

PREHEARING CONFERENCE
 BEFORE THE
 CALIFORNIA ENERGY RESOURCES CONSERVATION
 AND DEVELOPMENT COMMISSION

California Energy Commission

DOCKETED
11-AFC-02

TN # 2924

MAR. 05 2013

In the Matter of:)
)
 Application for Certification) Docket No.
 Hidden Hills Solar Electric) 11-AFC-02
 Generating System)
 _____)

TECOPA COMMUNITY CENTER
 405 TECOPA HOT SPRINGS ROAD
 TECOPA, CALIFORNIA
 TUESDAY, FEBRUARY 26, 2013
 12:00 P.M.

Reported and by:
 Martha L. Nelson, CERT

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David Hochschild, Commissioner and Associate Member

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John Zellhoefer

Jack Pritchett, Old Spanish Trail Association

Elizabeth Warren, Old Spanish Trail Association

Cindy McDonald

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Brian Brown, Amargosa Conservancy

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Eddie Gen

Amy Noel, Southern Inyo Fire Protection District 4

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Larry Levy, Inyo County Fire Protection

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PROCEEDINGS

12:07 P.M.

1
2
3 COMMISSIONER DOUGLAS: Hi everyone. Welcome
4 to this prehearing conference for the Hidden Hills Solar
5 Electric Generating System. Before we begin I'd like to
6 introduce the committee, and then ask the parties to
7 introduce themselves for the record. I'm Commissioner Karen
8 Douglas. I'm the presiding member of this siting committee.
9 To my immediate left is our Hearing Officer Ken Celli. To
10 his left is our Commissioner David Hochschild. And to his
11 left, Jim Bartridge, Adviser to Commission Hochschild. To
12 my right, Galen Lemei, my adviser. To his right is Jennifer
13 Nelson, also my adviser. And to her right is Eileen Allen.
14 She's a technical adviser for siting to the commission.

15 The Public Adviser Blake Roberts is in the room.
16 Blake, would you stand up? Thank you.

17 Applicant, could you introduce yourselves?

18 MR. HARRIS: Good morning. Jeff Harris here on
19 behalf of the applicant. To my left is Ms. Samantha
20 Pottenger with my office. And to my right is Gary Kazio who
21 is the project manager for the Hidden Hills project. In the
22 audience we also have John Carrier from CM2H Hill. And
23 Susan Strachan from Strachan Consulting and the
24 environmental consultant. And I think that's all of our
25 folks today.

1 COMMISSIONER DOUGLAS: Thank you. Staff, could
2 you introduce yourselves?

3 MR. RATLIFF: Dick Ratliff, Staff Counsel. With
4 me are also Staff Counsel Pippin Brehler and Kerry Willis.
5 And I think we have a project manager on the -- on the phone
6 line.

7 HEARING OFFICER CELLI: Oh, let me just make sure
8 that that's truth.

9 MR. RATLIFF: That would be Mike Battles. And
10 then he's present.

11 HEARING OFFICER CELLI: Oh, there we go. Great.

12 COMMISSIONER DOUGLAS: Excellent. Thank you.
13 Let's see, now, Intervenor John Zellhoefer, are you here?

14 MR. ZELLHOEFER: Over here. Right.

15 COMMISSIONER DOUGLAS: Does he have a mike are we
16 okay.

17 HEARING OFFICER CELLI: He --

18 COMMISSIONER DOUGLAS: John Zellhoefer is present.
19 All right.

20 Lisa Belenky; we heard from Lisa Belenky on the
21 phone. Are you present, Lisa?

22 MS. BELENKY: Yes, thank you. I'm still here.
23 And I'll be on mute most of the time.

24 COMMISSIONER DOUGLAS: Thank you. Intervenor Jack
25 Pritchett on behalf of the Old Spanish Trail Association.

1 MR. PRITCHETT: I'm right here. And I would -- I
2 would like to point out that I have Liz Warren, also, of the
3 Old Spanish Trail Association here with me.

4 COMMISSIONER DOUGLAS: Great. Thank you. Thank
5 you for being here.

6 Intervenor Cindy MacDonald, are you here?

7 MS. MACDONALD: Yes. Good morning. I am here.
8 Thank you.

9 COMMISSIONER DOUGLAS: Thank you for being here.

10 Intervenor Richard Arnold.

11 MR. ARNOLD: Yes, I'm here. Thank you.

12 COMMISSIONER DOUGLAS: Thank you. Intervenor Inyo
13 County, represented by Attorney Dana Crum.

14 MS. CROM: Yes. Dana Crum and Greg James on
15 behalf of Inyo County. And we also have Joshua Hart, our
16 planning director, who's present.

17 COMMISSIONER DOUGLAS: Great. Thank you.
18 Intervenor -- Intervenor Donna Lamm on behalf of Amargosa
19 Conservancy.

20 MR. BROWN: I'm Brian Brown. I'm here on behalf
21 of the Amargosa Conservancy. Donna is not here today.

22 COMMISSIONER DOUGLAS: All right. Thank you.

23 MR. CHRISTIAN: And I'm Bill Christian.

24 HEARING OFFICER CELLI: That was Bill Christian
25 and Brian Brown. And, you know, I'm going to ask if we can

1 organize it so that the two of you can sit next to each
2 other so we have parties -- sorry to do musical chairs. In
3 the future, what I try to do is have the parties sit in the
4 order in which they intervened, and this way it's easy for
5 me to keep track of who's -- where I'm at in the
6 proceedings. So thank you for doing that. So that was Bill
7 Christian.

8 COMMISSIONER DOUGLAS: Yeah. Okay.

9 HEARING OFFICER CELLI: Bill Christian.

10 MR. CHRISTIAN: Yes.

11 HEARING OFFICER CELLI: And Brian Brown.

12 MR. BROWN: Yes.

13 HEARING OFFICER CELLI: Okay.

14 COMMISSIONER DOUGLAS: And Intervenor Southern
15 Inyo Fire Protection District, represented by Attorney
16 William Ross.

17 MR. ROSS: Yes, I'm present. I don't have a
18 microphone. Chief Levy is next to me, to my left.

19 COMMISSIONER DOUGLAS: Okay. So William Ross is
20 present and Chief Levy is present.

21 HEARING OFFICER CELLI: Larry Levy? Larry Levy,
22 isn't it?

23 COMMISSIONER DOUGLAS: Larry Levy --

24 HEARING OFFICER CELLI: There he is.

25 COMMISSIONER DOUGLAS: -- is present, as well.

1 Are there any federal government agencies
2 represented here today?

3 Are there any officials representing Native
4 American Tribes or Nations?

5 MS. MACDONALD: Richard?

6 MR. ARNOLD: Oh, yes. I'm sorry.

7 COMMISSIONER DOUGLAS: And there's another
8 gentleman in the audience. If you could introduce yourself,
9 please?

10 MR. JIM: (Off mike.) I'm Eddie Jim, Chairman of
11 Pahrump Paiute Tribe.

12 COMMISSIONER DOUGLAS: Did you get your name?

13 HEARING OFFICER CELLI: Mr. Jim, what was the
14 first name? I'm sorry.

15 MR. JIM: Eddie.

16 HEARING OFFICER CELLI: Eddie Jim

17 COMMISSIONER DOUGLAS: Thank you. Are there any
18 elected officials in the room today?

19 MS. NOEL: Amy Noel, Southern Inyo Fire Protection
20 District 4.

21 COMMISSIONER DOUGLAS: All right. And any other
22 representatives of -- we heard from Inyo County. Any --
23 besides Inyo County, any other representatives of state or
24 local government agencies?

25 UNIDENTIFIED FEMALE: I don't know how to classify

1 me, but I'm a member of the Goodsprings Nevada Citizens
2 Advisory Council and have been since it was formed and
3 served as chair and so forth. The reason I'm here on that
4 score would be ancillary but very major infrastructures that
5 will serve the solar plant. The pipeline for the gas, as
6 well as the electrical transmission lines will run right
7 around my town. We're going to have fun.

8 COMMISSIONER DOUGLAS: Thank you. All right. So
9 I wanted to -- you've already checked the phone.

10 HEARING OFFICER CELLI: I've muted everybody, too,
11 so I wouldn't know if there's any --

12 COMMISSIONER DOUGLAS: All right. So we've
13 already checked the phone.

14 At this point I would like to offer the
15 committee's very special thanks and appreciation to Brandon
16 Shultz for getting the WebEx and phones to work. So thank
17 you.

18 And with that I'll turn this over to the hearing
19 officer.

20 HEARING OFFICER CELLI: Thank you, Commissioner.

21 Can you hear me okay back there? We have a nice
22 big turnout today. And it's nice to see people who I've
23 been talking to by way of email and phone all these months
24 in person, so welcome.

25 The committee noticed today's prehearing

1 conference in a notice of prehearing conference and
2 evidentiary hearing, which -- which was issued on December
3 21st, 2012. If you want, we put copies of that in the
4 corner. And I hate to create a big people jumping up to
5 grab handouts. But there were handouts by the door for
6 people. We left them on the table. So if you have those
7 noticed, that was noticed December 21st, 2012.

8 I want to remind everybody that we noticed March
9 18th and March 19th as evidentiary hearing dates. That
10 would be held in Sacramento. In case we're not able to
11 finish taking all of the evidence in Shoshone in the four
12 days that we've allotted, then we have some spillover. But
13 we don't really want to do that if we can avoid it.

14 We also noticed the time change on March 12th,
15 which is day one of the evidentiary hearings. That is going
16 to begin at 11:30 in the morning. But all of the
17 evidentiary hearings are going to start at nine o'clock in
18 the morning. So the first day is 11:30; all the rest are
19 9:00 in the morning.

20 As explained in the notices, the basic purposes of
21 the prehearing conference are to: one, assess the projects
22 readiness for hearings; two, to clarify areas of agreement
23 and dispute; three, to identify witnesses and exhibits;
24 four, to determine upon which areas parties need to question
25 other people's witnesses; and lastly, to discuss associated

1 procedural matters.

2 To achieve these purposes we require that any
3 party seeking to participate at this conference, or who wish
4 to present evidence or cross-examine witnesses at future
5 evidentiary hearings, file a prehearing conference statement
6 by February 19th, 2013. The time of the prehearing
7 conference statement -- statements, plural, were filed by
8 parties, except one intervenor, Amargosa, who did not
9 file -- or did file, but didn't file on time.

10 Staff published its final staff assessment on
11 December 21st, 2012. This serves as staff's testimony in
12 all subject areas. The final staff assessment, which you're
13 going to hear us referring to throughout these proceedings
14 as the FSA, Final Staff Assessment, has been marked for
15 identification as Exhibit 300. Rebuttal testimony was filed
16 on February 11th, 2013, and February 15th, 2013, and staff
17 has filed those as Exhibits 301 and 302. Staff also filed
18 the Final Determination of Compliance and marked that as --
19 for identification as Exhibit 303.

20 Timely testimony was filed by Applicant, which
21 would be the AFC testimony and exhibits on January 21st,
22 2013, and those exhibits have been marked for identification
23 as Exhibits 1 through 80.

24 Intervenor John Zellhoefer filed no testimony and
25 is not offering any exhibits.

1 Intervenor Center for Biological Diversity's
2 evidence was timely filed and marked for identification as
3 Exhibits 500 through 563.

4 Most -- Ms. Belenky, I should point out, most of
5 your exhibits on our draft exhibit list are missing the
6 transaction number, the TN number the dockets assigns. And
7 we need that information. It is a prerequisite now to
8 getting the evidence into the record. So please get those
9 numbers to Rosemary in my office as soon as you can.

10 Going to --

11 MS. BELENKY: I'm sorry, you said we don't have
12 some number. How would I have gotten that number?

13 HEARING OFFICER CELLI: Well, it's --

14 MS. BELENKY: You mean, the document we sent two
15 days ago?

16 HEARING OFFICER CELLI: Well, in other words,
17 every time you docket any document it gets stamped with a
18 docket number, a TN number. And we need those TN numbers to
19 be associated with your exhibits so we know where to find
20 them in dockets; you see?

21 MS. BELENKY: Well, we can figure this out, maybe
22 tomorrow.

23 HEARING OFFICER CELLI: Okay. We can do this
24 offline. But basically, I want everybody to be on notice
25 that we need those TN numbers.

1 Now, going to Intervenor Old Spanish Trail
2 Association's evidence was timely filed and marked for
3 identification as Exhibits 600 through 622, then there's a
4 gap and we go to 650 through 653, and then 670 through 685.

5 Intervenor Cindy -- Cindy R. MacDonald's exhibits
6 were timely filed and marked for identification as 700
7 through 759.

8 Mr. Pritchett, did you have a question?

9 MR. PRITCHETT: Excuse me. Go back. As you and I
10 discussed on the phone, you added those two other exhibits,
11 623 and 624, you had them on the list when we talked on the
12 phone.

13 HEARING OFFICER CELLI: Okay. So it begins 600
14 through 624.

15 MR. PRITCHETT: That's correct.

16 HEARING OFFICER CELLI: Okay.

17 MR. PRITCHETT: That's correct.

18 HEARING OFFICER CELLI: Okay. Thank you. Thanks
19 for that correction. Okay.

20 Intervenor Richard Arnold's evidence was timely
21 filed and marked for identification as Exhibits 800-804.

22 Intervenor Inyo County's evidence marked for
23 identification as Exhibits 900-947, and it was -- it was
24 also timely filed February 4th, 2013.

25 Intervenor Amargosa Conservancy -- there, okay,

1 thank you -- filed no testimony is not offering any
2 exhibits.

3 Intervenor Southern Inyo Fire Protection District.

4 MR. BROWN: We did file --

5 HEARING OFFICER CELLI: Mr. Brown? I'm sorry.

6 MR. BROWN: We filed. It wasn't that we --

7 COMMISSIONER DOUGLAS: Do they have a microphone
8 over there?

9 HEARING OFFICER CELLI: Hold on one second. We're
10 going to need to get you a microphone.

11 Just so everybody is clear, ladies and gentlemen,
12 these are -- this -- even though this is a conference,
13 unlike a formal, say, evidentiary hearing, everything we're
14 saying is being taken down and recorded by a court reporter.
15 And so it's necessary for everybody who wants to speak to
16 speak into the microphone and make sure that we speak one
17 person at a time so that we have a clean record.

18 Go ahead, Mr. Brown.

19 MR. BROWN: Yeah. We did file some testimony. I
20 believe it was late, a day or two. So is it being
21 disallowed, is that what you're saying, or --

22 HEARING OFFICER CELLI: Let me have one moment.

23 (Colloquy Between Hearing Officer Celli and
24 Commissioner Douglas)

25 HEARING OFFICER CELLI: What were those numbers,

1 Mr. Brown?

2 MR. BROWN: The exhibit numbers, I don't -- I'm
3 sorry, I don't have them with me. Does anyone else have
4 those numbers?

5 HEARING OFFICER CELLI: Okay. Normally the
6 committee does not accept late-filed exhibits because -- and
7 the reason is this -- and it's not like we're being tough
8 guys, basically. But the idea is everybody needs to share
9 information. If you bring these things in, nobody else has
10 seen these yet. And it's really not fair to the other
11 parties who did share amongst all themselves all of their
12 exhibits. So that's the reason we would usually exclude
13 that evidence.

14 MR. BROWN: Okay. Thank you. I just -- I just
15 wanted to have that clarified.

16 HEARING OFFICER CELLI: Right.

17 MR. BROWN: That's a really important part of
18 this. I mean, it's really about fairness. So since
19 everybody really has already given us their exhibits and
20 they've shared it with each other, everybody knows what's
21 going on. So I'm going to treat that as not offered at this
22 time. And maybe we'll cross that bridge later in an
23 evidentiary hearing, if need be.

24 And again, the whole point of all of this is for
25 the convenience of the committee to be able to make a

1 reasoned and informed decision about this proposed project.
2 And so it's really up to the committee what evidence they
3 want and what they want to let in and whatnot.

4 So with that, I normally -- we've switched our
5 systems over a little bit because of this new docketing
6 system. And therefore, in the past I used to ask people to
7 give me a DVD of all of their exhibits so I had a DVD of it,
8 but I'm not going to do that. But then I'm going to impress
9 upon you how important it is that we have your TN numbers so
10 that I can go into dockets into our database and get your
11 exhibits. Okay.

12 Now, today's agenda is divided into six parts.
13 First we're going to discuss the motion for subpoena duces
14 tecum and motion for extension of time brought by Old
15 Spanish Trails Association. Next, we're going to discuss
16 the parties -- all parties witnesses' lists, followed by
17 discussion of the parties exhibits' lists. Next, we discuss
18 the informal process that the committee will utilize in the
19 conduct of the evidentiary hearings. And after that we will
20 discuss the briefing schedule. And finally, we will provide
21 the opportunity for public comment.

22 And I would say off the cuff, Ladies and Gentlemen
23 who are members of the public who are here and wish to make
24 a comment, that this proceeding is probably going to go, I
25 don't know, a couple hours, maybe two, two-and-a-half hours

1 before we get to public comment. So just so you know, we
2 probably won't get to public comment for several hours. So
3 you can plan your day around it. Okay.

4 OSTA, you brought a motion. Your motion was filed
5 on February 19th, 2013. The committee received a motion for
6 subpoena duces tecum and a motion for extension of time for
7 rebuttal testimony. On February 20th, 2013 the Applicant,
8 BrightSource, sitting over here, filed an objection to Old
9 Spanish Trail Association -- as I'm going to be referring to
10 from here on out as OSTA -- Old Spanish Trail Association's
11 motion. They objected to that. And on Sunday the Energy
12 Commission staff, who are sitting over here, filed comments
13 on that motion.

14 The committee received and has considered all of
15 the motions, comments, and documents. And after reviewing
16 those documents makes the following findings: One, the Old
17 Spanish Trail Association has been an intervenor in this
18 proceedings since February 1st of 2012; two, discovery was
19 still open at that time and remained open until April 3rd of
20 2012; three, the Old Spanish Trail Association was aware of
21 the existence of the documents for which they seek a
22 subpoena duces tecum as early as December 12th, 2011 based
23 upon that mention of page two of the motion; and four,
24 movant, Old Spanish Trail Association, should have asked for
25 discovery while the discovery period was still open.

1 Accordingly, the motion for subpoena duces tecum and
2 extension of time is denied because it was filed untimely.

3 With that -- and we'll get to the next thing now.

4 Discussion of prehearing conference statements and topics
5 not ready to receive. Now, since we've received everybody's
6 prehearing conference statement, everybody was asked to tell
7 us what topics you felt were not ready to proceed. And I
8 want to just basically give you that.

9 The applicant said everything was ready to
10 proceed.

11 Staff said everything is ready to proceed except
12 socio. Is that still your position? Okay. I'm getting
13 nodding, yes, in the affirmative.

14 Mr. Zellhoefer said nothing was not ready, in
15 other words, everything was ready to proceed.

16 CBD is -- said the project description,
17 alternatives, biological resources, water supply, land, and
18 socioeconomics were not ready to proceeds.

19 The Old Spanish Trail Association said everything
20 seemed to be ready to proceed.

21 Ms. MacDonald was noise, traffic, soil, and water.

22 Mr. Arnold, everything is ready to proceed.

23 Inyo County, everything is ready to proceed.

24 Southern Inyo Fire Protection District, everything
25 is ready to proceed.

1 And the same is true with Amargosa.

2 So I want to -- I'm going to -- I want to jump to
3 topics that are in dispute, and then through that discussion
4 come back to this question of what is or is not ready to
5 proceed. Okay.

6 So let's -- let's go to the next thing, which are
7 the topics that are in dispute. Now, Staff, in their
8 prehearing conference statement, indicated that -- drew a
9 distinction between those topics that were ready to proceed
10 and those topics which could be handled via a workshop. So
11 that seemed like a simple shorthand for us to use. But
12 basically, according to all of the parties, the applicant
13 felt that the topics that need adjudication, which means
14 they're in dispute, we need to take evidence of facts about
15 these issues, are alternatives, biological resources,
16 cultural resources, land use, socioeconomics, noise, and
17 visual resources. And if there's anything you want to take
18 off that list, please let me know as we go, or add if --

19 MR. HARRIS: Water supply is not on that list.

20 HEARING OFFICER CELLI: Okay. Water.

21 MR. HARRIS: But we were actually hoping to maybe,
22 if not take that one off the list, at least maybe reduce the
23 scope of the issues there, so --

24 HEARING OFFICER CELLI: Thank you.

25 MS. CROM: Jeff, you need to speak up. We can

1 barely hear you.

2 HEARING OFFICER CELLI: Yeah. When it comes to
3 using these mikes you have to hold it like you were going to
4 swallow it. You have to speak right down the shaft of these
5 microphones. Okay. That's the way these microphones work.
6 So that's -- you'll be hearing from me on this all day.
7 Okay.

8 MR. HARRIS: Well, Mr. Celli --

9 HEARING OFFICER CELLI: Go ahead.

10 MR. HARRIS: I feel self-conscious holding this
11 now. I think we can take noise off from the applicant's
12 perspective.

13 MS. CROM: What was that?

14 HEARING OFFICER CELLI: Okay. So the applicant,
15 just to be clear everyone knows, applicant suggests that the
16 water -- water is a topic in dispute, that noise is not a
17 topic in dispute.

18 Staff thinks that alternatives, bio protection,
19 biological resources, water, cultural resources, land use,
20 traffic and transportation, socioeconomics, and visual
21 resources were -- remain in dispute and need adjudication.

22 Is that a complete list, Mr. Ratliff?

23 MR. RATLIFF: It is. But, I mean, Staff's focus
24 is usually on the disputes that we're aware of with the
25 applicant and other parties. I notice that in reading the

1 prehearing conferences, for instance, some of their issues
2 have been raised, including those from Ms. MacDonald
3 concerning noise specifically.

4 HEARING OFFICER CELLI: So you would add noise?

5 MR. RATLIFF: Well, certainly it appears to be
6 that Ms. MacDonald is raising issues about noise that go to
7 factual issues that certainly warrant saying it's disputed,
8 yes. So --

9 HEARING OFFICER CELLI: Thank you. And in that
10 regard, Staff, there's a code section or a regulation that
11 required Staff to sort of poll the parties and see what they
12 felt was the sum total of disputed -- matters in dispute.
13 And so thank you for providing that in your prehearing
14 conference statement.

15 Nothing in dispute as far as Mr. Zellhoefer is
16 concerned.

17 Center for Biological Diversity cited project
18 description, alternatives, biological resources, water
19 supply, land use, and socioeconomics as needing
20 adjudication.

21 Anything further on that, Ms. Belenky?

22 MS. BELENKY: No, thank you. That's -- that's
23 what we provided.

24 HEARING OFFICER CELLI: Thank you. OSTA, cultural
25 and visual resources only.

1 MR. PRITCHETT: Yes. I did indicate in my
2 statement six particular areas of dispute. I don't know if
3 you want me to recap those.

4 HEARING OFFICER CELLI: Well, we're -- in terms of
5 the topics that -- and these topics, where they come from,
6 really, is the table of contents from --

7 MR. PRITCHETT: Okay.

8 HEARING OFFICER CELLI: -- Staff's final staff
9 assessment.

10 MR. PRITCHETT: I understand.

11 HEARING OFFICER CELLI: But your issues really
12 were about cultural, as I recall --

13 MR. PRITCHETT: Yes.

14 HEARING OFFICER CELLI: -- and visual.

15 MR. PRITCHETT: All of them.

16 HEARING OFFICER CELLI: Okay. Thank you.

17 Ms. MacDonald, everything was in dispute,
18 according to you.

19 MS. MACDONALD: That's not correct. I would have
20 put everything, given the opportunity, but I ran out of
21 time. What was my list, four or five that were in dispute
22 and --

23 HEARING OFFICER CELLI: I have, okay,
24 alternatives, cultural, biological resources, land use,
25 socio -- actually, I think -- oh, here it is. Thank you.

1 That's -- that's the list I need. Okay.

2 So Ms. MacDonald is water, land, air quality,
3 environmental justice which is a sort of subset of
4 socioeconomics -- that's just where they put it -- project
5 description, greenhouse gasses --

6 MS. MACDONALD: Okay. Everything.

7 HEARING OFFICER CELLI: -- public health -- yeah,
8 pretty much everything.

9 MS. MACDONALD: Except the TS, the transmission
10 system, engineering system, I believe, was the only thing
11 that I left out.

12 HEARING OFFICER CELLI: Very good.

13 MS. MACDONALD: Or at least in some areas I just
14 wanted more clarification. Some were more major, some were
15 not.

16 HEARING OFFICER CELLI: I'm glad you raised that.
17 Because we're going to -- when we get -- later, when we talk
18 about the way we're going to do things, that -- that's
19 exactly how this is supposed to shake out, so you can get
20 that clarification.

21 MS. MACDONALD: I am looking forward to it. Thank
22 you.

23 HEARING OFFICER CELLI: Thank you. Mr. Arnold --

24 MR. ARNOLD: Sir.

25 HEARING OFFICER CELLI: -- cultural, visual

1 resources, biological resources, water supply, and
2 geological and paleontological resources.

3 MR. ARNOLD: Correct.

4 HEARING OFFICER CELLI: Anything other than that?

5 MR. ARNOLD: Biological, socio -- no, I believe
6 that's correct.

7 HEARING OFFICER CELLI: Okay.

8 MR. ARNOLD: Thank you.

9 HEARING OFFICER CELLI: Inyo County, any -- and
10 normally what I do is I go in the order -- just so you don't
11 feel like I'm putting somebody first or anything -- I
12 usually go in the order in which people intervened.

13 Inyo County, biological resources, land use,
14 socioeconomics, traffic and transportation, water, noise,
15 and visual.

16 MS. CROM: That's it.

17 HEARING OFFICER CELLI: That's it. Thank you.

18 Amargosa is water only, water supply.

19 And Southern Inyo Fire and Protection District was
20 strictly fire protection under the Workers Safety and Fire
21 Protection topic; is that correct?

22 MR. ROSS: And emergency medical services.

23 HEARING OFFICER CELLI: Okay. And that's under
24 that same topic, as well, so --

25 MR. ROSS: I understand.

1 HEARING OFFICER CELLI: Thank you. So those are
2 the topics that are in dispute.

3 For the record, Mr. William Ross just said that he
4 wanted to include emergency services, along with fire
5 protection. I'm just saying this for the court reporter's
6 benefit, that was what you just missed was -- that's what he
7 was saying.

8 And again, Mr. Ross, I don't see -- we have a
9 podium here. Is there a mike on that podium?

10 MR. ROSS: No.

11 HEARING OFFICER CELLI: We don't have a mike?
12 Let's --

13 COMMISSIONER DOUGLAS: Yeah. Let's give them
14 ours.

15 MR. RATLIFF: Staff can share theirs at the
16 podium, if necessary.

17 HEARING OFFICER CELLI: That would be really
18 great. In fact --

19 COMMISSIONER DOUGLAS: Can it share that end of
20 the table there?

21 HEARING OFFICER CELLI: Yeah. Let's send this
22 down to that -- to Mr. Zellhoefer's side.

23 Can we -- Brandon, would we be able to get a mike
24 on the podium? And then what I'm thinking, Staff, is that
25 if you need to speak you pop up to the podium and share that

1 mike with others, and this way we have a complete record.

2 And I'm just going to go off the record for a minute.

3 (Off the Record from 12:34 p.m., Until 12:35 p.m.)

4 HEARING OFFICER CELLI: We're back on the record.

5 And from time to time I'm going to have to confirm with the
6 committee, and so that's why we go off the record, or not.

7 So Staff, first I'm going to -- I'm going to back
8 to the topics, not ready to proceed. Socioeconomics; I
9 wanted to hear from Staff what -- what evidence is missing
10 or what we need in order to actually move that into the, I
11 guess in dispute or maybe even complete column.

12 MS. WILLIS: This is Kerry Willis, Senior Staff
13 Counsel. We've been in discussions with Dana Crum and Inyo
14 County trying to get our experts to figure out which issues
15 remain and why our numbers are so far apart in revenue at
16 this point in time. We were hoping to get together for the
17 workshop on the 5th, but it doesn't look like Inyo County
18 can make it for that day. So at this point I'm not sure how
19 we're going to proceed. But it seems like it would be
20 probably an enormous amount of hearing time having experts
21 kind of talk back and forth numbers.

22 HEARING OFFICER CELLI: I agree with that. I
23 mean, numbers are the one thing we can actually get people
24 to come together on eventually.

25 Is there any chance that Inyo can participate

1 on -- in the workshop by way of WebEx or phone?

2 MS. CROM: The problem is we have our county
3 administrator and two supervisors that are in Washington
4 D.C. at that time. So unfortunately, the parties that I
5 would need for -- in addition to our experts would not be
6 available. They're just -- they're simply out of pocket.

7 HEARING OFFICER CELLI: Okay. Is there any chance
8 that your participation as county counsel would be
9 productive in a workshop, even though they can't -- they're
10 not available?

11 MS. CROM: We -- I will make myself available on
12 the 5th. So I'll be there, probably via WebEx. We are
13 still exchanging information. Unfortunately, three days out
14 of pocket out here. So hopefully by Thursday I'll have some
15 information from our sales and use tax expert which I'll be
16 providing to staff. I mean, these -- really these questions
17 are -- are purely legal questions. I mean, the distribution
18 of sales and use tax is simply a statutory application. The
19 unfortunate thing is I don't think any of us have had any
20 clarity from either the DOE or the Department of Finance.

21 HEARING OFFICER CELLI: Okay. Well, that's --
22 that's an important distinction because, really, we don't
23 want to take any hearing time up with legal issues.
24 That's -- that goes in your brief. Hopefully you can work
25 it out with the other counsel. We're going -- what I'm

1 trying to do, of course, is encourage the parties to work
2 out that which can be worked out short of the evidentiary
3 hearing so we can use that precious time on the things that
4 really need to be adjudicated.

5 So when you say that socioeconomics isn't ready to
6 proceed, it sounds to me like you probably, since it's a
7 legal call, have all the information you need. You just
8 need to come to agreement or not, basically, that's it. It
9 sounds like it's ready to proceed, just in dispute.

10 MS. WILLIS: Well, I think that perhaps that's
11 correct. But I think that at this point, I think from
12 Staff's perspective we would like more clarity on -- on
13 the -- the -- if we're on the right path where -- that we
14 ended up with. The numbers are so far apart, by like 5 or 6
15 million dollars, that -- that we need to figure out why Inyo
16 has one figure and why we have a different figure. That --
17 to me, that's more of a workshop type of an issue rather
18 than a cross-examination type of an area.

19 HEARING OFFICER CELLI: I would agree with that.

20 MS. WILLIS: So --

21 HEARING OFFICER CELLI: And I wanted to ask
22 whether Southern Inyo Fire Protection District is a part of
23 this equation, too, with regard to -- are you including them
24 in this socio to say that it's not ready?

25 MR. ROSS: No.

1 MS. CROM: No.

2 HEARING OFFICER CELLI: They're not a part of
3 that?

4 MS. CROM: No. They're not -- they're not either
5 a property tax or a sales or use tax district. So these --

6 HEARING OFFICER CELLI: Okay.

7 MS. CROM: -- these funds would not flow to them.
8 And they would fall into the workers safety fire protection
9 issue.

10 HEARING OFFICER CELLI: Okay. Great. So --

11 MR. HARRIS: Mr. Celli, if I could, to make that
12 workshop protective, whatever is exchanged between Staff and
13 the Inyo County, can they get that filed ahead of time so
14 our experts can look at it and have an opinion on the 5th,
15 as well?

16 HEARING OFFICER CELLI: Well, you know, the
17 workshop isn't -- this isn't a committee workshop. It's --
18 really it's a Staff workshop, which we, the committee,
19 encourages and is grateful to Staff for putting it on. But
20 I don't know that the committee really wants to reach into
21 the -- you know, workshops are really on the order of
22 settlement negotiations. And we really don't want to insert
23 the committee in that. We don't really call the parties to
24 do that.

25 MR. HARRIS: I'm sorry. We're not objecting to

1 the communications happening. They may work these things.
2 But if there was a specific issue or specific information
3 that's developed, and it can even be the night before,
4 please note, forward it to me and by that give our guys an
5 opportunity to look at it and provide some meaningful input.

6 So, again, I'm not objecting to these discussions. I think
7 it's important. That's the only way things are going to be
8 worked out is with the talks.

9 MR. RATLIFF: And, of course, applicant would be
10 there.

11 MR. HARRIS: Very happily, yes.

12 HEARING OFFICER CELLI: Yeah.

13 MS. CROM: And I understand that, Jeff, and we
14 will definitely make sure that we get the information to
15 you. I mean, this is -- this gets into, I mean, as we know,
16 what the state does once they get sales and there's tax and
17 how they distribute it. And it's something that's, you
18 know, above my pay grade. And none of us seem to really
19 understand.

20 MR. HARRIS: And that -- that ground is the
21 majority of us involved.

22 MS. CROM: That's exactly right.

23 MR. HARRIS: Okay. Great. And if we can helpful
24 in advance of that, if you want to reach out to us we'll be
25 glad to have that conversation.

1 MS. CROM: Okay. Thanks.

2 HEARING OFFICER CELLI: So it sounds to me like
3 this is something that we're going to -- I would like to
4 move out of this not ready to proceed. I think it isn't
5 really ready to proceed. I think that's accurately
6 characterized. But that I have every amount of faith that
7 the parties will be able to work this thing out, short of an
8 evidentiary hearing, so that at least we will refine it down
9 to just those things that need to really be heard by the
10 committee. So thank you for the --

11 MS. CROM: And that's our goal.

12 HEARING OFFICER CELLI: That's great. Thank you.

13 Now, Ms. Belenky, you need to un-mute for a
14 minute.

15 MR. RATLIFF: Before you leave that topic --

16 HEARING OFFICER CELLI: Stay with me, Lisa. Go
17 ahead.

18 MR. RATLIFF: You know, I don't think we even know
19 what the questions are that we're trying to answer yet, and
20 that's part of the problem we have. If -- if they are legal
21 questions we don't know how to pose the questions. So we're
22 trying still to get a formulation of what are we arguing
23 about or are we arguing about something. And we don't --
24 and then we do that until we have defined the issues. I
25 don't think it would be profitable to say it's ready to go

1 to hearing because, I don't know, I think we'd just be
2 talking past each other, or we'd be discovering in real time
3 what the -- what the answers to various questions are.

4 So what -- what we're hopeful is if we can have --
5 what we really want is a dialogue with both the county and
6 the applicant to try to understand, through talking with
7 them, what it is that we don't understand that has to do
8 with how the money gets allocated.

9 There are also, I would just add, certain aspects
10 of the issue that are, I think, factual in nature, and that
11 is the nature of costs that re imposed on the county. And
12 we have some understanding of those. We've talked to the
13 county a fair amount and they've -- they've indicated to us
14 what kinds of expenses they believe the project imposes on
15 the county. But those -- those also introduce a certain
16 aspect, I think, to -- to the socioeconomics area that are,
17 in fact, factually related. And so it's not purely, I
18 think -- I think we would agree it's not purely a matter of
19 figuring what the law is, and then we know the bottom line
20 answer, although it may be that a good part of it is, in
21 fact, a legal question.

22 HEARING OFFICER CELLI: Ms. Crum, go ahead.

23 MS. CROM: I think I would agree to some extent.
24 I mean, just because we answer the distribution of sales and
25 use tax doesn't necessarily answer all of the question that

1 are at issue. But I would say, I think that we're set to go
2 to hearing on the other questions. And how we nail them
3 down is something that I think all counsel can -- can meet
4 and confer on.

5 But, you know, the issues -- and I don't think
6 that the committee is surprised by this -- is what are the
7 impact costs going to be and is the county going to be
8 adequately reimbursed for its impact costs. And I think
9 there's a tremendous number of uncertainties here. And
10 we're -- whether we will be able to nail those down or not
11 is probably highly unlikely. And so how we resolve it after
12 that, I don't know. That's what we're presenting to the
13 committee.

14 HEARING OFFICER CELLI: That's what the hearings
15 are for. I just don't want to spend all day on anything
16 that we could resolve short of the hearing, because there's
17 so much else that needs to be heard.

18 MS. CROM: We agree. And we've -- we've -- we've
19 recommended, you know, a condition of certification that we
20 think would address this issue, or at least allow a level of
21 comfort to the county. I mean, we're all sitting in a very
22 remote location. You can see how difficult it is to provide
23 services out here, and that's a concern of ours.

24 HEARING OFFICER CELLI: Okay. We get the idea.
25 You know, we're trying to do everything we can to make these

1 hearings run efficiently. That's what the prehearing
2 conference is all about. We just want to know what's going
3 to -- what we're looking at and how much time we need to
4 allocate to various issues. In my experience, and I'm sure
5 everyone else's, when it's dollars, parties seem to have a
6 way of kind of getting to some middle ground and coming to
7 some number. And, you know, I understand there's legal
8 aspects. And if the code says it's got to be X, well, then
9 you all will work out what X is. But I just wonder, you
10 know -- I'm heartened to know that the parties are going to
11 be speaking.

12 After today, when we finish the prehearing
13 conference today, the committee sends an email to all of the
14 parties saying you're welcome, and we invite you to stay
15 later and have further communications amongst yourselves to
16 the extent you can. We like having the parties together.
17 We like the parties communicating. Because it's only
18 through communication you're going to be able to resolve
19 things. But these -- I mean, when it comes to money issues,
20 that's the most resolvable sort of thing that we -- we have,
21 the most resolvable issue we can do. So I'm going to move
22 on, but you get the communication.

23 Ms. Belenky?

24 MS. BELENKY: Yes.

25 HEARING OFFICER CELLI: Okay. What is it in

1 project description that you felt was not ready to proceed?

2 MS. BELENKY: I think that there is some dispute
3 between various parties about the project description to the
4 extent that it would encompass the photovoltaic alternative,
5 as well, in our -- in the center -- I believe several
6 parties agree that it may be too narrowly construed, or some
7 people think it's too broadly construed.

8 HEARING OFFICER CELLI: So you're talking about
9 objectives? Are you talking about the project objectives?

10 MS. BELENKY: Well, which I think is presumed
11 under the project description the way it was last written.

12 HEARING OFFICER CELLI: Okay. Because what I'm
13 trying to determine is -- is your issue really -- does it go
14 to alternatives rather than project description?

15 MS. BELENKY: Well, unfortunately the project
16 description or objectives completely limit how you look at
17 alternatives. So we also have raised the question of the
18 distributed alternatives. So to that extent, as well, we
19 believe the project description and project objectives are
20 too narrow.

21 HEARING OFFICER CELLI: Okay. I get that. What I
22 wanted to say is that it seems to me that -- okay. The
23 objectives are what they -- at least we have Applicant's
24 objectives and we have Staff's view of what the objectives
25 are. And the objectives really, as far as I can tell, go to

1 the liability and the feasibility of these alternatives.
2 And I kind of get the sense that, really, although the
3 objectives may be located in project description, it's
4 really an alternative issue.

5 I mean, I understand what you're saying, though,
6 and I'm going to leave that in. But the situation, as far
7 as I can tell, is because we have a finite set of
8 information. We've got the AFC's project objectives, and
9 you have the FSA's project objectives, and none others, that
10 that is the sum total of the evidence we're talking about.
11 So I don't understand why it would be not ready for
12 adjudication. It sounds to me like it's quite ready.

13 MS. BELENKY: Well, because from the Center's
14 point of view those have been narrowed in a way that is
15 improper. And therefore, you're not looking at evidence you
16 need to be looking at that is broader.

17 HEARING OFFICER CELLI: Okay. But that sounds
18 like an actual dispute.

19 MS. BELENKY: Disputed area.

20 HEARING OFFICER CELLI: It is a disputed area.

21 MS. BELENKY: Factual -- it leads to factual
22 dispute.

23 HEARING OFFICER CELLI: Right.

24 MS. BELENKY: I -- you know, we have discussed
25 before, there is often questions that are mixed questions of

1 fact and law. And it is sometimes difficult to try and only
2 look at things in a purely factual context if by the way you
3 have described something, you're limited to facts that will
4 be looked at. And this is exactly the situation we would
5 posit here.

6 HEARING OFFICER CELLI: Okay. So on the one hand
7 it sounds like a lot of that can just show up in your brief
8 after the evidence is taken, because it's really a
9 question -- it's a question of what -- of the facts that are
10 going to be in evidence.

11 So I'm not seeing that as -- as something that's
12 not ripe or ready for -- for adjudication. I see that as an
13 argument, really. It's a factual -- it's a legal argument,
14 and it has a factual component. But I don't think we need
15 to take additional evidence on that project description.
16 And alternatives may be a different matter. You raised the
17 idea of distributed generation. And my memory, which is not
18 all that good, kind of remembers someone mentioning
19 distributed generation in the FSA. I thought that they did
20 address the distributed generation.

21 But in any event, I'm not hearing, Ms. Belenky,
22 that either project description or alternatives is really
23 not ripe. I think we have the information. It's just a
24 matter -- it's a dispute. You just disagree with it; right?

25 MS. BELENKY: We believe it is disputed. I don't

1 know what else to say. I think we've made it extremely
2 clear --

3 EXECUTIVE DIRECTOR BREED: What's --

4 MS. BELENKY: -- in both categories because of we
5 believe we can't go forward to the hearings, but we don't
6 believe that it's adequate.

7 HEARING OFFICER CELLI: Very clear. Okay. So is
8 that pretty much the same case with all of the rest of the
9 list here. I've got bio, water, land, and socio?

10 MS. BELENKY: I would say that, yeah, that the
11 reason that we don't believe that they are ready to proceed
12 is because that it all has been conceived too narrowly. But
13 given that, and given that the committee is moving forward
14 to hearing, we are ready to proceed to hearing on all of
15 those issues.

16 HEARING OFFICER CELLI: Okay. I appreciate that.
17 So really what we're trying to get to is what is -- if
18 something isn't ready we need to know why and what is --
19 what needs to happen in order for something to be ready. So
20 that's -- that's what we're kind of asking for.

21 HEARING OFFICER CELLI: Ms. MacDonald, I have -- I
22 don't know why I have this limited to noise, traffic, soil,
23 and water. I did read your papers. I know that noise was a
24 big one, and you gave a lot of detail about the Charleston
25 View area.

1 MS. MACDONALD: Correct.

2 HEARING OFFICER CELLI: But my sense is that it is
3 ready to proceed. You've got evidence to show -- to -- in
4 dispute.

5 MS. MACDONALD: There's some evidence that is in
6 dispute between the Applicant; the AFC filed subsequent
7 documents, and the FSA. Some of that is in dispute, period.
8 There are also areas where there is no data, period, the
9 end. There is nothing to dispute, there is nothing to
10 present, because it's not there. We don't have any noise
11 evaluations for traffic impacts. If it's not significant,
12 okay, fine. But nobody has even looked at it. The
13 applicant is saying, well, we did an analysis of noise with
14 the modeling program that doesn't make any sense. A lot of
15 their monitoring data is kind of in dispute. There's
16 factual disputes about the facts that have been presented in
17 some areas.

18 HEARING OFFICER CELLI: Yeah.

19 MS. MACDONALD: And there's other areas where they
20 just have not been addressed. Now, whether they will be
21 ready to proceed or not, I can not say. I am hoping that
22 the workshop will be productive. I have been asking for a
23 variety of workshops on the operational portion of this --
24 this process for a long time, so I'm really looking forward
25 to that. But I can not tell you until after there's some

1 sort of discussion. You know, if they can show me, no, it's
2 right here, okay, fine. I've done my very best to look
3 through everybody's documents, and there's a lot of things
4 that are just missing.

5 HEARING OFFICER CELLI: And that in itself, that's
6 great. So I appreciate your answer. As I'm -- what I'm
7 hearing, though, is that the absence of evidence is actually
8 an issue. That's -- that's -- that -- the absence of
9 evidence is evidence.

10 MS. MACDONALD: Yes.

11 HEARING OFFICER CELLI: Is that -- the evidence is
12 the absence of the evidence.

13 MS. MACDONALD: Yes.

14 HEARING OFFICER CELLI: Okay.

15 MS. MACDONALD: And if -- if it is the committee's
16 desire to listen to what Staff or Applicant did not cover,
17 what -- what areas of CEQA that they -- you know, that I
18 believe, if they want to see that evidence, fine. But I
19 don't see how you can go and say that we have proposed
20 mitigation. Our mitigation will reduce the project impacts
21 to less than significant without providing any data that
22 supports that determination.

23 HEARING OFFICER CELLI: Now, that's good. Now,
24 let me just -- I want to speak to that --

25 MS. MACDONALD: Okay.

1 HEARING OFFICER CELLI: -- because we have --
2 we're speaking now a lot, everybody -- this is for
3 everybody, and this isn't just Ms. MacDonald, this is
4 everybody -- we're talking about legal and factual
5 differences, and we're talking about evidence versus, you
6 know, legal argument of what is argument and what is
7 evidence.

8 What you're talking about here is -- is an issue
9 that isn't going to comment about in our evidentiary
10 hearing. In other words, if there's -- if something is
11 absent, if something's -- if the evidence is not entered
12 into the record, then that is evidence. Okay. Now, you're
13 not going to cross-examine on it. We're just basically
14 going to observe that there is no evidence on this point.

15 Where are you going to do that? You're going to
16 do that in your brief. And that's the point of the briefs.
17 And that's the point of this evidentiary hearing. And I
18 think everybody needs to know this. What you're doing is
19 you are -- we are, all of us, building Legos of logic and
20 information and evidence which is going to be the basis for
21 your brief. And in your brief you're going to present your
22 position to the committee of why they didn't put in evidence
23 and why the evidence was necessary but they didn't, and
24 therefore they should not prevail on that point.

25 MS. MACDONALD: I am okay with -- you know, I can

1 understand the logic behind that. But here's the difference
2 between your and my position, okay, having a lack of
3 evidence and a lack of mitigation, you're not going to live
4 with it. If you don't -- if there's an issue with noise you
5 can just ignore it, you can override it, and you don't live
6 with it. We -- we will, okay? This project is probably
7 going to be approved. Most everybody thinks that. All
8 right. And we're going to have to live with these impacts.
9 It is not good enough to ignore it, to not analyze it, and
10 to not mitigate for it. That's the difference between our
11 positions.

12 HEARING OFFICER CELLI: Actually, I don't think we
13 have a difference.

14 MS. MACDONALD: Okay.

15 HEARING OFFICER CELLI: And what I'm telling you
16 is that I acknowledge, and the committee would acknowledge
17 the absence of evidence. If you point there's an absence of
18 evidence the committee has to acknowledge that there's no
19 evidence on it.

20 MS. MACDONALD: Okay.

21 HEARING OFFICER CELLI: Okay. So at this point,
22 basically, we're just -- you know, it's kind of like when
23 you go and you watch boxing on TV, that guy comes out and he
24 says in this corner there's this guy and in that corner
25 there's this guy, and then he kind of goes through what the

1 rules are, no hitting below the belt, etcetera, that's kind
2 of what we're doing today. We're basically saying that this
3 is -- we're kind of getting a sense of what's -- what's in
4 the record and what isn't and what are going to -- what can
5 we do, what can't we do.

6 MS. MACDONALD: But how do I -- how do I resolve
7 that with all your discussions about attempting to resolve
8 things? I mean, I have made a lot of efforts, and I'm very
9 open to attempting to resolving things, and that is the
10 thrust of it. I mean, if forced to I will present no
11 evidence --

12 HEARING OFFICER CELLI: No, I --

13 MS. MACDONALD: -- but I prefer not to.

14 HEARING OFFICER CELLI: What comes to mind, and we
15 talked about this before, you had ways in -- a couple of
16 times, I can't remember exactly which document, but you
17 talked about the washing machines for the -- for the
18 mirrors. And you laid out how the numbers did not work out.
19 Okay.

20 Well, that information is already in the record,
21 or it's going to be in the record because that was part of
22 the AFC I think you based that on. The AFC said these are
23 the numbers and this is how it calculates out, and you had
24 different information. But that information doesn't require
25 you to put any evidence into the record. That's just the

1 logical -- you read the numbers and you calculate them out
2 and you show that they're wrong, that's argument. Okay. So
3 I'm -- this is -- I'm just trying to draw that distinction
4 there.

5 MS. MACDONALD: Thank you. And I am aware of the
6 distinctions.

7 HEARING OFFICER CELLI: Okay. Because -- and I
8 don't -- I mean, let's just say that was your only issue
9 with regard to the mirrors, or whatever that was in, I can't
10 remember, I think air quality, let's say that was your only
11 issue. Basically, you're done with air quality because you
12 have what you want. And you put -- and that's going to go
13 into your brief. Okay. Is -- is that -- I hope that's
14 clear to everybody, the way this works. So --

15 MR. RATLIFF: Mr. Celli, if I may, I think a fair
16 reading of Ms. MacDonald's statement is that she's
17 questioning, and presumably would question through cross-
18 examination, whether the staff's conclusions about impact or
19 lack of impact, of significant impact under noise, are
20 reasonably conclusions in the absence of the kind of
21 evidence that she thinks is necessary to establish that.
22 And -- and I, you know, I think that that, you know, is a
23 legitimate question to raise. I don't know the answer. I
24 don't know if -- you know, I don't have the witness here,
25 and he may have good reasons for saying that there isn't

1 significant impact because it's too far away or because
2 traffic is too quiet, or whatever he's going to say.

3 But I think that's the nature of -- of the issue
4 that she's raising. And I think that is a fair -- that can
5 be -- it has a factual nature. She can ask, if in fact, it
6 was reasonable to -- to conclude what the witness concluded
7 in the absence of that kind of information, so --

8 HEARING OFFICER CELLI: Certainly. But I really
9 was -- what I was trying to point out was that it sounded to
10 me like if you raised that issue multiple times, status
11 conferences, and imagine you've done so at the -- at the
12 workshops about the water and about the -- or rather the
13 window mirror washing.

14 MS. MACDONALD: Well, that's -- if you read some
15 of my documents you'll notice that I constantly make
16 reference to not being able to address these issues. Many
17 of the issues that I've taken issue with have never once
18 appeared on the agendas of workshops. I have never had an
19 opportunity. I am forced to do cross-examination; it's the
20 last thing left.

21 HEARING OFFICER CELLI: Right. But I'm just
22 saying, that's just -- that's a question you would ask.
23 And -- but that isn't -- that isn't evidence that you're
24 going to be putting in.

25 The point is that it -- it seems to me that if

1 you've tried and they're basically saying what we've got is
2 what we've got and what we're putting in is what we're
3 putting in, and we know what that is by now because
4 everybody has already given us all of their testimony, then
5 you pretty much know what direction this is going to be
6 going in. And at this point it sounds like that's all
7 argument, not necessarily a factual issue.

8 MS. MACDONALD: Actually, what he said was more
9 accurate. There are many factual issues and very many
10 specifics. And I know it's a very tedious process that
11 nobody really wants to look at. We want to look at the
12 large, sweeping brush strokes. But the details, and one of
13 the things that makes this very difficult, at least for me,
14 perhaps, compared to the other intervenors is so many of
15 these topic areas intertwine, interrelate, and will impact
16 our community. So I have the burden of I don't just get to
17 look at cultural resources. You know, I have to look at --
18 when I look at those mirror washing machines I have to look
19 at the impacts of emissions, I have to look at their noise,
20 I have to look at their hours of operation.

21 So, you know, there's a lot of different things
22 that dovetail in it, and many of them are factual. They
23 are. One of the things I put in my qualifications is she
24 owns a calculator. Some of these things are very basic.
25 Now, I'm not trying to pretend that I'm an expert in any

1 way. I've tried to educate myself. But some of this stuff
2 is pretty basic and are a factual nature. Now, I would love
3 to have an opportunity to resolve them prior to the hearing.
4 But if left no recourse then I am going to try to at least
5 get some information.

6 (A member of the audience loses consciousness.)

7 MS. MACDONALD: Are you okay? You need some
8 orange juice? You want a mint?

9 HEARING OFFICER CELLI: We're going to go off the
10 record for a minute.

11 (Off the Record From 1:02 P.M., Until 1:11 P.M.)

12 HEARING OFFICER CELLI: I suppose we should go
13 back on the record at this time. Somebody asked me when the
14 briefs were do, and didn't know that the briefs came after
15 the evidentiary hearing, but they do. They come well after
16 the evidentiary hearing. They're really your -- briefs are
17 your closing argument. It's your summation. It's how --
18 how the facts relate, the law, why you think you're right in
19 your position, that's what the briefs are about. The briefs
20 are critically important to the committee. And everything
21 we're doing is building up to your ability to put together
22 the brief you want to -- you want to write. So that's --
23 that's what this is all about.

24 Oh, good, Ms. MacDonald is back.

25 MS. MACDONALD: Sorry.

1 HEARING OFFICER CELLI: No problem. So we're --
2 we're back on the record, and we need to move on. I just --
3 I think that you -- we understand each other, that there's a
4 lot of things that I think that you considered not ready are
5 actually ready in that they're not -- it doesn't sound like
6 the parties are going to put forth any further evidence.
7 You will be able to question their witnesses at the
8 evidentiary hearing.

9 MS. MACDONALD: And I will. And you know I'm not
10 in agreement that we're saying the same thing. We will go
11 one way or the other. But I think, as Mr. Ratliff tried to
12 point out, there are factual disputes. Whether you want to
13 resolve them or not before the hearing, okay, fine. But
14 we're not in agreement that those things are ready to
15 proceed.

16 HEARING OFFICER CELLI: Very good.

17 MR. RATLIFF: If -- if Ms. MacDonald would like,
18 Staff will have the noise witness come to the workshop on
19 the 5th if -- I don't know that that will satisfy your
20 questions, but at least it will give you an opportunity to
21 ask the questions and --

22 MS. MACDONALD: It's a start.

23 HEARING OFFICER CELLI: Thank you, Mr. Ratliff.
24 That's great.

25 MR. RATLIFF: So we have everybody back. We're

1 back on the record. Really, that was it. Everybody else
2 saw things as needing adjudication, alternatives, cultural
3 resources, biological resources, land use, socioeconomics,
4 soil and water, visual resources, workers safety and fire
5 protection, which is a single subject under which fire
6 protection would occur, traffic and transportation, and
7 noise. So those seem to be the main topics in dispute.
8 And, in fact, we encourage the parties to continue your
9 dialogues and your communication to see if we can't move
10 things into the undisputed column.

11 I wanted to point out that -- am I jumping the
12 gun? Yeah, a little bit. I'll get to that. The exhibit
13 lists; I sent a copy of the tentative exhibit list to all of
14 the parties. That went out yesterday. And I don't know
15 what happened to my exhibit list. Is there an exhibit --
16 oh, can I have an exhibit list? Thank you.

17 So beginning with the applicant, which is 1
18 through 299, do we have -- I know that there are some TN
19 numbers on Exhibit 55, 56, 57, like that.

20 (Colloquy Between Hearing Officer Celli and
21 Commissioner Douglas)

22 HEARING OFFICER CELLI: Oh, I will -- no,
23 you're -- that's right. I'm sorry, Commissioner, you were
24 absolutely right. I'm jumping the gun. I wanted to say
25 that Staff indicated in a prehearing conference statement

1 that the following topics should be resolved in a workshop,
2 and that's what this December -- I'm sorry, the March 5th
3 workshop was supposed to accomplish. The list of topics
4 were air quality, hazardous materials, transmission lines,
5 safety and nuisance, public health, waste management,
6 facility design, geology and paleontology, power plant
7 efficiency, power plant reliability, and transmission
8 systems engineering.

9 MR. RATLIFF: Yeah. The idea -- the idea here is
10 that in -- in some of these topics, I'll just take one,
11 paleontology. The applicant has suggested that they would
12 change one or more conditions of certification. We'd like
13 to talk about that. We -- we don't think this is the kind
14 of thing we should be using hearing time on. And there are
15 several topics like that.

16 Also, it's my understanding, and I think it's
17 consistent with the prehearing conference and everything, I
18 think Ms. MacDonald has questions in a number of areas. And
19 we hope -- we think and hope that those don't necessitate me
20 bringing those issues to hearing, because, I mean, we have a
21 small amount of hearing time and -- and a lot of issues
22 already. So we're hoping, to the extent that we can, to try
23 to satisfy what seemed to be very reasonable questions, or
24 at least try to answer them as best we can and hope that
25 that suffices to address those issues satisfactorily, or

1 perhaps unsatisfactorily, but -- but to address them before
2 the hearings and not use hearing time on those issues.

3 And -- and that's why we wanted to -- to use the
4 workshops to -- to try to make as many staff in those areas
5 that we think are not areas that are really controverted and
6 ones that -- that we -- that we discuss. And we have some
7 areas that we -- at the workshop, like water supply where we
8 want to discuss with the applicant getting agreement on the
9 conditions of certification if we can. We don't know if we
10 can, but we want to attempt to. And that will be an attempt
11 that we'll try to do that there. And we may discuss solar
12 flux, as well.

13 HEARING OFFICER CELLI: Thank you, Mr. Ratliff.

14 So the idea is, Ms. MacDonald, because clearly
15 you're the person with the most issues that you feel are in
16 dispute --

17 MS. MACDONALD: Let me also add that, just
18 briefly, I seem to be the only one that's really looking at
19 the applicant's proprietary technology and their particular
20 systems. And as I tried to state in my opening statement, I
21 think that a lot of this new technology deserves more
22 scrutiny than perhaps the more traditional forms of power
23 plant siting. So some of those issues nobody has raised,
24 not even Staff, such as the mirror degradation, the mirror
25 washing machines, these are all very new kinds of things.

1 So I think it would be helpful to the committee
2 and for everyone to spend a little time actually exploring
3 what this renewable energy -- because this is kind of a
4 hybrid between, you know, traditionally gas-fired and
5 renewable. And there's not anything out there that as big
6 by a long shot. So I would hope that you -- that you would
7 also kind of join me in saying let's find out a little bit
8 more about the details of this thing because it's important
9 to the -- the State of California, to our future, and to our
10 energy production.

11 HEARING OFFICER CELLI: So I got that. Really, I
12 just want to bring that back to what Mr. Ratliff was saying,
13 which is that there's -- there's a workshop coming up.

14 MS. MACDONALD: Yeah.

15 HEARING OFFICER CELLI: And because you are the
16 party -- I don't mean to single you out, but you are the
17 party with the most issues on the table, according to your
18 prehearing conference statement, the committee would like to
19 encourage you to take advantage of the workshops so that
20 there are -- there is a hierarchy, I imagine, or a priority
21 of issues that you have. Some are more important than
22 others. Some have more teeth than others --

23 MS. MACDONALD: Right.

24 HEARING OFFICER CELLI: -- and those are the ones
25 we really want to tackle.

1 MS. MACDONALD: I understand.

2 HEARING OFFICER CELLI: And so that workshop is an
3 opportunity to kind of separate the wheat from the chaff.

4 MS. MACDONALD: And I will do my best. But let me
5 also point out that many of the issues that are on my list
6 are also on many other intervenors lists, socioeconomics,
7 water supply has been huge from the get-go. You know, so
8 I'm not completely isolated, only in some of them.

9 HEARING OFFICER CELLI: No. And I didn't mean to
10 imply that. But the -- but it seems to me that the ones
11 that everybody seems to agree on under the big issues are
12 the ones we really ought to be tackling. So that's --
13 that's what we want to be doing.

14 So with that I want to go back to the exhibit
15 list. I just want to make sure that if there -- if I have
16 something wrong -- first, I'm going to start with the
17 applicant.

18 If you've looked at the exhibit list, is there
19 anything that we need to change about this exhibit list? If
20 so, I'd like to know now. And again, I noticed that there
21 are some missing transaction numbers.

22 MR. HARRIS: Yeah. We have some TN numbers we
23 need to add. And I think we've got 1 through 80, I think is
24 the correct number of exhibits. So that's our list
25 anywhere. I believe it's complete.

1 HEARING OFFICER CELLI: Okay. So I just want to
2 make sure that the exhibit that you think is Exhibit 10,
3 let's say, is -- we have it right as Exhibit 10, okay, so
4 we're all talking about the same exhibit.

5 MR. HARRIS: Yeah. That's our understanding, that
6 you'll have all of this correct.

7 HEARING OFFICER CELLI: Okay.

8 MR. HARRIS: The numbers -- the list there is 80,
9 and you said there were 80. So I think we're there.

10 HEARING OFFICER CELLI: Thank you. Next is Staff.
11 Staff has Exhibits 300 through 399. Where did that go? Oh,
12 here we go. Now, Staff, we thought you had exhibits 300
13 through 303. And then yesterday we got, at like five
14 o'clock in the afternoon, thank you very much, we get
15 exhibits 303 through 322. I'd like to know why the
16 committee should even consider any of this evidence? Why
17 wasn't it filed at the time when everything else was
18 supposed to be filed?

19 MR. RATLIFF: Well, the -- what we filed yesterday
20 is an odd collection of a number of different things,
21 including half of the exhibits, I think, are actually
22 declarations, witness declarations. I think you want those.
23 I assume you do.

24 We also filed underline and strikeout biological
25 conditions for plants that Applicant had requested that I

1 think were necessary to see if we can settle those issues in
2 terms of the conditions of certification for plants.

3 We filed some visuals which will be used at the
4 hearings for water supply and solar flux. Apparently we
5 filed it too soon because today we were told there were two
6 more that didn't get in. So we hope to follow up with an
7 additional two exhibits for that.

8 We discussed this prior to filing with the
9 applicant.

10 HEARING OFFICER CELLI: I need everybody -- I
11 can't have two people -- Ms. Warren, I need -- you're coming
12 in on the microphone. We hear you speaking on the
13 microphone. And I have a court reporter who is supposed to
14 be taking everything down. If two people are talking at the
15 same time it will be -- it will drive us all crazy. So I'm
16 asking everyone to please be courteous and listen to who's
17 speaking.

18 I'm sorry, Mr. Ratliff. Go ahead.

19 MR. RATLIFF: We filed these after discussing with
20 Applicant. We were trying to determine if they were going
21 to do the same thing. They want to have the right to do the
22 same thing this week, to file any further visual exhibits.
23 We thought that that would be fair for everyone if they have
24 visuals that they want to file if they help illustrate
25 certain complicated areas such as water or solar flux. But

1 perhaps they have other visuals they want to show that they
2 think describe these rather complicated areas that are very
3 hard to explain without visuals.

4 So fortunately the applicant was quite reasonable
5 and didn't object to our doing this, so long as they could
6 do the same thing. And therefore we apologize for being
7 late, but we think it's still worthwhile to do these things.

8 HEARING OFFICER CELLI: Well, I appreciate your
9 explanation. I see that most of these -- well, let's look
10 at 314 -- well, 312, and then 314 through 319 are simply
11 declarations that I presume you forgot to include in the
12 FSA.

13 MR. RATLIFF: Apparently.

14 HEARING OFFICER CELLI: And that shouldn't be a
15 problem. I'm concerned about anything that people may have
16 an issue with like, for instance, this idealized flux field
17 diagram. That would probably be something that the
18 applicant would have an issue with.

19 MR. BREHLER: Mr. Celli, it -- it -- this is
20 Pippin Brehler, Senior Staff Counsel. With respect to these
21 exhibits, we don't feel that they add anything new to the
22 record. They're visual representations of information
23 provided by Applicant and analysis by Staff of information
24 in the record. As we said in our motion, to the extent a
25 picture is worth a thousand words, we believe that these

1 would expedite the hearing.

2 HEARING OFFICER CELLI: I didn't get a motion.
3 I'm just -- all I got was emails yesterday from dockets
4 telling me that I've got, you know, one by one, Exhibit 303
5 through 322, and I did not see a motion. What was the
6 motion?

7 MR. BREHLER: Apparently that reflects a backlog
8 in the dockets' office. I do have a proof of service that
9 we have a motion that we filed yesterday to correct the
10 Exhibit Numbers 300 through 303, and then add these
11 additional Exhibits 304 through 324. 323 and 324 don't
12 appear on your list because they're merely citations that
13 Staff added, supporting their rebuttal testimony. Most of
14 these, especially those that deal with the flux issue, as
15 you know, concern issues that we had additional workshops
16 very late on, additional rebuttal -- rebuttal testimony.
17 And as Mr. Ratliff said, this is -- these are things that
18 have been percolated and iterated in the -- in the minds of
19 Staff.

20 HEARING OFFICER CELLI: If I can just have a
21 moment.

22 (Colloquy Between Hearing Office Celli and
23 Commissioner Douglas)

24 HEARING OFFICER CELLI: We're -- we've never been
25 off the record. We're still on the record. Thank you.

1 The committee's concern is that we've already told
2 Amargosa Conservancy that they -- they -- we were not going
3 to accept their late-filed exhibits. And now --

4 MR. RATLIFF: Amargosa was actually not late,
5 though. We were -- we've been waiting for a moment where we
6 can re-raise that issue. We received the -- their testimony
7 on the day it was due.

8 HEARING OFFICER CELLI: Okay.

9 MR. RATLIFF: And I think Amargosa will --

10 HEARING OFFICER CELLI: But there's -- I also have
11 Southern Inyo Fire Protection District that came in late and
12 didn't file any exhibits. They actually intervened on the
13 last day to intervene. And since -- as a result they missed
14 every deadline and didn't exchange any testimony or rebuttal
15 testimony with anybody. And the committee was disinclined
16 to allow them to put anything in. And now I don't
17 understand how this is --

18 MR. RATLIFF: Well, you know, these --

19 HEARING OFFICER CELLI: -- how this is different.

20 MR. RATLIFF: -- these are different. These are
21 all different things. The -- the idea of visuals using for
22 hearing, the Energy Commission's practice has been, I guess
23 you could say varied over the years. A lot of times people
24 have brought exhibits that are used for illustrative
25 purposes when witnesses testify. And those are never made

1 part of the record at all but are used to try to illustrate
2 the facts that are being -- the points that are being made
3 when -- when the witnesses testify. We frankly don't care
4 if they're made --

5 HEARING OFFICER CELLI: It's more on the order of
6 argument, it almost sounds like.

7 MR. RATLIFF: We don't care if they're made
8 exhibits to the record. We just want to be able to use
9 visuals that are informative to the committee and help them
10 understand issues that sometimes are much better illustrated
11 in this manner than through a thousand words.

12 HEARING OFFICER CELLI: Let me ask Applicant, if
13 you would please speak in the mike and tell us, first, what
14 you're feeling is about the acceptance of these -- this
15 evidence, that I presume is in opposition to your evidence.

16 And then also Mr. Ratliff mentioned there was some evidence
17 you wanted to put in late today, and so I'd like to hear all
18 about that please.

19 MR. HARRIS: Yeah. Let me -- let me clarify that.

20 The applicant doesn't object to, you know, people using
21 like PowerPoints and existing materials that are in the
22 record. So if there are, you know, slides from our
23 workshops that they want to use, that's perfectly fine. It
24 may be more efficient to do that. It's the new things that
25 we have concerns about. And I'm not sure, especially with

1 304 through 309, my initial reaction to that was that they
2 were just copies of slides that we had pre-filed. But it
3 sounds like something completely new that's been put
4 together by Staff. And in that case we would object to new
5 information being put in past the time. I haven't actually
6 seen these documents. I don't know whether they are using
7 our documents or whether they are actually creating
8 something brand new and creating new arguments.

9 HEARING OFFICER CELLI: Okay. That -- the
10 committee doesn't like being in this position, but basically
11 here's the situation. Right now we're identifying exhibits
12 for identification purposes only. We're not receiving
13 anything into evidence yet. So at this time we're going to
14 need staff, hopefully by close of business tomorrow, to get
15 us an updated current exhibit list with TN numbers and a
16 description of what -- what is in there.

17 MR. BREHLER: Yes. Our staff back at the office
18 is working on that. I would point out that the motion and
19 the exhibit list is posted to the proceedings web page.

20 HEARING OFFICER CELLI: Okay. Thank you. I --
21 you know, this new system is worse -- the -- the committee
22 is supposed to be -- when things are docketed the committee
23 is supposed to get that email. I got everything else but
24 this motion, so I haven't seen the motion yet.

25 MR. CHRISTIAN: Mr. Celli, the --

1 HEARING OFFICER CELLI: Go ahead, Mr. Christian.

2 MR. CHRISTIAN: -- the Amargosa Conservancy did
3 timely file testimony with exhibits and we're not listed.
4 We didn't get TN numbers. So we'd like to have that
5 corrected.

6 HEARING OFFICER CELLI: That's -- first of all, if
7 that's the case, I apologize for saying that they weren't
8 timely, if I'm wrong about that.

9 MR. CHRISTIAN: We were late on the filing of the
10 prehearing -- the prehearing conference statement.

11 HEARING OFFICER CELLI: Okay. Under these
12 circumstances it's -- it's a little difficult to say that
13 you can't put in your evidence. So I think what needs to
14 happen is I will need a list that follows this format that
15 we provided in the prehearing conference notice that tells
16 us what your exhibit number would be, what your TN number
17 is, and what the description. And can you get that to us by
18 close of business tomorrow?

19 MR. CHRISTIAN: Yeah, I think so. That would be
20 possible.

21 HEARING OFFICER CELLI: Okay. Appreciate that.

22 MR. CHRISTIAN: What numbers would we use, do you
23 know?

24 HEARING OFFICER CELLI: You are -- were you the
25 last intervenor?

1 MR. CHRISTIAN: The last -- that's IFP, yeah. I
2 think we're the last -- we -- we filed the last day.

3 HEARING OFFICER CELLI: So Southern Inyo Fire
4 Department was, I think 1100.

5 MR. CHRISTIAN: We're -- I think we're 1000.
6 We're not on the list.

7 HEARING OFFICER CELLI: Somebody had 1100. Let
8 me -- all right.

9 MR. CHRISTIAN: We -- we can cover this later. We
10 don't need to --

11 HEARING OFFICER CELLI: Well, you know, I need you
12 to know what your numbers are. So Inyo County was --

13 MS. CROM: 900.

14 HEARING OFFICER CELLI: -- 900. Amargosa would be
15 1000. So 1001 through 1099. I hope you're not going to
16 have 99.

17 And Southern Inyo -- is Mr. Ross still here? I
18 don't see him. Or Mr. Levy? Well, I just wanted the record
19 to reflect that their numbers would be 1100 -- 1100 through
20 1199 for exhibit numbers. Okay.

21 Is there anything else that I need to hear about
22 additional evidence coming in? Ms. MacDonald, please.

23 MS. MACDONALD: It's not additional evidence, but
24 I wanted to give you the latest update on the TN numbers
25 that I was able to get from docket office before it went

1 offline. As it currently stood the impression that I got
2 was that when your opening testimony or your rebuttal
3 testimony came in they were all -- everything that was in
4 that package was assigned the same TN number. I'm still
5 working to clarify that, but that was the last communication
6 that I got from docket office.

7 HEARING OFFICER CELLI: Interesting. I understand
8 how they could do that. They probably took in one -- one --

9 MS. MACDONALD: And they put it -- they put it all
10 in a folder.

11 HEARING OFFICER CELLI: Yes.

12 MS. MACDONALD: You know, like if we had 20
13 exhibits, and then they put it all in a folder, that's my
14 impression at this point in time. That could change. But I
15 didn't know if that would be of any help to you, but --

16 HEARING OFFICER CELLI: Well, here's the point of
17 all of this, when we're talking about whatever exhibit that
18 you put in, on the record we want to be able to say now
19 let's talk about Exhibit Number 450, or whatever it is. And
20 so we need those numbers to be universal. We're all using
21 the same numbers. So let me look at -- at your portion of
22 this.

23 So you were -- you're -- what was your range? You
24 were exhibits 500?

25 MS. MACDONALD: Me? 700.

1 HEARING OFFICER CELLI: 700.

2 MS. MACDONALD: They also have a list that you can
3 get, it doesn't have a link on it, but there are some
4 documents that have no TN numbers. Like one of them that I
5 used as my exhibit was Applicant's data request response.
6 Anyway, they have a docket log that has some TN numbers on
7 them, as well --

8 HEARING OFFICER CELLI: Okay.

9 MS. MACDONALD: -- that people could request.

10 HEARING OFFICER CELLI: Everyone, if you could go
11 through your exhibit list that we sent to everybody and go
12 through -- update your TN numbers and send them to my
13 office, as well as to dockets, I would greatly appreciate
14 that. If there are -- as is common in these proceedings,
15 especially with this many people, when people are using the
16 same documents it would be helpful to say this is the same
17 as Applicant's Exhibit 5 or something like that if it -- if
18 it is, if that's the case.

19 So can I get everybody's agreement on that? I see
20 some nodding heads and acknowledgment that I'm going to get
21 an updated exhibit list from everybody by close of business
22 tomorrow.

23 Please, Ms. Crum.

24 MS. CROM: It will probably be Thursday. I would
25 like to, but I --

1 HEARING OFFICER CELLI: Okay. Close of business
2 Thursday. Today's Tuesday. We all have to -- we're going
3 to go late. We all have to get home and do your other
4 things. So let's just say Thursday.

5 MS. MACDONALD: Sorry. It's Cindy MacDonald
6 again.

7 HEARING OFFICER CELLI: Yes?

8 MS. MACDONALD: According to Staff's motion, they
9 requested, in the motion that they put in, if it's -- if I
10 understood this correctly they wanted additional exhibits,
11 and the applicant agreed, only on the contingency that they
12 could apply -- also put in additional exhibits, as well as
13 other parties. And the time limit on that was Friday. So
14 if we all rush to go put in an exhibit list on Thursday and
15 the committee grants the motion, then we will have more
16 exhibits on Friday.

17 HEARING OFFICER CELLI: Actually, we just -- I
18 thought I had an agreement from Staff that I was going to
19 get that -- the exhibits by close of business tomorrow.

20 MR. BREHLER: You will have the updated exhibit
21 list tomorrow with what was included in our motion. But --
22 but based on the discussions that -- that we had with
23 Applicant, who thought that there might be an interest in
24 others putting more in by Friday, Ms. MacDonald is correct.

25 HEARING OFFICER CELLI: The committee is not

1 interested in that. The committee has no interest in
2 getting more paper if we can avoid it.

3 Is there anything that is indispensable that needs
4 to come in, Mr. Harris?

5 MR. HARRIS: Well, no. What we had talked
6 about was the possibility of like pulling some PowerPoints
7 out of existing materials, and maybe some illustrative
8 things. Like, for example, it makes no sense to have an
9 aquifer, you know, just diagrams showing the aquifer that we
10 might want to use again.

11 But we're not interested in new evidence. And
12 we're really concerned about, you know, opening the door to
13 new evidence, things that have been very closely tied to
14 pre-filed. If something was to illustrate pre-filed
15 testimony, that -- that seems acceptable. But that's a
16 judgment call, and maybe the committee doesn't want to make
17 that. So --

18 MR. RATLIFF: Okay. Well, our motion was directed
19 to the presentations that we would make at the hearings on,
20 basically, two issues that involve conceptually very
21 complex --

22 HEARING OFFICER CELLI: I understand that. So
23 it's a benefit to the committee to see that information.
24 It's -- it's a way of laying it out that simplifies and
25 makes it understandable.

1 MR. RATLIFF: Right.

2 HEARING OFFICER CELLI: That's great.

3 MR. RATLIFF: And it's consistent with the -- the
4 rather elaborate testimony that you already have. So it's
5 only visuals which depict what is already described and
6 which we think will be useful to the committee in
7 understanding the testimony and -- as provided by both
8 parties.

9 HEARING OFFICER CELLI: Okay. So the point is,
10 Ms. MacDonald, you -- you had said -- so I want to make it
11 clear that we are not -- this motion has not been granted.

12 MS. MACDONALD: I understand that. That's why I
13 just said it was -- it was pending. That's all I -- I just
14 wanted to bring that to your attention because --

15 HEARING OFFICER CELLI: Thank you.

16 MS. MACDONALD: -- I didn't want to have to
17 duplicate the list twice.

18 Let me also add that one of the things, the
19 exhibits that's in here, is the revised conditions of
20 certification for some -- Bio 18 through 23, which the
21 committee might want to take a look at.

22 HEARING OFFICER CELLI: Certainly. And that --
23 that is -- you kind of point out some of the -- one the
24 problems with our process is that it is iterative. And
25 things seem to continue to change and improve, and we don't

1 want to slam the door on that. But at -- at some point we
2 want to be able to say the record is finite and that's
3 what's in the record.

4 MS. MACDONALD: And that is completely
5 understandable. But just to say that in Staff's rebuttal
6 testimony, those conditions were missing.

7 HEARING OFFICER CELLI: Okay.

8 MS. MACDONALD: Okay.

9 HEARING OFFICER CELLI: Thank you for that.

10 MS. MACDONALD: Both the Applicant and myself,
11 apparently, queried Staff about where they were. They're
12 not in your rebuttal testimony, so that's another issue.

13 HEARING OFFICER CELLI: I appreciate that. Thanks
14 for that clarification.

15 So basically, everybody, we need your updated
16 exhibit lists. And that's everything you think you want to
17 get in by close of business Thursday. I hope that's clear.

18 We're not going to put out an order. We're just saying
19 that now on the record. Everybody is here. We all
20 understand that.

21 Did you get that, Ms. Belenky?

22 MS. BELENKY: Yes, I did hear that.

23 HEARING OFFICER CELLI: Thank you.

24 MS. BELENKY: I think we -- we can work these
25 things out with someone at the docket to discuss where some

1 of the things appear.

2 HEARING OFFICER CELLI: Thank you very much.

3 MR. HARRIS: Maybe for clarification, so the
4 people that put together the proposed list, if it allows for
5 things like 304 through 311 that we're concerned about,
6 we'll have an opportunity at the -- at the hearing to lay
7 out those concerns?

8 HEARING OFFICER CELLI: Of course. You have to
9 move your exhibits in.

10 MR. HARRIS: Okay.

11 HEARING OFFICER CELLI: There's no guarantee that
12 all your exhibits are going to be received into evidence by
13 the committee because someone may object to some exhibit,
14 and then you're going to have to make an argument and prove
15 that it comes in. So right now what we're saying is we want
16 to be talking about the same document. We've got a mountain
17 of documents together. We want to be able to say that
18 Exhibit 500 is something that all know to be Exhibit 500,
19 and that's what I'm trying to accomplish today. We're just
20 trying to identify the exhibits. Then at the evidentiary
21 hearing you will make motions to enter the exhibits into the
22 record and, assuming there's no objection, it will be
23 received into the record at the evidentiary hearing. Okay.

24 MR. HARRIS: So as to things that were -- the
25 illustrative of timely filed testimony, we won't object to

1 those. If there are things that are new, that's probably
2 where we'll object.

3 HEARING OFFICER CELLI: And your objection is
4 preserved.

5 MR. HARRIS: Okay. Thank you.

6 HEARING OFFICER CELLI: Thank you. That's great.
7 So --

8 MR. BREHLER: Yeah. And just to clarify, Staff
9 did not take the position that any objection was waived. We
10 fully recognize that any objection could be made at the
11 hearings.

12 HEARING OFFICER CELLI: Yeah. And I think I've
13 talked about this already, and talk through those things
14 and, you know, if you find things that could make the
15 hearings more efficient, we're interested in that. We're
16 just worried about new stuff. Thank you. And that's what
17 workshops are for, folks, so we encourage that.

18 I want to talk about a discussion of the witness
19 list. We are going to be at the gym at the Shoshone Death
20 Valley Academy in Shoshone for the whole week of the 12th,
21 13th, 14th and 15th of -- not the whole week, Tuesday
22 through Friday -- of March, the 12th, 13th, 14th and 15th.
23 The first day of evidentiary hearings starts at 11:30, and
24 the remaining days start at 9:00 in the morning.
25 Evidentiary hearings --

1 (Colloquy Between Hearing Officer Celli and
2 Commissioner Douglas)

3 HEARING OFFICER CELLI: So evidentiary hearings
4 will probably go until sometime plus or minus ten o'clock at
5 night. We have a lot to cover. I know, people are burying
6 their heads in their faces. And it gets -- it's tedious,
7 but we need to do this. The committee will hear public
8 comment starting at about, oh, I think 6:00 p.m., which is
9 about the dinner hour. Generally we'll break around 6:00,
10 5:30, 6:00, somewhere in there. And we will be taking
11 public comment while the committee is probably have dinner
12 at the dais, listening to people's public comment at that
13 time, so we're using our time productively, except Friday.
14 Friday the 15th we're probably going to take public comment
15 at noon, because on that date we're going to have to get the
16 committee and everybody out in time to catch their flights
17 to wherever they came from. And so I think what we'll do is
18 we will have public comment.

19 Mr. Roberts, I'm just saying to Blake Roberts that
20 we'll do it at noon on Friday so the public adviser is ready
21 for that.

22 After -- by the way, are you using --

23 MS. BELENKY: I'm sorry, Mr. Celli?

24 HEARING OFFICER CELLI: Yes?

25 MS. BELENKY: This is Lisa Belenky. I am a little

1 bit concerned that you are saying that you will take public
2 comment while people are eating and the committee is
3 distracted by eating and not -- I mean, that just seems
4 really like odd, and it seems like it would be undermining
5 the ability of the public to really be heard. So I just
6 wanted to mention that. I hope you're not saying that
7 hearing in the evening will be done with dinner on the
8 table.

9 HEARING OFFICER CELLI: We are going to have
10 hearings into the evening. I didn't mean to make it sound
11 like the committee was going to go off to a restaurant and
12 let the public make comments without them. The committee
13 would be eating at the dais and having a working dinner,
14 essentially. And everybody will be sitting down. It's just
15 like a continuation of the hearing. We've done this an
16 awful lot, and I know that you've been there when we've done
17 it. So I --

18 MS. BELENKY: I have not been at any hearing where
19 the committee was eating during public comment. No,
20 actually, I have not. So I'm surprised by that comment.

21 HEARING OFFICER CELLI: I thought we did that, but
22 we do it commonly. And so that's what we're going to do to
23 try to get the most out of the clock, really, is -- is try
24 to have working dinners during that week.

25 MS. MACDONALD: Excuse me, this is Cindy

1 MacDonald. I have to agree with her. As soon as you said
2 that, I found that very disrespectful. These people only
3 get a few minutes, and your attention is very important to
4 them. To be having it split up like that, I don't think
5 time is more important than people. I just want that
6 stated.

7 HEARING OFFICER CELLI: Thank you. There would be
8 no change in that, however.

9 Now, after receiving -- let me put it -- let me
10 get back to this. The committee will hear public comment at
11 noon on Friday so that we can get everybody out on time.
12 After receiving undisputed evidence, and then accounting for
13 breaks, interruptions, and public comment, we will have
14 probably, on average, about six hours of productive hearing
15 time per day, if you -- if you think about what's available
16 in a day. 24 hours, which is the 4 days times 6 hours, is
17 about 18 percent of the time that the parties estimated was
18 needed to examine witnesses. The total estimated time for
19 examination of the parties was 130 hours, and we just don't
20 have 130 hours. So we need to be more efficient. And we've
21 broken down -- and I provided to the parties -- there's a
22 pie chart in front of you, there should be -- we broke down
23 the time estimated for direct and cross-examination. And we
24 were able to determine relatively the priorities of the
25 topic areas based upon the amount that the parties sought to

1 devote to each topic. So that's what that pie chart
2 represents.

3 So it works out as follows: 22 percent of the
4 time sought by the parties was devoted to biological
5 resources; 12 percent to cultural; 11 percent to land; 10
6 percent to socio; 9 percent to engineering, design,
7 efficiency, reliability, TSE, I think; then water; visual
8 and project description; and alternatives.

9 After that everything which is -- you know, air
10 quality, two percent, public health, two percent, noise, two
11 percent, traffic two percent, workers safety and general
12 conditions, one percent, those topics represent those topics
13 that Staff thought were amenable to resolution through the
14 workshop. Well, if not resolution, at least abbreviation.
15 But I think that this is a good way for us to kind of make a
16 determination of what the areas are that are the priorities
17 of the parties, what do you care about, what -- where do we
18 need to put the time to take the evidence and hear from the
19 parties witnesses and test the evidence. I think everybody
20 would agree that biology is number one, cultural, land,
21 socio.

22 Usually design, efficiency, and reliability is a
23 bit askew because that was -- Ms. MacDonald, you're the only
24 person who actually wanted to speak to those issues. Water
25 was something you wanted to talk to, but also -- not

1 everybody, but a lot of others wanted to talk to -- speak to
2 water. The project description, I think is tied in with
3 alternatives. That's my best guess. The people spoke to
4 project description -- Ms. MacDonald is shaking her head
5 no -- but I thought it had to do with the objectives. What
6 else?

7 MS. MACDONALD: Just a general description of the
8 project, for example, what it can produce in terms of
9 megawatts. Like one of the things I put in there was in
10 other documents that the applicant had filed with the
11 Securities Exchange Commission, 100,000 heliostats only
12 produced -- or 60,000 heliostats only produced 130
13 megawatts. I wanted to look at the megawatts.

14 HEARING OFFICER CELLI: All right. Let me just
15 ask, is that project description, or would that be
16 efficiency or reliability? I mean, I'm not sure that that's
17 in project description.

18 MR. RATLIFF: Well, I think the project
19 description describes the project. That's what it does.

20 HEARING OFFICER CELLI: Right.

21 MR. RATLIFF: It does so in terms of the
22 information that's been provided in the AFC. The AFC
23 describes the megawattage of the project and the way it
24 operates and the buildings that it will have, and so forth,
25 and that's what's in the project description. It's

1 basically what it --

2 HEARING OFFICER CELLI: All right.

3 MR. RATLIFF: -- the description.

4 HEARING OFFICER CELLI: So project description is
5 where that -- is the topic area we would consider that
6 under.

7 MS. MACDONALD: And I think -- this is Cindy
8 MacDonald -- they do dovetail with efficiency and
9 reliability. And, you know, I had a hard time
10 distinguishing between where do I file and I'm sorry for the
11 duplicates, but I didn't want it to get excluded.

12 But, you know, there's other things like in the
13 project objectives they were looking for a place with high
14 solarility, but there's no information about what the solarility
15 of the project site is. Or, you know, the facility design
16 also dovetails in some of these things. Water requirements
17 were in project description.

18 Another one that I asked Staff to address, which
19 they have not yet, which was part of the project
20 description, was the infrastructure, available
21 infrastructure, and was it reasonably available. And in my
22 estimate none of it was, as well as within reasonable like
23 jurisdictional bounds in terms of laws. And, of course,
24 obviously where there has been a lot of issues between
25 California and Nevada kind of things, all of those were

1 included in project description. I'm not able to
2 distinguish between facility design, reliability,
3 efficiency, project description.

4 I personally had two particular areas that nobody
5 did in my first filings that were operations and heliostats,
6 which I think the heliostat mirror assemblies could have a
7 whole section devoted to themselves. So if I could have any
8 guidance as to where the appropriate place to put that would
9 be, I am all ears.

10 HEARING OFFICER CELLI: I appreciate that.
11 It's -- it's -- there is a lot of crossover. And basically
12 we use the table of contents that the FSA puts out as sort
13 of what the headings are.

14 And so let's move on, because I want to talk about
15 how we can allocate our time, given the amount of time we
16 have. And if everybody has this document, we put them out
17 over there and this is available to look at. This is a
18 proposed --

19 (Colloquy Between Hearing Officer Celli and
20 Commissioner Douglas)

21 HEARING OFFICER CELLI: We are going to -- we'll
22 talk about this in more detail in a moment, but I wanted to
23 let you know, that's right, this gentleman is holding it up,
24 this is the HHSAGS, the Hidden Hills Solar Electricity
25 Generating System's evidentiary hearings proposed schedule

1 of how we could accomplish everything in the four days. And
2 I'm going to get back to that. But we want to make it -- we
3 want to discuss how we're going to get these -- get this
4 evidence in and how we're going to proceed and conduct the
5 evidentiary hearing. To save time we will not take time to
6 describe the exhibits that are moved into evidence or
7 describe topics covered by declaration. Essentially,
8 people's testimony that you've already put in sort of stands
9 on its own. That would be your direct evidence.

10 Regarding direct examination, we will deem all
11 parties opening and rebuttal testimonies as their direct
12 examination. There is no need to discuss experts resumes.
13 If have them in writing and there's no objection to the
14 witnesses and experts we don't want to take up time with
15 that. If you have an objection, and this is really
16 important, if you have an objection we want you to state the
17 objection first. We don't want to hear what are called
18 speaking objections where you get up on the soap box and go
19 you can't do that because of this and that and the other
20 thing. We just want to hear objection, relevance,
21 objection, speculative, objection, whatever. And then if
22 the committee wants to hear a development of the theory the
23 committee will ask for it.

24 Now, rather than taking time with the usual formal
25 question and answer, the committee will call all witnesses

1 to testify as a panel. When we're at the Shoshone -- and
2 Susan Strachan was here awhile. When we're at Shoshone we
3 will probably be set up quite like we are now, except we'll
4 have a bigger table. We'll have Applicant, Staff, and all
5 of the intervenors up to here. And then the table along
6 this side would be where the witnesses would sit as a panel.
7 So we'll call everybody's witnesses, let's say for water,
8 and bring them all up there.

9 Now, the testimony may include discussion among
10 the panel. One moment. Go ahead.

11 (Colloquy Between Hearing Office Celli and
12 Commissioner Douglas)

13 HEARING OFFICER CELLI: So the testimony may
14 include discussion among the panel without the lawyers
15 asking questions. So we would have a robust discussion of
16 the experts talking amongst themselves about whatever the
17 question is. If time permits the committee may allow
18 questioning of the panel by parties. If this process proves
19 difficult or unproductive the committee may revert to
20 standard formal examination at their discretion.

21 Now, Staff would ask -- this is sort of the detail
22 of how it would go. Staff would be asked first to briefly
23 summarize the position with regard to factual issues that
24 are in dispute. Then the applicant would have an
25 opportunity to comment and articulate their position and the

1 basis of their opinion. The witnesses would then probably
2 be a panel of the intervenors witnesses as a panel would be
3 offered an opportunity to articulate their positions,
4 focused on points of factual disagreement with Staff or
5 Applicant and the basis of their position.

6 The committee may ask questions of any witnesses
7 at any time. Parties may offer questions to the committee
8 to ask new witnesses. Dialogue between the witnesses will
9 be permitted to the degree that it is efficiently providing
10 useful information to the committee. We will start out
11 without formal time limits but may impose time limits or
12 limitations on the number of questions at the discretion of
13 the committee. So we're going to have to -- this is sort of
14 a trial by fire. We're going to have to see how this goes.
15 And if it goes efficiently, the way we think, it will save a
16 lot of time and trouble, rather than having the attorneys
17 asking these little bitty questions. And maybe we can just
18 get the information if we just let the experts speak, and
19 that's the idea.

20 So that is sort of the outline of the process. Is
21 there -- Mr. Harris, you had a question?

22 MR. HARRIS: I'm not sure I fully understand. Are
23 you actually talking about putting -- so the first one on
24 your list is, what, socio; putting the entire socio panel up
25 there, our witnesses, Staff's witnesses, Intervenor's'

1 witnesses?

2 HEARING OFFICER CELLI: Not necessarily. Because
3 what's going to happen is that depending on the subject area
4 Applicant and Staff may agree, but then there's areas where
5 Applicant and Staff disagree. And we already have
6 Applicant's information in the record. So really the point
7 of departure should be the opposition. We'd like to hear
8 from the opposing parties, Staff's and Intervenor's parties
9 first, and then give Applicant's experts an opportunity to
10 engage in this discussion with them.

11 This is going to be -- we're going to see if this
12 can work. And I know it's going to be a bit a logistical
13 problem with just the number of people we've got. But
14 that's -- that's, in theory, the idea. So it's a
15 discussion.

16 MR. HARRIS: Again, you're going to start with the
17 staff first, and then the applicant, and then the
18 intervenors?

19 HEARING OFFICER CELLI: Staff would articulate
20 what -- basically, this is the dispute, whatever the dispute
21 is, probably give a background, say what it is. The
22 applicant would then say, yeah, we agree or we disagree, or
23 would amplify, or whatever. And then we would have the
24 panel discuss. Panel Number One, what's your opinion? We
25 agree or we disagree. What's the basis of your opinion?

1 Next panel. Next panel. Next panel. So we start getting
2 some momentum on some people agree, some people disagree, I
3 don't see it that way or I agree with this guy, but I have a
4 little different take, etcetera, and let the parties engage
5 in a discussion. And basically it will go until the
6 committee feels that it's -- we've got all the information
7 we need on this.

8 COMMISSIONER DOUGLAS: So essentially, Mr. Harris,
9 to help answer your question, if -- if none of the witnesses
10 challenge an issue that one of your witnesses is at the
11 hearing to address, then you would not put that witness out
12 on the panel. I mean, we would have Staff begin by putting
13 its very brief and abbreviated sort of framework on this is
14 the issue in dispute. We would have Applicant say we agree
15 or we disagree, or we sort of agree but we disagree in this
16 respect.

17 And then we would turn to the intervenors. And
18 the intervenors', you know, witnesses might say, well, you
19 know, actually, here's our point of view. And we think that
20 we really -- you know, we don't know how Staff could have
21 reached that conclusion based on these facts and here's why.
22 And that would open up a point of discussion. That would
23 open up an opportunity for the committee to say, okay, well,
24 that's interesting. Staff, how did you reach that
25 conclusion based on those facts? And so Staff would to have

1 the right people up to answer those questions. And then
2 what we would probably do, just to not have so much musical
3 chairs, is -- is work to resolve that question. So once a
4 question has been framed and Staff has -- or Applicant, if
5 the question is to Applicant, has pulled up their experts to
6 answer that question we would say, okay, well, you know,
7 we've walked down the list of intervenors. We would make
8 sure that we had addressed that issue to the committee's
9 satisfaction and we would keep going.

10 But it's a way of helping the committee and the
11 parties get at the heart of an issue more efficiently than
12 through leading questions under cross, while preserving the
13 opportunity of all parties to put in information where they
14 have witnesses and to ask questions of other parties'
15 witnesses, to the extent that those questions are fruitful
16 and are bringing helpful information to the record.

17 Is that -- is that a helpful framing or do
18 you -- did I just raise more questions than I answered?

19 MR. HARRIS: Well, it's all brand new to me. And
20 I understand, I think with the most controverted issues,
21 that might work very well. The issue like flux or the
22 water, we may actually need more time to develop the story
23 for the committee. You know, the applicant is always
24 reminded it has the burden. It seems like we typically
25 would go first or last, as opposed to being sandwiched

1 between Staff and the intervenors. We can talk more about
2 that.

3 But I am concerned about this format. We've
4 typically trained our witnesses for, you know, the typical
5 Energy Commission direct testimony and cross-examination
6 scenario. So I'm having a little trouble envisioning how,
7 now that I've trained, you know, witnesses to deal with a
8 traditional format, what to expect. How do I tell them how
9 to prepare for this? You know, Staff may begin by framing
10 the issues. We may not agree that those are all the issues,
11 or maybe there's an issue they left out. So I don't know
12 how efficient it will be that way.

13 I think the use of panels is a very good idea,
14 particularly based upon subject matter. We're going to have
15 a very large group of people for biology, as well as the
16 staff. The idea of having 15, maybe 20 witnesses up there
17 and -- I don't see how that -- I don't have any idea how
18 that's going to work, frankly. And so I'm concerned about,
19 on the controverted issues, how this will work. I think it
20 will work very well on the less controverted issue. I think
21 it will work very well if there's only one or two people who
22 have contested questions --

23 COMMISSIONER DOUGLAS: Right.

24 MR. HARRIS: -- you know? So the more contested I
25 think the less workable this is, is my -- is my sense.

1 COMMISSIONER DOUGLAS: Okay. I think that, you
2 know, I think that's a reasonable concern. And I think that
3 certainly on the issues where there are fewer people with
4 issues, can you give me some examples of which issues you
5 think it would work well on, or -- or if it's easier, which
6 issues you think it would not work as well on? Or do you
7 want to think about that for a minute and I can go to Staff
8 real quick?

9 MR. HARRIS: Luckily I've got an external hard
10 drive here. Air quality is one I think would work very
11 well.

12 COMMISSIONER DOUGLAS: Okay.

13 MR. HARRIS: I think public health is another one
14 that will work very well. There are very few, limited
15 number of issues there. And those are pretty, you know,
16 straightforward, scientific, intellectual --

17 COMMISSIONER DOUGLAS: Yeah.

18 MR. HARRIS: -- objective categories.

19 COMMISSIONER DOUGLAS: Yeah.

20 MR. HARRIS: When we start talking about, you
21 know, ethnographic landscapes, that's a little bit
22 different, perhaps. Hazardous material management, waste
23 management, even some these things, let's see, reliability,
24 I can see combining alternatives with project description
25 for the reasons that have been articulated.

1 COMMISSIONER DOUGLAS: Okay.

2 MR. HARRIS: It's the little bit more controverted
3 ones where I get concerned about the ability of our panel to
4 put out what they think are the important issues and have a
5 little bit of opportunity to tell the story to committee.

6 COMMISSIONER DOUGLAS: Okay.

7 MS. CROM: And if I can just add -- this is Dana
8 Crum with the County of Inyo -- I'm assuming that this is
9 every subject matter that we're talking about, that we're
10 going to be doing panel presentation. And I guess I would
11 have to -- Jeff will find this shocking -- agree with Jeff
12 to some extent, that, you know, I think that panel
13 discussions can help to maybe frame some of the issues. But
14 I'm concerned, again, and I think this is just the lawyers
15 that are really nervous about this because we're not used to
16 this, but making sure that all of the points are covered in
17 an efficient way and in a manner that communicates to the --
18 the committee the concerns of each of the parties. And so I
19 am -- this is new to me, too. But I just want to make sure
20 that, you know, there's at least some process by which we
21 can follow up.

22 HEARING OFFICER CELLI: And -- and there will be.
23 I want to just make clear to everybody that this is sort of
24 an elastic process. And where it appears that the committee
25 needs to step in and create a little order or perhaps get a

1 little more traditional and formal, we would do that.

2 There -- and we are mindful of burden, and we're mindful
3 of -- of what's going on here.

4 But the fact is that since we have Staff creating
5 this workshop on the 5th that hopefully by the end of today
6 and by the end of that workshop we will have such a nice
7 clear focus on what the issues are that all parties should
8 be clear on what the issues are so we can get right to the
9 issues and hear from the experts what their positions are on
10 the things that matter, on the facts that are in dispute.
11 And -- and that's the idea.

12 And, yes, none of this is etched in stone. What
13 we're trying to do though, we thought, for instance, as you
14 mentioned, project description seems to be part and parcel
15 of alternatives. Facility design, reliability, efficiency,
16 a lot of these would be the same panel of experts. And it
17 enables us to really get a lot of information in a shorter
18 amount of time rather than going through the usual
19 procedural hoops and closing the record on this one, and --
20 and that sort of thing.

21 MS. CROM: Well, and I would agree. I mean, I
22 think that, you know, particularly from the county's
23 standpoint, we have witnesses that are cross-testifying
24 because the impacts are financial, but they fall into other
25 categories. And so, you know, to the extent we can

1 facilitate having everybody discuss those issues at one
2 time, that would be fine. I do see, you know, socio as
3 something that I think could start with a panel discussion
4 and then end with, you know, follow up with various
5 witnesses in that.

6 HEARING OFFICER CELLI: Sure. And that's --
7 that's probably the way it's going to go.

8 Mr. Zellhoefer? Wait. You need a mike.

9 MR. ZELLHOEFER: John Zellhoefer, Intervenor. I
10 just want to be clear in my mind that these hearings are for
11 the benefit of the committee. And when the committee
12 determines that they have the information they needed or
13 needs additional information, it's the committee running the
14 show. It's not the staff, it's not the applicant, and it's
15 not the intervenors; is that correct?

16 HEARING OFFICER CELLI: That is absolutely
17 correct. But the point is the committee -- the people who
18 are in possession of the information are the parties. And
19 the committee needs to hear what you think is important
20 facts that you want to present to the committee. And so
21 that was the idea behind this.

22 And this actually kind of segues nicely into --
23 back into this discussion of the schedule that we put out
24 for everyone.

25 MS. BELENKY: I'm sorry to interrupt. This is

1 Lisa Belenky, and I did raise my hand.

2 HEARING OFFICER CELLI: Oh, I see that. Thank you
3 for raising your hand. I acknowledge that.

4 MS. BELENKY: I just want something clarified.
5 Because what I heard you says, Mr. Celli, was that the
6 intervenors panel would be separate. And you also said that
7 the intervenors would not be able to direct a question to
8 the panel, that only the committee would. And I -- that is
9 not the way we've done in the past with the other -- any
10 other parties that I've been a part of. We have done panels
11 where any of the parties can ask questions.

12 So I'm a little bit concerned that it's only the
13 committee that would be questioning. And I feel that it may
14 very well cut short some of the issues that are very
15 important to intervenors. That's one issue.

16 And I don't -- I'm not sure about the intervenor
17 being in a separate panel. The intervenors are parties, as
18 well. And I'm not sure why everything would be separated
19 that way.

20 HEARING OFFICER CELLI: Well, the idea behind
21 that -- and it does not have to be separated that way. But
22 the idea was that it would probably be easiest for -- you
23 know, for instance, Staff opposes Applicant on certain
24 things and agrees with Applicant on certain things. And our
25 thought was that if intervenors were aligned with the

1 position that Staff had, that that would be one panel. And
2 then there would be a robust exchange between that panel and
3 Applicant's experts because it's -- we're trying to make
4 sure that you have clear lines. It doesn't have to be that
5 way. I mean, the intervenors panels can be with the rest of
6 them. But the idea is we want to put the focus on the
7 experts' testimony, not on the lawyers' questions.

8 MS. BELENKY: Well, I agree with that. But I
9 don't see why some experts would be separated out.

10 HEARING OFFICER CELLI: Well, they don't need to
11 be.

12 MS. BELENKY: So that's what I'm trying to
13 understand.

14 HEARING OFFICER CELLI: Right. No, I didn't mean
15 to imply that there would be a separate intervenors' table.
16 There's just going to be a table where we're going to call a
17 panel of experts. You know, not every intervenor has
18 experts on every subject. And so they're going to -- these
19 panels are going to vary, depending on the topic. So people
20 will get up, people can sit down, and we'll see how this
21 goes. You know, and the parties -- the committee can direct
22 the question. The committee could control the questioning.
23 It depends on the need. The committee can also allow the
24 traditional parties asking questions of the panel. It just
25 really depends on how -- how the discussion shakes out and

1 how much control it seems to need.

2 (Colloquy Between Hearing Officer Celli and
3 Commission Douglas)

4 HEARING OFFICER CELLI: Okay. So I saw a hand up.
5 It was Mr. Pritchett.

6 MR. PRITCHETT: Yeah. I didn't fully grasp the
7 concept of the panels when you first explained it. So would
8 you go over again what a panel is. And perhaps to make it
9 clearer to Ms. Warren and I, just explain what a cultural
10 resources panel would be.

11 HEARING OFFICER CELLI: Okay. So for instance,
12 cultural resources, let's say that we had Mr. Arnold, any
13 witnesses of Mr. Arnold's he would be calling, Staff's
14 witness -- I can't remember his name, but the --

15 MR. RATLIFF: Mr. Gates.

16 HEARING OFFICER CELLI: -- he wrote the
17 ethnographic study, any other witnesses Staff might have,
18 Ms. Warren is an expert I don't know, but everybody who has
19 a cultural witness we would put at the table. And then
20 we -- we could, and I'm not saying -- it doesn't have to be
21 this way, but the easy way, I think, of getting into this
22 would be, okay, expert number one, do you have an opinion
23 about the impacts of cultural resources or, you know, what
24 is that opinion, what is the basis of their opinion, next
25 person, next person, next person, next person, until at some

1 point I suspect they will -- the panel of its own momentum
2 would start having an internal discussion that we'd all be
3 in on, listening them to discuss point for point, well, I
4 agree with that except that you're not saying this or that.

5 And that is beneficial to the committee. Because
6 a lot of times when the lawyers are asking directed
7 questions we're trying to have to figure out what's behind
8 that question. But you're not getting an exchange. You're
9 not getting point for point between experts, the actual
10 people who are engaged in the -- in the discipline. And so
11 that's the idea.

12 This may not work. You know, this may not work,
13 folks. And if it doesn't we'll go back to the same old, you
14 know, same old way. But it's -- it's an option, and we
15 think it might be efficient.

16 Mr. Ratliff, you had a question?

17 MR. RATLIFF: Yes, I do. Staff is rather excited
18 about this prospect, actually. It kind of answers the
19 question of what if you gave a hearing and the lawyers
20 didn't come, you know? And then maybe you'll find out you
21 don't need us, which would be disappointing, I suppose,
22 but -- but it would also be exciting. And we think that it
23 could work. It is an experiment, we realize that, and that
24 if it doesn't work or if it fails badly we can just change
25 back over to formal procedure. And we're quite -- quite

1 content to try to do that.

2 We see it as an opportunity to have the hearing
3 more as kind of a conference dialogue where you have a
4 number of experts. And in some of these areas it's really
5 quite remarkable, it's really quite thrilling the number of
6 people you have who really have expertise in areas, and you
7 get to have them all at one table maybe simultaneously to
8 talk about it.

9 So we're -- we're generally in favor of it and we
10 want to make it work. But we also have, you know, certain
11 questions or certain suggestions which we hope might make it
12 go better. We don't necessarily see the need to segregate,
13 for instance, Applicants from Staff, or the intervenors.

14 HEARING OFFICER CELLI: I agree with that. I just
15 want to say -- Ms. Belenky, I don't know if you heard that,
16 but I think that bears emphasis. There -- really, now that
17 we're talking about it, there really is no need to separate
18 Intervenors' from Applicant's from Staff's experts if we
19 just have, basically, a table of experts. So I want to -- I
20 just want to say we -- none of this is etched in stone in
21 terms of who is at the table, and that makes perfect sense.

22 So please, continue.

23 MR. RATLIFF: Yeah. And we -- you know, just in
24 terms of the staff role, it might be useful to the
25 committee, for instance, I know the applicant or I suspect

1 the applicant, I mean, the applicant can speak for itself,
2 but I suspect they have in the areas of some of the most
3 complex areas, like water or solar flux, they have probably
4 some useful affirmative statement to make before we actually
5 get into the discussion where they actually can show you,
6 for instance, the hydrology as they would depict it at -- at
7 the site, and why water -- why, for instance, the impacts of
8 the project would not -- not be harmful to -- to other --
9 other -- other things or people who live in the area. And
10 Staff would like to do the same kind of thing in -- in a
11 rather brief 10 minute to 15 minute, well, I guess what you
12 would call presentation. And then have the committee talk
13 about all those things and -- and let the discussion begin.

14 And I understand. I have the -- I share the
15 anxiety, I think, that perhaps all the lawyers share,
16 besides the fact that we may not be necessary, I share the
17 fear that points that we thought were really important to be
18 made might get lost, might get overlooked. But there's no
19 reason, I think, should that happen with why we couldn't
20 interject the need to actually address those additional
21 points before we dismiss the panels. And in that sense
22 maybe we can be useful to such a discussion, simply by
23 raising any points that we think are points at issue that
24 haven't been discussed to kind of guide the effort. And so
25 we can perhaps be involved to a limited extent without

1 being, you know, the people who basically stand between the
2 committee and the -- and the witnesses, asking the questions
3 ourselves.

4 HEARING OFFICER CELLI: Well, it certainly is an
5 exciting possibility, having read a lot of these
6 transcripts, folks. And then you're trying to find the
7 evidence, and then you have to flip through ten pages of
8 lawyer argument. And then you get back into the person
9 actually testifying again. And this would -- it seems to
10 me --

11 MR. RATLIFF: Yeah.

12 HEARING OFFICER CELLI: -- you'd have more of the
13 transcript devoted to factual testimony. So that's --
14 that's the big picture idea behind the whole idea.

15 MR. HARRIS: Mr. Celli, if I could, I think Mr.
16 Ratliff is on to something with an introductory, you know,
17 10 or 15 minute kind of -- I'm more worried about losing
18 direct than I am about the cross, if that makes sense. I
19 think being able to put on a brief definitive case and
20 having the committee say, okay, water is very complex, Mr.
21 Harris, but you guys get, you know, 15 minutes to put your
22 view of the world out there and then we open it up, that's
23 something that is a lot more like traditional hearing
24 setting. So really it's that loss of the ability to make
25 the pertinent case that I'm more worried about than anything

1 else.

2 COMMISSIONER DOUGLAS: So that might have been a
3 failing in our own explanation, because that was -- that was
4 something that we wanted as part of the proposal, that
5 between Applicant and Staff, Staff because Staff really owns
6 the staff analysis. And there will be points in the staff
7 analysis that you will need to frame. And Applicant,
8 because you have the burden of proof and, you know, you have
9 witnesses to bring forward in order to try to prove your
10 points on these cases that you would have this opportunity
11 to make the framing comments and put forward and help frame
12 the case.

13 And then the intervenors would have the
14 opportunity to say, yes, well, you know, I heard everything
15 you said, but he missed that over there. And so they would
16 have the opportunity to engage in that as a dialogue. And
17 the committee might think that thing over there that you
18 missed was important and we might have questions about it,
19 or we might think, okay, that's not really relevant. That's
20 enough questions about that. Let's get back onto track, and
21 we would participate in guiding the conversation in that
22 way.

23 But we would not want to -- you know, we would
24 want concise opening statements. And, of course, you expect
25 that of us. And given, you know, the need for efficiency,

1 we would hope for concise framing of the issues. But we
2 would definitely give you the opportunity to frame the
3 issues as you see them.

4 MR. HARRIS: My anxiety level just went way down.

5 COMMISSIONER DOUGLAS: Oh, good.

6 MR. HARRIS: Because that was weighing on me for a
7 while. If I know I get 10 or 15 minutes to do our direct we
8 will tailor it accordingly. So -- and I'm not about to
9 retire soon. So I think the lawyers ought to stay involved.
10 So, you know, I think we have a role here. But I feel
11 limited by, you know, as you just described. And maybe you,
12 in the order, say you get 15 minutes on the panel or
13 whatever we get to put on our direct case. And then I
14 think -- I'm not as excited about the experiment. And my
15 first reaction was can we do it on the next one? But -- but
16 if we get a chance to give some of our testimony I think
17 that will really help the anxiety level go down quite a bit.

18 COMMISSIONER DOUGLAS: Yeah, that sounds good.

19 And I also think in terms of the order that we take issues
20 up we can think about your suggestion of taking up some of
21 the issues that are narrower on day one. Mr. Celli can talk
22 about our thinking on the order of issues that would come
23 up. And that would give everyone a chance to have some
24 experience with this format, as well.

25 MS. CROM: Again, this is Dana Crum from Inyo

1 County. I guess one of the suggestions I would have is that
2 since we're hoping that the 5th will help narrow some
3 issues, is that -- at least the -- the parties can get
4 together and identify the subsets of some of the subject
5 areas and the anticipated panels? Because I think that
6 would go far in helping us to move these things along. And
7 we do have the 5th set aside, so --

8 HEARING OFFICER CELLI: Thank you. I wanted to
9 now talk about the schedule, the proposed schedule. That's
10 this -- the sheet. I want to begin by saying in their
11 prehearing conference statements certain parties indicated
12 limited availability of their witnesses. And from Applicant I
13 understand that we would only be able to hear your haz
14 mat -- your hazardous material person and your workers
15 safety and fire and socio person on the 13th. CBD only had
16 Mr. Bill Powers available on the 14th and the 15th. The
17 avian flux expert for Applicant was only available on the
18 15th. The public health person was only available on the
19 14th and 15th. Oh, the same is true for the avian flux
20 person. The water person was only available on Friday the
21 15th.

22 And so in an effort to try to accommodate that we
23 came up with this schedule that I put on paper because, for
24 the record, I just can not get it to come up on the
25 computer, try as I may. All right. Well, it's not working.

1 So if we started on Monday the 12th you see that
2 there's an intro, housekeeping. Typically we have some
3 things to settle up front, and we spend some time talking
4 about that. I'm sorry, Tuesday the 12th. Thank you.
5 Tuesday the 12th at 11 o'clock is when we start.

6 At 12:30, optimistically, if we could start land
7 use at that time, Ms. Crum, that would be really your --
8 your people, because you asked that we do all of the County
9 of Inyo issues while we were here in Shoshone.

10 MS. CROM: That is correct, and I appreciate you
11 doing that. Tuesday is a board of supervisors day. And
12 traffic and land use will require two department heads. So
13 I think at this point we won't be able to make it work.

14 Mr. Hart, you would -- would you be available that
15 day?

16 HEARING OFFICER CELLI: Well, the good news is
17 this, we're going to be so efficient with this new panel
18 discussion that if we start the day with socioeconomic at
19 9:00, they'll be on their way to Bishop by probably noon.

20 MS. CROM: No, that's on Thursday the -- or
21 Wednesday the 13th.

22 HEARING OFFICER CELLI: Oh, okay.

23 MS. CROM: So socio will be fine. It's -- it's
24 Tuesday the 12th that the department heads are usually in a
25 board meeting. But if we are unable to move it, I'll just

1 commit that we will have the department heads there.

2 HEARING OFFICER CELLI: Well, I want to say a
3 couple of things about that as long as we -- you have the
4 microphone, and that is that the committee would not be
5 interested in hearing from the lawyers giving legal opinions
6 on how to interpret the laws. So you can take that off the
7 table.

8 MS. CROM: I'm not going to be asking anybody to
9 interpret the law.

10 HEARING OFFICER CELLI: All right. Because the
11 prehearing conference statement included something to that
12 effect. I thought it was two lawyers we don't really need
13 to hear from. Land use seems to be largely legal issues.

14 MS. CROM: I completely agree.

15 HEARING OFFICER CELLI: And I do not see land use
16 as being -- I was hoping that we'd be able to get some more
17 time out of the land use law because of the legal nature of
18 the land use part.

19 MS. CROM: I would agree. I think land use is
20 almost completely legal.

21 HEARING OFFICER CELLI: All right. So --

22 MS. CROM: And -- and we can discuss that later.
23 Traffic will be -- traffic flows into socioeconomics to --

24 HEARING OFFICER CELLI: Yeah.

25 MS. CROM: -- to tell you the truth. And so the

1 witness that I have for traffic is also slated for
2 socioeconomics and -- and may better be suited for Wednesday
3 morning.

4 HEARING OFFICER CELLI: To add traffic in with
5 socio, in other words?

6 MS. CROM: Well, really, it's -- it has to do with
7 impacts to Old Spanish Trail.

8 HEARING OFFICER CELLI: That's fine. We can do
9 that. What I'm -- what I'm just -- I'm just going to
10 make --

11 MR. HARRIS: Mr. Celli, before we get too far down
12 this road, there's a couple of things in this that are
13 inconsistent with our prehearing conference statement in
14 terms of witness availability.

15 HEARING OFFICER CELLI: Okay.

16 MR. HARRIS: I've noted a couple of errors.

17 HEARING OFFICER CELLI: Which ones?

18 MR. HARRIS: Well, we were just talking about
19 socioeconomics. That -- that one is going to be difficult
20 for us because our panel is only available on the 12th, and
21 that's what's reflected in our --

22 HEARING OFFICER CELLI: Actually, you told us that
23 your prehearing conference, I thought was the 13th and 14th.

24 MR. HARRIS: The statement says --

25 HEARING OFFICER CELLI: Socio.

1 MR. HARRIS: -- the applicant -- socio panel is
2 unavailable on March 13 through 15. So that only leaves the
3 12th for socio for us.

4 HEARING OFFICER CELLI: Well, why don't we --

5 MS. BELENKY: Excuse me --

6 MR. HARRIS: And the other -- the other incorrect
7 thing on --

8 HEARING OFFICER CELLI: One moment, Ms. Belenky.

9 MR. HARRIS: And the other incorrect thing on ours
10 is that our -- our water panel is not available on -- on the
11 15th. So we can switch bio and water. But that's also in
12 our prehearing conference statement, saying that the water
13 panel is unavailable on March 15th. So those two things are
14 incorrect on the -- on the current draft.

15 HEARING OFFICER CELLI: So you're suggesting
16 switching biology with water?

17 MR. HARRIS: Well, we could -- we could move water
18 over to Thursday morning, and then follow it up with
19 biology. And, if necessary, carry biology over to Friday
20 morning.

21 HEARING OFFICER CELLI: We have to be done with
22 water by Thursday afternoon according to, again, what our
23 prehearing conference statement says.

24 (Colloquy Between Hearing Officer Celli and
25 Commissioner Douglas)

1 MS. CROM: Unfortunately, Mr. Harris is suggesting
2 that we move socio to the 12th. That is absolutely
3 impossible for the county.

4 HEARING OFFICER CELLI: Yeah, I understand.

5 MR. HARRIS: Okay.

6 HEARING OFFICER CELLI: Yeah. And we're going to
7 have to work through that. Well, all right. So right now
8 the way I have it is I -- we were going to move traffic over
9 to -- next to socio on -- from Tuesday to Wednesday. We
10 would biology to later in the day on Thursday, and insert
11 water, soils and water and water supply before biology on
12 Thursday.

13 MR. HARRIS: Yeah. Can you repeat that for --
14 we're just trying to diagram this.

15 HEARING OFFICER CELLI: So instead of switching
16 them out altogether we would start the day of March 14th
17 with water, water and soils and water supply. We would not
18 switch out biology, we would just have biology begin
19 immediately upon the completion of water. Okay. So
20 hopefully we would get to it later in the day of March 14th,
21 Thursday. So we start bio then.

22 To accommodate the County of Inyo, we would move
23 traffic from four o'clock on Tuesday to probably, if we --
24 we did socioeconomics starting at nine o'clock that morning
25 we would move traffic to let's say 11:00 or something like

1 that so it's tied in. It's the same experts, apparently, so
2 we would tie it in to immediately follow, which is great
3 because that gives us some time on Tuesday, the later four
4 o'clock time, to insert something else if we need to. We
5 had tentatively discussed having hazardous materials, solid
6 waste, and general conditions sort of as -- to -- you know,
7 that's -- all of which should -- is likely to get cleared
8 up, I think, in the workshop. But that's why we put it
9 later in that day.

10 Ms. MacDonald, you had indicated you wish to
11 speak.

12 MS. MACDONALD: That is correct.

13 HEARING OFFICER CELLI: Before you do, actually, I
14 cut off Ms. Belenky. Let me get her first.

15 MS. MACDONALD: You're right, you did.

16 HEARING OFFICER CELLI: Ms. Belenky, go ahead.

17 MS. BELENKY: I was just getting confused between
18 what you said on Tuesday and Wednesday. But I'm assuming
19 you're going to send something out. And whether you're
20 including the socioeconomics growth inducing.

21 HEARING OFFICER CELLI: Well, that's right, and
22 EJ. You know, socioeconomics is growth inducing impacts and
23 environmental justice. And it's just because of the way
24 it -- they classify these things. So, okay, so, yes, I will
25 be sending out a hearing order after today that says based

1 on what we talked about it in the hearing this is our new
2 schedule, etcetera.

3 I've got Ms. MacDonald --

4 MS. MACDONALD: Thank you.

5 HEARING OFFICER CELLI: -- who is next.

6 MS. MACDONALD: I was just going to mention that,
7 if I understood you correctly, on Thursday the 14th you were
8 going to do biology and water supply. You were looking for
9 something to move over to the first day, Tuesday, which
10 would be the smaller ones up at the top, facility design,
11 etcetera. That's -- that would also possibly go in or might
12 be in conformance with taking the smaller projects the first
13 day to see how the whole program rolled. So I just wanted
14 to bring that to your attention.

15 HEARING OFFICER CELLI: And I appreciate that. And I
16 want you to know, a large part of why we're doing what we're
17 doing is so that we can accommodate your schedule here in
18 Inyo because we're trying to get this done so that you -- we
19 don't have to spill over. And that's -- that's the idea.

20 MS. MACDONALD: I'm onboard with that.

21 HEARING OFFICER CELLI: Okay. So --

22 MR. RATLIFF: My view, Mr. Celli, is as much as I
23 hate to be a naysayer is that you're not going to get as
24 through as many topics as you think you are --

25 HEARING OFFICER CELLI: Oh, I know.

1 MR. RATLIFF: -- on the days that you have
2 planned. And so there will be a backup --

3 HEARING OFFICER CELLI: That's right.

4 MR. RATLIFF: -- a flow over.

5 HEARING OFFICER CELLI: That's why we can up with
6 those two extra days so far.

7 MR. RATLIFF: Okay.

8 HEARING OFFICER CELLI: Hopefully not more than
9 two extra days, but that was the whole idea was that if we
10 can't get it all done by Friday afternoon, dinnertime, I
11 guess, then we will have to continue in Sacramento.

12 (Colloquy Between Hearing Officer and Staff)

13 HEARING OFFICER CELLI: So I will provide a new
14 updated schedule, hopefully by the end of this week.

15 Ms. Warren?

16 MS. WARREN: Yes, id' like to know where is the --
17 is land use to include all of the land use within the
18 transmission lines through Nevada and the natural gas
19 pipeline coming through?

20 HEARING OFFICER CELLI: No. The -- it --

21 MS. WARREN: Then where does that enter into
22 this -- this discussion?

23 HEARING OFFICER CELLI: The Nevada side of the
24 pipelines and the Nevada side of things are under CEQA
25 the -- CEQA does not include out-of-state impacts, unless it

1 can be shown that those impacts come back in state.

2 MR. RATLIFF: I think you mean --

3 MS. WARREN: Well, I would --

4 MR. RATLIFF: -- it doesn't include projects that
5 are out of state or parts of projects that are out of state.

6 HEARING OFFICER CELLI: Thank you. I'm not very
7 articulate today.

8 MS. WARREN: Well, maybe out of state, but you
9 can't -- the project has no use unless these things are
10 built. So I don't understand that drawing such a hard and
11 fast line there.

12 HEARING OFFICER CELLI: No. That's the way the
13 law is written. And what the -- the -- sort of the
14 prerequisite or the precondition of that is that the other
15 side of the state line is in a NEPA jurisdiction, which is
16 the National Environmental Protection Act, which is BLM
17 land, essentially.

18 MS. WARREN: Right. Well, I've been told by our
19 local field office, Las Vegas Field Office of BLM, that they
20 indeed are going to be making their final decision about
21 this whole project because it is a federal action from start
22 to finish. So I still don't understand why nobody is here
23 to bring these issues in before the group.

24 HEARING OFFICER CELLI: Well, we -- we are a state
25 agency, basically, that has plenty of jurisdiction --

1 MS. WARREN: I understand that.

2 HEARING OFFICER CELLI: -- over power plants. But
3 we're doing as whole and complete an analysis of the impacts
4 of this project, in accordance with the law, when the law
5 says you stop at the state line unless there are impacts
6 that come back. That's what we're going to do.

7 So, you know, and this is not a dead issue. I
8 mean, if somebody comes in with evidence to the contrary
9 then, you know, the committee will hear it.

10 MS. WARREN: Well, speaking as a Nevadan, I'm
11 really just -- just discouraged that there's nobody here to
12 hear these -- these comments and to learn about how you're
13 proceeding and so forth. I just think it's -- I'm offering
14 that up as my own thoughts, but it's very discouraging.

15 HEARING OFFICER CELLI: I see Mr. Harris was
16 wiggling in his chair.

17 MR. HARRIS: I'm all over the room, I'm sorry.
18 Two things. On the BLM process, and there is a connected
19 action to that BLM process. So it's not an environmental
20 (inaudible).

21 MS. WARREN: Yes, I understand that.

22 MR. HARRIS: Okay.

23 MS. WARREN: There's nobody here from my little
24 town but me.

25 MR. HARRIS: I'm sorry. I just wanted to make

1 sure you knew about the BLM process that's going on. So we
2 still -- we still have an issue, though, with socio with the
3 county. Currently the --

4 HEARING OFFICER CELLI: Socio is on Wednesday.

5 MR. HARRIS: Well, our -- our witnesses are not
6 available on Wednesday, according to our prehearing
7 conference statement.

8 HEARING OFFICER CELLI: So, in other words, I must
9 have read that available as unavailable.

10 MR. HARRIS: You have the horrible task of trying
11 to untangle this. I tried to do this myself and it made my
12 head hurt. So --

13 HEARING OFFICER CELLI: So if that's the case, I
14 can't have the county on Tuesday, but I can have the
15 applicant on Wednesday, Wednesday, Thursday or Friday, the
16 only day you can do socio?

17 MR. HARRIS: Our primary socio witness is flying
18 out of the country to India on Tuesday, so it's --

19 HEARING OFFICER CELLI: Well, there's WebEx.

20 MR. HARRIS: They're going to be on the airplane.

21 HEARING OFFICER CELLI: I've been to India. He'd
22 be getting up late at night. But let me see how we can
23 resolve this. You need your witnesses to be here in the
24 county.

25 MS. CROM: Yes. And Tuesday is a board day.

1 That's -- every Tuesday is a meeting of the Inyo County
2 Board of Supervisors.

3 HEARING OFFICER CELLI: Yeah. What about late in
4 the day on Tuesday. I mean, the board won't meet all day.

5 MS. CROM: They have to drive from Independence.

6 HEARING OFFICER CELLI: I know.

7 MS. CROM: It's three or four hours away. That's
8 not going to work.

9 HEARING OFFICER CELLI: If I just appeared
10 argumentative, I wasn't trying to be.

11 So -- all right, so the problem is I've got
12 socioeconomics on Wednesday, but Applicant's expert -- is it
13 all your experts or one particular expert? What's the
14 situation there?

15 MR. HARRIS: It's one expert. It's Fatima. And
16 if I had cell service I'd try to call her and figure out if
17 there's any way to get her Tuesday morning. I think she's
18 already --

19 HEARING OFFICER CELLI: You know what --

20 MS. CROM: We can use the phone in the office.

21 HEARING OFFICER CELLI: We're going to be -- let
22 me just ask -- let me just say this, I think that what's
23 likely to happen is that this may be one of those things,
24 Ms. Crum and Applicant, that spills over into the next week.
25 It's socio. It's -- we're talking numbers.

1 MS. CROM: Well, it sounds like their -- their
2 socio expert is going to be in India. So I doubt that she's
3 going to --

4 HEARING OFFICER CELLI: She can be on the phone.

5 MS. CROM: Can she come in on Friday? Since we
6 just moved water to Thursday, why don't we put everything on
7 Friday the 13th -- or 15th?

8 MR. HARRIS: We're going to -- we're going to use
9 the phone, as you suggested, and try to reach her and see if
10 there's any way to get her Tuesday morning. It may involve
11 changing -- it's a wedding or something. I don't know what
12 it is. But it may involve changing her flights.

13 HEARING OFFICER CELLI: So what we're talking
14 about is Wednesday. The County of Inyo can do socio in the
15 morning on Wednesday, as we had discussed.

16 MS. CROM: Yes.

17 HEARING OFFICER CELLI: Applicant's witnesses can
18 be there, except for one particular witness out of several
19 other witnesses, I take it.

20 MR. HARRIS: It's one out of two.

21 HEARING OFFICER CELLI: One out of two. Okay.

22 MR. HARRIS: And she's our EJ specialist which
23 is -- and Rene is here --

24 HEARING OFFICER CELLI: Right.

25 MR. HARRIS: -- to support. She would be

1 available.

2 HEARING OFFICER CELLI: Right. I'm of the mind
3 that maybe this might be one of those things where if we
4 can't get that particular witness on the phone, because we
5 could WebEx the person in, then it might be spilled over to
6 the following week. And I don't want to start piling up the
7 Monday, because really that seems to happen. But that --
8 that would be -- I think the better of the two alternatives
9 is to have her either WebEx or change her flight.

10 MR. HARRIS: And we're checking on that now.

11 HEARING OFFICER CELLI: Okay.

12 MR. HARRIS: So --

13 HEARING OFFICER CELLI: And we'll find out.

14 MR. HARRIS: Okay.

15 MS. CROM: Okay.

16 HEARING OFFICER CELLI: So I --

17 MS. CROM: And we can talk in more detail about
18 that.

19 HEARING OFFICER CELLI: But I would like to
20 preserve this -- the Tuesday socioeconomics in the morning.
21 And your people -- and we talked about traffic afterwards.
22 And your people have to be out of here by --

23 MS. CROM: No. My --

24 HEARING OFFICER CELLI: -- 4:00 in the afternoon
25 that day.

1 MS. CROM: No. My -- my people are fine on
2 Wednesday.

3 HEARING OFFICER CELLI: Oh. Okay.

4 MS. CROM: Wednesday is not a problem.

5 HEARING OFFICER CELLI: Okay.

6 MS. CROM: It's Tuesday that's the issue.

7 HEARING OFFICER CELLI: Okay. But we are still
8 going to do land use in the morning.

9 MS. CROM: We can do land use. That's Mr. Hart,
10 and he's available on Tuesday the 12th.

11 HEARING OFFICER CELLI: Okay. And there's not a
12 lot to land use, hopefully.

13 MS. CROM: No.

14 HEARING OFFICER CELLI: Okay. So that -- that's a
15 question that maybe, Applicant, if you can work that out
16 logistically. So we -- we're going to -- we had talked
17 about biology on Thursday. Was that a problem with the
18 Applicant, Staff or anyone, biological resources?

19 MR. HARRIS: Water and finance is easier for us.

20 HEARING OFFICER CELLI: Okay. If we moved water
21 and soils onto Thursday immediately following biological
22 resources --

23 MR. HARRIS: Yes.

24 HEARING OFFICER CELLI: -- then all of your
25 witnesses would be available on Thursday for water?

1 MR. HARRIS: Water, and then bio, in that order
2 would be good.

3 MR. RATLIFF: I was thinking bio then water, but
4 we could do water, then bio. Yeah, do water first.

5 MR. HARRIS: Yeah.

6 MR. RATLIFF: It's maybe easier.

7 MR. HARRIS: Because many of those folks -- the
8 water folks have conflicts on Friday, so they're going to
9 need to catch a plane out, so --

10 HEARING OFFICER CELLI: Okay. So water goes over
11 to March 4th in the morning, biology to follow immediately.

12 MR. HARRIS: Okay.

13 HEARING OFFICER CELLI: Anything --

14 MS. MACDONALD: What date is that?

15 HEARING OFFICER CELLI: That is the 14th. Water
16 just went from the 15th to the 14th. That's the first
17 topic. And biology would immediately follow.

18 MR. HARRIS: And one other suggestion, this is
19 just a suggestion, if you're going to move efficiency and
20 project description over to Monday at 4:00, it might make
21 sense to move visual, just basically switch visual and
22 alternatives since we are pretty -- pretty heavy overlap
23 between project description and alternatives.

24 MR. RATLIFF: But we want to have alternatives as
25 an overflow topic because it's a derivative topic. It's

1 derivative of a number of different witnesses. We can't
2 bring all those people down here. We won't have anyone here
3 except our alternatives witness, particularly if we don't
4 know when it's going to go on exactly. So we would love --
5 prefer to have that back in Sacramento.

6 HEARING OFFICER CELLI: So I'm going to take
7 alternatives and just put it into the overflow day of --
8 okay. And then that gives me some --

9 MR. HARRIS: That's going to create a problem with
10 us no matter what. We -- we have concerns on the 18th and
11 the 19th. Our flux and our bio folks won't be available
12 those days, and they would on that panel, or our water
13 panel, our socio, soils, project description, and biology
14 ones.

15 MR. RATLIFF: Jeff, I can't -- I can't understand
16 what you're saying. What --

17 HEARING OFFICER CELLI: Speak right into it.

18 MR. HARRIS: Sorry. I wish I had a little
19 different mike. The 18th and 19th, our witnesses that are
20 doing the bio flux and project description and water supply
21 would not be available on the 18th of the 19th. So I know
22 you've got witnesses you need to bring.

23 MR. RATLIFF: At what point do they need to be
24 available on the 18th and 19th if --

25 MR. HARRIS: Because they are part of the panel

1 for alternatives. Our people are on multiple panels.

2 MR. RATLIFF: Right, because alternatives cross
3 the --

4 MR. HARRIS: The same -- the same as you have.

5 MR. RATLIFF: Okay. Okay.

6 MR. HARRIS: Yeah.

7 MR. RATLIFF: I got it. I got I.

8 MR. HARRIS: Yeah. It's the same issue we have.
9 So it's not a good spillover --

10 MR. RATLIFF: So it doesn't --

11 MR. HARRIS: -- not for us.

12 MR. RATLIFF: That doesn't work then for you?
13 Then we need to reschedule a hearing for that.

14 MS. BELENKY: This is Lisa. I just want to catch
15 up on when we're talking about alternatives. First it
16 seemed like it was going to be Monday. Has there been
17 another proposed day?

18 HEARING OFFICER CELLI: Right. According to --
19 oh, Ms. -- oh, okay. She's not able to see this thing.
20 I've tried to open it. One moment. Let me just try to do
21 it a different way. I'm going to share an application.

22 MS. BELENKY: I have been listening, though.

23 HEARING OFFICER CELLI: I know you have, and we
24 are grateful for that.

25 MS. BELENKY: Only because I have our alternatives

1 witness, I think we put in our prehearing statement, is
2 available, I believe Tuesday afternoon or -- I mean,
3 Thursday afternoon or Friday. But he may be available
4 Monday, but I need to check. I didn't know that as on the
5 table. I've got Monday the 18th; right? (Inaudible.) So
6 I'm just trying to figure out --

7 HEARING OFFICER CELLI: Okay. Hang with me one
8 moment. I want to un-share my desktop. That was a bad
9 idea. Well, let's see if this works. I'm attempting to put
10 a document up that this program has been resisting all day.
11 And it doesn't look like it's going to work. I'm sorry.
12 Because I have a diagram. Actually, let me just see if I
13 have anybody from my office listening in.

14 Susan? No, not there. Susan Cochran. Ah, Susan
15 is there. Susan, if you're listening it would be really
16 great if you could send me a chat that acknowledges that you
17 hear me. Because what we are needing is the date workshop
18 which is on the O drive in Hidden Hills under prehearing --
19 prehearing conference. It needs to be emailed to Lisa
20 Belenky. So -- oh, good, you're listening. Thank you.
21 Thank you. Thank you. Thank you. Okay. So the idea is we
22 need you to go into the O drive and email the document to
23 Lisa. Thank you. Great. That's covered.

24 Lisa, you can expect an email presently, because
25 Susan Cochran is all over it.

1 Thank you very much, Susan.

2 MS. BELENKY: Okay. I will look for that in the
3 mail -- I mean, in the email. So we were just -- I thought
4 we were just discussing the day that alternatives will be.

5 HEARING OFFICER CELLI: No. What -- where we had
6 originally slated alternatives as going to be in the
7 afternoon of Friday, March 15th. But now it appears, I
8 believe it was Applicant's witnesses were unavailable the
9 13th -- yeah, the 15th. So we're looking to move
10 alternatives to a time that will work for everyone else. I
11 know that alternatives is something that the Center for
12 Biological Diversity cared about. So what --

13 MR. RATLIFF: Well, it -- it --

14 HEARING OFFICER CELLI: I moved traffic on Monday
15 to Tuesday -- or, I'm sorry, from Tuesday to Wednesday.

16 MR. RATLIFF: Tuesday and Wednesday.

17 HEARING OFFICER CELLI: If I put alternatives
18 where traffic was, Mr. Harris, if I put alternatives to --

19 MS. BELENKY: Our -- our expert is not available
20 on Tuesday.

21 HEARING OFFICER CELLI: Oh.

22 MS. BELENKY: That's --

23 HEARING OFFICER CELLI: Okay.

24 MS. BELENKY: He's only available Thursday
25 afternoon or all day Friday.

1 MR. RATLIFF: And our concern is --

2 HEARING OFFICER CELLI: Okay. So we're talking
3 about alternatives.

4 MR. RATLIFF: Our concern is to minimize the
5 number of Staff who have to travel. So that's why we don't
6 want to do it, if possible, here.

7 MS. BELENKY: So, Ms. Belenky, your -- your person
8 is available Thursday or Friday for alternatives, which is
9 why I put alternatives on Friday to begin with.

10 But Staff, you're saying that you can't get your
11 people here on Friday, even -- I wonder if they could
12 participate in a WebEx.

13 You see, the point of WebEx, I just want to
14 stay -- and Ms. Strachan was here. I don't see her now.

15 MR. HARRIS: She's here.

16 MS. STRACHAN: I'm right here.

17 HEARING OFFICER CELLI: Oh, hi. How -- have you
18 had a dry run and a test on WebEx out at Shoshone yet?
19 You'll need a microphone. Can you tell us how WebEx worked
20 or not? You have to speak right -- there you go.

21 MS. STRACHAN: Okay. Good. John Kerry and I just
22 came from Shoshone and we did -- we do have internet
23 connection. So we -- we should be able to have WebEx during
24 the hearings.

25 HEARING OFFICER CELLI: Okay. I sure don't like

1 relying on WebEx. I've got to tell you, I've had enough
2 problems. Like today I can't even get a document up that
3 everybody is supposed to be able to see. And I'm doing the
4 right things, so --

5 MS. STRACHAN: And Hearing Officer, having said
6 that, there are -- today was a good day of the internet at
7 Shoshone. We were told last Friday was horrible. It's just
8 very slow. The phone line works. That part works great.
9 But -- and we do have internet connection, it just can be
10 slow sometimes is what they were telling us.

11 HEARING OFFICER CELLI: Mr. Battles, you might
12 want to pick up this mike right here. See where I'm
13 pointing? There's a microphone in the corner. And speak
14 into the microphone.

15 MR. BATTLES: Sorry to interrupt, that Matt
16 Miller, our IT tech back at the commission has said if you
17 want to view -- have people to be able to view this document
18 to convert it to a .pdf, and then you will be able to share
19 it.

20 HEARING OFFICER CELLI: I have not been able to
21 open .pdfs either. It will not open .pdfs. And now it's
22 starting to act funny, and I don't want to lose who I have.

23 MR. BATTLES: Okay.

24 HEARING OFFICER CELLI: So I'm not --

25 MR. BATTLES: Okay.

1 HEARING OFFICER CELLI: -- incline to -- to start
2 playing, getting under the hood and tinkering with WebEx.

3 MR. BATTLES: I'm sure Mr. Miller heard that
4 and --

5 HEARING OFFICER CELLI: Yes. I have spent plenty
6 of hearing time messing with WebEx and I'm -- that's why I'm
7 just not inclined to -- to insist that a party have their
8 witnesses show up on WebEx because we may never hear them.
9 And so that's, I think a bad idea.

10 So now let's resolve this problem. I've got
11 alternatives. How many alternatives witnesses does Staff
12 have?

13 MR. RATLIFF: Well, this is difficult to know. I
14 mean, we don't -- we know that, for instance, the Center for
15 Biological Diversity has raised the issue of the no-project
16 alternative. That requires us to have, for instance,
17 someone from the supply office, presumably David Vandiver
18 (phonetic) would address that issue. And we know that the
19 Applicant has, likewise, raised a number of issues about
20 the -- a number of concerns about the benefits of solar
21 thermal, such things as inertia and VAR support. We had
22 assumed that maybe Mr. Vandiver would probably address those
23 issues too, questions regarding those.

24 In other areas we don't know, really, whether --
25 for instance, if someone wants to cross-examine about

1 whether Sandy Valley is better or worse cultural resources
2 or for water supply, then you would need to have the water
3 witness there or --

4 HEARING OFFICER CELLI: So who are the authors of
5 alternatives?

6 MR. RATLIFF: Well, we have one predominant author
7 Janine Hind (phonetic). But --

8 HEARING OFFICER CELLI: So that's another witness.

9 MR. RATLIFF: -- she makes contributions. She's
10 the principal witness. And normally she would --

11 HEARING OFFICER CELLI: Okay. So there's two.

12 MR. RATLIFF: Well, we would -- at a minimum I
13 think we would have those two. But there may be other areas
14 that are implicated by the cross-examination. And we were
15 hoping at least to be able to draw on the broader staff if
16 issues come up that the committee wants addressed and
17 either, you know, cite comparisons or technological
18 alternative comparisons.

19 HEARING OFFICER CELLI: Okay.

20 MR. RATLIFF: Because --

21 HEARING OFFICER CELLI: Why don't --

22 MR. RATLIFF: Because, you know, Janine Hind is --
23 is a very capable person, but she doesn't have the expertise
24 in all those areas that she's being the summary witness for,
25 so --

1 HEARING OFFICER CELLI: Okay. Let me ask Ms.
2 Crum, how many witnesses do you have for alternatives?

3 MS. CROM: I don't have any -- any witnesses for
4 alternatives. That was not our -- our issue.

5 HEARING OFFICER CELLI: Why was I staying here on
6 Friday for alternatives? Oh, that's for -- I'm sorry, Ms.
7 Belenky.

8 MS. CROM: Right.

9 HEARING OFFICER CELLI: Ms. Belenky, how many
10 witnesses do you have? Is it just Mr. Powers?

11 MR. RATLIFF: It's Eileen.

12 HEARING OFFICER CELLI: And Eileen. But for -- on
13 alternatives?

14 MS. BELENKY: It's Mr. Powers. And he would
15 testifying -- if it's in Shoshone he'd be testifying by
16 phone, I believe.

17 HEARING OFFICER CELLI: Okay. Well, you heard our
18 discussion, I hope.

19 MS. BELENKY: Yes, I did.

20 HEARING OFFICER CELLI: That's a very iffy
21 proposition because the phone may or may not work. However,
22 if we did take testimony in Sacramento we know the phones
23 work there, and WebEx works very well in Hearing Room A.

24 MS. BELENKY: Yes. And I think Monday might be
25 better for our witness. But I didn't ask him because I

1 didn't know if that was a possibility. But I could try to
2 email him.

3 HEARING OFFICER CELLI: Let's -- let's look into
4 that. Because if that's the case, I know it's better for
5 Staff.

6 Let me hear from Applicant about alternatives on
7 Monday the 18th of March.

8 MR. HARRIS: Sorry for the Laurel and Hardy
9 routine over here. Monday for alternatives would work fine.

10 HEARING OFFICER CELLI: In Sacramento?

11 MR. HARRIS: I have been informed that, yes, now
12 that --

13 HEARING OFFICER CELLI: Okay.

14 MR. HARRIS: Yeah.

15 HEARING OFFICER CELLI: Anyone else, did anyone
16 else have an alternatives' issue witness?

17 MS. MACDONALD: Yes.

18 HEARING OFFICER CELLI: Ms. MacDonald, we're
19 talking about Monday. I know it's in Sacramento. We -- our
20 WebEx does work really well, because you and I have talked
21 through WebEx. I've never met you before today. So --

22 MS. MACDONALD: I understand.

23 HEARING OFFICER CELLI: -- you know that it works.

24 MS. MACDONALD: Yes. And -- and I would be all
25 right with that. I just wanted one -- I only had one

1 question for clarification about the alternatives section.
2 In the applicant's testimony their witness was going to
3 discuss -- or he's the one -- in alternatives he discussed
4 the Security Exchange Commission filing, which I used in my
5 motion to terminate the applicant. I put mine in project
6 description. So the only thing I'm trying to figure out is
7 alternatives, is -- is that where the applicant intends on
8 dealing with those issues?

9 HEARING OFFICER CELLI: Applicant, is that where?

10 MR. HARRIS: That question is, yeah, the testimony
11 on the SEC question is an alternatives.

12 MS. MACDONALD: Okay. Out of curiosity, since I
13 put mine in project description, what is --

14 HEARING OFFICER CELLI: That's okay. I mean, the
15 point is, you know, I understand a good-faith effort.
16 Everybody's trying to get things slotted in the right slot.
17 And as you heard, there is going to be some overlap, you
18 know, with some of these things. So the point -- all I care
19 really about is when we call for alternatives that those
20 discussions that we're going to have about alternatives,
21 that you have your witness there and that everybody's
22 witnesses are going to be there at the same time on the same
23 day so we can have a reasonable discussion about
24 alternatives.

25 MS. MACDONALD: Okay.

1 HEARING OFFICER CELLI: So if that works, that's
2 fabulous. So going once, going twice, if nobody's got a
3 problem with alternatives on Monday the 18th, then we would
4 move alternatives over.

5 So everything else remains the same, except that
6 traffic went -- went up from Tuesday to Wednesday to follow
7 socioeconomics. Water went from Friday to Thursday to
8 precede biology. Alternatives went from Friday to the --
9 March 18th, Monday, the following Monday for an overflow
10 day. Are there any other question or problem with the way
11 the schedule reads now?

12 MS. CROM: Well, we think we might have a
13 resolution on socio. I'm looking at Jeff. Our intent --
14 but it would require kind of socio in two parts.

15 HEARING OFFICER CELLI: Uh-huh.

16 MS. CROM: That would be to have the county folks
17 speak on the 13th, which I think is an issue that is
18 separate and apart from what the experts would be
19 addressing, particularly on sales and use tax and the
20 economic impacts as addressed by Grimm and Gruen (phonetic),
21 Richard McCann (phonetic) and CH2M Hill. We could carry
22 that over until Monday in Sacramento. We're willing to do
23 that.

24 HEARING OFFICER CELLI: Socio.

25 MS. CROM: So we would have part of the socio on

1 Monday. That would accommodate the applicant's witness who
2 is not available on Tuesday.

3 HEARING OFFICER CELLI: Okay. I just want to make
4 sure that we're -- we're dealing with -- okay. So what
5 we're talking about doing on Wednesday is we're talking the
6 numbers that are an issue for socio.

7 MS. CROM: I'm talking about impact issues that
8 can be addressed by county employees, county department
9 heads, and elected officials.

10 MR. RATLIFF: That's duties that are imposed on
11 the county on roads, on services --

12 HEARING OFFICER CELLI: Okay.

13 MR. RATLIFF: -- on -- right? I mean, I just --

14 MS. CROM: Yes. Yes, that's exactly right.

15 HEARING OFFICER CELLI: I just don't --

16 MS. CROM: And I think that's separate and apart
17 from what are we talking about with respect to the benefits
18 that the county would reap.

19 HEARING OFFICER CELLI: Okay.

20 MS. CROM: That would be more impact cost, service
21 related issues.

22 HEARING OFFICER CELLI: Okay. So we would split
23 out socioeconomics along those lines.

24 Applicant, half of socioeconomics would go into
25 Monday.

1 MR. HARRIS: I guess I'm missing the categories.
2 I mean, which half are we talking about? Are we talking
3 about the --

4 MS. CROM: Well, it would be cost -- cost on
5 Tuesdays, revenues on Monday.

6 MR. HARRIS: Is there --

7 MS. CROM: There's a difference. There's always a
8 difference.

9 MR. HARRIS: Yeah. And environmental justice,
10 which is one portion of the socio discussion, as well;
11 right?

12 MS. CROM: And I could -- I mean, if you're expert
13 is going to be talking about environmental justice, I can
14 have an environmental justice witness testify Monday.
15 Because that's really Josh in Planning.

16 HEARING OFFICER CELLI: I want you all to know
17 that the hardest part of this whole thing is getting a
18 schedule together. And the more parties we have the more
19 crazy it becomes.

20 But go ahead, Mr. Pritchett.

21 MR. PRITCHETT: Just a question. I'm looking at
22 Wednesday now, the -- the 13th. And you've taken half the
23 socioeconomics to the following Monday. But socioeconomics
24 is still a big one. And we've moved traffic up, and you
25 have fire, worker safety. And we're -- cultural is down

1 here at four o'clock. That's a late start. Do you think
2 that we're going to get pushed clear into a very late start?
3 Do you think you can handle half of socio, traffic, and fire
4 and worker safety?

5 HEARING OFFICER CELLI: That's a good question. I
6 want to -- I want to say that everything we're talking about
7 is very mushy because we are depending upon everybody
8 finishing the evidence in time and not -- people saying, oh,
9 one more thing, and all of that sort of stuff. So, yes,
10 those -- see, what I like about this is by splitting socio
11 we -- we buy more time. And fire -- fire -- worker safety
12 and fire protection then goes from being around 12:30 to
13 maybe 10:30, if we can save that much time. So that's an
14 option. At which case cultural would start a couple of
15 hours earlier too.

16 Now, this is highly optimistic. The other is more
17 probably, is the converse where we're going to probably
18 start cultural after dinner, maybe, that night.

19 MS. WARREN: (Inaudible.)

20 HEARING OFFICER CELLI: You know, that always
21 happens too. It's always interesting to see how quickly
22 people are willing to stipulate to resolution at ten o'clock
23 at night after a full day.

24 MS. BELENKY: I'm sorry, that is actually a big
25 problem, and it is one that the Center has brought many

1 times.

2 HEARING OFFICER CELLI: Yes.

3 MS. BELENKY: I do not believe that pushing
4 hearings into the evening in order to somehow make people
5 fold because they're exhausted is appropriate, and I still
6 think it's funny.

7 HEARING OFFICER CELLI: No, that's just -- that's
8 clearly not the purpose. We're joking. The fact is we only
9 have a limited amount of time, and we're trying to take the
10 best advantage of the time that we have, and we have to go
11 late. And nobody wants to go late. Everybody wants to go
12 home at five o'clock. But we just don't have the time to do
13 that. In order to accommodate everybody we have to go late.

14 Go ahead, Mr. Pritchett.

15 MR. PRITCHETT: I do understand that. But looking
16 at your pie chart here, we are the second largest in terms
17 of whatever you want to call it. And it just seems that if
18 somebody has got to get pushed into the evening it shouldn't
19 be one of the more important issues. I mean, take some of
20 these other small ones that could be handled in a relatively
21 short time. I just think we've invested a huge amount. And
22 to find that we're going to start after dinner --

23 HEARING OFFICER CELLI: Right.

24 MR. PRITCHETT: -- when everybody's falling
25 asleep, it just doesn't seem fair. We would be the only

1 subject area to start after dinner.

2 HEARING OFFICER CELLI: One minute. Hold the
3 thought.

4 (Colloquy Between Hearing Officer and Commissioners)

5 MS. WILLIS: Ms. Celli?

6 HEARING OFFICER CELLI: One moment. Who -- who --
7 Ms. Willis?

8 MS. WILLIS: If traffic -- is traffic still moving
9 over to --

10 HEARING OFFICER CELLI: right after socioeconomics
11 and cost.

12 MS. WILLIS: Because we could move -- we could
13 move fire, worker safety over to Tuesday. That would --
14 that would take that one off.

15 HEARING OFFICER CELLI: Is anyone here from
16 Southern Inyo Fire Protection District? Mr. Levy, can you
17 come forward? I need you to talk into a microphone. If you
18 can just grab that mike right there. Thanks.

19 There's -- there's a proposal that we take fire
20 and worker safety and move it from Wednesday into -- or,
21 yeah, to Tuesday afternoon, sooner, that we do it around
22 later afternoon on Tuesday, which is day one of the
23 evidentiary hearings. Is that -- is that acceptable to you?
24 Would you have your witnesses there and --

25 MR. LEVY: At the present time we don't have any

1 witnesses. So --

2 HEARING OFFICER CELLI: I thought you were the
3 witness?

4 MR. LEVY: I may be. But since I live here, any
5 day works. So Tuesday afternoon --

6 MR. ROSS: Mr. Hearing Officer?

7 HEARING OFFICER CELLI: Yes, Mr. Ross?

8 MR. ROSS: In our prehearing conference statement
9 we made it clear that our witness is Ron Coleman, the former
10 state fire marshal.

11 HEARING OFFICER CELLI: Right.

12 MR. ROSS: And there's been no indication of the
13 coordination of, you know, different times.

14 HEARING OFFICER CELLI: That's right. But --

15 MR. ROSS: So that -- that then makes it dependent
16 upon communication with the reliability of whatever exists
17 in Shoshone. Now, we will work for that. But I think that
18 goes to a very serious question. I mean, if Mr. Coleman is
19 in Washington D.C. or Canada, you know --

20 HEARING OFFICER CELLI: The problem with all of
21 this, actually, is that since you intervened on the last day
22 and didn't provide any testimony or rebuttal testimony when
23 all the parties were exchanging information no one -- this
24 guy is a complete unknown to everybody.

25 MR. ROSS: I don't think he's a complete unknown

1 to everybody. He's well known to the applicant.

2 HEARING OFFICER CELLI: Well, I don't know if any
3 of these other people know who --

4 MR. ROSS: I think, you know, the -- you know,
5 I'll just comment on that. I mean, we are the ones that
6 have been talking with the applicant for that entire period.

7 HEARING OFFICER CELLI: And I --

8 MR. ROSS: So the sense that, you know,
9 intervening at the last moment is something that's
10 inappropriate in this administrative hearing, I would
11 respectfully disagree. We've been trying to reach
12 resolution all the way along.

13 HEARING OFFICER CELLI: I appreciate that. But
14 the problem is, is we certainly can not reward people who
15 hang out and wait for everything to blow over, and then
16 intervene and think that they can come in and put in --

17 MR. ROSS: I don't think we were hanging out and
18 waiting for anything to blow over, sir.

19 HEARING OFFICER CELLI: Okay. I'm just suggesting
20 that it isn't necessarily fair that everybody else provided
21 their testimony and rebuttal testimony and shared their
22 information throughout the proceedings, and then in comes a
23 latecomer who didn't have to do anything with that. I mean,
24 everybody would love to have their witnesses get up cold and
25 nobody knows that they're going to say.

1 MR. ROSS: Well, maybe you should talk to the
2 applicant rather than the agency that's authorized to
3 provide fire and emergency medical services to this area.

4 HEARING OFFICER CELLI: Applicant, do you have a
5 position on that?

6 MR. HARRIS: I'm sorry, I missed the question. We
7 were talking.

8 HEARING OFFICER CELLI: All right. The concern we
9 have is that we -- we were talking right now about moving
10 fire worker -- fire protection and worker safety from
11 Wednesday into Tuesday. But Southern Inyo Fire Protection
12 District has a witness that they would like to call,
13 notwithstanding the fact that there was --

14 MR. BROWNLOW: Hearing Officer Celli, this is Brad
15 Brownlow with the applicant. May I have the floor for a
16 moment?

17 HEARING OFFICER CELLI: One moment. Is this --
18 who's --

19 MS. STRACHAN: He's internal counsel for
20 Applicant.

21 HEARING OFFICER CELLI: Okay. Go ahead. Mr.
22 Brownlow, was it?

23 MR. BROWNLOW: And I do want to confirm that we
24 have been working in good faith with the fire district.
25 Throughout this process negotiations are often complicated

1 and tricky. But I don't -- I don't think it would be fair
2 to disadvantage the fire district merely because they --
3 they held their fire and waited until the last moment to
4 intervene. We're still working out the details. I think
5 both parties will tell you that we're making great progress.

6 But, you know, I don't think it would be fair to
7 disadvantage them simply because they waited. They had to
8 get in when they did because we haven't reached a final
9 agreement with them, but we are working very cooperatively
10 with them. And I just wanted to say that I don't think it
11 would be right to penalize them in any way for waiting until
12 the last minute. And they did get in within -- within the
13 time required for them to do so.

14 HEARING OFFICER CELLI: That's true. Now, let me
15 ask you this, Mr. Ross, is your witness available on Monday
16 the 18th?

17 MR. ROSS: I don't know. I will work -- you know,
18 I understand the concerns of the commission. We will
19 communicate with Chief Coleman and make every effort to
20 accommodate that schedule.

21 HEARING OFFICER CELLI: Because he's appearing by
22 phone anyway; isn't that correct?

23 MR. ROSS: He may.

24 HEARING OFFICER CELLI: Okay. Because on the 18th
25 we're up in Sacramento. The idea would be that everybody

1 who needs to appear by phone can do it -- we can do it
2 better. We're reasonably assured that WebEx will work in
3 Sacramento.

4 MR. ROSS: Well, the district will make every
5 effort to accommodate what's proposed now for the hearing
6 schedule in Shoshone with respect to its principal witness
7 if there is not agreement before that time.

8 HEARING OFFICER CELLI: That sounds reasonable.
9 Okay. So can we move then fire and worker safety -- did
10 anyone else -- let me see. County, did you have fire and
11 worker safety? Okay.

12 MS. CROM: No. But I think Mr. Harris wanted to
13 address socio.

14 HEARING OFFICER CELLI: Well, before we do that, I
15 just want to make sure, I want buy off that I can move fire
16 safety and worker -- worker safety and fire protection into
17 that Monday overflow day. Is there anyone who has a problem
18 with that? Any objection to that? Anyone? Staff?

19 MS. WILLIS: I think we're okay for that -- that
20 date.

21 HEARING OFFICER CELLI: Okay. I mean, of all
22 people, Staff should be okay with that.

23 MR. RATLIFF: Mr. Celli, I hesitate to say this
24 because I know we're -- we're kind of making progress here,
25 but my feeling is that all of this is going to kind of have

1 cascading effects when things start to slide.

2 HEARING OFFICER CELLI: Oh, ye of little faith.

3 MR. RATLIFF: And there's no -- you know, when you
4 do land use and visual on the first day, it will be late
5 when you finish visual. And --

6 HEARING OFFICER CELLI: We'll see about that.

7 MR. RATLIFF: And then the second day you're going
8 to have to -- you're going to be behind and you're going to
9 be --

10 HEARING OFFICER CELLI: That's right.

11 MR. RATLIFF: -- you're going to be able to --

12 HEARING OFFICER CELLI: But we actually -- we
13 picked up some time.

14 MR. RATLIFF: When you get to socioeconomics
15 impacts on the second day, that's going to take hours that
16 you aren't accounting for that's going to push you all the
17 way into the evening, probably. And then you're going to do
18 cultural. But the cultural involves the participation of
19 the tribes and some -- some intervenors who have actually
20 prepared a lot of material.

21 HEARING OFFICER CELLI: Yes.

22 MR. RATLIFF: And you can't really expect to put
23 them on late.

24 HEARING OFFICER CELLI: No.

25 MR. RATLIFF: So --

1 HEARING OFFICER CELLI: Right.

2 MR. RATLIFF: But --

3 HEARING OFFICER CELLI: Let me just say that the
4 way we're -- we're kind of looking at things right now is
5 that socio -- fire and worker safety just went into the
6 overflow day. So that's the following Monday.

7 MR. RATLIFF: Oh, okay. Okay. That's great.

8 HEARING OFFICER CELLI: Cultural now moves up to
9 immediately following socioeconomics.

10 MR. RATLIFF: Okay.

11 HEARING OFFICER CELLI: And --

12 MR. RATLIFF: Good.

13 HEARING OFFICER CELLI: -- I have great faith in
14 yours and Ms. Crum's ability and the applicant's to work out
15 a lot of these numerical problems and come to some common
16 ground in your workshop, because I think we can abbreviate
17 socioeconomics, the costs, hopefully, and that's shouldn't
18 take that long in terms of taking testimony. So we take
19 care of that. We do traffic. And we're into cultural. And
20 it looks like we could start cultural by noon, maybe, if we
21 work expeditiously.

22 MS. WILLIS: Mr. Celli, so just to recap, so for
23 the socioeconomics that we're discussing on the 13th --

24 HEARING OFFICER CELLI: Yes.

25 MS. WILLIS: -- that would costs, environmental --

1 HEARING OFFICER CELLI: Benefits.

2 MS. WILLIS: -- benefits, environmental justice?

3 HEARING OFFICER CELLI: Right.

4 MS. WILLIS: And are we discussing, also, growth
5 inducing impacts or --

6 HEARING OFFICER CELLI: Yes.

7 MS. WILLIS: Okay.

8 HEARING OFFICER CELLI: That's right.

9 MS. WILLIS: So we need to have a witness for
10 that.

11 HEARING OFFICER CELLI: Right.

12 MS. WILLIS: Because we did not schedule that.

13 HEARING OFFICER CELLI: Because socioeconomics
14 costs, we were talking about on the morning of Wednesday,
15 are strictly those fee-tax things; right?

16 MS. CROM: Oh, on Monday are you talking about --

17 HEARING OFFICER CELLI: I'm sorry.

18 MS. CROM: - or Tuesday?

19 HEARING OFFICER CELLI: On Wednesday.

20 MS. CROM: Well, on Wednesday we're looking at
21 impact costs. We're looking at -- the testimony of the two
22 supervisors, the county administrator, and the various
23 department heads.

24 HEARING OFFICER CELLI: Okay.

25 MS. CROM: Okay. So, you know, I hate to say that

1 it's only going to be an hour or two. I have two elected
2 officials, one who represents this district who is going to
3 testify.

4 HEARING OFFICER CELLI: Uh-huh.

5 MS. CROM: And I highly doubt his testimony is
6 going to be, you know, minimal. This is his district.

7 HEARING OFFICER CELLI: Uh-huh.

8 MS. CROM: So -- and then I have -- I mean, these
9 are all impact costs. And -- and, you know, we offered him
10 also for -- for general impacts for the project, and I think
11 we need to have him heard at that point.

12 MS. WILLIS: And at this point you would not be
13 cross-examining Richard McCann on Wednesday?

14 MS. CROM: Unless the applicant wants to have the
15 revenue issues on Wednesday. If that's the case, then we'll
16 need Dr. McCann, we'll need Dr. Gruen (phonetic), we'll need
17 Eric Meyers.

18 HEARING OFFICER CELLI: I thought we had resolved
19 that the revenue and benefits were on the overflow day?

20 MS. CROM: Well, the applicant has an issue.

21 MR. HARRIS: We've been trying to get a word in
22 here. Again, we --

23 HEARING OFFICER CELLI: Hold it straight up.
24 Okay.

25 MR. HARRIS: I'm sorry. We're trying to, again,

1 to break into the conservation here. On socio, we would
2 like to do it all as one. Monday is going to be difficult
3 for this witness. So if we can get him here on Wednesday
4 or -- sorry -- Wednesday morning. And I just -- I just
5 don't see the socio dividing into three bucket compartments.
6 I think it's all very interrelated. To problem with our
7 witness is the subject of their availability is the one
8 doing our property tax analysis. And that calls for some of
9 the numbers that we're talking about here. So I think doing
10 it as a consolidated makes more sense. We're going to have
11 him here on Wednesday morning, either in person or
12 telephonically. Monday would be impossible, I guess, for
13 her.

14 HEARING OFFICER CELLI: Okay. Let me step back.
15 What we had just resolved was that fire protection -- worker
16 safety and fire protection goes into Monday. There was no
17 problem with that. Okay. I thought -- and alternatives,
18 including EJ issues, went into Monday, the overflow. So --

19 MS. CRUM: Wait, no, not EJ issues. EJ issues
20 were with socioeconomics.

21 HEARING OFFICER CELLI: Right. So the EJ would
22 be --

23 MS. CROM: EJ would stay with socio now on --

24 HEARING OFFICER CELLI: Wednesday.

25 MR. HARRIS: Morning.

1 MS. CROM: -- morning.

2 HEARING OFFICER CELLI: Yeah. That's fine. And
3 I'm taking that out. I -- so socioeconomics, costs, EJ on
4 Wednesday. And Applicant wants all socio on Wednesday. But
5 what -- who -- who had a problem with that?

6 MS. CROM: No one. We have -- we're fine on
7 Wednesday. We can have all of our witnesses here.

8 HEARING OFFICER CELLI: We had to reroute our
9 witness to change a flight to be able to be here Wednesday
10 morning. So we've got a conflict.

11 MR. ARNOLD: Mr. Celli, cultural is still on -- on
12 Wednesday, so far as I know. And we would -- we would be
13 willing to go to Friday. And that would allow a lot of time
14 for socio. It seems to me that's going to be one that's
15 going to be very complex. So it's not a problem for us to
16 move to Friday.

17 HEARING OFFICER CELLI: You know, my concern is,
18 and what Mr. Ratliff said, as much as I'd like to pooh-pooh
19 it, is true, that things do have a tendency to expand and
20 take longer. And then there it's Friday and I've got to get
21 commissioners on the plane. And everything else is sort of
22 pushed into the future. And then cultural gets nothing.
23 And that -- that I don't think would work.

24 MR. ARNOLD: No, we don't want that.

25 HEARING OFFICER CELLI: So I would rather have

1 cultural earlier on in the week if we -- if we can make it
2 fit. But we're trying to -- we're trying to find a way to
3 make cultural -- it really is the centerpiece, that and bio,
4 of this whole case. And so let's --

5 MR. RATLIFF: Mr. Celli, could it help, I mean,
6 one potential solution here would be to move traffic back
7 into its current place and dump visual so you can do traffic
8 instead? Because that's going to be probably a two to three
9 hour item right there. If you think the committee really
10 thinks it needs visual then, of course, we'll do visual. If
11 you don't then -- then you've got more time. And then you
12 can actually start with socioeconomics on day two, and you
13 don't have to then do traffic before you get to cultural.
14 Because by the time you get to cultural on day two it will
15 be day three.

16 HEARING OFFICER CELLI: That's right. And so what
17 I want to know is why -- what is the issue in visual that we
18 need to even take evidence? Because I already have a ton of
19 evidence on visual from all of the parties. So why would I
20 even -- why do we even need to do visual?

21 MR. HARRIS: Well, I think we can do visual in a
22 lot less time than we requested. We requested an hour. I
23 think we could probably do it easily in less than half that
24 time. The issue comes down to whether the litigation as
25 proposed reduces the impact to less than significant. And

1 there's a different -- difference of opinion that Staff will
2 come in as, no, it does not, and the applicant will say,
3 yes. Big surprise. And so a half-an-hour for visual is
4 probably more than enough time.

5 HEARING OFFICER CELLI: Yeah. I just wonder if
6 having -- having read the FSA, for instance, if we already
7 have everybody's evidence on, okay, you've got this tower.
8 You've got whatever the attributes are. You have the
9 various KOB (phonetic). You have people's analysis of it,
10 and Applicant's, Staff's, other parties' analysis of visual.

11 What is to be gained by having parties actually come and
12 discuss it before the committee if we've already got all
13 this evidence already? What's missing?

14 MR. HARRIS: It sounds to that could be said about
15 every subject pretty much, number one.

16 But I guess I would feel better if, you know,
17 better than that, take a field trip to the Coalinga site or
18 the Ivanhoe site and see one of these towers in operation,
19 that might actually make more sense. But what we're having
20 right now is a disagreement on this objective, whether it
21 that will be significant or not. And I would actually feel
22 very -- much more comfortable about doing less on visual if
23 I knew the committee had a chance to see Coalinga or the
24 Ivanhoe site in operation.

25 HEARING OFFICER CELLI: Well, that's

1 argumentative.

2 MR. HARRIS: That's what I get paid for.

3 MR. RATLIFF: Staff would -- would propose to
4 submit it on the briefs and the testimony and -- and just
5 let the committee make up its mind. We -- I mean, we aren't
6 going to -- either you're going to see Coalinga or you're
7 not going to see Coaling, or you're going to see Ivanhoe or
8 you're not going to see Ivanhoe. It's not going to happen
9 because we argue about visual --

10 HEARING OFFICER CELLI: Right.

11 MR. RATLIFF: -- and take up, I would guess,
12 fairly it's going to be a couple hours at a minimum, and
13 possibly more.

14 HEARING OFFICER CELLI: I don't see why listening
15 to experts --

16 MR. HARRIS: In Ivanhoe it's --

17 MR. RATLIFF: No.

18 MR. HARRIS: Yes, it is.

19 MR. RATLIFF: No, it's not. It was nearly a day-
20 and-a-half at Ivanhoe. So I mean, that -- that should
21 caution you just a little bit as to what happens once you --
22 you open up that door.

23 MR. HARRIS: Well, the staff had made the rebuttal
24 testimony. FSA hasn't explained why the rejected changes to
25 Visual 3 and 5. So other issues we can work through.

1 HEARING OFFICER CELLI: That's workshop stuff
2 though. I mean, you're talking about conditions.

3 MR. HARRIS: Or cross-examination stuff.

4 HEARING OFFICER CELLI: Yeah. Ms. MacDonald, did
5 you have a comment?

6 MS. MACDONALD: Yes, but it just flew out of my
7 head. Sorry. I think one of the -- one of the things,
8 visual resources, there's a lot of overlapping things again,
9 like with biological resources. But like one of the
10 exhibits I presented was a satellite photo of Ivanhoe. Only
11 one of them so far is -- the mirrors are actually up, but
12 like there's glow that's spilling off outside the boundaries
13 which, you know, we have traffic and transportation right
14 there. There's a lot of different visual issues that are
15 interrelated to this.

16 HEARING OFFICER CELLI: Well, let me ask you
17 something.

18 MS. MACDONALD: Okay.

19 HEARING OFFICER CELLI: Okay. So let's say that
20 the committee receives that document into evidence.

21 MS. MACDONALD: Okay.

22 HEARING OFFICER CELLI: And maybe let's just say
23 that that document was the piece of evidence that teetered
24 the committee to this one way or the other.

25 MS. MACDONALD: Okay.

1 HEARING OFFICER CELLI: I'm trying to understand
2 why we need a lot of time of oral testimony about this issue
3 when we can look at a photograph and go, wow, look at the
4 lights going off.

5 MS. MACDONALD: Because I'm not sure that the
6 committee would -- and I don't know, I don't mean to say
7 that you wouldn't get this, but I'm not sure that the
8 committee is clear how close the road is and that the
9 motorists pass right through there. Perhaps Committee and
10 Staff apparently, like with the heliostat positioning plan,
11 it's only planned to be developed about 60 days before they
12 start operations. What are you going to do with all those
13 mirrors while they're getting installed? I mean, you've got
14 two or three years of installation where these mirrors are
15 sitting without any sort of guidance as to -- you know, a
16 lot of the safety features of this thing is based on their
17 ability to control the heliostats.

18 So the point being is that I think at least the
19 opportunity should be given so that we could bring up
20 interpretations and contextual backgrounds --

21 HEARING OFFICER CELLI: Uh-huh.

22 MS. MACDONALD: -- for what some of our exhibits
23 might be that might have very serious visual impacts on a
24 lot of levels.

25 HEARING OFFICER CELLI: Okay. But my question is

1 we -- assuming we receive all of that evidence that you've
2 already given us, I mean, we already have that testimony, we
3 already, I assume, have that photograph, we have that
4 evidence, you're going to be given an opportunity to brief.
5 At the close of the evidentiary hearing we're going to have
6 briefing wherein you are going to make all of those
7 contextual points, as you say --

8 MS. MACDONALD: Uh-huh.

9 HEARING OFFICER CELLI: -- to the committee, and
10 that's kind of where the action is on that.

11 So, I mean, because, you know, people think that
12 cross-examination is the opportunity to, you know, beat
13 somebody into submission or something like that, it's not
14 going to happen. They're all experts. They're going to say
15 whatever they said in their written testimony. They're not
16 going to deviate from it. And I'm just trying to -- if
17 there were some problem that the -- I mean, of all of the
18 things that we have to figure out visual is probably the
19 most subjective, although it's predicated on law and there
20 are certain checkpoints and things you have to -- you have
21 to include in the decision, versus proof of the cost of
22 things or something like that. I mean, you know, I'm not
23 really sure that we need to hear testimony over and above
24 what we're already going to get on visual.

25 MS. MACDONALD: Well, that would explain the

1 difference between the two of us, because I've studies it
2 quite a bit and I am pretty sure you need to hear something
3 about those mirrors and the visual glow, glares and things
4 with respect to the exhibit I'm discussing. There is no
5 testimony that goes with it because the article that I got
6 it from wasn't even printed until after my initial opening
7 testimony was presented, and I was able to just slam it in
8 on Monday as a photo and hoped to follow that up on it. So
9 there, you know, there isn't actually --

10 HEARING OFFICER CELLI: Okay.

11 MS. MACDONALD: And then it's also my
12 understanding, and I'm not interested in pounding the
13 experts into submission or vice versa, but it's my
14 understanding that -- that what is said on this record,
15 including the written stuff, is what the committee will make
16 their decisions on.

17 HEARING OFFICER CELLI: Okay.

18 MS. MACDONALD: And so, you know, it's -- it's a
19 big issue to give it no time. And I'm not just talking, you
20 know, art, like paintings that you know it's aesthetically
21 displeasing. There are some serious issues associated with
22 the visual impacts of this project that the committee should
23 at least consider. Thank you.

24 COMMISSIONER DOUGLAS: All right. Thank you. So
25 this is, for Ms. Belenky's benefit, Commission Douglas

1 stepping in where I should probably let the hearing officer
2 continue to try to work. Because this is, as you said Mr.
3 Ratliff, somewhat productive, but also getting increasingly
4 challenging.

5 I think that one of my priorities as we look at
6 prioritizing our four days that we have for evidentiary
7 hearing here is to particularly maximize the ability to take
8 advantage of the availability of witnesses who are local.
9 Because as we've said a number of times, you know, WebEx
10 works just fine in Sacramento. People who would be calling
11 in anyway can call in or come to Sacramento. And we really
12 need to make sure that we have an opportunity here from
13 witnesses who are here and the four days that we're here.

14 So I just want to go through this and ask a couple
15 of questions. I am aware that most of our witnesses on
16 cultural, not necessarily Applicant's or Staff's but
17 certainly from the intervenors perspectives, are here. And
18 so I think it's important that we do -- do cultural here and
19 we not allow that to be risk hitting an overflow day. On
20 socioeconomics, we have the county's people able to come on
21 Tuesday -- or Wednesday morning, I'm sorry. I didn't --
22 didn't want to make you jump when I said Tuesday. So I
23 think we need to take advantage of that.

24 But I have a question as to whether EJ and growth
25 inducing impacts need to be handled with it or whether we

1 should overflow EJ and growth inducing impacts. Can
2 anyone --

3 MS. CROM: Well, from our standpoint the EJ
4 actually goes hand-in-hand --

5 COMMISSIONER DOUGLAS: Okay.

6 MS. CROM: -- with the socioeconomic impacts.

7 COMMISSIONER DOUGLAS: So you would like your
8 witnesses who are coming on socio to address EJ?

9 MS. CROM: Yes.

10 COMMISSIONER DOUGLAS: All right. What about
11 growth inducing impacts; the same thing?

12 MS. CROM: Actually, we're not addressing growth
13 inducing impacts.

14 COMMISSIONER DOUGLAS: Okay. So the Center for
15 Biological Diversity, Ms. Belenky, are you bringing a
16 witness here to do growth inducing impacts?

17 MS. BELENKY: You know, I'm not sure I understood
18 fully your question. Are we ready for what?

19 COMMISSIONER DOUGLAS: Are you bringing a witness
20 here or is your witness going to be on the phone on growth
21 inducing impacts?

22 MS. BELENKY: On which impacts?

23 COMMISSIONER DOUGLAS: Growth inducing impacts.

24 MS. BELENKY: I don't know why I can't hear what
25 you're saying. We have a witness. Eileen will be there,

1 Eileen Anderson.

2 COMMISSIONER DOUGLAS: Okay.

3 MS. BELENKY: And then our other witness is an
4 alternative. So those are the two witnesses.

5 COMMISSIONER DOUGLAS: Okay. All right. So thank
6 you, Ms. Belenky.

7 On -- on biology, where are the witnesses coming
8 from?

9 MR. RATLIFF: We have Staff witnesses, and they're
10 coming from Sacramento. We have two witnesses from the
11 Department of Fish and Wildlife who we need to tell them
12 when to come, when to be here --

13 COMMISSIONER DOUGLAS: Yeah.

14 MR. RATLIFF: -- in addition to Staff witnesses.

15 COMMISSIONER DOUGLAS: Okay. Applicant?

16 MR. HARRIS: For biology we have one from Southern
17 California, one from Coalinga, Sacramento, North Carolina,
18 Davis, Southern California, Colorado -- let's see,
19 Sacramento, Sacramento --

20 COMMISSIONER DOUGLAS: Okay.

21 MR. HARRIS: -- Davis, Davis, and Las Vegas.

22 COMMISSIONER DOUGLAS: Okay. So one from Las
23 Vegas. But aside from that, from other places. Okay.

24 What about intervenors on biology?

25 MS. CROM: The county has one -- one witness that

1 is local, that's the ag commissioner.

2 COMMISSIONER DOUGLAS: The ag commissioner?

3 MS. CROM: The ag commissioner.

4 COMMISSIONER DOUGLAS: Okay. And on water, I
5 understand Amargosa River Conservancy --

6 MR. BROWN: We have two witnesses and they're both
7 going to be local.

8 COMMISSIONER DOUGLAS: Uh-huh.

9 MS. CROM: Our hydrologist is also local, water.

10 COMMISSIONER DOUGLAS: Okay. All right. So why
11 don't we go off the record for just a couple of minutes and
12 just talk about this. So we're going to go off the record
13 for a couple minutes and just talk about this. The parties
14 are welcome to talk to each other, if that helps. Go ahead
15 and take a little short break.

16 (Off the Record From 3:23 P.M., Until 3:35 P.M.)

17 COMMISSIONER DOUGLAS: I know it's fascinating to
18 talk about scheduling for two-and-a-half hours. I want to
19 thank you all for hanging in there with us. I think that
20 we're almost through. I hope that we're almost through.
21 All right.

22 So I'm going to go ahead and get started here. So
23 the committee conferred briefly when we called the break.
24 And again, as I said, it's a real priority to make sure that
25 we have sufficient time to hear from witnesses, particularly

1 witnesses who are here in the four days that we have, and
2 particularly given that we know -- we also know that there
3 could be reliability issues with the WebEx in Shoshone. We
4 hope there won't be. We -- we'll work hard to ensure it's
5 as smooth as possible. But we really want to take advantage
6 of the time of -- of witnesses who are here on cultural, on
7 water, on land use and socioeconomics and other issues.

8 So -- so here's the proposal. The proposal is
9 that we would move the biology topic to one of our overflow
10 days. It could be Monday. It could be Tuesday. We'll work
11 that out later. But we're going to take biology out of the
12 schedule for the four days that we're in Shoshone, and we
13 will put cultural there beginning at 9:00 a.m. and going
14 through the day. So we will have a day to cover --

15 MR. PRITCHETT: Could you say that again, please?

16 COMMISSIONER DOUGLAS: Cultural. We'll do
17 cultural on Thursday starting at 9:00 a.m. Okay.

18 Secondly, the second part of the proposal is that
19 the Tuesday and Wednesday would be basically as we've
20 described them except -- and I'm going to let the hearing
21 officer go through and describe them and make sure that
22 we've all got it -- I'm going to give him his notes in a
23 minute -- except that we are going to either get through the
24 topics we have for Tuesday and Wednesday on time, by the end
25 of the day Tuesday, or push any remaining topics into

1 overflow. So on my notes, because cultural is going to be
2 Thursday, the last topic we're trying to handle Wednesday is
3 fire worker -- fire and worker safety. Oh, that's overflow.
4 That's Monday already. Okay. So basically Tuesday and
5 Wednesday would be land use, visual, traffic. Yeah. Okay.
6 So Wednesday would be socioeconomics with traffic. We'll
7 walk through this more slowly.

8 But the main point I want to exercise is that we
9 will either get through those topics on the Tuesday and
10 Wednesday or we will overflow. We will prioritize getting
11 through the witnesses from Inyo County and other witnesses
12 who are here so that you will not have your witnesses on
13 WebEx in Sacramento.

14 MS. CROM: Great. Thank you.

15 COMMISSIONER DOUGLAS: All right. Friday, as my
16 notes have it, is unchanged from where we got in the
17 discussion early but not -- does not very much resemble what
18 I have on this sheet. So go ahead, Mr. Celli.

19 HEARING OFFICER CELLI: Boy, I don't want to open
20 a can, so I'm just going to do a quick summary.

21 So on Tuesday we're going to do the introduction
22 and housekeeping, followed by land use, visual. Then after
23 dinner we would have -- or after visual, however long it
24 takes, we'd have hazardous materials, solid waste, general
25 conditions.

1 On Wednesday we would begin with socioeconomics
2 which would include traffic, that's costs, EJ, etcetera.
3 That fire and worker safety went over to -- to the 18th, so
4 that's no longer there. And cultural is going to the next
5 days, Thursday. So by the end of the day we will have
6 finished everything up to socioeconomics. Okay.

7 Thursday we're taking biological off the calendar
8 altogether and putting -- starting cultural resources the
9 first thing Thursday morning, March 14th. We'll do cultural
10 s long s we need to, followed I guess by Friday, we're going
11 to do water, which is soil and water and water supply.

12 Oh, I skipped something. I'm sorry. Going back
13 to Thursday, there was a panel on project description,
14 facility design, efficiency, reliability, TSE, TLSN, all of
15 that. Okay. We will do that that whole day, cultural into
16 that.

17 On Friday we will do water supply, water, soil and
18 water, geo/paleo, noise, air, greenhouse gas, air quality,
19 public health. And that means that what we put into the
20 overflow is biology, biological resources, alternatives,
21 part of socio, right -- or, no. did we say that all of
22 socio --

23 MS. CROM: All socio.

24 HEARING OFFICER CELLI: Okay. Good. That's the
25 reason we did that. Right. Sorry. Strike that.

1 So biological resources and alternatives, and fire
2 worker and safety -- fire -- I'm sorry, worker safety and
3 fire protection have gone into the overflow day.

4 MR. RATLIFF: Where is traffic and noise?

5 HEARING OFFICER CELLI: Traffic is --

6 MR. RATLIFF: Two different topics, traffic and --

7 HEARING OFFICER CELLI: Right. Traffic is
8 Wednesday morning --

9 MR. RATLIFF: Wednesday morning.

10 HEARING OFFICER CELLI: -- right after socio.
11 Noise was Friday afternoon.

12 MS. POTTENGER: Is the project description,
13 facility design, efficiency, reliability, all of those
14 topics on the overflow days with alternatives?

15 HEARING OFFICER CELLI: No. That's going to be
16 after cultural that day. And we're going to -- and I'm
17 having a sense that that panel is going to be pretty much
18 all the same people or a lot of the same people. So that's
19 why we kind of lumped them together.

20 MS. BELENKY: Excuse me. I have a quick question.
21 Are we still doing alternatives on Monday?

22 HEARING OFFICER CELLI: Yes.

23 MS. BELENKY: Because -- this is Monday?

24 HEARING OFFICER CELLI: Yes, Ms. Belenky.

25 MS. BELENKY: So both biology and alternatives on

1 Monday?

2 HEARING OFFICER CELLI: Well, we're doing -- we're
3 going to have to figure out if we're going to do biology
4 first or alternatives first. But we're going to do biology
5 and alternatives on Monday. And we have through Tuesday for
6 spillover.

7 MS. BELENKY: Well, I guess -- okay. I asked him
8 about Monday. I didn't ask him about Tuesday.

9 HEARING OFFICER CELLI: Right. I did -- we did
10 notice Monday and Tuesday as -- in Sacramento as overflow
11 days.

12 MS. BELENKY: I'm a little bit confused as to why
13 biology was moved. And I -- but if that's -- if that's the
14 committee's decision, then I guess we'll have to -- I
15 thought that there were local -- there actually were some
16 local people who were testifying on biology.

17 HEARING OFFICER CELLI: Well, there are. But
18 there are a lot more local people testifying about the
19 cultural. And so we really need to do to maximize the
20 people who are here while we're here. So we decided to put
21 cultural where biological resources was, and took biology
22 and put it in the overflow days in order to accommodate
23 cultural.

24 MR. RATLIFF: Mr. Celli, we like this schedule.
25 We think it seems -- we think you've done a really good job

1 of -- the committee has done a good job of working it out,
2 and a very difficult task.

3 Just to make sure Staff knows what we're supposed
4 to do, I mean, on these -- these things that drop into small
5 print on panels, are we supposed to actually have witnesses
6 here or are we going to -- we don't see these as things that
7 have issues that were going to be adjudicated or anything.
8 So we --

9 HEARING OFFICER CELLI: Hence the small print.

10 MR. RATLIFF: Okay.

11 HEARING OFFICER CELLI: And that was on Staff's
12 recommendation based upon the idea that a lot of these
13 things can workshop away.

14 MR. RATLIFF: Okay. And if they don't, what
15 happens?

16 HEARING OFFICER CELLI: If they don't, then these
17 will be the times that we're going to be hearing the small
18 print matters.

19 MR. RATLIFF: Can we have our witnesses available?
20 For instance, if someone wants to cross-examine an air
21 quality witness, can we do that by WebEx or do we have to
22 physically bring down the air quality witness?

23 HEARING OFFICER CELLI: We are doing everything in
24 our power. Susan Strachan, who is here, has been working
25 with the people in Shoshone to make sure that we have WebEx

1 working.

2 Now, as Commission Douglas said, that which we can
3 not accomplish on those days are all going to go --

4 MR. RATLIFF: Okay. Okay.

5 HEARING OFFICER CELLI: -- into the overflow.

6 MR. RATLIFF: So if WebEx should fail --

7 HEARING OFFICER CELLI: Right.

8 MR. RATLIFF: -- then that would become an
9 overflow topic. Okay.

10 HEARING OFFICER CELLI: Yeah, that's right. And
11 that's how we're going to have to deal with the WebEx
12 failure. If it fails then we are just going to have to bump
13 it into overflow, and I'm sorry about that. But, you know,
14 it's electronics. What are you -- what can you do?

15 So with that, I'd like to move out of this -- oh,
16 now what?

17 MR. HARRIS: No. We have absolute big problems
18 with that. Our flux panel can not be on the spillover days.
19 They have to be Thursday and Friday, and that's the biology
20 panel. We put that in our prehearing conference statement.
21 It's clearly right there. And it's one of the issues we've
22 talked about. We have people coming back Wednesday night to
23 be able to be here Thursday morning and Friday. And water
24 panel, also in our prehearing conference statement, is not
25 available on Friday. And that's one of the ones that you've

1 moved, as well.

2 HEARING OFFICER CELLI: Well, water remains the
3 same. Water is still on Friday.

4 MR. HARRIS: And that was one of the days in our
5 prehearing conference statement we said our water panel
6 could not do.

7 MR. RATLIFF: Is it possible it could change?

8 MR. HARRIS: No.

9 HEARING OFFICER CELLI: If I -- if the only
10 restriction on the water panel as I understand it is Friday,
11 if I put --

12 MS. CROM: Could cultural go to Friday and water
13 go to Thursday?

14 HEARING OFFICER CELLI: I think that works. Say
15 it again, Dana? Cultural on Friday, first thing?

16 MS. CROM: Yes.

17 HEARING OFFICER CELLI: But still, with biology on
18 the overflow days.

19 (Colloquy Between Hearing Officer Celli and
20 Commission Douglas)

21 MR. RATLIFF: What's the problem with the biology
22 witnesses? Jeff, if I can ask, what is the problem with the
23 biology witnesses? When are they not available, and which
24 ones?

25 MR. HARRIS: The flux witnesses are available on

1 Thursday and Friday. And those are the only days that I can
2 get my entire panel here --

3 MR. RATLIFF: Could they --

4 MR. HARRIS: -- because they're coming from North
5 Carolina and -- not South America -- Southern California and
6 other places, Colorado.

7 MR. RATLIFF: Jeff, we won't miss them at all if
8 you don't bring them, so --

9 MR. HARRIS: Except their testimony.

10 MR. RATLIFF: Can they come the following week?

11 MR. HARRIS: No. We've got conflicts with our
12 flux witnesses on the 18th and 19th. We checked -- as soon
13 as the hearing notices were extended we checked with our
14 witnesses. And this is a difficult --

15 MR. RATLIFF: But these are only our flux
16 witnesses? Just to be clear I understand what the problem
17 is, it's only your flux witnesses, not your --

18 MR. HARRIS: Not anything else.

19 MR. RATLIFF: -- Desert Tortoise, Sprawling Owl
20 (phonetic), other witnesses?

21 MR. HARRIS: Yeah.

22 MR. RATLIFF: Okay.

23 HEARING OFFICER CELLI: Okay. Let me ask you
24 this. If -- if we added the -- the Monday after the 18th
25 would be the 25th as a day for avian flux, I know we're

1 pushing out, but --

2 (Colloquy Between Hearing Officer and Commissioners)

3 HEARING OFFICER CELLI: All right. Here's the
4 latest proposal. If I -- if I can have everyone, just for
5 one moment. If we leave biology on for Thursday,
6 cultural -- let me ask the cultural people, what if we did
7 cultural on Friday, first thing starting Friday morning.
8 Is -- does that pose a problem for anybody who is here,
9 mainly for cultural?

10 MR. PRITCHETT: No, so long as we can start in the
11 morning.

12 HEARING OFFICER CELLI: Yeah. Mr. Arnold, does
13 that work for you, Friday?

14 MR. PRITCHETT: For me it does personally. I'd
15 have to check with the witness to make sure on that person.
16 But hopefully that may work.

17 HEARING OFFICER CELLI: Okay.

18 MR. PRITCHETT: Yeah.

19 HEARING OFFICER CELLI: Ms. MacDonald, did you
20 have a witness? I don't think you did on cultural.

21 MS. MACDONALD: I have Thomas King, Dr. Thomas
22 King.

23 HEARING OFFICER CELLI: Could he do Friday
24 morning?

25 MS. MACDONALD: I don't know. I'd have to check.

1 HEARING OFFICER CELLI: Okay. We need you to
2 check that please.

3 MS. MACDONALD: I did -- I do remember you saying
4 when cultural had been discussed the Friday previously that
5 you didn't want to put it on Friday because you had people
6 to get out on a plane. I just --

7 HEARING OFFICER CELLI: Right. You know what I
8 was thinking was that what -- what typically happens with
9 these schedules is everything sort of pushes out. And then
10 what -- what happens by Friday is that whatever you want to
11 do on Friday goes by the wayside.

12 What we would do, what -- the way we've resolved
13 it is that anything that is unresolved before Friday will
14 automatically get put over into our overflow Monday and
15 Tuesday so that we can guarantee to start cultural on Friday
16 morning, and that's the plan.

17 MR. RATLIFF: So that pushes water where then?

18 HEARING OFFICER CELLI: Water is not moving on
19 Thursday.

20 MR. RATLIFF: Thursday morning?

21 HEARING OFFICER CELLI: Before bio.

22 MR. RATLIFF: Oh. Okay.

23 HEARING OFFICER CELLI: So I've got water and bio
24 on. And we'll go as late as we have to.

25 MR. RATLIFF: So we do water and bio Thursday?

1 HEARING OFFICER CELLI: Right.

2 MR. RATLIFF: Okay.

3 HEARING OFFICER CELLI: And we would start bio
4 with avian flux. Because if there's any bio we can't finish
5 before a reasonable hour, then that goes into the following
6 Monday, as well.

7 MS. BELENKY: I'm completely confused now. So --

8 HEARING OFFICER CELLI: So are all of us.

9 MS. BELENKY: -- we aren't going to do bio
10 Thursday.

11 HEARING OFFICER CELLI: We've changed it now, Ms.
12 Belenky, so that water and soil -- water issues would be on
13 Thursday. Biology will begin on Thursday, as well. And we
14 will begin with the avian flux issue. Okay. We'll go as
15 late as we can. If we can finish it, great. If we can't,
16 then whatever is left over in biology will go into the
17 overflow Monday the 18th.

18 Is that -- did you get all that, Ms. Belenky?

19 MS. BELENKY: I did, but I'm a little confused.
20 So you're saying biology will start the solar flux, and
21 maybe other biology issues, which I think there are. If
22 those don't finish on Thursday they're going to Sacramento
23 the week after.

24 HEARING OFFICER CELLI: Correct. You have it
25 right.

1 MR. HARRIS: Yeah. Our Desert Tortoise witness
2 has troubles on the 18th and the 19th. So we're trying to
3 figure out whether we could do -- start bio on Tuesday
4 afternoon -- I'm sorry, Wednesday afternoon, and then to do
5 everything except flux and bio on Wednesday afternoon, which
6 for us is only Desert Tortoise and is a very small portion
7 of our testimony.

8 HEARING OFFICER CELLI: So -- so, Mr. Harris,
9 we're talking about doing water, all the water issues, and
10 the bio issues, starting with avian flux, on Thursday, and
11 as much other bio as we can get done. Anything we can't get
12 done goes into the spillover.

13 MS. STRACHAN: And Tuesday afternoon is -- I think
14 if you wanted to start -- no, Wednesday afternoon.
15 Wednesday afternoon you could start some of the bio.

16 COMMISSIONER DOUGLAS: We might want to do that.

17 HEARING OFFICER CELLI: What if we started water?
18 Could we do -- could we start water on -- and maybe we
19 can -- if we can start that Wednesday afternoon we could
20 maybe finish water and start bio first.

21 MS. STRACHAN: On Thursday?

22 HEARING OFFICER CELLI: Finishing -- starting
23 water on Wednesday.

24 MS. STRACHAN: That would work for us.

25 (Colloquy Between Hearing Officer and Commissioners)

1 HEARING OFFICER CELLI: Okay. Did we get it all?

2 MS. STRACHAN: And then our project description,
3 are we bringing that over to the overflow?

4 HEARING OFFICER CELLI: Yeah. Right.

5 MR. HARRIS: With alternatives.

6 HEARING OFFICER CELLI: That would probably spill
7 out. But we'll see what we can accomplish, the idea being
8 that we really want to do as much of biology as we can. And
9 if there's time permitting we would continue on with those
10 issues which, again, look like they should be able to be
11 resolved in a workshop.

12 MR. HARRIS: So then maybe we can try this from
13 the top, a recap of Tuesday.

14 HEARING OFFICER CELLI: Okay. So Tuesday, we
15 start with intro and housekeeping at 11:30. We go to land
16 use, followed by visual. If time permits at the end of the
17 day we'll do hazardous materials, solid waste, and general
18 conditions.

19 On Wednesday morning we start with socioeconomics
20 in its totality, and traffic, followed by water and soils,
21 right, soil, water and water supply. Okay.

22 Then we're into the following day, which is
23 Thursday. We begin with biology.

24 MR. RATLIFF: We -- aren't we going to finish
25 water supply that morning?

1 HEARING OFFICER CELLI: Well, we'll finish it on
2 Wednesday night.

3 MR. RATLIFF: Oh, we will? Okay.

4 HEARING OFFICER CELLI: Water. Then -- there you
5 go. This is what we're going for. Thursday --

6 MS. STRACHAN: Bio.

7 HEARING OFFICER CELLI: -- we start -- we do bio
8 all day, kind of like what we had originally planned. And
9 then afterwards, all that panel on project description
10 facility design, efficiency, reliability, TLSN and TSE, if
11 we can get to it let's do it and we'll take care of it that
12 night.

13 The next day is Friday, day four. We start with
14 cultural, and we do cultural all day, as long as we -- as
15 long as we can go, really. And any of these other things
16 that we can get to, geo/paleo, noise, air quality,
17 greenhouse gas emissions. We'll try to tackle after we
18 finish cultural, leaving for the following Monday the 18th
19 worker safety, fire protection, worker safety, and
20 alternatives, and anything else that we were unable to
21 finish during the week. So any -- if we have to do any
22 cleanup of bio or any of these small type issues that came
23 up, those will get bumped into the Monday, as well. We will
24 take care of.

25 MR. RATLIFF: So does noise then slide into the

1 overflow, into the next week?

2 HEARING OFFICER CELLI: Does which?

3 MR. RATLIFF: Noise.

4 HEARING OFFICER CELLI: Noise.

5 MR. RATLIFF: I mean, there are a whole lot of
6 issues on here that we -- like greenhouse gas emissions
7 and --

8 HEARING OFFICER CELLI: Right.

9 MR. RATLIFF: -- and public health and geo/paleo
10 that we think really have no business being in the hearings
11 at all. But noise has been -- I mean, some very interesting
12 questions have been raised about noise. So we thought that
13 ought to be included somewhere.

14 HEARING OFFICER CELLI: And I agree
15 wholeheartedly. And I'm hoping that many of these things
16 may magically -- or, actually, not magically, but with the
17 concerted effort of committed people will resolve and we
18 won't have to take evidence on them. But if we can, that
19 would be great. But I agree that noise is probably
20 something.

21 COMMISSIONER DOUGLAS: I mean, noise is here.

22 HEARING OFFICER CELLI: Yes. But that -- noise
23 would be following cultural. So assuming we can get
24 cultural done expeditiously -- and this will be an
25 interesting panel discussion -- then we'll take all of that

1 evidence, as much of it as we can, finish it in a day. Then
2 we're on to noise and any of those other listed issues that
3 need to be vetted.

4 MS. MACDONALD: I have a quick question about
5 general conditions. I saw that show up for the first time.
6 I'm not sure what that pertains to, what topic. I mean, I
7 just wanted to know, what is that kind of covering?

8 HEARING OFFICER CELLI: In general, you know, our
9 general conditions, we always have general conditions that
10 are in there that set up things like, for instance, you know
11 the Energy Commission has a compliance unit that basically
12 our jurisdiction doesn't end. If we certify a power plant
13 the Energy Commission continues to monitor, make sure that
14 they're -- they're fulfilling their conditions of
15 certification, etcetera. Those are the conditions that
16 enable those things, you know, that basically say that
17 they've got -- you know, they submit to the jurisdiction,
18 that kind of stuff.

19 MS. MACDONALD: So it's kind of more about like
20 the CPM and the -- the conditions of certification? It
21 doesn't really have any -- okay.

22 HEARING OFFICER CELLI: Right. It's -- they're --
23 they're always the same kind of, you know, basically. It's
24 that sort of thing.

25 MS. MACDONALD: I don't quite understand.

1 Conditions of -- Staff could help clarify, perhaps.

2 MR. RATLIFF: Well, they're -- I think you could
3 call them generic conditions that are ones that are of such
4 a nature that we wanted them to apply to all thermal power
5 plant projects.

6 MS. MACDONALD: Okay.

7 MR. RATLIFF: And it includes reporting conditions
8 and forms for noise complaints and a variety of things of
9 that nature that we want to be in every compliance units
10 portfolio of things that they're suppose to be doing and
11 enforcing.

12 MS. MACDONALD: Okay. But it's a separate issue
13 than the conditions of certification?

14 MR. RATLIFF: Well, they are conditions. But
15 they're, like I say, generic to every case. They don't
16 change.

17 MS. MACDONALD: Okay.

18 MR. RATLIFF: But any of the additional ones that
19 go topic by topic, like I think you're familiar with, that
20 you've seen.

21 MS. MACDONALD: Okay. I think I kind of
22 understand. Thank you. Also --

23 MR. LEVY: (Off mike.) And that gets into the
24 opening of the FSA?

25 HEARING OFFICER CELLI: They're under engineering.

1 It's under general conditions, I think, or --

2 MR. RATLIFF: Right. In engineering.

3 HEARING OFFICER CELLI: Yeah. They're in --
4 they're in the FSA.

5 Mr. Harris?

6 MR. HARRIS: Well, we -- we have one more
7 suggestion.

8 HEARING OFFICER CELLI: Are we talking schedules
9 here?

10 MR. HARRIS: Yeah.

11 HEARING OFFICER CELLI: Yeah. Go ahead.

12 MR. HARRIS: Still talking schedules to
13 accommodate our witnesses. You've got this -- in your
14 current schedule on Wednesday you've got this block of --
15 I'm sorry, Thursday. There's no Monday on this thing. It
16 throws me off.

17 HEARING OFFICER CELLI: Right.

18 MR. HARRIS: Thursday you've got project
19 description, facility design, efficiency, reliability,
20 those, could we do that on Monday -- on Tuesday -- Tuesday?
21 And then what is currently on Tuesday, the hazardous
22 materials, solid waste, and move those to the overflow days?
23 So just basically take your panel on the bottom of Tuesday
24 and move it to the overflow day.

25 HEARING OFFICER CELLI: So let me be clear. And

1 this -- this would actually facilitate the locals. So if I
2 move project description, facility design, efficiency,
3 reliability, TLSN and TSE, which is transmission line safety
4 an nuisance and transmission system engineering, to Tuesday
5 night, right, so we move that over, that's -- this is
6 ambitious.

7 MS. MACDONALD: I'm good with that.

8 HEARING OFFICER CELLI: And then on what was on
9 Tuesday is hazardous materials, solid waste, and general
10 conditions, we move to overflow.

11 MR. HARRIS: Yes.

12 HEARING OFFICER CELLI: Anyone have a problem with
13 that? All right. So resolved.

14 MR. HARRIS: That was easy.

15 HEARING OFFICER CELLI: Great. One more?

16 MR. HARRIS: I said that was easy.

17 HEARING OFFICER CELLI: Okay. That is easy,
18 actually. So -- which, boy, I sure hope I can make some
19 sense of this and send something out that -- that looks
20 reasonably close to what we talked about here. I'm going to
21 need a good transcript for this. Very good. So thank you
22 all. This was grueling. This was grueling. But, you know,
23 we did it. And I appreciate everybody's cooperation on it.

24 I want to now switch to briefing schedule. Before
25 we get to public comment I want to talk about briefing.

1 Briefing are really important. Current schedule that you
2 received in your notice of prehearing conference and
3 evidentiary hearing called for opening briefs due on April
4 5th, 2013, and rebuttal briefs were due on April 12th.
5 However, I believe it was Ms. Belenky who requested that
6 rebuttal go over to 4/25. And Mr. Harris, I think that the
7 applicant concurred in the request that rebuttal briefs be
8 filed on the 24th rather than the 12th.

9 MR. HARRIS: I want to accommodate Ms. Belenky.
10 And I also don't mind having an extra week to do my rebuttal
11 brief. So it's more the former than the latter.

12 HEARING OFFICER CELLI: I'm fine with that, as
13 long as everybody understands this is really important. And
14 what happens is that the committee takes in all of this
15 evidence and then has to start writing a decision based on
16 the evidence. And what seems to always happen is as things
17 spill over and as briefing dates go -- be put into the
18 future the only thing that doesn't get to change is the --
19 is the date the decision is due out, which means that the
20 committee gets a smaller and smaller and smaller amount of
21 time to get its job done.

22 So I'm -- I'm just saying that while there's no
23 problem with that date, and I will put that into our order
24 after today and we'll put out a hearing order, I want to
25 impress upon the parties the need to observe that date and

1 get your briefs in on time. Because your briefs are
2 critically important and they have to make their way into
3 the decision. And a large part of the decision is waiting
4 for the brief.

5 MR. ARNOLD: Is that the opening briefs?

6 HEARING OFFICER CELLI: That -- no. The 24th is
7 your rebuttal briefs.

8 MR. ARNOLD: Rebuttal. Okay.

9 HEARING OFFICER CELLI: The opening briefs are
10 still due on April 5th.

11 MR. ARNOLD: Okay.

12 HEARING OFFICER CELLI: Okay. So you've got two
13 weeks between, and that's -- that's important. Okay.

14 MR. ARNOLD: Thank you.

15 HEARING OFFICER CELLI: With that, that covers,
16 really, all of the housekeeping, all of the prehearing
17 conference topics that we have prepared. I know people have
18 additional things and we're going to take that. But I want
19 to thank everybody for your participation in this.

20 Ms. Pottenger, you indicated you needed to say
21 something?

22 MR. HARRIS: She's raising her hand for me. She
23 does everything else for me, so I guess she does that too.

24 We have one housekeeping thing to make people
25 aware of. We identified Clay Vincent (phonetic) as a

1 witness. Clay got dealt out to other priorities in the
2 company. And so we're going to need to substitute in Chris
3 Moore who is our senior vice president with --

4 HEARING OFFICER CELLI: Did everyone here that?

5 MR. RATLIFF: No.

6 MS. CROM: No.

7 MR. HARRIS: So we're filing something to make
8 sure people know. But Clay Vincent was moved on to the
9 Palen project. And so he's not available to testify. So
10 his testimony will be sponsored by Chris Moore, who is
11 actually Clay's boss on the PM chart.

12 HEARING OFFICER CELLI: Okay.

13 MR. HARRIS: He's familiar with the issues in
14 those. We'll get you a resume and declaration and we'll
15 indicate what subjects we'll place him at, probably, as part
16 of the panel, and land use as part of the panel. In project
17 description he's part of a panel. And in socio he is part
18 of a panel. And so -- and TSE, but no one is asking for
19 questions on TSE, so there won't be any substitution on TSE.
20 But that's -- Chris Moore for soil. And then we'll file his
21 declaration and everything this week. So that's one thing.

22 HEARING OFFICER CELLI: Okay. So it goes.

23 MR. HARRIS: And things -- other things on your
24 list, I mentioned Palen. That's a project that we have
25 going forward as a company set for amendment. There are, in

1 the Palen proposals, the biological conditions that deal
2 with avian issues that we -- Staff has obviously seen these.
3 They were filed in the Palen case. But we will introduce at
4 the workshop on the 3rd -- or 5th, I guess this is 3/5, the
5 5th, introduce those as possible aid and maybe work through
6 the flux issues.

7 Mr. Ratliff and I have been dealing with the
8 issues and we have the most kind of -- this is maybe for the
9 experts, flux and water are issues where we're very close on
10 the conditions. And so we're going to try to take advantage
11 of the workshop to deal with that. And the Palen avian
12 things we think will be of interest to everybody, and we'll
13 try to file those ahead of time, like I asked Dana to do.
14 And some people can do it ahead of the workshop. But
15 that -- that gives me some hope that maybe there's a
16 resolution that, at least, as I told Dick, (inaudible) and
17 come up with a solution on the flux issue that works,
18 including adaptive management, which everybody, I think, is
19 in favor of that. So look for that coming from us this
20 week, probably tomorrow if we don't sleep. But Thursday, no
21 later.

22 Well, and then there's two other comments. We're
23 a little concerned about telephonic witnesses. We don't
24 know who's in the room with them or what they're reading,
25 what they're reviewing. We can't see the body of anyone.

1 And so we really hope that that's limited and that we get
2 notice ahead of time on anybody testifying on the telephone.

3 And then finally, in terms of overall purpose, the
4 committee laid out very clearly that the purpose of the
5 hearing is to summarize your pretrial testimony. I'm a
6 little concerned as I look at the request for time and I
7 compare that to the length of some of the testimony that I
8 think we could read it five or six times and would not need
9 the entire time requested. So we would want the committee,
10 if you could, to kind of remind folks about the purpose of
11 pre-filed testimony moving forward so there is no unfair
12 surprise.

13 And I think with that I want to say thank you for
14 having us here. Our attitude is much improved. The fear of
15 the unknown has gone away, and we thank you for taking the
16 time and accommodating our witnesses.

17 I have to tell you one kind of funny story. The
18 trip that was creating problems for the socio expert is not
19 to India, it's to Indiana. So that's why we were having a
20 little Laurel and Hardy moment when we were laughing at
21 that. So anyway, we had -- we had a telephone problem, the
22 first with no cell service, so figure that one out. So --
23 but anyway, thank you all very much. We very much
24 appreciate it.

25 HEARING OFFICER CELLI: Thank you, Mr. Harris. So

1 having spoken with --

2 (Colloquy Between Hearing Officer Celli and
3 Commissioner Douglas)

4 HEARING OFFICER CELLI: Right. I'm going to --
5 what I'm going to put in, I'm going to put in the order --
6 we're going to have a hearing order that's going to include
7 today's schedule that we worked out and anything else that
8 we think needs to be in there. We're going to have to ask
9 the parties to identify and exchange those witnesses that
10 are going to have to appear telephonically. And I know this
11 is very -- it's not all that concrete because we don't know
12 what sorts of things are going to get bumped into the
13 following week still. But if people want to take advantage
14 of that I think it's important for us to identify that. So
15 I will come up with a way to put that in the order so it
16 facilitates that exchange as quickly as we can do it.

17 Again, I'm going to ask everybody to make sure
18 that we get those to us by Thursday.

19 Go ahead, Mr. Pritchett.

20 MR. PRITCHETT: Procedural question. Is it
21 possible in these hearings for -- one of our people can't be
22 here in person, but can I read his testimony by proxy, as
23 opposed to having him read it telephonically?

24 HEARING OFFICER CELLI: Well, what I would say is
25 you can submit it as just an exhibit and we would -- it

1 would be in evidence. So it's the same thing, only it's
2 faster, actually, to --

3 MR. PRITCHETT: Yeah. Okay. Well, yeah.

4 HEARING OFFICER CELLI: -- just submit it.

5 MR. PRITCHETT: We've already submitted his
6 testimony. But he --

7 HEARING OFFICER CELLI: Oh.

8 MR. PRITCHETT: -- won't be able to be here in
9 person, and he may not be able to make the phone call
10 either.

11 HEARING OFFICER CELLI: That's fine. And we --

12 MR. PRITCHETT: Just take the -- the written
13 testimony?

14 HEARING OFFICER CELLI: Right. Which I suspect we
15 already have; right?

16 MR. PRITCHETT: Yes.

17 HEARING OFFICER CELLI: Okay. And, yeah, there's
18 absolutely no reason for somebody to come in and read what
19 we already received. That's -- there's just no reason to do
20 that.

21 The second thing I want to say, and thank you,
22 Commissioner, for reminding of this, the -- I drew a blank
23 right now. Oh, that's right. In some people's exhibit
24 lists there's things like the Encyclopedia of Biology, or
25 something like that, huge documents. And there might be a

1 sentence or two or something you need the committee to know.
2 The committee is not going to read the Encyclopedia of
3 Biology. The committee needs you in your briefs to say this
4 is so because at page 550 of the Encyclopedia of Biology
5 this person states whatever supports my premise. Okay.

6 I want to be clear about that. You can't just
7 dump a bunch of evidence on the committee and have us --
8 because we're not going to try to find relevance for you.
9 You have to -- the burden is on each party to establish
10 relevance to the committee. And so this is very important.
11 We're putting on all these witnesses. If there's something
12 you want to use to impeach them, you better have that at the
13 ready. And so I'm talking not just -- didn't you say in
14 this book? No. At page 555, paragraph 3, you state, quote,
15 blah, blah, blah, blah. Do you recall making that
16 statement? Okay. Isn't it true that on -- in this
17 transcript or wherever or on page whatever, paragraph
18 whatever, you said something else, or however you're going
19 to use the evidence. But I'm just saying we don't have time
20 for people to flip around in the books and try to define
21 things. Okay.

22 When you're doing -- asking your questions and
23 you're in the heat of battle your brain does not work as
24 well as when you are relaxed at your computer at home with
25 your cat on our lap and a cup of coffee. And I want to be

1 really clear that you're not going to come up with brilliant
2 cross-examination on the fly when we go do evidentiary
3 hearings. Come prepared. Because when the committee starts
4 hearing people go, hmm, thinking of things or wondering it
5 out, we cut you off at that point.

6 And finally, my famous legal definition of a
7 moment is ten seconds. So if you want to -- we'll give you
8 a moment. When you say, may I have a moment, ten seconds.
9 That's because we're under pressure for time.

10 Ms. MacDonald?

11 MS. MACDONALD: Speaking of impeaching, the -- I
12 have tried -- I have -- I have asked you before, via email,
13 what would be the appropriate procedures or places to
14 present evidence about the motion to terminate. I presented
15 it in project description. They presented it in
16 alternatives. Can I please get some clarification of -- I
17 don't care what topic area it goes into, but what is the
18 right place for me to address these issues?

19 (Colloquy Between Hearing Officer and Commissioners)

20 HEARING OFFICER CELLI: The basis for that -- we
21 didn't deny the motion. What we did --

22 MS. MACDONALD: I understand

23 HEARING OFFICER CELLI: -- was we put it off --

24 MS. MACDONALD: Yes.

25 HEARING OFFICER CELLI: -- because we hadn't taken

1 any evidence yet.

2 MS. MACDONALD: Well, you said that the hearing
3 would be the appropriate place to hear it.

4 HEARING OFFICER CELLI: Right.

5 MS. MACDONALD: Then, okay, so I'm trying to find
6 out where is -- what is the committee's preference or where
7 is the appropriate place? Because obviously the FSA's
8 technical disciplines don't have a heading for motions like
9 that.

10 HEARING OFFICER CELLI: Right.

11 MS. MACDONALD: So, you know, and like I said, I
12 have no preference. I don't care which topic area it would
13 like to be seen. The applicant has chosen alternatives.
14 They're bringing a witness there. If that is he preferred
15 way, I didn't put testimony under alternatives because to me
16 it was more project description. But I need clarification
17 as to where the appropriate procedural place to address this
18 issue is.

19 HEARING OFFICER CELLI: That's a good question.

20 Hold that --

21 MS. MACDONALD: Thank you.

22 HEARING OFFICER CELLI: -- second a moment -- that
23 question a moment.

24 (Colloquy Between Hearing Officer and Commissioners)

25 HEARING OFFICER CELLI: So the question -- to

1 answer your question, the question was when to bring this
2 motion to terminate? The motion to terminate was brought
3 before the committee said we're not going to -- we denied it
4 without prejudice, meaning you can bring it again, because
5 we just thought it was premature. We're still going to have
6 to hear all the evidence. It's going to have to come in
7 after the evidence comes in.

8 My recommendation is that you put it in
9 concurrently with your brief.

10 MS. MACDONALD: Okay.

11 HEARING OFFICER CELLI: Because then it's going to
12 make its way into the PMPD --

13 MS. MACDONALD: Okay.

14 HEARING OFFICER CELLI: -- the Presiding Members
15 Proposed Decision. Ladies and Gentlemen, when I say PMPD I
16 mean Presiding Members Proposed Decision. That's what we're
17 working towards.

18 MS. MACDONALD: So if am understanding correctly,
19 there isn't technically an appropriate topic area that this
20 would be addressed, that it will be addressed through all
21 the technical disciplines, through the cross-examination and
22 the panel. And then based on what is gathered through that
23 cross-examination that I may or may not get due to the
24 informal thing, then in addition to all the other topics I
25 can also add the motion on top of it; is that correct?

1 HEARING OFFICER CELLI: That's right.

2 MS. MACDONALD: So it's not really part of the
3 hearing?

4 HEARING OFFICER CELLI: Well, you need that
5 evidence in order to make the motion. Because if the motion
6 is -- is there's an insufficiency of the evidence --

7 MS. MACDONALD: Well, I obviously thought it was.

8 HEARING OFFICER CELLI: -- then --

9 MS. MACDONALD: I can certainly get more.

10 HEARING OFFICER CELLI: Right.

11 MS. MACDONALD: Got it.

12 HEARING OFFICER CELLI: Then, you know, at the
13 close of the evidence, that's when you bring the motion.
14 Now, we're not saying you have to do it immediately. But it
15 seems to me that the right place to do that, if you want it
16 to be considered as part of all of the rest of the
17 considerations that this committee has to consider would be
18 with probably your opening brief.

19 MS. MACDONALD: Opening brief?

20 HEARING OFFICER CELLI: Right. Because by the
21 time --

22 MS. MACDONALD: Oh, opening brief, not opening
23 testimony?

24 HEARING OFFICER CELLI: Right opening brief.

25 MS. MACDONALD: Got it. Okay.

1 HEARING OFFICER CELLI: April 5th --

2 MS. MACDONALD: Okay.

3 HEARING OFFICER CELLI: -- is what --

4 MS. MACDONALD: All right.

5 HEARING OFFICER CELLI: -- we're suggesting.

6 MS. MACDONALD: Thank you very much. I appreciate
7 it.

8 HEARING OFFICER CELLI: Yes.

9 MS. MACDONALD: I know it was a little
10 complicated. Thank you.

11 HEARING OFFICER CELLI: Sure. Okay. So I'm going
12 around this way to hear anybody's parting shots before we
13 get to public comment. Anything from Mr. Pritchett or the
14 Old Spanish Trail Association?

15 MS. WARREN: No. Everything seems clear to me.
16 At this point it still seems clear. We'll see whether it
17 remains clear.

18 HEARING OFFICER CELLI: Okay.

19 MS. WARREN: But, yes, you know, everything seems
20 doable. The dates seem doable and so forth. So thank you.

21 HEARING OFFICER CELLI: Thank you. And thanks for
22 your participation, everybody.

23 Mr. Arnold, anything further from Richard Arnold?

24 MR. ARNOLD: No, not really. I think we could
25 have probably saved a lot of time if we just canceled the

1 project, and problem solved. Just my simple country boy of
2 looking at things. So problem solved. No, thanks. We're
3 good. Thanks.

4 HEARING OFFICER CELLI: Okay. Thank you.

5 MS. CROM: We're fine.

6 HEARING OFFICER CELLI: Inyo County, nothing
7 further. Amargosa, nothing further. Mr. Zellhoefer,
8 nothing further.

9 Staff, anything further?

10 MR. ARNOLD: If I could, just a question about
11 probably how the informal process will go will be set on the
12 first day with the first witnesses, so -- the first groups
13 of witnesses. So you can make sure we understand how you're
14 going to do land use and visual on the first day. I just
15 wanted to question, would you then take the county's land
16 use witnesses and you would take the staff witness and you
17 would take the applicant's witness and take them all three
18 together, put them at a table together. Maybe you'll let us
19 sit at the table or maybe you won't, as attorneys.

20 HEARING OFFICER CELLI: Probably not the
21 attorneys.

22 MR. RATLIFF: Okay.

23 HEARING OFFICER CELLI: But certainly all the
24 experts. We're going to have quiet a crowd.

25 MR. RATLIFF: Have -- have each of them do an

1 introductory statement of maybe five minutes about their
2 conclusions and how they reached their conclusions perhaps?

3 HEARING OFFICER CELLI: What's your opinion and
4 what's the basis of your opinion?

5 MR. RATLIFF: Right. And what are your
6 conclusions, at least.

7 HEARING OFFICER CELLI: Right. And I -- Ms.
8 Strachan, I hope you're listening to this, because this
9 table sounds like it's growing. So we need to be able to
10 find a way -- it would be nice if we could get risers, then
11 we could have a choral group of experts and we can listen to
12 them all talk amongst themselves. It is a gym.

13 (Colloquy Between All Parties)

14 HEARING OFFICER CELLI: Ms. Willis?

15 MR. RATLIFF: Let me finish the thought before I
16 give up the talk here. Them to have a discussion with those
17 witnesses amongst themselves in which they are basically
18 engaged by you and answer your questions.

19 HEARING OFFICER CELLI: Okay.

20 MR. RATLIFF: And then is there -- there won't be
21 cross-examination in those circumstances typically.

22 HEARING OFFICER CELLI: Well, we're loathe to say
23 there's no cross-examination because, you know, the parties
24 may have burning questions that we would never have thought
25 of. And we think that it's appropriate if we're going to

1 exhaust the topic to let the parties ask a question or two.

2 COMMISSIONER DOUGLAS: Let me say it -- let me say
3 it this way if I can. I just grabbed the mike. We're not
4 thinking bout things in the formal terms of cross-
5 examination. But, for example, there may be a party that
6 doesn't have a witness but has questions. And so we would
7 want the party to come forward and say, well, you know, I've
8 heard all of this an I still have these questions and I
9 still -- you know, I don't understand this. And we might
10 allow that party to ask some questions directly to a
11 witness. We might also say, okay, I hear your question.
12 That makes a lot of sense to me. You know, witnesses, what
13 do you -- you know, who is best placed to address that and
14 kick the question to the panel so that -- you know, he
15 purpose of doing this is to ensure that we get to the heart
16 of issues more quickly and -- and efficiently. And so
17 whatever the best way of doing that.

18 But we -- but, you know, I do envision allowing
19 questions, allowing a party to, you know, I think Ms. Crum
20 brought up, you know, allowing, you know, maybe a closing
21 comment or something if that's needed without argument, but
22 just to ensure completeness of the record.

23 MS. WILLIS: When our -- because our staff witness
24 will be up first for land use. Is it okay for the attorney
25 then to direct him through questions so that they can just

1 get to the point, or do you want just a recitation of
2 issues? Because it might be -- it might be easier to follow
3 if we can kind of move them through that with question and
4 answer, like we would do with --

5 (Colloquy Between Hearing Officer Celli and
6 Commissioner Douglas)

7 HEARING OFFICER CELLI: Essentially, the Staff and
8 Applicant would be introducing their -- the issues as they
9 see them.

10 MS. WILLIS: Right. Then I was just wondering if
11 it's okay that we facilitate that so get them to -- so
12 you're not listening to 15 to 10 minutes talking as
13 opposed --

14 HEARING OFFICER CELLI: Well, I mean, that's a
15 little extreme, 10 to 15 minutes. Really, I mean, we're
16 talking about a high-level summary. We already have their
17 testimony; right?

18 MS. WILLIS: Right.

19 HEARING OFFICER CELLI: And they're going to say,
20 this is out opinion. Our opinion is whatever. The basis of
21 the opinion, is fact, fact, fact, fact, fact. And as a
22 result of those facts, based on my analysis and applying
23 these facts to the law or my study, my -- my expertise,
24 whatever, I come to the conclusion that -- this conclusion.

25 MS. WILLIS: And then you're also, though,

1 required to direct the committee to what the issues are with
2 other parties, as well. Isn't that what you were asking
3 for, to identify --

4 HEARING OFFICER CELLI: Yeah.

5 MS. WILLIS: -- identify what other issues there
6 are.

7 HEARING OFFICER CELLI: In the big picture you're
8 going to -- you know, Staff is probably in the best position
9 to say this is -- this is the issue and this is the way we
10 see it, and these parties have this -- seem to have this
11 angle on it. This is our angle, Applicant's angle.

12 MS. WILLIS: I mean, I usually do a direct in ten
13 minutes with question and answer. So I'm just thinking that
14 it might be an easier way just to get to the point.

15 COMMISSIONER DOUGLAS: I think having the
16 attorneys facilitation to ensure thoroughness is fine, as
17 long as we're, you know, within the time limits. And if you
18 could try to make the format more informal so that, you
19 know, in a formal direct you'll ask a question, get an
20 answer, ask follow-up, get an answer. And I think that
21 that -- we're hoping to move a little bit beyond that. But
22 I don't have any issues with facilitation.

23 HEARING OFFICER CELLI: But it's got to be good
24 direct. In other words, it's opening questions. We want to
25 hear -- I don't want to hear leading questions from

1 attorneys. I want to hear the evidence come from the
2 experts.

3 MS. WILLIS: Right.

4 HEARING OFFICER CELLI: So that's what we're
5 looking for. Why is a great question.

6 MS. WILLIS: Right.

7 HEARING OFFICER CELLI: Okay. So --

8 MR. RATLIFF: And you will -- presumably you'll --
9 you'll take, for instance, in land use you'd talk all of the
10 people to the table at once and -- and we'll do this as kind
11 of paneling all of the witnesses at once.

12 HEARING OFFICER CELLI: Correct. They will be
13 sworn. We would swear witnesses at the same time.

14 MR. RATLIFF: Okay.

15 HEARING OFFICER CELLI: There's a way -- there's a
16 number of ways to do that. The way I would probably do it
17 is administer the oath and then say Mr. Jones, Mr. Smith,
18 yes, yes, yes, yes, yes. And then I've got that in the
19 record.

20 MR. RATLIFF: Okay.

21 HEARING OFFICER CELLI: So -- but in the end what
22 I think is, you know, we don't want a lot of duplication.
23 You're going to have different experts for different
24 reasons, have different, you know, uses. And then we'll
25 hear what they have to say. And then really what we're

1 looking forward to is the discussion between the experts
2 themselves. And that, I envision, would be largely guided
3 by the commissioner and the committee.

4 MR. RATLIFF: Right.

5 HEARING OFFICER CELLI: Okay. So if there's
6 nothing further from Staff -- oh, yes.

7 MS. WARREN: If in answering a question in cross-
8 examination or whatever you want to call it you come up with
9 some information that would expand people's understanding
10 but it's not in one of your exhibits, it's in a different
11 one that you haven't in advance listed, can we do that or
12 not?

13 HEARING OFFICER CELLI: Yeah. That -- I mean,
14 that's a risk. But what -- what we're not going to have is
15 this isn't Matlock or A Few Good Men, and we don't want to
16 see like courtroom theatrics where you do this, didn't you,
17 then you did that, didn't you? You know, I mean, that's --
18 that does us no good here. And so if there is -- you know,
19 clearly, this is an information gathering process. If
20 something like you just described comes up then, yeah, we
21 want to hear about it. What about that?

22 MS. WARREN: Okay.

23 HEARING OFFICER CELLI: And we'll -- we'll get to
24 it. And we -- we should hear about that --

25 MS. WARREN: Okay.

1 HEARING OFFICER CELLI: -- but within reason,
2 because we do need to stay within the issue and we don't
3 want to go all over the place. So it's going to be an
4 interesting dance. We're going to have to be agile in this
5 process.

6 MS. WARREN: Okay. Thank you.

7 HEARING OFFICER CELLI: Thank you.

8 MR. HARRIS: So now I'm confused. So on the land
9 use panel, Staff will put on their witnesses. And then our
10 witnesses will be there. I'll put my witness on for ten
11 minutes and then -- I will put my witness on for ten minutes
12 through the direct and then we open that up so it's Staff,
13 Applicant --

14 HEARING OFFICER CELLI: I actually think that
15 maybe Staff and Applicant's witnesses are all on the same
16 panel, maybe everybody. Maybe the whole panel takes -- is
17 seated at the same time and sworn in at the same time.

18 MR. HARRIS: Well, I'm just trying to understand
19 sequences. So Kerry would go through her ten minutes of
20 direct. Then we would go through our ten minutes of direct.
21 And then the panel is available for questions?

22 HEARING OFFICER CELLI: Right. We do need to have
23 a basic idea of what is their opinion, what is the basis of
24 their opinion, kind of thing.

25 MR. HARRIS: Okay.

1 HEARING OFFICER CELLI: Yeah.

2 MR. HARRIS: And for folks who aren't going to
3 show up, then they're testimony will be accepted basically
4 as public comment then since they're not available for
5 cross? The one witness that is not going to -- may not be
6 there, their testimony is in but they're not available for
7 cross.

8 HEARING OFFICER CELLI: Right.

9 MR. HARRIS: So you would accept that testimony?

10 HEARING OFFICER CELLI: Well, I'm assuming it came
11 in as testimony and you were able to rebut.

12 MR. HARRIS: Am I able to cross through?

13 HEARING OFFICER CELLI: That's -- that's the
14 difficult part. If -- if that person is available, maybe
15 we'll do it on the phone. But like we said, that's risky
16 business.

17 MR. HARRIS: Okay. So if they're not available
18 for cross then you would accept the testimony and give it
19 the weight of public comment?

20 HEARING OFFICER CELLI: Right.

21 MR. HARRIS: Okay.

22 HEARING OFFICER CELLI: Exactly. Okay. I want to
23 thank everybody. This is not easy, but I really appreciate
24 everybody's commitment to this. And we will hopefully get
25 to the right result after everybody puts in the time that

1 they have.

2 I want to -- if I can have the blue cards.

3 MR. ROBERTS: Oh, there's -- I don't have any.

4 HEARING OFFICER CELLI: There are zero?

5 MR. ROBERTS: Well --

6 HEARING OFFICER CELLI: Go ahead.

7 MR. ROBERTS: It's time for public comment, Ladies
8 and Gentlemen. So if you're interested in making a public
9 comment you can --

10 HEARING OFFICER CELLI: Can I interrupt you one
11 more time?

12 MR. ROBERTS: Yes.

13 HEARING OFFICER CELLI: I did not ask Ms. Belenky
14 if there was any final point that she wanted to make. So I
15 just want to hear from Ms. Belenky, if there was anything
16 further before we go to public comment?

17 MS. BELENKY: No, there isn't anything further,
18 except that I did just want to close the loop on the issue
19 of testimony and hearings going into the evening. We have
20 seen two years ago some various (inaudible). And I just
21 want to caution. I think it's fine to have a small time
22 amount of time if people are going to eat in the evening.
23 But we would very strongly object to late-night hearings.
24 And we don't think it's fair to the parties or to the
25 experts.

1 HEARING OFFICER CELLI: Okay. Objection noted.

2 Thank you.

3 Now, with that we'll go to public comment. So Mr.
4 Roberts, go ahead and --

5 MR. ROBERTS: Oh.

6 HEARING OFFICER CELLI: Did anyone fill out a blue
7 card?

8 MR. ROBERTS: No one filled out a blue card.

9 HEARING OFFICER CELLI: Is there anyone in the
10 room who would like to make a public comment? Okay. I see
11 there's, oh, I don't know, maybe ten people in the room now,
12 and nobody has raised their hand.

13 So we're going to go to the phones. And I'm going
14 to un-mute people who have identified themselves first. And
15 then when I've gotten through those people I'm going to go
16 to the people who are like caller user number one, number
17 two, because we don't know who you are.

18 Bradley Brownlow, did you wish to make a comment?

19 MR. BROWNLOW: No, thank you.

20 HEARING OFFICER CELLI: Thank you. Chris Davis is
21 with Staff. Christopher Moore is with Applicant. Okay.
22 He's not going to make a comment, just listening. "Hello,
23 just listening."

24 Karen Parker, did you wish to make a comment?

25 MS. PARKER: No, thanks.

1 HEARING OFFICER CELLI: Thank you. Matt Laten
2 (phonetic) is with Staff. Mavis Scanlin (phonetic), did you
3 wish to make a comment? A journalist.

4 Nancy Matthews, did you wish -- Nancy Matthews,
5 did you wish to make a comment?

6 MR. HARRIS: She's with the applicant.

7 HEARING OFFICER CELLI: Oh, she's with Applicant.
8 Okay. Thank you.

9 Susan Cochran is with the hearing office.

10 TR, did you wish to make a comment?

11 Okay. We've gone through almost everybody on the
12 phone. Is there anyone on the phone at this time, now that
13 everybody is un-muted, who would like to make a comment to
14 the committee, please speak up now. Okay.

15 Hearing none, I will return the podium back to
16 Commissioner Douglas.

17 COMMISSIONER DOUGLAS: All right. Well, I want to
18 thank the parties again. I know this has been a grueling
19 afternoon, and it's no fun to spend hours going through
20 schedule. And I'm glad we finally have something that works
21 for everybody. We'll look forward to being out here again
22 in a couple of weeks for the evidentiary hearings. I do
23 want to encourage all the parties to work together. If you
24 have ideas for how to help make the flow work or help make
25 sure we, you know, order topics in the right way to -- to

1 advance what we need to do, you know, we're certainly all
2 ears. But we're -- we're not going to spend hours on our
3 first day of evidentiary hearing talking about process
4 because we're going to need to jump right in.

5 So thanks -- thanks for being here. And we'll
6 look forward to seeing you in a couple weeks. We're
7 adjourned.

8 (Thereupon the California Energy Commission, Hidden
9 Hills Solar Electric Generating System, Prehearing
10 Conference and Evidentiary Hearing and Order adjourned
11 at 4:31 p.m.)
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CERTIFICATE OF REPORTER

I, MARTHA L. NELSON, 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 into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of March, 2013.

/s/ Martha L. Nelson

MARTHA L. NELSON - CERT 00367

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.

/s/ Martha L. Nelson

March 5, 2013

MARTHA L. NELSON - CERT 00367