
24 between Conditions of Certification and mitigation of
25 environmental impacts and our compliance with LORS. In

1 other words, if the condition is changed, does it still meet
2 the goal of reducing impacts or ensuring compliance?

3 Only the parties who are the Applicant,
4 Interveners and Energy Commission Staff, and in this case we
5 have a single intervener, Rob Simpson, Helping Hand Tools,
6 may present evidence for introduction into the formal
7 evidentiary record. The formal evidentiary record is the
8 only evidence upon which the Commission and this Committee
9 may base a decision under law. Technical Rules of Evidence
10 may be relied upon as guidance in these proceedings.

11 However, any relevant, non-cumulative evidence may
12 be admitted if it is the sort of evidence upon which
13 responsible persons are accustomed to rely on in the conduct
14 of serious affairs.

15 Testimony offered by the parties shall be under
16 oath.

17 Each party has the right to present witnesses,
18 introduce exhibits, and to rebut evidence of another party,
19 subject to any restrictions on their participation, for
20 example the Petition to Intervene with Mr. Simpson.

21 Questions of relevance will be decided by the
22 Committee.

23 Hearsay evidence may be used to supplement or
24 explain other evidence but shall not be sufficient in itself
25 to support a finding that the Committee or the Commission

1 may be required to make.

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

6 The official record of this proceeding includes
7 sworn testimony of the parties' witnesses, whether live or
8 by declaration, the reporter's transcript of the evidentiary
9 hearing, the exhibits received into evidence, briefs,
10 pleadings, orders, notices and comments submitted by members
11 of the public. The Committee's decision will be based
12 solely on the record of competent evidence in order to
13 determine whether the project complies with applicable law.

14 Members of the public who are not parties are
15 welcome and invited to observe the proceedings. There will
16 be also an opportunity for the public to provide comment at
17 the conclusion of the evidentiary hearing today. Depending
18 upon the number of persons who wish to speak, the Committee
19 may have to limit the time allowed for each speaker.

20 This public comment period is intended to provide
21 an opportunity for persons who attend the hearing, either in
22 person or telephonically, to address the Committee. It is
23 not an opportunity to present supplemental written, recorded
24 or documentary materials. However, such materials may be
25 docketed and submitted to the Energy Commission for

1 inclusion in the administrative record. Members of the
2 public may submit written comments, if they would prefer
3 that than speaking directly to the Committee.

4 And again, Ms. Mathews, the Public Adviser is
5 present to assist those. And her contact information is
6 also contained in today's Notice of Evidentiary Hearing for
7 those members of the public who need help participating.

8 If you would prefer not to speak publicly but
9 would like to submit a written comment, the blue card has a
10 space to do it.

11 So I don't know if you brought any blue cards with
12 you, Madam Public Adviser?

13 Oh, she did. Excellent.

14 The exhibit list is available on the electronic
15 docket. Today we discussed during the prehearing conference
16 additional exhibits. Those have not all yet been docketed,
17 but they are noted for identification according to the
18 numbers discussed at this morning's prehearing conference.

19 Is there any objection to the introduction of
20 exhibits on the exhibit list, as well as the exhibits
21 identified during the prehearing conference earlier today?

22 And to remind you all, we have the following new
23 exhibits in a list that I don't have handy. I hide things
24 from myself. I have no idea what I did with it, with my
25 notepad that I had. I probably took it up to my office and

1 left it there. That's fine. We'll make it work.

2 Are there any objections to those exhibits?

3 MS. FOSTER: Project Owner does not have any
4 objections to the exhibits we discussed during the
5 prehearing conference.

6 HEARING OFFICER COCHRAN: Okay.

7 MR. BELL: No objection.

8 HEARING OFFICER COCHRAN: Mr. Simpson?

9 MR. SIMPSON: I have no objections, but I do have
10 a request.

11 HEARING OFFICER COCHRAN: Yes?

12 MR. SIMPSON: We have, I believe, Jason Pyle, the
13 intervener from the prior proceedings, on the line, and he'd
14 like to make a public comment but I wonder if he can go
15 first today so that he can get back to his job.

16 HEARING OFFICER COCHRAN: This is not the time for
17 public comment right now. This is the introduction.

18 You can always submit -- Mr. Pyle, you can always
19 submit your comment in writing and it will be received
20 through the e-commenting and will be read by the Public
21 Adviser. Can you email it to the Public Adviser? I'm
22 looking at the Public Adviser.

23 MR. PYLE: Good afternoon, Commission. I'm not
24 sure if I'm live or if you have me muted, so I'll just -- I
25 appreciate your time.

1 HEARING OFFICER COCHRAN: Actually.

2 MR. PYLE: And I'm just waiting to see if you can
3 hear me or not.

4 HEARING OFFICER COCHRAN: Actually, Mr. Pyle, we
5 can hear you just fine, but we need you to submit your
6 comment in writing, if you could.

7 MR. PYLE: Fair enough.

8 HEARING OFFICER COCHRAN: Thank you.

9 MR. PYLE: I can do that. Thank you.

10 HEARING OFFICER COCHRAN: Thank you.

11 Do you want it to go to Public Adviser?

12 Mr. Pyle, if you could address it to --

13 MR. PYLE: Yes, ma'am?

14 HEARING OFFICER COCHRAN: --

15 publicadviser@energy.ca.gov, Ms. Mathews will then receive
16 it and be able to read it during the public comment portion
17 of today's meeting.

18 MR. PYLE: Oh, okay. It would be lengthy. And if
19 that's the direction you would like, I will try that and
20 then get that completed. I will notice that right now that
21 given the poor notices from the Committee to people in this
22 area and myself, that I doubt I'll be able to get all that
23 obtained in that short a time period, and that we'll
24 probably be raising objections through any legal proceedings
25 because there's been no noticing that we've been able to

1 receive in the area immediately affected by this project.

2 So it's your determination, if you'd like me to do
3 that or if you'd like me to speak.

4 HEARING OFFICER COCHRAN: Actually, we would
5 prefer that you submit it in writing. This is not the time
6 for public comment. That's not on the agenda right now.

7 MR. PYLE: All right. At least the proceedings
8 are recorded. I duly note that and understand it. Thank
9 you.

10 HEARING OFFICER COCHRAN: Thank you. Okay.
11 So no objections to the exhibit list, Mr. Simpson?
12 Then all of the exhibits previously --

13 MR. SIMPSON: No.

14 HEARING OFFICER COCHRAN: I'm sorry, go ahead.

15 MR. SIMPSON: No objections.

16 HEARING OFFICER COCHRAN: Okay. Then all of the
17 exhibits previously marked for identification are now moved
18 into evidence and are admitted.

19 MR. BELL: Staff so moves.

20 HEARING OFFICER COCHRAN: Thank you.

21 MS. FOSTER: Project Owner moves.

22 HEARING OFFICER COCHRAN: Any discussion,
23 objection? Hearing none or seeing none, then all of the
24 exhibits are hereby admitted into evidence.

25 (Whereupon, Staff Exhibits 6000 through 6002 are

1 admitted.)

2 (Whereupon, Applicant Exhibits 5001 through 5012, 5014
3 through 5090, 5092 through 5123 are admitted.)

4 (Whereupon, Intervener Exhibits 7001 through 7003 are
5 admitted.)

6 HEARING OFFICER COCHRAN: The hearing process
7 today, as we explained during the prehearing conference and
8 as explained in the Notice of Prehearing Conference and
9 Evidentiary Scheduling Order and Further Orders, dated
10 December 7, '26 [sic], we'll proceed by way of an informal
11 hearing format.

12 The Committee will call all witnesses to testify
13 as a panel to testify as a panel on the topic at hand.
14 Witnesses may only testify on topics of issues within their
15 expertise. The testimony may include discussion among the
16 panel without the lawyers asking the questions. The
17 Committee will ask questions of the panel. The Committee
18 will allow questioning of the panel by the party.

19 The Committee may, in its discretion, revert to
20 the formal hearing process if the informal process does not
21 work well.

22 So at this time, we agreed that we would start
23 with Traffic and Transportation. And what I would like to
24 do is anyone in the audience or anyone online who is going
25 to testify today, please raise your right hand and be sworn.

1 And actually, Ms. James, if we could get you sworn
2 in, too, that would be helpful.

3 And I'm trusting that all of you online are duly
4 taking the oath and raising your right hand.

5 (Witnesses are collectively sworn.)

6 HEARING OFFICER COCHRAN: Okay. Please be seated.
7 Thank you very much. All witnesses have now been sworn.

8 So the topic of Traffic and Transportation is
9 first.

10 Ms. James, if you could come sit next to Mr. Bell
11 so you'll have a microphone handy and a comfortable chair to
12 sit in? Thank you very much.

13 So we'll begin with Staff and their identification
14 of issues for Traffic and Transportation.

15 MR. BELL: We have -- I'm sorry. John Hope is
16 available to testify and can explain Staff's position.

17 HEARING OFFICER COCHRAN: Thank you.

18 Mr. Hope?

19 MR. HOPE: Hi. This is John Hope with the Energy
20 Commission.

21 I guess we'll start with identifying that the
22 changes that Staff made to the Condition Trans-3 from the
23 FSA was in response to a request from the City to put,
24 essentially, some additional language to restrict the timing
25 for construction traffic. At that time, Staff provided that

1 additional language, you know, at the City's request. And
2 then subsequently, the application have requested that that
3 language be struck.

4 And so in response to that, Transmission staff
5 communicated and coordinated with the Noise staff to
6 identify if there was any way that this issue would be
7 better handled in a Noise analysis. And we came to a
8 conclusion that this issue would probably be better handled
9 in the Condition Noise-6.

10 And so at this point Staff if okay with removing
11 the previously requested language from the City.

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

13 Applicant, did you have any questions of Mr. Hope?

14 MR. O'KANE: Yeah. Stephen O'Kane with the
15 Applicant, AES Huntington Beach Energy. I'd like to add to
16 that a little bit.

17 We understood the City's concerns with respect to
18 timing of -- in particular, deliveries at that Plains All
19 American -- former Plains All American Tank site, and would
20 actually propose to keep the last line of the language which
21 would read,

22 "Timing of truck deliveries to the former Plains site,"
23 not the project site, "Timing of truck deliveries to
24 the former Plains site to occur between the hours of
25 7:00 a.m. to 8:00 p.m. on weekdays and Saturdays only."

1 HEARING OFFICER COCHRAN: Is that acceptable to
2 Staff?

3 MR. HOPE: Staff would like to ask a question, if
4 the Applicant could explain why they want to keep that
5 particular language in, and why it would only apply to the
6 All Plains site?

7 MR. O'KANE: Certainly. We need to strike the
8 earlier language with respect to construction workers
9 because I think that that -- it's our view that that would
10 be counterproductive to avoid the impact you're trying to
11 mitigate, which is queuing traffic outside of our control.
12 We need to let our construction workers get onsite before
13 their shift starts. We don't want them parking in the
14 neighborhoods, disturbing the neighborhoods. We want them
15 on our site where we can control them and we can keep them
16 quiet before any activities start. So that's why that
17 language needs to be struck.

18 But we do understand the City's concern. And
19 we would prohibit truck deliveries to our construction
20 laydown area, which is the former Plains Tank site, but not
21 to the project site. The project site itself is an existing
22 operating power plant. It runs 24/7. It already has
23 activities that happen and deliveries that happen. And we,
24 of course, will be having some nighttime deliveries to the
25 project site, in particular when we have permitted large

1 hauls that have to come in, those would be at night.

2 So the project site being the existing Huntington
3 Beach Energy -- or Huntington Beach Generating Station on
4 Newland, we would not restrict the deliveries there but we
5 would restrict them at the former Plains Tank Farm off of
6 Magnolia.

7 MR. HOPE: Thank you. And Staff is fine with
8 that.

9 HEARING OFFICER COCHRAN: Thank you very much.
10 Okay.

11 Applicant, did you have any witnesses, other than
12 Mr. O'Kane on Condition of Certification Trans-3?

13 MS. FOSTER: We have Jerry Salamy here, as well,
14 and Lisa Valdez on the phone. But at this point, we believe
15 that Trans-3 is resolved as between Staff and Project Owner.

16 HEARING OFFICER COCHRAN: Okay.

17 MR. BELL: Yeah. That's Staff's understanding,
18 as well.

19 Staff would also like to thank Ms. James for
20 making the journey up here. Her participation today helped
21 us resolve this issue, short of a more contentious
22 presentation.

23 HEARING OFFICER COCHRAN: Yes, thank you very
24 much, Ms. James. And you're about to be the star of the
25 show in just a few minutes.

1 I also recall from this morning -- so then are we
2 ready to move on then to the next topic?

3 So then the next topic that I had was Condition of
4 Certification Trans-8. And someone illuminate for me the
5 dispute.

6 MR. HOPE: This is John Hope again.

7 So this was similar to the changes that were made
8 for Trans-3 in that the City made a request for the timing
9 and the verification from 30 days to 6 months to allow for
10 them time to review and comment on the construction plans.

11 So Staff made that change subsequent to the FSA.
12 And then the Applicant has come back and made a change from
13 the six months to three months. And they added some
14 additional language, essentially for their design drawings.

15 At this point Staff if fine with the change in the
16 timing and the additional language. But we would want to
17 confer with the City, if they're okay with changing it to
18 three months?

19 HEARING OFFICER COCHRAN: Ms. James, would you
20 like to speak? And for the record, you were sworn in as a
21 witness.

22 MS. JAMES: Yes. The City concurs with the
23 requested changes to Trans-8.

24 HEARING OFFICER COCHRAN: Thank you very much.

25 Anything further on Trans-8?

1 MS. FOSTER: Nothing further from the Project
2 Owner. We appreciate the concurrence.

3 MR. BELL: And again, Staff would like to thank
4 Ms. James for weighing in on this issue. Staff is always
5 sensitive to local governmental agencies and we want to do
6 what we can to help them do what they need to do to, you
7 know, oversee what's in their jurisdiction. And this is
8 certainly appreciated. Thank you.

9 HEARING OFFICER COCHRAN: Thank you.

10 So now there was, as we discussed during the
11 prehearing conference and in the memo that went out to the
12 parties about the need for witnesses concerning the
13 intersection improvements at Magnolia Street and Banning
14 Avenue.

15 And first, I'd like to express my gratitude to
16 Staff for the explanation that they included regarding the
17 encroachment permit and the engineering. And I think the
18 Committee understands that it is appropriate for the City to
19 be in charge of an improvement that it's going to inherit.
20 So the engineering drawings and the timing of that, as we've
21 just discussed, as it relates to Trans-8, is appropriate.
22 However, I think the Committee is still concerned about the
23 discussion of the potential environmental effects of that
24 construction project, which I don't know have been
25 addressed, or at least I haven't been able to find them if

1 they have.

2 So I guess the first question I have is -- and
3 this is open to whomever -- what's the general nature and
4 scope of the improvements at Magnolia Street and Banning?

5 I would also want to know, what is the timing of
6 construction for that?

7 So I know that we just talked about a three-month
8 process for the encroachment permit, which makes sense when
9 the City is acting as, essentially, a property owner. I
10 would -- but I'm concerned a little bit about the timing
11 because this is going to be the parking lot for those
12 involved in the construction and demolition of the project.
13 And I need to know what the number of workers traveling to
14 the amended project site during construction of the
15 intersection modifications and the worker parking and
16 laydown yard might be.

17 In addition, until the improvements are completed
18 on the All American Plains Tank site -- can we just call it
19 the Tank site and everyone will know what we're talking
20 about? On the Tank site, what are the provisions for
21 parking until those intersection improvements are
22 constructed? Because it's my understanding, those
23 intersection improvements are needed to provide access to
24 the site.

25 And then finally, is there any concern that the

1 City won't be able to issue the encroachment permit that is
2 being asked for? And what happens in the event that the
3 encroachment permit isn't granted?

4 And I open that up to whomever would like to
5 speak.

6 MR. O'KANE: Stephen O'Kane with AES Huntington
7 Beach Energy. Maybe I would answer the specific questions
8 that you sent out first.

9 HEARING OFFICER COCHRAN: Certainly.

10 MR. O'KANE: And then we could move on from there
11 with some discussion.

12 The first question that you stated was timing to
13 construct the intersection modifications. For the
14 intersection itself, it will take about a month of physical
15 work which would -- and that work would include a turn lane,
16 curb cuts, traffic signalization to allow the turning and
17 the actual work in the intersection. We then also have to
18 construct a new access road on the actual property; right?
19 So that would take a month to six weeks, depending on
20 coordination, particularly the signalization piece.
21 That's -- you know, the physical work of adding a lane and
22 doing the curb cuts is actually quick and easy. Sometimes
23 it's the signalization that can take a little longer.

24 Then the next question was time to construct the
25 actual laydown yard, because trucks would go in, do a loop.

1 We would have a couple trailers onsite as warehousing. You
2 need to surface the area so it's appropriately -- it can
3 handle the weight of the vehicles, and it can also dust
4 control. So that work would take approximately three months
5 to do all the onsite work.

6 So the number of workers that would travel to the
7 amended project site during the construction of the
8 intersection modification, the workers, laydown yard,
9 intersection work would peak at about 20 contractors, 20
10 people. And the parking laydown preparation would use
11 approximately 10 to 15 people. So these would not happen
12 concurrently, they would happen sequentially. Obviously,
13 you've got to make the intersection and the entrance before
14 you can do the real work on the yard.

15 You added on to that a little bit. You were
16 asking, it was actually a pretty good question, where would
17 those workers park? So we would park those on our own site
18 on Newland, and they could just drive around to do the work.
19 We wouldn't have them parking on the City streets or in the
20 neighborhood in any way, so we could control that. So that
21 was actually good question because that was probably not all
22 that clear. Okay.

23 And then the actual number of people that would
24 park during the power plant construction, it would only peak
25 at about 100 contractors in that former tank yard during our

1 peak construction period, which would be eight months during
2 our peak construction period. If we start in the June of
3 July time frame of 2017, this would be like the winter of
4 '18-19. Eight months during that we would need overflow
5 parking. We would get -- that would be the peak numbers.
6 We'd have to have people actually park over at the Magnolia
7 area.

8 Outside of that time frame, that peak time frame,
9 all the construction parking workers would be either on our
10 site or on the Newland piece of property, which is our
11 primarily construction parking area. So the -- in terms of
12 construction worker parking, at the tank farm that's only
13 overflow during the peak times. It's primarily for
14 construction laydown and storage.

15 Everybody follow the timing and the numbers then?
16 Is that good?

17 HEARING OFFICER COCHRAN: Yes, but I do have two
18 questions.

19 MR. O'KANE: Okay.

20 HEARING OFFICER COCHRAN: When you were talking
21 about the laydown yard construction and dust control, you
22 were saying three months, that's also the construction
23 worker parking area?

24 MR. O'KANE: Yes. Yes.

25 HEARING OFFICER COCHRAN: Okay.

1 MR. O'KANE: Sorry. That whole tank --

2 HEARING OFFICER COCHRAN: And then --

3 MR. O'KANE: -- former tank area site preparation,
4 yes.

5 HEARING OFFICER COCHRAN: Okay. Perfect. And
6 then how many workers can be accommodated in that area?

7 MR. O'KANE: How many could we park in there?

8 HEARING OFFICER COCHRAN: Yes.

9 MR. O'KANE: If we only parked, you could park
10 hundreds in there.

11 HEARING OFFICER COCHRAN: Okay.

12 MR. O'KANE: But we would -- we would have a plan
13 to park approximately 100.

14 HEARING OFFICER COCHRAN: Okay.

15 MR. O'KANE: Okay.

16 HEARING OFFICER COCHRAN: And then the number of
17 workers that can park on Newland, which already exists;
18 correct?

19 MR. O'KANE: That's correct.

20 HEARING OFFICER COCHRAN: Okay.

21 MR. O'KANE: That space, I believe, I think we had
22 the numbers, did we actually, in the FSA? I'd be going off
23 of my head, but it was in the 250-275 range.

24 HEARING OFFICER COCHRAN: Okay.

25 COMMISSIONER MCALLISTER: So when you said

1 overflow parking, what did you mean by that? It seems like
2 you have a lot of parking to go around, if you have 100
3 contractors on site. So what is the overflow?

4 MR. O'KANE: Well, that peak, at a peak
5 construction there would be a few hundred contractors --

6 COMMISSIONER MCALLISTER: Oh, okay.

7 MR. O'KANE: -- right? So --

8 COMMISSIONER MCALLISTER: Okay. I missed that.

9 MR. O'KANE: -- most of the time you're down in
10 the 200 total number of contractors. But during the peak
11 construction period of fabrication and you'll have all the
12 pipe fitters, everybody, that's when the parking expands and
13 we have to overflow into the tank area. Okay.

14 HEARING OFFICER COCHRAN: And the details of how
15 things are parked and when are covered by the Transportation
16 Planning Plan?

17 MR. O'KANE: Control Plan, that's right.

18 HEARING OFFICER COCHRAN: Control Plan, thank
19 you --

20 MR. O'KANE: Right.

21 HEARING OFFICER COCHRAN: -- which I believe is
22 Trans-1.

23 MR. O'KANE: Which would also include how we get
24 our park -- our workers from the tank farm over the site,
25 the shuttle --

1 HEARING OFFICER COCHRAN: Perfect. Okay.

2 MR. O'KANE: -- the timing of that, when that
3 could happen.

4 HEARING OFFICER COCHRAN: Okay. Now, Ms. James, a
5 lot of the discussion that we're having about the potential
6 environmental effects are also based on the comment letter
7 that the City submitted. So now that you've heard the
8 testimony, what are the -- does the City have any remaining
9 concerns?

10 MS. JAMES: The City's position was that the
11 proposed intersection improvements were not part of the
12 original energy project that was approved. And the
13 environmental effects of creating that new intersection
14 improvement was not addressed in the amended project or the
15 analysis done for that project.

16 However, after further discussion with our Public
17 Works staff, we understand the position that the CEC is
18 taking and AES is taking, and we are prepared to proceed
19 with review of the engineering drawings and plans to
20 accommodate the intersection improvements.

21 HEARING OFFICER COCHRAN: Thank you very much for
22 that. Is there any concern that the City won't be able to
23 issue the encroachment permit within the time that we just
24 discussed, relating to Trans-8?

25 MS. JAMES: As long as the engineering documents

1 are complying with our local regulations and all of our
2 federal regulations regarding highways and improvements and,
3 you know, intersection improvements that our Public Works
4 staff is responsible for, Public Works has given me a time
5 frame of the six months. We are committed to accommodating
6 the review within the three months that it's been changed to
7 within the proposed conditions. I don't see extraordinary
8 issues with complying with the timing of Trans-8.

9 HEARING OFFICER COCHRAN: Okay. Thank you very
10 much.

11 MR. SALAMY: Hearing Officer, this is Jerry Salamy
12 with CH2M Hill.

13 I just wanted to be clear on the record to be
14 clear that the analysis, the environmental analysis for the
15 intersection improvements at Banning and Magnolia were
16 included in the PTA. So -- oh, they were included in the
17 PTA. We included them in the Air Quality section in terms
18 of estimating emissions for the project site. We did
19 include them in the Traffic and Transportation section,
20 relative to just movements of individuals to the project
21 site. And I suspect there was some discussion in Water
22 Resources and a few other areas, relative to the
23 disturbances on that Plains site.

24 HEARING OFFICER COCHRAN: Okay. Thank you. So
25 when you talk about Air Quality, are you referring then to

1 fugitive dust and the typical construction palliative
2 measures that would be taken to control that, as well as
3 source emissions from the construction vehicles?

4 MR. SALAMY: Exactly. Correct.

5 HEARING OFFICER COCHRAN: Okay. Is there anything
6 further on Traffic and Transportation from any of the
7 parties? Okay.

8 We're now going to open up for public comment on
9 the issue of Traffic and Transportation. Is there any
10 public comment on Traffic and Transportation?

11 (WebEx background conversation.)

12 HEARING OFFICER COCHRAN: Hello?

13 COMMISSIONER MCALLISTER: Just a point of order,
14 if anybody is on the line but does not need to comment, then
15 you can self-mute on your end, so that when we un-mute we
16 don't get stray noise.

17 HEARING OFFICER COCHRAN: Right.

18 Okay, seeing none, then I believe that closes the
19 topic of Traffic and Transportation.

20 I'm sorry. Ms. James?

21 MS. JAMES: Thank you. I just wanted to note for
22 the record that the City is in concurrence with AES's
23 proposed revised writing to Trans-3, number 12, regarding
24 the timing of deliveries to the Plains site to occur only
25 during the hours of 7:00 a.m. to 8:00 p.m. on weekdays and

1 Saturdays.

2 HEARING OFFICER COCHRAN: Thank you. And you are
3 satisfied with the discussion that was held today, then,
4 about the fact that there is an ongoing operating power
5 plant that has a different schedule than the Construction
6 Noise Ordinance would apply to?

7 MS. JAMES: Yes.

8 HEARING OFFICER COCHRAN: Thank you.

9 Anything else?

10 And again, Ms. James, thank you very much for your
11 help in getting through this, and for coming up here and
12 being flexible with us. Thank you so much.

13 So moving on then to Noise and Vibration, and in
14 specific, Condition of Certification Noise-6, which is being
15 displayed and being shared to everyone.

16 So can someone provide to me what the issue is, a
17 brief summary?

18 MR. BELL: I'll go. And that is the City of
19 Huntington Beach submitted a comment about the potential
20 noise impacts of activities at the tank farm site. The City
21 has asked, based on concerns expressed by nearby residents,
22 that certain activities related to construction, such as
23 warm-up activity, arrival of construction workers at offsite
24 parking facilities, onsite or queuing outside the facility
25 or outside the Plains site, et cetera, should not be allowed

1 to occur before 7:00 a.m.

2 Those revisions included requiring certain
3 activities be performed in a manner that would avoid
4 excessive noise, thus reducing the potential for noise
5 complaints as much as practicable, and prohibiting
6 construction staging warm-up activities from occurring
7 outside the City's preferable construction hours.

8 HEARING OFFICER COCHRAN: Thank you. And does --
9 so Noise-6 then reflects a recognition of those concerns
10 from the City in an attempt to address that; correct?

11 MR. BELL: In an attempt to address comments, you
12 know, that were received by the City and relayed to us
13 through the City.

14 HEARING OFFICER COCHRAN: Okay. And Applicant?

15 MS. FOSTER: Project Owner would like to thank Ms.
16 James for coming here today.

17 And for the record, Project Owner and the City
18 have discussed this comment since the time the City filed
19 the comment and Staff revised the condition, and would
20 welcome input from Ms. James on this condition.

21 I think that at this point in time the City is
22 okay with the construction workers getting to the site and
23 parking prior to 7:00 a.m. But we would like to have a
24 dialogue with Ms. James and involved with Staff to see if
25 there's some resolution here with the changes in the

1 condition that can be made.

2 HEARING OFFICER COCHRAN: And are we anticipating
3 we will do that right now? Okay.

4 MR. BELL: And we have Mr. Ed Brady joining us at
5 counsel table as a part of the panel discussion.

6 HEARING OFFICER COCHRAN: Thank you, Mr. Brady.
7 Whoever would like to speak first.

8 MS. JAMES: The City --

9 HEARING OFFICER COCHRAN: Ms. James?

10 MS. JAMES: The City is prepared to accept AES's
11 proposed revisions to Noise-6 combined with the previous
12 revisions back on, I believe it was Noise-3 -- or, sorry,
13 Trans-3, to limit the deliveries to the Plains site.

14 So the City is prepared to accept Noise-6
15 revisions proposed by AES.

16 HEARING OFFICER COCHRAN: Thank you very much.

17 Mr. Simpson, you have been given the opportunity
18 to cross examine on this topic. Do you have any cross
19 examination? Mr. Simpson? Mr. Simpson, let's try one more
20 time, because I think that we thought was you was not you.
21 Are you on the phone?

22 Mr. Lee, everyone is un-muted? All right.

23 So then is -- does Staff have a position based on
24 what Ms. James just talked about?

25 MR. BELL: Yes, Madam Hearing Adviser. Staff

1 often goes out of our way to be responsive to local
2 government agencies. And Mr. Brady did a fantastic job on
3 this section, was very thorough, and also very responsive.
4 And I think the City was happy with our response.

5 However, given further discussion between the
6 parties, Staff is okay with the revisions as proposed by the
7 City and by AES.

8 HEARING OFFICER COCHRAN: All right. So then I
9 will now open it for public comment on the topic of Noise-6.
10 Is there any public comment?

11 MR. SARVEY: I'd like to make a comment, if you
12 can hear me.

13 HEARING OFFICER COCHRAN: Yes. And could you
14 please identify yourself for the record?

15 MR. SARVEY: Yeah. My name is Bob Sarvey. I was
16 trying to get through on the last topic when you were asking
17 for public comment on the parking area and I didn't get un-
18 muted. Is it possible I could ask that question now?

19 HEARING OFFICER COCHRAN: Sure, you can make your
20 public comment.

21 MR. SARVEY: Well, my question is: Is that
22 parking area the same parking area that Coastal Commission
23 claims is a wetland, or that a different parking area we're
24 talking about?

25 HEARING OFFICER COCHRAN: Okay. Do you have any

1 other questions, Mr. Sarvey?

2 MR. SARVEY: No, that was my only question. Thank
3 you.

4 HEARING OFFICER COCHRAN: Thank you. And did you
5 have any comments, Mr. Sarvey, on Noise-6?

6 MR. SARVEY: No, I did not. Thank you.

7 HEARING OFFICER COCHRAN: Thank you.

8 With that, then, we will close Noise-6.

9 We are now to Air Quality.

10 Mr. Chandan, who is on the phone from the Air
11 District, did you take the oath of -- oath when I asked you
12 to raise your hand?

13 MR. CHANDEN: Yes. Both me and Chris Perry who is
14 here with me, we did take the oath.

15 HEARING OFFICER COCHRAN: Thank you very much.
16 And so the first question I have is: Is the Air District
17 ready to certify, pursuant to Public Resources Code section
18 25523(c)(2), that the Petitioner has identified complete
19 emission offsets and that they will be obtained in the time
20 required by the District?

21 MR. CHANDEN: Yes, Petitioner has submitted the
22 ERCs. They are in our system. We cannot use it until
23 we issue the POC (phonetic). But Petitioner has submitted
24 the ERC, yes.

25 HEARING OFFICER COCHRAN: Thank you so much. And

1 is there a Condition of Certification that requires them to
2 be provided to the District on a timely basis?

3 MR. CHANDEN: There is no condition in the permit.
4 But we cannot issue the permit to construct until the ERCs
5 are used.

6 HEARING OFFICER COCHRAN: Okay. Thank you so
7 much.

8 So now then, let us -- I'll open it up to a
9 discussion of Air Quality and what the issues are. I know
10 that the Applicant had identified a couple of Conditions of
11 Certification that were at issue. So --

12 MR. BELL: If we could bring out panel up to
13 convene the panel?

14 HEARING OFFICER COCHRAN: And again, Ms. James,
15 thank you very much for your participation and assistance.

16 Staff, if you could identify your panel?

17 MR. BELL: Yes. We have Wenjun Qian. Did I say
18 that right?

19 MS. QIAN: Qian.

20 MR. BELL: Qian. And David Vidaver. And I would
21 note that the witnesses do need to be sworn in.

22 HEARING OFFICER COCHRAN: Okay. If you could
23 raise your right hand?

24 (Witnesses are collectively sworn.)

25 HEARING OFFICER COCHRAN: Thank you.

1 Applicant, do you have a panel, as well?

2 MS. FOSTER: Our panel is Jerry Salamy and Stephen
3 O'Kane, who have already been sworn in.

4 HEARING OFFICER COCHRAN: Thank you so much.

5 MR. BELL: And this is on the subject of Air
6 Quality and GHG or just Air Quality?

7 HEARING OFFICER COCHRAN: Let's do Air Quality
8 first, and then we'll do GHG. Because we treat GHG as a
9 separate part of the decision, even though it's an appendix
10 to Air Quality. So let's take Air Quality first.

11 MR. BELL: And Public Health following?

12 HEARING OFFICER COCHRAN: And then Public Health
13 at the very end.

14 MR. SALAMY: Hearing Officer, we also have Elyse
15 Engel on the line

16 HEARING OFFICER COCHRAN: Okay. Ms. Engel, are
17 you online?

18 MR. SALAMY: E-L-Y-S-E E-N-G-E-L.

19 HEARING OFFICER COCHRAN: Ms. Engel? Everyone is
20 un-muted except for call-in user 36, I think, who muted his
21 or herself.

22 MR. SALAMY: It might take her a couple of minutes
23 to get on.

24 HEARING OFFICER COCHRAN: Okay.

25 MR. SALAMY: We can continue in the meantime.

1 HEARING OFFICER COCHRAN: Okay. When she comes on
2 I need to know so that I can make sure that she took the
3 oath.

4 (Colloquy)

5 MS. ENGEL: Can you hear me?

6 HEARING OFFICER COCHRAN: Now, yes. Thank you,
7 Ms. Engel.

8 MS. ENGEL: Oh. Hello.

9 HEARING OFFICER COCHRAN: Hello. And did you take
10 the oath that I administered to the witnesses earlier?

11 MS. ENGEL: I did not.

12 HEARING OFFICER COCHRAN: Okay. So raise your
13 right hand, because we can all see you over the telephone
14 lines.

15 MS. ENGEL: Okay.

16 (Elyse Engel is sworn.)

17 HEARING OFFICER COCHRAN: Then the witness has
18 been duly sworn. Thank you.

19 And now the issues. Who would like to go first?

20 MR. SALAMY: Overall, we'd like to thank Staff for
21 their job on the Air Quality section. They did a bang-up
22 job on it. And we only had a handful of items that we
23 identified in the Staff Assessment, so I will walk down
24 those now.

25 On page 4.1-32 in Air Quality Table 9, we believe

1 the carbon monoxide emission rate for the LMS-100s should be
2 44.6 pounds an hour instead of 45.7. And that change would
3 be reflective of the revised carbon monoxide concentration
4 that the Air District included in the FDOC.

5 The next issue was on page 4.1-92 under Air
6 Quality -- or under Condition AQ-2. We have requested -- we
7 requested this change with the Air District. And we would
8 then wait for the Air District to respond to this change to
9 condition AQ-2.

10 The next issue was on Condition AQSC-1. Staff
11 included a provision that prohibited the termination of the
12 Air Quality Construction Mitigation Manager without approval
13 from the CPM. That condition seems to be a little onerous.
14 The Applicant should have the ability to terminate employees
15 for a cause at will without approval from the CPM, and we
16 would like to see that provision stricken.

17 And the last issue is on Condition AQSC-9. Staff
18 has included the amount of ERCs. I'm sorry, AQSC-9 is a
19 condition that requires the Applicant to provide Emission
20 Reduction Credits consistent with the requirements of the
21 Air District Rules and Regulations. As Mr. Chandan just
22 stated, they cannot issue a permit to construct the project
23 without the ERCs being submitted. In order to eliminate the
24 need at some point in the future if a change is made to the
25 project, to have to come back and modify this condition, we

1 are requesting that the numeric values of the ERCs be
2 removed, and request that change be made. It appears that
3 if the District can't issue a permit to construct, then
4 having these numbers in the condition doesn't provide any
5 real value.

6 We are -- as noted during the workshop, the
7 Applicant is more than willing to provide documentation that
8 the Air District has received the requisite ERCs and that
9 the project would be issued a permit to construct.

10 HEARING OFFICER COCHRAN: Okay. Thank you.

11 Staff, do you have any issues other than those
12 identified by the Applicant, on which we need to spend some
13 time this afternoon?

14 MS. QIAN: Do I need to respond each time?

15 HEARING OFFICER COCHRAN: Not yet. What I want to
16 do is I want to get all of the issues first. And then we'll
17 go back through and talk about each one of them. Okay?

18 MS. QIAN: Okay.

19 HEARING OFFICER COCHRAN: So are there additional
20 issues, other than what Mr. Salamy just identified, that you
21 wish to speak to?

22 MS. QIAN: No.

23 HEARING OFFICER COCHRAN: Mr. Simpson, what are --
24 can you tell me the issues that you would like to discuss
25 this afternoon?

1 MR. SIMPSON: Hello. Can you hear me?

2 HEARING OFFICER COCHRAN: Yes.

3 MR. SIMPSON: Oh, okay. I was disconnected
4 earlier, so I'm not sure what happened there.

5 HEARING OFFICER COCHRAN: Sorry about that.

6 MR. SIMPSON: But I guess it happens.

7 HEARING OFFICER COCHRAN: We're on Air Quality.

8 And were --

9 MR. SIMPSON: Okay.

10 HEARING OFFICER COCHRAN: Were you able to hear
11 what Mr. Salamy said as the issues from the Applicant's
12 point of view?

13 MR. SIMPSON: Yeah. I've got three or four
14 questions for the Staff and for the Air Quality District, if
15 that's your question to me.

16 HEARING OFFICER COCHRAN: Yes. And can you tell
17 me what the general issues are so that we can treat them by
18 topic, or if they're included within another topic already
19 identified by the Applicant?

20 MR. SIMPSON: Well, they're Air Quality issues.
21 Is that your question?

22 HEARING OFFICER COCHRAN: But specifically, is it
23 a specific Condition of Certification that you are concerned
24 about? You know, what is -- what -- because Air Quality,
25 obviously, has a number of issues subsumed within it. What

1 are the specific sort of sub issues that you wanted to talk
2 about, so we can make sure that we have the right people
3 ready and queued up to answer the questions that you may
4 have?

5 MR. SIMPSON: Well, I've only got three or four
6 questions for staff and three or four questions for the Air
7 District. Some with the Air District are about their
8 process, their appeal process. Most of them are about PM
9 2.5 emissions, their new 1325 rule. Staff, I've got some
10 questions about mitigation and the status of the oil tanks
11 that are there.

12 HEARING OFFICER COCHRAN: Okay. So for the --

13 MR. SIMPSON: And the street sweeping mitigation.

14 HEARING OFFICER COCHRAN: Street sweeping. Okay.

15 So then let's check through these very quickly.

16 Ms. Qian, is it?

17 MS. QIAN: Qian.

18 HEARING OFFICER COCHRAN: Okay. Could you -- so
19 Mr. Salamy brought up a comment or an observation regarding
20 the carbon monoxide for the LMS-100 as being 44.6 instead of
21 45.7 as per the Air District FDOC. Does Staff have any
22 comment or observation or objection to that?

23 MS. QIAN: Staff agrees with the Project Owner
24 that the CO emissions should be revised to 44.6 pounds per
25 hour.

1 HEARING OFFICER COCHRAN: Okay. I'm turning now
2 to the Air District. Does either of the representatives
3 from the Air District have a comment or a response to
4 Applicant's proposed changes to Condition of Certification
5 AQ-2?

6 MR. CHANDAN: Those were the numbers that were
7 calculated by CEC Staff based on some numbers that were in
8 our report. So, no, we have no objection to that.

9 MR. SALAMY: Hearing Officer, I don't think he's
10 correlating the numbers.

11 Bhaskar, this is Jerry Salamy. I believe we're
12 talking about your Condition F52.1, which is --

13 MR. CHANDAN: Oh, okay.

14 MR. SALAMY: -- the condition regarding the
15 shutdown of the existing units.

16 MR. CHANDAN: Okay.

17 MR. SALAMY: And if that's an issue that you're
18 not ready to discuss at this time and need additional time,
19 I think that's certainly appropriate, as well.

20 MR. CHANDAN: We put that condition in based on
21 certain dates that you had given us earlier. I understand
22 that you have concerns about it, and we are discussing it
23 internally.

24 The general consensus is we need to put some date.
25 If the Applicant can look at it and give us some alternate

1 dates, we would be willing and open to change that date.

2 But the consensus is that we would like to have some date in
3 there.

4 HEARING OFFICER COCHRAN: And for purposes of the
5 license that the Energy Commission may grant for this, would
6 that changed date be reflected then in the permit that the
7 Air District would ultimately issue?

8 MR. CHANDEN: Yes. Yes, it will be. And that
9 condition is F52.1.

10 HEARING OFFICER COCHRAN: So it's a question of
11 the timing, not necessarily a question of whether the
12 Applicant will satisfy the requirement?

13 MR. CHANDEN: Right. We want to put some deadline
14 in there for that to happen, which is consistent with other
15 permits that we have issued, that we do have some date. And
16 we are flexible on changing that date, but we would like to
17 put some date in there.

18 MR. O'KANE: This is Stephen O'Kane with AES
19 Huntington Beach Energy.

20 If we have to have a date certain now, then I
21 would propose January the 15th, 2020.

22 HEARING OFFICER COCHRAN: Is that acceptable to
23 the Air District, Mr. Chandan?

24 MR. CHANDAN: That should be acceptable. I need
25 to get authorization from my manager, but I would think that

1 would be acceptable.

2 HEARING OFFICER COCHRAN: Okay. Regarding Air
3 Quality -- I'm sorry, regarding Condition of Certification
4 AQSC-1, Staff, do you have any comment or observation?

5 MS. QIAN: Yes. I think the Project Owner
6 proposed language would allow the Project Owner to replace
7 the AQSC-1 without CPM approval. And Staff still believes
8 that the CPM should approve any AQSC-1 replacement.

9 MR. SALAMY: We don't disagree with the idea that
10 the CPM approve the new Air Quality Construction Mitigation
11 Manager. We're not concerned about that aspect of the
12 condition.

13 I believe the concern we have is regarding the
14 idea that we have to clear terminations with the CPM.

15 HEARING OFFICER COCHRAN: Mr. Bell, can you
16 refresh my recollection please? Is AQSC-1 a somewhat
17 standard condition that the Energy Commission uses?

18 MR. BELL: Yes, Madam Hearing Adviser, it is.

19 HEARING OFFICER COCHRAN: Thank you. Okay.

20 Is there anything further on AQSC-1?

21 MR. O'KANE: Yes. We want to make it clear that
22 the -- it's the way that it's written, it's the language.
23 And the way it's written, it states that I would actually
24 have to seek approval of an agency to terminate an employee
25 or a contractor on my site, not whether or not I need to get

1 approval for a new one but terminate him. If that means I
2 terminate them and I can't have work because I don't have --
3 I can't work and I don't have the appropriately qualified
4 person onsite, that's fine. But AES absolutely must be able
5 to control their own staff and contractors on their site.
6 Regarding if this was a previously standard condition or
7 not, a bad condition can always be corrected.

8 So that's the gist of it. It's not that we don't
9 think the CPM shouldn't have approval authority, it's that,
10 for new ones, it's that they don't get to approve whether or
11 not I get to fire somebody.

12 HEARING OFFICER COCHRAN: Staff, could you perhaps
13 explain why approval of the termination is important?

14 MS. QIAN: Because the project should have an Air
15 Quality Construction Mitigation Manager onsite, and we need
16 to make sure there is one. And the Project Owner proposed a
17 language. It looks like the AQCM replacement does not need
18 approval by the CPM.

19 COMMISSIONER MCALLISTER: Is part of the concern
20 that the Applicant could fire and not replace and your just
21 making sure that it's staffed, or is there some other
22 concern?

23 MS. QIAN: I guess Staff would like to keep the
24 CPM updated, whether there's a termination or replacement.

25 MR. SALAMY: And I think that we're more than

1 willing to agree with doing so. I believe the issue is the
2 right to control employees on a project site.

3 If you look at the FSA, this provision was added
4 to the existing licensed Condition AQSC-1. So this is a new
5 provision since the project was licensed. And there has to
6 be some rationale for it. If you look at the way the
7 condition is written, it says, "The Project Owner shall
8 designate and retain an onsite Air Quality Construction
9 Mitigation Manager," who has these duties. And as an
10 obligation, the Applicant has to have an Air Quality
11 Construction Mitigation Manager onsite when they're working.

12 HEARING OFFICER COCHRAN: We understand.

13 MR. SALAMY: We understand.

14 HEARING OFFICER COCHRAN: I think perhaps what
15 could happen is we could create language to make sure that
16 there is no gap in coverage of having the construction
17 monitor available. But we hear it. I think that we know
18 what the issue is and we have enough evidence to decide that
19 question.

20 COMMISSIONER MCALLISTER: And also, understand
21 that Staff needs to know who that person is at all time.

22 HEARING OFFICER COCHRAN: Right.

23 COMMISSIONER MCALLISTER: Right.

24 MR. SALAMY: Of course. Absolutely.

25 HEARING OFFICER COCHRAN: Turning now to ACQC-9,

1 could I hear from Staff on eliminating the numeric values
2 for the ERCs?

3 MS. QIAN: As we heard, the South Coast AQMD, they
4 have already received the ERC list from the Project Owner.
5 And at this time point, Staff does not expect the quantities
6 of the ERCs to be changed. So Staff would like to keep the
7 language in the FSA.

8 HEARING OFFICER COCHRAN: Okay. Anything further
9 on that, Mr. Salamy?

10 MR. SALAMY: Well, the Applicant would just like
11 to reiterate that it serves no value to have the numbers in
12 the condition.

13 HEARING OFFICER COCHRAN: Okay. Thank you.

14 Mr. Simpson, you had questions regarding PM 2.5.

15 MR. SIMPSON: Yes.

16 HEARING OFFICER COCHRAN: Please, please, go
17 ahead.

18 MR. SIMPSON: Okay. Maybe we can start with Staff
19 questions.

20 (Indiscernible) at 4.1-36, it says,

21 "The Air Quality Table 12 shows that PM 10 and PM 2.5
22 emissions from construction which cause new exceedances
23 or contribute to existing violations of PM 10 and PM
24 2.5."

25 And the mitigation appears to be street sweeping

1 once a month, is it, for 5.5 miles; is that correct on 4.1-
2 42?

3 MR. BELL: Sorry. Staff's witness was originally
4 focused on the page Mr. Simpson first referred her to, is
5 now switching to the other page, trying to find the
6 reference.

7 HEARING OFFICER COCHRAN: That's fine. Thank you,
8 Mr. Bell.

9 MR. BELL: I just wanted to explain the delay for
10 the folks who are listening in on the phone.

11 HEARING OFFICER COCHRAN: Oh, okay. Thank you.

12 MS. QIAN: I believe the sweeping plan is based on
13 monthly basis.

14 HEARING OFFICER COCHRAN: And that's -- and can
15 you -- and what Condition of Certification is that?

16 MS. QIAN: It's AQ-SC6, I believe.

17 HEARING OFFICER COCHRAN: Thank you so much.

18 Do you have any more questions, Mr. Simpson?

19 MR. SIMPSON: Oh, I didn't hear the response.

20 HEARING OFFICER COCHRAN: She said, yes, according
21 to AQ-SC6, that street sweeping is on a monthly basis.

22 MR. SIMPSON: Okay. And on page 4.1-38, it says
23 that the exceedances would be during months 22 through 49.
24 And can you help me understand how monthly street sweeping
25 will eliminate violations of PM 2.5?

1 MS. QIAN: Could you say it again?

2 MR. SIMPSON: How do monthly street sweepings
3 eliminate violations of PM 2.5 Standards?

4 MS. QIAN: I believe the sweeping plan was
5 determined for the licensed project. And we are continuing
6 to use that condition for this amended project.

7 HEARING OFFICER COCHRAN: So that I understand,
8 there have been no changes between the project as approved
9 and the project as proposed by the Petition to Amend, is
10 that --

11 MS. QIAN: Well, the construction emissions would
12 be less than the licensed project, so the required emission
13 reduction will also be less.

14 HEARING OFFICER COCHRAN: Okay.

15 MR. SIMPSON: I guess I'm -- what I'm hearing is
16 that you're relying on the previous proceedings. But I'm
17 still trying to understand how street sweeping eliminates
18 violations of PM 2.5.

19 (Pause)

20 HEARING OFFICER COCHRAN: Applicant, did you want
21 to offer anything in response to Mr. Simpson's question? As
22 a panel, you are free to, if you would like.

23 MR. BELL: Oh, Ms. Cochran, was there a question
24 pending?

25 HEARING OFFICER COCHRAN: I believe he was

1 asking -- I think he's still talking about how it mitigates,
2 even though it was in the prior decision.

3 MR. BELL: Okay. I heard a statement --

4 HEARING OFFICER COCHRAN: Okay.

5 MR. BELL: -- that he didn't understand.

6 HEARING OFFICER COCHRAN: Oh, okay.

7 MR. BELL: But there was no question pending.

8 HEARING OFFICER COCHRAN: Do you have a question?

9 MR. SIMPSON: Sure. How does monthly street
10 sweeping eliminate violations of PM 2.5 Standards?

11 HEARING OFFICER COCHRAN: Mr. Simpson, can you
12 speak maybe a little closer to your microphone? I don't
13 know how your talking. If you're on a Bluetooth headset,
14 maybe if you put it directly -- we're having a difficult
15 time hearing you here in the hearing room.

16 MR. SIMPSON: Is this better?

17 HEARING OFFICER COCHRAN: Yes, much better. Thank
18 you.

19 MR. SIMPSON: Okay. My question to Staff and
20 South Coast Air Quality Management District is: Does
21 monthly street sweeping eliminate violations of PM 2.5
22 Standards? And, if so, how?

23

24 COMMISSIONER MCALLISTER: So does Staff of AQMD
25 have a response to the question?

1 MR. BELL: I'm not sure Staff can answer that
2 question. We're talking about mitigation, a mitigation
3 measure that is designed to mitigate a significant impact to
4 a level of less than significance. We're not talking about
5 a mitigation measure to make sure that a standard is not
6 violated. The question is nonsensical.

7 COMMISSIONER MCALLISTER: So I think it is. Okay.

8 HEARING OFFICER COCHRAN: Okay.

9 COMMISSIONER MCALLISTER: So that's the answer.

10 Let's move on.

11 AQMD have anything to say about this?

12 MR. CHANDAN: No, we have no comment on it.

13 HEARING OFFICER COCHRAN: Thank you very much.

14 Okay.

15 Mr. Simpson, moving along --

16 MR. SIMPSON: I'd like to restate the question.

17 I'd like to restate the question.

18 COMMISSIONER MCALLISTER: So I think the -- but
19 the point in the proceeding right here is that this was a
20 discussion that was accepted in part of the Final Decision
21 in the original application as a mitigation measure within
22 this topic area. So I think that basic situation has not
23 changed.

24 So I guess if you could frame the question in such
25 a way that it's relevant to this amendment proceeding?

1 HEARING OFFICER COCHRAN: Right. And so you've --

2 MR. SIMPSON: Sure. Sure.

3 HEARING OFFICER COCHRAN: And so you've asked the
4 question, and I think Mr. Bell has provided an answer. So
5 let's move on.

6 MR. SIMPSON: Well, he said my question is
7 nonsense, so I'll go on to my next question.

8 HEARING OFFICER COCHRAN: Please.

9 MR. SIMPSON: How does street sweeping once a
10 month mitigate violations of the PM 2.5 Standard?

11 MS. QIAN: So the construction emissions would
12 accumulate on the roads, and the sweeping will get rid of
13 the PME emissions.

14 MR. SIMPSON: The PM 2.5?

15 MS. QIAN: Actually, PM 2.5 is part of the PM
16 emissions.

17 MR. SIMPSON: Okay. You're coming to the same
18 conclusion, but you're not telling me how road dust sweeping
19 once a month eliminates 22 months of PM 2.5 emission
20 exceedance.

21 HEARING OFFICER COCHRAN: If you know, if you can
22 answer that.

23 MR. BELL: Was there a question pending, ma'am?

24 HEARING OFFICER COCHRAN: I believe -- I think --

25 MR. SIMPSON: Yes.

1 HEARING OFFICER COCHRAN: -- he's asking how
2 street sweeping mitigates exceedances of PM 2.5?

3 MR. SALAMY: If I may --

4 MR. SIMPSON: Yes.

5 MR. SALAMY: -- Hearing Officer, this is --

6 HEARING OFFICER COCHRAN: Thank you, Mr. Salamy.

7 MR. SALAMY: This is Jerry Salamy with the
8 Applicant.

9 The first thing I want to point out is the area is
10 nonattainment for PM 2.5, which means that you can't violate
11 the standard anymore, it's already been violated. So we
12 would be causing and/or contributing to a violation of the
13 standard for which we are providing mitigation for, both
14 from the source standpoint by implementing the conditions of
15 certification that limit or eliminate the generation of PM
16 2.5 and PM 10, fugitive dust, from the project site, as well
17 as providing mitigation in the form of street sweeping and
18 to create a reduction.

19 And the mechanism for street sweeping is to remove
20 particulate matter from the roadways which would be re-
21 entrained as a vehicle passes over those-- that roadway. So
22 by eliminating the dust that's on the roadway, the
23 particulate matter, you then eliminate additional dust being
24 entrained into the atmosphere.

25 Doing it on a monthly basis, monthly, daily, it's

1 all the same thing, the vehicles are going to travel down
2 the roads and they're going to entrain dust into the
3 atmosphere. How we're targeting 2.5 and PM 10, the use of
4 South Coast Air Quality Management District-approved street
5 sweepers are very high efficiency removal equipment that
6 would remove both PM 10 and PM 2.5 from the roadways. So
7 that's how the reductions are generated.

8 MR. SIMPSON: I'm sorry. I don't know who was --
9 was that testimony or was that attorney opinion?

10 HEARING OFFICER COCHRAN: That was testimony by
11 Mr. Salamy --

12 MR. SIMPSON: Okay.

13 HEARING OFFICER COCHRAN: -- who identified
14 himself.

15 MR. SIMPSON: Oh, good. Good. Okay.

16 HEARING OFFICER COCHRAN: Okay.

17 MR. SIMPSON: Okay.

18 HEARING OFFICER COCHRAN: And your next question?

19 MR. SIMPSON: Sure. I guess this one will be for
20 Staff. Has Peaking Unit 5 and the fuel tanks been removed,
21 or will that overlap with other construction emissions
22 estimated in Air Quality Table 7 of page 2.1-29?

23 MS. QIAN: I believe all the demolition and
24 construction phases are fully analyzed in Staff's analysis.

25 MR. O'KANE: This is Stephen O'Kane, the

1 Applicant.

2 The question was: Will the removal of the tank in
3 Peaker Unit 5, would it overlap with some of this other? It
4 would not because it's already been completed.

5 MS. QIAN: Oh.

6 MR. O'KANE: As part of the originally licensed
7 project, that -- those components of the project have not
8 changed. And so we've already moved forward under the
9 direction of the compliance manager for the project. And
10 that work has actually already been completed.

11 HEARING OFFICER COCHRAN: Thank you, Mr. O'Kane.

12 Next question, Mr. Simpson.

13 MR. SIMPSON: This is for the Air District.

14 HEARING OFFICER COCHRAN: Go ahead please.

15 MR. SIMPSON: Does street sweeping mitigate PM 2.5
16 emissions?

17 MR. CHANDAN: Street sweeping is mainly to reduce
18 PM emissions, PM 2.5, a subset of PMs. So, yes, it does
19 mitigate PM 2.5.

20 MR. SIMPSON: Okay. I've got a couple of
21 questions about your Rule 1325. Now I understand that --
22 does the District have authority to apply the new Rule 1325
23 on this permit, or must they wait until November of 2017?

24 MR. CHANDAN: August 14, 2017 is the effective
25 date. And we cannot implement it at this time. It goes

1 into effect August 14th. So all permits issued after that,
2 that rule will be effective.

3 MR. SIMPSON: Oh, okay. Thank you. Can you
4 identify the appeal procedure for your decision? Is your
5 decision appealable to the hearing board, and does it have
6 to go to the governing board or can it go straight to court?

7 MR. BELL: Staff will have to object to this. The
8 question is not relevant to these proceedings.

9 MS. FOSTER: Project Owner joins that objection.

10 HEARING OFFICER COCHRAN: I'm going to sustain
11 that objection. That does not affect the use of the
12 existing permit or what we're handling today, so please move
13 on, Mr. Simpson.

14 MR. SIMPSON: Okay. If this Rule 1325 kicks in,
15 how would the precursors be evaluated in the determination
16 of whether the project is a major source of PM 2.5?

17 MR. CHANDAN: I don't understand fully your
18 question. I believe you are talking about ammonia and VOCs,
19 which are the precursors identified in the new rule.

20 MR. SIMPSON: Yes.

21 MR. CHANDAN: Am I correct, Mr. Simpson?

22 MR. SIMPSON: Yes. Yes.

23 MR. CHANDAN: Right. So if the emissions of those
24 two pollutants are over 40 tons, then it becomes a major
25 source of PM 2.5.

1 MR. SIMPSON: I see. And are they over 40 tons?

2 MR. CHANDAN: For this project?

3 MR. SIMPSON: Yes.

4 MR. CHANDAN: I believe they are.

5 MR. SIMPSON: Okay. And a question for Staff.

6 Has Staff mitigated those precursor emissions?

7 MS. QIAN: Staff will require mitigation for any
8 nonattainment pollutants and precursors.

9 MR. SIMPSON: Okay. And how did Staff mitigate
10 the ammonia emissions?

11 MS. QIAN: I believe South Coast FDOC has already
12 responded to your similar comment. Basically, their
13 calculation of PM emissions already included the secondary
14 formation of ammonia and sulfate. So the mitigation for the
15 PM emissions already covered the ammonia emissions.

16 MR. SIMPSON: Oh, okay. Let's see if I've got any
17 more questions here. Oh, I do have a question for Staff.

18 On 4.1-23, it indicates Air Quality Table 4
19 summarizes existing and ambient monitoring data for
20 nonattainment criteria pollutants. And at the bottom it
21 says,

22 "Note that an exceedance is not necessarily a violation
23 of the standard, and that only persistent exceedances
24 lead to a designation of an area as nonattainment."

25 Can you help me to understand the threshold there?

1 Because it looks like you've got five or six years of
2 exceedances. Now would that represent a change to a
3 designation of an area to nonattainment --

4 MS. QIAN: I guess it's just a general --

5 MR. SIMPSON: -- or what is the threshold?

6 MS. QIAN: -- statement, the attainment status of
7 the South Coast Air Basin as shown in Air Quality Table 3.

8 MR. SIMPSON: Oh, all right. Yeah. I understand
9 that. But what it says is "an exceedance is not necessarily
10 a violation of the standard. Only persistent exceedances
11 lead to designation of an area as nonattainment." So at
12 what -- what's the threshold between an exceedance not being
13 a violation and an exceedance being a violation? Is it one
14 day, one week, one month, one year --

15 MS. QIAN: Energy Commission does not --

16 MR. SIMPSON: -- or is it some quantity?

17 MS. QIAN: Energy Commission does not determine
18 the attainment status. The EPA and the Air Resources Board
19 determine that.

20 MR. SIMPSON: Okay. But the Energy Commission --
21 well, at least Staff has determined that an exceedance is
22 not a violation. But I think your answer is that you don't
23 have a threshold, or do you have -- is there some threshold
24 that you're aware of between an exceedance being not a
25 violation and an exceedance being a violation?

1 MS. QIAN: Again, Staff does not determine the
2 attainment status, so I don't know the criteria.

3 MR. SIMPSON: Okay. And you said that would be up
4 to the EPA. Has there been any notice to the EPA from the
5 CEC about this proceeding?

6 MR. BELL: I have to object. That's misstates the
7 testimony.

8 HEARING OFFICER COCHRAN: I'm sorry, Mr.
9 Simpson --

10 MR. SIMPSON: Well, the --

11 HEARING OFFICER COCHRAN: -- can you restate your
12 question so I can hear?

13 MR. SIMPSON: Sure. You said that that would be
14 up to the EPA and the Air District. So my question is:
15 Have you notified the EPA about this situation?

16 HEARING OFFICER COCHRAN: I'm going to sustain Mr.
17 Bell's objection. I think that mischaracterizes the
18 witness's testimony. And, yeah, I think it mischaracterizes
19 it.

20 MR. SALAMY: This is Jerry Salamy --

21 MR. SIMPSON: Okay.

22 MR. SALAMY: -- with the Applicant. I'd just like
23 to weigh in here.

24 What Staff has done with Air Quality Table 3 and 4
25 is reiterate data produced by either the Air Resources Board

1 or the Environmental Protection Agency. They are not making
2 an assessment of the air quality, nor are they defining
3 whether the area is in attainment or not.

4 MR. SIMPSON: I think we just heard Staff testify
5 that it was in nonattainment, but I hear what you're saying.

6 Okay, I think that concludes my questions on those
7 topics. And then we'll have more questions in Public
8 Health, I suppose.

9 HEARING OFFICER COCHRAN: Does that satisfy your
10 questions for both Air Quality and Greenhouse Gas? Is there
11 anything additional in Greenhouse Gas that we need to cover?

12 MR. SIMPSON: Oh, sure. I thought Greenhouse Gas
13 was --

14 HEARING OFFICER COCHRAN: It is separate --

15 MR. SIMPSON: -- somewhat separate.

16 HEARING OFFICER COCHRAN: Okay. So I just wanted
17 to make sure that it still is separate. I'm just checking
18 because I thought I heard something different.

19 MR. SIMPSON: Okay.

20 HEARING OFFICER COCHRAN: Okay. So --

21 MR. SIMPSON: Okay.

22 HEARING OFFICER COCHRAN: So you have no further
23 questions on the topic of Air Quality?

24 MR. SIMPSON: Let me just double check here. Oh,
25 I do have one.

1 Let's see, this is on 4.1-37. I don't think I
2 asked this yet. It says,
3 "Modeling analysis shows that the worst case PM impacts
4 would occur on the northeast corner of the fence line.
5 However, areas of possible exceedance of the 24-hour PM
6 10 Standard and PM 2.5 Standard would remain near the
7 project boundary within 230 feet and 53 to the
8 northeast -- 53 feet of the northeast corner which are
9 mostly industrialized areas where the public has no
10 access."

11 So I think my question to Staff is: Are you
12 condemning the property next to it or prohibiting access, or
13 how does the public not work or function in these areas? So
14 the statement is that these are industrialized areas where
15 the public has no access. So there are no workers there?
16 There's no members of the public and that area will remain
17 fenced off or there are no condemnation proceedings?

18 MR. BELL: I'll have to object as compound. There
19 are several questions hidden in there. Perhaps he could
20 parse them out and ask them individually?

21 HEARING OFFICER COCHRAN: Sustained.

22 Can you break that down, Mr. Simpson?

23 MR. SIMPSON: Okay. Sure. Is Staff aware that
24 any members of the public work in these industrialized
25 areas?

1 MS. QIAN: The sentence I put in is just to
2 emphasize that the construction impacts would remain near
3 the project boundary, which are mostly industrialized areas.

4 MR. SIMPSON: Okay. But it concludes that the
5 public has no access to those areas. Is that correct, that
6 the public has no access?

7 MS. QIAN: Generally.

8 MR. SIMPSON: Okay.

9 HEARING OFFICER COCHRAN: Maybe I can help. Are
10 you distinguishing between workers who are legally and
11 permitted by the Applicant to be onsite from members of the
12 public generally who are not? I'm asking that of Staff.

13 MR. SIMPSON: Are you asking me?

14 HEARING OFFICER COCHRAN: I'm asking Staff. These
15 are Staff's words.

16 MR. SIMPSON: Okay.

17 HEARING OFFICER COCHRAN: So when you talk about
18 the public, that doesn't necessarily include workers who are
19 legitimately on the site; is that correct?

20 MS. QIAN: Right.

21 HEARING OFFICER COCHRAN: Thank you.

22 MR. SIMPSON: And if I can clarify, these are
23 offsite impacts that we're talking about within 230 feet and
24 53 feet of the northeast corner. So the way I'm reading
25 that, that's off the project site. Are you referring to on

1 the project site or off the project site in this statement?

2 MS. QIAN: It's off the project site, but it's
3 near the project site and mostly industrialized area.

4 MR. SIMPSON: Okay. And are there workers in that
5 area?

6 MR. BELL: Objection; vague.

7 HEARING OFFICER COCHRAN: Mr. Simpson, what
8 workers are you referring to? I'm trying to follow.

9 MR. SIMPSON: Well, it -- the way this reads is
10 that there's a wasteland there that no people are allowed
11 in. But the reality is that I believe that there are
12 workers there, there are others there that are already
13 highly impacted by whatever is going on, on their site. But
14 they've been discounted here where it says the public has no
15 access, when, in fact, not only does the public have access,
16 but these people are required to be there as factors of
17 their jobs. So it's not that these people can retreat from
18 these impacts. And it's not that these people aren't there.
19 And it's not that these people aren't members of the public,
20 they just happen to be working on a job on another site.

21 So I'm trying to either clarify that there are no
22 people within 230 feet and 53 feet of the northeast corner,
23 or that there are.

24 MS. QIAN: I believe the impacts to the workers
25 are discussed in the Public Health section, not the Air

1 Quality section.

2 MR. O'KANE: This is Stephen O'Kane again,
3 Applicant. A little clarification. It doesn't sound like
4 Mr. Simpson has reviewed the materials and where the project
5 site is.

6 So to remind the Committee that this is a -- the
7 project site is actually contained within a larger site
8 owned by AES. And the areas being referred to is additional
9 property within the Huntington Beach -- existing Huntington
10 Beach Generating Station.

11 HEARING OFFICER COCHRAN: Thank you very much.

12 MR. SIMPSON: Oh, I see. And so if I had
13 questions about those workers having been included in this,
14 that would be Public Health; is that correct?

15 MR. SALAMY: Yes, Public Health would include --
16 this is Jerry Salamy.

17 Public Health would include an assessment of
18 worker safety or worker impacts relative to air emissions.

19 MR. SIMPSON: And those are workers that are off
20 the site but employed by AES?

21 MR. SALAMY: The Public Health analysis would
22 include individuals not associated with the construction of
23 the or operation of the Huntington Beach Energy Project, so,
24 yes.

25 MR. SIMPSON: Okay. So this fence line that it's

1 referring to, that's an imaginary line or that's an actual
2 fence in between the project site and AES's other property?
3 Which fence line is this?

4 MR. SALAMY: This is the Huntington Beach Energy
5 Center Project site. At this point, I don't believe there
6 is going to be a physical fence that separates this site
7 from the rest of the Applicant-owned site.

8 MR. SIMPSON: I see. And so the public notice
9 measurement was from this site or AES's actual land site?
10 Because what I've seen in the past is they drill a narrow
11 line around these projects. And the public notice goes out
12 a couple hundred feet from that, and that stays on their
13 property, so they don't have to tell everybody. But if the
14 project site was the same as the site that the Applicant
15 controls, the public notice area would be much larger.

16 MR. O'KANE: I think my lawyer would probably
17 begin to object because we're starting to fish here. But
18 for the sake of clarity for Mr. Simpson, the notification
19 requirements per AQMD regulations and CEC regulations are
20 actually based on the AES Generating Station fence line,
21 which is a larger site than the project site described here.
22 So we have, in fact, gone out farther than regulations would
23 have actually required.

24 MR. SIMPSON: Thank you. Okay. So there's no
25 fence line as referenced here. And your contention is that

1 these numbers, 230 feet and 53 feet, are still on AES
2 property? Because when I look at it on the map, it looks
3 like that's a wetland. It looks like that's a public access
4 area.

5 HEARING OFFICER COCHRAN: Is there a question?

6 MR. SIMPSON: It looks like it's a lagoon and a
7 wetland.

8 HEARING OFFICER COCHRAN: Is there a question?

9 MR. SIMPSON: Yes. Are these references, the 230
10 feet and 53 feet, within AES property or are they outside of
11 AES property?

12 MS. FOSTER: Objection; asked and answered.

13 HEARING OFFICER COCHRAN: Sustained.

14 Next question, Mr. Simpson.

15 MR. SIMPSON: I think for Air Quality, that's it,
16 with the reservations for Greenhouse Gas and Public Health.

17 HEARING OFFICER COCHRAN: Separate topics.

18 MR. SIMPSON: So thank you.

19 HEARING OFFICER COCHRAN: Okay. Anything else?

20 Public comment on Air Quality? Everyone has been
21 un-muted. No public comment?

22 The Committee would like to thank the Air Quality
23 panel, and move on to Greenhouse Gases. Could we get the
24 Greenhouse Gas panel? Is it the same folks? Okay. I'm
25 being -- I'm seeing nods of the head that, yes, it's the

1 same people we just had for Air Quality. So let's talk
2 about greenhouse gases.

3 And, Mr. Simpson, this was your issue. I don't
4 believe that the other parties identified issues. So can
5 you tell us what the sub issues are that you wish to discuss
6 in greenhouse gases?

7 MR. SIMPSON: Sure. Well, it's largely
8 alternatives, what technologies can minimize greenhouse gas
9 emissions and what's been -- what's available and what's
10 been considered.

11 HEARING OFFICER COCHRAN: Okay. Your
12 participation did not include Alternatives. So we need to
13 talk about greenhouse gas emissions as it relates to what
14 the project description is and the equipment that was
15 described for that analysis.

16 MR. SIMPSON: Okay.

17 HEARING OFFICER COCHRAN: So do you have specific
18 questions regarding greenhouse gases as it relates to the
19 fleet of equipment described in the petition to amend the
20 Preliminary Staff Assessment, the Final Staff Assessment and
21 the Determinations of Compliance by the Air District?

22 MR. SIMPSON: Sure. Are you ready for the
23 questions or --

24 HEARING OFFICER COCHRAN: Yes.

25 MR. SIMPSON: -- did you want me to describe them

1 more or --

2 HEARING OFFICER COCHRAN: I want --

3 MR. SIMPSON: -- are you ready for the questions?

4 HEARING OFFICER COCHRAN: Go ahead.

5 MR. SIMPSON: Okay. Well, I think this will be to
6 Staff. Would the addition of a solar power component
7 potentially reduce greenhouse gas emissions?

8 MS. FOSTER: Objection. That goes beyond the
9 scope of what the Hearing Officer just provided was Mr.
10 Simpson's realm of questioning.

11 HEARING OFFICER COCHRAN: Sustained.

12 That touches on Alternatives, Mr. Simpson. It
13 needs to be about, you know, the equipment, the LMS and the
14 project description, as described in the project
15 description.

16 MR. SIMPSON: Well, in the Palmdale proceeding the
17 EPA determined that the solar component was an integral part
18 of the BACT determination for the gas plant, that it would
19 inherently reduce greenhouse gases. So what I'm talking
20 about is control technology. That's what the EPA has
21 described it as in Palmdale, and that's what I'm asking
22 about here.

23 HEARING OFFICER COCHRAN: It's -- well, never
24 mind.

25 MR. SIMPSON: So did you want me to restate --

1 HEARING OFFICER COCHRAN: Can someone --

2 MR. SIMPSON: -- the question?

3 HEARING OFFICER COCHRAN: -- answer the questions?

4 Could you restate the question, Mr. Simpson,
5 please?

6 MR. SIMPSON: Sure. Could a solar component help
7 reduce greenhouse gas emissions?

8 MS. FOSTER: We renew our objection.

9 HEARING OFFICER COCHRAN: And it's again
10 sustained.

11 Because I think your question was about control
12 technologies. Is there something specific about control
13 technologies as it relates to the equipment that is
14 currently being described in the Petition to Amend? What is
15 your question about that?

16 MR. SIMPSON: As I stated, the EPA has determined
17 that solar was a controlled technology for the Palmdale
18 plant. So considering it as a control technology for this
19 project is... seems to be within what's been decided. So if
20 you won't let me ask the question, you won't let me ask it.
21 That's okay.

22 MS. FOSTER: I'd also like to object to the
23 statements that Mr. Simpson is making as there's no
24 foundation for them and they aren't in evidence.

25 HEARING OFFICER COCHRAN: Sustained. This is not

1 the Palmdale proceeding. So findings that may have been
2 made regarding Palmdale are not relevant to these
3 proceedings.

4 So are there specific questions about greenhouse
5 gases --

6 MR. SIMPSON: We'll see.

7 HEARING OFFICER COCHRAN: -- with the suite of
8 equipment described in the Petition to Amend and the other
9 documents that you would like to ask?

10 MR. SIMPSON: Sure. Can Staff tell me what
11 consideration was given to solar power?

12 MS. FOSTER: Objection, for the same reasons as my
13 prior objection. It's outside the scope of the Greenhouse
14 Gas questioning.

15 HEARING OFFICER COCHRAN: Sustained.

16 Mr. Simpson, I understand that this is difficult,
17 but you're touching on alternatives that are not part of
18 this analysis. The Alternatives analysis is a separate
19 portion of the project analysis. So what we're looking at
20 here are greenhouse gas emissions related to the specific
21 equipment that is being proposed here, which did not include
22 a solar component, did not and does not include a solar
23 component.

24 MR. SIMPSON: Okay. I have no other questions.

25 HEARING OFFICER COCHRAN: Okay. Are there any

1 issues that either Staff or Applicant has that we haven't
2 touched on?

3 MR. BELL: None on behalf of Staff.

4 MS. FOSTER: None on behalf of Project Owner.

5 HEARING OFFICER COCHRAN: Thank you.

6 Is there any public comment on the topic of
7 Greenhouse Gases?

8 Seeing none, I think we're closed with Greenhouse
9 Gases.

10 Turning now to Public Health.

11 Mr. Simpson, again, this is your topic area.

12 Could -- oh, I'm sorry, I need to get our new
13 panel for Public Health.

14 MR. BELL: Staff has Witness Ann Chu, Ph.D.,
15 available for questions. Ms. Chu does need to be sworn in.

16 HEARING OFFICER COCHRAN: Ms. Chu, if you could
17 raise your right hand please?

18 (Huei-An Chu is sworn.)

19 HEARING OFFICER COCHRAN: Thank you so much.

20 Applicant, who are your witnesses for Public
21 Health?

22 Mr. Salamy?

23 MR. SALAMY: Jerry Salamy and Stephen O'Kane.

24 HEARING OFFICER COCHRAN: And they have both
25 previously been sworn.

1 Okay, Mr. Simpson.

2 MR. SIMPSON: Public Health section 4.7-20, it
3 says, "Cancer risk at point of maximum impact." It says the
4 PMI is approximately 0.15 miles northeast of the HBEP
5 facility boundary.

6 Has there been any effort to notify the people at
7 that location?

8 MS. CHU: Can you say the page number again?

9 MR. SIMPSON: Sure, sure, 4.7-20.

10 MS. CHU: Okay. So can you say your questions
11 again?

12 MR. SIMPSON: Sure. The headline is "Cancer risk
13 at the point of maximum impact." And then it says, "The PMI
14 is approximately 0.15 miles northeast of the HBEP facility
15 boundary."

16 And my question is: Did the CEC make any effort
17 to notify the people at that location of the 4.26 in 1
18 million cancer risk impact?

19 MS. CHU: We don't need to notify them because
20 this is below the threshold of significance.

21 MR. SIMPSON: Oh, I understand your contention is
22 that it's below the -- but maybe I didn't hear everything
23 you said.

24 Was there an attempt to notify the people at that
25 location or not?

1 HEARING OFFICER COCHRAN: He didn't hear her
2 answer.

3 Ms. Chu, if you could repeat your answer? He
4 didn't hear you, I'm afraid.

5 MS. CHU: Actually, there's no people --

6 MR. SIMPSON: Right.

7 MS. CHU: -- located in this position.

8 MR. SIMPSON: Oh, there's no people located in
9 that position? Okay.

10 And, okay, so let me ask another question.

11 Does your health risk analysis include toxic air
12 contaminants from the remediation of the contaminated soil
13 at the site? (Indiscernible) that way or this way? Okay.

14 MS. CHU: If you go to page 4.7-16, you see there
15 are five sources for our analysis.

16 MR. SIMPSON: Okay. I can look at that. But to
17 save time for the --

18 MS. CHU: Yeah.

19 MR. SIMPSON: -- hearing there --

20 MS. CHU: They include the four turbines and one
21 auxiliary boiler.

22 MR. SIMPSON: Oh, okay. So the answer is that it
23 doesn't contain -- or it doesn't consider the remediation of
24 the contaminated soil?

25 MR. BELL: Objection; misstates the testimony.

1 HEARING OFFICER COCHRAN: Well, I think that --

2 MR. SIMPSON: Oh, okay. Maybe I didn't understand
3 it.

4 HEARING OFFICER COCHRAN: I think that the
5 document is going to have to speak for itself, Mr. Simpson,
6 because that's -- Staff's testimony is that document, so the
7 document speaks for itself.

8 So I'm going to sustain the objection.

9 MR. SIMPSON: I didn't hear an objection.

10 HEARING OFFICER COCHRAN: Mr. Bell objected that
11 it misstated her testimony. And I'm sustaining that
12 objection because the document, that part of the FSA, speaks
13 for itself.

14 MR. SIMPSON: Well, if the witness can't answer --
15 you're not allowing the witness to answer the question. I'm
16 not sure why I'm using my time here to ask questions.

17 HEARING OFFICER COCHRAN: She did --

18 MR. SIMPSON: It's a pretty straightforward
19 question.

20 HEARING OFFICER COCHRAN: Okay. My understanding
21 is she did answer the question by referring to the
22 provisions of her written testimony. So that is her answer,
23 is look at page 4.7-16.

24 MR. SIMPSON: Okay. Thank you.

25 HEARING OFFICER COCHRAN: Do you have any other

1 questions --

2 MR. SIMPSON: I think that's all my --

3

4 HEARING OFFICER COCHRAN: -- on Public Health?

5 MR. SIMPSON: Nope. Nope.

6 HEARING OFFICER COCHRAN: Anything from Staff or
7 Applicant on Public Health?

8 MR. BELL: Nothing on behalf of Staff.

9 MS. FOSTER: Nothing from the Project Owner.

10 HEARING OFFICER COCHRAN: Thank you.

11 Are there any public comments on Public Health?

12 Seeing none, at this point is the evidentiary
13 record ready to be closed? Is there additional evidence
14 that we have not received?

15 MS. FOSTER: Project Owner does not have any
16 additional evidence or see the need for additional evidence
17 at this time.

18 HEARING OFFICER COCHRAN: Okay.

19 Mr. Bell?

20 MR. BELL: Nothing further on behalf of Staff.

21 HEARING OFFICER COCHRAN: Mr. Simpson?

22 MR. SIMPSON: Nothing further right now.

23 HEARING OFFICER COCHRAN: Okay. Then I will
24 declare the evidentiary record closed.

25 So during the prehearing conference we had talked

1 about the need for further briefing. Given the testimony
2 elicited today, do any of the parties see the need for
3 additional briefing of issues not previously covered?

4 MS. FOSTER: Project Owner does not.

5 MR. BELL: Nothing on behalf of Staff.

6 HEARING OFFICER COCHRAN: Mr. Simpson?

7 MR. SIMPSON: Absolutely, I do. Sure, I do.

8 HEARING OFFICER COCHRAN: And on what topic areas
9 do you believe briefing is required?

10 MR. SIMPSON: I'll be briefing all issues.

11 MR. BELL: And I know this might be premature, but
12 were Mr. Simpson to brief issues that are outside the scope
13 of his participation, Staff would object.

14 MS. FOSTER: Project Owner also objects.

15 HEARING OFFICER COCHRAN: What do you mean by all
16 issues, Mr. Simpson?

17 MR. SIMPSON: Well, we could start with the public
18 notices, I'll brief the issues that you've allowed me to
19 participate in. I'll brief Alternatives. And I just want
20 to be open to brief whatever issue I'd like to brief.

21 MS. FOSTER: Project Owner would also like to
22 object to any briefing that is not legal in nature if Mr.
23 Simpson is contemplating trying to add additional testimony
24 to the record. The evidentiary record has been closed.

25 MR. BELL: Staff joins in the objection.

1 MR. SIMPSON: I'm not sure how -- and the PSA has
2 only been out for, what, two weeks. To close the
3 evidentiary record before people even have 30 days to
4 consider that I find to be premature. But then nobody's
5 really been notified.

6 HEARING OFFICER COCHRAN: Okay. I believe this
7 is -- I believe this is where we're going to take this.

8 Mr. Simpson, obviously you can provide briefing,
9 legal briefing, on the issues that you were admitted on.
10 You can provide comment on all issues at any time. However,
11 that is when we talk about comment and briefing, though, we
12 are not talking about additional factual information that's
13 not already included in the record, including what was
14 stated today. So the way that briefing is usually done is
15 we are having a transcript prepared of today's evidentiary
16 hearing. Briefing is usually required within a certain
17 amount of time after the transcript has been docketed. And
18 then any reply briefs will follow shortly thereafter.

19 So at this point the schedule indicates, I believe
20 that the Presiding Member's Proposed Decision is going to be
21 issued the week of January 30th. And as stated in the order
22 granting our Petition to Intervene, we were not going to
23 change any of the dates.

24 So working backwards, and I'm going to look at the
25 court reporter and get an estimate of when the transcript

1 might be ready? Okay.

2 So today is the 21st of December. Happy New Year
3 for a new transcript, probably sometime the week of January
4 2nd, since I believe the 31st is a Saturday. Briefing will
5 be due one week after the transcript is filed. Any reply
6 briefs will be due one week after that, which should not
7 then disturb the schedule for the issuance of the PMPD on
8 January 30 or the week of January 30, excuse me.

9 If it seems as though the transcripts are going to
10 be delayed because of the holiday season that we're in, then
11 we will adjust the briefing schedule accordingly. But we
12 are going to stick with issuance of the PMPD the week of
13 January 30th. That is our commitment, and that's the
14 schedule that we had adopted based on all of the input that
15 we had at the time.

16 So that's where we are this point.

17 MR. SIMPSON: A week is not going to be adequate
18 for me to brief.

19 HEARING OFFICER COCHRAN: So I appreciate your
20 comments, Mr. Simpson. But again, I would remind you that
21 you came into the proceeding knowing the schedule, and that
22 included a preliminary -- I'm sorry, a Presiding Member's
23 Proposed Decision the week of January 30. So we have to
24 mindful of that and obtain briefings accordingly. And I
25 appreciate that it will be difficult, but I think it's still

1 manageable. That is not an unusual schedule at all for any
2 of these proceedings. So --

3 MR. SIMPSON: Well, this proceeding has been going
4 on for years. You have adequate Staff and resources to
5 brief in whatever time period is required, but I've got -- I
6 don't have that. It's not realistic for a member of the
7 public to be expected to brief in this time period. I mean,
8 I'm wrapped up with litigation on the other AES project on
9 CEC's failure to provide public notice on that one or
10 provide public participation.

11 So, you know, yeah, if I had nothing else to do,
12 maybe I could get something done in a week. But the reality
13 is that's an unfair schedule for the public.

14 MR. BELL: If I can, on behalf of Staff, these
15 administrative hearings are different than other types of
16 hearings that you might have, say in a court of law or even
17 in a court of equity, where live testimony is introduced at
18 the hearing. Often times the parties don't know exactly
19 what the witnesses are going to say. And you rely on what
20 you hear from the witnesses to form a complete record. And
21 in those cases, having the transcript in front of you is
22 paramount for drafting a legal brief.

23 These administrative proceedings are a little
24 different in that we already know what the testimony is
25 ahead of time. And very seldom is anything introduced at

1 the hearing itself that would be a surprise for any of the
2 parties. So in that the testimony has been filed ahead of
3 time, any party could get started on any of the briefs for
4 any of the legal issues that they've already previously
5 identified.

6 Mr. Simpson does bring up a good point, that this
7 proceeding or these proceedings for this facility have been
8 going on for years, since 2012, in fact. And it wasn't
9 until days before the evidentiary hearing in 2017 [sic],
10 more than five years later, that Mr. Simpson decided that he
11 wanted to jump in become a part of these proceedings. He
12 did so knowing that there was a short time frame. And the
13 Committee allowed him to participate in these proceedings,
14 knowing that there was a short time frame.

15 So for him to come in later on and say, sorry,
16 there's not enough time, we have to extend it out and make
17 this take longer to accommodate me, that's nothing more than
18 gamesmanship.

19 The Committee and the Commission go out of their
20 way to involve the public in every one of our proceedings,
21 as we should. That's part of our public mission. But to
22 allow somebody to come in at the last minute and extend out
23 the process much longer than it has to be just to
24 accommodate them because of their late participation, it
25 just doesn't follow. The Applicant, Staff, the public

1 deserve to have a Presiding Member's Proposed Decision in a
2 timely manner, as the Committee has already set out.

3 MS. FOSTER: And Project Owner agrees that with,
4 as well. There's nothing to stop Mr. Simpson from starting
5 the legal briefing now. Legal briefing is not normally
6 required as a matter of course. Parties at time also waive
7 the right to receive the transcript prior to legal briefing
8 being due.

9 And just to clarify for the record, the case Mr.
10 Simpson referenced was dismissed yesterday morning by the
11 Eastern District.

12 HEARING OFFICER COCHRAN: Thank you.

13 Mr. Simpson, did you want to respond to either Mr.
14 Bell or Ms. Foster?

15 MR. SIMPSON: Sure. I'm objecting to the briefing
16 schedule. This is -- from Christmas to New Year's is when
17 you're expecting this briefing to be done. I don't expect
18 that you'll have Staff on for that.

19 HEARING OFFICER COCHRAN: Okay. Mr. Simpson, I
20 think you're working under a misapprehension, so let me --
21 and it's probably my fault, I wasn't clear.

22 The briefs will be due one week after the
23 transcript comes out. The transcript isn't due until
24 approximately January 2nd. So we're looking at a week after
25 that for your first brief to be due. So that's some three

1 to four weeks out from today -- well, two-and-a-half, three.

2 So you'll have time after the holidays.

3 But as Ms. Foster and Mr. Bell have both remarked,
4 most of the evidence is already there. The transcript is
5 the cherry on the cake, if you will. The cake is already
6 out there for you. So you could start your legal briefing
7 now, and then just have to add whatever finishing touches
8 that are reliant on the testimony adduced today to add to
9 your briefing. So, understanding that briefing is probably
10 going to be due the week of the 9th of January, does that
11 ameliorate your concern?

12 MR. SIMPSON: It's still inadequate time for me to
13 give much of a brief. I mean, this is a big deal for one
14 guy to take on. I know you all have a bunch of attorneys
15 and staff and that sort of thing. But for a member of the
16 public who was just looking at an FSA that came out a couple
17 of weeks ago, it's inadequate. So, no, I'm not withdrawing
18 my objection. It sounds like you're overruling it, but I'm
19 objecting to the briefing schedule.

20 HEARING OFFICER COCHRAN: I appreciate that. And,
21 yes, you are correct.

22 MR. SIMPSON: I would like 30 -- I would like 30
23 days from the time that the transcript comes out.

24 HEARING OFFICER COCHRAN: Okay. I appreciate
25 that. And you're correct, the motion is going -- to

1 continue, the briefing schedule is going to be denied.
2 There will be an order put out that sets forth the date
3 based upon when the hearing transcript is placed on the
4 docket. And you will have one week from then to prepare
5 your draft -- or your brief.

6 With that, I'm going to open it up one last time
7 for any public comment. Anyone at all?

8 Ms. Mathews, did you ever receive an email from
9 Mr. Pyle?

10 She's indicating that she did not receive an email
11 from Mr. Pyle with his comments. Those may come in at a
12 later date, in which case we'll put them in the docket. And
13 again, I would remind you that there are multiple comment
14 opportunities still to come in this process, up to and
15 including the hearing before the full Commission on any
16 decision that may be reached.

17 At this time we are going to continue the closed
18 session scheduled for today to January 9, 2017 at 10:00 a.m.

19 And again, that will be for a closed session only, so folks
20 don't need to attend. Notice will be posted, as required by
21 the Bagley-Keene Open Meeting Law, and will also be filed in
22 the docket. And there will be --

23 MR. SIMPSON: Bagley-Keene.

24 HEARING OFFICER COCHRAN: I'm sorry?

25 MR. SIMPSON: Oh, I was just repeating, you said

1 Bagley-Keene. That's interesting. Thank you.

2 HEARING OFFICER COCHRAN: Okay. Yes, we're a
3 state body. That's the rules, we take them.

4 So with that, this meeting is continued, the
5 closed session. And as always, there will be a public
6 comment opportunity before the closed session reconvenes.

7 And with that, this meeting is continued to
8 January 9 at 10:00 a.m.

9 Thank you all for your participation today. And
10 we look forward to your continued participation.

11 (The meeting concluded at 2:22 p.m.)

12

13

14

15

16

17

18

19

20

21

22

23

24

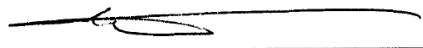
25

REPORTER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of January, 2017.




PETER PETTY
CER**D-493
Notary Public

TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 04 of January, 2017.



Barbara Little
Certified Transcriber
AAERT No. CET**D-520