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ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
BEFORE THE CALIFORNIA ENERGY COMMISSION

In the matter of,)
) Docket No. 13-AFC-01
Application for Certification)
For The Alamitos Energy Center)
Project)

ALAMITOS ENERGY CENTER COMMITTEE STATUS CONFERENCE

CALIFORNIA ENERGY COMMISSION
1516 9TH STREET
CHARLES IMBRECHT HEARING ROOM
SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 24, 2016

10:08 A.M.

Reported by:

Kent Odell

APPEARANCES (*Via WebEx)

COMMISSIONERS (AND THEIR ADVISORS) PRESENT:

Karen Douglas, Presiding Member

Jennifer Nelson, Advisor

Le-Quyen Nguyen, Advisor

Janea Scott, Associate Member

Rhetta de Mesa, Advisor

Matt Coldwell, Advisor

Kristy Chew, Commissioners' Technical Advisor for Energy Facility Siting

HEARING OFFICER:

Kenneth Celli, California Energy Commission

CEC STAFF PRESENT:

Jared Babula, Staff Counsel

Keith Winstead, Project Manager

Michael Lewis, Deputy Director, Siting, Transmission & Environmental Protection

Joseph Hughes, Air Resources Engineer

APPLICANT:

Stephen O'Kane, AES Southland Development, LLC

Jerry Salamy, Applicant Consultant, CH2M Hill

Jeff Harris, Ellison, Schneider and Harris, LLP

Samantha Neumyer, Ellison, Schneider and Harris, LLP

INTERVENOR:

*Elizabeth Lambe, Intervenor, Los Cerritos Wetlands Land Trust

APPEARANCES (CONT.)

ALSO PRESENT

*Oscar Chandan, South Coast Air Quality Management District

*Vicky Lee, South Coast Air Quality Management District

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

2 COMMISSIONER DOUGLAS: All right, good morning, everybody.
3 This is a Status Conference conducted by a Committee of the
4 California Energy Commission regarding the Alamos Energy Center.

5 The Energy Commission Chair has assigned a Committee of two
6 Commissioners to conduct these proceedings. And before we begin,
7 we'd like to introduce the Committee Members to you.

8 I'm Karen Douglas, Presiding Member of this Committee.
9 Commissioner Scott, to the left of the Hearing Officer, is the
10 Associate Member. To my immediate left is our Hearing Officer, Ken
11 Celli.

12 To my right is my advisor, Le-Quyen Nguyen. And then
13 Kristy Chew, the Technical Advisor on Siting for the Commissioners.
14 And then Rhett de Mesa, Commissioner Scott's advisor is to her left.
15 And Matt Coldwell, also Commissioner Scott's advisor, to the left of
16 Rhett de Mesa.

17 So, with that, let me ask the parties to introduce
18 themselves, beginning with the Applicant.

19 MR. HARRIS: Good morning, Jeff Harris here on behalf of
20 the Applicant.

21 MR. O'KANE: Stephen O'Kane, with AES.

22 MS. NEUMYER: Samantha Neumyer on behalf of the Applicant.

23 MR. SALAMY: Jerry Salamy on behalf of the Applicant.

24 COMMISSIONER DOUGLAS: Great, thank you.

25 And Staff?

1 MR. WINSTEAD: Keith Winstead, Project Manager.

2 MR. BABULA: Jared Babula, Staff Counsel.

3 COMMISSIONER DOUGLAS: Thank you.

4 Intervenor Los Cerritos Wetlands Land Trust, Elizabeth
5 Lambe?

6 MS. LAMBE: Hi, I'm on the call. Thank you.

7 COMMISSIONER DOUGLAS: Thank you for joining us.

8 All right, the Public Adviser's Office? I don't see Alana.
9 It doesn't look like they're here at the moment.

10 Are there any officials, elected officials or
11 representatives from any State, Federal, or Local Government Agencies
12 or Native American Tribes, in the room or on the phone today? If
13 you're on the phone, go ahead and speak up.

14 Anyone from South Coast Air Quality Management District?

15 MR. CHANDAN: Yes. This is Oscar Chandan. The last name's
16 C-h-a-n-d-a-n. And, Vicky Lee, from South Coast.

17 COMMISSIONER DOUGLAS: Great. Thank you. Thanks for being
18 here.

19 Anyone else, from any other State, Federal, or Local
20 Government Agencies, or Native American Tribes?

21 Okay, at this time I'll hand over the conduct of this
22 hearing to Hearing Officer Ken Celli.

23 HEARING OFFICER CELLI: Thank you, Commissioner Douglas.

24 Can everyone hear me okay in the room? Okay, seeing
25 nodding heads, yes.

1 This Status Conference for the Alamitos Energy Center
2 Project was scheduled in a Notice that we dated and was filed on
3 August 24th, 2016.

4 The purpose of today's conference is to inform the
5 Committee about any changes made to Alamitos Energy Center's
6 Application for Certification, which we sometimes refer to as an AFC,
7 and the progress the parties are making on the project.

8 Today, we will try to help resolve any procedural issues
9 that may exist, as well as to assess how well the parties are keeping
10 to the schedule, and any modifications we need to make there, too.

11 The procedure for today is, first, in the normal procedure
12 that we proceed by, is Applicant goes first, followed by staff,
13 followed by the Intervenor, Los Cerritos Wetlands Land Trust,
14 regarding the current status of the case.

15 Today, the Committee has some questions for the parties, so
16 we would like to take care of those, first, sort of housekeeping type
17 questions.

18 We will then provide an opportunity for the general public
19 to comment. So, if you're in the room, and we don't have any members
20 of the public in the room, but if you're on the phone and you'd like
21 to make a comment, we will give you that opportunity after we hear
22 from all of the parties.

23 If necessary, the Committee may go into a Closed Session.
24 At the conclusion of a Closed Session, I will return to reopen the
25 record just to adjourn the Status Conference.

1 So, we take the public comment before we go into a Closed
2 Session. And after that, there's really no need for people to sit
3 around and wait to hear if anything new is going to happen because it
4 probably won't.

5 So, having said that, I just want to ask some general
6 questions. We've received the PSA. We've looked at comments from
7 the Intervenor. We've looked at the comments from the Applicant.
8 And, various other people that we've received -- we've received
9 comments from Seal Beach. And we had some questions.

10 I, in particular, want to ask staff some questions with
11 regard to the retention basins. And this is referring to the Soil
12 and Water Section, and the Waste Management Section, maybe HAZMAT,
13 I'm not sure. But it's not very clear, from the point of view of the
14 reader, where these soil -- where these retention basins are. There
15 was some mention of the use of the south basin -- I guess, this goes
16 to both Applicant or staff, whoever can give me the best information.

17 There was some information we saw, where there's a
18 requirement for some remediation of the existing retention basins,
19 but that falls on Southern California Edison. And, I was able to
20 ascertain that there is a Management Plan in place for the -- for
21 these stormwater retention basins.

22 In Waste Management, it says that there's going to be the
23 runoff, I think it's the processed water and stormwater runoff go
24 into a south basin. But I gathered, in reading, that there are three
25 south basins. Maybe not. We'll find this out. But it sounds like

1 there are and that one of them is located above what appears to be an
2 old landfill. Not clear what the impact of that is, if any. I mean,
3 there was no mention of leaking or anything like that, that I saw.
4 An old dump. A 1940, 1950 dump is what it said.

5 And then, there was mention of Southern California Edison's
6 Water Quality Monitoring Program, and it says, "Most of the soil
7 removal and cleanup procedures for the retention basin in Southern
8 California Edison's Water Quality Monitoring Program were approved by
9 DTSC, but don't know if that affects any of the AEC retention
10 basins".

11 So, there's some confusion around these retention basins.
12 I don't know if you might be able to help us out, but we'd certainly
13 want to get some clarity before the FSA gets published.

14 MR. O'KANE: Stephen O'Kane with AES. I'm probably the
15 best answerer on this. So, there are three -- currently, there are
16 three retention basins at the Alamos Generating Station, North,
17 Central, and South Basin. The South Basin will remain and serve the
18 new Alamos Energy Center for stormwater runoff, only. Want to make
19 it clear that all processed water, sanitary wastewater is all through
20 the new sewer line that's to be built to the Center. So, it's only
21 for stormwater control, post construction, and once we're into
22 operation.

23 There is a -- you mentioned the remediation. There is a
24 Consent Decree, and with Southern California Edison, for known
25 contamination identified, and a work plan approved by DTSC, which is

1 proceeding as we speak. That -- that is actually under the Center
2 Basin. We can operate the current station with just -- well, with
3 just one basin, actually. We have two in operation. So, they're
4 going to proceed with their remediation work on the Center Basin
5 within the next few months. And, actually, should be done, and
6 complete, and out of our way before we mobilize construction to the
7 site.

8 So, that's done under a separate owner for legacy -- some
9 legacy contamination related to the chemical acid washing of the
10 boilers, when they used to be oil-fired. That's what that was
11 related to and that is proceeding.

12 So, this project does include the removal of the North
13 Basin for the second phase, the simple-cycle units. And, depending
14 on our operational needs, we may actually take that out of service,
15 use it for -- use that space, as we proceed through the construction
16 of the first phase, as we move to the second phase.

17 So, the end project, as described, there will only be a
18 South Basin. The existing South Basin will remain and will be there
19 to serve for stormwater control.

20 HEARING OFFICER CELLI: Okay, that's great. I really
21 appreciate that clarification.

22 And so, is there any -- is there any remediation going on
23 with the South Basin at all?

24 MR. O'KANE: No, the South Basin -- the existing basins
25 now, they are all lined and there's no known contamination under

1 them. There's no order, or Consent to Clear, or anything for the
2 existing basins that are in operation.

3 This is a pretty old Consent Decree. The Court Decree was
4 actually from 1995, from before AES even owned the facilities. And,
5 when these used to be unlined type basins and we had -- they had
6 leaching into the soil and the shallow groundwater. So, that's a
7 legacy issue, dating back to the '50s, '60s type of thing, that is
8 finally getting done.

9 Right, so there's -- yeah, I might -- yeah, okay, is it
10 okay if I do it from here? The South Basin is the long, skinny one.
11 Can somebody point to that one? That's the one. And that's the one
12 that will remain, right.

13 The North Basin, it's obviously the one in the northern
14 part, right. That one is in operation today.

15 And then, the next one below it is the Center Basin. That
16 is where SCE remediation is proceeding as we speak. Slowly, but
17 proceeding.

18 And the red line designates the entire AEC Project area.
19 So, the first phase in the southern part, and then the northern part
20 is where the simple-cycle units would go, and replace the (inaudible)
21 --

22 HEARING OFFICER CELLI: Thank you very much for that
23 clarification.

24 Staff, did you want to add anything to that?

25 MR. WINSTEAD: No.

1 HEARING OFFICER CELLI: Thank you.

2 MR. HARRIS: Just for the record, that was Project
3 Description Figure 2 we were referring to.

4 HEARING OFFICER CELLI: Thank you. Let's see here, there
5 was also a question I had with regard to noise levels. I was looking
6 at Chapter 8.80. This is -- I don't know if your Noise person is
7 here? But it's difficult to determine, from the PSA. I'm having a
8 hard time understanding whether there is a LORS noncompliance or not.
9 And, whether -- it's not clear. It sounds like there's a LORS
10 noncompliance, under the heading of "Compliance with LORS".

11 And then, there's what appears to be sort of more of a CEQA
12 type analysis under that heading. And it's difficult to determine
13 how -- whether we get to noncompliance with LORS or not. And that's
14 important because we obviously need to -- we'll have to deal with
15 that issue head on.

16 And so, do you have your Noise people here today or do you
17 --

18 MS. NEUMYER: I can get them (inaudible) --

19 HEARING OFFICER CELLI: Yeah, and folks, I just want to be
20 clear. Today is a Status Conference. This is -- we're not taking
21 evidence, we're just chatting. I've just read the PSA, I'm reading
22 it. I'm trying to get a sense of what's really going on there.

23 Part of the difficulty I'm having is, as I'm reading this,
24 I'm reading it from the point of view of, well, I've got a -- I've
25 got LORS compliance, which is basically it either exceeds or doesn't

1 exceed. And then, I've got a CEQA standard which is, well, is it a
2 significant impact or not, which is a much mushier standard.

3 And it is kind of confusing to me because the way the PSA
4 is written, the LORS section takes sort of a CEQA's eye view of
5 compliance with LORS.

6 MR. BABULA: Yeah, I think -- this is Jared, Staff Counsel.
7 LORS is one of the topics of our workshop. And I think part of the
8 additional information we're expecting is to sort of flesh that out.
9 There was some question about noise, and baseline, and I think it
10 goes to that area.

11 So, we're aware of that and I believe that our Noise staff
12 is working with the Applicant to get a little bit more info, and get
13 that clarified. And I think some additional measurements might have
14 even been being offered. But, the Applicant might have something to
15 add to that.

16 MR. SALAMY: Hi, this is Jerry Salamy, with CH2M Hill. We
17 discussed, at the workshop, the methodology that the Long Beach Noise
18 Ordinance includes for adjusting the noise criteria for the different
19 zones, with staff. And we identified that the ordinance allows for
20 the noise levels to be adjusted upwards if the background noise
21 levels exceeds the current standard.

22 So, staff is going back and reviewing the Long Beach Noise
23 Ordinance to determine the appropriate adjustment to the LORS levels.

24 So, we believe that, as a result of that work by staff,
25 that they will identify that there are no LORS noncompliance issues

1 for the project.

2 Regarding the CEQA issue, we are, as the -- Jared
3 indicated, we're looking at reviewing an appropriate baseline for the
4 project considering the industrial nature of the project area.

5 Right now, staff is using a very conservative four-
6 quietest-hours of the LD90 noise levels, which is basically the
7 quietest ten minutes in a four-hour period of time, or the quietest
8 average of ten minutes' worth of data.

9 We're looking at the data and determining whether there's a
10 more reasonable noise level considering, as I said, the industrial
11 nature. So, we would be proposing some additional -- or, an
12 additional background level for staff to consider, which we believe
13 would mitigate the CEQA issue that staff raised.

14 HEARING OFFICER CELLI: Great. Thank you. I just did
15 notice, as I was looking at the ordinances, that there was one that
16 talked about something having to do with the arithmetic mean between
17 the two. Because it's weird that you have, what do they call it,
18 District 4 up against District 1.

19 MR. SALAMY: Correct.

20 HEARING OFFICER CELLI: And so, I'll be interested to hear
21 how you come out on that because it will be interesting to know how
22 wide that borderline can be. So, we'll see.

23 MR. SALAMY: And, yeah, and that was part of the Long Beach
24 Noise Ordinance that allows you to average the two levels at the
25 boundary.

1 HEARING OFFICER CELLI: Well, that's great. I'm glad that
2 you're on it.

3 I want to ask Elizabeth Lambe, because I read your
4 comments, and you did raise some issues with regard to the noise.
5 And one of the things, and correct me if I'm wrong, Ms. Lambe -- can
6 you hear me okay? By the way, she's not muted, is she?

7 MR. BABULA: No.

8 MS. LAMBE: I can hear you. I muted you on my end because
9 of street noise.

10 HEARING OFFICER CELLI: Thank you very much.

11 MS. LAMBE: I'm here.

12 HEARING OFFICER CELLI: Appreciate that. And others on the
13 phone, if you're experiencing street noise, or pet sounds, or
14 whatever, please mute on your end until you're ready to speak.

15 It sounded to me, now, parties correct me if I'm wrong, but
16 my sense in reading the PSA, and the SAFC, is that the Applicant has
17 to demolish Unit 7, first. Then, they're going to start building
18 Block 1, which is the combined cycle block. Then, they're going to
19 start building unit, or Block 2, which is the simple cycle block.
20 Then, they're going to both be up and operational. Then, AGS may or
21 may not get into its demolition phase, depending on whether there's a
22 further need for that energy generation. Do I have that, in general,
23 correct?

24 MR. HARRIS: Yeah, I would say, yes. I guess the one point
25 I'd make is that the first demolition is actually not of a unit.

1 It's of some remaining infrastructure on that area.

2 MR. O'KANE: Well, most of that is an old tank farm area.
3 There's a small, white dot there. Right there is a tank and beside
4 it is a building, a very small building. Just go to the north of
5 that tank -- yeah --

6 (Inaudible comment)

7 MR. O'KANE: Okay, that's the old tank area, nothing is
8 there. But right there is a small, distillate tank, out of service.
9 And just to the north of it is a small building. Right there. That
10 infrastructure, the shell of a building that's left there has to come
11 out. There are containment burns around those old, old tank sites
12 that have to be graded, removed. But they're not existing generating
13 units that have any electrical capability whatsoever.

14 HEARING OFFICER CELLI: Okay, but that's what we're talking
15 about when we talk about the demolition. Which, according to staff's
16 one table I saw, I can't remember which section it was, it could have
17 been in Soil and Water, it would take about one quarter to do that
18 demolition.

19 MR. O'KANE: That's correct.

20 HEARING OFFICER CELLI: Okay. And that's a pre -- that's
21 something that happens before --

22 MR. O'KANE: Construction begins.

23 HEARING OFFICER CELLI: -- construction begins?

24 MR. O'KANE: Correct.

25 HEARING OFFICER CELLI: So, I'm saying -- I'm going through

1 that exercise, Ms. Lambe, because when I was reading your comments, I
2 gathered that there was some confusion on the part of Los Cerritos
3 Wetlands Land Trust about whether there was concurrent or consecutive
4 noise coming from these different phases. So, I just wanted to set
5 that up.

6 So, you have the floor, go ahead and express your
7 questions, Ms. Lambe.

8 MS. LAMBE: Well, I think -- I think you've done the math.
9 And then, also, the length that there would be these impacts. And,
10 in fact, we're primarily concerned about the cumulative impacts and
11 we're hoping for more detail than was in the Preliminary Staff
12 Assessment, including the battery proposal for the city, and other
13 potential off-site developments.

14 HEARING OFFICER CELLI: Yes, I'm glad you raised that. I
15 actually am going to -- I want to turn to staff and say that we did
16 receive some notification, during one of our status conferences, that
17 the demolition part was going to be specified as cumulative analysis.

18 But when I read Waste, Water and I think HAZMAT, I don't
19 believe that there was -- that the demolition of Unit 7 was actually
20 specified in the Cumulative Analysis Section. And so, staff, you may
21 want to take a look at that because, apparently, there's some
22 confusion about that, if you read the comments.

23 MR. BABULA: Yeah, one of the things -- so, a couple
24 things. First, in a prior Status Conference we had discussed
25 demolition of the actual AGS, the full, existing facility, that that

1 wasn't part of this project, but would be considered just as any
2 other thing, of some potential cumulative impacts with, potentially,
3 the operation of AES with -- or AEC, with the AGS unit being in
4 demolition, potentially as something that might happen.

5 The Unit 7, though, is that's the remaining part, the small
6 little tank and the remaining structure, that's just part of the
7 project. That's not cumulative. That is a facet of the project that
8 has been analyzed.

9 And so, when we're talking cumulative, there's a list in
10 the project -- I believe it's the Project Description that has a list
11 of all these, I think it's like 50 projects that are in the area,
12 that have been identified as potentially being something that might
13 happen concurrently, or near a time when activity's happening with
14 this project.

15 And so, those are the ones that the technical areas will
16 look at, if it triggers some issue with their particular technical
17 area. And so, for trying to respond to comments, we are trying to be
18 clearer about demolition, because it got a little confusing. Because
19 when we talk demolition, it's the existing stuff specific to the
20 Alamitos Energy Center.

21 Whereas, some of the members of the public were thinking,
22 oh, demolition of the entire thing, or what might happen later, past
23 2020. And so, we wanted to respond to comments. We are trying to
24 clarify and get a better scale on sort of what's happening, so that
25 it's clearer what we're talking about.

1 HEARING OFFICER CELLI: So, demolition of Unit 7 is really
2 sort of part of breaking ground, in a way, it has nothing to do with
3 --

4 MR. BABULA: Well, it's part of the -- it's just part of
5 the project. The project requires that some things get cleared out
6 and graded before they can start building.

7 And what's not part of the project is Alamitos Generating
8 Station, what happens with some agreement with the city at some point
9 later on.

10 HEARING OFFICER CELLI: Okay, because part of the comments
11 that came from the Los Cerritos folks had to do with the concurrent
12 noise levels of demolition and operation. So, operation of AEC while
13 demolition is taking place.

14 And I don't remember, I don't actually recall seeing any
15 sort of -- whether that was addressed at all in the Noise Section.

16 MR. HUGHES: Yeah, I don't know where we were at, but I
17 know for the Noise PSA --

18 HEARING OFFICER CELLI: Can you please identify yourself?

19 MR. HUGHES: My name's Joseph Hughes. I did the noise and
20 vibration analysis. But could I just ask, were these comments in
21 regards to the biological resource impacts as a result of noise?

22 HEARING OFFICER CELLI: Well, there's also some comments
23 from Los Cerritos Wetlands Land Trust with regard to the noise
24 impacts on biology. But the comment seems to be, and Ms. Lambe, cut
25 in if I misstate your position, but it seems that they were confused

1 as to what activities were going to be concurrent versus consecutive,
2 in terms of demolition. Then, Block 1, then Block 2, then AGS's
3 demolition.

4 And then, I read in their comments that they said, but
5 there appears to be no cumulative analysis on what would be the
6 effect of the demolition of the AGS, which would have to be, of
7 necessity, concurrent with the operational noise level of the AEC.

8 MR. HUGHES: No, I know for the Noise and Vibration Section
9 that doesn't take into account biological resource impact. We did
10 analyze the removal of Unit 7, first. So, that would be demolition
11 which was considered consistent with demolition construction.

12 And then, operation -- then, they would construct the new
13 facility. Then, there would be operation of the new facility. And
14 although demolition of the existing AGS would be handled under an MOU
15 with the city, and evaluated in a separate EIR, we did evaluate those
16 impacts as part of a cumulative assessment with ongoing operation of
17 the new AEC.

18 HEARING OFFICER CELLI: Okay, I didn't -- you probably --
19 you came in later, so you probably weren't here when I said that when
20 I read the Cumulative Section of Noise, I didn't see any section
21 specifically dealing with the demolition of Unit 7. And I understand
22 that it's just part of the construction and so forth.

23 But, we did receive some communication that somewhere along
24 the line, in one of our Status Conferences, I think, that staff was
25 going to sort of put some special attention on the demolition of Unit

1 7 to make it clear to the public.

2 MR. HUGHES: And if we didn't, I can make note of that in
3 the FSA. But I'm pretty sure because demolition and construction
4 equipment consists of typical equipment for both activities. And
5 because it would be occurring at the same location, it would be the
6 same distance from the sensitive receptors. So, the impacts from
7 demolition would be similar to the impacts of construction.

8 I believe we differentiated between those two activities.
9 But if we didn't, we can highlight that in the FSA.

10 HEARING OFFICER CELLI: That would be great. And, you
11 know, okay, I've made mistakes before and I may have misread
12 something. But I would just turn to staff and suggest that take a
13 look at all of the Cumulative Sections and just make sure that we've
14 got the Demolition Section covered in there, so that it gets
15 mentioned in all of those sections.

16 So, Ms. Lambe, was there anything further on those two
17 issues from -- that you would want to speak to?

18 MR. BABULA: Well, I just want to get a clarification
19 because, again, the Unit 7 demolition is part of the project. So, it
20 won't be cumulative. I mean, it's going to be a step in the project
21 that's being analyzed. And so, again, we don't -- we want to make
22 sure you're not talking about the AGS potential future thing?

23 HEARING OFFICER CELLI: That is what I'm talking about.
24 Sorry, forgive me. My first day back from vacation.

25 (Laughter)

1 HEARING OFFICER CELLI: I am talking about Units 1 through
2 6.

3 MR. BABULA: Okay.

4 HEARING OFFICER CELLI: Units 1 through 6 were to be dealt
5 with in the Cumulative Section and I just want to make sure that
6 they're called out by name, and analyzed specifically, in each
7 section, so that we've got that covered.

8 MR. BABULA: Right, and that would be if it triggers
9 some -- if it enhances a certain impact. So, if you have
10 construction going on, it's done. Now, you're in operation. And
11 then you have some type of demolition happening at AGS later on, it's
12 not -- like there wouldn't be -- I mean, really, the traffic wouldn't
13 be any different. I mean, the part's over --

14 HEARING OFFICER CELLI: Right, it won't apply --

15 MR. BABULA: Certain disciplines, right, it wouldn't apply
16 to.

17 HEARING OFFICER CELLI: Yeah.

18 MR. BABULA: Okay.

19 HEARING OFFICER CELLI: But those that it would apply to,
20 let's be careful to make sure that it's included in there.

21 MR. BABULA: Okay, thank you.

22 MR. HARRIS: And I guess I'd just add, too, that demolition
23 activities are generally exempt from CEQA.

24 HEARING OFFICER CELLI: Yes.

25 MR. HARRIS: It's a nondiscretionary --

1 MR. BABULA: Ministerial.

2 MR. HARRIS: Ministerial, thank you.

3 HEARING OFFICER CELLI: I think it is discretionary.

4 MR. HARRIS: If I was a real lawyer, like Jared, I'd say
5 the right word. But, yeah, it's a ministerial thing. So, the
6 (inaudible) -- impacts there really don't exist. I think it's a
7 matter of (inaudible) --

8 HEARING OFFICER CELLI: Right. Understood.

9 I just want to check in with Ms. Lambe. Are you there?
10 Anything further about these questions that I asked?

11 MS. LAMBE: No, I appreciate you asking the questions
12 you're asking. And again, we're looking forward to the response to
13 our comments from the Preliminary Staff Assessment.

14 HEARING OFFICER CELLI: Thank you.

15 MR. BABULA: And I can add, we did receive their comments.
16 We have reviewed them. Staff does not agree that this is a
17 piecemealing concept. They believe that AGS's demolition should be
18 considered as part of this project. And so, while we will look at
19 cumulative impacts, we don't believe that, and it's been articulated,
20 and it will be articulated in our responses, that the AGS Project is
21 part of this project, and our not reviewing it would not be
22 piecemealing.

23 HEARING OFFICER CELLI: Okay. And that's staff's position.

24 And then, Applicant, there was -- as long as we're just
25 talking about the comments from Los Cerritos Wetlands Land Trust,

1 they spent a lot of time talking about need, and a lot of time
2 talking about alternatives. And I just wondered if you want to make
3 a comment at this time?

4 MR. HARRIS: Well, as to alternatives, I think the staff's
5 done a very good job in their analysis, of alternatives. You know,
6 they emphasized the proper section of the Public Resources Code that
7 notes the strong relationship between the existing industrial
8 facility and this project.

9 And so, I think the Commission could have gone as far as
10 not doing an alternatives analysis, but I'm pleased that you did one.
11 I think it's always better to have that additional support. So,
12 that's for the Alternatives Section.

13 In terms of need, as I think we're all aware, the
14 integrated assessment of need is no longer part of your siting
15 process. To the extent that issue is relevant at all, it's talked
16 about at the PUC and long-term procurement.

17 So, it's not -- the question of need is not an issue that
18 needs to be decided by the Commission. So, that's basically our
19 response.

20 HEARING OFFICER CELLI: Okay, thank you.

21 What I'd like to do now, then, unless there's any other
22 questions, is start talking about the schedule. Just a little
23 history on this, we received, in Status Report Number 20, a detailed
24 expression of the possibility of a schedule from the Applicant. And,
25 unfortunately, the passage of time's rendered that particular

1 schedule moot.

2 Staff offered a -- I'm trying to find it. Staff's offered
3 a schedule in its most recent Status Report that says that from the
4 date of -- and I guess at this point we're going to start bringing in
5 the South Coast people to participate in this discussion. We see
6 that staff thinks that they can get a final Staff Assessment filed 30
7 days after the FDOC, the Final Determination of Compliance, is
8 published by the South Coast people. And then everything's TBD,
9 which is to be determined, with a full Commission adoption hearing on
10 12/14/16. So, somehow, magically, all those TBDs have to be
11 fulfilled and that's really what I want to be talking about today.
12 I've got my little worksheet here of the things that we need to take
13 care of.

14 I guess what I would do, first, is turn to Applicant and
15 ask about this December 14th date, because I think this is the first
16 I've heard of a December 14th. We had been shooting for an October
17 PMPD all along. It appears, now, that we're not going to be able to
18 do that.

19 But what about that date? Let's talk about that.

20 MR. HARRIS: Thank you. Well, before I go too much through
21 the schedule, let me just say at the top I want to thank the staff
22 for their hard work on this project. We had a very productive
23 workshop, on the 9th, down in Long Beach. And I can tell from the
24 comments, received from counsel, that they are working hard on this
25 document, as well.

1 The one issue of noise is being resolved among the parties.
2 And so, I really want to applaud the staff's hard work on this. It's
3 very clear they're focused on it and they're trying to meet schedule.
4 And, the atmosphere of cooperation has been outstanding. So, I want
5 to just put that out there. And, I was going to start with that
6 before we got into some of the detailed questions. But I really want
7 -- I think it's important, when things are going well, since you hear
8 from me when they're not, to also let you know they are going well.

9 So, again, thank you to Eric, and Michael, and the staff,
10 and everybody for the hard work. And there are a few issues to be
11 worked out, but there are very few issues to be worked out. And I
12 can very easily envision a set of evidentiary hearings that's a
13 single day, probably combined with a prehearing conference. And
14 maybe, only live witness testimony on one or two issues, at least as
15 between staff and the Applicant.

16 We would be looking to have the vast majority of these
17 sections done, basically, through declarations. You know, move the
18 evidence into the record, not put on any live witnesses and then go
19 forward. And I think that will be reflected in the Final Staff
20 Assessment you're going to see. It's going to be a very clean
21 document, I think. I hope it's completely clean, from our
22 perspective, but there may be an issue or two, you never know.

23 So, that gives me some hope for being able to maybe
24 consolidate some of the phases of the remaining proceeding, and also
25 looking for ways to try to get this done as quickly as possible. You

1 know, I like the staff schedule because it ends up with a hearing --
2 a decision this calendar year. And that's not new, you've heard us
3 say that in the past. That's still our hope, aspiration, and desire,
4 and that will depend a lot upon, I think, the FSA and then,
5 ultimately, the South Coast issues.

6 I also want to thank the staff of the South Coast, I know
7 that they're on the phone, for their work because they are working
8 hard on this document. They're working overtime, as we understand
9 it, to put things together. You know, let the lawyer make, you know,
10 pronouncements about substance, but I understand who they are on
11 substantive issues that came out of the comments. There were very
12 few comments. Comments from the Applicant, comments from one other
13 party, which I think we've gone about to address, as I understand it.

14 So, I'm actually hopeful that that process will go well,
15 but we need to give them the time and the space to do their work, as
16 well, the South Coast. And they are, as I said, working hard, like
17 your staff is working hard.

18 I think there are some things we can consolidate the
19 proceeding. I don't think there will be a need for rebuttal
20 testimony, for example, or very, very limited rebuttal testimony.
21 That will depend, obviously, on what the Final Staff Assessment says.
22 But I'm looking for hope for a decision, for this year, and that's
23 one area that I think we ought to be looking at the possibility of
24 whether we need, then, to include current rebuttal testimony, or
25 whether that can be filed, you know, simultaneously with prehearing

1 conference statements. So, that's sort of one specific injection,
2 you know, no rebuttal testimony, or rebuttal testimony filed with PHC
3 statements.

4 A second suggestion on schedule; I think the PHC could be
5 held on the same day as the evidentiary hearings. And again, that's
6 based on a belief that there aren't that many outstanding issues, so
7 --

8 HEARING OFFICER CELLI: You know, the only concern I have
9 with that, if this were -- if we had no Intervenors, I would have no
10 problem with that. The concern I have with the prehearing conference
11 is that that's where we really lay out what the rules are, how we are
12 going to proceed, what we need in the way of evidence. Because,
13 there's nothing that drives me nuttier than getting last-minute
14 evidence, after we've closed. We've said, look, we're closing the
15 evidence, we've received what we have, and then I start getting
16 things dribbling in from the various parties.

17 My prehearing conference is the opportunity to make those
18 kinds of things clear to all of the parties, especially the people --
19 and we may get some more intervenors, you know. So, generally
20 speaking, I like having a prehearing conference before an evidentiary
21 hearing because now everybody knows what's expected and what the
22 rules are.

23 Having said that, I'm going to take this opportunity to ask
24 Ms. Lambe, if you wouldn't mind unmuting your telephone, about the
25 kind of evidence -- because, generally, the way we operate is the

1 parties submit their evidence in writing and in the -- so, for
2 instance, staff's evidence will be the Final Staff Assessment. The
3 Applicant's evidence is going to be the Supplemental AFC, data
4 responses, things like that, any additional information. And so,
5 usually what we ask from the parties is for written reports and
6 testimony from experts, before we go into the evidentiary hearing.

7 So, and we do this as an efficiency measure so that when we
8 get to the evidentiary hearing we're only taking live testimony on
9 those matters that are really an issue, where there's a bona fide
10 disagreement between the parties. Yeah, and a question of fact,
11 shall we say.

12 So, with that, Ms. Lambe, I wonder if you can give us a
13 sense of what areas you think that you're going to be addressing?

14 MS. LAMBE: Well, let me first say that it's been -- I'm
15 really pleased with this process and the inclusivity of it. And we
16 will endeavor to produce any evidence, concerns, all of that staff,
17 as soon as it's available. We've no intention of hanging on to
18 things or submitting things at the last minute.

19 Specificity beyond that is sort of hard for me to do on
20 this call, except saying what I'd said at the Preliminary Staff
21 Assessment, the meeting, that meeting, which is, you know, things
22 that impact Los Cerritos Wetlands always rise to the top for us. I
23 mean, I don't want to go on and on about it on this call, but that's
24 our mission. And it's hard for me to be more specific than that,
25 other than we certainly don't have any interest in being bad partners

1 or delaying the process in any way.

2 HEARING OFFICER CELLI: And I greatly appreciate that. You
3 know, what's going to end up happening, though, is you're going to
4 have some expert, you or somebody for Los Cerritos Wetlands Land
5 Trust, writing a report, talking about -- so, for instance, the tar
6 plant, I saw that in your comments, green turtles, things like that.
7 You'll be raising those. But, we'll be receiving those prior to the
8 evidentiary hearing so that we know exactly what's in the record on
9 that time. And then, this way, the parties can actually put live
10 testimony on those facts that are in dispute.

11 So, that's the way we proceed. And like I said, we may get
12 another intervenor, besides Los Cerritos Wetlands Land Trust, between
13 now and, oh, let's say, about six weeks before the prehearing
14 conference.

15 So, the question I'm -- so, basically, is it fair to
16 assume, Ms. Lambe, that the kinds of comments -- so, we can look to
17 your comments, because what your comments dealt with were
18 alternatives. You dealt with cumulative -- the cumulative analysis,
19 mostly biology, it seemed to me, noise, those were the main concerns
20 that you had in your comments. And so, is it fair for me to assume
21 that those will be the same issues that you're going to bring in to
22 the hearings?

23 MS. LAMBE: Well, certainly, those issues. Again, we're
24 looking for the response to our comments. That's going to impact
25 where we go from here. But I guess that's what I have to say at this

1 point. I don't want to say anything that's not true. And everything
2 I've said so far is, you know, that we want to robustly participate
3 and shape the outcome for protecting our wetlands.

4 HEARING OFFICER CELLI: That's great. And, just as a
5 procedural matter, we received comments, but there aren't necessarily
6 going to be rebuttal to the comments. I don't know if Applicant
7 intends to rebut the comments received from Los Cerritos Wetlands
8 Trust?

9 MR. HARRIS: No. We'll file opening testimony, but we're
10 not filing any rebuttals.

11 HEARING OFFICER CELLI: Okay. So, really, what's going to
12 then happen, Ms. Lambe, is that the parties are going to submit their
13 opening testimony. As I said, opening testimony is going to be
14 staff's preliminary -- or, Final Staff Assessment. Applicant's going
15 to put in their application or their Supplemental Application for
16 Certification, data responses, other reports, things that have been
17 filed. Most everything, in fact everything has to be docketed prior
18 to their introduction into evidence, anyway. So, there won't be any
19 surprises. So, you will see that.

20 So, essentially, their rebuttal of your comments are going
21 to show up in that submission of evidence or what we're calling the
22 submittal of opening testimony. So, is that clear?

23 MS. LAMBE: Yes, thank you.

24 HEARING OFFICER CELLI: Yeah. And then, we -- see, part of
25 what we were just discussing was whether there needs to be a

1 rebuttal, a submission of rebuttal testimony, and I think there needs
2 to be that. We can play with the time in terms of the scheduling and
3 how quickly afterwards we get that testimony, the rebuttal testimony.
4 But, it seems to me, that we can't avoid that step.

5 MR. BABULA: Right, it sounds like they're also -- that the
6 Wetlands is waiting for staff's response to their comments to then
7 get a sense of whether they feel like they've been adequately
8 addressed, or not, in the FSA. And so, that's when she's saying
9 "response", she's meaning that.

10 And so, I do think there are ways we can combine some
11 things. Maybe, possibly, the prehearing conference could just be --
12 typically, the hearing office sends out like a list of things that we
13 -- like things like --

14 HEARING OFFICER CELLI: In the notice.

15 MR. BABULA: Yeah, it would be in the notice, a litany of
16 things we need to respond to. And so, we could do it through a paper
17 response and then the evidentiary -- the beginning of the evidentiary
18 hearing would be just kind of go over that, and so it doesn't have a
19 separate day, per se, but that we already pre-responded to all your
20 questions.

21 Another thing I want to bring up, and it kind of depends on
22 what Los Cerritos Wetlands wants to do on this, but if someone's
23 pushing for the idea that staff needs to review the demolition of
24 AGS, that seems to be something that can be taken care of in a
25 summary adjudication because it's a legal issue, and we don't need to

1 be discussing that at the evidentiary hearing. It should be pre-done
2 through a ruling by the Committee that that is correctly not
3 something staff should be looking at.

4 Because I can tell you, if we're going into evidentiary
5 hearings and suddenly it's deemed that we need to look at it, well,
6 we didn't do it and so where it kind of needs to -- things need to
7 stop and we need new information, and that's going to put a big block
8 on the process.

9 So, that might be something that we need to just brief
10 right now, and get a ruling, if that seems to be the direction.
11 Because, the other option is to do it after the evidentiary hearing,
12 in briefs, but at that point, if the ruling is contrary to our
13 position, then the record's inadequate to move forward.

14 HEARING OFFICER CELLI: Let me just say, and this is me,
15 speaking for myself, Ken Celli, not the Committee. But it just seems
16 to me that demolition is such a de rigueur kind of -- it's so basic
17 that I don't -- I didn't really understand why it just wasn't part
18 of the analysis, anyway. Because, I mean, it's just -- it's what
19 you're going to be doing with demolition of Unit 7 times six more
20 where --

21 MR. BABULA: Well, no, because there is no unit -- I mean,
22 7 doesn't have any -- it's just what the picture showed. It's not
23 actually like a boiler and turbines, and stuff, right, so that's one
24 thing. The other thing is we don't -- it wasn't part of our data
25 responses on the time table, on what materials are out there because,

1 again, the shutting down of that facility and the pumps is due mainly
2 to the response to the once-through cooling requirements.

3 HEARING OFFICER CELLI: Right. No, I understand that.

4 MR. BABULA: And it simultaneously can still be there while
5 this new facility operates and is in existence --

6 HEARING OFFICER CELLI: Right, but when they --

7 MR. BABULA: So, it's a separate -- it's a separate project
8 and it wasn't because of our project. So, even though, you know,
9 conceptually, it might seem, oh, what's the big deal, just include
10 it, but that triggers a whole bunch of other things we need to do.

11 HEARING OFFICER CELLI: Well, my thought was, you know,
12 you're going to recycle what you can recycle, you're going to
13 transport Class 1, 2, or 3 landfills, those things. I mean, you're
14 going to do -- it seemed to me to be similar analysis for what was
15 already being done.

16 So, that, again, is just me, personally. I'm not speaking
17 on behalf of the full Committee on this one.

18 Applicant, any thoughts?

19 MR. HARRIS: Well, I think the key thing about it being a
20 separate project is the unknown. The unknown in the timing of
21 scheduling the potential repurposing of that equipment. You know, we
22 can convert those into synchronous condensers that no longer use
23 once-through cooling. We need to notify and, you know, there's a
24 pressure of law there at the CPUC, but potentially seek approval for
25 the shutdown of those units.

1 So, there is -- while we've made a commitment to the City
2 of Long Beach that upon final determination it will no longer be in
3 use, or we would remove them as a community benefit, we don't have --
4 we don't have firm management schedule or commitment to retire and
5 shutdown those units. So, by definition, it is separate from this
6 project.

7 HEARING OFFICER CELLI: No, I understood that back when the
8 idea was originally floated. But, when I -- in the process of this,
9 because I figure, well, this thing may rear its ugly head again. And
10 if it does, is it that hard, especially since we're just looking at
11 it as a cumulative analysis, just to add those extra things within
12 the cumulative --

13 MR. BABULA: Well, it would be -- now, it's just part of
14 the project. If you're saying it's part of the project, then it's
15 you need to be able to (inaudible) -- it's the whole thing. And
16 you've got to remember, staff is doing three other projects right
17 now, too. And so to then say, well, let's just add new information,
18 and let's go get some stuff with the Applicant, and I'm not sure,
19 that may trigger -- and I don't have any idea offhand how that
20 affects the FDOC, and PDOC, and those things. So, this was not part
21 of the project for a good reason.

22 MR. HARRIS: Well, and I keep coming back to the demolition
23 being exempt. And so, I think that analysis would say that the
24 Applicant would go out, and go to the City, and pull a ministerial
25 demolition permit. That's the extent of the analysis that we've done

1 under CEQA. So, I don't think there's a hole here, anyway.

2 But, as Stephen pointed out, you know, we're not sure, you
3 know, you have to have regulatory approval from the ISO, the Water
4 Board, and the other folks to even think about taking these units out
5 of service.

6 And then, the ISO may come to us and say, well, what about
7 synchronous condensers? So, it really is -- it's almost -- it's
8 arguably not foreseeable, but I think it is foreseeable because we
9 said that we're going to take these down under the MOU.

10 But at the end of the day, I think Jerry's done a very good
11 job of distinguishing between the former Unit 7 site preparation,
12 really, even though we're calling it demolition, taking down the
13 tank, taking down the building, doing that work versus the larger
14 facility.

15 If you can put the picture back up? Just to kind of give
16 you an idea, the red -- and this, again, this Figure 2. The red is
17 the project site and the yellow is the existing units. And so,
18 they're physically separated. That's 5 and 6 down through the
19 southern portion of that. And then --

20 MR. O'KANE: Circled at the site.

21 MR. HARRIS: Yeah, the yellow. Yeah, there. And then, 1
22 and 2 --

23 MR. O'KANE: Yeah, 1 and 2 are up in the yellow.

24 MR. HARRIS: Yeah, as are 3 and 4.

25 MR. O'KANE: Yeah.

1 HEARING OFFICER CELLI: I just want to go off the record
2 for just a moment and have quick, little conference, and then we'll
3 come back on.

4 (Off the record at 10:59 a.m.)

5 (On the record at 10:59 a.m.)

6 HEARING OFFICER CELLI: Okay, we are back on the record,
7 again, after a momentary conference.

8 I just want to suggest to staff that, if you're so
9 inclined, and if you're interested, the Committee would hear a motion
10 so that -- for some sort of pre-ruling, if that's what you want to
11 call it. And, you can bring points and authorities, and then parties
12 would have an opportunity to put in their reply briefs and, including
13 you, Ms. Lambe.

14 So, I want to make sure that if this motion comes, we're
15 not requiring it, we're giving them the option, and if this motion is
16 made, then the parties, according to our regs, will have 15 days to
17 reply before they have to file their reply brief on this motion.
18 So, let's just handle it that way.

19 MS. LAMBE: I'm sorry, I didn't hear the first part of what
20 you said. It cut out on my phone.

21 HEARING OFFICER CELLI: Well, staff was asking if they --
22 they wanted a ruling and we provided an opportunity for staff to file
23 a written motion, to the Committee, to resolve the issue as framed by
24 staff. And their question has to do with the demolition of the AGS
25 units and exactly what analysis staff needs to provide in that

1 regard.

2 So, if they bring a motion, on whatever date they bring
3 that motion, there will be 15 days after that motion is filed for the
4 Applicant and you, as Intervener for Los Cerritos Wetlands Land
5 Trust, to file a reply brief. After that, the Committee would have
6 15 more days to make a decision as to how they want to rule on that
7 motion.

8 And, as I'm sitting here thinking, I would need the time to
9 be able to file a Notice of a Closed Session in order to give the
10 Commissioners an opportunity to discuss the points and authorities
11 that we receive from the parties. So, that's the way I think we
12 would --

13 MR. BABULA: Okay.

14 MS. LAMBE: And do you mind if I ask, and who's able to
15 make those kinds of motions? Is it interveners, as well, or what's
16 that process.

17 HEARING OFFICER CELLI: Okay, just your question is can you
18 bring a motion? Absolutely. That's your prerogative, as an
19 Intervener, is to bring motions, along with putting in evidence, and
20 so forth.

21 So, in this case, staff made a request. We're -- we are
22 giving them the opportunity to file that as a written request, so
23 that all of the parties are on notice of what it is they're asking
24 for, and what it is the Committee's going to have to decide. And, if
25 you have a different view or want to make any comments, whatsoever,

1 or add points and authorities, legal points and authorities, we will
2 absolutely entertain those.

3 So, the way it's going to work is this; on whatever date
4 the motion is filed would be day one. On day 15, your reply brief
5 would be due, and Applicant's, and people could comment, as well.

6 Did I answer your question?

7 MS. LAMBE: Yes. And, I mean, not to point out the
8 obvious, but I'm not a one-woman show. You know, I work for a
9 nonprofit, so that's why sometimes I can't give you yes or no answers
10 on some of the things you've asked me. But everything you've just
11 explained to me makes sense.

12 HEARING OFFICER CELLI: Okay, that's great. And also, I
13 want to remind you that Alana Mathews, who is the Public Adviser, is
14 available to assist you, if you have any questions, ongoingly, about
15 anything that we're doing and including our process.

16 MS. LAMBE: Yes, she's been very helpful. The Office of
17 the Public Adviser has been very helpful to us.

18 HEARING OFFICER CELLI: That's great. And that's what
19 they're there to do, so I'm glad to hear it.

20 So, what I'd like to do next, then, is get back to -- so --

21 MR. HARRIS: Before we leave this issue, I want to go back
22 and look, and see if you've already ruled on this. There is a prior,
23 at least discussion about this. I don't remember whether it was an
24 order or not.

25 HEARING OFFICER CELLI: Here's how it came down, it was

1 raised by staff, saying, look, you know, the AGS is demolition. It
2 is completely independent of the AEC. And we want to analyze it as
3 cumulative, not as direct and indirect impacts.

4 To which, at the time, the Committee said, we don't object
5 to your approach. So, we didn't approve it, per se. It wasn't a
6 motion, per se. We just said, okay, fine, you want to proceed that
7 way, that's fine. With sort of the implied caveat that if it's
8 challenged down the road, which now it seems that it may be, we will
9 have to revisit the issue. So, that's why we're -- I applaud staffs'
10 wanting to be proactive on this and we'll -- we'll look at the motion
11 and see what the parties have to say about it, and then make a
12 decision. Hopefully, we can give you enough of an answer so that we
13 can proceed with confidence.

14 MR. HARRIS: Right.

15 MR. BABULA: Yeah, originally, we had brought the issue in
16 a staff's report, in response to some statements that the Committee
17 had made, that we wanted to try to get clarification. And so, right,
18 it was in a staff's report.

19 HEARING OFFICER CELLI: That's right. It was a
20 clarification that came out in an order, as part of a notice. So,
21 that's how that came down.

22 MR. HARRIS: Okay, we'll look at that, again. You know, I
23 understand the potential efficacy of having an early decision on
24 this. There's also the possibility that you don't have an early
25 decision and that the process goes forward. It is a legal issue. It

1 can certainly be briefed. You know, the risk would be on the
2 Applicant if there was a hole in the record. We can do that.

3 And I guess I just want to add one more thing, the deadline
4 to intervene is past. So, you've said there might be more
5 intervenors. Without good cause, I don't expect any others.

6 HEARING OFFICER CELLI: Well, what is the basis of that
7 statement, that the deadline is past? Because we have, so far, did
8 we -- did we put in, in our previous schedule, that there was a
9 deadline to intervene?

10 MR. HARRIS: It is in your regulations and it's also in one
11 of the prior scheduling orders.

12 HEARING OFFICER CELLI: Well, the regulations say -- now,
13 the regulations have changed. I'm glad Mr. Babula is here, since he
14 helped write them. But, my recollection was it's the prehearing
15 conference or 30 days before the evidentiary hearing, whichever is
16 earlier. Is that still the case?

17 MR. BABULA: Unless there's something in a Scheduling Order
18 that already indicated the time table, which I don't know. Has there
19 been a Scheduling Order issued that had a date for --

20 MS. NEUMYER: Yes.

21 HEARING OFFICER CELLI: Our initial order. Okay, so this
22 was the Scheduling Order from -- the original scheduling order showed
23 a last date to file a Petition to Intervene is June 3rd, 2016. So,
24 that was our initial Scheduling Order.

25 MR. BABULA: I guess until that changes, that's the

1 deadline.

2 HEARING OFFICER CELLI: Yeah. Well, you know what, we will
3 go into Closed Session and the Committee will talk about scheduling.
4 And so, we will determine whether that sticks or not because, you
5 know, that schedule certainly has not been adhered to in other
6 regards. So, we will have to figure that one out.

7 So, getting back to schedule. Staff says December, wants a
8 December 14th -- is that the date that the Applicant wanted for an
9 adoption date?

10 MR. BABULA: That was our understanding, that that was what
11 the Applicant had, no later from that, from the Applicant's schedule.
12 So, we think that's consistent with what the Applicant's been saying.

13 HEARING OFFICER CELLI: Because working backwards, if there
14 are errata or revisions to the PMPD, that's 15 days, so that takes us
15 to the end of November. And then, when the PMPD comes out, there's a
16 30-day comment period. So, just assuming a perfect world, which
17 never seems to happen, that there are no revisions or errata, then 30
18 days before that November date would be October. Which means, what
19 we need to do is get an FSA, hold evidentiary hearings, prehearing
20 conference, evidentiary hearing -- my little cheat sheet here, and
21 walk you through the tasks we need to accomplish.

22 Oh, here it is. So, working backwards, we would have to
23 publish the PMPD no later than October 1st. Do I have that right?
24 October, November, right? October 1st, November 1st would be the end
25 of the -- no, October 15th, because October 15th through November

1 15th would be your 30-day comment period, plus 15 days, and now we're
2 into December. So, about October 15th-ish, we would need to file --
3 we would have to have our PMPD published. Okay?

4 Now, October 15th, I brought a calendar --

5 MR. BABULA: We could have evidentiary hearings on October
6 14th, right?

7 (Laughter)

8 HEARING OFFICER CELLI: So, let's just say I could cut it
9 down -- you know, we usually want six weeks. Even if I went to four
10 weeks of writing the PMPD, after the evidentiary hearing, I'm in the
11 middle of September. So, that means I would have to have -- I don't
12 even think we have enough -- we do not have enough time to notice a
13 prehearing conference and an evidentiary hearing right now.

14 And, we're waiting -- and we have yet to hear from South
15 Coast. I have no idea when the FDOC is going to come up. Staff
16 wants another 30 days afterwards, which I don't know if we're going
17 to -- I understand that you said you might be able to do it in less
18 time, but I don't know how much less time.

19 But this is -- this is looking undoable. And so, I just
20 think we need to go into this thing with both eyes open. Cutting as
21 much out as I can, even if I do a prehearing conference on the same
22 day as an evidentiary hearing, that's a no-brainer, we can do that.
23 Rebuttal testimony, people have to be able to rebut. But they don't
24 necessarily need a whole week, per se, after the -- we're looking at
25 -- especially since, and just to be clear, so for Ms. Lambe's

1 benefit, most all of the testimony's already out there and published
2 right now. We'll get a different -- we will get a different take
3 from the FSA than the PSA, but in terms of staff's -- or, rather
4 Applicant's evidence, that evidence is already out there, for the
5 most part.

6 So, there are some things I can do to cut it down, but I
7 just don't see a way to get to the December 14th date, realistically,
8 even if I cut it way down. Because, this is what always happens. It
9 always comes out of the writing time for the PMPD, and I just that
10 that would -- the problem there is the risk of, you know, error. And
11 we want to make sure that this is -- we write the best decision we
12 can. So, I'm heartened to know that your evidentiary hearing will
13 be, hopefully, one day, not more.

14 MR. BABULA: Yeah, I would expect it would be fairly short.
15 I agree with most of everything that Mr. Harris said with regard to
16 the timing, and most of this would be (inaudible) -- and it would --
17 it should all be submitted, paper-wise. Maybe a couple of issues of
18 direct testimony, at least between staff and Applicant.

19 And even with -- we got some good comments and we
20 understand a lot of where the Wetlands is coming from, and we've
21 discussed it with the biologist. So, I think even some of those
22 issues would probably be addressed in response to the comments.
23 There are some things that we might adjust in the FSA, that they're
24 okay with.

25 And the other thing would be the time period between the

1 publication of the FSA and the evidentiary hearing. Our regs allow
2 for 14 days, but we might want to consider what's reasonable for the
3 public to review the FSA. So, there is an area there to have it
4 expedited a little bit, I think. So, rather quickly from the
5 evidentiary hearing, and especially if the (inaudible) -- that, A,
6 there's no other intervenors and that things have been pretty much
7 resolved.

8 HEARING OFFICER CELLI: Mr. Chandan, if I'm pronouncing it
9 right, Chandan, or Ms. Lee, from South Coast Air Quality Management
10 District?

11 MR. CHANDAN: Yes.

12 HEARING OFFICER CELLI: Everything really comes down to the
13 thing -- the start date, the trigger for my ability to schedule
14 everything is really down to when will the FDOC in the Alamos
15 matter be published to give us your Determination of Compliance?

16 MR. CHANDAN: Yeah, well, let me first start with the
17 (inaudible) -- 21 has a date of August 22nd for the public comment to
18 close. Actually, the date is today, it's 8/24.

19 HEARING OFFICER CELLI: Okay.

20 MR. CHANDAN: That's when the last comment closes. So, we
21 don't know if we are going to receive any further comments.

22 There were several stages closed for public comments. One
23 was for public comments APA, and there were schools involved. And we
24 typically wait for a few days to see if we get any mailed-in
25 comments.

1 So, I would say the comment period ends the end of this
2 week. So, we don't know if there have been any further comments. So
3 far, we have one comment letter from public which requires us to look
4 at ways and aspects of the PDOC. And, fortunately, it's similar to
5 what we got on the (inaudible) -- the covering. We are talking about
6 (inaudible) -- so, we are talking with modelers to see if that -- if
7 we change it over back to United States (inaudible) -- emission
8 calculation that there was. And so, it involves a lot of work. We
9 have already started on that.

10 But at this point, without seeing if there are any further
11 comments, we cannot commit to a date at this point.

12 HEARING OFFICER CELLI: So, can we -- so, I'm not asking,
13 necessarily, for a commitment at this time, Mr. Chandan. But, I'm
14 looking for a ball park so I can have a sense of how much time the
15 rest of our process is going to need.

16 Let's just say you get no further comments, what's a
17 reasonable time frame that we would be able to get the FDOC
18 published?

19 MR. CHANDON: Well, we will need some time to give a more
20 certain date. We are diligently working on addressing the comments.
21 We are, you know, in contact with -- as I said, it's very similar to
22 the Huntington Beach Project, so we saw the work that we are already
23 doing at Huntington Beach, we can use (inaudible) -- but we talked
24 about the (inaudible) last week, but we are not able to commit
25 anything at this time because there are a lot of open issues

1 regarding our response and the comment that we received.

2 HEARING OFFICER CELLI: So, can you give us some sense
3 of -- because, there was a PDOC already in this matter, so we have
4 that. How -- what -- I mean, can you give me a sense, in
5 percentages, of how much of a change, how much difference there was?
6 What are the issues you're dealing with? Are we dealing with 30
7 percent of it, 50 percent, 10 percent?

8 MR. CHANDAN: Probably about 20 to 30 percent, I would say,
9 because there are significant problems in some of the (inaudible) --
10 a couple of our (inaudible) designations might have to change,
11 depending on what information we get from our research.

12 Our modeling analysis, we are looking at. And, there are
13 some personnel questions on (inaudible) -- and also which are the
14 legal staff needs to look at.

15 HEARING OFFICER CELLI: Okay. But, at this time, you're in
16 possession of all of the information that you need in order to write
17 the FDOC, pending the closure of your comment period; correct?

18 MR. CHANDAN: Yeah, but based on the responses that we get,
19 it will change our PDOC. So, we need to address the issues before we
20 can finalize the PDOC.

21 HEARING OFFICER CELLI: Okay.

22 MR. CHANDAN: I mean, the FDOC. The PDOC is done.

23 HEARING OFFICER CELLI: Right.

24 MR. CHANDAN: The FDOC will depend on how we decide to
25 address the comment that we have received.

1 HEARING OFFICER CELLI: So, generally speaking and, you
2 know, comments may come, things will -- I'm not trying to corner you
3 in anything, but what I need is a basis to make a ball park estimate
4 of how long it's going to take for me to put a schedule together.

5 So, are we two weeks out, are we a month out, roughly?

6 MR. CHANDAN: I'll have a better handle in a week or two,
7 because we have so many things going on at this time. We have just
8 contacted (inaudible) people, which are Air Quality District
9 (inaudible) -- and, you know, depending on how quick we get
10 responses, I would be better able to commit maybe after a week or
11 two.

12 HEARING OFFICER CELLI: Okay. But, my problem is I have to
13 notice any meeting with these parties, and this Committee. That
14 requires a 10-day notice in order for us to comply with all of the --

15 MR. BABULA: He could just file a statement in our docket.

16 HEARING OFFICER CELLI: Yeah, that would -- well, I mean,
17 more importantly, they're going to file an FDOC.

18 MR. BABULA: The comment period on the PDOC closed, though,
19 on the 22nd, so they should have other comments if --

20 HEARING OFFICER CELLI: Well, he's saying on the 24th.

21 MR. BABULA: Well, it's --

22 HEARING OFFICER CELLI: So, that's --

23 MR. CHANDAN: It should be 24th, yes.

24 HEARING OFFICER CELLI: Well, they're saying it's the 24th,
25 which is -- isn't that today?

1 MR. CHANDAN: That's today, right.

2 HEARING OFFICER CELLI: So, close of business, if -- so if
3 today, at close of business, you've got -- you have no further
4 comments, are you ready to proceed to publication of the FDOC?

5 MR. CHANDAN: No. No. Because based on the comment that
6 we've already received, we are laying the groundwork, we're trying to
7 respond to those comments, which are pretty extensive.

8 HEARING OFFICER CELLI: And these are comments, you said,
9 from the EPA?

10 MR. CHANDAN: No, it's from the public. We haven't
11 received any comments from the EPA. We have received one comment
12 from the public and one from the Applicant, themselves, which are not
13 extensive. So, those we can address easily. But the comment from
14 the public requires a lot of work.

15 HEARING OFFICER CELLI: And is there -- what I'm trying to
16 get at is, based on your experience, as somebody who's done a lot of
17 this sort of thing, you've -- you know, you probably have some sort
18 of back-of-the-envelope calculation about how long it's going to take
19 for you to get through all of this so you can put something out. So,
20 I just need to know, am I looking at weeks, months, what?

21 MR. CHANDAN: Weeks. But again, you know, we are dependent
22 on a lot of other people, a lot of other agencies giving us
23 information to make our determination. And I have no control on how
24 quickly I can get that information.

25 HEARING OFFICER CELLI: Yeah, that makes two of us.

1 (Laughter)

2 HEARING OFFICER CELLI: Well, we -- what we have to deal
3 with here is that -- I'm at a loss. We are dependent upon --

4 MR. HARRIS: Well, but you guys get tired of acknowledging
5 this, but there is -- there's a choice you can make, which is to move
6 forward with your schedule, assume success, publish your document.
7 If the FDOC continues to lag, you can publish a supplement,
8 supplemental staff assessment on that particular section. I know
9 that's not the preferred course by anybody here. But I guess I want
10 to be clear, the choice to wait to have the entire schedule driven by
11 the FDOC is a choice that you don't have to make. You can set a
12 schedule, with reasonable assumptions.

13 You know, I've been involved in cases where there have been
14 second -- second assessments, not on air quality, but second staff
15 assessment, supplemental staff assessments. So, I would, I guess,
16 urge you not to drive the entire schedule off that document being
17 produced.

18 You know, I admire the South Coast's inability to get
19 pinned down by you, despite your best efforts. And if I were their
20 lawyer, I would be congratulating them after the phone call that they
21 did a good job. They're just not in a position to commit. So, I
22 think that's the reality, they're not in a position to commit. And
23 that you ought to decide that you can move forward with a reasonable
24 schedule.

25 After this session today, we'll file what we think is a

1 schedule that may work, for your consideration. We'll make that
2 commitment to make that filing, as soon as possible. This week, I
3 think.

4 And then, just deal with the possibility that the Air
5 District stuff may necessarily be on a different track. And I want
6 to emphasize, again, how hard they're working over there. You know,
7 they're working -- they're literally working overtime to try to get
8 this done. So, but let's take some of the pressure off of them,
9 perhaps.

10 But at the end of the day, you're going to be the one
11 taking the heat for our final decision schedule, anyway, so you can
12 control that a little bit by moving forward in parallel. So, we
13 definitely would recommend that you'd consider that.

14 MR. BABULA: Another issue, too, is that -- so, we put FTSC
15 plus 30 days, but we would obviously make every effort to have it
16 quicker. And, quite possibly -- and I already have been reviewing
17 sections. So, things are moving forward.

18 Of course, the sections that don't depend on the FDOC are
19 moving forward, and are going through the review chain. So, it's not
20 like everybody's just standing around, waiting for the FDOC. Things
21 are happening. And so, I think there is an effort on staff's view,
22 and if the program staff wants to articulate more on the schedule,
23 they're in a better position than me. But, I think that 30 days is
24 something that we can work with.

25 HEARING OFFICER CELLI: And I would want to be clear that

1 this Committee isn't pointing a finger at anybody. We're not making
2 anybody wrong. We know you've worked hard. We know South Coast is
3 working hard. Everybody's done a lot of hard work on this case.

4 The only -- and, obviously, we always get frustrated when
5 it comes to scheduling because there's so many moving parts and the
6 variables interrupt the schedule. So, I just want to be clear that
7 everybody's doing their best and, at this time, we're -- it seems to
8 me we're at a point where this is going to be our last Status
9 Conference.

10 Our next hearing is going to be a prehearing conference.
11 And so, we really want to narrow it down as much as we can, at this
12 time. So, I'm just going to have a quick aside, for a minute. We're
13 still on the record.

14 (Pause)

15 HEARING OFFICER CELLI: So, Ms. Lambe, I'm going to go to
16 you, first, because we've had so much discussion here, and without
17 you physically in the room -- it's great that you're on the phone and
18 I always imagine you sitting here. But I want to include you and so,
19 see if there was anything you wanted to add to this discussion
20 regarding scheduling?

21 MS. LAMBE: No, not at this point. You know, as you know,
22 we're participating in the process and we'll continue to do so. And
23 we'll do our very best not to be unnecessarily late.

24 HEARING OFFICER CELLI: And we greatly appreciate that.

25 What we're going to do is I'm going to just ask -- I'm

1 going to go one -- around one more time, ask if there's anything
2 further from the parties, and then we will take public comment. And
3 then, the Committee will go into a Closed Session.

4 So, first, Mr. Harris, for the Applicant?

5 MR. HARRIS: Yeah, we -- this is very productive again,
6 today. We've spent a lot of time talking about issues and it made it
7 sound like things are worse than they are. I want to emphasize how
8 good things are in this case. The details are always difficult.
9 But, at the highest level, this is moving forward very well.

10 As I said a moment ago, our relationship with the staff in
11 this case has been very, very positive. We won't, probably, reach
12 agreement on every issue, but the good thing is that we can agree to
13 disagree on some of these things. And, probably, work out conditions
14 that will satisfy both of us.

15 So, again, you know, thank you to the staff for their hard
16 work, for their travel down to Long Beach, and for the engaging of
17 the public. And to Jared, for offering a lot of constructive
18 solutions today.

19 So, we will commit to filing with you, a straw man proposal
20 for you on the schedule, for your consideration, that will maybe talk
21 to -- at least share our concepts with staff, afterwards, here.

22 But we really want to thank everybody. I know that this
23 schedule has gotten completely crunched and we're holding on --
24 holding out hope, but we also don't want to kill people over
25 Christmas and Thanksgiving, as well, and we recognize that there's

1 certain life realities that get in the way of the work, that we'll
2 have to deal with. So, thank you, again, to the staff, and to the
3 Committee, and we're very pleased with the progress of this
4 proceeding. And again, thanks to the South Coast, well.

5 HEARING OFFICER CELLI: Thank you, Mr. Harris.

6 Mr. Babula?

7 MR. BABULA: Is there an expectation of where the
8 evidentiary hearing will be?

9 HEARING OFFICER CELLI: Yes, we expect the evidentiary
10 hearing to be down in Long Beach.

11 MR. BABULA: Down there, okay.

12 HEARING OFFICER CELLI: And that -- I'm glad you raised
13 that.

14 MR. BABULA: So, we want to make sure things work.

15 HEARING OFFICER CELLI: Yeah, well, we are going to -- we
16 didn't do so well at that golf course. That was -- we had difficulty
17 with the sound.

18 Go ahead. We need you to introduce yourself and speak into
19 the microphone?

20 MR. LEWIS: Yeah, my name is Michael Lewis. I'm the Deputy
21 Director of the Siting Division. And I have a comment about WebEx.
22 We've just undergone WebEx training and we are going to have strong
23 IT support. And we're going to -- we need to make sure we have a
24 venue that has a hard, dedicated line to the room. Because that was
25 the issue last time was the Wi-Fi dropped the signal. So, we do

1 request that.

2 And I'm new here, but I want to make a comment that we are
3 dedicated to accelerating your schedule as much as possible when we
4 get the data. I am dedicating my staff to putting you up to the
5 front, as much as possible, to get this done.

6 HEARING OFFICER CELLI: Thank you, Mr. Lewis, and nice to
7 meet you. Welcome.

8 Staff, anything further?

9 MR. WINSTEAD: I just wanted to thank the Applicant for
10 working -- exchange of information, as we wrap up this FSA. We
11 appreciate the Intervenor, Elizabeth Lambe, in her comments, and
12 public comments, also. It's helped with this process, in making sure
13 it was clear to everybody what we're trying to -- our final document
14 will be.

15 HEARING OFFICER CELLI: Thank you, Mr. Winstead.

16 Ms. Lambe?

17 MS. LAMBE: I don't have any comments.

18 HEARING OFFICER CELLI: Okay. Well, thank you very much
19 for participating and for your comments, and for all of your
20 comments.

21 At this time, we'd like to take agency and public comments.
22 There are only staff-associated people or Applicant-associated people
23 in the room at this time.

24 So, we'll go directly to the telephones. And the way we
25 want to do this is, if you're with an agency, any governmental

1 agency, and wish to make a comment at this time, we'd like to take
2 your comments, first. So, if you're on the telephone, please
3 identify, state your name, and make your comment. Go ahead.

4 Okay, hearing none, we assume there are no governmental
5 agencies on the telephone.

6 Let's hear from the general public, then. Is there any
7 member of the public who would like to -- who's on the telephone, who
8 would like to make a comment at this time? Please speak up?

9 Okay, it appears that we do not have any members of the
10 public who wish to make a comment at this time.

11 It's 11:30. The Committee is going to go into a Closed
12 Session. What's going to happen is the Committee is going to use
13 this Closed Session to discuss any matters that arose today,
14 especially scheduling. And what will happen is, when that Closed
15 Session adjourns, I will come down, Hearing Officer Kenneth Celli
16 will come down and adjourn the meeting. And that will be the end of
17 the meeting.

18 And so, if you're on the telephone, there's really not much
19 else of substance that's going to happen from here on out. But we
20 will keep the phones on, we will keep WebEx running. And I will come
21 down and adjourn when we have finished the Closed Session.

22 So, at this time, we're in Closed Session.

23 (Whereupon, Closed Session commenced at 11:30 a.m.)

24 (Whereupon, Public Session recommenced at 12:52 p.m.)

25 HEARING OFFICER CELLI: This is Hearing Advisor Kenneth

1 Celli. The clock shows that it's, oh, approximately eight minutes
2 before 1:00 in the afternoon, today, on the 24th of August.

3 And pursuant to Government Code Section 11126(c)(3), which
4 allows a State body, including a delegated committee, to hold a
5 Closed Session to deliberate on a decision to be reached in a
6 proceeding the State body was required by law to conduct, the
7 Committee has concluded its Closed Session.

8 At this time, there is nothing to report out. The Status
9 Conference is adjourned.

10 (Whereupon, the Status Conference was adjourned
11 at 12:53 p.m.)

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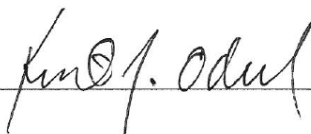
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And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of September, 2016.



Kent Odell
CER**00548

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IN WITNESS WHEREOF, I have hereunto set my hand this 08 of September, 2016.



Barbara Little
Certified Transcriber
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