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ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
HUNTINGTON BEACH ENERGY PROJECT
BEFORE THE CALIFORNIA ENERGY COMMISSION

In the matter of,)
)
Application for Certification)
for the) Docket No. 12-AFC-02
Huntington Beach Energy)
Project)

Comments to the PMPD

CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, HEARING ROOM A
SACRAMENTO, CALIFORNIA

WEDNESDAY, SEPTEMBER 17, 2014

2:07 P.M.

Reported by:

Peter Petty

APPEARANCES

COMMISSIONERS (AND THEIR ADVISORS) PRESENT:

Andrew McAllister, Presiding Member

Pat Saxton, His Advisor

Karen Douglas, Associate Member

Jennifer Nelson, Her Advisor

HEARING OFFICER:

Susan Cochran

CEC STAFF PRESENT:

Kevin W. Bell, Esq., Senior Staff Counsel

Felicia Miller, Project Manager

Alana Mathews, Public Adviser

Paul Kramer, Chief Hearing Officer

Eric Knight

PETITIONER/APPLICANT:

Stephen O'Kane, VP for AES Southland Development

Kristen Castanos, Esq., Stoel Rives

Melissa Foster, Esq., Stoel Rives

Jerry Salamy, CH2M Hill

INTERVENER:

Monica Rudman

APPEARANCES

GOVERNMENTAL AGENCIES:California Coastal Commission

Tom Lester

Louise Warren

PUBLIC COMMENT:

Jim Stewart

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SEPTEMBER 17, 2014

2:07 P.M.

COMMISSIONER MC ALLISTER: Okay, thanks everybody for coming. We're going to get started. A couple of minutes late here but, hopefully, we can knock out the agenda here in order.

Let's see, my name is Andrew McAllister. I'm the Presiding Member on this Committee Conference on the Presiding Member's Proposed Decision for the Huntington Beach Energy Project, 12-AFC-02.

And I'll just go along from dais, Pat Saxton, my advisor, myself, Susan Cochran, who's the Hearing Officer, Commissioner Douglas to her left, and Jennifer Nelson, her Adviser, to her left.

Let's see, we have I think a number of things to go through today, some comments on the proposed decision.

And I will, with that, kick it off. I want to thank you all again for coming and kick it off by passing to Susan.

HEARING OFFICER COCHRAN: Thank you and welcome.

I would note for the record that the Petitioner is present, if you could identify yourself for the record, please?

MR. O'KANE: Stephen O'Kane with AES Development Corporation. Thank you.

1 HEARING OFFICER COCHRAN: Thank you.

2 MS. FOSTER: Melissa Foster with Stoel Rives, Counsel
3 for the Applicant.

4 MS. CASTANOS: And Kristen Castanos with Stoel Rives,
5 Counsel for the Applicant.

6 HEARING OFFICER COCHRAN: Thank you. I also would
7 like to point out that our Public Adviser, Alana Mathews, is
8 in the audience.

9 And when we get to the public comment portion, if you
10 would like to speak, she has delightful and lovely blue cards
11 available so that we'll know if you wish to speak.

12 Did you want to say anything else, Ms. Mathews?
13 Thank you.

14 If I could also have staff introduce themselves?

15 MR. BELL: Kevin W. Bell, Senior Staff Counsel,
16 appearing on behalf of staff.

17 With me at counsel table -- or at the table is
18 Felicia Miller, Project Manager.

19 HEARING OFFICER COCHRAN: Thank you.

20 MR. BELL: I also have other staff present today.

21 HEARING OFFICER COCHRAN: Thank you so much.

22 I see that Intervener Monica Rudman is here. Ms.
23 Rudman, if you could introduce yourself?

24 MS. RUDMAN: Monica Rudman, Intervener.

25 HEARING OFFICER COCHRAN: Thank you. We didn't even

1 practice this.

2 MS. RUDMAN: I do work with the Energy Commission.

3 My ideas that I'll be presenting are not the opinion of the

4 Commission.

5 HEARING OFFICER COCHRAN: Thank you very much for

6 that.

7 Mr. Kramer, if you could unmute the folks so that we

8 can see if there are any -- if the other Intervener, Jason

9 Pyle has joined us today? Mr. Pyle?

10 Mr. Pyle? Bueller? Okay. Apparently Mr. Pyle has

11 not joined us today.

12 Are there any representatives from Federal Government

13 agencies on the phone?

14 MR. LESTER: Yes, this is Tom Lester from the Coastal

15 Commission.

16 HEARING OFFICER COCHRAN: Thank you.

17 MR. LESTER: And I'm not able to log in to the WebEx

18 part, but I am here via phone, anyway.

19 HEARING OFFICER COCHRAN: Okay, thank you very much.

20 Are there any officials representing Native American

21 Tribes or Nations?

22 Any other State agencies besides the California

23 Coastal Commission; South Coast Air Quality District,

24 Department of Fish and Wildlife?

25 MR. LESTER: I believe my staff attorney's on the

1 line, too, Louise Warren. She may be joining us shortly.

2 MS. WARREN: This is Louise Warren. I am on the
3 phone. I was waiting for the agency.

4 HEARING OFFICER COCHRAN: Oh, thank you.

5 Is anyone from the City of Huntington Beach on the
6 line?

7 Anyone else who would like to introduce themselves,
8 who's called in this afternoon?

9 Okay, as I said before we convened the hearing today,
10 if you could mute yourselves that way you have control over
11 when you're going to wish to speak.

12 If we have to mute you to cut down on the feedback
13 then you may miss your ability to give us a chat.

14 With that, the purpose of today's meeting is to
15 discuss the Presiding Member's Proposed Decision, we usually
16 call it the PMPD, that was published on September 3rd, 2014.

17 On that date the Notice of Availability went out to
18 the Proof of Service List, which noticed today's conference.

19 The Notice of Availability also included notice for
20 the Commission Business meeting, at which the full Commission
21 will decide whether to adopt the PMPD and any errata.

22 The current date for the full Commission to consider
23 the PMPD and errata is October 7, 2014.

24 The Notice of Availability of the PMPD indicated the
25 last date to submit comments is February 3rd -- February,

1 sorry. Friday, October 3rd, 2014, at 4:00 p.m.

2 We need them in by 4:00 p.m. so that Dockets has a
3 chance to actually have them posted by that date. And given
4 the short time frame that currently exists, from the 3rd to
5 the 7th, the sooner we get comments the better we'll all be.

6 The Committee also asked that comments to the PMPD be
7 provided for -- even before the end of the comment period for
8 today's conference in order to give the Committee a chance to
9 see the comments before we convene this meeting today.

10 Thus far, we have received written comments from the
11 City of Huntington Beach and the Applicant.

12 In addition, there have been a series of comment
13 letters from various individuals, largely touching on
14 greenhouse gas.

15 I know that Mr. Stewart made written comments that
16 were docketed today.

17 So, let's turn now to a discussion of where we are
18 today. And the first thing I would like to talk about is the
19 schedule.

20 As we know, the schedule was incredibly tight from
21 the close of the public hearings -- the evidentiary hearings
22 to the publication of the PMPD.

23 Since the publication of the PMPD, a second business
24 meeting has been scheduled for October 29, 2014.

25 Are there any thoughts on moving the consideration of

1 the HBEP to that later meeting, either October 29 or some
2 other future meeting?

3 MR. O'KANE: From the Applicant, the best perspective
4 is, no, we would like to proceed with the October 7th,
5 provided the issues we've docketed are dealt with in a timely
6 manner.

7 With respect to time frame, you know, the time frame
8 from the hearing to now, it would be consistent with a 12-
9 month licensing process type time frame, so I don't think
10 it's particularly tight.

11 HEARING OFFICER COCHRAN: Staff?

12 MR. BELL: The staff has no position as to the timing
13 of the hearing on the PMPD.

14 HEARING OFFICER COCHRAN: Okay.

15 COMMISSIONER MC ALLISTER: Excuse me, could you just
16 go over that?

17 HEARING OFFICER COCHRAN: I will. I was going to,
18 sorry.

19 COMMISSIONER MC ALLISTER: Okay. Yeah, no, sorry to
20 break in, I just kind of wanted to make sure that we
21 understood the serial nature of what has to happen by when,
22 so that we can sort of see when this would have to be -- when
23 the agenda would have to go public and if that gives us
24 enough time. So, what the series of events is.

25 HEARING OFFICER COCHRAN: Right. Probably what we're

1 looking at is with the close of the comment period on October
2 3rd that gives us, essentially, the weekend and Monday.

3 The errata may be ready Monday, but most likely would
4 be ready Tuesday morning, the day of the business meeting,
5 which doesn't give most folks enough time to actually look at
6 it to see if it accurately reflects everything we want to do.

7 In addition, it's likely that the errata would have
8 to -- any additional errata would have to be read into the
9 record at the business meeting, which could further
10 complicate things.

11 By moving the consideration of the item to October
12 29th, that does not reopen the comment period. The comment
13 period still would close on October 3rd.

14 It would just give folks an opportunity to review the
15 errata before actually going into the business meeting.

16 MS. FOSTER: I think it remains Applicant's position
17 that we would like to push forward for October 7th. It
18 depends on the discussion here today and a few of the items
19 we've raised in our initial comments.

20 But that is our intent and we would prefer that
21 approach.

22 HEARING OFFICER COCHRAN: Okay.

23 MR. BELL: And it remains staff's position that we
24 have no position.

25 HEARING OFFICER COCHRAN: Thank you.

1 Ms. Rudman, I'd like to hear from you on this as
2 well.

3 MR. RUDMAN: I am always in favor of a little more
4 time since it's very -- a lot of material to go through.

5 HEARING OFFICER COCHRAN: I'd like to ask the
6 Applicant a little bit, is October 7th critical or is --
7 would October 29th still work from your project perspective?
8 I mean I'm just trying to understand.

9 MR. O'KANE: Any delay causes further financial
10 burden, there's no doubt of that. We are now 26 months into
11 a 12-month process and we are disappointed that we have to
12 even consider further delay at this point.

13 Would it be -- from a project perspective, we would
14 obviously have to accommodate it should it be moved to
15 October 29th, but it's still our position that we'd like to
16 hold October 7th.

17 HEARING OFFICER COCHRAN: Okay, thank you for that.

18 So, the next thing I wanted to talk about, which
19 seems to be probably the bulk of the comments that we've
20 received to date are changes to the Conditions of
21 Certification.

22 And at the outset, I would like to apologize and
23 explain what happened with some of the Conditions of
24 Certification.

25 I took staff's Exhibit 2003 and used them as a model.

1 When we put the formatting for the PMPD on those conditions
2 some of the red lines disappeared.

3 And so, as I was going through and preparing the PMPD
4 some sections weren't changed that were supposed to have been
5 changed.

6 For example, AQSC 6, all of the changes in HAZMAT,
7 all of the changes in Waste, and all of the changes in Land
8 Use should have been as they appear in Applicant's comments
9 to the PMPD that we received on Monday, so that the errata
10 will reflect all of those changes.

11 As an example, in Hazardous Materials Handling,
12 Conditions of Certification 8 and 9, the verification for 8
13 slipped below 9. I mean it was clear what happened and it
14 was only through not being able to get one final look that
15 that has happened.

16 So, those changes will be made.

17 So, the next thing we need to turn to, then, is the
18 consideration of some other comments.

19 Mr. Kramer, if you could share the desktop with the
20 comments from the City of Huntington Beach on Worker Safety.

21 Yesterday, the City of Huntington Beach filed
22 comments and it was probably very difficult to find where
23 their tracked changes were.

24 Their tracked changes are actually on page APP-63 and
25 APP-158.

1 If you look at 158, their red line shows and it has a
2 change to the screening fencing for the parking lots shall be
3 a maximum of six feet tall, as opposed to "no less than six
4 feet tall".

5 That was one of their changes. And so, I'm going to
6 ask the parties is that acceptable to the parties that change
7 in Visual 3?

8 MS. FOSTER: Applicant is fine with all of the
9 changes that the City has proposed.

10 HEARING OFFICER COCHRAN: Okay.

11 MS. FOSTER: Both that one and the ones on Worker
12 Safety.

13 HEARING OFFICER COCHRAN: Okay. And this is -- up on
14 the screen is the language from Worker Safety. The
15 underscored, bold is the insertion that the City of
16 Huntington Beach has asked for, "That corners must allow for
17 clear travel of a minimum 17-foot inter radius and 45-foot
18 outer radius" and so forth.

19 Do the parties have any positions on those changes?
20 I've heard from Applicant. Staff?

21 MR. BELL: The staff's position with respect to this
22 addition is that placing the actual text of the local LORS
23 into the condition itself is redundant. However, it's not an
24 incorrect statement of that LORS. And if the Committee
25 wishes to leave that in there, staff has no objection.

1 HEARING OFFICER COCHRAN: Okay. Ms. Rudman?

2 MS. RUDMAN: I would prefer to have an opportunity to
3 kind of read these, as well as now it seems like the
4 compliance conditions are unclear. I'm not even sure what
5 the compliance conditions are anymore.

6 So, to me this is not like, you know, a form where I
7 can provide comments on these.

8 HEARING OFFICER COCHRAN: Well, I would say that
9 Applicant did a very thorough job of outlining their
10 conditions and their concerns about their conditions, and
11 those things have been read by -- you have had the
12 opportunity to read those.

13 So, you know, obviously, the comment period is still
14 open and you can make further comments.

15 But for a condition like this, you know, we'll
16 continue to accept your comments.

17 If you're unwilling to stipulate today that's fine,
18 we'll continue to move on and you can make further comments
19 during whatever additional comments you wish to file at the
20 close.

21 COMMISSIONER MC ALLISTER: Just to be clear, Counsel,
22 this is a cut and paste from -- your read on this is that
23 this came directly from the Huntington Beach Local Ordinance
24 in Huntington Beach, or City Code, or what?

25 MR. BELL: That's what I'm informed and believe.

1 HEARING OFFICER COCHRAN: In addition, the City of
2 Huntington Beach made two comments. And the first comment
3 has to do with Table 3, which is the volume capacity ratio.

4 The Volume Capacity Ratio Table was pulled from the
5 FSA. So, if there are changes that need to be made to that,
6 I need to hear from either staff or Applicant in comment so
7 that I can make those corrections.

8 Because when I looked at what was in the FSA and what
9 was in the PMPD, they were the same to me. I'm not an
10 engineer. I don't play one on TV. So, it could just be my
11 lack of understanding.

12 MR. BELL: The staff's position was that any
13 differences that have been detected between what is in the
14 FSA, what's in the PMPD and the comments made by the City is,
15 in effect, a distinction without a difference. At the end of
16 the day we're still at the same place that we were before and
17 there's nothing incorrect in what's been put forth.

18 HEARING OFFICER COCHRAN: Okay, I just wanted to make
19 sure that if there was some issue with the volume capacity
20 that we could take care of that.

21 So then we have sort of dealt with the low-hanging
22 fruit. Let's go to some of the more tricky issues. And I
23 think I would like to start with the Visual Conditions of
24 Certification.

25 And this touches on the Energy Commission's

1 relationship with the Coastal Commission.

2 In the PMPD we took into consideration the comments
3 that the Coastal Commission had made and treated them with
4 the due deference that they were due.

5 We did not treat them as the same type of comments
6 that we would have received if this were a Notice of
7 Intention proceeding. This is an AFC.

8 That being said, even if the Coastal Commission no
9 longer has plenary authority, we have a history of dealing
10 with our sister agencies and allowing them the opportunity to
11 at least review and comment on those plans that fall within
12 their jurisdiction.

13 There continues to be the Local Coastal Plan and
14 other issues that we would like -- I think that the Committee
15 would like to continue to hear from the Coastal Commission on
16 those plans as they come forward.

17 And there are a series of plans identified in the
18 Visual Conditions that have to be formulated.

19 So, it's a review and comment, only. It's not a veto
20 or an override.

21 With that, then, I would like to hear from the
22 parties about that.

23 MS. WARREN: This is Louise Warren from the Coastal
24 Commission, if I can just step in here for a minute.

25 The statements you just made regarding the Coastal

1 Commission's role in this process we disagree with pretty
2 strongly and think that they're inconsistent with the MOA
3 that our agencies entered into about a decade ago, and would
4 urge you to look at the letters and the MOAs that we've
5 written so far.

6 And if there is a problem with the MOA or a dispute,
7 there is a process in the MOA for resolving this dispute, but
8 they have been turned in this instance, yet.

9 HEARING OFFICER COCHRAN: Thank you. I understood
10 that that was the position of the Commission.

11 MS. WARREN: The Energy Commission?

12 HEARING OFFICER COCHRAN: No, the Coastal Commission,
13 sorry.

14 MS. WARREN: The position of the Coastal Commission
15 is that our report is proper in an AFC proceeding and should
16 be treated under 25523(b).

17 But we will be submitting additional written comments
18 for the October 3rd deadline, and I'm happy to walk through
19 that and to direct the Committee's attention to the MOA,
20 again. I just wanted to take this opportunity to explain
21 that the PMPD didn't, in our view, reflect the MOA or the
22 Coastal Commission's perspective on this.

23 HEARING OFFICER COCHRAN: Is it your position that
24 the MOA is a law, ordinance, rule or standard?

25 MS. WARREN: It's our position that the MOA describes

1 the procedures that the two agencies need to follow for
2 Coastal Commission comments on AFC proceedings and that the
3 MOA reflects the law as it applies to these proceedings. And
4 there was a disagreement about how to interpret 30413(d) and
5 25523 between our agencies.

6 And the MOA is the result of our negotiations and a
7 resolution of how the section should be interpreted.

8 HEARING OFFICER COCHRAN: I want to thank you for
9 your comments.

10 MS. WARREN: Thank you.

11 HEARING OFFICER COCHRAN: And is there anything
12 further?

13 Okay, yeah, if I could now hear from Applicant and
14 staff?

15 MR. BELL: And just briefly, before Ms. Foster chimes
16 in on this and that is staff is agreeable to the removal of
17 the California Coastal Commission from the Visual Resources
18 Condition of Certification -- removal of the language that
19 would provide for review and comment for the reasons set
20 forth in the Applicant's comments.

21 HEARING OFFICER COCHRAN: Thank you.

22 Applicant, did you have anything to add other than
23 what was in the written comments you submitted?

24 MS. FOSTER: We did not provide written comments on
25 the 30413(d) issue. That was briefed in our August 20th

1 brief.

2 HEARING OFFICER COCHRAN: Right.

3 MS. FOSTER: But we concurred with your position on
4 that in the PMPD and we agree with staff here about the
5 removal of the Coastal Commission from VIS-1, 2, 3 and 5.

6 HEARING OFFICER COCHRAN: Ms. Warren or Mr. Lester,
7 does the Coastal Commission have a position as to whether you
8 should be included in the Conditions of Certification
9 regarding review and comment on the Visual Conditions?

10 MS. WARREN: I'll defer to Mr. Lester on that.

11 MR. LESTER: I think that's secondary to the main
12 legal issues we've been discussing. I think it would be up
13 to the Committee to determine our role on Visual. We'd be
14 happy to review. We'd be happy to review and approve as long
15 as it is consistent with the City's LCP requirements for
16 Visual.

17 Because we're supposed to speak for the City on this
18 sort of issue, according to 30413(d), it may be appropriate
19 to keep us in that role.

20 HEARING OFFICER COCHRAN: Anything further?

21 MR. LESTER: Not at this point.

22 HEARING OFFICER COCHRAN: Is there anything else
23 anyone would like to say about the Visual Conditions of
24 Certification?

25 MS. RUDMAN: Would you read them out loud or tell me

1 what page they're on?

2 HEARING OFFICER COCHRAN: Visual begins at page APP-
3 143, in Appendix A and goes through to APP-159.

4 MS. CASTANOS: So, on behalf of the Applicant, we
5 would reiterate our position that it's not appropriate for
6 the Coastal Commission to be reviewing those plans for the
7 legal reasons that have been stated in our brief.

8 But we also believe there are some practical problems
9 associated with that that could result in delays with
10 construction, and start of operation that could be
11 problematic for the project with having additional layers of
12 review where it's unnecessary and not legally required.

13 HEARING OFFICER COCHRAN: And if there were a way to
14 craft language that would basically say they have a certain
15 amount of time, and if they don't comment, they're comments
16 are deemed waived would that satisfy your concern, on the
17 practical aspect?

18 MS. CASTANOS: I think as crafted the condition
19 actually says that now. I think the problem is, if they do
20 have comments then what? And how -- I mean if they aren't
21 satisfied with the plans, and the CPM is satisfied with the
22 plans, then how do we proceed?

23 HEARING OFFICER COCHRAN: Okay.

24 MS. FOSTER: It's a slippery slope and Applicant has
25 great concerns about it. And it could adversely affect the

1 timing of the project and it's contrary to law.

2 HEARING OFFICER COCHRAN: Yes.

3 MR. KNIGHT: Oh, sorry, it was dark green and not
4 light green.

5 (Laughter)

6 MR. KNIGHT: This is Eric Knight, Manager of the
7 Environmental Office.

8 The language -- there is language in the conditions
9 already that allow 30 days for a comment by the City of
10 Huntington Beach and the Coastal Commission. If comments
11 weren't received within that time period, the CPM would
12 consider the agencies to be acceptable of the plan.

13 And if there's disagreement -- and we deal with this
14 all the time. We routinely send plans, compliance plans to
15 local agencies that are affected by a project, State agencies
16 that are affected by a project.

17 And at the end of the day, it's clear the CPM makes
18 the decision.

19 So, we had originally written the conditions to
20 include the Coastal Commission throughout all the Visual
21 Conditions per unit and comment.

22 Based on the Applicant's comments, we thought the two
23 that were most appropriate would have been the Visual
24 Treatment, the Architectural Treatment, and the Landscaping.

25 Those are the two issues that tend to be of the most

1 concern to the Coastal Commission, given our long history of
2 working with them on El Segundo and a bunch of different
3 projects. So, we thought it was appropriate to keep them in
4 there.

5 And so I guess I would say if the Committee chooses
6 to include them, staff wouldn't object to that. We thought
7 it was appropriate in the beginning.

8 But things like lighting plans and things like that,
9 we thought maybe that was just not something the Coastal
10 Commission would be too concerned about. And that's
11 pretty -- you know, it's formulaic and we know how to deal
12 with lighting. So, anyhow, thank you.

13 COMMISSIONER MC ALLISTER: Counsel, could you sort of
14 filter the sort of project-related needs that Eric just
15 outlined with -- so what we've agreed to with this MOU -- or
16 MOA between the agencies?

17 Sort of what process would, in your view, be
18 appropriate or what role would the Coastal Commission play in
19 a process that respects the MOA?

20 MR. BELL: I'm guessing that question was addressed
21 to me?

22 COMMISSIONER MC ALLISTER: Yes.

23 MR. BELL: Yeah. I wasn't prepared to fully discuss
24 this issue today, but I can say that the MOA has been in
25 existence for some time and we do our best to work within the

1 confines of that MOA, as an agreement between our two
2 agencies.

3 I can't say that the MOA, itself, is not a legally
4 controlling document in that the other statutes or laws that
5 exist outside the MOA exist on their own and we still have to
6 comply with those.

7 We did solicit the Coastal Commission's comments. We
8 have tried to involve the Coastal Commission at every step of
9 the way in the past 26 months, and even before with this
10 project.

11 So, we've gone out of our way to reach out to the
12 Coastal Commission and try to keep them involved in this
13 project, itself.

14 The Coastal Commission has, as we know, filed a
15 report.

16 And as I stated in our opening brief, we are to give
17 due deference to other agencies that would otherwise have
18 primary jurisdiction, were it not for the Energy Commission's
19 jurisdiction.

20 The Coastal Commission's comments, some of them the
21 staff did find to be supported by our evidentiary record,
22 which, of course, every finding by the Committee and the
23 Commission has to be supported by our record.

24 Not by a record from an outside agency where we had
25 no evidence taken, no evidence submitted in our record, but

1 by our own evidentiary record.

2 Some of the ideas -- they had us do watering and
3 staff found that to be valuable.

4 Some of the other suggestions made by the Coastal
5 Commission staff found no justification within our record,
6 within local LORS to support some of the other
7 recommendations.

8 We envision the type of cooperation we've had with
9 the Coastal Commission to be very productive and we'd like to
10 continue that going on in the future. We'd like to continue
11 to engage with them.

12 One thing that would help is having the Coastal
13 Commission attend more of our workshops, attend more of our
14 meetings and attend our hearings to be more actively
15 involved, to help better understand the project and help
16 understand the position that staff takes in analyzing the
17 specifics of any given project.

18 Did that answer your question?

19 COMMISSIONER MC ALLISTER: Well, so, I'm just trying
20 to sort of situate. So, Applicant has expressed the worry
21 that there is sort of unmitigated -- you know, there's the
22 potential for sort of slippery slope type delays and I guess
23 I'm trying to get a read on whether -- you know, from staff
24 and from you I'm getting a sense that you don't really see it
25 the same way, but maybe we should try to be explicit about

1 that.

2 MR. BELL: I can't predict the future. I understand
3 Applicant's concern. Any time you add any other additional
4 layers of review, there's always the chance that there could
5 be some delays.

6 But I'm not sure that those types of delays are
7 really -- the gravamen of their objection. I believe what
8 the Applicant says that there's no legal basis to involve the
9 Coastal Commission post-licensing.

10 It's staff's position, however, that we really try to
11 reach out to our sister agencies, really try to bring them
12 into our process and have them participate actively. And we
13 like to continue to do that to the extent that we can.

14 COMMISSIONER MC ALLISTER: I mean I can envision a
15 scenario where you've got a delay that happens because we
16 maybe don't involve the Coastal Commission, and then they
17 have a problem and they come and feel that they haven't been
18 heard in the process.

19 You know, obviously, I'm not the expert on this, but
20 I want to make sure that things are as clear as they can be
21 between the agencies and the other parties.

22 MR. BELL: Well, we do have the MOU. And as I said,
23 we are trying to operate within the structure of that MOU to
24 the best of our ability.

25 COMMISSIONER MC ALLISTER: Yeah, go ahead.

1 MR. LESTER: This is Tom Lester, just a quick note on
2 that.

3 I don't recall any past AFC procedures where we've
4 been asked to weigh in on Visual or Landscaping issues that
5 have caused a delay or significant concern. It's operated
6 pretty smoothly in the past.

7 It's been a few years, but we review proposed layouts
8 and drawings and get back in a timely manner.

9 So, I would anticipate we would do the same thing at
10 this point.

11 MR. BELL: Yeah, I'm inclined to believe that the
12 last Coastal Commission comments or involvement with these
13 types of issues was in El Segundo, back in 2007.

14 MR. LESTER: That's probably about right.

15 COMMISSIONER MC ALLISTER: Okay, thanks for that.

16 MR. KNIGHT: But I just would add, you know, we were
17 mindful of the Applicant's concern about delay, so that's why
18 we added the language that said, you know, if comments
19 weren't received within 30 days the plan was deemed
20 acceptable to the Coastal Commission and the City of
21 Huntington Beach.

22 And it's a concurrent review. It's not first to the
23 City of Huntington Beach and then it's then on to the Coastal
24 Commission. It's a concurrent review.

25 COMMISSIONER MC ALLISTER: So, at that point it would

1 be up to the project, you know, CPM to determine the validity
2 of those comments and whether to move forward or not.

3 MR. KNIGHT: Exactly, right. It's reviewed and
4 approved by the CPM, comment by other entities within a set
5 time frame.

6 COMMISSIONER MC ALLISTER: Thanks.

7 MS. FOSTER: Applicant would like to go back to
8 Commissioner McAllister's original question about the MOU
9 here.

10 Notwithstanding our previous briefing on it, to our
11 knowledge the MOA does not contemplate post-licensing
12 involvement of the Coastal Commission. It sets out parties
13 agreement prior to, and we've taken issue with that
14 interpretation in the past, so I won't rehash that.

15 COMMISSIONER MC ALLISTER: Yeah, I get it. No, I
16 understand.

17 MS. FOSTER: But it doesn't provide any additional
18 rights to the Coastal Commission post-licensing. Therefore,
19 it's contrary to law at this point to include the Coastal
20 Commission. The City has an approved LCP. The City gets the
21 chance to look at the plan. The City's already adopted a
22 resolution related to visual enhancement for the project.

23 The Coastal Commission did not provide any comments
24 at that time, has not provided any comments related to Visual
25 for the project since that time.

1 So, it's Applicant's position that the Coastal
2 Commission need not be included in the Visual Conditions.

3 COMMISSIONER MC ALLISTER: Okay, so I think we
4 understand everybody's position. So, thanks very much.

5 Let's try to move on here to the next topic.

6 HEARING OFFICER COCHRAN: I'd like to now turn to
7 Applicant's proposal on transmission line safety and
8 nuisance, which is on APP-23 of their filing. In this case
9 it tracks with what I believe was in Exhibit 2003.

10 So, I was just going to ask why the Applicant now
11 wants to make these additional changes? Did I misunderstand?

12 MR. O'KANE: Thank you, Stephen O'Kane for the
13 Applicant. I'll have to admit that this is a bit of a late
14 observation on our part. And, primarily, this is the
15 recognition of the fact that the project does not include
16 transmission lines, only generator tie-ins. And the specific
17 standards that were referenced in the Condition of
18 Certifications are applicable to utility-owned and regulated
19 transmission lines under the CPUC.

20 We would have no objection complying with the
21 electrical standards contained within those operational
22 standards.

23 However, the rest of the requirements specified in
24 those operational standards, which include CPUC application
25 approval for the construction would not be applicable to a

1 generator tie-in, and I think that is what this section of
2 conditions are referring to is the electrical safety from the
3 generator tie-in, the high-voltage lines that are contained
4 within site, as there are no actual transmission lines
5 associated with this project.

6 MR. BELL: Staff has read and considered the
7 recommended language by the Applicant, believes that it is
8 supported by the evidentiary record and agrees with those
9 changes.

10 HEARING OFFICER COCHRAN: Ms. Rudman.

11 MR. RUDMAN: I haven't had a chance to really review
12 these, again.

13 I mean I think with the process where I thought there
14 was like some written compliance conditions that were clearly
15 things that we reacted to and now, apparently, a few days
16 later there's other compliance conditions, I just have not
17 had a chance to review those.

18 In this case it sounds very reasonable, but I can't
19 comment on it.

20 HEARING OFFICER COCHRAN: Okay. Turning then to BIO-
21 1, which is on APP-75, one of the things I note is that
22 Applicant has requested to strike out "Review and comment by
23 both U.S. Fish and Wildlife and CDF&W".

24 Why that change?

25 MS. FOSTER: Applicant has proposed that change

1 throughout the Biological Resources Conditions.

2 As noted in our cover letter and our testimony,
3 there's been no documented breeding of the Light-Footed
4 Clapper rail in the Brookhurst Marsh or the marshes that are
5 adjacent to the facility.

6 Therefore, there's no need to have Fish and Wildlife,
7 or Cal Fish and Wildlife involved in the Biological Resources
8 Conditions.

9 There is one condition that discusses if a special
10 status species is discovered, of course Applicant would then
11 go to the appropriate agencies and follow the appropriate
12 protocols.

13 But at the outset to include these other agencies
14 where there are no special status species or triggers seem
15 overly burdensome and unnecessary.

16 HEARING OFFICER COCHRAN: Staff, do you have a
17 position on this, anyone?

18 MR. BELL: Yes, staff has already considered this
19 condition, along with others that are similarly situation,
20 BIO-1 through BIO-6. And I can say the staff disagrees with
21 the recommended changes by the Applicant.

22 We believe that the evidentiary record supports the
23 inclusion of the language in the conditions, the proposed
24 condition of certification as set forth in the PMPD.

25 HEARING OFFICER COCHRAN: Ms. Rudman?

1 MS. RUDMAN: Again, I'm not sure which ones we're
2 talking about. But, so I would say the principle that I
3 would like be the most supportive of would be the strongest
4 protect for wildlife. So, having a wildlife expert on site
5 would be something that I would be the most supportive of.

6 So, depending on where that falls, on whose
7 conditions, you know, that's the direction I would choose.

8 HEARING OFFICER COCHRAN: Are there any other --
9 because like as Ms. Foster pointed out, many of the changes
10 were the same throughout in terms of eliminating CF&W and the
11 U.S. Fish and Wildlife Service.

12 Are there any other conditions that you'd like to
13 specifically call to our attention in BIO, let's focus in on
14 BIO beyond that sort of broad --

15 MS. FOSTER: Specifically related to the Fish and
16 Wildlife and the Cal Fish and Wildlife, you'll note that we
17 removed all the references to them expect for that special
18 status species.

19 HEARING OFFICER COCHRAN: Correct.

20 MS. FOSTER: We also had concern with the use of the
21 consult, or consultation with, given that that has a specific
22 meaning under the law.

23 HEARING OFFICER COCHRAN: Ah.

24 MS. FOSTER: So, it's not used throughout, but there
25 was a concern about inconsistencies with that and when it

1 would be appropriate.

2 And again, as I indicated, I believe it was BIO-8
3 where there is a discussion about -- BIO-7 or 8 where we do
4 talk about if a special status species is encountered,
5 they'll follow the protocol and consult as needed under the
6 law.

7 As far as the other Biological Resources Conditions,
8 I do not believe at this time Applicant needs to discuss any
9 of the changes. Most of them are all changes we've
10 previously put in the record. The record supports the
11 changes. And the big ones are the inclusion of those two
12 agencies.

13 HEARING OFFICER COCHRAN: One question I had is in
14 BIO-7, with the deletion of the changes to operation -- or
15 the deletion of "operation and closure" in the duties of the
16 designated biologist. I believe that's a suggested deletion
17 on your part.

18 MS. FOSTER: Are you referring to the end of the --

19 HEARING OFFICER COCHRAN: Right at the very beginning
20 it says, "The project owner shall ensure implementation of
21 the following measures during site mobilization and
22 construction" and then has struck out "operation and
23 closure".

24 MS. FOSTER: The staff assessment and the PMPD
25 indicates that there were no -- the impacts associated with

1 the operations of the facility were less than significant as
2 they relate to Biological Resources.

3 There was no nexus between the conclusion therein and
4 this condition to require a designated biologist during
5 operations of the plant.

6 As you know, under the Compliance and Closure
7 Conditions, the Compliance Plan and Closure Plan will be done
8 towards the end of the life of the facility.

9 If anything comes up in that time, it will be
10 addressed then, but including them now when there was no
11 nexus between impacts associated with operations and
12 mitigation here in this condition, that's the basis for
13 removing that from the condition.

14 HEARING OFFICER COCHRAN: Okay. Staff, I notice in
15 here that there are significant changes regarding the time of
16 when -- oh, I'm sorry. I'm sorry.

17 MR. KNIGHT: Well, could I just add that I think
18 maybe some of the confusion about BIO-7 is its title. And
19 that's the wrong title. It's not "duties of a designated
20 biologist".

21 It actually should be titled, "General Impact
22 Avoidance and Minimization Measures".

23 And then I think some of these things do apply during
24 operation or closure. So, things like designing the lighting
25 on the facility to be strobe light, or blinking unless the

1 FAA requires otherwise, things like closing trenches and
2 things like that.

3 So, maybe that's what's tripping everybody up is it
4 says "duties of a designated biologist" when that's the wrong
5 title.

6 HEARING OFFICER COCHRAN: I'm sorry, again, that's
7 "General Impact Avoidance" you said?

8 MR. KNIGHT: It's "General Impact Avoidance and
9 Minimization Measures". That's how staff had titled it in
10 the FSA.

11 Because there's another condition I believe it's BIO-
12 2, which says "Duties of a Designated Biologist and
13 Biological Monitor".

14 HEARING OFFICER COCHRAN: The other thing that I
15 noticed throughout the document is substitution of "special
16 status species" for animals. Does staff have an opinion on
17 that in terms of the removal of carcasses or --

18 MR. KNIGHT: We're okay with that change.

19 HEARING OFFICER COCHRAN: Okay. So then how --

20 MS. FOSTER: I think what Mr. Knight just indicated
21 may be part of Applicant's concern here. We had a concern
22 that there would be designated biologist duties throughout
23 operation and closure.

24 We are okay with the provisions related to FAA
25 lighting and that sort of thing. But apparently the title

1 caused concern and implicated that there would be some sort
2 of designated biologist involved throughout.

3 HEARING OFFICER COCHRAN: Thank you for the
4 correction on Soil and Water 4 regarding the correct MPDS
5 permit number.

6 If there's nothing else on Biological Resources,
7 let's turn to Cultural Resources.

8 So that everyone understands what the Committee tried
9 to do in the Conditions of Certification was to make them
10 parallel between sections, as well as within the document.

11 So, we tried to make the appointment of experts,
12 whether it's a designated biologist, the geo paleo person, or
13 the cultural resources specialists or anyone else. We tried
14 to make those processes similar all the way throughout the
15 document so that that way it's one type of language and one
16 type of approval throughout.

17 In specific, as it relates to the qualifications of
18 the cultural resource specialist, we have Applicant's
19 position, as reflected on APP-97.

20 And I was curious as to whether staff had any
21 position on this?

22 MR. BELL: Well, that's as to CUL-1, correct?

23 HEARING OFFICER COCHRAN: Correct.

24 MR. BELL: Sorry, I go by the numbers of the
25 conditions, not the page number, but I did find it.

1 HEARING OFFICER COCHRAN: That's okay. I'm trying to
2 give everyone cross-references.

3 MR. BELL: I had this one tabbed.

4 I can say that staff does disagree with the
5 recommended changes made by AES.

6 Staff also has some disagreement with the removal of
7 one subsection by the Committee. I can't say that staff has
8 reviewed and is considering the PMPD -- this is more of a
9 global statement, not just the Cultural Resource Section.

10 We've read and are considering the entirety of the
11 PMPD and will be filing extensive comments -- detailed
12 comments on the PMPD well before the October 3rd deadline.

13 Today, though, what we're addressing are some of the
14 agreements that we have with the Applicant to hopefully head
15 off having to address the areas of agreement again, at a
16 later time.

17 So, turning back to CUL-1, we can say the staff is in
18 general disagreement with respect to the Applicant's proposed
19 changes in CUL-1, and also the elimination of a portion of
20 the Condition of Certification.

21 Staff will set forth the rationale for its
22 disagreement with the Committee's proposed CUL-1 at the time
23 we file our extensive comments.

24 HEARING OFFICER COCHRAN: Thank you. And again, I
25 would ask, they've significantly shortened the time frame on

1 these from 75 to 45 days. Does staff have a position on
2 that, as well?

3 Was that included in your sort of "we disagree"?

4 MR. BELL: Yes. Staff was, well, to put it plainly,
5 happy with the way it was written.

6 HEARING OFFICER COCHRAN: Thank you.

7 Then let's now look at CUL-6 which --

8 MR. BELL: As to -- oh, I'm sorry.

9 HEARING OFFICER COCHRAN: I'm sorry.

10 MR. BELL: I was jumping in, I'm sorry.

11 HEARING OFFICER COCHRAN: Please do.

12 MR. BELL: Oh, as to CUL-6, the staff disagrees with
13 the Applicant's revisions in its entirety.

14 Additionally, as a part of our comments staff will
15 also be pointing out, as to CUL-6, that a portion of the PMPD
16 mischaracterizes the disturbance area on the site.

17 This is, staff feels, not a matter of interpretation.
18 We think it's -- it might be a math issue. The PMPD had
19 characterized the disturbance area as 30 -- or 3,300 feet by
20 staff's -- I'm sorry, square feet, 3,300 square feet.

21 Staff's calculations, mathematical calculations bring
22 it out to 25,830 square feet.

23 With those figures, there may be a different
24 conclusion that's reached as to this particular Condition of
25 Certification.

1 Again, staff will set that out in our comments to be
2 filed later.

3 But otherwise, staff disagrees, again, in the
4 Applicant's proposed new CUL-6 in its entirety.

5 HEARING OFFICER COCHRAN: Thank you.

6 Applicant, did you want to speak or do your proposed
7 changes speak for themselves.

8 MS. FOSTER: It's the same CUL-6 we've been proposing
9 throughout the proceeding, so it's not a new CUL-6 for
10 purposes of have you seen it before.

11 Applicant maintains its position that with the
12 extremely low likelihood or probability of encountering
13 cultural resources on the site, the mitigation as proposed is
14 not connected to what the potential for impacts are.

15 HEARING OFFICER COCHRAN: Ms. Rudman, did you have
16 any comments on CUL-1, CUL-6, or any of the Cultural
17 Resources Conditions of Certification?

18 MR. RUDMAN: I don't at this time.

19 HEARING OFFICER COCHRAN: Okay. I'm sorry I'm going
20 through my notes as quickly as I can. We've already talked
21 about Visual.

22 So, the last set, then, is Compliance and Closure.
23 We have Applicant's comments on COM-13, which is on APP-169.

24 Staff, I know that there was testimony at the
25 evidentiary hearing. Do you have any further comments on

1 COM-13?

2 MR. BELL: I'm sorry, could you repeat that question?

3 HEARING OFFICER COCHRAN: Do you have any comments to
4 Applicant's proposed changes to COM-13, the amount of time
5 between the incident and when the report has to be made.

6 MR. BELL: No, staff has no objection to that change
7 right there. I think that's as we had previously discussed
8 at an earlier date.

9 Staff's only comments as to the Compliance Conditions
10 were those that were missing out of the PMPD.

11 Oh, never mind, take that back. They're there, 1
12 through 15.

13 HEARING OFFICER COCHRAN: Okay, sort of -- okay.

14 And similarly, there are proposed changes to COM-14,
15 and I believe COM-15. Are those also acceptable to staff?

16 MR. BELL: Staff's amenable to those, as well.

17 HEARING OFFICER COCHRAN: Ms. Rudman, did you have
18 any comments on the Compliance and Closure Conditions of
19 Approval, including but not limited to those 13, 14, and 15
20 we just discussed?

21 MS. RUDMAN: So, you're asking for comments on the
22 Applicant's revisions or --

23 HEARING OFFICER COCHRAN: Yes.

24 MS. RUMAN: -- or are you asking on the Proposed
25 Decision?

1 HEARING OFFICER COCHRAN: Both, either, all.

2 MS. RUDMAN: I'll just have to provide all my
3 comments later.

4 HEARING OFFICER COCHRAN: Okay. Is there anything
5 further that any of the parties would like us to consider at
6 this point related to the PMPD?

7 MR. BELL: There are just a couple of areas that I
8 could list where staff is in agreement with AES's comments,
9 if that would be helpful?:

10 HEARING OFFICER COCHRAN: Yes please.

11 MR. BELL: As to proposed changes to the Noise
12 Section, specifically Noise 4 and Noise 6, staff is amendable
13 to the proposed changes by AES.

14 In the area of Waste 1 and Waste 2, staff is
15 amendable to those proposed changes.

16 We will be filing some comments in that section, in
17 the Waste section addressing demolition activities, but we
18 don't have to talk about that right now.

19 In the Soil and Water Section, Soil and Water 4,
20 staff notes that the permit number is incorrect in that, but
21 I see Madam Hearing Adviser nodding here head. She's aware
22 of that issue, I suppose.

23 HEARING OFFICER COCHRAN: Yes, that was included in
24 Applicant's comments, thank you.

25 MR. BELL: Good. And as to Soil and Water 3, staff

1 is amendable to those proposed changes.

2 Staff will be filing comments with respect to the
3 water supply assessment, as staff has concluded that is not
4 required under the circumstances.

5 Our comments will address that issue and the issue of
6 whether or not this area is an overdraft.

7 The staff believes that the evidentiary record points
8 to a different conclusion.

9 In Air Quality, staff is amenable to the proposed
10 changes by the Applicant for SC-3 and AQSC-6.

11 In the area of Hazardous Materials, staff is
12 amendable to the proposed changes to HAZ-6.

13 In the area of Land Use, Land-1, staff is amendable
14 to the proposed changes there.

15 There may also be some editorial cleanup that's going
16 to be required for that Condition of Certification, as well.

17 I understand there may have been some formatting
18 issues. I can sympathize.

19 In the area of Socioeconomics, in the intro section
20 there, in the PMPD itself, not in the Conditions, but in the
21 intro section, there's a -- staff has to note that there's no
22 mention of medical services in the record with respect to
23 socioeconomics, and yet medical services were included in the
24 PMPD section with respect to socioeconomics.

25 So, staff would be noting that that should be removed

1 from the PMPD since the record doesn't support that.

2 In the area of Traffic and Transportation, TRANS-2,
3 staff is okay with the language that's proposed by AES.

4 And TRANS-1, staff will be filing a brief comment
5 requesting the reinsertion of a phrase, specifically for all
6 necessary transportation permits in the opening paragraph of
7 TRANS-1.

8 Staff will -- just for clarity purposes, we'll
9 include that in our comments that we file before the
10 deadline.

11 In the Visual Resources Section, we covered a small
12 part of that.

13 Staff can say that we do agree with some, but not all
14 of the proposed changes from the Applicant. We'll be
15 addressing those specifically in our written comments.

16 And also with Biological Resources, I think we've
17 covered that as well that there still remains disagreement
18 over what the evidence supports and what it does not support
19 within the record, and we'll be addressing that as well.

20 The last part, I believe Ms. Foster has raised this
21 as well, which is there were numerous Conditions of
22 Certification where the staff and Applicant had, at the
23 recommendation -- at the wise recommendation of the Committee
24 to try to work out some agreed-upon language, and we do note
25 that the agreed-upon language did not make it into the PMPD

1 itself.

2 I understand Ms. Foster has prepared or will
3 prepare -- did you include that in your comments this time, I
4 can't --

5 MS. FOSTER: Yes, there's a list of those conditions
6 and you've covered all of them in your responses.

7 MR. BELL: Good. And I've got that list as well, but
8 we just want to make sure that the language we worked so hard
9 on coming to agreement makes it into the final document
10 itself.

11 But just for purposes of establishing our record,
12 we'll be including those as well in our written comments.

13 HEARING OFFICER COCHRAN: Ms. Rudman?

14 MS. RUDMAN: In terms of Air Quality, the Presiding
15 Member's Proposed Decision doesn't address my Air Quality
16 testimony.

17 The Presiding Member's Proposed Decision is based on
18 a determination of air quality impacts using weather that is
19 not characteristics of local conditions.

20 The South Coast Air Quality Management District's
21 August 27th letter confirms that the Costa Mesa Station had
22 less wind than the data used.

23 Compliance conditions should limit the emissions
24 based on using a continuous emissions monitoring system and
25 not using calculations based on fixed emission factors.

1 For example, if you go to Compliance Condition Air
2 Quality-1, the emission factors are just fixed over the life
3 of the project.

4 How can that actually be a good monitoring of the
5 impacts?

6 Further, as a principle, compliance conditions that
7 seek to limit local air pollution impacts must be measurable.

8 I suggest adding conditions that require emission
9 monitoring systems be placed at the Edison High School, the
10 Eader Elementary School, the John Burke Elementary School,
11 Gisler Middle School and Sowers Middle School.

12 I do not agree that the mitigations on construction
13 impacts that staff and the Applicant worked so hard on make
14 the impacts less than significant.

15 I prefer the impacts, the compliance conditions that
16 were in the Proposed -- Presiding Member's Proposed Decision
17 that I saw, which is why I'm a little disconcerted that those
18 are no longer the condition that I've working from.

19 In addition, in terms of greenhouse gases, the
20 Presiding Member's Proposed Decision assessment of no
21 significant greenhouse gas impacts is based on insufficient
22 evidence.

23 Staff's evidence is very qualitative and not up to
24 date.

25 I presented a Plexos modeling impact analysis,

1 performed by the Office of Ratepayer Advocates that
2 demonstrates that using current assumptions there is no need
3 for a power plant, such as HP Energy Project, to integrate
4 renewables.

5 The evidence shows the Huntington Beach Energy
6 Project will increase greenhouse gases and lead to an
7 increase in overall system heat rate for natural gas plants.

8 The Findings of Fact are incorrect in terms of the
9 heat rate and the maximum annual CO2 emission, since it
10 ignores startup and shutdown impacts and operations at less
11 than full load.

12 AQ10 says that HB Energy Project only needs to comply
13 with 1,000 and 100 pounds net megawatt CO2 limit if the
14 capacity factor exceeds 60 percent on an annual basis.

15 This is not correct. It should comply with the
16 standard at all times.

17 Further, the standard was revised downward this year
18 and HP Energy Project must comply with the new standard.

19 Also, AQ25, the greenhouse gas emission limit should
20 be the most current rule and not HB Energy Project's expected
21 greenhouse gas emissions, as currently written.

22 The Presiding Member's Proposed Decision claims that
23 HB Energy Project will allow less-efficient power plants to
24 retire, but doesn't say which ones.

25 The power plants it is replacing under Rule 1304 are

1 going to be retired, anyway, since they use once-through
2 cooling technologies.

3 Further, they are infrequently operated, so they are
4 almost retired anyways.

5 I'd like to see -- the decision is really based on
6 inadequate information.

7 In terms of adaptation policy, it's clear that
8 California is asking government at every level to safeguard
9 the State by reducing the impact of climate change.

10 Huntington Beach Energy Project is vulnerable to the
11 impacts of climate change.

12 As sea levels rise, it will become an island.

13 Further, the Presiding Member's Proposed Decision
14 ignores the impacts of flooding, storm surges and wave run up
15 on the supporting structures, including pipelines,
16 transmission lines and substation.

17 I'm asking that the final decision or the next
18 decision should comply with California Adaptation Policy.

19 In terms of the Visual Impacts, I've presented
20 evidence that Huntington Beach is the most visited beach in
21 California.

22 Huntington Energy Project will create unpleasant
23 views, affecting millions of visitors.

24 The Presiding Member Proposed Decision also declines
25 to consider the KOP, the Newport Pier, claiming that I did

1 not analyze the impacts. And I dispute that assertion.

2 Further, I was told that as an Intervener that the
3 Committee is required to consider my evidence and just cannot
4 dismiss it out of hand.

5 VIS-1, Compliance Condition VIS-1 does not mitigate
6 the project's Visual Impacts. Rather, the surfboard
7 structure will make the project's visible aspects worse.

8 In terms of water use, the feasibility of using
9 wastewater should be made in comparison to other power plant
10 projects, not in isolation.

11 Other power plant projects have also had to use
12 wastewater.

13 And then, basically, in terms of compliance
14 conditions I'd like to say that they should adhere to certain
15 principles.

16 Right now I'm not -- well, first of all, I'd like to
17 say I'm not even clear anymore what compliance conditions I'm
18 working from.

19 So, I think it's only fair to the public and the
20 process to now sort of give adequate, a clear sense of like
21 where is the baseline here for compliance conditions, and
22 then an adequate amount of time for the public to review
23 these and comment.

24 What happened is by basically accepting compliance
25 conditions two days ago, and we're starting from those, now,

1 as if they were the Committee's, basically you're only giving
2 the public like two days to review those, and that's really
3 not acceptable.

4 So, as general principles for compliance conditions,
5 I think they should mitigate the impacts and not be plans to
6 mitigate impacts.

7 Conditions should result in measurable and verifiable
8 effects and should be assessed by qualified experts.

9 Further, I believe it's unfair to the public and a
10 circumvention of the process to allow compliance conditions
11 that will be adopted by the discretion of the Compliance
12 Project Manager, who most likely will not be a subject matter
13 expert on all facets of issues, and which could be modified
14 by the Compliance Project Manager at his or her discretion.

15 I plan on submitting further written comments by the
16 deadline.

17 And I would also like to offer the Commissioners and
18 Committee, I've made copies of my evidence, hardcopies, and
19 you're certainly welcome to have it. Thank you.

20 HEARING OFFICER COCHRAN: Thank you.

21 Is there anything further that anyone would like to
22 say?

23 MS. WARREN: This is Louise Warren at the Coastal
24 Commission, again. I just want to jump in, again.

25 I think today has been one example of how we -- we do

1 need to -- the Coastal Commission needs to -- I believe it
2 was Mr. Bell who said participate a little bit more in these
3 hearings. And we are talking to staff, your staff about
4 doing that and trying to have a more streamlined process the
5 next time we go through all of this.

6 And we appreciate your patience and that of your
7 staff working with us.

8 With all of that said, I would like to reiterate that
9 we do not believe that the position presented in the PMPD as
10 to the role of the Coastal Commission in your proceedings is
11 entirely accurate and that the MOA better reflects what the
12 law is.

13 And then section 25523(b) only describes two
14 circumstances in which the Energy Commission can reject the
15 recommendations of the Coastal Commission.

16 So, as I said before, we will submit written
17 comments, but I just wanted to explain today why we're here
18 on that point. And I appreciate your time.

19 HEARING OFFICER COCHRAN: Thank you.

20 COMMISSIONER MC ALLISTER: Thanks very much for
21 participating. I think that would be positive so that we're
22 kind of operating on the same page, rather than having to
23 kind of get on the same page in a particular context.

24 So, definitely would encourage that participation and
25 thank you very much.

1 COMMISSIONER DOUGLAS: Yeah, this is Commissioner
2 Douglas. I just wanted to add that I also think it would be
3 extremely valuable to have the Coastal Commission be more
4 engaged in the earlier stages of the process and the staff
5 analysis. I think that would be very helpful.

6 HEARING OFFICER COCHRAN: Ms. Castanos, I believe you
7 had something you wanted to say?

8 MS. CASTANOS: Yes, I just wanted to thank the
9 Committee for taking the time today. We really do appreciate
10 your work on this and we really think the PMPD comes to the
11 right conclusion. So, I don't want any of the discussion
12 today and our comments on the COCs to deflect from that.

13 We would appreciate, as we said earlier, sticking
14 with that October 7th hearing date. We do think it's
15 important for our schedule.

16 And we understand that the comment period remains
17 open until the 3rd.

18 We would encourage the Committee, if it's possible to
19 do this, to issue sort of a first errata that would address
20 the changes to the conditions that we know or that the
21 Committee knows they may be presenting and -- because we know
22 there were some formatting issues and other issues associated
23 with the conditions as presented in the PMPD.

24 And I think that it would help AES tremendously if we
25 could see, in advance of October 6th or 7th, the direction

1 that those conditions are going before we walk into that
2 meeting.

3 And then the last thing I would say is that it is
4 very important to us that the Coastal Commission's role be
5 accurately portrayed in this process and reiterate our
6 comments about removing them from the review of the plans in
7 the Visual Conditions.

8 That is critically important to us in terms of
9 ensuring that we have a project that is workable from a
10 construction/operations perspective going forward.

11 HEARING OFFICER COCHRAN: Anything else from any of
12 the other parties?

13 MR. BELL: No, just a big thank you from staff for
14 the work of the Committee on this, and also another big thank
15 you for our Project Manager, Felicia Miller, for really
16 cracking the whip and getting this project moving as
17 expeditiously and efficiently as possible.

18 MS. RUDMAN: Well, if we're all saying thank you,
19 I'll say thank you for a very valuable learning experience,
20 and I hope that I have an impact.

21 MR. O'KANE: I guess as Applicant and not one to miss
22 an opportunity I, too, would like to say thanks.

23 (Laughter)

24 MR. O'KANE: It's been a long time to get to this
25 point. We are hopeful we get to the final end of the line

1 soon.

2 AES is really proud of what we put forward and I
3 think throughout this long process of review we've
4 demonstrated that for most -- 99 percent of the project we
5 put forward and was accepted in August of 2012 is still the
6 project we are looking to approve imminently.

7 That the review of the design, the methods of
8 construction really did not come with significant changes to
9 the proposed project and we are really proud of that and that
10 we've brought a well-thought-out project and look forward to
11 being able to implement it soon. Thank you.

12 COMMISSIONER MC ALLISTER: Well, I'll just, I guess,
13 be an exception. I'm not going to thank anybody.

14 No, just kidding.

15 We've left out, actually, and important part here,
16 which is the public comment, so I want to make sure we get to
17 that before I thank anybody.

18 So, do we have -- I think we have some parties on the
19 phone and at least one of them has said that they would like
20 to give public comments. So, I'll call on him, first, that's
21 Jim Stewart.

22 HEARING OFFICER COCHRAN: Mr. Stewart, if you can --

23 MR. STEWART: Hello, this is Jim Stewart. Can you
24 hear me?

25 COMMISSIONER MC ALLISTER: Yes, we can.

1 HEARING OFFICER COCHRAN: Yes, thank you.

2 MR. STEWART: Okay, great. So, I just want to say
3 that I live in Southern California and I feel like I'm
4 representing the millions of people in Southern California
5 who are going to be breathing the bad air from this plant for
6 the next 40 years.

7 But I'm also representing the 7 billion people on
8 this earth who are facing horrible issues of climate change.
9 And right now, of course, we're going through a record heat
10 wave here in Southern California and we don't appreciate the
11 Commission, and the staff and everything adding more to
12 global warming by approving this plant.

13 And we don't think that the Staff Report and Proposed
14 Decisions adequately consider the issues of greenhouse gas
15 emissions, especially in relationship to the loading order or
16 preferred resources.

17 The duty of the Commission should be to find all
18 possible ways of making this -- they need a power supply, and
19 so far we haven't needed any, that any needed power supply
20 must be from renewables and storage.

21 And what we call upon the Commission is to honor the
22 State Mandate, as stated in the Governor's Executive Order S-
23 305, which requires the California GHG emission be 80 percent
24 below 1990 levels by 2050.

25 And the CEC staff and Commission must show how this

1 plant's GHG emission projections are consistent with at least
2 a straight line project from now to that target of 80 percent
3 below 1990 levels by 2050.

4 Are you proposing that this thing be closed down in
5 ten years to keep us on that target?

6 I mean I don't think that AES's economic model is
7 consistent with this GHG mandate.

8 Thank you very much.

9 COMMISSIONER MC ALLISTER: Thank you for your public
10 comment. Yeah, thanks for listening through the hearing and
11 waiting to close to the end, anyway, to make your comment.
12 And they are definitely duly noted.

13 HEARING OFFICER COCHRAN: Are there any other public
14 comments either from -- within Hearing Room A or online?

15 With that the Committee is going to adjourn to Closed
16 Session to consider the Application for Certification
17 pursuant to Government Code section 11126(c)(3).

18 I would like to thank everyone for coming and for
19 your thoughtful comments. I've certainly learned a lot.

20 And I will dismiss the court reporter and I will let
21 you know when we are adjourned.

22 COMMISSIONER MC ALLISTER: And now, I want to thank
23 everybody for coming and we will close out when we return.

24 COMMISSIONER DOUGLAS: And I just want to add,
25 appreciate the hard work on Conditions that staff and

1 Applicant did do. So, we will look at all of that in the
2 next couple days. Thank you.

3 (Thereupon, a Closed Session
4 convened at 3:19 p.m.)

5 (Thereupon, the Hearing was adjourned at
6 4:00 p.m.)

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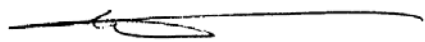
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I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of September, 2014.



PETER PETTY
CER**D-493
Notary Public

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Barbara Little
Certified Transcriber
AAERT No. CET**D-520