

PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for)
Certification for the) Docket No. 99-AFC-1
ELK HILLS POWER PROJECT)
(ELK HILLS))
)
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CALIFORNIA ENERGY COMMISSION
FIRST FLOOR HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

THURSDAY, DECEMBER 16, 1999
10:00 A. M.

Reported by:
Valorie Phillips
Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

David Rohy, Vice Chairman
Presiding Member

Michael Moore
Committee Member

STAFF PRESENT

Gary Fay, Hearing Officer

Major Williams, Hearing Officer

Bob Eller, Adviser to Commissioner Rohy

Shawn Pittard, Adviser to Commissioner Moore

Kerry Williams, Staff Counsel

Marc Pryor, Siting Project Manager

REPRESENTING THE APPLICANT

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INTERVENORS PRESENT

For CURE:

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For Sempra Energy:

Pat Fleming

Proceedings	1
Introductions	1
Air Quality	4
Public Health	6
Work Safety	8
Worker Safety	10
Transmission Line Safety	14
HAZMAT	14
Waste Management	14
Land Use	15
Traffic Transportation	16
Noise	16
Visual	17
Cultural	17
Socio-Economics	18
Biology	18
Soil and Water	19
Facility Design	23
Transmission System Engineering	24
Compliance	20
Discussion on Dates	35
Adjournment	44
Certificate of Reporter	45

1 P R O C E E D I N G S

2 PRESIDING COMMISSIONER ROHY: Welcome to
3 the Prehearing Conference for the Elk Hills
4 Project -- Elk Hills Power Project, I'll have to
5 be more correct. I'm David Rohy, Presiding Member
6 of the Elk Hills Power Project Committee.
7 Commissioner Moore, two to my right is the second
8 Member of the Committee. Mr. Gary Fay is our
9 Hearing officer, but I believe as we go forward,
10 Major Williams will become the Hearing Officer.
11 Is that correct, Mr. Fay:

12 HEARING OFFICER FAY: That's correct.

13 PRESIDING COMMISSIONER ROHY: To my left
14 is Bob Eller, Principal Policy Adviser in my
15 office and to my far right is Shawn Pittard,
16 Adviser to Commissioner Moore.

17 The purpose of this hearing is to work
18 on our schedule to see how the case will be
19 conducted. It is my choice to have the Hearing
20 Officer conduct most of the business in the case,
21 so I will ask Mr. Fay to begin the proceedings.

22 HEARING OFFICER FAY: Thank you,
23 Commissioner Rohy.

24 As the Commissioner indicated, Major
25 Williams, who was delayed, thanks to Amtrack will

1 be here shortly, will be taking over this case as
2 the Hearing Officer and I will be transitioning.
3 Questions can be directed to either of us, at
4 least for the time being.

5 What we'd like to do today is first take
6 introductions and then we'll go forward with the
7 -- we'll take preliminary comments and then a
8 subject-by-subject review, just to be sure we
9 don't miss anything. And frankly, I prefer it,
10 if the parties have nothing to add to their
11 written prehearing conference statements, just
12 indicate no change and we'll save some time, as
13 long as we do have that on the record.

14 So, can we begin with the Applicant?

15 MS. LUCKHARDT: Sure, my name is Jane
16 Luckhardt from the law firm of Downey, Brand,
17 Seymour and Rohwer and we are representing Elk
18 Hills Power in this case. With me here today is
19 Taylor Miller. He is my co-counsel on the case.
20 We have our responsibilities split by subject
21 matter, so either of us will be taking the lead on
22 certain issues.

23 Up at the table as well is Dennis
24 Champion from Elk Hills Power.

25 HEARING OFFICER FAY: Thank you. Staff?

1 STAFF COUNSEL WILLIS: Yes, I'm Kerry
2 Willis, Staff Counsel and to my right is Marc
3 Pryor, Project Manager for Elk Hills.

4 MS. REYNOLDS: Lizanne Reynolds, counsel
5 for CURE.

6 HEARING OFFICER FAY: All right.

7 Any other intervenors?

8 MS. LUCKHARDT: Also in the audience we
9 have Pat Fleming from Sempra Energy Resources.

10 MS. FLEMING: Representing Sempra Energy
11 Resources.

12 MS. LUCKHARDT: Okay.

13 And we also have Dennis Newman from
14 Occidental -- of Elk Hills. Thank you.

15 HEARING OFFICER FAY: Okay. Thank you
16 very much.

17 Let's get started then. Forgive me if
18 my order of progress doesn't match your own, but
19 I've got a handy little chart here that I'm trying
20 to use to organize my thoughts.

21 I assume there's no controversy about
22 the project description at this time, is that
23 correct? Speak up, if so.

24 All right. That can affect the scope of
25 the analysis, of course.

1 All right, air quality. From what I see
2 all three active parties agree that this will not
3 be filed as per the schedule. I'd like to hear
4 from the Applicant if they have anything to add to
5 this.

6 MR. MILLER: I might just add that the
7 PDOC was issued day before yesterday, so that is
8 as we most recently expected. So that would be
9 out for its 30-day comment period at this point.
10 And that does fit in with the prehearing -- the
11 most recent status reports filed by ourselves and
12 staff.

13 HEARING OFFICER FAY: So, based on my
14 calculations, as compared to the Committee's
15 original schedule, that is 57 days later than is
16 required for the 365-day schedule. I'll just note
17 that.

18 Okay. Anything further, Mr. Miller?

19 MR. MILLER: Not on air.

20 HEARING OFFICER FAY: And nothing that
21 you've seen changes anything in your prehearing
22 conference statement regarding air quality at this
23 time?

24 MR. MILLER: I don't think -- that's as
25 we expected it.

1 HEARING OFFICER FAY: Okay. Staff?

2 STAFF COUNSEL WILLIS: We haven't had a
3 chance to review the PDOC at this time, but as far
4 as the schedule goes I think that fits in with our
5 estimate of December in our prehearing conference
6 statement. So the schedule should pretty much --

7 HEARING OFFICER FAY: So the dates that
8 you gave in your prehearing conference statement
9 are still operative?

10 STAFF COUNSEL WILLIS: Yes.

11 HEARING OFFICER FAY: Okay. CURE?

12 MS. REYNOLDS: We haven't seen the PDOCs
13 so we don't have any changes at this point.

14 HEARING OFFICER FAY: Right, okay, no
15 changes at this time.

16 All right. It looks to me like, based
17 on the dates that staff provided and when they
18 expect to get the final DOC, which I guess is mid-
19 February. And then you need four weeks to turn
20 that around with conditions, etcetera, so you
21 would expect the FSA on air quality around March
22 15th?

23 STAFF COUNSEL WILLIS: That's correct.

24 HEARING OFFICER FAY: And the earliest
25 that we could have evidentiary hearings would be

1 March 29th?

2 STAFF COUNSEL WILLIS: That's correct.
3 Mr. Pryor just brought to my attention that the
4 PDOC has not been docketed yet as well, so I don't
5 know if that has a bearing on date, just for the
6 record.

7 MR. PRYOR: I'm sure it will be very
8 short.

9 STAFF COUNSEL WILLIS: That would be
10 correct, nothing -- I don't think we'd be
11 available or ready for hearings before the 29th of
12 March.

13 HEARING OFFICER FAY: Okay. I'd just
14 remind everybody that there's a 14-day requirement
15 from the time the FSA comes out until we can have
16 evidentiary hearings. So even if it doesn't
17 appear that that much lead time is necessary, it's
18 required by the regs, and frequently we wait -- we
19 give the parties seven days to file their
20 testimony in response or their affirmative case as
21 well as their response to the FSA, and that gives
22 us another seven days before the hearing.

23 Public health, it looks to me like the
24 parties think that's ready to go forward, except
25 for CURE. Anything to add, Mr. Miller?

1 MR. MILLER: No.

2 HEARING OFFICER FAY: Okay. Staff?

3 STAFF COUNSEL WILLIS: No.

4 HEARING OFFICER FAY: I'll just ask
5 staff, it's unusual to have public health go
6 before air quality. That's going to work, though,
7 in your opinion?

8 MR. PRYOR: Just in my limited
9 experience, on the Sunrise case we requested
10 public health to follow air quality to address a
11 certain issue. I believe in this case, public
12 health will be ready as we stated in our --

13 HEARING OFFICER FAY: Okay.

14 And, CURE, you don't believe it's ready
15 to go forward?

16 MS. REYNOLDS: No, we've identified the
17 issues in our prehearing conference statement. We
18 don't see a problem with -- we think we could go
19 forward on public health before air.

20 HEARING OFFICER FAY: Okay.

21 MS. REYNOLDS: We don't think those
22 issues are contingent on getting the --

23 HEARING OFFICER FAY: Okay, but no
24 change in your prehearing conference statement?

25 MS. REYNOLDS: Right.

1 HEARING OFFICER FAY: Okay.

2 Worker safety. Applicant?

3 MS. LUCKHARDT: We're ready to go
4 forward on worker safety at this time.

5 HEARING OFFICER FAY: Okay.

6 Staff, anything?

7 STAFF COUNSEL WILLIS: We don't have
8 anything to add.

9 HEARING OFFICER FAY: Okay. And, CURE,
10 you think that's not ready to go forward.
11 Anything further from your prehearing conference
12 statement?

13 MS. REYNOLDS: No changes.

14 HEARING OFFICER FAY: I apologize to the
15 parties that did not receive page two of today's
16 notice. That was, apparently, an error that did
17 occur here at the Commission, although the full
18 notice did go out on the web. And so staff and
19 CURE, I guess, didn't see the part that said we
20 needed a time estimate. Are you able at all to
21 give us a time estimate on your affirmative
22 presentation on public health and your cross
23 examination for CURE?

24 MS. REYNOLDS: I could wing it today. I
25 would prefer to file something on Monday perhaps.

1 Is that possible?

2 HEARING OFFICER FAY: Okay. That would
3 be fine.

4 MS. REYNOLDS: I apologize. I didn't
5 see the page two of the --

6 HEARING OFFICER FAY: In fact, why don't
7 we do that. Why don't we ask the parties, if they
8 have anything further to add, to get something to
9 us on Monday and specifically regarding time
10 estimates, and if the Applicant wants to correct
11 any of their time estimates. It just helps us to
12 know whether, you know, we can schedule half a
13 dozen items on a day or something else in between.

14 MS. LUCKHARDT: Mr. Fay, could we also
15 ask that CURE identify their witnesses?

16 MS. REYNOLDS: Oh, yes, we'll do
17 whatever is on the page to do. I haven't seen it,
18 I'm assuming it's on page two.

19 HEARING OFFICER FAY: Right, yeah,
20 that's important.

21 We'd also ask the parties, the staff and
22 CURE to identify exhibits. Don't bother giving
23 them exhibit numbers, we will probably use the
24 Applicant's exhibit list as a draft, and start
25 numbering from there. But if we at least have the

1 description, that will help us, and maybe leave a
2 little empty box on your submittal so we can fill
3 in the numbers as we go.

4 MS. REYNOLDS: I just want to clarify
5 that that exhibit list may not be complete,
6 because we haven't even seen the PDOC, so we don't
7 know what all the issues are.

8 HEARING OFFICER FAY: I understand and
9 I'm sure the Applicant will have additional
10 exhibits as well. That's not a problem, we just
11 want to have something to get started with and
12 obviously it will grow as the case develops.

13 Okay. Then worker safety, it's kind of
14 the same thing, anything further from the
15 Applicant?

16 MS. LUCKHARDT: No, we have nothing
17 further.

18 HEARING OFFICER FAY: Okay.
19 Staff?

20 STAFF COUNSEL WILLIS: Nothing further.

21 HEARING OFFICER FAY: And Ms. Reynolds?

22 MS. REYNOLDS: Nothing further.

23 HEARING OFFICER FAY: Okay.

24 The Committee has discussed a concern in
25 this area, in particular, that they would like to

1 not have to repeat the very time consuming process
2 we went through on Sunrise. So if there are basic
3 elements in your presentation that you think are
4 amenable to the Committee, talking of the Sunrise
5 record, that type of thing, so that we don't have
6 to spend an awful lot of time establishing the
7 basics --

8 MS. REYNOLDS: Could you give me an
9 example? I'm not on Sunrise and --

10 HEARING OFFICER FAY: I'm not sure I
11 can. Any ideas?

12 COMMITTEE MEMBER MOORE: Well, about the
13 only way I can say, in terms of public health
14 and --

15 HEARING OFFICER FAY: Well, worker
16 safety, yeah, I think we --

17 COMMITTEE MEMBER MOORE: We had a lot of
18 information, literally, coming to this very same
19 Committee regarding worker safety, and in
20 tremendous detail. Where, it seems to me, it can
21 be referenced, where you know that the
22 Commissioner is aware of the issue and you can
23 reference it, without going through the very
24 exhaustive testimony of cross examination, where
25 that works out, it seems to me it would save

1 everyone some time.

2 We've already got the point and
3 certainly where there are nuances that are
4 particular to this case, different kind of soil,
5 some other point that really ought to be brought
6 out, then clearly that's important and ought to
7 get on the record. But where we can minimize
8 the -- I guess the detail and concentrate on the
9 specifics, it will probably be to our advantage.

10 Now the flip side of that is that where
11 we can start to focus on some of the cumulative
12 effects, some of the things that really involve
13 other projects or the region as a whole, it's
14 probably going to be worth more of our time to
15 understand how the project fits in than dialing
16 into a lot of specifics about characteristics,
17 especially chemicals or biochemistry that we've
18 heard before.

19 So, I leave that to your judgment, but
20 where it can be minimized it certainly helps the
21 Committee I think.

22 PRESIDING COMMISSIONER ROHY: Right, and
23 particularly, we're going to be interested in
24 cumulative effects on transmission with all the
25 power plants that are in that area. So I would

1 agree with Commissioner Moore on the issues, where
2 we have done -- we've heard exhaustive testimony
3 and if they're not different, referencing would be
4 okay, but especially where they are different we'd
5 like to hear the differences.

6 MS. REYNOLDS: Okay. I'll probably seek
7 clarification as we go on. I want to make sure we
8 have an adequate record in this proceeding.

9 HEARING OFFICER FAY: Sure, and you may
10 want to review the record in Sunrise to see if
11 there's some things that you can ask the Committee
12 to take notice of that establish --

13 COMMITTEE MEMBER MOORE: Right, and let
14 me make it clear at the outset I'm not asking
15 anyone to compromise their case at all or what you
16 think is a fair exposition of knowledge here, it's
17 not my point. It's simply trying to make sure
18 that we don't go over ground needlessly that's
19 already been gone over. Frankly, that can
20 probably cause as many problems as anything else,
21 because you become a little deadened to it when
22 you've heard in that kind of detail.

23 HEARING OFFICER FAY: Along those lines,
24 it occurs to me if everybody has a copy of the
25 proposed topic area combinations that Ms.

1 Luckhardt provided and that was the Applicant's
2 suggestion, and I think perhaps it might help to
3 move public health from group three to group four
4 because of the concern that arose in Sunrise, I
5 know staff is filing information regarding their
6 position on the line between the topic of public
7 health and worker safety.

8 And so if that is subject to controversy
9 it might be better to have these examined on the
10 same day if not back to back.

11 Any questions?

12 MS. LUCKHARDT: That's acceptable to us.

13 HEARING OFFICER FAY: Okay.

14 All right. Transmission line safety and
15 nuisance, it looks like there's no controversy on
16 that, is that correct?

17 Okay. HAZMAT, neither the Applicant or
18 the staff listed that. If they have no change
19 from their prehearing conference statement, I'll
20 just ask CURE, since you listed that as something
21 not ready to move forward, anything to add to your
22 prehearing conference statement?

23 MS. REYNOLDS: No, not at this time.

24 HEARING OFFICER FAY: Okay.

25 Waste management, anything from the

1 Applicant further?

2 MS. LUCKHARDT: No.

3 HEARING OFFICER FAY: Staff?

4 STAFF COUNSEL WILLIS: No.

5 HEARING OFFICER FAY: CURE, where are
6 you on that? I have an inconsistent notation
7 here.

8 MS. REYNOLDS: Oh, did I put ready on my
9 chart? No, we said we did not believe it was
10 ready for hearing on page two and then on page
11 five we identified an issue under waste
12 management.

13 HEARING OFFICER FAY: Thank you.
14 Anything further?

15 MS. REYNOLDS: No.

16 HEARING OFFICER FAY: I recognize that
17 some of this is going to change with more
18 information coming out and I think we're just
19 going to try to keep status reports going so that
20 we can learn if somebody discovers that they
21 either no longer have a matter in issue or all of
22 a sudden have a large problem, and let the
23 Committee know as soon as possible.

24 Land use, any of the parties have a
25 concern on that?

1 Okay. Traffic and transportation, that
2 was again something that staff and the Applicant
3 think is ready to go and CURE does not. Anything
4 to add?

5 Okay. Noise, any comments from any of
6 the parties on that?

7 Okay. I'd like to take a little break
8 here and introduce Major Williams, who is a new
9 Hearing Officer with our office and Major will be
10 taking over this case. And so I want you all to
11 be familiar with him and feel free to call him if
12 you have any questions about any procedural
13 aspects.

14 And we have gone down the little chart
15 here that I'm keeping track of things, and we have
16 gone down as far as noise. You can handle this
17 any way you want. I was going to kind of wait for
18 you to come before I got into some of the
19 boilerplate that we like to do.

20 The Public Adviser's Office often
21 addresses the group and, from what I can see,
22 there are no members of the public here. Are
23 there any? Okay. There's no indication at all,
24 so I think we can forego that.

25 For the record, we do take comments from

1 the public at the end of every hearing and are
2 glad to do that.

3 All right, for now, I'm just going to
4 keep marching along. Visual, any comments from
5 anybody? All right, nothing on that.

6 And I see the staff and Applicant think
7 that cultural is ready to go. CURE does not.
8 What is the specific concern? Is it a narrow one?

9 MS. REYNOLDS: Yes, our concern is that
10 there are a significant number of cultural sites,
11 81 that have been identified along the route.

12 HEARING OFFICER FAY: Along the
13 transmission, alternative routes?

14 MS. REYNOLDS: All of the -- I think
15 that's a combination of all of the linears, both
16 the water line, wastewater line and transmission
17 line. And so we do disagree with the conclusion
18 that there is no significant impact associated
19 with those and we think that alternatives should
20 be evaluated that might be less impactful.

21 HEARING OFFICER FAY: Okay. Will you be
22 putting an affirmative case regarding that? Do
23 you know at this time?

24 MS. REYNOLDS: I'm not sure whether we
25 will put on our own testimony or simply cross

1 examine staff.

2 HEARING OFFICER FAY: But when you file
3 on Monday you'll indicate in the terms of time
4 what will be involved.

5 MS. REYNOLDS: Yes.

6 HEARING OFFICER FAY: If it's just cross
7 examination, an estimate of how much that is. If
8 it's also an affirmative case, direct testimony,
9 an estimate of how long that will take.

10 Okay. Socio-economics, any comments,
11 any modifications to the prehearing conference
12 statements? And I didn't have a notation for
13 CURE on that. It's probably my oversight.

14 MS. REYNOLDS: No, we think it's ready
15 for hearing, so we don't have any issues.

16 HEARING OFFICER FAY: No problem, okay.

17 Okay, everybody seems to agree that
18 biology will be delayed. I understand that staff
19 plans to file by February 18th, is that correct?

20 STAFF COUNSEL WILLIS: That's correct.

21 HEARING OFFICER FAY: All right. And
22 that's based on when you think the various agency
23 opinions will be ready, is that correct?

24 STAFF COUNSEL WILLIS: We do not believe
25 that the opinions will be ready at that point. I

1 think the date we were looking at was April 10th,
2 but we believe that staff will be ready to go
3 ahead with their testimony based on discussions
4 and preliminary opinions.

5 HEARING OFFICER FAY: Discussions with
6 those agencies?

7 STAFF COUNSEL WILLIS: With those
8 agencies.

9 HEARING OFFICER FAY: So it would not
10 only be their own opinion here at the CEC, but
11 they reflect what the Fish and Wildlife and Fish
12 and Game --

13 STAFF COUNSEL WILLIS: At this point
14 that's what we're hoping for.

15 HEARING OFFICER FAY: Okay.

16 Does CURE have anything to add to your
17 statement?

18 MS. REYNOLDS: No.

19 HEARING OFFICER FAY: And does the
20 Applicant concur with this schedule at this time?

21 MR. MILLER: Yes.

22 HEARING OFFICER FAY: Okay.

23 Soil and water, it looks like that will
24 be delayed. You'll be filing February 18th on
25 that as well, is that correct, staff?

1 STAFF COUNSEL WILLIS: That's correct.

2 HEARING OFFICER FAY: Okay. And what is
3 the delay factor on that?

4 STAFF COUNSEL WILLIS: I'm sorry?

5 HEARING OFFICER FAY: Why is soil and
6 water coming that late?

7 STAFF COUNSEL WILLIS: Staff filed the
8 PSA section on December 6th and we figured that
9 would be about enough time to also have a workshop
10 in between, sometime, hopefully, early February,
11 on water, and then allow a time for the final
12 staff assessment.

13 HEARING OFFICER FAY: At this time are
14 there some significant issues that have arisen
15 regarding water?

16 STAFF COUNSEL WILLIS: I don't believe
17 so.

18 HEARING OFFICER FAY: Okay. So it's
19 just reflecting the delay in the original filing?

20 STAFF COUNSEL WILLIS: That's correct.

21 HEARING OFFICER FAY: Does CURE have
22 anything to add to your prehearing conference
23 statement?

24 MS. REYNOLDS: We had, when we drafted
25 our prehearing conference statement, we only had

1 the PSA for water for a couple of days, so we
2 weren't able to turn that around. I can list the
3 issues of controversy that we have here. I can
4 put it in the Monday filing.

5 HEARING OFFICER FAY: Why don't you tell
6 us now and also put it in the Monday filing.

7 MS. REYNOLDS: Okay, the first issue is
8 the lack of minor constituent composition data for
9 the water source and --

10 HEARING OFFICER FAY: I'm sorry, could
11 you repeat that?

12 MS. REYNOLDS: The lack of minor
13 constituent data, composition data for the water
14 source and the impacts that will have on whether
15 the demineralization process is a hazardous waste
16 treatment unit.

17 HEARING OFFICER FAY: Is that it?

18 MS. REYNOLDS: The next issue is, and
19 this is also the one that staff identified,
20 continued evaluation of whether it's feasible to
21 use an alternative water source, namely, produced
22 water.

23 And the third issue deals with the
24 injection wells and whether or not there are
25 significant impacts associated with the injection,

1 both to water quality and geologic resources.

2 HEARING OFFICER FAY: Okay.

3 MR. MILLER: Mr. Fay?

4 HEARING OFFICER FAY: Yes.

5 MR. MILLER: Maybe this is as good a
6 time as any to raise a suggestion. CURE's PSA
7 comments indicated a concern with geology which
8 was the injection concern --

9 MS. REYNOLDS: Yes.

10 MR. MILLER: And I'm wondering if
11 there's any objection to grouping that issue under
12 water for resolution, rather than geology?

13 MS. REYNOLDS: We have no objection to
14 that. We just didn't want it to appear that we
15 didn't have any issues with geology. It does make
16 more sense to put it in with --

17 HEARING OFFICER FAY: And I understand
18 that you'd be arguing there's an impact on geology
19 at this time, but if we can take all that under
20 way, we may have -- we may be more likely to have
21 the right people here at that time.

22 MS. REYNOLDS: I agree, that's fine.

23 HEARING OFFICER FAY: Does staff concur?

24 STAFF COUNSEL WILLIS: Yeah, and

25 actually staff was going to propose that. The

1 staff person assigned to the water area will be
2 addressing that issue.

3 HEARING OFFICER FAY: Okay.

4 Anything further?

5 Okay, Ms. Reynolds, anything further
6 regarding water?

7 MS. REYNOLDS: No.

8 HEARING OFFICER FAY: Okay. Then, does
9 that remove your concern on geology, if we take up
10 the reinjection question under the subject of
11 water?

12 MS. REYNOLDS: Yes, that's fine. And
13 we'll still be arguing its geological impact, but
14 we're fine with covering it under the water
15 section, procedurally.

16 HEARING OFFICER FAY: Yeah, I mean if
17 there's just a few cross examination questions,
18 that's not a significant time factor. For
19 instance if you, you know, want to clarify
20 something with the staff geologist, I'd just like
21 to get agreement that we're going to -- the time
22 and place when we address that injection problem
23 is primarily under water.

24 MS. REYNOLDS: That's fine.

25 HEARING OFFICER FAY: Facility design,

1 any comments from any of the parties?

2 CURE didn't have a notation on that.

3 MS. REYNOLDS: I'm sorry, what was that
4 on?

5 HEARING OFFICER FAY: Facility design.

6 MS. REYNOLDS: Oh, I'm sorry, I must
7 have omitted that from my chart. We think that
8 that's ready for hearing.

9 HEARING OFFICER FAY: No problems, okay.
10 Reliability. I see no indication from
11 anybody.

12 Efficiency. Same thing.

13 Transmission system engineering. I
14 didn't see a notation from staff. Are you pretty
15 much deferring to the ISO?

16 STAFF COUNSEL WILLIS: No, staff
17 actually -- that was inadvertently left off. We
18 are ready to go in the scheduled January hearing
19 on transmission system engineering.

20 HEARING OFFICER FAY: Okay.

21 STAFF COUNSEL WILLIS: Our staff's
22 witness will be Mark Hesters and we'll include
23 that in our Monday filing.

24 HEARING OFFICER FAY: And, CURE, what is
25 your position on that?

1 MS. REYNOLDS: We're not -- we don't
2 have any issues to the contrary submitted.

3 HEARING OFFICER FAY: Okay.

4 The staff has spelled out why they feel
5 alternatives has to come later, and is CURE's
6 reasoning more or less the same, that until these
7 late issues are addressed that alternatives can't
8 be fully examined?

9 MS. REYNOLDS: Yeah, our -- we've always
10 kind of been a little bit up in the air about how
11 to handle alternatives, whether they should go
12 into the specific resource areas or whether
13 they're all lumped together at the end and whether
14 alternatives includes alternative project sites,
15 you know, what is encompassed by the alternative
16 section of the PSA.

17 Our main concerns with the alternative
18 evaluation is both with regards to cultural
19 resources and biological resources and the
20 significant number of those resources that would
21 be impacted by the linears, that we think the
22 alternative analysis should look at that. I don't
23 know whether you want to cover those issues in
24 biology and cultural and not in alternatives or
25 how you want to handle that.

1 I laid them out under alternatives as
2 well because I wanted to highlight that that is an
3 alternatives issue under a CEQA perspective.

4 MS. LUCKHARDT: I think it's our
5 position that we would like to have them covered
6 under the subject area when we have our subject
7 area witnesses available.

8 MS. REYNOLDS: We have no objection to
9 that.

10 STAFF COUNSEL WILLIS: Staff anticipated
11 that we would cover them under each subject
12 matter, under cultural and bio.

13 HEARING OFFICER FAY: Okay. And why
14 don't you describe for the record just how you
15 usually define alternatives when that topic is
16 addressed by staff.

17 MR. PRYOR: Alternatives, this is
18 usually a siting alternative of the power plant in
19 comparison with possible other sites. We do look
20 at, typically, alternative routes in a general
21 sense. We may take into consideration specific
22 technical areas, but we primarily intend to have
23 those addressed in those areas rather than the
24 general alternative section.

25 HEARING OFFICER FAY: So, for instance,

1 the alternative transmission line routes would be
2 addressed in greatest depth by the transmission
3 system engineering witness?

4 MR. PRYOR: The routes are mentioned in
5 there, as are alternatives and I expect them to
6 be. And, as counsel has said, the cultural area
7 and bio, based upon what we saw from CURE, we will
8 be addressing alternative routes in those two
9 sections as well.

10 HEARING OFFICER FAY: So the biologist
11 would address the biological impacts of the
12 alternative routes and the cultural expert would
13 address the cultural aspects?

14 MR. PRYOR: Yes.

15 HEARING OFFICER FAY: Okay.

16 PRESIDING COMMISSIONER ROHY: Gary.

17 HEARING OFFICER FAY: Yes.

18 PRESIDING COMMISSIONER ROHY: I saw --
19 was that body language that you wanted to speak?

20 MS. REYNOLDS: No, that was body
21 language that I don't want to speak.

22 (Laughter.)

23 HEARING OFFICER FAY: Okay.

24 MS. REYNOLDS: We may have some limited
25 cross on alternatives just to establish the basis

1 for the alternatives analysis and legally related
2 issues. But we won't focus our questioning --

3 HEARING OFFICER FAY: Well, I think the
4 Committee expects that the witnesses have some
5 familiarity with CEQA and that their analysis
6 reflects, you know, sensitivity to the need to
7 examine alternatives, but usually these witnesses
8 are best to speak to their own area rather than
9 have some generalist cover all alternatives.

10 MS. REYNOLDS: No, we have no objection
11 to that.

12 HEARING OFFICER FAY: And as to need,
13 Ms. Willis, why don't you just explain. I assume,
14 based on what staff has filed and the state of the
15 law at this time, that staff would have the only
16 input on that and it would just be further
17 declarations of legal status. Is that correct?

18 STAFF COUNSEL WILLIS: At this time
19 staff anticipates just providing the statement
20 that we provided, I believe in the PSA section,
21 outlining the current state of the law. If the
22 Committee requests otherwise then, you know, we
23 will be happy to comply, but at this point we are
24 not anticipating putting on testimony on need.

25 HEARING OFFICER FAY: Anybody else have

1 a comment about --

2 MS. LUCKHARDT: We're simply looking for
3 clarification from the Committee on what they
4 would like to hear. If you would like us to
5 present a witness on need, we can present a
6 witness. If you would prefer that we would not,
7 we won't.

8 PRESIDING COMMITTEE MEMBER ROHY: Mr.
9 Fay, my understanding of the law is we don't need
10 a witness after January 1.

11 HEARING OFFICER FAY: The decision will
12 not come out before the law changes.

13 PRESIDING COMMITTEE MEMBER ROHY: So
14 let's not burden the case with witnesses in this
15 item.

16 HEARING OFFICER FAY: And we assume that
17 the staff will simply inform the record of the
18 state of the law and that's something we can take
19 notice of.

20 STAFF COUNSEL WILLIS: Thank you.

21 HEARING OFFICER FAY: All right. And
22 there's no disagreement with that then? Okay.

23 And then compliance is pretty much the
24 staff's area and we trust they'll be ready to file
25 that.

1 I think the concern that the Applicant
2 mentioned about hazardous materials and
3 transportation together is addressed in their
4 grouping, and if we can take a minute and take a
5 look at that, does anybody have any comments in
6 addition to the one I made about moving public
7 health to group four, regarding the recommended
8 grouping that the Applicant has proposed?

9 MS. LUCKHARDT: Our purpose in putting
10 things together was to attempt to have all of the
11 pertinent witnesses available on specific issues
12 and as much as possible we would like to have
13 specific issues resolved in one sitting, one
14 hearing day, or over two days, if we can. Say,
15 the anhydrous ammonia issue and everything that
16 goes along with that, because that tends to be one
17 set of individual -- the site contamination issue
18 dealing with both waste and worker safety and
19 potentially public health held together.

20 HEARING OFFICER FAY: Okay.

21 PRESIDING COMMITTEE MEMBER ROHY: Mr.
22 Fay, I recently have new bifocals again and
23 sometimes I miss lines, but I haven't found air
24 quality on this grouping list.

25 HEARING OFFICER FAY: My glasses are the

1 same as yours.

2 (Laughter.)

3 MS. LUCKHARDT: We left off the ones
4 that are not up for hearing in the January-
5 February timeframe. This is just directing the
6 January-February timeframe.

7 PRESIDING COMMITTEE MEMBER ROHY: Thank
8 you.

9 HEARING OFFICER FAY: Now, the Applicant
10 asked the Committee to address their concern about
11 documents coming in for the first time at the
12 hearing and I'd just like to make clear to
13 everybody that we don't want any party to be
14 surprised. And if you plan to rely on a large --
15 especially a large document, but even making
16 reference to it, that it ought to be included in
17 your file testimony. Or, if it's readily
18 available, reference made to it so that we don't
19 have the problem of people scrambling at the last
20 minute and passing a document around, having to
21 look through it to see if they object to the
22 reference being included, etcetera. And I hope
23 there's no disagreement on that. It just creates
24 an unfair disadvantage too.

25 PRESIDING COMMITTEE MEMBER ROHY: And I

1 believe it delays the proceedings for all of us
2 when we have those disruptions.

3 HEARING OFFICER FAY: It certainly does,
4 because naturally there's objection and we have to
5 take time while people decide whether it's a big
6 problem or a little problem.

7 MS. LUCKHARDT: We also request that,
8 along with the identification of documents, that
9 all issues of concern also be identified in the
10 testimony so that we aren't being handed new
11 issues once we arrive at the hearing table.

12 HEARING OFFICER FAY: I think that's
13 very reasonable, that's the reason for pre-filing
14 testimony. However, if, in fact, it's come up
15 new, if the Applicant identifies something in
16 their testimony that they file as the FSA comes
17 out and that's filed the same day that CURE, for
18 instance, files its testimony, you know --

19 MS. LUCKHARDT: Oh, absolutely, we fully
20 intend to present -- orally respond to whatever
21 CURE provides and I would be surprised if CURE did
22 not do the same in response to our testimony. I'm
23 talking about issues on direct that have not been
24 identified in your direct testimony that have been
25 brought up new and different in the actual

1 testimony as you're sitting here before the --
2 during the hearing.

3 HEARING OFFICER FAY: Right, and I just
4 think all the attorneys have to caution their
5 witnesses that the Committee is not going to be
6 real patient about that and it's important to
7 exercise that kind of discipline, that if it's
8 worth bringing up, write it down. That's why we
9 have prefiled testimony.

10 Any concerns about that?

11 Okay.

12 I had a question regarding the U. S.
13 Fish and Wildlife Service consultation. Has that
14 occurred yet, the initial consultation?

15 MR. CHAMPION: Yes.

16 HEARING OFFICER FAY: It has, okay,
17 good. Do you know the date offhand or roughly?

18 MS. LUCKHARDT: Yeah, we have it.

19 MR. MILLER: I believe it would be the
20 tenth. That was a week ago Friday, that's right.
21 Well, I guess it arrived Monday, so you can say
22 Monday of this week.

23 MS. LUCKHARDT: December 13th.

24 MS. REYNOLDS: Will that document be
25 docketed?

1 MR. MILLER: Yes.

2 HEARING OFFICER FAY: As a follow-up to
3 what I said earlier, in the Applicant's prehearing
4 conference statement they said that they would be
5 rebutting CURE's testimony with all direct
6 testimony. And, you know, that just gave me some
7 concern. I think we have to be very careful that
8 the scope of that is limited to rebuttal that
9 could not have been brought up. You know, it just
10 works both ways, it's the point you made.

11 And the same goes for all the other
12 parties, so that we'll be prepared to discipline
13 the parties if they are really taking advantage of
14 that and bringing up things that could not have
15 been addressed in there with the testimony.

16 MS. REYNOLDS: I just want to clarify
17 that. So, if you have a disagreement with us on
18 an issue you will not file any written testimony
19 on that, you'll just present oral rebuttal
20 testimony?

21 MS. LUCKHARDT: That's correct, because
22 I don't believe there is an opportunity nor is
23 there sufficient time for us to be filing rebuttal
24 and having a chance for you to review ours before
25 hearing or our ability to review yours.

1 HEARING OFFICER FAY: With the exception
2 of staff, all the parties are filing
3 simultaneously, so the parties have the advantage
4 of being able to comment on the FSA, but not on
5 each other's written testimony.

6 Excuse me, if we could go off the record
7 for a moment.

8 (Thereupon a recess was
9 taken.)

10 HEARING OFFICER FAY: Back on the
11 record.

12 Major has reminded me that we ought to
13 just ask the parties, especially for this first
14 group of hearings, if there's any personal
15 conflicts or constraints on the dates. What I've
16 arranged with the Committee is a block of time
17 really between January 19th and February 2nd, a
18 two-week period there, some of which would be used
19 for evidentiary hearings, and bits and pieces of
20 that are being gobbled up, even as we speak. And
21 I might as well find out from the parties if they
22 have some unavailability during some of that time,
23 especially on the first -- really the first three
24 groups that Applicant proposed, because I'm
25 assuming those are topics that will go more

1 quickly and therefore we'd have a more rapid
2 turnover of witnesses.

3 MS. LUCKHARDT: We have one conflict on
4 the 19th, so we would request that hearings be
5 done on the 20th, if there is that flexibility.

6 HEARING OFFICER FAY: The 20th at the
7 earliest?

8 MS. LUCKHARDT: Yes. And we're fine
9 after that.

10 HEARING OFFICER FAY: Any other
11 comments?

12 MS. REYNOLDS: I'm sorry, I have not
13 seen -- okay, so we're just -- so January 19th
14 through February 4th, are you anticipating
15 solid --

16 HEARING OFFICER FAY: I would prefer not
17 to and I will try to avoid that. We may have a
18 couple of days in a row, but I'd like to have no
19 more than that if we can, just to give people a
20 little chance to have some breathing room and they
21 may have other things in their life, besides this
22 case, although that's hard to imagine. But the
23 Committee may have its own ideas of when it's
24 available and so these aren't commitments, but I'm
25 just taking in information at this time.

1 Any other conflicts or limitations?

2 Staff?

3 STAFF COUNSEL WILLIS: Nothing.

4 HEARING OFFICER FAY: Staff has nothing
5 else to do?

6 (Laughter.)

7 SITING PROJECT MANAGER PRYOR: We have
8 conversations. I'm not aware of any conflicts
9 with staff, but I have not been able to query
10 everyone. Would it be permissible that, if we are
11 aware of something, to file that Monday?

12 HEARING OFFICER FAY: We'd sure
13 appreciate that.

14 And, as I say, I'm specifically
15 concerned about the topics that are on schedule,
16 all the topics that are on schedule and within
17 that window of January 20th through February 2nd.
18 And we pretty much have information from staff of
19 when the other topics would have to come up.

20 Anything the Applicant has to add to
21 that, any disagreement or -- it looks reasonable
22 at this time?

23 MS. LUCKHARDT: Yes.

24 HEARING OFFICER FAY: And, of course,
25 all of this depends on when agencies respond to

1 our process, so I suppose things are subject to
2 change if expected documents don't come in on
3 time.

4 MS. REYNOLDS: Mr. Fay, I just have a
5 clarification question. Is there any way we can
6 have filed rebuttal testimony, even if it's just
7 two days before the hearings. I just think that
8 it's unfair to not have a chance to review that
9 before -- it's not going to be just limited to
10 cross, there's actually going to be testimony, and
11 it just seems unfair to not even see or know
12 anything about that until we're right at the
13 hearing. Is there any way we could accommodate
14 that?

15 HEARING OFFICER FAY: Commissioner Rohy
16 indicated to me that this is something that the
17 Committee won't be ruling on from the bench and
18 will address in the hearing order, but I'd like to
19 hear comment from the other parties.

20 MS. LUCKHARDT: I'm sorry, we were on a
21 side conversation and I didn't catch everything.

22 HEARING OFFICER FAY: Why don't you
23 repeat that for us?

24 MS. REYNOLDS: My request is that any
25 rebuttal testimony be filed perhaps two days

1 before the hearings. I just think it's unfair to
2 not see any of that until the hearings. Typically
3 in your hearings both parties know what each party
4 is going to present and we aren't going to know.
5 And I understand that you're not going to know
6 precisely how to rebut until you see our
7 testimony, but there should be some way that we
8 can work this out so we're not surprised by
9 rebuttal, as well, at the hearings.

10 MS. LUCKHARDT: I think that works both
11 ways. We talked about that internally a little
12 bit. The difficulty is that when you receive
13 something two days before, I don't know that that
14 is a huge advantage, because then you have to --
15 the minute we see her testimony or you see ours,
16 we have to immediately start drafting rebuttal
17 testimony as opposed to simply preparing
18 witnesses. And I just don't know on the -- there
19 are numbers of topic areas that we will be able to
20 draft all rebuttal testimony in a form that's
21 submittable over a five-day process.

22 MS. REYNOLDS: Well, it effectively
23 precludes our ability to cross examine the
24 witnesses, because we have to do cross examination
25 on the fly. We have no idea what they're going to

1 say.

2 MS. LUCKHARDT: That is exactly the same
3 situation every other party is in in this case.
4 We are in the exact same situation. We are not
5 going to see their direct until it's filed. It's
6 filed the same day as ours. We're going to have
7 to react to your direct, just as you're going to
8 have to react to ours and, just as we expect you
9 to ask your witness or witnesses what they think
10 of our direct testimony, we will be asking the
11 same of ours. I don't think you're in any less
12 position than we are.

13 MS. REYNOLDS: Well, I thought you
14 weren't going to file direct testimony in those
15 areas. I thought you were just going to oral
16 rebuttal. I thought that's what you said earlier.

17 MS. LUCKHARDT: We are going to file
18 direct testimony to issues that we can anticipate
19 that you will raise. We are not going to --
20 including your comments on PSA.

21 We cannot anticipate every issue you may
22 raise once you see the FSA and so it's impossible
23 for us to file all our testimony until we see
24 yours. We'll do our best to file and, you know,
25 we are working now to prepare testimony in

1 response to your comments on the PSA and to the
2 information that you have provided so far, but,
3 you know, if you provide new testimony there's
4 nothing we can do until we see it.

5 MS. REYNOLDS: Okay, well, that
6 clarification was helpful that you are going to be
7 filing testimony.

8 MS. LUCKHARDT: Oh, yes.

9 MS. REYNOLDS: I was under the
10 impression, when you said you were just filing
11 oral rebuttal that there was going to be no
12 testimony you were filing.

13 MS. LUCKHARDT: No, that's my mistake.
14 We will be filing testimony.

15 HEARING OFFICER FAY: And the parties
16 should all keep in mind, you know, the most
17 voluminous filing to date is the AFC which has a
18 great deal of detail about the project and the
19 Applicant then files their testimony which, you
20 know, may summarize portions of the AFC, may react
21 to the FSA, but is like a second iteration of
22 their position, so you've got both of those.

23 And with the staff you've got the PSA
24 revised by the FSA, so any party except the staff
25 or the Applicant has the luxury of a much deeper

1 record and staff and Applicant don't have that
2 luxury when they deal with intervenors.

3 So this has worked in the past and the
4 Committee will consider it, but it sounds like you
5 no longer have a concern.

6 MS. REYNOLDS: Yeah, I was under the
7 impression when you said oral rebuttal that there
8 was no written testimony.

9 HEARING OFFICER FAY: Okay, good.

10 All right, are there any final comments
11 from the parties?

12 MR. MILLER: Excuse me --

13 MS. LUCKHARDT: Let's take a second --

14 HEARING OFFICER FAY: Sure.

15 MS. LUCKHARDT: Yeah, we have a question
16 about how you would like to receive the
17 information from the Sunrise proceeding, as in
18 transcripts or potentially exhibits filed in that
19 case. Would you like us to enter them as exhibits
20 in this case or refer to them, how would you like
21 that dealt with during the hearings?

22 HEARING OFFICER FAY: Why don't we
23 address that in the hearing order and we'll give
24 some thought to that and try to give you some
25 guidance. It may depend on the size of the

1 exhibit, too. But we can certainly take notice of
2 our own proceedings, but we'll have to think about
3 the most convenient way to get that in for the
4 Committee to handle it.

5 Major reminded me that we want to also
6 be thinking about these later hearings in March,
7 and I anticipate that the hearing order would give
8 us the information that we have before us,
9 including staff's advice on what they anticipate,
10 and schedule the hearings for certain days at that
11 time. And because they're further out in the
12 future, they may well change, but at least we
13 would have a target to work for and everybody
14 would be on notice.

15 Any other thoughts on that? I see no
16 reason to not try to establish dates for those and
17 hopefully make them. It allows everybody to
18 adjust their schedules way in advance.

19 Okay. I'll just ask if there are any
20 public comments?

21 None, I hear none.

22 All right. Well, thank you very much
23 and the Committee will be issuing a hearing order
24 that will guide the evidentiary hearings
25 throughout the rest of the case.

1 Thank you. We are adjourned.
2 (Thereupon the hearing was adjourned at
3 11:02 a.m.)

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, 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 Meeting, nor in any way interested in the outcome of said Prehearing Conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of December, 1999.

VALORIE PHILLIPS

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