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STATE OF CALIFORNIA
California Energy Commission

1516 9th Street, Hearing Room B
Sacramento CA 95814

Status Conference for Alameda Energy Center

Docket No. 13-AFC-01

Transcript of Proceedings

Monday, October 10, 2016

10:33 a.m.

Brittany Flores, CSR 13460

1 APPEARANCES

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PROCEEDINGS:

COMMISSIONER DOUGLAS: Good morning, everybody. This is a status conference for the committee of the California Energy Commissioner regarding Alameda's Energy Center.

THE HEARING OFFICER: I don't think your sounds is coming through.

Does it show that her sound is coming through?

COMMISSIONER DOUGLAS: Hello.

Is this better?

All right. Well, this is the status conference conducted by a committee for the -- of the California Energy Commission regarding the Alameda Energy Center. The energy commission chair has assigned a committee of two commissions to conduct these proceedings.

Before we begin, we'd like to introduce the committee members to you. I'm Commissioner Karen Douglas, presiding member of the committee. To my left, Commissioner Janea Scott, the associate member of the committee. And then to my immediate left -- when he sits back down -- is the hearing officer, Ken Celli. Matt Coldwell, Commissioner Scott's advisor is to her left. And my advisors, Jennifer Nelson, and Quyen Nguyen are here. Kristy Chew, technical advisor for the

1 commissioners, is here. And at this point, I'll ask the
2 parties to introduce themselves again.

3 MR. HARRIS: Good morning. Jeff Harris here
4 on behalf of the applicant. To my right is vice
5 president of AGS. To my left is my colleague Samantha
6 Pottenger, and Jerry Salamy with CH2M Hill.

7 COMMISSIONER DOUGLAS: All right. Thank
8 you.

9 And staff.

10 MR. WINSTEAD: Good morning. This is Keith
11 Winstead, project manager for Alameda's Energy Center,
12 and with me is Jared Babula, legal counsel.

13 COMMISSIONER DOUGLAS: Great. And anybody
14 here for Los Cerritos Wetlands Land Trust?

15 MS. LAM: Hi. This is Elizabeth. I'm the
16 executive director of the Los Cerritos Wetlands Land
17 Trust. And my -- the person who has been helping me,
18 Joe Geever, is here, too.

19 COMMISSIONER DOUGLAS: Great. Thank you.
20 Thank you for being on the line.

21 I see the public advisor is here, Alana Mathews.

22 Are there any elected officials or
23 representatives from State, Federal, or local government
24 agencies or Native American tribes here today on the
25 phone?

1 If you're on the phone, please speak up.

2 Anyone from South Coast Manager's District?

3 MS. LEE: Yes. Vicky Lee and -- is supposed
4 to be the phone, too.

5 COMMISSIONER DOUGLAS: Great. Thank you.
6 Any other representatives of State, Federal, or local
7 government agencies or Native American tribes?

8 All right. Then at this time, I will hand over
9 the conduct of the hearing to hearing advisor, Ken
10 Celli.

11 THE HEARING OFFICER: Thank you,
12 Commissioner Douglas.

13 And good morning. Can you all here me okay?

14 Excellent.

15 This is a status conference for the Alameda Los
16 Cerritos Energy Project, which was scheduled in a notice
17 dated September 29th, entitled, "Second notice of
18 rescheduled committee status conference to October 10th,
19 2016 and consideration of tentative ruling on staff's
20 motion." The purpose of today's conference is to
21 discuss the upcoming proceedings, the schedule, and to
22 allow the committee to deliberate in closed session.

23 In addition, the committee issued a tentative
24 ruling on staff's motion for summary adjudication on
25 September 28th, 2016, and we'll hear argument and

1 comment on that tentative ruling. The open meeting will
2 be convened for a party discussions regarding, among
3 other things, the tentative ruling and scheduling. And
4 then afterwards, we will take public comment followed by
5 a closed session. The open meeting will reopen at the
6 conclusion of the closed session solely for the purpose
7 of reporting any action taken in closed session and
8 adjourning the meeting.

9 The way we'll proceed today is the staff is the
10 moving party, so we'll hear first from staff on the
11 tentative ruling and then we will hear from the
12 applicant who will essentially -- who has essentially
13 joined in staff's motion followed by intervener, Los
14 Cerritos Wetlands Land Trust, who submitted a reply
15 brief in opposition to the motion for summary
16 adjudication. Following those discussions, we will next
17 take up the question of the schedule raised in an email
18 from Elizabeth Lambe of Los Cerritos Wetlands Land
19 Trust. The committee also has some questions regarding
20 parts of the FSA. We will then provide an opportunity
21 for the general public to comment, and after that, the
22 committee will go into closed session. At the
23 conclusion of the closed session, I will return to
24 reopen the record just to adjourn the status conference.
25 Is there any question about how I'm going to proceed or

1 how we will proceed today from staff?

2 MR. BABULA: Just go -- is there --

3 THE HEARING OFFICER: I'm just -- I just
4 want to make sure everybody understands how the day is
5 going to go.

6 MR. BABULA: Yeah, I understand that.

7 THE HEARING OFFICER: And applicant.

8 MR. HARRIS: One clarification, when you
9 return from executive session, do you expect the parties
10 to be here?

11 THE HEARING OFFICER: I don't think that's
12 going to be necessary because in either case, the
13 staff -- or rather -- the committee is going to issue a
14 written ruling and/or a written schedule. So -- and
15 that would come out in pretty short order.

16 MR. HARRIS: So only -- it's only for
17 procedure.

18 THE HEARING OFFICER: That's right.

19 MR. HARRIS: Thank you.

20 THE HEARING OFFICER: And essentially, the
21 record -- or the transcript will show that I came down
22 and adjourned and "nothing further."

23 Any questions about how we're going to proceed
24 today, Ms. Lambe?

25 MS. Lambe: No. I'm, I'm clear. Thank you.

1 THE HEARING OFFICER: Okay. Great. Let's
2 begin then.

3 Staff, if you wouldn't mind, just for the benefit
4 of any members of the public that might be on the phone,
5 just give a quick summary of what your motion is and
6 then what staff's position on it will be.

7 MR. BABULA: Sure. So that motion dealt
8 with the Alameda's Generating Station, which is the
9 existing facility that's out at the site area. So the
10 question is, is how does staff treat the potential
11 decommissioning and demolition of that facility. Is
12 that a part of the project in front of us, or is it for
13 the Alameda Energy Center or is it not part of it based
14 on the most fundamental criteria that the Alameda
15 Generating Station does not need to be demolished or
16 shut down for the Alameda Energy Center to create a new
17 bill.

18 Staff's position was that, at most, the Alameda
19 Generating Station is just one of many other facilities
20 in the area that would fall under a cumulative impact
21 analysis, where the potential demolition is foreseeable
22 because there is an agreement between the applicant and
23 the City for some future demolition, but that it's not
24 part of this project. So staff's motion set forth the
25 legal basis for that and factual components. And staff

1 agrees with the committee's tentative ruling, which
2 found that the Alameda Generating Station is not part of
3 the project, and so it's direct and indirect impacts of
4 some future demolition will not be considered but it
5 would be considered as part of the cumulative impacts
6 analysis. And so because of the committee's tentative
7 decision, I don't really have anything further to
8 address. I think it was well covered in there as well
9 as the applicant's motion supporting staff's motion.

10 THE HEARING OFFICER: Thank you, Mr. BABULA.

11 And, applicant, anything further on that?

12 MR. HARRIS: Just first off, I'd like to
13 thank the staff for putting the issue in front of us at
14 this time because I think it was a wise move to put this
15 issue on the table now instead of waiting until later.
16 So thank you for the -- staff for doing that. I thought
17 it was -- Mr. Babula's brief was very well written, and
18 we support his analysis. We have seen our arguments and
19 what else is in the tentative ruling. They're very much
20 in agreement with the conclusion on page eight, and so
21 no need to go back down to our reasoning on that. Just
22 to say, I think the right cases were cited, and I think
23 this was the right result. Thank you.

24 THE HEARING OFFICER: Thank you, Mr. Harris.

25 Ms. Lambe.

1 MS. Lambe: You have to unmute it.

2 Well, we submitted, in writing, our views and I
3 can go over them again -- or I'm pretty sure everybody
4 had a chance to look at that and I don't know if there's
5 any questions?

6 THE HEARING OFFICER: Thank you. Yes. We
7 have read -- well, actually there were several
8 submissions. There was the original comments and then
9 there was your most -- your reply brief. And then we
10 also received your most recent filing that came within
11 about a week ago I guess.

12 MS. NELSON: October 7th.

13 THE HEARING OFFICER: October 7th.

14 Actually, I was talking about the September 30th
15 filing.

16 MS. NELSON: Okay.

17 THE HEARING OFFICER: That clarified the Los
18 Cerritos Wetlands Land Trust's petition with regard to
19 the ruling. So, so we have read all of those
20 submissions, Ms. Lambe. Just wanted to know if there
21 was anything further you wanted to add this morning?

22 MS. Lambe: Well, it sounds like you read
23 the memos that I sent on Friday, right? That's --

24 THE HEARING OFFICER: Yes.

25 MS. Lambe: -- most relevant. Then, I

1 guess, I don't have anything to say other than if there
2 was any questions or clarifications.

3 THE HEARING OFFICER: So the committee has
4 no further questions or clarification with regard to
5 these.

6 What's going to happen -- just so you're clear --
7 so all the parties are clear -- is the committee is
8 going to go into a closed session just to speak with
9 each other in a noticed closed session and talk about
10 the contents of the ruling and if there's any changes to
11 be made, et cetera.

12 So at this time here, having heard from all of
13 the parties, let's move onto the next matter before us,
14 which is the schedule.

15 Now, on September 22nd, I sent a hold-the-date
16 memo to the parties to hold the date of November 15th,
17 2016 for an evidentiary hearing. On September 30 --
18 or -- yes, September 30th, I docketed an email receipt
19 from Elizabeth Lambe of the Los Cerritos Wetlands Land
20 Trust asking to move the date to November 29th, 2016
21 because of her and another volunteer's unavailability.
22 On October 3rd, 2016, we received the applicant's
23 objection to Los Cerritos Wetlands Land Trust's request.

24 So here again, we have received everybody's
25 moving papers, but we want to hear if there was anything

1 further. The movant in this case would be Elizabeth
2 Lambe. So we're going to let her comment first before
3 going to the other parties.

4 So, Ms. Lambe, you have the floor.

5 MS. Lambe: I don't have a lot to say other
6 than, I mean, for better or for worse, I have definitely
7 tried to participate in this process as expeditiously as
8 possible, and this just happens to be one of those
9 perfect storms, where I'm not going to be around for
10 that time period. So I hope -- yeah. I think I put
11 them all in the memo.

12 THE HEARING OFFICER: Yes, you did. Thank
13 you. And so I understand you're out of town for
14 November 6th, through November 20th.

15 MS. Lambe: Right, and I'm rarely out of
16 town.

17 THE HEARING OFFICER: Thank you. Is there
18 anything further on that?

19 Ms. Lambe?

20 MS. Lambe: No. I just thought I was -- and
21 I think I am -- saving time by having written this all
22 and sent it around. So I don't have too much to say
23 right now.

24 THE HEARING OFFICER: Thank you.

25 MS. Lambe: So then I think -- I hope that

1 what I sent in, people did have a chance to look at. I
2 think because -- I know Friday wasn't a lot of time, but
3 again, I wanted to get things in writing to make it as
4 easy as possible for people.

5 THE HEARING OFFICER: Applicant, did you get
6 a chance to read the additional memos submitted by Ms.
7 Lambe?

8 MR. HARRIS: On Friday, we did. Although,
9 we're not really clear on the nature of the conflict for
10 the entire month of November but was wondering if she
11 can elaborate a little bit on that, what the conflict
12 is?

13 THE HEARING OFFICER: Okay. But you did
14 read it?

15 MR. HARRIS: I did, yeah.

16 THE HEARING OFFICER: Okay.

17 MR. HARRIS: Sure, the basis.

18 THE HEARING OFFICER: Okay. Staff, did you
19 have a chance to read Ms. Lam's submission?

20 MR. BABULA: Yes.

21 THE HEARING OFFICER: Ms. Lambe, everybody
22 read it. I'm just gonna -- I want to have a quick
23 off-the-record conversation with the commissioners, and
24 then I want to get back on.

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(Off the record.)

THE HEARING OFFICER: We're going to go back on the record now. We're back on the record.

Ms. Lambe, the committee's interested to know whether you have anyone else who can appear in on your behalf during November 6th through November 20th?

MS. Lambe: To be honest with you, I really don't. You know, we're a very, very small organization, and I'm really their only representative. If that was the case, I would have made arrangements for that.

THE HEARING OFFICER: The reason I'm asking is because I noticed that your comments that came in on the PSA were brought to us via some law firm. I don't remember exactly who right now, but I did see that you had a law firm representing you as far as your comments were concerned, and I was wondering if those people could come in on your behalf?

MS. Lambe: Well, you know, they helped with the letter, but they're not part and parcel to this process. You know, they help a little bit when we need help. I mean, I just can't imagine we're very different from so many small environmental organizations in southern California. You know, we -- we're, we're, we're really a shoestring operations. And so yes, we

1 definitely contract for outside help, but it's a burden
2 for us.

3 THE HEARING OFFICER: I understand that.
4 You know, from time to time, we run into this problem,
5 and we have to deal with it on a case-by-case basis.

6 At this time, let's hear then the only opposition
7 we received in terms of your request, came from the
8 applicant. So let's here from the applicant next
9 regarding the request for extension of time for the
10 evidentiary hearing.

11 MR. HARRIS: Thank you. I'm still not clear
12 on why the entire month is out.

13 THE HEARING OFFICER: Well, she does say in
14 her -- that she's out of town. Out of -- I thought she
15 said out of the country for -- from November 6th through
16 November 20th. And beyond that, I'm not sure it's any
17 of our business.

18 MR. HARRIS: Fair enough. Well, our folks
19 have made the effort to be here. We have looked at the
20 schedule that has been before us for quite a while, the
21 headache that is November. You know, we definitely
22 understand that the trust, as a group and not as an
23 individual, scheduling conflicts can occur. I
24 understand that, but again, the representation to this
25 committee was that this was an organization with 145

1 members and not a sole individual, and it was granted on
2 that basis as well.

3 I won't detail everything in our October 3rd
4 letter, but there have been plenty of opportunities for
5 the trust to speak and to act when requested by the
6 committee, and they have chosen not to. We haven't seen
7 a status report, I think, since July. And there haven't
8 been any responses to the committee's schedule
9 indicating conflicts, and then that's all very well
10 documented in our letter of October 3rd, so I won't go
11 through those bullets to explain pieces of those issues.

12 But, I guess, the bottom line is that there's
13 real potential of prejudice for the applicant, and I
14 think that has to weigh on the committee. I understand
15 how much this commission values public participation. I
16 think you have gone out of your way to solicit that
17 participation from the trust, and you have been very
18 diligent on the phone calls to see if they're there, and
19 if they're not, to make sure the record is clear. But
20 there is, potentially, large prejudice to this process
21 going forward. We are already looking at the
22 possibility of not getting a decision in 2016. I think
23 we have all, sort of, resolved that that's not going to
24 happen, but early 2017 is critical, this project, going
25 through the process and being able to begin

1 construction. There are processes that follow on after
2 your decision that are critical and are time sensitive.
3 There's issues related to federal approvals, one of
4 which can be a complete stay on construction until that
5 approval is in place for the PSD permit. So we don't
6 have time to move this thing any farther in time without
7 losing the ability to potentially construct during
8 construction season 2017.

9 So those are the issues that, that weigh heavily
10 on us. We think the staff has worked very hard and put
11 together a very good document. We see very few issues
12 between us and staff, and just to be clear on that,
13 there's probably only one subject matter where we think
14 we'll need live testimony as between us and staff and
15 that's on cultural resources. And even that, I don't
16 think, is a long session. So the issues in this case
17 are very narrow. The purpose of the evidentiary hearing
18 is to develop a factual record. Are there facts that
19 need to be put before the committee, and that's a real
20 critical issue, but I think what you're going to hear a
21 little bit about is the lack of a determination of
22 compliance. And I want to focus on that issue for just
23 a second because I think the commission's obligation
24 under the 1978 MOU is to accept that FDOC into your
25 record, that comes into your record. It's usually

1 sponsored in by staff, but there's no witness associated
2 with the FDOC. There's no testimony associated with the
3 FDOC. It becomes part of your record, and it's a vital
4 part of your record for sure, but it's not part of the
5 record you're even going to need for evidentiary
6 hearings. We think that you might have a party request
7 a hearing on air quality or public health afterwards. I
8 don't think you're going to hear it from us, but it may
9 happen. And at that point, I really want to focus on
10 what that FDOC is, and it's a document you accept. It's
11 not one that's sponsored by a witness. It's not subject
12 to cross-examination. It's not subject to amendments by
13 the commission.

14 So there are essentially no, I think, strong
15 reasons to delay this proceeding any further, and there
16 are a lot of good reasons to allow this project, which
17 has been identified as a critical part of the State's
18 OTC policy, to phase out and the liability in southern
19 California moving forward and in a way that we will be
20 prejudiced -- I'll use that term again -- with any other
21 significant delays. So I appreciate scheduling
22 conflicts can arise, but I think the committee order is
23 pretty clear on the scope of participation here for the
24 group, and we really want this process to move forward
25 in a way that allows this project to be built.

1 THE HEARING OFFICER: Thank you, Mr. Harris.

2 Can I get a comment from staff.

3 MR. BABULA: Sure. We didn't --

4 MS. Lambe: So, so, so I have just been
5 jotting down a couple of notes, so just let me know when
6 I can say a couple words.

7 THE HEARING OFFICER: I will, and what I'm
8 going to do, Ms. Lambe, just so you know, is I'm -- I go
9 around the table and I ask for applicant's response to
10 your comments. I'm now asking for staff's response to
11 your comments. And since this is basically your
12 motion -- although it's couched in terms of the
13 request -- I'm going to -- I'm going to let you have the
14 last say with regard to the scheduling. I just --
15 Ms. Mathews, who is our public advisor, is coming
16 forward to the microphone and seems to have a question.
17 So --

18 MS. MATHEWS: I can wait until after staff
19 responds. I just have a request for the committee.

20 THE HEARING OFFICER: Okay.

21 MS. MATHEWS: Of an inquiry that I'd ask the
22 committee to make.

23 THE HEARING OFFICER: Let's -- let me do
24 that after. Do you need to -- is it something that you
25 need applicant and staff to address?

1 MS. MATHEWS: They may want to.

2 THE HEARING OFFICER: Let me do this, let me
3 have staff respond to the initial comments by Ms. Lambe.
4 Let's then hear from Ms. Lambe, and then I would ask
5 your comments, and then I'll go around and see if
6 anybody has any response.

7 Okay. So let's hear from staff.

8 MR. BABULA: Yeah. Okay. Thanks. So we
9 didn't find anything in the written and the only -- my
10 main comment right now is the time to actually look at
11 the November 15th date, is that, you know, part one of
12 the deficit came out from, we're still waiting on the
13 FDOC. And so, sort of, the, the element of the schedule
14 is, we still don't have a clear message and it may be
15 easier just to inform us today exactly when the FDOC
16 will come out. Because whereas -- and I understand what
17 staff is saying regarding the FDOC, the document,
18 itself, but you got to remember, staff uses that
19 document to formulate our section and the air quality
20 section. And so under our regs, the standard is 14 days
21 for a hearing, the section has to come out. So if we're
22 looking at November 15th as our evidentiary hearing for
23 everything, we would need to have that, that set part
24 two, the FSA, out 14 days before now the regs to go out
25 for the presiding member to change that. This date

1 range would be less than 14 days. And so one of the
2 factors that we're looking at is we want to get that
3 part two of the FSA, which is the air quality and public
4 health sections, out hopefully two weeks before November
5 15th so that then we could have one evidentiary hearing
6 that covers everything, and so that issue is still
7 floating out there as a factor in the schedule
8 regardless of the vacation schedule or career schedule
9 of the energy center. We also have this other factor
10 of, "Do we get the second part of the FSA out and keep
11 to this November 15th schedule?"

12 I would also like to say that, you know, staff is
13 open to Ms. Lambe and her organization submitting
14 written materials to be put into the record even if
15 they're not physically present. I think we would be
16 open to letting them submit what their opening testimony
17 and information if that is a mechanism to, kind of,
18 makes this work in this situation.

19 THE HEARING OFFICER: That's, that's great.
20 Thank you, Mr. Babula.

21 And I just want to say, before I turn it back to
22 Ms. Lambe, Alana Matthews, who is, is our public
23 advisor, could assist Los Cerritos in understanding how
24 to basically submit declarations to support their
25 testimony so that -- just that staff can have something

1 and then their testimony. Los Cerritos, could also --
2 and they will have to anyway -- submit their testimony
3 under oath.

4 So with that, let's go back to Elizabeth Lambe,
5 and any follow-up comments or statements, go ahead,
6 Mrs. Lambe.

7 MS. Lambe: Sure. Let me pass -- we're
8 sharing a little speaker phone here -- let me pass the
9 phone over to Joe Geever who has been helping us with
10 this if you don't mind.

11 THE HEARING OFFICER: Go ahead.

12 Mr. Geever, could --

13 MR. GEEVER: This is --

14 THE HEARING OFFICER: Could you please spell
15 your name for the court reporter.

16 MR. GEEVER: Yes. It's G, like "George,"
17 E-E-V, like "Victor," E-R.

18 THE HEARING OFFICER: Thank you. Go ahead.

19 MR. GEEVER: Can you hear me?

20 THE HEARING OFFICER: Now we can. Go ahead.
21 You have the floor, Mr. Geever.

22 MR. GEEVER: Okay. So -- yeah, the
23 discussion, I think, is a little bit confusing. So in
24 the memo that we sent on October 7th, we actually
25 revised our request for scheduling and it's, kind of, --

1 I mean, just to summarize it, the schedule that was sent
2 out was, kind of, a bunch of dates that were triggered
3 on finalizing the staff assessment. And the staff
4 assessment that was published was a partial staff
5 assessment. So in our minds, that's not really the
6 final, final staff assessment and that those dates
7 following it are, kind of, enough time to respond to the
8 final, final staff assessment. So it's like, like your
9 counsel was suggesting, it's not necessarily about a
10 vacation out of the country, but we'll be out of the
11 country. It's not necessarily based on that. It's
12 about that schedule -- that schedule being triggered by
13 the final staff assessment, which, in our minds, has not
14 been published. And I can -- you know, I have been
15 going through the partial final, final staff assessment
16 and found pieces of referencing in biological resources
17 in other places that refer back to the sections like air
18 quality that are not in the partial final staff
19 assessment. It just seems to us they have to finalize
20 it before you start triggering all this process.

21 THE HEARING OFFICER: Thank you, Mr. Geever.
22 Anything further on that?

23 MR. GEEVER: No. I hope that's -- I'm not a
24 professional at this stuff, so I hope that makes sense.

25 THE HEARING OFFICER: It makes complete

1 sense, and we're going to hear from the parties about
2 that.

3 Next, I'm going to hear from Ms. Matthews, Alana
4 Mathews, our public advisor is here.

5 It doesn't look like your microphone is working.

6 MS. MATHEWS: I don't think it's working,
7 but I think I can project my voice. If you guys want me
8 to come to a microphone, I can move.

9 I was just going to ask the committee to -- if
10 you can make an inquiry as to whether or not the absence
11 of Ms. Lambe would affect the public participation of
12 members of that organization or any other members of the
13 public and to have a chance for that to be addressed by
14 all the parties.

15 THE HEARING OFFICER: Thank you. So just to
16 be clear, Ms. Matthews, you're basically not just
17 limiting your question to Los Cerritos Wetlands Land
18 Trust but anybody who was looking to them to, sort of,
19 serve as public comment for them?

20 MS. MATHEWS: Correct.

21 THE HEARING OFFICER: Did you get that
22 question, Ms. Lambe, or, Mr. Geever?

23 MS. Lambe: Yeah. I mean, the, the --
24 because we're a small locally based organization, I'm,
25 I'm the designated person. There really isn't anyone.

1 Yeah, I mean, our members aren't really -- they're
2 activists corps. And this, I got to be honest with you,
3 is such a complicated process, it's, you know, it's just
4 not very -- possible.

5 THE HEARING OFFICER: Is that a satisfactory
6 -- Ms. Mathews, did you have anything further on that?
7 Any other question on that?

8 MS. MATHEWS: I don't have any questions. I
9 just wanted the inquiry to be made for the committee to
10 consider to make sure that information is considered.

11 THE HEARING OFFICER: Thank you. And just
12 to be clear, for those of you on the phone that Ms.
13 Matthews said she has no further questions. She just
14 wanted that inquiry to be made.

15 Now, having made that inquiry, what -- I think
16 I'll just go around the table one more time and then I
17 think we'll -- we're going to have to have the matter
18 submitted.

19 So go ahead, Mr. Harris.

20 MR. HARRIS: Well, thank you. A couple
21 things. I think we need to hold the date on the 15th
22 for the hearing. It is consistent with commission
23 precedent to have a second set of hearings on the FDOC.
24 We did this in the Huntington Beach approval. The FDOC
25 actually came in less than 14 days before the hearing

1 date. The committee did issue the type of order that
2 Jerry talked about. So to suggest that you can't move
3 forward at all until the air district act, I think, is
4 just incorrect, and I think it's improper. We will
5 expect -- we'll hope for the best but prepare for the
6 possibility of a second day hearing based on just
7 accepting that FDOC into the record and accepting
8 staff's two sections that are affected by this FDOC. So
9 that seems to be pretty self-evident.

10 In terms of the suggestion that the staff -- or
11 excuse me -- that the trust participate, you know,
12 obviously, they're going to need to file their testimony
13 before they leave on November 6th. So we'll have their
14 testimony, and we're amenable to the possibility of
15 accepting that all by declaration as well. So there
16 would be no prejudice to their evidentiary record in
17 that respect. And so if that's an accommodation that we
18 can make to the trust, accept their testimony and leave
19 any, any contested issues to briefing, I think that's
20 probably the result.

21 THE HEARING OFFICER: Okay. Thank you.

22 Staff.

23 MR. BABULA: Just one clarification. On
24 this final, final, final staff assessment, so what was
25 published, the technical sections that were published,

1 those -- that is the final staff assessment for those.
2 And so we will be publishing the remaining two sections
3 in part two of the final staff assessment. And so when
4 that comes out, those will not be, be doing or doing
5 anything with the first batch of ones in part one. I
6 would ask the committee to see if the air district is on
7 the phone to maybe give us some insight if they have a
8 potential date. That would be helpful and that would
9 also help and it will give you the ability to maybe set
10 a schedule. So maybe we can ask the air district.

11 THE HEARING OFFICER: Before I ask the air
12 district, I just wanted to hear from -- if there was
13 anything further from Ms. Lambe or Mr. Geever.

14 MR. GEEVER: Well, yeah. Obviously, we're
15 looking for -- oh, I'm sorry. This is Joe Geever again.
16 Obviously, we're looking forward to the second part of
17 the final staff assessment so we have all the pieces of
18 the puzzle and not to repeat myself, or at the risk of
19 repeating myself, that's what the schedule looks like,
20 you know, triggers three weeks after the final staff
21 assessment, four weeks after the final staff -- so based
22 on that date, when the staff assessment is finalized, so
23 we'll wait for your ruling, but I think we laid it out
24 in the memo. But -- thanks.

25 THE HEARING OFFICER: And thank you. And

1 let me ask you, Mr. Geever, or, Ms. Lambe, are you -- do
2 either of you expect to testify as experts, yourself, or
3 were you going to just call other people to serve as
4 your expert witnesses?

5 MR. GEEVER: Well, we would be testifying
6 ourselves, trying to submit some written documents,
7 evidence, and there's a possibility yet depending on
8 what the scope is, there's a possibility that we would
9 bring experts.

10 THE HEARING OFFICER: Okay.

11 MR. GEEVER: I mean, because we haven't
12 gotten a ruling on the staff's motion, it's a little
13 unclear to us, you know, if the committee rules against
14 the motion, then that changes the project description as
15 a completely different prep. But if it's cumulative
16 impacts, then that raises some other issues about the
17 adequacy of the cumulative impacts and the necessity for
18 an alternatives analysis. But that -- it's a little bit
19 hard to tell you in any definitive way how we're going
20 to proceed. That's why we're waiting for the final
21 staff assessment.

22 THE HEARING OFFICER: Okay. Thank you, Mr.
23 Geever.

24 Let's, let's then open up the phones to the South
25 Coast Air Quality Management District people, Ms. Lee,

1 and, Mr. Chondon, are you there?

2 MR. CHONDON: Yes. Hi. This is Mr.
3 Chondon. Can you hear me?

4 THE HEARING OFFICER: Yes, we can. How are
5 you doing on the FDOC, Mr. Chondon?

6 MR. CHONDON: We're still working on it.
7 Unfortunately, I cannot commit to a date at this time.
8 The comments have been too -- were very comprehensive.
9 We are -- have been working on --

10 THE HEARING OFFICER: I'm sorry, but I'm
11 having a hard time hearing you, Mr. Chondon. Is there a
12 lot of -- are there several people in the room with you
13 there?

14 MR. CHONDON: No. I'm alone in this room,
15 but I'm on my cellphone. So is it clear now?

16 THE HEARING OFFICER: Now it is. If you can
17 keep it right where it is, that would be great.

18 MR. CHONDON: Okay. Great. So what I was
19 saying was the comment periods ended on August 24th.
20 The comment -- we just received one comment, but it was
21 really comprehensive. We are working very diligently to
22 address those comments. We have -- legal staff.

23 THE HEARING OFFICER: I'm sorry, Mr.
24 Chondon. We accidentally muted you here in the room it
25 seems. I heard what you said up to and including your

1 8/24/16 comments that you're diligently working on, and
2 then I didn't get anything after that. So go ahead.

3 MR. CHONDON: Okay. So we basically have
4 received only one comment letter. The comment letter
5 was very comprehensive. It had a lot of details that we
6 need to look into. We are working diligently on
7 addressing those comments. We have made quite a bit of
8 progress of the district's staff, including modeling
9 staff, resources staff, and our legal people are all
10 involved in drafting the response to the comments.
11 We -- there are some issues that we need to look at as
12 far as the BACT limits are concerned. The layer of BACT
13 analysis, we are looking back at those as far as the
14 FDOC is concerned to determine if we need to change
15 anything there. We change one of the BACT limits on the
16 simple cycle for the CO BACT, but there are other
17 comments that we need to address and the comments are
18 very comprehensive. It's taking time. We are a lot
19 closer to finishing than we were a few weeks back, but
20 unfortunately, I don't have a date that I can commit to
21 at this time.

22 THE HEARING OFFICER: Okay. Well, last time
23 we spoke, you said you were -- you felt that you were
24 weeks away rather than months away being able to produce
25 an FDOC. And now we are a month away from when we spoke

1 last and then some. So do you think you're, what, 90
2 percent done?

3 MR. CHONDON: I would say 80 percent done.
4 We are pretty close, the FDOC. We are definitely --
5 internally, can initial the FDOC and still continue to
6 address to some of those comments, which we can, you
7 know, incorporate before the permit to construct are
8 issued, but these are internal discussions that we are
9 having to start the process. But, you know, we are
10 still a few weeks away from completing and submitting
11 the FDOC.

12 THE HEARING OFFICER: Thank you.

13 Anything further, Mr. Chondon.

14 MR. CHONDON: As you know, we will keep
15 working on this and the work load of the CEC staff and
16 we appreciate all the help that they have given us, and
17 we'll continue to work with them to make sure that
18 they're in the loop if there are any changes involved.

19 THE HEARING OFFICER: Thank you, Mr.
20 Chondon.

21 And then we also have Ms. Vicky Lee on the lines.

22 Did you wish to make any further comment,
23 Ms. Lee?

24 MS. LEE: No, not at this time. Thank you.

25 THE HEARING OFFICER: Okay. Thank you.

1 So parties, now we have some sense that the air
2 quality FDOC is, in their words, a few weeks away. And
3 so with that, let me just ask applicant -- anything
4 further on this?

5 I just want to say, for the record, that,
6 Ms. Lambe, and, Mr. Geever, that the Energy Commission
7 has -- we have, in the past, very often, bifurcated
8 cases, and specifically, it's because of this type of
9 situation where you have the air quality management
10 district that staff depends upon for the air quality
11 analysis coming in late. And so what we'll often do is
12 what we call bifurcate, which means we take in the
13 evidence of all the other subject areas in their
14 entirety and take in that evidence at an evidentiary
15 hearing. So just as a practical matter so you
16 understand what would happen in this case, let's say
17 they come in, in three or four weeks with the FDOC.
18 Staff would need a couple of weeks for them to finish up
19 their air quality section. So that's a few more weeks.
20 Then what would happen is, once they file that, we would
21 file a new notice for the rest for part two of the
22 evidentiary hearing so that we would have the
23 evidentiary hearing on all outstanding matters, which in
24 this case is air quality and greenhouse gases only
25 because we --

1 MR. BABULA: Public health.

2 THE HEARING OFFICER: I'm sorry. Public
3 health, air quality, greenhouse gases are the only
4 outstanding subject areas. And what we have received
5 now is the final record of staff's testimony except air
6 quality, greenhouse gases, and public health. So that's
7 the way we have done it in the past, and so I, I hope
8 that gives you a better idea of the way that we would
9 handle the bifurcation.

10 Go ahead, Mr. Harris.

11 MR. HARRIS: I'm sorry. We were conferring
12 over here. I appreciate it. No. I think we have
13 clearly vetted the issues. I think there's a means in
14 your process to allow pretrial testimony to come in. I
15 think, obviously, that testimony limits what can happen
16 orally and -- you know, in the event of an unfair
17 surprise. So I think that may be a very nice workaround
18 here, and we appreciate the opportunity to be able to
19 get out testimony in on file, to get the other party's
20 testimony on file, and I think commission's precedent
21 does allow you to do as you suggested, which is to
22 bifurcate those issues and hold the hearing until
23 materials are filed.

24 THE HEARING OFFICER: Staff, anything
25 further?

1 MR. BABULA: No. Unless Matt or Nancy has
2 any -- no? Okay. Our air quality staff is here, but
3 they don't have anything to say, but we're flexible to
4 work the evidentiary hearings that, sort of, fit the
5 needs and people's schedule and also allow staff the
6 appropriate time to do their work.

7 THE HEARING OFFICER: Okay. Then last but
8 not least, Ms. Lambe, or, Mr. Geever, any final thoughts
9 on scheduling?

10 MR. GEEVER: Well, obviously, we're not
11 familiar with what you have done in the past, so I don't
12 know what the precedence is, but it is a little bit of a
13 disadvantage when you don't have the final staff
14 assessment because -- just for example -- some of the
15 issues in the air quality section are relevant to the
16 analysis in the biological resources section may not
17 have -- well, I think we put it in the memo but it
18 just -- it makes it difficult to make a comprehensive
19 review when you don't have all the pieces of the puzzle
20 in front of you.

21 THE HEARING OFFICER: I think your point is
22 well taken and that is always the problem that we face.
23 And in order to ensure due process for the parties and
24 make sure that the Los Cerritos Wetland Land Trust has
25 the opportunity to inquire, question, examine on air

1 quality issues as they relate to the subjects that were
2 published in FSA part one, I believe that the committee
3 would routinely allow questioning, say, into bio, for
4 instance, at the -- at the second evidentiary hearing,
5 limited to air quality issues as they relate to bio. Is
6 that -- is that clear, Mr. Geever?

7 MR. GEEVER: I hate it say it, but no, it's
8 not. I mean, I -- for example, we have never been
9 through this process. We don't really know how -- if
10 the original evidentiary hearing is about all the
11 subjects in the final staff assessment but air quality
12 and public health, and so you postpone those questions
13 about air quality but those questions have a direct
14 relevance to what's been the biological -- and in any of
15 the other subjects.

16 THE HEARING OFFICER: Certainly. I --

17 MR. GEEVER: No. It's not clear to me how
18 you track back -- and it's also not clear to me how --
19 if you're going to have a second evidentiary hearing
20 anyway, having the first evidentiary hearing, you know,
21 streamlines anything. But look, we are admittedly just
22 members of the public trying to, you know, navigate our
23 way through this thing. If this is -- if this is the
24 way you do it, we will do our best to participate with
25 whatever you set up.

1 THE HEARING OFFICER: And I appreciate your
2 compliance with that. A couple of thoughts I want to
3 share with you. One is the public advisor is here and
4 available to advise and assist you in navigating our
5 process, which is, admittedly, not necessarily the
6 easiest thing to do when you have never done it before.

7 The other thing I would tell you is if you peruse
8 the Warren Alquist Act, which is our enabling statute,
9 and you look to see well, where, where -- how much say
10 do the parties have over the scheduling, what you'll
11 find -- there's a section 25522, that basically says
12 that we, the Energy Commission, are obligated to move
13 with alacrity and we have to get our divisions done in
14 18 months, and it allows for an extension of time only
15 as mutually agreed upon. That's what the statute says,
16 "mutually agreed upon between the applicant and the --
17 and the presiding member." And so you understand that
18 the applicant has a -- has a real interest in moving
19 their project along. You know, time is money and that
20 sort of thing. But there are -- there is no other rule
21 or reg that I'm aware of that says anything about
22 parties input with regard to our scheduling. So I'm
23 just sharing that with you, because there's a lot of
24 factors involved in this sort of thing.

25 One of which, now as we're talking, is we have

1 now heard that because the FDOC is a few weeks away --
2 and as I said, it's not just FDOC coming in, in a few
3 weeks, it's the FDOC coming in, in a few weeks and then
4 staff taking a couple of weeks to finalize their staff
5 assessment. So we're looking at however long it's going
6 to take to get that FDOC out. There's additional time
7 tacked onto that that is for staff's analysis.

8 In the meanwhile, Mr. Geever, what we're going to
9 have is a transcript because we -- everything that we're
10 doing right now is -- we have a court reporter in the
11 room. She's taking this down. We'll get a transcript
12 for all of our hearings and conferences, and so you will
13 have the benefit of having the entire record for you
14 before we ever get to the second FSA, the air quality
15 portion.

16 So with that then, having heard from all of the
17 parties, what we're going to do then is I'm going to go
18 around and ask if there are any other matters --
19 actually, committee has some questions for staff with
20 regard to the FSA but I -- after I ask questions of
21 staff, I'm going to go around and ask if the parties
22 have any further questions. After that, we're going to
23 take public comment, and after that, we will go into a
24 closed session.

25 So moving on to the next question I have, and

1 this is directed to staff, you may recall that at the
2 last status conference, I raised some questions about
3 the overlap between CEQA analysis. I think it was in
4 the context of, perhaps, water -- or I don't remember
5 exactly. But I did see that what did make its way into
6 the FSA was in your LORS table, where you -- there's a
7 three column table basically says what the LORS is, a
8 description of the LORS, and then whether they're in
9 compliance or not. And then in a LORS table, there's
10 a LORS -- the City of Seal Beach general plan
11 circulation on it, and again, we have the situation
12 where it says,

13 "It is consistent with compliance, with,
14 trans two condition of the AEC project trips
15 to the traffic volumes estimated on the City
16 railways and intersection in the City of
17 Seal Beach during the AEC deconstruction
18 period, which is January 20th -- January 20,
19 21, which creates a significant impact for
20 one intersection, which is the Pacific Coast
21 Highway at Seal Beach Boulevard during the
22 morning peak period. While the AEC is not
23 consistent with the LORS standards for the
24 City, the level of service standard for the
25 City of Seal Beach, the impact would be

1 temporary and trans two requires the project
2 to be staggered during the arrival time of
3 the workforce during the morning peak
4 periods, so that the impacts are reduced to
5 a less than significant level,"

6 which I appreciate in terms of a environmental
7 CEQA impact. But this is under the LORS table. So it
8 seems like we have a noncompliance, and I'm trying to
9 ascertain whether there's going to be -- I mean,
10 because -- either you're in compliance or you're not and
11 then we need to do an override on or not on it, but you
12 can't -- I can't have a CEQA reduced to a -- you know,
13 below significant on a LORS. So what can staff do about
14 that is what I want to know at this point? Are we going
15 to have to call an expert at the evidentiary hearing and
16 deal with this?

17 And also, this is the only -- I want to be clear,
18 I'm asking staff to go back and look at your FSA and
19 make sure -- this is -- this is the only one I have
20 seen -- but make sure if there are any more like this,
21 that we have got to deal with this head on.

22 Go ahead, Mr. Knight.

23 MR. KNIGHT: Eric Knight, environmental
24 office manager.

25 THE HEARING OFFICER: Spell your name,

1 please.

2 MR. KNIGHT: K-N-I-G-H-T, and Eric is
3 E-R-I-C.

4 Let me -- I'll go back and look at it but it,
5 kind of, seems like if the conclusion was the mitigation
6 trans two reduce the impact of less than significant
7 that means that the LORS has been moved up to an
8 accessible level; therefore, it would also achieved LORS
9 compliance, but I mean, we'll go back and look at it.

10 THE HEARING OFFICER: That's not what the
11 testimony says. I need to know that.

12 MR. KNIGHT: But it sounds like it's an
13 inconsistency in my view.

14 THE HEARING OFFICER: Well, I would
15 appreciate if staff would go back and look.

16 MR. BABULA: And that can be, we could -- we
17 could just, like, have the technical person just file --
18 opening testimony, file a supplement page that just
19 would supplement that as a mechanism to notify.

20 THE HEARING OFFICER: Okay. That's fine. I
21 just wanted to bring that to your attention, and I want
22 to make clear that in all probability, ladies and
23 gentlemen, the next order that's going to come from this
24 committee is going to be a prehearing conference, a
25 notice of prehearing conference with the orders, usual

1 orders, and notice of that evidentiary hearing. So if
2 there's any kind of clean-up evidence that needs to come
3 in, now's the time to take care of that.

4 MR. BABULA: Okay. I actually have a
5 question for the applicant, but we can go through your
6 questions first.

7 THE HEARING OFFICER: That was really the
8 only one.

9 MR. HARRIS: Can I respond to his question
10 before we --

11 MR. BABULA: Sure.

12 MR. HARRIS: But there's also a legal issue
13 here, and that is quite simply that the ordinances at
14 Seal Beach are not applicable LORS. They are LORS for
15 another jurisdiction. And to make that case in simple
16 legalize, just assume as the -- a project of this
17 size -- I assume it's a 49 megawatt project and it's
18 getting licensed by the City of Long Beach. The City of
19 Long Beach is not analyzing the traffic LORS for the
20 City of Seal Beach, and so I think as a matter of law,
21 it should not be a LORS or noncompliance. We welcome
22 the staff's clarification, and maybe rebuttal testimony
23 is the best way to do that, but it's not an applicable
24 LORS and so we wouldn't have to override it is our legal
25 position.

1 MR. BABULA: We'll look at it.

2 THE HEARING OFFICER: Yes. Okay. Ms. Lambe
3 or Mr. Geever?

4 MR. BABULA: My question to applicant is you
5 said there's an issue of cultural, would you like to
6 elaborate so that we can get a sense of what the issue
7 is and do you have suggested fixes or --

8 THE HEARING OFFICER: Ms. Nuemyer, I need
9 you to state and spell your name.

10 MS. NUEMYER: This is Samantha Nuemyer on
11 behalf of the applicant. This relates to Cul 6 I
12 believe, and it's the condition related to undiscovered
13 archaeological resources and to, I guess, sum it up, we
14 don't believe that full-time archaeological monitoring
15 is appropriate and -- based on the land forms that are
16 present and the amount of fill and work that's already
17 been done on that site, and so we just think it's, kind
18 of, a small factual dispute with CEC staff at this
19 point. And so we're going to be requesting that our --
20 the Cole 6 that we proposed in the -- or in our PSA
21 comments to be adopted.

22 MR. BABULA: Thank you. We'll take a look.

23 THE HEARING OFFICER: Anything? Any further
24 questions from staff?

25 MR. BABULA: No. That was it. If they --

1 if there are any other -- want us to take this time
2 since we're all here if there's anything else you want
3 to bring up.

4 MR. HARRIS: That was based upon our
5 thorough discussion this morning at 9:00 this morning.
6 That was the one that we thought we might have to have
7 some actual live witness testimony. It's one where the
8 visuals would be important, all that stuff would be
9 pre-filed, of course, and we would be certainly open to
10 the idea of some -- proposing some language in rebuttal
11 testimony. Perhaps, you guys, could do based on our
12 statements to get that off the table completely. That
13 would be our hope and our desire, but based upon the
14 discussion at Huntington Beach, we might need testimony
15 on that issue.

16 MR. BABULA: Okay. Well, we'll look at what
17 your comments on that staff's amended and take a look at
18 cultural stuff.

19 MR. HARRIS: And to answer your question
20 about other sections, and there's a couple of com
21 sections, compliance section, 13 and 14 and 15 -- I
22 think one of those more than the other. I think 13 is
23 the one -- that has the issue. There's some language in
24 there that triggers the notification to the Energy
25 Commission based upon notification with Cal ISO, and I

1 don't think we have a problem with that in concept.
2 It's more about the time bound nature of that. So if
3 instantaneously, you know, you lose a pump for, you
4 know, 20 minutes, you would notice the Cal ISO of that.
5 The pump is repaired in 20 minutes, you notice that as
6 well. Those kind of one-offs are the type of, probably,
7 hypotheticals that lawyers worry about more than real
8 world things. So we might be able to work out some
9 language on that as well and welcome a chance to do so.

10 MR. BABULA: I could offer that if there are
11 some refinements to some of the conditions that you want
12 to suggest or if also Wetlands want to suggest, feel
13 free to docket them beforehand, and we'll take a look
14 and see what we can do, if we want to agree or we can
15 then bring it to the hearing and try to work some of
16 these out especially if it's just looking at some
17 relatively minor language changes and things like that.

18 MR. HARRIS: That's a very good suggestion.
19 I knew about the -- I suggested the formal process,
20 where we file testimony and file rebuttal, but that
21 informal way may be the way to go. So thank you for
22 that suggestion.

23 MR. BABULA: And I also just want to point
24 out quickly just so people are aware, after reviewing
25 all of the comments, and it took the FSA to respond to

1 the comments, but with the comments made by the
2 wetlands, we made a number of changes. I have about
3 ten. I'll just go over a couple of them quickly that we
4 made based on the wetlands comments. We included
5 legless lizard and the pacific seahorse on the
6 endangered status species. We added the burrowing owl,
7 survey before construction mitigation. We changed some
8 of the potential for some of the birds species to be at
9 the site from not likely to moderate, and so we made
10 other changes, too, based on their comments. So we did
11 make an effort to thoroughly review the comments and
12 then make changes as appropriate based on the
13 information provided.

14 THE HEARING OFFICER: Do you anticipate
15 another workshop between now and the evidentiary
16 hearings?

17 MR. BABULA: No. Not -- no, I don't, but I
18 think we can use the docket, again, if the parties have
19 anything they'd like to suggest or edit or some language
20 for conditions. We just need to look at those and use
21 that to help manage the discussion so that when we do
22 come to evidentiary hearings, things are as refined and
23 focused as possible.

24 THE HEARING OFFICER: That would be great.
25 The, the thing I'd like to avoid is confusion because we

1 have got all of these versions flying around -- staff's
2 version, the applicant's version -- and so if there were
3 a way to get some sort of a agreed upon set of
4 conditions -- I guess maybe that's premature. We'll
5 have to wait until after the evidentiary hearing.

6 MR. BABULA: Yeah, that will. I mean, now
7 with our docketing system, we do have the ability to
8 have a fairly descriptive title when it shows on the
9 page. So that would be a tool to help people understand
10 what this stuff is. And then usually, it's customary,
11 once we get the final set, either the hearing
12 officer will ask -- give us a Word version of final set
13 of conditions or we can do that after. It's pure and
14 then it's correct, but they're going to have to use the
15 docket mechanism to, sort of, get the information
16 between parties outside of the notice rebuttal.

17 THE HEARING OFFICER: Thank you.

18 Let's hear one more time from Los Cerritos
19 Wetlands Land Trust about any of these questions or any
20 of these last discussions we have had.

21 Go ahead.

22 MS. Lambe: I don't have anything. Thank
23 you.

24 THE HEARING OFFICER: Thank you.

25 Or, Mr. Geever?

1 MR. GEEVER: No.

2 THE HEARING OFFICER: Thank you. Thank you.

3 At this time then, I'm going to -- we're going to
4 go to the public comment section of our staff's -- oh,
5 Mr. Harris, Go ahead.

6 MR. HARRIS: Yeah. Just one point we wanted
7 to raise. We think it's important that people be
8 working on their testimony. You -- based on the
9 schedule -- the scheduling order that's out there,
10 testimony would be due this Friday, and that's not an
11 issue for staff. Obviously, their testimony has been
12 filed, but for the Wetlands Trust -- has said several
13 times that they're not familiar with the process. I
14 think it's important the committee let them know that
15 that testimony be due as soon as Friday. I have a
16 feeling that maybe the committee will be a little more
17 generous than Friday, but we're working towards that day
18 internally and that's why Mr. Salamy is desperate to get
19 out of this room so that he can go back and work on
20 that. So I think it's important that that issue be laid
21 out there. And if there's any questions from the Trust
22 about the schedule, we put that on the table now.

23 THE HEARING OFFICER: Thank you.

24 What's going to happen is we, the committee, will
25 issue a notice of a prehearing conference of evidentiary

1 hearing, and included in that will be a new scheduling
2 order, and the new scheduling order will supercede all
3 prior orders, scheduling orders. Now, that said, we
4 don't know if FSA part two is going to come out, but
5 when it does, we will have to issue a new notice of
6 prehearing conference and evidentiary hearing and a new
7 schedule just for those sections. Okay. So that's -- I
8 want to be clear with the parties, what you're going to
9 get today or tomorrow or whenever I get it out, will be
10 the schedule for the FSA, part one. Okay.

11 And yes, absolutely, all parties should be
12 working on the testimony. I know we have received
13 staff's testimony. Applicant will file according to the
14 schedule that we published and so will Los Cerritos
15 Wetlands Trust, but absolutely be working on your
16 evidence at this time, because soon, we're going to have
17 a schedule that comes out, and these things always go
18 faster than you think.

19 We have -- at this time, we're going to go into
20 public comment. I have received one request to speak
21 from the public advisor from Dave Shukla. I'm sorry if
22 I pronounced your name incorrectly.

23 Ms. Avalos, if you can help him get a live mic
24 there.

25 Welcome, Mr. Shukla.

1 MR. SHUKLA: Hello. I didn't plan to speak,
2 so forgive me if I'm reading what I have written down.

3 Hi. My name is Dave Shukla. My parents' house
4 is located directly across the street from the Alameda's
5 Generating Station and for these proceedings is a noise
6 monitoring station one in the PSA FSA.

7 THE HEARING OFFICER: So let me just ask
8 you, so your folks live on the -- would that be the east
9 side?

10 MR. SHUKLA: They live directly west of AGS
11 across Studebaker and across the -- across Studebaker
12 across the -- whatever we call the channel, Los Cerritos
13 Channel.

14 THE HEARING OFFICER: Los Cerritos. Okay.
15 So we're on that side. Oh, okay. Go ahead.

16 MR. SHUKLA: Yeah. First, I'd just like to
17 thank Mr. O'Kane and Ms. Dahlia Gomez of AES for moving
18 so promptly to update the noise monitoring data. I
19 hadn't realized that there was data from five years
20 prior, but upon raising the issue, they were very prompt
21 and very considerate in making sure that there wasn't
22 just new data but that it was done for the full 28 days
23 like suggested.

24 Thank you.

25 And also, I'd just like to thank the CEC staff

1 for examining some of the land use issues related to our
2 southeast area specific plan in Long Beach since --
3 although this process and that one has -- had been
4 concurrent, there haven't been a lot of considerations
5 made there or really within the city so far as getting
6 engaged -- and you can tell that I have tried -- to
7 think through, kind of, the implications of this process
8 or certifying the AEC.

9 And the only other thing that I'd like to -- that
10 I'd like to add is I'm just here on behalf of my
11 parents, who are a bit older, and my brother, who is
12 disabled, and it really -- it's really important that
13 the public has a firm sense of what's to expect from the
14 project, and especially because there are things that
15 you can foresee will be related, you know, we would like
16 to very much know what we're in for, you know,
17 especially with subsequent demolition pursuant to the
18 state's mandate on eliminating the once through cooling.
19 So, you know, thankfully, there's space for that.

20 THE HEARING OFFICER: Thank you, Mr. Shukla
21 for your comments, and I don't know if you got a chance
22 to read the order, the tentative ruling?

23 MR. SHUKLA: I did.

24 THE HEARING OFFICER: And that's going to
25 get finalized by the committee at -- you know, but what

1 I would say is you had an opportunity to understand
2 there's a difference between the curtailment of a one
3 through cooling and decommissioning of the project,
4 which is different than demolition of the project.

5 MR. SHUKLA: Yeah, yeah. You don't have to
6 demolish all six sets to start on the AEC. I think I
7 understand that.

8 THE HEARING OFFICER: Thank you. Thank you
9 very much for your comments and for your participation.

10 Is there anything -- are there any other members
11 of the public who are here in this room?

12 I'm getting the shake of the head in the negative
13 from Mrs. Avalos. So then we will go to phone, but the
14 way I'd like to do this first is I'd like to see if
15 there are any members of any State or governmental
16 agencies that are on the phone, and if you are and would
17 like to make a comment, please speak up now.

18 Any governmental agencies on the telephone who
19 wish to make a comment? Speak up. Go ahead.

20 Okay. Hearing none then, let's go to general
21 members of the public. If there's anybody on the phone
22 at all that would like to make a comment to the
23 committee about anything having to do with the Alameda
24 Energy Center, please speak up now.

25 Go ahead. If you want to make a comment, make a

1 comment right now.

2 Hearing none, then we -- at this time, we'll go
3 into a closed session. We're still on the record, and
4 we'll go into the closed session upstairs, and
5 afterwards, I will come down and adjourn the meeting.

6 Thank you all for participating today.

7

8 (Closed session.)

9

10 THE HEARING OFFICER: Okay. Ladies and
11 gentlemen, if you're on the phone, the record should
12 reflect that there's nobody here other than staff
13 counsel, Ralph Lee, and the court reporter. It's about
14 two minutes past 12:00 noon.

15 The closed session, which was conducted in
16 accordance with Government Code section 1126 subdivision
17 C sub 3, which allows the State body including a
18 delegated committee to hold a closed session to
19 deliberate on a decision to be reached, any proceeding
20 that the State body was required to, by law, to
21 undertake, has been completed and concluded.

22 There's nothing to report out at this time other
23 than to say that any orders will be filed within the
24 next few days, a notice, the prehearing conference and
25 evidentiary hearing, and final ruling.

1 And with that, the status conference is
2 adjourned. We're off the record.

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4 (Whereupon the proceeding concluded at 12:03 p.m.)

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1 I, Brittany Flores, a Certified Shorthand Reporter of
2 the State of California, duly authorized to administer
3 oaths, do hereby certify:

4 That the foregoing proceedings were taken before me
5 at the time and place herein set forth; that a record of
6 the proceedings was made by me using machine shorthand
7 which was thereafter transcribed under my direction;
8 that the foregoing transcript is a true record of the
9 testimony given.

10 I further certify I am neither financially interested
11 in the action nor a relative or employee of any attorney
12 of party to this action.

13 IN WITNESS WHEREOF, I have this date subscribed my
14 name.

15

16 Dated: 11/1/16

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Brittany Flores CSR 13460

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