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STATE OF CALIFORNIA

California Energy Commission

1516 9th Street, Hearing Room B
Sacramento CA 95814

Status Conference for Alameda Energy Center
Docket No. 13-AFC-01
Transcript of Proceedings
Monday, October 10, 2016
10:33 a.m.

Brittany Flores, CSR 13460
APPEARANCES

COMMITTEE MEMBERS:
Commissioner Karen Douglas, presiding member
Commissioner Janea Scott, associate member

Mr. Kenneth Celli, Hearing Officer

Advisors:
Ms. Kristy Chew
Mr. Matthew Coldwell
Ms. Jennifer Nelson
Ms. Le-Quyen Nguyen
Ms. Alana Matthews

STAFF:
Mr. Keith Winstead, project manager
Mr. Jared Babula, legal counsel
Mr. Eric Knight, environmental office manager
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PROCEEDINGS:

COMMISSIONER DOUGLAS: Good morning, everybody. This is a status conference for the committee of the California Energy Commissioner regarding Alameda's Energy Center.

THE HEARING OFFICER: I don't think your sounds is coming through.

Does it show that her sound is coming through?

COMMISSIONER DOUGLAS: Hello.

Is this better?

All right. Well, this is the status conference conducted by a committee for the -- of the California Energy Commission regarding the Alameda Energy Center. The energy commission chair has assigned a committee of two commissions to conduct these proceedings.

Before we begin, we'd like to introduce the committee members to you. I'm Commissioner Karen Douglas, presiding member of the committee. To my left, Commissioner Janea Scott, the associate member of the committee. And then to my immediate left -- when he sits back down -- is the hearing officer, Ken Celli. Matt Coldwell, Commissioner Scott's advisor is to her left. And my advisors, Jennifer Nelson, and Quyen Nguyen are here. Kristy Chew, technical advisor for the
commissioners, is here. And at this point, I'll ask the parties to introduce themselves again.

MR. HARRIS: Good morning. Jeff Harris here on behalf of the applicant. To my right is vice president of AGS. To my left is my colleague Samantha Pottenger, and Jerry Salamy with CH2M Hill.

COMMISSIONER DOUGLAS: All right. Thank you.

And staff.

MR. WINSTEAD: Good morning. This is Keith Winstead, project manager for Alameda's Energy Center, and with me is Jared Babula, legal counsel.

COMMISSIONER DOUGLAS: Great. And anybody here for Los Cerritos Wetlands Land Trust?

MS. LAM: Hi. This is Elizabeth. I'm the executive director of the Los Cerritos Wetlands Land Trust. And my -- the person who has been helping me, Joe Geever, is here, too.

COMMISSIONER DOUGLAS: Great. Thank you. Thank you for being on the line.

I see the public advisor is here, Alana Mathews. Are there any elected officials or representatives from State, Federal, or local government agencies or Native American tribes here today on the phone?
If you're on the phone, please speak up.

Anyone from South Coast Manager's District?

MS. LEE: Yes. Vicky Lee and -- is supposed to be the phone, too.

COMMISSIONER DOUGLAS: Great. Thank you.

Any other representatives of State, Federal, or local government agencies or Native American tribes?

All right. Then at this time, I will hand over the conduct of the hearing to hearing advisor, Ken Celli.

THE HEARING OFFICER: Thank you, Commissioner Douglas.

And good morning. Can you all here me okay?

Excellent.

This is a status conference for the Alameda Los Cerritos Energy Project, which was scheduled in a notice dated September 29th, entitled, "Second notice of rescheduled committee status conference to October 10th, 2016 and consideration of tentative ruling on staff's motion." The purpose of today's conference is to discuss the upcoming proceedings, the schedule, and to allow the committee to deliberate in closed session.

In addition, the committee issued a tentative ruling on staff's motion for summary adjudication on September 28th, 2016, and we'll hear argument and
comment on that tentative ruling. The open meeting will be convened for a party discussions regarding, among other things, the tentative ruling and scheduling. And then afterwards, we will take public comment followed by a closed session. The open meeting will reopen at the conclusion of the closed session solely for the purpose of reporting any action taken in closed session and adjourning the meeting.

The way we'll proceed today is the staff is the moving party, so we'll hear first from staff on the tentative ruling and then we will hear from the applicant who will essentially -- who has essentially joined in staff's motion followed by intervener, Los Cerritos Wetlands Land Trust, who submitted a reply brief in opposition to the motion for summary adjudication. Following those discussions, we will next take up the question of the schedule raised in an email from Elizabeth Lambe of Los Cerritos Wetlands Land Trust. The committee also has some questions regarding parts of the FSA. We will then provide an opportunity for the general public to comment, and after that, the committee will go into closed session. At the conclusion of the closed session, I will return to reopen the record just to adjourn the status conference. Is there any question about how I'm going to proceed or
how we will proceed today from staff?

MR. BABULA: Just go -- is there --

THE HEARING OFFICER: I'm just -- I just want to make sure everybody understands how the day is going to go.

MR. BABULA: Yeah, I understand that.

THE HEARING OFFICER: And applicant.

MR. HARRIS: One clarification, when you return from executive session, do you expect the parties to be here?

THE HEARING OFFICER: I don't think that's going be to necessary because in either case, the staff -- or rather -- the committee is going to issue a written ruling and/or a written schedule. So -- and that would come out in pretty short order.

MR. HARRIS: So only -- it's only for procedure.

THE HEARING OFFICER: That's right.

MR HARRIS: Thank you.

THE HEARING OFFICER: And essentially, the record -- or the transcript will show that I came down and adjourned and "nothing further."

Any questions about how we're going to proceed today, Ms. Lambe?

MS. Lambe: No. I'm, I'm clear. Thank you.
THE HEARING OFFICER: Okay. Great. Let's begin then.

Staff, if you wouldn't mind, just for the benefit of any members of the public that might be on the phone, just give a quick summary of what your motion is and then what staff's position on it will be.

MR. BABULA: Sure. So that motion dealt with the Alameda's Generating Station, which is the existing facility that's out at the site area. So the question is, is how does staff treat the potential decommissioning and demolition of that facility. Is that a part of the project in front of us, or is it for the Alameda Energy Center or is it not part of it based on the most fundamental criteria that the Alameda Generating Station does not need to be demolished or shut down for the Alameda Energy Center to create a new bill.

Staff's position was that, at most, the Alameda Generating Station is just one of many other facilities in the area that would fall under a cumulative impact analysis, where the potential demolition is foreseeable because there is an agreement between the applicant and the City for some future demolition, but that it's not part of this project. So staff's motion set forth the legal basis for that and factual components. And staff
agrees with the committee's tentative ruling, which found that the Alameda Generating Station is not part of the project, and so it's direct and indirect impacts of some future demolition will not be considered but it would be considered as part of the cumulative impacts analysis. And so because of the committee's tentative decision, I don't really have anything further to address. I think it was well covered in there as well as the applicant's motion supporting staff's motion.

THE HEARING OFFICER: Thank you, Mr. BABULA. And, applicant, anything further on that?

MR. HARRIS: Just first off, I'd like to thank the staff for putting the issue in front of us at this time because I think it was a wise move to put this issue on the table now instead of waiting until later. So thank you for the -- staff for doing that. I thought it was -- Mr. Babula's brief was very well written, and we support his analysis. We have seen our arguments and what else is in the tentative ruling. They're very much in agreement with the conclusion on page eight, and so no need to go back down to our reasoning on that. Just to say, I think the right cases were cited, and I think this was the right result. Thank you.

THE HEARING OFFICER: Thank you, Mr. Harris. Ms. Lambe.
MS. Lambe: You have to unmute it.

Well, we submitted, in writing, our views and I can go over them again -- or I'm pretty sure everybody had a chance to look at that and I don't know if there's any questions?

THE HEARING OFFICER: Thank you. Yes. We have read -- well, actually there were several submissions. There was the original comments and then there was your most -- your reply brief. And then we also received your most recent filing that came within about a week ago I guess.

MS. NELSON: October 7th.

THE HEARING OFFICER: October 7th.

Actually, I was talking about the September 30th filing.

MS. NELSON: Okay.

THE HEARING OFFICER: That clarified the Los Cerritos Wetlands Land Trust's petition with regard to the ruling. So, so we have read all of those submissions, Ms. Lambe. Just wanted to know if there was anything further you wanted to add this morning?

MS. Lambe: Well, it sounds like you read the memos that I sent on Friday, right? That's --

THE HEARING OFFICER: Yes.

MS. Lambe: -- most relevant. Then, I
guess, I don't have anything to say other than if there was any questions or clarifications.

THE HEARING OFFICER: So the committee has no further questions or clarification with regard to these.

What's going to happen -- just so you're clear -- so all the parties are clear -- is the committee is going to go into a closed session just to speak with each other in a noticed closed session and talk about the contents of the ruling and if there's any changes to be made, et cetera.

So at this time here, having heard from all of the parties, let's move onto the next matter before us, which is the schedule.

Now, on September 22nd, I sent a hold-the-date memo to the parties to hold the date of November 15th, 2016 for an evidentiary hearing. On September 30 -- or -- yes, September 30th, I docketed an email receipt from Elizabeth Lambe of the Los Cerritos Wetlands Land Trust asking to move the date to November 29th, 2016 because of her and another volunteer's unavailability. On October 3rd, 2016, we received the applicant's objection to Los Cerritos Wetlands Land Trust's request.

So here again, we have received everybody's moving papers, but we want to hear if there was anything
further. The movant in this case would be Elizabeth Lambe. So we're going to let her comment first before going to the other parties.

So, Ms. Lambe, you have the floor.

MS. Lambe: I don't have a lot to say other than, I mean, for better or for worse, I have definitely tried to participate in this process as expeditiously as possible, and this just happens to be one of those perfect storms, where I'm not going to be around for that time period. So I hope -- yeah. I think I put them all in the memo.

THE HEARING OFFICER: Yes, you did. Thank you. And so I understand you're out of town for November 6th, through November 20th.

MS. Lambe: Right, and I'm rarely out of town.

THE HEARING OFFICER: Thank you. Is there anything further on that?

Ms. Lambe?

MS. Lambe: No. I just thought I was -- and I think I am -- saving time by having written this all and sent it around. So I don't have too much to say right now.

THE HEARING OFFICER: Thank you.

MS. Lambe: So then I think -- I hope that
what I sent in, people did have a chance to look at. I think because -- I know Friday wasn't a lot of time, but again, I wanted to get things in writing to make it as easy as possible for people.

THE HEARING OFFICER: Applicant, did you get a chance to read the additional memos submitted by Ms. Lambe?

MR. HARRIS: On Friday, we did. Although, we're not really clear on the nature of the conflict for the entire month of November but was wondering if she can elaborate a little bit on that, what the conflict is?

THE HEARING OFFICER: Okay. But you did read it?

MR. HARRIS: I did, yeah.

THE HEARING OFFICER: Okay.

MR. HARRIS: Sure, the basis.

THE HEARING OFFICER: Okay. Staff, did you have a chance to read Ms. Lam's submission?

MR. BABULA: Yes.

THE HEARING OFFICER: Ms. Lambe, everybody read it. I'm just gonna -- I want to have a quick off-the-record conversation with the commissioners, and then I want to get back on.
(Off the record.)

THE HEARING OFFICER: We're going to go back on the record now. We're back on the record.

Ms. Lambe, the committee's interested to know whether you have anyone else who can appear in on your behalf during November 6th through November 20th?

MS. Lambe: To be honest with you, I really don't. You know, we're a very, very small organization, and I'm really their only representative. If that was the case, I would have made arrangements for that.

THE HEARING OFFICER: The reason I'm asking is because I noticed that your comments that came in on the PSA were brought to us via some law firm. I don't remember exactly who right now, but I did see that you had a law firm representing you as far as your comments were concerned, and I was wondering if those people could come in on your behalf?

MS. Lambe: Well, you know, they helped with the letter, but they're not part and parcel to this process. You know, they help a little bit when we need help. I mean, I just can't imagine we're very different from so many small environmental organizations in southern California. You know, we -- we're, we're, we're really a shoestring operations. And so yes, we
definitely contract for outside help, but it's a burden for us.

THE HEARING OFFICER: I understand that. You know, from time to time, we run into this problem, and we have to deal with it on a case-by-case basis.

At this time, let's hear then the only opposition we received in terms of your request, came from the applicant. So let's hear from the applicant next regarding the request for extension of time for the evidentiary hearing.

MR. HARRIS: Thank you. I'm still not clear on why the entire month is out.

THE HEARING OFFICER: Well, she does say in her -- that she's out of town. Out of -- I thought she said out of the country for -- from November 6th through November 20th. And beyond that, I'm not sure it's any of our business.

MR. HARRIS: Fair enough. Well, our folks have made the effort to be here. We have looked at the schedule that has been before us for quite a while, the headache that is November. You know, we definitely understand that the trust, as a group and not as an individual, scheduling conflicts can occur. I understand that, but again, the representation to this committee was that this was an organization with 145
members and not a sole individual, and it was granted on that basis as well.

I won't detail everything in our October 3rd letter, but there have been plenty of opportunities for the trust to speak and to act when requested by the committee, and they have chosen not to. We haven't seen a status report, I think, since July. And there haven't been any responses to the committee's schedule indicating conflicts, and then that's all very well documented in our letter of October 3rd, so I won't go through those bullets to explain pieces of those issues.

But, I guess, the bottom line is that there's real potential of prejudice for the applicant, and I think that has to weigh on the committee. I understand how much this commission values public participation. I think you have gone out of your way to solicit that participation from the trust, and you have been very diligent on the phone calls to see if they're there, and if they're not, to make sure the record is clear. But there is, potentially, large prejudice to this process going forward. We are already looking at the possibility of not getting a decision in 2016. I think we have all, sort of, resolved that that's not going to happen, but early 2017 is critical, this project, going through the process and being able to begin
construction. There are processes that follow on after your decision that are critical and are time sensitive. There's issues related to federal approvals, one of which can be a complete stay on construction until that approval is in place for the PSD permit. So we don't have time to move this thing any farther in time without losing the ability to potentially construct during construction season 2017.

So those are the issues that, that weigh heavily on us. We think the staff has worked very hard and put together a very good document. We see very few issues between us and staff, and just to be clear on that, there's probably only one subject matter where we think we'll need live testimony as between us and staff and that's on cultural resources. And even that, I don't think, is a long session. So the issues in this case are very narrow. The purpose of the evidentiary hearing is to develop a factual record. Are there facts that need to be put before the committee, and that's a real critical issue, but I think what you're going to hear a little bit about is the lack of a determination of compliance. And I want to focus on that issue for just a second because I think the commission's obligation under the 1978 MOU is to accept that FDOC into your record, that comes into your record. It's usually
sponsored in by staff, but there's no witness associated with the FDOC. There's no testimony associated with the FDOC. It becomes part of your record, and it's a vital part of your record for sure, but it's not part of the record you're even going to need for evidentiary hearings. We think that you might have a party request a hearing on air quality or public health afterwards. I don't think you're going to hear it from us, but it may happen. And at that point, I really want to focus on what that FDOC is, and it's a document you accept. It's not one that's sponsored by a witness. It's not subject to cross-examination. It's not subject to amendments by the commission.

So there are essentially no, I think, strong reasons to delay this proceeding any further, and there are a lot of good reasons to allow this project, which has been identified as a critical part of the State's OTC policy, to phase out and the liability in southern California moving forward and in a way that we will be prejudiced -- I'll use that term again -- with any other significant delays. So I appreciate scheduling conflicts can arise, but I think the committee order is pretty clear on the scope of participation here for the group, and we really want this process to move forward in a way that allows this project to be built.
THE HEARING OFFICER: Thank you, Mr. Harris.

Can I get a comment from staff.

MR. BABULA: Sure. We didn't --

MS. Lambe: So, so, so I have just been
jotting down a couple of notes, so just let me know when
I can say a couple words.

THE HEARING OFFICER: I will, and what I'm
going to do, Ms. Lambe, just so you know, is I'm -- I go
around the table and I ask for applicant's response to
your comments. I'm now asking for staff's response to
your comments. And since this is basically your
motion -- although it's couched in terms of the
request -- I'm going to -- I'm going to let you have the
last say with regard to the scheduling. I just --
Ms. Mathews, who is our public advisor, is coming
forward to the microphone and seems to have a question.

So --

MS. MATHEWS: I can wait until after staff
responds. I just have a request for the committee.

THE HEARING OFFICER: Okay.

MS. MATHEWS: Of an inquiry that I'd ask the
committee to make.

THE HEARING OFFICER: Let's -- let me do
that after. Do you need to -- is it something that you
need applicant and staff to address?
MS. MATHEWS: They may want to.

THE HEARING OFFICER: Let me do this, let me have staff respond to the initial comments by Ms. Lambe. Let's then hear from Ms. Lambe, and then I would ask your comments, and then I'll go around and see if anybody has any response.

Okay. So let's hear from staff.

MR. BABULA: Yeah. Okay. Thanks. So we didn't find anything in the written and the only -- my main comment right now is the time to actually look at the November 15th date, is that, you know, part one of the deficit came out from, we're still waiting on the FDOC. And so, sort of, the, the element of the schedule is, we still don't have a clear message and it may be easier just to inform us today exactly when the FDOC will come out. Because whereas -- and I understand what staff is saying regarding the FDOC, the document, itself, but you got to remember, staff uses that document to formulate our section and the air quality section. And so under our regs, the standard is 14 days for a hearing, the section has to come out. So if we're looking at November 15th as our evidentiary hearing for everything, we would need to have that, that set part two, the FSA, out 14 days before now the regs to go out for the presiding member to change that. This date
range would be less than 14 days. And so one of the factors that we're looking at is we want to get that part two of the FSA, which is the air quality and public health sections, out hopefully two weeks before November 15th so that then we could have one evidentiary hearing that covers everything, and so that issue is still floating out there as a factor in the schedule regardless of the vacation schedule or career schedule of the energy center. We also have this other factor of, "Do we get the second part of the FSA out and keep to this November 15th schedule?"

I would also like to say that, you know, staff is open to Ms. Lambe and her organization submitting written materials to be put into the record even if they're not physically present. I think we would be open to letting them submit what their opening testimony and information if that is a mechanism to, kind of, makes this work in this situation.

THE HEARING OFFICER: That's, that's great. Thank you, Mr. Babula.

And I just want to say, before I turn it back to Ms. Lambe, Alana Matthews, who is, is our public advisor, could assist Los Cerritos in understanding how to basically submit declarations to support their testimony so that -- just that staff can have something
and then their testimony. Los Cerritos, could also -- and they will have to anyway -- submit their testimony under oath.

So with that, let's go back to Elizabeth Lambe, and any follow-up comments or statements, go ahead, Mrs. Lambe.

MS. Lambe: Sure. Let me pass -- we're sharing a little speaker phone here -- let me pass the phone over to Joe Geever who has been helping us with this if you don't mind.

THE HEARING OFFICER: Go ahead.

Mr. Geever, could --

MR. GEEVER: This is --

THE HEARING OFFICER: Could you please spell your name for the court reporter.


THE HEARING OFFICER: Thank you. Go ahead.

MR. GEEVER: Can you hear me?

THE HEARING OFFICER: Now we can. Go ahead.

You have the floor, Mr. Geever.

MR. GEEVER: Okay. So -- yeah, the discussion, I think, is a little bit confusing. So in the memo that we sent on October 7th, we actually revised our request for scheduling and it's, kind of, --
I mean, just to summarize it, the schedule that was sent out was, kind of, a bunch of dates that were triggered on finalizing the staff assessment. And the staff assessment that was published was a partial staff assessment. So in our minds, that's not really the final, final staff assessment and that those dates following it are, kind of, enough time to respond to the final, final staff assessment. So it's like, like your counsel was suggesting, it's not necessarily about a vacation out of the country, but we'll be out of the country. It's not necessarily based on that. It's about that schedule -- that schedule being triggered by the final staff assessment, which, in our minds, has not been published. And I can -- you know, I have been going through the partial final, final staff assessment and found pieces of referencing in biological resources in other places that refer back to the sections like air quality that are not in the partial final staff assessment. It just seems to us they have to finalize it before you start triggering all this process.

THE HEARING OFFICER: Thank you, Mr. Geever. Anything further on that?

MR. GEEVER: No. I hope that's -- I'm not a professional at this stuff, so I hope that makes sense.

THE HEARING OFFICER: It makes complete
sense, and we're going to hear from the parties about that.

Next, I'm going to hear from Ms. Matthews, Alana Mathews, our public advisor is here.

It doesn't look like your microphone is working.

MS. MATHEWS: I don't think it's working, but I think I can project my voice. If you guys want me to come to a microphone, I can move.

I was just going to ask the committee to -- if you can make an inquiry as to whether or not the absence of Ms. Lambe would affect the public participation of members of that organization or any other members of the public and to have a chance for that to be addressed by all the parties.

THE HEARING OFFICER: Thank you. So just to be clear, Ms. Matthews, you're basically not just limiting your question to Los Cerritos Wetlands Land Trust but anybody who was looking to them to, sort of, serve as public comment for them?

MS. MATHEWS: Correct.

THE HEARING OFFICER: Did you get that question, Ms. Lambe, or, Mr. Geever?

MS. Lambe: Yeah. I mean, the, the -- because we're a small locally based organization, I'm, I'm the designated person. There really isn't anyone.
Yeah, I mean, our members aren't really -- they're activists corps. And this, I got to be honest with you, is such a complicated process, it's, you know, it's just not very -- possible.

THE HEARING OFFICER: Is that a satisfactory -- Ms. Mathews, did you have anything further on that? Any other question on that?

MS. MATHEWS: I don't have any questions. I just wanted the inquiry to be made for the committee to consider to make sure that information is considered.

THE HEARING OFFICER: Thank you. And just to be clear, for those of you on the phone that Ms. Matthews said she has no further questions. She just wanted that inquiry to be made.

Now, having made that inquiry, what -- I think I'll just go around the table one more time and then I think we'll -- we're going to have to have the matter submitted.

So go ahead, Mr. Harris.

MR. HARRIS: Well, thank you. A couple things. I think we need to hold the date on the 15th for the hearing. It is consistent with commission precedent to have a second set of hearings on the FDOC. We did this in the Huntington Beach approval. The FDOC actually came in less than 14 days before the hearing.
date. The committee did issue the type of order that Jerry talked about. So to suggest that you can't move forward at all until the air district act, I think, is just incorrect, and I think it's improper. We will expect -- we'll hope for the best but prepare for the possibility of a second day hearing based on just accepting that FDOC into the record and accepting staff's two sections that are affected by this FDOC. So that seems to be pretty self-evident.

In terms of the suggestion that the staff -- or excuse me -- that the trust participate, you know, obviously, they're going to need to file their testimony before they leave on November 6th. So we'll have their testimony, and we're amenable to the possibility of accepting that all by declaration as well. So there would be no prejudice to their evidentiary record in that respect. And so if that's an accomodation that we can make to the trust, accept their testimony and leave any, any contested issues to briefing, I think that's probably the result.

THE HEARING OFFICER: Okay. Thank you.

Staff.

MR. BABULA: Just one clarification. On this final, final, final staff assessment, so what was published, the technical sections that were published,
those -- that is the final staff assessment for those.
And so we will be publishing the remaining two sections
in part two of the final staff assessment. And so when
that comes out, those will not be, be doing or doing
anything with the first batch of ones in part one. I
would ask the committee to see if the air district is on
the phone to maybe give us some insight if they have a
potential date. That would be helpful and that would
also help and it will give you the ability to maybe set
a schedule. So maybe we can ask the air district.

THE HEARING OFFICER: Before I ask the air
district, I just wanted to hear from -- if there was
anything further from Ms. Lambe or Mr. Geever.

MR. GEEVER: Well, yeah. Obviously, we're
looking for -- oh, I'm sorry. This is Joe Geever again.
Obviously, we're looking forward to the second part of
the final staff assessment so we have all the pieces of
the puzzle and not to repeat myself, or at the risk of
repeating myself, that's what the schedule looks like,
you know, triggers three weeks after the final staff
assessment, four weeks after the final staff -- so based
on that date, when the staff assessment is finalized, so
we'll wait for your ruling, but I think we laid it out
in the memo. But -- thanks.

THE HEARING OFFICER: And thank you. And
let me ask you, Mr. Geever, or, Ms. Lambe, are you -- do either of you expect to testify as experts, yourself, or were you going to just call other people to serve as your expert witnesses?

MR. GEEVER: Well, we would be testifying ourselves, trying to submit some written documents, evidence, and there's a possibility yet depending on what the scope is, there's a possibility that we would bring experts.

THE HEARING OFFICER: Okay.

MR. GEEVER: I mean, because we haven't gotten a ruling on the staff's motion, it's a little unclear to us, you know, if the committee rules against the motion, then that changes the project description as a completely different prep. But if it's cumulative impacts, then that raises some other issues about the adequacy of the cumulative impacts and the necessity for an alternatives analysis. But that -- it's a little bit hard to tell you in any definitive way how we're going to proceed. That's why we're waiting for the final staff assessment.

THE HEARING OFFICER: Okay. Thank you, Mr. Geever.

Let's, let's then open up the phones to the South Coast Air Quality Management District people, Ms. Lee,
and, Mr. Chondon, are you there?

MR. CHONDON: Yes. Hi. This is Mr. Chondon. Can you hear me?

THE HEARING OFFICER: Yes, we can. How are you doing on the FDOC, Mr. Chondon?

MR. CHONDON: We're still working on it. Unfortunately, I cannot commit to a date at this time. The comments have been too -- were very comprehensive. We are -- have been working on --

THE HEARING OFFICER: I'm sorry, but I'm having a hard time hearing you, Mr. Chondon. Is there a lot of -- are there several people in the room with you there?

MR. CHONDON: No. I'm alone in this room, but I'm on my cellphone. So is it clear now?

THE HEARING OFFICER: Now it is. If you can keep it right where it is, that would be great.

MR. CHONDON: Okay. Great. So what I was saying was the comment periods ended on August 24th. The comment -- we just received one comment, but it was really comprehensive. We are working very diligently to address those comments. We have -- legal staff.

THE HEARING OFFICER: I'm sorry, Mr. Chondon. We accidently muted you here in the room it seems. I heard what you said up to and including your
8/24/16 comments that you're diligently working on, and then I didn't get anything after that. So go ahead.

MR. CHONDON: Okay. So we basically have received only one comment letter. The comment letter was very comprehensive. It had a lot of details that we need to look into. We are working diligently on addressing those comments. We have made quite a bit of progress of the district's staff, including modeling staff, resources staff, and our legal people are all involved in drafting the response to the comments. We -- there are some issues that we need to look at as far as the BACT limits are concerned. The layer of BACT analysis, we are looking back at those as far as the FDOC is concerned to determine if we need to change anything there. We change one of the BACT limits on the simple cycle for the CO BACT, but there are other comments that we need to address and the comments are very comprehensive. It's taking time. We are a lot closer to finishing than we were a few weeks back, but unfortunately, I don't have a date that I can commit to at this time.

THE HEARING OFFICER: Okay. Well, last time we spoke, you said you were -- you felt that you were weeks away rather than months away being able to produce an FDOC. And now we are a month away from when we spoke
last and then some. So do you think you’re, what, 90 percent done?

MR. CHONDON: I would say 80 percent done. We are pretty close, the FDOC. We are definitely -- internally, can initial the FDOC and still continue to address to some of those comments, which we can, you know, incorporate before the permit to construct are issued, but these are internal discussions that we are having to start the process. But, you know, we are still a few weeks away from completing and submitting the FDOC.

THE HEARING OFFICER: Thank you.

Anything further, Mr. Chondon.

MR. CHONDON: As you know, we will keep working on this and the work load of the CEC staff and we appreciate all the help that they have given us, and we’ll continue to work with them to make sure that they’re in the loop if there are any changes involved.

THE HEARING OFFICER: Thank you, Mr. Chondon.

And then we also have Ms. Vicky Lee on the lines. Did you wish to make any further comment, Ms. Lee?

MS. LEE: No, not at this time. Thank you.

THE HEARING OFFICER: Okay. Thank you.
So parties, now we have some sense that the air quality FDOC is, in their words, a few weeks away. And so with that, let me just ask applicant -- anything further on this?

I just want to say, for the record, that, Ms. Lambe, and, Mr. Geever, that the Energy Commission has -- we have, in the past, very often, bifurcated cases, and specifically, it's because of this type of situation where you have the air quality management district that staff depends upon for the air quality analysis coming in late. And so what we'll often do is what we call bifurcate, which means we take in the evidence of all the other subject areas in their entirety and take in that evidence at an evidentiary hearing. So just as a practical matter so you understand what would happen in this case, let's say they come in, in three or four weeks with the FDOC. Staff would need a couple of weeks for them to finish up their air quality section. So that's a few more weeks. Then what would happen is, once they file that, we would file a new notice for the rest for part two of the evidentiary hearing so that we would have the evidentiary hearing on all outstanding matters, which in this case is air quality and greenhouse gases only because we --
MR. BABULA: Public health.

THE HEARING OFFICER: I'm sorry. Public health, air quality, greenhouse gases are the only outstanding subject areas. And what we have received now is the final record of staff's testimony except air quality, greenhouse gases, and public health. So that's the way we have done it in the past, and so I, I hope that gives you a better idea of the way that we would handle the bifurcation.

Go ahead, Mr. Harris.

MR. HARRIS: I'm sorry. We were conferring over here. I appreciate it. No. I think we have clearly vetted the issues. I think there's a means in your process to allow pretrial testimony to come in. I think, obviously, that testimony limits what can happen orally and -- you know, in the event of an unfair surprise. So I think that may be a very nice workaround here, and we appreciate the opportunity to be able to get out testimony in on file, to get the other party's testimony on file, and I think commission's precedent does allow you to do as you suggested, which is to bifurcate those issues and hold the hearing until materials are filed.

THE HEARING OFFICER: Staff, anything further?
MR. BABULA: No. Unless Matt or Nancy has any -- no? Okay. Our air quality staff is here, but they don't have anything to say, but we're flexible to work the evidentiary hearings that, sort of, fit the needs and people's schedule and also allow staff the appropriate time to do their work.

THE HEARING OFFICER: Okay. Then last but not least, Ms. Lambe, or, Mr. Geever, any final thoughts on scheduling?

MR. GEEVER: Well, obviously, we're not familiar with what you have done in the past, so I don't know what the precedence is, but it is a little bit of a disadvantage when you don't have the final staff assessment because -- just for example -- some of the issues in the air quality section are relevant to the analysis in the biological resources section may not have -- well, I think we put it in the memo but it just -- it makes it difficult to make a comprehensive review when you don't have all the pieces of the puzzle in front of you.

THE HEARING OFFICER: I think your point is well taken and that is always the problem that we face. And in order to ensure due process for the parties and make sure that the Los Cerritos Wetland Land Trust has the opportunity to inquire, question, examine on air
quality issues as they relate to the subjects that were published in FSA part one, I believe that the committee would routinely allow questioning, say, into bio, for instance, at the -- at the second evidentiary hearing, limited to air quality issues as they relate to bio. Is that -- is that clear, Mr. Geever?

MR. GEEVER: I hate it say it, but no, it's not. I mean, I -- for example, we have never been through this process. We don't really know how -- if the original evidentiary hearing is about all the subjects in the final staff assessment but air quality and public health, and so you postpone those questions about air quality but those questions have a direct relevance to what's been the biological -- and in any of the other subjects.

THE HEARING OFFICER: Certainly. I --

MR. GEEVER: No. It's not clear to me how you track back -- and it's also not clear to me how -- if you're going to have a second evidentiary hearing anyway, having the first evidentiary hearing, you know, streamlines anything. But look, we are admittedly just members of the public trying to, you know, navigate our way through this thing. If this is -- if this is the way you do it, we will do our best to participate with whatever you set up.
THE HEARING OFFICER: And I appreciate your compliance with that. A couple of thoughts I want to share with you. One is the public advisor is here and available to advise and assist you in navigating our process, which is, admittedly, not necessarily the easiest thing to do when you have never done it before.

The other thing I would tell you is if you peruse the Warren Alquist Act, which is our enabling statute, and you look to see well, where, where -- how much say do the parties have over the scheduling, what you'll find -- there's a section 25522, that basically says that we, the Energy Commission, are obligated to move with alacrity and we have to get our divisions done in 18 months, and it allows for an extension of time only as mutually agreed upon. That's what the statute says, "mutually agreed upon between the applicant and the -- and the presiding member." And so you understand that the applicant has a -- has a real interest in moving their project along. You know, time is money and that sort of thing. But there are -- there is no other rule or reg that I'm aware of that says anything about parties input with regard to our scheduling. So I'm just sharing that with you, because there's a lot of factors involved in this sort of thing.

One of which, now as we're talking, is we have
now heard that because the FDOC is a few weeks away --
and as I said, it's not just FDOC coming in, in a few
weeks, it's the FDOC coming in, in a few weeks and then
staff taking a couple of weeks to finalize their staff
assessment. So we're looking at however long it's going
to take to get that FDOC out. There's additional time
tacked onto that that is for staff's analysis.

In the meanwhile, Mr. Geever, what we're going to
have is a transcript because we -- everything that we're
doing right now is -- we have a court reporter in the
room. She's taking this down. We'll get a transcript
for all of our hearings and conferences, and so you will
have the benefit of having the entire record for you
before we ever get to the second FSA, the air quality
portion.

So with that then, having heard from all of the
parties, what we're going to do then is I'm going to go
around and ask if there are any other matters --
actually, committee has some questions for staff with
regard to the FSA but I -- after I ask questions of
staff, I'm going to go around and ask if the parties
have any further questions. After that, we're going to
take public comment, and after that, we will go into a
closed session.

So moving on to the next question I have, and
this is directed to staff, you may recall that at the last status conference, I raised some questions about the overlap between CEQA analysis. I think it was in the context of, perhaps, water -- or I don't remember exactly. But I did see that what did make its way into the FSA was in your LORS table, where you -- there's a three column table basically says what the LORS is, a description of the LORS, and then whether they're in compliance or not. And then in a LORS table, there's a LORS -- the City of Seal Beach general plan circulation on it, and again, we have the situation where it says,

"It is consistent with compliance, with, trans two condition of the AEC project trips to the traffic volumes estimated on the City railways and intersection in the City of Seal Beach during the AEC deconstruction period, which is January 20th -- January 20, 21, which creates a significant impact for one intersection, which is the Pacific Coast Highway at Seal Beach Boulevard during the morning peak period. While the AEC is not consistent with the LORS standards for the City, the level of service standard for the City of Seal Beach, the impact would be
temporary and trans two requires the project to be staggered during the arrival time of the workforce during the morning peak periods, so that the impacts are reduced to a less than significant level,"

which I appreciate in terms of a environmental CEQA impact. But this is under the LORS table. So it seems like we have a noncompliance, and I'm trying to ascertain whether there's going to be -- I mean, because -- either you're in compliance or you're not and then we need to do an override on or not on it, but you can't -- I can't have a CEQA reduced to a -- you know, below significant on a LORS. So what can staff do about that is what I want to know at this point? Are we going to have to call an expert at the evidentiary hearing and deal with this?

And also, this is the only -- I want to be clear, I'm asking staff to go back and look at your FSA and make sure -- this is -- this is the only one I have seen -- but make sure if there are any more like this, that we have got to deal with this head on.

Go ahead, Mr. Knight.

MR. KNIGHT: Eric Knight, environmental office manager.

THE HEARING OFFICER: Spell your name,
please.

MR. KNIGHT: K-N-I-G-H-T, and Eric is E-R-I-C.

Let me -- I'll go back and look at it but it, kind of, seems like if the conclusion was the mitigation trans two reduce the impact of less than significant that means that the LORS has been moved up to an accessible level; therefore, it would also achieved LORS compliance, but I mean, we'll go back and look at it.

THE HEARING OFFICER: That's not what the testimony says. I need to know that.

MR. KNIGHT: But it sounds like it's an inconsistency in my view.

THE HEARING OFFICER: Well, I would appreciate if staff would go back and look.

MR. BABULA: And that can be, we could -- we could just, like, have the technical person just file -- opening testimony, file a supplement page that just would supplement that as a mechanism to notify.

THE HEARING OFFICER: Okay. That's fine. I just wanted to bring that to your attention, and I want to make clear that in all probability, ladies and gentlemen, the next order that's going to come from this committee is going to be a prehearing conference, a notice of prehearing conference with the orders, usual
orders, and notice of that evidentiary hearing. So if there's any kind of clean-up evidence that needs to come in, now's the time to take care of that.

MR. BABULA: Okay. I actually have a question for the applicant, but we can go through your questions first.

THE HEARING OFFICER: That was really the only one.

MR. HARRIS: Can I respond to his question before we --

MR. BABULA: Sure.

MR. HARRIS: But there's also a legal issue here, and that is quite simply that the ordinances at Seal Beach are not applicable LORS. They are LORS for another jurisdiction. And to make that case in simple legalize, just assume as the -- a project of this size -- I assume it's a 49 megawatt project and it's getting licensed by the City of Long Beach. The City of Long Beach is not analyzing the traffic LORS for the City of Seal Beach, and so I think as a matter of law, it should not be a LORS or noncompliance. We welcome the staff's clarification, and maybe rebuttal testimony is the best way to do that, but it's not an applicable LORS and so we wouldn't have to override it is our legal position.
MR. BABULA: We'll look at it.

THE HEARING OFFICER: Yes. Okay. Ms. Lambe or Mr. Geever?

MR. BABULA: My question to applicant is you said there's an issue of cultural, would you like to elaborate so that we can get a sense of what the issue is and do you have suggested fixes or --

THE HEARING OFFICER: Ms. Nuemyer, I need you to state and spell your name.

MS. NUEMYER: This is Samantha Nuemyer on behalf of the applicant. This relates to Cul 6 I believe, and it's the condition related to undiscovered archaeological resources and to, I guess, sum it up, we don't believe that full-time archaeological monitoring is appropriate and -- based on the land forms that are present and the amount of fill and work that's already been done on that site, and so we just think it's, kind of, a small factual dispute with CEC staff at this point. And so we're going to be requesting that our -- the Cole 6 that we proposed in the -- or in our PSA comments to be adopted.

MR. BABULA: Thank you. We'll take a look.

THE HEARING OFFICER: Anything? Any further questions from staff?

MR. BABULA: No. That was it. If they --
if there are any other -- want us to take this time
since we're all here if there's anything else you want
to bring up.

MR. HARRIS: That was based upon our
thorough discussion this morning at 9:00 this morning.
That was the one that we thought we might have to have
some actual live witness testimony. It's one where the
visuals would be important, all that stuff would be
pre-filed, of course, and we would be certainly open to
the idea of some -- proposing some language in rebuttal
testimony. Perhaps, you guys, could do based on our
statements to get that off the table completely. That
would be our hope and our desire, but based upon the
discussion at Huntington Beach, we might need testimony
on that issue.

MR. BABULA: Okay. Well, we'll look at what
your comments on that staff's amended and take a look at
cultural stuff.

MR. HARRIS: And to answer your question
about other sections, and there's a couple of com
sections, compliance section, 13 and 14 and 15 -- I
think one of those more than the other. I think 13 is
the one -- that has the issue. There's some language in
there that triggers the notification to the Energy
Commission based upon notification with Cal ISO, and I
don't think we have a problem with that in concept. It's more about the time bound nature of that. So if instantaneously, you know, you lose a pump for, you know, 20 minutes, you would notice the Cal ISO of that. The pump is repaired in 20 minutes, you notice that as well. Those kind of one-offs are the type of, probably, hypotheticals that lawyers worry about more than real world things. So we might be able to work out some language on that as well and welcome a chance to do so.

MR. BABULA: I could offer that if there are some refinements to some of the conditions that you want to suggest or if also Wetlands want to suggest, feel free to docket them beforehand, and we'll take a look and see what we can do, if we want to agree or we can then bring it to the hearing and try to work some of these out especially if it's just looking at some relatively minor language changes and things like that.

MR. HARRIS: That's a very good suggestion. I knew about the -- I suggested the formal process, where we file testimony and file rebuttal, but that informal way may be the way to go. So thank you for that suggestion.

MR. BABULA: And I also just want to point out quickly just so people are aware, after reviewing all of the comments, and it took the FSA to respond to
the comments, but with the comments made by the wetlands, we made a number of changes. I have about ten. I'll just go over a couple of them quickly that we made based on the wetlands comments. We included legless lizard and the pacific seahorse on the endangered status species. We added the burrowing owl, survey before construction mitigation. We changed some of the potential for some of the birds species to be at the site from not likely to moderate, and so we made other changes, too, based on their comments. So we did make an effort to thoroughly review the comments and then make changes as appropriate based on the information provided.

THE HEARING OFFICER: Do you anticipate another workshop between now and the evidentiary hearings?

MR. BABULA: No. Not -- no, I don't, but I think we can use the docket, again, if the parties have anything they'd like to suggest or edit or some language for conditions. We just need to look at those and use that to help manage the discussion so that when we do come to evidentiary hearings, things are as refined and focused as possible.

THE HEARING OFFICER: That would be great. The, the thing I'd like to avoid is confusion because we
have got all of these versions flying around -- staff's version, the applicant's version -- and so if there were a way to get some sort of a agreed upon set of conditions -- I guess maybe that's premature. We'll have to wait until after the evidentiary hearing.

MR. BABULA: Yeah, that will. I mean, now with our docketing system, we do have the ability to have a fairly descriptive title when it shows on the page. So that would be a tool to help people understand what this stuff is. And then usually, it's customary, once we get the final set, either the hearing officer will ask -- give us a Word version of final set of conditions or we can do that after. It's pure and then it's correct, but they're going to have to use the docket mechanism to, sort of, get the information between parties outside of the notice rebuttal.

THE HEARING OFFICER: Thank you.

Let's hear one more time from Los Cerritos Wetlands Land Trust about any of these questions or any of these last discussions we have had.

Go ahead.

MS. Lambe: I don't have anything. Thank you.

THE HEARING OFFICER: Thank you.

Or, Mr. Geever?
MR. GEEVER: No.

THE HEARING OFFICER: Thank you. Thank you.

At this time then, I'm going to -- we're going to go to the public comment section of our staff's -- oh, Mr. Harris, Go ahead.

MR. HARRIS: Yeah. Just one point we wanted to raise. We think it's important that people be working on their testimony. You -- based on the schedule -- the scheduling order that's out there, testimony would be due this Friday, and that's not an issue for staff. Obviously, their testimony has been filed, but for the Wetlands Trust -- has said several times that they're not familiar with the process. I think it's important the committee let them know that that testimony be due as soon as Friday. I have a feeling that maybe the committee will be a little more generous than Friday, but we're working towards that day internally and that's why Mr. Salamy is desperate to get out of this room so that he can go back and work on that. So I think it's important that that issue be laid out there. And if there's any questions from the Trust about the schedule, we put that on the table now.

THE HEARING OFFICER: Thank you.

What's going to happen is we, the committee, will issue a notice of a prehearing conference of evidentiary
hearing, and included in that will be a new scheduling order, and the new scheduling order will supercede all prior orders, scheduling orders. Now, that said, we don't know if FSA part two is going to come out, but when it does, we will have to issue a new notice of prehearing conference and evidentiary hearing and a new schedule just for those sections. Okay. So that's -- I want to be clear with the parties, what you're going to get today or tomorrow or whenever I get it out, will be the schedule for the FSA, part one. Okay.

And yes, absolutely, all parties should be working on the testimony. I know we have received staff's testimony. Applicant will file according to the schedule that we published and so will Los Cerritos Wetlands Trust, but absolutely be working on your evidence at this time, because soon, we're going to have a schedule that comes out, and these things always go faster than you think.

We have -- at this time, we're going to go into public comment. I have received one request to speak from the public advisor from Dave Shukla. I'm sorry if I pronounced your name incorrectly.

Ms. Avalos, if you can help him get a live mic there.

Welcome, Mr. Shukla.
MR. SHUKLA: Hello. I didn't plan to speak, so forgive me if I'm reading what I have written down.

Hi. My name is Dave Shukla. My parents' house is located directly across the street from the Alameda's Generating Station and for these proceedings is a noise monitoring station one in the PSA FSA.

THE HEARING OFFICER: So let me just ask you, so your folks live on the -- would that be the east side?

MR. SHUKLA: They live directly west of AGS across Studebaker and across the -- across Studebaker across the -- whatever we call the channel, Los Cerritos Channel.


MR. SHUKLA: Yeah. First, I'd just like to thank Mr. O'Kane and Ms. Dahlia Gomez of AES for moving so promptly to update the noise monitoring data. I hadn't realized that there was data from five years prior, but upon raising the issue, they were very prompt and very considerate in making sure that there wasn't just new data but that it was done for the full 28 days like suggested.

 Thank you.

And also, I'd just like to thank the CEC staff
for examining some of the land use issues related to our southeast area specific plan in Long Beach since -- although this process and that one has -- had been concurrent, there haven't been a lot of considerations made there or really within the city so far as getting engaged -- and you can tell that I have tried -- to think through, kind of, the implications of this process or certifying the AEC.

And the only other thing that I'd like to -- that I'd like to add is I'm just here on behalf of my parents, who are a bit older, and my brother, who is disabled, and it really -- it's really important that the public has a firm sense of what's to expect from the project, and especially because there are things that you can foresee will be related, you know, we would like to very much know what we're in for, you know, especially with subsequent demolition pursuant to the state's mandate on eliminating the once through cooling. So, you know, thankfully, there's space for that.

THE HEARING OFFICER: Thank you, Mr. Shukla for your comments, and I don't know if you got a chance to read the order, the tentative ruling?

MR. SHUKLA: I did.

THE HEARING OFFICER: And that's going to get finalized by the committee at -- you know, but what
I would say is you had an opportunity to understand there's a difference between the curtailment of a one through cooling and decommissioning of the project, which is different than demolition of the project.

MR. SHUKLA: Yeah, yeah. You don't have to demolish all six sets to start on the AEC. I think I understand that.

THE HEARING OFFICER: Thank you. Thank you very much for your comments and for your participation.

Is there anything -- are there any other members of the public who are here in this room?

I'm getting the shake of the head in the negative from Mrs. Avalos. So then we will go to phone, but the way I'd like to do this first is I'd like to see if there are any members of any State or governmental agencies that are on the phone, and if you are and would like to make a comment, please speak up now.

Any governmental agencies on the telephone who wish to make a comment? Speak up. Go ahead.

Okay. Hearing none then, let's go to general members of the public. If there's anybody on the phone at all that would like to make a comment to the committee about anything having to do with the Alameda Energy Center, please speak up now.

Go ahead. If you want to make a comment, make a
comment right now.

Hearing none, then we -- at this time, we'll go into a closed session. We're still on the record, and we'll go into the closed session upstairs, and afterwards, I will come down and adjourn the meeting.

Thank you all for participating today.

(Closed session.)

THE HEARING OFFICER: Okay. Ladies and gentlemen, if you're on the phone, the record should reflect that there's nobody here other than staff counsel, Ralph Lee, and the court reporter. It's about two minutes past 12:00 noon.

The closed session, which was conducted in accordance with Government Code section 1126 subdivision C sub 3, which allows the State body including a delegated committee to hold a closed session to deliberate on a decision to be reached, any proceeding that the State body was required to, by law, to undertake, has been completed and concluded.

There's nothing to report out at this time other than to say that any orders will be filed within the next few days, a notice, the prehearing conference and evidentiary hearing, and final ruling.
And with that, the status conference is adjourned. We're off the record.

(Whereupon the proceeding concluded at 12:03 p.m.)

--o0o--
I, Brittany Flores, a Certified Shorthand Reporter of the State of California, duly authorized to administer oaths, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction;

that the foregoing transcript is a true record of the testimony given.

I further certify I am neither financially interested in the action nor a relative or employee of any attorney of party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: 11/1/16

Brittany Flores

Brittany Flores CSR 13460