

DOCKETED

Docket Number:	09-AFC-07C
Project Title:	Palen Solar Power Project - Compliance
TN #:	201117
Document Title:	10/24/13 Prehearing Conference Transcript
Description:	Transcript of Prehearing Conference 10/24/13
Filer:	Ken Celli
Organization:	California Energy Commission
Submitter Role:	Committee
Submission Date:	11/5/2013 1:11:15 PM
Docketed Date:	11/5/2013

PREHEARING CONFERENCE
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

THURSDAY, OCTOBER 24, 2013
10:05 A.M.

Reported by:
Peter Petty
Contract No. 170-09-002

COMMITTEE MEMBERS PRESENT

Karen Douglas, Presiding Member

David Hochschild, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Kenneth Celli, Hearing Officer

Gabe Taylor, Advisor to Commissioner Hochschild

Eileen Allen, Commissioners' Technical Advisor for Siting

CEC STAFF PRESENT

Christine Stora, Project Manager

Jennifer Martin Gallardo, Staff Counsel

David Flores, Planner 3 Supervisor

OFFICE OF THE PUBLIC ADVISER

Blake Roberts, Assistant Public Adviser

APPLICANT

Scott Galati, Attorney
Galati/Blek, LLPE

Matt Stucky, PE Abengoa Solar

Andrea Grenier, Centerline

INTERVENORS

Lisa T. Belenky
Ileene Anderson (via WebEx)

Center for Biological Diversity
Kevin Emmerich (via WebEx)
Basin and Range Watch

Sara Clark
Doug Bonamici (via WebEx)
Nancy Jascula (via WebEx)
Colorado River Indian Tribes (CRIT)

Seth Shteir
National Parks Conservation Association

INTERESTED GOVERNMENT AGENCIES

Tiffany North (via WebEx)
County of Riverside

Rebecca Forbes
Caltrans

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P R O C E E D I N G S

10:05 A.M.

1
2
3 PRESIDING MEMBER DOUGLAS: Before we begin
4 I'd like to introduce the Committee and then ask the
5 parties to introduce themselves for the record. My
6 name's Karen Douglas, I'm the Presiding Commissioner
7 on this siting case.

8 And to my immediate left is our hearing
9 officer, Ken Celli. To his left is Commissioner David
10 Hochschild, the Associate Member on this case and to
11 Commissioner Hochschild's left, Gabe Taylor, his
12 Advisor. To Gabe Taylor's left is Eileen Allen, she's
13 the Technical Advisor on Siting for Commissioners.

14 Let's see now, we've got the Public Advisor's
15 Office in the room. Blake if you could identify
16 yourself, so Blake is here. And let me ask the
17 petitioner if you could introduce yourselves for the
18 record?

19 MR. GALATI: This is Scott Galati, Counsel to
20 Palen Solar Holdings.

21 MR. STUCKY: This is Matt Stucky, I'm with
22 Abengoa Solar. We are a member of the project
23 company, Palen Solar Holdings.

24 MS. GRENIER: Andrea Grenier, Permitting
25 Consultant with Centerline.

1 PRESIDING MEMBER DOUGLAS: Thank you, staff?

2 MS. MARTIN-GALLARDO: Yes, this is Jennifer
3 Martin-Gallardo, Staff Attorney.

4 MS. STORA: And Christine Stora, Compliance
5 Project Manager on the Palen Solar Project.

6 PRESIDING MEMBER DOUGLAS: Thank you. All
7 right, let me turn now to the intervenors.
8 Intervenor, Center for Biological Diversity? Are they
9 unmuted?

10 HEARING OFFICER CELLI: Everybody should be
11 unmuted, but let me make sure. Oh, I have somebody.

12 PRESIDING MEMBER DOUGLAS: Hang on, we're
13 making sure.

14 HEARING OFFICER CELLI: I just lost Matt
15 Miller.

16 PRESIDING MEMBER DOUGLAS: We're making sure
17 that people are not muted.

18 HEARING OFFICER CELLI: Let's see, all right.
19 Yeah, everybody is unmuted, which is unusual because
20 you'd think by now we'd start hearing somebody making
21 noise.

22 PRESIDING MEMBER DOUGLAS: Right, all right
23 so --

24 FEMALE SPEAKER: (Inaudible) up there.

25 FEMALE SPEAKER: No, she's on there.

1 PRESIDING MEMBER DOUGLAS: Intervenor, let's
2 see Lisa Belenky or Ileene Anderson from the Center
3 for Biological Diversity.

4 MS. ANDERSON: Yes, this is Ileene Anderson
5 on the phone, can you hear me?

6 PRESIDING MEMBER DOUGLAS: Yes, we can.
7 Thanks.

8 MS. ANDERSON: Great, I believe my colleague
9 Ms. Belenky was going to swing by there, but evidently
10 she may be running a little bit late.

11 PRESIDING MEMBER DOUGLAS: Okay.

12 HEARING OFFICER CELLI: As we all are.

13 PRESIDING MEMBER DOUGLAS: Great, thanks.
14 There was a bit of an echo there, hopefully we --

15 HEARING OFFICER CELLI: That was a fellow
16 named Peter. Peter I'm going to, depending on who
17 Peter is, I'm going to mute him. He's just on the
18 computer anyway.

19 PRESIDING MEMBER DOUGLAS: Got it.
20 Intervenor Kevin Emmerich with Basin and Range Watch?

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

22 PRESIDING MEMBER DOUGLAS: Yes, we can.
23 Thank you.

24 MR. EMMERICH: Okay, we're here.

25 PRESIDING MEMBER DOUGLAS: Intervenor Alfredo

1 Figueroa from Californians for Renewable Energy are
2 you on line? Alfredo Figueroa, Californians for
3 Renewable Energy? Okay, not yet.

4 Intervenor for CURE, Tanya Gulesarian or
5 Elizabeth Klebaner?

6 All right, Intervenors for LiUNA, Hildeberto
7 Sanchez or Eddie Simons?

8 MALE SPEAKER: (Inaudible)

9 PRESIDING MEMBER DOUGLAS: All right,
10 Intervenor Rebecca Loudbear, Colorado River Indian
11 Tribes?

12 MS. CLARK: This is Sarah Clark, Counsel for
13 Colorado River Indian Tribes. Joining me on the phone
14 is Doug Bonamici and Nancy Jасulca who's in the
15 Attorney General's Office at CRIT.

16 PRESIDING MEMBER DOUGLAS: Great, thank you.
17 Did you pick that up?

18 FEMALE SPEAKER: (Inaudible)

19 PRESIDING MEMBER DOUGLAS: All right, public
20 agencies. Are there any -- Lisa Belenky, welcome.
21 Lisa Belenky is here for the record and Ileene
22 Anderson is on the phone.

23 Are there any representatives here today from
24 federal government agencies? Here in the room or --

25 VOICE MAIL FOR MS. MARSDEN: You have reached

1 the desk of Kim Marsden, Natural Resource Specialist
2 at the California Desert District of BLM. I'm
3 unavailable to answer your call.

4 HEARING OFFICER CELLI: Boy!

5 PRESIDING MEMBER DOUGLAS: All right, well
6 BLM is apparently trying to call in.

7 HEARING OFFICER CELLI: I can't figure out
8 which one I'm muting from. I'm happy to mute from
9 this one and work off of this one, but is it going to
10 work for me if I do?

11 PRESIDING MEMBER DOUGLAS: We'll survey later
12 for federal government agencies as well.

13 Are there any officials representing Native
14 American tribes or nations besides the Colorado River
15 Indian Tribes? They've already been introduced.

16 Okay, are there any elected officials here
17 from state, county or at the local level? Any local
18 government agencies?

19 MS. NORTH: Tiffany North, the Deputy County
20 Counsel, County of Riverside.

21 MS. FORBES: This is Rebecca Forbes from the
22 California Department of Transportation, Caltrans.

23 PRESIDING MEMBER DOUGLAS: Great, thank you.
24 Anyone else? All right, with that I'll turn this
25 over.

1 MS. FORBES: And I'm --

2 PRESIDING MEMBER DOUGLAS: Oh, go ahead.

3 MS. FORBES: I'm sorry, this is Rebecca.

4 Again, Kim is that your name or anyways I'm not sure
5 how long this is going to be, but we have an all-staff
6 meeting starting at 10:00. So I was wondering if
7 there was any way we could address the transportation
8 issues at the beginning or do we have to follow the, I
9 don't know if there was an agenda.

10 HEARING OFFICER CELLI: No, it's just
11 comment. We'll have comment at the end, so if they're
12 available to make comment we'll let them. But right
13 now we're not doing transportation.

14 MS. FORBES: Oh, you're not doing
15 transportation?

16 HEARING OFFICER CELLI: Not at the moment,
17 we've got that's a little further down in the agenda.
18 So if you've got a meeting why don't you do your
19 meeting and come back. We'll probably be hitting
20 transportation right about when you're done.

21 MS. FORBES: Well, it's going to be an all-
22 day. It's an all-day staff thing, I mean literally
23 like yours it's from like 10:00 to probably 2:00.

24 HEARING OFFICER CELLI: Okay, Caltrans what
25 I'm going to ask you to do is perhaps let me ask

1 staff. Can we get an offline phone call and they can
2 speak to Christine or someone and staff can represent
3 Caltrans position regarding transportation?

4 MS. MARTIN-GALLARDO: I think that that
5 sounds workable.

6 HEARING OFFICER CELLI: Let's do that and
7 then this way whatever it is you needed to tell the
8 Committee, the information will be received and you
9 can have your meeting.

10 MS. FORBES: Okay, right because there was
11 issues and David Flores had called me about them,
12 about the issues.

13 HEARING OFFICER CELLI: Well, David Flores is
14 here nodding his head in the affirmative. And so
15 maybe David, do you have a cell phone? Perhaps you
16 can have an offline phone call and then when we get
17 around to traffic and transportation you can come up
18 and tell us what Caltrans had to say? Great, that
19 solves that problem. Thank you.

20 MS. FORBES: Okay, great. So then I will
21 hang up and wait for the call I guess.

22 HEARING OFFICER CELLI: Thank you for
23 cooperating.

24 MS. FORBES: Okay, thank you.

25 MR. SHTEIR: Commissioner Douglas, I just

1 wanted to let you know my name is Seth Shteir and I'm
2 here representing the National Parks Conservation
3 Association. And we petitioned to be an intervenor.

4 PRESIDING MEMBER DOUGLAS: Great, thank you.
5 All right, so with that I think we're through
6 introductions. I'll turn this over to the hearing
7 officer.

8 HEARING OFFICER CELLI: Thank you,
9 Commissioner Douglas, good morning everybody.

10 The Committee noticed today's prehearing
11 conference in a notice of prehearing conference and
12 evidentiary hearings issued on October 7th, 2013.
13 Prior to that on October 3rd I personally sent out a
14 memo to all the parties giving them a heads up, so
15 that we could work out a schedule as early as
16 possible.

17 I just want to remind everybody that we had
18 noticed in October 28th, 29th and 30th as evidentiary
19 hearing dates. That's next Monday, Tuesday and if
20 necessary Wednesday. It's going to be at the UC
21 Riverside Palm Desert Campus. And due to delays in
22 the publication of the determination of compliance by
23 South Coast Air Quality Management District we
24 scheduled a November 1st date as the publication date
25 for the air quality section of the final staff

1 assessment, which we will refer to throughout these
2 hearings as FSA, Final Staff Assessment.

3 And on November 14th we set the evidentiary
4 hearing on air quality only, but I wanted to give all
5 of the parties a heads up that that date's not going
6 to work. I don't have a date right now, probably
7 within a week of that date we will set one as soon as
8 I can get a date when all the commissioners can be
9 here. We would have it in Sacramento. It would be on
10 air quality only. And I'm going to try to get it to
11 be hopefully the week of the 18th, somewhere in there.

12 But the fact is I'm not going to notice it
13 until the FSA section comes off, because we need the
14 time, so just this is a preview of coming attractions.
15 You'll be getting a notice on this one when we have
16 some certainty as to what the dates are.

17 MS. BELENKY: November.

18 HEARING OFFICER CELLI: Yes?

19 MS. BELENKY: Oh, I think you said October
20 18th and you meant November.

21 HEARING OFFICER CELLI: You're right,
22 Ms. Belenky. I mean, November. I'm talking about
23 November 1st was supposed to be the FSA publication
24 date. November was supposed to be --

25 And I'm just going to say, Matt Miller if

1 you're listening in I could use you in the room,
2 because I need to get the -- oh wait a minute. Never
3 mind, I got it. I'm sorry ladies and gentlemen I'm
4 working on this technical stuff and as people cough
5 and things I try to mute them and stay on top of it.
6 But if you're listening in on the telephone and you're
7 not a party or someone from the National Parks
8 Conservation Center it would be useful to us if you
9 would please mute your phone on your side until you
10 have something to say. And then we will call on you
11 when it's time, but we get some background noise and
12 I'm trying to avoid that.

13 Excuse me one second, I think I'm going to
14 need to (inaudible) host or presenter rather, thanks.
15 Okay, I'm back.

16 So as explained in the notices~~s~~ the basic
17 purpose of a prehearing conference is to assess the
18 project's readiness for hearings to clarify areas of
19 agreement or dispute amongst the parties. To identify
20 witnesses and exhibits, to determine upon which areas
21 parties need to question the other party's witnesses.
22 And to discuss associated procedural matter such as
23 scheduling, etcetera.

24 To achieve these purposes we require that any
25 party seeking to participate at this conference or

1 present evidence or wish to question witnesses at
2 evidentiary hearings file a prehearing conference
3 statement by October 22nd, 2013. Timely prehearing
4 conference statements were filed by all parties except
5 the Intervenor California for Renewable Energies,
6 Californians for Renewable Energy, Intervenor ~~TIER~~
7 CURE California -- let me step back.

8 We received prehearing conference statements
9 from everybody except Californians for Renewable
10 Energy, California Unions for Reliable Energy and
11 LiUNA, which is the Labors International Union
12 National; I forget what A stands for, LiUNA.

13 Staff published its Final Staff Assessment
14 Part One, on September 11th, 2013 and Part Two on
15 September 23rd, 2013. And the air quality section,
16 which would include the greenhouse gases section, will
17 be Part Three is still pending. And again we've said
18 that would be due out November 1st, 2013. The FSA
19 serves as staff's testimony on all subject areas. The
20 FSA has been marked for identification as Exhibits
21 2000 and 2001.

22 Staff's rebuttal testimony was filed on
23 October 21st, 2013 as Exhibit 2003. And the South
24 Coast Air Quality Management District's PDOC, which is
25 the Preliminary Determination of Compliance is marked

1 as for identification as Exhibit 2006. That was filed
2 on October 18th, 2013.

3 The timely testimony was filed by Petitioner
4 Palen Solar Holdings. That included the petition,
5 testimony and exhibits, and that was on September
6 30th, 2013. That included efficiency, facility design
7 compliance, hazardous materials, land use, noise and
8 vibration, reliability, power plant reliability,
9 socioeconomics, transmission line safety and nuisance,
10 transmission systems engineering, visual resources,
11 waste management, soil and water.

12 And then on October 9th, 2013 petitioner
13 filed Batch Two, which included alternatives,
14 biological resources, cultural resources, geology,
15 paleontology, project description, public health,
16 traffic and transportation, worker safety and fire
17 protection.

18 These exhibits have been marked for
19 identification as Exhibits 1001 through 1081. I may
20 be wrong about that, because I understand there were
21 some changes that had to be made to accommodate the e-
22 filing system.

23 The Intervenor Center for Biological
24 Diversity's evidence was timely filed and marked for
25 identification as 3000 through 3062.

1 Intervenor Basic and Range Watch filed
2 Exhibit 4000.

3 MS. BELENKY: Excuse me?

4 HEARING OFFICER CELLI: Yes?

5 MS. BELENKY: We added the 3063 when you
6 split up that other exhibit.

7 HEARING OFFICER CELLI: Oh yes, that's right.
8 Thank you. You know, ladies and gentlemen just so you
9 know, we're doing this new e-filing system. It
10 required four digits and it has to be numeric only and
11 we can't have alpha, which has created all kinds of
12 interesting creative workarounds that we've had to
13 come up with. And I do appreciate everybody's
14 indulgence on that.

15 So we're going to talk about exhibits in a
16 little while anyway, just to get some clarity on that.
17 But ~~Basic-Basin~~ and Range Watch did file a timely
18 prehearing conference statement. They only have the
19 one exhibit, 4000.

20 Californians for Renewable Energy has not
21 filed any exhibits, nor did CURE, nor did LiUNA.

22 Intervenor Colorado River Indian Tribes filed
23 a timely prehearing conference statement and marked
24 for identification Exhibits 8000 through 8020. They
25 were timely filed. We will talk later also about the

1 question about confidentiality.

2 Today's agenda is divided into six parts.
3 First, we will discuss the petition to intervene by
4 National Parks Conservation Association.

5 Second, we will discuss scheduling of the
6 hearings and when I say scheduling of the hearings I'm
7 talking about what's going to occur when on Monday and
8 Tuesday. In what order are we going to take the
9 topics.

10 Thirdly, we will discuss the parties witness
11 lists.

12 Fourth, we will discuss the parties' exhibit
13 lists and confidentiality requests.

14 Fifth we will discuss the formal and informal
15 process that the Committee will utilize in the conduct
16 of the evidentiary hearings.

17 Sixth we will discuss the briefing schedule
18 and finally we will provide an opportunity for the
19 public to make public comment.

20 So let us begin. We have Seth Shteir?

21 MR. SHTEIR: Yes, that's correct, uh-huh.

22 HEARING OFFICER CELLI: Is that how I
23 pronounce it, Mr. Shteir?

24 Mr. SHTEIR: Shtire (phonetic), but that's
25 okay.

1 HEARING OFFICER CELLI: Shteir?

2 MR. SHTEIR: Yeah.

3 HEARING OFFICER CELLI: It's not okay with
4 me, because I make everybody pronounce my name Chelli
5 (phonetic) even though there's no h. So I'm a real
6 stickler for pronouncing people's names right, so
7 Mr. Shteir.

8 MR. SHTEIR: Okay, yes sir.

9 HEARING OFFICER CELLI: We received your
10 petition to intervene and the Presiding Member had a
11 chance to look at it. And the ruling is as follows.
12 The ruling on the petition to intervene by National
13 Parks Conservation Association is as follows. The
14 petition is denied and the Committee makes the
15 following findings on the petition.

16 The petition: one, the petition is untimely.
17 As directed in our October 7th, 2013 notice of
18 prehearing conference and evidentiary hearing, and
19 pursuant to Title 20 Section 1207(b) of the California
20 Code of Regulations, the deadline to file a petition
21 to intervene must be filed 30 days prior to the
22 evidentiary hearing. Or at the time of the prehearing
23 conference, whichever date is earlier. Thirty days
24 prior to the evidentiary hearings in this case was
25 September 28th, 2013.

1 The Committee does not find good cause, two.
2 The petition states that ~~it's~~sits late filing was
3 caused by the inability to gather information from the
4 federal websites due to the federal government
5 shutdown. However, the government shutdown occurred
6 on September 30th, 2013 two days after the deadline to
7 file a petition, which was September 28th in this
8 case.

9 Three, the National Parks Conservation
10 Association's concerns regarding visual, biological or
11 cultural impacts are adequately represented by
12 existing intervenors and parties and staff.

13 So finally, the National Parks Conservation
14 Association petition to intervene is denied; anything
15 further on that, Mr. Shteir?

16 MR. SHTEIR: Well, just to put I think there
17 was a representation in one of the follow-ups that the
18 concerns about Joshua Tree National Park had already
19 been represented by the National Parks Service. But
20 for the record I would like to point out that we are a
21 little bit different than the National Parks Service
22 in that we're a membership-based organization that has
23 800,000 active members and supporters and 100,000 in
24 California.

25 So just to think about that a little more, we

1 connect people who have previously not been
2 represented in a lot of the renewable energy
3 conservation process, then also people who are park
4 lovers, so I think there's a little bit of a
5 distinction made.

6 HEARING OFFICER CELLI: Thank you, the
7 Committee understands that. And I appreciate your
8 attempts and in the future way, we do everything at
9 the Energy Commission to allow and encourage
10 participation from intervenors and members of the
11 public. But in this the application came in just too
12 late, so we encourage you in the future to please try
13 to come in sooner and you wouldn't run into that
14 problem. So thank you very much.

15 PRESIDING MEMBER DOUGLAS: And just one more
16 comment --

17 MS. BELENKY: Oh, sorry.

18 PRESIDING MEMBER DOUGLAS: Oh, go ahead.

19 MS. BELENKY: Oh, go ahead.

20 PRESIDING MEMBER DOUGLAS: All right, just
21 one more comment Mr. Shteir. I'm also very familiar
22 with the National Parks Conservation Association. I
23 think it's a really strong organization. I think it
24 has an important mission and I would want to recommend
25 that you make comment in the proceeding to that to the

1 extent that you have specific questions or concerns,
2 that you talk to staff and potentially other parties.
3 And just ensure that we thoroughly vet and raise the
4 issues that you have. Comment letters can be sent in
5 really at any time and so you're welcome to send one
6 in.

7 The issue was -- but, you know, so I think
8 that there's a lot that you can add to the proceeding.
9 I don't think you need to be a party necessarily to do
10 it and given the timing of your petition I'd recommend
11 that you, as I said talk to staff, potentially talk to
12 other intervenors or parties. And make public comment
13 and just be a -- you do represent an important
14 perspective. And we'd like to and we certainly will
15 listen to it.

16 MR. SHTEIR: Well, thank you very much for
17 your consideration. And we'll continue to do that.

18 HEARING OFFICER CELLI: Thank you,
19 Mr. Shteir. CBD?

20 MS. BELENKY: Yes, I had a question and after
21 their petition came in I did go back and look at the
22 rule. And, you know, not at all disputing the
23 decision except to the extent that it relies on this
24 timeliness question. It seems to me there's a gap,
25 because it says that you can petition to intervene 30

1 days before the hearings. Or by the time of the
2 prehearing conference and then but if the hearings
3 aren't noticed before the 30 days before them, there
4 seems to be a gap there in the way the rule is
5 written. And so I am concerned. It sounds like
6 that's not the only basis for your ruling, which is
7 fine but I am concerned about that as a structural
8 matter if that were the main basis for the ruling.

9 HEARING OFFICER CELLI: And I appreciate that
10 and I personally am partially to blame for that. And
11 the problem stems from the fact that I had put
12 together a schedule long before the notice came out,
13 but delayed the notice because we were waiting for
14 this PDOC to come out if you recall. And it finally,
15 it just got to the point where we just needed to move
16 on. So we'll talk some more about that.

17 Let's talk now about the prehearing
18 conference statements and the topics that the parties
19 consider to be not ready to proceed. Both petitioner
20 and staff noted that air quality and GHG or greenhouse
21 gases, which is a subset of the air quality section,
22 have not been published. So clearly they're not ready
23 to proceed.

24 According to the Center for Biological
25 Diversity the issues are, or the topic areas that are

1 not ready to proceed would be the project description,
2 alternatives, biological resources, soil and water
3 resources, air quality and greenhouse gases and
4 purpose and need. And I take it Ms. Belenky, that
5 purpose and need would be going to what I think is the
6 override section, because I'm trying to slot that in
7 the usual topic areas that we have. And I was, you
8 know, need really doesn't come into play unless public
9 convenience and necessity becomes an important topic.
10 So can I say that that would in the override section's
11 purpose and need; is that what you had in mind?

12 MS. BELENKY: Well, I think that may be fine.
13 It may more go to alternatives. It's sort of like why
14 are you even looking at this project or whatever. So
15 I would think it goes more into alternatives, but I
16 don't we actually had a separate hearing section on
17 override before.

18 HEARING OFFICER CELLI: That's true. And I
19 think you're absolutely right. You know, the thing
20 about alternatives is it really is hand in hand with
21 the override's consideration. So I'm going to lump
22 them all together. I just wanted to make sure, you
23 know, in times past as you call them silos. We talk
24 about something and then we have to change silos on
25 you and I want to avoid that to the extent I can.

1 MS. BELENKY: Thank you.

2 HEARING OFFICER CELLI: Then let's see the
3 Basin and Range Watch had considered all topics ready
4 to proceed. The Colorado River Indian Tribes, and
5 Ms. Clark you're here to represent them?

6 MS. CLARK: Yes.

7 HEARING OFFICER CELLI: Your folks say that
8 cultural is not ready to proceed. And then as I
9 mentioned earlier I did not get a prehearing
10 conference statement from CARE, CURE or LiUNA. So
11 those are the topics that the parties claim are not
12 ready to proceed, but then of course all of the
13 parties say, "But if you're going to proceed then
14 these are areas that we consider to be in dispute."

15 The areas that are in dispute according to
16 the petitioner would be the override section or
17 override statement is really how it shakes out,
18 biological resources, cultural resources, worker
19 safety and fire protection, traffic and
20 transportation, geology and paleontology and visual.

21 Staff's topics that are in dispute are
22 alternatives, biology, cultural, worker safety, geo
23 and paleo, traffic compliance and visual.

24 MR. GALATI: Mr. Celli, our prehearing
25 conference statement removed visual with staff's

1 errata, so we don't believe that visual's in dispute.

2 HEARING OFFICER CELLI: Thank you, that may
3 save us some time. CBD finds the following to be in
4 dispute: project description, alternatives, biological
5 resources, soil and water and air quality. And I take
6 it also that since air quality hasn't been published
7 yet that that sort of is a placeholder for the moment.
8 Basin and Range Watch considers visual, bio and
9 cultural to be in need of adjudication. The Colorado
10 River Indian Tribes believe that cultural, visual,
11 alternatives and environmental justice are in need
12 adjudication and I thought that was interesting.

13 In our normal topic areas EJ is sort of split
14 first in socio-economics. That's where they look to
15 see where the EJ communities would normally be within
16 the project area, but then each section that may have
17 an impact if there were to be found an EJ community
18 then addresses the EJ community problem. In this case
19 I'm taking it that the EJ, because I think you said
20 that it was a cultural?

21 MS. CLARK: That's correct, so it can be
22 subsumed into cultural resources.

23 HEARING OFFICER CELLI: I think that, I
24 really do because I don't see anybody opening up the
25 window on socio-economics.

1 MS. CLARK: That's correct.

2 HEARING OFFICER CELLI: And I would really
3 like to keep it closed if we don't have to, so and
4 that takes care of all of the parties in terms of what
5 they believe are in dispute. So that is what we have
6 to talk about on Monday through Tuesday would be
7 alternatives, cultural, bio, geo-paleo, the EJ of
8 cultural that I get to take that one out, so basically
9 cultural again with an eye towards the environmental
10 justice problem, soil and water, project description,
11 air quality, visual resources, workers, worker safety,
12 fire protection, traffic and transportation,
13 compliance and the override.

14 And I just wanted to ask Ms. Belenky, with
15 regard to soil and water in the FSA, because typically
16 your concern is with things like the sand transport
17 and stuff like that. Sand transport was dealt with in
18 bio. It got mentioned in soils and water, but then it
19 was really dealt with in depth as a bio issue. The
20 whole sand transport, which would seem like it would
21 be a kind of a soils issue, but it was dealt with in
22 ~~soil~~bio.

23 MS. BELENKY: The sand was dealt with in bio,
24 but there are other issues. There's the cryptobiotic
25 soils issues, there are water use, the amount of water

1 use, which seems to be different than earlier
2 proposals and the surface hydrology as well.

3 HEARING OFFICER CELLI: So water use and
4 surface hydrology would definitely be soils and water.
5 The cryptobiotic soils I believe were raised in bio,
6 so...

7 MS. BELENKY: Okay, so we'd put sand and
8 cryptobiotic soils into bio?

9 HEARING OFFICER CELLI: Yeah.

10 MS. BELENKY: Okay, but water use and surface
11 hydrology are soils and water?

12 HEARING OFFICER CELLI: Yeah, so I'm going to
13 keep soils and water as a disputed topic then.

14 MR. GALATI: Mr. Celli, if I could add
15 another correction?

16 HEARING OFFICER CELLI: Yes.

17 MR. GALATI: Compliance, which was originally
18 in our prehearing conference is not disputed. I think
19 the only people disputing compliance was the
20 applicant, so I don't see that as a disputed item.

21 HEARING OFFICER CELLI: And just because
22 we're not, so we're not going crazy, the applicant --
23 this is an amendment to an already certified project.
24 And so as such there is a petition to amend and I'm
25 trying to be good about calling what would normally be

1 the applicant, the petitioner in this case, so in case
2 I fall back and forth and I'm talking about the
3 applicant/petitioner to my way of thinking that's the
4 same person. So the petitioner is the former
5 applicant who's now petitioning to amend their
6 certification, okay?

7 So that means that the parties have indicated
8 in their prehearing conference statements that the
9 following topics are not in issue: land use, although
10 the Committee has some questions about land use and
11 I'll point that out in a little bit, hazardous
12 materials, transmission line, safety and nuisance,
13 public health, waste management facility design, noise
14 and vibration, power plant efficiency, power plant
15 reliability, transmission systems engineering and now
16 compliance.

17 So that's now 11 topic areas that should be
18 submitted by declaration and we no longer need live
19 testimony, live witnesses on those 11 topics. Do I
20 have that right, Mr. Galati?

21 MR. GALATI: That is correct from the
22 petitioner's perspective.

23 HEARING OFFICER CELLI: And staff, are you
24 willing to allow those 11 topics that I just listed to
25 be submitted by declaration and therefore not by way

1 of live testimony?

2 MS. MARTIN-GALLARDO: Yes.

3 HEARING OFFICER CELLI: And Ms. Belenky?

4 MS. BELENKY: Yes, to the extent that what
5 we're saying, I just want to be really clear for the
6 record, is that we don't have an evidentiary issue
7 with these sections. And that obviously we do have
8 disputes as to various matters within these sections,
9 particularly land use and what is the land use
10 determinations of this area. But those are not
11 necessarily factually disputes, they may be legal
12 disputes.

13 HEARING OFFICER CELLI: You have it exactly
14 right and, of course, we'll talk about briefing later
15 and a lot of this is going to show up in your briefs.
16 But what the question, what I'm asking now Ms. Clark
17 just so you know, is whether you feel that any of the
18 11 topics I just listed really call for or need live
19 witnesses rather than the written testimony we've
20 already received. So do you agree that we can submit
21 those 11 topic areas by way of written testimony
22 rather than live testimony?

23 MS. CLARK: (Inaudible)

24 HEARING OFFICER CELLI: Okay, thank you. And
25 now Mr. -- he's with Range Watch, thanks.

1 Mr. Emmerich, are you on the phone,
2 Mr. Emmerich? Did he call, did you speak with him
3 earlier?

4 MR. GALATI: Yeah, he might be muted.

5 HEARING OFFICER CELLI: He might be.

6 MR. EMMERICH: I'm sorry, could you ask that
7 question again?

8 HEARING OFFICER CELLI: Thank you,
9 Mr. Emmerich. Just I'm going to give you a list of
10 topics that appear to be areas where the testimony
11 will be submitted by declaration and that live
12 testimony of witnesses will be unnecessary. And I
13 just want to clear that you agree that we can, we do
14 not have to take up evidentiary hearing time on the
15 following 11 topics: land use, hazardous materials,
16 transmission line safety and nuisance, public health,
17 waste management, facility design, noise and
18 vibration, power plant efficiency, power plant
19 reliability, transmission systems, engineering and
20 compliance.

21 MS. MARTIN-GALLARDO: Would that also include
22 socio-economics, would we want to add that to the
23 list?

24 HEARING OFFICER CELLI: Yeah, I think I'd
25 better add socio-economics, because the EJ question is

1 really a cultural question. So there's actually 12
2 topics now and I'll go around and make sure that the
3 rest of the parties don't mind. But I'm asking you
4 Mr. Emmerich, whether you agree that the above topic
5 areas that I just read will be submitted by
6 declaration. And that live testimony of witnesses is
7 unnecessary.

8 MR. EMMERICH: Well, I would say live
9 testimony and witnesses is unnecessary, but I'm going
10 to confess that these hearing procedures are somewhat
11 confusing to us. We do have disputes with some of
12 those issues, however we didn't put that in our
13 prehearing conference statement. I mean, I guess I
14 would agree to that yeah.

15 HEARING OFFICER CELLI: Thank you. Just to
16 be clear you're always going to have the ability to
17 address any legal issue in your briefs on any subject.
18 But what we're trying to do right now is see what
19 areas we need to spend evidentiary hearing time on.
20 And that's really where the question goes.

21 MS. CLARK: If I could make a brief comment
22 on that point?

23 HEARING OFFICER CELLI: Ms. Clark?

24 MS. CLARK: I think it would be very helpful
25 for the public siting guide to make that more clear

1 than the way it's written. It currently indicates
2 that if you wish to dispute an issue on any point you
3 need to submit testimony about it and it needs to be
4 heard in evidentiary hearings. And so I think some of
5 the confusion that has come from us and perhaps other
6 intervenors would be remedied by more clarification.

7 HEARING OFFICER CELLI: Appreciate that,
8 we'll have a word with the public advisor on that
9 who's nodding his head. And Dr. Roberts is here and
10 he acknowledges that.

11 So and then Ms. Clark, we added socio-
12 economics. Did you agree that we don't need live
13 testimony on that?

14 MS. CLARK: Live testimony is needed.

15 HEARING OFFICER CELLI: And Ms. Belenky, on
16 socio-economics?

17 MS. BELENKY: No, not needed, thank you.

18 HEARING OFFICER CELLI: Thank you, so then as
19 to the topics any party claims that are incomplete or
20 are in dispute we expect the parties to work together
21 to determine whether or not any of these topics can be
22 moved into the undisputed column between now and the
23 evidentiary hearing, which is Monday.

24 The parties are welcome to conduct a workshop
25 immediately following this prehearing conference if

1 you're interested in speaking together. We would
2 leave the WebEx on, so that people could participate
3 if the parties want to talk. This is a noticed
4 hearing or conference.

5 Can the petitioner inform the Committee
6 whether they have settled any -- well, I guess I've
7 talked to you and you basically stated that compliance
8 was out of that column.

9 So let's talk next about the exhibit lists.
10 This is a new system where you --

11 MS. BELENKY: Mr. Celli, I'm sorry to
12 interrupt, but I thought we were going to schedule
13 these?

14 HEARING OFFICER CELLI: Yes.

15 MS. BELENKY: Or I just want to make sure
16 we're on the same number.

17 HEARING OFFICER CELLI: We are, I'm coming
18 around to the scheduling after I get to the exhibit
19 list and witnesses.

20 MS. BELENKY: Okay, because we did have a
21 question about how the day will go and we have had
22 several members of the public contact us about, you
23 know, about what time the public comment periods will
24 be. And is it going to be a set time, so they can
25 come and, you know, things like that. So I didn't

1 want to leave scheduling too fast.

2 HEARING OFFICER CELLI: We will, I'll come
3 around to it, but just because you raised it and
4 people are listening public comment will be at 6:00
5 p.m. on Monday and Tuesday.

6 MS. BELENKY: Only, and not during the day?
7 Because some people are going to come during the day
8 and I think in the last set of hearings we did, we did
9 like just before lunch each day we had like 20 minutes
10 or something?

11 HEARING OFFICER CELLI: We just did it, we
12 can probably do that too.

13 MS. BELENKY: Okay, well I guess we'll talk
14 about it later this morning.

15 HEARING OFFICER CELLI: But we just --

16 MS. BELENKY: But it is important, because
17 there's a lot of people who are very interested who
18 live in the area. And if they come and sit through
19 the whole day and then have to wait until 6:00
20 o'clock, I mean that's a very long time for people to
21 wait to say anything. And I do believe we did midday
22 before, so we would just ask the Committee to consider
23 that.

24 HEARING OFFICER CELLI: That's true, it's a
25 work day Monday and Tuesday. So that's why 6:00 p.m.

1 seemed like a good idea, but if people are there who
2 can only make a comment at noon then we'll have the
3 public advisor who will be there.

4 MR. GALATI: Mr. Celli, if I could weigh in
5 here, because I actually think something we've done in
6 other projects that have been very, very helpful is
7 you set aside a time like 6:00 o'clock for public
8 comment. But at the end of every topic area if people
9 are there and want to comment on that topic area you
10 allow them, the public, to comment on it. And if
11 they've heard what they need to do they may not have
12 to wait until 6:00.

13 That way the areas that are disputed you hear
14 the comment right after you heard the testimony if
15 people are there or you can listen to it all at 6:00
16 o'clock. That way there's lots of opportunities for
17 public comment as opposed to specified times, because
18 my recollection is we never can break at the right
19 time in the middle of a hearing to give public
20 comment. But we can at the end of the night when
21 we've scheduled it. That would give more opportunity
22 for public involvement in my opinion.

23 MR. EMMERICH: Hello, this is Kevin Emmerich.
24 Can I make a comment on that?

25 HEARING OFFICER CELLI: Sure.

1 MR. EMMERICH: The public comments are I mean
2 I'm going to echo what Lisa said, the public does not
3 follow these hearings closely. It's confusing enough
4 to me as an intervenor, let alone the public. So I
5 believe that a fixed time announced ahead of the
6 hearing is really a good idea, whether it's at 6:00
7 p.m. or noon or whatever. But that way the people
8 will know when to call in and or show up and make that
9 comment. But if they're sitting there waiting you're
10 going to lose people. They're just going to zone out,
11 they're going to drift off and they're not going to be
12 able to follow this like the rest of us are. So
13 that's my comment, thank you.

14 HEARING OFFICER CELLI: Thank you,
15 Mr. Emmerich. And I agree and I think the approach of
16 this Committee is going to be a sort of a hybrid where
17 I'm pretty sure we're going to have a 6:00 p.m. public
18 comment, because that's about when we break for
19 dinner. And we will be flexible and try to
20 accommodate people who are there during the day and
21 maybe pre-lunch if there's a lunch break we can ask
22 for comments. So we'll do what we can to accommodate
23 everybody and again, we're going to have the public
24 advisor there and it's always good to have the public
25 advisor to communicate to the Committee who's here and

1 who needs to make a comment.

2 So back to the discussion of the publics'
3 witness list or the parties' witness list we will be
4 in the auditorium at Building B at US Riverside's Palm
5 Desert Campus in Palm Desert. That's on October 28th
6 and 29th, Monday and Tuesday. And we'd still have the
7 room for the 30th if we can't finish our business by
8 Tuesday.

9 The evidentiary hearings start each day at
10 10:00 a.m. Evidentiary hearings will go as late into
11 the evening as the Committee deems necessary. The
12 Committee will hear public comment starting at about
13 6:00 p.m. each evening except Wednesday. If we do go
14 into Wednesday it's possible that we may finish, may
15 not finish on Tuesday, so if we do finish on Tuesday
16 there will be no public comment on Wednesday. Let's
17 be clear about that. If we need to extend hearings
18 into Wednesday we will take public comment at noon, so
19 that I can get the commissioners to the airport on
20 time for their flights.

21 After receiving the undisputed evidence and
22 then accounting for breaks, interruptions and public
23 comment we really have generally about six hours of
24 productive hearing time per day. Twelve hours is
25 almost a third, a little less than a third of the time

1 that the parties estimated we needed to examine
2 witnesses. The total estimated time for examination
3 of the parties' witnesses is 26 hours or 26.2
4 according to our calculations: 14.1 hours on Monday
5 and 12.1 hours on Tuesday.

6 Obviously we don't have 26.2 hours for
7 hearings and it was staff's recommendations that we
8 proceed as follows: that on Monday we start with
9 alternatives, we then go to visual, we would then go
10 to geo-paleo followed by cultural. Now that part of
11 the prehearing conference that staff submitted did not
12 account for project description or soil and water, so
13 we need to put those in. And it would go in on Monday
14 I believe. And then on Tuesday staff recommended
15 cultural and worker safety and fire protection and we
16 would probably do it in that order.

17 MS. CLARK: Can you repeat that, what you
18 just said then?

19 HEARING OFFICER CELLI: Right, so we were
20 going to do -- I'm sorry, I've got that wrong. I said
21 cultural, I meant bio on Tuesday. That was at the
22 request of CBD~~B~~, because CBD's witnesses could only
23 come on Tuesday. So we devoted Tuesday to biological
24 resources. Also petitioner's witnesses couldn't come
25 on worker safety and fire protection except for on

1 Tuesday, so we have to do those two on Tuesday.

2 So as you know, what I would like to do is
3 try to get everything done on Monday, but the
4 remaining bio which is going to take a lot of time,
5 and worker safety. But we may have some spillage
6 there, but that is right now sort of my working
7 generalized view of how the day should go.

8 So let me hear from the parties on that.
9 Let's start with the petitioner.

10 MR. GALATI: I think that's way too much time
11 and we don't need that much time. I think that there
12 might have been some double counting of the hours
13 accidentally. The --

14 HEARING OFFICER CELLI: Can I interrupt you
15 for one second, because I just want to point something
16 else out. We're going to talk about the way that
17 we're going to proceed by way of formal or informal.
18 I ask the parties to give me direct and cross-
19 examination times, which is the old style, the old
20 model. And it doesn't really translate very well to
21 the informal and we found at least in the Hidden Hills
22 case, that the informal process really streamlined
23 things. And when I have a panel of everybody's
24 witness sitting there at once it seems to go much
25 faster.

1 So I'm pretty confident that we're going to
2 be able to do this in the two days, but I just want to
3 talk about what days we do what topics on. So in
4 terms of your witnesses that's what I want to address
5 Mr. Galati.

6 MR. GALATI: I think all of the topics can be
7 completed on Monday pretty handily with moving and
8 doing worker safety and biology on Tuesday. I don't
9 believe we'll need Wednesday. One of the things I'd
10 like to note is that it really depends on the
11 Committee's determination of which witnesses will be
12 allowed to testify. I'm assuming that the Committee
13 would invoke the rule that the witnesses we're talking
14 about are the witnesses who have filed previously
15 written testimony.

16 So anyone who hasn't filed testimony
17 shouldn't be able to testify unless they were
18 specifically requested to be there for cross-
19 examination for something that they did. So in that
20 case that person's not giving direct testimony.
21 They're sitting on the panel in case somebody has a
22 question. And then --

23 HEARING OFFICER CELLI: For about a witness?

24 MR. GALATI: -- so in that case most of the
25 witnesses that the intervenors have cited are biology

1 and cultural. And I don't believe that there are
2 witnesses for visual or traffic or alternatives that
3 have filed previously written testimony. So the
4 intervenors are intending to cross-examine, so it
5 probably makes sense for scheduling whether or not
6 you're going to allow cross-examination. And probably
7 the only time you'll hear Ms. Belenky and I agree on
8 something is we both would like cross-examination. So
9 we would like you to not limit our ability to do so,
10 but I think that ruling needs to be done first before
11 we can schedule the hearing. Because I think it
12 really affects how much time is needed.

13 HEARING OFFICER CELLI: Let's hear from staff
14 on that, please.

15 MS. MARTIN-GALLARDO: I think that there are,
16 as noted in our prehearing conference on visual
17 resources there was one issue raised, I believe by
18 CRIT, as far as the project complying with federal
19 LORS. In response to that comment staff provided a
20 response to that comment, I do believe in its rebuttal
21 testimony. And we fill that this issue is mainly a
22 legal issue, that we could address in briefing
23 correct?

24 HEARING OFFICER CELLI: On visual?

25 MS. MARTIN-GALLARDO: Correct, on that LORS

1 compliance issue raised by CRIT. And we did make that
2 comment in our prehearing conference statement and
3 left it up to the Committee for their decision whether
4 or not it could be submitted as is.

5 HEARING OFFICER CELLI: Yeah, let's hear
6 from, do you go by CRIT? Can we call them CRIT?

7 MS. CLARK: Fine, yes.

8 HEARING OFFICER CELLI: Okay, CRIT being the
9 Colorado River Indian Tribes, go ahead.

10 MS. CLARK: We are in agreement that visual
11 resources doesn't need live adjudication. We have a
12 dispute, a legal dispute, regarding the adequacy of
13 the FSA but it's not anything that we intend to
14 provide testimony regarding. So we're happy to remove
15 that from the list.

16 HEARING OFFICER CELLI: Thank you.

17 MS. CLARK: However, and I know that other
18 parties do have concerns about visual resources and so
19 I don't want to preclude any from Basis Range Watch or
20 any other intervenors.

21 HEARING OFFICER CELLI: Okay.

22 MS. MARTIN-GALLARDO: I should go back and
23 respond to your actual question, I'm sorry. I
24 misunderstood what your question --

25 HEARING OFFICER CELLI: For people on the

1 phone, this is Ms. Martin-Gallardo speaking, go ahead.

2 MS. MARTIN-GALLARDO: Thank you, as far as
3 the ability to have those individuals who -- for those
4 subject matter areas that are in controversy, that the
5 parties feel cross-examination would get to issues
6 that were not covered through the informal process,
7 staff does support that opportunity for providing
8 cross-examining.

9 HEARING OFFICER CELLI: Let me just mute this
10 one guy, there we go. Thank you, so I have two in
11 favor of some limited cross-examination yes. Let's
12 hear from Ms. Belenky on this.

13 MS. BELENKY: I'm sorry, if we're only
14 talking about visual we're not involved in that. But
15 I did notice that other people did ask to cross-
16 examine witnesses for visual. There are some other
17 topic areas that seem to be missing from your list,
18 but we could finish this.

19 HEARING OFFICER CELLI: For cross-
20 examination?

21 MS. BELENKY: For the hearings, you don't
22 have soil and water, you don't have project
23 description?

24 HEARING OFFICER CELLI: Right, my intention
25 was I did say that we didn't account for project

1 description and soil and water in staff's list. So
2 the way that, so far the way I read it is Monday would
3 be alternatives, visual to the extent it needs to be
4 heard, geo-paleo, cultural, soil and water and project
5 description. Is there any other topic area that
6 I'm -- this is for Monday.

7 MS. BELENKY: I think that transportation
8 and --

9 HEARING OFFICER CELLI: Traffic and
10 transportation.

11 MS. BELENKY: -- override are both not in
12 here.

13 HEARING OFFICER CELLI: That's right. You
14 know, he override --

15 MS. BELENKY: Well, you put it on, I didn't.

16 HEARING OFFICER CELLI: That's right, it's
17 really --

18 MS. BELENKY: And they put it on I think.

19 HEARING OFFICER CELLI: MS. BELENKY: Right now
20 socio's off the books, it's off the table. So that's
21 right, traffic and transportation and the override.
22 The issues as they relate to override are tied to the
23 individual topic where the impacts are significant.
24 And if they're to be deemed immitigable or
25 unmitigated, then that is where we would expect the

1 parties to bring forth any evidence on the need that
2 either supports or doesn't support an override. So
3 I'm --

4 MS. BELENKY: I don't want to derail where
5 you're going, but that is not what we did in the last
6 set of hearings at which we were told that no legal
7 argument was allowed. And I believe that arguing
8 about override would be a legal argument.

9 HEARING OFFICER CELLI: That's true, I'm
10 talking about just evidence. So for instance, you
11 know you have to put on say benefits of the project or
12 something like that. If there's some evidence on that
13 and let's just use visual. If there were some
14 benefits to the visual then that would the time to put
15 on evidence of benefits vis-à-vis the visual topic
16 when we're talking about visual, okay? I don't mean
17 to confuse anybody with this, but that's I don't see
18 override as a separate thing is what I'm saying.

19 Okay, so --

20 MR. GALATI: Mr. Celli, I wanted to make
21 another point here, because I think that what I was
22 trying to convey I didn't convey effectively. In
23 order to schedule the hearings I think the Committee
24 would want to know who's going to do direct
25 examination and how many witnesses are on the panel.

1 MHEARING OFFICER CELLI: Yeah, hold the
2 thought, because I'm going to get to that.
3 Mr. Emmerich, are you still on the phone?

4 MR. EMMERICH: Yeah.

5 HEARING OFFICER CELLI: Okay, so tentatively
6 in general we're speaking about on Monday doing
7 alternatives, visual, geo-paleo, cultural resources,
8 soil and water, project description, traffic and
9 transportation, did I forget anything, yeah and
10 traffic and transportation. And then on Tuesday
11 worker safety and biological resources and probably
12 anything that spills over from Monday that we can't
13 finish. So that's in general how we're planning to
14 proceed; do you follow that?

15 MR. EMMERICH: Yeah, I follow that. What's
16 the question?

17 HEARING OFFICER CELLI: Well, I just wanted
18 if you had any point to make on that like a problem.
19 I realize actually that you're not calling any
20 witnesses, so it doesn't matter. I'm mostly trying to
21 hear from the parties whether there was a glitch or a
22 problem.

23 MR. EMMERICH: Well, yeah I'll just throw in
24 I mean I was planning to do a visual witness and I
25 missed the deadline due to some medical issues. But

1 what I wanted to know is can you clarify what you were
2 saying about the cross-examining of the visual
3 witness?

4 HEARING OFFICER CELLI: Yes, thank you.

5 MR. EMMERICH: I wasn't quite following what
6 that was about.

7 HEARING OFFICER CELLI: Great, that's
8 perfect, because that segues into my next little blurb
9 here, the discussion of the informal procedures. To
10 save time we will not take time to describe the
11 exhibits that are moved into evidence or to describe
12 topics covered by declaration. Regarding direct
13 examination we will deem all parties opening and
14 rebuttal testimony as their direct examination that
15 you've already submitted. There's no need to discuss
16 experts resumes if we have them in writing and there's
17 no objection to that witness testifying as an expert.

18 If you have an objection, please state the
19 objection first and avoid speaking objections. The
20 lawyers know what I'm talking about, but if you're not
21 a lawyer we don't want you to start arguing, we want
22 you to basically say "objection relevance, objection
23 hearsay, objection" whatever the general basis of your
24 objection is. And then the Committee can inquire
25 further if we want to hear from you on the point.

1 So rather than taking time with the usual
2 formal questioning and answering, the Committee may
3 call all witnesses to testify as a panel. And we
4 notice in the notice of prehearing conference and
5 evidentiary hearing where it says, "Notice of intent
6 to proceed by way of informal hearing."

7 The testimony may include discussions among
8 the panel without the lawyers asking questions.
9 Instead the Committee would ask questions of the panel
10 and if time permits the Committee may allow
11 questioning of the panel by the parties. But if the
12 parties appear to be unduly confrontational, combative
13 or otherwise unproductive the Committee will take over
14 the question. The discussion will continue until the
15 Committee determines that it has heard enough evidence
16 and if this process proves difficult or unproductive
17 the Committee may revert to standard formal
18 examination at their discretion.

19 If we allow cross-examination there will be
20 no time for thinking on the fly. If you can't come up
21 with good cross-examination in the quiet of your
22 workspace you will not do any better in the heat of
23 the hearing. Have your cross-examination ready and
24 written out and be prepared to tell the Committee how
25 many questions you have before you begin your cross-

1 examination. There will be no time for floundering or
2 fishing expeditions. And if the Committee sees that
3 we will curtail any cross-examination.

4 Again, the legal definition of a moment is
5 about ten seconds, so please be ready to state the
6 page number and the line of any testimony you seek to
7 cross-examine any witness about. And remember to
8 allow your witnesses to finish their answer.

9 Now, I just read that from my outline, but I
10 would like to just speak extemporaneously and sort of
11 describe the vision we have of an informal hearing as
12 we did it in Hidden Hills. Which is all of the
13 parties' witnesses are called up at the same time to
14 sit on a panel together. Typically depending on the
15 issues we'll either have petitioner, because they have
16 the burden, we'll have the petitioner's witnesses say
17 basically this is our, if you will an opening
18 statement. "This is our position, this is where we're
19 going, this is what our testimony is as a summary."

20 Then we would usually go down the line and
21 say, "Okay, staff's witnesses, do you agree with
22 that? Let's hear from that panel," and they would
23 have their presentation and they would describe
24 whatever their position is about whatever the issue
25 is. Then I would turn to the next witness and say,

1 "CRIT's witnesses, what's your take on this?" CBD's
2 witnesses and we do it that way.

3 And then, and this is very helpful to the
4 Committee, after we've heard from all of the parties,
5 discussion ensues. And the parties say, "Well, we
6 feel this way or that way or we don't agree with
7 that," or whatever. And that discussion is thoroughly
8 informed and it's very helpful. I don't get a
9 transcript with 20 pages of lawyers arguing over the
10 form ~~and of~~ the question. I get nothing, but expert
11 testimony in the transcript. It's a real efficient
12 way to go. It isn't perfect, it may have some
13 problems, it's a lot of the times we need to guide it.

14 But usually the way that we did this in
15 Hidden Hills is after the parties peter out if you
16 will, we go to the parties and say, "Okay, are you
17 satisfied? Is there any further question you need to
18 ask?" Then the parties get to, basically this is your
19 cross-examination, but this is all about informing the
20 Committee. So we're not interested in that your
21 Matlock TV cross-examination.

22 We want it, basically we're interested in
23 follow-up questions, so that we can be informed if
24 there's more. Or there's something that needs to be
25 filled out let's get that information. And if it

1 starts getting like that, the Committee's likely to
2 say, "You know, Mr. Galati where are you going with
3 this, what is it you're asking?" And you'll say, "You
4 know, what I'm trying to get to is this." And then we
5 would turn to the panel and say, "Well, what about
6 that?" And let the panel flesh it out.

7 So that is the way that it has worked and
8 it's been very -- it worked at least in Hidden Hills,
9 I thought, pretty well. So that is my description,
10 apart from what I've written, of the way that that
11 would work; I'm not depriving the parties of cross-
12 examination. And as you know due process requires
13 that if I let one party ask questions I'm going to let
14 all the parties ask the questions. So that's the way
15 we're going to proceed probably, in most of these
16 instances.

17 In some of these, like for instance fire and
18 water, you've got only two parties are really fighting
19 it out. It seems to me there's only two parties with
20 a dog in that fight and so we'll let them -- that's
21 probably a little more susceptible to direct and cross
22 if it's just one party asking questions. So we're
23 flexible on this and we'll see how it goes, but that's
24 really the way we envision the proceeding to go. And
25 if there's a problem I'm sure I'll hear from the

1 parties and your counsel and you'll tell me that
2 something needs more and you'll inform us.

3 MR. GALATI: Yeah, on behalf of the
4 petitioner we think that sounds perfect. We have no
5 problem with that. We can make our offer of proof of
6 why we need to do cross-examination. If the Committee
7 doesn't believe that that cross-examination, that
8 we've met any -- we don't get to ask any questions,
9 that's fine. If we go overboard or badgering a
10 witness that's fine, we're not seeking to do that. We
11 just know that we may know a point that you may not
12 ask.

13 MR. EMMERICH: That's true.

14 MR. GALATI: And so we want that capability.
15 And the reason I bring it up now is there are many
16 parties who want to cross-examine witnesses in subject
17 areas and that's their only participation other than
18 legal briefs. And so it' depends, that's why I think
19 if the Committee's doing an informal process this 18,
20 26 hours that you have listed here is far too much,
21 because you may not limit, you may not allow a lot of
22 cross-examination in those instances.

23 HEARING OFFICER CELLI: I can tell you as a
24 veteran of working with this Committee in other
25 matters I can say that this Committee is interested in

1 more information. They really want to understand
2 what's going on, so if somebody has a question area
3 we're not likely to cut it off unless it's completely
4 irrelevant or something like that. So or duplicative
5 or, you know, needlessly cumulative, so but that's
6 really the way that the Committee intends to proceed.
7 Let's hear from staff, anything on that, just so we
8 can?

9 MS. MARTIN-GALLARDO: I think that satisfies
10 our concerns about making sure that you hear
11 everything that you need to hear.

12 HEARING OFFICER CELLI: Okay, and CRIT do you
13 understand, because I know Ms. Belenky and everyone
14 else has kind of done something like this before, but
15 do you have any questions about the informal process?

16 MS. CLARK: No, I think that works well for
17 us.

18 HEARING OFFICER CELLI: Okay, Ms. Belenky,
19 you're a veteran of the informal process.

20 MS. BELENKY: I am, and I have no objection
21 to the process itself. I do want to raise an issue
22 that we had actually in several hearings that I've
23 been to. What happens is the applicant has a long
24 time on the panel, their witnesses, and then the staff
25 has a long time. And then maybe it's an hour or maybe

1 it's noon and we all wish we were having lunch. And
2 you say, "Let's just try and finish up everybody else
3 now really quick." And that's not okay with me and I
4 don't want to see that happen again, because what
5 happens is our witnesses feel upset and intimidated
6 that they can't finish saying what they're saying.
7 Everybody's cranky and wishing they had lunch or a
8 break and I don't think that's okay and I just don't
9 want to see that.

10 HEARING OFFICER CELLI: Well, what would you
11 do, how would you have us handle that situation?

12 MS. BELENKY: Then you have a break and you
13 come back and you finish. You can't just run people
14 into the edges. Or run people so late at night that
15 people are leaving and we saw that during several of
16 the panels. People, public members came who wanted to
17 speak or wanted to hear the discussion. And people
18 started floating away, because it just takes so long
19 to get through the applicant and the staff dominate.

20 So it's not really a panel discussion, it's
21 that the applicant and staff dominate and then you let
22 the intervenors have a minute at the end. And that to
23 me isn't okay. If we're going to do real panels
24 that's fine, but I think we need to be cognizant of
25 this pushing people up against meal times and breaks

1 and as I said people start to float away. And it's
2 really unfair.

3 HEARING OFFICER CELLI: That's a point well
4 taken and I think that will happen then on Monday. So
5 what I'm thinking of doing is specifically with regard
6 with bio I would like to start with bio on Tuesday, so
7 that we don't run into that problem. If we start at
8 10:00 o'clock on bio and hopefully we can get through
9 all of it, but if we don't then if it's 12:00, 12:30,
10 1:00 o'clock and everybody's hungry and spacey then
11 let's just we'll break. Bring it to our attention,
12 you know, and we'll take a break and then come back
13 and resume the panel after everybody's had something
14 to eat.

15 MR. GALATI: The applicant does not object to
16 CBD or staff going first. However you want to run the
17 hearing to hear from everybody we don't have a dog in
18 that fight. So what we don't want is at the end feel
19 like a party didn't have an opportunity to present
20 their evidence. So if you want it switched around
21 every subject area or you want to break bio into
22 pieces we have the avian issue, we have desert
23 tortoise issue or whatever. And switch it around
24 we're fine with that, we'll accommodate that.

25 HEARING OFFICER CELLI: I appreciate that.

1 Generally just so you know what I think determines the
2 order is who has the burden. But if there's a dispute
3 or if there's not a dispute say with petitioner and
4 staff, and petitioner has the burden and I will often
5 go with staff, because they wrote the FSA. And that's
6 basically the basis of a lot of the decisions, so
7 that's great.

8 Anything from Mr. Emmerich, did you want to
9 speak about this process, any questions?

10 MR. EMMERICH: Just that we'd like to be able
11 to ask questions.

12 HEARING OFFICER CELLI: And you will be able
13 to. Now, if it's possible Mr. Emmerich, because this
14 has happened in the past where if the questions seem a
15 little too pinpoint and we think we can get more
16 information out of the panel by asking a more general
17 question, that's the sort of thing that the Committee
18 will do. But other than that absolutely you're going,
19 that's why you're an intervenor. You will have the
20 right to ask questions.

21 MR. EMMERICH: Thank you.

22 HEARING OFFICER CELLI: Thank you.

23 MR. GALATI: Mr. Celli, I have another
24 question about the process and I don't know if now is
25 a good time?

1 HEARING OFFICER CELLI: Now is a great time,
2 because I'm about to -- the next thing I'm going to
3 talk about is briefing schedule, so let's talk about
4 the process.

5 MR. GALATI: I recognize that the lawyers
6 representing the CRIT, this is the first time I've
7 seen them in a case. And their testimony reads very
8 much like a brief and it might be because of the
9 direction on the siting guide. But I would like to
10 understand if Ms. Clark or Ms. King or Ms. Loudbear is
11 actually going to be sitting on a panel as a expert on
12 the subject matter?

13 For me, I object to that as an objective or
14 I'd like to be sworn in on every panel since this last
15 projected the permitted about 10,000 megawatts. So I
16 think I want to be on every panel, so those are your
17 two choices from my perspective. I know either is a
18 good one.

19 HEARING OFFICER CELLI: Thank you for raising
20 that point. Ms. Clark?

21 MS. CLARK: Yes?

22 HEARING OFFICER CELLI: There's been a
23 problem with your exhibits, because I believe they
24 were all or almost all of them, sought to be
25 confidential.

1 MS. CLARK: I don't believe it's all or most,
2 but certain ones were yes.

3 HEARING OFFICER CELLI: Okay, and then I got
4 an email on was it yesterday or the day before that
5 basically there was a termination by Chief Counsel's
6 Office that they were ineligible.

7 MS. CLARK: Yes.

8 HEARING OFFICER CELLI: I just want you to
9 know that this Committee in particular has a real
10 sensitivity to the Native American issues and the
11 cultural. And so I understand, and this Committee
12 understands, that there may be things in declarations
13 that you've submitted that at first blush don't look
14 like something that would be a sensitive or
15 problematical, okay? But and maybe worthy of
16 confidentiality protections even if there was a prima
17 facie determination by staff that there wasn't.

18 So but let's just start from the position
19 right now that right as of now can you tell us what's
20 happening with those?

21 MS. CLARK: Yes, can I first address
22 Mr. Galati's question and then move to that?

23 HEARING OFFICER CELLI: Please, yes. Oh, and
24 by the way, lawyers are not witnesses and we would not
25 empanel lawyers.

1 MS. CLARK: So the specific issues that we
2 would like to bring to the Commission's attention are
3 not legal issues at this time. We understand that
4 that will be reserved for legal briefing. There are
5 factual issues related to our experience at the
6 Genesis Project and the application of certain
7 conditions of certification and mitigation measures.
8 That the best witness are the people who dealt with
9 those and that's the Attorney General's Office and our
10 office. There's also issues related to consultation
11 and the ethnographic study, which again were primarily
12 handled by the Attorney General's Office and our
13 office.

14 And so our intent in the evidentiary process
15 is to bring those factual issues to the Commission's
16 attention. CRIT does not have an archeologist on
17 staff that can present these issues and has not been
18 able to retain one in the short period of time that
19 this process has allowed us. And so it's either that
20 the Commission can hear those factual concerns or if
21 you agree with Mr. Galati's objection then you won't.

22 And I understand the concern about having
23 lawyers testify as experts, but I think with respect
24 to these particular factual issues that the Attorney
25 General's Office and our office are in the best

1 positions to do that.

2 HEARING OFFICER CELLI: And when you say
3 Attorney General's Office you're talking about who's
4 Attorney General?

5 MS. CLARK: The Colorado River Indian Tribes
6 Attorney General's Office.

7 HEARING OFFICER CELLI: Let Mr. Galati go
8 ahead.

9 MR. GALATI: Let me clarify, I don't think
10 we're talking past each other. I don't mind if the
11 Committee thinks it's relevant to hear about what
12 happened at Genesis in the legal proceedings. In the
13 legal proceedings they can do that. They could've
14 brought the witnesses and I think they did brought the
15 witnesses who signed the declarations, who actually
16 witnessed what happened on the ground. Those are
17 witnesses that I can cross-examine or those are
18 witnesses that are providing factual evidence.

19 But the factual evidence of, "Yes, we filed a
20 motion, this was the disposition of the motion, this
21 was the temporary restraining order." I don't mind if
22 the witnesses testify to that, they're the ones that
23 did it, I don't have a problem with that. But the
24 opening testimony from the lawyers is very much like a
25 legal brief of why you did not meet CEQA, because you

1 didn't do this analysis this way. They are not
2 experts from that perspective to determine the factual
3 basis. They can certainly take the factual basis that
4 staff and applicant have testified to and make that
5 argument in their brief.

6 That's my point is, because the adequacy of
7 CEQA, the adequacy of consultation, you certainly can
8 put up a person who said, "They contacted me nine
9 times or they didn't contact me at all," that's fact.
10 But that's not what their testimony really does and
11 that's what I want to make sure that we don't get in
12 to. "You violated land use policy, because you didn't
13 do X." They don't have a land use expert to do that
14 and so it's not in subject. So that's what I'm
15 objecting to.

16 HEARING OFFICER CELLI: Okay, and let me ask
17 you this Ms. Clark, because I haven't read those
18 declarations and I don't know what's in them yet,
19 okay? But I would say that I agree. You understand
20 that we do not allow lawyers to come in as legal
21 experts to talk something that is the law.

22 MS. CLARK: I understand that now, yeah.

23 HEARING OFFICER CELLI: That's all brief.

24 MS. CLARK: Yes.

25 MR. GALATI: I understand that if

1 consultation, if the adequacy of the consultation is
2 an issue, and the person, the office, the DOJ of the
3 Colorado River Indian Tribes is the appropriate office
4 who should have received contacts from petitioner or
5 whatever who can come in and testify that, "We never
6 got any," I mean that's a factual call, okay? That is
7 the kind of thing that I think probably should or
8 could have been done unless it's in dispute, on paper.
9 I don't object to the testimony of Doug Bonamici, he
10 is the individual that was there and he wrote that.
11 I'm not objecting to that, that entire thing can come
12 in, you can ask him questions on the panel.

13 There was just the testimony of Ms. King,
14 Ms. Clark and Ms. Loudbear that read to me very much
15 brief-like. And there was rebuttal testimony very
16 much brief-like and those I'm objecting to them being
17 called as experts on each individual panel to be able
18 to talk about that.

19 HEARING OFFICER CELLI: Right, and that
20 objection would be sustained, Ms. Clark.

21 MS. CLARK: That's fine, we're not disputing
22 that. I do agree, so.

23 HEARING OFFICER CELLI: Okay, so --

24 MS. CLARK: But can I address the
25 confidentiality issue?

1 HEARING OFFICER CELLI: Yes, please.

2 MS. CLARK: So as you know, we filed an
3 application for confidentiality with respect to the
4 testimony of Wilene Fisher-Holt who is one of the
5 individuals that we intend to call as a factual
6 witness. She's the CRIT museum director and has much
7 experience with cultural resource issues. In addition
8 to her testimony she collected statements from four
9 tribal elders related to their concerns about the
10 project. And we received the determination from CEC
11 staff that these statements and the testimony of
12 Wilene are not properly considered confidential under
13 the Public Records Act and other various federal law.

14 We disagree with that determination. We
15 understand that the main focus of those laws is on
16 specific archeological sites, however the ambit of
17 those laws is to focus on protecting sensitive
18 cultural resource information. And that includes
19 statements related to keeping information private that
20 relates to those concerns.

21 And so we would also mention that the
22 information contained in these statements is
23 information that could have come out had CRIT been
24 properly included in the ethnographic study and had
25 CRIT been properly consulted. But because neither of

1 those things happened this is the form that we're now
2 in. Had the process happened by those means they
3 would've been kept confidential. And so I understand
4 the concern that this process is typically a public
5 forum and the goals of having informed public comment.
6 It's what I do and I appreciate that.

7 However, I hope that we can reach a middle
8 ground here and so what we're willing to offer is
9 that we never intended for these statements to be kept
10 from the parties of this proceeding. The real concern
11 for the tribal elders in particular is putting this
12 information up on the web. And so we don't want the
13 statements to be available to the public at large.

14 HEARING OFFICER CELLI: Let me ask you about
15 that okay, because I have a couple -- confidentiality
16 presents a real problem in this forum. Because we
17 have cross and confront, we are a very public agency,
18 and our laws require that our decision be based upon
19 substantial evidence. And if the substantial evidence
20 is resolved by one of these declarations or facts
21 contained therein and nowhere else, that's going to be
22 in the decision. And that supporting evidence has to
23 be in the record, it is public. And people have asked
24 in the past for in-camera hearings and that sort of
25 thing, but again that poses a problem, because it puts

1 a damper on our ability to discuss these things openly
2 on the record.

3 MS. CLARK: We're not requesting in-camera
4 hearings. The testimony of Wilene Fisher-Holt, the
5 live testimony, she's comfortable having that be in
6 the public process and will make statements that she's
7 comfortable making. And if she's asked questions that
8 present invasions into her privacy or into the
9 confidential information then she won't answer them.
10 And I don't think that the Commission hopefully will
11 force that to happen.

12 With respect to your question about well what
13 if there's some substantial evidence? If that
14 information is included in sort of in the decision in
15 a way that it doesn't reveal who made the statement on
16 what grounds right, I don't, the tribal elders would
17 be fine with that. It's just it has to be done in
18 such a way that it protects direct quotation, that
19 sort of thing.

20 HEARING OFFICER CELLI: Let me just say that
21 okay in lieu of submitting, so at this time you have
22 the ability to withdraw --

23 MS. CLARK: We will if this is not --

24 HEARING OFFICER CELLI: -- the evidence that
25 you apply for confidentiality are denied, okay? Now

1 you could perhaps resubmit it in a redacted way if
2 that would make things easier.

3 MS. CLARK: Redaction doesn't really address
4 our concerns. The issue is for the individuals that
5 made those statements is tying their name and their
6 culture to the stories and narratives that are
7 contained within. And I understand that this is not
8 something that is well represented in the law on
9 confidentiality. However, those are the concerns that
10 they have and I can't waive that for them.

11 HEARING OFFICER CELLI: Well, if anyone
12 appears and testifies on the record their name's going
13 to be in the transcript and they have to be under
14 oath.

15 MS. CLARK: So there are two different sets
16 of documents. There's the testimony of Wilene Fisher-
17 Holt, which she has indicated she is okay with. I
18 wouldn't say entirely comfortable with disclosing to
19 the public as standard testimony. We will submit that
20 if we don't address this confidentiality issue the way
21 we requested.

22 The statements of the tribal elders, which
23 are included as exhibits, they are not going to be
24 testifying. Those are only submitted as written
25 testimony and in the event that the application for

1 confidentiality is denied if we can't reach some
2 different agreement about those we will withdraw those
3 and not present them as evidence.

4 HEARING OFFICER CELLI: You know, our regs
5 allow hearsay is admissible in our proceedings. And
6 experts have the right to rely on hearsay in their
7 testimony under oath and if Ms. Fisher-Holt could
8 testify that, "I spoke to seven people and all seven
9 of them feel this way or that," or something to that
10 effect without attributing who the person is -- let me
11 hear from petitioner really, because I think you
12 really have the biggest problem with that.

13 MR. GALATI: No, I don't have a problem as
14 long as the Commission weighs hearsay and otherwise
15 inadmissible evidence with appropriate weight.

16 HEARING OFFICER CELLI: Right, and the rule
17 is basically this: that hearsay is admissible, but
18 isn't sufficient in itself to support a finding. So
19 there would have to be other competent evidence in the
20 record upon which the Committee could make a finding.
21 But then it would be supplemental to that.

22 What I'm trying to do, I'm just trying to
23 find a way, so that CRIT's case can be made. They
24 can, apparently Ms. Fisher-Holt is willing to come in
25 and testify. She can be under oath, she can be asked,

1 you know, crossed. And she could testify to
2 statements of other people without even attributing
3 who the statement is. She can say, "I spoke to,"
4 okay, "I spoke with a tribal elder and the tribal
5 elder said the following." And I mean, I'm hoping
6 that this might avoid the need for any sort of
7 designation of confidentiality, going off the record,
8 all that in-camera business.

9 MS. CLARK: My concern about this is that the
10 tribal elders -- I realize that this is a difficult
11 situation. We're asking to be heard, but we're asking
12 to be heard in a limited forum. The tribal elders
13 very much want to make their statements to the
14 Commission. And so to the extent that we can just
15 have those four exhibits considered confidential I
16 think that would be a mechanism by which the
17 Commission can hear those concerns directly from them
18 without going into the confidential issues. And so
19 that's our request.

20 HEARING OFFICER CELLI: We're going to go off
21 the record, but in the meanwhile I just want to throw
22 out the idea that we have had nondisclosure agreements
23 in the past for certain sensitive topics. But we're
24 off the record for a moment.

25 (Off the record.)

1 We're doing really well here folks and I'm
2 just saying that we should be finishing up pretty
3 soon, so we're at least getting to public comment. No
4 telling how long that'll go. But maybe we'll take a
5 break if need be for then. And the record shall
6 reflect that the Committee had an off-the-record
7 conversation as noticed in our prehearing, our notice
8 of prehearing conference and evidentiary hearing.

9 And I want to throw this -- before I ask all
10 of the other parties I want to talk to Ms. Clark about
11 this, because what the Committee would be willing to
12 do, the Committee would be willing to make a finding
13 of confidentiality or have these documents deemed
14 confidential, so that we would prevent them from being
15 made public. If the parties wanted to see any of
16 these documents the parties would have to sign a
17 nondisclosure agreement. If they don't sign it or if
18 they don't need to see it then they don't have to sign
19 it. And this way we don't need unanimous
20 nondisclosure agreements. So it would be voluntary
21 only on the part of those parties that need to see it.

22 But then the Committee would treat this
23 information as hearsay. It would not be a basis for a
24 finding.

25 MS. CLARK: That's fine.

1 HEARING OFFICER CELLI: And I'm hoping that
2 that covers everything. Does that?

3 MS. CLARK: I think that does.

4 HEARING OFFICER CELLI: Okay, now --

5 MS. CLARK: And so --

6 HEARING OFFICER CELLI: Go ahead.

7 MS. CLARK: -- with respect to Wilene Fisher-
8 Holt's testimony we can have that put into the record
9 as public as all of the other testimony. And she will
10 be there to testify on Monday.

11 HEARING OFFICER CELLI: Thank you, so
12 Mr. Galati did you understand what the Committee is
13 proposing to do? Do you have any questions or
14 comments?

15 MR. GALATI: No, just the form of the
16 nondisclosure agreement, I'd like it to cover myself
17 and my cultural person and that's it.

18 HEARING OFFICER CELLI: And the full
19 Commission staff if staff are going to be a party to
20 this nondisclosure agreement.

21 MS. MARTIN-GALLARDO: Correct.

22 HEARING OFFICER CELLI: So do you have
23 anything to add to this work-around that we're trying
24 to come up with here?

25 MS. MARTIN-GALLARDO: Staff has nothing to

1 add.

2 HEARING OFFICER CELLI: Okay, Ms. Belenky?

3 MS. BELENKY: No, thank you.

4 HEARING OFFICER CELLI: Mr. Emmerich,
5 anything on this confidentiality process that we're
6 proposing?

7 MR. EMMERICH: No, thank you.

8 HEARING OFFICER CELLI: Thank you. Okay,
9 then that would be --

10 MR. GALATI: I also just wanted to make a
11 comment on the testimony of Wilene Fisher-Holt. We
12 waive any objection. The fact that we haven't yet
13 seen it, Counsel is going to make it available to us
14 since it will be in public and we'll be prepared to go
15 on Tuesday.

16 HEARING OFFICER CELLI: Okay.

17 MR. GALATI: Monday, and we'll even be
18 prepared to do it on Monday if you want.

19 HEARING OFFICER CELLI: Very good, thank you
20 all. I appreciate the spirit of cooperation that the
21 parties have exhibited in this case. It's refreshing.

22 Then so we've talked about confidentiality.
23 We've talked about the way that we're going to
24 probably proceed by way of an informal hearing. There
25 was the confidentiality issues. The -- oh, there was

1 an issue about staff did you intend to call someone
2 that you did include in your prehearing conference who
3 was a Quechan witness?

4 MS. MARTIN-GALLARDO: So last evening staff
5 did docket a revised identification of witnesses to
6 add Lorey Cachora, tribal member of the Quechan Tribe.
7 And he holds a special position as a consultant to the
8 Quechan Tribe appointed by their tribal counsel. And
9 he was -- I provided the revised prehearing conference
10 statement with his name and also docketed his CV, his
11 bio and his declaration. And that was docketed last
12 night.

13 HEARING OFFICER CELLI: Okay, so petitioner
14 any objection or problem with that?

15 MR. GALATI: Yeah, I have an objection of a
16 new witness who's going to testify about something
17 that I don't know, because he hasn't filed any
18 prewritten testimony. If he's available there just
19 for cross-examine. Well, again, cross-examination
20 about what? I'm not sure what he prepared, what he
21 did, other than he talked to the Energy Commission
22 staff during the ethnography. So I do object to that,
23 because I don't know how to prepare for a witness that
24 I don't know what they're going to say.

25 MS. MARTIN-GALLARDO: I did, just to clarify

1 this is Jennifer Martin-Gallardo for staff, to clarify
2 in his declaration it does state that he was a
3 consultant to staff. And the testimony that he'd be
4 providing would be corroborative of staff's testimony
5 filed in the FSA. And that is what we, because our
6 ethnographer Tom Gates consulted with him in the
7 creation of that you'd see some quotes and guidance on
8 tribal, you know, traditional cultural issues
9 attributed to Mr. Cachora. He's going to be there to
10 corroborate and to confirm that those statements that
11 he made were indeed, and to be there also if any
12 rebuttal testimony needs to be offered.

13 HEARING OFFICER CELLI: Mr. Galati, go ahead.

14 MR. GALATI: I'm the one that's primarily
15 objecting to how CUL-1 is being done in the analysis.
16 I haven't objected to a single comment. I'm not even
17 sure what comments that we're talking about. I think
18 it's redundant. I'm not claiming that Mr. Cachora did
19 not tell staff something or that staff didn't believe
20 what Mr. Cachora said. So to me I'm not sure what the
21 purpose is. And so I think the purpose obviously is
22 something different than that, because I'm not
23 claiming that Mr. Cachora didn't say what he said.

24 So I don't know what he's there for. I
25 suppose he's there to say, "I agree with staff, you

1 should make the applicant do X." He has the ability
2 to do that in public comment, but that doesn't make
3 him an expert witness on staff without filing
4 testimony. If he is going to say, "I agree with staff
5 and here's why," I think he should've written it into
6 testimony, so I can prepare for it and offer rebuttal.
7 Which I do not now know what he's going to do, so I
8 will stipulate.

9 MALE SPEAKER: (Inaudible)

10 HEARING OFFICER CELLI: Who's speaking? Go
11 ahead, I just need to mute somebody.

12 MR. GALATI: So I'll stipulate that what
13 Mr. Cachora said to staff was, is it's an adequate.
14 But they believed it, that it is an adequate
15 representation and that their ethnography can be based
16 on what Mr. Cachora said. Otherwise I don't know why
17 he's there.

18 HEARING OFFICER CELLI: Really at this point,
19 it's about the un-timeliness that we're really talking
20 about. CRIT, do you have a position on this one way
21 or the other?

22 MS. CLARK: Well, we would welcome the
23 participation of Mr. Cachora. And I would note that,
24 perhaps so it's not in his voice, there is significant
25 information from him contained in the FSA. And I

1 would imagine, perhaps staff could clarify, that that
2 would be the basis of his testimony.

3 HEARING OFFICER CELLI: I just want to get a,
4 I'm just pulling the parties to see where everybody
5 stands on this. Where is CBD on this late file
6 testifying?

7 MS. BELENKY: We take no position on cultural
8 issues.

9 HEARING OFFICER CELLI: Do you have a
10 position, Mr. Emmerich?

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

12 HEARING OFFICER CELLI: Yes, go ahead. The
13 question is do you have -- okay, staff filed testimony
14 last night to enable Lorey Cachora to participate on
15 the panel as a witness for cultural. And I'm just
16 trying to get a sense of whether -- and the petitioner
17 is objecting and I want to know whether you have a
18 position one way or the other, on the participation
19 of Lorey Cachora?

20 MR. EMMERICH: No, no. We support her
21 participation.

22 HEARING OFFICER CELLI: Okay.

23 MR. GALATI: Again, my objection is not on
24 timeliness. My objection is there's no pre-filed
25 testimony for me to prepare. Their testimony was due

1 on the 9th like mine. If not, if they rebutted what I
2 did, then it was due on the 16th and I could've
3 prepared by making sure that my witnesses are prepared
4 to talk about what Mr. Cachora might have said or
5 agreed. So if they had done that I would have no
6 objection whatsoever.

7 HEARING OFFICER CELLI: Right, so when I talk
8 about timeliness just so you know, I'm thinking did
9 they file a prehearing conference statement? Did
10 everything to rebuttal in the testimony come in
11 timely, so this is outside of those time frames.

12 We're going to just go off the record for one
13 moment here.

14 (Off the record.)

15 HEARING OFFICER CELLI: We're doing really
16 well here, folks, and I'm just saying that we should
17 be finishing up pretty soon, or at least getting to
18 public comment. No telling how long that'll go. And
19 then we'll take a break if need be before then.

20 Okay. And the record should reflect that the
21 Committee had a off-the-record conversation, as
22 noticed in our Notice of Pre-Hearing Conference and
23 Evidentiary Hearing, and I want to throw this --
24 before I ask all of the other parties, I want to talk
25 to you, Ms. Clark, about this, because what the

1 Committee would be willing to do, the Committee would
2 be willing to make a finding of confidentiality or
3 have these documents deemed confidential so that we
4 would prevent them from being made public. If the
5 parties wanted to see any of these documents, the
6 parties would have to sign a non-disclosure agreement.
7 If they don't sign it or if they don't need to see it,
8 then they don't have to sign it. And this way we
9 don't need unanimous non-disclosure agreements, so it
10 would be voluntary only the part of those parties that
11 need to see it.

12 But then the Committee would treat this
13 information as hearsay. It would not be a basis for a
14 finding.

15 MS. CLARK: That's fine.

16 HEARING OFFICER CELLI: And I'm hoping that
17 that covers everything. Does that?

18 MS. CLARK: I think that does.

19 HEARING OFFICER CELLI: Okay. Now -- go
20 ahead.

21 MS. CLARK: With respect to Wilene Fisher-
22 Holt's testimony, we can have that put into the record
23 as public as all of the other testimony, and she will
24 be there to testify on Monday.

25 HEARING OFFICER CELLI: Thank you.

1 So Mr. Galati, you understand that what the
2 Committee is proposing to do, do you have any
3 questions or comments?

4 MR. GALATI: No, just the form of the non-
5 disclosure agreement, I'd like it to cover myself and
6 my cultural person, and that's it.

7 HEARING OFFICER CELLI: And the full
8 Commission staff wouldn't be a party to this non-
9 disclosure agreement.

10 MS. MARTIN-GALLARDO: Correct.

11 HEARING OFFICER CELLI: So do you have
12 anything to add to this workaround that we're trying
13 to come up with here?

14 MS. MARTIN-GALLARDO: Staff has nothing to
15 add.

16 HEARING OFFICER CELLI: Okay. Ms. Belenky?

17 MS. BELENKY: No, thank you.

18 HEARING OFFICER CELLI: Mr. Emmerich,
19 anything on this confidentiality process that we're
20 proposing?

21 MR. EMMERICH: No, thank you.

22 HEARING OFFICER CELLI: Thank you.

23 MR. GALATI: I just wanted to make a comment
24 on the testimony, we waive any objection the fact that
25 we haven't yet seen it. Counsel is going to make it

1 available to us since it will be in public and then
2 we'll be prepared to go on Tuesday.

3 HEARING OFFICER CELLI: Okay. Monday.

4 MR. GALATI: And we'll even be prepared to do
5 it on Monday if you want.

6 HEARING OFFICER CELLI: Very good. Thank you
7 all, I appreciate the spirit of cooperation that the
8 parties have exhibited in this case, it's refreshing.

9 So we've talked about confidentiality. We've
10 talked about the way that we're going to probably
11 proceed by way of an informal hearing. There was the
12 confidentiality issues.

13 Oh, there was an issue about staff, did you
14 intend to call someone that you didn't include in your
15 pre-hearing conference who was a Quechan witness?

16 MS. MARTIN-GALLARDO: So last evening, staff
17 did docket a revised identification of witnesses to
18 add Lorey Cachora, a tribal member of the Quechan
19 tribe, and he holds a special position as a consultant
20 to the Quechan tribe appointed by their Tribal
21 Council. And I provided the revised pre-hearing
22 conference statement with his name and also docketed
23 his CV, his bio, and his declaration, and that was
24 docketed last night.

25 HEARING OFFICER CELLI: Okay. So,

1 petitioner, any objection or problem with that?

2 MR. GALATI: Yeah, I have an objection of a
3 new witness who's going to testify about something
4 that I don't know because he hasn't filed any pre-
5 written testimony. If he's available there just for
6 cross -- well, again, cross-examination about what?
7 I'm not sure what he prepared, what he did, other than
8 he talked to the Energy Commission staff during the
9 ethnography, so I do object to that, because I don't
10 know how to prepare for a witness that I don't know
11 what they're going to say.

12 MS. MARTIN-GALLARDO: I did, just to
13 clarify -- this is Jennifer Martin Gallardo for
14 staff -- to clarify, in his declaration it does state
15 that he was a consultant to staff and the testimony
16 that he would be providing would be corroborative of
17 staff's testimony filed in the FSA, and that is what
18 we -- because our ethnographer Tom Gates consulted
19 with him in the creation of that, you'd see some
20 quotes and guidance on traditional cultural issues
21 attributed to Mr. Cachora. He's going to be there to
22 corroborate and to confirm that those statements that
23 he made were indeed and to be there also if any
24 rebuttal testimony needs to be offered.

25 HEARING OFFICER CELLI: Mr. Galati, go ahead.

1 MR. GALATI: I'm the one that's primarily
2 objecting to how call one is being done in the
3 analysis. I haven't objected to a single comment.
4 I'm not even sure what comments that we're talking
5 about. I think it's redundant. I'm not claiming that
6 Mr. Cachora did not tell staff something or that staff
7 didn't believe what Mr. Cachora said.

8 So to me, I'm not sure what the purpose is,
9 and so I think the purpose obviously is something
10 different than that, because I'm not claiming that
11 Mr. Cachora didn't say what he said. So I don't know
12 what he's there for. I suppose he's there to say I
13 agree with staff, you should make the applicant do
14 this. He ability to do that in public comment. That
15 doesn't make him an expert witness on staff without
16 filing testimony.

17 If he is going to say I agree with staff and
18 here's why, I think he should have written it in
19 testimony so I can prepare for it and offer rebuttal,
20 which I do not now know what he's going to do. So I
21 will --

22 MALE VOICE: You're losing a lot of friends,
23 Scott.

24 HEARING OFFICER CELLI: Who's speaking? Go
25 ahead.

1 MR. GALATI: So I'll stipulate that what
2 Mr. Cachora said to staff was that staff, it's
3 inadequate that they believed, that it was an adequate
4 representation and that their ethnography can be based
5 on what Mr. Cachora said. Otherwise, I don't know why
6 he's there.

7 HEARING OFFICER CELLI: Really, at this point
8 it's about the untimeliness we're really talking
9 about.

10 Ms. Clark, do you have a position on this one
11 way or the other?

12 MS. CLARK: We would welcome the
13 participation of Mr. Cachora. And I would note that,
14 perhaps though it's not in his voice, there is
15 significant information from him contained in the FSA,
16 and I would imagine -- perhaps staff could clarify --
17 that that would be the basis of his testimony.

18 HEARING OFFICER CELLI: I'm just polling the
19 parties to see where everybody stands on this.

20 Where is CBD on this late file?

21 MS. BELENKY: We take no position on cultural
22 issues.

23 HEARING OFFICER CELLI: Do you have a
24 position, Mr. Emmerich?

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

1 HEARING OFFICER CELLI: Yes, go ahead. The
2 question is do you have -- okay, staff filed testimony
3 last night to enable Lorey Cachora to participate on
4 the panel as a witness for cultural, and I'm just
5 trying to get a sense of whether -- and the petitioner
6 is objecting and I want to know whether you have a
7 position one way or the other on the participation of
8 Lorey Cachora.

9 MR. EMMERICH: No, no, we support her
10 participation.

11 MR. GALATI: Again, my objection is not on
12 timeliness. My objection is there's no pre-filed
13 testimony for me to prepare. Their testimony was due
14 on the 9th like mine. If not, if they rebutted what I
15 did, then it was due on the 16th and I could have
16 prepared by making sure that my witnesses are prepared
17 to talk about what Mr. Cachora might have said or
18 agree. If they had done that, I would have no
19 objection whatsoever,

20 HEARING OFFICER CELLI: Right. So when I
21 talk about timeliness, I'm thinking did they file a
22 pre-hearing conference date and did everything and
23 rebuttal and the testimony come in timely, so this is
24 outside of those timeframes.

25 We're going to just go off the record for one

1 moment here.

2 (Off the record at 10:39 a.m.)

3 HEARING OFFICER CELLI: So Ms. Martin-
4 Gallardo, we're interested in what is staff's showing
5 of good cause for the late filing, if any?

6 MS. MARTIN-GALLARDO: I think staff needs to
7 clarify first that we do not anticipate Mr. Cachora's
8 testimony extending beyond the bounds of what exists
9 in the FSA.

10 To the extent that he was Tom Gates'
11 consultant to cultural traditional cultural issues,
12 that is why we would provide Lorey Cachora should the
13 Committee have any questions for him related to the
14 things that Mr. Gates attributed to him as far as his
15 support.

16 We do acknowledge that hearsay is accepted in
17 these proceedings, so Tom Gates could speak to what
18 Lorey Cachora had told him, but we do believe that
19 issues coming from a Native American perspective are
20 sensitive and are best represented by a Native
21 American as opposed to someone with a Eurocentric
22 perspective.

23 That said, as far as the timeliness, in our
24 experience in past hearings, there are agencies such
25 as California Department of Fish and Wildlife that

1 come and sit at the panel to do just such a thing,
2 corroborate what staff did say in their testimony to
3 support staff in that way. And my understanding is
4 that oftentimes the CVs and declarations and things of
5 that sort are not even provided until the evidentiary
6 hearings.

7 So what I believe that staff actually,
8 instead of going that method, we were actually trying
9 to be as forthright as possible. Get this information
10 out as soon as possible, hence, filing it last night.
11 I do acknowledge that it did follow the pre-hearing
12 conference statement the day before and I do apologize
13 for that.

14 HEARING OFFICER CELLI: Okay, we're on the
15 record again.

16 MR. GALATI: Mr. Celli, I have a compromise
17 proposal if you'd like to hear it before you rule.

18 HEARING OFFICER CELLI: Sure.

19 MR. GALATI: Okay. Understand the bind that
20 staff may have put themselves in or got put in, I
21 don't know exactly what happened. I'd be happy to let
22 Mr. Cachora come to the hearing, the Committee ask him
23 questions, if you let me have an opportunity to think
24 about those questions and conduct cross-examination.

25 But I don't want him giving direct testimony,

1 but if the Committee sees something that they think
2 that Mr. Cachora is the only person that can answer
3 the question, I don't want him sitting on the panel.
4 You can bring him up separately and you can ask him
5 whatever questions that the Committee things are
6 relevant.

7 I would like to take ten minutes to walk
8 outside, collect my thoughts, talk to my expert, come
9 back in and cross, if that's helpful.

10 HEARING OFFICER CELLI: That is helpful. The
11 Committee's inclination is as follows. That, really
12 since staff says that his testimony doesn't really
13 exist beyond the FSA's testimony, basically it's what
14 he's already testified to, that's already in the
15 record. We don't really need him to rehash that which
16 we already have.

17 He could sit in. Therefore, because of the
18 lateness, he would not be allowed to be part of the
19 panel unless the Committee wanted -- something came in
20 that appeared to be an issue that only he could
21 resolve, it would be nice to have him there so that
22 the Committee ~~—~~ o, o or if others wanted to ask
23 questions, the Committee could call him forward, ask
24 him to join the panel.

25 So what we're proposing is sort of what

1 Mr. Galati was suggesting, which is he be available,
2 that he's there at the Committee's disposal if the
3 Committee has questions or wants further information.
4 But the Committee would not allow him to make an
5 opening statement or be a part of the case in chief,
6 if you will, of staff when the cultural comes on. So
7 he would be available, let's say as rebuttal as needed
8 if the Committee deems it necessary.

9 The parties would have an opportunity, of
10 course, as they always do, to ask questions. But then
11 he would also have the ability to speak as a
12 commenter. So I think it would be useful to have him
13 there but I don't think that at this late date it's
14 appropriate to put him on the panel unless something
15 comes up that renders his testimony in issue.

16 Any question about that?

17 MS. MARTIN-GALLARDO: I think we understand.

18 HEARING OFFICER CELLI: Okay, great. So that
19 is how we will deal with Lorey Cachora then as a
20 witness.

21 Did we cover all of the -- I want to say a
22 few things also. I want to raise something that no
23 one else has raised yet, which is, I saw a lot of
24 evidence coming in from CBD on the Desert tortoise, a
25 lot of things relevant to the Desert tortoise. I

1 haven't had a chance to read it so I don't know what
2 the content is, and I just want to say, though, that I
3 want to reiterate to all of the parties that this is
4 an amendment, this is not an AFC, and it seems to me
5 that for the bulk of the changes to this project is
6 the verticality of these towers going up.

7 I don't know what the evidence will be, but
8 I'm just going to give you heads up that the
9 testimony, if there is any, relevant to Desert
10 tortoise has to speak to the change of the project.
11 We're not going to readjudicate the old Palin Solar
12 Power Plant.

13 So I want to put that out to all of the
14 parties, that we're looking at the modifications only
15 because this is an amendment. We're not looking at
16 everything from scratch. So I hope that says enough.

17 Ms. Belenky.

18 MS. BELENKY: Well, I mean, I think that we
19 may have to discuss that further during the hearings,
20 but I did have another question about a timeliness of
21 some information.

22 And I must say, although we are not involved
23 in the cultural issue, both staff and the applicant
24 have put in things up to the hearing in other matters,
25 so I don't really see why suddenly this becomes such a

1 big issue. Only if you don't like what they put in, I
2 supposed.

3 But staff also put in a new, I think they
4 called it an appendix or something to the FSA on
5 Tuesday night, I believe it was, with new information
6 about the project description and a very long specific
7 section on the Desert tortoise fencing. And there are
8 issues here about Desert tortoise habitat and
9 connectivity, and I am not certain if staff believes
10 that these issues, that any issues we may have about
11 that testimony, that new part of the FSA is now going
12 to be heard next Monday and Tuesday when we only got
13 it on Tuesday, and certainly it was way after rebuttal
14 was Monday.

15 HEARING OFFICER CELLI: Staff, can you
16 explain what we're talking about here, please?

17 MS. MARTIN-GALLARDO: Sure, I can. The
18 supplement that was provided on Tuesday was basically
19 done to accommodate a request by Caltrans. Caltrans
20 will have to provide an encroachment permit in order
21 for the project owner to do the Desert tortoise
22 exclusion fencing required by Bio 9, and that
23 exclusion fencing happens within the Caltrans
24 corridor.

25 What staff did to accommodate this request

1 was basically provide a standalone document for
2 Caltrans to be to reference when they need to do their
3 environmental review. And this document does not
4 provide new information; this is information that we
5 had for the project repackaged into a document that
6 can be used by them.

7 We do add on, I believe only bio and cultural
8 sections, a further requirement to assist Caltrans in
9 getting further -- I apologize -- surveys as it goes
10 forward, so we don't believe that this is something
11 that, when the parties review it, one, we don't
12 imagine that anyone would have a problem with the
13 document itself. But two, the fact that this
14 information is in the FSA basically repackaged for
15 Caltrans purposes, that was the intent there.

16 We wanted to do it in the process as opposed
17 to doing it later.

18 HEARING OFFICER CELLI: Somebody's on the
19 phone and we're hearing a lot of background that you
20 probably don't want us to hear. And I can't figure
21 out who that is.

22 MALE VOICE: It's user 18.

23 HEARING OFFICER CELLI: User 18, thank you.

24 Sorry about that. Can you kind of step back
25 and bring us...

1 MS. MARTIN-GALLARDO: Sure. I'm not sure
2 where I should start again, but the purpose of this
3 document is to support Caltrans environmental analysis
4 when they do that. We did it at this point as opposed
5 to doing it at some later date in order to avoid
6 having to do some kind of amendment process.

7 We recognize it's late. We do recognize
8 that, although we don't see that there would be any
9 issue to be taken with this as far as the encroachment
10 being done through the Caltrans process and we're
11 facilitating their environmental review by doing this.

12 HEARING OFFICER CELLI: So there are no
13 conditions?

14 MS. MARTIN-GALLARDO: The conditions do not
15 change. What we did is a thorough document that
16 covers all areas, and when you see that every single
17 subject area said no problem, the existing condition
18 XYZ will address this issue.

19 And when it came to bio and cultural, they
20 wanted to do a significant section pulling from the
21 FSA just the I-10 corridor specific discussion. And I
22 do believe that those are the only sections that had
23 an additional statement under, I believe Bio 9
24 requiring the project owner to do anything further
25 that Caltrans wants, being like surveys. It's just

1 basically a catch-all in our condition Bio 9 that
2 requires this Desert tortoise fencing, that they
3 follow any requirements that Caltrans may have as they
4 put that Desert tortoise fencing in.

5 HEARING OFFICER CELLI: Okay.

6 MS. STORA: I think I need to -- this is
7 Christine Stora, the compliance project manager. I
8 think I do need to make a statement here that there is
9 a new condition for cultural, I believe it's Cultural
10 18, that staff wrote for the installation of the
11 Desert tortoise fencing.

12 We also need some clarification and some
13 other conditions requiring things like a defibrillator
14 be available during the, for Worker Safety 5.

15 So there were a couple of minor modifications
16 made on a few conditions for Worker Safety 5 and then
17 several bio ones and then the Cul 18 I believe is new.

18 MR. GALATI: If I could just provide some
19 color.

20 HEARING OFFICER CELLI: Please.

21 MR. GALATI: You know how long we've been
22 planning to do that Desert tortoise connectivity
23 fence, since 2009 when staff presented it to us in a
24 staff assessment on the first project. The Commission
25 adopted a decision that says thou shalt connect from

1 ten to thirteen the different washes, to maintain
2 connectivity so that we would direct the tortoises to
3 the washes.

4 And the project was licensed last time with
5 that requirement with no further analysis that stands
6 alone on the Desert tortoise project description. CBD
7 was part of that. Nobody raised the issue that
8 somehow the Desert tortoise fencing needed to have its
9 own evaluation. I contend that it's exempt under
10 CEQA, but staff, to accommodate Caltrans, put together
11 what looks like a mini CEQA analysis for the fence.

12 Again, nothing this project has done is
13 changing the location or the extent of the fence, this
14 amendment.

15 HEARING OFFICER CELLI: Okay.

16 MR. GALATI: And so staff came out with new
17 conditions and probably to the great chagrin of every
18 client of mine, we have agreed to, okay, because I'm
19 trying to get the thing done as opposed to fighting
20 the concept that it didn't need to be done in the
21 first place.

22 The last part that is raised in Ms. Belenky's
23 pre-hearing conference is that the project description
24 was somehow not appropriate, because staff asked me to
25 describe exactly the fence that they're prescribing

1 that I do. So I went over the weekend and pulled out
2 everything I could find about Desert tortoise fences
3 and put together a project description to help staff,
4 and submit it to them. And then they did an analysis
5 on that to satisfy Caltrans.

6 Please, do not penalize this client for,
7 number one, agreeing to do the Desert tortoise fencing
8 twice, and three, providing a document to help staff
9 do something that's not necessary to help another
10 agency.

11 So that's the last bit that I would love to
12 say here. Can we please move on? We're accepting the
13 conditions. There's no new analysis that needs to be
14 heard in hearings.

15 HEARING OFFICER CELLI: Okay, but the
16 question was on timeliness, I believe. But go ahead,
17 Ms. Belenky, why don't you...

18 MS. BELENKY: Yes, the question was on
19 timeliness. And the center has in fact objected in
20 the earlier proceeding as well as in this one to the
21 fact that these plans are not provided during the
22 public hearing period. So having one provided is
23 perhaps a good thing, however, it was untimely.

24 In fact, the center did have issues with the
25 tortoise fencing in the original proceeding,

1 particularly that the way the original design, and I
2 believe this one is too, it funnels tortoises across
3 under the road and then they have to run into another
4 fence and then they have to go down like a bowling
5 alley and then go under another road.

6 We have had issues with the connectivity
7 issues for Desert tortoise from the original
8 proceeding and we still have them here. We never --
9 those issues did not disappear because you redesigned
10 the project. We have always had those issues.

11 HEARING OFFICER CELLI: So it essentially
12 reopens the question, if we have new analysis.

13 MS. MARTIN-GALLARDO: I don't see it as
14 reopening the question. The decision did address
15 these --

16 HEARING OFFICER CELLI: Right, I remember
17 reading that there was Desert tortoise fencing, but
18 then I also noted that we got new evidence that came
19 in after the fact, which I frankly haven't read so I
20 don't -- I'm not making any representations that it's
21 a full analysis of the Desert tortoise fencing that
22 was going to already be there anyway.

23 MR. GALATI: Connectivity was fully
24 adjudicated. The fence locations have not changed
25 from the first project. Both the outer fence of the

1 project and the fence along I-10, both fences along I-
2 10. The issues been adjudicated.

3 The evidence that you see in front of you now
4 is simply something to accommodate Caltrans so that
5 they can feel that they have something, so when they
6 issue the encroachment permit that it was addressed.
7 And staff felt the need to put in three new
8 conditions, modify one with worker safety, making sure
9 that everything we do in worker safety covers this,
10 and a new biology condition and a new cultural
11 condition, of which we have accepted.

12 HEARING OFFICER CELLI: As a public agency,
13 we are deferential to other public agencies. If we
14 allow the late filed analysis of the tortoise fencing,
15 then it seems to the Committee that CBD would have the
16 ability then to ask questions about the new analysis.
17 She's been deprived of an opportunity to review it and
18 submit comments on it, and so we think that it would
19 be appropriate, if need be, that she have the
20 opportunity to do so during the bio section on
21 Tuesday.

22 MR. GALATI: I agree and I support that.
23 That wasn't my argument, but I agree and support that
24 we can talk about it in evidentiary hearings.

25 HEARING OFFICER CELLI: Right, that's the

1 point.

2 I mean, Ms. Belenky, I understand you're
3 making the point that we're trying to draw black lines
4 here and say what can and cannot come in. There are
5 always extraordinary circumstances in these cases,
6 this sounds like one of them. But in an effort to
7 give you as much process as possible, we would enable
8 CBD to treat it as basically an area in dispute.

9 MS. BELENKY: Thank you.

10 HEARING OFFICER CELLI: Yes. Thank you.

11 MR. GALATI: I have one more thing. You
12 know, staff filed in their rebuttal testimony, which
13 we got on Monday, a bunch of new change conditions,
14 completely timely filed. We're prepared to talk about
15 them at the hearing. If the parties don't object, and
16 only do this if the Committee wants it, might be
17 easier to follow along and the parties might like to
18 know what our position is on those. I could docket a
19 one-page summary of what we agree with, what we don't
20 agree with, and why, or we can just do it orally.

21 But if the Committee would like something in
22 writing, if the parties would like to see it before
23 they hear it, I'd be happy to docket it later today or
24 first thing in the morning.

25 HEARING OFFICER CELLI: Well, you can docket

1 it. Doesn't sound like it needs to be evidence.

2 MR. GALATI: It's a summary of, you know, we
3 put in our pre-hearing conference sort of a preview of
4 what you'll hear.

5 HEARING OFFICER CELLI: Right.

6 MR. GALATI: But, as is our style, if we can
7 change some language that make it acceptable, we're
8 trying to do that in a couple of cases, but it might
9 be helpful to have a road map of where we're going,
10 because there were a lot of changes to the conditions
11 in the supplement.

12 HEARING OFFICER CELLI: That would be
13 helpful.

14 MR. GALATI: It's already contested, and then
15 the parties could see where we're coming before they
16 hear it.

17 HEARING OFFICER CELLI: Sure. That's
18 helpful. Doesn't sound like evidence to me, it
19 doesn't sound like anything that needs to come in.
20 It's basically a road map, and that's helpful to the
21 Committee, so I don't see, unless other parties,
22 staff, you have a problem with that?

23 MS. MARTIN-GALLARDO: No, no problem with
24 that.

25 HEARING OFFICER CELLI: CRIT?

1 MS. CLARK: No problem.

2 HEARING OFFICER CELLI: Ms. CBD?

3 MS. BELENKY: No problem, but we reserve the
4 right to also put in additional drafting on the
5 conditions, which we have reserved in our pre-hearing
6 conference statement and throughout the process.

7 HEARING OFFICER CELLI: Right, I saw that, so
8 you did reserve that right.

9 And then Mr. Emmerich, do you have a problem
10 with the petitioner providing us a summary of their
11 positions on the various conditions?

12 MR. EMMERICH: No, we don't, thank you.

13 HEARING OFFICER CELLI: Thank you. And
14 again, it doesn't sound to me like that would be
15 something offered in as evidence, it's just helpful to
16 the Committee in terms of just following along.

17 Okay, I think we've covered all the sort of
18 procedural issues that we have. Apparently not, I've
19 got everybody looking beseechingly towards the dais,
20 so I'm going to go around.

21 I wanted to talk about briefing schedule
22 next, but before I do let me just see, is there
23 anything we need to cover from the petitioner before
24 we get to the briefing schedule?

25 MR. GALATI: No, thank you.

1 HEARING OFFICER CELLI: Staff?

2 MS. MARTIN-GALLARDO: Have we left the issue
3 of the hearing schedule, what will be held on which
4 days?

5 HEARING OFFICER CELLI: What we plan to do --
6 let me go back to that -- is -- here's the easy way to
7 say it. Bio and worker safety and fire protection are
8 on Tuesday. Everything else is on Monday, if we can
9 get it done. And if that which we cannot finish on
10 Monday would roll over into Tuesday.

11 MS. MARTIN-GALLARDO: I just wanted to raise
12 a question for Tiffany North. I did receive an email
13 from her on the schedule in question. I wanted to
14 open perhaps the phone for her to explain a situation
15 that she has for worker safety.

16 HEARING OFFICER CELLI: Tiffany North, can
17 you speak up, please. I see you have your hand up
18 there.

19 MS. NORTH: Yeah, good morning. The County
20 of Riverside had previously been told that worker
21 safety and fire protection would be on Monday. Deputy
22 Chief Dorian Cooley is nothing available Tuesday
23 morning, and it sounds like so long as we can set a
24 time for worker safety and fire protection to take
25 place on Tuesday afternoon, that it won't start any

1 sooner than Tuesday afternoon, then that would be
2 fine. I just want to confirm.

3 HEARING OFFICER CELLI: Absolutely. So
4 worker safety and fire protection would follow
5 cultural. We would start Tuesday morning with
6 cultural.

7 MS. MARTIN-GALLARDO: With biology.

8 HEARING OFFICER CELLI: I am so sorry, strike
9 that. Let me start all over again.

10 Tuesday we're doing bio, cultural we're doing
11 on day one. The two big ones here are cultural and
12 bio and I keep confusing them in my head. Monday is
13 cultural, Tuesday is bio. We would start with bio and
14 do worker safety and fire protection after we finish
15 bio on Tuesday.

16 MS. NORTH: Okay, I just want to confirm that
17 it won't happen any time before noon that day.

18 HEARING OFFICER CELLI: Oh, it will not.
19 Certainly not.

20 FEMALE: The one last thing that I want to
21 bring up is the timing of alternatives on Monday. We
22 have biological staff going to be participating on
23 Tuesday, but that may want to be available on Monday
24 for the alternatives section. And I wanted to see if
25 we couldn't -- maybe this is premature, maybe we can't

1 get into this type of detail as far as timing.

2 If alternatives could go in the afternoon,
3 that would give time for bio staff to be travelling.
4 Otherwise, if we did alternatives first thing in the
5 morning, they could be available to testify by
6 telephone.

7 HEARING OFFICER CELLI: Is there a problem
8 with having alternatives later in the day?

9 MS. CLARK: We would welcome the opportunity
10 for cultural to go in the morning. We're just worried
11 about the time crunch at the end of the day to the
12 extent that big issue could be handled first and
13 alternatives could be handled later, we would welcome
14 that.

15 HEARING OFFICER CELLI: I really see it like
16 that. I think that we really need to kick off with
17 cultural on Monday and take as much time as we need to
18 to finish cultural, and then -- because cultural is
19 the big one, and the other issues like alternatives,
20 the only people interested in alternatives that I
21 recall are staff applicant and CBD.

22 MR. GALATI: We're only bringing our
23 witnesses for cross-examination purposes. That's why
24 I brought that up early on.

25 HEARING OFFICER CELLI: Yeah.

1 MR. GALATI: Traffic and transportation, the
2 only issue we have with staff is probably a 15-minute
3 discussion and anyone else who wants to ask our people
4 questions. And same thing like, for example, visual
5 or project description. Project description we're
6 only bringing because Ms. Belenky asked for cross-
7 examination time.

8 So again, it depends on how the Committee --
9 I think we can run through so I think it's a good idea
10 to start with cultural. I do not see us spending a
11 lot of time on the other issues, they are generally
12 cross-examine issues.

13 HEARING OFFICER CELLI: Okay. And you know,
14 ladies and gentlemen, we do everything we can to give
15 the parties as much certainty as we can. The level at
16 which we're speaking about, what we're going to be
17 able to accomplish on Monday and Tuesday is about as
18 much detail as I can give you because these are all
19 elastic examinations. We don't know how long or short
20 they're going to go. They always vary, there's always
21 something that comes up and you just have to deal with
22 things as they happen. But the plan would be to take
23 care of the big ones first. Cultural on Monday, bio
24 on Tuesday, everything else would follow, so that's
25 the plan.

1 And then, Ms. Belenky, I get you out of there
2 early because you like to leave early. You're not
3 interested in staying all night, so we'll do bio
4 first.

5 MR. GALATI: And along those lines, I thought
6 I heard CRIT say that they no longer want to cross-
7 examine on visual resources because it was a legal
8 issue. Is there anyone who needs my visual resources
9 witnesses, because I'll tell them not to come?

10 HEARING OFFICER CELLI: Well, let's ask
11 Mr. Emmerich, because he called out visual in
12 particular.

13 Mr. Emmerich, do you need to cross-examine --
14 what's the name of your visual witness?

15 MR. GALATI: We have Andre Grenier and Tim
16 Zack. Tim did all the analysis. He didn't file
17 testimony because we don't have any, but if somebody
18 wants to ask on his documents, they can.

19 HEARING OFFICER CELLI: Let me ask you this,
20 just to kind of get to the heart of it. My sense in
21 reading the documents is that visual is not in dispute
22 between staff and applicant.

23 MR. GALATI: Not at all, including the fact
24 that there's a significant unmitigable impact.

25 HEARING OFFICER CELLI: Right, so are we

1 beating a dead horse here? I'm trying to understand
2 what do we need to do in visual if there's an
3 immitigable significant impact? That's as much as we
4 can do as a Committee is make that finding, that's the
5 worst thing we can do here.

6 So Mr. Emmerich, what's your intent with
7 regard to cross-examination on visual?

8 MR. EMMERICH: Well, you're not giving me too
9 much of an opportunity here to even answer. You're
10 telling me you all agree that the Palen Solar Energy
11 Project will significantly damage visual resources, so
12 if it's not really going to be a subject we're talking
13 about in the hearing, I'm not really sure, I mean, I
14 feel like I'm being put on the spot here.

15 I did want to bring up some issues on visual
16 resources, so I'm not really sure what to say to that.
17 I would like to ask both the applicant or the
18 petitioner or whatever you're calling it and the CEC
19 about visual resources.

20 MR. GALATI: That's all I was wondering. If
21 someone still wants to, we'll bring our witness.

22 MR. EMMERICH: Okay, yeah.

23 HEARING OFFICER CELLI: Go ahead,
24 Mr. Emmerich.

25 MR. EMMERICH: I said yes, we would like to.

1 HEARING OFFICER CELLI: Okay, so be it.

2 We'll hear what he has to ask, that's fine.

3 Okay, so where was I with regard to visual,
4 who raised that question?

5 MS. MARTIN-GALLARDO: I was wondering if we
6 could make our witness available by phone given the
7 distance to travel. It's not from Sacramento,
8 actually.

9 HEARING OFFICER CELLI: Let me ask you.
10 Petitioner's witnesses will be there in person.

11 MR. GALATI: We'll have one in person and one
12 by telephone. Again, not knowing exactly what the
13 questions are going to be, if the issue was LORS
14 related and the issue was do we agree with impacts
15 related, Andre Grenier will be personally present.

16 If it is, how did you take this photograph or
17 something like that, if you allow that cross-
18 examination, our witness intended to call in by
19 telephone.

20 HEARING OFFICER CELLI: Okay. So
21 Mr. Emmerich, you're going to be there in person,
22 aren't you?

23 MR. EMMERICH: Yes, that's correct, both
24 myself and Laura Cunningham will be there.

25 HEARING OFFICER CELLI: Okay. So you heard

1 that petitioner in this case is trying to -- wants to
2 call -- will have one live witness there for you and
3 one telephonic witness there for you.

4 MR. EMMERICH: That would be fine.

5 HEARING OFFICER CELLI: Okay. And now staff
6 is asking if they can have their witnesses appear with
7 regard to visual, their visual witnesses appear
8 telephonically. Do you have a problem with that or a
9 question?

10 MR. EMMERICH: No, I don't have a problem
11 with that.

12 HEARING OFFICER CELLI: Okay so staff's
13 visual witnesses can appear telephonically, then.

14 MS. MARTIN-GALLARDO: Thank you.

15 HEARING OFFICER CELLI: That's convenient.

16 Okay, anything further from staff before we
17 talk about briefing schedules?

18 MS. MARTIN-GALLARDO: No, go ahead. I thank
19 you very much.

20 HEARING OFFICER CELLI: Thank you. Let's
21 hear from Ms. Clark regarding representing CRIT.

22 MS. CLARK: I had just one issue I'd like to
23 circle back to in response to Mr. Galati's point. We
24 had not named Doug Bonamici as a witness, but given
25 your concern about the hearsay issues and wanting to

1 hear it from the horse's mouth, I will discuss with
2 him the possibility of testifying. And so I am
3 curious to hear if that's okay with other parties and
4 commission to do so at this late time.

5 MR. GALATI: He filed testimony.

6 HEARING OFFICER CELLI: You know,
7 Mr. Bonamici --

8 MS. CLARK: He filed testimony, he filed a
9 written testimony.

10 HEARING OFFICER CELLI: Okay.

11 MS. CLARK: But we had not named him as a
12 witness.

13 HEARING OFFICER CELLI: All right. So we are
14 on notice that he's there and that he's available.

15 MR. GALATI: I'm fine with him testifying
16 although he wasn't in your pre-hearing conference
17 statement. Because he filed written testimony, I know
18 what he's going to say.

19 HEARING OFFICER CELLI: Good. All right, so
20 then that's not a problem. Anything further from
21 CRIT?

22 MS. CLARK: No, that's it.

23 HEARING OFFICER CELLI: Okay, Ms. Belenky.

24 MS. BELENKY: Assuming what we're doing is
25 talking about what's going to happen on the different

1 days, I did want to say that Bill Powers submitted
2 testimony in the original proceeding and his testimony
3 would be largely the same. I don't know that that
4 part of the testimony is something that, you know, we
5 would rely on it. I don't know how the Committee
6 feels. I think the Committee has changed since the
7 original proceeding, would rather hear his full
8 testimony, which he would be appearing by telephone,
9 or we can -- maybe people have questions, I just don't
10 know.

11 This is the distributed alternative that was
12 not prepared by staff or was, you know, whatever,
13 considered and rejected. So that, you know, that may
14 be a time saver, it's something to consider. You
15 don't have to necessarily decide now, because he would
16 appear by phone.

17 HEARING OFFICER CELLI: I'm not sure I
18 understand. Are you asking whether he can or cannot
19 appear by telephone, or whether he --

20 MS. BELENKY: We would ask that he appear by
21 telephones, so I'm hoping that he could.

22 HEARING OFFICER CELLI: Okay. Any objection
23 from any of the parties?

24 MR. GALATI: Well, again, it sounds like that
25 was adjudicated in the first project, and they

1 certainly can use his testimony to make a brief that
2 you should select that.

3 HEARING OFFICER CELLI: Okay, my question is
4 do you mind if he appears by telephone?

5 MR. GALATI: I mind him appearing as a
6 witness. He hasn't previously filed testimony in this
7 matter. He has in the old matter. If his testimony
8 is already in the record and the Commission already
9 made a decision on that point, why do they need new
10 testimony from him?

11 MS. BELENKY: Because the staff, once again,
12 failed to look a distributed alternative in light of
13 this new alternative that was never even discussed in
14 the original, so I do think it is relevant, the same
15 testimony is relevant.

16 We did put in an additional exhibit because
17 it was a contended issue before the duck chart issue
18 as to, you know, what time of day -- there's a big
19 issue in the California grid as to what time of day
20 becomes the big issue that you have to track for to
21 get a lot of redundant energy on line and so that you
22 never have any -- so that at that time of day you
23 never have any loss, you know, everybody has all the
24 energy they could possibly want, and there's a whole
25 redundancy problem in our system that actually, you

1 know, he testified about how a distributor can
2 actually help with that.

3 Anyway, that had been a contended issue.
4 There is new information on it. The whole question of
5 distributed and whether it should have been considered
6 as alternative again comes up here because
7 alternatives were again considered. So it is not that
8 he hasn't submitted testimony. Yes, it's the same
9 testimony because it's the same issue. It was again
10 summarily rejected by staff and we think it's a
11 contended issue.

12 HEARING OFFICER CELLI: Let me, I want to
13 sort of draw some distinctions here so we know what
14 we're talking about. First, is it true that you have
15 not submitted any testimony from Bill Powers so far in
16 the PSAGS matter? In other words, in this --

17 MS. BELENKY: That means we haven't submitted
18 it on the amendment. We specifically said that we
19 were resubmitting it. In our opening testimony we
20 said resubmitted as though fully contained herein, I
21 believe, so we did say that it was resubmitted on this
22 matter.

23 HEARING OFFICER CELLI: Okay, so basically
24 you're incorporating by reference testimony that was
25 submitted in the original approved project, which we

1 call the PSPP, and the amended project is the PSAGS,
2 or the Palen, and they've got different names. Okay,
3 so that's what I was talking about. We don't have new
4 evidence from Mr. Powers in the amended project, in
5 the amended proceedings, okay.

6 Now, if CBD wants to rely on testimony that
7 was already there, the problem with that is that
8 that's been adjudicated, and the Committee's
9 interested in making a determination whether the
10 amendment, which are the changes, have impacts,
11 etcetera --

12 MS. BELENKY: Yes, that's right, and the
13 change --

14 HEARING OFFICER CELLI: -- or that the
15 alternatives are considered.

16 MS. BELENKY: It's the change that -- first
17 of all, it's three years later. And the change, again
18 we needed to look at alternatives, and again the staff
19 did not, as far as I can tell.

20 HEARING OFFICER CELLI: It sounds to me
21 entirely ~~il~~legal. I mean, if it's not there, if they
22 didn't do an analysis of distributed generation and
23 it's not there, then that's a fact that we don't need
24 any testimony on, but the absence of it has a legal
25 effect which is the whole point I think that you want

1 to make. So I don't think we really need him to come
2 in.

3 MS. BELENKY: Okay.

4 HEARING OFFICER CELLI: That's just me, and
5 I'll throw that to the other parties here.

6 MS. BELENKY: But we can rely on his earlier
7 testimony in our argument.

8 HEARING OFFICER CELLI: Right, but you're
9 going to have to make the case how it relates to the
10 amendment, that this is somehow new information, okay,
11 because we're just looking at the amendment here.

12 MS. BELENKY: Yes, I understand how you're
13 trying to cut that, and I think it doesn't always
14 slice so finely, that's the problem.

15 HEARING OFFICER CELLI: But you're on notice,
16 you understand what we're asking.

17 MS. BELENKY: Okay, maybe.

18 HEARING OFFICER CELLI: Okay, so I'm trying
19 to be helpful in the determination do you need to call
20 him or not. You said you have the testimony you want
21 already. We can take a official notice of that if we
22 wanted to

23 MS. BELENKY: Yes.

24 MALE VOICE: Your mic is off.

25 MS. BELENKY: Oh, sorry. You could take

1 official notice of his earlier testimony --

2 HEARING OFFICER CELLI: All right.

3 MS. BELENKY: -- and that its' relevant to
4 this matter.

5 HEARING OFFICER CELLI: All right, so this
6 all sounds to me like legal.

7 MS. BELENKY: I don't know.

8 HEARING OFFICER CELLI: Yes, it doesn't sound
9 like a factual thing. And it sounds to me like there
10 was no testimony put in for the amendment, new
11 testimony put in for Mr. Powers for the amendment, so
12 if we don't have that, then we'll just go with what
13 you've already got.

14 MS. BELENKY: I think, okay. I'll have to
15 think about this. Thank you.

16 HEARING OFFICER CELLI: Okay. Let me ask
17 Mr. Emmerich if there's anything else we need to talk
18 about before we get to the briefing schedule.

19 MR. EMMERICH: Oh gosh, not that I can think
20 of now, thank you.

21 HEARING OFFICER CELLI: Okay, thank you.

22 So with that, ladies and gentlemen, I want to
23 just say that the current schedule that we put out
24 called for an opening brief on November 15th and
25 rebuttal briefs on November 21st. The petitioner in

1 their pre-hearing conference statement sought to
2 dispense with the debriefing altogether. Let me know
3 if I'm misrepresenting anybody's position. CRIT
4 asks --

5 MR. GALATI: You've taken that position for a
6 long time, please summarily deny it.

7 HEARING OFFICER CELLI: CRIT asks for more
8 time for rebuttal briefs.

9 MS. CLARK: Yes.

10 HEARING OFFICER CELLI: And CBD specifically
11 asked for the following dates: November 28th for
12 opening briefs and December 12th for rebuttal briefs.

13 Now, I just want to harken back to our most
14 recent status conference, which was several months
15 ago, because I'd asked the petitioner what's the rush,
16 why do we have to go so fast. And the petitioner made
17 the case that there had to be a December PMPD, and if
18 there is to be a December PMPD, I can't have a
19 December 12th rebuttal briefs date.

20 MR. GALATI: I would like to once again
21 address the idea about going too fast. We're a year
22 into the process for an amendment, so I'm tired of
23 everybody saying it's rushed. It's always rushed when
24 you have a deadline. If you have four weeks out for
25 the deadline, it's never good. If you have two weeks

1 out for the deadline, it's never good.

2 The bottom line is, and that's why I asked
3 for real direction from the Commission, and I think I
4 got it in the hearing office. This is an amendment,
5 we should be focusing on the changes. So when we're
6 thinking about the changes, we have far less issues to
7 brief, far less issues to go to evidentiary hearing
8 about, and I think that we should proceed quickly.
9 And we do want a decision by the full Commission in
10 January, which means a PMPD needs to come out in
11 December.

12 HEARING OFFICER CELLI: Okay, but my problem
13 now with that is that the PDOC just came off, we don't
14 have an FDOC. I understand that there was something
15 filed that addressed an impending FDOC, but we have to
16 have a hearing on air quality somewhere.

17 I just found out, by the way, and I want
18 everybody to know that the date that we originally
19 picked, which was the 15th, isn't available, we can't
20 get the hearing room. And I had the 18th, but that
21 date went away, and right now I don't know what the
22 date will be, but the later that goes, the longer I
23 have to give parties an opportunity to do their
24 briefs, and I have to be able to get that PMPD done.

25 MR. GALATI: I agree, and I recognize that

1 the FDOC and PDOC have been delayed. I would remind
2 the Committee that it's a renewable energy project
3 with two small boilers. There are significant
4 greenhouse gas emission savings. What the FDOC and
5 PDOC do are the very, very technical conditions on
6 what your NOX limits are and what your PM10 limits
7 are. We already know all the other issues for
8 environmental impacts, they've been submitted in the
9 petition for amendment.

10 So I don't anticipate a lengthy hearing on
11 air quality, just like we didn't have a lengthy
12 hearing on the first project, which had boilers, on
13 air quality, it was actually submitted on declaration.
14 So I'm just not anticipating the kinds of, you know,
15 I'm hoping we come here for air quality for the
16 purpose of marking and identifying the exhibits at the
17 hearing and not having much discussion, it's possible.

18 All the construction emissions and
19 construction stuff has already been identified and put
20 in the PSA, and we've already agreed to the conditions
21 of certification for those.

22 So I recognize that we've got a time delay,
23 but I'd like to keep moving forward. If it all falls
24 in place, it will be able to get us a PMPD in
25 December, even with a PDOC and FDOC coming in late.

1 HEARING OFFICER CELLI: So let's just look at
2 a calendar for a minute, because if I have a December
3 12th rebuttal brief -- just so you know, the Committee
4 relies on those rebuttal briefs.

5 MR. GALATI: Yes, we object to the December
6 12th rebuttal brief.

7 HEARING OFFICER CELLI: That's a very
8 important part of these proceedings, though. Normally
9 the usual sort of flow is that we have transcripts
10 that come off three days, we have expedited
11 transcripts in this case, I mean, we have transcripts
12 three days after the hearing. That takes us really to
13 the first week of November. Then we have an opening
14 brief within about ten days of the date we anticipate
15 that the transcripts are available, and then we have
16 rebuttal briefs a week or ten days after that. That's
17 the kind of rule of thumb that we usually follow.

18 The wrench in the works is air quality,
19 unless we bifurcate briefing basically, which it
20 sounds like we may have to do.

21 MR. GALATI: I think we should. I think we
22 could easily do one week after the transcripts are
23 available for opening brief and one week for rebuttal
24 briefs.

25 Again, they're not the range of issues.

1 Every counselor here already knows most of what's
2 going in their brief. They've seen the written
3 testimony. The only thing we're going to hear about
4 is whether or not we get out on cross-examination the
5 points we want to make, that's it.

6 HEARING OFFICER CELLI: Yes.

7 MR. GALATI: So we know what the issues are,
8 and the briefs should be far easier to prepare than if
9 you didn't know what the issues were. And they are
10 limited to the petition for amendment.

11 HEARING OFFICER CELLI: Right. And staff
12 says that you are going to make every effort to get
13 that FSA section done by the first of November, but
14 any news on that?

15 MS. MARTIN-GALLARDO: I think that stands.
16 Yes, the last I checked in, they're very, very aware
17 of this. They're working overtime, they're working
18 weekends, and they're doing everything that they can.
19 November 1st is definitely the target.

20 HEARING OFFICER CELLI: Okay, that's saying
21 something from staff, I guess, in light of our history
22 schedules.

23 So really CBD, you're the only, Ms. Belenky,
24 you're the only one with an issue, articulated air
25 quality is an issue, and I got the sense from reading

1 your papers that it was more about reserving the right
2 because you don't know what's coming.

3 MS. BELENKY: We certainly don't know what's
4 coming. I just, I really do object to less than ten
5 days, which is now what's being suggested. I
6 personally have a conflict the 13th, 14th and 15th.

7 HEARING OFFICER CELLI: For an evidentiary
8 hearing?

9 MS. BELENKY: So I had hoped to see all of
10 these things by now, and since we haven't it makes it
11 difficult.

12 HEARING OFFICER CELLI: Your conflict, let
13 me, just to be clear. Your conflict is that you can't
14 make an evidentiary hearing on the 13th, 14th and
15 15th?

16 MS. BELENKY: Well, for the evidentiary
17 hearing, Ileen Anderson was prepared to be there, but
18 now you're putting that down into the 18th or later.

19 I guess I have a procedural question, whether
20 it really makes sense. We've objected throughout the
21 process to separating our pieces of this, and we still
22 object to that. I do feel like it's rushed. I think
23 ten days would be absolutely minimum from the time we
24 get the transcripts, and two weeks is much fairer, and
25 at least a full week, which I believe CRIT has also

1 asked for, which was not in this schedule.

2 HEARING OFFICER CELLI: CRIT was asking for a
3 full extra week, actually.

4 MS. CLARK: No, no, we were just asking for
5 one week, which is not included. It sounds like --

6 HEARING OFFICER CELLI: Oh I see, because it
7 was six days, not seven. Okay, I've got you.

8 MS. BELENKY: It does make a difference.

9 HEARING OFFICER CELLI: Yes. Let me do this,
10 then. Let's keep the current schedule for briefing,
11 and then I would add an extra day or two even for
12 rebuttal, because the air quality really throws a
13 wrench in the works. So currently we have -- now
14 wasn't the 15th a Friday, as I recall? Why don't we
15 do this? Let's say opening briefs are due that
16 Monday, so that would take us to 11/18.

17 MALE VOICE: (Inaudible)

18 HEARING OFFICER CELLI: Okay. Opening briefs
19 11/15.

20 MS. BELENKY: 11/18.

21 HEARING OFFICER CELLI: I'm sorry, 11/18.
22 And then rebuttal I have as 11/21, so really it would
23 be to the 25th. Is the 25th a weekend day? Does
24 anyone have a calendar?

25 FEMALE: That would be a Monday.

1 HEARING OFFICER CELLI: That's a Monday?

2 Okay, so rebuttal is 11/25.

3 Now, clearly we are having to bifurcate
4 because we're going to have -- I mean, this is a solar
5 power plant, you know. It's not like we're going to
6 have plumes of emissions. I understand that there's
7 always issues with regard to the vehicles and the
8 various things, but I think that the parties are going
9 to, we're going to have to come up with a briefing
10 schedule specific to the air quality at the hearing,
11 whenever that is. So at the hearing we'll say, okay,
12 we've heard the evidence, transcripts will be off on
13 such an such a date, opening briefs will be due on
14 such and such a date, and rebuttal briefs will be due
15 on such and such a date.

16 My sense of air quality as it relates to
17 solar power plants, it's usually not that big a deal.
18 If it isn't, then we can get that out in a reasonably
19 quick time turnaround, attach it to the rest of the
20 PMPD and try to make this time line that we've set
21 out. So I think that's the best I can do right now
22 for in terms of giving you some certainty as to the
23 air quality briefing schedule.

24 MS. BELENKY: It might help if we could
25 clarify what you're bifurcating. Air quality is not

1 just the emissions from these two boilers. There are
2 significant particulate matter issues in this basin
3 that are new since the original application was
4 adopted, you know. There have been a lot of incidents
5 with particulate matter from the grading, etcetera,
6 that were not really analyzed in the original one at
7 all, and there has been new information. So that
8 whole part of air quality --

9 HEARING OFFICER CELLI: Well, the grading
10 goes away in a way, in this case. As I understood it
11 from my reading, there were four and a half million
12 cubic feet of ground disturbance, and now it's down to
13 like two hundred thousand because they're not grading.
14 They don't have to grade for the heliostats.

15 MS. BELENKY: I do understand that that's the
16 position --

17 HEARING OFFICER CELLI: Which would be a big
18 reduction.

19 MS. BELENKY: -- and this goes also to some
20 of the crypto biotic soil issues, because they will be
21 driving all over the whole site pretty much. So even
22 if you don't grade, physically grade, you're still
23 going creating a PM situation. Are you saying that
24 any issues about air quality should be bifurcated? I
25 just want it clarified, is that what you're saying?

1 HEARING OFFICER CELLI: Yes, I just want to
2 be clear that crypto biotic soils are a bio issue, not
3 an air quality issue.

4 MS. BELENKY: Well, they relate to each
5 other.

6 HEARING OFFICER CELLI: Right, and as they
7 relate -- I'm sure you can, I'm sure, put that in your
8 air quality later if we get to that. But the question
9 of crypto biotic soils, we intended to tackle under
10 bio on Tuesday. So that --

11 MR. EMMERICH: This is Kevin Emmerich. Can I
12 make a comment?

13 HEARING OFFICER CELLI: Yes, let me just
14 finish saying the one thing. I just want to say yes,
15 air quality, which also includes greenhouse gases,
16 then you asked about what's the bifurcation.
17 Basically, the briefing would be on all subject areas
18 except air quality and greenhouse gases on the dates
19 that I just said, 11/18 for opening, and 11/25 would
20 be on all topics except air quality and GHG. So that
21 is to your question, Ms. Belenky.

22 Go ahead, Mr. Emmerich.

23 MR. EMMERICH: I'm just going to back up what
24 Lisa said. I think you are undermining the fugitive
25 dust issues, even though they've got a different

1 project footprint, there still will be dust, and I
2 just want to point out that these issues have not been
3 resolved with other nearby large utility scale
4 projects. And the dust issues can actually branch
5 over into public health issues, so let's not take that
6 lightly, thank you.

7 HEARING OFFICER CELLI: Thank you. So the
8 public health is going to be an issue tackled. If
9 you're going to submit a brief, and you can elect to
10 submit a brief or not. We're not requiring briefs,
11 but they're always helpful. They would be due on
12 the -- everything except air quality and GHG would be
13 due on November 18th for an opening brief, and your
14 rebuttal briefs would be due on November 25th, 2013
15 for everything except air quality and GHG. And the
16 Committee will give direction on what the briefing
17 schedule will be on air quality and GHG at the
18 evidentiary hearing when we handle air quality and
19 GHG. Okay, so that's briefing.

20 MR. GALATI: One last point on that is I do
21 want the Committee to know that the staff prepared a
22 preliminary staff assessment about all the fugitive
23 dust, included all the changes to conditions for
24 specifically this project. They didn't bifurcate and
25 prepare that part of the FSA. I didn't see any

1 comments from CBD on the preliminary staff assessment
2 which related to construction fugitive dust. It was a
3 crypto biotic soils, which has been moved, and it was
4 soil and water, which has been moved in soil and
5 water, but not on air quality emissions from
6 construction.

7 The comments that did come in were related to
8 Valley Fever, which had been addressed in worker
9 safety, and public health which had been addressed in
10 public health.

11 As far as I'm concerned, I'm not anticipating
12 that the FSA would change significantly from the PSA
13 when it comes to all of the construction emissions.

14 The second part of the emissions are largely
15 the conditions of certification from the PDOC, which
16 it is out now for public review docketed at the
17 commission. If anybody wants to see what the
18 conditions are likely to look like ahead of time, the
19 staff has routinely for a long time copied them
20 directly in and added a verification. So nobody
21 should be surprised by this. I don't believe we'll
22 need any air quality briefs.

23 HEARING OFFICER CELLI: Well, you always
24 think that. You don't believe in briefing matters.

25 MR. GALATI: Certainly there are no legal

1 issues with air.

2 HEARING OFFICER CELLI: Well, if there are,
3 and we're going to give the parties an opportunity to
4 put them in their briefs, and we'll figure that out.

5 So I think I've heard from everybody now on
6 the briefing schedule. If there's nothing else, I'd
7 like to go to public comment. Anything further from
8 petitioner?

9 MR. GALATI: No, thank you,

10 HEARING OFFICER CELLI: Staff?

11 MS. MARTIN-GALLARDO: No, not at this time.

12 HEARING OFFICER CELLI: CRIT?

13 MS. CLARK: No, thank you.

14 HEARING OFFICER CELLI: CBD?

15 MS. BELENKY: No, thank you.

16 HEARING OFFICER CELLI: Mr. Emmerich?

17 MR. EMMERICH: No.

18 HEARING OFFICER CELLI: Thank you all very
19 much, this has been very productive. I think we're
20 going to have a very efficient evidentiary hearing.

21 I'm going to go now and un-mute; I have to do
22 it on this computer. I'm now going to un-mute
23 everybody on the phones because I have the public
24 advisor is here, Dr. Roberts. Do we have any members
25 of the public who wish to make a comment here today?

1 He's shaking his head in the negative, so we'll go to
2 the phones and un-mute everybody. How do I do that, ~~I~~
3 ~~need~~unmute all.

4 Okay. Now, the way I'm going to proceed,
5 ladies and gentlemen who are on the telephone, is I'm
6 first going to call the people by name, and then once
7 I've covered all the people who are called by name --
8 there we go. Electronics, you've just got to love it.
9 Okay, I'm going to first call the people by name who
10 have put in their name, and then when I've finished
11 calling all the people by name, then I'm going to call
12 the people who are calling in who are not identified.
13 And then it's really whoever speaks up first, we let
14 them go and we'll proceed that way.

15 So Andrea Compton, did you wish to make a
16 comment?

17 MS. COMPTON: Not at this time, thank you.

18 HEARING OFFICER CELLI: Thank you. And if
19 somebody is associated with staff or applicant, would
20 you just shout out and let me know so I could, if
21 they're not going to make a comment.

22 Ann Crisp.

23 MS. MARTIN-GALLARDO: That's staff.

24 HEARING OFFICER CELLI: Okay. I have
25 anonymous, I'll get to you. I've got a bunch of call-

1 in users. Carol Watson?

2 MS. MARTIN-GALLARDO: Also staff.

3 HEARING OFFICER CELLI: CEC Jay Fong?

4 MS. MARTIN-GALLARDO: Also staff.

5 HEARING OFFICER CELLI: Doug Bonamici seems
6 to have hung up.

7 MS. CLARK: He's CRIT.

8 HEARING OFFICER CELLI: And he hung up
9 anyway, I think he doesn't have an icon.

10 Jerry Bemis is with staff. Gregg Irvin is
11 with staff, right?

12 MS. MARTIN-GALLARDO: Correct.

13 HEARING OFFICER CELLI: Ileen Anderson, any
14 comment from Ileen Anderson?

15 MS. ANDERSON: No, thank you.

16 HEARING OFFICER CELLI: Okay, Janine Hind is
17 with staff?

18 MS. MARTIN-GALLARDO: Correct.

19 HEARING OFFICER CELLI: Kim Marsden?

20 MS. MARSDEN: I have no comment at this time.

21 HEARING OFFICER CELLI: Thank you. Lisa
22 Worrell.

23 MS. MARTIN-GALLARDO: She's staff.

24 HEARING OFFICER CELLI: Staff, okay. Marie
25 Fleming.

1 MR. HOCHSCHILD: Office.

2 HEARING OFFICER CELLI: Okay, Mark Hesters is
3 with staff. Marylou Taylor?

4 MS. MARTIN-GALLARDO: Also staff.

5 HEARING OFFICER CELLI: Matt Layton is with
6 staff.

7 Nancy Jasculca.

8 MS. CLARK: Jasculca, she's with CRIT.

9 HEARING OFFICER CELLI: Okay. Just because
10 they're with you doesn't mean they can't make a
11 comment. Typically staff.

12 MS. CLARK: That's true.

13 MS. JASCULCA: Oh, and I don't have any
14 comment at this time, thank you.

15 HEARING OFFICER CELLI: Thank you. Scott
16 Bleck is with the applicant.

17 MR. GALATI: Correct.

18 HEARING OFFICER CELLI: Tiffany North?

19 MS. NORTH: I'm Tiffany North with the County
20 of Riverside, just a few quick comments. I first
21 want to say thank you for accommodating our schedule
22 for Tuesday with the workers safety and fire
23 protection for Tuesday afternoon.

24 And I just wanted to confirm that the county
25 doesn't have many comments on any of the other

1 sections. Most of the issues have been addressed.
2 But I wanted to make certain that we can give public
3 comment. It sounded like during the discussion
4 earlier that you will allow some public comment on
5 each of those sections as they come up.

6 HEARING OFFICER CELLI: Usually. You know,
7 when we talk about public comment, there's really sort
8 of two parts to it. There's the agency comment and
9 then there's the general public at large comment. And
10 we try to accommodate the agencies first to the extent
11 that we can.

12 And sometimes, Ms. North, it's more efficient
13 to hold off on comment until like noon time. In other
14 words, if I knock out three topic areas and we can
15 take comments on all three areas by lunch, that might
16 be one way we will do it. No matter what, we will
17 give you an opportunity to comment on everything. I'm
18 just not sure, it depends on the flow of the day
19 whether we're going to do it immediately following the
20 close of each topic area.

21 MS. NORTH: Okay, understood, thank you.

22 HEARING OFFICER CELLI: Thank you very much,
23 thanks for being part of this.

24 So now I have called on everybody who
25 identified themselves on the phone. Oh, there's a

1 person named anonymous, did you wish to make a comment
2 anonymous? Okay, I'm hearing none. Then I'm just
3 going to un-mute the phone with regard to the
4 remaining callers and whoever is on the phone and who
5 wants to make a comment to the Committee, please speak
6 up now.

7 MR. BONAMICI: Hi, if you can hear me, this
8 is Doug Bonamici. I am on the phone but on direct
9 line. Thank you for hearing us, and I'll be happy to
10 testify. If so, call to do so.

11 HEARING OFFICER CELLI: Thank you very much.
12 Anyone else on the telephone who would like
13 to make a comment at this time, please speak up. The
14 record should reflect I have one, two, three, four,
15 five, six, seven, eight active call-in users right now
16 that are not identified as anything other than a call-
17 in user and a number. Any of you who wish to speak,
18 please do so now. Any comments, go ahead.

19 Okay, hearing none, then I'm going to turn
20 the meeting back to Commissioner Douglas for
21 adjournment.,

22 MS. STORA: Actually we do have another
23 comment out here in the audience. We have a follow-up
24 with Caltrans. I'd like David Flores to relay their
25 comments that we collected earlier.

1 HEARING OFFICER CELLI: Oh yes, thank you.

2 Mr. Flores, would you please come to the
3 podium and use the microphone so you can get in the
4 record. And I forgot the woman's name who spoke, if
5 you could please re-identify her.

6 MR. FLORES: Yes, Commissioners, Dave Flores.
7 I supervise the traffic and visual unit. Rebecca
8 Forbes, with Caltrans District Eight, their concern
9 was under Trans One which identifies that I-10 should
10 remain at LOSC. Their concern was the response back
11 from the applicant, the petitioner, that they would
12 like to have that struck from the conditions.

13 From what Ms. Forbes had indicated is that I-
14 10 is part of North American Free Trade Agreement.
15 This is an interconnection route between the ports and
16 to back east. This is a four lane interstate, two
17 lanes in each direction, and their major concern is
18 the traffic that could occur off their off-ramps and
19 could occur, stacking could occur off their I-10.
20 Because they're concerned that this is a major route
21 for truck traffic that they don't want any
22 interruption in their interstate at this point.

23 HEARING OFFICER CELLI: Just for (inaudible)
24 text, can I just --

25 MR. FLORES: Yes.

1 HEARING OFFICER CELLI: So does the condition
2 say something like there's no impact unless you get to
3 LOSC or worse?

4 MR. FLORES: Yes, the way the condition reads
5 is that I-10 always shall operate at a level of
6 service C or better when no such requirement existed
7 in the original condition. This was what the
8 applicant had indicated. And so the applicant has
9 disagreed with that LOSC performance standard for the
10 following reason, and they indicate that there are
11 already conditions in place.

12 Caltrans has indicated that they're willing
13 to go to LOSD if possible, but that they would have to
14 be notified and mitigation be in place if that was to
15 occur. And so they've indicated that they're willing
16 to go down to an LOSD, but they would prefer, of
17 course, that it remain at LOSC, the level of service.
18 And so I believe we can work as to maybe crafting the
19 conditions of certification for Trans One that maybe
20 satisfies all parties.

21 HEARING OFFICER CELLI: Okay. So thank you
22 on behalf of Rebecca Forbes for the comment. I just
23 want to ask, because I'm not clear. In other words,
24 from Caltrans point of view, was Trans One acceptable
25 as it was and then the new amendment added the

1 language with regard to LOSC?

2 MR. FLORES: That's correct.

3 HEARING OFFICER CELLI: They want it the old
4 way.

5 MR. FLORES: No.

6 HEARING OFFICER CELLI: No.

7 MR. FLORES: We had added to the level of
8 service C because this was per a letter that Caltrans
9 on August 12th provided to the CEC which identified
10 that they would like to have an LOSC level of service
11 at a minimum.

12 HEARING OFFICER CELLI: Okay, I got it. So
13 we're going to talk about traffic and transportation
14 in the evidentiary hearing and we'll hear about it
15 then.

16 Any other comments, anyone else on the phone
17 wishing to make a comment at this time? Hearing none,
18 then Commissioner Douglas, please.

19 COMMISSIONER DOUGLAS: All right, well thank
20 you. We look forward to seeing all of you at the
21 hearing, and for now we're adjourned.

22 (ADJOURNED)

23 --o0o--

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