

PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

DOCKET 11-CAI-02
DATE SEP 09 2011
RECD OCT 12 2011

In the Matter of a Complaint Against:)
)
ORMAT NEVADA, INC. brought by)
CALIFORNIA UNIONS FOR RELIABLE ENERGY)
_____)

Docket No.
11-CAI-02

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

MONDAY, SEPTEMBER 19, 2011

10:00 a.m.

Reported by:
Peter Petty
Contract No. 170-09-002

ORIGINAL

COMMITTEE MEMBERS PRESENT

Karen Douglas, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Kenneth Celli, Hearing Officer

Eileen Allen, Advisor to Commissioner Weisenmiller

Galen Lemei, Advisor to Commissioner Douglas

STAFF PRESENT

Jeff Ogata, Assistant Chief Counsel

Robert Worl, Project Manager

OFFICE OF THE PUBLIC ADVISER

Jennifer Jennings, Public Adviser

COMPLAINANT

Tanya Gulesserian
Elizabeth Klebaner
Adams Broadwell Joseph & Cardozo
representing California Unions for Reliable Energy (CURE)

RESPONDENT

Samantha G. Pottenger
Christopher T. Ellison, Attorney
Ellison Schneider and Harris LLP

Charlene L. Wardlow
Ormat Nevada, Inc.

INTERVENOR

Howard F. Wilkins
Remy, Thomas, Moose & Manley, LLP
representing Imperial County Planning & Development Services

ALSO PRESENT

Rosario Gonzalez, Deputy County Counsel (via WebEx)
representing Imperial County Air Pollution Control District

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1 have received heretofore. Secondly we will identify the
2 matters that are disputed. Thirdly we will discuss any
3 objections to the informal hearing procedures. After that
4 we will discuss the Witness List, then we will discuss the
5 Exhibits List and after that we will discuss a briefing
6 schedule. After that we are going to inquire whether a
7 workshop would be productive. We did notice a workshop in
8 our Notice of Prehearing Conference, or the option, shall we
9 say, of a workshop immediately following.

10 Finally we will provide an opportunity for the
11 public to comment. I notice that there really is no public
12 here today in person but there may be on the phone. We will
13 take public comment at the close of the hearing, followed by
14 a workshop if the parties seek to exercise that option. And
15 we will know by then.

16 So with that I would like to begin our discussion
17 of motions. We have CURE, and CURE stands for California
18 Unions for Reliable Energy, and CURE is also the Complainant
19 in this case. CURE brought a motion for data requests,
20 brought a couple of motions. A motion for data requests, a
21 motion to direct parties to docket all documents.

22 And in the complaint there was a request that any
23 additional parties be noticed in the POS. We don't really,
24 I haven't heard or seen anyone other than the three entities
25 that were noticed in the POS. Perhaps some of the other

1 parties have some suggestions. But I just wanted to hear
2 from CURE as to whether you're satisfied that all of the
3 reasonable parties have been notified.

4 So with that, please, Ms. Gulesserian. I think we
5 should take the motions in order that you think make sense
6 because I did receive a letter from you saying that there
7 was one that was being withdrawn.

8 MS. GULESSERIAN: Yes, thank you. That was --
9 well first with respect to the complaint. It seems to CURE
10 that the parties, all potentially responsible parties or
11 interested parties have received notice of the complaint and
12 that those that sought to intervene have intervened. So we
13 don't have any further issues with respect to notice of the
14 complaint.

15 With respect to data requests. We have submitted
16 two sets of data requests based on information, public
17 information that we had regarding these projects. We have,
18 we just received responses to those data requests on Friday
19 afternoon, however, I haven't had a thorough chance to
20 review them. And we did note that some of the, there are no
21 responses to some of the data requests. So we need to
22 evaluate at this time whether we need to do a motion to
23 compel or whether we can gather some information in a
24 workshop setting as you had just mentioned.

25 We also just received, it hasn't been filed but

1 since it's on the issue of data requests. We received some
2 confidential information that was submitted to staff earlier
3 this month. We just received that on Thursday. Our
4 engineer had received those materials on Saturday pursuant
5 to non-disclosure agreement. And we have done our best to
6 review that since Saturday, just so we could come here with
7 a preliminary assessment of whether we received the
8 information that we sought in our petition for confidential
9 records and whether we have concluded gathering information
10 in order to move towards an evidentiary hearing.

11 Based on our initial review over the weekend it
12 appears that we have received the ten documents that are the
13 subject of our petition to inspect and copy confidential
14 records and so CURE would withdraw that petition. It no
15 longer needs to be ruled on since we received them.

16 Then also with respect to what we received. The
17 information appears incomplete in order to proceed. So what
18 we would -- since our engineers just received them and they
19 were provided to us on Thursday we would anticipate
20 following it up with a few data requests in order to
21 understand the information. Or perhaps -- I haven't thought
22 about this but a workshop to understand the information that
23 was provided.

24 We do seek an order -- and we did -- it would have
25 been helpful over the past several weeks to have an order

1 directing all parties to file and serve all documents in
2 this proceeding. It is our understanding that based on the
3 rules, which I cited in one of my letters, all documents
4 need to be filed, docketed and served on all parties.

5 On September 2nd, earlier than that, I think it
6 was August 16th, Energy Commission staff submitted good data
7 requests to the applicant in order to evaluate generating
8 capacity. We would not have submitted duplicate of data
9 requests since staff had already submitted them. And so we
10 were waiting for responses; we expected those on September
11 2nd. On September 2nd nothing had been docketed, nothing
12 had been served. And following the Labor Day weekend I
13 emailed staff to ask if there was anything because the
14 docket and service did not show anything.

15 It appears that the applicant and staff had a
16 meeting on that Friday, the September 2nd, which was not
17 noticed or we were not informed of. And there was an
18 exchange of information along with a request -- along with
19 an application for designation of confidential materials
20 that was not docketed or served.

21 So we -- I subsequently called the other party to
22 see if we could get the materials as well in order to
23 proceed as quickly as we could towards the exchange of
24 information. I didn't have a response so I filed this
25 petition to compel. So it took a matter of over, almost two

1 weeks or more to receive the materials that were provided to
2 staff.

3 Which, you know, would have been -- it would have
4 been helpful in order to expeditiously get us to where we
5 needed to be in order to provide informed testimony at a
6 evidentiary hearing. We are not there yet. So we do
7 request that all parties serve and file documents, docket
8 documents so that we can move as quickly as possible, which
9 is what we would like to do. Thank you very much.

10 HEARING OFFICER CELLI: Thank you. I would have
11 seated everybody differently because I usually like to look
12 this way. So who is representing Ormat? Okay,
13 Ms. Pottenger.

14 I have Respondent, which is Ormat, the Respondent
15 is Ormat Nevada, Inc. A motion to dismiss that was attached
16 to the answer. And I had objections to data requests and
17 extensions. And without spending a lot of time on this it
18 sounds like perhaps the parties have resolved the data
19 request issues but let's hear from Ormat on that, please.

20 MS. POTTENGER: In regards to the motion to
21 dismiss, Ormat feels that CURE has failed to file a prima
22 facie case against Ormat. Cure has failed to submit a
23 verified complaint with facts alleging that the Commission's
24 regulations have been violated by Ormat in terms of whether
25 North Brawley or East Brawley are 50 megawatts or more in

1 terms of net generation.

2 In terms of the petition to inspect documents.
3 Ormat believes that this issue has already been resolved,
4 given that we provided Exhibits 203 and 204, which were the
5 materials that Ormat submitted under an application of
6 confidentiality in response to the engineering questionnaire
7 from staff.

8 HEARING OFFICER CELLI: So Exhibit 203 and 204,
9 let me pull out your exhibit list, is everything for which
10 you were seeking confidential designation?

11 MS. POTTENGER: Correct.

12 HEARING OFFICER CELLI: I'm sorry, go ahead.

13 MS. POTTENGER: That's pretty much Ormat's
14 position. We've responded to CURE's request for data. They
15 signed a non-disclosure agreement with Ormat and we have
16 produced the documents. Therefore we feel that an order
17 requiring parties to serve all documents is moot, there is
18 no need.

19 HEARING OFFICER CELLI: Thank you. And then
20 Mr. Wilkins, we have no motions from the intervenor at all.

21 MR. WILKINS: That is correct. We joined in
22 Ormat's motion to dismiss but we have not brought any
23 individual motions.

24 HEARING OFFICER CELLI: Okay, thank you. Nor did
25 staff, correct?

1 MR. OGATA: That's correct, Mr. Celli, staff did
2 not file any motions.

3 HEARING OFFICER CELLI: Thank you. We are just
4 going to go off the record for a moment. I just want to
5 have a quick discussion with the Committee and then we'll
6 get back on the record.

7 (Off the record at 10:17 a.m.)

8 (On the record at 10:20 a.m.)

9 HEARING OFFICER CELLI: From time to time we may
10 go on and off the record like that so thank you for your
11 indulgence.

12 I want to reflect that the Committee has
13 considered the motions. At this time the Committee finds
14 that CURE has made a prima facie case so the motion to
15 dismiss is denied but without prejudice to a later motion if
16 it's appropriate. The motion for, the motion to dismiss is
17 actually maybe premature since what we're asking for and
18 what we're being asked for is an investigation. So we'll
19 see, that's sort of the cart before the horse.

20 As to the data requests. We are going to invite
21 the parties again to have a workshop to today. We think
22 that the parties can work these things out informally. We're
23 encouraged that there is a non-disclosure agreement that's
24 been signed, so I think that the parties should feel safe in
25 exchanging information that way. The Committee encourages

1 and seeks to have the parties openly exchanging information
2 and that's, so that would be the order on that. We're going
3 to request that you handle that informally and appreciate
4 the efforts that you've made heretofore.

5 The last point I want to make though is that
6 because of the time constraints based on our regulations
7 there will be no continuances and we will be having an
8 evidentiary hearing on Monday. And so we're going to insist
9 that the parties work together with alacrity so that we can
10 get moving on Monday and have that hearing.

11 So with that, if there isn't anything further on
12 motions then we will move to the next thing, which are the
13 allegations in dispute. Anything, Mr. Ellison.

14 MR. ELLISON: Thank you, Hearing Officer Celli.
15 We accept the Committee's ruling, of course. And we will
16 work with alacrity and we will cooperate with CURE and have
17 a workshop.

18 I do, however, want to make a comment about the
19 data gathering process that we're engaged and this cart
20 before the horse concept. The reason that we filed the
21 motion to dismiss was because we believe the Commission's
22 regulations are quite clear that to initiate an
23 investigation you have to already have compiled facts
24 suggesting that there is a violation. That's why the
25 complaint has to be verified, which this was not. That's

1 why the Commission's regulations require a -- do not call
2 for data requests and that's why the Commission's
3 regulations call for such a short time frame.

4 HEARING OFFICER CELLI: Let me just, let me just
5 say that we believe that we did receive a verified
6 complaint. It was signed not by an officer of CURE but
7 rather by their attorneys, okay. But we did receive an
8 explanation for that in that CURE is not a corporation or a
9 traditional entity, it's more of a, sort of an organ --
10 well, how would we call it? What would you call it? A
11 group of unions that are hanging out together.

12 MR. ELLISON: I understand the explanation. The
13 purpose, I believe, of the verification is to say that you
14 have a witness who is prepared to testify under oath to the
15 facts in the complaint and that the facts make a prima facie
16 case that you're prepared to defend in a hearing. I believe
17 the complainant in this proceeding has the burden of proof.

18 HEARING OFFICER CELLI: That's true, that's
19 accurate.

20 MR. ELLISON: So the fact, the fact that we sit
21 here today with lots of discovery, the fact that we're
22 holding a workshop, the fact that CURE has said this morning
23 they're not ready to file testimony, all suggest to me that
24 CURE doesn't have a case and that they're trying to go on a
25 fishing expedition to create one, to be blunt.

1 So the comment that I want to make is that we are
2 working, we have voluntarily provided information even
3 though we have these views in these motions. We have
4 negotiated a non-disclosure agreement with CURE, well will
5 hold a workshop, we will move with alacrity.

6 But I do want to make clear that we would
7 vigorously oppose any further continuance of this
8 proceeding. We believe this complaint absolutely has no
9 merit. And we believe that not only it has no merit, but
10 that in fact it violates fundamentally the whole concept of
11 the Commission's investigation regulations. Thank you.

12 HEARING OFFICER CELLI: Thank you. So I do want
13 to reiterate the Committee's appreciation for the efforts
14 that are being made informally to work out discovery. You
15 raise an important point that the Committee does
16 acknowledge, which is the scheme does not really contemplate
17 discovery, per se, because actually the relief sought is an
18 investigation. And so it is a bit of the cart before the
19 horse. Nevertheless, the parties need to come in here
20 prepared and informed. And we think that it is beneficial
21 for the parties to work out informally everything that they
22 can. We do appreciate your exchange.

23 The opposition to the continuance is noted and as
24 we said, there will be no continuances. We just have no
25 room. We're going to have the evidentiary hearing on the

1 last day.

2 MS. GULESSERIAN: May I have a response to that?

3 HEARING OFFICER CELLI: Certainly, go ahead.

4 MS. GULESSERIAN: Okay.

5 HEARING OFFICER CELLI: Ms. Gulesserian. And by
6 the way, we're on the phone so people are listening in and
7 so before you speak please identify yourselves. Go ahead.

8 MS. GULESSERIAN: Thank you, Mr. Celli,
9 Commissioners. Tanya Gulesserian on behalf of CURE.

10 First of all the regulations set forth what the
11 complaint needs to have in it. And our complaint alleges a
12 violation of the statute, shows a violation of statute based
13 on information provided by Ormat to the county, to Imperial
14 County. So we believe that there is sufficient information
15 in there to request, to file a complaint and request an
16 investigation.

17 HEARING OFFICER CELLI: And just to be clear, the
18 Committee agrees because the Committee found that there was
19 a prima facie case and that's why we're here today.

20 MS. GULESSERIAN: And we appreciate that.

21 With respect to the hearing. The regulations
22 state that the Commission shall provide written notice no
23 fewer than 14 days before the first hearing and it also
24 provides that the hearing shall be scheduled to commence no
25 later than 90 days after receipt of the complaint. So we

1 believe that there is an opportunity in the regulations for
2 a first hearing to be held that is then continued.

3 HEARING OFFICER CELLI: I agree.

4 MS. GULESSERIAN: Okay.

5 HEARING OFFICER CELLI: What I am trying to do is
6 preserve the fact that yes, this is the 90th day, which will
7 be our hearing. Next Monday is the 90th day and so we have
8 to commence on that day. Hopefully it won't go longer than
9 one day. We'll get to that as we talk about witnesses and
10 exhibits. But if we can, we can accomplish it in one day,
11 that would be great.

12 MS. GULESSERIAN: CURE is very willing to commence
13 the evidentiary hearing and discuss the need to continue it.
14 Maybe when we get to the issue of witnesses and exhibits,
15 like, we can talk about that a little bit more. Thank you
16 very much.

17 HEARING OFFICER CELLI: Thank you. Anything from
18 staff or intervenor?

19 MR. OGATA: (Shook head.)

20 HEARING OFFICER CELLI: Staff shook their head no.

21 MR. WILKINS: No.

22 HEARING OFFICER CELLI: As does intervenor, thank
23 you.

24 So we are on to the allegations that are in
25 dispute. These come from mostly the complainant. These

1 were all denied by the respondent. The allegations in
2 dispute are:

3 One, whether Ormat is developing a 150 megawatt,
4 gross megawatt, geothermal facility in the North Brawley
5 known geothermal resource area.

6 Two, whether the North Brawley and East Brawley
7 geothermal projects are one facility with a combined gross
8 generating capacity of 150 megawatts.

9 Three, whether Ormat may sell 50 megawatts of
10 generation from the East Brawley Project to Southern
11 California Edison pursuant to the PPA agreement approved by
12 CPUC Resolution E-4126. Which I believe that's the North
13 Brawley's PPA. That was, I think, the allegation.

14 MS. KLEBANER: The PPA does not specify which
15 project. The PPA states a project developed in the North
16 Brawley area.

17 HEARING OFFICER CELLI: Okay, good, thank you for
18 that clarification.

19 Disputed item number four: Whether Ormat executed
20 a PPA for the sale, PPA being a Power Purchase Agreement,
21 for the sale of up to 100 megawatts from a new geothermal
22 facility in North Brawley.

23 Five, whether Ormat segmented permitting and
24 development of the East Brawley and North Brawley facilities
25 into two 75 megawatt geothermal projects for the purpose of

1 environmental review.

2 Six, whether East Brawley and North Brawley
3 projects are proposed on adjoining parcels of land.

4 Seven, whether East Brawley and North Brawley were
5 planned separately or intended by Ormat as one development.

6 Eight, whether East Brawley and North Brawley will
7 share utility service pursuant to a water supply agreement
8 between Ormat and the City of Brawley.

9 And lastly number nine, whether the net generating
10 capacity of either the East Brawley or the North Brawley
11 project is greater than or equal to 50 megawatts.

12 So I am going to go around the room and ask if
13 there are any questions or comments regarding this list of
14 disputed issues. First with CURE, complainant.

15 MS. GULESSERIAN: We don't have any corrections to
16 this list of disputed issues. We would note that since
17 receiving the prehearing conference statement of staff we
18 have identified further, you know, disputed issues.

19 We have also just recently obtained information
20 from Ormat in which there appear to be more disputed issues
21 that may fall within some of the categories here. So
22 generally, I would say at this time, it might be broad
23 enough to cover the issues that we are litigating.

24 HEARING OFFICER CELLI: Thank you.

25 MS. GULESSERIAN: Thank you.

1 HEARING OFFICER CELLI: I just want to say that
2 procedurally the complaint is what identifies what the
3 issues are and we are locked into the complaint. So CURE
4 couldn't expand on those issues because it's not part of the
5 verified complaint. And we would like to limit the issues
6 to what's in the complaint and in the answer.

7 Any questions or comments from respondent
8 regarding the list of disputed issues?

9 MS. POTTENGER: Respondent would just like to note
10 that many of the facts that CURE has identified as being in
11 dispute are actually irrelevant to the question at hand in
12 terms of whether the Commission actually has jurisdiction
13 over North Brawley and East Brawley.

14 For example, whether Ormat may sell 50 megawatts
15 of generation from a PPA. That's simply irrelevant to the
16 question of jurisdiction. The Commission's regulations
17 provide a specific methodology for calculating the
18 generating capacity of projects and the amount or terms of a
19 PPA is simply irrelevant to that issue.

20 HEARING OFFICER CELLI: Okay, thank you. That's
21 something that we're going to have to rule on next week.
22 That's a factual question. Staff.

23 MR. OGATA: Jeff Ogata, staff counsel. We have
24 nothing to add to what you have already set forth,
25 Mr. Celli.

1 HEARING OFFICER CELLI: Thank you, Mr. Ogata.
2 Mr. Wilkins.

3 MR. WILKINS: Howard Wilkins for the County of
4 Imperial, intervenor. We have nothing further to add
5 either.

6 HEARING OFFICER CELLI: Thank you very much.

7 Next we're going to get to the topic of informal
8 proceedings. As stated in the Notice of Prehearing
9 Conference and Evidentiary Hearing issued on August 19,
10 2011: Pursuant to Government Code section 11445.10 et seq.
11 and section 1217 of the Commission's regulations, Title 20,
12 the Committee may conduct all or portions of the
13 evidentiary hearings in an informal manner. For example,
14 the Committee could allow a panel of witnesses sponsored by
15 a single party or by multiple parties to testify at once,
16 with an exchange of questions and responses between the
17 witnesses and counsel for various parties instead of formal
18 direct and cross-examination. Other aspects of the hearing
19 may be conducted informally as well at the discretion of the
20 Committee.

21 Any objections to the taking of testimony or
22 evidence in an informal manner were to be filed on or before
23 the deadline for filing a Prehearing Conference Statement.
24 The parties were encouraged to comment on the format best
25 suited for the hearings and identify the topics for which

1 informal hearings may be appropriate in their Prehearing
2 Conference Statements.

3 The parties took the following positions on
4 informal hearings. There was no objection from anyone
5 except CURE objected to an informal expert panel. Staff was
6 silent on the question but both Ormat and intervenor did not
7 object to informal hearing procedures.

8 I want to first acknowledge, Ms. Gulesserian, that
9 I understand the concern that you voice, which was that if
10 we had a panel that it gets a little chaotic with multiple
11 people answering the questions and it could undercut your
12 cross. You don't want people coming in and rescuing someone
13 when you've got them on the hot seat. I understand those
14 types of concerns.

15 What I wanted to run by you is the possibility of
16 having an informal direct examination followed by a formal
17 cross. And the reason I'm raising this, and we'll talk
18 about this later with witnesses. The witness list we
19 received from intervenor and respondent showed a lot of
20 overlap, a lot of what looks to me like duplication. I
21 would hate to have to call witness after witness after
22 witness and cover ground again and again.

23 You know how -- this isn't your first rodeo and
24 you know that we like to keep things moving. So what I'm
25 proposing is an admonition both from their counsel and from

1 the Committee so that if we call the panel but we admonish
2 the witnesses that you are not to answer a question unless
3 asked. And you would have, you would direct your cross-
4 examination to specified individuals. So if there's three
5 people you would say, this is a question for John Smith,
6 day, time and place, whatever your question is. And you
7 stay with Mr. Smith as long as you need to. We would
8 prohibit any of the other panelists from cutting in, that
9 kind of thing. Would that allay your concerns regarding
10 cross-examination of a panel?

11 MS. GULESSERIAN: Sorry, I'm thinking about it a
12 little bit. I'm trying to envision the scenario. I think
13 that has been a similar scenario in previous evidentiary
14 hearings in that we are permitted to follow-up a statement
15 with a question of that particular witness. Then the
16 witness doesn't know the answer and another witness then
17 offers the answer. So it sounds a little bit similar to the
18 process of using a panel. I'm not sure what the difference
19 is. Is it that --

20 HEARING OFFICER CELLI: Well.

21 MS. GULESSERIAN: Still, you would still have
22 another witness probably answer the question.

23 HEARING OFFICER CELLI: Hypothetically, perhaps
24 the answer you want is "I don't know" from some panelist,
25 even though the person sitting next to him might know the

1 answer and that would be enough for you on cross. But as
2 the cross-examiner you control the cross and you wouldn't
3 permit that person -- and we wouldn't permit another person
4 because there was no question pending to that person. What
5 I'm looking at is trying to preserve the panel and policing
6 it closely so that we don't pull the rug out on your cross-
7 examination either.

8 MS. GULESSERIAN: I appreciate the consideration
9 and would, I'm open to seeing how that goes. And I
10 appreciate the effort to direct the panel on answering the
11 questions to the question posed, you know, by the right
12 person. So I'm willing to try that.

13 HEARING OFFICER CELLI: That will be great.

14 MS. GULESSERIAN: Thank you.

15 HEARING OFFICER CELLI: I just want to give
16 everybody a sense of, the way that I envision the room
17 actually when we, when we set up for the evidentiary hearing
18 is if you can imagine -- right now, and for the people on
19 the phone, the dais is at an angle or is facing the fulcrum
20 of the angle created by two tables, create making an L. We
21 would make a U, sort of this way, so we'd have another table
22 kind of coming out this way so we at the dais would be able
23 to see the witnesses and have the parties still sitting at
24 the table. So it's a horseshoe shape instead of a V shape.

25 I really, I understand the concerns with regard to

1 cross-examination. We'll do our best.

2 I just want to also acknowledge that this isn't a
3 court of law, it's an administrative hearing. And in the
4 end the Committee wants to know the facts. We need to know
5 the facts so we can make a call one way or the other. And,
6 you know, as a practical matter some of you may be thinking
7 you're doing a great job of cross-examining some guy into a
8 puddle of animal fat. But the Committee might just ask a
9 question that undoes it all by saying, what did you really
10 mean by that and getting whatever it is. Because really we
11 want to get to the bottom of that. So this isn't, we have
12 no jury, this isn't on TV. This is a fact-finding mission.

13 MS. GULESSERIAN: Just one more comment. CURE
14 appreciates that and we would like to get to the bottom of
15 the facts too based on public representations. You know,
16 that's why we're here today.

17 And another comment I wanted to make was regarding
18 the witnesses. I want to thank you for recognizing that the
19 witnesses seem to have overlap. Intervenor's witnesses and
20 Ormat's witnesses seem to have overlap.

21 This proceeding is different than evidentiary
22 proceedings in applications for certification in that we
23 don't have testimony submitted beforehand so I'm not sure
24 what each witness is going to say at this point. But based
25 on the information provided they seem to be the same things.

1 I would hope that we don't have a hearing where we're
2 hearing the same thing just by multiple witnesses. Thank
3 you.

4 HEARING OFFICER CELLI: Thank you. And that is
5 part of the benefit of having an administrative hearing is
6 we can do things like have informal hearings so we don't
7 have to hear the same thing over and over again from
8 everyone. And we really need to move with alacrity.

9 Just a reminder, we'll talk about this more later,
10 the Committee has 21 days in which to render a decision,
11 actually publish a decision in this case. So everything is
12 a bit accelerated in this process and so we do have to move
13 with alacrity.

14 With that then I am going to accept CURE's trial
15 of an informal panel process. We will do what we can from
16 the dais to make sure that your cross-examination is
17 effective for you and is satisfactory for you. And if it
18 doesn't work out then we can revisit the question during the
19 hearing. So thank you for that.

20 Next we're going to talk about exhibit lists.
21 I've received 40 -- well, the exhibit list I have from CURE
22 is 45 exhibits, 46 but there was one omitted. Twenty-three
23 was omitted so that's actually 45.

24 Also I see that some of the exhibits proposed are
25 going to be submitted by other parties. For instance, the

1 verified answer. I think the Committee would rather receive
2 the verified answer from the respondent than from the
3 complainant because they've got a better foundation to lay
4 on it, I mean, they're in a better position.

5 MS. GULESSERIAN: I did have a comment on our
6 exhibit list. As long as the verified answer is entered
7 into the record as an exhibit then that is acceptable to
8 CURE. And we can -- I also expect over the course of the
9 next week to revise the exhibit list, to shorten the exhibit
10 list in this proceeding. To pull out some of the documents.

11 Some of the documents that are in there are there to lay
12 foundation for where the document came from, that it is a
13 public record. I think we put it all in there to make sure
14 that the Committee or the parties had it all as soon as we
15 possibly could provide them.

16 You know, that said. If the Committee doesn't
17 have to be, if there is not much of a formality and you
18 don't -- depending on how you rule on evidentiary matters,
19 even though it is a very broad standard, we can leave out
20 the Public Records Act Request, which is, you know, the
21 proof that we obtained it from a public agency.

22 So I just wanted to let you know that we can
23 substantially shorten the exhibit list. I also expect to
24 add at least, at least one document to the exhibit list. It
25 won't be a surprise, there would be no prejudice to any

1 party. It has to do with the permit for the North Brawley
2 Project. That was not included on the exhibit list.

3 HEARING OFFICER CELLI: What exactly is, what
4 would you call the document? What would you title this
5 document?

6 MS. GULESSERIAN: I don't know what the title of
7 the document is yet. It would be either the -- probably the
8 most relevant thing would be the final permit, existing
9 permit for the North Brawley facility.

10 HEARING OFFICER CELLI: So is this --

11 MS. GULESSERIAN: Conditional use permit.

12 HEARING OFFICER CELLI: Because I think I recall
13 seeing a conditional use permit already.

14 MS. GULESSERIAN: For the East Brawley facility.
15 I went back to look through them. And if it's there, you
16 know, we can double check again this week. But I don't
17 recall the North Brawley conditional --

18 HEARING OFFICER CELLI: Well, we'll see about
19 that.

20 MS. GULESSERIAN: Okay.

21 HEARING OFFICER CELLI: I think that that's the
22 kind of thing that everybody should be aware of now anyway
23 and so I don't think you're going to get a big fight on
24 that.

25 MS. GULESSERIAN: All right, thank you.

1 HEARING OFFICER CELLI: And again, we're going to
2 give you an opportunity to speak amongst yourselves. And if
3 you would make a note that that's something that we want to
4 see people doing is stipulating.

5 I do appreciate a shortened list. A revised list
6 might give us a little heartburn though because we don't
7 like surprises, we don't like new evidence coming in after
8 the fact. The whole idea of a prehearing conference today
9 is so that everybody knows what we're dealing with and what
10 the universe of our record is. Mr. Ellison, you have a
11 question.

12 MR. ELLISON: I do, thank you. Chris Ellison on
13 behalf of Ormat.

14 This subject of surprises is something I wanted to
15 comment upon. First of all, there is a CUP, a conditional
16 use permit, for North Brawley and we have provided that.
17 There is not one yet for East Brawley, it's still in the
18 permit process. And we are happy to stipulate to the
19 admission of the North Brawley CUP. Of course, there is no
20 stipulation available for a document that doesn't exist with
21 respect to East Brawley.

22 HEARING OFFICER CELLI: Now as I understand it, it
23 was the application. Isn't East Brawley in the application
24 process now?

25 MR. ELLISON: Yes, there is an application but

1 there is not a permit.

2 HEARING OFFICER CELLI: Okay. So I thought that
3 that was what the proffered evidence was going to be was the
4 application. Do I have that right, Ms. Gulesserian?

5 MS. GULESSERIAN: For East Brawley, yes.

6 HEARING OFFICER CELLI: For East Brawley, okay.

7 MR. ELLISON: Well we have no objection to that
8 either. But we do have a larger, more all-encompassing
9 concern about a surprise in the hearing.

10 Our basis for the motion to dismiss and the prima
11 facie case is essentially we view this, if I can back up a
12 little bit, we view this as being fundamentally a case
13 about, does the Energy Commission have jurisdiction over
14 either or both of these projects?

15 That distills not to the rather long list of
16 factual disputes that we have properly identified by you,
17 Hearing Officer Celli, but rather to two fundamental issues
18 in our view. One being are North Brawley and East Brawley
19 individually over 50 megawatts? And the second issue being,
20 can you combine them to put them together over 50 megawatts?

21 Those we believe are the two issues in this proceeding that
22 are relevant to the Commission's jurisdiction.

23 The Commission has a published method for
24 calculating 50 megawatts. It has a regulation that is
25 adopted on this issue. Our issue with CURE's complaint is

1 that even though they are a very sophisticated intervenor,
2 they don't make a case using that method.

3 Our concern about surprise is that they're going
4 to come in at the last minute and try to make such a case,
5 even though it was never made in their complaint. And that
6 we will be suddenly surprised with a witness testifying to
7 those issues.

8 And we accept the Committee's denial of our motion
9 to dismiss but I want to be very clear about this concern
10 and we have asked some data requests to try and get at this.

11 That CURE is essentially going to try to, pardon the
12 expression, cure their defective complaint with testimony
13 that is outside the scope of their original complaint. And
14 I want to highlight that right now.

15 HEARING OFFICER CELLI: And let me, let me just --

16 MS. GULESSERIAN: Respond as well.

17 HEARING OFFICER CELLI: Rest assured that will not
18 happen. And in fact, Ms. Gulesserian, the last case you and
19 I were in on, I prevented CURE from bringing in about six
20 inches of paper at an evidentiary hearing. And I think you
21 may recall that, that was in Beacon. Surprises will not fly
22 with this Committee. That is not going to happen. If it's
23 not in your prehearing conference and unless all of the
24 parties unanimously stipulate, it's not coming in.

25 So I want to be, I want to be real clear with all

1 of the parties. What we've got today is what's coming in.
2 With the exception of a reservation of rights that we
3 enabled the complainant to bring in any evidence in rebuttal
4 to anything that was new information that came out of the
5 confidential, which you have identified now as Exhibits 203
6 and 204.

7 So if there was anything in 203 or 204 that was
8 unknown to the complainant or unknowable to the complainant,
9 then we would enable the complainant to bring a motion to
10 bring in evidence in rebuttal to that. But the burden would
11 be on the complainant to show how that rebuts and how --
12 that the evidence wasn't available, that the evidence rebuts
13 the evidence and it was unknowable. So that's the way we
14 would handle that.

15 MR. ELLISON: Okay, well just to be crystal clear.
16 Our view is that evidence is relevant in this proceeding
17 and admissible subject to three tests. And I want to be
18 absolutely out front about this so that there's no surprise.

19 One of them is, is it relevant to an allegation in
20 the CURE original complaint? And that's the point I made a
21 moment ago.

22 HEARING OFFICER CELLI: It frames the issue.

23 MR. ELLISON: Okay. Secondly, is it relevant to
24 the Commission's -- and these to me are, it has to be all of
25 these things. Is it relevant to the Commission's

1 regulations on the issue related in the complaint? And the
2 Commission, as I say, does have a regulation on how you
3 calculate 50 megawatts. It also has published decisions on
4 how and when you aggregate projects together. There is law
5 on this subject.

6 A great deal of the evidence that has been
7 submitted by both sides, frankly. I mean, identified as
8 exhibits, is not relevant to the tests that the Commission
9 has put into law for its own jurisdiction. And so to me the
10 fundamental concern that I have about this proceeding is, is
11 it going to be a free-for-all or is it going to be limited
12 to evidence that is relevant to the Commission's already
13 published regulations and decisions on its jurisdiction?

14 HEARING OFFICER CELLI: That's two and you said
15 three.

16 MR. ELLISON: Well, the third is, is the complaint
17 itself. In other words, my view is that CURE in its
18 complaint didn't allege violation of the Commission's
19 regulations on these issues. That's why we filed a motion
20 to dismiss, okay. It didn't use the Commission's method
21 for calculating 50 megawatts. It doesn't allege that using
22 that method that these projects are over 50. So by that
23 this case should be over, in my view. I mean, I don't think
24 it's a valid complaint. But you've ruled on that and we
25 accept that.

1 But I don't think that that should open the door
2 to a free-for-all where you can present or try and cure that
3 problem by bringing in evidence that raises allegations such
4 as the Commission's method, that were never raised in the
5 complaint in the first place.

6 HEARING OFFICER CELLI: Thank you. Just to be
7 clear. We, for the most part, follow the evidence code.
8 But our regs say that any relevant evidence that people of,
9 you know, in matters of serious matters and serious affairs,
10 that people would think is useful, we can bring it in. So
11 we have an expanded level of relevance at these hearings.

12 But the burden is on the complainant to show that
13 if there is jurisdiction that it meets the jurisdictional
14 requirements and they have the burden of proof on that. So
15 those are questions of fact that we'll hear at the
16 evidentiary hearing.

17 So understood, appreciate that. And I want to
18 make it absolutely crystal clear, there will be no
19 surprises. We will not countenance surprise at the
20 evidentiary hearing and appreciate that.

21 MS. GULESSERIAN: I'd like to have an opportunity
22 to respond and tell you that we don't have any surprises.
23 We don't want any surprises either.

24 HEARING OFFICER CELLI: Right. And I think that's
25 great. I think that if you take advantage today of the

1 workshop then everybody should be on the same page on Monday
2 for what's coming in and everybody should know what's coming
3 in.

4 With that, I'd like to know from CURE. On Monday
5 when we come in we'll have a quick -- and I'll talk about
6 how the day will proceed but I'd like to have a quick
7 discussion to find out what exhibits are coming out. Those
8 exhibits that you've decided aren't necessary. And we'll
9 know on Monday what you're going to omit or not include in
10 your list.

11 Staff, I've got 300 and 301, the testimony. No
12 other witnesses, just the written testimony, right?

13 MR. OGATA: That's correct, Mr. Celli. We will
14 have the witnesses here so if you decide you would like us
15 to put on a short direct we'll be prepared to do that.
16 Otherwise, we have even pre-filed our testimony so there
17 should be no surprises with respect to what staff is going
18 to say.

19 HEARING OFFICER CELLI: Very good, thank you.

20 Intervenor. I want to speak to you, Mister --

21 MR. WILKINS: Wilkins.

22 HEARING OFFICER CELLI: Wilkins, I'm sorry. We
23 received a note from the intervenor that said that due to
24 late notice received by the County on the morning of
25 September 12, 2011 that the County's petition to intervene

1 was granted, the County has not had a full opportunity to
2 identify and prepare exhibits and declarations that the
3 County intends to offer into evidence.

4 The County, however, reserves the right to
5 introduce exhibits and declarations it intends to offer into
6 evidence in response to later filings submitted by the
7 parties. The County will provide notice to the other
8 parties as well as the Committee and Hearing Officer Celli
9 as to the exhibits and declarations the County intends to
10 offer into evidence as soon as such information is
11 available. The County may introduce evidence from the
12 administrative record associated with the County's review of
13 the North Brawley and East Brawley projects.

14 So that's a quote from the prehearing conference.
15 I just want to state for the record that the petition to
16 intervene was filed on September 6 and the order was signed
17 and sent out on September 12, which is less than a week,
18 which is pretty good for this organization.

19 The order was by no means late, though. The
20 intervenor was served with the notice of complaint
21 scheduling order from the Chief Counsel's Office on July 26,
22 2011. The intervenor has had as much notice as every other
23 party in this case and nothing prevented them from
24 petitioning to intervene sooner than two weeks before the
25 hearing.

1 The August 19 Notice of Prehearing Conference and
2 Evidentiary Hearing stated expressly, "intervenors will take
3 the case as they find it at the time intervention is
4 granted. For example, if the deadline for filing opening
5 testimony has passed, the newly approved Intervenor will not
6 be allowed to file opening testimony. Persons interested in
7 obtaining intervenor status are therefore encouraged to file
8 their petitions as soon as possible."

9 So, the Committee puts that out there because if
10 we're going to have intervenors, and especially in such an
11 accelerated case as this, we want them to come in quickly
12 and get their petition granted as quickly as possible so
13 that they're on board. The later you wait the more water
14 under the bridge, we can't recover that.

15 So, the intervenor, it sounds from your position
16 that you're not really interested in submitting evidence
17 other than evidence that comes in later. In other words,
18 unidentified evidence. Do I have that correct?

19 MR. WILKINS: Howard Wilkins for the intervenor,
20 the County of Imperial. That's correct. We have not
21 identified any exhibits or documents at this time that we
22 believe are necessary and would seek to have admitted to the
23 hearing.

24 To the extent additional information or documents
25 are available that would potentially shorten the testimony

1 of our identified witnesses and they are part of the
2 administrative record and public documents and we could
3 reach a stipulation with all parties that it would be
4 beneficial to introduce those rather than introduce
5 testimony on those documents, we would seek such a
6 stipulation and present that at the hearing. But otherwise
7 we have not identified documents we intend to introduce as
8 evidence at the hearing next Monday.

9 HEARING OFFICER CELLI: So at this time the
10 intervenors would not be submitting evidence except in
11 rebuttal to any evidence submitted that was not noticed in a
12 prehearing conference statement and only upon stipulation by
13 all parties. So that, I think, would be acceptable.

14 MR. WILKINS: I believe that's correct. Except I
15 might add that some of it may be, I think it would all
16 relate to rebuttal essentially. But to the extent it was
17 information that would shorten the testimony of our
18 witnesses, it may not necessarily be considered rebuttal
19 evidence, and the parties would stipulate to it and they're
20 public documents, we would potentially offer that also.

21 HEARING OFFICER CELLI: All right. Well as long
22 as the common thread here is stipulation by all parties.
23 The Committee will accept anything that all of the parties
24 stipulate that they want in the record so that's acceptable.
25 I just want to reiterate that we're not having, we can't

1 play Hide the Ball. There's no surprise witnesses, there's
2 no surprise evidence; and that's why we would take a hard
3 line on that.

4 MR. WILKINS: Understood. There's no Hide the
5 Ball here that we have not identified any documents at this
6 time.

7 HEARING OFFICER CELLI: Okay, very good, that's
8 clear. You've got a look of consternation, Ms. Gulesserian.

9 MS. GULESSERIAN: I'm just not sure what he's
10 referring to. But I did want to strongly object to what
11 I've been hearing as respondent's excoriating CURE for not
12 providing a rebuttal to date based on confidential
13 information that they withheld to date.

14 HEARING OFFICER CELLI: I'm not sure I heard that.

15 MS. GULESSERIAN: So I'd like to inform the
16 Committee regarding what has happened since Thursday in
17 obtaining the confidential information. And then, as you
18 noted, we reserve the right to address it, rebut it at a
19 later time. And I don't want there to be any surprises
20 regarding that. I am working to determine whether we need
21 to call a witness, provide some information. There's a lack
22 of information, I know, that we would like to have data
23 requests or a workshop in order to gather some more
24 information. We have identified an engineer that is
25 necessary to respond to the information. This moves on to

1 witnesses, if it's okay?

2 HEARING OFFICER CELLI: Yes, we're about to get
3 into witnesses, yes.

4 MS. GULESSERIAN: Based on what we received we
5 spoke to CURE's consultant, Robert Koppe, and he is an
6 engineer. He's the one that has the ability and background
7 to review the information provided on Thursday. He is the
8 one who did that over the weekend and was able to just give
9 me a preliminary assessment of what was there when I
10 received the information I had sought in the petition.

11 He has -- he is unable to come on August 26th to
12 be a witness. He has offered to -- If what's going to -- I
13 don't know what's going to happen throughout today but he is
14 still working on reviewing the confidential information.

15 HEARING OFFICER CELLI: We have David Marcus.

16 MS. GULESSERIAN: We have David Marcus but we
17 needed an engineer, based on what I received that was
18 confidential. That was all -- it was a different skill set.

19 HEARING OFFICER CELLI: Okay.

20 MS. GULESSERIAN: So based on that we got our
21 consultant who is an engineer, Robert Koppe to -- Koppe, to
22 assess the information. So he is going to finish that up
23 today. I do not have the results of that because he's not
24 done. His options are to provide written testimony by
25 tomorrow end of day or Wednesday. He has a commitment

1 already for Monday, August 26th. Or he could come and
2 testify at a continued hearing date.

3 So I don't know what the Committee would prefer as
4 far as -- he could put -- if there is something that he
5 needs to put in writing he could do that, probably by
6 tomorrow or Wednesday morning. And that is just based on
7 what we received on Thursday.

8 HEARING OFFICER CELLI: What about the option to
9 testify by way of telephone/WebEx?

10 MS. GULESSERIAN: That might be an option. I
11 believe that the next, the 26th is a date where he will be
12 in a mountainous region. And so I had asked him whether the
13 following Monday, if it started next week and then was
14 continued for -- it was continued, if the following Monday
15 he would be at an area that is, we could definitely have a
16 good connection, and he said he would be.

17 So I think we could try it. We can try it. I'm
18 just not sure what the connection is going to be like. But
19 he wants to be available if there is something the Committee
20 should have once he finishes his review.

21 HEARING OFFICER CELLI: One of the thoughts that
22 comes to my mind is that we are accepting all of staff's
23 testimony by written testimony. As usual, you know, as you
24 would if this were an AFC, with an attached résumé. I'm
25 sure the parties aren't going to object today. I think

1 today let's see if the parties can work together. It really
2 streamlines things when we receive written testimony.

3 The problem sounds like that the other parties
4 would be denied a right to cross-examine the party on that.

5 And if need be maybe we would have to continue over, just
6 for the cross-examination. But I think that the preference
7 of the Committee would be to receive written testimony. And
8 maybe that would do. We'll have to see what the other
9 parties, how they feel about that. But I think that it
10 would be allowable only because he is limited to the
11 rebuttal of Exhibits 203 and 204, which were the new, the
12 formerly confidential information, right?

13 MS. GULESSERIAN: Um-hmm, that's correct.

14 HEARING OFFICER CELLI: Okay. Anyone have a
15 problem with that? Staff?

16 MR. OGATA: Jeff Ogata, staff counsel. I guess on
17 this point I do share Mr. Ellison's concerns. But not
18 seeing it in advance, obviously I can't comment at this
19 point in time so I don't have anything else to offer on
20 that.

21 HEARING OFFICER CELLI: Okay. And respondent,
22 anything on this? I mean, really, we haven't come to any
23 sort of -- we haven't made any pronouncement on this yet.
24 We're basically trying to work with you. This is a
25 conference, it's not a hearing, we're just trying to find

1 ways to make it work. And it is efficient to have written
2 testimony. Everybody gets it in advance, they can think
3 about it, work through it. But again, there's the problem
4 of the cross-examination. But it might be the case that if
5 you receive written testimony and you think it doesn't hold
6 up on its own you may not need cross-examination. So I just
7 want to hear from respondent on that point.

8 MS. POTTENGER: Respondent objects absolutely to
9 any attempt to continue the hearing to receive testimony
10 from CURE's witness. CURE has been on notice since the
11 scheduling order was issued on July 26th that evidentiary
12 hearings would be held on September 26th.

13 HEARING OFFICER CELLI: Right.

14 MS. POTTENGER: CURE has --

15 HEARING OFFICER CELLI: This is limited to just
16 the new information that is in Exhibits 203 and 204. She
17 wouldn't be -- in other words, she would be precluded from
18 going beyond that with this particular witness.

19 MS. POTTENGER: Well at the same time part of the
20 case that CURE is expected to bring is to show that the
21 Commission's regulations have been violated and to show that
22 the generating capacities of East Brawley and North Brawley
23 are 50 megawatts or more pursuant to the Commission's
24 regulations. Therefore, CURE was on notice that they should
25 present a witness on September 26 in accordance with that

1 methodology, whether that included an engineering expert or
2 not, they were on notice and obligated to provide their
3 affirmative case on September 26th.

4 In addition, CURE has stated that they were
5 expecting engineering to come out in response to staff's
6 engineering letter. They could have had a witness prepared
7 in response to that or available to review. In short, CURE
8 has had ample opportunity to have a witness ready and
9 available to testify on September 26th. So we object to any
10 effort to extend the evidentiary hearing beyond that date.

11 HEARING OFFICER CELLI: Okay, objection noted.
12 And intervenor, anything on that point?

13 MR. WILKINS: Howard Wilkins for Intervenor County
14 of Imperial. We would just join in the comments of Ormat's
15 counsel.

16 HEARING OFFICER CELLI: Thank you. Well, let's
17 see how we do.

18 MS. POTTENGER: Oh, Hearing Officer Celli?

19 HEARING OFFICER CELLI: Yes.

20 MS. POTTENGER: May I add one more thing?

21 HEARING OFFICER CELLI: Please.

22 MS. POTTENGER: I apologize.

23 HEARING OFFICER CELLI: Go ahead, Ms. Pottenger.

24 MS. POTTENGER: We have no objections to pre-
25 filed, written testimony from the witness, however.

1 HEARING OFFICER CELLI: Thank you. And that is
2 the preference of the Committee is pre-filed, written
3 testimony with attached résumé or CV or whatever. And then
4 we will, we'll know Monday, we'll know at the hearing what
5 people's positions are, what the other parties, how they
6 feel about it. And then we'll deal with what we're going to
7 do about it then. So we'll have sort of in limine motions
8 before we begin. We're off the record.

9 (Off the record.)

10 HEARING OFFICER CELLI: I just want to encourage
11 CURE to make sure that if this testimony is necessary or the
12 parties want to cross-examine this individual that he make
13 himself available with regard to -- hopefully by telephone,
14 cross-examination by phone if he can appear by phone. And
15 we'll talk in a moment after I talk about the witness list,
16 about how I expect the day to go so you can kind of have the
17 time slot of when you think he would be, when we think he
18 would be available to testify.

19 Ms. Pottenger, you had a question?

20 MS. POTTENGER: Hearing Officer Celli, respondent
21 has an additional exhibit to add to its prehearing
22 conference. It is basically Ormat's response to the data
23 requests issued by CURE. I am not sure if now is the
24 appropriate time to mention it but I just wanted to add that
25 we would like to add that as respondent's next in order.

1 HEARING OFFICER CELLI: Okay. You know, I'm not
2 going to rule on that now. What I am going to ask that you
3 do today is you workshop that and see if the parties agree
4 to it. I really don't think that we want to get into
5 discovery issues if we can avoid it because there's a dearth
6 of regulations on discovery. There just isn't anything in
7 this scheme.

8 MS. POTTENGER: It's solely our response to the
9 data request issued by CURE. It was filed and served on
10 everybody on Friday. We just wanted to include it to our
11 exhibits.

12 HEARING OFFICER CELLI: Okay. Well, you can
13 include it and then we'll see if its relevant. Because in
14 the end what we're trying to decide is, is there
15 jurisdiction or is there not jurisdiction, and your
16 responses to data requests may or may not have anything to
17 do with that.

18 MS. POTTENGER: Understood, thank you.

19 HEARING OFFICER CELLI: Okay, thanks. Let's move
20 on. We're going to move on now to a discussion of
21 witnesses. We have one witness from CURE, which is David
22 Marcus, estimated 30 minutes. And then the possibility --
23 well, if it's written testimony then we would only have, who
24 was the other, Mr. Koppe?

25 MS. GULESSERIAN: Mr. Koppe, Robert Koppe and

1 David Marcus. And David Marcus would be ten minutes.

2 HEARING OFFICER CELLI: Okay.

3 MS. GULESSERIAN: Probably.

4 HEARING OFFICER CELLI: That's great.

5 MS. GULESSERIAN: Ten to 15 minutes.

6 HEARING OFFICER CELLI: So your estimation
7 included cross-examination, you think?

8 MS. GULESSERIAN: Yeah, I was just being
9 conservative in the prehearing conference statement.

10 HEARING OFFICER CELLI: That's fine. Ormat, you
11 have -- this is -- Respondent Ormat has Thomas Buchanan, Don
12 Campbell, Bob Sullivan and Charlene Wardlow, each at 30
13 minutes.

14 Imperial County has Armando Villa, who is actually
15 the intervenor. Is it Villa?

16 MR. WILKINS: Villa, yes.

17 HEARING OFFICER CELLI: Okay. Jim Minnick,
18 Richard Cabanilla. And is it Jurg Heuberger?

19 MR. WILKINS: That's the best I can do also.

20 HEARING OFFICER CELLI: Okay. I used to know a
21 judge named Randy Huebach, H-U-E-B-A-C-H, so I guessed that
22 it's Heuberger. And my apologies. Let me look and see if
23 he's even on the line. It looks like he's not. But the
24 name that we're speaking of, J-U-R-G is the first name, I
25 think it's Jurg, the last name is H-E-U-B-E-R-G-E-R.

1 Heuberger I think would be the pronunciation.

2 Each of these witnesses, both Ormat's and Imperial
3 County's witnesses, are an estimated 30 minutes. That's an
4 awful lot of time on direct. We're going to be in Hearing
5 Room A, by the way. Our notice said that we were going to
6 be in Hearing Room B. And thank God we're going to be in
7 Hearing Room A because we would be packed like sardines in
8 Hearing Room B, especially with panels.

9 But after accounting for breaks, interruptions, we
10 have probably four to five hours worth of productive hearing
11 time on Monday. Five hours is the total amount of time
12 estimated to conduct only the direct examinations based on
13 what I've received so far. Really four and a half, and now
14 less because of CURE's reduction.

15 Cross-examination often takes up as much if not
16 more than direct examination time and we really don't want
17 to spend nine to ten hours on this question if we can avoid
18 it. We need -- this is why we're seeking to have panels.
19 We think it makes sense to have panels. It'll speed things
20 up, avoid needlessly cumulative and duplicative testimony.

21 And so in that regard I'm proposing the following
22 schedule: We are noticed to begin at 9:30 on Monday. At
23 9:30 the Presiding Member, Commissioner Douglas, will do the
24 introductions. Then we will entertain motions and talk
25 about procedures. And I'm going to give us about, you know,

1 with everybody settling in and all the discussions and
2 whatever, I'll give us an hour on that let's say.

3 After that, between say 10:30 and 11:00 o'clock
4 would be CURE's case in chief. Right now you have one
5 witness and one other witness available for cross-
6 examination based on written testimony. So I think we were
7 probably going to go around 11:00 o'clock next Monday; 10:30
8 or 11:00, something like that. I think we would probably
9 take care of your live witness first unless we have to take
10 Mr. Koppe out of order, let's say.

11 If we work through lunch, which we usually do. We
12 might take a half an hour break for lunch and then come
13 back. And if you don't mind the Committee munching on the
14 microphones we would have a working lunch so we can keep the
15 ball rolling and keep calling witnesses.

16 At 12:30 would be Ormat Nevada, Inc.'s panel. As
17 I said, I'm going to try to get a horseshoe shape of tables
18 so that we can actually have the Committee see the witnesses
19 as they're testifying and all of the parties can see them at
20 the same time.

21 But what I want to do is give Ormat until, let's
22 say if you start at 12:30 we would give you until 1:30, 2:00
23 o'clock to get all of your testimony in. And that would
24 include cross-examination. I know this is an elastic,
25 flexible situation but that's what we're aiming for.

1 At 2:00 o'clock Imperial County's panel would take
2 the stand, be sworn in, testify. We really don't have any
3 sense of what these people are going to testify to and
4 whether it's even necessary for, you know, if it's really
5 necessary for Imperial County's witnesses to testify. I
6 think it would be useful for all of us to be able to ask
7 them questions with regard to their determinations of
8 jurisdiction. And so I'm not saying it's a bad idea to
9 bring them, I just wonder if it's really necessary to spend
10 an hour and a half on Imperial County's witnesses. What do
11 you think, Mr. Wilkins?

12 MR. WILKINS: Howard Wilkins for Intervenor County
13 of Imperial. We intend to limit this and at the least drop
14 off one, possibly likely two witnesses. We believe Jim
15 Minnick and Richard Cabanilla will be the two County
16 witnesses. And we could potentially, if we did them as a
17 panel, shorten their direct examination. They both will
18 need to appear telephonically so they will not be in the
19 room. And we are working through ways of streamlining to
20 make sure that all their testimony is relevant and helpful
21 to the Commission.

22 HEARING OFFICER CELLI: Thank you. Any objection
23 to their telephonic testimony, CURE?

24 MS. GULESSERIAN: No objection. I would note that
25 it would be helpful to have the testimony ahead of time.

1 HEARING OFFICER CELLI: It would be.

2 MS. GULESSERIAN: And I would make the same
3 request with respect to respondent's witnesses. I don't, I
4 don't know if I'm -- I don't see any testimony for those
5 witnesses so I don't really know what they are going to say.

6 HEARING OFFICER CELLI: We have the answer and we
7 have their exhibits but we don't have anything from Imperial
8 and that's kind of why I was taking this tack right now. It
9 would speed things up if we could have written testimony
10 because then the parties are armed with that and then it
11 saves us having to do direct at all. Basically they
12 testify, yeah, that was my statement and I'm sticking to it.
13 Then we give it over to the other parties for cross. So
14 that's an option we would encourage.

15 MR. WILKINS: I need to confer with my client on
16 that.

17 HEARING OFFICER CELLI: Okay, that's great, I
18 appreciate that. I really see Imperial County's role as
19 really just explaining why they did what they've done. And
20 that's, I don't really think that they have -- well we'll
21 see what their position is.

22 But I think if Imperial starts at two o'clock then
23 after we hear from Imperial County's panel and assuming
24 there may be some rebuttal/clean-up testimony as needed, or
25 cross, we should be able to finish by 4:00 o'clock the

1 taking of testimony.

2 Mr. Ogata, you had a thought?

3 MR. OGATA: Jeff Ogata, staff counsel. I didn't
4 hear staff's testimony in your schedule so that's my only
5 thought.

6 HEARING OFFICER CELLI: Okay. Because staff was
7 submitting exhibits but said it had no witnesses, per se.

8 MR. OGATA: Well I'm assuming there may be some
9 cross examination so there's still no point in your schedule
10 for that.

11 HEARING OFFICER CELLI: That's true, that's a good
12 point. So let me put that in right now. So CURE starts at
13 11:00. We work through lunch. Ormat starts at 12:30. I
14 usually try to do things in the order that the parties
15 participated. I would probably slip staff's witnesses in
16 between Ormat and Imperial at, say, 1:30, 2:00 o'clock.
17 That takes us to now 2:30.

18 I still think Imperial could be finished by 4:00
19 o'clock. I just have to make a note to insert staff "wits."

20 And this is for cross-examination only at, did I say 1:30?

21 Okay, 1:30 to 2:00. That means, Ms. Jennings, that we
22 would have public comment around 4:00 in the afternoon of
23 Monday. And following public comment we would adjourn.

24 So is everybody okay with that flow? Ormat, you
25 have a question? I'm sorry, respondent. Ms. Pottenger, go

1 ahead.

2 MS. POTTENGER: I'm sorry, I just wanted to
3 clarify that Charlene Wardlow, Bob Sullivan and Tom Buchanan
4 will be here and present in the hearing room the day of the
5 evidentiary hearings.

6 One of our witnesses, Don Campbell, due to
7 personal restrictions is really unable to travel the
8 distance so we request that he be permitted to testify by
9 telephone.

10 HEARING OFFICER CELLI: I'm sure that's okay.
11 these are administrative hearings. This is a bit of a
12 relaxed standard but I don't want to abuse that. And I
13 encourage you to take a look and see if all four witnesses
14 are necessary because there may be some overlap. Maybe you
15 can have an all-purpose witness if one is needed, you know.
16 I think you need to talk amongst yourselves and see who the
17 parties need to talk to. Go ahead, Mr. Ellison.

18 MR. ELLISON: Chris Ellison for Respondent Ormat.
19 I apologize if I interrupted you. But in looking at this
20 schedule, if I'm reading it correctly, we have 12:30 to 1:30
21 and Imperial County had -- which is an hour, and Imperial
22 County has an hour and a half.

23 HEARING OFFICER CELLI: Right.

24 MR. ELLISON: From 2:30 to 4:00. Is that what you
25 intended?

1 HEARING OFFICER CELLI: No. If we start Ormat at
2 12:30 we're going to give Ormat until 2:00 o'clock.

3 MR. ELLISON: Okay.

4 HEARING OFFICER CELLI: But I realize that I'm
5 cutting you short but it makes sense more to cut the
6 intervenor short by inserting staff at 2:00 o'clock.

7 MR. ELLISON: Okay.

8 HEARING OFFICER CELLI: That would give Ormat from
9 12:30 to 2:00 o'clock, staff from 2:00 to say 2:30, Imperial
10 from 2:30 to 4:00 o'clock, I think that should be ample
11 time. Then public comment at 4:00. So I think that's a
12 reasonable aspiration for us to see if we can conform to
13 that schedule. Ms. Gulesserian, you had a question?

14 MS. GULESSERIAN: Thank you, I appreciate it.

15 I wanted to raise a concern that I just realized
16 as I am looking over which witnesses are going to be present
17 and not. Is it Don Campbell that -- as an example of
18 somebody that's testifying by phone. It says that Don
19 Campbell is testifying regarding the resource constraints of
20 the site, geothermal fluid temperatures, the effects of
21 scale, fines and fill on the efficiency and productivity of
22 wells. That's a lot of detail that is missing from the
23 information provided in Exhibits 203 and 204, for which my
24 engineer had suggested workshopping data requests. Getting
25 some information. So we do not have that information yet.

1 And I'm concerned about testimony on the detail --
2 this is one of the critical details in this case. I'm
3 concerned about that testimony by phone with my engineer by
4 phone and my ability to cross-examine on such a technical
5 issue without my engineer here.

6 Because the information is not provided in the
7 exhibits that it looks like this witness might be testifying
8 about, my witness will not be able to write -- I will
9 provide written testimony but he will not be able to provide
10 written testimony that -- on this subject matter.

11 HEARING OFFICER CELLI: Right.

12 MS. GULESSERIAN: So I don't know where that
13 leaves me. But there is -- I think what we want, what we
14 want and I think what the Committee wants is for the correct
15 information to come out and for us to be able to provide our
16 testimony from experienced engineers on this issue. And
17 since it's such a critical issue I think we should think
18 about the ability to have my witness review this testimony
19 that is at this time unknown, since it's not in any exhibit,
20 and provide a response. And he would maybe be willing to do
21 it, you know, under oath and also subject to cross-
22 examination.

23 HEARING OFFICER CELLI: You know, let me just
24 speak to that because we are all under the gun in this case.
25 This is an abbreviated, accelerated process. Ormat is drug

1 in here, kicking and screaming, by a complainant. We're a
2 little loathe to require them to provide written testimony
3 because it's really their neck in this case. Even though
4 it's your day in court it's also their's. They don't want
5 to be here, you do.

6 And I think that what -- you know, we can't
7 provide for every eventuality. And I think what we are
8 going to have to do is hopefully as you workshop you can
9 drill down and get more information and get more details as
10 needed to provide to your engineer. Maybe you can work out
11 a time for the engineers to speak. But I think part of this
12 is just going to have to be transactional. He's just going
13 to have to understand and hear what the testimony is on
14 Monday on the phone, hopefully he can, and perhaps you can
15 have a telephone conversation and he can provide you with
16 his feedback on the testimony as we go.

17 Because I just, I think it's a little too late now
18 for us to start ordering more discovery back and forth. So
19 I think what we've got is what we have right now and we're
20 just going to have to roll with it. You're going to have to
21 do your best with that.

22 I don't think we would order -- I'm going to go
23 off the record a minute but I just, I'm questioning the
24 wisdom of ordering written testimony where it's just an
25 invitation for a continuance or the need to roll over and

1 spend more time. I don't believe we want to go there. So
2 one moment. We're going to go off the record.

3 (Off the record at 11:24 a.m.)

4 (On the record at 11:27 a.m.)

5 HEARING OFFICER CELLI: So the Committee conferred
6 on the request and the Committee determined that CURE's
7 witness, CURE's engineering witness, should be able to
8 listen in and respond. And we would give CURE an
9 opportunity to talk on the phone before cross-examination
10 with your expert so that you could have discussions then.
11 But the Committee isn't going to require written testimony
12 from Ormat on this regard. However, if Ormat would
13 voluntarily choose to do so we would welcome that as well.

14 With that, I think that we should be able to
15 accomplish all of the testimony in the time estimated if we
16 use the panels. So with that I think we have now finished
17 our discussion of the witnesses and our scheduling.

18 I just want to say a couple of things. If you are
19 going to put in written testimony then there really isn't
20 need -- staff is putting in, for instance, testimony,
21 written testimony. There wouldn't be a need to have them
22 rehash their direct testimony again. We would just
23 essentially, you're going to lay a foundation and then open
24 them up to cross-examination. And that's the way we would
25 handle it just to speed things up.

1 When it comes to objecting I am going to ask that
2 the parties not make speaking objections. That you just
3 object and you say the grounds for the objection and we just
4 take it from there. If we need more information we'll
5 inquire.

6 Regarding cross-examination. I am going to ask
7 that the parties, I know you are all accomplished attorneys
8 and great cross-examiners. But as I said, this isn't going
9 to be, this isn't Perry Mason and we're not going to have a
10 jury and nobody is watching and so we just want the facts.
11 I don't think that you're going to do any better on cross-
12 examination making stuff up as you go along then you would
13 in the quiet of your office thinking up good cross-
14 examination.

15 And so I'm going to ask that you not flounder
16 around. I just can't stand it when people are flipping
17 through papers trying to figure out their cross-examination
18 as we roll. You should be able to come in here and tell me
19 how many questions you have. And we will, if it's going
20 very long, we'll ask how many more questions do you have?
21 Because that's an indication that it's taking too long and
22 it doesn't appear to be getting anywhere.

23 So there's no fishing, no floundering. And if we
24 find that the Committee may curtail your cross-examination.
25 I often say this tongue in cheek but I say that the legal

1 definition of a moment is ten seconds. So if you're asking
2 for a moment so you can go flip through the papers to go
3 find something, that's not, we're not going to give you much
4 time for that.

5 When you do your cross examinations we want you to
6 ask, if you're going to ask the party on something that they
7 have written before that you say, at page five on paragraph
8 two of your prior testimony, Mr. Witness, did you say blah-
9 blah-blah? You want that at your fingertips. Because
10 otherwise the other party is just going to object and say,
11 where is this, where did they say this? And you'll need to
12 come up with that. So be prepared.

13 Also make sure that you allow the witnesses to
14 finish their answer. That's all I have to say on that.

15 I think everybody knows what to do. In the end
16 it's about just getting to the truth.

17 Finally, briefing scheduling. I want to talk
18 about the briefing schedule. It takes -- we're asking for
19 three days to get a transcript. I'm getting a nod from the
20 court reporter so that's -- I don't need a three day
21 transcript for this proceeding today, for the pre-hearing,
22 but for the evidentiary hearing we will need a three-day
23 hearing. And Mr. Petty is nodding in the affirmative.

24 So if the hearings are finished on September 26
25 then the transcript would be ready about September 30th.

1 The Committee is obligated to issue a proposed
2 decision setting out its recommendations to the full
3 Commission within 21 days of the hearing, which would take
4 us to October 17th. That's pursuant to section 1235 of our
5 regs.

6 The Energy Commission, the full Commission then
7 would prepare a decision within 21 days of the Committee's
8 Proposed Decision and that takes us to November 7th, 2011.

9 Now, there really is no time for briefs, let alone
10 rebuttals, in that scenario because we have to write a
11 decision, it has to be vetted through the Committee, it
12 comes back for revisions, there's a lot to it. So it's not
13 like we have 21 days writing time, we have about a week or
14 less of writing time.

15 The Committee could extend the time for the
16 parties to file opening briefs and rebuttals but only if the
17 parties stipulate that the Committee and the Commission may
18 file their decisions beyond the dates mandated by the
19 regulations and that would require a stipulation, a
20 unanimous stipulation. I don't know where the parties are
21 at in terms of how big a rush this is.

22 But otherwise, if we're going to stick to the
23 regulations and keep to the 21 days I think that would
24 preclude briefing at all and we would require closing
25 argument from the parties orally at the hearing. I'm going

1 to throw it out there. CURE, we'll hear from you first.
2 How do you feel about that? What is CURE's position with
3 regard to briefing?

4 MS. GULESSERIAN: CURE would request the
5 opportunity to brief. I think it's necessary in this type
6 of proceeding where we are limiting our witnesses because
7 there's a lot of evidence that is in the exhibits. So I
8 think that if we did not have briefing we would spend more
9 time with witnesses so we could explain what is in the
10 exhibits.

11 HEARING OFFICER CELLI: Would an opening, so could
12 you do that in an opening brief without rebuttal?

13 MS. GULESSERIAN: I can't say at this time but I
14 would request the opportunity to do an opening and rebuttal.
15 And we would do that in -- we would certainly stipulate to
16 an extension of time.

17 HEARING OFFICER CELLI: To accommodate the --

18 MS. GULESSERIAN: To accommodate that. And we
19 would also be willing to do it quickly. Because we think
20 it's important in this case.

21 HEARING OFFICER CELLI: Let me just go around and
22 ask staff. What's your feeling on a stipulation to extend
23 time beyond the 21 days?

24 MR. OGATA: Jeff Ogata, staff counsel. We are
25 going to take no position on the extension of time. You

1 know, staff's testimony is out there already. Certainly we
2 don't know what we're going to hear in the course of the
3 proceedings so we don't, at this point, have a sense of
4 whether there needs to be briefing or not. So I think we'll
5 just leave that to the wisdom of the Committee.

6 HEARING OFFICER CELLI: Okay, thank you. And
7 let's hear from respondent on that. The question really is,
8 can we -- in determining whether we are going to allow
9 briefing at all, what is your position with regard to a
10 stipulation to extend time? How do you feel about briefing,
11 is it necessary? And then also consider that if you want to
12 do a brief, and usually people want to rebut the brief, then
13 how are we going to work that into the 21 days? Go ahead.

14 MS. POTTENGER: Well, respondent feels that should
15 the Commission determine that it lacks jurisdiction over the
16 Ormat projects then briefing is unnecessary. However, if we
17 do need to go to the second phase and determine
18 administrative remedies then respondent is willing to
19 stipulate to an extension because we feel that opening and
20 reply briefs are essential.

21 HEARING OFFICER CELLI: Thank you. Intervenor,
22 what's your position on that?

23 MR. WILKINS: We would join Ormat's position,
24 Howard Wilkins for County of Imperial.

25 HEARING OFFICER CELLI: So, staff, what would

1 prevent us from doing this then would be the fact that I
2 don't have unanimity in the stipulation here. Because I
3 don't think the Committee would be willing to waive its own
4 time; I don't think we have the power to do so. So what is
5 your position on that?

6 MR. OGATA: I don't think I said we were opposed
7 to it, I said I'm willing to abide by what the Committee
8 decides. If you're asking us if we would agree to it, I
9 think the parties have indicated that they're agreeable to
10 it under certain conditions so I am not going to stand in
11 the way of the parties. They have more to win or lose from
12 this than staff does so I don't want to stand in the way of
13 what their needs are.

14 HEARING OFFICER CELLI: So staff would be willing
15 to stipulate if the other parties are all agreed to
16 stipulate to an extension of time?

17 MR. OGATA: If everybody is in agreement and you
18 need our vote we will stipulate.

19 HEARING OFFICER CELLI: Okay, thank you. Now the
20 question becomes -- honestly, folks, briefing is useful to
21 the Committee. We get to see what people's positions are,
22 what the law is that supports their position and it is
23 helpful. The Committee would do it without if that was the
24 feeling of the parties.

25 If we make a determination on Monday that there is

1 no jurisdiction then that's the end of the, the end of the
2 proceedings. Because we are basically operating in two
3 phases. First we are going to determine, is there
4 jurisdiction? And then if we determine that there is
5 jurisdiction, then really that's what the briefs are going
6 to be about. What do we do about this and where do we go
7 from here?

8 Well if time is waived then we can waive as much
9 time, I mean, then it doesn't matter. We can take as much
10 time as the parties need. Generally if this were an AFC,
11 let's say, we would say, well, briefs are due ten days from
12 the date of the publication of the transcripts. Because I
13 think that's a necessary part of your brief. It needs to be
14 able to cite to the transcript.

15 Generally we would give you seven days after that
16 to rebut. I think that's kind of normal, ballpark. How do
17 you feel about that time frame, CURE?

18 MS. GULESSERIAN: I apologize, I was thinking
19 about the issue about the need for briefing on jurisdiction.

20 HEARING OFFICER CELLI: Well let me --

21 MS. GULESSERIAN: The issue of jurisdiction,
22 there's a definition. There are legal definitions in the
23 Warren-Alquist Act and the regulations. So it is not purely
24 a factual issue, it's facts applied to the law. And we
25 believe that there is a need for briefing on the

1 jurisdictional issue and that the evidence can be found in
2 the exhibits.

3 Again, we are willing to discuss each of the
4 exhibits at the evidentiary hearing or the ones that are
5 relevant to the issue, to the legal issue presented. But we
6 believe that the jurisdictional issue is one that needs
7 briefing. And I apologize for your next question as I was
8 thinking about that.

9 HEARING OFFICER CELLI: Well no, actually that's a
10 reasonable request. We could take the question in abeyance
11 and see what the briefs say.

12 The question I had asked earlier was, knowing that
13 we have three days to get a transcript off, I was thinking
14 ten days after that for opening briefs, seven days after
15 that filing date for rebuttal briefs.

16 MS. GULESSERIAN: That's reasonable. We can do --
17 we think an opportunity to brief the jurisdictional issue is
18 important and we will do that definitely within that time
19 frame.

20 HEARING OFFICER CELLI: I actually happen to have
21 a calendar here.

22 MS. GULESSERIAN: Thank you.

23 HEARING OFFICER CELLI: So today is the -- so next
24 Monday is the 26th. If the transcripts come off on Thursday
25 the 29th, let's say the 30th, then ten days would be October

1 12th for opening briefs. Okay? October 12th for opening
2 briefs?

3 MS. POTTENGER: Is this if we proceed to the
4 second phase of evidentiary hearings?

5 HEARING OFFICER CELLI: Right, right. I'm just
6 kind of building this in on the assumption. So opening
7 briefs would be on the 12th and then seven days from that
8 would be the 19th of October for rebuttal briefs. Then the
9 decision would come out as quickly thereafter as we could
10 probably get it.

11 One moment. We're going to go off the record for
12 a moment.

13 (Off the record at 11:40 a.m.)

14 (On the record at 11:43 a.m.)

15 HEARING OFFICER CELLI: We're back on the record.
16 We were talking about October 12th as a briefing, opening
17 briefing date, and October 19th rebuttal briefs.

18 I wanted to make a point, though. This is to CURE
19 in particular. Because I have about, what, nine, ten inches
20 of paper now in my office from CURE. When we put this
21 evidence in, I'm going to need CURE to tell me what page,
22 where in each exhibit is the relevant information and what
23 it's relevant to.

24 Because there's an awful lot of information there.
25 And if you're going to leave it to me to determine what is

1 and isn't relevant that's a scary thought. Now you have a
2 particular intention and I think you need to really focus
3 the Committee on what it is that you're trying to prove and
4 what it proves. So I'm going to ask that you do that.

5 In fact, all the parties do that. If there is a
6 voluminous -- I think Ormat, I only got some applications
7 and things like that from respondent. But, you know, we're
8 counting on the parties to direct the Committee as to where
9 the real meat is, where we need to look.

10 Is that an acceptable proposition then? I'm just
11 going to go around and ask the parties then if they'd be
12 willing to stipulate that the Committee is relieved from
13 having to issue a Proposed Decision within 21 days of the
14 hearing and also that the Commission would be relieved from
15 the duty of preparing a final decision within the 21 days of
16 the Proposed Decision by stipulating to a briefing schedule?
17 And the briefing schedule is October 12th for opening briefs
18 and October 19th for rebuttal. CURE, do you so stipulate?

19 MS. GULESSERIAN: I have a clarification question.

20 HEARING OFFICER CELLI: Yes.

21 MS. GULESSERIAN: I'm sorry. I wanted to make
22 sure to what I'm stipulating to. And that is, briefing the
23 jurisdictional issue, which there is two-fold in this case.

24 HEARING OFFICER CELLI: Yes.

25 MS. GULESSERIAN: Is that what we're talking about

1 right now?

2 HEARING OFFICER CELLI: What we're talking about
3 is really the regs call for a 21 day Proposed Decision from
4 the Committee, followed by a 21 day final decision from the
5 Commission. And with those time frames we just don't have
6 enough time for briefing.

7 And so since the parties have generally indicated
8 that they are interested in scheduling an extension of time
9 for briefing, and the Committee is fine with that, then I am
10 asking for a stipulation that the Committee can file its
11 Proposed Decision beyond the 21 days.

12 MS. GULESSERIAN: Its Proposed Decision on the
13 issues raised in our complaint --

14 HEARING OFFICER CELLI: Correct.

15 MS. GULESSERIAN: -- regarding jurisdiction.

16 HEARING OFFICER CELLI: And as an extension of
17 that as well, the Commission.

18 MS. GULESSERIAN: Yes.

19 HEARING OFFICER CELLI: So there's two parts. We
20 have to extend the time for the Committee to file its
21 Proposed Decision and extend the time for the Commission to
22 file its Final Decision. That's the stipulation I'm looking
23 for.

24 MS. GULESSERIAN: Elizabeth Klebaner for
25 California Unions for Reliable Energy. Just further

1 clarification. Briefing, it is our understanding that
2 briefing will occur whether or not -- in advance of the
3 Committee reaching a determination with respect to
4 jurisdiction in this proceeding, is that correct?

5 HEARING OFFICER CELLI: Not necessarily. Because
6 we noticed that there is, there's essentially two phases to
7 our hearing on Monday. The first phase is, is there
8 jurisdiction? The second phase is, okay, there's
9 jurisdiction, what are we going to do about it, what are the
10 remedies?

11 If there is a finding of no jurisdiction then the
12 complaint is dismissed. And then there is no need for
13 briefings because then the proceedings are over. That would
14 be, that's an option, that's a possibility. I'm not saying
15 that's what is going to happen necessarily but I do know
16 that we noticed it as such.

17 Now if we want we can still allow the parties to
18 brief the issue anyway and still have, I believe there is
19 going to be a Proposed Decision and a Final Decision
20 regardless of which direction the Committee goes in. And so
21 therefore I am looking to extend the time by which the
22 Committee and the Commission needs to file their decisions
23 by.

24 MS. KLEBANER: Thank you. CURE would stipulate to
25 extending the time to allow the Committee to render a

1 decision. However, CURE would also request an opportunity
2 to brief the issue of jurisdiction with respect to both
3 arguments, one with respect to the individual generating
4 capacities of the projects, but also as to the aggregation
5 issue and what is the relevant law and relevant standards
6 that should be applied to that question of fact. The
7 parties have put forward different standards for what the
8 legal criteria are for determining aggregation in a
9 particular case. And so we would request an opportunity for
10 briefing after phase one.

11 HEARING OFFICER CELLI: Actually the way we're
12 going to do it, the way we noticed it is that phase two
13 immediately follows phase one. In other words, it's all one
14 hearing essentially. We're not going to break, do phase
15 one, brief phase one, come back, do phase two, brief phase
16 two. We're going to do it in one hearing.

17 So really the reason we split it out like that was
18 to focus the parties on what the issue is. What the real
19 issue is is jurisdiction, okay. So that's first and
20 foremost. And if CURE can't make its case on Monday and
21 can't prove that there is jurisdiction then the Committee is
22 empowered to just dismiss the complaint at the close of the
23 evidence then and there. Now whether they do or not, that's
24 an option.

25 So what I would say is this. Since there is going

1 to be briefing anyway the parties are free to brief on
2 whatever they want to, really. If you want to argue
3 jurisdiction, if there is a -- you know, I don't know what's
4 going to happen. But essentially it seems to me you can't
5 avoid it and so jurisdiction should be a part of the
6 briefing. And also what the remedies are.

7 I don't really want to limit the briefing. The
8 parties are in control of their own briefings. So whatever
9 you're going to put in your briefs, you know, that's for the
10 parties. Hopefully what the parties put in their briefs is
11 something that's useful to the Committee so that we can make
12 an intelligent and appropriate decision.

13 But that's, you know, we don't really, it's hard
14 to say what to put in your brief. So yes, jurisdiction is
15 going to have to be briefed it seems to me because
16 everything relies on that.

17 MS. KLEBANER: Right. I believe we're on the same
18 page here, with what -- CURE is requesting what you are
19 suggesting. All that we request is an opportunity to assist
20 the Committee in determining what the law should be that is
21 applied to the facts. That will be discovered on Monday.

22 HEARING OFFICER CELLI: Thank you. So let me get
23 to Ormat. Mr. Ellison.

24 MR. ELLISON: Having heard what I just heard it
25 seems to me that the jurisdiction brief that CURE is

1 interested in filing goes to what the law is that should be
2 applied to the facts.

3 HEARING OFFICER CELLI: Certainly.

4 MR. ELLISON: We think that's an important issue
5 as well. We agree. That's an issue that we could brief
6 now. We don't need --

7 HEARING OFFICER CELLI: That is true.

8 MR. ELLISON: We do not need to wait for the
9 testimony to come in on the facts to brief what the standard
10 is by which those facts should be judged as to relevance and
11 everything else.

12 HEARING OFFICER CELLI: That's true. And
13 unfortunately we didn't notice that because now there's
14 really not enough time for that between now and a hearing.

15 MR. ELLISON: Well we would stipulate, in order to
16 address CURE's concern about briefing that issue, to the
17 filing of briefs next Monday, for example, limited to that
18 question. Obviously not on everything else but limited to
19 the question of what is the legal standard for determining
20 the Commission's jurisdiction, both individually and with
21 respect to aggregation. And then we can take up at the
22 close of the hearing whether there's a need for any
23 additional extension of time or briefs.

24 I do have a concern about an open-ended extension
25 of time. I don't want this case to drag on for months. If

1 the Committee believes, having heard the testimony, having
2 seen the briefs that I just described if you choose to go
3 that way, that it still needs additional briefing and
4 additional time, we would stipulate to a short period of
5 time to allow the Committee to consider further briefing.
6 But not an open-ended one.

7 HEARING OFFICER CELLI: So what do you think is a
8 short period of time that's reasonable?

9 MR. ELLISON: The briefing schedule that you
10 described and a decision coming out in response to those
11 briefs without further hearing would be reasonable.

12 But I do want to emphasize the point that this
13 question of the law, I actually think that it would be very
14 helpful to issues that are going to come up, I believe at
15 the hearing, as to the relevance of testimony and exhibits.

16 It might be very helpful for the Committee to have briefs
17 as to what the legal standard for its jurisdiction is.

18 HEARING OFFICER CELLI: Yes.

19 MR. ELLISON: Have those ahead of time.

20 HEARING OFFICER CELLI: So with regard to the
21 timing. Would you be willing to stipulate to 21 days from
22 the receipt of the rebuttal briefs? Okay, we're talking
23 about October 12th as opening briefs, rebuttal briefs on the
24 19th, which means that the decision would be due out on the
25 2nd of November. Rebuttal here, one, two, three. No, that

1 would be the 9th of November.

2 MR. ELLISON: (No audible response.)

3 HEARING OFFICER CELLI: Mr. Ellison, let me just
4 say that what the calendar shows is if we have opening
5 briefs on October 12th and rebuttal briefs on the 19th, that
6 21 days from the 19th would be the 9th of November for a
7 Committee Decision.

8 MR. ELLISON: And the Commission's Final Decision
9 would be?

10 HEARING OFFICER CELLI: Twenty-one days from the
11 9th of December (sic) would be the --

12 MR. ELLISON: Basically the end of November.

13 HEARING OFFICER CELLI: Right, or first week in
14 December. It depends on when the Business Meeting would be.

15 MR. ELLISON: Okay. And to be clear, we're
16 talking about a slip in the schedule of two to three weeks.

17 HEARING OFFICER CELLI: Correct. I think three
18 weeks.

19 MR. ELLISON: We would be willing to stipulate to
20 that if the Committee believes that the briefing is
21 important and would be helpful. We do not want to deprive
22 the Committee of anything to help you reach the right
23 decision.

24 Having said that, I do want to emphasize again
25 that we think that the jurisdictional issues can be briefed

1 now and we would stipulate to that as well.

2 And I want to emphasize most of all that we would
3 not be willing to stipulate to an open-ended extension
4 beyond the time frame that we just spoke of.

5 HEARING OFFICER CELLI: Okay. And that seems
6 reasonable. I'm going to turn back to CURE because really
7 the jurisdictional issue is something that everybody can
8 brief now. But what is being deprived then is the
9 opportunity to tie in the testimony of the witnesses to the
10 brief.

11 MR. ELLISON: The issue that I'm speaking of is
12 the issue that I believe CURE's attorneys described, which
13 is, what is the law to apply to the facts. The witnesses
14 are not qualified to testify to the law, that's not the
15 subject of live witness testimony.

16 So what I'm envisioning is a brief that is purely
17 the legal questions of what is the standard for the legal
18 standard for determining the Commission's jurisdiction, both
19 with respect to aggregation and with respect to the
20 individual units.

21 And as I mentioned, I think that that -- once the
22 Committee makes a decision with respect to what the legal
23 standard is, it will be in a better position to judge the
24 relevance of the facts that are being presented to it as to
25 whether they're relevant to that standard or not.

1 HEARING OFFICER CELLI: You did brief this a bit
2 in your response. I mean, we have heard your position.
3 We've heard, we know that the regs contain a certain
4 calculation of what is a net megawattage. And I really
5 wasn't sure that that was even in dispute.

6 I made the observation that I believe it was in
7 the motion to dismiss or maybe in the answer, that Ormat
8 argued that everybody knows that the regulations set out how
9 you come to net gross megawatts. Rather, how to calculate
10 from the gross to the net. So that we understand how they
11 arrive at whatever the megawatts would be.

12 Are you saying, CURE, that that is in dispute?

13 MS. KLEBANER: No. To clarify. Oh.

14 MS. GULESSERIAN: It turns out that it might be,
15 based on the information we received on Thursday.

16 HEARING OFFICER CELLI: Okay, all right.

17 MS. GULESSERIAN: And so the calculation, the
18 method for calculating might be a legal issue that we, just
19 frankly, haven't had time to complete.

20 HEARING OFFICER CELLI: So --

21 MS. GULESSERIAN: Plus there's a second legal
22 issue, which is aggregation. And that is, based on the
23 papers alone you can see that they're applying -- we've
24 applied two different legal standards on the aggregation
25 issue.

1 HEARING OFFICER CELLI: Okay. So would you be
2 able to brief your position on this by Monday?

3 MS. GULESSERIAN: We would be willing to continue
4 the evidentiary hearing to a, you know, date, another week
5 in order to do the briefing beforehand. I think that that
6 is a reasonable scenario if you want to do it in that order.

7 HEARING OFFICER CELLI: The Committee really is
8 disinclined to continue the hearing date. What I was trying
9 to discern is whether you were capable of having a brief out
10 on the legal question by Monday? If not, I don't think I
11 would require that. I think that what we can -- in the end
12 that brief is going to work its way back into your opening
13 brief anyway.

14 So what I think we'll end up doing is just have,
15 we'll keep the schedule as we have it now and that would be
16 something that would be briefed in your opening briefs. I
17 don't think it makes a difference, really. Ms. Pottenger,
18 you want to comment on that?

19 MS. POTTENGER: I'm just curious to know if CURE
20 has changed their position in terms of what the legal
21 standard is regarding the generating capacity as it's
22 calculated pursuant to the Commission's methodology,
23 considering that they've set it out in their complaint? Are
24 they changing their position from what's been written in
25 their complaint, such that they feel that they couldn't

1 draft a legal brief by next Monday on this issue?

2 HEARING OFFICER CELLI: CURE, you want to respond
3 to that?

4 MS. GULESSERIAN: We are not amending our
5 complaint.

6 HEARING OFFICER CELLI: Okay. So apparently
7 they're sticking with their complaint, the standard that's
8 in it.

9 MS. POTTENGER: In which case there should be no
10 need to continue the evidentiary hearing if they set out
11 what they believe to be the standard in their complaint.
12 Then there should be no need to continue the evidentiary
13 hearing.

14 HEARING OFFICER CELLI: I think as we're speaking
15 it's coming clear to me that really what needs to happen is
16 the Committee needs to hear all the evidence, take in all
17 the evidence. Let the parties brief the evidence after the
18 evidence is received and then rebut the briefs and we'll
19 move as we normally would.

20 So while I agree, Mr. Ellison, that the parties
21 should be able to brief right now what their legal position
22 is with regard to jurisdiction, we're not going to require
23 that. I don't think that's necessary.

24 But I still am in the middle of trying to get a
25 stipulation as to these dates. And here's the point of

1 this, folks. We have a regulation that says, that lays out
2 certain dates. We're trying as best we can to conform to
3 these dates. So far we're batting 1,000 here. On our 90th
4 day we're having our hearing. We want to make sure that we
5 get these decisions written on time.

6 And in order to do that the parties are going to
7 file briefs and rebuttal briefs. but we want a stipulation
8 from the parties that relieves the Committee from the 21
9 days from the date of the hearing to file a Proposed
10 Decision, because that's the current state of the law,
11 followed by 21 days by which the Commission has to render
12 its decision. So I am asking for a stipulation that the
13 committee can file a Proposed Decision 21 days from the date
14 the rebuttal briefs are filed and then the Commission will
15 file its decision 21 days from the Committee's Proposed
16 Decision. So I think I narrowed it there for you. I hope
17 that's --

18 MS. GULESSERIAN: CURE stipulates to that.

19 HEARING OFFICER CELLI: Okay. Staff, any
20 stipulation?

21 MR. OGATA: We will stipulate to that, assuming
22 all the parties do. But I, I hate to go over this one more
23 time but I do have one more question again.

24 HEARING OFFICER CELLI: Go ahead.

25 MR. OGATA: But I think it kind of was raised by

1 Ormat's counsel. You've indicated that the Committee may
2 render a decision on Monday with respect to jurisdiction.
3 And if so the briefing schedule is moot? Or are you
4 indicating that regardless of what happens on Monday there
5 will be this briefing schedule and so you're asking the
6 parties to stipulate to the schedule you've laid out?

7 HEARING OFFICER CELLI: That's a good question.
8 We're going to go off the record for a moment.

9 (Off the record at 12:02 p.m.)

10 (On the record at 12:02 p.m.)

11 HEARING OFFICER CELLI: Since the parties were so
12 gracious as to enable the Committee to see their briefs and
13 to actually agree to brief this the Committee probably is
14 disinclined to make a ruling right on the spot and would
15 want to make a ruling after briefs. So while that option
16 exists it's highly unlikely.

17 So with that we're asking for a stipulation that
18 the opening brief would be filed on the 12th of October, the
19 rebuttal brief would be filed on the 19th of October, the
20 Proposed Decision from the Committee would be filed on
21 November 9th and the Commission's Decision would be as soon
22 as possible within 21 days after the Proposed Decision.

23 So really the triggering event here, folks is the
24 rebuttal briefs on the 19th triggers the 21 days for the
25 Proposed Decision. That's what the stipulation we're asking

1 for is. So with that, Mr. Ogata?

2 MR. OGATA: Thank you, Mr. Celli. With that,
3 staff is willing to stipulate to that schedule.

4 HEARING OFFICER CELLI: Thank you. And Respondent
5 Ormat Nevada, Inc.?

6 MS. POTTENGER: We're willing to stipulate to
7 that.

8 HEARING OFFICER CELLI: Thank you. And
9 Mr. Wilkins?

10 MR. WILKINS: Mr. Wilkins for County of Imperial,
11 Intervenor. I would just add that I would like to add that
12 we are willing to stipulate as indicated. However, the
13 County is in the process of preparing a Final EIR for the
14 East Brawley Project and we believe that our hearing, our
15 public hearing to actually approve the project will be
16 scheduled for somewhere around that time frame based on the
17 current schedule. Therefore we would request, and I'm sure
18 you will do so, all haste in issuing a decision in the
19 matter.

20 HEARING OFFICER CELLI: Well thank you for the
21 stipulation. And with that we will keep to these dates
22 then. The October 12th is the date for the opening briefs,
23 October 19th is rebuttal briefs, November 9th is Proposed
24 Decision. And then I don't know what date the next Business
25 Meeting would be after that but it would have to be within

1 21 days of the Proposed Decision.

2 So thank you all for that; that does take some of
3 the heat off. And I think we'll have a better decision in
4 the end because of it so thank you for that stipulation.

5 Now my next question is, before we go to public
6 comment, whether, it seems to me that it would be productive
7 for the parties to have a workshop today. We've discussed a
8 number of things where the parties need to confer and talk
9 about such things as stipulating parties, written testimony,
10 telephonic testimony. The nuts and bolts of what we're
11 going to bring in. Maybe you can exclude certain evidence.

12 And so do you think that would be productive,
13 Ms. Gulesserian, that you have a workshop immediately
14 following our hearing today, our conference today?

15 MS. GULESSERIAN: I'm trying to think if I have
16 enough materials with me. I think we could begin a
17 discussion, sure. I don't have my experts with me and
18 they're the ones that would be important for a workshop.

19 HEARING OFFICER CELLI: Okay. This was really an
20 informal discussion. You know, the code calls for noticed
21 meetings whenever the parties meet and this was noticed in
22 our notice and so we have this opportunity and the Committee
23 would really encourage the parties to take advantage of it.

24 I'm hoping that staff, respondent and intervenor
25 can speak with the complainant today and see what you can do

1 to streamline the process. What kind of witnesses we don't
2 need and share that information. Share what exhibits can be
3 removed or withdrawn. Or anything else that we can do to
4 streamline these. And just amongst yourselves. There's a
5 settlement in the offering. Hope springs eternal.

6 Mr. Ogata, go ahead.

7 MR. OGATA: Thank you, Mr. Celli. I just offer
8 this as a thought. I don't know if the parties can actually
9 have a workshop that would be totally productive this
10 afternoon. I guess we'll all have to talk about it. But
11 I'm wondering if we can try to convene the workshop but have
12 you keep the hearing open, continue the hearing until such
13 time as if we need to come back to you and ask for
14 continuance of the workshop until the day after or Thursday
15 you can just order that as opposed to having us re-notice
16 that at some point.

17 HEARING OFFICER CELLI: That's a good question.
18 Complainant, let's hear from CURE whether you think it would
19 be useful, if need be, to have your witnesses with you at a
20 continued workshop for later on in the week?

21 MS. GULESSERIAN: As I thought a little bit more,
22 it would be helpful to have my engineer complete his review
23 and either be available or, you know, prepare us for
24 participation in that workshop. So yes, later in the week
25 would be very helpful and we would be willing to

1 participate.

2 HEARING OFFICER CELLI: Because I think we could
3 probably order that right now. Order it started today and
4 continue to a date certain. I think if that's acceptable to
5 all parties. So what do you think of that, Mr. Ogata?

6 MR. OGATA: I think that sounds like a good idea.
7 I know I'd have to check with my staff so I couldn't
8 actually do that right this second.

9 HEARING OFFICER CELLI: Well it's ten after 12.
10 What we can do, well be breaking in a moment for public
11 comment. I should just say for the record that we have, I
12 have Rosario Gonzales who is with Imperial County in some --

13 MR. WILKINS: Deputy County Counsel.

14 HEARING OFFICER CELLI: I also have Mark Nero on
15 the phone. I don't know who Mark Nero is, he might be a
16 member of the public. And I have -- by the way, those of
17 you who are on the phone, you're on mute, we can't hear you.

18 I'll be unmuting you as soon as we go to public comment. I
19 have one unidentified person calling in, Call-in User 3, I
20 don't know who that person is, and that's really it. And
21 the record should reflect that there are no members of the
22 public here today who want to make a public comment because
23 we have an empty audience.

24 But we could take a break, let the parties confer.
25 Maybe we can come back in about a half an hour and go back

1 on the record and then make whatever orders are necessary
2 with regard to a workshop after taking public comment. So
3 if that's acceptable to everyone?

4 MS. GULESSERIAN: We'd propose not to delay this
5 for a half an hour. We just -- we maybe propose a workshop
6 on -- we want to get to work and get through this so we can
7 get our questions set for the workshop. I don't know. I
8 mean, I understand that people might need to talk to their
9 folks but I'm proposing Wednesday for a workshop.

10 HEARING OFFICER CELLI: I think the way in order
11 to do this right is you'd have to start it today and we
12 would have to order a continuance of it.

13 MS. GULESSERIAN: Start it?

14 HEARING OFFICER CELLI: Yes. This way we don't
15 run into, we don't run afoul of our noticing regulations.

16 MS. GULESSERIAN: Okay.

17 HEARING OFFICER CELLI: So with that, what I think
18 we'll do is let's -- I'm going to start. Maybe you can talk
19 amongst yourselves as we're taking public comment and then
20 we'll make a ruling on a continuance of the workshop today.

21 So with that I'm going to unmute the telephone
22 people. Rosario Gonzalez, can you hear me?

23 MS. GONZALEZ: Yes I can, thank you.

24 HEARING OFFICER CELLI: Hello. Did you wish to
25 make a comment, please?

1 MS. GONZALEZ: No, I'm just appearing on behalf of
2 APCD and the County.

3 HEARING OFFICER CELLI: Okay, well thank you very
4 much. How has the audio been, by the way? Have you been
5 able to hear okay?

6 MS. GONZALEZ: It's been good for the most part.
7 Every now and again it kind of fades out for about, maybe a
8 second or two. But it's not a problem to where I haven't
9 been able to understand.

10 HEARING OFFICER CELLI: Okay. Well thank you very
11 much and thank you for participating, Ms. Gonzalez.

12 MS. GONZALEZ: You're welcome.

13 HEARING OFFICER CELLI: With that, I seem to have
14 scared away the other members of the public because they
15 have hung up. So if anybody wishes to make a public comment
16 and is listening in, now would be a great time to call in.
17 Our lines are open and we'll be taking public comment.

18 Ms. Jennifer Jennings is here from the Public
19 Adviser's Office. Ms. Jennings, do we have anyone that
20 you've heard of, heard from, that wanted to make a public
21 comment?

22 MS. JENNINGS: No.

23 HEARING OFFICER CELLI: Or any written public
24 comment? No. For the record, Ms. Jennings has indicated no
25 one has indicated any interest and there has been no written

1 public comment received.

2 So with that I think we're about ready to go back
3 on the record and -- I think procedurally. We're going to
4 go off the record for a moment.

5 (Off the record at 12:12 p.m.)

6 (On the record at 12:13 a.m.)

7 HEARING OFFICER CELLI: Mr. Ogata, I just want to
8 talk to you about the workshop idea. Generally workshops
9 are noticed by staff without Committee involvement. In this
10 case we noticed the workshop because we just thought it
11 might be useful, since the parties really haven't had any
12 opportunity to get together at all in this case. But with
13 regard to a continuance. I'm informed that in the past
14 staff would just, if the parties all agree to a continuance
15 they can have one and you just need to post one on the door,
16 a notice of the continuance.

17 MR. OGATA: Okay, Jeff Ogata. So is there a
18 question there?

19 HEARING OFFICER CELLI: I want to know if what I
20 just explained to you is a correct recitation of the
21 noticing requirements of a continued workshop?

22 MR. OGATA: So what you would want to do then is
23 just to leave a note on the door explaining that the
24 workshop has been postponed to a future date?

25 HEARING OFFICER CELLI: Well what we would do is

1 commence a workshop today and then the parties can stipulate
2 to a continuance, can they not?

3 MR. OGATA: Yes.

4 HEARING OFFICER CELLI: Okay. So we don't really
5 need an order from the Committee continuing your workshop,
6 that's what I'm trying to say. We start the workshop today
7 and then the parties can stipulate to the continued date to
8 finish the workshop.

9 MR. OGATA: I suppose that's probably true. I
10 don't know if anybody would have a problem with that. The
11 difference being that staff workshops, obviously the
12 Committee is not a part of that so, of course, that's why
13 the parties themselves can agree to that.

14 In this case since the Committee is the one that
15 called for the workshop I'm not sure that the parties
16 necessarily stipulate among ourselves, or the Committee
17 disagrees. In some sort or fashion the Committee needs to
18 say that whatever the parties agree to is fine with the
19 Committee. Just to tie up, you know, any loose ends.

20 HEARING OFFICER CELLI: Okay, so since the
21 Committee ordered the workshop the Committee would order the
22 parties to commence the workshop and then would basically
23 order the parties be -- give them the discretion to
24 stipulate to a continued workshop if necessary.

25 MR. OGATA: And I would be willing to offer that

1 staff will inform the list serve of that date and time in
2 case people need to know and want to participate in the
3 workshop.

4 HEARING OFFICER CELLI: Thank you, that would be
5 great. And I hope this way we've got it covered and
6 everybody is noticed. Mr. Ellison?

7 MR. ELLISON: We're fine with all of this subject
8 to, we're checking the availability of our witnesses. We
9 would I think prefer, and I suspect most of the parties
10 would agree, to do this by telephone rather than physically
11 getting together so I would offer that thought.

12 And then there is one other concern, both with
13 respect to the workshop and to the hearing on Monday that I
14 wanted to flag for all the parties to think about and for us
15 to discuss at the workshop and for the Committee to be
16 thinking about and that is this:

17 Ormat is an unusual company. I am not sure that
18 the Commission has dealt with a company quite like Ormat
19 before. They are unusual in that they manufacture a lot of
20 their own geothermal equipment and they sell that equipment
21 to other companies around the world. They have, I think,
22 something on the order of 80 patents of very proprietary
23 information about the equipment, including equipment that is
24 at issue in this proceeding and including information that
25 is the subject of the non-disclosure agreements that we have

1 executed with CURE.

2 Discussion of that information in public is a big
3 problem for Ormat. So we need to work out something, and we
4 will talk to CURE about that at this workshop, to make sure
5 that, really two things. One is, CURE executed the non-
6 disclosure agreement and added Mr. Koppe to it. We'd like
7 to come to some agreement on additional people that you
8 might want to execute the NDA for. We'd like to have our
9 consent before you add anybody to that. But more
10 importantly, we'd like to have a conversation about how
11 we're going to discuss some of this information because some
12 of it is quite proprietary.

13 HEARING OFFICER CELLI: You raise a good point.
14 And in the past, normally the confidentiality question comes
15 up in the context of, you know, Native American burial
16 grounds or something like that. In which case what the
17 Committees usually do is bend over backwards to find ways to
18 avoid letting that evidence into the record.

19 I'm hoping that once your witnesses take a look,
20 and I'm speaking to the Complainant CURE, that really only
21 that which is absolutely necessary would even come into the
22 record. And then I suppose we would have to have some sort
23 of in camera review and we would have to preserve the sealed
24 nature of whatever it is that the confidential designation
25 was given to.

1 So the easiest way to deal with confidential
2 information is to not include it in the record. That's the
3 preferred option unless it is absolutely necessary. Because
4 then if it must come in we need you, parties, to flag it,
5 tell us. We're going to have to stop, we're going to have
6 to do a separate in camera presentation of the evidence, and
7 we'll see, we'll see how we deal with that.

8 But I think Mr. Ellison raises an important point
9 and the parties need to be sensitive to these issues
10 because, you know, they're entitled to their trade secrets.

11 In fact, they can sue you now if you divulge or if you
12 breach your non-disclosure agreement.

13 I think all of the parties are adequately
14 protected in this case. I think that part of the workshop
15 then would be a discussion of who is going to be signatories
16 to your NDA, your non-disclosure agreement.

17 MS. GULESSERIAN: Thank you, we think that's a
18 valuable reminder. Yes, we completely understand. Talking
19 about it in a workshop setting should be interesting. But
20 at this point we don't intend to have anybody else sign a
21 non-disclosure agreement except for she has not finished
22 hers. But thank you. We fully intend to keep it
23 confidential. I don't think that -- at this point I don't
24 anticipate needing to bring any of that into the evidentiary
25 hearing. Because it's possible to summarize information in

1 a -- but we'll see.

2 HEARING OFFICER CELLI: Thank you.

3 MS. GULESSERIAN: Thank you.

4 HEARING OFFICER CELLI: So thank you, CURE.

5 Anything further from staff?

6 MR. OGATA: Nothing further.

7 HEARING OFFICER CELLI: Anything further from
8 Respondent Ormat Nevada, Inc.?

9 MS. POTTENGER: No, thank you.

10 HEARING OFFICER CELLI: Thank you. Anything
11 further from County of Imperial, Mr. Wilkins?

12 MR. WILKINS: Nothing else, Your Honor.

13 HEARING OFFICER CELLI: Okay. With that then we
14 would turn it back to the Presiding Member, Commissioner
15 Douglas, for adjournment, followed by the workshop.

16 PRESIDING MEMBER DOUGLAS: Thank you, Hearing
17 Officer Celli. Appreciate the parties being here today and
18 the work that you're certainly putting into preparing for
19 the evidentiary hearing. As the Hearing Officer said, we're
20 very committed to having this proceeding run in an orderly,
21 efficient and expeditious way and to the time lines that we
22 have all agreed to today. So thank you and we're adjourned.

23 (Whereupon, at 12:20 p.m. the
24 Prehearing Conference was adjourned.)

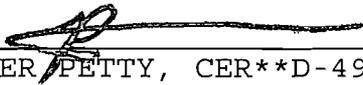
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CERTIFICATE OF REPORTER

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

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 23rd day of September, 2011.



PETER PETTY, CER**D-493

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



RAMONA COTA, CERT**478

September 23, 2011