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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

FRIDAY, SEPTEMBER 11, 2015
9:00 A.M.

Reported by:
Peter Petty
APPEARANCES

Commissioners (and their advisers) Present

Karen Douglas, Presiding Member
Jennifer Nelson, her Adviser
Le-Quyen Nguyen, her Adviser
Janea Scott, Associate Member
Rhettta DeMesa, her Adviser
Courtney Smith, her Adviser
Eileen Allen, Commissioner’s Technical Adviser for Facility Siting
Alana Mathews, Public Adviser

Hearing Adviser:
Susan Cochran

Staff Present:
Kerry Willis, Staff Counsel
Keith Winstead, Project Manager
Paul Kramer
Petitioner AES Southland, LLC
Ellison Schneider & Harris
Greggory Wheatland, Esq.
Samantha Pottenger, Esq.
Stephen O’Kane, AES
Interveners
City of Redondo Beach
Jon Welner, Jeffer Mangels Butler & Mitchell, Special Counsel to the City
Kimberly Huangfu, Jeffer Mangels Butler & Mitchell, Special Counsel to the City
Jeremy Decker

City of Hermosa Beach
Shahiedah Coates, Attorney
Hany Fagary, Mayor pro tem, City of Hermosa Beach

Also Present
Tom Luster, California Coastal Commission
South Coast Air Quality Management District (SCAQMD)
Mohsen Nazemi, Deputy Executive Officer
Jillian Wong
Andrew Lee
John Yee

Public
Betsy Ryan, Resident of Hermosa Beach
Lauren Pizer Mains, Senator Ben Allen’s Office
<table>
<thead>
<tr>
<th>INDEX</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>PROCEEDINGS</td>
<td>6</td>
</tr>
<tr>
<td>ADJOURNMENT</td>
<td>65</td>
</tr>
<tr>
<td>REPORTER’S CERTIFICATION</td>
<td>66</td>
</tr>
<tr>
<td>TRANSCRIBER’S CERTIFICATION</td>
<td>67</td>
</tr>
</tbody>
</table>
COMMISSIONER DOUGLAS: Good morning, everybody. This is the status conference for the proposed Redondo Beach Energy Project. My name is Karen Douglas, I’m the Presiding Member on the committee assigned to this project. Commissioner Scott is the Associate Member. She’s sitting next to the hearing adviser. The Hearing Adviser is to my immediate left, Susan Cochran. To my right are my Advisers, Jennifer Nelson and Le-Quyen Nguyen. And to Commissioner Scott’s right are her Advisers, Courtney Smith and Rhetta DeMesa. To Rhetta DeMesa’s left is Eileen Allen, the Technical Adviser for Siting for the Commissioners. And I see Alana Mathews, the Public Adviser is here. Let me ask the Petitioner if you could introduce yourselves.

MR. WHEATLAND: Good morning, I’m Gregg Wheatland, counsel for the applicant. With me is Samantha Pottenger and Stephen O’Kane.
COMMISSIONER DOUGLAS: Excellent. Thank you. Staff, please.

MS. WILLIS: Good morning, I’m Kerry Willis, Staff Counsel, and with me is Keith Winstead, Project Manager.

COMMISSIONER DOUGLAS: Thank you. Intervener James Light, Building a Better Redondo, are you here or on the WebEx?

All right. Intervener City of Redondo Beach?

MR. WELNER: Yes, good morning. Jon Welner for the City of Redondo Beach. I’m here with Kimberly Huangfu, who is also outside counsel.

I believe on the phone are Mike Webb, City Attorney, and two consultants, James Westbrook regarding air and Jeremy Decker on noise issues.

COMMISSIONER DOUGLAS: Thank you very much. Intervener City of Hermosa Beach?

MS. COATES: Hi, good morning. This is Shahiedah Coates for the City of Hermosa Beach.

COMMISSIONER DOUGLAS: Good morning, thank you.

Are there any representatives of state, federal, or local public agencies or Native American tribes in the room or on the phone?

MR. LUSTER: Yes, Tom Luster, Coastal
Commission.

COMMISSIONER DOUGLAS: Excellent, thank you.

Anyone else?

MR. LEE: This is Andrew Lee and John Yee from the South Coast Air Quality Management District.

COMMISSIONER DOUGLAS: Great, thanks for being with us this morning.

Anyone else?

MR. FANGARY: This is Hany Fangary, mayor pro tem of the City of Hermosa Beach.

COMMISSIONER DOUGLAS: Excellent. Thanks for joining us.

Anyone else from state, federal, or local government agencies or Native American tribes in the room or on the phone?

All right. In that case, I’ll turn this over to the Hearing Adviser to get us started.

HEARING ADVISER COCHRAN: Thank you and good morning.

The committee last convened on August 5th, 2015. At that time we discussed various issues, some of which will be repeated today. Since that last committee conference there have been some developments that the committee is aware of and wishes to address briefly.
In addition, as set forth in the agenda for today’s meeting, we will be having a hearing on the motion to compel technical noise data that was filed by the City of Redondo Beach.

But first I would like to start with the information concerning the recent gas release from the existing Redondo Beach generating station, I believe is its title.

On August 28th there was a release of raw natural gas by the plant. Members of the public have filed in the Commission’s docket observations regarding the gas release, subsequent health issues, and related prolonged loud noises coming from the plant.

The applicant has stated that this release was in conformity with the operation of certain pieces of plant equipment. You could find the applicant’s response/press release in our docket at TN205980.

The City of Redondo Beach Fire Department was the first responder and indicates the applicant did not notify the City of the release. And again, you can find the City of Redondo Beach’s activities in relation to this gas release in the docket at TN206005.

What the committee would like to remind you
of is that the existing plant is not licensed by the California Energy Commission, and so therefore the committee and the Commission do not have the ability to investigate or enforce any claimed violation, we simply don’t have the jurisdiction to do that. This is the first license that is being sought from the California Energy Commission for operation of a power plant in that area.

So what I’d like to move on to now, then, is the discovery motions, and there are two motions actually pending.

The first one that I wanted to talk about was the motion to compel that was brought by the City of Redondo Beach. We discussed this at the August 5th committee conference as well, and we invited the parties to respond to the motion regarding noise data. Since that time it’s the committee’s understanding that on August 28th a substantial amount of noise data was provided by the applicant to City staff and all of the parties and has been docketed.

One of the things I would point out is that between August 5th and August 28th, the staff originally supported the motion that the City of Redondo Beach had brought. What is the staff’s current position as it relates to that motion?
The other thing I would note is that late yesterday evening, or late yesterday afternoon, the City of Redondo Beach, the movant, filed a supplemental brief, and portions of that are available on screen.

Paul, if you could pull that up. It’s the Redondo Beach in the lower tray.

And what this includes is an overview from movant City of Redondo Beach’s point of view of what their request was and what the responses to date have been. If you want to see the full document, it’s located in the docket at TN206063.

So then turning to staff, the questions again are, do you continue to support the motion? The information that was provided on the 28th, and I know it’s been not a long time since then, has that provided you with what you need, and would additional information be helpful?

MS. WILLIS: Thank you. Once again, Kerry Willis representing the staff.

As we stated in our response to the motion, that staff did not believe that the information requested by the City was necessary for the decision. We felt it was relevant. Staff understands that there is public interest on noise because we’ve had several
workshops and they’ve been very long to probably like 11:00 o’clock at night. So we wanted to support both cities in investigating and looking more into noise issues.

Since that time, and when we received the data that AES brought forth, we have sent the data to our modeler and we do believe that we have received all that we need to support the modeling that has been done by AES for this project, so we no longer have any issues with data.

There are other issues with noise modeling between what we’ve read from the City and from us that we can discuss when that is the appropriate time, but for just this motion and for the data, we no longer have any requests.

HEARING ADVISER COCHRAN: Thank you for that. Let’s turn now to, then, the moving party. Do you have anything that you’d like to add other than what was contained in your supplemental brief from yesterday afternoon, briefly?

MR. WELNER: Yes, and I will keep it brief. I think that what we attempted to do in the table is break down for the committee into pieces what information was requested and what has been received and what has not been received.
I think what staff were alluding to with regard to other noise issues is the limited peer analysis that was performed by our noise consultants on the day that it was received, which identified a significant discrepancy between the calculations that had been performed by AES and the calculations that were tested and performed by our consultants.

I think this underscores the need for more complete disclosure of the data and calculations that were used by AES since there appears to be a really significant gap between their calculations and the ones produced by Salter and Associates.

You asked me to be brief so I won’t go through the table. We’d be glad to go through the table and explain why in further detail these individual items are necessary for a truly effective peer review that will cover all the issues.

HEARING ADVISER COCHRAN: Okay. Applicant, did you have anything you wished to add?

MR. WHEATLAND: Well, first of all, I’d like to get clarification on the supplemental brief, because you recall at the end of the last conference I raised an objection to having filing submitted at the very last hour just moments before the hearing, or just in the very last few minutes of the day prior to
the hearing. And I explained the unfairness that arose through the sandbagging of such filings, and the committee noted my concern.

I understood noting the concern to be an agreement that such filings would not take place, but apparently this conduct is still continuing and the supplemental brief was filed at about 4:45 yesterday afternoon.

The Commission rules don’t provide for supplemental briefs on a motion. They do provide for a response. And the Commission’s rules also provide in Section 1716.5 that additional pleadings can be made with the consent or approval of the committee.

But in this case the City did not file a motion for a leave to file a supplemental brief. And I believe very strongly that if any consideration should be given to that brief they should have filed a proper motion.

I served for many years as assistant chief ALJ at the Public Utilities Commission, and frankly, such conduct would never be tolerated before the Public Utilities Commission. The party would file a supplemental brief at the very last moment without having been granted leave to file such brief.

To do so is very unfair both to the decision
makers and to the other parties because it denies them a reasonable opportunity to review and respond to it. So I’d like to ask first if the committee intends to give any consideration to the supplemental brief.

MR. WELNER: The City would like to respond briefly to that comment.

HEARING ADVISER COCHRAN: Mr. Wheatland, are you through with -- I understand your procedural objection.

MR. WHEATLAND: All right.

HEARING ADVISER COCHRAN: What I would say is it’s also been the committee’s perception that sometimes the data come in late and that this may have been the earliest time. Even if this brief had not been filed, we would still have required the same information that’s contained in it. The questions we were going to ask today were what’s still outstanding from the production that was made on the 28th?

So while I understand that it may have been a better process to seek leave to file a supplemental brief, the information contained therein is germane and relevant to the committee.

That being said, we do understand that there
has been a little of delay and perhaps prejudice to
the applicant by receiving this late. Are you looking
for additional time, then, to --

MR. WHEATLAND: No, I’m prepared to respond
to it today, but I do want to point out, may I just
for the purposes of the record, that this was one of
three filings that were made in the last hours of
yesterday or in that period of time. There was also a
114 page document that was dropped into the record.
There was also an additional so-called peer review
which is actually just the intervener’s comments on
noise issues that was dropped in. All of these
materials came in at the very last moment.

And there’s a continuing pattern here that’s
I’m concerned about because as we go forward I don’t
want to see the City submitting, for example,
supplemental testimony the day before the start of the
hearing. Or I don’t want to see them filing
supplemental briefs that aren’t authorized by the
committee, so I just would like to have my concerns
noted for the record.

As to the merits of this, the table that’s
produced that’s called Exhibit A, you’ll note has six
items to it. Now, we previously identified in our
response to their motion to compel what we believed
were four data requests. You’ll notice that there are six here.

And one of the continuing problems we’ve had with the City’s requests for information is that they keep shifting. Each time they ask for it, they ask for something different, something additional.

So the items that are the six items here don’t accurately reflect or coincide with the information that was in the motion to compel. And certainly the items that were identified here have never been raised before by the City.

The very first item is Item No. 1. Now, they allege here that we failed to confirm whether the existing AES power plant was operating at the time the noise measurements are taken.

That’s absolutely untrue, because that confirmation was made in a filing that we made on May 22nd, 2014. The TN number is 202364.

And then it was subsequently again confirmed in a record of conversation that was docketed on June 4th, 2014, TN number 202417.

So the fact that the plant has been operating at the time that the noise measurements were taken for Locations M3 and M4 has been on the record for at least a year.
The second item that the City has, they say we’ve refused to provide the file.

Well, that’s not actually correct. What we have refused to provide is the noise model, which is a proprietary model. They have access to obtaining it from a private third party if they choose to do so.

We have provided to them the inputs that were used in the model. They claim it wasn’t in electronic form, but they got the information that they needed with respect to that model.

Number three is very interesting, because look at what they say they’ve requested, including elevation heights of noise generating equipment.

That hasn’t been a request that they’ve submitted before. I don’t find any reference to elevation heights of noise generating equipment in their motion to compel.

Now, one of the very important things to understand is that if we step back from this a minute, we first raised an objection that the information isn’t timely. We’ve raised an objection that they haven’t shown good cause for their failure to obtain it in a timely manner.

But even if you put those all aside, we’ve also said that the information has been substantially
provided. And we’ve been continuing to work in good faith with the staff and other parties to provide the information as much as it’s available. The staff has made several clarifying requests and we have provided information in response to that.

But with respect to the height and noise generating equipment, that’s a new and different request from what they’ve been asking for in the past.

A list of noise mitigation measures, this was substantially provided in our responses to the staff and to the City, and we believe we’ve fully satisfied that request to the extent that that information is available.

One of the other things important to remember is that the City is asking for a level of information for types of noise analysis that are generally conducted once the application is approved and you do the final engineering.

We have a good faith disagreement with the City as to the level of information that’s required. We’ve provided the level of information that’s been available for the last 60 power plants that the Commission has licensed.

Number five, yeah, I don’t find this in the motion to compel, but perhaps the City can point out
where in their motion that is specified.

And number six again is very interesting because look at this reference here. They’re saying we didn’t provide octave and third octave band levels used to develop the noise monitoring map. That’s the first time that request has come. That isn’t in their motion to compel.

So in summary, we believe we have substantially complied with all of the City’s requests. We have provided more information and more detail about noise modeling than has been provided for any other application that the Commission has licensed. And all of this information is being provided years after the deadline has expired for discovery.

HEARING ADVISER COCHRAN: Thank you, Mr. Wheatland. I just want to clarify a couple of things. First of all, I appreciate your concern about the timeliness. The committee shares your concern about timeliness, and we again caution the parties that late filings, particularly as we move toward evidentiary hearings, will not be tolerated, will not be accepted absent a showing of good cause as required by the regulations.

But again, I would state that for purposes of
today we clearly indicated that the motion to compel was going to be an item that we were going to discuss, and the information in the supplemental brief, while late, is germane to those discussions. So these are the points that I took from it. First of all, the fact that the plant was operating while the noise analysis measurement data were taken has been in the record since 2014. That the raw data has been provided regarding the noise model, but that the model itself, in other words, the computer program, if I understand it, that it runs through isn’t provided.

MR. WHEATLAND: Right.

HEARING ADVISER COCHRAN: You just give the raw data inputs. And you could use any other sort of modeling software for that same information; is that correct?

MR. WHEATLAND: We believe that’s correct, yes.

HEARING ADVISER COCHRAN: Okay. And then your comments regarding as what’s set forth here in Exhibit A that’s on screen, in Items three, five, and six, those are all newly sought and not contained in the motion to compel.

And finally, that for request number four,
the information being sought is for the final engineering and that the data are not available now; is that the applicant’s position? On Item four.

MR. WHEATLAND: We provided a response but not in the level of detail that would satisfy the City.

HEARING ADVISER COCHRAN: So the level of detail is something that would be forthcoming then when the final engineering for the plant is being done.

MR. WHEATLAND: Yeah, typically what we do is we do preliminary noise modeling during the AFC process, but the actual detailed noise mitigation measures are developed and designed once the plant is licensed and we do the final engineering. That’s the way the Commission has done it for all of the projects it’s licensed.

HEARING ADVISER COCHRAN: Okay. Turning now to Mr. Welner. Do you have an issue of -- do you now have an understanding that there is information about whether the plant was operating, for request number one?

MR. WELNER: Whether or not it was provided before, it’s certainly being confirmed now.

HEARING ADVISER COCHRAN: Okay. Secondarily,
have the raw data been provided to you and your
consultants regardless of whether the noise model
itself has been provided?

MR. WELNER: The raw data for the ambient
noise coming from M3 and M4 was not provided. I’d like
to ask Jeremy Decker to speak to that, if he could.

HEARING ADVISER COCHRAN: Briefly, please.

MR. WHEATLAND: Well, it really does. Their
request was for the hourly data. The motion to compel
asked for hourly data and they’ve been provided it.

What the City’s trying to do now is shift the
discussion and saying that there was more data that
they didn’t get besides the hourly data.

MR. WELNER: That’s not correct. If you look
at the email that was then used as an appendix to the
motion to request that was sent on June 18th, the
underlying data being requested is listed in a table.
It says “Provide all ambient noise measurement data
for monitor locations M1, M2, M3, and M4.” Next
sentence says, [interference].

MR. WHEATLAND: But can I point out that when
the City came back to us and said what we hadn’t
provided, they said, and I’ll quote, “We did not
receive hourly ambient noise data for locations M3 and
M4.” That was their request.
MR. WELNER: And where are you citing?

MR. WHEATLAND: From your motion to compel.

MR. WELNER: The motion to compel contained an appendix referring to this email, did it not?

MR. WHEATLAND: You say it did.

MR. WELNER: Yes. So I guess the way the City’s looking at this issue is there are procedural items that I want to briefly address, but setting those aside for a moment, the City is looking at the noise issue not from a who wins the motion, who gets points and who asked what. We’re trying to be constructive and get the data we need in order to create an analysis that truly protects the citizens of Redondo and Hermosa from excessive noise.

So we did ask -- you know, there is a repeated habit that has occurred where we show up at these hearings and say back and forth, you didn’t ask this. Yes, we did. You didn’t ask this. Yes, we did.

I have in front of me a table, and I can go through it showing you where we asked for the stuff previously, but the real point is -- and this is not something that takes a long time, I think Jeremy Decker can be very concise, but each of these things has real significance in terms of understanding what the noise will be, and the data that’s being asked for
here is critical for a true noise analysis.

HEARING ADVISER COCHRAN: But there’s a fundamental disconnect with what I’m hearing you say, Mr. Welner, between what your motion asked for and what you would have liked in a perfect world.

MR. WELNER: No, but --

HEARING ADVISER COCHRAN: And what we’re focused on here is what the motion to compel asked for.

MR. WELNER: Yes. And it asked for provide all ambient noise measurement data for monitor locations M1, M2, M3, and M4.

MR. WHEATLAND: And if I can just add, if the committee would please direct its attention to Exhibit B to the City’s motion. This is a letter from the City’s consultant to the committee that purports to summarize the information that was not provided. This is the summary of the information that was not provided yet.

And you’ll see the very first item, ambient noise data from monitor locations M1, M2, M3, and M4 was requested. We did not receive hourly ambient noise data locations for M3 and M4, when in fact the City had.

That’s what they said they didn’t get. That’s
what in our response we say we have provided. Now they’re asking for something quite different.

HEARING ADVISER COCHRAN: Pardon me, I was dealing with a technical issue. So, okay.

MR. WELNER: So what Mr. Wheatland is pointing to is a short set of bullets from a letter that summarizes an exchange, which refers to the actual email that I’m talking about. There are going to be details missing from the four bullets that are included in the email table that’s much more detailed. And what this letter is asking for is that the items in the table be produced, and this is a summary to give people an idea of what is contained in that table.

HEARING ADVISER COCHRAN: Okay. I appreciate that. I think at this point the committee has the information it needs in order to be able to rule on this motion, and a formal written order from the committee will be forthcoming. Thank you for your time on that issue.

Now let’s turn to the next discovery motion, which was the motion for subpoena, again brought by the City of Redondo Beach, seeking documents from the California Public Utilities Commission and Southern California Edison regarding the long-term procurement
plan, LTPP, and power purchase agreements that were awarded pursuant to that LTPP.

Ms. Willis, I understand that you have received contact from the CPUC. Have you ever actually made a connection person to person?

MS. WILLIS: No, I haven’t. An attorney with the California Public Utilities has given us several calls and I’ve responded and we just have not connected yet.

HEARING ADVISER COCHRAN: Okay.

MS. WILLIS: I think her questions more were what should we do or should we do anything, and that point I was actually going to refer her to the committee.

HEARING ADVISER COCHRAN: Thank you so much. With that being said, what I think the committee is going to do is today is 15 days from the filing of that application for the subpoena, and 15 days is usually the time in which parties and others have a chance to respond to the motion. Given the short timeframe, the fact that this status conference was set today being the last day, the committee would like to have written comments from anyone who would like to provide them. And again, we would extend a special request to either the CPUC or Southern
California Edison, whoever would like to chat with us, to respond to that motion by September 18, 2015, so a week from today.

Mr. Wheatland.

MR. WHEATLAND: I wonder, though, if they have been given notice, that the PUC or Edison has actually been given notice of the motion for subpoena. Typically, when a party would subpoena third party information, as at least a courtesy they would give a copy of their motion to the parties from whom the information is being requested. Has the City served either of these two parties with their motion?

MR. WELNER: No, the City hasn’t served the motion on the Public Utilities Commission. However, both from within the long-term procurement process and externally through discussions of filing a Public Records Act request, the City has been actively working with the Public Utilities Commission to try and obtain this data. And included in the motion and the correspondence back and forth with the Public Utilities Commission about that request and their detailed response.

This is not, as Mr. Wheatland well knows, a litigation proceeding. Before a subpoena can be issued, there needs to be a subpoena issued not by us,
which is the normal procedure in litigation, but by the committee. And therefore, we felt it was inappropriate to notify anyone that a subpoena was coming until we know whether or not the committee intends to take action on it or not.

HEARING ADVISER COCHRAN: Okay. With that information clarification, the parties are requested to provide whatever comments they wish on the subpoena, its scope, timeliness, whatever you want to comment on, by September 18th.

Separately from this, the committee will contact the CPUC and Southern California Edison and seek their input. They will probably be given more than a week to respond to us. So that’s what will happen with the motion for the subpoena at this point.

MR. WELNER: May the City have a minute to respond regarding the procedural issue that was raised earlier?

HEARING ADVISER COCHRAN: Absolutely.

MR. WELNER: Okay, thank you.

The City is very cognizant of the deadlines, and particularly after the discussion at the last status conference, has been working very hard to submit things in as timely a manner as possible.

We would note that since August 27th when the
subpoena motion was first filed, the City has been filing large substantive briefs every two or three days on different topics and has been particularly surprised by a number of things that have happened. There are many moving parts currently involved in this proceeding, many of which were not expected.

So what I would say is the noise data that this supplemental brief responds to was provided only on the 28th. Our noise consultants, as you know, were quite occupied analyzing the limited data that they had received from AES in order to provide an analysis, not yesterday, but on Monday, which was their peer review of that data. And then following that were able to (inaudible) with us to submitting the supplemental brief.

The reason for submitting it, we hesitated to do it because of the discussions about last minute filings, but thought particularly because of the confused discussion back and forth between the parties where one asks for one thing and the other responds differently, that having a table would clarify things and we thought it might help the committee.

So I would note that in this case we submitted a very thorough status report on the 1st previewing every activity that then we followed
through with over the next couple of weeks.

We told you that the population maps were being worked on. They’ve been worked on for over a month by (inaudible) Network and were submitted as soon as they were available.

Of course, the peer review of the noise data was submitted on Monday, which was as soon after the 28th as could reasonably be expected to have been produced.

And in the meantime, as you know, there were other incidents that we needed to take care of, including the uncontrolled release of gas from the plant, the Wetlands Enforcement action by the Coastal Commission in which we were involved in assisting, the discovery of a new lawsuit filed by AES against the Coastal Commission, which it hasn’t bothered to disclose to the parties prior to the status conference. All of these things were keeping us quite busy.

We in the future, of course, will endeavor to submit things as soon as possible, and we apologize that this supplemental brief was submitted yesterday. However, the choice between not submitting such a table and submitted it at the last minute, we thought it was clear that it would be most helpful to everyone
if we submitted it.

HEARING ADVISER COCHRAN: We appreciate that.

MR. WELNER: Thank you.

HEARING ADVISER COCHRAN: And thank you for bringing up the dewatering. It’s almost as if you were looking at my notes, because the next topic that we were going to turn to was case progress and schedule, and the very first item on my list was dewatering of potential wetlands.

I know that there is a large controversy concerning whether these are in fact wetlands; I recognize that. And as Mr. Welner indicated, the Coastal Commission had commenced an enforcement action, which is found in our docket at TN 205946, and we were made aware that there was a filing of an action in superior court by AES against the Coastal Commission.

So I would turn to the applicant at this point and ask for some more information about that lawsuit. And specifically, does this pending action affect the proceedings here at the Energy Commission? If so, how? If not, why not?

MR. WHEATLAND: The petition for writ that was filed by the applicant relates to a notice of violation that was issued against AES at the existing
Redondo Beach facility. As the committee noted earlier, that facility is not subject to the jurisdiction of the California Energy Commission. The issue relating to the notice of violation and the dewatering activities that are currently occurring are not something that you’re going to be asked to review or decide upon.

And so Mr. Welner is correct, we haven’t provided notice. The reason for it is it is that particular notice and the lawsuit that arises from it is not matters that are subject to the jurisdiction of the Commission.

Having said that, one of the issues that is potentially to be addressed in the litigation is the Coastal Commission’s assertion of the existence of jurisdictional wetlands; that is an issue that may also arise in this proceeding and upon which the Commission may have to make a determination.

You received a set of recommendations from the Coastal Commission addressing those issues, and at the appropriate time in the evidentiary hearings the applicant will be providing a response to those issues.

And we believe that the proper course for this committee to pursue is not to be concerned about
the litigation, but instead to focus upon the dispute as framed for you by the pleadings of the parties when we get to the evidentiary hearings.

HEARING ADVISER COCHRAN: It’s my understanding that the 30413D report that we’re calling for shorthand purposes, by the Coastal Commission includes a designation of these as wetlands. So isn’t the heart of the lawsuit also an issue in these proceedings as to whether those are in fact wetlands and what appropriate mitigation measures may be for that?

MR. WHEATLAND: Well, it may be addressed. But also, it’s important to note that it may be, but also the court may never even get to that question. The dewatering activities that we are discussing here are activities that have been occurring on that site since the 1960s, prior to the existence of the Coastal Commission. So it’s possible that that litigation may never reach the question of jurisdictional wetlands. It may find that the dewatering activities are appropriate activity and that the notice of violation would be denied.

It’s also possible that if those issues are not decided in that way, the court may go on to consider those issues, but it’s hard to predict how a
HEARING ADVISER COCHRAN: Mr. Luster from the California Coastal Commission, I know that you’re on the phone, and I don’t want to get into any sort of privileged conversations that may have occurred, but do you have anything that could help the Energy Commission committee on this issue.

MR. LUSTER: Certainly, just a couple of brief items.

Yes, we were served earlier this week with the suit regarding the Commission’s finding that there were wetlands on the site, and the Commission forwarded those findings to you in the form of the 30413D report, and so we do have an independent finding by the Coastal Commission that these are Commission jurisdictional wetlands.

Although the Energy Commission isn’t a party to the suit, part of AES’s suit asks the court to weigh in on Warren Alquist and Coastal Act conformity. Namely, whether the wetland determination is properly a 30413D report relevant to NOI and AFC proceedings or something else.

So I see AES hasn’t docketed the suit, so I can do that a little later today just so you can see what the issues are. And I’m not here with my attorney
so I don’t have anything further to say about it, but I will post the suit a little later today.

HEARING ADVISER COCHRAN: The committee would appreciate that, thank you very much, and thank you for your comments.

MR. LUSTER: Uh-huh.

HEARING ADVISER COCHRAN: Do any of the other parties wish to speak to this issue?

MR. WHEATLAND: There is one more thing I’d like to add just on that issue.

HEARING ADVISER COCHRAN: Certainly.

MR. WHEATLAND: Both the City and the Coastal Commission representative speak about the Commission’s determination. One of the issues in the lawsuit is whether in fact any determination was actually made. That is, does the Coastal Commission’s approval of recommendations to the California Energy Commission constitute a formal determination of wetland jurisdiction? And we are asserting in that litigation that mere approval of staff report isn’t the appropriate process for making a wetlands determination.

So that’ll be another issue that the court will be addressing, is whether in fact a determination has even been made.
HEARING ADVISER COCHRAN: Okay. Thank you very much. Now I would like --

MR. WELNER: The City does have a comment.

HEARING ADVISER COCHRAN: I’m sorry, yes, go ahead.

MR. WELNER: Sure. So actually, I would like to point out that the way the lawsuit is constructed, it actually makes it clear that the real purpose of the lawsuit is to influence this proceeding.

The notice that was received from the Coastal Commission had to do with unpermitted development. In other words, the construction or installation of new pumps on the site without getting a permit.

That would be true whether or not there are wetlands on the site.

In other words, a coastal development permit is required for that kind of work and installation regardless of whether there are wetlands. The fact that there are wetlands just means that they’re not going to get that permit. And none of that is really addressed in their lawsuit.

The only issue that’s addressed in their lawsuit which seeks a writ and declaratory relief is whether or not the Coastal Commission properly decided that there are wetlands on the site. That, I would
submit to you, is central to a lot of both the
Commission’s and the Coastal Commission’s analysis.

If there are wetlands on the site, then there
are observed biological resource issues. But, as the
Coastal Commission ably reported in their submission
to you, it has all kinds of other implications for the
findings that you need to make. If there are wetlands
there, likewise, it completely changes the analysis.

I think it would be impossible -- I’d like to hear what staff have to say, but I think it would be
impossible for staff to complete a final staff
assessment without knowing whether there are or are
not wetlands on the site.

So now that this question is, I guess I would say, in play due to this lawsuit with the Coastal
Commission, I think it’s a basis for waiting and seeing what happens, because we don’t know as we speak
today whether or not the Coastal Commission’s view will prevail or not.

Does staff have a view?

HEARING ADVISER COCHRAN: Do you wish to speak, Ms. Willis? You don’t have to if you don’t want
to.

MS. WILLIS: Thank you. I don’t disagree with Mr. Welner’s comments. At this point, without
addressing the filing in a substantive way, the issues that are raised definitely do impact our biological resources section, how we respond to the Coastal Commission.

And we certainly do have an MOU with the Coastal Commission and we do take their comments, whether or not they’re required or not, seriously. So I’m not totally convinced that a decision on how the report or how the comments came to us would totally change our analysis at this point, but we do have a pending biological resources document that is either completed or near completed that there might be some impact based on the decision that comes out of this writ.

HEARING ADVISER COCHRAN: Mr. Wheatland, I know that you are not counsel on the underlying superior court writ petition, and given that it was filed earlier this week I’m assuming there’s no briefing schedule, but can someone give me a ballpark of what they think the writ petition timing would be?

MR. WHEATLAND: I can’t off the top of my head. I could try to obtain that information for you.

HEARING ADVISER COCHRAN: Okay.

MR. WHEATLAND: But I want to stress that the reason this lawsuit is filed is because the Coastal
Commission submitted a set of recommendations to you, and then when through subsequent discussions with the Coastal Commission and through their subsequent filing, they indicated that they thought that that was more than just a set of recommendations. They thought they had made a formal determination of wetlands.

And the statute of limitations is very short with respect to the timeframe that a party can challenge a wetlands determination if in fact one had been made. So given the uncertainty on whether they had made one or not, the only way the applicant could preserve its right to challenge that was to file this petition for writ.

If the Coastal Commission said, oh, we’re just making recommendations to the Commission, we hadn’t made a formal determination, that would have been fine. But because they didn’t do so, we had to file that action in order to preserve our rights.

But that doesn’t in any way influence the independent judgment this Commission has to make with respect to the recommendations that are made to you by the Coastal Commission. We encourage the staff to look at the recommendations and give you their independent views on it, and we’ll also provide you with our opinion, but there’s no need to wait for the outcome
of any court decision on this. You have a duty to
independently exercise your judgment with respect to
the recommendations you’ve received.

HEARING ADVISER COCHRAN: Thank you very
much.

MR. FANGARY: This is Hany Fangary, mayor pro
tem from City of Hermosa Beach. May I be allowed to
address this briefly?

HEARING ADVISER COCHRAN: I’m sorry, could
you restate your name and perhaps spell it? We have a
court reporter here whom I think would appreciate
that.

MR. FANGARY: Sure, my name is Hany, H-A-N-Y
is my first name, last name is Fangary, F as in Frank,
A-N as in Nancy, G-A-R-Y. I’m the mayor pro tem of the
City of Hermosa Beach. Hermosa Beach is an intervener
in this proceeding. I’m not speaking on behalf of the
City because we do have City counsel on the line
available to address issues on behalf of the City, but
I was wondering if I would be able to address this
issue briefly.

HEARING ADVISER COCHRAN: Certainly.

MR. FANGARY: Okay. I’m somewhat puzzled and
surprised that there is a proceeding, a lawsuit that
was filed, at least as far as I know as of today, that
the City of Hermosa Beach has not been aware of until I participated in this call. I think it’s consistent,
unfortunately, with AES’s record of keeping things quiet and not letting people know what’s going on, so that concerns me.

The other thing that concerns me, if the applicant’s specific statements to the committee today on the lawsuit that they filed -- and I haven’t seen it and I’m looking forward for it to be posted -- but if the lawsuit resulted from the specific Coastal Commission recommendations to the Energy Commission and the committee, but they don’t want us to wait around for this to pan out, it doesn’t make a whole lot of sense because this is clearly connected to what’s going on before the committee.

And I think the applicant’s compliance with the conclusions and directives of another California government agency is relevant to this proceeding. If the applicant is ignoring directions from -- not only ignoring but challenging directions from another California state agency and basically suing them for that purpose, I think that’s relevant for this committee to evaluate how that pans out and how the applicant treats decisions and directives given by state agencies, because that, I think, shows a
reflection on how they will be addressing and dealing with directives given by this Energy Commission and the committee.

So I think it’s completely relevant and I’m really disappointed that this is the first time we’re hearing about it, but I think it’s really relevant for the committee to get a full update regarding this litigation and hear from the California Coastal Commission’s counsel on this issue and factor this in. And my recommendation would be for the committee to wait this out and see what decisions come through this litigation before we proceed forward because I think that’s relevant.

Thank you very much.

HEARING ADVISER COCHRAN: Thank you very much, Mr. Fangary.

So is there anything else on dewatering?

Okay. I would like to now move on to the final determination of compliance from South Coast Air Quality Management District.

At the last committee conference we did not have specific information from the Air District and I appreciate both Mr. Lee and Mr. Yee being on the phone with us today.

MR. NAZEMI: I’m sorry, this is Mohsen
Nazemi, Deputy Executive Officer for South Coast Air Quality Management District. I’m also on the phone and so is Dr. Jillian Wong, our air quality dispersion modeling expert.

HEARING ADVISER COCHRAN: Oh, thank you so much for joining us. So Mr. Nazemi, you had sent an email to Ms. Allen, the technical adviser, indicating that the FDOC would be published in late 2015, early 2016, but that you would be updating the committee today on the status. Do you have an update for us?

MR. NAZEMI: Yes, absolutely. The status of the project is actually, we think we’re going to be able to issue the FDOC much earlier than the previous estimate. However, I can’t give you an exact date because they have actually sent out some requests for information to the applicant. We are waiting to receive that information back from the applicant.

And we are in the final stages of responding or preparing our response to comments that we received during the public comment period for the PDOC as well as the public hearing or public community meeting that we held in Redondo Beach. We did get some also comments from the City of Redondo Beach that we are preparing responses to that.

And so from our standpoint, I think we are
expecting the FDOC to be issued more like late October, early November, provided we have all the information back from the applicant and complete our evaluation.

At the time that I sent the email, we also were just informed about the release of the 1500 page regulation by EPA called the Clean Power Plant, and so we needed some time to review and evaluate the applicability to the AES Redondo Beach repower project and compliance with that. And in fact, some of the questions we have sent back to the applicant is to finalize our analysis for the new EPA regulations.

So I think at this point our estimate is that it will be earlier than the end of 2015, beginning of 2016, but I can’t give you an exact date.

HEARING ADVISER COCHRAN: Thank you very much both for participating and for that information.

MR. NAZEMI: Sure, not a problem.

HEARING ADVISER COCHRAN: So then let’s talk about everyone’s favorite topic, the scheduling of the issuance of staff’s final staff assessment.

I know that the applicant had requested that the committee bifurcate the preparation of the final staff assessment given the then current information about the FDOC. And so I guess the question I would
have now to the applicant is do you wish to continue
to have that bifurcated, or should we wait and see if
the FDOC actually comes out earlier than we had all
planned or thought?

MR. WHEATLAND: Well, the information from
the District is new information for us today, and so
what I’d like to do is just ask if we could off the
record for a minute and we could discuss that for a
second before I --

HEARING ADVISER COCHRAN: Absolutely. So why
don’t we take a brief five minute recess?

(Off the record 10:55 a.m. to 11:00 a.m.)

HEARING ADVISER COCHRAN: Thank you, we’re
back on the record here in Sacramento.

So Mr. Wheatland, you caucused?

MR. WHEATLAND: Yes. Well, first of all, I
wanted to let you know that we did receive an
additional request for information from the District
on August 28th. We’re in the process of preparing our
response and we’ll file a response to the District’s
request within a matter of a day or two, very short
time.

HEARING ADVISER COCHRAN: Thank you.

MR. WHEATLAND: We also very much appreciate
the efforts that the District is making to complete
the FDOC and to look carefully at their schedule and move the completion date forward, so we really do appreciate the efforts that they are making. But there still remains considerable uncertainty as to when, in fact, the FDOC will be issued. We don’t have a date certain for it, and there’s always the potential that it could be sooner or there could be further slippage. So given the uncertainty over the availability of the FDOC, we would strongly recommend that the committee bifurcate the FSA and proceed with the consideration of all those issues other than air quality that are now ready to be decided, and then to hold a supplemental evidentiary hearing once the FDOC is issued and the staff issues their section of air quality on the FSA, then you could hold hearings limited to those issues at that time. But we would strongly encourage the committee for the reasons that we set forth in our status report to bifurcate the FSA.

HEARING ADVISER COCHRAN: Thank you, Mr. Wheatland.

As the group with the biggest dog in the fight, I’ll turn to staff and ask you. My impression from the most recent status conference statement that staff filed indicates that the noise and vibration
section is actually being very updated. You mentioned bio today as well. We have the issues related to the Coastal Commission report, the lawsuit, et cetera.

If the committee were looking for an analysis that said, yes, these are wetlands, this is what would happen; or if these are wetlands this is the impact; if these are not wetlands these are the impacts, how long with all of that whole universe that we’ve talked about this morning as well as the unknown universe out there, what timeframe is staff looking at for publication of an FSA?

MS. WILLIS: At this point, staff is definitely not supporting bifurcation. We don’t really know or understand what the applicant’s, I guess, hurry is on this since there are some outstanding issues that remain.

One of the areas that you address, and then I would add alternatives, are areas that we believe could benefit from further workshops. So if we do not bifurcate and we waited until after the Air District submitted their FDOC, we could be using that time wisely to hold some additional workshops, certainly on noise.

Just my brief conference with Mr. Welner on what the City’s experts found and we haven’t published
our results yet, but our modeling expert has found something quite different. So the battle of the modelers is probably better for a workshop than for extensive hearing time.

HEARING ADVISER COCHRAN: We agree.

MS. WILLIS: I kind of thought that might be the case.

Also, the biological issues, I mean, we haven’t quite worked out how the lawsuit might impact or not impact. It certainly throws a wrench into some of the discussions that we have. Although, as Mr. Wheatland said, that staff can make a recommendation on whether these are wetlands regardless.

And we have taken the Coastal Commission’s, whether it’s a mandated requirement or just another agency giving us their opinion, we could still take that into consideration in our analysis, and we have.

So I guess our recommendation would be to wait until after the FDOC is filed, publish in one complete document. Have that time to -- we would think that we would probably pre-publish the sections that I mentioned, whether it’s bio probably, definitely noise, and certainly alternatives. That’s another section that we have spent a considerable amount of time updating, especially in response to the Coastal
HEARING ADVISER COCHRAN: Okay, thank you.

City of Redondo Beach.

MR. WELNER: Thank you. It’s probably not a surprise, but we would concur with staff regarding waiting for some of these very fast moving developments to be resolved. I have a few items in addition to the ones that were listed by staff.

First of all, just to go back to the noise issue. We think that is very ripe for a workshop and are very eager actually to get into a room with AES’s experts and staff experts and arrive at an understanding of how the contralines were created and why our results are so different, so we think that would be very useful and important before finalizing any noise analysis.

In addition to the other items that were mentioned that were very important, I would add three other pending developments that we think would result in changes to the staff analysis.

One is, of course, the outcome of the subpoena motion with regard to the alternatives section. Whether or not there is a cooperative way short of a subpoena for the PUC or Edison to provide the limited data that’s being asked for or a subpoena
is actually issued, the location of viable alternative sites is very significant for the alternatives analysis.

Secondly, the population density analysis which a lot of time, money, and effort went into on the City and its consultant’s behalf, I think is very important for the alternatives analysis as well, demonstrating that the site in Redondo is among the very most dense possible places that have ever been considered for a power plant.

And then finally, the follow-up to the uncontrolled gas release is something that the City is very concerned about and actually believes, as it’s reviewing responses from AES, should result in additional conditions and requirements being put in the staff report, and that’s something that is going to take at least a few weeks to be fully digested.

So with all of those things moving, I can’t imagine a reason why the committee would want to direct staff to issue what they have. It’s really a snapshot in time and there’s a lot of moving parts.

HEARING ADVISER COCHRAN: Thank you.

Ms. Coates from the City of Hermosa Beach, did you want to add anything?

MS. COATES: Hi, thank you. Just that we also
support staff’s recommendation and the various comments that the City of Redondo Beach has just stated. Thank you.

HEARING ADVISER COCHRAN: Okay, thank you.

Anyone else in the room or online who I didn’t call? Mr. Wheatland.

MR. WHEATLAND: I wanted to explain why the applicant, as Ms. Willis puts it, is in a hurry.

The docket number on this application is 12AFC03. The application was filed more than three years ago, and it was -- well, maybe not more than three, but approximately three years ago.

There was a substantial period of delay entering data adequacy. We were data adequacy on all elements except for the fact that receiving the Air District’s determination that our applicant was complete. The entire proceeding was delayed in finding us data adequacy for that one item alone, and that was for a period of about six months or more.

Putting aside the period of suspension, it’s still been a very long time since we’ve been data adequate, and far in excess of the 12-month time period that the Commission is required to make a decision on applications under the statute.

You’re never going to have perfect
information. There’s always going to be new developments and changes. But what is expected of the Commission under the Warren Alquist Act is that at a given point in time you take the information as it’s best available to you and make a decision.

So if we always allow new developments to be a cause for delay, and especially its new developments where they are raised by the City years after the close of discovery, then we’ll never reach closure.

We think it’s really important that the Commission undertake a proper balance of the statutory obligation to make a timely decision, and the obligation to make a decision based on the best available information.

Whether or not you grant the motion to bifurcate, and I think you should, but whether or not you do, we ask at the very least that you give us a date certain for a final decision on this application so that all of us in this room have a target to shoot for and a goal to achieve.

HEARING ADVISER COCHRAN: I understand that this bears a date as 2012 as the year that it was received, but we were also on hiatus for about a year when we were very close to giving you exactly what the applicant had wished for, which was a decision.
I would also note that discovery, by my calculation, closed in 2014, so we’re a year, year and a half at best, from close of discovery, and things have happened. And so we do need to consider the things that have happened and that continue to happen, some of which the applicant has brought themselves by pursuing a land use plan that didn’t include a power plant on this location. That affects staff’s analysis; it can’t not affect staff’s analysis.

So we understand our obligation but we also understand that this is a moving target and that there are a large number of people who have participated in this.

I went to the site visit and informational hearing on this. We had a packed theater, all of whom were speaking on this project. There’s an incredible amount of material docketed on almost a daily basis by residents in the area concerning this power plant.

This is an important decision, and while we are mindful of our statutory obligation, we’re also mindful of the fact that we have obligations under the California Environmental Quality Act, Warren Alquist, our regulations, and so on, to provide a complete discussion and analysis of this action that has been requested. So we have taken your request for
bifurcation under submission.

Is there anything else on case progress and schedule that would like to be stated? Then at this point we’re going to move on to public comment.

COMMISSIONER DOUGLAS: So at this time we’re in public comment. I understand that we have a blue card, so at this moment we are moving to public comment.

Betsy Ryan, Hermosa Beach resident, if you could come forward, please.

MS. RYAN: Hi. Thank you for letting me speak. My name is Betsy Ryan, I live in Hermosa Beach, and although the AES power plant is in Redondo Beach, its 50-acre site is across the street from Hermosa Beach and a densely populated area.

Regarding the August 28th gas leak, people in Hermosa Beach could smell the gas, the gas release, from their homes. The fire department was called but the gate to the AES was locked and there was no security guard available to let them in.

This is just one of the many instances that has left significant concerns regarding our safety if similar or worse were to happen. If AES is allowed to rebuild, it would be the same operators.

There is a risk, fear, and inconvenience.
People left their homes when they smelled the gas, and people were afraid it could explode.

The plants lets out loud noises when it releases vapor at a pitch that not only disturbs us but makes our dogs howl.

This new plant also presents health risks to our residents. According to the AES application tables 5.1 through 17 and 5.1 through 29 for the new Redondo Beach power plant, dangerous particulate emissions may rise from 3.3 to 49.7 tons per year and exceed the state standard for concentration in our air.

This will put our children at a higher risk for asthma. Exposure to particulate emissions causes twice as many deaths per year in California as breast cancer.

A new plant will generate 1.5 million tons of greenhouse gasses per year and that’s 10 times what the entire City of Hermosa Beach produces per year.

According to the AES spokesman Pendergraft, a new power plant is not necessary. Here is a quote from AES spokesman Pendergraft when AES wanted to develop a commercial mixed use and residential development for the AES site. Here’s his quote.

“New power plants are definitely needed, but there are more locations in the
region that can meet those needs,’
Pendergraft said on Tuesday in a nod to the
AES Long Beach and Huntington Beach plants.
‘Subject to a favorable vote, we are focusing
our efforts on developing new power plants on
our other two sites.’ Pendergraft said that
the company has long shown an interest in
looking for alternative uses for the Redondo
Beach property."
That’s the end of the quote.
So a new power plant is not necessary for the
stability of the grid.
There is also the Los Alamitos and Huntington
Beach plant. We have solar and we have community
aggregate as we are becoming more environmentally
sensitive to the California coastline and nature.
On July 8th, 2015, the California Coastal
Commission acknowledged the wetlands on the 50 acre
site. These wetlands have ecological value as well as
historical value to the Chowigna Native American
Indians.
The City of Redondo Beach and the City of
Hermosa Beach have both passed resolutions opposing
the rebuilding of the AES power plant. Please do not
allow them to rebuild.
Thank you.

COMMISSIONER DOUGLAS: Thank you for being here.

Is there anyone else in the room who would like to make public comment? Anyone else on the phone, on WebEx who would like to make public comment? Paul, is there anyone on the line?

MS. MAINS: I’m on the line, Lauren Pizer Mains from Senator Ben Allen’s office.

COMMISSIONER DOUGLAS: All right, go ahead speak up.

MS. MAINS: -- interest in this issue, and I’m here more to learn. We are concerned with some of the implications of a new plant, and so just wanted to note that we are following this closely.

COMMISSIONER DOUGLAS: All right, thank you. And could you just please repeat your name and affiliation for the court reporter?

MS. MAINS: Sure. It’s Lauren Pizer, PIZER, last name is Mains, MAINS, and I’m from the office of Senator Ben Allen.

COMMISSIONER DOUGLAS: Thank you very much. Who else would like to speak, go ahead and speak up.

MR. FANGARY: This is Hany Fangary with the
City of Hermosa Beach. I am the mayor pro tem for the City of Hermosa Beach, but speaking on my personal capacity of just living in the City, I live roughly eight blocks away from the power plant.

As the committee is aware, the City of Hermosa Beach has adopted a unanimous resolution opposing the rebuilding of the power plant, and since then we have obviously been an intervener in the process, but I continue to be concerned about things that are going on in the power plant.

The issue with the gas release that occurred on August 28th the committee is obviously very aware with all the filings, but it raises some concerns and I guess calls from the residents on Friday at 8:00 o'clock or 9:00 o'clock at night telling me of the gas smell and they had to leave their house and disrupt their families because of the gas smell and the fact that the Redondo Beach Fire Department goes there to the gate and nobody, AES is not answering the phone and nobody is allowing them to get in, that causes some significant health and safety risks for the residents of Hermosa Beach.

I appeared before the committee staff’s workshop that occurred in Torrance and I think at least eight to ten people that live in Hermosa Beach
showed up at that meeting and spoke and addressed the concerns, and I would just mention real briefly the concerns that we in Hermosa Beach have.

One is obviously the air emissions that will be generated from this new power plant.

Noise concerns, and the noise concerns, I think in my mind are highlighted by what Redondo Beach has submitted and by the plan that Redondo Beach submitted recently to the committee that shows the area where the noise from the new power plant are impacted. You can tell from the figure a lot of these areas are Hermosa Beach residents immediately north of the power plant.

There’s also obviously ongoing view concerns of a new power plant being there right next to the coast.

There’s significant public safety concerns that are specifically highlighted by the gas release that occurred and the fact, the impression that the City of Hermosa Beach has is that AES does not have an emergency plan in place to address these issues as they come up.

And as of this call today I am now newly concerned by the new lawsuit that AES decides to file against a California agency that has issued a decision
to the committee, that the committee I think obviously should take into account. And I think it raises concerns for me about how they treat directives and information provided by the committee to them if they decided to sue the California Coastal Commission based on the California Coastal Commission’s conclusions.

I also agree with the California Coastal Commission’s recommendation that as part of this process a needs assessment needs to be evaluated. I think somebody already addressed the issue that just less than a year ago AES was basically telling the Redondo Beach residents to vote for our plant to develop this property because they felt that the power plant was not needed, and if that has not changed, I don’t know why the committee should proceed with this and have all the interveners continue to spend time and money dealing with this stuff if the rebuilding of the power plant is not necessary.

And then lastly, I’ll mention that I am also fully in support of the staff’s recommendation that there should be no bifurcation of this process, that the process should proceed with the new information about the Coastal Commission litigation we should allow this process to vet through and have the committee be fully informed about it before final
decisions are made.

Thank you very much.

COMMISSIONER DOUGLAS: All right. Thank you for joining us today.

Would anyone else like to make a comment, please speak up.

MR. DECKER: Yeah, this is Jeremy Decker with Charles Salter Associates.

COMMISSIONER DOUGLAS: Go ahead.

MR. DECKER: Earlier Mr. Welner asked if I would comment on something. I wondered if he still wanted to hear.

COMMISSIONER DOUGLAS: You know, I think this is an issue that will addressed in a workshop and in the analysis, and I don’t think it’s necessary for us to hear technical arguments from one of the parties right now.

MR. DECKER: Sure, as long as we have an opportunity to address, that would be great.

COMMISSIONER DOUGLAS: You will have opportunity to address it, thank you very much.

Other public comments, please?

All right, very good. With that, then, we will --

MR. WHEATLAND: I’d like to comment, please,
in response to what the gentleman from Hermosa Beach just spoke to.

COMMISSIONER DOUGLAS: In a moment, Mr. Wheatland. So we have a public commenter. Would you like to come back up; is that what you’re saying?

MS. RYAN: -- close to 200 signatures from residents who are opposing the power plant. And then I also have the quote from the AES spokesman where he says it’s not necessary, so I’d like to submit this.

COMMISSIONER DOUGLAS: Could you please speak to the public adviser and she’ll help you learn how to docket materials or send them in to the record. Thank you.

Go ahead, Mr. Wheatland.

MR. WHEATLAND: Despite the hearing officer’s initial statement at the beginning of this hearing, the question of incidents at the existing plant are not relevant to the matters that this Commission has to decide, and a number of parties, the City of Redondo Beach and the gentleman from Hermosa Beach have made statements regarding these incidents over the course of today’s discussion, and a number of the statements are simply flat wrong.

AES has responded to the City in a letter dated September 8th, 2015, regarding the allegations
that they have raised and docketed in this proceeding, and also we will put a copy of this response into the docket as well so you’ll have that available to you. But I do want to stress the fact that a number of statements that are just really wrong and can’t be left standing are the allegation that no one answered the phone is absolutely wrong, as we will provide you with the detailed timeline of the incident. The Unit 7 and Unit 8 CRO did receive calls from the Redondo Beach Fire Department dispatcher and did respond to those calls.

It’s also the allegation that there was a problem at the front gate is simply wrong. That front gate opened 58 seconds after the fire department chief arrived at the front gate.

So our detailed response will get into all these issues for you, but I urge you not to take at face value any of the comments that were made today by the City or the gentleman from Hermosa Beach regarding that incident.

COMMISSIONER DOUGLAS: Thank you, Mr. Wheatland. I believe the hearing officer’s comments were about jurisdiction, not -- I don’t think we’ve made any statement one way or the other about relevance, but we appreciate your statements.
HEARING ADVISER COCHRAN: Thank you. With that, the committee is going to adjourn into closed session in accordance with Government Code Section -- I can’t see it, can you scroll up just a bit -- 11126(c)(3) -- and I thank my optometrist for being able to read that -- which allows a state body, including a delegated committee, to hold a closed session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct.

Obviously, we have the motion to compel, the motion for subpoena, the request to bifurcate as matters that entitle us to adjourn into closed session.

We will excuse the court reporter, there will be no reportable action following from this. There will be a formal written order of motion some sort of response to all. Thank you very much. We’re adjourned to closed session.

[Adjourned to closed session at 11:25 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 16th day of August, 2015.

[Signature]

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.

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 16th day of September, 2015.

____________________
Terri Harper
Certified Transcriber
AAERT No. CET**D-709