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CALIFORNIA ENERGY COMMISSION  
STATUS CONFERENCE ON THE  
EL SEGUNDO ENERGY CENTER AMENDMENT

TRANSCRIPT OF PROCEEDINGS

1516 9th Street  
Sacramento, California 95814

Wednesday, November 19, 2014

1:32 p.m.

BRITTANY FLORES  
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A P P E A R A N C E S

THE HEARING OFFICER:

Raoul Renaud

COMMISSIONERS:

Karen Douglas  
advisors - Jennifer Nelson  
                  Jim Bartridge

STAFF:  
  
Camille Remy-Obad, compliance manager  
  
Elena Miller, legal counsel

--o0o--

1 SACRAMENTO, CALIFORNIA, November 19, 2014

2 1:32 p.m.

3 --o0o--

4

5 COMMISSIONER DOUGLAS: All right. Good  
6 afternoon, everyone. I think we're ready to go.

7 So I'm Karen Douglas. I'm the presiding member  
8 on this amendment, and we're here for the status  
9 conference on the El Segundo Energy Center Amendment.  
10 Let's see here.

11 So I'll just introduce the committee. To my  
12 right is the hearing officer, Raoul Renaud. To my left  
13 is Jennifer Nelson, my advisor, and to Jennifer Nelson's  
14 left is Jim Bartridge. He's advisor to Commissioner  
15 Scott.

16 I'll ask the parties to introduce themselves now  
17 beginning with the applicant.

18 MR. MCKINSEY: John McKinsey here, counsel  
19 for the applicant, El Segundo Energy Center, LLC,  
20 project owner, and George Piantka is here from NRG as a  
21 representative of the project owner.

22 COMMISSIONER DOUGLAS: Excellent.

23 MR. MCKINSEY: And I'm assuming I'm getting  
24 picked up.

25 COMMISSIONER DOUGLAS: Um, I just noticed

1 that you don't have a microphone.

2 Okay. Go ahead.

3 MR. MCKINSEY: I don't know if there was  
4 anybody on the phone that said they heard me.

5 COMMISSIONER DOUGLAS: We could ask Leslie.

6 MS. COCHRAN: Leslie, can you hear us?

7 LESLIE: Yes, I can here you.

8 COMMISSIONER DOUGLAS: Did you just hear --  
9 or all right. Did you just hear John McKinsey introduce  
10 himself and the applicant people here?

11 LESLIE: Yes, I did. I did.

12 COMMISSIONER DOUGLAS: All right.

13 Wonderful. Let's go to staff.

14 MS. REMY-OBAD: All right. My name is  
15 Camille Remy-Obad. I'm the new compliance manager for  
16 the El Segundo facility modification issue to amend.  
17 With me from legal counsel is Elena Miller, and we also  
18 have several of the technical staff here for questions  
19 and -- as we go along in our agenda.

20 COMMISSIONER DOUGLAS: Super. Thank you.  
21 All right.

22 Now, we've got some interveners in this project.

23 Is Michelle Murphy or Bob Perkins on the phone?  
24 Michelle Murphy or Bob Perkins? Doesn't sound like it.

25 All right. Is anybody here from State, local, or

1 Federal Government agency or Native American tribes here  
2 or on the phone?

3 All right. So with that, I'll hand over the  
4 conduct of the hearing to the hearing advisor.

5 THE HEARING OFFICER: Okay. Thank you. So  
6 this is a status conference we're holding on the El  
7 Segundo Energy Center amendment. We noticed this status  
8 conference in a notice that was issued November 5. The  
9 committee wanted to hold a status conference today to  
10 receive information from the parties regarding the  
11 progress of the amendment proceeding and to help resolve  
12 any procedural issues as well as assess the scheduling  
13 of the future events in the proceeding.

14 The committee's interested in hearing about any  
15 barriers to the completion of staff's analysis,  
16 date-specific project milestones, and any other matters  
17 relevant to the schedule, and the parties may also use  
18 this opportunity to address any questions or concerns  
19 they may have.

20 In -- we, at this point, have part one of the  
21 FSA, and in reviewing that, a few items have come to  
22 light, which the committee felt were worth bringing to  
23 the attention of the parties and discussing at today's  
24 status conference, and those were set forth in a memo  
25 that was issued last week dated November 14th, and I

1 assumed you all received it or have -- maybe have a copy  
2 of it. You don't. I have some extra copies. Actually,  
3 they're over there on the credenza. So I thought today  
4 we would just -- we would go through those memo items  
5 first and get those aired and then see what else the  
6 parties might want to bring up and then go to public  
7 comment.

8 That sounds like a good plan to everybody?

9 All right. So why don't we just turn right into  
10 the first item on the memo, which is an update on the  
11 schedule, and maybe we'll turn to applicant first. The  
12 FSA was issued -- is going to be issued in two parts  
13 because the air quality and GHG sections are held up due  
14 to issues you have raised with the district, the air  
15 district, and a petition to amend also pertaining to air  
16 quality questions. So I wondered if you could just give  
17 us a brief idea of any timelines you might be aware of,  
18 how long that whole process is going to take.

19 MR. MCKINSEY: I'm going have Mr. Piantka  
20 address the -- kind of, the discussion around the  
21 timeline for South Coast Air Quality Management  
22 District, but I would say that the, the air quality  
23 petition to amend that would modify the start-up  
24 definitions for the existing units is being done in a  
25 separate process by the air district from the



1 determination of compliance for this modification, the  
2 additional units, so they're really separate from each  
3 other so that whatever they're doing on that, that  
4 sequence -- which will actually be shortly done because  
5 they're doing it as part of the Title V permit renewal  
6 issuance -- that will be completed as a separate piece  
7 completely from addressing the comments on the final  
8 determination of compliance and issuing that document,  
9 and George can address that.

10 THE HEARING OFFICER: All right.

11 MR. PIANTKA: Yes. George Piantka for NRG,  
12 the applicant. So as John said, the, the air quality  
13 petition amends that all indications are that, that the  
14 language that would be incorporated into the Title V is  
15 complete, and I know they've been communicating their  
16 progress to staff, and we believe that the Title V  
17 renewal will be issued as administrative -- release to  
18 that permit very soon and that that language that, that  
19 their district has completed, will then allow the air  
20 quality petition to amend to proceed. So we don't see  
21 any, any complications there. I know we had in our  
22 status report that we thought this would come to  
23 fruition in a December business meeting but certainly  
24 recognizing the timing in that we're anticipating there  
25 being a January business meeting, which is agreeable to

1 us.

2           Regarding the FDOC and the comments that we had  
3 to them, we -- you know, we understand from the air  
4 district that they will finish an errata of the FDOC by  
5 the end of the year. You know, that's the specificity  
6 that I have so far from them and then that will enable  
7 part B of, you know, the proceeding.

8           MR. MCKINSEY: And I'm going to add to that  
9 that they have indicated that they're doing this as an  
10 errata so that it would not trigger any type of a notice  
11 in review and comment period. So when they issue it,  
12 it's the document just as if --

13           THE HEARING OFFICER: All right. Very good.  
14           Staff, you have anything to add to that?

15           I guess, the main question that the committee  
16 might -- I'm sorry.

17           MS. REMY-OBAD: No, go ahead, please.

18           THE HEARING OFFICER: The main thing the  
19 committee would like to know is once those two processes  
20 are complete, can you give us a ballpark idea of how  
21 much time staff would need before you could issue part  
22 two.

23           MS. REMY-OBAD: Okay. Well, what, what we  
24 are hoping for is that we can go to a January business  
25 meeting on units 5 and 7, because there does need to be

1 a 30-day comment period for the staff's analysis. Staff  
2 is still waiting, I believe -- and correct me if I'm  
3 wrong -- for a finalized version from South Coast for  
4 that amendment.

5 Is that correct?

6 MS. QIAN: Yes.

7 MS. REMY-OBAD: Okay. But we do believe  
8 that that would be forthcoming, and so that's our hope  
9 on that end, and I think that we can close that one up  
10 in January.

11 In terms of FS -- FSA part B, one of the things  
12 that staff was hoping to do today was, sort of, come to  
13 the committee and talk through schedule and a preferred  
14 approach because we did bifurcate these two processes  
15 and so it -- we're -- staff's, sort of, looking for some  
16 guidance also from the committee as to how they think it  
17 would be best for us to proceed if we want to go to  
18 hearings on FSA part A and -- in the interim of waiting  
19 for FSA part B to be completed or if there is a more  
20 cohesive way to address issues that have come up. So  
21 that -- I don't mean to be evasive on that.

22 THE HEARING OFFICER: No, no.

23 MS. REMY-OBAD: Yeah.

24 THE HEARING OFFICER: No, that's fine and I  
25 can tell you off the -- right off the bat, that the

1 ideal plan would be that we have the complete FSA before  
2 we go to evidentiary hearings, and then we can issue a  
3 complete PMPD as a result of that. Obviously, we're not  
4 proceeding in that fashion in this case, and it's good  
5 to have part one of the FSA anyway so that we can be  
6 working on that in the meantime and that enables us, in  
7 fact, to, you know, surface issues that we have seen  
8 there and get those taken care of before we get to  
9 hearings.

10 I take it you're, you're wondering whether we  
11 might have two sets of evidentiary hearings?

12 MS. REMY-OBAD: Well -- and one of the  
13 things that I was going to propose is I think there's  
14 going to be some discussion today about some of the  
15 issues that were brought up by the committee and what  
16 I -- and maybe some direction from the committee as to  
17 what they would like to see in terms of either  
18 supplemental testimony or additional analysis, so I was  
19 thinking that maybe I could do a better job of answering  
20 that question at our December committee status  
21 conference just, sort of, based on the discussions that  
22 we have today.

23 COMMISSIONER DOUGLAS: So how good a sense  
24 do you have, though, of how long it would take to finish  
25 part B of the FSA once you have got the errata from

1 final action by South Coast?

2 MS. QIAN: So the district -- so this is --  
3 Wenjun Qian. I'm the air quality staff for this  
4 project.

5 So the district agreed to send us a draft of the  
6 errata to the FDOC before they finalize it, so we will  
7 be able to review the changes, and we will try our best  
8 to finalize our staff analysis

9 COMMISSIONER DOUGLAS: Do you know how long  
10 it might take to do that? Can you --

11 MS. QIAN: I think usually we have 30 days  
12 after the FDOC but --

13 COMMISSIONER DOUGLAS: Okay.

14 MS. QIAN: -- we can probably do it much  
15 faster, because we have already completed most part of  
16 the air quality section.

17 COMMISSIONER DOUGLAS: Okay. So you were  
18 saying -- we were saying that the FDOC might be done in  
19 January; is that it?

20 MR. PIANTKA: Well, I heard -- this is  
21 George Piantka again -- so the end of the year was the  
22 verbal confirmation from the air staff. As we provided  
23 comments to the FDOC, you know, everything that we  
24 communicated back and forth, it seems that, you know,  
25 the process moving forward, it doesn't seem like there's

1 any difficulties or, you know, or any conflicts from the  
2 analysis then that the district's going through. That's  
3 the best schedule I have -- is by the end of the year  
4 from them.

5 COMMISSIONER DOUGLAS: If that's the case,  
6 and then we have part B of the staff assessment in  
7 January, for example, then it really seems like there's  
8 nothing gained in splitting the evidentiary hearings  
9 because having them, you know, during the holidays  
10 doesn't make a lot of sense. So -- um -- so if that's  
11 the way this plays out, it makes more sense, I think, to  
12 put the focus on finishing the air quality section and  
13 getting both parts of the staff assessment published and  
14 moving the hearings after that, but, but we're happy to,  
15 you know, hear more. And I don't know if -- Applicant,  
16 we haven't asked you if you have an opinion on that  
17 question yet.

18 MR. MCKINSEY: We have the same position  
19 you're reaching. We didn't think it would be a good  
20 idea to try to bifurcate the evidentiary hearings into  
21 two parts but just the logistics of finding a location  
22 and everything else alone, makes it -- really, we want  
23 to do it once and be done.

24 COMMISSIONER DOUGLAS: Okay.

25 MR. MCKINSEY: One of the things that -- we

1 have read some informal discussions with staff about  
2 comments on the -- from the FSA.

3 COMMISSIONER DOUGLAS: Uh-huh

4 MR. MCKINSEY: And so it certainly makes  
5 sense to try and, I think, use this opportunity, you  
6 know, use lemons to make lemonade, since we're waiting  
7 on the FDOC errata from South Coast, we have an  
8 opportunity to give some comments and feedback to staff  
9 on the FSA as well, which might allow them to  
10 incorporate anything they want to adjust when they issue  
11 that part B to the FSA and they may also say --

12

13 (Interrupted by recording on teleconference call.)

14

15 MR. MCKINSEY: So, so that, you know,  
16 normally, the FSA is a final document and then probably  
17 go into evidentiary hearings with their issues. It  
18 would give us a chance to clean out some of the issues  
19 where we can reach agreement with staff, and the only  
20 concern I have a little bit with that procedurally is  
21 that there isn't a public notice out there for comments  
22 because you don't normally do comments on an FSA, but we  
23 could still submit our comments as part of a, you know,  
24 public record document and that would allow the staff  
25 to, basically, make a decision on components that they

1 agree with for these decisions on any adjustments they  
2 want to make, and I think that would result in a cleaner  
3 position between the parties and ultimately reduce  
4 the -- any unnecessary work in evidentiary hearings.

5 COMMISSIONER DOUGLAS: I think that sounds  
6 very helpful. I'm seeing staff nod. Good.

7 THE HEARING OFFICER: So we'll hope to be  
8 able to do everything in one fell swoop, but if stuff  
9 comes up that looks like that's not going to be  
10 feasible, we'll, you know, we'll discuss that if we need  
11 to.

12 All right. Okay. But at this point, the goal is  
13 going to be to do a single evidentiary hearing and not  
14 bifurcate that hearing.

15 MS. REMY-OBAD: Okay.

16 THE HEARING OFFICER: Good. Okay. We next  
17 raised an issue from visual resource section relative to  
18 the Scattergood project, and it's simply on cumulative  
19 impacts. The text in the FSA --

20 MR. KANEMOTO: This is Bill Kanemoto.  
21 Sorry. I was disconnected. I had to re-call in.

22 MS. REMY-OBAD: Bill's one of the authors  
23 for the visual resources section.

24 THE HEARING OFFICER: Okay. Good.

25 COMMISSIONER DOUGLAS: Oh, good.



1 MS. REMY-OBAD: So we'll be with you in just  
2 a bit.

3 THE HEARING OFFICER: Okay. Thank you.  
4 Thanks for getting back in here, and we're just getting  
5 to the visual issue. So --

6 MR. KANEMOTO: Yeah, sorry about that.

7 THE HEARING OFFICER: That's fine. No  
8 problem. Your timing is perfect. The, the text of the  
9 FSA relative to the cumulative impact with -- in  
10 conjunction with the Scattergood project is inconclusive  
11 based on essentially not being sure how Scattergood's  
12 going to look when it's done, and we were wondering if  
13 there's going to be a possibility of getting more  
14 information that will enable a more conclusive  
15 determination than that.

16 MS. REMY-OBAD: All right. And Dave Flores  
17 was our technical senior for visual resources and Bill  
18 Kanemoto, who is on the phone, have been looking into  
19 that, so I'm just, sort of, going to hand over the  
20 discussion.

21 THE HEARING OFFICER: Perfect. Great. Go  
22 ahead. Just state your name before you speak.

23 MR. FLORES: Good afternoon. My name is  
24 Dave --

25 MR. KANEMOTO: Yes. Bill Kanemoto, again.

1           MR. FLORES: Oh, Hi, Bill. This is David.  
2 Hold on, Bill. Let me just introduce myself real quick.  
3 This is David Flores. And online, as you know, is Bill  
4 Kanemoto, who actually wrote the visual analysis. Bill  
5 and I both have had the discussion and I know Bill also  
6 provided a memo, which I believe he can read into the  
7 record, but just for information and I'll provide this  
8 to the commissioner and to the hearing officer, just to  
9 reflect the Scattergood project that the major portion  
10 of the work is occurring behind the existing facility.  
11 And so I believe this -- and this information was  
12 received from Kiewit Construction, which is -- which  
13 is essentially constructing this project as we speak.

14           And so from there, Bill, I'll let you go ahead,  
15 and if you'd like to read into the record your memo.

16           MR. KANEMOTO: Sure. Yeah, we are able to  
17 obtain some more current information, and we're able to  
18 determine that there would not be a cumulative impact in  
19 relation to the Scattergood project. Shall I read the  
20 whole paragraph?

21           COMMISSIONER DOUGLAS: Please.

22           MR. FLORES: Yes, Bill.

23           MR. KANEMOTO: "Staff reviewed new  
24 information regarding new generation units at the  
25 Scattergood power plant. Based on the siting of the new

1 Scattergood units, staff concludes that these would not  
2 have a cumulative impact on the ESEC viewshed. Because  
3 they would be largely screened from public view by the  
4 large, existing Scattergood power plant building, the  
5 new units would not be prominent to motorists or other  
6 viewers on the nearby roadway and would therefore not  
7 contribute to cumulative visual impacts in the ESEC  
8 viewshed."

9 THE HEARING OFFICER: Okay. Are you done?

10 MR. KANEMOTO: Yep.

11 THE HEARING OFFICER: Okay. Thank you for  
12 that. What about view from the west? People on the  
13 beach? Is that going to be an issue?

14 MR. KANEMOTO: Yes, that is the same  
15 viewshed, so they would not be affected either.

16 THE HEARING OFFICER: Okay. Good.

17 MR. KANEMOTO: Both the road and the beach  
18 are to the west.

19 THE HEARING OFFICER: So I think what the  
20 committee would want so that this can be made part of  
21 the evidentiary record when the time comes is that  
22 either you, you know, change that section of the FSA or  
23 issue some sort of an addendum or errata or something  
24 that we can -- that can be docketed or something --

25 MS. REMY-OBAD: Okay.

1 THE HEARING OFFICER: -- mark it as an  
2 exhibit.

3 MS. REMY-OBAD: Okay.

4 THE HEARING OFFICER: Great. Thank you.  
5 I'm glad you were able to do that.

6 Okay. Next, the issue we raised on the memo  
7 pertains to the general issue of water supply  
8 assessments and the necessity of preparing one, or not,  
9 for this case. The FSA, as currently written, states  
10 that one is not necessary because the -- because of the  
11 use of recycled water. But the FSA does indicate that  
12 there is some use of freshwater as well. So we, we  
13 wanted to -- so that this doesn't become a complicated  
14 factor when we get to evidentiary hearing, it would be  
15 better if we could have this on the table at this point  
16 and, kind of, make a procedural decision about whether  
17 or not a WSA should be part of the evidentiary record,  
18 and I'll throw that out to whomever wants to address it  
19 first, but maybe, maybe staff first because we're  
20 talking about the FSA.

21 MS. REMY-OBAD: Okay. Both Matt Layton and  
22 Mike Conway from our engineering technical staff are  
23 here, and we were all interested in hearing what the  
24 committee was thinking in terms of the information that  
25 they would want staff to provide in regards to the water

1 supply assessment and if the committee is interested,  
2 staff can talk a little bit about what -- what are the  
3 understood regulatory requirements for the analysis and  
4 also some of their recent agency consultations in  
5 regards to it for, for El Segundo modification project.

6 COMMISSIONER DOUGLAS: Why don't you start  
7 with that.

8 MS. REMY-OBAD: Okay.

9 MR. CONWAY: Good afternoon. My name is  
10 Mike Conway, and I'm the lead author on the FSA for the  
11 water supply section of the FSA. I think if the  
12 question is whether or not a WSA should be prepared for  
13 the record, our preliminary investigation would say,  
14 "no," based on a few different factors. One, the, the  
15 recycle water use aside, the potable water use is very  
16 low. We're proposing up to four acre feet per year.  
17 If, if recycled water were to be considered as part of  
18 the, the total water being used and a threshold for a  
19 water supply analysis, there are a couple ways to look  
20 at it. One would be -- would, would the total volume of  
21 water meet any threshold? And our preliminary answer is  
22 "no" based on local water use data on a per person basis  
23 and also based on Department of Water Resources  
24 guidance. And so right now our in-house low number  
25 would be 150 acre feet a year for something that would

1 trigger a water supply assessment. So this water use  
2 doesn't meet that, that number to begin with even if the  
3 recycled water were combined. Also, when considering  
4 the local data for water use per capita and potential  
5 dwelling units, we would come up with a fairly similar  
6 low-end estimates of perhaps 150 as a threshold. So  
7 this project would also meet that.

8           Furthermore, we had some follow-up conversation  
9 with the lead author of the Senate Bill 610, Department  
10 of Water Resources, and he reaffirmed the range of, you  
11 know, the threshold range of about 150 to 250 acre feet  
12 per year. We got that just on Monday. Also, though,  
13 staff hasn't found any example in the Water Code itself  
14 or in any CEQA document where recycled water use alone  
15 triggered a water assessment. So we don't have any  
16 example of that anywhere to look to.

17           Also, I contacted the director of Public Works at  
18 City of El Segundo, and they stated that they would not  
19 prepare a water supply assessment for this project,  
20 which would be their duty being that they are the water  
21 system in the area. We also contacted West Basin  
22 Municipal Water District, who would be serving the  
23 recycled water, and though they are not a public water  
24 system by the definition of the law, they also stated  
25 that this is not something they could do, would do, or

1 would consider. And so we have those -- we have records  
2 of conversation of each of those as of Monday.

3 So at this time, we would say, no, a water supply  
4 assessment would not need to be prepared for this  
5 project. If, if there were a different determination  
6 somewhere along the line to our preliminary assessment,  
7 this would be the first of its kind and would require  
8 substantial increase in staff time to be able to come up  
9 with such a unique document.

10 THE HEARING OFFICER: All right. A question  
11 for you; isn't there an acreage threshold also?

12 MR. CONWAY: Sure.

13 THE HEARING OFFICER: If you have a  
14 industrial project --

15 MR. CONWAY: There is.

16 THE HEARING OFFICER: -- that is above  
17 x-acres?

18 MR. CONWAY: That's 40. In this project,  
19 we're below that.

20 THE HEARING OFFICER: Is above that?

21 MR. CONWAY: I'm sorry?

22 THE HEARING OFFICER: I just didn't hear  
23 what you said.

24 MR. CONWAY: I'm sorry. Would be below.  
25 Would be below the 40 acre, the surface threshold.

1 THE HEARING OFFICER: The entire El Segundo  
2 project or just the amendment portion?

3 MS. MILLER: This is Elena Miller from chief  
4 counsel's office. The footprint of the project is 33  
5 acres, and the threshold in the Water Code is 40 acres.

6 THE HEARING OFFICER: Okay. Well, that's  
7 good to hear.

8 COMMISSIONER DOUGLAS: So in the FSA, when  
9 the term "city water" is used, because there's a  
10 reference I think to the use of city water, does that  
11 mean potable water, or is that something else?

12 MR. CONWAY: The way the conditions are  
13 written, they should explicitly define what is potable,  
14 or water fit for drinking, versus recycled. We tend to  
15 stick to those two terms, and so in whatever sense that  
16 reference is made, it should indicate City of El Segundo  
17 and potable, and if we're talking about recycle, it  
18 should say "recycle" and "West Basin Municipal Water  
19 District." And if not, we need to make those changes.

20 COMMISSIONER DOUGLAS: Okay.

21 THE HEARING OFFICER: Anyone else want to  
22 comment on the water supply assessment issue?

23 Yes.

24 MR. LAYTON: This is Matt Layton. How do  
25 you want us to provide this to you? Do you want us to



1 amend the FSA, assuming that we'll get comments from the  
2 applicant, because apparently, what was in the FSA  
3 wasn't enough. So we appreciate the guidance that you  
4 have provided here, but now how do we get it to the  
5 committee because I'm not sure doing it at a status  
6 conference without the applicant having witnesses -- if  
7 this was controversial. I don't think they're worried  
8 about this particular -- but other issues like this  
9 might be more controversial.

10 COMMISSIONER DOUGLAS: So we're not taking  
11 evidence at the status conference.

12 MR. LAYTON: I know.

13 COMMISSIONER DOUGLAS: This is a dialog to  
14 inform the committee and, and have -- and ensure a  
15 thorough, a complete analysis for a complete record. We  
16 can get to the question of whether we approach this  
17 through -- ask staff to do supplemental testimony or to  
18 incorporate changes into the FSA when part B is  
19 published. I mean, that will be a question we have for  
20 you, really, as to what you would -- what you would  
21 suggest or, or want to do. And we may want to go  
22 through all the topic areas before we really get to the  
23 question of how additional evidence is brought into the  
24 record.

25 MR. LAYTON: So what visual staff did

1 wouldn't be necessarily adequate to get that into the  
2 record so you would expect them to also come back and  
3 provide -- I'm just trying to understand. All these  
4 topics are going to lead to something eventually.

5           COMMISSIONER DOUGLAS: What visual staff  
6 just did with reading the paragraph to us was helpful to  
7 us in understanding where they are with a certain issue,  
8 but it's not evidence. So we would need it in  
9 supplemental testimony or in some form that would be  
10 docketed and go into the record.

11           THE HEARING OFFICER: And as to the water  
12 supply assessment, I think at this point, the committee  
13 is listening with great interest to everybody and is  
14 taking that all under advisement, but it has not made a  
15 decision about how far we want to go with that.

16           MR. LAYTON: Okay. Well, staff is making  
17 sure that what we have in there is -- we have our  
18 numbers to even understand and reference them and  
19 therefore provide you with the logic of how we got to  
20 our conclusion and our recommendation.

21           COMMISSIONER DOUGLAS: That would be very  
22 helpful.

23           MR. LAYTON: Great. Thank you.

24           COMMISSIONER DOUGLAS: And if we have  
25 additional questions, we will ask them either at another

1 status conference or we'll put something out in writing  
2 or do something to communicate that if we have  
3 additional questions.

4 MR. LAYTON: Thank you. This helps.

5 COMMISSIONER DOUGLAS: Thank you.

6 MS. MILLER: This is Elena Miller again.  
7 Would it help the committee if I recite some of the  
8 numbers for you, because I know that you're well aware  
9 of what the Water Code states. The hearing officer  
10 asked about the 40 acre threshold. Would it be helpful  
11 for you to give you two numbers?

12 COMMISSIONER DOUGLAS: Sure.

13 MS. MILLER: Okay. So the Water Code  
14 Section 10912, not only does it have the 40-acre  
15 threshold, but it also says 500 dwelling units, and so  
16 you heard from staff today. They provided you  
17 information of conversations that they have had with the  
18 local district. The two numbers I wanted to iterate for  
19 you, we've got potable water in a small amount. It's  
20 .84 acre feet per year, and then recycled water at 137  
21 acre feet per year, and I know that there's been  
22 discussion about what to count and what to not count,  
23 but we don't, obviously, want to get into that today.  
24 But I wanted to recite for you those numbers, because  
25 they are low numbers, and as best I can tell looking at

1 the design of the project, it's just the way the main  
2 amendment for units 9, 10, 11, and 12 is designed that  
3 we have those low water numbers.

4 COMMISSIONER DOUGLAS: Okay.

5 THE HEARING OFFICER: Great.

6 Okay. Anything else on that?

7 Okay. Thanks.

8 Now, the next issue we raised in the memo is just  
9 about the Coastal Commission's involvement. Contained  
10 within the FSA appendix VR 2 is the Coastal Commission  
11 report from March 2002 concerning the original AFC  
12 proceeding to which this is an amendment. And it's not  
13 abundantly clear, but it can be inferred that the Coastal  
14 Commission is, is satisfied with the ongoing validity of  
15 that report and is not planning to involve itself  
16 further. And I wanted to -- if we wanted some  
17 verification of that and make sure we're, we're not  
18 going to leave the Coastal Commission out of this  
19 proceeding when they, in fact, want to be included.

20 MS. REMY-OBAD: Well, I know that both Dave  
21 Flores and Elena Miller are pretty well versed on the  
22 issues that have come up with the California Coastal  
23 Commission, so I'll let them also speak to this.

24 One of the things that I did want to emphasize is  
25 that our acting chief counsel, Jeff Ogata, and the

1 deputy director of the Step Division, which is Roger  
2 Johnson, have an appointment amendment with Tom Luster  
3 with the California Coastal Commission on November 21st  
4 and -- to discuss how our two agencies can assist one  
5 another and offer assistance to Coastal Commission by  
6 recommending how most effectively they can participate  
7 in the siting proceedings. So we -- and I think one of  
8 the things that I hope that they'll also, you know,  
9 bring up is to be able to reiterate with the Coastal  
10 Commission, you know, specific to El Segundo -- I don't  
11 know that for a fact, but I think we can request that as  
12 well. So if either of you have any other comments about  
13 that.

14 MS. MILLER: I have only one point to make,  
15 and that is that I have been reassured by staff and  
16 prior project managers on this case since I was assigned  
17 that there have been efforts to contact the Coastal  
18 Commission, though those conversations are not on the  
19 record that what I have been told is that the Coastal  
20 Commission, they have not -- not only have they not  
21 provided comments but that they do not plan to provide  
22 comments in this proceeding and I think that speaks to  
23 the inquiry that the committee made in the November 14th  
24 memo.

25 MR. MCKINSEY: I wanted to add a little more

1 on that. The original permitting of the units that are  
2 now operating there that the AFC, the Coastal Commission  
3 was an active party and issued, what they refer to as, a  
4 30143D report, which is the section of the act that  
5 defines the various roles of the Coastal Commission in a  
6 proceeding, and then subsequently to that decision  
7 approving that project and essentially overruling the  
8 Coastal Commission's position, the owner submitted a  
9 major amendment to eliminate limited cooling for those  
10 new units and changing their design. And those changes  
11 effectively calm the Coastal Commission down  
12 significantly about the project. And this new position  
13 to amend has that same characteristic along with a lot  
14 of the other features. And so part of the -- what was  
15 going on in the middle of the last decade -- and there  
16 was some dialogue and I think there's actually a little  
17 bit buried back there in the old docket log for the  
18 original proceeding near the end of -- more importantly,  
19 during the approval of the amendment was the Coastal  
20 Commission giving that indication relative to, to their  
21 major concerns having been the use of once-through  
22 cooling being discontinued at the site. And then the  
23 other thing that I'd say is that, that one of the things  
24 I have become really careful with the Coastal Commission  
25 and these projects is to make sure that we always keep

1 track of the difference between any mandated necessary  
2 participation in a proceeding versus their comments and  
3 their position, and I won't try to go any farther than  
4 saying that 30143 is the place where you look to see  
5 what is required and what isn't required, and we're  
6 definitely comfortable in that, this proceeding can move  
7 forward without any further Coastal Commission  
8 participation, but certainly, if that ends up being an  
9 issue, it's something we can do legal briefs on and  
10 expound.

11 THE HEARING OFFICER: Good. I think that's  
12 what we need to know. Thank you.

13 Okay. Now, next is the -- in meeting alternative  
14 section, we're looking for some discussion of the whole  
15 concept of demand side resources and their applicability  
16 as potential alternatives.

17 Wondered if any member of the staff cared to  
18 comment on that and from the applicant as well?

19 MS. REMY-OBAD: Well, who I'd like to  
20 introduce is Eric Knight. He is the manager for the  
21 environmental protection office, and I think he can  
22 probably do the best of any of us to speak to -- more to  
23 that demand side resource issue.

24 THE HEARING OFFICER: Great. Thank you.

25 MR. KNIGHT: Good afternoon. Eric Knight.

1 Yeah, we have -- we have seen the committee's request to  
2 include a discussion of demand side resources, such as  
3 demand response, and I saw that that was something that  
4 was included in the commission decision for Huntington  
5 Beach, so that is something that we can address and will  
6 address, I guess, in a supplemental filing, a  
7 supplemental FSA. I think we'll -- to the, you know,  
8 similar conclusions, Huntington Beach decision, made to  
9 that -- those types of activities don't meet most of the  
10 basic objectives of this project and in some cases, may  
11 not be feasible.

12 THE HEARING OFFICER: Great.

13 COMMISSIONER DOUGLAS: Good. Thanks for  
14 that. I think that was very helpful, and really, it's  
15 in the interest of having a complete record and just  
16 ensuring that issues are discussed, so thank you.

17 THE HEARING OFFICER: Perfect. Thank you.

18 Okay. And then Item 6 in the memo was with  
19 reference to air quality and GHG, and I think we've  
20 exhausted that topic at this point. I guess one  
21 question that I'm not sure I have heard answered was  
22 whether the applicant has any time constraints or, or  
23 deadlines or anything in mind in the future that, that  
24 we ought to bear in mind in thinking about our  
25 scheduling, yeah.



1                   MR. MCKINSEY: The -- well, you know, one  
2 thing I try to always emphasize especially for this  
3 project is it's in a very urban location, so the sooner  
4 that we set dates for anything where we have got to find  
5 space and figure out how to arrange it, the better.  
6 That saying, "Hey, you want to do something in 20, 30  
7 days," when it's really 30, 40 days advance planning,  
8 but sometimes, everybody's booked up, et cetera. So the  
9 earlier we set some dates, the better. In particular,  
10 here, because it's in a very dense and high usage area  
11 right now in terms of space, but other than that, I  
12 think Mr. Piantka can, kind of, address where NRG is at  
13 in terms of schedule-wise on the project.

14                   THE HEARING OFFICER: Great.

15                   MR. PIANTKA: Right. Thank you. George  
16 Piantka again. No, we don't have any, you know,  
17 immediate schedule constraints. Don't ask me for a very  
18 specific schedule. We're anticipating from what we have  
19 discussed here today and the progress on the part A,  
20 part B, and district, you know, encourage them. You  
21 know, we're talking about evidentiary hearings and it  
22 feels like a first quarter type activity and a decision,  
23 you know, ensuing thereafter. So we're supportive, and,  
24 in fact, you know, to go back to the progress, you know,  
25 we're supportive and have been pleased with the overall

1 progress, and I know we, we supported bifurcation, and  
2 we did want to see progress of staff, and we also felt  
3 very important to get the FDOC accurate and resolved  
4 with South Coast, and so we know we had a part in  
5 creating this schedule. So we're, you know, we're  
6 pleased we're progressing and no immediate, you know,  
7 concerns about the schedules.

8 THE HEARING OFFICER: Okay. Thank you.

9 MR. MCKINSEY: I have one suggestion, too,  
10 on this. Since we have a status conference, it might be  
11 a really good agenda item for the -- for the December  
12 status conference to say where do we think we're at, at  
13 South Coast's FDOC errata because then we might actually  
14 be able to discuss more specifics on schedule.

15 MR. PIANTKA: I might add -- George Piantka  
16 again. It might be like we have seen in other committee  
17 conferences now and even having participation in South  
18 Coast if they have an update as well or maybe we'll all  
19 probably have an FDOC by that time, we can discuss it.  
20 So -- at that time. So --

21 THE HEARING OFFICER: We'll make sure to  
22 discuss that at that time.

23 COMMISSIONER DOUGLAS: So I just want to say  
24 something about the status conferences. I mean, we have  
25 been moving towards having monthly status conferences

1 because it's helpful to the committee and hopefully  
2 helpful to everyone to have some early engagement and  
3 communication, and, you know, at the same time, we don't  
4 want to exhaust everyone with status conferences. We  
5 want to make sure that it's a good use of time and it  
6 can be more informal. They can be by phone, you know,  
7 so we just want to make sure that they are useful to  
8 everybody. We do have some agenda items it sounds like  
9 for December particularly scheduled, and I think, Mr.  
10 McKinsey, you're right that scheduling evidentiary  
11 hearing dates is not always easy. We try to line up two  
12 commissioners and venues in an urban environment and,  
13 you know, the witnesses that all the parties need, and  
14 so I really think as soon as we can get to having a  
15 schedule and locking in dates for hearings, you know, we  
16 should go ahead and do that. So I would be hopeful we  
17 could do it in December. If we found that our agenda  
18 was relatively light on the other hand in December, we  
19 could make this more of a phone check-in and, and, you  
20 know, move towards either another status conference or,  
21 or deal with scheduling another one in January.

22 So what, what do the parties have and staff and  
23 applicant in mind in terms of December. Like, what,  
24 what do you think would be helpful for us to have on our  
25 agenda in December? I have got, schedule, and maybe

1 evidentiary hearing dates on my list.

2 MS. MILLER: And a status update to see if  
3 we're on track for the petition for units 5 and 7 so the  
4 air quality. So, you know, if we can speculate today  
5 that, that -- that best case scenario will be on the  
6 January business meeting, then when we come into the  
7 committee in December, we'll know and be able to update  
8 you on if we're on track. Of course, you will -- there  
9 will also be other signs like public notice saying if  
10 we're on track, so I think that's a good topic.

11 COMMISSIONER DOUGLAS: Okay. There's, of  
12 course, completion of part B of the FSA, and by  
13 December, hopefully, we would be able to have a date  
14 when we'd be expecting that.

15 MS. MILLER: Yes, but there's also I think  
16 -- leads to a question and the question that I don't  
17 think we have answered yet today is though we have heard  
18 from the committee and we appreciate the committee wants  
19 a single evidentiary hearing, the committee presented  
20 questions to staff that staff have largely answered  
21 today, but we need to get those into the record and we  
22 have heard people phrase it in different ways today, but  
23 what they're asking is are we doing a supplemental to  
24 FSAA or are we going to present all of this in the end  
25 with one final document, and I realize that the

1 committee may not be prepared to answer that right now,  
2 but I would ask that the committee consider that staff  
3 do need direction on how to get that into the record  
4 because that's unclear.

5 COMMISSIONER DOUGLAS: So it's often better  
6 for the public to have one document where they can find  
7 everything they need to find and not be chasing down,  
8 you know, supplemental testimony and parts A and B and  
9 so on. So I think that if it, you know, all other  
10 things being equal that would be our preference.

11 MS. MILLER: That is staff's preference if I  
12 can be so bold as to speak for staff.

13 COMMISSIONER DOUGLAS: Good. Then let's do  
14 that.

15 MR. MCKINSEY: Yeah, I was going to suggest,  
16 related to that, that I think by the next status  
17 conference that you should have a good idea that the  
18 project owners submitted comments and staff's had a  
19 chance to see them and can say, "Yes, we can roll these  
20 into that final document," or "We will know what the  
21 outstanding issues are from this part," and so I think  
22 that relates directly to that, that should be the items,  
23 so where are we at overall between both the FDOC errata  
24 timing and, kind of, closing these open-ended things on  
25 the part A.

1                   COMMISSIONER DOUGLAS: Well, let me ask  
2 another question then. For the parts of the analysis  
3 that are in FSA part A that's published, would we be far  
4 enough along in December to start going through some of  
5 the work that we might normally do in a prehearing  
6 conference, you know, for example, talking through what  
7 issues we think may need to go to hearing and what --  
8 you know, what amount of time, what witnesses you might  
9 be looking for, because the more that we can clarify,  
10 you know, the coverage of hearings and the length of the  
11 hearings, the -- you know, the better off we'll be but I  
12 don't want to push this either if you think you may need  
13 more time to do that.

14                   MR. MCKINSEY: I, I think our comments might  
15 trigger the staff's ability to say, yeah, we're either  
16 on the page of applicant on this issue or not. The only  
17 other concerns I have got working in all of this is that  
18 we don't have any intervention in this proceeding.  
19 There also hasn't been a deadline, and normally with  
20 prehearing conference type formalities, you'd say, "This  
21 is your deadline to be a party," so perhaps something,  
22 setting a deadline on intervention would be helpful as  
23 well related to that. Or at least, you know, if -- what  
24 I don't want to see is a party come along in January and  
25 say, "I want to intervene," and then say, "Wait. How

1 can all these things be closed," et cetera. And then on  
2 the other hand, if it's more informal and we're just  
3 simply giving the committee an idea, then that doesn't  
4 concern me.

5 THE HEARING OFFICER: Just to set things  
6 straight, we do have an intervener in the case, Michelle  
7 Perkins and Bob Murphy.

8 MR. MCKINSEY: Oh, they haven't been -- were  
9 they granted intervener status?

10 THE HEARING OFFICER: Yeah.

11 MR. MCKINSEY: Oh, I guess -- but they  
12 haven't participated. I forgot they have intervened.

13 THE HEARING OFFICER: Right. But they  
14 are --

15 MR. MCKINSEY: You talk to them a lot  
16 anyway.

17 THE HEARING OFFICER: Yes, they're involved.

18 MR. MCKINSEY: Okay.

19 THE HEARING OFFICER: But that's it.

20 MS. REMY-OBAD: Well, just on behalf of  
21 staff, I just want to thank the committee for providing  
22 this opportunity for staff to update the committee and  
23 being also to, to give us a forum for open dialog and  
24 some guidance on some of these outstanding issues and  
25 also on the recent inquiries that you have had, so thank

1 you.

2 COMMISSIONER DOUGLAS: Good. Thank you, and  
3 we'll, we'll look forward to doing this in December and  
4 making as much progress as we can. And so I guess with  
5 that, we're through everything? Or no, we need public  
6 comment.

7 THE HEARING OFFICER: And before we go to  
8 public comment, let me just check on the phone to see  
9 if, perhaps, intervener Michelle Perkins or Bob Murphy  
10 have joined us?

11 Apparently have not. If you have, speak up.

12 No. Okay. So the next item on the agenda then  
13 would be public comment. Are there any members of the  
14 public present who wish to comment?

15 Anyone on the phone wish to provide a public  
16 comment at this time? If so, just go ahead.

17 Okay. Hearing none, I think, right, we're  
18 adjourned.

19 COMMISSIONER DOUGLAS: We're adjourned.  
20 Thank you.

21

22 (Whereupon the proceedings ended at 2:21 p.m.)

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25



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

4 That the foregoing proceedings were taken before me  
5 at the time and place herein set forth; that any  
6 witnesses in the foregoing proceedings, prior to  
7 testifying, were duly sworn; that a record of the  
8 proceedings was made by me using machine shorthand which  
9 was thereafter transcribed under my direction; that the  
10 foregoing transcript is a true record of the testimony  
11 given.

12 Further, that if the foregoing pertains to the  
13 original transcript of a deposition in a Federal Case,  
14 before completion of the proceedings, review of the  
15 transcript ( ) was ( ) was not requested.

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

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

21

22 Dated:

23

24

25

\_\_\_\_\_  
Brittany Flores CSR 13460