

## DOCKETED

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BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of: )  
 )  
 SAN GABRIEL GENERATING STATION, ) Docket No.  
 SUN VALLEY ENERGY PROJECT, and ) 07-AFC-02,  
 WILLOW PASS GENERATING STATION ) 05-AFC-03 and  
 ) 08-AFC-06  
 ----- )

COMMITTEE HEARING  
 ON APPLICANT'S MOTIONS TO  
 CONTINUE SUSPENSION AND  
 ENERGY COMMISSION'S MOTIONS TO  
 TERMINATE PROCEEDINGS

CALIFORNIA ENERGY COMMISSION  
 1516 Ninth Street  
 Sacramento, California

Wednesday, August 26, 2015  
 9:00 A.M.

Reported by Peter Petty

APPEARANCES

COMMITTEE:

Karen Douglas, Presiding Commissioner

Janea Scott, Associate Member

HEARING OFFICER:

Kenneth Celli, California Energy Commission

ADVISERS:

Jennifer Nelson, Adviser to Commissioner Douglas

Le-Quyen Nguyen, Adviser to Commissioner Douglas

Rhetta de-Mesa, Adviser to Commissioner Scott

Eileen Allen, Commissioner's Technical Advisor for  
Facility Siting

CEC STAFF:

Jeff Ogata, Staff Counsel

Roger Johnson

Alana Matthews, Public Adviser

PETITIONER:

Sean P. Beatty, Regional General Counsel

ALSO PRESENT -- PUBLIC:

Marilyn Bardet

Kalli Graham, Pittsburg Defense Counsel

Lisa Graham

Charles Davidson, Sierra Club

Eddie Moreno, Sierra Club

Sarah Friedman, Sierra Club

Pamela Arauc

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1 P R O C E E D I N G S

2 AUGUST 26, 2015 9:00 A.M.

3 COMMISSIONER DOUGLAS: Good morning,  
4 everybody. This is the hearing on the applicant's  
5 motions to continue suspension, and the Energy  
6 Commission's motions to terminate proceedings for the  
7 San Gabriel, Sun Valley, and Willow Pass AFCs. My  
8 name is Karen Douglas, I'm the presiding member of the  
9 committee assigned to oversee really the three motions  
10 on the part of staff and applicant.

11 To my left is our hearing officer, Ken Celli.  
12 To his left is Commissioner Janea Scott. She's the  
13 Associate Member on this committee.

14 And then our advisers are in the room. To my  
15 right, Jennifer Nelson and LeQuyen Nguyen. And next to  
16 Commissioner Scott is Rhetta DeMesa and then Eileen  
17 Allen, who is the technical adviser for Commissioners.

18 At this point we'll take introductions from  
19 the parties, starting with the applicant.

20 MR. BEATTY: Good morning, Commissioner  
21 Douglas, Commissioner Scott, Hearing Officer Celli. My  
22 name is Sean Beatty. I'm West Region General Counsel  
23 for NRG, and here on behalf of the motions that we've  
24 filed to extend the suspensions for one more year of  
25 the three projects that are at issue.

1 COMMISSIONER DOUGLAS: Thank you. And staff.

2 MR. OGATA: Good morning. I'm Jeff Ogata,  
3 Assistant Chief Counsel, and Roger Johnson, who is the  
4 Deputy Director of the Siting Transmission  
5 Environmental Protection Division is also here.

6 COMMISSIONER DOUGLAS: Great. Are there any  
7 interveners in the room or on the phone, Anthony  
8 Rosiles or Mark Joseph?

9 All right. The public adviser is in the room,  
10 so thanks Alana.

11 And is there anyone on the phone from federal  
12 or state or local government agencies or officials  
13 representing native American tribes?

14 All right. Well, in that case, I'll turn this  
15 over to the hearing officer.

16 HEARING OFFICER CELLI: Thank you. Good  
17 morning, Commissioners, and good morning, folks.

18 The notice of today's hearing was filed on  
19 August 12th, 2015. This committee will conduct the  
20 hearing to allow the parties to submit evidence and  
21 argument on the petitions for continued suspension of  
22 the San Gabriel Generating Stations, the Sun Valley  
23 Energy Project, and the Willow Pass Generating Station  
24 on their applications for certification.

25 We will also be hearing staff's motion to

1 terminate proceedings in all three of these  
2 applications for certification.

3           And for the record, folks, we will refer to  
4 application or applications for certification as AFCs,  
5 that would be Application for Certification.

6           The notice explains the history of how each  
7 of these projects came to be before the committee  
8 today, but for me to summarize quickly, as to the San  
9 Gabriel Generating Station, or SGGS, this project has  
10 been suspended since June 5th of 2009.

11           The Sun Valley Energy Project has been in  
12 suspension since May 3rd, 2011.

13           The Willow Pass project has been suspended  
14 since June 10th, 2014.

15           And on June 30th the Energy Commission staff  
16 filed a separate motion to terminate proceedings for  
17 all three of these projects. The motions seek an order  
18 terminating the AFCs for failure to pursue the  
19 applications with due diligence under California Code  
20 of Regulations Title 20, Section 1720.2.

21           All three of these applicants filed a request  
22 for additional suspension on June 30th, 2015, and all  
23 three of the applicants filed responses to staff's  
24 motions to terminate the proceedings, which were filed  
25 on July 15th, 2015.



1 All of these documents are available on the  
2 respective web pages of each of these projects.

3 The committee consolidated these matters into  
4 a single hearing today to further the interests of  
5 administrative economy and efficiency due to the  
6 similarity of the parties and to the similarity of  
7 issues, pursuant to Section 1719(a) of our  
8 regulations, Title 20.

9 In terms of procedures today, there are only  
10 two issues before the committee.

11 First, whether there is good cause to allow  
12 the suspension of the San Gabriel Generating Station,  
13 Sun Valley and Willow Pass projects to be reinstated  
14 and continued.

15 And secondly, whether any of these three  
16 projects should be terminated for lack of due  
17 diligence pursuant to 1720.2.

18 The committee will not rule on any motion  
19 today, and depending upon the state of the record will  
20 either issue an order on the motions or possibly  
21 require further evidence with or without further  
22 hearings, and then issue the order.

23 The committee has authority to suspend a  
24 project without full Commission approval. However, if  
25 the committee finds that the record weighs in favor of

1 terminating the AFCs or any of them, then the  
2 committee's order would be a recommendation in the  
3 form of a proposed order, and that matter would be set  
4 for hearing decision by the full Commission, who would  
5 then issue a final decision.

6           The way we're going to proceed today is as  
7 follows.

8           First, we will hear from the applicants on  
9 their motions to suspend.

10           Next, we will hear from staff on its motion  
11 to termination. And staff may also rebut applicant's  
12 motion to suspend at that time.

13           After that, we will hear from any  
14 interveners, and at this moment it doesn't -- we have  
15 no interveners in the room. If they're on the  
16 telephone, please speak up at any time because we want  
17 to know that you're here if you are.

18           So are there any interveners.

19           MS. BARDET: I'm here.

20           HEARING OFFICER CELLI: And who are you?

21           MS. BARDET: (inaudible) speak up. I'm  
22 Marilyn Bardet, a resident of Benicia, California.

23           HEARING OFFICER CELLI: Marily, how do you  
24 spell your last name?

25           MS. BARDET: Bardet, B-A-R-D-E-T.

1 HEARING OFFICER CELLI: And which of these  
2 three have you been granted status as an intervener?

3 MS. BARDET: I have not been granted status  
4 but I have received notice that it would be wise to  
5 call in to give our opinion about the suspension or  
6 termination of these project proposals.

7 HEARING OFFICER CELLI: So what I'm going to  
8 do, then, for everybody on the phone, not just Marilyn  
9 Bardet, the interveners are people who have actually  
10 petitioned to intervene and where the committee has  
11 actually granted that party an intervener status. Ms.  
12 Bardet and everyone else is welcome to participate,  
13 and we're going to have a moment at the end of taking  
14 the testimony from the parties which we will call the  
15 public comment period, and at that time Ms. Bardet  
16 will be able to -- and everyone else will be able to  
17 make a comment at that time and we will just call you  
18 at that point.

19 So really what I'm looking for right now is  
20 whether there is anyone on the telephone who has  
21 actually been granted status as an intervener by the  
22 committee. And hearing none, then it looks like we  
23 just have the applicant and staff here today.

24 If they show up, if they call in, then we  
25 would give them an opportunity to participate.

1           After hearing from all of the parties, the  
2 applicant may rebut staff's motion to terminate and  
3 any points made by any interveners.

4           And finally, staff may rebut applicant's  
5 points regarding the motion to terminate.

6           So I hope that's clear the way we're going to  
7 go forward, and if there's any questions just let me  
8 know.

9           Members of the public who are not parties are  
10 welcome and invited to observe the proceedings and  
11 participate through WebEx.

12           There will also be an opportunity for the  
13 public to provide comment after all the parties have  
14 had their say. Depending on the number of persons who  
15 wish to speak, the committee may have to limit the  
16 time allowed each speaker.

17           The public comment period is intended to  
18 provide an opportunity for persons who attend the  
19 hearing to address the committee. It is not an  
20 opportunity to present supplemental written, recorded,  
21 or documentary materials. However, such materials may  
22 be docketed and submitted to the Energy Commission for  
23 inclusion in the administrative record.

24           Members of the public may submit written  
25 comments if they would prefer that to speaking

1 directly to the committee. And we have some people  
2 here today in the room. If you're a member of the  
3 public and you're here and you just want to have the  
4 public adviser read your written statement into the  
5 record, you do that by filling out the blue card that  
6 Alana Matthews is in the back and she's got the blue  
7 cards.

8           After taking public comment from the members  
9 of the public who are present here in the room today,  
10 we will take comment from members of the public who  
11 are participating using the WebEx Teleconferencing  
12 application or who have called in on the phone.

13           After public comment, the committee may go  
14 into a closed session to deliberate on issues and  
15 arguments presented by the parties.

16           As I said before, no decision will be  
17 rendered today, so after the public comment or closed  
18 session, if there is one, the hearing would simply be  
19 adjourned.

20           If there are any questions, please go ahead  
21 and ask me. Otherwise, we will start with the  
22 applicant. Any questions on procedure?

23           Okay. Hearing none, then Mr. Beatty.

24           MR. BEATTY: Thank you. First off, I'd like  
25 to acknowledge the Siting Division and the good

1 working relationship that NRG has with the Siting  
2 Division. Certainly our opposition to their motion to  
3 terminate and our actual motion to extend the  
4 suspension for a year was not intended to reflect any  
5 kind of adverse position. I think a lot of the points  
6 that staff makes in their motions are valid points,  
7 but I think it is worth having a brief conversation  
8 here this morning to talk about what to do with these  
9 applications and come to whatever decision the  
10 committee and then the Commission decides there.

11 I thought what I'd do briefly as well before  
12 jumping into each of the specific plants is just a  
13 brief history lesson as to how NRG became involved in  
14 each of these three projects. It is summarized in the  
15 submission that staff made yesterday, but just  
16 briefly.

17 NRG has been in something of an acquisition  
18 mode in the last few years. If you look at the first  
19 AFC, San Gabriel, on the chart that staff prepared.  
20 The history of that one is that that was an RRI  
21 project and it's a repowering.

22 I use that term loosely 'repowering.' It  
23 would be adjacent to an existing power plant down in  
24 the L.A. Basin in Rancho Cucamonga, which is kind of  
25 east L.A. Basin. San Gabriel would be adjacent to the

1 Etiwanda Power Plant.

2           And so that was an RRI project that was filed  
3 for us as a document back in 2007.

4           Sun Valley was a project that was initially  
5 filed by Edison Mission Energy, which their portfolio  
6 was acquired by NRG about a year and a half ago. That  
7 transaction closed, so we stepped into the shoes of  
8 Edison Mission on Sun Valley.

9           I think Sun Valley is an interesting project  
10 in that a lot of the focus on reliability, including  
11 the IEPR proceeding last week down in Irvine has  
12 focused on kind of the Orange County southern L.A.  
13 Basin and Sun Valley is located in an area that could  
14 potentially be beneficial for addressing reliability  
15 needs down there.

16           And then Willow Pass is a project that was  
17 actually originally filed by Mirant and is a little  
18 bit closer to my heart, because I actually was working  
19 for Mirant when this was filed. I started at Mirant  
20 actually a couple months after Willow Pass was filed,  
21 so have lived with that project. It was kind of the  
22 sister project to what has now become Marsh Landing,  
23 which got a contract from PG&E and got constructed. We  
24 filed Marsh Landing and Willow Pass at the same time.

25           So, as you may know, RRI and Mirant came

1 together as GenOn, and then GenOn got bought by NRG a  
2 couple years ago, so that's how NRG now stands in the  
3 shoes of the applicants, or at least the owner of the  
4 applicants for each of these projects.

5 Even though there is the common issue of  
6 these three AFCs have been pending for multiple years,  
7 there's that common denominator. I think each project  
8 does have some unique characteristics to it that merit  
9 some consideration in terms of why it may be prudent  
10 to allow the extensions of suspension for one more  
11 year.

12 As our moving papers have indicated, if we  
13 are granted this one extra year and the facts and  
14 circumstances don't play out in a way that would make  
15 it prudent to reinvigorate the processing of these  
16 applications, we've indicated we wouldn't oppose  
17 another staff motion to terminate if that were the  
18 case a year from now.

19 So really what we're focused on is the facts  
20 and circumstances in the landscape today that maybe  
21 make it prudent to keep these applications pending so  
22 that if a -- and I wouldn't call it expedited, but  
23 because these projects are further along than if an  
24 AFC were initially filed, say, tomorrow, there could  
25 be some time savings, and that's the real focus here



1 is if we're in a position where we need to react  
2 quickly, allowing these AFCs to continue existing for  
3 a year could shave six months, a year off of the  
4 processing that if this application were filed, say,  
5 tomorrow, like I say. And that's somewhat theoretical  
6 in terms of what the timing is, but that's the  
7 potential benefit.

8           In the order scheduling this proceeding there  
9 was the potential to put forward new facts or to make  
10 legal argument. I think today is really more about  
11 legal argument, but the one kind of factual item I  
12 would throw out there is the IEPR proceeding or the  
13 IEPR hearing that occurred last week, August 17th,  
14 down in Irvine. And there was some discussion about  
15 the need for mitigation of potential needs emerging in  
16 southern California, so it was a really southern  
17 California focused event.

18           And CEC policy staff put forward some ideas  
19 for how to make that happen. And the proposal to allow  
20 existing AFCs to continue in existence was not one of  
21 those proposals, but the idea of permitting sites,  
22 say, before they have contracts, was a concept that  
23 was thrown out there.

24           And I think that, although we're not squarely  
25 in the shoes of that proposal, that we are proposing

1 here is somewhat similar to that, which is to say for  
2 purposes of reliability in the L.A. Basin and southern  
3 L.A. in particular, the California Public Utilities  
4 Commission has really put a lot of emphasis on  
5 preferred resources. And we are actually  
6 counterparties to a number of the contracts on  
7 preferred resources.

8           And I have to say there's some uncertainty as  
9 to what's going to happen. We have 70 megawatts of  
10 distributed generation that are being objected to  
11 because they do rely on natural gas as their fuel  
12 source. That's 70 megawatts of preferred resources  
13 that could be denied, and they're expecting a proposed  
14 decision October 1st.

15           So we'll have a better picture about what's  
16 going to happen there and what the consequences of  
17 losing those 70 megawatts, if they were to be lost.

18           So I'm not predicting either way what's going  
19 to happen. In fact, as the counterparty we're very  
20 hopeful that they will be approved, but there's  
21 uncertainty, and I think that's the point ultimately,  
22 and the uncertainty surrounding all of the preferred  
23 resources, not just those contracts, makes it a  
24 sensitive area for focus.

25           And specifically Sun Valley would be very

1 well positioned to address if the need arose to get  
2 some generation online quickly.

3           Once again, there's the common denominator of  
4 these AFCs have been pending for awhile, but on a  
5 unique basis, or what's unique about each application,  
6 Sun Valley, I would also note, is configured with  
7 LMS100's which are peaker units.

8           And our experience more recently has shown  
9 that the utilities and the demands of the grid have  
10 really been for fast starting, flexible generation to  
11 back up renewable energy, and the LMS100's are  
12 certainly in that category.

13           The other two projects are actually  
14 configured as combined cycle. It's not clear what the  
15 appetite would be for utilities absolutely for  
16 combined cycle, but like I say, our experience  
17 recently is the preference is more for a simple cycle  
18 such as the LMS100 that is reflected in the Sun Valley  
19 project.

20           I think San Gabriel is also in a position,  
21 it's in the L.A. Basin as well. I'm no expert on where  
22 the efficiency and the effectiveness of the various  
23 locations throughout the basin are. The most I can say  
24 on San Gabriel is that it is in the L.A. Basin. It is  
25 the focus of Edison's preferred resource RFO, the L.A.

1 Basin, and there is some potential that San Gabriel  
2 could be helpful.

3 I'd have to say if I were ranking the two  
4 sites, Sun Valley is probably the one that has more  
5 effectiveness than San Gabriel.

6 And then lastly we have Willow Pass. I think  
7 our papers are pretty clear on that. PG&E has not  
8 actually procured new generation for some period of  
9 time. I think Marsh Landing is probably the most  
10 recent new project to come online and go through the  
11 contracting process and the RFO process, etcetera. And  
12 there really hasn't been any procurement.

13 There's been some ill fated procurement,  
14 namely Oakley. And I notice that staff's write-up  
15 suggests that Oakley is a preferred alternative there.

16 We politely would beg to differ. We think  
17 that Oakley is a combined cycle. It was cutting edge  
18 technology. To my knowledge the contract, I  
19 understand, has been terminated, so there's no PPA in  
20 place with Oakley, and that was a source of a lot of  
21 contention with the PUC.

22 It's a build-to-own project so it would have  
23 been utility owned as compared to IPP owned.

24 And we frankly think given the opportunity  
25 that we could put forth a proposal at Willow Pass

1 that's price competitive that would undercut the cost  
2 of Oakley. That's just our speculation and our  
3 confidence in our ability to develop power plants. But  
4 we are not so certain that Oakley absolutely is the  
5 alternative, that Willow Pass is a legitimate  
6 possibility.

7           That said, it's all on the assumption that  
8 some need for generation were identified in the  
9 greater Bay Area. And as staff rightly points out, the  
10 ISO studies right now are not really showing that.  
11 There would have to be some change, I think.

12           But once again, we feel like if we had one  
13 more year we'd see if something comes out of the  
14 current LTPP at the PUC that suggests that actually  
15 there is a need in the greater Bay Area, we'd be well  
16 positioned to respond to that.

17           So I think that that concludes my remarks.  
18 I'm certainly open to answering questions if there are  
19 any.

20           HEARING OFFICER CELLI: Thank you, Mr.  
21 Beatty.

22           MR. BEATTY: You're welcome.

23           HEARING OFFICER CELLI: Let's hear from  
24 everyone first. Staff, any response, and also your  
25 motion to terminate.

1           MR. OGATA: Thank you, Mr. Celli. Good  
2 morning, Commissioner Douglas, Commissioner Scott.  
3 Jeff Ogata, Assistant Chief Counsel on behalf of  
4 staff.

5           We certainly appreciate Mr. Beatty's  
6 presentation. As he points out, we agree that staff's  
7 motions to Terminate have a common denominator, which  
8 is basically length of time and no activity, but there  
9 certainly are characteristics of each project that  
10 could sway the committee to extend the suspensions for  
11 a period of time. And again, I appreciate Mr. Beatty's  
12 explanation.

13           Mr. Johnson will be responding to some of  
14 those points in just a second, but I just wanted to  
15 again just reiterate our motions to terminate  
16 basically all three projects just a function of timing  
17 and a lack of activity. The status reports that we've  
18 received have basically indicated no change.

19           We're aware of issues such as the trying to  
20 get offsets in the L.A. Basin, which has been  
21 difficult or impossible. We frankly don't see that  
22 changing in the near future, but of course we don't  
23 know everything that's going on there. But everything  
24 that we're aware of, I guess we're not quite as  
25 optimistic as NRG about the possibility of these

1 projects moving forward, but that being said,  
2 certainly Mr. Beatty has raised some interesting  
3 points.

4           And I think at this point I'll have Mr.  
5 Johnson give his response.

6           MR. JOHNSON: Thank you, Committee. Roger  
7 Johnson of the Siting Division. I'd just like to  
8 comment that these projects are very stale. The  
9 information is very dated, and to restart them would  
10 be very similar to starting over again.

11           Significant information would have to be  
12 filed to supplement the record and to explain all  
13 that's changed, all the new information that needs to  
14 be evaluated now than when these were filed many years  
15 ago.

16           The thing about projects that go in  
17 suspension, sometimes the agreements that are  
18 necessary for a project to go forward expire. So  
19 typically that would be true with the air permit  
20 application. That definitely would have to be  
21 restarted again. And the district, while we don't have  
22 data adequacy regulations for supplements to restart,  
23 the district does, and so there could be quite a bit  
24 of time there to bring that application up to speed  
25 for the district to start processing it again.

1           Another area that gets stale is the  
2 interconnection agreement with the utility and the  
3 ISO. That's a multi-year process to start, and  
4 depending on whether or not the developer has paid the  
5 fees to maintain their place in the queue, that's an  
6 unknown at this time. We did not research that for  
7 these projects to know which projects would have to  
8 start over again, and that could be, again, a multi-  
9 year effort to get that going.

10           On San Gabriel and Willow Pass, it's clear  
11 the project owner has site control. Again, staff  
12 doesn't understand right now the issue of site control  
13 for Sun Valley. That's a private piece of property.  
14 Typically these are options to purchase, sometimes  
15 they're bought. And so we don't understand if this  
16 site is still available, and if not, if those options  
17 have been kept up or if the project was actually  
18 purchased, the site was purchased.

19           And there at Sun Valley we've had a change.  
20 When the AFC was filed that was an unincorporated area  
21 of the county. Today it's the city of Menifee, and so  
22 there is different land use concerns that would have  
23 to be addressed with that new jurisdiction.

24           And finally, Sun Valley, we did talk about at  
25 the hearing last week at Irvine about contingency



1 projects being available to quickly come into  
2 construction should there be a need in Southern  
3 California reliability area. And Edison has contracted  
4 with those projects that it believes would meet their  
5 needs, and Sun Valley was not one of those projects to  
6 receive a contract from Edison.

7           So to suggest that this project location  
8 might be a good place to have a contingency project,  
9 that's an unknown at this time. We'd have to have the  
10 ISO address that issue as well.

11           So for those reasons we believe that it is  
12 time to terminate these. If there is value in these  
13 projects in the future, they can refile. A lot of the  
14 information would be similar, and so I think that  
15 putting together a new application wouldn't be as  
16 challenging as an initial application, but at this  
17 time it would be better for all parties involved to  
18 start over with a fresh AFC and the data adequacy that  
19 goes along with that.

20           Thank you.

21           HEARING OFFICER CELLI: Thank you, Mr.  
22 Johnson.

23           Mr. Beatty, go ahead. We're going to give you  
24 an opportunity to rebut anything that was raised just  
25 now by staff. Go ahead.

1 MR. BEATTY: Sure. A couple things.

2 The air permitting in South Coast is very  
3 complicated, but we do have the existing Etiwanda  
4 station that I think it part of the solution if either  
5 of the two, Sun Valley or San Gabriel, were to get a  
6 green light. The rules are still very much up in the  
7 air in terms of whether or how we could use those, but  
8 that's how we would see trying to move forward if one  
9 of those two projects was reinvigorated through the  
10 procurement process.

11 I have to apologize, I should have looked at  
12 what the interconnection queue standing of each of the  
13 projects is, and certainly if that's a deciding factor  
14 I can get them for two of the projects. One of them I  
15 do know because it was in our documents.

16 We noted that we did on Sun Valley earlier  
17 this year signed the generator interconnection  
18 agreement, so we preserved our place in the queue for  
19 Sun Valley.

20 For San Gabriel and for Willow Pass I'd have  
21 to take a look at the files and recall where things  
22 are at. If that were critical to a decision, certainly  
23 we could do some kind of submission to let the  
24 Commission know what the status is.

25 HEARING OFFICER CELLI: Thank you.

1 Commissioner Douglas, any questions for the parties?

2           COMMISSIONER DOUGLAS: I have a question for  
3 Mr. Beatty. You suggested the time savings from  
4 allowing these applications to remain filed could be  
5 six months to a year, but I have to admit I have a  
6 hard time seeing where those time savings come from.

7           If I understand you correctly, I think what  
8 you are saying -- and help me if I didn't understand  
9 you correctly -- is that part of the issue is you have  
10 to see how you might fare in the LTPP or future  
11 procurement. And even if it indicated a need for these  
12 projects, it may or may indicate a need for these  
13 projects as currently designed.

14           And Mr. Johnson pointed out a number of  
15 issues around information probably needing to be  
16 resubmitted, probably being stale. Agreements that at  
17 one time were in place probably not being in place.

18           I think that there's a lot of potential  
19 sometimes to see false economy, and then when you  
20 really are back here with the actual proposal, not  
21 finding it. So I wanted to give you a chance to give  
22 us any specifics if you can about actual time savings.

23           MR. BEATTY: I think it's in a sense  
24 speculative. I think there's a data adequacy process  
25 that is the initial focus typically of an AFC. It's

1 hard to know for all three of them.

2 I think on Sun Valley what I was trying to  
3 get at with the LMS configurations, I'm actually  
4 relatively comfortable that if a need were identified  
5 that the configuration wouldn't have to change.

6 I should also point out on Sun Valley, and I  
7 should have said this in the rebuttal, is that we do  
8 have site control, we purchased the parcel, so that's  
9 not an issue. And by 'we' I should say Edison Mission  
10 at the time purchased it.

11 But in a sense I almost put it back on the  
12 Commission. If the Commission sees the potential that  
13 if expedited need arose in the next year and that  
14 there were time savings that could be realized by  
15 allowing the suspension to continue in place, then  
16 that potential is worth keeping it alive for one more  
17 year.

18 If the Commission frankly says no, there's  
19 really no time savings here. And I think a year  
20 overstates it. I think six months, three to six months  
21 could be. But in a sense if you're talking about a  
22 reliability need on an urgent basis, three to six  
23 months could be critical.

24 So that's the question really what it boils  
25 down to.

1           And I tried to allude to this earlier. We  
2 have a good working relationship with Siting Division.  
3 If these applications are terminated and it turns out  
4 that the sites are needed, you know, we'll refile and  
5 move forward.

6           It's really just almost in a speculative vane  
7 to try and keep as much flexibility around these  
8 projects given that there's a little of uncertainty,  
9 particularly in the L.A. Basin.

10           HEARING OFFICER CELLI: Eileen Allen, go  
11 ahead.

12           MS. ALLEN: Mr. Beatty, could you give us an  
13 estimate on the construction time required for each of  
14 the projects?

15           MR. BEATTY: Well, as currently configured,  
16 combined cycles are going to take a little bit longer  
17 than peakers, and the Sun Valley is set up for five  
18 LMS100s.

19           Just pulling a page out of a recent case that  
20 the Commission addressed, at Carlsbad, we like to say  
21 about two years to get Carlsbad constructed, and  
22 that's a project that was permitted as six LMS100s.

23           If push came to shove could we get it  
24 constructed in 18 months? I think that's conceivable.

25           MS. ALLEN: Thank you. Regarding the Willow

1 Pass project specifically, could you bring us up to  
2 date on the toxics remediation process?

3 MR. BEATTY: Well, that's a legacy issue from  
4 the purchase sale agreement, so it really relates to  
5 the Pittsburg Power Plant site that we, or that Marin  
6 purchased from PG&E back in 1998.

7 It's a process that needs to get closed out  
8 under the PSA, but really only gets triggered once any  
9 kind of development occurs, so it's not something that  
10 either site is really in a hurry to try and get  
11 resolved, but if this AFC for Willow Pass got  
12 reinvigorated it would certainly tee that up.

13 We had to do it for Marsh Landing, for  
14 example, with PG&E, and we also have the retired  
15 Potrero Power Plant that we're trying to examine  
16 redevelopment opportunities there and we're working  
17 with PG&E. And you also get state agencies involved in  
18 that process as well, but in terms of the working  
19 relationship with PG&E certainly it's something that I  
20 feel comfortable that we'd be able to take care of.

21 HEARING OFFICER CELLI: Further questions?

22 MS. ALLEN: No.

23 HEARING OFFICER CELLI: I have a few  
24 questions I'd like to address, and this is probably  
25 something, Mr. Ogata, you were probably about to speak

1 to.

2           When I look at 1720.2, what it says is, "The  
3 Committee or any party may, based upon the applicant's  
4 failure to pursue an application or notice with due  
5 diligence file a motion to terminate the notice or  
6 application proceeding. Within 30 days of filing such  
7 motion the committee may hold a hearing, provide an  
8 opportunity for the parties," etcetera.

9           As is so often the case, our regs don't say  
10 what due diligence is. And I looked to the Warren  
11 Alquist Act, couldn't find it. So I went to Black's  
12 Law Dictionary, my ninth edition, which I go to from  
13 time to time, and most due diligence seems to have to  
14 do with things like the purchasing of businesses or  
15 the purchasing of property and the obligation of the  
16 would-be purchaser to have some sort of constructive  
17 notice or observational notice of what's going on at  
18 the site or with the business.

19           But in the context of what we're doing here,  
20 I thought the best definition was, "An effort to  
21 accomplish something which is the care, caution, or  
22 attention ordinarily exercised by a person who seeks  
23 to satisfy a legal requirement or discharge an  
24 obligation."

25           And I appreciate that these are old, as staff

1 said, potentially stale projects, but I'm not sure  
2 that the mere passage of time is lack of due  
3 diligence. So I'd like to hear more about the  
4 failings, if any, on the part of the applicant,  
5 because that seems to be what the committee needs to  
6 look at and make a decision on, is whether staff has  
7 shown that there is a lack of due diligence.

8           So go ahead, Mr. Ogata.

9           MR. OGATA: Thank you, Mr. Celli. I think  
10 what I'll do is refer you to the chart that staff  
11 filed yesterday morning.

12           HEARING OFFICER CELLI: One moment.

13           Paul, the chart from staff is, I think, the  
14 first document at the top you might want to look at.  
15 The very top, TN205193 or 94. That would be it, yes,  
16 you're right, the background. There you go. And in the  
17 back of it is a table, a spreadsheet.

18           Is that what you're referring to, Mr. Ogata?

19           MR. OGATA: Correct.

20           HEARING OFFICER CELLI: Okay, let's take a  
21 look at that so everyone can see it. Okay. And it's  
22 two pages. Which page did you want to look at?

23           MR. OGATA: Well, the first order of  
24 business, I think, would be to explain how this was  
25 prepared since it's under my signature but I did not



1 prepare this, so I just wanted to point out and  
2 explain and if you need an offer of proof.

3           This chart was prepared pursuant to Mr.  
4 Johnson's direction by his staff, and so to the extent  
5 that any questions about how this was done, you can  
6 refer those to Mr. Johnson.

7           So moving on from there. What this chart does  
8 do is point out, again factually I believe, and Mr.  
9 Beatty is welcome to take argument with that if it's  
10 not factual.

11           But with respect to the first page of that,  
12 status progress during suspension, which is the last  
13 line on this chart, it sort of points out the  
14 information that we've been receiving from the project  
15 owner on these -- during this time, and really there  
16 has been basically no strategy, no schedule, no  
17 information.

18           And so when we talk about due diligence, I  
19 certainly understand that there may be confidential  
20 information, confidential proceedings, lots of things  
21 going on, but from our perspective, we have seen no  
22 activity on these projects.

23           And so to us that doesn't really reflect due  
24 diligence. There may be something going on but we're  
25 not aware and certainly haven't seen any results of

1 that.

2           So certainly from the information that's  
3 publicly available, we don't believe that there's been  
4 a showing of due diligence on the part of the project  
5 owners on any of these three projects.

6           Now, just sort of an observation, if you  
7 will. Certainly with respect to San Gabriel, the fact  
8 that they proposed a peaker is very interesting. May  
9 be useful because, again, as public information that  
10 all of you are aware that all the major amendments  
11 that we've received on prior licenses have all gone  
12 from combined cycle to peakers.

13           So with that in mind, perhaps Sun Valley is  
14 in a position to come in without extensive change, but  
15 the other two projects proposed as combined cycle, as  
16 Mr. Beatty indicated, that's sort of contrary to the  
17 amendments that we've been seeing here in-house.  
18 Again, that's not private information, all of you are  
19 aware of all of that.

20           So again, with respect to whether these  
21 projects are viable or whether they should be  
22 continued or whether they should come back, that's  
23 sort of to me an indicator of two projects that don't  
24 seem to have much viability, as it were, in the way  
25 that it's been proposed to us.

1           So again, just looking at this chart and  
2 looking at sort of what's been happening to date as  
3 far as staff is concerned, there really isn't an  
4 indication that these projects have been going forward  
5 with any great speed or with any great diligence, so  
6 that's why we brought these motions.

7           HEARING OFFICER CELLI: Mr. Beatty?

8           MR. BEATTY: Yeah, it's almost a chicken and  
9 the egg question on due diligence. I think we  
10 performed our due diligence up to the point where then  
11 we sought to suspend the applications.

12           And it's an interesting dynamic in California  
13 because you see different strategies.

14           Willow Pass got filed, for example, without a  
15 PPA, and that is somewhat unusual because it's a fair  
16 amount of cost just to prepare all the materials and  
17 the outside consultants. But we do have some  
18 experience pursuing AFCs to conclusion even without  
19 PPAs. I think the original Carlsbad decision is  
20 reflective of that.

21           In fact, we have what we think of as the El  
22 Segundo 2 project that's hopefully getting close to a  
23 decision. And those are being pursued -- Carlsbad  
24 originally was pursued without a PPA and El Segundo  
25 doesn't have one.

1           But that said, the financial reality is that  
2 we have to evaluate what the need is and what the  
3 likelihood is that the plant would be procured to  
4 decide how much due diligence to put into an AFC.

5           And I think all we're saying here today is it  
6 feels like there's some circumstances, particularly  
7 down in L.A., that may require the state to act  
8 promptly, and that it may be beneficial for that  
9 reason to keep these AFCs alive, even in the face of  
10 perhaps a lack of due diligence. And frankly, that's  
11 what the whole point of the motion to suspend is, is  
12 to relieve us of that obligation to pursue the AFC  
13 vigorously.

14           I think the question for the Commission is,  
15 after looking at San Gabriel you've had a number of  
16 suspensions. At what point does repeated seeking of  
17 suspensions constitute a lack of due diligence? And  
18 that's a tough question.

19           I think in some respects we're at the mercy  
20 of the market, and the market's highly influenced by  
21 regulators, in particular the PUC. Well, and the air  
22 district as well.

23           As Mr. Ogata pointed out, the air district in  
24 L.A. or south coast has some rulemakings going on but  
25 it's not absolutely clear what the path forward is

1 there, but if the need for generation arose and a  
2 logjam broke at the south coast, we think we have some  
3 solutions there.

4 And so I guess what I'm saying is we're  
5 poised to continue the due diligence in the event that  
6 the right signal was sent out to independent power  
7 producers that, yeah, you should start thinking about  
8 these projects, or providing projects that can address  
9 the needs.

10 So just in all candor, our due diligence is  
11 we've been suspended for a number of years on several  
12 of these. I guess technically Willow Pass has only  
13 been suspended for one time only, but the reality is  
14 not a lot has happened on that because we're not  
15 getting the signal at the moment that it's needed.

16 HEARING OFFICER CELLI: And was staff  
17 accurate in their characterization of San Gabriel as -  
18 - because my recollection was it's a combined cycle  
19 application but that NRG is looking to turn it into a  
20 peaker?

21 MR. BEATTY: I'm not sure if I heard Mr.  
22 Ogata say that, but --

23 HEARING OFFICER CELLI: There was some  
24 mention of a peaker and I didn't get it either.

25 MR. BEATTY: I think what we try and pride

1 ourselves on is knowing who our customers are, and  
2 largely that three big utilities in California, and  
3 trying to understand what they want. So if the signal  
4 that was sent to potential bidders under an RFO, we'd  
5 try and read that and respond. If it turned out a  
6 combined cycle wasn't what, for instance, Edison in  
7 L.A. was looking for, then we'd be looking at other  
8 options in that regard.

9 I think Mr. Ogata is right, though, in the  
10 way he summarized -- and I alluded to this earlier --  
11 is what we're seeing is a demand for flexible quick  
12 start units that are typified by simple cycle  
13 generators, and so the move away from combined cycle  
14 to simple cycle is something that I agree that we're  
15 seeing as well.

16 HEARING OFFICER CELLI: And then I just want  
17 to ask staff, in the past we've had other older  
18 projects that have wallowed but the applicant has  
19 failed to file status reports or a suspension has  
20 lapsed without a request for a renewed suspension. Is  
21 that the case in any of these three projects?

22 Because it seems to me, based on just a quick  
23 review of the efilings what's in the docket that most  
24 of the status reports have been filed on time and the  
25 requests for renewed suspensions have seemed to have

1 occurred prior to the suspension actually lapsing. If  
2 I have that wrong, correct me, but I just want to give  
3 the parties an opportunity to make a record on that.

4 MR. OGATA: Mr. Celli, I think you're  
5 correct, with the exception of Willow Pass being just  
6 left, you know, dangling without any action by anybody  
7 for several years until someone identified the need  
8 that maybe there should be a formal suspension and not  
9 just be informal all these years.

10 But having put it on your calendar to file  
11 your petition every year, I don't see that as due  
12 diligence. I just see that as, you know, trying to  
13 keep the project alive at the least possible expense  
14 to the company, and it just costs a stamp to send that  
15 in. But they have, as you note, filed regularly for  
16 their extensions.

17 HEARING OFFICER CELLI: Thank you.

18 Commissioner Douglas?

19 COMMISSIONER DOUGLAS: Yeah, I guess I just  
20 have a brief comment.

21 I think as I look at this, it's clear, Mr.  
22 Beatty, what you're saying, that the company certainly  
23 diligently pursued licensing until the point at which  
24 they didn't see, I think, the projects as viable or  
25 permittable in the case of not being able to get

1 offsets in that timeframe and stopped activity.

2           And I think from my perspective as I look at  
3 this, it's very clear that these projects have been in  
4 our process, suspended or at least inactive, for a  
5 very long time. So long that in fact we formed this  
6 committee because one of these projects had no sitting  
7 Commissioners assigned to it at all, and I think the  
8 others probably might have had me.

9           MR. BEATTY: I also noticed that one of the  
10 AFCs is not actually online.

11           COMMISSIONER DOUGLAS: Right. So I do think  
12 that these are a bit exceptional in the amount of time  
13 that they've taken. And I am quite sure that NRG would  
14 have put much more diligence into it if you saw a  
15 pathway forward on these projects, and I think that's  
16 really where we are.

17           These projects have been sitting in our  
18 process for quite a long time because the market has  
19 been changing and to some degree regulatory  
20 requirements or challenges have affected your ability  
21 to get the air permits or to move forward on some  
22 sides.

23           We do not require that you have a contract to  
24 move through our process, of course. We have people  
25 occasionally file without contracts. As you say it's



1 rare. It's been done. We don't require that you have a  
2 contract to approve a project should a proceeding go  
3 there.

4           But of course, the prevailing practice is  
5 that companies don't want to go all the way through a  
6 licensing proceeding without having a contract. And I  
7 just say that to note that the suggestion of lack of  
8 due diligence is not so much in this instance an  
9 argument that NRG is not doing what it needs to do. I  
10 think as Mr. Celli pointed out, you guys have been on  
11 time in filing for suspensions and so on.

12           But I think what the Commission needs to look  
13 at is how long these projects have been in our system.  
14 Are there really any advantages or are there really  
15 any reasons to leave them in? And on the other side of  
16 that, what are the disadvantages to leaving them in?  
17 And certainly in our regulations the requirement that  
18 applications be pursued with due diligence, I think,  
19 speaks exactly to situations like this where we at  
20 some point need to look at how long projects have been  
21 in this process and ask the very question before us.

22           Really, is there any prejudice to anybody to  
23 say if the market moves in such a direction that you  
24 think you want to propose a power plant in this  
25 location, file.

1           And so that's what we'll be thinking about.  
2 I'd be interested in any closing comments certainly  
3 from you and from staff. And we definitely, I notice,  
4 have some blue cards and have a number of people on  
5 the phone, so I think we'll have some public comment  
6 on this as well.

7           MR. BEATTY: Yeah, and I'm I can't circumvent  
8 public comment, but I guess I perceive this to be more  
9 of a procedural discussion and not one about like the  
10 future of California policy on fossil fuel generation,  
11 but maybe we're in for a little bit of that.

12           I think my concluding remark would be to look  
13 at each of the AFCs separately, even though they have  
14 been pending for a long period of time, basically the  
15 same amount of time virtually for each of them.

16           And if I had to give a prior to one, I'd say  
17 Sun Valley to me is the one that if there were any  
18 perceived benefit of a rapid response by virtue of a  
19 pending AFC, that that's the one that really could be  
20 beneficial.

21           I'm kind of in the position of *Sophie's*  
22 *Choice* here of favoring one over my other two, but  
23 that's what I would say ultimately is to look at each  
24 of the plants on its own circumstances and rule that  
25 way instead of like an overarching determination that

1 eight years is too long to have a pending AFC.

2 Thank you.

3 HEARING OFFICER CELLI: Thank you, Mr.  
4 Beatty.

5 Staff, closing comment?

6 MR. OGATA: Again, we certainly appreciate  
7 Mr. Beatty's comments, and I agree with Commissioner  
8 Douglas, we're not taking any shots at NRG. We do have  
9 a great working relationship with them, and so it's  
10 just a function of is this really to the benefit of  
11 the Commission to continue these projects. And so the  
12 issue of due diligence is one aspect of that certainly  
13 what the code requires.

14 But on the other hand, again, if you look at  
15 the second page of staff's filing yesterday on the  
16 chart, and Mr. Johnson alluded to the fact that if  
17 they restarted, there's a number of things that would  
18 have to be resubmitted; biological surveys, the  
19 offsets, new transportation studies. There's a number  
20 of things that have changed in the ensuing time here  
21 that if it was refiled certainly staff would have a  
22 head start because we're familiar with the sites, but  
23 we'd have to have brand new information.

24 So I really don't see that there's a benefit  
25 to keeping these projects alive based on the fact that

1 they were here, they've been here, because essentially  
2 they're going to require a new AFC anyway.

3           So even though there may be something to due  
4 diligence in that the filings have been done on time,  
5 the reality of a project restarting after this amount  
6 of time has gone on is really that there will be  
7 almost new AFC equivalent information that's going to  
8 be required. So from that point of view, we don't  
9 really see the benefit of keeping these projects on  
10 the books, so to speak, for any future benefit of  
11 saving of time.

12           I don't know if Mr. Johnson has any more to  
13 say, but I think that concludes our presentation.

14           HEARING OFFICER CELLI: Thank you, staff.  
15 Then at this time we will go to public comment.

16           I'm just going to say for the benefit of the  
17 people who are on the telephone that the way we're  
18 going to proceed is we will first take public comments  
19 from the members of the public who are here in the  
20 room today. Then we will go to the phone.

21           And usually the way we proceed on the phone  
22 is we try to take city, county, governmental officials  
23 first who are on the phone so we can get them back to  
24 work, so if you are a member of county, local, or  
25 state government and you're on the phone, when we get

1 to the telephone we'd want you to speak up and let us  
2 know that, please.

3 As far as who's in the room today -- and  
4 again, this is the public comment period starting now.  
5 Parties, members of the public and other interested  
6 persons and entities may speak up to, we'll give you  
7 three minutes on any matter appearing on today's  
8 agenda.

9 Forgive me if I mispronounce anybody's name.  
10 We'd ask that you come to the podium and speak  
11 directly into the microphone. The first person, is it  
12 Kalli Graham?

13 MS. GRAHAM: Yes.

14 HEARING OFFICER CELLI: Please come forward  
15 to the podium and bring the microphone down so it's  
16 aimed right at your mouth just the same way my  
17 microphone is, and then we will hear you and so will  
18 the people on the phone.

19 MS. GRAHAM: How's that?

20 HEARING OFFICER CELLI: Great, thank you.

21 MS. GRAHAM: Awesome, thank you.

22 Hello. I want to thank you for this hearing  
23 and making it possible for the public to be involved;  
24 we really appreciate that.

25 My name is Kalli Graham and I am with the

1 Pittsburg Defense Council, a grassroots community  
2 organization with the goal of improving the quality of  
3 life for Pittsburg residents.

4 Today I want to speak about the Willow Pass  
5 NRG property which is located near homes, schools, and  
6 churches that are 300 to 500 feet from property line  
7 with new homes being built as we speak that are 500  
8 feet from the property's pipelines and tanks that have  
9 been out of use for 16 years.

10 We are a community that has some of the  
11 highest rates of asthma and emergency room visits and  
12 hospitalizations in the county, and in some areas  
13 almost six times the rate of other Contra Costa  
14 communities.

15 Pittsburg has been designated as a  
16 disadvantaged community by the California EPA, as a  
17 community air risk evaluation, also known as the CARE  
18 community by the Bay Area Air Quality Management  
19 District.

20 The proposed power plant property is also on  
21 a high flood zone, as these maps will show, as well as  
22 a high liquefaction zone that has two fault lines that  
23 run on either side of the NRG property.

24 The Greenville-Clayton Fault, approximately  
25 5.4 miles from the property, is capable of producing a

1 6.25 magnitude quake. And the Concord-Green Valley  
2 Fault, approximately 9 miles, is capable of producing  
3 a 6.0 quake.

4 To help put that in perspective, last year's  
5 Napa quake was a 6.0 and the town is still recovering.

6 There are many different alternatives  
7 available now for clean energy and NRG is leading the  
8 way on this. To propose a 19th Century solution to  
9 continue dirty energy is archaic.

10 There are many more reasons why I would like  
11 to ask you to terminate the gas fire power plant  
12 proposal. Unfortunately, three minutes is not enough  
13 to speak about all of them, so I will just sum it up  
14 by saying that the data being used for evaluation is  
15 outdated and this moves California backwards on clean  
16 energy and clean air goals.

17 Thank you.

18 HEARING OFFICER CELLI: Thank you very much,  
19 Ms. Graham.

20 MS. GRAHAM: Less of a Sophie's Choice, more  
21 of a Solomon's Choice.

22 HEARING OFFICER CELLI: Mr. Davidson from  
23 Sierra Club.

24 MR. DAVIDSON: Good morning. I'm a Contra  
25 Costa County resident, and the Sierra Club has asked

1 me as a volunteer to request of you to terminate the  
2 NRG's Pittsburg Willow Pass application.

3 We have heard that NRG is in an acquisition  
4 mode, with NRG's application pending for multiple  
5 years.

6 We have also seen that the Willow Pass Power  
7 Plant has passed its ownership between Mirant, GenOn,  
8 and now NRG, and that it has been unused for a number  
9 of years. For several reasons this is prudent to  
10 discontinue to keep NRG's application pending.

11 Firstly, Calpine's two power plants in  
12 Pittsburg already provide 40 to 50 percent of San  
13 Francisco electricity via the innovative underwater  
14 high voltage direct current transbay cable initiated  
15 by the municipally owned Pittsburg Power Company.

16 Notably, because Clean Power San Francisco,  
17 San Francisco's community choice aggregation  
18 electricity program will be up and running in January  
19 2016, and as San Francisco is one of the wealthiest  
20 cities in the U.S., that world class city will be  
21 voluntarily paying a premium for clean power that can  
22 be used to promote a renewable energy build-out.

23 Secondly, Pittsburg already has its pollution  
24 externalized from San Francisco's electricity usage  
25 and is thus among the top polluted communities in the



1 state. Moreover, Pittsburg particulate matter  
2 pollution also hovers within the basin that includes  
3 Pittsburg, Antioch, Concord, and Walnut Creek, as  
4 could be seen in the dense haze hovering over that  
5 basin due to the recent Lake County fire.

6 Thirdly, Contra Costa County has the highest  
7 rates of asthma pollution per visits in Contra Costa  
8 County. Pittsburg already has a 56 percent minority  
9 population and a 16 percent poverty rate with those  
10 people most concentrated exactly near the NRG site.

11 Notably, Pittsburg has six times the hospital  
12 asthma admissions rate than wealthier south county  
13 communities such as Orinda or Lafayette.

14 Fourthly, Contra Costa County has by far the  
15 most (inaudible) and Department of Toxic Substances  
16 Control polluted sites in the entire Bay Area  
17 district, with a total of over 60 square miles of such  
18 property and with much of that left over from World  
19 War II industry or on refinery land. These are also  
20 large sources of pollution burden and could be used  
21 for renewable energy generation such as solar and  
22 wind.

23 Therefore, NRG, a Texas company with a  
24 deficit in renewable energy generation within  
25 California, needs to aggressively lead in local Contra

1 Costa County solar and perhaps wind generation build-  
2 out.

3 Please deny NRG's Willow Pass permit. Thank  
4 you.

5 HEARING OFFICER CELLI: Thank you, Mr.  
6 Davidson.

7 Lastly in the room we have Eddie Moreno from  
8 the Sierra Club. Please come forward.

9 MR. MORENO: Good morning Committee and  
10 Commissioners. Eddie Moreno representing Sierra Club  
11 of California. On behalf of our members, I would like  
12 to thank you for the hearing.

13 We are in strong support of the staff motion  
14 to terminate the proceedings for the three before-  
15 mentioned power plants. We believe that moving to  
16 approve another suspension for the applications is not  
17 in the best interest of California and the  
18 environment.

19 The Commission has given the applicants  
20 plenty of time to advance the certification of these  
21 power plants. During that time, the policies of the  
22 state have changed and California has renewed its  
23 commitment many times over to clean energy, energy  
24 efficiency, DG, and even storage.

25 Much more remains in the pipeline, especially

1 now with the ambitious but absolutely necessary  
2 climate goals laid out in SB350 by Senator De Leon.

3           Additionally, the siting for the three power  
4 plants are in an area of the state that are some of  
5 the polluted and overburdened. San Bernardino County,  
6 for example, has the worst smog pollution in the  
7 country.

8           These communities cannot withstand another  
9 impact to air quality and are actively organizing  
10 against the Etiwanda Generating Station. The community  
11 members could not be here today because they are at  
12 this very moment in the third week of nonstop  
13 organizing in San Bernardino County on some of the  
14 hottest days on record to support passing SB350.

15           These efforts to push for clean energy  
16 clearly demonstrate that these communities do not want  
17 or need the gas fire power plants. Please help to  
18 protect the state's environment and most vulnerable  
19 communities from climate change pollution by  
20 terminating these proceedings.

21           Thank you.

22           HEARING OFFICER CELLI: Thank you, Mr.  
23 Moreno.

24           Ms. Matthews, is there anyone else in the  
25 room? She's indicating no, so we're going to go to the

1 phones right now, so I would ask Mr. Kramer if you  
2 could open up the lines, unmute everybody.

3 Do we have any members of any governmental  
4 agencies on the telephone who would like to make a  
5 comment, including elected officials?

6 Okay. Hearing none, we can't really identify  
7 who's on the phone, it just says call-in user 2,  
8 etcetera. So if you have called in and would like to  
9 make a comment, please speak up. He who is the most  
10 assertive wins.

11 MS. BARDET: Hello, this is Marilyn Bardet,  
12 and I assert myself because I have another meeting to  
13 go to.

14 HEARING OFFICER CELLI: You have the floor,  
15 go ahead, we can hear you clearly.

16 MS. BARDET: Thank you. I would concur  
17 absolutely with Kalli Graham and also Charles Davidson  
18 and one of the first speakers, Mr. John, regarding the  
19 use of the word 'stale' in relation to these project  
20 proposals to have them suspended rather than  
21 terminated.

22 I agree with the idea of terminating them  
23 because they are stale. They are not in conformance  
24 with today's regard for environmental justice issues  
25 nor the fast changing landscape to do with AB32, and I

1 would say climate change where we know for a fact that  
2 there's an accelerating rate heretofore really not  
3 analyzed of the arctic melt.

4           And we are in a crisis period. We are looking  
5 forward to Paris and what we're going to do to support  
6 climate change conformance with climate change efforts  
7 worldwide, and California is leading the charge.

8           And I just hope that we will see Pittsburg  
9 and southern California, very sunny places, to have  
10 distributive solar as a solution for, if you want to  
11 call it backup or primary source for energy.

12           I'm a long-time activist in Benicia currently  
13 with Benicians for a Safe and Healthy Community, but I  
14 have also worked on energy planning and development  
15 issues for the last 15 or 20 years commenting on EIRs.

16           I know that there's been no cumulative impact  
17 study on what any newly proposed power plant would  
18 mean for the people of Pittsburg who live so close to  
19 the site. I've been to Pittsburg, I know where this  
20 site is. And right now there is a proposal that is  
21 being reviewed for a large oil terminal operation that  
22 would transfer crude oil to Bay Area refineries under  
23 the WestPac project that has not yet been determined  
24 whether that would go forward, but in an EIR you would  
25 be responsible for identifying all the cumulative

1 impacts that would occur to the people in Pittsburgh  
2 who are already burdened by incredible gross pollution  
3 from other sources within a close distance.

4           So all in all, I do not believe that it is  
5 smart with regard these key issues of climate,  
6 environmental justice, and what the possibilities are  
7 on the positive side of what you can do about energy  
8 generation in the future that involves all of us  
9 making our contribution to solar, wind, and whatever  
10 other, hydro power, microhydro, whatever is available  
11 to us to investigate and use in the future.

12           And I respect your debate here and I also  
13 respect why the energy companies are interested in  
14 suspending termination of the projects, but if they've  
15 been sitting around with stale applications since  
16 2009, I'd say you'd have to start all over, and I know  
17 what the expense would be for those companies, and I  
18 think it's just time to terminate them.

19           Thank you very much for your consideration of  
20 my comments by phone. Thanks.

21           HEARING OFFICER CELLI: Thank you, Ms.  
22 Bardet, and thank you for your participation.

23           Anyone else who would like to make a  
24 telephone comment, please speak up.

25           MS. FRIEDMAN: Hi, this is Sarah Friedman

1 with the Sierra Club.

2 HEARING OFFICER CELLI: Go ahead, Ms.  
3 Friedman, we can hear you fine.

4 MS. FRIEDMAN: Okay, great. So thank you to  
5 Commission staff and Commissioners Douglas and Scott  
6 for holding this hearing today.

7 We urge the Commission to consider all three  
8 projects together to terminate. These applications  
9 were deemed data adequate during a period ranging from  
10 eight to nine years ago, and they've long lasted their  
11 certifications. There's been significant changes in  
12 the intervening years, as the public has demonstrated;  
13 water, areas seeing new development, gas (inaudible)  
14 housing and freight, causing a traffic impact.

15 These changes were unforeseen and not  
16 considered in the original environmental assessments  
17 and were not part of the environmental baseline, which  
18 as the Commission and staff identified relies on  
19 outdated information.

20 Surveys (inaudible) are no longer accepted.  
21 And we believe that allowing the applicants to rely on  
22 these certifications which have inaccurate and  
23 outdated information would thwart the public  
24 participation goals of CEQA.

25 It's my belief that if the applicants really

1 want to develop these projects, they should diligently  
2 pursue new certifications based on the current and  
3 past information and a proper (inaudible) as required  
4 by CEQA.

5           And I'd also add that I think it's highly  
6 doubtful that plants that have been unsuccessful in  
7 obtain PPAs for the past seven years are suddenly  
8 going to seem marketable in the next twelve months,  
9 particularly in the greater Bay Area where there's  
10 been no new procurement and no need identified.

11           I think if NRG is proposing to actually  
12 repower the Pittsburg plant as well.

13           And in southern California each of San  
14 Gabriel and Sun Valley have had the opportunity to do  
15 significant Edison RFOs and have either not done so or  
16 not been successful.

17           Anyway, thank you guys for your time.

18           HEARING OFFICER CELLI: Thank you, Ms.  
19 Friedman. Any comments on the telephone, please speak  
20 up.

21           MS. ARAUC: Yes, this is Pamela Arauc.

22           HEARING OFFICER CELLI: Pamela, what was the  
23 last name?

24           MS. ARAUC: A-R-A-U-C.

25           HEARING OFFICER CELLI: Arauc. Go ahead, Ms.



1 Arauc.

2 MS. ARAUC: Yes. Thank you, Commissioners,  
3 for the opportunity to participate in this process.  
4 I'm a resident, my name is Pamela Arauc, and I'm a  
5 resident of Antioch. And I as hundreds of residents in  
6 the Bay Area live and experience environmental unjust  
7 influx of pollution.

8 I am a member of the Bay Area Refinery  
9 (inaudible) Coalition and I'm a member of the Sierra  
10 Club Delta Group, and we have been demanding that the  
11 cities, county, and country move in the direction of  
12 clean, renewable industries versus dirty energy  
13 projects.

14 We strongly support the staff motion to  
15 terminate the proceedings for the three proposed  
16 natural gas power plant projects. And we strongly  
17 oppose the applicant's motion for yet another  
18 suspension.

19 Terminating these proceedings is in the best  
20 interest of the Commission, agencies, and the public.  
21 We, as impacted communities, would like to move in the  
22 direction of clean energy renewable industries.

23 Pittsburg is a fence line community also  
24 referred to a (inaudible), a community predominantly  
25 inhabited by low income minority population that are

1 impacted by heavy industrial pollution that affect the  
2 health and quality of life of residents.

3 Data analysis by the Contra Costa Health  
4 Services show that between 2009 and 2011 Pittsburg had  
5 the highest asthma rates per emergency rooms in Contra  
6 Costa County.

7 In addition to asthma, cancer rates in the  
8 area are high. According to Contra Costa Health  
9 Services, cancer deaths in Antioch are 200 per 100,000  
10 residents and in Pittsburg is 180 per 100,000  
11 residents. The average number in the county is 162.

12 As impacted communities, we want to move in  
13 the direction of future generations' needs and that is  
14 in the direction of clean energy industries.

15 Again, we strongly support the staff motion  
16 to terminate proceedings for the three proposed  
17 natural gas power plants. Thank you.

18 HEARING OFFICER CELLI: Thank you, Ms. Arauc.  
19 Anyone else on the phone who would like to make a  
20 comment, please speak up.

21 Go ahead, we're not hearing you very well. I  
22 can't tell if that's background noise or if somebody's  
23 actually trying to make a comment. If somebody's  
24 trying to make a comment now we can't hear you very  
25 well. Please speak directly into your phone and don't

1 use a speakerphone.

2 Okay. Anyone else who would like to make a  
3 public comment at this time, now's your chance.

4 Okay. Hearing none, one moment.

5 Ladies and Gentlemen, at this time the  
6 committee will go into a closed session for  
7 deliberations regarding discussions about the evidence  
8 or arguments presented at today's hearing. The  
9 committee will adjourn to a closed session in  
10 accordance with Government Code Section 1126(c)(3),  
11 which allows a state body including a delegated  
12 committee to hold a closed session to deliberate on a  
13 decision to be reached in a proceeding the state body  
14 was required by law to conduct.

15 What that means, folks, is that the committee  
16 will go into an office setting and have a discussion  
17 and deliberations off the record, and then at some  
18 point when the committee is finished deliberating, I  
19 will come back on the record and adjourn the  
20 proceeding.

21 And as I said earlier on when we started this  
22 proceeding, there is going to be no decision today. If  
23 there is any decision, the decision will be in a  
24 written order that would probably come out within the  
25 next month.

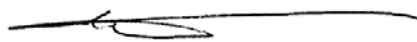


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I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under 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 9th day of September, 2015.

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PETER PETTY  
CER\*\*D-493  
Notary Public

**TRANSCRIBER'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 transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

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Terri Harper  
Certified Transcriber  
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