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BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of:)
)
Prehearing Conference for the) Docket No. 13-AFC-01
Alameda Energy Center)
_____)

CALIFORNIA ENERGY COMMISSION

ART ROSENFELD ROOM

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

WEDNESDAY, NOVEMBER 9, 2016

3:00 P.M.

Reported by:

Kent Odell

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HEARING OFFICER

Ken Celli

California Energy Commission

Janea A. Scott, Commissioner, Associate Member

Rhetta de Messa, Adviser to Commissioner Scott

Matt Coldwell, Adviser to Commissioner Scott

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Jeffrey Harris, Ellison, Schneider & Harris, LLP

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Jerry Salamy, CH2M Hill

Intervenors

Elizabeth Lambe (via telephone), Los Cerritos Wetlands Land Trust

Joe Geever (via telephone), Los Cerritos Wetlands Land Trust

Others

Ralph Lee, Staff Counsel

Paul Kramer, Assistant Chief Counsel

APPEARANCES

South Coast Air Quality Management District

Bhaskar Chandan (via telephone)

Public Comment

Rob Simpson

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P R O C E E D I N G S

3:00 P.M.

SACRAMENTO, CALIFORNIA, WEDNESDAY, NOVEMBER 9, 2016

COMMISSIONER SCOTT: Hello and good afternoon.

This is the prehearing conference for the Alamitos Energy Center.

Before we begin, I would like to introduce the Committee, and then ask that the parties identify themselves for the record.

I am Commissioner Janea Scott. I'm the Associate Member on this case. And next to me is my Adviser Rhetta de Mesa. And next to her is my other Adviser Matt Coldwell. To my right is Hearing Officer Ken Celli. And Commissioner Douglas is sorry that she can't be here. I do think at some point maybe one of her Advisers will come and join us.

I would like to ask the parties to please identify themselves and their representatives at this time, and we'll start with the Applicant please.

MR. O'KANE: Thank you. Stephan O'Kane. I'm Vice President of AES Alamitos Energy.

MR. HARRIS: Good afternoon. I'm Jeff Harris on behalf of the Applicant. Also with me today is my colleague Samantha Neumyer, and Jerry Salamy from CH2M.

COMMISSIONER SCOTT: Excellent. Let me have the

1 staff introduce themselves please?

2 MR. WINSTEAD: Keith Winstead, Project Manager for
3 Alamitos Energy Center.

4 MR. BABULA: Jared Babula, Staff Counsel

5 COMMISSIONER SCOTT: And may I have the
6 Intervenors introduce themselves? Do we have --

7 MS. LAMBE: I'm on --

8 COMMISSIONER SCOTT: Oh, there you are.

9 MS. LAMBE: Yeah, I'm on the call. Elizabeth
10 Lambe, Executive Director, Los Cerritos Wetlands Land Trust.
11 And Joe Geever is supposed to be on the call too.

12 COMMISSIONER SCOTT: All righty. We'll check back
13 in a few minutes to see if he joined us.

14 I'd like to welcome --

15 MR. GEEVER: Oh, I'm sorry. I'm here.

16 COMMISSIONER SCOTT: Hi. Welcome.

17 MR. GEEVER: Thank you.

18 COMMISSIONER SCOTT: I'd like to welcome LeQuyen
19 Nguyen, who is Commissioner Douglas's Adviser to the dais
20 here.

21 Let me see, do we have anyone from the Public
22 Advisers Office? I don't think so. That's okay.

23 And then do we have anyone from the agencies? Let
24 me start first and see if we have any elected officials?
25 Okay.

1 Do we have anyone representing an agency of the
2 federal government? If so, please speak up. All right.

3 Do we have any agencies of the State of
4 California? Okay.

5 Yes, hi.

6 COMMISSIONER SCOTT: Hi.

7 MR. CHANDAN: Hi. This is Bhaskar Chandan from
8 the South Coast AQMD. I'm here along with Ricky Lai.

9 COMMISSIONER SCOTT: Great. Welcome.

10 Do we have any others from the State of
11 California? Okay.

12 Any Native American tribes? All right.

13 And do we have any representatives from Los
14 Angeles County, the City of Long Beach, or any other nearby
15 towns or cities or other agencies that would like to
16 introduce themselves at this time? If so, please go ahead.
17 Okay.

18 Hearing none, at this time I will hand over the
19 conduct of this hearing to Hearing Adviser [sic] Ken Celli.

20 HEARING OFFICER CELLI: Thank you, Commissioner
21 Scott.

22 Before I begin, let me just ask, Ralph, and for
23 the record, I'm referring to Ralph Lee, is there a way we
24 can see all of the callers in or the attendees? Because I'm
25 only seeing three of them. In other words, can we extend

1 the view down or click on the view all attendees, that blue
2 thing?

3 MR. LEE: I think we're looking at the additional
4 attendees right here.

5 HEARING OFFICER CELLI: Oh, I see. So call-in
6 user two, three, four, five, six. And we have Dave Shukla,
7 Gary Morath (phonetic), I'm sorry if I mispronounce your
8 name, Morath. Okay.

9 And then did you identify which one was Joe
10 Geever?

11 MR. LEE: I did not.

12 HEARING OFFICER CELLI: Joe, could you speak up?

13 MR. GEEVER: Yeah. My name is Joe Geever. I'm
14 working with Elizabeth Lambe from the Los Cerritos Wetlands
15 Land Trust. I'm calling from out of the country, so maybe
16 you're not recognizing it or whatever.

17 HEARING OFFICER CELLI: No, you sound great. We
18 just have you as call-in user number two.

19 And I you could rename him as Joe Geever, then we
20 know who he is. And then he should probably be -- we don't
21 rename?

22 MR. LEE: We aren't allowed to rename in this.

23 HEARING OFFICER CELLI: Oh, that's right. Okay.
24 So then -- who was -- I'll make a note that call-in user is
25 Mr. Geever. And then we'll keep him unmuted.

1 And hopefully all of you who are on the phone, if
2 you can kind of keep the background noise down, that would
3 be helpful.

4 So today's Committee, the Committee noticed
5 today's prehearing conference in the Notice of Prehearing
6 Conference and Evidentiary Hearings that was issued on
7 October 14th, 2016.

8 I just want to remind everybody that we have
9 noticed for November 15th, next Wednesday, the evidentiary
10 hearing on all the subject areas, except air quality and
11 public health. And when I say air quality, that includes
12 greenhouse gases. The hearing will start at noon in the
13 Catalina Room at the Grand Events Center at 4101 East Willow
14 Street, Long Beach. And we will take public comment at
15 three o'clock that afternoon.

16 So as we explained in the notice, the basic
17 purposes of the prehearing conference today are to assess
18 the project's readiness for hearings, to clarify areas of
19 agreement or dispute amongst the parties, to identify
20 witnesses and exhibits, to determine upon which areas
21 parties need to question the other parties witnesses, and to
22 discuss associated procedural matters, including the Los
23 Cerritos Wetlands Land Trust's motion to stay proceedings.
24 And when we -- I'm going to refer to the Los Cerritos
25 Wetlands Land Trust as the Trust throughout these

1 proceedings, just to make life easy for myself.

2 Now, to achieve these purposes we require that any
3 party seeking to participate at this conference or wishes to
4 present evidence or cross examine witnesses at the
5 evidentiary hearings file a Prehearing Conference Statement
6 by November 2nd, 2016. We received timely Prehearing
7 Conference Statements from all of the parties, although we
8 note that one of the parties filed one 40 seconds after 5:00
9 p.m., which makes it go into the next day, but for our
10 purposes, we accept it.

11 Staff published its Final Assessment Part 1 on
12 September 23rd, 2016. Part 2, which will include air
13 quality, GHG, and make that greenhouse gases, and public
14 health is still pending, awaiting the final determination of
15 compliance from South Coast Air Quality Management District.

16 I wonder if this might be a good time just to
17 quickly ask the representatives from South Coast that are on
18 the phone, do we have a date yet for a publication of the
19 FDOC, the Final Determination of Compliance?

20 MR. CHANDAN: Yeah. We are working diligently on
21 it. We are very close to issuing this. We are going
22 forward with issuing the comments and the response to the
23 public comments that we have received. And we expect to
24 issue the FDOC the week of the 21st of November.

25 HEARING OFFICER CELLI: Thank you very much.

1 November 21st, okay.

2 MR. CHANDAN: The week of November 21st.

3 HEARING OFFICER CELLI: Okay. Go ahead.

4 COMMISSIONER SCOTT: I'd just like to take one
5 moment to introduce our Public Adviser Alana Mathews. She's
6 joined us in the room. Just in case there was anyone who
7 has questions about the process or would like to speak with
8 her, she is now here.

9 Welcome.

10 HEARING OFFICER CELLI: Thank you, Commissioner.

11 So the FSA, when I'm talking about the FSA, I'm
12 talking about the Final Staff Assessment. And when I talk
13 about the PSA, I'm talking about the Preliminary Staff
14 Assessment.

15 The FSA serves as Staff's testimony on all subject
16 area. The FSA has been marked for identification as Exhibit
17 2000. And Staff's rebuttal testimony was filed on October
18 26th, 2016, marked for identification as Exhibit 2004.

19 Timely testimony was filed by the Applicant AES
20 Southland Development, LLC, which included the application.
21 Just to be clear, it included the original application and
22 the supplemental Application for Certification, and
23 exhibits. And these have been filed between February 3rd,
24 2014 through October 26th, 2016. These exhibits have been
25 marked for identification as Exhibits 1001 to 1073. The

1 SAFC has been marked for identification as Exhibits 1500
2 through Exhibit 1508. Opening testimony has been marked for
3 identification as Exhibit 1070, that's 1070. And rebuttal
4 has been marked for identification as Exhibit 1072.

5 The Intervenor Los Cerritos Wetland Lands Trust's
6 evidence, or the Trust's evidence, was timely filed and
7 marked for identification as Exhibits 3000 through 3048.
8 Los Cerritos Wetlands Land Trust filed the opening testimony
9 of Joe Geever and testimony of Bill Powers, which have been
10 marked for identification as 3008 and 3009, along with
11 numerous other documents that now appear on their exhibit
12 list. The rebuttal testimony of Joe Geever has been marked
13 for identification as Exhibit 3004.

14 I sent all of the parties a link to get to the
15 exhibits lists on the Alamitos website. I also printed a
16 few. If you wanted to look at the exhibit list, there are
17 exhibit lists on the table in the foyer as you come in.

18 So next I'd like to talk about today's procedure.
19 Today's agenda will be divided into eight parts.

20 First, we're going to discuss the Motion to Stay
21 Proceedings filed by Los Cerritos Wetlands Land Trust.

22 Secondly, we will discuss the parties Prehearing
23 Statements, and specifically what subjects are disputed that
24 need live testimony and what subjects can be submitted on
25 written testimony.

1 Third, we will discuss the parties exhibit list.

2 Fourth, we will discuss the parties witness lists.

3 Fifth, we will discuss scheduling the agenda of
4 the hearing.

5 And sixth, we will discuss the formal and informal
6 processes that the Committee may utilize in the conduct of
7 the evidentiary hearings.

8 Seventh, we will discuss the briefing schedule.

9 And finally, we will provide an opportunity for
10 public comment.

11 I see we have actual members of the public here in
12 the room. And then we will also take comment from people on
13 the telephone.

14 So to begin with, the Motion to Stay Proceedings
15 which was filed by the Trust on November 2nd, 2016,
16 Intervenor Los Cerritos Wetlands Land Trust filed a Motion
17 to Stay Proceedings. Our regulations, specifically Title
18 20, section 1211.5, allow any party to ask for a ruling or
19 an order by way of a written motion, and allows the other
20 parties 14 days to respond to that motion.

21 If we had applied the regular timing for responses
22 to the Trust's Motion to Stay Proceedings, both the
23 prehearing conference today and the evidentiary hearing
24 would be over before the Committee received responses. I do
25 acknowledge that we saw that there was a response filed by

1 the Applicant this morning.

2 But in light of that fact, the Committee will rule
3 on the motion at this time. The record should reflect that
4 the Committee heard extensive discussion on the schedule for
5 the evidentiary hearing at the October 10th, 2016 status
6 conference after the Trust brought its request to extend the
7 date of the evidentiary hearing, filed September 30th, 2016.

8 The Trust informed the Committee that both
9 Elizabeth Lambe and Joe Geever will be out of the country on
10 November 15th, 2016. The Applicant opposed any delay in the
11 schedule, and both Applicant and Staff recommended accepting
12 the Trust's evidence on written motion.

13 The Intervenor's motion seeks an order, making the
14 following five findings.

15 First, the order seeks an order that the
16 Preliminary Staff Assessment be modified to take into
17 account proper project description, to include analysis of
18 air quality and demolition of the AGS -- AGS stands for the
19 Alamitos Generating Station -- impacts, and to properly
20 analyze cumulative impacts and alternatives.

21 Requested finding number two -- one moment.
22 Requested finding number two was that the Preliminary Staff
23 Assessment must be modified to include an adequate analysis
24 of need for gas-fired generation above 640 megawatts
25 considered by the CPUC to meet the objectives of the

1 projects and consistency with the state's Loading Order.

2 Requested finding number three, that the
3 Preliminary Staff Assessment must be modified to include an
4 analysis of alternatives that could reasonably meet the
5 purpose of the project while minimizing adverse
6 environmental impacts, the superior environmental
7 alternative, including alternatives that offer a portfolio
8 of preferred resources in the loading order.

9 Requested finding number four, the Scheduling
10 Order is rescinded and the approval process stayed until the
11 Preliminary Staff Assessment is modified and recirculated
12 for public comment and a complete Final Staff Assessment is
13 approved.

14 And requested finding number five, evidentiary
15 hearing will be rescheduled following issuance of a new PSA
16 and FSA.

17 Pursuant to Title 20, CCR section 1210, the
18 Presiding Member makes the following ruling on the Trust's
19 Motion to Stay Proceedings. The motion is denied for the
20 following reasons.

21 First, as stated in the Committee ruling on
22 Staff's Motion for Summary Adjudication, the PSA is not a
23 decisional document. It is Staff's preliminary expert
24 testimony, analyzing the AFC, and is subject to a 30-day
25 comment period. The Trust filed a 16-page comment on the

1 PSA. The PSA is revised when Staff files a Final Staff
2 Assessment, which it did and docketed it on September 23rd,
3 2016.

4 The Committee does not order Staff to revise its
5 PSA or FSA. If the Trust disagrees with the FSA, it may
6 submit testimony in rebuttal to the FSA, which it has done.

7 That is the whole reason why we have an evidentiary
8 hearing. So if Staff's testimony is inadequate, it will be
9 borne out in the record.

10 Secondly, the Energy Commission does not determine
11 the need for a project. Senate Bill number 110 repealed
12 Public Resources sections 25523(f), as in Frank, and
13 25524(a), and amended other provisions relating to the
14 assessment of need for new resources. SB 110 removed the
15 requirement that to certify a proposed facility the Energy
16 Commission must make specific findings that the proposed
17 facility is in conformance with the adopted integrated
18 assessment of need. Regarding the determination of need, SB
19 110 states,

20 "Before the California electricity industry was
21 restructured, the regulated costs recovery framework
22 for power plants justified requiring the Commission to
23 determine the need for new generation and site only
24 power plants for which need was established. Now that
25 power plant owners are at risk to recover their

1 investments, it is no longer appropriate to make this
2 determination."

3 So I would refer everyone to this. The site would
4 be Public Resources Code section 25009.

5 Accordingly, the Committee will not order Staff to
6 assess the need for the AEC Project.

7 Thirdly, if the Trust disagrees with the
8 alternatives analysis in the FSA, it may submit testimony in
9 rebuttal to the FSA's alternative analysis, which it has
10 done. Again, this is why we're having an evidentiary
11 hearing. If Staff's testimony is inadequate, it will be
12 brought out in the record, and the Committee will weigh
13 conflicting testimony and decide which evidence
14 preponderates.

15 As to the Trust's fourth and fifth requests, we
16 reiterate that the PSA and FSA are not decisional documents
17 to be recirculated. They are Staff's expert testimony. So
18 the Committee will not stay proceedings so that Staff can
19 revise its testimony to comport with the way that the Trust
20 thinks it ought to be. Staff and the Trust have workshopped
21 the PSA, and the Trust has submitted substantial comments on
22 the PSA. And we have had status conferences at which all
23 parties were invited to comment and discuss the PSA.

24 So the Final Staff Assessment, as required by law,
25 has taken into account whatever the Trust had to say about

1 it. Where Staff agreed with the Trust, it revised the
2 language in the FSA. Where Staff disagreed with the Trust,
3 presumably no revisions were made. If Staff made a
4 misstatement in its testimony, it can correct the record at
5 the evidentiary hearing. This happens, and we encourage or
6 we won't discourage corrections to the record at the
7 evidentiary hearing because we need an accurate record of
8 the parties' positions. Otherwise, the FSA is Staff's story
9 and they're sticking to it.

10 So based on the foregoing, the Committee finds
11 that good cause for a stay of proceedings has not been
12 shown, and therefore the motion is denied.

13 Any question about that from Applicant?

14 MR. O'KANE: No, thank you.

15 HEARING OFFICER CELLI: Staff?

16 MR. BABULA: I would just add that Staff also
17 responded in detail to the comments made by the Wetlands
18 Trust on the PSA in the FSA.

19 HEARING OFFICER CELLI: Did you say and the PSA or
20 in the FSA?

21 MR. BABULA: It would have been in the FSA is
22 where the response to comments are, which were comments on
23 the PSA.

24 HEARING OFFICER CELLI: Got it. Thank you.

25 Ms. Lambe, any questions?

1 Is she muted, Elizabeth Lambe?

2 MS. LAMBE: I just un-muted myself.

3 HEARING OFFICER CELLI: Fine.

4 MS. LAMBE: I don't have any questions.

5 Joe, do you have any?

6 Or can you ask Joe?

7 HEARING OFFICER CELLI: Go ahead, Mr. Geever.

8 MR. GEEVER: No. That sounds clear to me.

9 HEARING OFFICER CELLI: Okay. Thank you.

10 We're going to next move on to the discussion of

11 Prehearing Conference Statements. According to --

12 MR. GEEVER: Mr. Celli, I'm sorry, can I interrupt

13 you for one second?

14 HEARING OFFICER CELLI: Mr. Geever, go ahead.

15 MR. GEEVER: Will that decision be written on the

16 docket -- in the docket?

17 HEARING OFFICER CELLI: No. But it's going to --

18 where it's going to show up is in the transcript of these

19 proceedings which should come out in a couple of weeks,

20 so --

21 MR. GEEVER: Okay. That's fine. Thank you.

22 HEARING OFFICER CELLI: Yeah. There's a record.

23 We have a court reporter here, and we will have a

24 transcript.

25 So the next -- the topics we're next going to talk

1 about are the topics that are not ready to proceed. So what
2 we're talking about now, Ladies and Gentlemen, just to give
3 you some context is that all of the parties filed a
4 Prehearing Conference Statement. And I'm just basically
5 going to speak to what the parties told us in terms of their
6 readiness and what their concerns and disputes are.

7 As to topics that are not ready to proceed, the
8 Applicant stated that none of the topics are not ready to
9 proceed, meaning all of the topics -- and when I say topics,
10 I really mean subject areas -- are ready to proceed.

11 Staff states that other than air quality,
12 greenhouse gases and public health, all subject areas are
13 ready to proceed.

14 And the Los Cerritos Wetlands Land Trust states
15 that none of the topics are ready to proceed because the air
16 quality section hasn't been published yet.

17 Am I properly characterizing your position on
18 that, Ms. Lambe?

19 MS. LAMBE: Yes.

20 HEARING OFFICER CELLI: Okay. Thank you.

21 So that's the position of the parties at this
22 time.

23 The topics that are in dispute that need
24 adjudication, according to the parties, first, Applicant
25 says that nothing but cultural -- Condition of

1 Certification's Cul 6 is the only thing in dispute.

2 Mr. Harris, you have more?

3 MR. HARRIS: I have less, actually. We have been
4 talking among ourselves. We've received letters from
5 various tribal representatives, and we've looked at those
6 closely and respect what's been said there.

7 We also have very serious scheduling issues, as
8 you know, and we appreciate the consideration in that
9 respect.

10 And so we have decided to forego live witness
11 testimony on Cul 6. We will not be offering that testimony
12 orally from Ms. Lawson. So that is a change from our
13 Prehearing Conference Statement that really results from
14 events that have happened since the filing of the PHC
15 Statement. So we're offering less instead of more, I guess,
16 which is good, so --

17 HEARING OFFICER CELLI: Excellent. That's, as you
18 know, always music to my ears to make a more efficient
19 hearing.

20 So therefore, Applicant has no topics in dispute
21 in the position -- from the point of view of the Applicant?

22 MR. HARRIS: No topics requiring live witness
23 testimony, correct.

24 HEARING OFFICER CELLI: Okay.

25 MR. HARRIS: There are a few conditions here that

1 are noted further in the PHC that we can talk about.

2 HEARING OFFICER CELLI: But those, we've got those
3 in written testimony?

4 MR. HARRIS: Correct. Yeah. So written testimony
5 was sufficient for those topics.

6 HEARING OFFICER CELLI: Okay. Great.

7 Staff, I have compliance, COM is compliance. It's
8 a Condition of Certification, Compliance 14, Compliance 15,
9 Bio 1, Bio 8, Cul 1, Cul 6, and Trans 3 as the remaining
10 issues that needed oral testimony. Is that still the case?

11 MR. BABULA: Well, that was just disputed areas.
12 So I had already, in the Prehearing Statement, said all this
13 could be done through just the filings that existed. But
14 those, there are some changes on those numbers now. So I
15 believe from the Applicant's filing that COM 14 they're okay
16 with. And then I believe Worker Safety 8 they're now okay
17 with.

18 And then I'm a little bit -- I had a question
19 about their thing about Cul 6. So Cul 6, you don't need
20 live testimony but there's still not an alignment on the
21 condition, or are you okay with the condition?

22 MR. HARRIS: Well, first, let me clarify.

23 As to, which one was it, Com 13 -- oh, so Worker
24 Safety 8, we're okay with that language as is proposed to
25 have been revised. So we saw --

1 MR. BABULA: Okay.

2 MR. HARRIS: -- some new language today. That
3 will be docketed. So --

4 MR. BABULA: Yeah. Okay.

5 MR. HARRIS: -- with the new language, we're fine
6 with that. It works for eight.

7 You're correct on Com 14, as well. We've
8 basically decided that with the additional language, that
9 one will be acceptable to us.

10 So Cul 6, we provided just today, actually
11 probably even after lunch, some proposed language for the
12 Staff's consideration. We would like to continue to work
13 with Staff. Basically, we're interested in a couple of
14 things. One is more clarity on which areas would be subject
15 to full-time monitoring. And then a few other requests that
16 we believe would lessen the administrative burden without
17 lessening the monitoring. So at the highest level, that's
18 what we're talking with Staff about.

19 So we have not reached agreement on the Cul 6
20 language, but our differences are very, very narrow. We
21 have basically accepted the areas that Staff has identified
22 for full-time monitoring, and we accept those areas.

23 There's a little bit of an issue with the Cul 6
24 language in that it references like Power Block 4, which is
25 not part of this project description. It was part of the

1 original AFC and not the supplemental AFC. So there's some
2 cleanup language there, as well.

3 But at the end of the day, we don't feel the need
4 to put on expert testimony on that. And we're hopeful
5 that -- well, actually what we envision, hopefully, the
6 filing of Staff would be a stipulation that would include
7 things like new Worker Safety 8 today, and maybe some
8 language on this one. But otherwise we'll brief the issues.
9 So a long way of saying we're close.

10 HEARING OFFICER CELLI: Very good.

11 MR. BABULA: Would you like -- so I have Cultural
12 Staff here, if we want to just take a few minutes to maybe
13 try to discuss what they have talked about on Cul 6 and at
14 least sort of have a little bit of a dialogue?

15 HEARING OFFICER CELLI: I don't think so.

16 MR. BABULA: Okay.

17 HEARING OFFICER CELLI: I'll tell you why, because
18 we don't want to get into the area of taking evidence. I
19 mean, really what I'm trying to do right now is the 35,000-
20 foot view of how are we going to run this evidentiary
21 hearing, what's coming in and what isn't. As long as I know
22 that this is all coming in on paper, then I know I don't
23 have to schedule and figure out how to schedule and work
24 witnesses time in and cross examination and so forth.

25 So as I understand it, it's Staff's position that

1 all of these areas that are now in dispute, these conditions
2 can be handled by way of written testimony, so --

3 MR. BABULA: Correct. I believe that everything
4 that's been filed between all the parties in this case is
5 enough information for the Committee to make a decision.
6 Unless the Committee has specific questions, I had proposed
7 that no live witness testimony is necessary, unless, of
8 course, the Committee did have specific questions.

9 And I do want to reiterate that that would be the
10 time to flesh out the factual information and not rely on
11 briefing afterwards. Because really we want to make sure
12 the record is complete so that a decision could be made with
13 everything that's been mentioned in all the written filings
14 and stuff, and not rely on post-hearing briefing.

15 HEARING OFFICER CELLI: Okay. We will get to
16 that.

17 MR. BABULA: All right.

18 HEARING OFFICER CELLI: Okay. But thank you for
19 offering.

20 Lastly, the Trust -- and again, the topic we're
21 talking about right now is subject areas that are in dispute
22 that need adjudication. And the way that I was able to sort
23 of ascertain from the Prehearing Conference Statement is
24 that the Trust believes that the project description is
25 flawed. And it disputes what's -- the heart of the dispute

1 is a discrepancy between the 640 megawatts and the 1040 that
2 is what's being applied for.

3 Also, demolition.

4 I think we've received written testimony on
5 cumulative impacts. Although, the way it was couched in the
6 Prehearing Conference Statement was that there were several
7 subject areas where testimony is going to be needed. And
8 we're going to have to talk about the logistics of that.
9 She also raised -- and when I say she, I'm thinking
10 Elizabeth Lambe, but really it's it, the Trust, raised the
11 question of need.

12 Also, consistency with LORS. The Trust identified
13 Project Description, Noise, Biological Resources, Cultural
14 Resources, Compliance, Traffic, Soil and Water, Alternatives
15 as under the heading of Consistency with LORS. So these are
16 areas that the Trust feels are in dispute.

17 But then we also received the witness list that
18 actually listed out what the topic areas were that they
19 wanted to cover. So basically, if I may sort of summarize,
20 what I came up with here, my list. And so, Ms. Lambe and
21 all of the parties, I want you to kind of listen to this and
22 write down and tell me if I've got this right or wrong.

23 I have exactly nine issues in dispute. Applicant,
24 Staff and the Trust all raised cultural resources. Staff
25 and the Trust raised biological resources. The Trust only

1 raised soil and water. The Trust also raised Traffic and
2 Transportation, Noise and Vibration, Hazardous Materials,
3 Project Description, Land Use, and Alternatives.

4 So those are, according to my calculation, the
5 matters that are currently in dispute. And when I say in
6 dispute, that means those are the issues we're going to be
7 dealing with. I'm not necessarily saying these require live
8 witnesses. We're going to talk about who needs a live
9 witness when we get to the witness part.

10 But do I have that right? Actually, I'm just
11 going to ask Ms. Lambe, because really, I understand
12 Applicant's and Staff's issues.

13 But, Ms. Lambe, did I get that list right?

14 MS. LAMBE: It sounds correct to me. Let me just
15 check, while I'm on this call with Joe, does that sound
16 correct to you, Joe?

17 MR. GEEVER: It does. Although, I got to tell
18 you, because I'm traveling, I don't have the documents in
19 front of me. But that does sound right, yeah.

20 HEARING OFFICER CELLI: Well, I pulled that from
21 your Prehearing Conference Statement. So that's basically
22 I'm just trying to summarize and make sure everybody's on
23 the same page and that we're all talking about the same
24 thing.

25 That means then, by process of elimination, that

1 the following topics are not an issue; facility design,
2 power plant efficiency, power plant reliability,
3 transmission systems' engineering, transmission line safety
4 and nuisance, waste management, workers safety and fire
5 prevention, geological and paleontological resources,
6 socioeconomics, and visual resources.

7 Now that list that I just read off are the
8 remaining, shall we say, undisputed areas. Although what I
9 didn't mention, because I think it kind of goes without
10 saying, is that we're going to get air quality, greenhouse
11 gases and public health in phase two or part two, in the
12 second half of this. So those, I'm not saying that they are
13 or are not in dispute. I'm not even including them in this
14 list. I'm just basically focusing strictly on next
15 Wednesday's evidentiary hearing.

16 So any question about that or comment from
17 Applicant?

18 MR. HARRIS: No. I haven't checked it against the
19 list in the table of contents. But the nine you laid out, I
20 believe are correct. And then the --

21 HEARING OFFICER CELLI: And Staff?

22 MR. BABULA: Yeah, that sounds correct.

23 HEARING OFFICER CELLI: Okay. And Ms. Lambe?

24 MS. LAMBE: It sounds correct.

25 HEARING OFFICER CELLI: Okay. Great. So then I

1 just want to make sure that the parties understand that
2 undisputed topic areas in those areas that I just listed,
3 all testimony will be submitted by declaration and live
4 testimony of witnesses is unnecessary. I'll say that again.
5 Live testimony of witnesses is unnecessary.

6 So as to the topics any party claims are
7 incomplete or in dispute, we expect the parties to work
8 together to determine whether or not any of these topics can
9 be moved into the undisputed column between now and the
10 evidentiary hearing, or in the column that says we no longer
11 need a live witness. So I appreciate the Applicant and
12 Staff's efforts to reduce the amount of witness time we need
13 to take.

14 MR. BABULA: I've got a question. This is Jared
15 Babula.

16 So, well, I mean right now, based on that list, I
17 guess the Intervenor will want live witnesses for those
18 topics. I'm not clear. Like do they feel -- even though
19 they've said these are disputed areas, is this who they want
20 live witnesses for?

21 HEARING OFFICER CELLI: Good question. Hold that
22 thought, because we are going to talk about -- we're talking
23 about witnesses in a separate section.

24 MR. BABULA: Okay.

25 HEARING OFFICER CELLI: Okay. Right now this is

1 the big picture of what's in dispute, what topics area are
2 in dispute.

3 MR. BABULA: Right.

4 HEARING OFFICER CELLI: Then we're going to talk
5 about what witnesses we need, because we're going to need
6 more.

7 Go ahead.

8 MR. BABULA: Okay. And then the second part is
9 some of their areas of dispute really stem to demolition of
10 AGS, which was already addressed in the order that the
11 Committee issued.

12 HEARING OFFICER CELLI: We're going to talk about
13 that in evidence. So we're going to talk about evidence,
14 and we're going to talk about witnesses. So give me a
15 chance and we'll get them. And then at the end, as usual,
16 I'm going to make sure that I didn't omit something by
17 asking the parties what else we need to cover.

18 So moving right on then to the discussion of the
19 exhibits list. And as I said, if you're here in the room,
20 there are exhibit lists out on the foyer table there, if you
21 want to look at exhibit lists.

22 I passed out exhibit lists today to the people who
23 are the parties. So who's here are the Applicant and Staff.

24 And Ms. Lambe and Mr. Geever, I want you to know
25 that I've been working on exhibit lists all day. And we had

1 been making changes to that, probably up until about, I
2 think noon or even maybe one o'clock. So if you printed one
3 off from our exhibit list that's generated from the website,
4 it may have changed. So I want to give you that heads-up.

5 I want you to know that we had a secretary that
6 was good enough to be a precinct worker who handled that
7 yesterday, and called at ten o'clock and said she couldn't
8 come into the office. So I would say that that was the
9 first casualty of the new administration.

10 But we -- now then, discussion of exhibit lists.
11 I sent a link by way of an email, by the way, and I posted
12 it to dockets, to all of the parties. So everyone should be
13 able to have a copy to review.

14 What I tried to do was assign the exhibit numbers
15 that the parties asked for -- let me get into this, here we
16 go -- as requested by the parties in their exhibit lists.
17 But it turns out that the docketing system will not allow a
18 single exhibit number to cover multiple TN numbers. So, for
19 instance, the Applicant sought to use Exhibit Number 1000 to
20 cover all 74 TN numbers of the original Application for
21 Certification, but the system prevented us from doing that.

22 So instead, what we did is we assigned exhibit
23 numbers in the 1400 series to cover all of the AFC exhibits.
24 And then we used the 1500s exhibits -- 1500 series to cover
25 the supplemental AFC. So they're all there. And that's why

1 we don't have an Exhibit 1000 or an Exhibit 1023, or Exhibit
2 1024.

3 Also, the docket system will not allow a TN number
4 to have more than one exhibit number. So the table that --
5 if you're looking online I hope you can see that exhibit
6 list changes table that I put together here. That shows the
7 results of where two or more parties identified the same
8 document as an exhibit. And if you can't find the exhibit
9 by the number cited in the testimony, then use this chart to
10 find the assigned exhibit number because it's quite possible
11 that we've now taken in testimony where somebody was
12 referring to Exhibit 1000. Well, there is no Exhibit 1000.
13 So if you look at the chart it's going to be one of the
14 1400s there. Okay?

15 Is that clear from the Applicant's -- Staff?

16 MR. BABULA: That's fine. Thanks.

17 HEARING OFFICER CELLI: And, Ms. Lambe, any
18 question about that, because of the changes we had to make?

19 MS. LAMBE: I guess I don't have any questions.
20 It's a little hard to follow, but I don't think I have any
21 questions.

22 HEARING OFFICER CELLI: Well, let me -- just to be
23 clear, in terms of the evidence that you, being the Land
24 Trust, sought to put into evidence, there was Exhibit Number
25 3000. Because all of the Trust's exhibits were in the 3000

1 series. But since there was already Exhibit 2004, which was
2 one of Staff's exhibits -- so in other words, you were
3 asking to put in an exhibit that Staff had already put in.
4 So we can only go with one.

5 Therefore, we're going to actually go with Staff's
6 for your Exhibit 3000 as 2004. Exhibit 3025 was already put
7 in as Exhibit 2002. Exhibit 3026 was Applicant's Exhibit
8 1068. And 3031 was Staff's Exhibit 2000. And 3037 is
9 Staff's Exhibit 2006.

10 So in that table where it says actual exhibit
11 number, those are the numbers we're going to go with. So I
12 did that because I didn't want to prejudice any of the
13 parties if their exhibits -- I'm sorry, if their expert
14 witnesses have already testified using the numbers that
15 we're not using. This makes it easier for people to cross
16 reference.

17 The last exhibit that you had asked for, the last
18 exhibit number was something that said something to the
19 effect of all of Staff's exhibits, which, of course, all of
20 Staff's exhibits are already in and have a number. So
21 therefore, that exhibit would not get a number.

22 So is that clear?

23 MS. LAMBE: Yes.

24 HEARING OFFICER CELLI: Okay. Great.

25 Are there any corrections I need to make to the

1 exhibit list, Applicant?

2 MR. HARRIS: Not at this time. We may have
3 additional documents with the FSA Part 2.

4 MR. O'KANE: Yeah.

5 MR. HARRIS: But very few, I'd expect.

6 HEARING OFFICER CELLI: Staff, any changes?

7 MR. BABULA: No. If there's some agreement of
8 some of these conditions that are pending, then those will
9 be added.

10 HEARING OFFICER CELLI: Okay. And then Los
11 Cerritos Land -- the Trust, Ms. Lambe?

12 MS. LAMBE: I don't have any.

13 HEARING OFFICER CELLI: Okay. Thank you.

14 Then --

15 MR. GEEVER: Ms. Celli?

16 HEARING OFFICER CELLI: Yes, Mr. Geever, go ahead.

17 MR. GEEVER: I'm sorry. So this will be repeated
18 for the Part 2 process; right? You'll take additional
19 evidence for Part 2?

20 HEARING OFFICER CELLI: Exactly. Yes, we will.
21 We're going to have to -- what's going to have to happen is
22 as soon as the FDOC comes off, which we just -- what was the
23 word, they said it was November, the week of November 21st,
24 then what will happen is let's say the FDOC publishes, what
25 we are going to do next is we are going to issue a

1 Scheduling Order, much like the last one we issued, that
2 says, okay, if the FDOC came off on such and such a date,
3 Staff's FSA will be due on such and such a date, opening
4 testimony on such and such a date, rebuttal testimony,
5 prehearing. I'm not sure whether we'll do a Prehearing
6 Conference Statement or not on just those few. We'll figure
7 that out.

8 But basically, what you're going to get are all of
9 the tasks and the dates by when those tasks are going to be
10 done. So there will be no surprise on that.

11 And again, hopefully by now everyone will know
12 that one TN number gets one exhibit number. And so we
13 probably will do better on exhibit numbers next time, with
14 the experience factor. We can only hope.

15 Anyway, I wanted to say that the Applicant and
16 Staff at our last status conference jointly, I would say,
17 suggested that the Committee allow the Trust's exhibits to
18 be moved into evidence by way of written motion at the
19 November 15th, 2016 evidentiary hearing.

20 Do you understand what we mean by that, Ms. Lambe?

21 MS. LAMBE: I basically understand what you're
22 saying, yes.

23 HEARING OFFICER CELLI: Okay. So we're not --
24 this does not need to be War and Peace. It's basically, you
25 know, the Land Trust moves into evidence Exhibit Numbers

1 3000 through whatever. And if you docket that, then that
2 motion is going to be on file. Okay? That's all I need.
3 One sentence will do it. Okay?

4 MS. LAMBE: Yes.

5 HEARING OFFICER CELLI: Okay. Now, in order for
6 us to be able to proceed, I need you to identify your
7 exhibits that you are -- move those exhibits into the record
8 by 3:00 p.m. tomorrow, which is November 10th, 2016. The
9 reason I'm saying that, my inclination was to go to Friday,
10 except I was informed that Friday is Veterans Day which is a
11 holiday, and the Energy Commission will be closed. And then
12 Monday for most people is a travel day, getting down to Long
13 Beach and completing their finalized things. So that's what
14 we would need. So we're looking at tomorrow at three
15 o'clock for that motion.

16 Any question on that?

17 MS. LAMBE: No. I mean, I'm not sure about that
18 deadline.

19 Joe, what do you think?

20 MR. GEEVER: If it's a single paragraph and I
21 don't have to cite any codes or whatever.

22 All you want is a sentence saying please move our
23 exhibits into evidence; is that right?

24 HEARING OFFICER CELLI: That's correct. At this
25 moment all of your evidence has been identified and marked

1 for identification as the number that you gave it. But in
2 order for the Committee to receive that evidence into the
3 record there has to be a motion. And the Committee -- this
4 is a formality -- but the Committee will receive the
5 evidence into the record, as if we were at the hearing and
6 you made the motion at the hearing.

7 So that's really all we're doing. It's just we're
8 covering the bases. And this was the suggestion of Staff
9 and Applicant. And the Committee is willing to go along
10 with that.

11 MR. GEEVER: That sounds straightforward enough.
12 Yeah, I can get you a sentence like that.

13 HEARING OFFICER CELLI: Okay. Good. Thank you.

14 And now, Applicant and Staff, I just want to ask,
15 this is an important question because do Applicant and
16 Staff -- let me first go that the Applicant and ask whether
17 you intend to stipulate to the admissibility of all of the
18 Trust's exhibits?

19 MR. HARRIS: Yeah. And I thought maybe we could
20 save Joe and Elizabeth some trouble, if you wanted to take a
21 motion from them today to accept their exhibits, we would
22 not object to that, so --

23 HEARING OFFICER CELLI: Okay.

24 MR. HARRIS: -- an oral motion, it can be oral.

25 HEARING OFFICER CELLI: That's fine. I might just

1 do that in a minute, but I want to cover some other bases
2 first. Because I kind of need to --

3 MR. HARRIS: Sure.

4 HEARING OFFICER CELLI: -- we need follow this
5 through.

6 MR. HARRIS: You have a process, and I will try to
7 respect it, sir.

8 HEARING OFFICER CELLI: I appreciate that.

9 So do you intend to stipulate to the admissibility
10 of their evidence?

11 MR. HARRIS: Yes, noting certain things may be
12 hearsay, for example, all the rules of evidence may apply to
13 the weight given to that evidence. But we will, yes,
14 stipulate to admissibility.

15 HEARING OFFICER CELLI: Okay. And Staff, I'll
16 tell you where I'm going with this. If we, if the parties
17 can't be there, if Mr. Geever and Ms. Lambe can't be there
18 and they want to put evidence in, and any of the parties
19 objects to the evidence, there's nobody there to make an
20 offer of proof. Now, if I'm going to go to an offer of
21 proof, I have to do something akin to probably ask for a
22 written offer of proof or something, and now we're just
23 dragging this thing out. And it completely negates any
24 benefit from bifurcating. It basically means that we
25 probably would have been better off just putting them off

1 together and having Phase 1 and Phase 2 together.

2 So that's why I'm asking whether the parties are
3 willing to stipulate to the admissibility, I'm not talking
4 about the weight, I'm just strictly talking about the
5 admissibility of the evidence as proffered by the Trust?

6 MR. BABULA: Yeah, that's fine. The Staff will
7 stipulate to that, too. That's kind of what I thought the
8 original process we were going to do to accommodate the fact
9 that they can't be present.

10 HEARING OFFICER CELLI: That's great. Well,
11 actually, all we talked about at the status conference is
12 how they were going to move it in. But on further
13 reflection it dawned on me that there's quite a bit more
14 that could go on, if there were any objections. So I just
15 wanted to make sure that there were no objections to those
16 things.

17 And then the other thing is, since they're not
18 there they would have no idea what evidence would be
19 objected to. They'd need a transcript for that, so on and
20 so forth.

21 So I appreciate your willingness to stipulate.

22 So, Ms. Lambe and Mr. Geever, what you just heard
23 is that the Applicant and Staff will stipulate to the
24 admission of your exhibits, all of your exhibits. And we're
25 going to allow you to make a motion at this time, Mr. Geever

1 or Ms. Lambe, to move them into the record. So would you go
2 ahead and make that motion?

3 MS. LAMBE: Joe?

4 MR. GEEVER: Oh. So moved. I don't know how you
5 want to do that.

6 HEARING OFFICER CELLI: Okay. Well, that's -- you
7 did it. Excellent. Well done. Okay.

8 And then, so stipulated, Applicant?

9 MR. HARRIS: Yes.

10 (Intervenor's Exhibits are received into evidence.)

11 MR. HARRIS: And we have no objection to
12 stipulating to the Staff's, as well. But hopefully I'm not
13 getting ahead of you.

14 HEARING OFFICER CELLI: Okay. We'll deal with
15 that on Wednesday.

16 Okay, excellent. That saves a lot of trouble.
17 Thank you very much. And I really appreciate the parties'
18 willingness to work together. So --

19 MR. BABULA: You might want to clarify, they don't
20 need to -- you still don't need them to write something
21 there now.

22 HEARING OFFICER CELLI: That's right.

23 MR. BABULA: Yeah.

24 HEARING OFFICER CELLI: Yeah. That's no longer
25 necessary, Ms. Lambe and Mr. Geever, because we just

1 accepted your motion. And there's no opposition to your
2 evidence, so it's all coming in, so there you have it.

3 So let's move on to the next issue which is
4 witness lists.

5 The estimates provided by the parties amount to
6 about six hours of live testimony, which seems excessive
7 given the small number of disputes, compared to other
8 hearings we've done.

9 So the first question I have for the Trust is that
10 why do we need live testimony from Bill Powers when we've
11 already received his written testimony?

12 MR. GEEVER: He's going to be -- well, first, we
13 were providing him for cross examination by the Applicant
14 and the Staff, I guess. Not having any idea how this
15 hearing process works, we thought it was required.

16 HEARING OFFICER CELLI: Well, usually --

17 MR. GEEVER: But he also has questions for -- or
18 will hopefully have the opportunity to question Staff's
19 conclusions.

20 HEARING OFFICER CELLI: Okay. So here's the first
21 thing I need to clear up with the parties in the room. By
22 my -- when I read your Prehearing Conference Statement, I
23 didn't see any requests from either Applicant or Staff for
24 time to cross examine Bill Powers.

25 So is that accurate, Mr. Harris?

1 MR. HARRIS: Yes, that's correct.

2 HEARING OFFICER CELLI: Okay. And Mr. Babula?

3 MR. BABULA: Yeah, that's correct.

4 HEARING OFFICER CELLI: Okay. Then with that, Mr.
5 Geever, there's no request for cross examination by Mr.
6 Powers. And you might be able to save yourself a little
7 money if he testifies by way of the written testimony that
8 you've already put in. But I understand you want him to
9 come in and have discussion with the other witnesses?

10 MR. GEEVER: That was the impression we were
11 under, was that there was going to be some kind of an
12 informal discussion with the possibility of cross
13 examination, and potentially questions by the Committee or
14 from the Committee.

15 HEARING OFFICER CELLI: That --

16 MR. GEEVER: But like I said, I'm just reading
17 that between the lines. I already said that. I don't know
18 where I got that idea.

19 HEARING OFFICER CELLI: Well, we do do that. I
20 mean, we have actually -- you probably got the idea from our
21 noticing that when we do the hearing we reserve the right to
22 do what we call an informal examination, which means we call
23 a group of people as a panel all at once and swear them all
24 in. And depending on the hotness of the topic, there may be
25 some lively discussion among the panelists. So we do do

1 that --

2 MR. GEEVER: Okay.

3 HEARING OFFICER CELLI: -- from time to time.

4 MR. GEEVER: Well, I can tell you that -- I'm
5 sorry, I didn't mean to interrupt you.

6 HEARING OFFICER CELLI: Well, I'm just saying that
7 we do do informal, and we have reserved the right. And I'm
8 not -- at this time the Committee hasn't committed one way
9 or the other whether we're going to do formal or informal.
10 And if we can just hold this discussion in abeyance for a
11 minute because informal versus formal is a topic I'm going
12 to cover subsequently, I'm going to describe the
13 differences.

14 But at this point I just was going to ask whether
15 we need the live testimony of Bill Powers. And your
16 suggesting that you were offering him up for cross
17 examination, which nobody else needs apparently, so they're
18 okay there. He's welcome to come. And if we have a panel
19 that's an informal panel, then I imagine that the Committee
20 would allow him to participate that way. So that's your
21 call.

22 MR. GEEVER: Okay. Can I add one other thought to
23 that?

24 HEARING OFFICER CELLI: Yes.

25 MR. GEEVER: It isn't written anywhere, but just

1 through discussions with him, there is a dispute. The
2 Staff's rebuttal of his opening testimony is an ongoing
3 dispute. He doesn't agree with the Staff's rebuttal. So I
4 don't know if that makes a difference.

5 But I think that he and I were under the
6 impression that that was going to be the context of that
7 informal panel discussion.

8 HEARING OFFICER CELLI: Okay. So generally,
9 here's how it works, everybody. You understand, because I
10 know, Mr. Geever, that you're an attorney, that there is
11 direct and cross examination. And --

12 MR. GEEVER: No, I'm not an attorney.

13 HEARING OFFICER CELLI: Oh, I thought you were,
14 but I thought I had read that in your resume.

15 But in any event, what we call direct examination
16 is when a party who is putting on a witness puts on their
17 opening testimony by way of direct examination, kind of like
18 if -- the easiest way to think about it is if you watch any
19 of these criminal law shows on TV, when they call the cop
20 and they say, Officer, on date, time and place, where were
21 you, and did you see the person in the room sitting there,
22 and what was he doing, and that sort of thing, that would be
23 their case in chief. That would be the direct examination.
24 Okay? Then the defense attorney gets up and struts on over
25 and starts asking a bunch of questions to the police

1 officer, and that is called cross examination. Okay?

2 So if -- again, I'm assuming you've watched cop
3 shows on television.

4 But in any event, we assume that your direct
5 testimony is whatever the written testimony is that you've
6 provided. So, for instance, the FSA, the Final Staff
7 Assessment is Staff's direct testimony. Okay? Then we ask
8 the parties to submit their rebuttal testimony, which was a
9 week after the opening testimony was due, and that's your
10 opportunity to rebut the testimony. And I know, if
11 recollection serves, Mr. Geever, I think you filed a
12 rebuttal, but I don't think we got any rebuttal from Mr.
13 Powers, per se.

14 So after we hear the opening testimony or the
15 direct examination and the rebuttal testimony or the cross
16 examination, it's discretionary with the Committee as to
17 whether they want to allow what's called redirect, meaning
18 allowing a party to sort of ask more questions to
19 rehabilitate their witness or to correct the record. So
20 it's really on a -- decided at the time, when we figure out
21 whether we need more information on a particular factual
22 problem or something. So --

23 MR. GEEVER: Yeah. So that's -- I'm sorry to
24 break in, but, yeah, you're right, I have watched trial on
25 TV. And I went to law school and got a law degree, but it

1 wasn't for trial. I've never practiced law. It was for
2 public policy.

3 But I guess my question is, is that, yes, there
4 was opening testimony and, yes, there was a written
5 rebuttal. And, you know, our witness doesn't feel that the
6 rebuttal both accurately characterized his testimony, nor
7 that it's factually correct or relevant.

8 So I understand what you mean, you can't go back
9 and forth forever, you know, in written form like that. But
10 that's what I was assuming was the benefit of this informal
11 roundtable, whatever you call it, discussion of those
12 disputes, ongoing dispute.

13 HEARING OFFICER CELLI: Okay. So essentially
14 there's a couple of ways we can go about it. Because we
15 kind of have a logistical problem here. The first problem
16 is that neither you nor Ms. Lambe are going to be there.

17 And did you -- let me ask you now if you were
18 going to have any representative, legal representative or
19 anyone there who would be able to do the cross examination
20 for you?

21 MR. GEEVER: Yes.

22 HEARING OFFICER CELLI: Oh. Who's --

23 MR. GEEVER: And my hope was that I have had a
24 discussion with Mr. Powers about my testimony, and he is
25 willing to, I don't know, be my proxy or whatever. Because

1 similar to his feeling about the rebuttal, I don't think the
2 rebuttal of my opening testimony characterizes what I said,
3 and therefore misses the relevance.

4 HEARING OFFICER CELLI: Uh-huh. Well, that's
5 exactly what an evidentiary hearing is for. I mean, that's
6 what we want to do.

7 MR. GEEVER: Oh, and I didn't answer your other
8 question. I'm sorry, I keep interrupting you. I really
9 apologize, Mr. Celli.

10 We do have somebody who is going to -- who has
11 experience in these hearings and does have a license to
12 practice law --

13 HEARING OFFICER CELLI: And who's that?

14 MR. GEEVER: -- that will do the questioning.

15 HEARING OFFICER CELLI: Who?

16 MR. GEEVER: Her name is April Sommer.

17 HEARING OFFICER CELLI: April Sommer. Okay. I
18 remember her.

19 MR. GEEVER: S-O-M-M-E-R.

20 HEARING OFFICER CELLI: Okay. Excellent. And so
21 she'll be there in Long Beach?

22 MR. GEEVER: Well, I mean, I guess I'm waiting for
23 you to tell me.

24 HEARING OFFICER CELLI: Well --

25 MR. GEEVER: I mean, if Bill's not going to be

1 there, I don't know why she would attend, too.

2 HEARING OFFICER CELLI: Well, you know, it's kind
3 of your call in this regard. We're going to -- see, that
4 was the reason I asked you whether you and an attorney or
5 somebody who's going to come in and ask questions for you.
6 Because we have, and we're segueing right into this witness
7 section here, we just saved 45 minutes, which we weren't
8 going to give Applicant and Staff anyway, to talk about Cul
9 6. But we still show that you want to cross examine David
10 Vidaver and Steven Kerr for Alternatives, and Scott White in
11 Bio, I think, Jennifer Lancaster, I don't remember what
12 section, Fire?

13 MR. BABULA: Bio.

14 MR. HARRIS: Bio.

15 HEARING OFFICER CELLI: Bio. Bio. Okay. Is
16 Scott White Bio, also?

17 MR. HARRIS: Yes.

18 HEARING OFFICER CELLI: All right. I'm not sure
19 why you need two separate Bio witnesses, but we'll find that
20 out.

21 Lisa Worrall in Socio. Okay. And Kareem Abulaban
22 is in what area?

23 MR. BABULA: Soil and Water.

24 HEARING OFFICER CELLI: Soil and Water. Joe
25 Hughes --

1 MR. HARRIS: Noise.

2 HEARING OFFICER CELLI: -- Noise and Vibration.

3 And Shahab Khoshmashrab, Noise and Vibration. Okay.

4 So somebody would have to be there in order to ask
5 questions of these witnesses. Okay. So I'm -- is Ms.

6 Sommer on the phone with us right now?

7 MR. GEEVER: No, I don't believe so.

8 HEARING OFFICER CELLI: Oh, okay.

9 MR. HARRIS: Mr. Celli, if I could, I think we do
10 have a threshold question of whether there should be live
11 witness testimony on the nine subjects that you have laid
12 out. And that will probably help us determine whether
13 anybody needs to be there.

14 You know, Mr. Babula already kind of raised the
15 issue that a lot of the Trust's issues are related to
16 demolition of the existing AGS Facility, and you've already
17 ruled on that issue, so --

18 HEARING OFFICER CELLI: That's true. Here's -- I
19 don't presume to be omniscient. And they may have some use
20 for that evidence or some other way to get it in, and I'm
21 going to give them that chance. But you're right, I mean,
22 that whole question, those matters that have been ruled
23 upon, we're not going to revisit. We're not going to
24 revisit the demolition of Units 1 through 6 because that is
25 not a reasonable foreseeable consequence of the AEC. And

1 that was decided by the Committee, and we will not go back
2 to that.

3 Now having said that, Mr. Geever, I hope -- and
4 Ms. Lambe, I hope that's clear to you both that we don't
5 reopen that discussion. That matter has been adjudicated.

6 MR. GEEVER: Yeah. So my understanding of the
7 ruling was that the Committee decided not to consider the
8 demo of 1 through 6 as part of the project. Nonetheless,
9 that demolition is a foreseeable project that should be
10 analyzed for cumulative impacts.

11 HEARING OFFICER CELLI: You have it exactly right.
12 And it is only relevant for purposes of a cumulative impact
13 analysis.

14 So in other words, what you're suggesting then is
15 that you really were intending to call these people on their
16 cumulative analysis of the future demolition of AGS, if and
17 when that happens?

18 MR. GEEVER: Well, yeah. I mean --

19 HEARING OFFICER CELLI: Okay.

20 MR. GEEVER: -- the rebuttal was fairly brief but
21 I guess, you know, unsatisfactory from our perspective. I
22 don't know how to characterize it.

23 HEARING OFFICER CELLI: Well, that's fine. I
24 think that Mr. Geever's made the case for allowing some very
25 short cross examination on these witnesses with regard to

1 cumulative analysis.

2 MR. BABULA: And he also sounds like he'd like to
3 do some just direct of his witness. I mean, so it kind of
4 seems like we jumped into two things. Because one of the
5 questions was there is the belief that Mr. Powers has a
6 different view of what Staff said in the rebuttal and what
7 the Applicant said in the rebuttal. And so it sounds like
8 he would like to have a direct, just some sort of direct
9 testimony, and then also the cross examination of certain
10 Staff witnesses.

11 HEARING OFFICER CELLI: I think, since they're
12 going to have an attorney present that -- Ms. Sommer, she's
13 been around. I know that she's participated in some matter,
14 I can't remember which. I know she knows enough about the
15 way we do things that she could bring a motion and say,
16 look, we'd like to do a quick opening or --

17 MR. BABULA: Well, yeah. But I just mean we
18 should probably let him know that that would be okay, like
19 at the evidentiary hearing. If that's what the Committee
20 wants, then they can -- you can do it. Or if it's -- but as
21 long as it's not just repeating what was already said in the
22 direct. But if they want to supplement, based on the
23 rebuttal --

24 HEARING OFFICER CELLI: That's a good point. You
25 raise a great point, Mr. Babula. Thanks for bringing that

1 up. Because the one thing I cannot tolerate is attorneys
2 who, after cross examination, get up and think they're going
3 to drag me through their redirect all over again, as if that
4 rebuts the cross examination. Not okay. Not acceptable. I
5 don't want to hear the redirect. That's why we take it in
6 as written testimony. It's in there. And so we don't need
7 to go, oh, but didn't we already show you that? Well, if
8 you already showed me that, you don't have to show it to me
9 again. So I want to make that point clear. So we don't get
10 to rehash what's already come in.

11 But I think you raise an interesting point. And I
12 will discuss with our Committee how we want to proceed in
13 terms of formal or informal examination. Because I'm, as
14 we're talking, I'm thinking that I think we could probably
15 do this very expeditiously as an informal examination with a
16 panel of all of these witnesses with the various
17 disciplines, if they're basically covering cumulative
18 impacts analysis, vis-a-vis the demolition of the -- the
19 future demolition of the AGS. So I think that that could go
20 pretty quickly if we keep a tight leash on it.

21 MR. BABULA: Staff would be open to that.

22 MR. GEEVER: Mr. Celli?

23 HEARING OFFICER CELLI: Mr. Geever, go ahead.

24 MR. GEEVER: So not to make an already complicated
25 thing even more complicated, but there are parts of the

1 subject areas that are intertwined with the air quality
2 analysis that's no longer available or not available. So,
3 for example, Biological Resources relies on conditions that
4 are in the air quality analysis. And the air quality
5 analysis is not part of the Final Staff Assessment Part 1.

6 HEARING OFFICER CELLI: Right. And so what --

7 MR. GEEVER: So that, you know, further
8 complicates not just the cumulative impacts adequacy
9 question, but the fact that part of the Biological Resource
10 section in the Final Staff Assessment by reference to the
11 Air Quality section is also not final.

12 HEARING OFFICER CELLI: That's correct. And what
13 I would say is this, that if the parties can show at the
14 second phase, at Part 2, at our next evidentiary hearing
15 that there is a crossover between, let's say Bio and Air
16 Quality, like let's say nitrogen deposition is a matter in
17 issue, well, then the Committee would certainly allow that
18 to be opened because at this time you have no testimony on
19 air quality. You would need that in order to be able to
20 proceed. So I just --

21 MR. GEEVER: But here's the -- I'm sorry.

22 HEARING OFFICER CELLI: But what I'm saying is --

23 MR. GEEVER: But here's the way --

24 HEARING OFFICER CELLI: Those areas of biology
25 that are not dependent air quality, we certainly can take

1 care of that on Wednesday, and that's what we intend to do.

2 MR. HARRIS: Mr. Celli, I do want to challenge one
3 thing that you said, that you think he's made the case for
4 the nine subjects and the nine sets of witnesses. I'd like
5 to go through each one of those, because I think almost all
6 of the are related to demolition or legal arguments on
7 Alternatives which don't require live witness testimony, or
8 claims of missing information on Cumulatives which wouldn't
9 require live testimony to prove the negative. And also, you
10 know, concerns about characterization of their testimony
11 which are arguments and not issues for briefing.

12 I look at eight of those nine subjects and see
13 issues that have already been decided by this Committee.
14 And so I think it's worth the time to figure out exactly
15 what the Trust wants to ask about on Biological Resources,
16 on Soil and Water, and Traffic and Transportation, because
17 I'm certain those are things that you've decided on
18 demolition.

19 HEARING OFFICER CELLI: Okay. But I want to be
20 clear that we definitely decided that the demolition is a
21 reasonably foreseeable event --

22 MR. HARRIS: Correct.

23 HEARING OFFICER CELLI: -- somebody out there in
24 the future, we just don't know when.

25 MR. HARRIS: And we don't disagree with your

1 ruling on that. We think it was wise and wonderfully
2 written.

3 The issue is whether there's a need for live
4 witness testimony on those subjects. If the issue is just,
5 well, there's nothing in, pick a subject, you know, biology
6 on cumulative impacts, then that is an argument, that's not
7 a factual issue.

8 HEARING OFFICER CELLI: But to be clear --

9 MR. HARRIS: And I don't see factual issues in
10 this.

11 HEARING OFFICER CELLI: Just to -- I'm sorry, I
12 didn't mean to speak over you, Mr. Harris.

13 MR. HARRIS: Right.

14 HEARING OFFICER CELLI: But to be clear, they're
15 only asking for cross examination of Staff's witnesses.
16 They're not putting on testimony, actual direct examination.
17 They want to cross these witnesses, and I think that that's
18 fair. I think that if --

19
20 MR. HARRIS: If I may --

21 HEARING OFFICER CELLI: Yeah.

22 MR. HARRIS: -- and I'm interrupting on purpose,
23 if the questions are did you consider demolition, that's not
24 fair. And I'd like to know what the scope of these
25 questions are. And based upon their Prehearing Conference

1 Statement, they're re-litigating the demolition issue.

2 HEARING OFFICER CELLI: Well, again, if the
3 question goes into the direct and indirect impacts of the
4 demolition, then that would revert back to the ruling. That
5 matter is already adjudicated, so we wouldn't go there.

6 MR. BABULA: Right. And some of their -- I mean,
7 it was a little problematic looking at their testimony or
8 what they filed because they did intertwine them. And they
9 had a paragraph in there that said, well, we think this is
10 still part of the project, and they wanted to sort of get a
11 reversal of that ruling.

12 HEARING OFFICER CELLI: Yeah.

13 MR. BABULA: And then there were --

14 HEARING OFFICER CELLI: That's off the table.

15 MR. BABULA: And there were times when they just
16 started talking about specifically the impacts of
17 demolition, not in conjunction with the similar type of --
18 like a dust plume coming from demolition mixing with the
19 dust plume coming from operation.

20 HEARING OFFICER CELLI: Right.

21 MR. BABULA: Like it wasn't -- that wasn't the
22 frame of the testimony.

23 So I kind of agree with the Applicant in that it
24 can get very -- very quickly go into really questions about
25 pure demolition and not in conjunction with cumulative. And

1 that's kind of what we should try to flesh out today so we
2 don't spend a lot of time arguing this at the hearing.

3 HEARING OFFICER CELLI: I think that's fair. I
4 think all of your points are fair. And I want to just say
5 that for starters the 30 minutes of cross examination per
6 person, according to my -- oh, Mr. Lee, can I get you to put
7 up the -- this is called -- oh, what did we call it, the
8 witness list? It says, "Party calling witness, Subject
9 area," there you go, "Direct, Cross, and Committee will
10 allow." Okay.

11 Now the good news is as you look at that chart the
12 first two have been -- are no longer necessary. Okay. The
13 remainder, what the Committee is willing to allow would be
14 about ten minutes per person. That would be -- and when I'm
15 calculating this I'm thinking in terms of formal
16 examination, one lawyer asks one witness the questions. And
17 then the next lawyer gets up and cross examines. The next
18 lawyer gets up and cross examines. And then redirect, if we
19 would allow that. That's how I calculate this thing.

20 When it comes to informal where we call a panel, I
21 mean, really, I have read the FSA. I understand what the
22 issues are. I wrote the ruling. I know what the issues are
23 with regard to the demolition. And so I would suggest that
24 what we're dealing with is a very short cross examination on
25 what effects would be simultaneous or cumulative where their

1 impacts could be significant. And we're going to -- I think
2 it's fair to let them cross Staff's witnesses on that. But
3 this isn't all day long.

4 And, Mr. Geever, and I'm hoping Ms. Sommer -- my
5 recollection is she understands that this is an
6 administrative hearing. We're here to get the facts, find
7 out what impacts, if any, what evidence we need in order to
8 make determinations about the effects of a power plant. This
9 isn't Matlock or, you know, Perry Mason or something like
10 that. So is that clear, Mr. Geever?

11 MR. GEEVER: Yeah. Well --

12 HEARING OFFICER CELLI: I mean, basically what --

13 MR. GEEVER: -- I haven't ever -- I've never seen
14 Ms. Sommer's work, but imagine that she understands this
15 process. She certainly understands it better than I do.

16 HEARING OFFICER CELLI: Yeah. I mean, this is
17 very limited testimony, and I think that it shouldn't take
18 that long. And I think that, you know, cumulatively, all of
19 the testimony in terms of cross examination of witnesses,
20 discussions of panelists if we go the informal route, we're
21 looking at an hour tops on the question of cumulative
22 impacts. And I'm not saying it should take an hour, I'm
23 saying this should be well done within an hour. It could
24 probably be done within a half an hour.

25 MR. HARRIS: Mr. Celli, are you envisioning this

1 would be a formal process as oppose to like the informal
2 panels then for the questioning?

3 HEARING OFFICER CELLI: Not really. I'm thinking,
4 you know, because what we're looking at is -- their concern
5 has to do with the cumulative impacts. If I call a panel of
6 all of these witnesses, they would all be thinking about
7 these questions in terms of their particular discipline.
8 And they'd be able to pipe up and respond, as needed.

9 MR. HARRIS: Okay. Well, my concern with an
10 informal process is that I think I then have to make my
11 witnesses available to participate in an informal
12 discussion. Otherwise, we're disadvantaged.

13 HEARING OFFICER CELLI: That's true.

14 MR. HARRIS: And I would prefer not to have nine
15 people, nine subject matters on standby or in the room,
16 traveling all that way. So if we're going to proceed down
17 this route, I think maybe -- and Ms. Sommer is a
18 practitioner in this field. It ought to be a formal direct,
19 you know, redirect, cross examination process then. And we
20 would want to be able to ask questions, even though we have
21 no witnesses, based upon her direct examination.

22 HEARING OFFICER CELLI: That's a reasonable
23 request.

24 Mr. Babula, what do you think of that?

25 MR. BABULA: I'm a fan of the informal but, you

1 know, we can go either way. Because I again think that I
2 agree with you, these would be pretty short.

3 And I do want to throw it back to the Committee
4 quickly, because does the Committee feel they need the
5 information to make a decision, considering what was already
6 put in the FSA, what was put in all the opening testimony,
7 what was put in the rebuttal testimony? Because we spent a
8 considerable amount of time in our rebuttal testimony
9 focusing on cumulative impacts to address some of the --
10 many of the issues raised by the Wetlands Trust. And so I
11 get a sense what we'll end up doing is pretty much
12 reiterating that information in a similar form.

13 HEARING OFFICER CELLI: I can tell you that I
14 probably wouldn't allow that. I would keep a pretty close
15 watch on that.

16 What I want to -- what I'm thinking, though, is we
17 might even just do some sort of hybrid. But my concern has
18 to do with what Mr. Harris said, which is if we're going to
19 impanel a panel, he would like to have panelists in that
20 panel, as well, to rebut any statements that effect the
21 interest of the Applicant.

22 MR. BABULA: Right.

23 HEARING OFFICER CELLI: And I think that that's a
24 reasonable --

25 MR. BABULA: Right. That makes sense.

1 HEARING OFFICER CELLI: -- request.

2 MR. BABULA: He would want to have --

3 MR. HARRIS: And I'd also like to see a pre-filed
4 testimony from those people. So I don't think we ought to
5 have panelists who haven't pre-filed testimony in Biology,
6 for example.

7 HEARING OFFICER CELLI: Well, we have --

8 MR. HARRIS: The panel -- really the panel is
9 going to be us and them. We are the panel. There's no
10 witnesses for the other parties --

11 HEARING OFFICER CELLI: Right. Yeah.

12 MR. HARRIS: So --

13 HEARING OFFICER CELLI: It's basically -- it's
14 just cross examination of Staff's witness. That's all
15 they're asking for. And I think that's -- the only thing
16 that Bill Powers was going to testify to had to do with
17 Alternatives.

18 MR. HARRIS: No.

19 HEARING OFFICER CELLI: Now here again, I don't
20 want to have a discussion today about need. We've
21 established that. But often times it goes off in that
22 direction, and we're not going to go in that direction.

23 So I just -- we have the direct of -- we have the
24 written direct of Mr. Geever and Mr. Powers. We have
25 rebuttal from Mr. Geever. And we have all of Staff's

1 testimony. But I believe that it is fair for the Intervenor
2 to be able to have some cross examination of Staff's
3 witnesses on these limited areas, and so I think we're going
4 to allow that.

5 But I just wanted to make it very clear to all the
6 parties that this is going to happen efficiently and with
7 alacrity. We are not going to -- this isn't going to be a
8 fishing expedition, and we're not going to allow people to
9 strut around and ask --

10 MR. BABULA: I have a question. Some of these
11 topic areas, they have multiple names. And so I don't know
12 if we want to bring -- like can we just do it by a topic,
13 and then Staff will provide the appropriate witness? I
14 mean --

15 HEARING OFFICER CELLI: Possibly. I just want --
16 but I want to make something clear to Staff. Because in
17 addition to the above requested testimony, yes, there's
18 more, the Committee needs some Staff to provide answers to
19 some questions with regards to LORS. And I hope you can
20 start taking notes on these questions I'm about to give you.
21 Because at this late date there will be no transcript
22 between now and the evidentiary hearing, and you need to
23 know what we need to -- what we're asking for.

24 So the first thing -- and the first thing I want
25 to point out, Staff, because I know that I raised this

1 before at a status conference in the past about take another
2 look at the way that Staff did LORS in the PSA and FSA,
3 because the first one that comes to mind was Facility
4 Design. There's columns. And the columns should say what
5 is the LORS, what is a description of the LORS, and
6 hopefully a third column that says whether there's
7 compliance and how it complies. Okay? Most of the sections
8 have two columns, what is the LORS, and whether or not --
9 and a description of the LORS.

10 In, I believe it was Facility Design, it said
11 "LORS" and it said "Federal," which is a jurisdiction, not a
12 LORS. And then in Description it said "Title" whatever. I
13 have that here. I can actually tell you. It said
14 "Federal," and then it said "Title 29 Code of Federal
15 Regulations," et cetera, where the Title 29 Code of
16 Regulations should be in that first column, because that's
17 the reg we're talking about, or code, and then a description
18 of it, and then whether there's compliance.

19 So I don't need that person to come in. I mean, I
20 figured it out, we can do that.

21 But the first one I would tell you is Transmission
22 System Engineering, there's a reference to CPUC GO 128. Ad
23 it talks about whether there's going to be underground lines
24 for the AEC. And my reading of the entire FSA, although it
25 never quite comes out and says there's not going to be any

1 undergrounding, why do we have -- if there's no
2 undergrounding that's going to happen, why do I have this
3 LORS? And there's several sections.

4 There was some other section that said "List of
5 LORS," and then said this LORS does not -- these LORS do not
6 apply to this project. Well, if they don't apply, don't put
7 them in the record, because then we have to see whether
8 there's compliance or not. And what if there isn't?

9 And then there's also the case where there are
10 LORS where it's instructive. Like in other words, the
11 federal government wants the state to implement something.
12 So there's no affirmative duty on the Applicant to do
13 anything or on the project, so there's no way the project or
14 the Applicant could comply because it's up to the state to
15 do whatever.

16 So I'm asking that you have your experts go
17 through their LORS and take that stuff out, because then we
18 have to make a determination as to whether there's
19 compliance or not.

20 MR. WINSTEAD: This is Keith, the Project Manager.

21 Just to be clear and make sure we don't miss
22 anything, would it be possible for you to docket that list
23 of items that you'd like changed or revised so I don't miss
24 them? Because I'm trying to take these notes and I'm not --

25 HEARING OFFICER CELLI: I'm just going to -- I'm

1 just giving it to you right now.

2 MR. WINSTEAD: Okay.

3 HEARING OFFICER CELLI: I haven't given it to you
4 yet.

5 MR. WINSTEAD: Oh, okay. Thanks.

6 HEARING OFFICER CELLI: So right now, Mr.
7 Winstead, I'm speaking in general, just generally, the whole
8 FSA, some of the problems that I saw with it. Some of them
9 were very good, but it was spotty. So you need to take a
10 look at those, in particular, Transmission Systems
11 Engineering, I need to know whether there's undergrounding
12 or not. It's not in the record. I need an expert to come
13 in and testify whether there was undergrounding.

14 In Workers Safety and Fire Protection there's 29
15 CFR 1910.1 through 1910.1500, that's 29 CFR 1910.1 through
16 1910.1500. We need to know whether these federal regs
17 create an affirmative duty on the Applicant, or are they
18 just standards for implementation by the state government?
19 And we're going to need someone to come in and testify about
20 that.

21 With regard to Land, Land was the big one. Okay.
22 So in Land, Public Resources Code section 3021 -- I'm sorry,
23 did I say that -- 30211 -- strike that, not that one. Okay.

24 First, Public Resources Code section 25529, okay,
25 the analysis says that this is an existing plant, so there's

1 no provision that needs to be made. And we're talking about
2 a coastal area. But we don't see this as an option under
3 the language in the section.

4 So the question is: Where does this exemption
5 that's listed, where is it listed? Where is it created?

6 This is not about impacts. We're talking about
7 LORS. So there has to be a LORS analysis, if it's compliant
8 or not. If it's not compliant, what do you recommend we do
9 about that? So that was that section.

10 We have, let's see, City of Long Beach General
11 Plan Land Use Element, July 1st, 1989. There's a change in
12 the description.

13 And then we have the City of Long Beach Local
14 Coastal Program adopted February 12th, 1990, amended January
15 1994. And we need to know whether there was any action by
16 the Coastal Commission on this, and whether the 1994
17 amendments allow the city to continue to make determinations
18 on the LCP?

19 Now then, there's a bunch of -- there's a list of
20 a bunch of references to the Southeast Area Development and
21 Improvement Plan, or the SEADIP.

22 MR. BABULA: Yeah.

23 HEARING OFFICER CELLI: Okay. So starting with
24 Subarea 9, we need to break all these subareas down first.
25 The first one, this Subarea 9 talks about that the AEC site

1 and offsite laydown area would be located within a SEADIP
2 Subarea 19. The wastewater pipeline would be located within
3 SEADIP Areas 9, 22 and 24 South, and the wastewater would be
4 subsurface. And then there's various references to these.

5 What we want to know is whether the Long Beach
6 Municipal Code exempts pipelines or other ground facilities
7 from zoning? Because if they do, then we don't have to put
8 all of these things into the record. We can basically just
9 say it's exempt under whatever muni quote, muni ordinance
10 that there might be. Okay.

11 Now, Subarea 19, there's mention of commercial
12 storage, "self-storage shall be allowed by Conditional Use
13 Permit," that is completely out of left field. There's no
14 discussion of storage at that point. But then it talks
15 about project design plans would demonstrate compliance with
16 the general development standards that apply to the IG Zone
17 District. There is probably somewhere a Condition of
18 Certification that requires that, and it should be
19 referenced here. So we need to know what condition makes
20 that compliant.

21 Then there's a further talk -- further discussion
22 about "Electric services are a conditionally permitted use
23 within the IG Zone." But there is nothing in the FSA that
24 gives us the basis to say what would meet the standards of a
25 Conditional Use Permit? So we need to have a discussion of

1 what -- I mean, someone is going to have to come in testify,
2 what are the standards for a CUP, and whether those
3 standards are met by the AEC. Okay?

4 Next, let's see, there's a question in Subarea 22B
5 regarding the additional street access to 7th Street. So it
6 says, "No additional street access to 7th Street shall be
7 permitted." But then we need to know -- in other words, the
8 section that they put in there does not address, does not
9 answer the question, is there street access to 7th Street
10 required? So we need to know that.

11 Let me see what else here.

12 Subarea 24 South, "Land uses are to be developed
13 as an overlook area and interpretive center from bordering
14 marsh." Is Subarea 24 South pipeline only? Because if it
15 is, then how do we do design standards to fit with an
16 underground pipe? We need to know that.

17 Also, how do building heights apply to underground
18 pipe? We don't think it does. But if it is, we better find
19 out how.

20 Next, we talk about SEADIP provisions. Provision
21 1 is, again, that circumstance where we think there's
22 probably a Condition of Certification that covers that, but
23 it's not cited. Same with Provision 2.

24 Provision 5,

25 "The proposed AEC would comply with the general

1 development standards that apply to the IG Zone
2 District. Stack heights at the existing AGS are over
3 200 feet. The proposed AEC design would result in
4 significantly shorter stacks, 140-foot and 80-foot
5 stack heights, and new project features would appear
6 more streamlined overall."

7 Maximum heights for nonresidential uses is 35
8 feet. These new stacks are 80 or 140 feet tall. The facts
9 that the impacts may be reduced in comparison is not
10 germane. The structures are over-height. And how do we
11 address these? This is -- we need testimony on that.

12 Here again, Provision 6, we probably would like a
13 condition or know which condition makes the project design
14 compliant.

15 On Provision 9 it says,

16 "The design of the proposed AEC would be compatible
17 with the existing electric uses at the project site and
18 with the standards of the IG Zone."

19 This is just a conclusion. We need a because. We
20 need to know why there's compliance.

21 Okay, let's see, let me just -- Item 15, this is
22 the last entry before the City of Long Beach Code Supplement
23 12. And it says,

24 "All utility lines shall be placed underground and
25 utility easements shall be provided as required, unless

1 waived by the Commission on the advice of the Director
2 of Public Works."

3 And then it says,

4 "Provision 15, the proposed wastewater pipeline would
5 be placed underground, with the exception of a portion
6 that would be affixed to the bridge as it crosses over
7 Los Cerritos Channel."

8 There's no discussion of how we got to the
9 standard is "waived by the Commission on advice of the
10 Director of the Public Works." We'd like to hear more about
11 that. What does the law require with regard to such
12 structures? You know, because it's now not underground.
13 It's going to be affixed to the bridge, I take it.

14 Okay, let's see, now Long Beach Municipal Code
15 Supplement 12, and you've got section 21.37.060, Site Plan
16 Review. And it says,

17 "Staff has determined that implementation of Land 1
18 would best ensure AEC's consistency with the city's
19 Community Development Standards of the PD-1 District."

20 I'm not going to get into it, but other than to
21 say it sounds like this is at odds with the one-stop shop
22 that the Energy Commission is to have the Applicant have to
23 file for a permit, so --

24 MR. BABULA: Yeah. We actually already fixed
25 that. That was taken out; right?

1 Wasn't that one that you -- you commented on that?

2 Yeah.

3 HEARING OFFICER CELLI: Okay.

4 MR. BABULA: Some of these things are actually in
5 some of the supplemental testimony.

6 So one question is, is can we just file? I mean,
7 why have someone there? We can just file supplemental
8 information.

9 HEARING OFFICER CELLI: That's okay with me if --
10 but if one of the parties wants to cross on this, then they
11 would -- see, this is after filed information and the
12 parties haven't had a chance to see it.

13 MR. BABULA: Right.

14 HEARING OFFICER CELLI: And that's why I
15 thought --

16 MR. HARRIS: Yeah.

17 HEARING OFFICER CELLI: -- the expedient way to
18 deal with it would be to just take oral testimony. And then
19 if somebody wants to cross, great, if they don't --

20 MR. HARRIS: Mr. Celli, these are legal issues.

21 And I'd also direct you to Exhibit 1067, that's
22 our responses to the Committee's Land Use questions.

23 HEARING OFFICER CELLI: 1067?

24 MR. HARRIS: Yeah, 1067.

25 HEARING OFFICER CELLI: Okay.

1 MR. HARRIS: It's the responses. TN number is
2 213749, responses to the Committee's Land Use questions. A
3 lot of these questions are answered. And I guess the
4 salient thing for me is that in every section the Staff
5 makes an affirmative determination of LORS compliance.

6 I have great sympathy for the Staff for including
7 things that are not applicable because I like checklists.
8 And I think there are things that are not applicable in this
9 project because it's an existing project on an existing --
10 excuse me, there's an existing power plant in the vicinity.
11 And we are, for example, connecting to the existing Edison
12 substation. So all of the questions about, you know,
13 overhead lines, underground lines are things that are
14 addressed by Edison in their substation, and we're merely
15 connecting to those things.

16 And so I think the fact that this is not a
17 greenfield site accounts for a lot of these LORS being in
18 there. And I said, I would have probably kept them on my
19 checklist, too, but --

20 HEARING OFFICER CELLI: Well, my problem is, is
21 that as the Committee receives the evidence and Staff says
22 these are the LORS that apply, then a determination has to
23 be made as to whether there's compliance and how does the
24 project comply?

25 So that's why I'm throwing this out to say, well,

1 if some of these, because I have the feeling a lot of these
2 just don't apply, tell us so. We need some evidence on
3 that. So that's what I'm asking for.

4 Now, what I would ask is whether the parties would
5 be willing to allow these witnesses to appear by phone?

6 Well, before I do that, is Rick Alexander still
7 here? He's not here anymore? I'm just concerned, because
8 before I go down the path of, oh, let's do this by way of
9 WebEx, I want to know that WebEx is going to work at the
10 Grand down in Long Beach, that we're not going to have a
11 problem with the WebEx. Yeah, exactly. It's rolling the
12 dice.

13 MR. HARRIS: We have been talking with your Staff.
14 We're going to go down a head of time. And I congratulate
15 you on waiting an hour-and-a-half to figure out the WebEx
16 issue. It's always on our mind, too, so thank you.

17 HEARING OFFICER CELLI: Well, I mean, my thought
18 would be while it would be cheaper for we, the taxpayers, to
19 have the Staff stay up here in Sacramento and get on the
20 phone, but then sometimes we've had such difficulty hearing
21 people, bad reception, difficulty understanding different
22 people's accents and things like that.

23 So let me ask the Intervenor, Ms. Lambe or Mr.
24 Geever, would you object to some of these witnesses
25 appearing by way of phone and subjecting themselves to cross

1 examination by way of the WebEx, as we're doing now?

2 MR. GEEVER: So if I might go back a ways to Mr.
3 Babula's question about the people that we listed. The
4 people that -- the names that we listed were the authors of
5 those sections. So --

6 HEARING OFFICER CELLI: Yeah. They were the right
7 people --

8 MR. GEEVER: -- you know, I don't --

9 HEARING OFFICER CELLI: -- that you wanted to
10 call. I think that's -- you chose the right witnesses.

11 MR. GEEVER: But whether it's one of them or --
12 you know, I don't have the answer to that. I don't want to
13 put too many people out of -- you know, make a lot of
14 trouble for a bunch of people if one person can answer the
15 questions.

16 HEARING OFFICER CELLI: Okay. Thank you.

17 So, Staff, please note that. We would probably
18 need one Bio person and one whatever.

19 Go ahead. Anything else, Mr. Geever, on the
20 question? What I'm trying to figure out is whether it would
21 be objectionable to you as the Trust to have your attorney
22 cross examine witnesses by way of telephone, or
23 teleconference really?

24 MR. GEEVER: I'm a little reluctant to speak on
25 behalf of the Land Trust's attorney. Well, let me try this,

1 and you can tell me that I'm being redundant and I can't do
2 this. But that's a long list that you just read off there.
3 And now that we know the Air Quality Management District is
4 going to get their FDOC out fairly quickly, I'm going to try
5 this once again, that I do not see how holding this hearing
6 next week streamlines the final approval of this thing when
7 you're going to have to hold another hearing anyway.

8 HEARING OFFICER CELLI: Well, allow me to address
9 that.

10 MR. GEEVER: And I will promise that if you were
11 to postpone this first hearing and combine it and just have
12 one hearing where all the subject matter is available that
13 some of these things that are about a question of the Staff
14 rebuttal, I mean, I'm happy to try and work through those
15 with Mr. Babula or whoever on Staff and maybe can find some
16 resolution that wouldn't require those to have to be there.

17 HEARING OFFICER CELLI: Well, I appreciate that. I
18 just -- I understand from the point of view of an intervenor
19 that it looks like the only matter that exists for the
20 Energy Commission is the Alamos Energy Center, and that's
21 what this whole Committee does all the time. But they are
22 doing -- there are many, many power plants going on right
23 now, all of which need analysis. And, you know what,
24 they're all analyzed by these same witnesses. We don't have
25 battalions of experts in Bio and Air and Land Use and all of

1 the various things. So what we're having to do is divide up
2 the availability of people's times.

3 And I can tell you from my own experience, it's
4 very difficult for me to be able to plan, especially as we
5 don't know when things like the FDOC is going to come in.
6 How do we lock in the time of these Commissioners that are
7 very, very busy? Sometimes a Commissioner is gone an entire
8 month. And if they're blocked for a whole month and I can't
9 get two Commissioners in a hearing at the same time, then
10 that prejudices the Applicant because that costs them a
11 month, not due to anything they did but that we just
12 couldn't schedule our time and make our time work. So
13 there --

14 MR. GEEVER: But wouldn't that be the case with
15 the Part 2 hearing regardless?

16 HEARING OFFICER CELLI: No, that wouldn't.
17 Because what is happening is that by accepting this evidence
18 early and closing the record on those areas that we can
19 close, we're able to focus that second hearing just on the
20 issues that need to be discussed, and then very quickly get
21 a decision out. So it does speed up the process. We're
22 still working, even though this thing has been bifurcated.

23 So I understand, it may not make a lot of sense
24 from your perspective, but it does speed up the process.
25 And again, we visited that one and I really don't want to

1 have to go back to that again.

2 So what we were talking about before we went and
3 digressed a little bit was allowing witnesses to testify by
4 way of phone, telephone or by WebEx. And I think that we'll
5 just have these witnesses be available on Wednesday in Long
6 Beach if --

7 MR. BABULA: Tuesday?

8 HEARING OFFICER CELLI: I'm sorry, on the 15th,
9 whatever day the 15th is on. Is that a Tuesday? On next
10 Tuesday. And so because at this late hour, I don't think
11 we're going to be able to logistically make things happen
12 and work for everybody. Friday is a holiday. So you might
13 as well just have the witnesses there and available.

14 If for some reason something comes up and they
15 can't be, then they should be available by WebEx. And God
16 willing, WebEx will work and we'll be able to hear them and
17 we can make that happen.

18 MR. BABULA: Right. So what we could do is
19 file -- I mean, I kind of agree with Jeff Harris's comment,
20 that most of these LORS things, there's not going to be a
21 lot of cross examining. I mean, if it has -- it's
22 underground or it's not underground. I mean, some of these
23 are like yes or no. We could try to get -- file written
24 sort of resolutions to your concerns and questions and
25 clarifications on these LORS, especially if they don't

1 apply. I mean, if it's just knocking things down, saying
2 this doesn't apply, we can do that and file. And then we'll
3 have -- if someone wants to cross, we could have someone on
4 standby on the phone --

5 HEARING OFFICER CELLI: So today's --

6 MR. BABULA: -- ready to go. But to pre-file --

7 HEARING OFFICER CELLI: What is today, Wednesday?

8 MR. BABULA: Today is Wednesday, yeah.

9 HEARING OFFICER CELLI: Okay. So today is
10 Wednesday.

11 MR. GEEVER: Hey, Mr. Celli, can I make an offer
12 that will maybe save you guys some airfare?

13 HEARING OFFICER CELLI: Yes, please.

14 MR. GEEVER: Maybe, if Elizabeth is willing, maybe
15 she can call Ms. Sommer and see if there's any objection to
16 the WebEx thing. I honestly don't have any, but I can't
17 speak for her. And if not, we can maybe get you that answer
18 tomorrow.

19 HEARING OFFICER CELLI: That would be great.
20 Because tomorrow being Thursday and the next day is a
21 holiday, tomorrow is like a Friday around here. And so
22 that's why I'm saying we need to resolve this issue now or
23 by tomorrow in order to be able to go into the hearings next
24 week with everybody on the same page, so --

25 MR. GEEVER: Yeah. I really don't want to be the

1 person forcing your Staff all around the state.

2 HEARING OFFICER CELLI: And I appreciate that. So
3 let's hope that we can get this resolved by tomorrow.

4 So what I would ask then is that if it's okay with
5 the Trust, that the witnesses appear by way of WebEx by
6 teleconference, that you send me an email and I will docket
7 that email when I get it. Is that -- does that work for
8 you?

9 MR. GEEVER: Elizabeth, I think that's a question
10 for you.

11 MS. LAMBE: It seems -- yeah. It seems like it
12 does. Yeah. Yeah, it seems like it does.

13 HEARING OFFICER CELLI: Okay. That's great.

14 MS. LAMBE: Joe, maybe, when you have time maybe,
15 Joe, you could just send me a quick note, you know, how you
16 would -- so I'm very clear on what I'm asking, but it makes
17 sense to me.

18 HEARING OFFICER CELLI: Very good.

19 MR. GEEVER: Okay. We'll work it out, Mr. Celli.

20 HEARING OFFICER CELLI: Thank you very much.

21 MR. GEEVER: We'll get you -- try and get you an
22 answer tomorrow.

23 HEARING OFFICER CELLI: Excellent. Thank you.

24 So that -- the next thing we're going to talk
25 about is the agenda then, which is really quickly, we have

1 an agenda to put, Mr. Lee, on the internet. So at noon we
2 would -- the Presiding Member would welcome -- the Presiding
3 Member is Commissioner Karen Douglas, would welcome
4 everybody, explain our procedures. I would explain the
5 procedures, take any motions, and take in all of the
6 undisputed evidence at that time.

7 At 1:00 we would finish taking the undisputed
8 evidence and we would call witnesses on disputed subjects.
9 And as I said, I don't think, based on anything I've seen,
10 that we should take more than an hour in taking evidence on
11 disputed evidence. If we do then we'd be finished around
12 2:00 or 2:30, let's say.

13 Now, as you can see, we've set it up for a public
14 comment time at three o'clock, and we will honor that. I
15 know Alana Mathews is here. We will definitely have a three
16 o'clock public comment period. But the way I envision this
17 is let's say we finish taking all of the testimony by 2:00
18 or 2:30, I would take public comment at that time, just so
19 the people who are there don't have to stick around. They
20 can make their public comments and then go on their merry
21 way. And then we would take a break until three o'clock,
22 and then have another public comment for those people who
23 thought, oh, I have to be there by 3:00 to make my public
24 comment, so that they can make their public comment.

25 If for any reason, and I hope there isn't one, but

1 if for some reason we need to take additional evidence, we
2 could do it after public comment. But I'm trying -- I'm
3 shooting for getting it all done before the public comment.
4 And generally we're looking at, ballpark, about a five
5 o'clock adjournment, 4:00 to 5:00, something like that.

6 So that would be the agenda.

7 Now I just want to talk about the informal
8 procedure versus formal procedure.

9 MR. O'KANE: Excuse me. I wonder if I could make
10 one slight request to that.

11 HEARING OFFICER CELLI: Mr. O'Kane, go ahead.

12 MR. O'KANE: Stephen O'Kane, Applicant, with AES.

13 We did get a request from two elected officials
14 who couldn't attend at three o'clock for the public comment
15 period because it's the Long Beach City Council meeting that
16 night, and they have pre-Council meetings.

17 I did two -- I only have two individuals who would
18 like to make -- elected officials requested if they could
19 speak at 12:30 to the Committee, very short, just a few
20 minutes.

21 HEARING OFFICER CELLI: Could you -- I know
22 politicians being what they are, were you able to get a
23 commitment of how short?

24 MR. O'KANE: I'll get you one. Three to five
25 minutes type of things.

1 HEARING OFFICER CELLI: They'll make a promise.

2 MR. O'KANE: Okay.

3 HEARING OFFICER CELLI: Okay. So, yeah, three to
4 five minutes is fine but not -- we have to get this evidence
5 into the record, so --

6 MR. O'KANE: Well, one quick thing. Were you
7 finished with the LORS thing? I wasn't clear.

8 HEARING OFFICER CELLI: Yes.

9 MR. O'KANE: Okay.

10 HEARING OFFICER CELLI: I am finished with the
11 LORS.

12 MR. O'KANE: So that --

13 HEARING OFFICER CELLI: The Land Use one was the
14 one that required the most sort of --

15 MR. O'KANE: Right.

16 HEARING OFFICER CELLI: -- detailed description.
17 But we really are asking that you look across the board at
18 all of the areas and clean up the LORS. Because what the
19 Committee needs to be able to say is this LORS applies to
20 this project, and this project complies or not. If it
21 complies it complies because, how it complies. If it
22 doesn't comply, what is your recommendation? What are we
23 going to do? Do we need to override? That's what the
24 Committee needs to know.

25 MR. O'KANE: Okay. Let me just make sure Staff is

1 clear.

2 HEARING OFFICER CELLI: A big thumb up.

3 MR. O'KANE: Thumb up. We're good.

4 HEARING OFFICER CELLI: Great. Okay. Great.

5 So --

6 MR. WINSTEAD: I just hope Jared's notes are
7 better than mine, because I couldn't keep up with you.

8 HEARING OFFICER CELLI: Okay. Well, I think it --
9 you got the tenor of what the concerns were. And I think if
10 you look at Land Use you'll go, hmm, I see that, yes,
11 there's an absence of a "because" here, or what in the
12 evidence gets us to compliance? So that's what we're
13 looking for.

14 Discussion of informal procedures. To save time,
15 sometimes we will take -- we won't take time to describe the
16 exhibit. Okay. The fact is I will not take time to
17 describe the exhibits that are moved into evidence or
18 describe topics covered by the declaration. Basically,
19 we're going to say, okay, is there a motion by Applicant,
20 Applicant's going to move in their evidence, Staff's going
21 to move in their evidence, the Trust will move in their
22 evidence. I'm not going to say Exhibit 1000 is this. We're
23 just going to accept it. The public can look online and see
24 what it is, all of these exhibits on our exhibit list. So
25 that would be a waste of time.

1 Regarding direct examination, we deem all of the
2 parties' opening and rebuttal testimony as their direct
3 examination. There is no need to discuss experts' resumes
4 if we have them in writing and there's no objection to the
5 witness as an expert. If you have an objection, state the
6 objection first and avoid speaking objections.

7 Now, we don't need to go there because all of the
8 evidence, at least from the Land Trust, is going to be
9 received. I can't imagine Applicant or Staff objecting to
10 either -- the admissible of either evidence. So I don't
11 think we're going to have a problem with speaking
12 objections.

13 Rather than taking --

14 (Background telephone noise.)

15 HEARING OFFICER CELLI: Ms. Lambe, is that a
16 question?

17 MS. LAMBE: I'm sorry. I thought I was on mute
18 and I'm not. Sorry about that.

19 HEARING OFFICER CELLI: Okay. No problem.

20 MS. LAMBE: Let me mute.

21 HEARING OFFICER CELLI: Rather than taking time
22 with the usual formal question and answer, the Committee may
23 call all witnesses to testify as a panel. The testimony may
24 include discussions among the panel without the lawyers
25 asking questions. Instead, the Committee will ask the

1 questions of the panel. If time permits, the Committee may
2 allow questioning of the panel by the parties. But if the
3 parties appear to be unduly confrontations, combative or
4 otherwise unproductive the Committee will take over the
5 questioning. The discussion will continue until the
6 Committee determines that it has heard enough evidence.

7 If this process proves difficult or unproductive,
8 the Committee may revert to standard formal examination at
9 their discretion.

10 If we allow cross examination, there will be no
11 time for thinking on the fly. If you can't come up with
12 good cross examination in the quiet of your workspace,
13 you're not going to do any better in the heat of a hearing.
14 Have your cross examination written out and be prepared to
15 tell the Committee how many questions you have before you
16 begin your cross. There will be no time for floundering and
17 fishing expeditions, otherwise the Committee will curtail
18 the cross examination.

19 I like to say that the legal definition of a
20 moment is ten seconds. So when people say, may I have a
21 moment, that's ten seconds. So be ready to state the page
22 number and line of any testimony you seek to cross examine
23 the witness about. So if you want to say, you know, witness
24 you said this before but now you're saying this somewhere
25 else, give us the exhibit number and the page and the line

1 where those statements are.

2 Also, and very important, allow the witnesses to
3 finish their answer. I want to make sure that you also
4 admonish your witnesses, if they're going to serve on a
5 panel, not to talk over each other. They have to be able to
6 listen to each other and let them finish out before the next
7 panelist talks. The reason this is important is because it
8 really ruins the court reporter's transcript, and we've got
9 people cutting off each other and fragmented statements. So
10 if we can do that, this will work.

11 So I know that -- I don't remember if Ms. Sommer
12 was part of -- I don't think she was, but I know that both
13 of you have participated in the informal process and you
14 know how that goes.

15 Ms. Mathews, if you wanted to ask questions, come
16 to the podium and use the microphone, please.

17 MR. BABULA: And so at this point the only cross
18 examination we're talking about is the Intervenor crossing
19 Staff as identified in their Prehearing Conference
20 Statements you had posted on the screen. So that's really
21 what this instruction was about.

22 HEARING OFFICER CELLI: Really. And again, we
23 want them to come prepared so that we know exactly how much
24 cross examination is needed. And my recommendation is ask
25 the important questions up front, because you may not get

1 through your full list of questions.

2 Ms. Mathews?

3 MS. MATHEWS: Yes. I just ask the Committee to
4 address, you briefly mentioned you couldn't imagine that
5 there would be an objection from Applicant or Staff of them
6 admitting their exhibits. What is the procedure if the
7 Intervenor has an objection to either the Applicant's or the
8 Staff's exhibits?

9 HEARING OFFICER CELLI: You are so good. You came
10 in late so you missed it, but I'll tell you.

11 The Staff and Applicant stipulated to the
12 admissibility of all of the Trust's evidence, so it's all
13 coming in.

14 MS. MATHEWS: (Off mike.) Not the Intervenor's
15 exhibits, Staff's exhibits or the Applicant's?

16 HEARING OFFICER CELLI: They're both going to be
17 there, so they can just make an objection and we'll rule
18 right there. That's not a problem. And, in fact, the
19 Trust -- the Intervenor will have a lawyer there. And the
20 Intervenor's lawyer will be able to respond, make offer of
21 proof, whatever. So we're good there. Thanks for asking
22 that question.

23 So then the next thing to talk about --

24 MR. HARRIS: Well, before you leave, I'm still
25 unclear about whether we're a panel or not, and whether I

1 have to get nine people to Long Beach or on the phone.

2 HEARING OFFICER CELLI: Here's what I'm going to
3 suggest about that. I understand the need for you to be
4 able to have your witnesses represent your position if we
5 impanel Staff's witness. As I envision this so far, we're
6 going to have -- there's going to be Mr. Powers, who's going
7 to talk on the limited issue of Alternatives. Then they
8 wanted to cross Staff's witnesses, all of them, on the
9 cumulative impacts of the future demolition of the AGS,
10 okay, which again I think is going to be pretty short.

11 And therefore, what we're waiting on finding out
12 now is whether tomorrow we're going to get an email that
13 says that witnesses can testify by teleconference, by WebEx.
14 If that's okay, then you could have your witnesses available
15 in that way. I hope that helps because we don't really
16 know.

17 MR. HARRIS: I'm actually not clear still, again.

18 HEARING OFFICER CELLI: Right. I mean, I think
19 that it would be kind of a waste of time to have to swear in
20 each witness, let's say there's nine, and have to swear in
21 nine witnesses, have, you know, a direct, or let them just
22 launch into cross. Because my thought is we already have
23 everybody's opening testimony. So then I would say, okay,
24 Ms. Sommer, your witness, ask your questions. She's going
25 to ask her cross examination questions. They're going to

1 answer. Then we would allow the other parties, I guess I
2 would call it redirect by Applicant, Staff, and then that
3 would be that. And we'd go on to the next witness.

4 That right there could be 10 to 15 minutes. Okay.
5 If I impanel everybody at the same time and they sit down
6 and they ask the same question -- because you know the
7 probabilities are it's going to be the same question to all
8 of them, then we could just go down the line of the
9 witnesses and have them answer the question, and even have a
10 discussion, as needed. Because those discussions are
11 actually rather useful to the Committee. They're factual.

12 MR. HARRIS: Okay. Well, my confusion remains. I
13 don't know what's going to happen, for example, if there's a
14 question asked and the Staff witness says I don't know if
15 it's 40 feet or 50 feet tall. My witness may know that
16 answer.

17 HEARING OFFICER CELLI: Yes.

18 MR. HARRIS: If I my witness is not on the phone
19 or in the room, it's going to create the impression in the
20 record that there's a whole in the record.

21 HEARING OFFICER CELLI: Wouldn't you -- okay. For
22 instance, Staff, Mr. Babula is here with Mr. Winstead. When
23 we start, Mr. Winstead is going to be sworn in. Okay.
24 There's also Mr. Knight sometimes. They sort of have what I
25 call the all-purpose utility witness to come in and kind of

1 describe, you know, the --

2 MR. HARRIS: I'm getting Mr. Salamy a t-shirt now.

3 HEARING OFFICER CELLI: There you go. There's
4 your all-purpose utility witness, Mr. Salamy.

5 So basically someone like that who can actually
6 say we know that it's 40 feet and tell us where, and then
7 we're good.

8 So I understand that in an abundance of caution,
9 you're thinking of -- you're seeing legions of witnesses
10 that need to be available. But I suspect that that may not
11 be the case if you have one witness who knows the whole
12 record and what's in the AFC and the SAFC.

13 MR. BABULA: I think there's a risk it could be a
14 jumbled mass. But we'll have to try to parse through it, I
15 guess.

16 Again, the underlying thing is to have -- need all
17 nine witnesses on what's really been fleshed out
18 considerably in the written record.

19 HEARING OFFICER CELLI: Well, that's in your point
20 of view.

21 MR. BABULA: Yeah.

22 HEARING OFFICER CELLI: But that may not be the
23 Intervenor's point of view, and we need to honor that.

24 MR. BABULA: Right.

25 HEARING OFFICER CELLI: And so that's why we're

1 doing this. And again, they've been good enough to offer to
2 send us an email saying whether they'll do it.

3 MR. BABULA: Yeah.

4 HEARING OFFICER CELLI: If we can do this thing on
5 the phone, or by way of WebEx rather, that would be the most
6 efficient way to do it, as I said, God willing, the WebEx
7 works.

8 But I'm inclined to go, for purposes of the
9 cumulative questions, towards a panel, just right now,
10 speaking in the abstract. And probably the testimony with
11 regard to Alternatives might be a little more amendable to
12 formal cross examination. But again, we'll play it by ear.
13 This is -- you know, you're concerned that the record is
14 going to be a mess. I'm always concerned about that. But a
15 hearing is a wild animal and it's live theater and you have
16 to deal, so --

17 MR. BABULA: And when you said Alternatives, were
18 you referring to the direct of Mr. Powers or --

19 HEARING OFFICER CELLI: Right.

20 MR. BABULA: Okay. Because again, I had indicated
21 that we didn't have any cross examination --

22 HEARING OFFICER CELLI: That's great.

23 MR. BABULA: -- for that witness.

24 HEARING OFFICER CELLI: You may not. In which
25 case, after his cross, then he's dismissed as a witness.

1 So therefore -- so with that, I'd like to move on
2 then to our next topic, which is the briefing schedule.

3 Both Staff and Applicant seek to dispense with
4 briefing all together, according to their Prehearing
5 Conference Statement.

6 MR. HARRIS: I'm sorry, Mr. Celli, can you list
7 again the topics or which Mr. Salamy now has to go talk to
8 people? Is it the nine that you gave at the top? Are there
9 going to questions on all of those or are eight of them
10 falling under Cumulatives and one is Alternatives? I'm not
11 clear.

12 HEARING OFFICER CELLI: Do you have the witness on
13 the screen? It would be the one before this.

14 For the record, I'm talking to Mr. Lee who has now
15 pulled up a table that I put together. And it shows the
16 party calling the witness. The witness, the subject area,
17 direct cross, and Committee will allow how much time. So
18 basically, we have limited it to those. Those are the
19 witnesses. Those were the witnesses that were requested.
20 And as Mr. Geever indicated, where, for instance, you see
21 David Vidaver and Steven Kerr, he doesn't need both of them.
22 He just needs an Alternatives' witness. And the same with
23 Bio, et cetera, he just needs a witness on the subject area.

24 MR. HARRIS: Mr. Celli, then on your table over
25 here you've got subject matter. Cultural, obviously, the

1 top two come off.

2 HEARING OFFICER CELLI: Right.

3 MR. HARRIS: Then you have Mr. Vidaver under
4 Alternatives. Is Mr. White Bio or is he Bio in the scope of
5 Alternatives?

6 HEARING OFFICER CELLI: I think Mr. White is Bio.
7 And was Jennifer Lancaster Bio? So we would need -- I don't
8 think we need both. We need a Bio witness, one Bio witness
9 who could testify to the whole of it.

10 MR. HARRIS: Okay. Alternatives. Okay.

11 HEARING OFFICER CELLI: Lisa Worrall, was she
12 Socio, I think?

13 MR. BABULA: Traffic.

14 HEARING OFFICER CELLI: Traffic. Aboul
15 Abulaban --

16 MR. HARRIS: Soil and Water, yeah.

17 HEARING OFFICER CELLI: -- Water.

18 MR. HARRIS: Yeah.

19 HEARING OFFICER CELLI: Hughes --

20 MR. HARRIS: Noise.

21 HEARING OFFICER CELLI: -- Noise. Khoshmashrab
22 was --

23 MR. HARRIS: Noise.

24 HEARING OFFICER CELLI: -- Noise or Facility
25 Design. So I think there might have been a question

1 regarding Facility Design, I'm not sure. But those would be
2 the witnesses that they're going to tell us would be
3 available, and those are the subject areas. So that limits
4 the --

5 MR. HARRIS: Five subject areas.

6 Go ahead and read them, Samantha.

7 MS. NEUMYER: So Alternatives, Bio, Traffic --

8 MR. HARRIS: Use the microphone. Sorry

9 MS. NEUMYER: Okay. So we have Alternatives,
10 Biological Resources, Traffic and Transportation, Soil and
11 Water, and Noise and Vibration are the five subjects that we
12 need to --

13 HEARING OFFICER CELLI: Right.

14 MS. NEUMYER: -- bring our witnesses
15 (indiscernible)?

16 HEARING OFFICER CELLI: You said Alternatives;
17 right? Yes, that's correct.

18 MR. HARRIS: All right.

19 HEARING OFFICER CELLI: Well --

20 MR. HARRIS: I pinned you down finally, so --

21 HEARING OFFICER CELLI: Oh, I didn't mean to be
22 wiggling around.

23 MR. HARRIS: No. Thank you for the clarification.
24 It very much helps us figure out who we need to land on to
25 be there Tuesday.

1 HEARING OFFICER CELLI: Okay. Now the briefing
2 schedule. Both parties, both the Applicant and Staff say
3 that they would rather not have briefing altogether, but the
4 Applicant would recommend 14 days after the hearing
5 transcripts are available for opening briefs, and 7 days
6 after that for rebuttal briefs, which is eminently
7 reasonable. Staff recommends opening briefs two weeks after
8 hearing transcripts are available and is silent on rebuttal
9 briefs. And then the Trust made no recommendation with
10 regard to the briefs.

11 What I would say is this, the briefs are really,
12 really helpful to the Committee because the briefs are
13 basically the closing argument of the parties. We would
14 limit them, usually, to not more than say 15 pages. But
15 what they do is they show the Committee where the attention
16 needs to go. What are the issues that we need to resolve?
17 What are the controversies that the Committee needs to look
18 at? And what are the parties' positions?

19 And the beauty of a brief is that the parties can
20 give me exactly points and authorities. They tell me what
21 their point is and then they can tell me what the law is
22 that supports that point. And so I find it useful to have
23 opening and rebuttal briefs. And most of the time the
24 rebuttal briefs are really where the action is.

25 But I would say that if a party doesn't feel like

1 it, for whatever reason, I wouldn't require briefing. But I
2 would allow the opportunity, because I think it's an
3 important opportunity to seize by the parties, to file
4 opening briefs 14 days after -- and I'll send out a
5 memorandum to this effect -- 14 days after the transcripts
6 are available for opening testimony, and 7 days later for
7 rebuttal. And we would make it optional. Okay?

8 MR. HARRIS: Mr. Celli, we, the Applicant, would
9 be interested in expediting the transcripts. So if there's
10 a process for that, I guess I'm saying we'd write a check,
11 if that would be necessary, either that or spend Christmas
12 briefing. So we amendable to expediting the transcripts.

13 HEARING OFFICER CELLI: That is something that I
14 think we can ask for. I'm looking over at the Chief Hearing
15 Officer for a nod yes or no. But we would do what we can to
16 expedite. He's giving me the maybe look. But we would do
17 what we could to expedite it. We certainly -- we all have
18 an interest in getting those transcripts out quickly. So
19 everybody is interested in that. Okay.

20 I'm just going to around the table and ask the
21 Applicant, Staff and Intervenors if there was anything
22 further? Because if we're done here, then I want to go to
23 public comment.

24 So, Applicant, anything further about the November
25 15th evidentiary hearings?

1 MR. HARRIS: I wouldn't pretend that you ever
2 missed anything. So, no, we're satisfied. Thank you.

3 HEARING OFFICER CELLI: Thank you.
4 Staff?

5 MR. BABULA: I just wanted to clarify, we don't
6 need Cultural then; right?

7 HEARING OFFICER CELLI: Correct.

8 MR. BABULA: That wasn't on -- okay, no Cultural.

9 HEARING OFFICER CELLI: Well, actually, I thought
10 there was -- wasn't Cultural one of the ones that --

11 MR. BABULA: Well, that was from the Applicant,
12 but they said that we won't be needing --

13 HEARING OFFICER CELLI: Oh, okay. All right.

14 MR. BABULA: -- live witnesses and --

15 HEARING OFFICER CELLI: Okay. Ms. Lambe or -- and
16 Mr. Geever, anything further before we go to public comment?

17 MS. LAMBE: I don't have anything.
18 Joe, do you?

19 MR. LEE: This is Ralph Lee. It appears Mr.
20 Geever dropped off the line. He may have called back in as
21 call-in user ten. Would you like me to open the line?

22 HEARING OFFICER CELLI: Yeah. You better open
23 that. And you should probably open them all because we're
24 about to take public comment anyway.

25 MR. LEE: All lines are open.

1 HEARING OFFICER CELLI: Okay, Mr. Geever, are you
2 out there?

3 Well, maybe he was satisfied.

4 MS. LAMBE: He may not be, you know, him being on
5 vacation and all, so --

6 HEARING OFFICER CELLI: Yeah. I don't blame him
7 for hanging up. Okay.

8 Then having heard from all of the parties, then
9 thank you very much, all of you, for your comments.

10 What I'm going to do now is go to public comment.

11 I'm going to ask Alana Mathews if there is
12 anybody?

13 Mr. Simpson, Rob Simpson is here as a member of
14 the public, would like to make a comment. Come on up to the
15 podium.

16 If anyone in the room would like to make a public
17 comment, please fill out a yellow -- a blue card and give it
18 to Alana Mathews.

19 Go ahead, Mr. Simpson. You have the floor.

20 MR. SIMPSON: Good afternoon. Thank you for the
21 opportunity to speak. Again, my name is Rob Simpson. I'm
22 Executive Director for Helping Hand Tools.

23 We submitted comments to the Air District. And
24 we'd hoped to comment. And I asked the Public Adviser to
25 submit that to you in time to comment for your pending

1 motion. And I saw that she delivered it to you before the
2 motion was decided.

3 But I also heard after, in another context, you
4 say you're not revisiting your prior decisions. So if
5 that's the case, then I don't need to waste your time with
6 comments on the bifurcation and pending -- and the motion
7 that's been decided.

8 HEARING OFFICER CELLI: That's why that went so
9 quickly. We've been around the block on that one before.

10 MR. SIMPSON: Okay. So that's a decided matter
11 and --

12 HEARING OFFICER CELLI: Yes, sir.

13 MR. SIMPSON: -- too late for comments?

14 HEARING OFFICER CELLI: Yes, sir.

15 MR. SIMPSON: Thank you.

16 HEARING OFFICER CELLI: Thank you. But thanks for
17 being here, and thank you for your participation.

18 It's good to see Mr. Sarvey here, as well.

19 If there are no other members of the public who
20 wish to make a comment in the room, I'm going to go to the
21 telephones now. So all of you who are on the telephone,
22 because we don't know who you are, the first thing I'm going
23 to ask is -- oh, you know what, I want to ask for the South
24 Coast Air Quality Management District people to speak up and
25 please state your names.

1 MR. CHANDAN: Hi. This is Bhaskar, that's B-, as
2 in boy, H-A-S-K-A-R, last name is Chandan, it's
3 C-H-A-N-D-A-N. And I'm a supervisor here in the Engineering
4 and Permitting Group at South Coast AQMD. And we also have
5 Ricky Lai who is the Permitting Engineer on this.

6 HEARING OFFICER CELLI: Mr. Chandan, let me ask
7 you, on our Proof of Service list we list Mohsen Nazemi as
8 the contact for South Coast Air Quality Management District.
9 Is that still accurate information or should we change that
10 name?

11 MR. CHANDAN: Yeah. Mr. Nazemi is no longer with
12 us. You should replace that name with Dr. Laki Tisopulos.

13 HEARING OFFICER CELLI: Could you spell that?

14 MR. CHANDAN: T-I- -- let me make sure I give you
15 the correct spelling, or can I just send it to you?

16 HEARING OFFICER CELLI: Yeah. Actually, if you
17 wouldn't mind -- well, actually, see if you can spell it on
18 the record now because I have a court reporter here who's
19 taking this down.

20 And, actually, we have Mr. Matt Layton here.

21 MR. LAYTON: Laki is L-A-K-I.

22 MR. CHANDAN: Correct.

23 MR. LAYTON: And Tisupulos [sic] is
24 T-I-S-U-P-U-L-O-S.

25 MR. CHANDAN: T-I-S-O-P-U-L-O-S.

1 MR. LAYTON: Oh, O.

2 HEARING OFFICER CELLI: Tisopulos.

3 MR. LAYTON: Just an O instead of a U, that first
4 one.

5 HEARING OFFICER CELLI: Laki Tisopulos.

6 MR. LAYTON: Only one U.

7 HEARING OFFICER CELLI: Okay. L-A-K-I
8 T-I-S-O-P-U-L-O-S. Thank you very much.

9 MR. CHANDAN: Correct.

10 HEARING OFFICER CELLI: Just a housekeeping
11 matter.

12 Was there any comment you wish to make, Mr.
13 Chandan or Mr. Lai?

14 MR. CHANDAN: As I mentioned, we are at the tail
15 end of finalizing the FDOC and responding to the comments
16 that we have received from the public. And we will be
17 issuing both within the next couple of weeks.

18 HEARING OFFICER CELLI: Very good.

19 MR. CHANDAN: There is another issue with public
20 noticing. And we are -- our Legal wants us to re-notice
21 this for public and for EPA's review, which we are going to
22 do simultaneously. But just to let you know, we will be
23 issuing the FDOC in the next couple of weeks.

24 If there are any questions, I will be willing to
25 answer.

1 HEARING OFFICER CELLI: No, I think that's -- this
2 is an opportunity for comment. We really are finished with
3 questions. So thank you for making yourselves available.

4 Are there any other state or local agencies,
5 people who are associated with state or local agencies that
6 are on the telephone?

7 Hearing none, then if you are on the telephone and
8 you'd like to make a comment, please speak up. And the most
9 aggressive speaker gets to comment first. Anyone wishing to
10 make a comment, please speak up, speak now.

11 MR. SHUKLA: I'm glad I'm not the most aggressive
12 one. This is Dave Shukla, S-H-U-K-L-A.

13 HEARING OFFICER CELLI: Go ahead, Mr. Shukla.

14 MR. SHUKLA: Thank you.

15 HEARING OFFICER CELLI: You have the floor.

16 MR. SHUKLA: Oh, I just wanted to thank you. I
17 just wanted to say thank you. I figured after a long
18 meeting like this, it would be a nice thing to do.

19 HEARING OFFICER CELLI: Okay. Well, that's nice.
20 And thanks for saying that. Are we going to see you in Long
21 Beach?

22 MR. SHUKLA: Yes, you will.

23 HEARING OFFICER CELLI: Oh, very good. Well, I'll
24 look forward to that.

25 Is there anyone else on the telephone who would

1 like to make a comment?

2 Okay then, Commissioner Scott?

3 COMMISSIONER SCOTT: Okay. Well, this concludes
4 the prehearing conference in preparation of our November
5 15th, 2016 evidentiary hearing on the subject areas
6 contained in Part 1 of the Final Staff Assessment. So I
7 look forward to seeing you all at the evidentiary hearing
8 next week, and we're adjourned. Thank you everyone.

9 (The prehearing conference adjourned at 5:15 p.m.)

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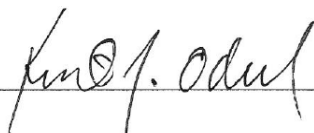
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REPORTER'S CERTIFICATE

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 22nd day of November, 2016.



Kent Odell
CER**00548

CERTIFICATE OF TRANSCRIBER

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.

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.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



MARTHA L. NELSON, CERT**367

November 22, 2016