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BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of:)
)
 REDONDO BEACH ENERGY PROJECT) Docket No. 012-AFC-03
 -----)

STATUS CONFERENCE
 CALIFORNIA ENERGY COMMISSION
 ART ROSENFELD HEARING ROOM
 1516 NINTH STREET
 SACRAMENTO, CALIFORNIA

FRIDAY, SEPTEMBER 11, 2015
 9:00 A.M.

Reported by:
 Peter Petty

APPEARANCES

Commissioners (and their advisers) Present

Karen Douglas, Presiding Member

Jennifer Nelson, her Adviser

Le-Quyen Nguyen, her Adviser

Janea Scott, Associate Member

Rhetta DeMesa, her Adviser

Courtney Smith, her Adviser

Eileen Allen, Commissioner's Technical Adviser

for Facility Siting

Alana Mathews, Public Adviser

Hearing Adviser:

Susan Cochran

Staff Present:

Kerry Willis, Staff Counsel

Keith Winstead, Project Manager

Paul Kramer

Petitioner AES Southland, LLC

Ellison Schneider & Harris

Greggory Wheatland, Esq.

Samantha Pottenger, Esq.

Stephen O'Kane, AES

Interveners

City of Redondo Beach

Jon Welner, Jeffer Mangels Butler & Mitchell, Special
Counsel to the City

Kimberly Huangfu, Jeffer Mangels Butler & Mitchell,
Special Counsel to the City

Jeremy Decker

City of Hermosa Beach

Shahiedah Coates, Attorney

Hany Fagary, Mayor *pro tem*, City of Hermosa Beach

Also Present

Tom Luster, California Coastal Commission

South Coast Air Quality Management District (SCAQMD)

Mohsen Nazemi, Deputy Executive Officer

Jillian Wong

Andrew Lee

John Yee

Public

Betsy Ryan, Resident of Hermosa Beach

Lauren Pizer Mains, Senator Ben Allen's Office

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1 SACRAMENTO, CALIFORNIA
2 FRIDAY, SEPTEMBER 11, 2015 10:04 A.M.

3 --o0o--

4 COMMISSIONER DOUGLAS: Good morning,
5 everybody. This is the status conference for the
6 proposed Redondo Beach Energy Project. My name is
7 Karen Douglas, I'm the Presiding Member on the
8 committee assigned to this project.

9 Commissioner Scott is the Associate Member.
10 She's sitting next to the hearing adviser.

11 The Hearing Adviser is to my immediate left,
12 Susan Cochran.

13 To my right are my Advisers, Jennifer Nelson
14 and Le-Quyen Nguyen.

15 And to Commissioner Scott's right are her
16 Advisers, Courtney Smith and Rhetta DeMesa.

17 To Rhetta DeMesa's left is Eileen Allen, the
18 Technical Adviser for Siting for the Commissioners.

19 And I see Alana Mathews, the Public Adviser
20 is here.

21 Let me ask the Petitioner if you could
22 introduce yourselves.

23 MR. WHEATLAND: Good morning, I'm Gregg
24 Wheatland, counsel for the applicant. With me is
25 Samantha Pottenger and Stephen O'Kane.

1 COMMISSIONER DOUGLAS: Excellent. Thank you.
2 Staff, please.

3 MS. WILLIS: Good morning, I'm Kerry Willis,
4 Staff Counsel, and with me is Keith Winstead, Project
5 Manager.

6 COMMISSIONER DOUGLAS: Thank you.
7 Intervener James Light, Building a Better
8 Redondo, are you here or on the WebEx?

9 All right. Intervener City of Redondo Beach?

10 MR. WELNER: Yes, good morning. Jon Welner
11 for the City of Redondo Beach. I'm here with Kimberly
12 Huangfu, who is also outside counsel.

13 I believe on the phone are Mike Webb, City
14 Attorney, and two consultants, James Westbrook
15 regarding air and Jeremy Decker on noise issues.

16 COMMISSIONER DOUGLAS: Thank you very much.
17 Intervener City of Hermosa Beach?

18 MS. COATES: Hi, good morning. This is
19 Shahiedah Coates for the City of Hermosa Beach.

20 COMMISSIONER DOUGLAS: Good morning, thank
21 you.

22 Are there any representatives of state,
23 federal, or local public agencies or Native American
24 tribes in the room or on the phone?

25 MR. LUSTER: Yes, Tom Luster, Coastal

1 Commission.

2 COMMISSIONER DOUGLAS: Excellent, thank you.
3 Anyone else?

4 MR. LEE: This is Andrew Lee and John Yee
5 from the South Coast Air Quality Management District.

6 COMMISSIONER DOUGLAS: Great, thanks for
7 being with us this morning.

8 Anyone else?

9 MR. FANGARY: This is Hany Fangary, mayor *pro*
10 *tem* of the City of Hermosa Beach.

11 COMMISSIONER DOUGLAS: Excellent. Thanks for
12 joining us.

13 Anyone else from state, federal, or local
14 government agencies or Native American tribes in the
15 room or on the phone?

16 All right. In that case, I'll turn this over
17 to the Hearing Adviser to get us started.

18 HEARING ADVISER COCHRAN: Thank you and good
19 morning.

20 The committee last convened on August 5th,
21 2015. At that time we discussed various issues, some
22 of which will be repeated today. Since that last
23 committee conference there have been some developments
24 that the committee is aware of and wishes to address
25 briefly.

1 In addition, as set forth in the agenda for
2 today's meeting, we will be having a hearing on the
3 motion to compel technical noise data that was filed
4 by the City of Redondo Beach.

5 But first I would like to start with the
6 information concerning the recent gas release from the
7 existing Redondo Beach generating station, I believe
8 is its title.

9 On August 28th there was a release of raw
10 natural gas by the plant. Members of the public have
11 filed in the Commission's docket observations
12 regarding the gas release, subsequent health issues,
13 and related prolonged loud noises coming from the
14 plant.

15 The applicant has stated that this release
16 was in conformity with the operation of certain pieces
17 of plant equipment. You could find the applicant's
18 response/press release in our docket at TN205980.

19 The City of Redondo Beach Fire Department was
20 the first responder and indicates the applicant did
21 not notify the City of the release. And again, you can
22 find the City of Redondo Beach's activities in
23 relation to this gas release in the docket at
24 TN206005.

25 What the committee would like to remind you

1 of is that the existing plant is not licensed by the
2 California Energy Commission, and so therefore the
3 committee and the Commission do not have the ability
4 to investigate or enforce any claimed violation, we
5 simply don't have the jurisdiction to do that. This is
6 the first license that is being sought from the
7 California Energy Commission for operation of a power
8 plant in that area.

9 So what I'd like to move on to now, then, is
10 the discovery motions, and there are two motions
11 actually pending.

12 The first one that I wanted to talk about was
13 the motion to compel that was brought by the City of
14 Redondo Beach. We discussed this at the August 5th
15 committee conference as well, and we invited the
16 parties to respond to the motion regarding noise data.

17 Since that time it's the committee's
18 understanding that on August 28th a substantial amount
19 of noise data was provided by the applicant to City
20 staff and all of the parties and has been docketed.

21 One of the things I would point out is that
22 between August 5th and August 28th, the staff
23 originally supported the motion that the City of
24 Redondo Beach had brought. What is the staff's current
25 position as it relates to that motion?

1 The other thing I would note is that late
2 yesterday evening, or late yesterday afternoon, the
3 City of Redondo Beach, the movant, filed a
4 supplemental brief, and portions of that are available
5 on screen.

6 Paul, if you could pull that up. It's the
7 Redondo Beach in the lower tray.

8 And what this includes is an overview from
9 movant City of Redondo Beach's point of view of what
10 their request was and what the responses to date have
11 been. If you want to see the full document, it's
12 located in the docket at TN206063.

13 So then turning to staff, the questions again
14 are, do you continue to support the motion? The
15 information that was provided on the 28th, and I know
16 it's been not a long time since then, has that
17 provided you with what you need, and would additional
18 information be helpful?

19 MS. WILLIS: Thank you. Once again, Kerry
20 Willis representing the staff.

21 As we stated in our response to the motion,
22 that staff did not believe that the information
23 requested by the City was necessary for the decision.
24 We felt it was relevant. Staff understands that there
25 is public interest on noise because we've had several

1 workshops and they've been very long to probably like
2 11:00 o'clock at night. So we wanted to support both
3 cities in investigating and looking more into noise
4 issues.

5 Since that time, and when we received the
6 data that AES brought forth, we have sent the data to
7 our modeler and we do believe that we have received
8 all that we need to support the modeling that has been
9 done by AES for this project, so we no longer have any
10 issues with data.

11 There are other issues with noise modeling
12 between what we've read from the City and from us that
13 we can discuss when that is the appropriate time, but
14 for just this motion and for the data, we no longer
15 have any requests.

16 HEARING ADVISER COCHRAN: Thank you for that.

17 Let's turn now to, then, the moving party. Do
18 you have anything that you'd like to add other than
19 what was contained in your supplemental brief from
20 yesterday afternoon, briefly?

21 MR. WELNER: Yes, and I will keep it brief.

22 I think that what we attempted to do in the
23 table is break down for the committee into pieces what
24 information was requested and what has been received
25 and what has not been received.

1 I think what staff were alluding to with
2 regard to other noise issues is the limited peer
3 analysis that was performed by our noise consultants
4 on the day that it was received, which identified a
5 significant discrepancy between the calculations that
6 had been performed by AES and the calculations that
7 were tested and performed by our consultants.

8 I think this underscores the need for more
9 complete disclosure of the data and calculations that
10 were used by AES since there appears to be a really
11 significant gap between their calculations and the
12 ones produced by Salter and Associates.

13 You asked me to be brief so I won't go
14 through the table. We'd be glad to go through the
15 table and explain why in further detail these
16 individual items are necessary for a truly effective
17 peer review that will cover all the issues.

18 HEARING ADVISER COCHRAN: Okay. Applicant,
19 did you have anything you wished to add?

20 MR. WHEATLAND: Well, first of all, I'd like
21 to get clarification on the supplemental brief,
22 because you recall at the end of the last conference I
23 raised an objection to having filing submitted at the
24 very last hour just moments before the hearing, or
25 just in the very last few minutes of the day prior to

1 the hearing. And I explained the unfairness that arose
2 through the sandbagging of such filings, and the
3 committee noted my concern.

4 I understood noting the concern to be an
5 agreement that such filings would not take place, but
6 apparently this conduct is still continuing and the
7 supplemental brief was filed at about 4:45 yesterday
8 afternoon.

9 The Commission rules don't provide for
10 supplemental briefs on a motion. They do provide for a
11 response. And the Commission's rules also provide in
12 Section 1716.5 that additional pleadings can be made
13 with the consent or approval of the committee.

14 But in this case the City did not file a
15 motion for a leave to file a supplemental brief. And I
16 believe very strongly that if any consideration should
17 be given to that brief they should have filed a proper
18 motion.

19 I served for many years as assistant chief
20 ALJ at the Public Utilities Commission, and frankly,
21 such conduct would never be tolerated before the
22 Public Utilities Commission. The party would file a
23 supplemental brief at the very last moment without
24 having been granted leave to file such brief.

25 To do so is very unfair both to the decision

1 makers and to the other parties because it denies them
2 a reasonable opportunity to review and respond to it.

3 So I'd like to ask first if the committee
4 intends to give any consideration to the supplemental
5 brief.

6 MR. WELNER: The City would like to respond
7 briefly to that comment.

8 HEARING ADVISER COCHRAN: Mr. Wheatland, are
9 you through with -- I understand your procedural
10 objection.

11 MR. WHEATLAND: All right.

12 HEARING ADVISER COCHRAN: What I would say is
13 it's also been the committee's perception that
14 sometimes the data come in late and that this may have
15 been the earliest time.

16 Even if this brief had not been filed, we
17 would still have required the same information that's
18 contained in it. The questions we were going to ask
19 today were what's still outstanding from the
20 production that was made on the 28th?

21 So while I understand that it may have been a
22 better process to seek leave to file a supplemental
23 brief, the information contained therein is germane
24 and relevant to the committee.

25 That being said, we do understand that there

1 has been a little of delay and perhaps prejudice to
2 the applicant by receiving this late. Are you looking
3 for additional time, then, to --

4 MR. WHEATLAND: No, I'm prepared to respond
5 to it today, but I do want to point out, may I just
6 for the purposes of the record, that this was one of
7 three filings that were made in the last hours of
8 yesterday or in that period of time. There was also a
9 114 page document that was dropped into the record.
10 There was also an additional so-called peer review
11 which is actually just the intervener's comments on
12 noise issues that was dropped in. All of these
13 materials came in at the very last moment.

14 And there's a continuing pattern here that's
15 I'm concerned about because as we go forward I don't
16 want to see the City submitting, for example,
17 supplemental testimony the day before the start of the
18 hearing. Or I don't want to see them filing
19 supplemental briefs that aren't authorized by the
20 committee, so I just would like to have my concerns
21 noted for the record.

22 As to the merits of this, the table that's
23 produced that's called Exhibit A, you'll note has six
24 items to it. Now, we previously identified in our
25 response to their motion to compel what we believed

1 were four data requests. You'll notice that there are
2 six here.

3 And one of the continuing problems we've had
4 with the City's requests for information is that they
5 keep shifting. Each time they ask for it, they ask for
6 something different, something additional.

7 So the items that are the six items here
8 don't accurately reflect or coincide with the
9 information that was in the motion to compel. And
10 certainly the items that were identified here have
11 never been raised before by the City.

12 The very first item is Item No. 1. Now, they
13 allege here that we failed to confirm whether the
14 existing AES power plant was operating at the time the
15 noise measurements are taken.

16 That's absolutely untrue, because that
17 confirmation was made in a filing that we made on May
18 22nd, 2014. The TN number is 202364.

19 And then it was subsequently again confirmed
20 in a record of conversation that was docketed on June
21 4th, 2014, TN number 202417.

22 So the fact that the plant has been operating
23 at the time that the noise measurements were taken for
24 Locations M3 and M4 has been on the record for at
25 least a year.

1 The second item that the City has, they say
2 we've refused to provide the file.

3 Well, that's not actually correct. What we
4 have refused to provide is the noise model, which is a
5 proprietary model. They have access to obtaining it
6 from a private third party if they choose to do so.

7 We have provided to them the inputs that were
8 used in the model. They claim it wasn't in electronic
9 form, but they got the information that they needed
10 with respect to that model.

11 Number three is very interesting, because
12 look at what they say they've requested, including
13 elevation heights of noise generating equipment.

14 That hasn't been a request that they've
15 submitted before. I don't find any reference to
16 elevation heights of noise generating equipment in
17 their motion to compel.

18 Now, one of the very important things to
19 understand is that if we step back from this a minute,
20 we first raised an objection that the information
21 isn't timely. We've raised an objection that they
22 haven't shown good cause for their failure to obtain
23 it in a timely manner.

24 But even if you put those all aside, we've
25 also said that the information has been substantially

1 provided. And we've been continuing to work in good
2 faith with the staff and other parties to provide the
3 information as much as it's available. The staff has
4 made several clarifying requests and we have provided
5 information in response to that.

6 But with respect to the height and noise
7 generating equipment, that's a new and different
8 request from what they've been asking for in the past.

9 A list of noise mitigation measures, this was
10 substantially provided in our responses to the staff
11 and to the City, and we believe we've fully satisfied
12 that request to the extent that that information is
13 available.

14 One of the other things important to remember
15 is that the City is asking for a level of information
16 for types of noise analysis that are generally
17 conducted once the application is approved and you do
18 the final engineering.

19 We have a good faith disagreement with the
20 City as to the level of information that's required.
21 We've provided the level of information that's been
22 available for the last 60 power plants that the
23 Commission has licensed.

24 Number five, yeah, I don't find this in the
25 motion to compel, but perhaps the City can point out

1 where in their motion that is specified.

2 And number six again is very interesting
3 because look at this reference here. They're saying we
4 didn't provide octave and third octave band levels
5 used to develop the noise monitoring map. That's the
6 first time that request has come. That isn't in their
7 motion to compel.

8 So in summary, we believe we have
9 substantially complied with all of the City's
10 requests. We have provided more information and more
11 detail about noise modeling than has been provided for
12 any other application that the Commission has
13 licensed. And all of this information is being
14 provided years after the deadline has expired for
15 discovery.

16 HEARING ADVISER COCHRAN: Thank you, Mr.
17 Wheatland. I just want to clarify a couple of things.

18 First of all, I appreciate your concern about
19 the timeliness. The committee shares your concern
20 about timeliness, and we again caution the parties
21 that late filings, particularly as we move toward
22 evidentiary hearings, will not be tolerated, will not
23 be accepted absent a showing of good cause as required
24 by the regulations.

25 But again, I would state that for purposes of

1 today we clearly indicated that the motion to compel
2 was going to be an item that we were going to discuss,
3 and the information in the supplemental brief, while
4 late, is germane to those discussions.

5 So these are the points that I took from it.

6 First of all, the fact that the plant was
7 operating while the noise analysis measurement data
8 were taken has been in the record since 2014.

9 That the raw data has been provided regarding
10 the noise model, but that the model itself, in other
11 words, the computer program, if I understand it, that
12 it runs through isn't provided.

13 MR. WHEATLAND: Right.

14 HEARING ADVISER COCHRAN: You just give the
15 raw data inputs. And you could use any other sort of
16 modeling software for that same information; is that
17 correct?

18 MR. WHEATLAND: We believe that's correct,
19 yes.

20 HEARING ADVISER COCHRAN: Okay. And then
21 your comments regarding as what's set forth here in
22 Exhibit A that's on screen, in Items three, five, and
23 six, those are all newly sought and not contained in
24 the motion to compel.

25 And finally, that for request number four,

1 the information being sought is for the final
2 engineering and that the data are not available now;
3 is that the applicant's position? On Item four.

4 MR. WHEATLAND: We provided a response but
5 not in the level of detail that would satisfy the
6 City.

7 HEARING ADVISER COCHRAN: So the level of
8 detail is something that would be forthcoming then
9 when the final engineering for the plant is being
10 done.

11 MR. WHEATLAND: Yeah, typically what we do is
12 we do preliminary noise modeling during the AFC
13 process, but the actual detailed noise mitigation
14 measures are developed and designed once the plant is
15 licensed and we do the final engineering. That's the
16 way the Commission has done it for all of the projects
17 it's licensed.

18 HEARING ADVISER COCHRAN: Okay. Turning now
19 to Mr. Welner. Do you have an issue of -- do you now
20 have an understanding that there is information about
21 whether the plant was operating, for request number
22 one?

23 MR. WELNER: Whether or not it was provided
24 before, it's certainly being confirmed now.

25 HEARING ADVISER COCHRAN: Okay. Secondly,

1 have the raw data been provided to you and your
2 consultants regardless of whether the noise model
3 itself has been provided?

4 MR. WELNER: The raw data for the ambient
5 noise coming from M3 and M4 was not provided. I'd like
6 to ask Jeremy Decker to speak to that, if he could.

7 HEARING ADVISER COCHRAN: Briefly, please.

8 MR. WHEATLAND: Well, it really does. Their
9 request was for the hourly data. The motion to compel
10 asked for hourly data and they've been provided it.

11 What the City's trying to do now is shift the
12 discussion and saying that there was more data that
13 they didn't get besides the hourly data.

14 MR. WELNER: That's not correct. If you look
15 at the email that was then used as an appendix to the
16 motion to request that was sent on June 18th, the
17 underlying data being requested is listed in a table.
18 It says "Provide all ambient noise measurement data
19 for monitor locations M1, M2, M3, and M4." Next
20 sentence says, [interference].

21 MR. WHEATLAND: But can I point out that when
22 the City came back to us and said what we hadn't
23 provided, they said, and I'll quote, "We did not
24 receive hourly ambient noise data for locations M3 and
25 M4." That was their request.

1 MR. WELNER: And where are you citing?

2 MR. WHEATLAND: From your motion to compel.

3 MR. WELNER: The motion to compel contained
4 an appendix referring to this email, did it not?

5 MR. WHEATLAND: You say it did.

6 MR. WELNER: Yes. So I guess the way the
7 City's looking at this issue is there are procedural
8 items that I want to briefly address, but setting
9 those aside for a moment, the City is looking at the
10 noise issue not from a who wins the motion, who gets
11 points and who asked what. We're trying to be
12 constructive and get the data we need in order to
13 create an analysis that truly protects the citizens of
14 Redondo and Hermosa from excessive noise.

15 So we did ask -- you know, there is a
16 repeated habit that has occurred where we show up at
17 these hearings and say back and forth, you didn't ask
18 this. Yes, we did. You didn't ask this. Yes, we did.

19 I have in front of me a table, and I can go
20 through it showing you where we asked for the stuff
21 previously, but the real point is -- and this is not
22 something that takes a long time, I think Jeremy
23 Decker can be very concise, but each of these things
24 has real significance in terms of understanding what
25 the noise will be, and the data that's being asked for

1 here is critical for a true noise analysis.

2 HEARING ADVISER COCHRAN: But there's a
3 fundamental disconnect with what I'm hearing you say,
4 Mr. Welner, between what your motion asked for and
5 what you would have liked in a perfect world.

6 MR. WELNER: No, but --

7 HEARING ADVISER COCHRAN: And what we're
8 focused on here is what the motion to compel asked
9 for.

10 MR. WELNER: Yes. And it asked for provide
11 all ambient noise measurement data for monitor
12 locations M1, M2, M3, and M4.

13 MR. WHEATLAND: And if I can just add, if the
14 committee would please direct its attention to Exhibit
15 B to the City's motion. This is a letter from the
16 City's consultant to the committee that purports to
17 summarize the information that was not provided. This
18 is the summary of the information that was not
19 provided yet.

20 And you'll see the very first item, ambient
21 noise data from monitor locations M1, M2, M3, and M4
22 was requested. We did not receive hourly ambient noise
23 data locations for M3 and M4, when in fact the City
24 had.

25 That's what they said they didn't get. That's

1 what in our response we say we have provided. Now
2 they're asking for something quite different.

3 HEARING ADVISER COCHRAN: Pardon me, I was
4 dealing with a technical issue. So, okay.

5 MR. WELNER: So what Mr. Wheatland is
6 pointing to is a short set of bullets from a letter
7 that summarizes an exchange, which refers to the
8 actual email that I'm talking about. There are going
9 to be details missing from the four bullets that are
10 included in the email table that's much more detailed.
11 And what this letter is asking for is that the items
12 in the table be produced, and this is a summary to
13 give people an idea of what is contained in that
14 table.

15 HEARING ADVISER COCHRAN: Okay. I appreciate
16 that. I think at this point the committee has the
17 information it needs in order to be able to rule on
18 this motion, and a formal written order from the
19 committee will be forthcoming. Thank you for your time
20 on that issue.

21 Now let's turn to the next discovery motion,
22 which was the motion for subpoena, again brought by
23 the City of Redondo Beach, seeking documents from the
24 California Public Utilities Commission and Southern
25 California Edison regarding the long-term procurement

1 plan, LTPP, and power purchase agreements that were
2 awarded pursuant to that LTPP.

3 Ms. Willis, I understand that you have
4 received contact from the CPUC. Have you ever actually
5 made a connection person to person?

6 MS. WILLIS: No, I haven't. An attorney with
7 the California Public Utilities has given us several
8 calls and I've responded and we just have not
9 connected yet.

10 HEARING ADVISER COCHRAN: Okay.

11 MS. WILLIS: I think her questions more were
12 what should we do or should we do anything, and that
13 point I was actually going to refer her to the
14 committee.

15 HEARING ADVISER COCHRAN: Thank you so much.

16 With that being said, what I think the
17 committee is going to do is today is 15 days from the
18 filing of that application for the subpoena, and 15
19 days is usually the time in which parties and others
20 have a chance to respond to the motion. Given the
21 short timeframe, the fact that this status conference
22 was set today being the last day, the committee would
23 like to have written comments from anyone who would
24 like to provide them. And again, we would extend a
25 special request to either the CPUC or Southern

1 California Edison, whoever would like to chat with us,
2 to respond to that motion by September 18, 2015, so a
3 week from today.

4 Mr. Wheatland.

5 MR. WHEATLAND: I wonder, though, if they
6 have been given notice, that the PUC or Edison has
7 actually been given notice of the motion for subpoena.

8 Typically, when a party would subpoena third
9 party information, as at least a courtesy they would
10 give a copy of their motion to the parties from whom
11 the information is being requested. Has the City
12 served either of these two parties with their motion?

13 MR. WELNER: No, the City hasn't served the
14 motion on the Public Utilities Commission. However,
15 both from within the long-term procurement process and
16 externally through discussions of filing a Public
17 Records Act request, the City has been actively
18 working with the Public Utilities Commission to try
19 and obtain this data. And included in the motion and
20 the correspondence back and forth with the Public
21 Utilities Commission about that request and their
22 detailed response.

23 This is not, as Mr. Wheatland well knows, a
24 litigation proceeding. Before a subpoena can be
25 issued, there needs to be a subpoena issued not by us,

1 which is the normal procedure in litigation, but by
2 the committee. And therefore, we felt it was
3 inappropriate to notify anyone that a subpoena was
4 coming until we know whether or not the committee
5 intends to take action on it or not.

6 HEARING ADVISER COCHRAN: Okay. With that
7 information clarification, the parties are requested
8 to provide whatever comments they wish on the
9 subpoena, its scope, timeliness, whatever you want to
10 comment on, by September 18th.

11 Separately from this, the committee will
12 contact the CPUC and Southern California Edison and
13 seek their input. They will probably be given more
14 than a week to respond to us. So that's what will
15 happen with the motion for the subpoena at this point.

16 MR. WELNER: May the City have a minute to
17 respond regarding the procedural issue that was raised
18 earlier?

19 HEARING ADVISER COCHRAN: Absolutely.

20 MR. WELNER: Okay, thank you.

21 The City is very cognizant of the deadlines,
22 and particularly after the discussion at the last
23 status conference, has been working very hard to
24 submit things in as timely a manner as possible.

25 We would note that since August 27th when the

1 subpoena motion was first filed, the City has been
2 filing large substantive briefs every two or three
3 days on different topics and has been particularly
4 surprised by a number of things that have happened.
5 There are many moving parts currently involved in this
6 proceeding, many of which were not expected.

7 So what I would say is the noise data that
8 this supplemental brief responds to was provided only
9 on the 28th. Our noise consultants, as you know, were
10 quite occupied analyzing the limited data that they
11 had received from AES in order to provide an analysis,
12 not yesterday, but on Monday, which was their peer
13 review of that data. And then following that were able
14 to (inaudible) with us to submitting the supplemental
15 brief.

16 The reason for submitting it, we hesitated to
17 do it because of the discussions about last minute
18 filings, but thought particularly because of the
19 confused discussion back and forth between the parties
20 where one asks for one thing and the other responds
21 differently, that having a table would clarify things
22 and we thought it might help the committee.

23 So I would note that in this case we
24 submitted a very thorough status report on the 1st
25 previewing every activity that then we followed

1 through with over the next couple of weeks.

2 We told you that the population maps were
3 being worked on. They've been worked on for over a
4 month by (inaudible) Network and were submitted as
5 soon as they were available.

6 Of course, the peer review of the noise data
7 was submitted on Monday, which was as soon after the
8 28th as could reasonably be expected to have been
9 produced.

10 And in the meantime, as you know, there were
11 other incidents that we needed to take care of,
12 including the uncontrolled release of gas from the
13 plant, the Wetlands Enforcement action by the Coastal
14 Commission in which we were involved in assisting, the
15 discovery of a new lawsuit filed by AES against the
16 Coastal Commission, which it hasn't bothered to
17 disclose to the parties prior to the status
18 conference. All of these things were keeping us quite
19 busy.

20 We in the future, of course, will endeavor to
21 submit things as soon as possible, and we apologize
22 that this supplemental brief was submitted yesterday.
23 However, the choice between not submitting such a
24 table and submitted it at the last minute, we thought
25 it was clear that it would be most helpful to everyone

1 if we submitted it.

2 HEARING ADVISER COCHRAN: We appreciate that.

3 MR. WELNER: Thank you.

4 HEARING ADVISER COCHRAN: And thank you for
5 bringing up the dewatering. It's almost as if you were
6 looking at my notes, because the next topic that we
7 were going to turn to was case progress and schedule,
8 and the very first item on my list was dewatering of
9 potential wetlands.

10 I know that there is a large controversy
11 concerning whether these are in fact wetlands; I
12 recognize that. And as Mr. Welner indicated, the
13 Coastal Commission had commenced an enforcement
14 action, which is found in our docket at TN 205946, and
15 we were made aware that there was a filing of an
16 action in superior court by AES against the Coastal
17 Commission.

18 So I would turn to the applicant at this
19 point and ask for some more information about that
20 lawsuit. And specifically, does this pending action
21 affect the proceedings here at the Energy Commission?
22 If so, how? If not, why not?

23 MR. WHEATLAND: The petition for writ that
24 was filed by the applicant relates to a notice of
25 violation that was issued against AES at the existing

1 Redondo Beach facility. As the committee noted
2 earlier, that facility is not subject to the
3 jurisdiction of the California Energy Commission. The
4 issue relating to the notice of violation and the
5 dewatering activities that are currently occurring are
6 not something that you're going to be asked to review
7 or decide upon.

8 And so Mr. Welner is correct, we haven't
9 provided notice. The reason for it is it is that
10 particular notice and the lawsuit that arises from it
11 is not matters that are subject to the jurisdiction of
12 the Commission.

13 Having said that, one of the issues that is
14 potentially to be addressed in the litigation is the
15 Coastal Commission's assertion of the existence of
16 jurisdictional wetlands; that is an issue that may
17 also arise in this proceeding and upon which the
18 Commission may have to make a determination.

19 You received a set of recommendations from
20 the Coastal Commission addressing those issues, and at
21 the appropriate time in the evidentiary hearings the
22 applicant will be providing a response to those
23 issues.

24 And we believe that the proper course for
25 this committee to pursue is not to be concerned about

1 the litigation, but instead to focus upon the dispute
2 as framed for you by the pleadings of the parties when
3 we get to the evidentiary hearings.

4 HEARING ADVISER COCHRAN: It's my
5 understanding that the 30413D report that we're
6 calling for shorthand purposes, by the Coastal
7 Commission includes a designation of these as
8 wetlands. So isn't the heart of the lawsuit also an
9 issue in these proceedings as to whether those are in
10 fact wetlands and what appropriate mitigation measures
11 may be for that?

12 MR. WHEATLAND: Well, it may be addressed.
13 But also, it's important to note that it may be, but
14 also the court may never even get to that question.

15 The dewatering activities that we are
16 discussing here are activities that have been
17 occurring on that site since the 1960s, prior to the
18 existence of the Coastal Commission. So it's possible
19 that that litigation may never reach the question of
20 jurisdictional wetlands. It may find that the
21 dewatering activities are appropriate activity and
22 that the notice of violation would be denied.

23 It's also possible that if those issues are
24 not decided in that way, the court may go on to
25 consider those issues, but it's hard to predict how a

1 court will ultimately address them.

2 HEARING ADVISER COCHRAN: Mr. Luster from the
3 California Coastal Commission, I know that you're on
4 the phone, and I don't want to get into any sort of
5 privileged conversations that may have occurred, but
6 do you have anything that could help the Energy
7 Commission committee on this issue.

8 MR. LUSTER: Certainly, just a couple of
9 brief items.

10 Yes, we were served earlier this week with
11 the suit regarding the Commission's finding that there
12 were wetlands on the site, and the Commission
13 forwarded those findings to you in the form of the
14 30413D report, and so we do have an independent
15 finding by the Coastal Commission that these are
16 Commission jurisdictional wetlands.

17 Although the Energy Commission isn't a party
18 to the suit, part of AES's suit asks the court to
19 weigh in on Warren Alquist and Coastal Act conformity.
20 Namely, whether the wetland determination is properly
21 a 30413D report relevant to NOI and AFC proceedings or
22 something else.

23 So I see AES hasn't docketed the suit, so I
24 can do that a little later today just so you can see
25 what the issues are. And I'm not here with my attorney

1 so I don't have anything further to say about it, but
2 I will post the suit a little later today.

3 HEARING ADVISER COCHRAN: The committee would
4 appreciate that, thank you very much, and thank you
5 for your comments.

6 MR. LUSTER: Uh-huh.

7 HEARING ADVISER COCHRAN: Do any of the other
8 parties wish to speak to this issue?

9 MR. WHEATLAND: There is one more thing I'd
10 like to add just on that issue.

11 HEARING ADVISER COCHRAN: Certainly.

12 MR. WHEATLAND: Both the City and the Coastal
13 Commission representative speak about the Commission's
14 determination. One of the issues in the lawsuit is
15 whether in fact any determination was actually made.
16 That is, does the Coastal Commission's approval of
17 recommendations to the California Energy Commission
18 constitute a formal determination of wetland
19 jurisdiction? And we are asserting in that litigation
20 that mere approval of staff report isn't the
21 appropriate process for making a wetlands
22 determination.

23 So that'll be another issue that the court
24 will be addressing, is whether in fact a determination
25 has even been made.

1 HEARING ADVISER COCHRAN: Okay. Thank you
2 very much. Now I would like --

3 MR. WELNER: The City does have a comment.

4 HEARING ADVISER COCHRAN: I'm sorry, yes, go
5 ahead.

6 MR. WELNER: Sure. So actually, I would like
7 to point out that the way the lawsuit is constructed,
8 it actually makes it clear that the real purpose of
9 the lawsuit is to influence this proceeding.

10 The notice that was received from the Coastal
11 Commission had to do with unpermitted development. In
12 other words, the construction or installation of new
13 pumps on the site without getting a permit.

14 That would be true whether or not there are
15 wetlands on the site.

16 In other words, a coastal development permit
17 is required for that kind of work and installation
18 regardless of whether there are wetlands. The fact
19 that there are wetlands just means that they're not
20 going to get that permit. And none of that is really
21 addressed in their lawsuit.

22 The only issue that's addressed in their
23 lawsuit which seeks a writ and declaratory relief is
24 whether or not the Coastal Commission properly decided
25 that there are wetlands on the site. That, I would

1 submit to you, is central to a lot of both the
2 Commission's and the Coastal Commission's analysis.

3 If there are wetlands on the site, then there
4 are observed biological resource issues. But, as the
5 Coastal Commission ably reported in their submission
6 to you, it has all kinds of other implications for the
7 findings that you need to make. If there are wetlands
8 there, likewise, it completely changes the analysis.

9 I think it would be impossible -- I'd like to
10 hear what staff have to say, but I think it would be
11 impossible for staff to complete a final staff
12 assessment without knowing whether there are or are
13 not wetlands on the site.

14 So now that this question is, I guess I would
15 say, in play due to this lawsuit with the Coastal
16 Commission, I think it's a basis for waiting and
17 seeing what happens, because we don't know as we speak
18 today whether or not the Coastal Commission's view
19 will prevail or not.

20 Does staff have a view?

21 HEARING ADVISER COCHRAN: Do you wish to
22 speak, Ms. Willis? You don't have to if you don't want
23 to.

24 MS. WILLIS: Thank you. I don't disagree with
25 Mr. Welner's comments. At this point, without

1 addressing the filing in a substantive way, the issues
2 that are raised definitely do impact our biological
3 resources section, how we respond to the Coastal
4 Commission.

5 And we certainly do have an MOU with the
6 Coastal Commission and we do take their comments,
7 whether or not they're required or not, seriously. So
8 I'm not totally convinced that a decision on how the
9 report or how the comments came to us would totally
10 change our analysis at this point, but we do have a
11 pending biological resources document that is either
12 completed or near completed that there might be some
13 impact based on the decision that comes out of this
14 writ.

15 HEARING ADVISER COCHRAN: Mr. Wheatland, I
16 know that you are not counsel on the underlying
17 superior court writ petition, and given that it was
18 filed earlier this week I'm assuming there's no
19 briefing schedule, but can someone give me a ballpark
20 of what they think the writ petition timing would be?

21 MR. WHEATLAND: I can't off the top of my
22 head. I could try to obtain that information for you.

23 HEARING ADVISER COCHRAN: Okay.

24 MR. WHEATLAND: But I want to stress that the
25 reason this lawsuit is filed is because the Coastal

1 Commission submitted a set of recommendations to you,
2 and then when through subsequent discussions with the
3 Coastal Commission and through their subsequent
4 filing, they indicated that they thought that that was
5 more than just a set of recommendations. They thought
6 they had made a formal determination of wetlands.

7 And the statute of limitations is very short
8 with respect to the timeframe that a party can
9 challenge a wetlands determination if in fact one had
10 been made. So given the uncertainty on whether they
11 had made one or not, the only way the applicant could
12 preserve its right to challenge that was to file this
13 petition for writ.

14 If the Coastal Commission said, oh, we're
15 just making recommendations to the Commission, we
16 hadn't made a formal determination, that would have
17 been fine. But because they didn't do so, we had to
18 file that action in order to preserve our rights.

19 But that doesn't in any way influence the
20 independent judgment this Commission has to make with
21 respect to the recommendations that are made to you by
22 the Coastal Commission. We encourage the staff to look
23 at the recommendations and give you their independent
24 views on it, and we'll also provide you with our
25 opinion, but there's no need to wait for the outcome

1 of any court decision on this. You have a duty to
2 independently exercise your judgment with respect to
3 the recommendations you've received.

4 HEARING ADVISER COCHRAN: Thank you very
5 much.

6 MR. FANGARY: This is Hany Fangary, mayor *pro*
7 *tem* from City of Hermosa Beach. May I be allowed to
8 address this briefly?

9 HEARING ADVISER COCHRAN: I'm sorry, could
10 you restate your name and perhaps spell it? We have a
11 court reporter here whom I think would appreciate
12 that.

13 MR. FANGARY: Sure, my name is Hany, H-A-N-Y
14 is my first name, last name is Fangary, F as in Frank,
15 A-N as in Nancy, G-A-R-Y. I'm the mayor *pro tem* of the
16 City of Hermosa Beach. Hermosa Beach is an intervener
17 in this proceeding. I'm not speaking on behalf of the
18 City because we do have City counsel on the line
19 available to address issues on behalf of the City, but
20 I was wondering if I would be able to address this
21 issue briefly.

22 HEARING ADVISER COCHRAN: Certainly.

23 MR. FANGARY: Okay. I'm somewhat puzzled and
24 surprised that there is a proceeding, a lawsuit that
25 was filed, at least as far as I know as of today, that

1 the City of Hermosa Beach has not been aware of until
2 I participated in this call. I think it's consistent,
3 unfortunately, with AES's record of keeping things
4 quiet and not letting people know what's going on, so
5 that concerns me.

6 The other thing that concerns me, if the
7 applicant's specific statements to the committee today
8 on the lawsuit that they filed -- and I haven't seen
9 it and I'm looking forward for it to be posted -- but
10 if the lawsuit resulted from the specific Coastal
11 Commission recommendations to the Energy Commission
12 and the committee, but they don't want us to wait
13 around for this to pan out, it doesn't make a whole
14 lot of sense because this is clearly connected to
15 what's going on before the committee.

16 And I think the applicant's compliance with
17 the conclusions and directives of another California
18 government agency is relevant to this proceeding. If
19 the applicant is ignoring directions from -- not only
20 ignoring but challenging directions from another
21 California state agency and basically suing them for
22 that purpose, I think that's relevant for this
23 committee to evaluate how that pans out and how the
24 applicant treats decisions and directives given by
25 state agencies, because that, I think, shows a

1 reflection on how they will be addressing and dealing
2 with directives given by this Energy Commission and
3 the committee.

4 So I think it's completely relevant and I'm
5 really disappointed that this is the first time we're
6 hearing about it, but I think it's really relevant for
7 the committee to get a full update regarding this
8 litigation and hear from the California Coastal
9 Commission's counsel on this issue and factor this in.
10 And my recommendation would be for the committee to
11 wait this out and see what decisions come through this
12 litigation before we proceed forward because I think
13 that's relevant.

14 Thank you very much.

15 HEARING ADVISER COCHRAN: Thank you very
16 much, Mr. Fangary.

17 So is there anything else on dewatering?

18 Okay. I would like to now move on to the
19 final determination of compliance from South Coast Air
20 Quality Management District.

21 At the last committee conference we did not
22 have specific information from the Air District and I
23 appreciate both Mr. Lee and Mr. Yee being on the phone
24 with us today.

25 MR. NAZEMI: I'm sorry, this is Mohsen

1 Nazemi, Deputy Executive Officer for South Coast Air
2 Quality Management District. I'm also on the phone and
3 so is Dr. Jillian Wong, our air quality dispersion
4 modeling expert.

5 HEARING ADVISER COCHRAN: Oh, thank you so
6 much for joining us. So Mr. Nazemi, you had sent an
7 email to Ms. Allen, the technical adviser, indicating
8 that the FDOC would be published in late 2015, early
9 2016, but that you would be updating the committee
10 today on the status. Do you have an update for us?

11 MR. NAZEMI: Yes, absolutely. The status of
12 the project is actually, we think we're going to be
13 able to issue the FDOC much earlier than the previous
14 estimate. However, I can't give you an exact date
15 because they have actually sent out some requests for
16 information to the applicant. We are waiting to
17 receive that information back from the applicant.

18 And we are in the final stages of responding
19 or preparing our response to comments that we received
20 during the public comment period for the PDOC as well
21 as the public hearing or public community meeting that
22 we held in Redondo Beach. We did get some also
23 comments from the City of Redondo Beach that we are
24 preparing responses to that.

25 And so from our standpoint, I think we are

1 expecting the FDOC to be issued more like late
2 October, early November, provided we have all the
3 information back from the applicant and complete our
4 evaluation.

5 At the time that I sent the email, we also
6 were just informed about the release of the 1500 page
7 regulation by EPA called the Clean Power Plant, and so
8 we needed some time to review and evaluate the
9 applicability to the AES Redondo Beach repower project
10 and compliance with that. And in fact, some of the
11 questions we have sent back to the applicant is to
12 finalize our analysis for the new EPA regulations.

13 So I think at this point our estimate is that
14 it will be earlier than the end of 2015, beginning of
15 2016, but I can't give you an exact date.

16 HEARING ADVISER COCHRAN: Thank you very much
17 both for participating and for that information.

18 MR. NAZEMI: Sure, not a problem.

19 HEARING ADVISER COCHRAN: So then let's talk
20 about everyone's favorite topic, the scheduling of the
21 issuance of staff's final staff assessment.

22 I know that the applicant had requested that
23 the committee bifurcate the preparation of the final
24 staff assessment given the then current information
25 about the FDOC. And so I guess the question I would

1 have now to the applicant is do you wish to continue
2 to have that bifurcated, or should we wait and see if
3 the FDOC actually comes out earlier than we had all
4 planned or thought?

5 MR. WHEATLAND: Well, the information from
6 the District is new information for us today, and so
7 what I'd like to do is just ask if we could off the
8 record for a minute and we could discuss that for a
9 second before I --

10 HEARING ADVISER COCHRAN: Absolutely. So why
11 don't we take a brief five minute recess?

12 (Off the record 10:55 a.m. to 11:00 a.m.)

13 HEARING ADVISER COCHRAN: Thank you, we're
14 back on the record here in Sacramento.

15 So Mr. Wheatland, you caucused?

16 MR. WHEATLAND: Yes. Well, first of all, I
17 wanted to let you know that we did receive an
18 additional request for information from the District
19 on August 28th. We're in the process of preparing our
20 response and we'll file a response to the District's
21 request within a matter of a day or two, very short
22 time.

23 HEARING ADVISER COCHRAN: Thank you.

24 MR. WHEATLAND: We also very much appreciate
25 the efforts that the District is making to complete

1 the FDOC and to look carefully at their schedule and
2 move the completion date forward, so we really do
3 appreciate the efforts that they are making. But there
4 still remains considerable uncertainty as to when, in
5 fact, the FDOC will be issued. We don't have a date
6 certain for it, and there's always the potential that
7 it could be sooner or there could be further slippage.

8 So given the uncertainty over the
9 availability of the FDOC, we would strongly recommend
10 that the committee bifurcate the FSA and proceed with
11 the consideration of all those issues other than air
12 quality that are now ready to be decided, and then to
13 hold a supplemental evidentiary hearing once the FDOC
14 is issued and the staff issues their section of air
15 quality on the FSA, then you could hold hearings
16 limited to those issues at that time. But we would
17 strongly encourage the committee for the reasons that
18 we set forth in our status report to bifurcate the
19 FSA.

20 HEARING ADVISER COCHRAN: Thank you, Mr.
21 Wheatland.

22 As the group with the biggest dog in the
23 fight, I'll turn to staff and ask you. My impression
24 from the most recent status conference statement that
25 staff filed indicates that the noise and vibration

1 section is actually being very updated. You mentioned
2 bio today as well. We have the issues related to the
3 Coastal Commission report, the lawsuit, et cetera.

4 If the committee were looking for an analysis
5 that said, yes, these are wetlands, this is what would
6 happen; or if these are wetlands this is the impact;
7 if these are not wetlands these are the impacts, how
8 long with all of that whole universe that we've talked
9 about this morning as well as the unknown universe out
10 there, what timeframe is staff looking at for
11 publication of an FSA?

12 MS. WILLIS: At this point, staff is
13 definitely not supporting bifurcation. We don't really
14 know or understand what the applicant's, I guess,
15 hurry is on this since there are some outstanding
16 issues that remain.

17 One of the areas that you address, and then I
18 would add alternatives, are areas that we believe
19 could benefit from further workshops. So if we do not
20 bifurcate and we waited until after the Air District
21 submitted their FDOC, we could be using that time
22 wisely to hold some additional workshops, certainly on
23 noise.

24 Just my brief conference with Mr. Welner on
25 what the City's experts found and we haven't published

1 our results yet, but our modeling expert has found
2 something quite different. So the battle of the
3 modelers is probably better for a workshop than for
4 extensive hearing time.

5 HEARING ADVISER COCHRAN: We agree.

6 MS. WILLIS: I kind of thought that might be
7 the case.

8 Also, the biological issues, I mean, we
9 haven't quite worked out how the lawsuit might impact
10 or not impact. It certainly throws a wrench into some
11 of the discussions that we have. Although, as Mr.
12 Wheatland said, that staff can make a recommendation
13 on whether these are wetlands regardless.

14 And we have taken the Coastal Commission's,
15 whether it's a mandated requirement or just another
16 agency giving us their opinion, we could still take
17 that into consideration in our analysis, and we have.

18 So I guess our recommendation would be to
19 wait until after the FDOC is filed, publish in one
20 complete document. Have that time to -- we would think
21 that we would probably pre-publish the sections that I
22 mentioned, whether it's bio probably, definitely
23 noise, and certainly alternatives. That's another
24 section that we have spent a considerable amount of
25 time updating, especially in response to the Coastal

1 Commission's comments.

2 HEARING ADVISER COCHRAN: Okay, thank you.
3 City of Redondo Beach.

4 MR. WELNER: Thank you. It's probably not a
5 surprise, but we would concur with staff regarding
6 waiting for some of these very fast moving
7 developments to be resolved. I have a few items in
8 addition to the ones that were listed by staff.

9 First of all, just to go back to the noise
10 issue. We think that is very ripe for a workshop and
11 are very eager actually to get into a room with AES's
12 experts and staff experts and arrive at an
13 understanding of how the contralines were created and
14 why our results are so different, so we think that
15 would be very useful and important before finalizing
16 any noise analysis.

17 In addition to the other items that were
18 mentioned that were very important, I would add three
19 other pending developments that we think would result
20 in changes to the staff analysis.

21 One is, of course, the outcome of the
22 subpoena motion with regard to the alternatives
23 section. Whether or not there is a cooperative way
24 short of a subpoena for the PUC or Edison to provide
25 the limited data that's being asked for or a subpoena

1 is actually issued, the location of viable alternative
2 sites is very significant for the alternatives
3 analysis.

4 Secondly, the population density analysis
5 which a lot of time, money, and effort went into on
6 the City and its consultant's behalf, I think is very
7 important for the alternatives analysis as well,
8 demonstrating that the site in Redondo is among the
9 very most dense possible places that have ever been
10 considered for a power plant.

11 And then finally, the follow-up to the
12 uncontrolled gas release is something that the City is
13 very concerned about and actually believes, as it's
14 reviewing responses from AES, should result in
15 additional conditions and requirements being put in
16 the staff report, and that's something that is going
17 to take at least a few weeks to be fully digested.

18 So with all of those things moving, I can't
19 imagine a reason why the committee would want to
20 direct staff to issue what they have. It's really a
21 snapshot in time and there's a lot of moving parts.

22 HEARING ADVISER COCHRAN: Thank you.

23 Ms. Coates from the City of Hermosa Beach,
24 did you want to add anything?

25 MS. COATES: Hi, thank you. Just that we also

1 support staff's recommendation and the various
2 comments that the City of Redondo Beach has just
3 stated. Thank you.

4 HEARING ADVISER COCHRAN: Okay, thank you.

5 Anyone else in the room or online who I
6 didn't call? Mr. Wheatland.

7 MR. WHEATLAND: I wanted to explain why the
8 applicant, as Ms. Willis puts it, is in a hurry.

9 The docket number on this application is
10 12AFC03. The application was filed more than three
11 years ago, and it was -- well, maybe not more than
12 three, but approximately three years ago.

13 There was a substantial period of delay
14 entering data adequacy. We were data adequacy on all
15 elements except for the fact that receiving the Air
16 District's determination that our applicant was
17 complete. The entire proceeding was delayed in finding
18 us data adequacy for that one item alone, and that was
19 for a period of about six months or more.

20 Putting aside the period of suspension, it's
21 still been a very long time since we've been data
22 adequate, and far in excess of the 12-month time
23 period that the Commission is required to make a
24 decision on applications under the statute.

25 You're never going to have perfect

1 information. There's always going to be new
2 developments and changes. But what is expected of the
3 Commission under the Warren Alquist Act is that at a
4 given point in time you take the information as it's
5 best available to you and make a decision.

6 So if we always allow new developments to be
7 a cause for delay, and especially its new developments
8 where they are raised by the City years after the
9 close of discovery, then we'll never reach closure.

10 We think it's really important that the
11 Commission undertake a proper balance of the statutory
12 obligation to make a timely decision, and the
13 obligation to make a decision based on the best
14 available information.

15 Whether or not you grant the motion to
16 bifurcate, and I think you should, but whether or not
17 you do, we ask at the very least that you give us a
18 date certain for a final decision on this application
19 so that all of us in this room have a target to shoot
20 for and a goal to achieve.

21 HEARING ADVISER COCHRAN: I understand that
22 this bears a date as 2012 as the year that it was
23 received, but we were also on hiatus for about a year
24 when we were very close to giving you exactly what the
25 applicant had wished for, which was a decision.

1 I would also note that discovery, by my
2 calculation, closed in 2014, so we're a year, year and
3 a half at best, from close of discovery, and things
4 have happened. And so we do need to consider the
5 things that have happened and that continue to happen,
6 some of which the applicant has brought themselves by
7 pursuing a land use plan that didn't include a power
8 plant on this location. That affects staff's analysis;
9 it can't not affect staff's analysis.

10 So we understand our obligation but we also
11 understand that this is a moving target and that there
12 are a large number of people who have participated in
13 this.

14 I went to the site visit and informational
15 hearing on this. We had a packed theater, all of whom
16 were speaking on this project. There's an incredible
17 amount of material docketed on almost a daily basis by
18 residents in the area concerning this power plant.

19 This is an important decision, and while we
20 are mindful of our statutory obligation, we're also
21 mindful of the fact that we have obligations under the
22 California Environmental Quality Act, Warren Alquist,
23 our regulations, and so on, to provide a complete
24 discussion and analysis of this action that has been
25 requested. So we have taken your request for

1 bifurcation under submission.

2 Is there anything else on case progress and
3 schedule that would like to be stated? Then at this
4 point we're going to move on to public comment.

5 COMMISSIONER DOUGLAS: So at this time we're
6 in public comment. I understand that we have a blue
7 card, so at this moment we are moving to public
8 comment.

9 Betsy Ryan, Hermosa Beach resident, if you
10 could come forward, please.

11 MS. RYAN: Hi. Thank you for letting me
12 speak. My name is Betsy Ryan, I live in Hermosa Beach,
13 and although the AES power plant is in Redondo Beach,
14 its 50-acre site is across the street from Hermosa
15 Beach and a densely populated area.

16 Regarding the August 28th gas leak, people in
17 Hermosa Beach could smell the gas, the gas release,
18 from their homes. The fire department was called but
19 the gate to the AES was locked and there was no
20 security guard available to let them in.

21 This is just one of the many instances that
22 has left significant concerns regarding our safety if
23 similar or worse were to happen. If AES is allowed to
24 rebuild, it would be the same operators.

25 There is a risk, fear, and inconvenience.

1 People left their homes when they smelled the gas, and
2 people were afraid it could explode.

3 The plants lets out loud noises when it
4 releases vapor at a pitch that not only disturbs us
5 but makes our dogs howl.

6 This new plant also presents health risks to
7 our residents. According to the AES application tables
8 5.1 through 17 and 5.1 through 29 for the new Redondo
9 Beach power plant, dangerous particulate emissions may
10 rise from 3.3 to 49.7 tons per year and exceed the
11 state standard for concentration in our air.

12 This will put our children at a higher risk
13 for asthma. Exposure to particulate emissions causes
14 twice as many deaths per year in California as breast
15 cancer.

16 A new plant will generate 1.5 million tons of
17 greenhouse gasses per year and that's 10 times what
18 the entire City of Hermosa Beach produces per year.

19 According to the AES spokesman Pendergraft, a
20 new power plant is not necessary. Here is a quote from
21 AES spokesman Pendergraft when AES wanted to develop a
22 commercial mixed use and residential development for
23 the AES site. Here's his quote.

24 "New power plants are definitely
25 needed, but there are more locations in the

1 region that can meet those needs,'
2 Pendergraft said on Tuesday in a nod to the
3 AES Long Beach and Huntington Beach plants.
4 'Subject to a favorable vote, we are focusing
5 our efforts on developing new power plants on
6 our other two sites.' Pendergraft said that
7 the company has long shown an interest in
8 looking for alternative uses for the Redondo
9 Beach property."

10 That's the end of the quote.

11 So a new power plant is not necessary for the
12 stability of the grid.

13 There is also the Los Alamitos and Huntington
14 Beach plant. We have solar and we have community
15 aggregate as we are becoming more environmentally
16 sensitive to the California coastline and nature.

17 On July 8th, 2015, the California Coastal
18 Commission acknowledged the wetlands on the 50 acre
19 site. These wetlands have ecological value as well as
20 historical value to the Chowigna Native American
21 Indians.

22 The City of Redondo Beach and the City of
23 Hermosa Beach have both passed resolutions opposing
24 the rebuilding of the AES power plant. Please do not
25 allow them to rebuild.

1 Thank you.

2 COMMISSIONER DOUGLAS: Thank you for being
3 here.

4 Is there anyone else in the room who would
5 like to make public comment? Anyone else on the phone,
6 on WebEx who would like to make public comment?

7 Paul, is there anyone on the line?

8 MS. MAINS: I'm on the line, Lauren Pizer
9 Mains from Senator Ben Allen's office.

10 COMMISSIONER DOUGLAS: All right, go ahead
11 speak up.

12 MS. MAINS: -- interest in this issue, and
13 I'm here more to learn. We are concerned with some of
14 the implications of a new plant, and so just wanted to
15 note that we are following this closely.

16 COMMISSIONER DOUGLAS: All right, thank you.
17 And could you just please repeat your name and
18 affiliation for the court reporter?

19 MS. MAINS: Sure. It's Lauren Pizer, PIZER,
20 last name is Mains, MAINS, and I'm from the office of
21 Senator Ben Allen.

22 COMMISSIONER DOUGLAS: Thank you very much.
23 Who else would like to speak, go ahead and
24 speak up.

25 MR. FANGARY: This is Hany Fangary with the

1 City of Hermosa Beach. I am the mayor *pro tem* for the
2 City of Hermosa Beach, but speaking on my personal
3 capacity of just living in the City, I live roughly
4 eight blocks away from the power plant.

5 As the committee is aware, the City of
6 Hermosa Beach has adopted a unanimous resolution
7 opposing the rebuilding of the power plant, and since
8 then we have obviously been an intervener in the
9 process, but I continue to be concerned about things
10 that are going on in the power plant.

11 The issue with the gas release that occurred
12 on August 28th the committee is obviously very aware
13 with all the filings, but it raises some concerns and
14 I guess calls from the residents on Friday at 8:00
15 o'clock or 9:00 o'clock at night telling me of the gas
16 smell and they had to leave their house and disrupt
17 their families because of the gas smell and the fact
18 that the Redondo Beach Fire Department goes there to
19 the gate and nobody, AES is not answering the phone
20 and nobody is allowing them to get in, that causes
21 some significant health and safety risks for the
22 residents of Hermosa Beach.

23 I appeared before the committee staff's
24 workshop that occurred in Torrance and I think at
25 least eight to ten people that live in Hermosa Beach

1 showed up at that meeting and spoke and addressed the
2 concerns, and I would just mention real briefly the
3 concerns that we in Hermosa Beach have.

4 One is obviously the air emissions that will
5 be generated from this new power plant.

6 Noise concerns, and the noise concerns, I
7 think in my mind are highlighted by what Redondo Beach
8 has submitted and by the plan that Redondo Beach
9 submitted recently to the committee that shows the
10 area where the noise from the new power plant are
11 impacted. You can tell from the figure a lot of these
12 areas are Hermosa Beach residents immediately north of
13 the power plant.

14 There's also obviously ongoing view concerns
15 of a new power plant being there right next to the
16 coast.

17 There's significant public safety concerns
18 that are specifically highlighted by the gas release
19 that occurred and the fact, the impression that the
20 City of Hermosa Beach has is that AES does not have an
21 emergency plan in place to address these issues as
22 they come up.

23 And as of this call today I am now newly
24 concerned by the new lawsuit that AES decides to file
25 against a California agency that has issued a decision

1 to the committee, that the committee I think obviously
2 should take into account. And I think it raises
3 concerns for me about how they treat directives and
4 information provided by the committee to them if they
5 decided to sue the California Coastal Commission based
6 on the California Coastal Commission's conclusions.

7 I also agree with the California Coastal
8 Commission's recommendation that as part of this
9 process a needs assessment needs to be evaluated. I
10 think somebody already addressed the issue that just
11 less than a year ago AES was basically telling the
12 Redondo Beach residents to vote for our plant to
13 develop this property because they felt that the power
14 plant was not needed, and if that has not changed, I
15 don't know why the committee should proceed with this
16 and have all the interveners continue to spend time
17 and money dealing with this stuff if the rebuilding of
18 the power plant is not necessary.

19 And then lastly, I'll mention that I am also
20 fully in support of the staff's recommendation that
21 there should be no bifurcation of this process, that
22 the process should proceed with the new information
23 about the Coastal Commission litigation we should
24 allow this process to vet through and have the
25 committee be fully informed about it before final

1 decisions are made.

2 Thank you very much.

3 COMMISSIONER DOUGLAS: All right. Thank you
4 for joining us today.

5 Would anyone else like to make a comment,
6 please speak up.

7 MR. DECKER: Yeah, this is Jeremy Decker with
8 Charles Salter Associates.

9 COMMISSIONER DOUGLAS: Go ahead.

10 MR. DECKER: Earlier Mr. Welner asked if I
11 would comment on something. I wondered if he still
12 wanted to hear.

13 COMMISSIONER DOUGLAS: You know, I think this
14 is an issue that will be addressed in a workshop and in
15 the analysis, and I don't think it's necessary for us
16 to hear technical arguments from one of the parties
17 right now.

18 MR. DECKER: Sure, as long as we have an
19 opportunity to address, that would be great.

20 COMMISSIONER DOUGLAS: You will have
21 opportunity to address it, thank you very much.

22 Other public comments, please?

23 All right, very good. With that, then, we
24 will --

25 MR. WHEATLAND: I'd like to comment, please,

1 in response to what the gentleman from Hermosa Beach
2 just spoke to.

3 COMMISSIONER DOUGLAS: In a moment, Mr.
4 Wheatland. So we have a public commenter. Would you
5 like to come back up; is that what you're saying?

6 MS. RYAN: -- close to 200 signatures from
7 residents who are opposing the power plant. And then I
8 also have the quote from the AES spokesman where he
9 says it's not necessary, so I'd like to submit this.

10 COMMISSIONER DOUGLAS: Could you please speak
11 to the public adviser and she'll help you learn how to
12 docket materials or send them in to the record. Thank
13 you.

14 Go ahead, Mr. Wheatland.

15 MR. WHEATLAND: Despite the hearing officer's
16 initial statement at the beginning of this hearing,
17 the question of incidents at the existing plant are
18 not relevant to the matters that this Commission has
19 to decide, and a number of parties, the City of
20 Redondo Beach and the gentleman from Hermosa Beach
21 have made statements regarding these incidents over
22 the course of today's discussion, and a number of the
23 statements are simply flat wrong.

24 AES has responded to the City in a letter
25 dated September 8th, 2015, regarding the allegations

1 that they have raised and docketed in this proceeding,
2 and also we will put a copy of this response into the
3 docket as well so you'll have that available to you.

4 But I do want to stress the fact that a
5 number of statements that are just really wrong and
6 can't be left standing are the allegation that no one
7 answered the phone is absolutely wrong, as we will
8 provide you with the detailed timeline of the
9 incident. The Unit 7 and Unit 8 CRO did receive calls
10 from the Redondo Beach Fire Department dispatcher and
11 did respond to those calls.

12 It's also the allegation that there was a
13 problem at the front gate is simply wrong. That front
14 gate opened 58 seconds after the fire department chief
15 arrived at the front gate.

16 So our detailed response will get into all
17 these issues for you, but I urge you not to take at
18 face value any of the comments that were made today by
19 the City or the gentleman from Hermosa Beach regarding
20 that incident.

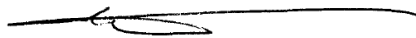
21 COMMISSIONER DOUGLAS: Thank you, Mr.
22 Wheatland. I believe the hearing officer's comments
23 were about jurisdiction, not -- I don't think we've
24 made any statement one way or the other about
25 relevance, but we appreciate your statements.

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 16th day of August, 2015.



PETER PETTY
CER**D-493
Notary Public

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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 a disinterested person, and was under my supervision thereafter transcribed into typewriting.

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Terri Harper
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