

MANDATORY STATUS CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification)
for the Palen Solar Power)
Plant Project)
_____)

Docket No.
09-AFC-7

DOCKET	
09-AFC-7	
DATE	<u>SEP 09 2010</u>
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CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

THURSDAY, SEPTEMBER 9, 2010
2:00 p.m.

Reported by:
Ramona Cota, CERT
Contract No. 170-09-002

COMMITTEE MEMBERS

Robert B. Weisenmiller, Presiding Member

Karen Douglas, Chairman and Associate Member

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Alan Solomon, Project Manager

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Scott Galati, Attorney
Robert Gladden, Attorney
Galati and Blek

Alice Harron
Michael Cressner
Solar Millennium, LLC

INTERVENORS

Jason W. Holder, Attorney
Adams Broadwell Joseph & Cardozo
representing California Unions for Reliable Energy (CURE)

Kevin Emmerich
Laura Cunningham
Basin and Range Watch (B&RW)

Lisa T. Belenky, Attorney (via teleconference)
Center for Biological Diversity (CBD)

ALSO PRESENT

Mohsen Nazemi (via teleconference)
Brian Yeh (via teleconference)
South Coast Air Quality Management District

Susan Fiering (via teleconference)
State of California
Office of the Attorney General

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PROCEEDINGS

2:05 p.m.

HEARING OFFICER RENAUD: Good afternoon,
 everybody. We'll start with introductions as is our usual
 custom. To my right is Chairman Karen Douglas, the
 Associate Member of this Committee, and to her right is
 Chuck Najarian, her advisor. To my left is Commissioner
 Robert Weisenmiller who is the Presiding Member of this
 Committee and to his left is Eileen Allen, his advisor.

Could we have introductions, please, from the
 applicant.

MR. GALATI: Scott Galati representing Palen Solar
 I, LLC, which is the Solar Millennium Company.

MS. HARRON: Alice Harron, Solar Millennium.

MR. CRESSNER: Michael Cressner, Solar Millennium.

HEARING OFFICER RENAUD: Thank you. And from the
 staff?

MS. HAMMOND: Christine Hammond, staff counsel.
 I'm sitting in for Lisa De Carlo. And with me is Alan
 Solomon, project manager.

HEARING OFFICER RENAUD: Thank you. Do we have
 any other parties in the room? I know we have some on the
 phone.

(No response.)

HEARING OFFICER RENAUD: All right. I see also in

1 the audience Jennifer Jennings, our able public advisor,
2 welcome.

3 And we are operating with WebEx, our computer
4 participation system. Looking at my screen I see we have a
5 number of people on the line. Do we have any
6 representatives from Intervenor CURE?

7 MR. HOLDER: Yes, good afternoon. This is Jason
8 Holder on behalf of CURE.

9 HEARING OFFICER RENAUD: Thank you, good
10 afternoon.

11 Any representatives from Intervenor Center for
12 Biological Diversity, CBD?

13 MS. BELENKY: Yes, hi. This is Lisa Belenky from
14 the Center for Biological Diversity.

15 HEARING OFFICER RENAUD: Thank you and welcome.

16 Representative from Intervenor CARE, Californians
17 for Renewable Energy?

18 (No response.)

19 HEARING OFFICER RENAUD: No? All right.

20 Basin and Range Watch?

21 MR. EMMERICH: Good afternoon. This is Kevin
22 Emmerich and Laura Cunningham from Basin and Range Watch.

23 HEARING OFFICER RENAUD: Welcome, thank you.

24 Is there anyone else on the phone representing any
25 of the parties, intervenors?

1 (No response.)

2 HEARING OFFICER RENAUD: I think we got everyone,
3 all right. And is there anyone else participating by
4 telephone who would like to introduce themselves? You don't
5 have to but we always like to hear from you.

6 MS. TREMAINE: Kim Tremaine, staff with Cultural.

7 HEARING OFFICER RENAUD: Good, thank you, okay.

8 MR. WALTERS: William Walters representing staff
9 for Air Quality.

10 HEARING OFFICER RENAUD: Very good, thank you.

11 MR. YEH: Brian Yeh with the South Coast Air
12 Quality Management District.

13 HEARING OFFICER RENAUD: Very good, thank you.

14 MS. FIERING: And Sue Fiering with the California
15 Attorney General's Office.

16 HEARING OFFICER RENAUD: All right, thank you very
17 much. Okay.

18 The Committee scheduled this status conference for
19 the purpose of hearing from the parties regarding the
20 proposed schedule, the current schedule and modifications to
21 it, and to discuss possibly changing or amending the
22 schedule in terms of when the Revised Staff Assessment would
23 be published and when we could conduct evidentiary hearings
24 on this matter and publish a PMPD, a Presiding Member's
25 Proposed Decision.

1 The Committee asked that each party submit an
2 issues statement with a proposed schedule and we thank you
3 for the ones you did submit. They are both thorough,
4 complete and mercifully short.

5 I was thinking that maybe the best way to proceed
6 would be to first hear from the applicant because I think
7 perhaps the applicant has the most at stake here concerning
8 how we handle the schedule. Would you care to address the
9 Committee?

10 MR. GALATI: Yes, thank you. I wanted to first
11 tell you that I think there has been some confusion. And
12 there has been some confusion, I think, in the development
13 community and things have evolved over time on how somebody
14 can qualify for ARRA funding. I think for those of you that
15 are on the Rice project, have heard a little bit of this
16 before.

17 But one of the ways you can qualify for ARRA
18 funding is to spend five percent, what they call the safe
19 harbor rule. Another way is to begin construction. As you
20 all know the Blythe project is beginning construction and is
21 qualifying that way. It's very important that it do so.

22 We were very clear that we were not able to, once
23 we did the reconfiguration, to begin construction by the end
24 of the year. And that is why we did not push for a
25 September license like we have done in the Blythe project.

1 And we thought a license by the end of the year is
2 what we were hoping for so that we could elect and have an
3 option to qualify for ARRA funding the other ways, such as
4 safe harbor or something like that. While it's no
5 commitment to be able to do that, clearly a license that is
6 not received by the end of the year will preclude any
7 opportunity to do that. And so again we are asking for a
8 license by the end of the year.

9 There seemed to be some confusion when we
10 submitted our reconfiguration and had some conversations.
11 We were clear that we were not able to start construction by
12 the end of the year but we were never giving up on ARRA
13 funding and the ability to qualify, which we still would
14 like that opportunity.

15 With that in mind, our schedule tries to do that.
16 Our schedule tries to get a license by the end of the year,
17 which we think is important. The only schedule proposed
18 that does not do that is the Center for Biological
19 Diversity; and so that is the only issue that we have with
20 the Center for Biological Diversity's schedule is it doesn't
21 allow a decision by the end of the year.

22 We do recognize that counsel Lisa Belenky has
23 commitments on the 11th and 12th and so what we tried to do
24 is to define a schedule that was responses to her motion to
25 continue, but also gets us a license by the end of the year

1 and also accommodates staff's bifurcation of the Revised
2 Staff Assessment into two pieces.

3 Here is what we know. The Revised Staff
4 Assessment part one. We have reviewed it and we have gone
5 through it pretty thoroughly and we think that we are very
6 close on a lot of those issues with staff. We don't
7 anticipate huge problems. We all know that the sections
8 that tend to take the most time are in part two, Biology,
9 Cultural, Land Use, Visual, some of the things that we had
10 had a lot of conversations on the Blythe project and others
11 on. We are hoping that the conditions look very similar so
12 that we are close there as well.

13 We thought that we wanted to try to avoid doing to
14 the Committee and to the staff and to the applicant, quite
15 frankly, what we did in the Blythe project. Which was,
16 continue to break for workshops during evidentiary hearings
17 and try to put things together last minute. So we tried to
18 divine a schedule where there is a workshop after the
19 Revised Staff Assessment part two. Where we can do all of
20 that hard work before the evidentiary hearing so we are not
21 trying to scramble and do it at the evidentiary hearing.

22 When we did that and we put a workshop in -- and
23 we have asked you to schedule one for September 27. And
24 then we thought about filing testimony and rebuttal
25 testimony. It was very difficult to be able to do that and

1 maintain the hearing schedule. Staff's schedule says that
2 we could do two sets of hearings. We could do hearings on
3 part one and then hearings on part two.

4 When we were looking at it we thought that was
5 actually probably going to consume more staff time than a
6 real productive workshop. And so we think we should be able
7 to wrap things up in one and a half days of hearings.
8 Hopefully one and a half days of hearings after part two.

9 So what we asked you to do in our schedule was to
10 move the hearing to the following week, schedule a workshop
11 on September 27. Encourage staff to bring people to the
12 workshop that can say yes or no. Because it won't be
13 helpful if we go to the workshop on the 27th and hear, we'll
14 consider that. That's not helpful. We need to have the
15 same sort of productive workshops that we had during the
16 evidentiary hearings where we said yes and we said no. And
17 we got great conditions and we had collaboration of how
18 things needed to be done and I think we made, hopefully, the
19 Committee's job easier in the Blythe project by being able
20 to do that. That is our goal here.

21 In addition, we haven't had a large amount of time
22 on this project to communicate with the intervenors about
23 the issues. We have redefined the project and reconfigured
24 the project to Reconfiguration Alternative 2 and 3 to move
25 out of what we thought was the primary issue. We did that

1 with an understanding that we could still get a license by
2 the end of the year. If we had known then that it was
3 probably jeopardizing our license by the end of the year we
4 would have asked staff to continue to write its Staff
5 Assessment and we would have put on our evidence that we
6 don't believe we caused the impacts that we reconfigured our
7 way out of.

8 But I want to make sure that the Committee
9 understands and is sensitive that I don't want to have this
10 applicant think, and future applicants think that by making
11 a huge project change to accommodate, that they are going to
12 be punished by not being able to get their license by the
13 end of the year. And we need to get the license by the end
14 of the year.

15 That being said, I think our schedule is -- I
16 didn't put specific dates in there but we think a workshop
17 on the 27th could be productive. That will allow us to be
18 able to put testimony together on October 4th.

19 What we would like to do, and I know that staff is
20 not always happy with this particular proposal but it has
21 worked in the past. If we go to the workshop on the 27th
22 and we agree that we -- let's say Biology we are still
23 negotiating on five conditions at that workshop and we come
24 to a resolution about what those conditions should be.

25 Sending staff back to write an addendum or another

1 document is just taking too much time. We will put it in
2 our testimony on October 4 and the staff witness can come to
3 the evidentiary hearing and put on the record that that
4 reflects our agreement and, in fact, they agree to it. I
5 added ten days for rebuttal testimony in case I am too
6 optimistic and we write the conditions in a way that we
7 didn't get it right. Staff then has some time to write very
8 focused rebuttal testimony. Not a Staff Assessment addendum
9 but rebuttal testimony to what we file.

10 The other parties, if they don't agree with what
11 we do at that workshop. It will be all above board, you'll
12 see it in our testimony. And they have an opportunity to
13 rebut that in their rebuttal testimony as well. And we have
14 given them ten days to do that instead of the typical week
15 that we have been working on.

16 So that was what we tried to do with the schedule.
17 And I realize that it puts a business meeting on December
18 22 but that's what we were hoping for. I do realize that it
19 does squeeze the Hearing Office again to do a four-week PMPD
20 or so before the Thanksgiving holiday hits. But I think
21 that is the best we can work with to try to make the record
22 easy, complete and you only hear disputes. Like in the
23 Blythe project, you heard a dispute on one condition. That
24 is how we think evidentiary hearings should go.

25 PRESIDING MEMBER WEISENMILLER: Scott, just for

1 the record. And this goes back to the definition of the
2 projects. I'm assuming you are also going for the loan
3 guarantee.

4 MR. GALATI: Yes, we are still in the loan
5 guarantee program, still going through due diligence on loan
6 guarantee.

7 PRESIDING MEMBER WEISENMILLER: Okay.

8 HEARING OFFICER RENAUD: Okay, thank you for that.

9 It looks like you have really raised a couple of issues for
10 us to consider. One is whether or not to hold two sets of
11 evidentiary hearings. I think we all know from experience
12 that evidentiary hearings on uncontested topics are largely
13 matters of formality and don't need to take much time. And
14 sometimes assembling everybody just for the purpose of that
15 formality is not very productive.

16 And the other is, the other issue raised really is
17 whether or not we can do all of this before the end of the
18 year. And certainly from the schedules that I'm looking at
19 here it looks feasible.

20 Let me hear from the staff, though, about what the
21 applicant's position is and your position, particularly on
22 the bifurcation issue, I think.

23 MR. SOLOMON: Let me begin by saying that staff
24 developed a schedule because of the concerns raised by the
25 applicant. This schedule would have a decision being made

1 by December 15th.

2 We are bifurcating the evidentiary hearings on
3 part one and part two. The reason for bifurcation would be
4 because staff felt that it would be easier to go through
5 some of the uncontested sections and have those resolved.
6 If the Committee would prefer to have a later evidentiary
7 hearing held then we would be fine with, as the applicant
8 suggests, the week of the 18th, or having it on the dates
9 that staff suggested, October 20th and 21st.

10 With regards to a workshop on September 27th.
11 Unfortunately there are no rooms available on the 27th. I
12 have contacted the applicant and told them that I have
13 reserved Hearing Room B for a week later, October 5th. So
14 if they would be agreeable to a workshop on the 5th rather
15 than the 27th I think that would satisfy everyone.

16 With Blythe we had a -- we moved forward, we made
17 a great deal of progress in resolving issues at the Blythe
18 workshop and I'm assuming that we'll be able to do the same
19 with Palen.

20 HEARING OFFICER RENAUD: Let me ask this. Is the
21 September 16 date still looking good? Do you see any
22 impediment to that not -- to that one staying firm?

23 MR. SOLOMON: I do not see any impediment.

24 HEARING OFFICER RENAUD: All right.

25 MR. SOLOMON: We will be able to -- with one

1 exception. We will be able to publish part two of the RSA
2 on September 16 as indicated. The only impediment is with
3 regards to Air Quality.

4 HEARING OFFICER RENAUD: All right. And what is
5 it about -- I know that the FDOC is the issue. Why is that
6 item an impediment to your publishing the Air Quality
7 section?

8 MR. SOLOMON: I am going to ask Will Walters, who
9 is our air quality specialist, to address, to address that.

10 HEARING OFFICER RENAUD: All right. And I know we
11 have a representative of the District on the phone as well
12 who might weigh in on this as well.

13 MR. SOLOMON: Yes.

14 HEARING OFFICER RENAUD: So go ahead, Mr. Walters.

15 MR. WALTERS: Yeah. Actually I had thought we did
16 publish the Air Quality section with the notation that we
17 were going to need to do a supplement. And it's the
18 supplement that is going to be delayed for the FDOC.

19 Specific issues that we are going to need to
20 address in the supplement are the revisions to the District
21 conditions, of which I know there are going to be some
22 relating to the HTF and probably a few others; revisions to
23 the emission calculations, in particular again to the HTF
24 piping system; as well as we are probably going to be
25 deleting one staff condition that I believe the District is

1 now going to cover in their revised conditions. And we are
2 also going to be adding some additional information
3 regarding mitigation since the offsets are going to be
4 required for the DOC. So we are going to -- when we get
5 that information from the applicant in regards to the QRCs
6 that they are proposing we will be able to provide that in
7 the supplement.

8 HEARING OFFICER RENAUD: Okay, thank you,
9 Mr. Walters. I think you are correct that there is an AQ
10 section in part one but it's lacking some things. Okay, I
11 think Mr. Walters finished with his statement. Anything to
12 add to that?

13 MS. HAMMOND: I do. This is Christine Hammond,
14 counsel for staff. I had some concern about Mr. Galati's
15 proposal about putting in proposed conditions of
16 certification via testimony. If the applicant would like to
17 put forth proposed conditions to parties ahead of the
18 workshop, I think the workshop is the appropriate place to
19 have the discussion, put forth information.

20 It becomes pretty awkward, maybe it's burdensome
21 for the record, to have parties' versions of conditions
22 going back and forth via filings. It also leaves less room,
23 I think, for the parties to continue to negotiate. I think
24 the workshop is the appropriate place to be having that back
25 and forth. I just have never heard of versions of

1 stipulations or conditions going back and forth via
2 testimony and so at this point I'm uncomfortable and have
3 strong reservations about that suggestion.

4 HEARING OFFICER RENAUD: I know the Committee is
5 strongly in favor of workshops aplenty. They have proven to
6 be very, very productive. Certainly in the Blythe case that
7 was true. And I think starting those as soon as is
8 reasonable after publication of part two would make sense.

9 MS. HAMMOND: And what I'm hearing from
10 Mr. Solomon is that what was submitted by the parties via
11 filings and testimony were actually stipulated conditions,
12 not versions.

13 MR. GALATI: Maybe I can clear this up because as
14 is my probably nature and long history I have said something
15 that has confused and that I did not speak clearly. Because
16 what I didn't include was a step that we clearly -- we are
17 already preparing our comments and proposed minor changes to
18 conditions on part one. And we would propose and create
19 those minor changes that we wanted to part two prior to the
20 workshop. So that on the 27th staff has something to think
21 about, look at and we negotiate.

22 What I was trying to say after that is, let's say
23 we propose a change that staff says, we're not comfortable
24 with the "and," we would like a comma and an "or." Rather
25 than staff have to go back and create a new addendum, we

1 would put in our testimony, this is the change to the
2 condition we propose, and we'd capture the "or" instead of
3 the "and." And it's been done many, many, many times. And
4 then on direct examination of the staff witness I say, have
5 you seen applicant's testimony, opening testimony. Staff
6 says, yes. And I say, do you agree with that change and
7 they say, yes.

8 What I'm trying to stop here is the constant
9 number of addendums that staff is overworked, overburdened
10 and has difficulty sticking to a time frame to get out.
11 Here is an opportunity where staff need not write anything.

12 And if I get it wrong, they can do it in the rebuttal
13 testimony, which would take place ten days after they saw
14 the testimony. So there would be comments, workshop,
15 testimony that tries to capture agreements. And then
16 lastly, if we got it wrong, staff could rebut it by just
17 rebutting the specific issue in the testimony. Which would
18 be a lot easier to prepare than an addendum.

19 HEARING OFFICER RENAUD: Okay.

20 MR. GALATI: So that's what I was intending to
21 occur so that we could have a productive workshop. They
22 would know what we're planning.

23 HEARING OFFICER RENAUD: Any or all of those
24 procedures are fine with the Committee as long as they are
25 productive. And I don't think there is any way we can sit

1 here at this point and predict when or how changes to
2 conditions will be made. I think the important thing is
3 that the parties use whatever tools and procedures make
4 sense at the moment. So we won't be limiting the methods by
5 which conditions can be changed or discussed. Ms. Hammond.

6 MS. HAMMOND: I don't want to belabor this point
7 but I had two different things. And that is, you know, we
8 can make minor changes, things of an errata in nature, on
9 the record during the hearing. But for one party to attempt
10 to memorialize what it perceives as an understanding between
11 the parties unilaterally while having the other parties
12 respond via filings, is completely different.

13 If the parties can reach agreement and come to an
14 agreement on the language, great, and that will be
15 submitted. And if the parties don't reach agreement then
16 each party can submit their forwarded condition. So I think
17 there is an important distinction to make. And having one
18 party put forth what it perceives as an agreement is
19 something that we have a problem with. It would be best if
20 the parties could reach agreement together at the same time
21 and then present it jointly to the Committee.

22 HEARING OFFICER RENAUD: All right, thank you.

23 Let's hear from the intervenors.

24 First of all, we have a gentleman from the Air
25 District. Would this be an appropriate point for him to

1 speak or is he really here to monitor? I was wondering, is
2 his issue the FDOC, for example.

3 MS. HAMMOND: If he wants to add anything to what
4 Will put forward or if there is a summary of some of the
5 missing items that would be great, Brian.

6 HEARING OFFICER RENAUD: Brian Yeh, are you there?

7 MR. NAZEMI: This is Mohsen Nazemi. Actually I
8 joined Brian here.

9 HEARING OFFICER RENAUD: All right.

10 MR. NAZEMI: I am the Deputy Executive Officer
11 with AQMD. Brian Yeh is senior manager and we have two
12 other staff members also here.

13 I just want to add something to make sure that we
14 are all on the same page relative to the timing of the FDOC.

15 As you all know, the District issued a Preliminary
16 Determination of Compliance some time ago and as a result of
17 that we received comments both from CEC staff and from
18 intervenor CURE relative to one in particular issue on
19 fugitive emission calculations for this project.

20 But since that time we have been diligently
21 working with both CEC staff and with the applicant to try to
22 resolve the fugitive emission estimates from this project.
23 And after many meetings and conference calls just last
24 Friday, September 3rd, we received the revised calculations
25 for fugitives from the applicant, that we have over the

1 weekend reviewed. At this point we are in agreement with
2 some minor differences in the fugitive emission.

3 Just so that you know, the emissions now are
4 almost five times greater than what we estimated in the
5 Preliminary Determination of Compliance. So at this point
6 we have asked the applicant to revise and resubmit their
7 risk assessment based on the revised fugitive emissions.
8 And as soon as we have that information we are ready to go
9 public notice, which at this point is required.

10 Unlike the last time which we did it based on just
11 the applicant's request, because now the emissions exceed
12 the threshold for public notification. And we can't use the
13 previous public notice because in that public notice we had,
14 like I said, emissions that were much lower than what has
15 now been established as the more appropriate emission
16 figure. So that public notice will require a 30 day public
17 comment.

18 It is not required to go to the EPA for a 45 day
19 review because it is not a Title 5 permit. But we still
20 have to wait until the 30 day public comment period is over
21 and look at any comments we receive and at that point we
22 will be ready to issue the FDOC.

23 So depending on when we get the health risk
24 assessment and today is the 9th. I'm just guessing that the
25 earliest that we can issue the FDOC would be around the

1 middle of October. We also, as you all know, have not
2 received the indication of the necessary offsets that needs
3 to be purchased by the applicant. But I'm assuming that
4 they are pursuing that and we will have that before the FDOC
5 is issued.

6 HEARING OFFICER RENAUD: Okay, thank you very
7 much. By the way, before I forget. Would you mind spelling
8 your name for the record here, please.

9 MR. NAZEMI: Sure. Mohsen is the first name, M as
10 in Mary, O-H-S-E-N. The last name Nazemi, N as in Nancy, A-
11 Z-E-M-I.

12 HEARING OFFICER RENAUD: Thank you, okay.

13 Let's hear from -- well, first of all,
14 Mr. Galati, do you have any response to what was just said?

15 At some point we need to move on to the other intervenors.

16 MR. GALATI: Yes. I just have a quick response.
17 In some of the natural gas-fired power plants the FDOC has
18 been able to come in after evidentiary hearings. We allowed
19 the record to stay open. Those are projects that have
20 hundreds of tons of emissions. We should be able to figure
21 out a way to get to evidentiary hearing, let the FDOC come
22 in. I would suggest that we use the PDOC that is
23 recirculated in October, leave the record open, and should
24 the FDOC change any conditions they be handled as a minor
25 errata.

1 HEARING OFFICER RENAUD: Thank you. I think that
2 is something, a procedure I recognize from the past so it
3 could work here.

4 Mr. Solomon?

5 MR. SOLOMON: Adding to what Mr. Galati had said.
6 Following staff's proposed schedule with the Committee
7 Conference on the PMPD being held on November 30th. I think
8 assuming that Solar Millennium does provide this information
9 to the District timely that we would have any supplemental
10 or any additional information from Will Walters could be
11 added and supplemented at that time.

12 HEARING OFFICER RENAUD: Very well, thank you very
13 much. All right, let's move to our intervenors.

14 Mr. Holder, do you care to weigh in here on behalf
15 of CURE?

16 MR. HOLDER: Yes, thank you. When I saw staff's
17 issued statement I concurred with staff's proposed schedule.
18 But I initially thought that consolidated hearings,
19 evidentiary hearings, would be more efficient. I think
20 Mr. Galati's explanation earlier regarding this made a lot
21 of sense to me. But staff has a lot of experience, of
22 course, with evidentiary hearings and it may be efficient to
23 knock out those issues that aren't controversial. But I
24 just want to say that we would be fine with applicant's
25 proposal for a consolidated evidentiary hearing.

1 HEARING OFFICER RENAUD: Thank you very much, we
2 appreciate that.

3 Okay, let's see. Mr. Emmerich, Ms. Cunningham,
4 anything to add here?

5 MR. EMMERICH: I guess what we would like to add
6 is that we think the schedule, given the reconfiguration and
7 the fact that things aren't going to be resolved until after
8 the year, we don't believe that we need to have the
9 evidentiary hearings so quickly in October and we would
10 actually like to request that it be delayed until further
11 notice.

12 It has been difficult for us to get a lot of
13 responses from the Energy Commission on this particular
14 project. We did put in a data request, I believe it was
15 May. There was a response docketed in June, however, we
16 have never received that in the mail, via email, and we
17 didn't really see it on the web site.

18 Our point is, is that if we take some more time
19 here we would be able to work these things out a little bit
20 better, thank you.

21 HEARING OFFICER RENAUD: All right, thank you.

22 These are data responses from the staff or the
23 applicant that you're referring to?

24 MR. EMMERICH: Well, the applicant apparently
25 responded to our request. However, the staff did not make

1 that available for us to see.

2 HEARING OFFICER RENAUD: Is there a
3 confidentiality issue here perhaps, Mr. Galati?

4 MR. GALATI: No, there is not. I can attest to
5 you, and I believe that we have docketed a proof of service,
6 that they were both appropriately mailed and provided to
7 them electronically. I can't remember if this particular
8 intervenor only elected electronic; I'll have to go back and
9 take a look at the proof of service. But as is our case,
10 when we file something in docket, responses, we send them to
11 the requesting party and we serve them. So I can provide
12 proof of service.

13 HEARING OFFICER RENAUD: Thank you.

14 MR. GALATI: And I would like to point out, that
15 apparently happened in May. Today is September, the first
16 I'm hearing about it. My name is all over the proof of
17 service. I know both of the people from Basin and Range
18 Watch. In fact, I met them on the Ridgecrest project
19 several times since then and this has not been brought up
20 that a copy of a document was not provided to them. I
21 clearly would have. So if there is -- whether it's served
22 or not, when I get back to my office I will electronically
23 serve that document again to Basin and Range Watch.

24 MR. EMMERICH: At this point, I mean, we would
25 like that resolved, of course. This was before the

1 reconfiguration so the response is going to be irrelevant to
2 us at this point anyway. However, we contacted individuals
3 in the Energy Commission and just didn't receive responses.

4 So whether or not we followed up with the right group of
5 people, I don't know that. We are not 100 percent familiar
6 with Energy Commission procedures. But we did not receive
7 those notices. I just wanted to point that out.

8 HEARING OFFICER RENAUD: Thank you. We'll
9 certainly look into the records here. But I should remind
10 you that anytime you don't receive something that you're
11 expecting to receive you should raise that right away.
12 Waiting a long time really does affect your rights to pursue
13 that.

14 MR. EMMERICH: We actually did. We sent in some
15 emails to individuals on the list and did not receive
16 responses. We didn't send it to everybody on the list,
17 maybe that was the procedure, but we sent it to certain
18 individuals in the Commission and did not receive responses.

19 HEARING OFFICER RENAUD: Okay. Well, the other
20 thing I should remind you of is that the Public Adviser is
21 here to assist you with problems and issues of this sort.
22 Please take advantage of that resource if you haven't
23 already.

24 MR. EMMERICH: We have. Jennifer has been quite
25 good and she has helped us out a lot. But I just wanted to

1 bring that up at this point.

2 HEARING OFFICER RENAUD: All right, thank you.

3 Let's see. Ms. Belenky, would you care to weigh
4 in on the discussion so far?

5 MS. BELENKY: Yes, sure. I had a couple of things
6 I wrote down here.

7 First of all, I don't think that there is any
8 intent by any of the parties to punish the applicant in any
9 way for doing a reconfiguration. So I don't think that's at
10 all accurate.

11 I think there is a lot of confusion about the ARRA
12 funding and what you need to do to qualify and in fact
13 whether a single company can get two sets of ARRA funding.
14 And I have looked at the regulations and I do think that is
15 still quite unclear. Nonetheless, we are certainly not
16 trying to prevent this applicant from trying to get that
17 funding if they can. So I just wanted to set the record
18 straight on that.

19 I also really appreciate that people have provided
20 some alternate scheduling that would allow us to go to our
21 previously scheduled retreat for our organization.

22 I actually don't have any objection to the
23 schedule that Mr. Galati has put forward with the change, I
24 guess, that the staff is saying that an October 5th workshop
25 would work better as far as rooms, et cetera. And that also

1 would give the parties a bit more time with the second set
2 of the revised SA in order to compile whatever our issues
3 may be. And of course we can discuss these things
4 informally, even without a workshop, to try and work through
5 an issue.

6 Then lastly I just wanted to say that the Air
7 District -- it was quite interesting the Air District saying
8 that the fugitive emissions were five times greater than
9 they had previously thought. And I am not sure, I haven't
10 had time to review the first set of the Revised Staff
11 Assessment. But whether those new numbers are in the Staff
12 Assessment for the air question or if the air is now going
13 to have to be revisited again.

14 HEARING OFFICER RENAUD: All right, thank you for
15 weighing in there.

16 While I'm thinking of it, we do have before us a
17 pending motion filed by your client. I'm hoping that as a
18 result of our discussion today and the revised schedule that
19 will be issued by the Committee we will be able to deem your
20 motion moot. At this point I just want to say, don't expect
21 us to set a briefing schedule and oral argument and all that
22 kind of thing. I think once the revised schedule is issued
23 your concerns raised in your motion will be resolved.

24 MS. BELENKY: Yes, thank you.

25 HEARING OFFICER RENAUD: Thank you.

1 MR. GALATI: Before the Committee rules on the
2 schedule can I address the workshop on the 5th?

3 HEARING OFFICER RENAUD: Let me say, we are not
4 going to rule on the schedule in the sense of picking dates
5 today.

6 MR. GALATI: Okay.

7 HEARING OFFICER RENAUD: I think we have
8 everybody's input. I think the two questions before the
9 Committee are going to be, first, whether or not to
10 bifurcate. My personal inclination is probably not to, just
11 because of the fact that we can usually get through those
12 uncontested topics in very short order.

13 We certainly like the workshop idea. We always
14 like the workshops.

15 The dates that are being proposed for getting to a
16 Commission decision by mid to late December all look
17 feasible. I think it is just going to boil down to a matter
18 of finding dates when Commissioners are available and so on,
19 rooms are available.

20 MR. GALATI: What I wanted to address was, if we
21 move the workshop to October 5th, at some point parties have
22 to file testimony in order to support a -- and there needs
23 to be rebuttal testimony because we have contested matters
24 and intervenors in the case. So we can either squeeze
25 review of the Staff Assessment for a workshop or we can

1 squeeze preparing testimony which you have to live with
2 under oath.

3 I chose to have the workshop earlier and have more
4 time to flesh out your issues for testimony rather than move
5 the workshop later and then get stuck with filing testimony
6 that you may not really -- it may create an issue when you
7 don't have to. And then we're back at evidentiary hearing.

8 And while we were productive in Blythe it was
9 incredibly inefficient to be running upstairs and having
10 exhibits being printed out 20 minutes before we were
11 presenting them, with no ability to ever look at them and to
12 make sure that they were done correctly. Completely
13 inefficient to do that. Our goal would be to do that at the
14 workshop and to allow all the parties to be comfortable with
15 what the agreements are.

16 So if the issue is a room, we can get a room. I
17 have a room, we can rent a hotel room. That's a problem
18 that we can solve. We'll pay to rent a hotel room if that
19 would be necessary so that staff doesn't have to travel. My
20 office is only six blocks away. We have a conference room,
21 we can do it there. We can do it downstairs. That's
22 solvable.

23 It would be much more effective to have a workshop
24 prior to when we have to file testimony than afterwards.
25 Otherwise I don't know. I just think it's going to be

1 inefficient for the Committee and it's going to be hard on
2 the staff again.

3 HEARING OFFICER RENAUD: Thank you. I agree. I
4 think that for a critical step in an AFC proceeding, finding
5 a room should not stop us. And I don't have any doubt that
6 we can find something. Even if we have to put up a tent,
7 we'll do it.

8 Mr. Solomon, other than the room question is there
9 anything else about September 27th or thereabouts that was
10 of concern to you for a workshop?

11 MR. SOLOMON: No, there was nothing else.

12 HEARING OFFICER RENAUD: All right, that's all,
13 okay. All right, very good. Does any of the parties wish
14 to add anything at this point? I think we're close to
15 wrapping up.

16 MR. GALATI: I would like to add something
17 positive since you don't hear that from me very much. I
18 very much appreciate staff getting the Staff Assessment out
19 as they did on part one and we think they did a good job. I
20 think that we can resolve our issues there. And we are very
21 happy to hear the commitment that the 16th is not moved. So
22 I am very encouraged that we can get this done and we will
23 be very, very productive in a workshop. We'll come there
24 with solutions and try to resolve things so that we make
25 evidentiary hearings not the way they were in Blythe.

1 For contested hearings to take two days, that's
2 not, that's not what we're shooting for. We're shooting for
3 -- for uncontested hearings to take two days. What we're
4 shooting for is if we are uncontested or we just have to
5 come to evidentiary hearing on the minor disagreements. So
6 we very much appreciate staff hitting those dates.

7 HEARING OFFICER RENAUD: Thank you, thank you.

8 One thing that has been pointed out, Mr. Solomon
9 and Ms. Hammond is in staff's statement on page two. We
10 just want to make sure we interpret you correctly here. In
11 the paragraph at the top you talk about Part 2 issues heard
12 October 25 and 26 but in the chart it's 20 and 21. And I
13 was just wondering if you want to tell us which one of those
14 is the right one.

15 MR. SOLOMON: It is October 20th and 21st. The
16 dates in text, the paragraph above, October 25 and 26, those
17 were the original dates that we were looking at. But then
18 when we were rolling those dates forward we came to a
19 decision too late to serve the applicant's purpose. So
20 although we corrected the dates in the table we did not
21 change them, correct them in the text.

22 HEARING OFFICER RENAUD: Thank you. That's very
23 understandable and thank you for the explanation.

24 MS. HAMMOND: As long as we are on the subject of
25 dates I wanted some -- if we can get some clarification with

1 the applicant. A Committee Decision on December 22nd. Is
2 the applicant proposing that the Commission calendar a new
3 agenda meeting? I don't think there is a business meeting.

4 HEARING OFFICER RENAUD: You mean Commission
5 Decision, I take it, first of all, not Committee Decision.

6 MR. GALATI: Correct. It would be a Commission
7 Decision. And one of the reasons that we selected that
8 date, we wondered if the Committee would be willing to hold
9 a special meeting for that purpose.

10 I am keenly aware that there is always one person
11 who gets squeezed and never gets to change and that is the
12 hearing officer who has to write the PMPD. And so we are
13 already down to four weeks. To make it the 15th and move
14 the dates and have a productive workshop, I was worried it
15 might make him have to do a PMPD in three-and-a-half weeks.

16 So that was the purpose and I figured the Committee could
17 talk about. But I wanted to say that we can come on the
18 22nd and it would be a great Christmas present.

19 PRESIDING MEMBER WEISENMILLER: Certainly the
20 Commission has and will set special meetings to deal with
21 proposed decisions so that is not -- if there is not one
22 scheduled we will certainly schedule one.

23 MS. HAMMOND: Okay. We have no opposition to
24 that, it's just a request for clarification. Thank you.

25 PRESIDING MEMBER WEISENMILLER: I think in terms

1 of comments. Obviously as we look back next year on sort of
2 lessons learned. I think certainly we appreciate the
3 reconfiguration and sort of the slide on the time just
4 dealing with reality. I think we are all learning as we go
5 through the PMPD process this month the work involved in
6 sort of going through the PMPDs, dealing with the FEIS
7 consistency, starting to gear up on compliance. And so
8 certainly this has been very helpful in this process.

9 At the same time I think it was wise by the
10 applicant to start reconfiguration. You can certainly look
11 at other projects where the reconfigurations are occurring
12 much, much later in time and much more painfully. So
13 certainly getting the signal early helps.

14 And again, we are certainly going to try to have a
15 timely decision. What the decision is we'll see in December
16 but we are certainly trying for that.

17 I think in terms of the question of the
18 applicability of the cash grant. Certainly I have seen from
19 tax attorneys is that a company like yours could certainly
20 have multiple projects for the cash grant. Again, I
21 certainly have not seen anything in literature that suggests
22 anything otherwise.

23 MR. GALATI: That's our understanding as well.

24 HEARING OFFICER RENAUD: Okay, thank you.

25 Anything else from any of the parties?

1 Let me ask if there are any members of the public
2 on the line who would care to comment, or present here in
3 the room? If you do just go ahead and start talking.

4 (No response.)

5 HEARING OFFICER RENAUD: No, I don't think there
6 are. All right. We'll just check and make sure we aren't
7 leaving something out.

8 All right. I think that concludes then --
9 Ms. Jennings, yes.

10 MS. JENNINGS: Thank you, Jennifer Jennings. It
11 is my understanding from Mr. Emmerich that if a budget is
12 passed and it was possible they would really like the
13 hearing in the local area. That there are members of the
14 public who would like to participate in the evidentiary
15 hearings.

16 Mr. Emmerich, are you still on the line?

17 MR. EMMERICH: Yeah, I am. There were parts that
18 I didn't hear because we had a little static. Repeat the
19 first part.

20 MS. JENNINGS: I was just suggesting, hoping that
21 if a budget passed they would consider holding the
22 evidentiary hearings in the local area. Because you had
23 indicated there are members of the public who would like to
24 attend.

25 MR. EMMERICH: Yes. I mentioned to you that there

1 were three people, two in the Palm Springs area and one out
2 near Desert Center, in that community, that said that they
3 would comment if they were held locally.

4 MS. JENNINGS: And that they're representatives of
5 groups in the local area?

6 MR. EMMERICH: No, they were the public.

7 MS. JENNINGS: Okay. Thank you.

8 HEARING OFFICER RENAUD: All right, thank you.

9 I think we want to reassure you that the
10 Commission tries to make the hearings as accessible to
11 members of the public as possible and we will consider what
12 will be the appropriate location as we are preparing the
13 schedule and as we are preparing notices. And of course the
14 budget is going to be one of the factors that needs to be
15 considered.

16 All right, if there is nothing else I think we'll
17 adjourn the conference. We will be issuing a revised
18 Committee schedule shortly. Thank you.

19 MR. GALATI: Thank you.

20 MR. EMMERICH: Thank you.

21 MS. BELENKY: Thank you.

22 (Whereupon, at 2:52 p.m. the Status
23 Conference was adjourned.)

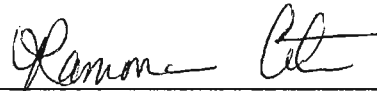
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CERTIFICATE OF REPORTER

I, RAMONA COTA, an Electronic Reporter and Transcriber, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Mandatory Status Conference; that I thereafter transcribed it into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said conference, nor in any way interested in outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of September, 2010.



Ramona Cota, CERT**478