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BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of: )
) REDONDO BEACH ENERGY PROJECT ) Docket No. 012-AFC-03
) _____________________________ )

STATUS CONFERENCE

CALIFORNIA ENERGY COMMISSION

ART ROSENFELD HEARING ROOM

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 5, 2015

9:00 A.M.

Reported by:

Peter Petty

CALIFORNIA REPORTING LLC
(415) 457-4417
APPEARANCES

Commissioners (and their advisers) Present
Karen Douglas, Presiding Member
Jennifer Nelson, her Adviser
Le-Quyen Nguyen, her Adviser
Janea Scott, Associate Member
Rhetta DeMesa, her Adviser
Eileen Allen, Commissioner’s Technical Adviser
    for Facility Siting
Shawn Pittard, Assistant Public Adviser

Hearing Officer
Susan Cochran

Staff Present:
Kerry Willis, Staff Counsel
Keith Winstead, Project Manager
Matt Layton
Paul Kramer
Petitioner AES Southland, LLC
Greggory Wheatland, Esq., Ellison Schneider & Harris
Samantha Pottenger, Esq., Ellison Schneider & Harris
Stephen O’Kane, AES
Jerry Salamy, CH2M Hill
Interveners
City of Redondo Beach
Jon Welner, Esq., Jeffer Mangels Butler & Mitchell,
   Special Counsel to the City
Kimberly Huangfu, Esq., Jeffer Mangels Butler &
   Mitchell
Charles Salter
James Westbrook, Bluescape Environmental
Michael Webb, Esq., City Attorney
City of Hermosa Beach
Shahiedah Coates, Esq., Assistant City Attorney
Also Present
Tom Luster, California Coastal Commission
Louise Warren, California Coastal Commission
Public
None Present
<table>
<thead>
<tr>
<th>INDEX</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>PROCEEDINGS</td>
<td>5</td>
</tr>
<tr>
<td>ADJOURNMENT</td>
<td>53</td>
</tr>
<tr>
<td>REPORTER’S CERTIFICATION</td>
<td>54</td>
</tr>
<tr>
<td>TRANSCRIBER’S CERTIFICATION</td>
<td>55</td>
</tr>
</tbody>
</table>
COMMISSIONER DOUGLAS: Good morning, everybody. We are here for the status conference on the Redondo Beach Energy Project. I’m Karen Douglas, I’m the Presiding Member of the Energy Commission assigned to this case.

And to my left is our Hearing Adviser, Susan Cochran.

To her left is Janea Scott. Commissioner Scott is the Associate Member on this case.

Commissioner Scott’s Adviser, Rhetta DeMesa, is to her left.

And Eileen Allen, the Technical Adviser for the Commissioners, is on the far left of the dais, my left.

And then to my right is my Adviser, Jennifer Nelson. Le-Quyen Nguyen from my office will also be here shortly.

So let’s see, we have the Public Adviser, Shawn Pittard is here. Can you stand up? And so he’ll be collecting blue cards, he’s holding one up, and we already have a few, so looks like people are really with the program and ready to put their comments in,
but certainly if anyone else has a blue card, please give it to Shawn.

And at this point let me ask the Petitioner if you could introduce yourselves, please.

MR. WHEATLAND: Good morning, I’m Greg Wheatland, I’m counsel for the applicant.

Joining me shortly on my left will be Samantha Pottenger, also counsel for the applicant.

On my right is Stephen O’Kane with AES.

And behind me is Jerry Salamy with CH2MHill, consultants to the applicant.

COMMISSIONER DOUGLAS: Thank you very much. All right, staff, please.

MS. WILLIS: Good morning, my name is Kerry Willis, Senior Staff Counsel.

With me is Project Manager, Keith Winstead.

We also have various staff members in the audience for questions.

COMMISSIONER DOUGLAS: Excellent, thank you. And now intervener James Light, Building a Better Redondo, on the phone or in the room.

We usually call the interveners by order in which they intervened, which is what I’m doing here.

James Light, Building a Better Redondo?

What about then City of Redondo Beach?
MR. WELNER: Good morning. My name is Jon Welner, I’m outside counsel for the City of Redondo Beach.

I have with me Kimberly Huangfu, who is also outside counsel.

Seated to my left is Charles Salter, who is the noise consultant for the City.

And also behind me is James Westbrook, who is the air consultant for the City.

And on the phone, I believe, is Mike Webb, the City Attorney; is that correct?

MR. WEBB: That’s correct. Good morning.

MR. WELNER: Very good.

COMMISSIONER DOUGLAS: Thank you very much. Excellent, thanks for being here.

Is there anyone on the phone from the City of Hermosa Beach?

MS. COATES: Good morning, my name is Shahieda Coates. I’m the Assistant City Attorney for the City of Hermosa Beach.

COMMISSIONER DOUGLAS: Good morning. Thanks for being on the phone with us this morning.

Are there any representatives of federal government agencies on the phone or in the room, or officials representing Native American tribes or
nations? Are there any elected officials from state or local jurisdictions? Is there anyone participating today from the Coastal Commission or the South Coast Air Quality Management District?

MR. LUSTER: Good morning, this is Tom Luster with the Coastal Commission.

MS. WARREN: This is Louise Warren, Deputy Chief Counsel, Coastal Commission.

MR. LUSTER: May I start with an apology? This is Tom Luster. I just realized that the document we posted on Friday last week was our previous month’s status report. I’ve just posted the correct one earlier today. If later in the agenda you want me to just summarize that for everybody, I’d be happy to. But apologies for posting the wrong document a couple days ago.

COMMISSIONER DOUGLAS: Great. Well, thank you. And we did wonder about that, but we’ll look forward to seeing the new one.

What about South Coast Air Quality Management District?

Excellent. Well, with that, then, let me turn this over to Ms. Cochran.

HEARING OFFICER COCHRAN: Good morning, and thank you all for joining us.
As you are aware, the committee noticed today’s conference on the preliminary staff report — which from now on I’m going to say PSA — on July 21st, 2015.

On July 23rd, 2015, the committee issued an order directing the parties to respond to identified issues and questions. These issues and questions touched on both substantive and procedural issues.

Before considering the responses that the committee received to its July 23rd order, I wanted to first talk about the pending motion, which is Item 2 on our agenda today.

Yesterday afternoon, the City of Redondo Beach filed a motion seeking to compel AES to provide certain data on noise. As I stated, today’s agenda contains an item for consideration of pending motions.

However, Section 1716.5 of the Commission’s regulations provides that parties have 15 days to respond to motions unless otherwise ordered by the presiding member. The presiding member at this point has not indicated a willingness to waive that 15-day requirement; thus, the motion is not ripe for consideration by the committee today.

And so we would invite the parties, particularly staff and the applicant, if they wish to
respond to the motion in writing. The committee is particularly interested in hearing, first of all, whether the motion is timely; and second, whether the information sought by the City of Redondo Beach is needed for staff’s analysis.

I would also note that consistent with Section 1716.5, the committee may decide the motion without further hearing or may schedule a hearing to determine that.

So before we launch into the substance of the issues that we had outlined on the July 23rd order, is there any comment on the motion to compel that you would like us to consider at this point?

MR. WELNER: Well, Jon Welner. I would only say that I think while we’re gathered here we should take advantage of the presence of our expert, Charles Salter, if the committee is interested. He can provide a little bit additional testimony or background regarding the need for the motion.

HEARING OFFICER COCHRAN: Staff or applicant?

MR. WHEATLAND: We just received the motion yesterday afternoon. I haven’t had a chance to review it in any detail or to talk to our consultant, so I would prefer not to respond or discuss the motion today but to respond as provided in the rules.
HEARING OFFICER COCHRAN: Thank you.

Staff?

MS. WILLIS: We would agree with that. As we said, we just received it yesterday and I just gathered staff at 7:30, 8:00 o'clock this morning to see if they were available, and we have some staff but we aren't really prepared to respond.

HEARING OFFICER COCHRAN: And I think that's, again, why at this point we don't believe that the motion is ripe for consideration. We appreciate the offer to have Mr. Salter explain, but hopefully the motion stands on its own and we'll take into account what the parties have to say.

MR. WELNER: Thank you.

HEARING OFFICER COCHRAN: So let's now talk about the issues raised in the July 23rd, 2015 order. First of all, I'd like to specifically thank staff and the applicant for their very thorough and cogent responses to the questions that we raised.

I note that this morning we received a status report from the City of Redondo Beach, and obviously we haven't had a chance to look at or digest that. That's why the order asked that those status reports be filed on or before the 1st. And so the discussion now is probably going to be more focused on what staff
and applicant had to say than considerations from the City of Redondo Beach.

The first issue that we wanted to talk about was air quality and greenhouse gasses. And obviously, unless someone from the South Coast Air Quality Management District has joined us?

Okay, seeing no hands raising on the computer or here in the committee chamber, the first question I have is the City of Redondo Beach has questioned whether --

MR. LAYTON: Excuse me, Susan?

HEARING OFFICER COCHRAN: Yeah, yeah, yeah.

MR. LAYTON: Matt Layton. I spoke to Andrew Lee at the District yesterday. He said they would try to be available today.

HEARING OFFICER COCHRAN: Okay.

MR. LAYTON: I reminded him that would be of great help, but I guess so far they haven’t called in.

HEARING OFFICER COCHRAN: Okay, thank you.

Well, we’ll talk about them behind their backs, then.

Mr. Welner submitted a letter which is found on the docket at TN205189, that basically sets forth both procedural and substantive issues to the District about the process thus far relating to the issuance of the final determination of compliance, or the FDOC,
and focusing on the public meeting that was held on the preliminary determination of compliance, the PDOC. Can someone tell me what the status of that objection that was raised is?

MR. WELNER: We’ve heard nothing.

HEARING OFFICER COCHRAN: Okay.

Also, when South Coast did file a status report with us -- and again, we thank them for that timely filing -- but it indicates that there is no estimated delivery date for the FDOC.

I know that generally what they have said previously is that it would take them 30 days following the completion of the public meeting. And I’m just going to characterize it as a public meeting, I know that’s an issue. And then staff would require 45 days after the receipt of the FDOC for the publication of its analysis in the FSA.

So given that we have no idea what the delivery date for the FDOC is, what effect does that have on this proceeding? And I’m looking specifically at Ms. Willis.

MS. WILLIS: Thank you. We have had discussions with our air quality staff, and at this point we are unaware of what date the FDOC will be finalized. That’s why we were hoping that the Air...
District would be on the phone today to maybe clarify that issue.

We were expecting no later than, I think, yesterday. That would give us the 30 days to review. We’re actually thinking 30 days instead of 45 days that we could complete this.

If we don’t receive it, it really is going to be a day-for-day slip, I believe, because all the other sections are either nearing completion or have been completed and reviewed, so we were really planning on the September 4th publication date. And without the Air District’s FDOC we are lagging behind in that area.

HEARING OFFICER COCHRAN: Okay. Does any other party wish to speak to that? Mr. Wheatland.

MR. WHEATLAND: First of all, I should mention that one of the things that the District cited in its letter was that it had asked for additional information from the applicant. We had received a request from the District on July 22nd. We are in the process of preparing a response and we will submit that to the District no later than the end of this week, but this is additional information that they’ve just now recently submitted to us.

We believe that the Air District and the FDOC
is an important part of the AFC proceeding, but we
don’t believe that it should be the tail that wags the
dog. And what I mean by that is that when we
originally filed this application, you may recall that
the Executive Director’s determination was that the
AFC was complete, all except for one item, and that
was getting a letter of completeness from the
District.

And the initiation of this proceeding was
delayed for, I don’t know. Stephen, how many months
was it, eight, nine months or more, simply because we
didn’t have that letter of completeness. Every other
aspect of the application was complete and the
proceeding was ready to go, but the District’s delay
caused a delay in the commencement of the proceeding.

We’d hate to be in a similar position where
the District’s procrastination delays the entire
proceeding, and what we’d encourage the committee to
consider is a process that you have adopted in past
proceedings when there have been delays from the Air
District, and that is basically to bifurcate the
issuance of the FSA so that those portions of the FSA,
which as I understand it will be complete for
everything except air quality, can proceed to be
issued in accordance with the committee’s schedule,
and then to consider issuance of that portion of the FSA once you receive the FDOC.

One of the other important things to know about that FDOC is that there is a requirement in existing law that the Commission take every condition in the FDOC and include it verbatim as a condition in the Commission’s decision. So there isn’t discretionary review of the FDOC that the Commission needs to undertake; you’re required by law to take that document and adopt it as part of your decision.

The additional discretionary review that’s required is the additional conditions that the staff must prepare, and we certainly agree that it’s reasonable for the staff to have 30 days after the FDOC is received for the staff to provide that information, but we would hate to have that single item delay the issuance of the entire FSA.

HEARING OFFICER COCHRAN: Do either of the other parties, any of the other parties wish to address the suggestion that we bifurcate the FSA?

MS. WILLIS: Staff has in the past has bifurcated the process and published separately. In fact, there’s been, I think in some cases sections are published, you know, and then more sections are published.
It does not make for an easy to follow document. I know when we’re looking back at Carlsbad, for instance, going back to the original case, there were quite a few different staff documents, and trying to figure out which one is the real one or the final one was very difficult.

We prefer to publish it as one document, and that has been our preference.

HEARING OFFICER COCHRAN: Mr. Welner, just one second.

Mr. Luster, are you still on the phone?

MR. LUSTER: I am.

HEARING OFFICER COCHRAN: I just got news from our technical staff that the status report that you tried to file was rejected for technical reasons, so if you could refile that document in our docket, that would be much appreciated.

MR. LUSTER: I will do that.

HEARING OFFICER COCHRAN: Thank you very much.

MR. LUSTER: Fortunately, it is largely referring to previous documents that we have put on the docket, but I’ll redo it right now.

HEARING OFFICER COCHRAN: Okay, thank you very much.
Mr. Welner, on the bifurcation issue.

MR. WELNER: Yeah, thank you.

So the City doesn’t object in principle to bifurcating the PSA if there’s a real problem getting a report or getting an FDOC decision from the Air District, but we see that decision as being premature today for a number of reasons.

First of all, if there were some compelling rush, some issue that were driving us to making the September 4th date critical, we could understand taking the extraordinary step of bifurcating the report. But as staff just indicated, it would make for a clearer and better report and there’s no compelling need to have the report issued on September 4th.

Secondly, I would cite back to the committee its own statement in the notice of the committee conference describing about the Coastal Commission report and the FDOC decision as essential to the complete review and analysis of this project.

It’s not as if air is a side issue in this particular decision. Air and noise are probably the central two issues for the City and for the Commission, and I think it’s very important that the staff assessment deal with that when it’s issued in final form.
Third and probably most importantly, the FDOC in this case is not simply a ministerial step. It’s not something like it may be perhaps in some cases where the FDOC, the issues are settled. And in fact, I think from the City’s point of view, we’re not entirely sure that an FDOC can be issued.

So it’s not that the Air District is procrastinating, as was suggested. The Air District, we know, is working hard on a number of substantive issues that not only affect issuance of the FDOC but are important for the Energy Commission and its staff to consider.

I have with me today, as you know, James Westbrook, our air consultant. If it would be of interest -- I’m not going to go there right now, but if it would be of interest to the committee, we can certainly quickly review what those substantive issues are that are being looked at by the Air District that matter not only for issuance of the FDOC but also for the Commission’s CEQA considerations.

And finally, I guess what I would say in terms of the last point is that if, in fact, the committee wants to consider bifurcating the report, it should at least provide notice to the Air District that that is a step that might be taken. Perhaps give
the Air District 30 or 60 days. Let them know that if
the FDOC is not issued by a certain time, then the
committee would consider bifurcating the report.

But I think it would be precipitous to simply
bifurcate it today since we don’t know when the FDOC
will be issued. We know the Air District is working
hard on it. Unfortunately, a representative of the
District couldn’t be here today to explain where they
are in the process.

HEARING OFFICER COCHRAN: Ms. Coates, do you
have anything that you’d like to add on behalf of the
City of Hermosa Beach?

MS. COATES: No, nothing to add.

HEARING OFFICER COCHRAN: Thank you.

COMMISSIONER DOUGLAS: I just had a brief
comment on this. We will take this in and obviously
make a decision in terms of schedule, but I would note
that, of course we do at times bifurcate the document
and it’s not unusual.

More often than not, when we ask staff or
when staff proposes to bifurcate the staff assessment,
it is the FDOC that we are waiting for.

That said, it’s a much easier decision to
make when you know that the FDOC is imminent or you
have a sense of when it’s coming, and at least my
experience has been it can be a bit more disruptive if the time it takes for the FDOC to be issued kind of drags out, and then you have potentially hearings on one document and a rather long delay before you get to hearings on certain parts of the air quality section. So I think that we will take this under submission. I think that we are very interested in hearing from the Air District about when they think they’ll issue the FDOC.

And I will also say that we’re not in the practice of waiting indefinitely either, and the time is going to come, and it may be sooner rather than later, at which point we say, you know, we’re really ready to go with the rest of this proceeding and we’ve waited long enough.

So we will take this under submission and we will make a decision on schedule, but at least those are some thoughts.

I don’t know if any party wants to add any last thoughts to this right now, or if not, we’ll move on.

MS. WILLIS: I was just informed after I spoke that we did republish in El Segundo the entire document, so that would be an option.

COMMISSIONER DOUGLAS: Thank you. Yeah,
HEARING OFFICER COCHRAN: Okay. Another air quality issue that was raised had to do with efficiency and the heat rate average. And as I understand the comments that we received from staff and applicant, that the heat rate average does exceed the WECC standard.

So given this seemingly comparative lower efficiency, the committee is looking for information on how this plant compares to other plants and the benefits flowing from this technology in this location.

Part of this obviously will include a discussion of the role of this plant. For example, is this plant needed for voltage support? I know that was an issue in Huntington Beach.

And further, recent cases have led us to discuss whether there are other technologies that might address some of these issues regarding efficiency and the like, so we would be looking for that in the FSA unless people have comments on that issue.

I know that applicant’s status report focused in on our displacement theory as part of the answer, but are there other technologies or, you know, those
MR. O’KANE: Stephen O’Kane with AES. I just had a clarifying question there. You mentioned how does this plant compare to the WECC standard. Could you clarify what you meant by ‘standard’?

HEARING OFFICER COCHRAN: Well, my understanding is that we use the WECC for the heat rate average.

MR. O’KANE: Correct.

HEARING OFFICER COCHRAN: Okay. So it’s in relationship to that part of the analysis on the greenhouse gas emissions in terms of the relative efficiency leads to the displacement theory, because my understanding of the displacement theory is that more efficient plants displace less efficient plants. And so if a plant is marginally more efficient, it will be used.

But my question is, when it is marginally efficient how do we continue to do that, particularly in light of some of the discussion in recent cases like Carlsbad and Huntington, and of course the Commission’s precedential decision in Avenal.

MR. O’KANE: Okay. Just had that clarifying question, I guess standard versus an average.
HEARING OFFICER COCHRAN: Right.

MR. O’KANE: I guess that’s a significant difference.

HEARING OFFICER COCHRAN: Okay. That’s my shorthand; I’m not an engineer.

Any other questions, comments, protests?

Then I would like to move on to the Coastal Commission 30413(d) report.

Now, I understand that the applicant contends that this project is not subject to the 30413(d) provisions. I think, however, that the treatment that we gave the Coastal Commission report in Huntington Beach is fairly illustrative. And there were very specific things in the Coastal Commission report that we wanted to call to the parties’ attention.

The first of which is the consideration of additional alternatives, and that discussion is on pages 7 to 14 on their document, which has a TN205306 in the Redondo Beach docket.

I don’t want to speak for Mr. Luster.

Mr. Luster, perhaps you can characterize the Commission’s position regarding the alternatives analysis and what the Commission is looking for. My understanding is that there was some question as to whether the Coastal Commission had sufficient
information to determine whether there were no feasible less environmentally damaging alternatives or that the site had greater merit than available alternative sites; is that correct?

MR. LUSTER: Yes. We had two main areas where we thought revised alternative analysis would be necessary.

One, both the Coastal Act and the City’s LCP, Local Coastal Program, have requirements for projects involving wetland fill. Even if it’s an allowable use, there’s a three-part test that requires consideration of determining whether there are no feasible less environmentally damaging alternatives to the fill.

And given the new information and changed circumstances that have come out since publication of the PSA, we think at the very least the alternatives analysis in the PSA needs to be revised to include that new information and changed circumstances. And then based on the conclusions of the revised alternatives analysis, we could then apply this test that’s in both the LCP and the Coastal Act.

There’s a similar requirement in Coastal Act Section 30264 that’s cited in the report that we docketed regarding whether alternative sites have greater relative merit. And similarly, with the new
information that’s been developed since last July, we think the revised alternatives analysis should be used to make that determination.

So those are the two main issues that we had. Louise, do you want to add anything?

MS. WARREN: No, I think you’ve summarized it properly. I think I’m mostly here because I was a little surprised to see in the submission from the applicant the arguments about 30413(d) and the legal status of that. And we haven’t had an opportunity to respond to that. We obviously disagree with that legal analysis, so I just didn’t know if the committee had questions or if the Coastal Commission should try to find an opportunity to submit its own interpretation of those provisions.

HEARING OFFICER COCHRAN: Ms. Warren, we appreciate that. I don’t know that we have questions at this point, but we may have questions later. Because I also know that you submitted a letter regarding the land use issue, which is the next point that we’re going to be discussing.

Getting back, though, to alternatives for just a moment, do any of the parties have comments that they would like to make?

Mr. Wheatland, I saw you.
MR. WHEATLAND: I do have a question. The gentleman from the Coastal Commission mentioned new information and changed circumstances since the PSA was issued. The proposal for the project is exactly the same as proposed for the PSA, so I was wondering if he could be more specific as to what specific new information or changed circumstances he was referring to, and if that information was included in the report or a document submitted by the Coastal Commission.

HEARING OFFICER COCHRAN: Mr. Luster.

MR. LUSTER: Yes, thank you. Yes, we describe the information in the Coastal Commission’s adopted report starting on Page 7, I believe. It goes into some contracts from last year, the Cal ISO analyses, Energy Commission analyses of greater liability and expected generating capacity, so those are the main issues. It’s all spelled out in those pages of the report that you mentioned earlier.

MR. WHEATLAND: And what, may I ask, were the changed circumstances?

MR. LUSTER: Well, along with the contract and determinations of needed generating capacity, our conclusion that the areas onsite were the Coastal Commission jurisdictional wetlands and the need to do an alternatives analysis to allow fill over those
wetlands.

MR. WELNER: Jon Welner for the City.

There’s additional -- I mean, I would simply interject that the Coastal Commission report goes actually to great length to describe these new circumstances. I don't know why applicant is asking them to recite those pieces of the report again here, but I would only add to what Mr. Luster has described, that some of the key changed circumstances that are described in the Coastal Commission report is that over the course of the past year during a voluntary suspension that AES requested, it became clear through both the PUC long term procurement process and the Cal ISO reports that occurred at the time that the power that is being proposed to be generated by this plant is not needed and that, in particular, the claim in the AFC that the power must come from this location in order to guarantee reliability of the grid is simply -- is actually opposite. This subregion received no power purchase agreements because the reliability issue is resolved far better by facilities that are further south.

So those are some of the new conditions that are described in the report.

Oh, there’s one other, which is that AES made
clear in the course of its campaign for its
initiative, Measure B, that things would be just fine
if the plant were closed and (inaudible) development
were put in its place.

So those specifically are some of the new
conditions that are cited in the Coastal Commission
report, and Mr. Wheatland well knows they’re cited in
the report, and again, I’m not sure why he’s asking
Mr. Luster to recite them here, but thought I would
add that to the conversation.

HEARING OFFICER COCHRAN: I appreciate that.

And again, just a quick glance through the
Coastal Commission 30413(d) -- I’ll be able to trip
through that smoothly soon -- is on Pages 10 and
following it about the changed circumstances, so I
would suggest that that be sort of the starting point
in the analysis.

Staff, did you have anything you wanted to
add?

MS. WILLIS: Sure, thank you. We did review
the report carefully. We’ve also been in discussions
with the Coastal Commission on what the Energy
Commission’s functions are as far as need analysis, so
I think we have a clear understanding and they have a
clear understanding of what our functions are and what
the CPUC’s function, so that was made clear. Unfortunately, we didn’t have the discussions until after the report was submitted, but we are doing upgrading and reevaluating our alternatives analysis to look at some of the things that they’ve raised, and the issues that they’ve raised.

HEARING OFFICER COCHRAN: Okay, thank you.
MR. LUSTER: Madame Chair?
HEARING OFFICER COCHRAN: Yes?
MR. LUSTER: I’m sorry, may I add one more comment?
HEARING OFFICER COCHRAN: Certainly.
MR. LUSTER: Thank you. I should note that the Commission adopted this report at a public meeting at which AES provided comments, and so the Commission heard from them through our process and provided the report before you today.
HEARING OFFICER COCHRAN: And we just received -- oh, this is from Mr. Welner, this isn’t from the Coastal Commission. Is there another one?
MR. KRAMER: No, but it just came in. I thought you might want to see it.
HEARING OFFICER COCHRAN: Thank you.
MR. KRAMER: We’re still waiting on the other one.
HEARING OFFICER COCHRAN: Thank you.

So the discussion of need tees me up for the next discussion, which is land use, which was touched on in the Coastal Commission report as well as in the letter from Ms. Warren that was docketed on July 24th at TN205515. And that essentially has to deal with Ordinance O-314-15, adopted by the City of Redondo Beach on July 7, 2015, that in his status report I know Mr. Welner refers to as the prohibition, and it essentially applies to electrical generating facilities of 50 megawatts or more, and specifically indicates that the City will not issue any permit, license, or entitlement for use, including a business license, for any facility within the definition of the ordinance.

Obviously, if this ordinance applies, where does that leave us? And I think everyone has cited to the need, then, for the Commission to override the inconsistency with the LORS.

I know that applicant has taken the position that the ordinance is invalid, is unreasonable, unlawful, etcetera. But I guess the question I have is, if we are going to have to override, is a needs analysis part of that? What is that going to look like? What’s the timing for that type of analysis? And
I’m looking now at staff for the answer to this.

MS. WILLIS: Before we reach that question, and we haven’t completed that section of the FSA, so I’m not actually at liberty to say where we’re going to go because I actually don’t know where we’re going with that.

We did have questions, though, in reviewing this ordinance for the city. There’s some confusion, and I guess we’ve read the Coastal Commission’s letter very carefully. I believe we understand what they’re saying, but there seems to be some discrepancy and we just want to get a clarification.

In the section, I believe it’s Title 10 of their ordinance they add a Chapter 7, which is the chapter that’s added that provides the prohibition against the 50 megawatts or greater modification or new power plant, or anything before the Energy Commission.

But then also in Chapter 2 there’s a public utility facility definition that’s been modified that includes the exception that is laid out in Title 10, Chapter 7. But in Chapter 5 there is also a public utility facility definition that does not have that language that has been changed.

So we’re just asking the City if they could
clarify why it’s been changed in one part and not in the other part of the Municipal Code, because we’re kind of grappling with what does that mean, or if it has a meaning.

MR. WELNER: Sure. We can address that question, I think it’s more of a technical question, but what I’d like to just inquire since he’s not physically here is, Mike Webb, do you want to take a stab at responding to that?

MR. WEBB: I’m trying to load the ordinance as we speak. I think what Ms. Willis is referring to is there is still allowed power plants under 50 megawatts that aren’t otherwise subject to the Energy Commission jurisdiction, and I think that was more cleanup language to make certain that where under 50 megawatts not otherwise subject to the Energy Commission jurisdiction is allowed that there weren’t internal inconsistencies, but let me take a look and -

MS. WILLIS: If it helps, I was looking at the definitions, it’s 10-5.402 and it would be Section 140, Public Utility Facility, that is not changed.

MR. WELNER: Yeah, I think what I would say is that I think Mike Webb and myself don’t have the ordinance in front of us right now, but what we can do
is be happy to respond to that in writing.

I would add to that that whatever language is there with regard to any section outside of the new Section 7, as Mike Webb indicated, is cleanup language in order to make sure the rest of the Code aligns with Section 7.

HEARING OFFICER COCHRAN: And for those of you playing along at home, the ordinance is in our docket, and for some reason I don’t have the TN handy, so I apologize for that, but it is in the docket if you wish to maybe load it faster through our docket.

Mr. Wheatland.

MR. WHEATLAND: But before we get to the question of a schedule for doing a need analysis, I think we skipped over the most fundamental question of whether such analysis would be required at all.

The Commission in a very carefully reasoned decision that was just issued for the Carlsbad facility was presented with this exact same argument where the parties contended that you needed to do a need conformance analysis as part of a 255.25 determination, and the Commission in a very well reasoned decision explained why that was not required.

So I think before the committee would get to the question of a schedule for preparing an
unnecessary analysis, you need to look at that threshold determination and take that on squarely. We believe that there are very strong reasons why such an analysis would be inappropriate. We think those are well articulated by the Commission. And we think there’s a very high burden on the parties that contend that such analysis would be required to prove it and to have the committee make that determination before you get to the question of scheduling.

MR. WELNER: If we may, the City also has a quick response to that statement.

HEARING OFFICER COCHRAN: Just one moment. First of all, the Redondo Beach ordinance is docketed at 205603. Thank you, Ms. Allen. And I’d like to clarify when I say needs analysis what I’m really talking about is the necessary analysis for public convenience and necessity, and sometimes the terms ‘necessity’ and ‘need’ is conflated. It’s my shorthand, I apologize, but it is public convenience and necessity. And so the question still stands.

MR. WHEATLAND: I’m sorry, then.

HEARING OFFICER COCHRAN: No, no, no.

MR. WHEATLAND: I totally misunderstood your question, because in terms of a 255.25 or whatever the
section is for, you will need to receive evidence on
that topic, and I believe that it’s most appropriate
to receive that evidence as part of the evidentiary
hearings that will take place.

In some cases the Commission has taken
evidence on that issue only after it concluded the
evidentiary hearings, but I think it would be more
efficient for your process to receive that testimony
during the evidentiary phase.

The applicant is prepared to present
testimony in support of those findings and we would
propose that we would do so on the deadline for
submitting testimony in the evidentiary hearings,
which I believe is September 25th.

HEARING OFFICER COCHRAN: Under the current
schedule.

MR. WHEATLAND: Yes. And we would encourage
the committee to ask other parties to address the
issue in their direct testimony at that time.

I don’t mean to presume to speak for the
staff, though, in whether they choose to address it in
the FSA or as subsequent testimony; I think it would
be up to them.

HEARING OFFICER COCHRAN: Okay. Mr. Welner.

MR. WELNER: Yes, a couple of things to
quickly address in response to all the things that
have been said.

One is, the City believes that it’s quite
important for staff to address this question of public
convenience and necessity. Their analysis on every
other issue is something that’s valued and needed by
the committee and the Commission in order to make its
determinations, and we would appreciate the
opportunity to both brief the issue and have staff
opine on the issue before we reach the evidentiary
hearing stage.

I was going to have a number of things to
respond to the needs analysis question but I’ll defer
those since that doesn’t appear to be what we’re
talking about here in terms of what Mr. Wheatland
said, that no needs analysis is required.

But I would say that, as the City notes in
its status report, that there’s no light of day
between public convenience and necessity and need,
they’re synonymous, and in order to make a finding of
public convenience and necessity, essentially the
Commission has to find that the power is needed.

Moreover, I would note that there are two
separate bases in the Coastal Commission report
calling for essentially what we’re saying is a needs
analysis.

One basis, which was not addressed by Mr. Wheatland, is the wetlands fill issue, which distinguishes this case from other cases. There’s an independent Coastal Act requirement that there be no feasible less environmentally damaging alternative to what is being proposed. And the Coastal Commission explains that part of that means determining that the power is needed at this site. That’s independent of the Energy Commission’s responsibility to override the LORS and look at public convenience and necessity for that reason.

I think that’s it. Thank you.

HEARING OFFICER COCHRAN: Ms. Willis.

MS. WILLIS: Thank you. The question of public convenience and necessity and the word ‘need’ has been an issue in this case since the very beginning, it’s been brought up in the public over and over again. So although Mr. Welner thinks it’s synonymous, the case law shows that it is not.

We have briefed this issue in previous cases, and the term ‘public convenience and necessity’ is not used in the same way as a requisite.

So we would be happy to brief that again, but there are briefs in other cases that have been filed
that allow the Commission broad discretion to consider a range of factors in making the determination of whether an override is needed. In Section 255.25 it actually lists consumer benefits, environmental factors, and electric system reliability. 

So our position is quite different than Mr. Welner’s that it’s not a synonymous situation. But it has been brought up over and over again, and we have replied over and over again our position, so I just wanted to make sure that that’s been clear that this has been discussed and the disagreement remains. 

As far as the Coastal Commission, as I said, we have discussed that with them. We’re looking at the environmental impacts and we are not doing the need analysis as part of our FSA.

HEARING OFFICER COCHRAN: Thank you.

So the last thing that I substantively had was the discussion of the reclaimed water pipeline, which as I understand it will be somewhere in the neighborhood of 330 feet to 400 feet, largely onsite, but with 100 feet of the pipeline in Herondo Street, if I’m pronouncing that correctly.

MR. WHEATLAND: Yes.

HEARING OFFICER COCHRAN: And obviously an issue there is, will that work require an encroachment
permit? Does the Energy Commission’s consolidated permitting authority extend to an encroachment permit? And will Ordinance 3134-15 affect the issuance of any needed encroachment permit? Those are issues that came to mind as I, too, have wrestled with what the ordinance says and what it means.

Assuming for this discussion that it applies, and I understand your sentiment that it does not, Mr. Wheatland, but those are issues that I’m concerned about and wondered if anybody else had those same concerns or thoughts.

Mr. Wheatland.

MR. WHEATLAND: Yes, actually those are very good concerns and thoughts, and we have had the same concerns and thoughts as well.

First of all, the Commission’s general statutory jurisdiction is in lieu of all otherwise applicable local and state permits, and so we believe an encroachment permit is exactly the type of permit over which the Commission has preemptory authority. In the past, the Commission also has found that it has preemptory authority over encroachment permits and has done it in one of two ways.

In some instances, the Commission has reserved to its own jurisdiction the determination of
compliance with those permits through the CPM.

In other cases where the local agency is supportive of the project and because an encroachment permit is a ministerial permit, an over-the-counter permit, the Commission has delegated to the local jurisdiction the exercise of the issuance of that permit.

In this case, because of the City’s obvious posture in the case and because of this new ordinance, if applicable, we believe it would be appropriate for the Commission to reserve to itself the jurisdiction for determination of compliance with any encroachment permit that might be required.

HEARING OFFICER COCHRAN: Ms. Willis, are you familiar with --

MS. WILLIS: We’re not ready to address that issue at this point.

HEARING OFFICER COCHRAN: Okay. And I just want to make sure, too, that to the extent that we are now working offsite and in the street, that we make sure that the analysis of impacts in other sections like traffic, noise, air quality, sort of dovetails with the pipeline.

One question I also had in this is, I know that the timing is uncertain, and whether there is a
commitment to using this during construction. And I know that recently we talked about amounts of potable water given the drought conditions that could be used for construction and demolition purposes on other projects, and whether there’s potentially a condition for that to make sure that we’re converting over to the use of reclaimed recycled -- and I use those interchangeably -- water as soon as practicable.

MR. WHEATLAND: There isn’t currently a condition, but we would welcome such a condition, that is our intent.

HEARING OFFICER COCHRAN: Okay.

MR. WHEATLAND: And obviously you need to have some construction to build the pipeline to begin receiving the water.

HEARING OFFICER COCHRAN: Absolutely.

MR. WHEATLAND: But we intend to do so as early as practicable in the process.

But could we ask for the City’s response with request to the encroachment permit, because I’d be curious as to whether they consider that to be a permit that’s preempted by the Commission, or if there are any other permits that are referenced in the ordinance that they believe are not preempted by the Commission.
HEARING OFFICER COCHRAN: If you’re able to respond to that today.

MR. WELNER: I don’t believe we’re prepared to answer that today, thank you.

HEARING OFFICER COCHRAN: Another issue related to the use of the reclaimed water is pretreatment. In the analysis of impacts I know that there is a suggestion it could either be done onsite or through rental recharge beds, and I just want to make sure that the analysis of the impacts of that, whether it’s waste management or hazmat or the water quality for the discharge, that those are also handled in whatever document we need next whenever we see that next.

I know that the applicant has said they don’t believe that pretreatment is necessary. I’m just basing this on other cases I’ve seen where pretreatment was necessary.

The final issue, then, is the schedule. I know that we have already talked about bifurcation. Are there any other issues regarding the schedule?

When the schedule was issued in May we thought that we would have the FDOC by now, and we did put two asterisks after everything after September 4th as a major Let’s see how the world actually comes to
pass, because life is what happens when you’re busy making plans. So what is life showing us about the schedule at this point; what do we think is a realistic schedule?

I know Mr. Wheatland has mentioned the fact that under the May schedule, opening testimony would be due September 25th.

Questions, comments, protests?

Mr. Wheatland.

MR. WHEATLAND: We’re prepared to meet the schedule as it’s been set by the committee.

HEARING OFFICER COCHRAN: Staff?

MS. WILLIS: As we stated earlier, we were prepared for September 4th. Not having the FDOC, depending on whether the committee would prefer us to bifurcate or not, we could be prepared to publish most of the sections -- I believe public health is also another section is reliant on the FDOC -- by September 4th. If not, it would probably be, as I said, maybe 30 days after, so late September if we got it in the next month.

HEARING OFFICER COCHRAN: Mr. Welner.

MR. WELNER: So the city would point out that, in addition to the issue of the FDOC and when that information will come out, there are two other
significant pieces of information that could substantially impact staff analysis that we are still waiting for.

One, of course, has to do with the motion that we filed to compel production of underlying technical data that we’ve been going back and forth with AES on since May. And again, our noise consultant is here, but the basic gist of that is there are numerous assertions that have been made where the underlying technical data has not been available for examination. And depending on the outcome of that motion, if that data becomes available, there may be a need for additional time for the parties and for staff to absorb and respond to that information.

And the second item, which has been a little bit more off the radar but is worth bringing to the committee’s attention, is the City has requested from the Public Utilities Commission that it provide information about the 198 initial offers that were made to Edison for gas-fired power plants in the L.A. Basin. That information was described in testimony by Edison that was submitted to the Public Utilities Commission, but unfortunately it was redacted.

The City has requested that information from the PUC. The PUC’s initial response was kind of a bit
of a form letter that said, “It’s redacted, you can’t have it.” We’re continuing to try and work with the PUC to get that information, but if that fails we’re likely to ask the committee for help in obtaining that information. We don’t believe there’s any basis for it to be confidential.

So my only point in saying this is that the alternative section could be informed by that data if and when it becomes available, and that’s something that we’ve been working on but have been unable to shake loose.

HEARING OFFICER COCHRAN: And that raises something that I had forgotten to mention earlier.

It’s been mentioned that air quality and noise are probably the big issues as far as the City is concerned. And I know that in reading much of the information that’s come through on noise, I think it would be helpful if we took a step back and if someone could provide the committee with some sort of a primer for the layperson, because as I start reading DBA, LEQ, L90 at 3 feet, I get lost because I don’t have the technical background for that. I’m the first to admit if I knew math I probably wouldn’t be a lawyer. So those types of things could be very helpful to the committee as we move forward on this.
And it’s very easy when you understand your subject to just sort of launch into your subject, but for those of us who aren’t the subject matter expert, that could be extremely helpful.

Ms. Coates, is there anything that you wish to add on any of the things that we’ve talked about on behalf of the City of Hermosa Beach?

MS. COATES: Yes, thank you. I would like to just voice the City’s concern about the scheduling. There is a lot of information that has come up in the analyses that have been done by the Air Quality Management District and Coastal Commission that should inform the FSA, and I think it’s particularly important that the FDOC be considered.

There was some discussion about bifurcating the FSA, and I think that this process already involved a lot of very complicated technical information that can be difficult for the public to digest. And so the extent that the FSA can be presented in easily digestible manner, I think that should be the goal. So to that end, bifurcation should be disfavored. Just a single document that addresses all of the issues would be preferred, and so the City would support an extended schedule that would allow for all of that information to be considered in
a single document.

Thank you.

HEARING OFFICER COCHRAN: Thank you very much.

Is there anything else on agenda item?

Mr. Wheatland.

MR. WHEATLAND: Well, this has to do with scheduling. I was handed this interveners City of Redondo Beach status report just at the commencement of this hearing. It’s dated August 4th. Mr. Welner has been capable of sending me other emails late at night. Certainly, if that’s when it was prepared, it could have been provided to us prior to the start of the hearing.

This is the fourth status report that the City has issued that’s been late by a number of days. Not just one day but multiple days. It’s a consistent pattern that’s occurred. And I think it’s really important that if the City is to be an intervener in this proceeding, it assume the responsibilities as represented by counsel.

And I’d like to ask that the committee would admonish all of the parties of their duty to make timely filings and to provide the courtesy of early notice of these matters, and not to hold it off until
the start of the hearing.

HEARING OFFICER COCHRAN: So noted.

COMMISSIONER DOUGLAS: Moving on now to public comment, Item 4. We have two speakers cards. We’ll start with James Westbrook, City of Redondo Beach.

MR. WESTBROOK: Good morning. James Westbrook. I’m with Bluescape Environmental representing City of Redondo Beach, and I’m here just to really answer any questions, as Mr. Welner said, on air quality issues before the Commission. I do have some details I can provide in terms of those comments, but I’d like to see if you have any questions.

HEARING OFFICER COCHRAN: Thank you. I think that we don’t have any questions at this point.

MR. WESTBROOK: Okay. That’s all I have.

HEARING OFFICER COCHRAN: Thank you so much.

COMMISSIONER DOUGLAS: All right, thank you.

Charles Salter, City of Redondo Beach.

MR. SALTER: I’m dealing with the acoustical issues, and I appreciate the interest in acoustics, because as you can see from the letters I’ve prepared, I’m concerned about the potential acoustic impact of the new plant, and then the difficulty if not impossibility of fixing it after the fact.
So I’d be glad to come back and present information in detail on the different acoustical metrics that are in the report, and I’d be glad to answer any questions in the next minute or so having to do with my overall concern about acoustic impact based on what I’ve read and commented on so far.

COMMISSIONER DOUGLAS: All right. Well, thank you for being here and making comment as well. And I do want to suggest, you know, as we go through the status conferences, when we have questions we’ll ask them. It’s not necessary to have your consultants make public comment, although we will not turn away any public comment. But these status conferences are not evidentiary hearings. When we ask for information, it’s informational but it’s not something that we would, you know, cite to in the record or base a finding on, and so we try to have enough information in these hearings that we’re all informed but not so much that everyone feels like they need to bring their witnesses too and have them make comment to rebut other comment. That just doesn’t help us because it’s not on the record.

But anyway, thank you both for our comments.

And let me ask now if there’s any additional public comment either in the room or on the phone?
Are the phone lines open? All right, thank you, Paul.

Paul said that anyone who’s muted is muted because they did that themselves, we did not mute anybody, so the phone lines are open. Please speak up now if you’d like to make public comment.

All right, hearing none, we are going to go into a brief closed session to discuss the scheduling issue. It’s actually unusual for us to have something to report after a closed session. We don’t like to keep people waiting here for us to come out and report orally; we like to send everyone home and put something out in writing.

In this instance, however, the schedule is a pretty time sensitive issue for us to decide. I think staff needs to know if they need to put out the FSA on the date that is proposed or not.

So we will go now just into that little closed session room. Please stick around because we actually will have something to report afterwards.

And this is exactly how we tell you if we will have something to report or not, so it will not be ambiguous ever.

So with that, we will be back. We’re going into closed session.
HEARING OFFICER COCHRAN: If we could all resume our seats, please. We’re back on the record. The committee has returned from closed session.

Before we discuss what we determined in closed session, I’d like to once again see if anyone from South Coast Air Quality Management District has managed to join us?

And I don’t know who put us on hold, but your music is lovely.

Okay. The committee has met in closed session and has made the following determinations. A written order concerning this will be issued shortly.

At this point, the schedule issued in May of 2015 is vacated. That means that the FSA does not need to be published on September 4, 2015.

Instead, we will be holding another status conference in approximately 30 days, depending on calendars, or as soon thereafter as we can reasonably get that scheduled, hoping for new information from the South Coast Air Quality Management District about the status of the FDOC.

However, in the event that we are unable to determine a publication date for the FDOC, we may then...
be inclined to issue a new schedule and bifurcate the FSA. And by bifurcate the FSA, we mean exactly that, the FSA only, not bifurcating the evidentiary hearings.

If the FDOC issues before the next status conference, the FSA would then be due within 30 days of the publication of the FDOC, as staff so graciously provided this morning.

And that’s the determination of the committee.

With that, we’re adjourned. Thank you.

[Adjourned at 10:20 a.m.)

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REPORTER'S CERTIFICATE

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of August, 2015.

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IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of August, 2015.

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Certified Transcriber
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