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BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY COMMISSION

In the Matter of:)
)
Business Meeting)
_____)

CALIFORNIA ENERGY COMMISSION
ART ROSENFELD HEARING ROOM
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

TUESDAY, SEPTEMBER 22, 2015
9:39 A.M.

Reported by:
Peter Petty

Commissioners Present

Robert Weisenmiller, Chairman
Karen Douglas
David Hochschild
Andrew McAllister
Janea Scott

Staff Present:

Rob Oglesby, Executive Director
Kourtney Vaccaro, Chief Counsel
Alana Mathews, Public Adviser
Sean Pittard, Public Adviser's Office
Tiffany Winter, Secretariat

Agenda Item

Paul Kramer, Assistant Chief Counsel 1
Richard Ratliff, Senior Staff Counsel 1

Also Present

Interested Parties (* Via Telephone)

John McKinsey, Locke Lord, LLP 1
Jonathan Kendrick, Locke Lord, LLP 1
Robert Sarvey, Intervenor 1
*Robert Simpson, Intervenor 1

Public Comment

*Nicholas Horres, San Diego APDC 1
*Terry Stewart, California Department
of Fish and Wildlife 1

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P R O C E E D I N G S

SEPTEMBER 22, 2015 9:39 a.m.

CHAIRMAN WEISENMILLER: Let's start the meeting now. Let's start with the Pledge of Allegiance.

(Whereupon, the Pledge of Allegiance was recited in unison.)

CHAIRMAN WEISENMILLER: Good morning. Let's start with the Carlsbad Energy Center Project Amendments. Mr. Kramer.

MR. KRAMER: Good morning, Commissioners, Chair Weisenmiller. Before you today are basically three petitioners and/or motions.

One, first is Robert Sarvey's petition for reconsideration filed on September 2nd.

Then, Robert Simpson's petition for reconsideration and motion to reopen the evidentiary record and restore his intervention rights, also filed on September 2nd.

And then, finally, Mr. Simpson's motion to reissue the notice of the Presiding Member's proposed decision and reopen the evidentiary record to accept the revised final determination of compliance from the Air District. That was filed on September 11th.

1 I'll just note that under the rules your grant of
2 reconsideration is a discretionary decision. There's no
3 particular mandate that you have to grant it in any
4 particular circumstances.

5 And, if you could put up the second page of that
6 .pdf? I just want to briefly review the rules about what
7 needs to be contained in a petition for reconsideration.
8 This is Section 1720 of our Commission regulations.

9 And it requires that a petitioner show either new
10 evidence that, despite the diligence of the petitioner,
11 could not have been produced during the evidentiary
12 hearings on the case or an error in fact, or change in law,
13 or error in law in the previously adopted order or
14 decision.

15 And then they are also required to fully explain
16 why the matters that they are presenting to you could not
17 have been considered during the evidentiary hearings. And
18 their view of the effect that that information would have
19 on a substantive element of the decision that you made.

20 I'll finally note that a little while ago today,
21 more for the purposes of convenience, I docketed two
22 proposed orders. One relating to Sarvey's petition, one
23 relating to Simpson's.

24 You, of course -- they are simply a proposal and
25 a framework for your later discussions, should you decide

1 to adopt a motion today.

2 The reason for docketing them is so that people
3 who are outside the building can have access to them on
4 their computers and look along. And we also have copies in
5 the foyer, here, for people who would like to see those.
6 If we run out of copies, please let me know and I'll have
7 some more made.

8 With that, I'm not proposing to summarize the
9 positions of the parties. I think they can do that
10 themselves. And that's it for me.

11 CHAIRMAN WEISENMILLER: Okay, thank you. So,
12 what we're going to do is we're going to take up first Mr.
13 Sarvey's petition, filed on September 2nd. And then we'll
14 take up Mr. Simpson's petition, filed on September 2nd.
15 And then, finally, we will address Mr. Simpson's motion,
16 filed on September 11th.

17 Before we start, let me just encourage everyone
18 to assume the Commissioners have read the pleadings in this
19 matter. And we ask each of you, therefore, to summarize
20 the arguments. You don't need to repeat everything that
21 has been briefed, but attempt to focus on and summarize the
22 key points that you'd like the Commissioners to consider.

23 So, with that, we'll start with Mr. Sarvey's
24 petition. And in terms of just laying out sort of the
25 sequence, so Mr. Sarvey will go first. And then I will

1 invite aligned parties to follow him, Mr. Simpson, the
2 Sierra Club, Terramar, Power of Vision. And then I'll ask
3 the Commission staff and the project owner to respond. And
4 then, finally, I will give Mr. Sarvey the final word.

5 And then we'll break from that discussion and go
6 to questions from the Commissioners and then we'll move on
7 to the next motion. And then, also, obviously, public
8 comment, excuse me.

9 So with that, Mr. Sarvey, do you want to start?

10 MR. SARVEY: Thank you, Commissioner. First of
11 all, the first issue that I raised was the installation of
12 the clutch technology. And I think that staff has now
13 admitted that they believe the clutch technology is
14 feasible for this project.

15 And the clutch technology was raised over 60 days
16 before the adoption hearing by Mr. Simpson, where he
17 requested that the Commission consider that clutch
18 technology, and it was denied.

19 So, there was never an opportunity for us, as
20 Intervenors, to address this clutch issue except at the
21 PMPD hearing -- I mean, at the Business Meeting where the
22 decision was adopted.

23 And it's pretty clear from the transcript that
24 Commissioners felt that it was important that they did have
25 a record on the clutch technology and that in the future

1 they intended to address that in future siting proceedings.

2 And I don't see any reason why the Commission did
3 not consider it, considering that it was raised 60 days
4 before your decision on July 30th, and was brought forth to
5 you and rejected. And then, when it came to the Business
6 Meeting the committee sort of represented that that had
7 never come up in the proceeding. But, in fact, it had come
8 up 60 days before your July 30th decision.

9 And there was time to analyze it. It was
10 brought -- it was triggered by the fact that the committee,
11 themselves, docketed D-15-05-051, which was the PUC
12 decision requesting that SDG&E take a look at that clutch
13 technology issue.

14 And, therefore, we tried to make sure that the
15 project was fully ready for its power purchase agreement
16 and the project proponent wouldn't have to come back and
17 get another amendment. So, there's really no reason why
18 that shouldn't have been addressed in the proceeding.

19 And it's kind of left a bad taste in my mouth
20 that the committee represented that we hadn't raised that
21 before.

22 So, I think that's something that needs to be
23 discussed some more. When I read the transcript from the
24 Business Meeting, it seems one of the Commissioners was
25 very concerned about it. I believe it's a threshold

1 environmental issue. I agree with that Commissioner.
2 So I think that reconsideration, we need to take a look at
3 that.

4 I attended an all-party meeting on May 19th,
5 which occurred approximately 45 days after the close of the
6 evidentiary hearing, where a representative from Carlsbad
7 Energy, Ms. Lisa Cottle, was the attorney for Carlsbad
8 Energy at this all-party meeting at the CPUC, attended by
9 all five CPUC Commissioners. Was directly asked by
10 Commissioner Sandoval, who organized the meeting, would
11 Carlsbad Energy have any consideration of building six
12 turbines or five. They flatly said five only, they had no
13 intentions of building six.

14 And there's no way I could have presented that at
15 the evidentiary hearing, since it didn't occur until 45
16 days afterwards.

17 As you know, my participation has been limited in
18 this proceeding and I've raised a number of issues. And I
19 understand my participation's been limited, but it's even
20 more of a slap in the face when my issues aren't addressed
21 in the final decision.

22 And the final decision just makes conclusory
23 statements. It doesn't cite the evidence that I bring
24 forward, particularly CAISO saying that the original
25 Carlsbad Energy Center, the combined cycle plant, was a

1 better plant for renewable integration and for the grid
2 operations than the ACECP.

3 And, I mean, there's numerous, numerous quotes
4 about a superior technology that the combined cycle plant
5 was. The decision doesn't even discuss it. It doesn't
6 mention it. It acts like it never happened. And that all
7 occurred in the 2007 proceeding.

8 And finally, it's my feeling that the override
9 findings aren't supported by substantial evidence in the
10 proceeding. And the most important part is the decision
11 that keeps inferring that somehow the electricity market
12 has changed and that a combined cycle project, a very
13 efficient one like the original CECP, is no longer
14 appropriate.

15 But the fact is that Southern California Energy,
16 out of their 1,200 megawatts of natural gas-fired plants,
17 has chosen to have over 1,000 megawatts of that be combined
18 cycle. And I don't see anything in the market that says a
19 combined cycle CECP isn't the way to go.

20 And I think that that just conclusory statement
21 that the market has changed is not substantial evidence.

22 So, thank you.

23 CHAIRMAN WEISENMILLER: Thank you.

24 So, let's go on to aligned parties. Mr. Simpson.

25 Okay, let's -- let's see if he reconnects. And

10

1 while we're waiting, Sierra Club.

2 Public Adviser, would you call him?

3 I'll ask, Mr. Simpson, are you on the line?

4 Public Adviser, would you please call him and
5 help him get connected?

6 While we're waiting, let's again go through it.
7 Sierra Club? Terramar? Power of Vision? Any other
8 aligned party on the line?

9 Mr. Oglesby, could you get IT involved?

10 (Off-the-record discussion)

11 CHAIRMAN WEISENMILLER: Mr. Simpson, please go
12 ahead.

13 MR. SIMPSON: Hello, can you hear me?

14 CHAIRMAN WEISENMILLER: Yes, we can.

15 MR. SIMPSON: Oh, good. I've tried to call in a
16 few times here, so I'm not sure where you're at in the
17 proceedings?

18 CHAIRMAN WEISENMILLER: Well, we're right at the
19 stage where Mr. Sarvey has presented his statement and I
20 was looking to the aligned parties, those who agree with
21 him, which I assume you are, to now speak. So, please go
22 ahead, about Mr. Sarvey's motion, or petition, excuse me.

23 MR. SIMPSON: To Mr. Sarvey's motion or to speak
24 to my own?

25 CHAIRMAN WEISENMILLER: No, you're to speak

1 about -- you have an opportunity, if you want, to speak
2 about Mr. Sarvey's petition. We'll deal with yours next.

3 MR. SIMPSON: Sure. Mr. Sarvey's motion was
4 largely about the clutch technology which, at the Business
5 Meeting, the whole reason for rejecting the clutch
6 technology was that it hadn't been considered, hadn't been
7 raised before.

8 But I think you've got ample evidence that it had
9 been raised before.

10 But I was unable to raise this issue at the
11 Business Meeting because nobody turned my mic back on after
12 my first comment. So, I was unable to cross-examine the
13 first -- the witness. I was unable to respond. I just
14 wasn't called on again. So, I appreciate the opportunity
15 to be called on here.

16 I do have a question. On the agenda for this
17 meeting, I didn't see all of the filings on it and I'm not
18 sure if all of the filings had made it to the Commission?

19 CHAIRMAN WEISENMILLER: Mr. Kramer, can we
20 address that?

21 MR. KRAMER: Well, as I understand it, the
22 secretariat had provided you with copies of all the
23 documents that had been filed recently. That's different
24 than what Mr. Simpson would see on the agenda backup
25 materials on the website. Of course, it could be.

1 What we did there was we posted an index to all
2 of the filings as of, I believe it was about a week ago
3 Monday. And then, we also had a link in there to the
4 docket log so that people could go and look, to see
5 subsequently filed documents. So, I think everything is up
6 there. And as far as I know, you've seen all of it that's
7 relevant to today's proceeding.

8 Mr. Simpson did file some things yesterday, by
9 way of a complaint or a request for investigation. And
10 that's not before you today. So, if he's speaking about
11 those materials, it is quite possible you don't have those.

12 CHAIRMAN WEISENMILLER: Okay. But again, right
13 now we're dealing with Mr. Sarvey's petition. After we
14 finish discuss there, we'll deal with your petition and
15 then your motion, all in turn.

16 So, do you have any more comments on Mr. Sarvey's
17 petition.

18 MR. SIMPSON: Sure. When I looked at the
19 applicant's response of Mr. Sarvey's testimony, they
20 basically called him a liar, with no substantiation.
21 There's no testimony from the person that he indicated made
22 the statements that only five turbines are going to be
23 built. There's no -- it's just probably a factual issue,
24 it's a report of the PUC.

25 There's no substantive response to Mr. Sarvey's

1 petition or motion. And the fact is that the clutch
2 technology is available. It should have been considered,
3 but it wasn't considered because the Commission was led to
4 believe that it hadn't been raised.

5 So, unless there's some other basis for not
6 considering it, the issue should be considered. Thank you.

7 CHAIRMAN WEISENMILLER: Okay, fine. I think --
8 now, let's go again. Are there any of the other aligned
9 parties, Sierra Club, Power of Vision, Terramar on the
10 line, who wish to speak at this time?

11 No, okay. So, now we will go to, basically,
12 Commission staff.

13 MR. RATLIFF: Dick Ratliff, Staff Counsel.
14 Staff's position is that Mr. Sarvey's petition should be
15 denied. The first issue that was raised was with regard to
16 the clutch. And staff did not admit that the clutch is
17 feasible. Staff stated that the clutch is feasible.

18 But with regard to that, there are four things
19 you should keep in mind. The PUC decision did not require
20 the clutch. It required that it be studied. We have no
21 results of that study.

22 The ISO filed comments that it may not be useful.
23 Presumably, that would be included in any study.

24 The project proposal does not include the clutch.
25 And having a defined and stable project definition is, as

1 has been often observed by the petitioners, important in
2 terms of the integrity of the proceeding legally. So, a
3 change at this date might imperil the decision legally.

4 Fourth, if the clutch is a good decision and it
5 is something we want subsequently, it could be added by
6 amendment.

7 So, we think that with those things in mind, we
8 believe that you should not seize upon this issue as one to
9 reconsider.

10 Regarding the five turbines versus six turbines,
11 again the project definition is stable. The project is for
12 six turbines. To change the project at this point would
13 again imperil the integrity, legally, of the proceeding.
14 So, you don't, I believe, want to do that.

15 Regarding the third issue that Mr. Sarvey raised
16 in his petition, the ISO's endorsement, back in 2010, of a
17 combined cycle project, that was, as I just suggested,
18 several years ago. And in the dynamic area of the world of
19 energy, that's a long time.

20 Now, if the market, or the utility in question,
21 or the PUC believes that a simple-cycle project is
22 preferable because of the number of -- the amount of
23 intermittent electricity that will be generated, that
24 probably is a very important factor in the preferability of
25 the simple-cycle project that you have before you.

1 So again, we believe that these issues are either
2 distractions or ones that should not be considered under
3 reconsideration.

4 CHAIRMAN WEISENMILLER: Okay, thank you.

5 Applicant?

6 MR. MC KINSEY: Thank you. John McKinsey, Locke
7 Lord, we're counsel to the project owner, Carlsbad Energy
8 Center, LLC.

9 I'd like to address a couple of the points that
10 Mr. Sarvey raised. But I'll reiterate, as you noted, that
11 we have addressed these comments thoroughly in our brief
12 and I won't feel the need to repeat or go through all of
13 our arguments.

14 But I think the understanding about what the
15 parties did or didn't do during the proceeding is
16 worthwhile. And while two of the Commissioners, as
17 Committee members, were present through that proceeding,
18 the other Commissioners were not.

19 And so, I think there's been some
20 mischaracterization of how or when something was or could
21 have been brought up.

22 On the discussion of the clutch issue, the only
23 point where the clutch issue was ever raised -- it was not
24 brought forward, for instance, as a party at some point
25 during the proceeding where they proposed a design change,

1 or made comments on either the staff assessment, or at a
2 workshop, or on a decision saying I think that there's a
3 missing analysis here. I think that this should have been
4 considered an alternative technology. It should have been
5 evaluated.

6 There was no presentation of evidence by any
7 party as to the merits of a clutch, what it could
8 accomplish, what it could mitigate, what it could do. The
9 only -- and we noted this on page 4 of our brief, where
10 this word and this term came up, was when there was a
11 motion brought by Mr. Simpson, urging the Commission to
12 reject the PTA because the PUC decision had required a
13 clutch.

14 In other words, it was a mischaracterization of
15 the PUC decision, but it also was not an attempt to make
16 the clutch an issue, to bring it in. It was actually a
17 motion to reject.

18 And the order denying that motion, by Mr.
19 Simpson, notes that the PUC decision wasn't characterized
20 correctly and that the PUC decision was not requiring that
21 clutches be installed, but it simply directed SDG&E to
22 evaluate the feasibility of clutches presumably in general,
23 not for any specific project.

24 And so, it was not something that was raised by
25 the parties, when it certainly could have been at any

1 point. During the entire proceedings somebody could have
2 said, similar to what you had raised, Commissioner
3 Hochschild, I think this is a very good idea. I think it
4 needs to be evaluated and analyzed.

5 And as Mr. Ratliff has noted, the only way to
6 evaluate something like this is to have all the parties
7 present evidence and information. And there simply is not
8 and has not been still, to this point, a data adequacy
9 requirement, for instance, that would require clutches as
10 part of the alternates that should be evaluated in design.
11 And the project owner never proposed clutches in this
12 design. And so, it's not an issue that was raised during
13 the proceeding that's the basis for reconsideration.

14 On the capacity of the project and whether it's
15 five or six units, and the project owner's position
16 throughout the proceeding has been very consistent that the
17 project remains unchanged. And that the procurement
18 document is simply a procurement for five of the six
19 turbines' output. And that it doesn't eliminate the sixth
20 turbine and that the project owner remains committed to all
21 six.

22 The testimony, if you want to call it that, but
23 the proposed evidence that is Mr. Sarvey's recollection of
24 what occurred at a workshop, and suggests that counsel for
25 the project owner stated emphatically that there will not

1 be a sixth unit, that only five is going to be built, is
2 simply Mr. Sarvey's understanding or recollection of what
3 was said and is not the project owner's understanding. It
4 was not the project owner's instructions to that counsel
5 and -- and has no recollection that that was how it was
6 worded. There is no transcript of that setting.

7 But more importantly, I think it's relevant to
8 understand the timing component to this. Though this
9 occurred, that workshop occurred after the evidentiary
10 hearings, there was still ample opportunity for Mr. Sarvey
11 to have raised this in the setting.

12 Mr. Sarvey could have raised this as comments on
13 the PMPD, could have put forth the wonderful declaration
14 that he prepared after the decision to say, here's what I
15 heard. And might have then elicited an interesting
16 discussion about whether what he was raising was relevant,
17 anyway.

18 Because again, as the decision notes and as the
19 committee noted during the proceeding, the question of
20 procurement at a PUC setting is different than the question
21 of the environmental permit that's being granted to a
22 party. And what NRG and what the project owner, Carlsbad
23 Energy Center, LLC, is authorized to build is a six-unit
24 project. And the project owner has repeatedly, in this
25 proceeding, indicated that that was what they continued to

1 do and that the project design had not changed.

2 So, I think the timing component here is again,
3 as Mr. Ratliff noted, something that doesn't appear to be
4 the grounds for reconsideration of decision by the
5 Commission.

6 And I'll note, finally, that we disagree and we
7 stated in our pleadings almost all the other points that
8 Mr. Sarvey raised orally just now.

9 And I'll give one more example. The statement
10 that the override findings are not supported, it's simply
11 incorrect. In the decision there is very clear evidentiary
12 support for override findings, including a listing of the
13 substantial benefits being provided. And so, it's simply
14 an incorrect statement.

15 And I think, like most of those, our comments and
16 staff's comments demonstrate that. Thank you.

17 CHAIRMAN WEISENMILLER: Thank you.

18 Okay, Mr. Sarvey, this is your chance to respond.

19 MR. SARVEY: Thank you. Well, first, I want to
20 respond to the proposed order denying my petition for
21 reconsideration, since it was handed to me about two
22 minutes before we started this hearing.

23 And the proposed order says, in a couple of
24 places, that I could have somehow presented this evidence
25 during the evidentiary hearing. Well, the statement by the

1 applicant's attorney at the PUC was on May 19th, so that
2 was after the hearing. So, I had no opportunity to provide
3 any evidence. Had I tried, there would have been
4 objections, what have you.

5 As the statute says, you provide, you know,
6 evidence that could not have been provided at the
7 evidentiary hearing and there's no way I could have done
8 that.

9 And it's also the same with the clutch
10 technology. I couldn't have presented that evidence,
11 either, because we were actually warned at the evidentiary
12 hearing not to talk about proposed decisions. Commissioner
13 McAllister, he directed us, unless it's a final decision he
14 did not want to discuss it.

15 And then the committee docketed that decision on
16 June 2nd. It then became an issue because now the PUC's
17 asking someone, anyone to figure out whether this clutch
18 technology could be useful. And the only place that could
19 happen is here.

20 So, I just wanted to address those two points on
21 the committee's order.

22 And as far as the applicant saying that I somehow
23 maybe misstated what was said at the hearings, at the PUC,
24 at the all-party meeting, the applicant surely could have
25 brought Lisa Cottle in, or someone, and cleared that up for

1 us under oath. But that's never happened.

2 All we have -- we have nothing under oath that
3 this thing is going to be six turbines. And it's only
4 going to be five, let's not fool ourselves. I mean, if
5 we're just going to approve any project, why didn't we just
6 let them build under the old license? This thing's going
7 to be five turbines, it's not going to be six, no way.

8 So, the applicant mentioned that I should have
9 submitted this statement under my PMPD comments. I don't
10 see any mechanism in the rules and regulations that would
11 allow me to submit any kind of evidence outside the
12 evidentiary hearing or during the reconsideration. I'm not
13 a lawyer, maybe I don't understand your rules, but that's
14 the way I see it.

15 And then, finally, it was mentioned that the PUC
16 would have told us if they wanted a combined cycle project.
17 But if you read the D-15-05-051, the CPUC clearly defers to
18 the Energy Commission to make that decision of what's the
19 appropriate technology here.

20 Unfortunately, the Energy Commission is not -- is
21 just taking the project description and not looking at what
22 the best technology is. I mean, it's clear that the
23 original combined cycle project, under the staff's analysis
24 and also in practice, there's two projects that are
25 operating in practice. One's a five-turbine LMS-100. NRG

1 owns that. There's a combined cycle, just like the
2 original CEC project.

3 And they're performing at a much, much better GHG
4 emission rate. And to me, the Commission has an obligation
5 not just to take what the applicant is providing us, this
6 is what we're going to build, but they have an obligation
7 to look at other technology and say, hey, is this better?

8 And in this case we had a record for both
9 technologies. And it was clear that the original combined
10 cycle emitted less GHG emissions, less criteria pollutant
11 emissions. It was more efficient in all ways.

12 The only reason that was stated that it was not
13 being considered because of the applicant's project
14 objectives and that the market had changed, where there's
15 no explanation of where the market had changed. And I
16 still haven't heard that. So, I don't see any reason why
17 you shouldn't grant this reconsideration. Thank you.

18 CHAIRMAN WEISENMILLER: Thank you.

19 Let's go to public comment. We have a number of
20 cards here, some of whom I think are dealing with
21 subsequent issues. So, but just to double check, NRG, do
22 you have public -- oh, I see, NRG has testified as the
23 application so, no.

24 So, that leaves the APCD. Your comment may be
25 more relevant to the next item.

1 MR. HORRES: I have no comment on this.

2 CHAIRMAN WEISENMILLER: Okay, thank you.

3 So, there are no public comment on this issue.

4 Okay, and I believe the same on -- we also have the
5 Department of Fish and Game, and my presumption -- or Fish
6 and Wildlife. My presumption is they're on the next
7 motion.

8 So, with that, I believe we've finished public
9 comment. And at this stage I'll ask for questions from the
10 Commissioners.

11 What we will do after this discussion is we will
12 put this matter under submission and deliberate in closed
13 session. But if you have any questions at this time?

14 COMMISSIONER SCOTT: No questions.

15 COMMISSIONER HOCHSCHILD: Just one question for
16 Mr. Ratliff. You said the clutch could be added by
17 amendment. And I'm a little bit confused by that because
18 the whole point, as I understand with the clutch is you
19 have to -- you know, it gets built into the original
20 project. It's not something you can retrofit in
21 subsequently. That's what a synchronized condenser is.

22 So, when you were suggesting that, were you
23 suggesting sort of an amendment that's immediately filed?
24 Because they're going to ideally get going on this pretty
25 quickly. So, I'm just trying to understand your point.

1 MR. RATLIFF: Well, Commissioner, I have the
2 feeling you may know a lot more about this than I do. But
3 my understanding was that this is something that can be
4 retrofitted into an existing project. But if not, then I'd
5 have to concede to an engineer on that point so --

6 COMMISSIONER DOUGLAS: I think, Commissioner
7 Hochschild, what I understood was that if there were an
8 amendment before a project is built, then that would be
9 possible. But I think afterwards, after the project's
10 built there would be a different approach.

11 CHAIRMAN WEISENMILLER: Any other questions?

12 Okay, so thank you, Mr. Sarvey.

13 So, Mr. Simpson, we're going to go on to your
14 petition filed on September 2nd. The same sequence, where
15 you're going to do opening argument. We'll go through
16 aligned parties and then allow response, and then you have
17 final word. And then public comment, obviously.

18 So, go ahead.

19 MR. SIMPSON: All right. First, I'd like to
20 start with public comment on the last issue. I didn't have
21 an opportunity to say it and otherwise say so, and I'd like
22 to comment.

23 We raised the issue of the clutch technology with
24 adequate specificity for the Commission to do an analysis.
25 It's not for the intervenors to be doing the whole job for

1 the Commission.

2 I raised this issue in my motion to deny. I also
3 raised the point of the PUC's decision and it states, "In
4 an effort to balance the liability risks with the public
5 interests in achieving our clean energy goals, we will
6 condition approval of the Carlsbad PPTA on a reduction of
7 the capacity from 600 megawatts to 500 megawatts.

8 So, these are issues that were raised with
9 adequate specificity for the Commission to consider it, but
10 that didn't occur.

11 This override finding that was discussed, the
12 Commission rules 1714, there should have been a certificate
13 of public convenience for that. And that certificate,
14 1714, requires the CEC to notify the PUC and get the PUC's
15 opinion on that. But that didn't occur.

16 So, you're just skipping the rules and the
17 evidence that's before you.

18 CHAIRMAN WEISENMILLER: Well, thank you. But
19 you've had a chance to argue before. You didn't have to
20 wait for public comment. You know, you had the chance to
21 discuss it before.

22 Let's just move on and address your petition.
23 And again, just lay out the high points of the arguments
24 you want us to consider in your petition.

25 MR. SIMPSON: No, I didn't have a chance to do

1 public comment before because my mic was turned off. So, I
2 was making my public comments at this time, thank you.

3 CHAIRMAN WEISENMILLER: But, you know, you didn't
4 need to wait for public comment. You had the chance after
5 Mr. Sarvey to address. Yeah, you talked. So, let's go on
6 to your motion.

7 MR. SIMPSON: And that's the motion for
8 reconsideration?

9 CHAIRMAN WEISENMILLER: Actually, excuse me, I'm
10 referring to your petition filed on September 2nd.

11 MR. SIMPSON: Okay, you said motion, so I'm not
12 sure what you're referring to.

13 CHAIRMAN WEISENMILLER: No, I misspoke.

14 MR. SIMPSON: Okay. So, I'll address the
15 petition now, and the motion at another time?

16 CHAIRMAN WEISENMILLER: That's correct.

17 MR. SIMPSON: Is that how you want me to proceed?

18 CHAIRMAN WEISENMILLER: That's correct.

19 MR. SIMPSON: Okay. You know, the real crux of
20 this reconsideration was that despite my diligence in
21 raising these issues, the Commission has continued to defer
22 consideration of the effects on biological resources. It's
23 continued to defer this issue of the effects of the thermal
24 plumes on avian species.

25 In the evidentiary record, you're going to have a

1 80-mile-an-hour updraft, 800 degrees. And the diameter of
2 that plume, it's a 170-foot diameter plume which is well
3 into the protected habitat. And there's been no analysis
4 of the impact.

5 There's been no analysis of the impact of the new
6 web of high-voltage wires that are planned to bank the --
7 or bisects the dwellings. There's been no analysis of the
8 light impacts and there's been no explanation of how the
9 noise will be 72 decibels at the nearest projector, which
10 is 400 feet away.

11 But somehow, the noise will be less than 50
12 decibels from the lagoon which is 100 feet away. There's
13 been nothing that says what the noise in the lagoon is
14 going to be. It's magically going to be less than the
15 noise on the other side of the lagoon, which it's just
16 defies logic.

17 So, the staff biologists that testified at the
18 last meeting, said, yes, this 50 decibel level is -- what
19 your record says, but the noise would be 72 decibels at 400
20 feet from the project. Which is 300 feet into the lagoon.

21 So, it just doesn't add up and everyone seems to
22 refuse to look at that.

23 So, without repeating the whole petition,
24 that's -- no one objects to Dr. Longcore's response to the
25 assertion that you need to research -- reached his

1 conclusion. That the Commission use Dr. Longcore's
2 research to reach the conclusion that this project isn't
3 safe. Dr. Longcore repeated that and nobody's responded to
4 that. Nobody said, oh, that's not what we meant.

5 So, all this has happened since the evidentiary
6 hearing and the Commission can continue to ignore it, but
7 everybody's not going to continue to ignore it. Thank you.

8 CHAIRMAN WEISENMILLER: Okay. Mr. Sarvey, would
9 you like to speak on his petition?

10 MR. SARVEY: First, I need a little procedural
11 guidance here. I've not been approved to discuss biology
12 in this proceeding. And I don't know if that was limited
13 to the evidentiary hearing, the PMPD comments? There was
14 never any guidance given there, so it's fairly confusing on
15 what my role is right here.

16 But I read Dr. Longcore's letter and it does
17 concern me. And I believe that the Commission should
18 address the issue.

19 There's a substantial amount of wildlife right
20 next to that project, in the lagoon. And there's even
21 wildlife that's been seen nesting in the -- in the tanks
22 that are being demolished. That's in the construction or
23 the compliance, monthly compliance reports.

24 And staff says that there's no species at all on
25 the property. So, I feel that's a pretty weak excuse for

1 not looking at the issues that he's raising. And also, you
2 have Dr. Longcore's letter in there. I think that's
3 something that should be taken a look at by staff's
4 biologists and addressed. Thank you.

5 CHAIRMAN WEISENMILLER: Okay, thank you.

6 So, in terms of any other of the aligned parties,
7 Sierra Club, Terramar or Power of Vision? Okay, I believe
8 they're not on the line.

9 So, let's go to the Commission staff.

10 MR. RATLIFF: The Commission staff believes that
11 the substantive issues raised by Mr. Sarvey's petition have
12 absolutely no merit. They were all raised during the
13 proceeding and considered during the proceeding.

14 I think enough said. I'm sorry, Mr. Sarvey
15 corrects me, we're discussing Mr. Simpson's petition.

16 CHAIRMAN WEISENMILLER: Okay, thank you. Thanks
17 for the correction.

18 Okay, applicant?

19 MR. MC KINSEY: The project owner essentially
20 agrees with staff that I think we've responded to most of
21 the issues.

22 I will note that in our filing we did not
23 directly address the substance of the accusation of avian
24 impacts from thermal plumes. But it is in the record.
25 There was testimony and evidence and it was analyzed.

1 I wanted to say one other thing, which I think
2 would be really useful in understanding some of the
3 comments that Mr. Simpson made about no analysis. And I
4 don't agree that there was no analysis. But one of the
5 things that the committee pointed out to the parties, at
6 the beginning, was some instruction on what was occurring.
7 And it's a little easy to lose track of the big picture
8 when you're dealing with petitions to amend that undergo
9 long, and thorough, and careful analysis.

10 You begin to think of them as an entirely brand-
11 new project, but this wasn't. This was two petitions to
12 amend that were going to modify and, from the project
13 owner's perspective, certainly significantly improve what
14 was already an approved project that had been found to meet
15 all LORS, and not have any significant adverse impacts.

16 And three big changes were accomplished by the
17 Commission's approval of these petitions to amend that we
18 can lose track of, the elimination of once-through cooling
19 and the elimination of the operation of all the units in
20 Encina Power Station. And then, the removal of that large
21 generator building, the exhaust stack and all the related
22 equipment that is much closer to the lagoon, and much
23 closer to the ocean front.

24 And third, the conversion to simple-cycle
25 technology, from combined-cycle technology, which

1 facilitates better integration with renewable energy, such
2 as solar and wind.

3 And so, this was a petition to amend, modifying
4 what was already an existing approved project. And so the
5 question becomes one of what is being changed and how could
6 that affect the already approved envelope of the project?

7 And without a doubt, when we speak of most of the
8 potential for effects of biology, the project's footprint
9 didn't expand into an area that was not already part of the
10 project site. And the project overall became less visible
11 and improved substantially.

12 And so, there was no obligation to recreate all
13 of that analysis, even though in many cases we did and we
14 were very thorough in that regard.

15 But it's that bigger picture that should be
16 understood here, that this project has really already been
17 approved once and now it was undergoing a change in certain
18 circumstances, most of which were improvements. And,
19 certainly, we ran into some new things to think about, some
20 new rules. But the committee did its job very well of
21 keeping the parties focused.

22 And I was also going to note that just as Mr.
23 Sarvey, both Mr. Simpson and Sarvey's participation was
24 limited in this proceeding, as you know, because they
25 challenged that before you as a Commission, to non-include

1 biology. But I don't think we have an issue with somebody
2 wanting to raise an issue, whether they do it as a member
3 of the public or as a party.

4 And so, we're not trying to skirt around the
5 discussion of biology today because, again, we're not the
6 slightest bit concerned about the merits of the decision,
7 and the quality of the project, and its harmony to the
8 lagoon and the existing environment, and all the
9 substantial benefits that this project will now bring,
10 thanks to the Commission's approval of the petitions to
11 amend, to this community.

12 CHAIRMAN WEISENMILLER: Okay. Mr. Simpson, it's
13 your chance to respond, on the topic of the petition, to
14 the arguments.

15 MR. SIMPSON: Thank you. I understand. I
16 understand that this was an amendment of a previously-
17 approved project and each of the issues that I've raised
18 are pertaining to the changes.

19 Instead of two stacks, there are six stacks. The
20 two stacks were relatively low velocity. The six stacks
21 have twice the velocity and a much greater area of impact.
22 And I think it's a factor of ten, the plume diameter.

23 Now, this plume diameter and velocity is adequate
24 to cause a closure of the air space above the projects.
25 So, in a coastal zone, that's a public issue, you can't

1 just close the air space to emergency access, to
2 lifeguards, to helicopters.

3 And it's not just that this air space is closed,
4 but the city hasn't even required the applicant to get FAA
5 approval for this closure until after the project is built.
6 So, what if the FAA says no, you can't close the air space
7 here? Then you've got this project built and you can't
8 operate it because nobody bothered to get FAA approval
9 before it was built.

10 It's absurd to build a big project without
11 knowing if they'll be able to operate in the air space
12 that's provided.

13 The north turbine is in a different location. It
14 has a glittering effect on the habitat. There's a new
15 cluster of high-voltage wires next to that habitat. And
16 none of these impacts have been adequately considered.

17 I mean, I think it's -- the idea must be that if
18 it gets built, the FAA's going to have to approve the
19 closure of the air space. But I don't see it being the way
20 to go. I don't see the impact of six turbines, with double
21 the velocity, higher temperature stacks as the same as two
22 lower velocity stacks that probably wouldn't even require
23 closing the air space. The impact on them is up to about a
24 thousand feet. And the same impact on these turbines is
25 2,200 feet.

1 So, these issues have not been adequately
2 considered. They've been brushed over as if they were
3 considered in the original proceeding. But there's no way
4 any of these issues that I've raised were considered in the
5 original proceeding or considered even in the amendment.

6 I think it's --

7 CHAIRMAN WEISENMILLER: Okay.

8 MR. SIMPSON: I'm done.

9 CHAIRMAN WEISENMILLER: Are you done?

10 Yeah, well, we had some issues. The court
11 reporter's having some difficulty understanding you. The
12 presumption is you're calling from a cell, instead of a
13 land line.

14 But at this stage, let's turn the attention to --
15 I think we have, again, public comments which will deal not
16 with your petition, but your motion.

17 And I'm going to turn to the Commissioners and
18 see if you have questions? Does anyone have questions?

19 MS. VACCARO: Excuse me, Chair Weisenmiller.
20 Before you move forward, I want to be clear what's before
21 us right now is a combined petition and motion. And then
22 Mr. Simpson also has a motion, which will be the third item
23 that hasn't been taken up, yet.

24 I think there were some public commenters on the
25 line that might wish to speak on this item, as well,

1 potentially, on the third item.

2 CHAIRMAN WEISENMILLER: Okay, so we can turn to
3 them. I was getting -- before we transition, let's go to
4 the public comment. And then, again, we'll take the matter
5 under submission.

6 So, I was going to ask for -- if there have
7 public comment on these issues from the APCD?

8 MR. HORRES: The APCD, I don't think we have any
9 comments on what was just discussed.

10 CHAIRMAN WEISENMILLER: Okay. And Terry Stewart,
11 Department of Fish and Game -- Fish and Wildlife, excuse
12 me.

13 MS. STEWART: Yes, hello. Can you hear me?

14 CHAIRMAN WEISENMILLER: Please. Yes, we can.

15 MS. STEWART: Hi. So, we were just asked
16 yesterday to listen in on the call. And I think my
17 understanding of the project is that we were not provided
18 an initial copy of the document. And we have been asked to
19 look at the situation and see whether or not we would have
20 reviewed and sent in a comment letter.

21 Generally, when we get a document what we do is
22 we kind of triage what's going on. And we look to see if
23 the project is within a sensitive biological area. This
24 is. It's close to Agua Hedionda Lagoon. We have an
25 ecological reserve on the east end of Agua Hedionda Lagoon.

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1 We do have listed species in the area.

2 We would look at that and try to, you know,
3 define whether or not project impacts would be detrimental.

4 So, since this is an existing power plant, the
5 modifications seem to be improvements over the approved
6 projects, and the footprint did not expand, we would
7 definitely have reviewed the document. But I'm not sure, I
8 cannot confirm that we wouldn't have provided comments or
9 not at this stage.

10 Generally, we would look at the document and
11 provide some sort of a comment letter.

12 CHAIRMAN WEISENMILLER: Okay, thank you.

13 MS. STEWART: Uh-hum.

14 CHAIRMAN WEISENMILLER: Let's -- we may circle
15 back to this issue so, please, both of you stay on the
16 line.

17 We also now have Mr. Simpson's motion, filed on
18 September 11th, 2015. And this motion is essentially a
19 motion for reconsideration. All petitions or motions for
20 reconsideration were due by September 2nd, 2015. This is
21 not really close. And because it was filed on September
22 11, 2015, the motion is untimely.

23 I recommend the Commission decline to hear
24 argument on it or otherwise decide its merits.

25 Commissioner Douglas?

1 COMMISSIONER DOUGLAS: I just -- you know, I
2 agree and believe it's untimely. I just wanted to also
3 make the point that the revised final determination of
4 compliance that Mr. Simpson seeks to introduce is in the
5 docket, and the changes it made were incorporated into the
6 record by way of staff's air quality errata.

7 So, you know, we have the Air District on the
8 phone and I would really appreciate hearing from the Air
9 District.

10 But the Air District, in a docketed e-mail, on
11 September 15th, spoke to this issue. My understanding is
12 that the changes that -- the FDOC has been incorporated and
13 the FDOC's in the docket.

14 But Mr. Horres, if you're still on the phone, it
15 would be great to hear from you on this.

16 MR. HORRES: Hello, this is Nick Horres. Yes, so
17 just confirming what we stated in that e-mail, we didn't
18 issue a revised FDOC, other than the one that had been
19 previously docketed and the staff had considered.

20 The only thing that we issued was a revised
21 notice of issuance, which was correcting what was basically
22 a typo in one section of the notice, where it had described
23 the approved project as being combined cycle.

24 However, in the detailed equipment description
25 and throughout the FDOC, it's correctly stated as being a

1 simple-cycle project that we're evaluating.

2 COMMISSIONER DOUGLAS: Thank you. I think that's
3 the only question I have on this.

4 Oh, and let's just ask Terry Stewart, from CDFW,
5 do you have any additional comments beyond what you just
6 said?

7 MS. STEWART: No, that's really it right now,
8 thank you.

9 COMMISSIONER DOUGLAS: Thank you.

10 CHAIRMAN WEISENMILLER: Any public comment?

11 Please, Mr. Sarvey and Mr. Simpson.

12 MR. SARVEY: Yeah, I'd like to make a public
13 comment if I could, please?

14 CHAIRMAN WEISENMILLER: Sure.

15 MR. SARVEY: Whether Mr. Simpson's motion is
16 untimely or not, you heard Fish and Game say they didn't
17 receive the document. And the Commission's regulations,
18 Section 1748, requires at least 14 days before the start of
19 evidentiary hearings that Commission staff is supposed to
20 distribute the final staff assessment to interested
21 agencies.

22 And then, Section 1749 of the Commission's rules
23 of practice and procedure require the presiding member
24 proposed decision to be published within 15 days,
25 distributed to interested agencies, parties, and to any

1 person who requests a copy.

2 Well, the Commission did not meet these
3 requirements of their rules of practice and procedure.
4 And, you know, there's really no excuse not to reissue
5 these documents.

6 Obviously, we can't go back and reissue the FSA.
7 But we can reissue the PMPD and let Fish and Game have
8 their time that they need to look it over and make their
9 recommendations.

10 And I think it would be abuse of discretion if
11 the Commission violated their own procedures and did not
12 allow Fish and Game to comment on this PMPD.

13 And unless you're trying to insist that Fish and
14 Game isn't an interested agency, and I wouldn't think that
15 you would try to say that.

16 So, along with that, your guidelines of your
17 certified regulatory program, Section 15251, under those
18 guidelines you must consult trustee agencies in the process
19 of preparing an EIR substitute. And that's been challenged
20 in court. And when you don't follow your own procedures,
21 you need to go back and do it. And that's why I think the
22 motion should be granted.

23 CHAIRMAN WEISENMILLER: Mr. Simpson, please, do
24 you want to comment on this?

25 MR. SIMPSON: Now, is this my opportunity to

1 present on my motion?

2 CHAIRMAN WEISENMILLER: No, this is your -- I
3 have tentatively, you know, said you were late. Now, this
4 is your opportunity to respond to that and provide your
5 argument. Just as, again, Mr. Sarvey. I will then turn to
6 the staff and the applicant to give them a chance.

7 But please, go ahead.

8 MR. SIMPSON: Okay, so this is my opportunity to
9 speak to my motion, is that what you said?

10 CHAIRMAN WEISENMILLER: That's correct.

11 MR. SIMPSON: The issue of notification to the
12 California Department of Fish and Wildlife was clearly
13 raised in my original petition, on page 11. And I also
14 pointed out on page 11 that you told every other agency
15 that there would be no changes to the transmission lines.
16 And then the project proceeded with a bunch of changes to
17 the transmission lines.

18 So, 1714 of your rulings states that "The
19 Executive Director shall transmit a copy of the notice of
20 application to California Department of Fish and Game".

21 Now, I think it's significant it says this
22 responsibility is laid on the Executive Director. It
23 doesn't lay this responsibility on staff or someone else.
24 And I think that's an important distinction. This notice,
25 coming from the Executive Director, has a different level

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1 of weight to it, when it's given, when it's presenting to
2 Fish and Game, Fish and Wildlife, or any agency.

3 So, an e-mail from some staff member, in 2014,
4 that doesn't address any of the issues in 1714, what 1714
5 also says, "The Executive Director shall request analysis,
6 comments and recommendations from these agencies".

7 And each level of this proceeding Fish and Game
8 is obviously an interested agency and they're plainly
9 identified in 1714. Thereafter, they're identified as
10 these agencies.

11 At which point you would both give them a copy of
12 the preliminary staff assessment, the final staff
13 assessment, the PMPD, and the decision. And each of those
14 rules, whether you decide to determine this motion is not
15 timely, it's merely a clarification of what's in the
16 original petition.

17 So, Fish and Wildlife has clearly said that they
18 were not involved in this process and the rules clearly say
19 that they're supposed to be.

20 Now, Fish and Wildlife, Fish and Game, everyone's
21 missing a copy of the 15-day notice that is under the
22 Endangered Species Act. Well, the burden then is simple,
23 you didn't let them participate.

24 So, I don't know how you're going to court and
25 you're going to tell the judge that, well, yeah, we were

1 supposed to let these resource agencies participate but,
2 yeah, we decided not to. And we had another chance at it
3 and we decided not to.

4 And at the applicant's recommendation, I filed a
5 complaint and a request for investigation of this issue.
6 So, it's going to come up again and it's going to be
7 squarely in that. This is a valid complaint that you
8 haven't allowed these people to participate, and the rules
9 are saying you're supposed to.

10 So, whether it's contained in this petition for
11 reconsideration, the motion or this next complaint of
12 investigation, or before the courts at some point, you're
13 probably going to want to let Fish and Game have a look at
14 this thing.

15 CHAIRMAN WEISENMILLER: Okay. Well, thank you.
16 I mean, the reason why I asked Fish and Game under the
17 petition was because it was also in there.

18 So, with that, let's go on to staff's comment on
19 this issue.

20 MR. RATLIFF: I'd like to point out, as did Mr.
21 McKinsey earlier, that this has been a long proceeding
22 inasmuch as there was a five-year proceeding that had to do
23 with the original licensing of the project.

24 And Fish and Game did provide comments and
25 participate in that proceeding. Did not seem to be

1 particularly interested in the issues, biologically, in
2 that proceeding or alarmed by anything about the proposed
3 project that was originally licensed.

4 The Department did also receive the original
5 petition for amendment on the project before you now, more
6 recently, but has not participated in the proceeding. And,
7 apparently, did not receive the PMPD as required by the
8 regulation.

9 So, in my view, this probably fell off -- there
10 seems to me to be a likelihood that this may have fallen
11 off the bottom of the page in terms of the interest level
12 at that agency but -- and I don't believe that this
13 omission is one of a great magnitude.

14 But I think in terms of being extremely cautious,
15 the Commission may want to consider crafting its final
16 order on the petitions for reconsideration in a manner
17 which allows the Department time to comment on the PMPD, if
18 they wish to.

19 CHAIRMAN WEISENMILLER: Okay, applicant.

20 MR. MC KINSEY: We respectfully disagree that
21 this is an omission. And I think we set forth our argument
22 in our response to the motion very clearly that both 1748,
23 as well as 1749, those two sections which are a regulation,
24 that it's not a statute, but that regulation simply uses an
25 undefined, uncapitalized term "interested agencies".

1 And so you can't say that the omission of any
2 agency is automatically a fault. And, certainly, an agency
3 that's not listed. And in this case it simply says
4 "interested agencies".

5 And when you look at the procedural context, that
6 Fish and Game received a copy of the petition to amend and
7 did not respond or participate in the proceeding, that
8 there's no reason for them to then be considered an
9 interested agency that need to receive a copy of the PMPD.

10 And so, we don't agree that this is an omission
11 at all. And I think we've heard, generally, and I think
12 it's correct that this isn't being raised by an agency,
13 saying, we're upset that you didn't do this. But you have
14 a party, who's claiming that they think that this is a
15 legal flaw in the process.

16 And I think that in that context there's no basis
17 to grant this motion at all.

18 COMMISSIONER DOUGLAS: So, this is Commissioner
19 Douglas. For Terry Stewart, if you're still on the line, I
20 have one question for you which follows up on Mr. Ratliff's
21 comment.

22 If we were to provide the Department with some
23 period of time to look at the document and assess whether
24 you would have comments, and make comments if you had them,
25 what period of time would you be able to -- you know, what

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1 time period would work for you? Would you be able to look
2 at it in a week, two weeks, three weeks?

3 MS. STEWART: Yes, hi. I think we would take a
4 look at the document. And, you know, I would ask you for
5 30 days.

6 COMMISSIONER DOUGLAS: Thank you.

7 MS. STEWART: I don't know what that does to your
8 timeline. But generally, we can get documents reviewed and
9 looked at in 30 days. And I don't know whether or not we
10 would have a comment letter or have substantive comments
11 related to the modifications. Because it does sound like
12 it's -- like they have been improvements to the project.

13 So, I think we would like to look at the document
14 and have a 30-day review, if that's appropriate.

15 COMMISSIONER DOUGLAS: All right, thank you.

16 CHAIRMAN WEISENMILLER: Okay. Now, let's remind
17 Commissioners, so we've -- basically, we have under
18 submission the petition which includes this issue.
19 We have a motion. I've asked the Commission to decline to
20 hear argument on the motion, per se. And I would like a
21 motion on that issue.

22 COMMISSIONER DOUGLAS: I'll move --

23 MS. VACCARO: Chair Weisenmiller, just as a point
24 of clarification, because what the record is now reflecting
25 is that you made your recommendation and there was assent,

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1 in terms of nodding from Commissioners, but no motion at
2 that time. And then, the Commission went forward and
3 actually did hear argument from Mr. Simpson and then heard
4 from others on the motion.

5 I think your actual disposition on the motion is
6 something you could take under submission at this time.
7 And as you indicated early on that you would be doing that
8 with all three items, deliberating in closed session and
9 then coming out with a statement, after closed session, on
10 each of these three. But I think we've already moved
11 forward on that.

12 CHAIRMAN WEISENMILLER: Okay. No, let's do that.
13 I mean, I think it was important -- I thought it was
14 important to get on the record this particular issue,
15 realizing there's a number of other things and that we're
16 trying not to quite -- well, actually, we've dealt with a
17 lot of these in the petition. And, Mr. Simpson assures us
18 we'll have another opportunity later on some of these
19 issues.

20 So with that, let's -- we're going to go --
21 basically, we're taking it under submission and we're now
22 going to deliberate in closed session. We'll be back out
23 to announce our decision later.

24 I'm going to guess it's about an hour, but we'll
25 see.

1 (Whereupon, the Commission adjourned into
2 Closed Session at 10:46 a.m.)

3 (Whereupon, the Commission reconvened
4 the Public Session at 12:27 p.m.)

5 CHAIRMAN WEISENMILLER: Okay, we'll be back in
6 session. We're back on the record, having returned from
7 Closed Session, as noticed in the agenda.

8 In that Closed Session we deliberated on the
9 petitions and motions before the Commission. the
10 Commission deliberated, but there was no vote taken in the
11 Closed Session.

12 So with this, turning the attention to the
13 Commissioners, are there any questions or comments from any
14 of the Commissioners before we hear any motions?

15 COMMISSIONER DOUGLAS: Chair Weisenmiller, I have
16 a couple comments. You know, I've been on this proceeding
17 for, obviously, a long time now. The amendment, but also
18 this -- these two amendments, but also prior to this.

19 And I just wanted to say, first of all, just
20 based on my experience on this case, that there's been a
21 very thorough process. We have been, I think, diligent in
22 going through the record and developing a record. And I
23 think that there is substantial evidence in the record that
24 amply supports the conclusions and the Commission decision.

25 I think we looked at a reasonable range of

1 alternatives. We may -- we did limit certain intervenors
2 to specific topical areas, but we also provided an
3 opportunity for them to ask the committee to expand the
4 scope of their participation by raising specific, and
5 making specific requests to expand that scope in specific
6 areas.

7 Neither of the Intervenors before us today took
8 advantage of that opportunity or make any specific request
9 like that.

10 I do want to say that the issue raised by Mr.
11 Simpson, the procedural issue on noticing CDFW and
12 providing them with the PMPD per our regulations does raise
13 a concern with me. We have a close working relationship
14 with CDFW. And while I don't want to particularly sit here
15 today and parse the meaning of the phrase "interested
16 agency", I do think that it would make sense to provide
17 them with a 30-day period to review and comment on the PMPD
18 and probably, also, the final decision.

19 You know, aside from that, I think my overall
20 sense is that there's really nothing that's been raised
21 that meets the standard for reconsideration. That
22 procedural issue is one that I think we may want to
23 address. So, those are my comments.

24 COMMISSIONER MC ALLISTER: So, I was the
25 associate member on the committee. And I want to really

1 echo Commissioner Douglas's comments.

2 You know, from my vantage point there's been a
3 very robust process, with many opportunities for
4 stakeholders, both public comment and intervenors, to put
5 whatever issue they wanted on the table for discussion.
6 There's been really no -- there have been some sort of
7 process for kind of convenience and ease of process, but
8 there's been -- certainly, any effort to impugn the process
9 as limiting that sort of opportunity I think is completely
10 off base.

11 So, we followed that process. It happened when
12 it happened and it's reaching its conclusion, and I think
13 that is entirely appropriate, echoing some of the comments
14 that Commissioner Douglas just made.

15 So, you know, nobody has a crystal ball of what's
16 going to happen with this project going forward. It's not
17 really the concern of this particular discussion.

18 So, I think bringing this to a close and there
19 really hasn't been issue -- aside from the process issue,
20 with the Department of Forestry and Wildlife, I think there
21 really isn't reason to change course at this point.

22 CHAIRMAN WEISENMILLER: Thank you. Any other
23 questions or comments?

24 Okay, so let's turn attention to each of the
25 items. Is there a motion regarding Mr. Sarvey's petition

1 for reconsideration, filed on September 2nd, 2015?

2 COMMISSIONER DOUGLAS: I move to deny Mr.
3 Sarvey's petition for reconsideration.

4 COMMISSIONER MC ALLISTER: Second.

5 CHAIRMAN WEISENMILLER: Okay, we have a motion
6 and it's seconded.

7 All those in favor?

8 (Ayes)

9 CHAIRMAN WEISENMILLER: All those opposed?

10 So, this passes five to zero.

11 Mr. Kramer, please modify the proposed hearing
12 advisor order that you distributed for today's hearing to
13 conform to the motion and Commissioner comments.

14 The Commission will return to this item to review
15 an active proposed order after Mr. Kramer has made the
16 changes.

17 I would also note that you admitted that there
18 was a factual question there that we could clean up. Do
19 you want to discuss that?

20 COMMISSIONER DOUGLAS: You know, so -- oh, sorry,
21 go ahead, Mr. Kramer.

22 MR. KRAMER: Yeah, Mr. Sarvey pointed out a bit
23 of an inconsistency between the discussion and one of the
24 findings or conclusions. It relates to whether he could
25 have raised the comments that the proponent's lawyer made

1 at the PUC hearing at the evidentiary hearing. And, of
2 course, he's right, the comments were made after the
3 evidentiary hearings.

4 So, I will -- I'll add a clarifying preamble to
5 one of the findings to make those two consistent, when I
6 bring it back for you.

7 CHAIRMAN WEISENMILLER: That would be good. Of
8 course, you're talking about the alleged comments?

9 MR. KRAMER: Yes.

10 CHAIRMAN WEISENMILLER: Okay.

11 COMMISSIONER DOUGLAS: There's just one other
12 comment I have on that order, when you look at it, and that
13 is there are a couple places where it references evidence
14 that Mr. Sarvey was seeking to bring to us for this
15 petition.

16 You know, I think it's certainly new information,
17 but we're not in an evidentiary proceeding right now, so I
18 think we might want to refer to it right now as
19 information.

20 MR. KRAMER: Will do.

21 CHAIRMAN WEISENMILLER: Okay. Now, is there a
22 motion regarding Mr. Simpson's petition for reconsideration
23 in the imbedded motion filed on September 2nd, 2015?

24 COMMISSIONER DOUGLAS: Yes, there is. And I
25 think that Mr. Simpson's petition raises a number of issues

1 that, you know, I do not think have merit. But the one
2 portion of the petition that I do think we should act on is
3 to ensure that CDFW does receive a 30-day period to
4 determine whether they would like to make comments, and to
5 make such comments.

6 And so, I would move that the Commission grant
7 Mr. Simpson's petition on the sole ground that it appears
8 that CDFW did not receive the published PMPD from the
9 Energy Commission, and that Mr. Simpson's petition be
10 denied on all other grounds.

11 And I'd like to further incorporate into this
12 motion and move that the Commission is not deciding or
13 rendering an opinion on whether CDFW is an interested
14 agency within the meaning of Commission Regulation 1749.
15 But, rather, providing CDFW an opportunity to comment.

16 COMMISSIONER MC ALLISTER: Was that a motion?

17 COMMISSIONER DOUGLAS: Yes.

18 COMMISSIONER MC ALLISTER: Second.

19 CHAIRMAN WEISENMILLER: Okay, all those in favor?

20 (Ayes)

21 MS. VACCARO: Before you vote, would you want to
22 specify a time period for which I didn't -- I didn't hear
23 it. You might have stated it. Would you also want to
24 include that?

25 COMMISSIONER DOUGLAS: Oh, thank you. Thank you.

1 I'd like to include within the motion that they be given 30
2 days. That's what they requested. That's what they would
3 have gotten in any case.

4 COMMISSIONER MC ALLISTER: Second.

5 CHAIRMAN WEISENMILLER: Okay, all those in favor
6 of the revision motion?

7 (Ayes)

8 CHAIRMAN WEISENMILLER: This also passes five to
9 zero.

10 I would note that Mr. Simpson wants to do public
11 comment and we're past that phase, although we will have
12 public comment at the end of the hearing. He's certainly
13 welcome to speak then.

14 So, is there a motion regarding Mr. Simpson's
15 motion to reissue notice of presiding member's proposed
16 decision and reopen the evidentiary record, filed on
17 September 11th?

18 COMMISSIONER DOUGLAS: So, I would move to deny
19 that motion as untimely.

20 COMMISSIONER MC ALLISTER: I'll second.

21 CHAIRMAN WEISENMILLER: All those in favor?

22 (Ayes)

23 CHAIRMAN WEISENMILLER: This also passes five to
24 zero.

25 So, again, Mr. Kramer, please go back and modify

1 the first two proposed decisions, that you distributed
2 earlier today, to conform to the motion and Commissioner
3 comments. And we will return to them to review an accurate
4 proposed protective order after Mr. Kramer's made the
5 changes.

6 COMMISSIONER DOUGLAS: And I just wanted to
7 clarify, the comment I made about the word "evidence" as
8 opposed to "information", actually pertains to Mr.
9 Simpson's motion for reconsideration.

10 MS. VACCARO: And just for the clarity of the
11 record, your comments, Chair Weisenmiller, were to direct
12 Mr. Kramer to go back and make conforming changes to the
13 proposed orders that he distributed this morning. He did
14 not distribute a proposed order on Mr. Simpson's --

15 CHAIRMAN WEISENMILLER: No.

16 MS. VACCARO: -- late filed motion. So, is it
17 the wish of the Commission for that decision to be deemed
18 final as per the vote?

19 CHAIRMAN WEISENMILLER: No, that decision is
20 deemed final. Just for the first and second items, we will
21 await his revisions. Thank you for the clarification.

22 COMMISSIONER MC ALLISTER: That means 1-A, right?
23 Both items in 1-A of the agenda, right?

24 CHAIRMAN WEISENMILLER: I'm looking at it.

25 COMMISSIONER MC ALLISTER: Anyway --

1 CHAIRMAN WEISENMILLER: I think it's clear, yeah.

2 COMMISSIONER MC ALLISTER: Okay.

3 CHAIRMAN WEISENMILLER: Now, with that, let's go
4 on to Lead Commissioner or Presiding Member reports.
5 Commissioner Scott?

6 COMMISSIONER SCOTT: I have a couple things to
7 share with you all. Last Thursday and Friday we, the
8 Energy Commission, worked with UC Davis, the Institute on
9 Transportation Studies, and put together what I've been
10 calling a little, mini merit review.

11 So, you know how the Department of Energy does
12 the annual merit review of all of the projects that they
13 fund, we did -- we focused on four of our biofuels
14 projects.

15 And it was really interesting. I appreciated
16 having those four project developers come in and really let
17 their projects be put under a microscope. We had some
18 great reviewers, some from the National Labor, from Air
19 Resources Board come and really look at the projects, and
20 kind of dig into the projects and ask questions.

21 And, really, what we were trying to do is
22 identify some of the challenges and barriers that are
23 there, identify successes or good lessons learned that we
24 could bring forward to the other fuel developers. And, you
25 know, this is important as we try to increase the amount of

1 alternative fuels and biofuels that we have in the State,
2 as we work to meet the Low Carbon Fuel Standard and others.

3 So, we had a really good discussion. I want to
4 say thank you, so very much, to Tim Olson. And I hope that
5 if you all see him, you'll pass that along. He did a
6 fantastic job pulling together the reviewers, pulling
7 together the project developers, really organizing it well,
8 getting a great set of interested stakeholders to come in
9 and to listen, and learn about the projects.

10 So, he -- I mean, he just knocked it out of the
11 park with that. And it was a nice change to really dig in
12 and reflect on some of the biofuels projects that the
13 Commission has.

14 I will also highlight that yesterday Commissioner
15 Hochschild and I went to visit Travis Air Force Base and
16 talk about some things that are related to energy, that are
17 of mutual interest.

18 They're doing a lot on water and conserving
19 water. And so it was pretty interesting, actually, to
20 drive around the base. They took us on what they call a
21 windshield tour. So, you get to kind of go through the bus
22 and look out the windshields at the different things on the
23 base.

24 And pretty much every lawn in the base is
25 completely brown. And they're incredibly proud of that

1 fact because that's a big change for folks in the military
2 not to have everything pristine, and beautiful, and
3 absolutely perfect looking. So, that was just really neat
4 to see that they are also very serious partners with us on
5 conserving water use.

6 The other thing that they do, that I think was of
7 strong interest to me, is they do the logistics. They move
8 all of the military-related goods, if you will, and people
9 around the world to where they need to be.

10 And as we were thinking about Governor Brown's
11 sustainable freight, it would be really interesting to see
12 what kind of neat logistics type of tricks, and tips, and
13 lessons learned that they might have, that is something
14 that we could bring maybe more broadly to the goods
15 movement. You know, not military goods movements, but just
16 I don't know what you call it, regular goods movement, or
17 the goods that come through the Ports of L.A. and Long
18 Beach.

19 But that was a very interesting visit. And
20 maybe, Commissioner Hochschild, I don't know if you want to
21 add anything about our visit to that?

22 Okay, the only other thing I would mention, since
23 we have a little time while we wait, is that Christine
24 Kehoe and I wrote an Op-ed that got picked up by the Sac
25 Bee, which was really exciting.

1 And so it was last week, for National Drive
2 Electric Week. And we talked about why it's great to drive
3 a plug-in electric vehicle. And so, we were pretty, pretty
4 exciting that the Sac Bee picked that one up. So, that's
5 my report.

6 COMMISSIONER MC ALLISTER: That's great. She is
7 a powerhouse, she's great. Congratulations.

8 So, just a couple of things. Not too long has
9 passed since our last Business Meeting. But trying to move
10 forward on sort of parsing out the various activities under
11 AB 758, which we adopted last meeting.

12 And, you know, the legislative session has kind
13 of ended now, in the Legislature, but now things are moving
14 to the Governor's desk. So, there are a couple of things
15 that, hopefully, will help us along in that regard, on
16 benchmarking and, obviously the big one, SB 350, with the
17 EE goals and the renewable energy goals. So, those are
18 very linked with AB 758. So, we're hopeful there.

19 Let's see, IEPR has been moving forward, so staff
20 has been -- I mean, you know, it's not even just a village
21 effort, it's sort of like a small town effort. Maybe, I
22 don't know, maybe a kind of regional hub effort.

23 But coming together, so under review, so at some
24 point here, in the next few weeks, I think that will be
25 hitting the street in draft form.

1 We had a natural gas update workshop yesterday
2 that was, I think, pretty interesting. And good to see all
3 the work on the natural gas front. A lot of policy issues
4 wrapped up in natural gas in terms of sort of near term
5 versus long term, and really requires us to step up and do
6 analysis, and integrative analysis, which I think is a bit
7 of a challenge, but I think we're up to it.

8 And then, finally, last week was the NASEO, the
9 National Association of State Energy Officials, annual
10 meeting, which is a national thing. And it happened in San
11 Diego. And so, it was a good opportunity for California to
12 be host, the host state.

13 And staff went down and made a number of
14 presentations. Mike Sokol, and Dave Ashuckian, and Angie
15 Gould did a great sort of dog and pony show on what's
16 happening in California. So, that was really good, well
17 received.

18 And then, just I think there was just a lot of
19 awareness having -- you know, the legislative session
20 having ended the previous Friday, there was a lot of kind
21 of buzz about, you know, what happened and kind of how
22 things played out. And a lot of really looking to
23 California as a leader.

24 I mean, we -- it's a little bit delicate because
25 we have a big agency, we have a lot of energy, you know,

1 across various agencies. We have a lot of energy-related
2 expertise and activity.

3 And most states are just not like that. They're
4 energy offices, you know, they administer the Federal
5 Weatherization Assistance Program, and they do a few other
6 things. And maybe they have one staff, maybe they have 20
7 staff. But we're by far, by far the biggest agency.

8 So our colleagues, you know, it's kind of hard
9 for me sometimes not to appear as the 900-pound gorilla and
10 sort of say, oh, well, you know, our scale is a magnitude
11 bigger than anything else.

12 But I think there -- you know, that's kind of a
13 fact that we're just bigger and doing more. But I also
14 really value that NASEO relationship because there are
15 great ideas happening in other places. They're doing a lot
16 from not many resources and we can actually learn from any
17 of the other states. In places that I think, you know,
18 it's kind of not always obvious. So that networking and
19 kind of thought leadership at the Federal level, that NASEO
20 and the staff bring is really valuable.

21 So, I think that was a success and quite a well-
22 done project. And I think the PUC actually helped us put
23 together -- or helped NASEO, Jeanne Clinton, actually at
24 the Governor's Office, the PUC, and Deana over at CAEATFA
25 helped to put together -- or provide a California speaker

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1 for financing, multi-family financing and PACE session that
2 they did as well. So, you know, certainly California held
3 its weight and played a good part in that event.

4 So, that's my report.

5 COMMISSIONER HOCHSCHILD: Nothing to report since
6 the last meeting.

7 COMMISSIONER DOUGLAS: So, I had an opportunity
8 to go to Los Angeles and commemorate or help celebrate a
9 really nice partnership between First Solar and UCLA, where
10 First Solar had provided a donation to UCLA and, in
11 particular, to the Center for Tropical Research, for them
12 to do some really cutting edge work on using -- they
13 literally can use feathers that are taken from a bird, a
14 single feather, and the tip of the feather has DNA. And by
15 doing genomic mapping of -- you know, because birds that
16 are the same species may have populations or subpopulations
17 that actually have different migration routes, and over
18 winter in different places or breed in different places.

19 And so, by using this genomic mapping, once you
20 establish that information, you can literally tell from a
21 single feather what population a bird's from. And it helps
22 so much in some of the most vexing and challenging issues
23 when it comes to considering, you know, well, what is the
24 impact of any one stressor?

25 Whether it's, you know, renewable energy, which

1 has been in the news at times, but also other stressors on
2 a population of birds.

3 And it's just been, you know, one of the real
4 holes in our knowledge of bird population and is -- has
5 been the real difficulty in really identifying, especially
6 for smaller birds, these kinds of patterns.

7 And so, this genomic work is extremely cutting
8 edge. I think it really opens the door to us to get a lot
9 better understanding of migratory birds, smaller birds and,
10 in particular, when we are doing things like conservation
11 strategies, or like trying to assess, you know, well, what
12 is the impact and what is the significance of the impact of
13 some activity on a bird population or subpopulation.

14 And so, and I also -- and so this, First Solar
15 provided a pretty substantial donation. There was also an
16 anonymous donor. The UCLA research team has collected
17 enough feathers to really do this work well for 50
18 different bird species. Although, the initial donation
19 doesn't cover that many species.

20 And I think there's a lot of hope that as this
21 work continues other partners can be brought to the table
22 to really help us build out this, and map this
23 understanding.

24 I also want to note that this work is actually a
25 follow-on from an EPIC grant that, you know, I believe was

1 a 2014 project. And that project was a proof of concept to
2 see if this technique was going to be feasible. And that
3 was successful and that's why there is this follow-on
4 interest from the private sector.

5 I just think it's really exciting. And one of
6 the best things about it is that it's very scalable. And
7 while you do have to invest, initially, in kind of building
8 the genomic map and getting the information that allows you
9 to interpret the information you would get from a single
10 feather, once you have built that you really can get an
11 incredible amount of information just from, you know, a
12 bird feather.

13 And that can be from, you know, birds as they're
14 banded. You know, a lot of the idea is to build on
15 existing bird banding activities. But also, you know, if a
16 carcass is found, this technique could also be used.

17 So, I was really excited about it. I got to
18 learn a lot more about it. I got to meet some of the
19 researchers and talk to First Solar about their thoughts as
20 this moved forward. And I was just really interested in
21 this and looking forward to following and tracking as this
22 progresses.

23 CHAIRMAN WEISENMILLER: Yeah. So, what I was
24 going to talk about last week is I went out to the CAL-ISO,
25 to the board meeting, and what was up was the

1 recommendations of the Energy Imbalance Market Transitional
2 Committee.

3 And it's really, in some respects, been a long
4 process. There's been lots of stakeholder meetings. It
5 was really good to get it to this stage.

6 And the way I characterized it, you know, talk a
7 minute about the -- when you look at the Governor's State
8 of the State address, there's this one line about how to
9 really meet our greenhouse gas goals, we're going to have
10 to transform our buildings, our communities, our utilities.
11 He didn't mention it, but maybe next time, and also our
12 regulatory institutions is the other part of it.

13 So, this was sort of a step in that
14 transformation of the ISO from a very California
15 organization to something that's much more regional in
16 nature.

17 Now, having said that, this is the imbalance
18 markets, which basically get to that last 15 minutes, or
19 so, of scheduling where, not surprisingly, often your
20 forecast of how much wind or solar is going to be produced
21 is higher or lower than anticipated.

22 And so, what this is doing is treating those
23 imbalances. It's not getting into the day-ahead
24 scheduling, but that imbalance part.

25 And, you know, we proposed -- and, generally,

1 you know, I say -- originally, when I was talking to people
2 about it at the ISO, it had really come up with a very
3 creative offer that was, you know, that I didn't see how
4 anyone could confuse.

5 And then talking to, actually Bonneville, they
6 assured me that as long as the offer involved either FERC
7 regulation or somehow touching California that it was a
8 non-starter.

9 So, one of that is coming back to some of the
10 Governor's issues. So this, again, is a good initial step
11 to really have more voices represented for the energy
12 imbalance market part, which is defined jurisdictionally as
13 the part but for, you know, the energy imbalance market
14 would occur. It's obviously an integrated operation.

15 And it was pretty exciting because at the same
16 time, when I was there, and right now Nevada Power is
17 running in parallel with the ISO for the energy imbalance
18 market. They have been running in parallel now for --
19 since September 1, and it seems to be going very smoothly.

20 And then, I think it was the next day that
21 Portland General Electric announced they were also joining
22 the imbalance market. So, you had Nevada joining the
23 imbalance market this year, or imminently, and then you
24 have, basically, Puget, Portland General Electric and APS
25 joining next fall. So, there's sort of just huge steps in

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1 that area.

2 And at the same time, with 350, one of the things
3 that's in there, obviously, that was very important is to
4 open up the broader governance issue, particularly in the
5 context of the PacifiCorp proposal to basically join the
6 CAL-ISO as a participating transmission owner. Which,
7 again, would allow much, you know, in terms of savings and
8 greenhouse gas reductions much greater because you start to
9 affect day-ahead dispatch.

10 So, anyway, the bottom line is that, you know,
11 last week, for a number of steps was very important in
12 their transformation. Obviously, you know, we've invested
13 a lot in them and they play a key role in the State in
14 keeping the grid operating smoothly with increasing amounts
15 of renewables. So, it's sort of one of the things of
16 broadening their mission, but staying close to home in
17 terms of what we need them to do.

18 So, anyway, as I said, often we hear about
19 transforming other entities, so it's good to start looking
20 at transformations of our various more regulatory
21 institutions.

22 Anyway, let's go on to Chief Counsel's Report.

23 MS. VACCARO: Nothing to report.

24 CHAIRMAN WEISENMILLER: Okay, Executive Director
25 Report?

1 MR. OGLESBY: I think I'll take this opportunity,
2 since we have a few minutes, just to give an update on some
3 of the budget items.

4 CHAIRMAN WEISENMILLER: Okay.

5 MR. OGLESBY: And that is the fact that we, and
6 the public that's listening in should be aware, that we had
7 prepared to launch two drought-related programs. One
8 providing a rebate on washers and one putting forth
9 advanced technology in the industry, agricultural, and
10 commercial and residential sector through our research
11 division.

12 As the Legislature adjourned, they adjourned
13 without resolving some of the funding sources that we'd
14 anticipated for those programs. Those were to be funded by
15 the Greenhouse Gas Reduction Fund. It's still pending with
16 the Legislature.

17 We are ready to implement, when funded. But at
18 this point, the implementation of those two programs is on
19 hold.

20 And with that, I have nothing else to report.

21 CHAIRMAN WEISENMILLER: Okay, Public Adviser
22 Report? None.

23 Okay, any public comment? Sure, go ahead, Mr.
24 Simpson.

25 MR. SIMPSON: Well, on those last topics, the

1 budget items I think would be served much better if you
2 actually charged for the amendment this project just had.
3 That would have been another three-quarters of a million
4 dollars for the Commission.

5 And to reach the Greenhouse Gas bills, if you
6 stop building these fossil fuel-burning facilities, that
7 would probably be the greatest step that could be done.

8 And the DNA for the birds in the Carlsbad area,
9 for the feathers won't be necessary because their feathers
10 will be burned off from this facility.

11 But regarding the decision, I'm trying to
12 determine how that decision fits into the 1720 rule? Have
13 you stayed the effective date of the decision or does the
14 decision stand as it is?

15 And how does the public participate in the Fish
16 and Wildlife's determination? How do we comment on what
17 Fish and Wildlife does or doesn't do?

18 And what authority is there to just open a
19 comment period for Fish and Wildlife, and not the rest of
20 the public?

21 Thank you.

22 CHAIRMAN WEISENMILLER: Thank you.

23 So, we are now going to await Mr. Kramer and then
24 we'll consider those revised motions.

25 (Off the record at 12:57 p.m.)

1 (On the record at 1:00 p.m.)

2 CHAIRMAN WEISENMILLER: Okay, so for anyone on
3 the line, Mr. Kramer's returned to the room. So, we're
4 going to take up the two motions next -- the two orders,
5 yes. And we'll give all the Commissioners a chance to read
6 the orders before we take them up.

7 So, Mr. Kramer, when you're ready, why don't you
8 start reading into the record, for those who don't have a
9 copy.

10 MR. KRAMER: Okay, regarding Mr. Sarvey's
11 petition for reconsideration. The changes to the
12 previously circulated order are as follows. The title was
13 changed to say "Commission Order Denying Robert Sarvey's
14 Petition for Reconsideration".

15 In further finding number 9, the word "evidence"
16 was changed to "information", along the lines you shared
17 about the other order.

18 And it was the word "evidence" was also changed
19 to "information" in conclusions, paragraph 4.

20 And then the final change was to add a preamble
21 to conclusions, paragraph 4, which reads -- I shall read
22 the whole paragraph, now.

23 "With the exception of the alleged statements of
24 the project proponent's counsel, Mr. Sarvey is seeking to
25 reopen and reargue issues that were addressed or could have

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1 been addressed with the exercise of diligence during the
2 evidentiary hearings, the PMPC comment period, or during
3 the Energy Commission's July 30, 2015 adoption hearing.
4 The information that he identifies was available to him to
5 offer during the evidentiary hearings".

6 And that's it for Mr. Sarvey's. Should I pause
7 for you to take a vote or --

8 CHAIRMAN WEISENMILLER: Do I have a motion?

9 COMMISSIONER DOUGLAS: Yes, I move to adopt the
10 order that Mr. Kramer just read or he read the proposed
11 changes to the order. I move to adopt this order as
12 amended.

13 COMMISSIONER MC ALLISTER: Second.

14 CHAIRMAN WEISENMILLER: All those in favor?

15 (Ayes)

16 CHAIRMAN WEISENMILLER: This passes five to zero.

17 Let's go -- Mr. Kramer, would you go on to the
18 next one?

19 MR. KRAMER: Okay, this would be the Robert
20 Simpson petition and motion, combined. And the change
21 there, again to the title, was to remove "Hearing Officer
22 Proposed" and now make it -- call it "Commission Order
23 Partially Granting Robert Simpson's Petition", et cetera.

24 The next change is in the section that's labeled
25 "Discussion". And a new paragraph is added right under the

1 heading, "Discussion".

2 It reads, "Mr. Simpson points out that it appears
3 that the PMPD was not sent to the California Department of
4 Fish and Wildlife, formerly Fish and Game (CDFW). He
5 asserts that the failure to do so renders the subsequent
6 process legally deficient. The remedy he proposes is to
7 grant reconsideration, send the PMPD to CDFW and take
8 additional comments and evidence from all parties before
9 adopting a revised decision".

10 There was one change in the next paragraph, which
11 was there before, and that's to change the first phrase to
12 say, "the other issues Mr. Simpson raises are not new to
13 this proceeding" and then it continues on.

14 One change in the paragraph following that, there
15 was a missing verb. So, the middle sentence now would
16 read, "That limitation was specifically made subject to
17 review upon Petitioner's further motion and a specific
18 showing of a compelling interest in the other topic areas
19 considered in this proceeding and did not", and the new
20 word to be added is, "affect Petitioner's right to make
21 public comments separately from his role as an Intervenor".

22 That's the limit of that change.

23 Further finding number 9 changed, I believe it
24 was "new evidence" to "information". So, it reads, "The
25 information proffered by Mr. Simpson is largely in the

1 nature of argument", et cetera.

2 There is a new conclusion that was inserted after
3 conclusion number one, and it reads, "Without deciding
4 whether it is strictly necessary to send the decision out
5 for additional comment, we find it prudent to address this
6 potential deficiency by allowing CDFW an opportunity to
7 provide comments that it wishes to make on the decision.
8 Following receipt of any such comments, the full Commission
9 shall, at a subsequently noticed hearing, decide whether to
10 change the Commission decision".

11 And the next paragraph, formerly conclusion
12 number two, now renumbered as conclusion three, begins with
13 a new word, "Otherwise". And I'll read the first part.

14 "Otherwise, the petition does not satisfy the
15 requirements of the Commission's Regulation regarding
16 petitions for reconsideration" and then it continues.

17 In newly renumbered conclusion four, which
18 formerly was conclusion three, the phrase "new evidence" is
19 changed in the last sentence to be "information".

20 And then we go to the orders. And the existing
21 paragraph one or order paragraph one has been replaced by
22 two paragraphs, and the subsequent paragraphs renumbered.

23 The first reads, "The petition is partially
24 granted for the sole purpose of allowing the California
25 Department of Fish and Wildlife to review and comment on

1 the presiding member's proposed decision, docketed on June
2 9, 2015 -- there's a footnote with the TN number -- "and
3 the Commission decision docketed on August 3, 2015, with
4 another footnote -- "In all other respects, the petition,
5 including the embedded motion, is denied."

6 Then the following new paragraph reads,
7 "Following a comment period of 30 days for CDFW's comments,
8 those comments if any, and any responsive comments shall be
9 considered by the full Commission and the Commission will
10 decide whether to change the Commission decision, pursuant
11 to Title 20, California Code of Regulations, Subsection
12 1720(c)".

13 That's the extent of the changes.

14 CHAIRMAN WEISENMILLER: Great. Do we have a
15 motion?

16 Oh, wait, hang on one second.

17 MS. VACCARO: I would ask that the Commissioners
18 consider adding into any motion a directive to Commission
19 staff, whether it be to Counsel's Office, or the STEP
20 Division to deliver copies of the PMPD, and the decision to
21 California Department of Fish and Wildlife by a date
22 certain.

23 COMMISSIONER DOUGLAS: So, would that be a new
24 number six in the order?

25 MS. VACCARO: It doesn't have to be in the order,

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1 itself.

2 COMMISSIONER DOUGLAS: Oh.

3 MS. VACCARO: You could make a motion that
4 approves the proposed order as amended orally by Mr.
5 Kramer, and also include a directive to staff within that
6 motion.

7 COMMISSIONER DOUGLAS: Perfect. So, should we
8 say by Monday?

9 CHAIRMAN WEISENMILLER: Yeah.

10 COMMISSIONER DOUGLAS: All right. So, I move to
11 approve the proposed order, as amended orally by Mr.
12 Kramer, and to direct staff to provide the PMPD and the
13 final decision to CDFW by Monday. Which is what date?

14 CHAIRMAN WEISENMILLER: I would say close of
15 business Monday. Actually, that will start the clock so --

16 MR. KRAMER: I think that's the 28th.

17 COMMISSIONER DOUGLAS: Monday, September 28th.

18 COMMISSIONER MC ALLISTER: Second.

19 CHAIRMAN WEISENMILLER: Those in favor?:

20 (Ayes)

21 CHAIRMAN WEISENMILLER: This also passes five to
22 zero. Thank you.

23 This hearing is adjourned.

24 (Whereupon, at 1:10 p.m., the Business

25 Meeting was adjourned.)