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

In the Matter of the:)
)
Palen Solar Electric) Docket No.
Generating System Amendment) 09-AFC-07C
-----)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

MONDAY, AUGUST 5, 2013
10:06 A.M.

Reported by:
Peter Petty
Contract No. 170-12-001

COMMITTEE MEMBERS PRESENT

Karen Douglas, Presiding Member

David Hochschild, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Kenneth Celli, Hearing Officer

Jim Bartridge, Advisor to Commissioner Hochschild

Kelly Foley, Advisor to Commissioner Hochschild

Galen Lemei, Advisor to Commissioner Douglas

Jennifer Nelson, Advisor to Commissioner Douglas

Eileen Allen, Commissioners' Technical Advisor for Siting

CEC STAFF PRESENT

Christine Stora, Project Manager

Jennifer Martin Gallardo, Staff Counsel

OFFICE OF THE PUBLIC ADVISER

Blake Roberts, Assistant Public Adviser

APPLICANT

Charles Turlinski, Director Project Development
Palen Solar Holdings, LLC

Scott Galati, Attorney
Galati/Blek, LLPE

INTERVENORS

Lisa T. Belenky (via WebEx)
Ileene Anderson (via WebEx)
Center for Biological Diversity

Kevin Emmerich (via WebEx)
Basin and Range Watch

Elizabeth Klebaner (via WebEx)
California Unions for Reliable Energy (CURE)

Christina Caro (via WebEx)
Hildeberto Sanchez

INTERESTED GOVERNMENT AGENCIES

Kim Marsden
Bureau of Land Management (BLM)

Deborah Bardwick, Office of the Solicitor, US Dept of
the Interior (via WebEx)
Amy Howard (via WebEx)
National Park Service

Tiffany North (via WebEx)
County of Riverside

PUBLIC

Isaak Velez

K Kaufmann

Sarah Clark

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P R O C E E D I N G S

10:06 A.M.

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3 PRESIDING MEMBER DOUGLAS: Great, so good
4 morning everybody. Welcome to the status conference
5 for the Palen Solar Electric Generation System's
6 amendment process. I'm Karen Douglas, I'm the
7 Presiding Member assigned to this committee.

8 To my left is our hearing officer, Ken Celli.
9 To his left is the Associate Member of the committee,
10 Commissioner Hochschild. To Commissioner Hochschild's
11 left is Gabe Taylor, his Advisor. To Gabe Taylor's
12 left is Ileene Anderson, she's the Technical Advisor
13 for Siting for the Commission -- Allen. Ilene
14 Anderson, we'll get to you later, sorry. I knew that
15 someday I was going to do that. On my right is Galen
16 Lemei and on his right is Jennifer Nelson, my
17 advisors.

18 Now let me have the petitioner, if you could,
19 identify yourselves for the record please.

20 MR. GALATI: Scott Galati, Counsel to Palen
21 Solar Holdings.

22 MR. TURLINSKI: Charlie Turlinski, Project
23 Manager Palen Solar Holdings.

24 MS. MARTIN-GALLARDO: This is Jennifer
25 Martin-Gallardo, Staff Counsel.

1 MS. STORA: And Christine Stora, the
2 Compliance Project Manager on the Palen Solar Project.

3 PRESIDING MEMBER DOUGLAS: Thank you, so
4 we've gone through applicant and staff. Let's now go
5 to you, the intervenors. Is Lisa Belenky or Ileene
6 Anderson from CBD on the line?

7 MS. BELENKY: Yes, this Lisa Belenky and
8 Ileene is also on the line although she's in a car, so
9 may not be able to speak very often.

10 PRESIDING MEMBER DOUGLAS: All right, thank
11 you.

12 Kevin Emmerich from Basin and Range Watch we
13 heard from earlier, Mr. Emmerich are you still there?

14 MR. EMMERICH: Yes, we're still here.

15 PRESIDING MEMBER DOUGLAS: All right, thank
16 you.

17 Alfredo Figueroa from Californians for
18 Renewable Energy are you on the line? It sounds like
19 not, right now.

20 Tanya Gulessarian or Elizabeth Klebaner from
21 CURE?

22 MS. KLEBANER: Yes, good morning. This is
23 Elizabeth Klebaner.

24 PRESIDING MEMBER DOUGLAS: Good morning,
25 thank you.

1 Hildeberto Sanchez or Eddie Simons from the
2 Laborers' International Union?

3 MS. CARO: Good morning, this is Christina
4 Caro from Lozeau Drury on behalf of the all of the
5 LiUNA parties and individuals.

6 PRESIDING MEMBER DOUGLAS: Thank you. Are
7 there any public agencies on the phone or in the room
8 today? Any federal agencies, start with federal.

9 MS. MARSDEN: Kim Marsden, BLM.

10 PRESIDING MEMBER DOUGLAS: Thank you, any
11 other federal agencies?

12 MS. BARDWICK: Deborah Bardwick, Office of
13 the Solicitor.

14 PRESIDING MEMBER DOUGLAS: Thank you.

15 MS. BARDWICK: Thank you.

16 PRESIDING MEMBER DOUGLAS: What about --

17 MS. HOWARD: Amy Howard, National Park
18 Service.

19 PRESIDING MEMBER DOUGLAS: Great, any other
20 federal agencies on the line today? What about state
21 or local agencies?

22 MS. NORTH: Tiffany North, County of
23 Riverside.

24 PRESIDING MEMBER DOUGLAS: Thank you, anyone
25 else? All right, it doesn't sound like there are any

1 other public agencies. If there are please speak up.

2 Let's see, I see we've got Blake Roberts here
3 from the Public Advisor's Office, so thank you. And
4 with that I'll turn this over to the Hearing Officer.

5 HEARING OFFICER CELLI: Thank you,
6 Commissioner.

7 Good morning everybody, Kenneth Celli C-E-L-
8 L-I, on behalf of the committee. I'm the hearing
9 advisor.

10 And today we're here for a status conference.
11 The status conference was noticed on July 15th, 2013.
12 The purpose of today's conference is to hear from the
13 parties regarding the status of the Palen Solar
14 Electricity Generation System's amendment to their
15 certified power plant and to help resolve any
16 procedural issues as well as to assess the scheduling
17 of future events in this proceeding.

18 We will first hear from the petitioner who
19 will summarize their view of the case status and
20 scheduling followed by staff. Then we go in order of
21 the intervenors: Center for Biological Diversity then
22 followed by Basin and Range Watch. After that we'll
23 hear from Californians for Renewable Energy if they
24 come in or get on the line, we haven't heard from them
25 yet today, after that the California Unions for

1 Reliable Energy and finally Laborers' International
2 Union of North America. Then we will provide an
3 opportunity for general public comment.

4 After that we noticed a closed session. We
5 are probably going to take advantage of that closed
6 session today after we hear from all of the public
7 comments.

8 And during that time I have invited Paul
9 Kramer to come down to talk to the parties about using
10 the new E-Filing system to answer questions, so that
11 we can use that system which really is going to
12 streamline things. And he can describe that to you
13 later.

14 At this time I'm going to turn it over to the
15 petitioner. What we want to talk about first, Mr.
16 Galati, is the scheduling. Where are we at with the
17 schedule and the petitioner's view with regard to
18 scheduling and getting us to hearings etcetera. So
19 please, Mr. Galati you have the floor.

20 MR. GALATI: Thank you. I filed a status
21 report, which basically summarizes where we think we
22 are, but if I could give a little background for the
23 committee.

24 The project, I believe, has had six very
25 productive workshops at different stages of the

1 proceeding; most recently four workshops that were
2 conducted after the preliminary staff assessment. At
3 the preliminary staff assessment stage we had comments
4 on over 35 conditions of certification and we think
5 that we've narrowed those down to 13. So I think that
6 we've been extremely proactive and the parties have
7 worked together very well, I think staff's been very
8 accommodating and we've had a lot of good dialogue.

9 Some of the conditions that we are maybe
10 having a dispute, those 13 conditions doesn't
11 necessarily mean that we have a dispute. It means
12 that we weren't able to get the specific language
13 completely agreed to at the workshops. A couple of
14 those conditions we haven't seen yet, because they're
15 going to come out in the final staff assessments. So
16 it's sort of like a reserving the right.

17 But all of those issues, I think, where the
18 project -- if the project were headed to evidentiary
19 hearing today I know that it can't, the final staff
20 assessment is not out and there's some analysis done,
21 our best prediction is that we are down to sort of
22 four areas of which we might need the committee to
23 make a decision.

24 The first is fire mitigation where we don't
25 have an agreement right now with Riverside County

1 and/or staff. And second is cultural mitigation only
2 because we had great conversations at the workshop,
3 but we didn't work out the specific language and
4 traffic and transportation in one area only, which is
5 the conditions around glint and glare, because staff
6 hasn't completed that yet.

7 And in biological resources the only thing
8 that I'm pleased to report is the only thing that we
9 may have any disagreement on, on biological resources,
10 are some minor condition changes with relating to
11 timing. We do not have major biological issues on the
12 project from our perspective. So again I think the
13 project is moving very well through the process.

14 I did want to address one thing that I think
15 that everybody has been saying is sometimes the
16 project might be moving too quickly. I'd just like to
17 put this together. If there were no delays in the
18 schedule the Energy Commission may be making a
19 decision in December, which is a year from when we
20 filed the statutory requirement a little shorter than
21 what it had done for the original project, which was
22 about a 14-month process. So I just wanted to dispel
23 any rumors that we are processing this in such a quick
24 pace that people haven't been able to participate.

25 I also wanted to make sure that everybody did

1 understand that so much of what we filed when we came
2 into this project was agreeing with the existing
3 conditions and the areas that did not change on the
4 project. So we think that the petition focused on two
5 areas. One, what are the changes of the project and
6 two, we have worked very practically with staff to
7 update conditions based on lessons learned that are
8 unrelated to this petition for amendment.

9 The BLM published its supplemental draft EIS,
10 that has gone fairly well. The programmatic agreement
11 has been amended. The biological assessment has been
12 delivered to U.S. Fish and Wildlife Service for a
13 supplemental biological opinion that will address only
14 the linear, the new gas line and the change to the
15 transmission line only.

16 And the area where we have an issue
17 associated with the schedule is the South Coast Air
18 Quality Management preliminary determination and
19 compliance. We don't have that as we sit here today.
20 We know staff needs that for its final staff
21 assessment. And our best guess based on information
22 from South Coast would be that it would be on or
23 before the September 20th timeframe. Excuse me, I
24 apologize, on or before the August 23rd timeframe, so I
25 want to just make sure I correct that, August 23rd.

1 They said they needed about four weeks from
2 our workshop on the 26th of July. I can tell you that
3 they have almost completed their draft conditions.
4 They've shared some of the conditions with us and
5 we're looking forward to it before that date, but I
6 can't give the committee any firmer date than that
7 one. So that's our issue on scheduling. We know
8 staff needs that for the air quality portion of their
9 final staff assessment.

10 Lastly, we've been working very, very hard to
11 get staff what it needs on the cultural area. As you
12 know, I think we talked about it at the last status
13 conference, it's BLM land. There are special permits
14 that need to be needed, we coordinated with the
15 tribes. We did trenching onsite with tribal
16 representatives present. We did new pedestrian
17 surveys with tribal representatives present. That all
18 took some time.

19 Now we're putting together the reports. We
20 have catalogued and identified sites within a 15-mile
21 radius, so it's a lot of work to put that in. So
22 we've been paring down some documents and sending
23 those to staff while we move forward. So we'll let
24 staff announce whether they have received what they
25 need for cultural, but we believe that the areas are

1 ready to go except for air quality. At this time we
2 believe the areas are ready to go for the final staff
3 assessment.

4 HEARING OFFICER CELLI: Thank you.

5 A couple of quick points I'd like to make,
6 first of all I just want to alert Issak Velez and K.
7 Koffman to the fact that I had to mute you both,
8 because we were getting background sounds or feedback
9 from your telephone. So you're muted right now. We
10 can't hear you. Later we would open up or un-mute
11 you, if you will, when it comes to public comment. If
12 there's something that's pressing that you need to say
13 you can always send a chat. So that's a little
14 housekeeping; I'm sorry for that interruption.

15 I want to have a frank discussion about
16 scheduling today and I want all parties to be aware of
17 where we think we're going with this. We had
18 initially, meaning the committee had initially issued
19 a revised schedule that had called for an 8-23, an
20 August 23rd final staff assessment, and a prehearing
21 conference September 9th and evidentiary hearing
22 starting September 16th. That meant the way that we
23 had scheduled this thing originally that there were
24 two weeks between the FSA and the prehearing
25 conference, which is pretty short given the way we do

1 things generally

2 That means that between the FSA's publication
3 on the 23rd and the prehearing conference what would
4 have to happen is we would need an exchange of the
5 petitioner and staff's filing testimony, the
6 intervenors filing their testimony, all parties filing
7 their rebuttal testimony and then all parties filing
8 their prehearing conference statement.

9 That's a lot of back and forth and a lot of
10 activity to do in two weeks. It sounds like to me
11 like possibly, and I'll let the parties discuss this,
12 with this new wrinkle which is the Air Quality
13 District's -- I'm not going to call it a delay, but
14 the wait for the PDOC to come off there may be some
15 more time to give at least the intervenors more of a
16 chance to read and reflect on the staff assessment and
17 give them a couple of weeks.

18 So off the top of my head I'm thinking if we
19 created 8-23 as the publication date for all areas
20 except Air Quality okay, because I understand the
21 problem with Air Quality. And then required a week
22 later that petitioner and staff file their testimony
23 and that shouldn't be that onerous, because staff's
24 testimony is the FSA. And petitioner's testimony is
25 largely already produced, which would be your original

1 petition and data responses and that sort of thing.

2 Then two weeks after the FSA we could have
3 the intervenors file testimony. Three weeks after the
4 FSA we could have all parties file rebuttal testimony.
5 And four weeks after the FSA all parties would file
6 their prehearing conference statement. That would
7 take us to September 6th.

8 I'm not saying this is etched in stone
9 anywhere. I'm just throwing these out as dates as
10 possible. I'm mostly trying to highlight the
11 intervals between each task, okay? So that would take
12 us to 9/6. And the question when we get to staff and
13 staff you're batting next is, can staff actually get
14 that Air Quality section out by September 6th? I don't
15 know if they can or not given what they have to do
16 with PDOC from the Air Quality folks. So I'm just
17 throwing these out, because these are things that have
18 to happen before we get to a prehearing conference.
19 And I can either jam everybody up or we can give some
20 time for that depending on what's going to happen.

21 Let's hear from staff first about what this
22 means to staff. What the delay in PDOC means and any
23 other comments about the scheduling as you see it.
24 Ms. Stora, go ahead.

25 MS. STORA: Thank you. Today staff is

1 requesting 30 days after the PDOC is issued by South
2 Coast to finalize the FSA.

3 HEARING OFFICER CELLI: Okay, that -- let me
4 just be clear and that's August 23rd was the FSA date,
5 but 30 days from August 23rd is when the District
6 thinks they can get their PDOC off if I understand Mr.
7 Galati?

8 MS. STORA: Uh-huh.

9 MR. GALATI: But I messed that up, so I'm
10 going to fix it again. They think that they will get
11 the PDOC on or before August 23rd.

12 HEARING OFFICER CELLI: Okay.

13 MR. GALATI: So that would be putting
14 staff's, if it was a 30-day delay that would put
15 staff's final staff assessment with Air Quality on
16 September 23rd.

17 HEARING OFFICER CELLI: Okay, got it.
18 Thanks, go ahead.

19 MS. STORA: Okay, so South is requesting 30
20 days after we receive that permit to issue the FSA,
21 because we're not exactly sure when we will see that
22 permit. I mean, that's just a best guess right now,
23 but we would see it in August, early August. So that
24 would push us out towards the end of September.

25 HEARING OFFICER CELLI: Okay. Now this is

1 Air Quality only, meanwhile I assume everything else
2 is on schedule for 8/23 correct?

3 MS. STORA: It's not exactly just Air
4 Quality. There is a small portion of Public Health
5 that we would need to see the PDOC permit for, so
6 those will be bundled together. We are still
7 receiving some information on culture and biology as
8 Mr. Galati has mentioned. We are diligently going
9 through that and preparing our FSA. And at this time
10 if we kept the August 23rd deadline for cultural and
11 biology we would expect that we would have to submit a
12 lot of supplemental information after the FSA was
13 published.

14 HEARING OFFICER CELLI: Why?

15 MS. STORA: Because we're still receiving
16 information.

17 MS. GALLARDO: This is Jennifer, Staff
18 Counsel. I just want to clarify that it's not so much
19 outstanding data information from the applicant. What
20 has come in that biology staff and cultural staff is
21 working on right now is a substantial amount of
22 comments, information that was submitted by the
23 applicant at the end of August. August 23rd is when --
24 I'm mean, I'm sorry, at the end of July, July 23rd is
25 the day that we received a large quantity of final

1 information. I think we referenced all of this in our
2 status report.

3 HEARING OFFICER CELLI: You did, are you
4 expecting anything else or are we -- do we have
5 everything yet?

6 MS. GALLARDO: I think that we have most
7 everything in the cultural and bio areas. The
8 information that we received, if there's little things
9 like mapping, you know, we misunderstand where
10 something's pointed to on a map. I think staff and
11 applicant are working together to figure out the
12 little wrinkles that they're having, but there's no
13 big reports or anything like that that's outstanding.
14 I just wanted to make that clear, what we're talking
15 about with information.

16 But comments did come in from the public and
17 the intervenors on the 29th. And there's substantial -
18 -

19 HEARING OFFICER CELLI: July 29th?

20 MS. GALLARDO: Correct and there's
21 substantial quantity of comments and things and staff
22 in the bio and air quality areas, they are definitely
23 working diligently. But if there were no Air Quality
24 PDOC delay I think we would probably be here today
25 asking for a couple of weeks for them to be able to

1 incorporate all of the new information to give us a
2 very good analysis. Something that wouldn't require
3 much, you know, supplemental information at
4 evidentiary hearings or things like that. They want
5 to provide the committee and the public a solid
6 document without holes. And in order to do so they
7 feel that they would need a little bit more time.

8 HEARING OFFICER CELLI: And let me just
9 inquire, we're only talking about bio and cultural
10 here? Nothing else?

11 MS. STORA: Correct, no --

12 HEARING OFFICER CELLI: I mean, I understand
13 the public health tie into the Air Quality, but that
14 seems rather minor.

15 MS. STORA: The only other thing I would add
16 to that is that because our sections are not done for
17 cultural and biology the gal who is preparing our
18 alternatives analysis is hinging upon all other
19 technical areas. So she's also a little bit behind,
20 so it's actually biology, cultural and the
21 alternatives analysis which is brand-new and was not
22 published in the PSAs. So we're seeing that for the
23 first time in the FSA.

24 HEARING OFFICER CELLI: Okay, so cultural-bio
25 alternatives and one moment, just let me ask this.

1 Thank you, I'm sorry for that delay. We're having to
2 deal with the monitor going on.

3 Okay, so just to keep on this train of
4 thought here. So I have cultural, bio and
5 alternatives will be late, but not necessarily as late
6 -- this is a question, I'm making it a statement, but
7 let me ask it. Will it necessarily be as late as the
8 Air Quality or could it be published short of the
9 needed extra time for the air quality section? And
10 I'm talking cultural, bio and alternatives.

11 MS. STORA: Yeah, staff agrees that that's a
12 possibility. I've actually received the majority of
13 the smaller sections that doesn't have as many
14 comments. Unfortunately I don't have that exact list
15 in front of me; I just updated it this morning though.
16 But we do believe that bio and cultural would be ready
17 before the PDOC permit and well, before air quality
18 and public health is ready.

19 I don't necessarily think that we need all of
20 the time that we would need for air quality and public
21 health to publish those, but they are lagging a little
22 bit behind the rest of the document.

23 HEARING OFFICER CELLI: And needless to say
24 I'm assuming then that the comment period comes in
25 whenever the last section is published?

1 MS. STORA: Yes, it would be.

2 MS. GALLARDO: I'm sorry, I'm not clear on
3 the question.

4 HEARING OFFICER CELLI: No, I'm just making a
5 statement and if I'm wrong I'm hoping somebody's going
6 to correct me on this. But I'm just assuming that
7 that comment period will commence on the FSA at the
8 end of the last publication whether that be air
9 quality or whatever.

10 MS. GALLARDO: I'm not sure what comment
11 period on the FSA. What I'm familiar with is the
12 regulation that requires 14 days from FSA before you
13 can to the hearings.

14 HEARING OFFICER CELLI: That's true, okay
15 you're right. Thank you for correcting me on it,
16 okay.

17 So let me ask you this, what is it about the
18 PDOC, because this is an amendment, this isn't an AFC
19 so what is it that's so substantially different than
20 the original Palen Solar Power Plant?

21 MS. GALLARDO: So, oh go ahead Scott.

22 MR. GALATI: The original power plant had a
23 different type of auxiliary boiler, which was
24 nighttime. It also had what was a thermal oilage
25 system. We have two completely different boilers and

1 what that means is in the South Coast Air Quality
2 Management District you file a permit for the piece of
3 equipment, so it is a brand-new permit. And it will
4 include all of the conditions associated with
5 operating that, so in staff's defense, they do need to
6 have that to be able to true it up with their own kind
7 of conditions to check out their modeling, to compare
8 to their health risk assessment.

9 So we agree that they need time with that
10 document. I don't think we can streamline that. If
11 it would help the committee hearing what Mr. Celli
12 said at the beginning in trying to give the maximum
13 amount of time for the first part of the FSA, so that
14 the intervenors have time to be able to read it and
15 respond and hearing what staff said, that they need
16 additional time for cultural and bio, I think we have
17 a proposal we might be able to throw out if you think
18 it'd be helpful

19 HEARING OFFICER CELLI: Okay, let me -- I'm
20 going to stay on the record, but I'm just going to
21 acknowledge ladies and gentlemen, that our computer
22 feed just timed out. There is the password is on a
23 yellow sheet of paper right in front of the screen
24 there, something about a hearing room, if you wouldn't
25 mind. Thank you. We have people on that now, okay.

1 So I'm sorry Mr. Galati you've got -- thank you, Mr.
2 Lemei. I'm sorry, I think I missed the import of what
3 you just said. We were talking about --

4 MR. GALATI: Yeah, I was just saying if the
5 committee would like I think we have maybe a proposal
6 that can accommodate staff with additional time for
7 cultural and bio. And hearing what Mr. Celli has said
8 about trying to make sure that the intervenors have a
9 maximum time for the first part of the staff
10 assessment. You know, schedule is important to us and
11 we know where we'd like to end up, but we have a
12 proposal for your consideration.

13 HEARING OFFICER CELLI: I appreciate that.
14 I'm going to, first I think what we need to do is get
15 through the, let's hear from all the parties first and
16 then we'll actually kick around the specifics.

17 Anything further from staff?

18 MS. STORA: Yeah, I believe Jennifer has one
19 more thing.

20 HEARING OFFICER CELLI: Go ahead Ms. Martin
21 Gallardo.

22 MS. GALLARDO: Yes, I was speaking with
23 public health staff this morning and there is one
24 possibility as far as that section. There is a small
25 portion of public health that may be impacted and

1 there is a possibility that we could publish that in
2 the first section and just provided some kind of
3 addendum, but that's just another detail to consider.

4 HEARING OFFICER CELLI: That's great, that
5 makes sense so appreciate that.

6 Let's go first to CBD, Lisa Belenky can you
7 hear me? I see your hand is up.

8 MS. BELENKY: Here, yes thank you. I think
9 we just need only to discuss this one issue of
10 scheduling. I mean, we have obviously other issues
11 for this conference.

12 We would say first of all we did not receive
13 a response to our data request as far as we can tell,
14 so that is also outstanding.

15 We would object generally to this idea that
16 the FSA come out in pieces and that it not be issued
17 as a coherent whole. And one of the really big
18 problems with that is that there's no way to show that
19 the cumulative analysis or the alternatives analysis
20 has really considered the project as a whole. We are
21 very concerned that this project is being looked at in
22 such a piecemeal manner and the PSA didn't even have
23 an alternative analysis in it. So that's one thing
24 that we would object to about putting it out in pieces
25 in what we do consider to be quite a rush.

1 We would also disagree very strongly with the
2 statement made by the applicant that the biological
3 opinion is ready to be assessed, because the only
4 thing that the applicant apparently believes that
5 needs to be assessed is the linear and the impact to
6 the desert tortoise on the ground. However I think
7 Fish and Wildlife Service and others are very
8 concerned that there may be impact to avian species
9 that would include listed species including for
10 example, the Yuma Clapper rail that was recently found
11 dead at a very nearby project. So we disagree that it
12 as far along as they appear to be trying to tell us.

13 We also note that the Fish and Wildlife
14 Service has also said they want to see the completed
15 FSA and all of the biological information, before they
16 provide any feedback on the staff assessment.

17 So those things taken together show I think
18 very clearly among many other things that we put in
19 our specific report, in our status and in earlier
20 status reports that this is not ready to go to
21 hearing. And that the FSA needs to have a coherent
22 view going through all of this information. First we
23 need all the information, the applicant has not
24 provided sufficient information in many areas already.

25 We would also note Fish and Wildfire Service

1 sent another email regarding the eagle data that was
2 collected by the applicant. So there are still quite
3 a lot of holes in this, particularly I am focusing on
4 biological, but there are other very large holes.
5 Certainly there's been no alternatives in the office
6 or a coherent cumulative analysis at this time.

7 So for all those reasons we would object to
8 having the FSA come out in pieces. We need a
9 coherent, single document that deals with everything.
10 And we are again objecting to the rushing.

11 We also had asked that the committee consider
12 a site visit to the Ivanpah Project once it is
13 actually in operation, because there are certain
14 things particularly around the glint and glare that
15 need to be actually seen in person as far as we
16 understand. And we think that even waiting to get
17 some data from that project on solar flux and avian
18 impact as well as avian impacts from the mirrors would
19 be far more prudent than rushing ahead with the
20 project at this time. Thank you.

21 HEARING OFFICER CELLI: Thank you, Ms.
22 Belenky. I think that's actually not a bad idea, this
23 idea of a committee site visit to Ivanpah. I'm just
24 trying to imagine right now given the tight schedule
25 we're all talking about how I could fit that in with

1 the committee. I know that we will most certainly --

2 MS. BELENKY: We don't agree with the tight
3 schedule, so they could both happen. We're
4 disagreeing, we're objecting to the tight schedule.

5 HEARING OFFICER CELLI: Well, that's okay.
6 I'm just saying that I think your idea is a good one
7 that there be a committee site visit. Maybe we would
8 do that when we're down there already for the
9 evidentiary hearings later on, but first let me hear
10 from the -- so is there anything further from Center
11 for Biological Diversity?

12 MS. BELENKY: Well, just to clarify again we
13 object to the schedule as you are rushing through it.
14 We object to only having two weeks after a
15 comprehensive FSA is issued in which to provide our
16 testimony. That these are massive documents and that
17 it's completely unreasonable.

18 HEARING OFFICER CELLI: Okay. Your objection
19 is noted. Thank you.

20 Let's hear from Basin and Range Watch, Mr.
21 Emmerich?

22 MR. EMMERICH: Hello, can you hear me?

23 HEARING OFFICER CELLI: Very well, go ahead.

24 MR. EMMERICH: Okay, I just guess I'm going
25 to go ahead and agree and concur with everything Lisa

1 said. Now I had a few of our own perspectives here.
2 We totally agree that you are rushing this process
3 very quickly. We don't believe that most of these
4 issues have been resolved. I heard you mention
5 cultural and biological resources, but let's face it,
6 it's really going to be adaptive management for
7 everything. There's no way to mitigate the impacts to
8 visual resources.

9 We are very interested in the entire avian
10 flux issue and what Lisa brought up about the Yuma
11 Clapper rail. This lake effect problem might turn out
12 to be something that has a significant impact on the
13 water bird population of this area and we're not
14 hearing you talk about it that much. We'd like to
15 have another workshop. We'd like to hear a little bit
16 more about how you plan to possibly mitigate this
17 problem. And we don't believe there's any way that
18 can be done, so it appears that a lot of these
19 situations and these issues with biological cultural,
20 visual are going to end up in the same status that a
21 lot of these other projects have, the override. And
22 we would really like to encourage you to avoid the
23 override on this particular case.

24 The old PSA that came out for this project
25 was incomplete. You gave us 30 days to comment on it.

1 You've told us that you accept comments any time, but
2 you won't respond to any comments that were after that
3 deadline. And I believe that does discourage a lot of
4 public comment and some public comments can be very
5 sophisticated.

6 But the bottom line here is it's going too
7 fast. Two weeks for something like a 1,300-page
8 document is very unreasonable. We're having
9 difficulty commenting on cultural resources, because
10 we don't even see transcripts for the cultural
11 workshop that took place in July. And I could be
12 looking in the wrong place, your documents can be
13 difficult to navigate through, but we're not finding
14 that. And so again, how can we really give you a
15 comprehensive list of comments when we can't really
16 see the entire review.

17 HEARING OFFICER CELLI: If I may Mr.
18 Emmerich, let me just ask staff, because I'm not even
19 aware that they actually have transcripts of
20 workshops. And the reason that they wouldn't do that
21 as a workshop is basically in the order of a
22 settlement conference. And therefore really the
23 committee doesn't want it. That's really for the
24 parties to show up and certainly parties who are there
25 can take notes or record as they need to I suppose.

1 But I don't think there are transcript. I'm getting a
2 nod from staff yes.

3 MR. EMMERICH: Okay, I think there were for
4 the Hidden Hills case. I don't know, I mean this is
5 Energy Commission legal stuff, but what I'm saying is
6 that we don't have any information, enough information
7 on cultural resource. And if more of that information
8 was out there, if you would delay the process, allow
9 us a little more time to comment, to look at this
10 stuff. We're not a big corporation. We can't hire
11 six lawyers to go over different parts of every FSA
12 section. So it's going to take us a lot longer.

13 I really think you need to give us two
14 months. You need to give us 60 days to comment on
15 that final staff assessment. That is a big document
16 and that is not unreasonable at all. BLM documents
17 have 90-day comment periods and they're much shorter,
18 so just slow it down a little bit. That might not
19 help right source meet it's scheduled but we'd really
20 like to see a debate on the alternatives as well. And
21 we're pushing for you to consider offsite alternatives
22 and that would really help preserve these resources.
23 I don't really have too many more comments on the
24 schedule other than "Slow down, thank you."

25 HEARING OFFICER CELLI: Okay, thank you Mr.

1 Emmerich. I just want to point that out that the --

2 MR. EMMERICH: One moment, can you see this
3 for a second?

4 HEARING OFFICER CELLI: I'm sorry, we're
5 back. Thank you Mr. Emmerich, for your comments. We
6 will consider all of these things.

7 Let me get through all of the parties first,
8 so we've heard from CBD, we've heard from Basin and
9 Range Watch. Is there anyone on the phone from
10 Californians for Renewable Energy, Mr. Figueroa are
11 you on the phone? Or anyone from Californians for
12 Renewable Energy?

13 I have, by the way, had to mute Isaak Velez.
14 Who is he with, does anyone know, Isaak Velez? All
15 right, I'm going to unmute him. Oh, he seems to have
16 hung up.

17 MR. VELEZ: Hello, can you hear me?

18 HEARING OFFICER CELLI: Yes, who's speaking?

19 MR. VELEZ: This is Isaak Velez. I'm with
20 the Laborer's International Union of North America.

21 HEARING OFFICER CELLI: Okay, great. Stay
22 there, I had to mute you, because there was some sound
23 coming from your background, but you're unmuted now.
24 Give me a minute, I'll come around to you.

25 MR. VELEZ: I don't have any comments. I'm

1 just kind of listening.

2 HEARING OFFICER CELLI: Okay. Thank you, Mr.
3 Velez. If you could mute on your side rather than
4 have me mute you then you could hear and talk and we
5 wouldn't hear your background noise.

6 MR. VELEZ: Sounds good.

7 HEARING OFFICER CELLI: Okay, thank you. I'm
8 going to unmute K Kaufman. Mr. Kaufman or Ms.
9 Kaufman, K Kaufman?

10 MS. KAUFMAN: I don't know if you can hear
11 me?

12 HEARING OFFICER CELLI: Yes, I can. Go
13 ahead.

14 MS. KAUFMAN: Okay. No, I'm a reporter with
15 the Desert Sun. I have no comments, I'm just
16 listening.

17 HEARING OFFICER CELLI: Okay, thank you very
18 much. Can I ask you, Ms. Kaufman, to mute your
19 phone, because there's background sound coming in?

20 MS. KAUFMAN: I'm not on the phone; I'm on a
21 computer.

22 HEARING OFFICER CELLI: Okay, I'm going to go
23 ahead and mute you then. If you have any comment or
24 need to ask --

25 MS. KAUFMAN: That's fine.

1 HEARING OFFICER CELLI: -- send me a chat,
2 okay?

3 I just muted Ms. Kaufman. Okay, I think
4 we've established that Alfredo Figueroa and
5 Californians for Renewable Energy aren't here, so
6 let's go then to Californians Unions for Reliable
7 Energy. Ms. Klebaner?

8 MS. KLEBANER: Yes, thank you Hearing Officer
9 Celli. We are purely supportive of a schedule that
10 would meet staff and the applicant's requests.

11 HEARING OFFICER CELLI: You support staff and
12 the applicant's -- we actually haven't seen any
13 schedules yet, but in other words you are --

14 MS. KLEBANER: We are supportive of a
15 schedule that could be worked out by both parties.

16 HEARING OFFICER CELLI: Okay, got it, very
17 clear. Thank you, anything further from CURE?

18 MS. KLEBANER: No, thank you.

19 HEARING OFFICER CELLI: Thank you, Ms.
20 Klebaner.

21 I'm going to turn now to the Laborers' Union
22 of North America.

23 MS. CARO: Good morning, Mr. Celli. This is
24 Christina Caro on behalf of Hildeberto Sanchez, Eddie
25 Simmons and LiUNA. As I've mentioned in our status

1 report we're actually in the process of reviewing the
2 PSA and documents recently submitted by the applicant.
3 And we'll reserve any substantive comments or
4 procedural for later in the proceedings and at this
5 point are following along as intervenors and
6 interested parties.

7 HEARING OFFICER CELLI: Okay, well thank you
8 for that. I just want to be clear today folks, it
9 seems to me that this is probably going to be our last
10 status conference. And the next time we're going to
11 have a conference together it'll be a prehearing
12 conference and so today's our day to work out the
13 schedule and that's really what I would like to
14 accomplish today.

15 I'm going to, now that we've heard from all
16 of the intervenors and I'm clear at least CBD and
17 Basin and Range Watch would like a lot more time I'd
18 like to understand better. And maybe if the
19 petitioner, I keep calling you the applicant, but the
20 petitioner in this case because this is an amendment,
21 perhaps if you could make a record on what the rush
22 is. Why do we need to move this one along at speed,
23 so Mr. Galati could you address that please?

24 MR. GALATI: First of all, I've been doing
25 work around the Commission for a long time. I've

1 never been here when we've never had a crunched
2 schedule. I've worked on projects that took two and a
3 half years and it was a crunched schedule. It always
4 is a crunched schedule for the committee. The
5 applicant and the staff and the intervenors do good
6 work. It takes a long time, but if we do good work
7 and we bring something to the committee that's focused
8 then the committee can meet that crunched schedule.

9 Second of all I'd like to remind everybody
10 once again that this is a petition for amendment. And
11 as much as the intervenors and others don't like to
12 remember we already adjudicated a lot of these issues
13 in the first project. And the applicant went to great
14 lengths, extremely great lengths to minimize going
15 outside the footprint and taking advantage of that
16 particular thing.

17 So even when it comes to alternatives, which
18 everybody thinks that this is a brand-new project I
19 don't believe that the Commission really needs to look
20 at alternatives in the same way for this petition for
21 amendment. But there was a full suite of alternatives
22 evaluated in the first project as you know. So I
23 think that alternatives should build off of that.

24 I would like to make sure that we understand
25 what our goal is. Our goal is to become commercial in

1 June of 2016, because that is what the lenders will be
2 requiring in order to qualify for the investment tax
3 credit, which expires at the end of 2016. So some
4 people have said our PPAs require this.

5 I mean, it's been all over the map, but
6 what's really clear is this will be one of the first
7 projects that might be commercially financed, which is
8 exactly what the DOE loan guaranty program was hoping
9 would happen is that you would take new technology,
10 the federal government would help you get a loan so
11 then you could become commercial projects that can
12 stand on your own. That's the purpose, so we may be
13 having to do that with commercial financing.

14 With commercial financing they don't take the
15 same risk as when the DOE has signed a loan guarantee.
16 So they've required, in case in there's any delays
17 during construction or startup that in order to
18 qualify for the investment tax credit, which the PPAs
19 are based on, in order to qualify for the investment
20 tax credits we have to come online six months before
21 the expiration. The banks want a buffer. That is
22 something we can't negotiate and that's why we have
23 targeted that commercial operation date in June of
24 2016.

25 So then when you back up from June of 2016 we

1 have to make substantial deposits as we described to
2 you in March, by the end of the year. We wanted our
3 permit by the end of the year. We first wanted our
4 permit, so we could do desert tortoise clearing. When
5 that was not possible, we were able readjust the
6 schedule at substantial cost to the project.

7 And so what we need to do is while we won't
8 be able to clear tortoises until March we need to have
9 our license, so that we can get the equity money to
10 actually place deposits on pieces of equipment that
11 are long-term equipment. And that is something very,
12 very difficult to do when you still don't know when
13 you still don't know if you have any permits.

14 And I still want to bring you back to if you
15 give us a decision in December, that'll be a year from
16 when we file. I think that one thing that I've heard
17 the intervenors and others complain about was
18 something that staff tried to do to actually make it
19 easier for them. Normally when you file a petition
20 for amendment even if it's a substantial one, like
21 let's take the Dry Lake II Project where we completely
22 swapped out the turbines, reconfigured the project,
23 moved it around, used different technology.

24 Staff didn't write a brand-new staff
25 assessment. A PSA and an FSA, what they did is they

1 wrote an amendment analysis that looked at only the
2 changes. But what staff did for the PSA to help the
3 intervenors and public is they took all the work that
4 had been done on the first project and augmented it.
5 So that's why it's a big document. Everybody on the
6 phones read most of that document two years ago.

7 Second what has been done is how is it now
8 different? I think that the staff shouldn't be
9 punished for putting out a large document trying to be
10 complete. It's the same thing that will happen with
11 the final staff assessment.

12 So from our perspective is there are things
13 that are different about this project. And let's just
14 talk about the negative ones since that's what the
15 analysis always focuses on. The negative ones are it
16 is tall and there's new visuals and those have been in
17 the record for a long time now. People can all
18 comment on the visual simulations, which were
19 submitted in April or May.

20 The cultural issues that we talk about, let's
21 make we're really clear about this, they are related
22 to visual. Because onsite we're only moving 200,000
23 cubic yards instead of the 4.5 million cubic yards.
24 The cultural information that we went out and got
25 onsite was stuff that wasn't required for the first

1 project. We did some trenching and we updated the
2 pedestrian surveys, we found one additional site.
3 Nothing in the trenching, one additional site in the
4 pedestrian surveys.

5 So I want to put this in perspective, because
6 it sounds like we're starting to do AFC and there's
7 all this information that's not out there. There is
8 plenty of information out there and I think that the
9 parties, you know, can easily digest it.

10 Ultimately a 60-day comment period on a
11 preliminary staff assessment, we can't support. So
12 what we would agree to and what we would propose is
13 staff says they need some additional time for bio and
14 cultural, why don't we move part one of the FSA to the
15 30th of August giving them another week.

16 The part two of the FSA, which would be the
17 air quality, I mean the whole purpose of this would be
18 to move until September 20th the final staff assessment
19 part two. That way the intervenors have three, four,
20 five weeks to look at the biology and the cultural of
21 which seem to be the main concerns.

22 HEARING OFFICER CELLI: Okay, I'm sorry to
23 interrupt, but I want to follow you here. So part one
24 of the FSA are you anticipating would include bio,
25 cultural and alternatives?

1 MR. GALATI: Yes, and the reason I would say
2 it should include alternatives the public health and
3 air quality section will be the same for all
4 alternatives. We need the same boilers, we need the
5 same emissions. So there weren't impacts to offsite,
6 there were impacts onsite so wherever you move it,
7 it's such a big enough project that I believe
8 alternatives could be done if biology and cultural was
9 done. So I would suggest that part two of the FSA be
10 air quality and public health update only.

11 HEARING OFFICER CELLI: All right, because
12 you heard Ms. Stora mention that they needed a couple
13 of extra weeks for the cultural and the bio.

14 MR. GALATI: Yeah, my proposal was to give
15 them one week. And again, I'm trying to balance what
16 staff needs for additional time. Plus what I'm
17 hearing from the intervenors is it's a big document,
18 how can they file their testimony?

19 I would point out to the Commission that your
20 regulations allow you to go to evidentiary hearing 14
21 days after final staff assessment for a full AFC.
22 Remember this is a final staff assessment, there's
23 already a PSA out there much of which we talked about
24 at workshops and worked out very cooperatively.

25 I also want to correct one thing. I did not

1 say that the biology issues are resolved. I said the
2 applicant doesn't dispute what staff has written and
3 we have minor changes to conditions. So that's our
4 disputes. We know that the intervenors have
5 biological issues that have not been able to be
6 resolved in workshops, but that's what we would
7 propose. It's a way for us to get, again a decision
8 at the end of the year, that's what we're hoping for.
9 We might be asking the Commission for a special
10 business meeting for that, so.

11 HEARING OFFICER CELLI: Well, before we talk
12 to them and while it's on my mind I just want to ask
13 you Mr. Galati, Ms. Belenky mentioned that there's an
14 outstanding data request. Could you speak to that?

15 MR. GALATI: Yeah, I'll be real clear about
16 that. The outstanding data request is give us all the
17 information that you have about Ivanpah. So what we
18 did is we went through the -- you know, Ivanpah is not
19 owned by BrightSource. It's owned by another entity,
20 BrightSource is a partner. We don't have access to
21 any of that data.

22 We already explained to Ms. Anderson what we
23 would be giving her at the last workshop, which is
24 references to the publicly-filed monthly compliance
25 reports, which is surprising because I saw all that

1 data from the monthly compliance report already
2 summarized in CBD's status report. So it doesn't
3 appear to me that they need it, but what they will be
4 getting from us is pointing to where the publicly
5 available data is. We don't have any private data.

6 We finished that data request last week and
7 we'll be docketing it this week.

8 HEARING OFFICER CELLI: Okay. Thank you, I
9 just wanted to see how that fit in.

10 MR. GALATI: I could have objected that it
11 was a data request for something outside our control
12 and instead what we did is we did the work to try to
13 point them where the information was.

14 HEARING OFFICER CELLI: I appreciate that.

15 Staff, have you heard Mr. Galati speak about
16 this two-pronged FSA where basically everything comes
17 out on August 30th including bio, cultural and
18 alternatives. And then part two would just be the air
19 quality and public health. So let's hear your take on
20 that, please.

21 MS. GALLARDO: Were you asking staff, I'm
22 sorry we were --

23 HEARING OFFICER CELLI: Yes, I'm sorry. So I
24 want you to respond to what Mr. Galati is proposing,
25 which is a bifurcated FSA where on 8/30 all sections

1 including bio, cultural and alternatives is published.
2 And then on 9/20 the air quality and the public health
3 would be separately published.

4 MS. GALLARDO: Sure, okay. I think that as
5 far as 9/20 air quality and public health, assuming
6 that everything comes in from South Coast as expected
7 that's absolutely fine.

8 There are some considerations internally
9 where we would request one extra week tacked onto the
10 August 30th date. So what staff would propose is a
11 September 6th part one FSA publication. And one of the
12 additional reasons to what we've already discussed is
13 that the Commission is required to put out two other
14 documents, large documents, Huntington Beach is coming
15 out on the 20th of August. Blythe is coming out on the
16 30th of August. And what this means for us internally
17 is that all the seniors and management are jammed at
18 doing reviews. And so that's just an additional
19 consideration.

20 We did say that staff would have come here
21 asking for two more weeks anyway, which on top of the
22 August 23rd which would have put us at September 6th.
23 So I just wanted to give you one more justification
24 for that September 6th date.

25 HEARING OFFICER CELLI: Okay, so let's just

1 play this one out if we can. If applicant or rather
2 if staff published the FSA on 8/30 and -- or I'm sorry
3 on September 6th, the middle of September. And the air
4 quality -- so what would we, we'd still go with the
5 9/20 date? In other words staff can make the 9/20
6 date, so for all intents and purposes 9/20 would be
7 the end of the FSA period?

8 MS. GALLARDO: Correct.

9 HEARING OFFICER CELLI: So we can use that as
10 our first calculation data instead of 8/23 it would be
11 9/20/13. Okay, so in order to speed things up now
12 petitioner and staff, let me hear from you if this is
13 a problem, but I don't understand why I couldn't
14 require petitioner and staff to file their testimony
15 on the same day which would be the 20th as the FSA's
16 publication since most all of your work is already
17 done? Mr. Galati.

18 MR. GALATI: We organize our testimony in two
19 ways. One is the exhibits, I can give you all of the
20 exhibits, I know what those are going to be. But the
21 testimony is staff propose this condition, we don't
22 like it, here's the reason why we think you should
23 eliminate it or you think we should modify it in some
24 way. So I can't do that on the same day.

25 HEARING OFFICER CELLI: So how much time

1 would you need?

2 MR. GALATI: I think we would need probably
3 three days for that.

4 HEARING OFFICER CELLI: All right, so let me
5 just for the --

6 MR. GALATI: I can do the exhibits on the day
7 of the testimony. There might be some additional
8 exhibits. Sometimes we see something and the staff
9 assessment we haven't seen before and we might have
10 some additional exhibits, but we can turn around in
11 three business, not the three weekend days, but three
12 business days we can file the changes to conditions
13 that we would propose in our testimony.

14 HEARING OFFICER CELLI: All right, so let me
15 just for sake of ease just say okay so within one week
16 of the publication applicant would file its testimony.
17 And staff would file any, you know, from time to time
18 we get supplemental reports or there's a curriculum
19 vitae or a resume that fails to make it. So, you
20 know, I would then say okay if petitioner and staff
21 file testimony one week later that takes us to 9/27 or
22 13.

23 Okay, now the beauty of the bifurcation, and
24 I'm speaking now Ms. Belenky is that I understand that
25 you call for a single document, but if you got a

1 bifurcated document you would have your -- all of the
2 issues that you seem to be mostly concerned about I
3 think is bio, cultural, visual, alternatives. You
4 would have that a couple of weeks beforehand, Ms.
5 Belenky can you hear me?

6 MS. BELENKY: Yes, I can hear you.

7 HEARING OFFICER CELLI: Okay, so I'm just
8 doing this back of the pencil sort of calculation
9 here. If the last of the FSA is published on
10 September 20th. And if the following week the
11 applicant and staff publish or file the last of their
12 testimony then if we went one week out from there,
13 which would be I think take us into October at that
14 point you would actually in reality have had almost a
15 month for review of the FSA for everything except air
16 quality and public health. You follow me?

17 MS. BELENKY: Yes, I follow what you say.

18 HEARING OFFICER CELLI: Okay, now let me just
19 pencil that in for now and say --

20 MS. BELENKY: Well, okay. I mean I would
21 like to respond to what Mr. Galati said. I feel like
22 it was really misinformation and I'm very upset that
23 the committee is hearing argument from the applicant
24 that is so not -- you know, none of the intervenors
25 have really had a chance to put out our position. You

1 know, if you only want to talk about the schedule
2 fine, but I very strongly disagree with many of the
3 statements he made.

4 HEARING OFFICER CELLI: And I'm going to give
5 you a chance to address that, but right now all I
6 really want to focus on at this moment is having the
7 parties understand where we're going with regard to a
8 schedule. Okay, because there are just certain things
9 that have to happen and we're trying to be balanced
10 and accommodate everybody.

11 So basically right now, as I'm thinking right
12 now if the intervenors have the first week of October
13 as a due date let's say for their testimony, that
14 takes us to the second week of October for all parties
15 rebuttal testimony. Okay, so let's say second week of
16 October.

17 Now the week after that or within some
18 reasonable amount of time we're into the third week of
19 October. I'm getting a prehearing conference
20 statement. Now and prehearing conference statements
21 are really important to the committee and they're very
22 useful. It tells us who the witnesses are, what the
23 evidence is going to be and from that we calculate how
24 much time it's going to take to do the hearings and
25 how we are going to conduct the hearings.

1 As I may or may not have mentioned Mr. Kramer
2 is going to talk later about the E-Filing that will
3 substantially reduce the time involved in putting a
4 prehearing conference statement together. But we need
5 to have some time to review it, so that basically if
6 we do that we are now into essentially the week of the
7 13th of October. We can't have our prehearing
8 conference until it looks like the week of October
9 21st, okay?

10 Now if that's the case prehearing conference
11 October 21st, now sometimes we can reduce the time
12 between the prehearing conference and evidentiary
13 hearings by a few days and we do need a couple of days
14 there. Potentially we're looking at evidentiary
15 hearings now later sometime after the 16th, so we're
16 probably looking really at the week of the 20th of
17 October for evidentiary hearings down in Southern
18 California somewhere.

19 MR. GALATI: Mr. Celli, were you having --

20 MS. BELENKY: I'm sorry, but the prehearing
21 conference would be that week. Now you're saying that
22 the hearings would be that week?

23 HEARING OFFICER CELLI: Well, I calculated
24 that October the prehearing statement would be the
25 week of like let's say the October 14th through 18th

1 week. And therefore the evidentiary hearings would be
2 either later that week if we can have an early enough
3 prehearing conference or the following week, the week
4 of the 21st of October. So let's just say for the sake
5 of argument somewhere in the week of October 21st is
6 the evidentiary hearings. If we do that then I want
7 to think this thing out in terms of the rest of the
8 schedule, so applicant or petitioner in this case can
9 actually see where we go from there.

10 And let me just tell you what the events are
11 that occur after the evidentiary hearing that really
12 shouldn't affect what the committee is doing, because
13 we need briefs from the parties usually within a
14 couple of weeks of the evidentiary hearing. And the
15 presiding members proposed decision generally takes
16 somewhere around six to eight weeks to write, okay?
17 This is an amendment, hopefully we should be able to
18 write this a little faster.

19 But if we carry this out we're already in
20 October, PMPD wouldn't be out until the first week of
21 December, PMPD. Okay, if we went like that with PMPD
22 due out in December, the first week let's say, we
23 would have a comment period that takes us really into
24 January, because of Christmas and New Year's all that.
25 Which means that the close of the public comment

1 period would be in the beginning of January, errata
2 and revisions if need be would occur in January, which
3 means that the earliest I could possibly envision this
4 getting to the full Commission is early February.
5 What does that mean to the petitioner?

6 MR. GALATI: That's extremely daunting and
7 again we wanted this in December, so now we're moving
8 into February. We probably could live with the first
9 business meeting in January.

10 One idea I have Mr. Celli, is again we've
11 done this many, many times and we should be able to do
12 it again. And that is I would notice the prehearing
13 conference to be an evidentiary hearing for all non-
14 disputed matters, so that things that come in they
15 come in, we don't need live testimony. There are 23
16 technical sections you could certainly start working
17 on the portion of the PMPD and that you would know
18 then.

19 There's no need for briefs. You would know
20 then all those areas you could be working on. That
21 would also focus the hearings when we got to go down
22 south. The thing I also would like you to know, and I
23 think you do, there is no requirement for briefs. The
24 purpose of briefs is to help the committee. They have
25 been used in the past as evidentiary statements, as

1 closing arguments, that's not what they were for.
2 That's not what they should be for. They should be
3 for legal disputes. You heard the testimony.

4 I once again argue if you want to have
5 efficient hearings you make the lawyers do an opening
6 and a closing. It's the only way that you -- anyone
7 who's ever done trial work if you do an opening and a
8 closing you have to get right to your point on your
9 witnesses. I would argue that at the close of
10 evidentiary hearings you ask the parties to give their
11 closing on how they want the committee to rule. And
12 then you decide whether there are legal issues that
13 you need briefed or not. And briefs in the past have
14 been used as closing arguments, they're not necessary.

15 And we would suggest that if we went to
16 evidentiary hearing in October the object would be to
17 streamline your ability to get out the PMPD early in
18 the first part, end of November or early in the first
19 part of December so we can make the January 8th
20 business meeting.

21 HEARING OFFICER CELLI: Well, what I'm
22 suggesting right now, what I just walked through as a
23 December 1st or first week of December PMPD. That was
24 contemplated as I walked through that and I don't know
25 how I can avoid that. You know, I'll see what I can

1 do to clean things up there. But the rest of it is we
2 still have to have a 30-day comment period on the
3 PMPD.

4 MR. GALATI: Right, that certainly gets us to
5 January 8th as long as the errata is not sufficient or
6 big enough to require recirculation. On my projects
7 that happens one out of ten times, so I am comfortable
8 with a December 1 PMPD date. It would meet the
9 applicant's objectives.

10 HEARING OFFICER CELLI: I just want to say
11 just with regard to opening briefs and reply briefs
12 those are very important to the committee. When I'm
13 receiving large quantities of paper from multiple
14 parties it helps the committee to know what page or
15 what part of that document purports whatever
16 proposition they're putting forth. And so it's
17 useful.

18 The opening briefs are useful to the parties.
19 The reply briefs are often times even more useful,
20 because that clearly is where the committee is going
21 to be resolving the issues one way or the other. It's
22 always good to hear that, so I don't know that I would
23 dispense with the opening or reply briefs, but I don't
24 think that they affect the speed with which we get the
25 PMPD out. So I don't think that that affects the

1 scheduling really that much.

2 The comments, you know, if we get a large
3 number of comments those comments have to get in.
4 Oftentimes we put those in by way of errata, but
5 that's a variable too. So we will meet on this, it's
6 interesting to hear, but I'm just telling you as I
7 look at the events that have to occur from here on out
8 that's the best-case scenario. And anything, any
9 schedule delays, any failures of any parties, any
10 unforeseen circumstances will inure to the detriment
11 of the petitioner here, because then it's just going
12 to be -- it's this general idea of a PMPD by December
13 1st or more, not less, that I can see.

14 So I just want to have a frank discussion
15 about this, so we all know that this is really a
16 rushed schedule just for that. But it's the only one
17 I can see where there's actually time for the parties
18 to respond appropriately for large documents. Go
19 ahead Mr. Galati.

20 MR. GALATI: I would again remind the
21 committee that some of the sections are already
22 written on your PMPD, because they don't change for
23 the first project. The second thing that I would
24 remind you is that we take responsibility for the
25 delay in the PDOC. That's about a 30-day delay. Last

1 time when we were in May we were looking at a December
2 business meeting, so this would be consistent with
3 that 30-day delay.

4 I think also staff working hard to get part
5 one of the FSA out gives the parties more time than
6 was originally contemplated during our May 5th
7 workshop. So I think that the schedule you just laid
8 out, Mr. Celli, with getting to a PMPD in December if
9 the committee can produce it, I think that the only
10 people that get squeezed in this particular schedule
11 is the committee. I don't believe the parties get
12 squeezed on this. I think it's actually better for
13 the parties than what you laid out in May.

14 HEARING OFFICER CELLI: I actually agree. I
15 think that there's kind of a gift in this news about
16 the PDOC in that what it does is it affords the
17 intervenors a little more time. Staff did you have
18 any comment on this?

19 MS. GALLARDO: No. No further comment.

20 HEARING OFFICER CELLI: Okay, I'm going to go
21 to Ms. -- let's go back to Lisa Belenky.

22 MS. BELENKY: Are you just asking for a
23 comment on the proposed schedule?

24 HEARING OFFICER CELLI: Yeah and first let's
25 talk about schedule and then this is a good time for

1 you to raise any other issues you have. But I want to
2 talk about schedule first, if you would.

3 MS. BELENKY: Okay, well I'm not exactly sure
4 what you were saying about the prehearing conference
5 and the evidentiary hearings. It seemed like you were
6 putting them at the same exact time. Are you planning
7 for any time between the prehearing conference and the
8 evidentiary hearings?

9 HEARING OFFICER CELLI: Yeah, basically again
10 this is all ballpark, but what we're looking at for a
11 prehearing conference would be October, the week of
12 the 13th through the 19th, which is actually the Monday
13 the 14th through October 18th as a prehearing
14 conference week.

15 MS. BELENKY: Well, is that when you said the
16 statement would be due? So the conference, the
17 statement and the conference would be due in the same
18 week is what you're saying?

19 HEARING OFFICER CELLI: No, I would want the
20 statement would have to be the week before. So I was
21 --

22 MS. BELENKY: But that's the week we would
23 have to file our rebuttal? So I'm just trying to
24 understand what you're saying, because the rebuttal
25 was October 11th I think or that week?

1 HEARING OFFICER CELLI: No, the rebuttal
2 would be the week of the 7th. Yeah, the 7th through
3 the 11th.

4 MS. BELENKY: Well, the other dates are
5 always a Friday, so now are you moving all the dates
6 to Monday. I'm just trying to follow what you're
7 saying; that's all.

8 HEARING OFFICER CELLI: Yeah, I actually
9 haven't been speaking specifically of days. I've been
10 kind of talking more in terms of weeks like the first
11 week of October, second week of October, like that.
12 So what I have down is intervenors file testimony
13 first week of October. All parties file rebuttal
14 second week of October. Prehearing conference
15 statement would be due -- you're right, the third week
16 of October is the 14th.

17 So somehow I would have to fit in a
18 prehearing conference statement due date that gave the
19 committee a chance to read and review and work off
20 that in preparation of the prehearing conference. But
21 assuming we could do that, let's say the statement
22 came in on the 14th we can still have a prehearing
23 conference up here and that would be up here in
24 Sacramento on say the 17th or 18th. And then put the
25 evidentiary hearings the week of the 21st, somewhere in

1 there.

2 MS. BELENKY: Okay. I mean, okay now I
3 understand what you're saying.

4 HEARING OFFICER CELLI: Right.

5 MS. BELENKY: I think you know this, we still
6 object to separating the PSA into two parts. I know
7 you think you're giving us a gift, but what you're
8 saying is basically this area of air quality and
9 public health is not something that you're considering
10 as part of the project as a whole. And, you know, you
11 did not ask me to respond to Mr. Galati now, so I will
12 not. But we strongly disagree that this is just a
13 minor amendment that you don't have to review the
14 project as a whole in all of the other aspects.

15 HEARING OFFICER CELLI: Well, go ahead and
16 finish your thought on that. Go ahead, Ms. Belenky.
17 You have the floor, so if you wanted to say more about
18 that go ahead.

19 MS. BELENKY: All right, first of all this
20 project actually as staff's report that came out I
21 think last week on the Mojave fringe-toed lizard
22 habitat and sand areas shows that this project
23 actually has a much higher impact on those resources
24 than the original projects. The towers are not just
25 an issue for visual resources. They're a major issue

1 to avian species in the area.

2 We also have solar flux issues that I know
3 that the applicant has said that we could perhaps use
4 evidentiary hearing from another matter. We strongly
5 object to that. We believe that it has to be
6 discussed in this matter and that those, a lot of
7 those issues may need to be revisited.

8 The alternatives need to look at avoiding
9 impacts from the projects, which means all impacts.
10 But also especially these new impacts, so it will need
11 to look at new alternatives. It cannot just rely on
12 earlier alternatives, so those are just a few of the
13 issues.

14 I feel like it's extremely disingenuous to
15 say that this is simply a minor amendment with some
16 tall towers. That is not true. These mirrors have
17 much different effects on the avian species. The
18 towers and the flux have much different effects. And
19 they are not within the same footprint as the earlier
20 project.

21 And those are just directly about this. I
22 think this schedule is still very rushed with all of
23 the rebuttal and the testimony, but we really strongly
24 believe you need a consolidated FSA. You need to give
25 people time to review it. We disagree that you can

1 use a prehearing conference as an evidentiary hearing.
2 I've never heard of that. Mr. Galati suggests now
3 that we change the way that we do these hearings. And
4 we would very much like to discuss how the hearings
5 are done. On some matters the hearings have been done
6 as panels, as others they've been done in a more
7 traditional way.

8 We have not been allowed at the last two
9 hearings I attended to in fact discuss any legal
10 matters. Mr. Galati now suggests that all legal
11 matters be dealt with during the hearing. These are
12 major changes to the way this process would be run and
13 we need to discuss them. And they shouldn't just be
14 left for the last minute whether yes we have briefs or
15 no we have briefs is not the only issue.

16 HEARING OFFICER CELLI: Now I appreciate
17 that. Actually the way that the hearings will be run
18 is the subject for our prehearing conference, so we
19 don't have to talk about that now. And yes, all of
20 the parties will have input on that, but --

21 MS. BELENKY: Well, in your schedule the
22 prehearing conference may be on a Friday before
23 hearings begin on a Monday. I believe that the
24 parties would deserve to know more about how the
25 hearings will be conducted earlier than two days

1 before the hearings begin.

2 HEARING OFFICER CELLI: Okay, anything
3 further Ms. Belenky?

4 MS. BELENKY: That's fine for today, thank
5 you.

6 HEARING OFFICER CELLI: Thank you. I'm going
7 to ask Mr. Emmerich, you've been listening to this
8 discussion about scheduling. What do you have to say
9 about that?

10 MR. EMMERICH: Hello, can you hear me?

11 HEARING OFFICER CELLI: Yes, go ahead.

12 MR. EMMERICH: Yeah, again I'm going to
13 concur and agree with just about everything Lisa's
14 just said. And I want to add that I really think the
15 alternative section should receive full attention. We
16 also do not agree that this is simply an amendment to
17 the other project. This is a radical change. I mean,
18 the similarities are it has a very big footprint and
19 it is a concentrated solar thermal project, but
20 there's a lot of differences. And those differences
21 are three-dimensional.

22 And so I mean, I don't want to sound
23 redundant here, but again you have not given us any
24 good mitigation for these avian flux issues, lake
25 effect collisions with heliostat. We feel that the

1 Mojave fringe-toed lizard situation is far more grim
2 than it was originally told to us. And we feel that
3 this cumulative scenario here definitely needs to be
4 looked at more, simply because this is a solar energy
5 zone surrounding it. And this has really been looked
6 at for massive development.

7 I can't really give you too many more details
8 about the schedule. You're going to cluster a lot of
9 this stuff together and I would urge you, I don't know
10 why you're saying that you can't give us too much
11 flexibility on this. Maybe there were orders, you
12 know, above from the state level, but I would urge you
13 to consider the fact that you do invite public
14 participation in these projects.

15 And we've been doing it for about four years
16 and we think it's gotten a lot more difficult and we
17 don't think that you're going slow enough on this
18 project. And it's not as public friendly as some of
19 the others. I thought Hidden Hills was a much more
20 public-friendly project and granted that was closer to
21 residential communities. But I feel the Palen Project
22 should be handled more that way. Thank you.

23 HEARING OFFICER CELLI: Thank you, Mr.
24 Emmerich. As you know I was the hearing officer on
25 the Hidden Hills. In fact, this is the identical

1 committee so we know what you're speaking about. I
2 just want to make the point though that it seems to me
3 that the way that we are talking about, and nothing
4 has been etched in stone, the committee has to act.
5 And the committee will put out a schedule when it
6 comes time to notice the prehearing conference and so
7 forth. But my thought was that it would be a benefit
8 to the intervenors to bifurcate the document, because
9 then the intervenors would have a longer time to
10 review that information that came out in the first
11 filing. But we'll see how that plays out or whether
12 we even do that.

13 Let's hear next from Elizabeth Klebaner.
14 We're talking about scheduling and anything further.

15 MS. KLEBANER: I don't have anything further
16 at this time. Thank you.

17 HEARING OFFICER CELLI: Thank you. Then
18 let's talk to Christina Caro from LiUNA.

19 MS. CARO: Nothing further from LiUNA at this
20 time.

21 HEARING OFFICER CELLI: Okay, thank you.
22 Where we would go from here ladies and gentlemen is
23 the committee had scheduled a closed session. Before
24 we go to closed session rather than have all of the
25 people who are on the telephone hang out and wait for

1 us to finish a closed session I believe it would be
2 more user friendly if we took public comment now. And
3 then went into closed session, because after a closed
4 session since we're not likely to have anything to
5 report out we would just adjourn at that time.

6 So with that is there anything further from
7 any of the parties before we go to public comment? Go
8 ahead Ms. Martin Gallardo.

9 MS. GALLARDO: The only thing that staff
10 would add is that we do agree that the issues are
11 narrow and clear-cut. And if the committee did want
12 to go with the option of doing closing arguments at
13 hearing we would support that.

14 HEARING OFFICER CELLI: Thank you. Okay, if
15 there's nothing further from any of the parties than
16 any other parties on the phone, we're going to go
17 ahead and take public comment.

18 Now, I see that here in the room I have Mr.
19 Blake Roberts and if you wouldn't mind approaching the
20 podium and just letting us know if there's anybody
21 here who has a comment in the room.

22 MR. ROBERTS: No, right now I don't know of
23 any public comments.

24 HEARING OFFICER CELLI: Okay, thank you.
25 Then I'm going to go through the list. The way I'm

1 going to approach this ladies and gentlemen, I'm going
2 to go through the list of people who have named
3 themselves on the telephone by coming in by way of
4 their computers. I usually like to try to take the
5 agencies first and then the other people who've
6 identified themselves and then the people on the
7 telephone.

8 So first let's hear from Kim Marshall.

9 MALE VOICE: Marsden.

10 HEARING OFFICER CELLI: Marsden.

11 MS. MARSDEN: It's Marsden.

12 HEARING OFFICER CELLI: I'm sorry, Kim
13 Marsden. My handwriting is terrible, go ahead. You
14 have the floor.

15 MS. MARSDEN: That's okay, I don't have any
16 comments. Thank you.

17 HEARING OFFICER CELLI: Thank you, Ms.
18 Marsden.

19 Deb, oh boy, Bardwick? Deborah Bardwick?

20 MS. BARDWICK: Mr. Celli, I have no comments
21 at this time.

22 HEARING OFFICER CELLI: Thank you. Amy
23 Howard, let me unmute. Now go ahead Amy Howard.

24 MS. HOWARD: I have no comments at this time.
25 Thank you.

1 HEARING OFFICER CELLI: Thank you, Ms.
2 Howard. She was with National Parks.

3 Is there anyone else on the telephone who's
4 with a federal, state, county or local agency?

5 MS. CLARK: This is Sarah Clark. I'm with
6 the Colorado River Indian Tribes and I don't fall into
7 that category, but sort in a public agency category.

8 HEARING OFFICER CELLI: Absolutely, go ahead
9 Ms. Clark.

10 MS. CLARK: I just had a few comments on the
11 schedule. First I would note that I reviewed the PSA
12 for cultural resources on behalf of the tribes and as
13 many of you know the PSA is largely incomplete with
14 respect to cultural resources. Many of the decisions
15 were simply deferred into the FSA and because of that
16 we would very much appreciate and welcome the
17 opportunity to comment on the FSA before it becomes
18 the staff testimony before the CEC. The tribes have
19 not made a decision whether or not to intervene at
20 this time and therefore we feel strongly that the
21 staff needs to consider that public comments that can
22 be made on the staff assessment prior to going to the
23 Commission. And so the short period that you've
24 identified in the proposed schedule simply wouldn't
25 allow time to do that where the FSA comes out

1 virtually at the same time that the staff testimony
2 does.

3 And then our second comment would be given
4 that the tribe has not decided to intervene at this
5 point, but is still considering all of its options we
6 would ask that we have ample time for me to review the
7 FSA to determine whether or not it addresses our
8 concerns. And then to make a decision whether to
9 intervene and for that reason the longer time period
10 that you've laid out where we have at least a month to
11 do that before the prehearing conference would be much
12 appreciated.

13 HEARING OFFICER CELLI: Thank you, Ms. Clark.
14 I just want to say on a personal note that we welcome
15 you as an intervenor. But when someone intervenes
16 they pretty much take the case as it is at the time
17 they intervene. So it's of course, always better to
18 intervene sooner than later.

19 MS. CLARK: I understand that. Thank you.

20 HEARING OFFICER CELLI: Okay, thank you.
21 Anyone else from any other tribes, federal, government
22 or agencies on the telephone?

23 Okay, now what I'm going to do is I'm going
24 to go through the names we have. I've heard from Amy
25 Howard. Anwar Ali? Oh, he's with staff? Okay, thank

1 you. Deborah Bardwick we've heard from, Christina
2 Caro is a party. Elizabeth Klebaner we've heard from.
3 Ilene Anderson is a party. Isaak Velez he said he was
4 -- I forgot who he, oh he was a reporter I think?
5 Okay, Jay Hillard? Did you wish to make a comment.
6 Okay, hearing none and we have K Kaufman. Kevin
7 Emmerich is a party. Marsden we heard from, Lisa
8 Belenky is a party. Lisa Worrall, isn't she with
9 staff? Is with staff, okay. Matt Miller, Peter I
10 think he hung up, Sarah Clark we heard from. Tiffany
11 North, did you wish to make a comment?

12 MS. NORTH: No comments at this time, thank
13 you.

14 HEARING OFFICER CELLI: Thank you. And Scott
15 Blek is with applicant or petitioner rather.

16 Okay, what that leaves us ladies and
17 gentlemen are those people who called in that we don't
18 know who you are. I have you down as call-in user 12,
19 13, 14 and call-in user number 3. If you are on the
20 telephone and would like to make a comment please
21 speak up right now. Go ahead, anyone? Is there
22 anyone on the telephone who would like to make a
23 comment at this time? Okay, hearing none then we have
24 taken in all of the public comment.

25 So what we'd like to do next ladies and

