

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

In the Matter of:)

Application for Certification for the)
Calico Solar Project Amendment.)

) Docket No.
) 08-AFC-13C
)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM B
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

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ORIGINAL

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Bart Brizzee
Office of the County Counsel
representing County of San Bernardino

Jeff Aardahl
Defenders of Wildlife

Patrick C. Jackson

Travis Ritchie
Sierra Club

Bob Burke
Society for the Conservation of Bighorn Sheep

INTERESTED AGENCIES (All Present Via WebEx)

Tom Gavigan
Lahontan Water Board

MEMBERS OF THE PUBLIC (All Present Via WebEx)

Fred Stern

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1 phone, let's see. Sierra Club?

2 MR. RITCHIE: Yes, Commissioner. This is Travis
3 Ritchie with the Sierra Club.

4 PRESIDING MEMBER DOUGLAS: Thank you.

5 Is anyone here from CURE?

6 MR. HOLDER: Yes, Commissioner Douglas. This is
7 Jason Holder on behalf of CURE.

8 PRESIDING MEMBER DOUGLAS: Thank you. Anyone from
9 Basin and Range Watch?

10 (No response.)

11 HEARING OFFICER VACCARO: Patrick Jackson?

12 MR. JACKSON: Thank you. Yes, I'm here.

13 PRESIDING MEMBER DOUGLAS: Great. Newberry
14 Community Services District?

15 (No response.)

16 PRESIDING MEMBER DOUGLAS: Okay. Society for the
17 Conservation of Bighorn Sheep?

18 (No response.)

19 PRESIDING MEMBER DOUGLAS: Defenders of Wildlife?

20 MR. AARDAHL: Yes, this is Jeff Aardahl with
21 Defenders.

22 PRESIDING MEMBER DOUGLAS: Great. San Bernardino
23 County?

24 MR. BRIZZEE: Bart Brizzee from the County
25 Counsel's Office for the County of San Bernardino.

1 PRESIDING MEMBER DOUGLAS: Thank you. BNSF
2 Railroad Company?

3 MS. KIM: Helen Kim from Katten Muchin.

4 SPEAKER: ??? here as well.

5 PRESIDING MEMBER DOUGLAS: Thank you.

6 Are there any representatives of local, state or
7 federal agencies on the phone, except for Bart Brizzee who
8 has introduced himself already?

9 MR. GAVIGAN: Tom Gavigan, Lahontan Water Board.

10 PRESIDING MEMBER DOUGLAS: Thank you. Anyone
11 else?

12 (No response.)

13 PRESIDING MEMBER DOUGLAS: All right.

14 DR. GREENBERG: Commissioner?

15 PRESIDING MEMBER DOUGLAS: Yes.

16 DR. GREENBERG: Alvin Greenberg, Energy Commission
17 staff, on the phone.

18 PRESIDING MEMBER DOUGLAS: Thank you. Our Public
19 Adviser's Office is represented by Lynn Sadler in the room
20 today. With that I will turn this over to the Hearing
21 Officer.

22 MR. BURKE: Commissioner?

23 PRESIDING MEMBER DOUGLAS: Yes.

24 MR. BURKE: Bob Burke with the Society for the
25 Conservation of Bighorn Sheep is on the phone.

1 PRESIDING MEMBER DOUGLAS: That's great, thank
2 you. Thanks for checking in.

3 HEARING OFFICER VACCARO: Okay. Wow, again it
4 seems as though we meet at regular intervals and between
5 each interval there's quite a bit of activity. I think this
6 has probably been quite a busy period from the last time we
7 sat here.

8 I think one of the things we all knew we were
9 waiting for was to hear back from the California Department
10 of Fish and Game. And everyone is aware that we have
11 received a letter from the California Department of Fish and
12 Game indicating that they believe that the Energy Commission
13 should serve as lead agency over the entirety of the
14 project.

15 That is very consistent with the July 1st Order of
16 this Committee as well and I think it's one of the threshold
17 issues that is presented in staff's issues report as well as
18 in the applicant's issues report for today. The question
19 is, will the Commission be the lead agency. The answer to
20 that is, unequivocally yes. And it will serve as the lead
21 agency over the entirety of the project.

22 There are a number of issues to discuss.
23 Typically I think we would start with the issue statements
24 and go from there. But because the issue statements raise a
25 number of issues I think we'll start with what the Committee

1 wants to talk about first and then we'll make our way
2 around.

3 I think now that everybody is clear on who is
4 going to be lead agency I think the next important question
5 is, what is the form of the document or documents and under
6 what process will it be prepared? The Committee has made
7 the determination that this document will be prepared under
8 the Commission's Certified Regulatory Program; it will be
9 one document.

10 That said, there are a lot of details. We are
11 going over it orally now but certainly to ensure that there
12 is clarity there will also be a written document that puts
13 this in writing. Everybody will know, without having to ask
14 again, what the expectations are.

15 I think what is very important to understand is
16 that the Committee is envisioning that this is going to look
17 very much like a traditional AFC process. Staff will be
18 expected to issue a single document, which would be a
19 Preliminary Staff Assessment. The expectation is that there
20 will be workshops, comments received on that document, and
21 that staff would ultimately prepare a Final Staff
22 Assessment.

23 Again, I think the Committees in the past on
24 different cases have indicated the process is always a
25 better process when that Preliminary Staff Assessment is as

1 complete and thorough as possible. I think this Committee
2 continues with that expectation.

3 The important thing to remember is that this
4 document has to address essentially three components. It
5 needs to address the solar thermal component, the common
6 facilities well as the PV component.

7 I think there has been some question about whether
8 that can all be accommodated in one document. The Committee
9 believes it can. I think one way that you achieve that is
10 through the structuring of the document. Here is what the
11 Committee would like to see.

12 It would like to see the initial part of each
13 technical section will start with an analysis of the solar
14 thermal component and the common facilities. It will be
15 under its own heading. After that the discussion will go to
16 the PV component. I think there is no question that the
17 entire discussion has to include cumulative impacts
18 analyses.

19 There was some confusion that if all of this
20 information is in one document what does that mean for
21 conditions of certification. I think the July 1st order
22 made it very clear that the Commission is not exercising
23 certification jurisdiction over the PV portion; therefore
24 the Commission will not be issuing conditions of
25 certification for the PV portion. But the expectation is

1 that the analysis identifies impacts, makes recommended
2 mitigation measures to avoid or reduce those impacts to less
3 than significant levels.

4 With respect to the other portions of the document
5 we would expect staff to recommend and propose conditions of
6 certification as it typically would in a Preliminary Staff
7 Assessment and Final Staff Assessment.

8 Wow, I think I covered all of that without even
9 looking at my script.

10 (Laughter.)

11 (Commissioner Douglas and
12 Hearing Officer Vaccaro confer.)

13 HEARING OFFICER VACCARO: Okay, here is the
14 question. Because she's asking which means I might not have
15 said it clearly. I think with respect to the solar thermal
16 portion and the common facilities, the staff will be putting
17 forward conditions of certification for the Commission to
18 adopt and impose on the project. With respect to the PV
19 portion, there will be recommendations of mitigation
20 measures to avoid or reduce to less than significant any
21 identified impacts. Okay, I think I got that.

22 So that goes to lead agency, form and scope of the
23 environmental document. But that is sort of the big lead-up
24 now to the alternatives discussion.

25 Again, as has been the case throughout this

1 process, there have been a number of thoughts, suggestions,
2 opinions, arguments on which direction the analysis should
3 go. The Committee made very clear in its July 1st order,
4 over I think the objection of some of you, that it expects
5 to see a more robust alternatives analysis in this
6 Preliminary Staff Assessment and through this amendment
7 proceeding. So here are some guidelines for what that
8 means. Again, all of this will be reduced to writing so
9 that there won't be any question. But just to give you I
10 think a sense of where the Committee is headed.

11 I think one of the primary things that the
12 Committee would like the analysis to include would be an
13 examination of a project that's located exclusively south of
14 the BNSF rail line. That would be a project that might look
15 at purely PV, a combination of PV and SunCatchers or
16 SunCatchers alone.

17 I think the Committee would also like some
18 examination of the water well being located south of the
19 BNSF tracks.

20 A project configuration that avoids washes and
21 minimizes drainage impacts, I think with a particular focus
22 on potential impacts to the BNSF tracks as well as adjacent
23 properties is something else that the Committee would like
24 to see.

25 Specifically regarding compensatory mitigation for

1 Desert Tortoise, Mojave Fringe-Toed Lizard and other
2 biological resources' impacts. The Committee would like
3 some examination of a project configuration that would allow
4 for the one-to-one and three-to-one mitigation ratios and
5 avoid to the extent feasible the need for five-to-one
6 mitigation ratios.

7 And this last thing. It seems like a nit in way
8 but it really isn't. Whether or not it belongs in
9 alternatives or elsewhere I think remains to be seen. But
10 in the initial Calico proceeding during the alternatives
11 analysis there was quite a bit of testimony and discussion
12 within the decision about why PV is perhaps not a viable
13 alternative, but here we are being presented with a project
14 that has a very significant PV component. I think some re-
15 articulation of either changed circumstances or what now
16 makes utility scale PV viable is something that needs to
17 show up in the evidentiary record for this amendment
18 proceeding.

19 Of course everybody is going to get their
20 opportunity to ask questions about all of the things that
21 were just said. This isn't a place for arguing these points
22 because there are things that the Committee has carefully
23 considered and this is the position of the Committee. But
24 that said, we recognize there's room for discussion and for
25 fine-tuning some of these things. Perhaps not all but some

1 of these things.

2 So I think with all of that, and that' was quite a
3 bit, we probably might want to hear from the parties,
4 questions or comments, before we move to the various issue
5 statements. And for those parties submit conference or
6 issue statements you already know you still get the
7 opportunity to speak and to make your comments today but we
8 will take it, first of all, in the order of documents
9 presented. First we'll hear comments on all that I've said
10 then we'll start with the applicant's issue statement, we'll
11 hear from staff and we'll hear from Sierra Club. Those are
12 the three parties who submitted writings. Ms. Foley Gannon.

13 MS. FOLEY GANNON: Thank you. I think we
14 understand the decision about the lead agency and the
15 framing of the document. One question related to how the
16 document would be framed. And I think it was discussed
17 somewhere in the July 1st order and earlier discussions at
18 status conferences about the clarity about the baseline.
19 Again, in the July 1st order it's discussed, the incremental
20 changes of the project. So I would just like to get
21 clarification if that's correct, that that's the way the
22 Committee is looking at it. So that when you're talking
23 about you're analyzing, you know, the impacts associated
24 with the SunCatchers and related facilities and then the PV
25 again we're comparing that to the project that's already

1 been approved. Is that correct?

2 HEARING OFFICER VACCARO: I generally don't like
3 to answer a question with a question but sometimes I need my
4 own clarity, I think, to give the correct answer.

5 If we're starting with the July 1st order as the
6 starting point, right, for what it is that the Committee
7 said it wanted. And it specifically identified about a
8 handful of technical areas where we believe that the
9 baseline is not just taking the project from what was
10 previously analyzed. I don't think that the language there
11 was particularly unclear so I think in trying to figure out,
12 are you asking for clarity of what was written? Do you want
13 another recitation of what those technical areas are? I
14 don't think I'm understanding.

15 MS. FOLEY GANNON: Okay, then I'm going to have to
16 answer your question with a question too, unfortunately.

17 The way that I read the July 1st order was that
18 you had set forth areas where you thought there was a
19 trigger for needing supplemental analysis under the, sort of
20 the three different triggers under CEQA.

21 HEARING OFFICER VACCARO: Correct.

22 MS. FOLEY GANNON: Meaning that there's either new
23 information or there was a change in the project or a change
24 in circumstances in these areas and if we had disagreement
25 about those areas. I think those were very similar to the

1 areas that we had identified.

2 But there's still the question then at what you're
3 looking at. So just because under a typical supplemental
4 document, just because there's new information -- let's say
5 there's new information related to the translocation plan
6 for Desert Tortoise. That would mean that you would be --
7 if that was the new information that triggered the need to
8 analyze it that would mean you were certainly looking at the
9 impacts associated with the translocation plan, for example,
10 but not necessarily maybe the impacts associated with
11 putting a fence up around 4,600 acres.

12 So that's incremental as in the changes in these
13 -- those, whatever, five, six, whatever technical areas you
14 identified which trigger the need for supplemental review.
15 Those are the things that would really be the focus of the
16 staff. Is that correct? Is that clear what I'm saying?

17 HEARING OFFICER VACCARO: Yes, what you're saying
18 is clear.

19 MS. FOLEY GANNON: Okay.

20 HEARING OFFICER VACCARO: So I'm not going to
21 answer that with another question, I'm going to give you a
22 real answer. It might not be satisfactory at this moment.

23 I think you -- now that I understand what you're
24 asking, you raise a very fair question. And it's one that I
25 think the Committee needs to clearly articulate in writing I

1 think what its expectations are there. So we've got to Step
2 1, in terms of the July 1st order, I think what we need to
3 do now is give a bit more direction. And we'll do that in
4 writing. I think all of this is going to be reduced to
5 writing and that will be included.

6 MS. FOLEY GANNON: Okay. Then with regard to
7 alternatives a somewhat similar question. You were talking
8 about a more robust analysis of alternatives. Do you mean
9 more robust than was done in the original proceeding? Or is
10 it more robust than was done -- would usually be associated
11 with an amendment? That's sort of a preliminary question.

12 PRESIDING MEMBER DOUGLAS: For those of you on the
13 phone, this is Commissioner Douglas. You're asking good
14 questions that are forcing us to refine our thinking as we,
15 as we talk to you. But I think it's actually more the
16 latter. That the Committee is interested in an especially
17 robust alternatives analysis that helps us address some of
18 the concerns that we have about potential impacts to focus
19 on with some specificity in some of these areas of
20 alternatives analysis. And we'll refine areas for you.

21 But my observation about how this project went the
22 first time around in the Commission is that the alternatives
23 analysis happened rather late in terms of the Committee
24 choosing an alternative and something else adding with it.
25 But I just want to be sure that as we go through this

1 process we do look rigorously at alternatives all the way
2 through.

3 MS. FOLEY GANNON: And obviously I know we are not
4 here to argue those points. I would say in thinking about
5 this, if you go back and look at the record there were extra
6 alternatives that were put in at the end.

7 PRESIDING MEMBER DOUGLAS: Yes.

8 MS. FOLEY GANNON: You know, that end up becoming
9 the project.

10 PRESIDING MEMBER DOUGLAS: Yes.

11 MS. FOLEY GANNON: And that's how the process
12 ended up working. But there were, you know, a number of
13 alternatives, including -- and that's another question.
14 There was sort of a Phase I only alternative that was looked
15 at. And just squaring it with the fact that we're looking
16 at an amendment and just trying to understand. The staff
17 will probably have their own questions about this, about how
18 we're approaching that or comparing that. And are we
19 comparing it to the approved project when we're comparing
20 alternatives or how are you envisioning that?

21 HEARING OFFICER VACCARO: Well, I guess it's
22 comparative to the extent that there's -- that what you're
23 looking at now has been previously evaluated in some
24 fashion. But you're using a different technology.

25 And for instance, when we say let's look at the

1 south of the BNSF rail line only with either a PV only, a
2 SunCatcher-PV mix or SunCatcher. That wouldn't be
3 comparative necessarily because I don't believe that that's
4 really been previously addressed or examined.

5 MS. FOLEY GANNON: Right. I guess when I'm saying
6 comparative I was asking the question -- because I'm
7 assuming you're weighing alternatives. You're saying, is
8 there a way to lessen impacts. So if we're comparing it
9 to, again -- like you said, at this point like a "no
10 project" alternative would be meaning we don't amend the
11 project so the project is what was approved. So I would
12 assume that when we're laying out the comparison of the
13 impacts that would be the baseline, what the no project
14 alternative would be. Is that correct?

15 PRESIDING MEMBER DOUGLAS: it's an unusual
16 situation because you've got an approved project that you
17 have told us you are not going to be able to -- can't build.
18 So it's going back to the originally approved project that
19 won't be built.

20 I think that we can give some more clarity of what
21 the Committee wants to see in the analysis and what we see
22 as significant new information that would make us want to
23 see a more robust alternatives analysis in some areas. But
24 if you're asking a hard question -- because it's very hard
25 to compare something to the impacts of something that won't

1 happen. So, you know, maybe you can --

2 MS. FOLEY GANNON: Well, I think -- except for we
3 do have an analysis that's been completed that says what
4 those impacts are. And we have also been in discussions
5 with the BLM about how they're approaching this under NEPA.
6 You know, the requirements under NEPA are, you know, more
7 rigorous than CEQA about the way they have to go through it.
8 And this is the way that they are approaching it, after we
9 sat down and talked to them about it.

10 That their approach is saying, you know, you have
11 an approved project and we have the analysis of that
12 approved project. And they are considering it in a couple
13 -- a couple of things that are not the same as what you're
14 talking about here but not different. I mean, they're sort
15 of saying, is there something about this amendment that
16 could be done differently that would change the impacts of
17 what you're approving as an amendment.

18 And so I think that that's, that's an approach
19 that I can understand. But I think grappling a little bit
20 more with these ideas and giving some guidance about exactly
21 how to do this I think would be helpful. And again my
22 suggestion would be to say if you look at things that -- if
23 it was -- if the amendment project was changed in this way
24 would that reduce the impacts. And would -- you know, and
25 how would it relate to meeting the project purpose and the

1 applicant's goals? You know, so it's really focused on the
2 amendment.

3 MR. RITCHIE: Commissioner, this is Travis
4 Ritchie. If I might add a point on this.

5 HEARING OFFICER VACCARO: Mr. Ritchie, I'm sorry,
6 at this time because Ms. Foley Gannon just took a breath and
7 she is about to speak again. We are here and willing to
8 hear everything that the parties have to say. But if we
9 could go ahead and let the applicant finish with their
10 questions and comments first I think that's the best way to
11 do it. We'll do it in the process that we have been
12 following, allowing everybody a full and fair opportunity to
13 speak. But I am going to have Ms. Foley Gannon continue
14 with her thoughts and comments right now.

15 MS. FOLEY GANNON: Thank you. And the final point
16 about considering or providing supplemental information
17 about why PV would be feasible for this project when it was
18 deemed not feasible before. The one thing -- and I think we
19 can certainly provide information about, you know, again,
20 sort of what's been some of the changing economies and
21 what's been happening in regard to -- been made aware of
22 today.

23 But one of the things is in our record, the way it
24 was done under the staff's assessment and under the decision
25 was that PV was really ruled out here because it didn't

1 reduce impacts, not because it wasn't economically feasible.

2 The NEPA document said it got rid of it because it may
3 actually have more impact. So the joint document that was
4 first prepared discussed it that way. So again, I think I
5 understand I think what the intent is for having that
6 information, but I also think that, you know, we need to
7 make sure that we're also reflecting what's already in the
8 project's record.

9 HEARING OFFICER VACCARO: And I think in that same
10 vein, I understand completely what you're saying. I mean, I
11 too have reviewed the record for this, the prior proceeding,
12 as have a number of the parties and many other interested
13 persons. And I think that reasonable minds differ truly on
14 what the conclusions were about the PV and its viability as
15 an alternative and whether it's limited solely to the fact
16 that it wasn't going to reduce impacts or it wasn't shown to
17 be available utility scale. I think, let's just address it.

18 And I think even in the record for this amendment
19 proceeding you have seen some different opinions on what the
20 record said. So if there can be clarity I think it's
21 important that there is clarity.

22 MS. FOLEY GANNON: Okay. I think we can provide
23 that information. I think that's our only questions, thank
24 you.

25 HEARING OFFICER VACCARO: Okay, I think we'll turn

1 to staff next.

2 MS. WILLIS: Thank you. I think, I think we
3 believe that in our issue statement we had -- the first
4 three questions have been answered sufficiently for us and
5 we'll be looking forward to seeing the written document that
6 the Committee produces.

7 We agree with some of the question -- we have the
8 same, similar questions that applicant has presented on
9 alternatives of what exactly we would be looking for,
10 especially for an amendment. Because at this point the
11 amendment actually was reducing the number of SunCatchers so
12 it was, it's a little bit of a different process. And we
13 were also concerned about the no project would be, is it the
14 licensed project as is.

15 I think one of the questions I guess that we have
16 is more of a procedural question is that at this point in
17 time would the applicant then be submitting more
18 documentation on alternatives to staff or would it be staff
19 going in, doing that and looking at our own, coming up with
20 our own alternatives?

21 HEARING OFFICER VACCARO: I think it seems like
22 the most efficient and perhaps prudent course to ensure that
23 it is thorough is that staff takes the lead, of course
24 working with the applicant and getting information from the
25 applicant. I think to the extent that the applicant

1 disagrees or has a different position than staff then of
2 course, as is always the case, the applicant can do its own
3 submission. But to the extent that there is the ability to
4 work together on this I think that would be perhaps
5 advisable.

6 MS. WILLIS: And then we also had similar
7 questions on the baseline discussion and we will be looking
8 forward to reading the Committee's further direction on
9 that.

10 HEARING OFFICER VACCARO: Mr. Ritchie, on behalf
11 of Sierra Club, we're ready to hear from you now.

12 MR. RITCHIE: Thank you, Hearing Officer Vaccaro.
13 This is Travis Ritchie with the Sierra Club.

14 I think first I'll address the thought that was my
15 mind when I spoke up just a little bit before about whether
16 it's baseline or such.

17 I think, you know, specifically speaking about the
18 Desert Tortoise, which is something that was specifically
19 identified in the July 1st order and has obviously been one
20 of the big issues here. My understanding of the questions
21 that Ms. Foley Gannon was asking was whether the analysis
22 impact is comparing the baseline of a project, you know,
23 assuming that the SunCatcher project had been built. But
24 then how does that differ if we build the PV project and
25 what's the difference between those two end results.

1 I don't think that's the appropriate way to look
2 at it and I don't -- I didn't read the July 1st as looking
3 at it that way. It specifically identified new information
4 and referenced Ivanpah. And the Ivanpah facility is one
5 that we all know where the predicted landscape, the
6 predicted amount of Desert Tortoise and the impact to that
7 habitat was vastly different than what everybody thought at
8 the time of project approval.

9 And I think that's the new information that Sierra
10 Club is certainly concerned about. I think it raises
11 similar questions in this instance. And, you know, the
12 difference between whether it's PV technology or SunCatcher
13 technology is missing the point. The SunCatcher evaluation
14 of the original project considered a complete loss to Desert
15 Tortoise within the footprint of the project. And we
16 imagine that's going to be a similar case here with PV.
17 It's going to be a complete loss to Desert Tortoise within
18 the project. They just can't survive on sites like this. I
19 don't think anybody debates that.

20 But what we need to look at is based on this new
21 information, based on our experience with Ivanpah, what is
22 that impact? I don't think it's appropriate for the
23 applicant to bank on that previous decision and say, well we
24 already know that, you know, there is no significant impact
25 because the previous decision told us that.

1 I think we know a lot more now about this species
2 and its habitat and I think we all know that there is a
3 significant danger that the predictions for Desert Tortoise
4 habitat and a number of Desert Tortoise on this project site
5 are potentially very wrong. And I think that's where the
6 July 1st order identified the need for Calico to do a
7 renewed assessment of the extent of the project impacts to
8 Desert Tortoise based on that information.

9 So going forward and crafting that clear guidance,
10 you know, that's something that I think is important to
11 recognize. It's not just, you know, is the PV panel going
12 to do more or less harm to Desert Tortoise on site than a
13 SunCatcher would have. It's, what do we know now that we
14 didn't know before about these sites and how can we prevent
15 that type of, that type of damage and that type of impact?
16 We shouldn't just ignore that. So that's a specific issue
17 with baseline.

18 I guess I'll move on then to my other questions
19 with respect to the procedure that Hearing Officer Vaccaro
20 outlined going forward.

21 Obviously, Sierra Club submitted our issue
22 statement and we suggested that in this case two documents
23 would be more appropriate and would have more -- easier to
24 comply with the bearing authorities, both CEQA and then the
25 Warren-Alquist Act.

1 I think one document there is a possibility that a
2 single Draft EIR and Final EIR process could have somehow
3 come forward. But I think that the approach that you
4 suggested of just along the certified regulatory program and
5 then having the final document be essentially the PMPD
6 process and then a final decision process, I just don't
7 think that complies with the law of CEQA.

8 I think given the recognition from the Commission
9 and the correct recognition that this is not a certification
10 jurisdiction issue, I think the process of CEQA has to
11 apply. And at least for the PV portion of the project if
12 not the entire project.

13 That's not to say that the certified regulatory
14 program wouldn't be applicable for looking at the SunCatcher
15 project and doing a PMPD and a final decision for those
16 areas that are within certification jurisdiction. But I
17 don't think the process of the certified regulatory program
18 complies with a typical CEQA requirement and I don't think
19 that this type of process would be legally defensible for
20 the PV component.

21 I tried to identify one example in our issue
22 statement of where that conflict, where I can see that
23 conflict being directly relevant with respect to public
24 comment. Under the certified regulatory program the public
25 comment comes after the first PMPD draft. But the Committee

1 is prohibited from looking at new information that those
2 public comments might raise because the Committee has to
3 look at the evidentiary record. The certified regulatory
4 program is an indicative process. For better or for worse
5 it's different.

6 The typical CEQA process holds like a notice and
7 comment type rulemaking process. There are certain rights a
8 party has in adjudication. And, you know, the right to
9 cross-examine, the right to develop evidence. The
10 Commission is very familiar with all of those issues and
11 that's how the Commission does their proceedings. And
12 that's fine for certified regulatory programs and it makes
13 sense that all parties would then have the right to have the
14 evidence that goes forward and look at these things. But
15 that type of process is incompatible with public notice and
16 comment the way that CEQA describes it.

17 My thought here is, you know, we mentioned before
18 that it's quite an effort for some parties to participate as
19 full party participants in this type of proceeding. Again,
20 for better or for worse, I'm not judging that process, it is
21 what it is.

22 But if we have, if a party comes forward during
23 the public comment process after the evidentiary hearing,
24 after the PMPD draft has been completed and circulated for
25 public comment and that member of the public has significant

1 new information and provides that significant new
2 information to the Committee, the Committee is restricted
3 under the certified regulatory program from fully
4 considering that and adopting that information into this
5 process. I think that's a major problem. I think that
6 that's something that's not allowed under CEQA and I think
7 it creates significant problems for a document going
8 forward.

9 I also identified judicial review of the document
10 because I think it was kind of an elephant in the room that
11 folks have been thinking about but perhaps not addressing
12 directly. And, you know, this is something that Sierra Club
13 is obviously very concerned about, I think other members of
14 the public are very concerned about.

15 And I think doing a combined document like this
16 just creates a huge ambiguity for the legal status of that
17 document, whether it's protected by Public Resources Code
18 25531 and can go into the California Supreme Court or
19 whether it's something that complies with the normal process
20 of CEQA and goes through normal CEQA review in the Superior
21 Court. I think a single document is going to be incredibly
22 difficult to parse.

23 And while that's ultimately a question for the
24 courts to decide I just think it creates a procedural hurdle
25 that is just going to create a mess for everyone. I think

1 it would be far better for everyone involved if the process
2 clearly identified which document applied to the
3 Commission's jurisdiction under a certified regulatory
4 program and which document applied as a CEQA document.

5 And if you'll allow me to check my notes briefly
6 to make sure that I hit all of the topics I wanted to.

7 I guess one final thing I'll talk about with
8 respect to the Desert Tortoise issue and I spoke about this
9 a little bit before with baseline. I believe the applicant
10 submitted an agreement with respect to CURE about doing
11 additional Desert Tortoise studies, at least in Phase I.
12 You know, I think going along with our concern and going
13 along with what we've learned about Desert Tortoise in areas
14 like this and habitat like this.

15 You know, I want -- Sierra Club wants to go on the
16 record as saying I think we should go out and do new Desert
17 Tortoise surveys and we should figure out -- do a separate
18 independent study. Figure out how many Desert Tortoise are
19 out there. If it complies with the last study we'll all be
20 able to sleep better. If it's more like what we saw at
21 Ivanpah then we can react accordingly. But I think we need
22 new on the ground information of what the Desert Tortoise
23 populations look like for this site and I think we need that
24 before a decision is made on this process. And that
25 concludes my comments.

1 HEARING OFFICER VACCARO: Okay, Mr. Ritchie, you
2 have raised a number of points. I think some of which, or
3 almost all of which, the Sierra Club has made known to the
4 Committee and the parties in various writings and even
5 orally.

6 What I would like to do is ask you a few questions
7 to see if maybe we get from a position of you believe that
8 the CRP process and one document is wholly unacceptable to
9 maybe hearing some maybe thoughtful suggestions for where in
10 that process there might be room for what you think is
11 missing in terms of the participation of members of the
12 public or interested agencies who don't come in as
13 intervenors.

14 Where you think there might be concern or room for
15 improvement for a comment period. If you believe a 45 day
16 comment period is more appropriate for a PSA, what the
17 comment period you think would be amenable to your concerns
18 perhaps on the FSA. What you might like to see when the
19 PMPD is produced and circulated that shows that it has
20 considered the various comments that have been on the PSA as
21 well as the PMPD.

22 I say all of this, of course, with the, with the
23 view that I believe that the certified regulatory process
24 does have a mechanism and various mechanisms in place to
25 ensure that everyone has a full and fair opportunity to

1 participate. But I do understand that not everyone sees it
2 that way.

3 But the Committee is very interested in hearing
4 where you believe in this process on this amendment there
5 are some ways to build in some of the safeguards that you
6 think are otherwise missing.

7 MR. RITCHIE: Sure. And I appreciate that and I
8 appreciate the difficulty that the Committee faces in trying
9 to mesh these two processes. I guess I'll preface this with
10 saying, I'll give my response.

11 I don't think that my personal feeling or Sierra
12 Club's description of where the process could be improved
13 would fix the legal inadequacy of doing the certified
14 regulatory program for this process. I don't think it can
15 be fixed. So, you know, anything I say here are suggestions
16 but at the end of the day I still think legally CEQA
17 requires something that complies with the typical CEQA
18 process of a Draft Eir, public comment and EIR. Things that
19 I, that we have said before in writing.

20 HEARING OFFICER VACCARO: Okay, so --

21 MR. RITCHIE: But putting that aside for now. You
22 know, one of the major problems with this process, with the
23 certified regulatory process, is the public comment issue.
24 Now the PMPD allows public comment. The evidentiary
25 hearings conclude, they take the assessments of the staff,

1 the staff assessment, all the information developed in the
2 evidentiary hearing, and that's all drafted into a PMPD. And
3 then that goes out for public comment, there are public
4 comments on that, and then there is -- if necessary there's
5 a revised PMPD and a final decision after that.

6 I think the major problem and the major difference
7 here is that the level of flexibility that the Commission
8 has after the PMPD goes out, after the evidentiary hearings
9 are closed, to consider new information, to develop new
10 ideas and to fully analyze this project. I think a lot of
11 the work that goes into a typical CEQA document happens in
12 that time between the draft and a final and then the
13 recirculation of the final. And, you know, sometimes it
14 gets recirculated again and again and again and each time
15 the document gets better and better and better.

16 That doesn't happen in the Energy Commission's
17 process. The Energy Commission's process front loads the
18 evidence gathering and front loads the record, the
19 development of the record, during the evidentiary hearings,
20 during the staff assessment, during the cross-exam. And
21 essentially by the time you get to the PMPD the train has
22 left the station.

23 You know, that process has a time and a place and
24 there are reasons for it but it doesn't allow for the type
25 of public involvement and the type of public comment and

1 input into this process that CEQA envisioned. It's -- in
2 lieu of CEQA or an equivalent of CEQA but that specific part
3 of the process does not comply with CEQA.

4 And I think that given that most of this project,
5 most of the footprint of this project is something that the
6 Commission has recognized is not within its certification
7 jurisdiction, I think treating it under the certified
8 regulatory program is just ignoring that distinction. It's
9 making it into a semantic argument of whether a headline --
10 you know a chapter is headlined as a condition of
11 certification or a recommendation for mitigation.

12 HEARING OFFICER VACCARO: Mr. Ritchie?

13 MR. RITCHIE: The wording doesn't matter, it's the
14 practical effect.

15 HEARING OFFICER VACCARO: Okay. I'm going to
16 interrupt because I think the point you're making is a point
17 that you have been making and it really is understood I
18 think by all of us. And I am not in any way demeaning or
19 minimizing the point.

20 I think my only question for you at this point,
21 understanding all of what you've said and the fact that you
22 completely disagree with the appropriateness of the CRP and
23 the CRP process is how exactly once the PMPD issues do you
24 see the process potentially changing in this case that would
25 at least allow for the public participation or this

1 reconsideration or fuller consideration that you think is
2 currently missing?

3 And in a way I know this is putting you on the
4 spot and maybe you don't have a ready answer. But I can
5 assure you that the Committee is very interested in hearing
6 any response that you might have, you on behalf of Sierra
7 Club, to that very specific question.

8 MR. RITCHIE: I guess the best answer I could give
9 there is at that point where it becomes a PMPD, if you
10 insist on doing one document and one process, shift gears
11 and then start to treat the PMPD like the Draft EIR. And
12 there's a specific point in the CEQA doc -- in the CEQA
13 guidelines and I don't have it in front of me at that point.

14 But, you know, at that point send it out for
15 public comment. Receive that public comment. Answer every
16 single public comment. That's what a normal CEQA document
17 does, you know. Sometimes they group them together and say,
18 you know, all these documents are addressed here or this
19 document, you know, is besides the point. But answer each
20 of those public comments.

21 And then if new information is raised, if
22 significant information is raised, analyze it. Respond to
23 it. Incorporate that into a revised PMPD. And if it's
24 significant new information recirculate the PMPD again as
25 required by CEQA. And then keep doing that as much as is

1 required until you get to a final document that meets all of
2 those points of identifying the significant environmental
3 impacts.

4 Now that being said, I don't know if you can do
5 that. I don't know if doing that under your certified
6 regulatory process would violate any due process rights of
7 the applicant to cross-examine that type of information, to
8 test that information. So I don't think that would be
9 legally adequate but that substantively, that's the type of
10 thing that I think is missing from the certified regulatory
11 program.

12 HEARING OFFICER VACCARO: Okay, thank you. If you
13 don't have any other comments then I think I want to turn to
14 CURE at this time.

15 MR. HOLDER: Yes, good afternoon; Jason Holder on
16 behalf of CURE. I think I was going to leave it to the
17 staff and maybe the applicant to respond to Sierra Club as
18 to the need for two documents.

19 But we believe that one document prepared pursuant
20 to certified regulatory program would be appropriate here.
21 And in particular it would be appropriate to avoid a
22 segmentation or piece-mealing analysis of the whole of the
23 project. And of course it would be a lot more efficient for
24 the staff to analyze it under one document.

25 And that would be the only comment I have.

1 HEARING OFFICER VACCARO: Thank you.

2 Have we been joined by Basin and Range Watch?

3 (No response.)

4 HEARING OFFICER VACCARO: Okay, hearing no answer.

5 So, Mr. Jackson, if there are any comments you'd like to
6 make on these various topics we have discussed so far.

7 MR. JACKSON: Thank you. I have no comments on
8 what you have discussed so far.

9 HEARING OFFICER VACCARO: Okay, thank you.

10 Newberry Community Services District, are you on
11 the line?

12 (No response.)

13 HEARING OFFICER VACCARO: Okay, I'm hearing
14 silence so I'll move forward to Mr. Burke with the Society
15 for the Conservation of Bighorn Sheep.

16 MR. BURKE: I have no comments at this time.

17 HEARING OFFICER VACCARO: Thank you.

18 Mr. Aardahl on behalf of Defenders of Wildlife?

19 MR. AARDAHL: Yes, thank you. I just have just
20 one general comment. And that is, Defenders appreciate
21 hearing that the Committee intends to pursue a new and more
22 robust analysis of alternatives. And we think that's
23 entirely appropriate and one of the reasons for that is
24 because of the switch in technology. And we believe that PV
25 technology offers perhaps significant opportunities for

1 addressing impacts of the project, not only as it was
2 originally approved but also opens up new opportunities with
3 regard to the proposed modifications.

4 HEARING OFFICER VACCARO: Okay, thank you.

5 Bart Brizzee on behalf of the County of San
6 Bernardino.

7 MR. BRIZZEE: Thank you. No comments at this
8 time.

9 HEARING OFFICER VACCARO: Okay, thank you.

10 Ms. Kim, Helen Kim, representing BNSF.

11 MS. KIM: Yes, thank you. We certainly -- on
12 behalf of BNSF we certainly appreciate the Committee's
13 statement that it's looking for a more robust examination of
14 our alternatives, specifically locating the project entirely
15 south of the BNSF railroad tracks. Also examination of the
16 possibility of locating the water line entirely south of the
17 railroad tracks. As well as -- and basically looking to
18 minimize the impact on BNSF of railroad operations and
19 tracks.

20 With respect to the Sierra Club's comments as
21 articulated by Mr. Ritchie. We wanted to make clear that
22 BNSF shares the Sierra Club's concerns regarding the process
23 that the Committee is proposing at this time. We do not
24 believe that the certified regulatory process is legally
25 defensible with regard to the PV portion for all of the

1 reasons that Mr. Ritchie stated. And I would say that I
2 would agree with Mr. Ritchie that the only way to comply
3 with the requirements of CEQA is to, is to revise the
4 certified regulatory process to comply with CEQA rather than
5 the other way around.

6 I mean, I don't think -- I mean, from what I heard
7 from the questions, the question was, well how do we make
8 this CEQA fit into, you know, the CEC's certified regulatory
9 process. I don't think that that is the proper way to look
10 at the question. I think the question has to be looked at
11 in terms of the PV portion, which is after all 85 percent of
12 this project. You know, in order to be legally defensible
13 it has to comply with CEQA. So I don't think that minor
14 monetation (phonetic) or tweaks to the certified regulatory
15 process will get us there. And I think everybody in the
16 room and on the phone wants a process that will be legally
17 defensible.

18 So I would hope that the Committee would give
19 serious consideration to the Sierra Club's letter, which I
20 thought -- which we thought was very well written and
21 articulated all of the reasons why there should really be,
22 we think, two documents.

23 There's something to be said for efficiency and
24 ease for staff. But at the end of the day we have to have a
25 process that complies with CEQA for the PV portion and I

1 think that's what we need to keep our eyes upon.

2 HEARING OFFICER VACCARO: I think, Ms. Kim, your
3 very last sentence about a process that complies with CEQA I
4 think is something that certainly resonates with the
5 Committee and the Committee has given careful consideration
6 to each and every argument that has been made with respect
7 to the form and scope of the appropriate document.

8 And the Committee has determined that the
9 certified regulatory program and one document under that
10 program is the appropriate legally defensible document for
11 this project. So I think at this point the Committee has
12 heard quite a bit on that subject from the parties. The
13 decision has been made. And what we'll do -- members of the
14 public, certainly when it's time for public comment, are
15 certainly welcome to comment on that aspect again. I think
16 the matter is closed at this point as far as the parties are
17 concerned.

18 And what we would like to do is to the extent we
19 haven't already covered the important issues that are raised
20 in the written submissions to the Committee let's do that
21 now starting with the applicant. I think you've given us
22 quite a bit of status. Please assume that the Committee has
23 read and understands all of what was written by Mr. O'Shea
24 so that you can hit the high points without going through
25 all of the details.

1 MS. FOLEY GANNON: Brevity is not always our
2 strength in all of these filings and we apologize for that.

3 Before getting into some of these issues there is
4 one thing we would like to respond to, using the example for
5 the Desert Tortoise and the translocation plan as the new
6 information for the baseline. And Mr. Ritchie raised the
7 issues of Ivanpah. I know that the Committee has expressed
8 an interest in knowing how those do or do not affect what
9 has been done and studied on this site and we will be
10 submitting official information on this.

11 But we would like to make the point first off that
12 there are many reasons why that information, I believe, is
13 not going to, is not going to really result in new
14 information about -- it all falls into question the studies
15 that have been done on the sites because there's many, many
16 differences about when they were done. I know we are not
17 giving testimony on these things today but there's just --
18 because there was a number of comments said I would like to
19 just clarify the record a bit.

20 But in terms of comparing it to the baseline.
21 Again, we appreciate the fact that if there was new
22 information that called into question the impacts of the
23 project as it was approved and as the project that we are
24 suggesting to be amended, then we agree that that would be
25 something that would be appropriate to study here, so we are

1 not disagreeing about that. That we don't think that
2 affects the baseline. Any new information that's relevant
3 to the analysis we absolutely agree has to be looked at and
4 studied and we will be presenting information upon that.

5 But to, again, to continue saying because
6 something happened on this other project which had very
7 different studies and analyses done that says -- that calls
8 into question anything that's been studied on this site we
9 think is just not an accurate statement to make.

10 MR. GALLAGHER: Well, and just to sort of
11 elaborate on that a little bit. I don't want you to be left
12 with the mis-impression that what happened at Ivanpah is
13 directly applicable to what happened here. And the reason
14 for that is that a few people were surprised when Ivanpah
15 had more tortoise than its prior studies showed.

16 We were least surprised probably that Ivanpah had
17 more tortoise because -- and the reason for that is that
18 both Calico and Ivanpah had done their initial rounds of
19 tortoise studies in 2007 and 2008 under the earlier Fish and
20 Wildlife protocols and those were dry years, we had much
21 lower numbers.

22 The difference, the one big difference in the two
23 projects was that because of the timing, I guess, we were
24 required to go out and do new surveys in 2010 under the new
25 Fish and Wildlife Service protocols and the numbers of

1 tortoise that were observed went up by a factor of three.
2 And Ivanpah simply didn't do that. So, you know, we've
3 already discovered a lot more tortoise than the comparable
4 studies had shown.

5 And I don't want -- and I know this is not a time
6 for testimony; we obviously will respond to the Committee's
7 order. But I just didn't want you to be left with the mis-
8 impression that there's somehow an equivalence between what
9 happened to this project and what happened to that project
10 before the spring.

11 MS. FOLEY GANNON: Okay, now we will be brief.

12 So in most of our issue statements in the
13 beginning we were just giving updates on where we are on our
14 different deliverables. You know, the sites are ongoing.
15 We did just docket yesterday and the hard copies delivered
16 and made FTP sites available of the Geotech report. So that
17 has been completed. The hydrology studies are being
18 completed. We are working on the glint and glare study. We
19 are working with BNSF to get the necessary information we
20 need about the actual, their actual physical features on the
21 site to be able to complete our model. So those things are
22 ongoing.

23 There is the issue about the testing for valley
24 fever, which we have submitted information about. The
25 investigations we have done to be able to conduct those

1 studies, the possibility of doing those studies and whether
2 those studies would actually -- whether the experts are
3 telling us whether they think that information actually
4 result in something that would be meaningfully contributing
5 to what's been analyzed here.

6 And we have -- I know Dr. Greenberg is on the
7 phone. We have worked with him. Our technical people have
8 worked with him on making sure that we were being exhaustive
9 in our approach. So we weren't just saying, no, we won't
10 look at this. But we were doing what we could. And we have
11 -- the results of what we have done are leading us to the
12 point where we have to say we don't -- that this is
13 something that is reasonably available to us to be able to
14 do. Nor do we think it's going to meaningfully contribute
15 to the issue before the Commission. So we are being -- we
16 are asking to be relieved from having to conduct these
17 studies.

18 HEARING OFFICER VACCARO: I did notice that in the
19 document prepared by Mr. O'Shea. I think what I would ask,
20 specifically ask to that point. I think that needs to be
21 addressed to the Committee in the form of either a motion or
22 some other request. While you have made all of the points
23 here I think you have done, it's quite a bit of recitation
24 of fact. I think from the Committee's point of view it's
25 probably important that those facts are tied to a

1 declaration. Perhaps even one under penalty of perjury
2 under the laws of the state of California.

3 MS. FOLEY GANNON: Um-hmm.

4 HEARING OFFICER VACCARO: And that is accompanied
5 by a motion. But even before you get there, I think one of
6 the desired ways of approaching this is to see if you can't
7 amicably resolve the issue with Mr. Jackson. I don't know
8 if you have already attempted a stipulation with him. If
9 not, maybe consider approaching that. If you can't agree
10 then submit it, I think properly, to the Committee for the
11 Committee to address in the form of an order.

12 MS. FOLEY GANNON: Okay. We appreciate that
13 guidance.

14 The rest of it. Again, most of what we were
15 stating in our issue statement was responses to your -- the
16 staff's questions from their, from their status report,
17 which have been addressed by the decisions articulated here
18 today.

19 We will be submitting a modified project
20 description. We have a draft of that completed. We will
21 not try and make sure that it's consistent -- or maybe we'll
22 wait until after we get your written order about how you
23 want to see the document presented, so we can make sure that
24 that would work with whatever structure is outlined there.
25 And we will docket that because I know staff is also anxious

1 to get that.

2 Any other information that we provided here was
3 just the information we had presented to the BLM, which was
4 a side-by-side comparison of impacts that were analyzed
5 under NEPA and what we thought the changes and most impacts
6 would be on a resource by resource basis.

7 And then we have provided at the request of staff
8 an update on the CPUC proceedings.

9 And I think that's all that I have to address here
10 unless there's questions that you have for us.

11 HEARING OFFICER VACCARO: Just one quick one so
12 that I get a brief answer. The schedule. Can you indicate
13 for everybody who might be interested what's different or
14 what's not different about the schedule that's attached to
15 the staff report -- to your issues report.

16 MS. FOLEY GANNON: Mostly the things that were
17 related to the hydrology report got pushed out about two
18 weeks. Part of this was due to, again, our Geotech report
19 took a little bit longer. First off we had to get the extra
20 soil borings that we described last time. It took a little
21 bit longer to put it together.

22 And then we were making sure that when we started
23 the hydrology analysis the new road that's being -- access
24 road that's being put in between Hector Road and Section 8,
25 which is south of the railroad, that was not included in

1 those studies because that was, it's a separate amendment
2 that we were -- that came up after we had submitted the
3 original petition to amend. And we wanted to make sure it
4 was one analysis so we wove that in, which added a week to
5 our schedules, and then we decided to stay out another week
6 so that we wouldn't have to push it back again.

7 And then the glint and glare, as I described
8 earlier, this is -- I think we built in enough time that we
9 certainly should have it done by November 1st but we need
10 about six or seven weeks after we get the final information
11 from BNSF about their facilities. And again, I know the
12 site visit is being scheduled now between our technical
13 experts and BNSF's personnel. So we are hopeful we're going
14 to have that information all in the very near future. But
15 until we have it they can't create the final model. So this
16 is -- we think we built in enough time here that November
17 1st should be the final piece of information.

18 HEARING OFFICER VACCARO: Okay, thank you.
19 Ms. Willis.

20 MS. WILLIS: Thank you. First of all, we
21 appreciate the applicant responding to our questions in such
22 a thorough way. This was very helpful.

23 The only comment that we have on the schedule.
24 When we originally calculated that it would take about 45
25 days for a staff assessment following the last submittal of

1 data, that was back in May I believe, like May 9th or some
2 date like that. At that point in time there weren't --
3 there wasn't a lot of activity in the siting office.

4 At this point I think we have four AFCs coming in
5 plus it could get, this could get pushed closer to holiday
6 time. So we just wanted to make sure that, you know, if we
7 stick with this date it's probably doable but we want to
8 make sure that we've calculated in the Christmas and
9 Thanksgiving holidays and all of that time into that
10 schedule.

11 HEARING OFFICER VACCARO: So hypothetically if
12 this November 1st isn't a firm date and it moves to mid-
13 November, end of November or December, how does the 45 days
14 change and what's it changing by? A matter of months,
15 weeks, days?

16 MR. HOFFMAN: I couldn't see more than weeks. But
17 as you're aware, November and December get interesting with
18 all the amounts of holidays that come in and staff time and
19 holidays. So being able to -- and vacations. Being able to
20 hit it closer to that November 1st date helps us put out a
21 document closer towards the beginning of December. Trying
22 to put out a document towards the end of December gets
23 difficult at times but we've done it.

24 PRESIDING MEMBER DOUGLAS: The Committee
25 understands the need for some personal time in December and

1 potentially January so --

2 MR. HOFFMAN: We're getting those this year?

3 (Laughter.)

4 PRESIDING MEMBER DOUGLAS: I think it's up to
5 Terry.

6 MS. FOLEY GANNON: And we obviously would
7 appreciate that as well. And we would recognize that if it
8 slipped from November 1st we would have that effect so we
9 really -- you know, we tried to build in enough time here to
10 not have to have anything slip. We hope to get vacations
11 too.

12 MR. RITCHIE: For the record, Sierra Club also
13 approves of vacations.

14 (Laughter.)

15 HEARING OFFICER VACCARO: Mr. Ritchie, once again
16 you knew that it was your turn. I think staff has completed
17 the comments they had on their written submission. I think
18 you've told us everything that was in your letter relating
19 to the CRP process and the environmental document. But I
20 said everybody gets to comment on their written submission
21 so is there any final word that you'd like to give us?

22 MR. RITCHIE: I can hear the hesitation --

23 (Laughter.)

24 MR. RITCHIE: You know, no, I think I said it all.
25 I think based on the schedule, we'll be interested to see

1 kind of how that all boils down. And we'd be interested to
2 see kind of a written statement from the Commission on how
3 it perceives the schedule going forward just so that we can
4 all plan accordingly.

5 And also whether or not evidentiary hearings are
6 going to be part of that and when those might occur?

7 And then I guess I'll just end with, you know,
8 based on a lot of the issues that I brought up before. You
9 know, we are obviously very concerned about this process and
10 we'll look at whether or not the initial remedies now -- and
11 I think, you know, this issue has come up before and I think
12 it's a major concern for us and that's something that we're
13 going to be looking very carefully at going forward. And so
14 I'll end at that.

15 HEARING OFFICER VACCARO: Okay, thank you.

16 So, Mr. Holder on behalf of CURE, any final
17 comments on what's been discussed, this most recent segment
18 of discussion being the schedule that was addressed and a
19 few other items of status raised by Calico?

20 MR. HOLDER: No, I don't have any other comments
21 or questions, thank you.

22 HEARING OFFICER VACCARO: Okay, same question for
23 you, Mr. Jackson. Any final comments on the most recent
24 discussion?

25 MR. JACKSON: My question goes to the schedule.

1 And maybe I'm a little bit premature here. The staff
2 requested the applicant to provide an updated CPUC access
3 issue. Would that access issue, would that affect the
4 schedule? And if so, how?

5 HEARING OFFICER VACCARO: I think I'll let the
6 applicant and staff in turn address that question.
7 Ms. Foley Gannon.

8 MS. FOLEY GANNON: That is a separate process.
9 That is a process, a proceeding before another agency. As
10 we complete our status update we anticipate resolution of
11 that proceedings in october. Which would be well in advance
12 of the --

13 HEARING OFFICER VACCARO: Thank you. Ms. Willis.

14 MS. WILLIS: Yes. We would agree. I believe if
15 the decision comes out before the November date then
16 certainly we would include that information in our
17 Preliminary Staff Assessment.

18 The one thing I didn't address. Mr. Ritchie had
19 talked about the public comment time. We certainly will be,
20 we will be adding in time after the PSA for public
21 workshops. And that will be another issue of the scheduling
22 during the December time, holidays. We may have to push
23 that up to the first of the year if that schedule, you know,
24 turns out the way we're anticipating at this point. But we
25 certain are planning on, you know, having public workshops

1 on this, on this document.

2 HEARING OFFICER VACCARO: Thank you.

3 MR. RITCHIE: If I could -- I want to make a
4 clarifying point because I think --

5 HEARING OFFICER VACCARO: You know, Mr. Ritchie,
6 because I'm on Mr. Jackson's time right now.

7 MR. RITCHIE: I apologize.

8 HEARING OFFICER VACCARO: I will give you --

9 MR. RITCHIE: If you could come back to me I'd
10 appreciate that.

11 HEARING OFFICER VACCARO: Okay. Mr. Jackson, did
12 you have any other questions?

13 MR. JACKSON: No, let Mr. Ritchie talk.

14 HEARING OFFICER VACCARO: Actually no, I'm going
15 to go to Mr. Burke next. I'm going to follow the order that
16 I indicated because I need to be fair to absolutely
17 everyone. So Mr. Burke, are there any comments or questions
18 that you have?

19 MR. BURKE: Not on the topic at hand.

20 HEARING OFFICER VACCARO: Okay. Do you have
21 another question relating to this matter that you would like
22 to ask the Committee or have addressed at this time?

23 MR. BURKE: No.

24 HEARING OFFICER VACCARO: Okay.

25 Mr. Aardahl, on behalf of Defenders?

1 MR. AARDAHL: Thank you. The only other comment I
2 would like to make is just to note that in the year that's
3 passed I think since our last hearings in Barstow we do have
4 new information regarding the Desert Tortoise translocation
5 effort underway at Fort Irwin and I think that would be
6 among the items that would be I guess classified as new
7 information that would be relevant to the revised analysis.
8 Thank you.

9 HEARING OFFICER VACCARO: Thank you.

10 Mr. Brizzee, County of San Bernardino.

11 MR. BRIZZEE: Nothing on this issue, thank you.

12 HEARING OFFICER VACCARO: Okay. Helen Kim?

13 MS. KIM: Yes, thank you. With respect to the
14 applicant's status report on the glint/glare study BNSF
15 wanted to raise an issue. It is certainly true that BNSF
16 offered the applicant's expert, Powers Engineers, an
17 opportunity to conduct a site visit to verify the height and
18 location of the signals. That is stated in the applicant's
19 status report.

20 But I wanted to also raise the fact that BNSF also
21 offered to arrange for Powers to meet with BNSF at first on
22 maintenance so that they could understand the activity in
23 the area and the safety issues and needs of our maintenance
24 personnel. We also offered the opportunity for them to
25 speak with our mapping experts to provide details on mapping

1 and other information that might be of use to Powers
2 Engineers.

3 But Powers Engineers has not been receptive to
4 BNSF's offers and therefore BNSF is concerned that Powers is
5 not interested in performing a study that will adequately
6 account for all the concerns and the potential impacts of
7 the proposed project on BNSF'S track maintenance personnel.

8 Obviously we want to make sure that the applicant's experts
9 fully understand BNSF has property in that area so that the
10 proper analysis can be done.

11 HEARING OFFICER VACCARO: Okay, thank you,
12 Ms. Kim. And I think what we can do, us sitting here on the
13 dais, is just continue to commend BNSF and Calico for
14 working together and to encourage the two entities to
15 resolve whatever differences they might have and continue
16 working together on the glint and glare study to the extent
17 feasible.

18 I think with that I have a question and then
19 Mr. Ritchie, we'll hear back from you one last time and very
20 briefly.

21 I wanted to know from staff, have there been
22 contacts with BLM? Is there a sense of how the
23 coordination, or if there is any coordination at all with
24 BLM in terms of its review of the process? That's something
25 that we haven't heard much about from staff at all. But if

1 we look to the last process there was early BLM involvement
2 in the prior Calico proceeding.

3 MR. HOFFMAN: Sure. this is Craig Hoffman. We
4 have almost had weekly conversations with Jim Stovall and
5 staff in regard to what's going to be taking place with the
6 NEPA document. It looks like towards the beginning of
7 September they're going to be issuing their NOI or some type
8 of kickoff, they're starting their NEPA process. But we
9 have been working with them and we understand their process.
10 And coordinating the types of project descriptions that are
11 taking place and that is happening.

12 I was just also going to offer up that for part of
13 our next status conference we'll put together a proposed
14 schedule of what it might look like in the preparation of
15 the FSA and workshops so people have that on their
16 calendars.

17 HEARING OFFICER VACCARO: Great, thank you.

18 Mr. Ritchie, very briefly and then we're going to
19 move to public comment.

20 MR. RITCHIE: I will be, Hearing Officer Vaccaro.
21 And this is the line of the question that you posed before
22 about potentially constructive effort with the process. I
23 wanted to know, with respect to public comment on the staff
24 assessment. I think one of the potential concerns with that
25 and why it's different than public comment on a PMPD is that

1 public comment on the staff assessment doesn't have kind of
2 the final product or the proposed project.

3 It keeps moving so much during the hearing and the
4 additional evidence that's coming in that it's very
5 difficult for the public to know whether or not it's
6 commenting on the project that is actually proposed or not.

7 And I just wanted to make that distinction that public
8 comment on the staff assessment is good but it's not a
9 substitute for that type of public comment on something
10 that's equivalent to a Draft EIR. And thank you for
11 allowing me to have that -- that's all I'll say.

12 HEARING OFFICER VACCARO: You're welcome. And
13 thank you for adding something to a question previously
14 asked.

15 Now we're turning to public comment. It doesn't
16 look like there's anyone here in the room that's a member of
17 the public so I'll ask if there are any members of the
18 public on the telephone who wish to comment on today's
19 proceedings or anything relating to this Calico Amendment
20 Project?

21 MR. STERN: I'll make a comment, if I may. I'm
22 Fred Stern from Newberry Springs and I've been following
23 this for a couple of years and input into the initial public
24 comment. I didn't think I'd -- pardon me for saying so --
25 so I'd like to say it again, I don't think the access issue

1 has been properly addressed, I don't think the drainage
2 issue has been properly addressed, and I don't think the
3 public health issues have been properly addressed. So we go
4 to the next stage of this process so maybe treat those
5 issues a little more seriously. I'm talking about the
6 private land owners, not the railroad tracks. Thank you.

7 HEARING OFFICER VACCARO: Okay, thank you.

8 Any other members of the public who wish to make a
9 comment?

10 (No response.)

11 HEARING OFFICER VACCARO: Hearing none I am now
12 turning the microphone over to Commissioner Douglas.

13 PRESIDING MEMBER DOUGLAS: Thank you. It has been
14 a productive status conference and we look forward to many
15 more of them.

16 I would like to thank all the parties for your
17 hard work in preparing for the status conference and look
18 forward to working through this process and through these
19 issues. Commissioner Weisenmiller?

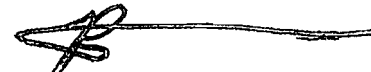
20 ASSOCIATE MEMBER WEISENMILLER: I want to thank
21 everyone. I would also note that certainly the intent -- I
22 was here when the CFR process went through the -- the
23 activity was the Resources Agency. At the time Huey Johnson
24 was the Secretary. And certainly Huey has, I think everyone
25 would say, impeccable environmental credentials. And so the

CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 31th day of August, 2011.



PETER PETTY