

STATUS CONFERENCE  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Application for Certification ) Docket No.  
for the Genesis Solar Energy ) 09-AFC-8  
Project )  
\_\_\_\_\_ )

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

THURSDAY, MARCH 18, 2010

1:30 p.m.

Reported by:  
John Cota  
Contract No. 170-07-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

James D. Boyd, Vice Chair and Presiding Member

Robert Weisenmiller, PhD, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Kenneth Celli, Hearing Officer

Sarah Michael, Advisor to Commissioner Boyd

STAFF AND CONSULTANTS PRESENT

Caryn Holmes, Senior Staff Counsel

Robin Mayer, Staff Counsel

Mike Monasmith, Project Manager

APPLICANT

Scott Galati, Attorney  
Galati Blek

Scott Busa  
NextEra Energy Resources

Tricia Bernhardt  
Tetra Tech EC

Meg Russell

INTERVENOR

Rachael Koss, Attorney  
Adams Broadwell Joseph & Cardozo  
California Unions for Reliable Energy (CURE)

ALSO PRESENT

Magdalena Rodriguez (via telephone)  
California Department of Fish and Game

Bill Bruniga (via telephone)  
Reclamation

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

2 1:39 p.m.

3 PRESIDING MEMBER BOYD: All right,  
4 pardon the delay. Good afternoon, everybody.  
5 Welcome to the Genesis Solar Energy Project status  
6 conference.

7 I am Jim Boyd, the Presiding  
8 Commissioner for this case. To my -- Well let me  
9 go through the, I'll go through the introductions  
10 now. To my far right is Commissioner  
11 Weisenmiller, Robert Weisenmiller, who is the  
12 Associate Member of this proceeding. To my left  
13 is my advisor, Sarah Michael. To my immediate  
14 right is Ken Celli, the Hearing Officer.

15 We are here to discuss the proposed  
16 Genesis Solar Energy Project. And before we get  
17 into the details and before I turn the proceedings  
18 over to the hearing officer I think we should have  
19 introductions from the participants. So shall we  
20 start with the applicant, please.

21 MR. GALATI: Scott Galati representing  
22 NextEra Energy.

23 MR. BUSA: I'm Scott Busa with the  
24 business development group at Nextera Energy.

25 HEARING OFFICER CELLI: Thank you.

1                   PRESIDING MEMBER BOYD: Good to see you  
2 both again. The staff?

3                   MS. HOLMES: Caryn Holmes, staff  
4 counsel; here with Robin Mayer, staff counsel, and  
5 Mike Monasmith the project manager.

6                   PRESIDING MEMBER BOYD: Thank you. Are  
7 there any intervenors in the room?

8                   MS. KOSS: Yes.

9                   PRESIDING MEMBER BOYD: There are?

10                  MS. KOSS: Good afternoon. Good  
11 afternoon. Rachael Koss on behalf of CURE.

12                  PRESIDING MEMBER BOYD: Welcome,  
13 Rachael.

14                  MS. KOSS: Thank you.

15                  PRESIDING MEMBER BOYD: Any other  
16 intervenors who might be on the phone?

17                  HEARING OFFICER CELLI: Are the -- let  
18 me --

19                  PRESIDING MEMBER BOYD: We have another  
20 intervenor, I just wonder if he is out there  
21 somewhere.

22                  HEARING OFFICER CELLI: Yes, I need to  
23 unmute. Tricia Bernhardt. Can you hear me,  
24 Tricia? Are you on the line? She is speaking but  
25 you're muted. I have to unmute these folks. The

1           guy just walked out of the room. I can see you're  
2           talking but it's not coming across on the speaker.

3                   MR. BUSA: I can introduce Tricia.

4                   MS. MAYER: Well the speakers aren't on.

5                   MR. BUSA: Yes, we can't really hear,  
6           ourselves.

7                   MS. MAYER: We can't hear, we can barely  
8           hear you.

9                   HEARING OFFICER CELLI: Yes. Okay, one  
10          moment. Let me take care of this, hopefully very  
11          quickly.

12                   (Pause to stabilize WebEx.)

13                   PRESIDING MEMBER BOYD: The other  
14          hearing room is more intimate, however the noise  
15          from the adjacent room is overwhelming sometimes.

16                   THE REPORTER: We are still on the  
17          record, Commissioner.

18                   HEARING OFFICER CELLI: Right. We can  
19          go off the record.

20                   (Off the record.)

21                   HEARING OFFICER CELLI: We were in the  
22          midst of our introductions and you were asking  
23          about the intervenors.

24                   PRESIDING MEMBER BOYD: Correct.

25                   HEARING OFFICER CELLI: So you need to

1 say whether CARE was on the phone or not.

2 PRESIDING MEMBER BOYD: We don't have  
3 any evidence that CARE is on the phone. Is there  
4 someone from CARE out there in Radio Land?

5 Okay. And now you more or less  
6 introduced the agency and applicant folks.

7 HEARING OFFICER CELLI: Thank you.

8 PRESIDING MEMBER BOYD: Do you want to  
9 try that again on the record?

10 HEARING OFFICER CELLI: Thank you,  
11 Commissioner.

12 We have here with us -- are there any  
13 agencies, Mr. Galati, that are with us, any  
14 relevant agencies, governmental agencies?

15 MR. GALATI: No, other than Magdalena on  
16 the phone.

17 HEARING OFFICER CELLI: And Magdalena is  
18 from where?

19 MR. GALATI: Fish and Game.

20 HEARING OFFICER CELLI: And does  
21 Magdalena have a last name or is she like Cher?

22 (Laughter.)

23 MS. RODRIGUEZ: Rodriguez.

24 MS. HOLMES: Rodriguez.

25 PRESIDING MEMBER BOYD: She's listening.

1 HEARING OFFICER CELLI: Magdalena, your  
2 last name, please.

3 MS. RODRIGUEZ: Rodriguez.

4 HEARING OFFICER CELLI: Rodriguez, thank  
5 you.

6 Okay. Anyone from Bureau of Land  
7 Management or any other elected officials or  
8 representatives from the State of California?

9 PRESIDING MEMBER BOYD: Or other federal  
10 agencies.

11 HEARING OFFICER CELLI: Other federal  
12 agencies. Riverside County, the City of Blythe?

13 PRESIDING MEMBER BOYD: The Air  
14 District?

15 MR. BRUNIGA: Hello.

16 HEARING OFFICER CELLI: Hello. Who is  
17 speaking?

18 MR. BRUNIGA: Yes, this is Bill Bruniga.

19 HEARING OFFICER CELLI: Hi Bill. Are  
20 you with an agency?

21 MR. BRUNIGA: I'm with Reclamation. I'm  
22 just listening in.

23 HEARING OFFICER CELLI: Thank you very  
24 much. Bill Bruniga.

25 PRESIDING MEMBER BOYD: Is the Mojave

1 Desert Air Quality Management District on the  
2 line?

3 (No response.)

4 HEARING OFFICER CELLI: I think we got  
5 them all.

6 PRESIDING MEMBER BOYD: Okay. You're  
7 half into it so why don't you take over the rest  
8 of the hearing.

9 HEARING OFFICER CELLI: Thank you,  
10 Commissioner.

11 Okay, this status conference is  
12 sponsored by the Energy Commission to inform the  
13 Committee, the parties and the community about the  
14 project's progress to date and to discuss legal  
15 issues raised by the parties.

16 Following the conference the Committee  
17 will hear public comment.

18 Notice of this status conference was  
19 issued on March 1, 2010, served on all parties and  
20 posted on the California Energy Commission's web  
21 site.

22 The notice stated that at the status  
23 conference all parties shall be prepared to  
24 present their respective positions regarding the  
25 substantive topic areas that are ready for

1           evidentiary hearing; those topics that require  
2           further analysis, including the nature of and the  
3           time frame for any such analysis; the topic areas  
4           that have been resolved; and the topic areas that  
5           are disputed and will require adjudication.

6                     The parties will also be called upon to  
7           identify proposed witnesses as well as time  
8           required for direct testimony and/or cross  
9           examination to the extent presently known.

10                    The notice included a schedule, which we  
11           provided in the notice.

12                    And with that I am going to first turn  
13           to the applicant. I know it's premature. A lot  
14           of the language I used in that notice is the kind  
15           of language that you hear in a prehearing  
16           conference. But we are coming up on all of this  
17           pretty quickly and so I thought it would behoove  
18           the parties to come in ready to talk about where  
19           we are at topic by topic.

20                    So with that, Mr. Galati, please.

21                    MR. GALATI: I'll be the first to say  
22           that I don't know where we are topic by topic  
23           because I haven't seen the staff assessment. And  
24           so when I see the staff assessment -- I think that  
25           we have provided a lot of information and so we

1           need to see how staff is reviewing and coming up  
2           with that information and how they are using it.

3                       I would like to, and maybe this is the  
4           appropriate time, to talk about the schedule and  
5           how I think maybe some revisions to it might prove  
6           productive for us.

7                       HEARING OFFICER CELLI: Well everything  
8           in the schedule pretty much emanates from the SA.  
9           So perhaps we should hear from the staff first  
10          right now about where are we at with regard to the  
11          staff assessment. Please.

12                      MR. MONASMITH: Yes. Thank you.

13                      The administrative draft for the Genesis  
14          Staff Assessment Draft Environmental Impact  
15          Statement was essentially done on March 1st. It  
16          was sent to BLM's Palm Springs South Coast Field  
17          Office for review from their strike team, which  
18          includes solicitors, subject matter experts.

19                      It has been received back by staff. We  
20          are now in the process this week of final  
21          management and staff counsel review.

22                      We are on track to publish the SADEIS  
23          next Friday, which is a day after the indicated  
24          schedule date. So it will be March 26 versus  
25          March 25, which is on your Revised Committee

1 Scheduling Order.

2 We will then at that point be sending  
3 copies to the EPA, which will then file it. And  
4 the Notice of Availability will go out on April 9  
5 for the commencement of a 90 day review. We are  
6 on schedule.

7 HEARING OFFICER CELLI: So the 90 day,  
8 it will go into the Federal Register on April 9.

9 MR. MONASMITH: Correct. In terms of  
10 topic by topic discussions. Right now the topics  
11 that will require further discussion and those  
12 that we anticipate receiving more information on--  
13 again, this will be within the Executive Summary  
14 in the SADEIS itself--include Air Quality,  
15 Biological Resources, Cultural Resources.

16 HEARING OFFICER CELLI: Let me ask you  
17 this. Are we looking at, are we talking about --  
18 maybe it might be easier to approach it the other  
19 way which is, what are the non-controversial, if  
20 any, topics that are pretty much ready to go?

21 MS. HOLMES: That' a little bit  
22 difficult for us to answer because we don't know  
23 what the applicant's position is on anything until  
24 we have their reaction to our staff assessment.

25 What Mr. Monasmith was providing to you

1 was a list of technical areas which staff expects  
2 it will need to do additional analysis for or work  
3 on after the staff assessment is published.

4 HEARING OFFICER CELLI: Okay, great,  
5 let's go with that.

6 MS. HOLMES: Now whether or not the  
7 applicant has difficulties or problems with any of  
8 the other areas which we believe are complete, I  
9 have got no idea, obviously.

10 HEARING OFFICER CELLI: Understood. I  
11 have my little list here. As you can see I've got  
12 it described as ready, not ready, stipulated,  
13 disputed. And I believe that what you are about  
14 to tell me is going to go into the not ready  
15 column.

16 MR. MONASMITH: They are going to be  
17 ready, Hearing Officer. Essentially for Air  
18 Quality and for TSE there are two components, the  
19 Final Determination of Compliance from the Mojave  
20 Desert Air Quality Management District is  
21 forthcoming in April. So for Air Quality that  
22 component of that analysis will still need to be  
23 finalized.

24 With Transition System Engineering, the  
25 Phase 2 cluster study for this area is still

1 something that is outstanding. We do not  
2 anticipate, nor staff has determined that that  
3 will be an issue that staff or the applicant or  
4 other parties will have. But more information  
5 needs to come for those two.

6 In terms of Biological Resources,  
7 Cultural Resources and Soil and Water Resources.  
8 As we have known from the very beginning, these  
9 are the three most discussed, analyzed topics that  
10 received extensive discovery, were the subjects of  
11 our ten workshops. And those involve discussions.  
12 The intervenor CURE has filed some data requests  
13 in regard to those and there's mitigation  
14 components for staff suggestions that will need to  
15 be obviously entered into with the applicant. So  
16 for those further discussion will need to occur.

17 Everything else looks relatively good.

18 HEARING OFFICER CELLI: And so things  
19 like, let's say, Facility Design, where typically  
20 whatever the applicant says seems to be okay with  
21 the staff.

22 MR. MONASMITH: That's correct.  
23 Facility Design, Reliability Efficiency, BLM had  
24 no comment in those areas. Those are not  
25 technical areas in which they have commented and

1 are not commenting.

2 In terms of other uses, other technical  
3 analyses. Again, we are not releasing this until  
4 next Friday so I kind of hesitate to, at this  
5 point, do any final conclusions as the final  
6 management review is still occurring. But we  
7 don't, apart from the Bio, Cultural and Water, see  
8 any problems with the remainders.

9 HEARING OFFICER CELLI: That's actually  
10 quite encouraging because it sounds like we have  
11 got really -- you have two --

12 You mentioned the FDOC will be due out  
13 in April. Do we have any sense of when the  
14 cluster study is going to come out for the system  
15 impact?

16 MR. MONASMITH: Yeah, we've heard  
17 September. The Phase 1 cluster study had a -- was  
18 I think 8,000, over 8,000 megawatts that it dealt  
19 with. Phase 2 will be a little over 2,000. Staff  
20 does not anticipate problems with the Phase 2  
21 study so that section is positive in terms of what  
22 our staff is finding for the system  
23 interconnection from the gen-tie through the  
24 Blythe project transmission line and then to the  
25 Colorado River Substation just south and west of

1 the city of Blythe.

2 MR. BUSA: And I can comment as the  
3 applicant. We are in regular contact with  
4 Southern California Edison who is conducting the  
5 studies for us. And in a meeting last week they  
6 actually told us that they anticipated expedited  
7 completion of the Phase 2 studies and they are  
8 targeting now June 30th for that.

9 HEARING OFFICER CELLI: June 30th  
10 instead of September?

11 MR. BUSA: That's correct.

12 HEARING OFFICER CELLI: That's very  
13 promising.

14 PRESIDING MEMBER BOYD: Mike, I was  
15 pleased to hear you say that but for the three  
16 areas everything is fine. I was a little curious  
17 about Air Quality, which I always for some reason  
18 read everything. I noticed quite a few questions  
19 going back and forth but they are going to get  
20 resolved? There seemed to be a little more  
21 traffic than I am used to seeing in this area.

22 MR. MONASMITH: I would never presume to  
23 speak for Will Walters who is conducting our  
24 analyses but at this point, and I'll reserve  
25 comment finally until it comes out next Friday,

1 but it's looking good.

2 PRESIDING MEMBER BOYD: Good.

3 HEARING OFFICER CELLI: Excellent.

4 Thank you very much for that information.

5 As I said, I understand no one has seen  
6 the analysis yet and so it's a little early to say  
7 what the difficulties are but you have all have  
8 been in workshops and so forth. I think I would  
9 like to hear from Ms. Koss about what are the  
10 concerns and if you can -- do you have something  
11 that is a list of topic areas that you can work  
12 off of and tell us what topic areas do you think  
13 CURE will have a dispute with?

14 MS. KOSS: Yes. We definitely concur  
15 that --

16 HEARING OFFICER CELLI: Hang on. Is  
17 your mic on, the green light?

18 MS. KOSS: How about that?

19 HEARING OFFICER CELLI: If you can speak  
20 a little closer into it.

21 MS. KOSS: Here we go. No?

22 HEARING OFFICER CELLI: Is her green  
23 light on?

24 MS. KOSS: It's on.

25 HEARING OFFICER CELLI: That's much

1 better.

2 MS. KOSS: Okay. So we concur that  
3 until we see the staff assessment we really can't  
4 guarantee anything. But as of yet CURE has very  
5 serious concerns in the areas of Biological  
6 Resources, Soil and Water Resources. We are still  
7 evaluating Cultural Resources.

8 We have participated in all of the  
9 workshops. The most recent soil and water and  
10 biological resources workshops. It appeared that  
11 there were still lots of data gaps in those areas.  
12 We are still looking for data to evaluate. We've  
13 recently submitted on March 11th the data requests  
14 in the area of Biological Resources.

15 We anticipate submitting data requests  
16 in the area of Groundwater Resources in the next  
17 few days. We have just received word from our  
18 consultant on that. And we are still evaluating  
19 Cultural Resources. I don't know whether or not  
20 we will have anything to submit in the area of  
21 Cultural Resources.

22 But as you will see from our data  
23 requests in Biological Resources, we are very  
24 concerned with the cumulative impacts. This is --  
25 Given that this whole I-10 corridor is slated for

1 multiple projects we just don't feel like there  
2 has been an adequate analysis of the cumulative  
3 impacts, the wildlife corridor impacts.

4 We are very concerned about the  
5 baseline, specifically given staff's recent  
6 finding in Solar Two, the Imperial Project. Staff  
7 concluded that because concurrent surveys were  
8 performed for plant species and wildlife species  
9 they were inadequate. The same thing has occurred  
10 here. We feel like the applicant may need to go  
11 back and do additional work to establish an  
12 adequate baseline from which to analyze impacts.  
13 In our view there's a lot of work to be done in  
14 the area of biological resources.

15 In the area of Soil and Water. Again,  
16 cumulative impacts given the I-10 corridor. We  
17 don't feel like there has been an adequate  
18 analysis of the Palo Verde Mesa Basin, which in  
19 turn shows the impacts on the adjudicated Colorado  
20 River. This is a serious issue.

21 Yes? You look like you want to say  
22 something.

23 HEARING OFFICER CELLI: I just was --  
24 because I got confused. My recollection was that  
25 this project, the Ford Dry Lake is in the

1 Chuckawalla Basin; isn't that right?

2 MS. KOSS: Exactly.

3 HEARING OFFICER CELLI: And where is the  
4 Palo Verde?

5 MS. KOSS: Just to the east.

6 HEARING OFFICER CELLI: Okay. Is there  
7 a mountain range that separates them or what?

8 MS. KOSS: I don't know if there's a  
9 mountain range that separates them but I do know  
10 that they are connected.

11 HEARING OFFICER CELLI: Okay, thanks.  
12 I'm sorry for the interruption, go ahead.

13 MS. KOSS: Not at all.

14 So again, we will hopefully in the next  
15 couple of days submit data requests in the area of  
16 groundwater resources.

17 So given all of these concerns, and I'm  
18 sure we'll talk about the schedule in a little  
19 bit, we do feel like this is being rushed. I know  
20 the staff assessment is coming out. We know that  
21 it is going to be incomplete in at least the areas  
22 of Biological Resources, Cultural Resources and  
23 Soil and Water Resources, as Mr. Monasmith said.  
24 So we just have serious concerns that analysis be  
25 complete prior to testimony and evidentiary

1           hearings.

2                       HEARING OFFICER CELLI: Thank you, I  
3           appreciate that. So your main concerns are soil,  
4           water, bio.

5                       MS. KOSS: Potentially cultural.

6                       HEARING OFFICER CELLI: And cultural  
7           potentially. Now I am going to ask again whether  
8           -- is Mr. Boyd or Mr. Simpson from Californians  
9           for Renewable Energy on the line?

10                      (No response.)

11                      HEARING OFFICER CELLI: Hearing that he  
12           is not I wonder if I could just ask Mr. Monasmith  
13           if CARE has been showing up at your workshops?

14                      MR. MONASMITH: Yeah. Mike Boyd on  
15           behalf of CARE. He is working with some  
16           individuals from the Blythe community,  
17           specifically Arturo Figueroa, and has expressed  
18           interest in all the subjects that we have  
19           discussed. He has participated in a number of our  
20           workshops. Cultural Resources is very important  
21           to CARE and to the individuals in Riverside County  
22           that they are working with. So we have, we have  
23           been working with Mr. Boyd in that regard.

24                      HEARING OFFICER CELLI: So his main  
25           concern, to the best of your ability, would be

1 cultural?

2 MR. MONASMITH: Yeah. He has expressed  
3 a concern in cultural but he is also -- as you  
4 know CARE has been involved in a number of  
5 proceedings related to other power plant projects.  
6 And Biological Resources is one that they  
7 obviously care about and have voiced concern for.

8 MS. KOSS: Mr. Celli, can I interrupt  
9 for just a moment.

10 HEARING OFFICER CELLI: Thank you.

11 MS. KOSS: I'm sorry. I also would like  
12 to reserve, of course, any topic area because we  
13 don't have the staff assessment. But a light just  
14 went off for Alternatives.

15 HEARING OFFICER CELLI: Alternatives,  
16 thank you.

17 MS. KOSS: Thank you.

18 HEARING OFFICER CELLI: We are just  
19 trying to get a sense here of where we're going.

20 MS. KOSS: Of course.

21 HEARING OFFICER CELLI: What the issues  
22 are going to be. Thank you all very much for  
23 that.

24 And now I am going to turn it back to  
25 the applicant. We were talking -- since we have a

1 sense now of what the issues are going to be, Bio,  
2 Cultural, Water. I would like to hear from you --  
3 and maybe Alternatives -- in terms of you had  
4 raised a question about the scheduling.

5 MR. GALATI: Yeah. Basically the  
6 concern is this. Our experience is if we are able  
7 to do a thorough review of the staff assessment  
8 and provide the staff with very detailed written  
9 comments prior to a staff assessment workshop,  
10 that workshop can be a lot more productive than if  
11 we get in a room and talk about the issues.

12 If we put, for example, let's say there  
13 is mitigation proposed by staff that we think  
14 could be changed or done something different,  
15 added to, modified. We would like to try to  
16 propose an actual resolution to the problem as  
17 opposed to just saying, we don't like the  
18 mitigation you proposed. And we find that that's  
19 how you are most productive.

20 The idea would be to get agreement or  
21 find maybe a compromise situation on getting to  
22 the same place. When I look at the schedule I  
23 don't believe having a staff assessment workshop  
24 on the 8th would allow us that opportunity.

25 My understanding is in seeing the Blythe

1 project that's a 1327 page staff assessment. And  
2 read as fast as I might, with the number of people  
3 that have to read and review and propose  
4 solutions, we need some time to be able to give  
5 staff something appropriate.

6 What we are proposing in the Blythe  
7 project and what was accepted in the Ridgecrest  
8 project was about a three week time for us to  
9 review and prepare comments. And then schedule  
10 the workshop after that, after staff had our  
11 comments for about a week. Other parties would  
12 have that same amount of time. And then we could  
13 actually go to a workshop and talk about the  
14 issues after they have been thought all the way  
15 out.

16 It's only then that I can tell you,  
17 Mr. Celli, whether we have a problem with, you  
18 know, Facility Design or Alternatives or Bio or  
19 Water or even some of the subject matter that we  
20 don't always have like Traffic and Transportation.  
21 My experience is there's always a difference of  
22 opinion. Oftentimes when both parties see each  
23 other's side then come to another compromise, that  
24 resolves that.

25 So when I look at the schedule. To me,

1 we need to move the evidentiary hearings out a  
2 little further and filing of testimony a little  
3 further. Even in those areas that might be non-  
4 contested we need some actual time to resolve it.  
5 Or we will be at evidentiary hearing presenting  
6 disputes to you and trying to resolve it on sort  
7 of the eve of trial, which we like to avoid.

8 HEARING OFFICER CELLI: Fair enough.

9 And does that right true with the staff?

10 MS. HOLMES: I think it does. As we  
11 noted, there are going to be some technical areas  
12 that would not represent staff's final testimony  
13 in the document that is published next week.  
14 There is going to need to be some refinements made  
15 at some point along the way, hopefully sooner  
16 rather than later.

17 HEARING OFFICER CELLI: You're talking  
18 about, you're talking about TSE and Air?

19 MS. HOLMES: The five, the five topics  
20 that we identified.

21 HEARING OFFICER CELLI: All right.

22 MS. HOLMES: So I think that that makes,  
23 I think that that makes sense. One of the things  
24 that I would caution everybody about is that we  
25 are starting to run into the period of time where

1 many of the projects that are ahead of this one  
2 are going to hearing and scheduling is going to be  
3 challenging at best.

4 HEARING OFFICER CELLI: And CURE, do you  
5 think that this schedule would benefit from a  
6 little bit of breathing room?

7 MS. KOSS: Yes we do.

8 HEARING OFFICER CELLI: Okay. So with  
9 that I'm looking at a staff assessment workshop  
10 which was on April 8th. April 8 is actually -- if  
11 it's going to come out on, if the staff assessment  
12 is coming out on the 26th the 8th would be really  
13 one day short of two weeks and, Mr. Galati, you  
14 were saying you wanted three weeks.

15 MR. GALATI: I wanted three weeks for us  
16 to be able to file our comments. So have the  
17 staff assessment in the fourth week, the staff  
18 assessment workshop in the fourth week. The staff  
19 needs some time to be able to look at our  
20 comments.

21 HEARING OFFICER CELLI: Could the staff  
22 put together a workshop, we're looking at  
23 somewhere after the 15th. But I think we need to  
24 keep it tight in order to keep things the way we  
25 have been doing. And the parties have done an

1 awesome job of sticking to the calendar.

2 But the 15th would take us one week out,  
3 the 22nd would take us two weeks out. What is  
4 your pleasure, Mr. Galati?

5 MR. GALATI: I am going to defer to  
6 staff on that. What we want is the ability to  
7 prepare something thorough and we want staff to  
8 have enough time to actually review it. So for  
9 example, if we propose changes to the way  
10 hazardous materials is written and the staff gets  
11 an opportunity both at the staff level and the  
12 management level to say, we agree with those  
13 changes, it might be no need for that person to  
14 participate in the workshop.

15 As well as if we propose something that  
16 staff says, well it hits part of the mark but not  
17 all of the mark, we want to make sure they have  
18 some time to think about how we could augment what  
19 we may have proposed. And so I think that takes  
20 at least a week. And so I's defer to staff on how  
21 much time they would need.

22 HEARING OFFICER CELLI: Let me ask you.  
23 Does this affect, this shouldn't affect the  
24 process, the state process that we're doing.  
25 We're moving the pegs, we're doing what we're

1 doing.

2 MS. HOLMES: Correct.

3 HEARING OFFICER CELLI: The additional  
4 time that you're asking for would not affect the  
5 publication of the DEIS in the Federal Register,  
6 or would it?

7 MS. HOLMES: No, it would not.

8 HEARING OFFICER CELLI: Okay.

9 MS. HOLMES: I would note that the Palen  
10 and the Blythe workshops, both of which as of  
11 today will have been published, are the 28th and  
12 the 29th of April, it's my understanding.

13 MR. GALATI: I didn't actually see that  
14 yet come across my desk.

15 MS. HOLMES: You should soon.

16 MR. GALATI: So I should see that soon.

17 What makes sense to me then is for us to  
18 have the workshop the first week in May and have  
19 evidentiary hearings in the middle of June.  
20 Because Mr. Celli, let me walk you through what my  
21 thinking is.

22 If the Notice of Availability is April  
23 9th -- which I would like to ask staff why April  
24 9th since it's coming out on the 26th. Is there  
25 some federal reason that it takes some time to get

1 the Notice of Availability out? But that starts  
2 the 90 day clock for comments on the Draft EIS.

3 The staff obviously needs some time at  
4 the end of that to review those comments as they  
5 come in, if they come in on the last day, and  
6 prepare the final, their staff -- I don't know if  
7 they are calling it an errata or an addendum at  
8 this point. But the next document, which is also  
9 the Final EIS. That document then is probably  
10 going to come out in July.

11 So in my opinion, if we are productive  
12 during the months of May, June and July that  
13 actually is the time frame where we can resolve  
14 issues and finish up the non-contested evidentiary  
15 hearing pieces. Or maybe even the contested  
16 pieces if it doesn't take a lot of time.

17 So I don't see moving these dates around  
18 in that time frame as ultimately changing the date  
19 of the decision.

20 HEARING OFFICER CELLI: Okay. Staff,  
21 how do you feel about the first week of May? And  
22 how does that affect our flow in terms of --  
23 because as we all know, workshops don't involve  
24 the committee, they can be done pretty much  
25 anytime, we can move that around. I just want to

1 make sure that we are not affecting any of our,  
2 you know, productivity dates. Those dates where  
3 things were actually coming --

4 MS. HOLMES: Every day is a productivity  
5 date, Mr. Celli.

6 HEARING OFFICER CELLI: That's true.

7 MS. HOLMES: I do know that there's two  
8 other prehearing conferences that week, which I'll  
9 be participating in, but that's obviously not  
10 determinative. It's very difficult --

11 HEARING OFFICER CELLI: The week of June  
12 1st?

13 MS. HOLMES: I think it's very difficult  
14 for us sitting here with just this one project in  
15 front of us. No, I was looking at May 1st, the  
16 first week of May. This one project in front of  
17 us, to come up with a schedule that we know is  
18 going to work. I mean, I really do think it takes  
19 us making sure that the staff that need to be at  
20 the workshop are not at a Ridgecrest workshop or a  
21 Rice workshop or a Rice prehearing conference or  
22 whatever it is. I think it is going to be very  
23 difficult for us here to finalize days for a  
24 workshop. I think a target is a good idea but a  
25 specific date I think is going to be pretty

1 challenging.

2 HEARING OFFICER CELLI: Well, let's  
3 ballpark it because then I am left with trying to  
4 get Commissioners in one place or another and  
5 working around those things as well.

6 Right now it's looking like staff will  
7 have the staff assessment out on the 26th. April  
8 8th, the staff assessment workshop. The April 9th  
9 date will remain for purposes of filing for  
10 publication of the DEIS. But that staff workshop  
11 goes from April 8th somewhere into the first week  
12 of May. Okay. Then we go -- or thereabouts.

13 Then if we are into the first week of  
14 May, applicant, when do you file testimony?

15 MR. GALATI: We can file testimony two  
16 weeks after the workshop.

17 HEARING OFFICER CELLI: Okay, plus two  
18 weeks. Staff files the following week?

19 MS. HOLMES: That actually raises a  
20 question I had. The schedule that is current has  
21 staff filing testimony on April 15th, it has all  
22 parties' rebuttal testimony on April 26th, and  
23 then parties filing rebuttal testimony again on  
24 May 3rd. And I was a little unclear what that --

25 HEARING OFFICER CELLI: I'm sorry,

1 strike that. That's a typo.

2 MS. HOLMES: What you're trying to  
3 accomplish with that.

4 HEARING OFFICER CELLI: Let me tell you  
5 that that is a typo, thanks for bringing that to  
6 my attention.

7 MS. HOLMES: Okay.

8 HEARING OFFICER CELLI: What I'd like to  
9 do and what I wasn't able to do when we were  
10 creating this particular schedule is try to have a  
11 week between applicant files, followed by the  
12 following week by staff filing, followed by the  
13 following week intervenors' file, followed by the  
14 following week prehearing statements.

15 MS. HOLMES: So there's no rebuttal  
16 testimony.

17 HEARING OFFICER CELLI: I'm sorry,  
18 intervenors file. Then all parties file rebuttal  
19 testimony the week after the intervenors file.  
20 The prehearing conference statements the following  
21 week.

22 MS. HOLMES: And so it's under this  
23 schedule the additional testimony that the staff  
24 would file, which on this schedule is April 15th  
25 and we all agree needs to change. That would be

1 the resolution of the five issues that we have  
2 identified that we think may require some  
3 refinement from the time that the staff assessment  
4 is published, as well as any other issues that may  
5 be raised by the data that is provided as a result  
6 of CURE's data requests or issues that the  
7 applicant raises at the workshop. The concept is  
8 that would tie up all the pieces in the staff's  
9 supplemental testimony, what you're calling the  
10 staff testimony.

11 HEARING OFFICER CELLI: You know,  
12 typically when we say, staff files testimony,  
13 that's when the staff comes in with the FSA and  
14 says, this is going to be Exhibit whatever, okay.  
15 Then you have the -- in those weeks you have the  
16 intervenors filing the following week. Then you  
17 have rebuttal testimony and typically staff gives  
18 us some sort of supplemental testimony at that  
19 time.

20 MS. HOLMES: Well I would think that --  
21 I guess that is sort of my question. At what  
22 point do you want to have these outstanding five  
23 issues tied up? Is it your concept that they  
24 would be tied up at the time that the staff files  
25 testimony or at the time that the staff files

1           rebuttal testimony?

2                         HEARING OFFICER CELLI:  Rebuttal.

3                         MS. HOLMES:  Okay, thank you.

4                         HEARING OFFICER CELLI:  Because you are  
5           not really, that's when everybody is in possession  
6           of everybody else's testimony.

7                         MR. GALATI:  Mr. Celli, I'd throw out  
8           another possibility.  It makes sense to me if we  
9           have the prehearing conference before we start  
10          filing testimony.  At least in this case because  
11          we can report to you what occurred at the workshop  
12          and what issues are still outstanding.  I know  
13          that we can't, staff or we wouldn't have seen  
14          anybody else's testimony.  But at least at that  
15          time maybe we could get a better sense.

16                        HEARING OFFICER CELLI:  That's not a bad  
17          idea.  That's actually what we would have is  
18          another status conference.

19                        MS. HOLMES:  A status conference is what  
20          it sounds like.

21                        HEARING OFFICER CELLI:  Because a  
22          prehearing conference is a very peculiar animal  
23          that we need in order to, you know, slot times,  
24          witnesses, things like that.  But I think what  
25          you're talking about would be kind of like what I

1 had in mind today, which is the status conference  
2 to see where are we at, where do we differ, that  
3 kind of thing.

4 So we can slot some time after the first  
5 week in May. Perhaps that second week of May  
6 before the applicant files testimony. Because  
7 pretty much at this point applicant's testimony is  
8 pretty well done.

9 Then we can have a status conference and  
10 start receiving testimony from the parties and  
11 then have our prehearing conference.

12 MR. GALATI: I think that works.

13 HEARING OFFICER CELLI: Okay. So I will  
14 insert a status conference there. So that being  
15 the case we start the first week of May and then  
16 there's another month. So we're into the second  
17 week of June or so by the time we get to a  
18 prehearing conference. We're really into the  
19 third or fourth week, maybe even into July before  
20 we have a prehearing conference.

21 I'm just kind of thinking out loud here  
22 folks. We can do the schedule together.

23 What I typically have is an evidentiary  
24 hearing a week or two after the prehearing  
25 conference. I think since this is an ARRA case we

1           were going with one week for the prehearing  
2           conference, then we go right into evidentiary  
3           hearing.

4                       MR. GALATI: We can shorten our  
5           testimony time to one week after the status, the  
6           workshop, to shave a week off that. Because I  
7           would prefer us not to be going into July with  
8           evidentiary hearing while the staff is trying to  
9           prepare the Final EIS and respond to comments that  
10          they are receiving on their 90 day notice.

11                      HEARING OFFICER CELLI: Let me go off  
12          record for one moment if I can.

13                      (Off the record.)

14                      HEARING OFFICER CELLI: In light of  
15          people's vacations and things like that we are  
16          really looking at --

17                      MS. HOLMES: Are we doing vacations?

18                      HEARING OFFICER CELLI: Pardon me?

19                      MS. HOLMES: Are we taking into account  
20          everybody's vacation? Can we put our hats in the  
21          race?

22                      HEARING OFFICER CELLI: The Committee's.  
23          And wouldn't it be great if everybody just sort of  
24          fashioned their vacation schedule after the  
25          Committee's and then we'll all be on the same

1 page.

2 MR. BUSA: That needs to be published.

3 PRESIDING MEMBER BOYD: They told me  
4 July and August were the heavy months so I stay  
5 away from them.

6 HEARING OFFICER CELLI: For the most  
7 part, since I'll be here, I will be receiving  
8 everybody's documents. And that's what we're  
9 really talking about is the receipt of everybody's  
10 documents. And that is occurring through May and  
11 the beginning of June, okay. But we are really  
12 not going to be able to have a committee available  
13 for prehearing and hearings until the first week  
14 of July and there's not much we can do about that.

15 What I can do, what I would be willing  
16 to do are things like -- and first of all I'm sure  
17 you are all aware it's really a question of what  
18 can the parties reduce in terms of, you know,  
19 evidentiary hearing time. But I'd be willing to  
20 have a prehearing conference, say on a Monday, and  
21 then start hearings later -- well I guess that  
22 doesn't make a lot of sense. It would probably  
23 make more sense to have a later in the week  
24 prehearing conference followed by evidentiary  
25 hearings on the following Monday.

1                   Which in the month of July, July 1st is  
2                   a Thursday. We could potentially lock that in,  
3                   you know, depending on everybody's schedules. You  
4                   know, start that Thursday with a prehearing  
5                   conference and then go into the following week if  
6                   it's open for evidentiary hearings.

7                   MR. BUSA: Monday is a holiday.

8                   HEARING OFFICER CELLI: That would be  
9                   the week of the 5th. I'm sorry, Mr. Busa, you --

10                  MR. BUSA: Monday the 5th is the 4th of  
11                  July holiday.

12                  HEARING OFFICER CELLI: The 6th then.

13                  MS. HOLMES: Mr. Celli?

14                  HEARING OFFICER CELLI: Yes.

15                  MS. HOLMES: Would the Committee be  
16                  willing to consider, I've mentioned this before  
17                  and this idea has been rejected. But given the  
18                  exigencies of the circumstances would the  
19                  Committee be willing to consider issuing an order  
20                  allowing people to object to information coming in  
21                  by declaration.

22                  So for those areas that are uncontested,  
23                  for which for example other parties have no  
24                  concerns or comments, they could come in by  
25                  declaration and you wouldn't need to hold a

1 hearing. Obviously members of the public would  
2 need to be offered the opportunity to offer  
3 comments on those sections at the time that you do  
4 hold a public hearing. But it is a suggestion.

5 HEARING OFFICER CELLI: I'm not sure I  
6 understand what you're saying. So Facility  
7 Design, okay. There's the AFC, then staff's got  
8 the FSA, and CURE is going to put in something,  
9 maybe/maybe not, and CARE doesn't, you know, put  
10 something in or not. But they aren't necessarily  
11 disputing Facility Design. So all of the parties  
12 stipulate that this is going to come in by way of  
13 declaration, right? What --

14 MS. HOLMES: You get your evidentiary  
15 record. It gets certain subjects in the  
16 evidentiary record and the record closed for those  
17 subjects earlier in the process.

18 HEARING OFFICER CELLI: I see what  
19 you're saying. So that during that week in May  
20 when we are receiving the testimony and we get  
21 everybody's rebuttal testimony we have a  
22 stipulation, let's say --

23 MS. HOLMES: Or the second week in May  
24 or the third week of May. I'm just pointing out  
25 that information, if there is not going to be any

1 cross examination made on a given topic there is  
2 no reason really to hold a hearing on it. You  
3 might as well consider the possibility of having  
4 it come in by declaration. Other agencies do do  
5 that.

6 HEARING OFFICER CELLI: Well that's --  
7 and we do that so I don't see what the deviation  
8 is.

9 MS. HOLMES: You don't need to hold the  
10 hearing to have them come in by declaration.

11 HEARING OFFICER CELLI: I see what  
12 you're saying.

13 MS. HOLMES: You don't need to take the  
14 Committee time to do that. So you could establish  
15 your record for maybe 10 to 15 of the topic areas  
16 in May or early June. And then the record is  
17 closed on those topics.

18 HEARING OFFICER CELLI: I will kick that  
19 one around. I think that's not a bad idea. I do  
20 note that when it comes to undisputed topics it's  
21 all of about three minutes to say --

22 MS. HOLMES: I understand that. But it  
23 does allow you writing the decision to know that  
24 the record is closed on a given topic and it  
25 enables you to potentially complete sections

1 before you need to turn your attention to the  
2 contested sections.

3 HEARING OFFICER CELLI: It's a good  
4 idea, it's a good idea.

5 MS. HOLMES: I'm doing this for you,  
6 Hearing Officer Celli.

7 HEARING OFFICER CELLI: Thank you, no,  
8 it's a great idea.

9 MR. GALATI: I actually agree with that.  
10 I also wanted to -- this is how I envisioned it  
11 happening. I envisioned it happening that we  
12 would need to probably have disputed evidentiary  
13 hearings after staff completes its staff  
14 assessment errata and the Final EIS.

15 So anything that was contested I don't  
16 understand why we would have evidentiary hearings  
17 before staff concludes its final testimony in its  
18 staff assessment addendum, which also responds to  
19 public comment, as well as the Final EIS.

20 So I assumed we would be going in  
21 August, after staff's document came out, to have  
22 anything that we had not resolved. So I assumed  
23 the first batch of evidentiary hearings were only  
24 those things that we had resolved.

25 HEARING OFFICER CELLI: Interesting.

1 One moment.

2 MS. MAYER: Along those lines can I  
3 point out that the comment period ends July 9th  
4 for BLM on the Draft EIS.

5 HEARING OFFICER CELLI: Yes.

6 MS. MAYER: So that's when we will start  
7 to be able to respond to the comments.

8 MS. KOSS: And if I may, Mr. Celli,  
9 respond. This is precisely why CURE wants all of  
10 the analysis complete prior to testimony and  
11 hearing so that we don't have to have two rounds  
12 of hearings.

13 HEARING OFFICER CELLI: Yes. This is an  
14 unusual circumstance with all of these parallel  
15 proceedings going on and this 90 day comment  
16 period and so forth. But my recollection was that  
17 we were going to essentially -- we would take in  
18 the evidence however we do that is uncontested.  
19 And that would come in.

20 The record would remain open. Because  
21 just because they are undisputed here at the state  
22 level doesn't necessarily mean that we won't  
23 receive some sort of interesting comment or  
24 something further on the federal side that would  
25 necessitate our reopening and changing hopefully

1 by way of stipulation or something like that,  
2 anything in the PMPD. Do I have that right?

3 MR. GALATI: Yes. Mr. Celli, I actually  
4 think this would work exactly like we did recently  
5 in Lodi. In Lodi the first round of evidentiary  
6 hearings were those areas that were no disputes.  
7 While the record was not completely closed until  
8 the January 28th time frame when we had the  
9 evidentiary hearing for things that were contested  
10 and any other documents to come in and clean up  
11 the record including the staff assessment or  
12 errata in this case and the Final EIS.

13 But nothing would stop you from starting  
14 to prepare the PMPD and then responding if any  
15 issues. So I would think that we could do  
16 evidentiary hearings in June, that we would be  
17 submitting things on declaration, whether you  
18 decided to do it as a hearing or not. But it  
19 would be only for those areas of things that are  
20 undisputed between at least the parties.

21 That's how I thought it would work.  
22 Because I didn't see any other way to, how do you  
23 get the staff assessment errata, which -- let's  
24 say at the workshop we propose something, staff  
25 proposed something in the Draft EIS, but by

1 working together we come up with a third way to  
2 resolve something. Staff somehow has to write  
3 that down for that public.

4 HEARING OFFICER CELLI: Right.

5 MR. GALATI: And that's going to be in  
6 the staff assessment errata and Final EIS based on  
7 a response to an applicant comment.

8 HEARING OFFICER CELLI: Right.

9 MR. GALATI: So somehow that's got to  
10 get in the record.

11 HEARING OFFICER CELLI: Yes.

12 MR. GALATI: And I think it's got to get  
13 in the record both on the federal level as well as  
14 the state level. So that's why I would say, after  
15 that document comes out is when the evidentiary  
16 hearing to resolve disputes and clean up the  
17 record needs to be held.

18 But I don't see, I don't agree with CURE  
19 that there is no benefit. Because there is a huge  
20 benefit to the Committee to take those undisputed  
21 areas and at least get into the record those  
22 undisputed areas. You can leave the record open,  
23 but that would at least allow the Committee to  
24 start writing the PMPD as it sees fit on those  
25 areas that are not disputed and get a jump start

1 on preparation of the document.

2 HEARING OFFICER CELLI: I have always --  
3 my vision of the way this was going to go was that  
4 we would have something similar to Lodi, which is  
5 essentially you are putting on your regular  
6 evidentiary hearing. First you are taking in all  
7 that which is uncontested, then you are hearing  
8 all of that which is contested. You have whatever  
9 evidence you need to take on those issues.

10 But instead of closing the record we  
11 leave it open. The rest of the process plays out.  
12 And then we have sort of a clean-up session, one-  
13 day evidentiary hearing just to hear anything that  
14 needs to tie up any loose ends. Any post-comment  
15 period evidence that we may need to take and then  
16 the record is closed. And at that time yes, it is  
17 productive time because we could be writing drafts  
18 of a PMPD and holding it open pending further  
19 developments.

20 So that's kind of -- I see it as really  
21 two things, not three things. And I don't know  
22 that -- and not only that, I see a great benefit  
23 in having the parties come together as often as  
24 they can. Because when the parties are together  
25 things get done and we're able to resolve things.

1           So I'm in favor of an evidentiary hearing as we  
2           normally, traditionally have them. We have the  
3           parties here to talk about whatever might be  
4           outstanding or unresolved.

5                        But I am not foreclosing the possibility  
6           of Ms. Holmes's idea about crafting some sort of  
7           one-day uncontested evidentiary hearing and then  
8           several weeks later starting the disputed  
9           evidentiary. I'll kick that one around and see  
10          what we come up with.

11                       MR. GALATI: I certainly support that as  
12          well. I would just ask you to think about the  
13          disputed evidentiary hearing. I think it needs to  
14          come after the staff's final document.

15                       HEARING OFFICER CELLI: But when we're  
16          talking about the final document we're talking  
17          about that SSA thing which is coming out after the  
18          90 day period. It comes back -- I'm not sure  
19          where the federal, how that relates to the final  
20          federal -- when does the final federal document  
21          come out?

22                       MR. GALATI: They are treating that as  
23          the Final EIS, which would include response to  
24          comments that were received during the 90 day  
25          period.

1 HEARING OFFICER CELLI: Ninety days is  
2 July 9th.

3 MR. GALATI: Yes. And so something --  
4 you know what, that's why I asked why April 9th  
5 and not March 26 for the Notice of Availability  
6 because we have lost some time with that 90 days.

7 I assumed that it would be June 30 would  
8 be the sort of deadline. And that sometime at the  
9 end of July staff could prepare. And then in  
10 August we would be doing the final evidentiary  
11 hearing and the PMPD could be written about those  
12 dispute areas in the August/September time frame.

13 That's where I thought the schedule  
14 would be going unless staff has a different --  
15 here's another thing, reason why I'm bring this  
16 up. The staff draft assessment from what I just  
17 heard, there might be three to five areas where  
18 they don't conclude because there is new work that  
19 needs to be done.

20 So the way that staff would clean that  
21 up would probably be in that document unless I'm  
22 reading it wrong.

23 MR. MONASMITH: Let me just clarify a  
24 couple of things. First of all, we will conclude,  
25 we will have recommendations. But in a number of

1       those areas, the three, bio, cultural and water,  
2       suggested mitigations, what we have worked out  
3       will need the applicant's involvement before we  
4       are able to come with something to the Committee.  
5       So just to clarify that.

6                   In terms of the April 9th date. BLM has  
7       sent up the paperwork up to the EPA. They will  
8       receive eight copies of our SADEIS. They only  
9       publish, put out the Notice of Availability on  
10      Fridays. It's a rule, it's how they work. We  
11      will submit those when we put our document out and  
12      we plan to get that to them the 1st. The 29th  
13      actually they will receive their copies.

14                   The operative date will then be April  
15      2nd and they will publish the NOA on April 9th.  
16      It comes on July 9th. We then will look at all of  
17      the comments, work with BLM. And we will put out  
18      these SAE, the Staff Assessment Errata Final  
19      Environmental Impact Statement. That comes out  
20      according to our internal schedule and what was  
21      worked out with BLM and all the parties last year  
22      will come out at the end of August. That's the  
23      final document.

24                   And then of course there is a 30 day  
25      protest period and a 30 day protest resolution

1 before errata can be issued and that will come out  
2 end of October. So that is the federal piece that  
3 we are operating under.

4 None of that precludes us from going  
5 ahead and putting out our document on the 26th,  
6 applicant looking at it, and us moving ahead as we  
7 have been discussing in terms of our testimony.

8 MS. HOLMES: I'd like to point out one  
9 other issue and that's that you have in your  
10 schedule allowed for both supplemental testimony  
11 and rebuttal testimony by staff. It would be my  
12 hope that we could use those filing opportunities  
13 to reach our final positions.

14 Which would mean that the Supplemental  
15 Staff Assessment, as it's called in some of these  
16 documents, it's also called other things, is  
17 nothing but response to comments. And I am not  
18 convinced that that needs to come in as evidence.

19 HEARING OFFICER CELLI: Right.

20 MS. HOLMES: The federal government  
21 doesn't need it to go through an evidentiary  
22 hearing process. So if the supplemental staff  
23 assessment is nothing but response to comments, I  
24 am not sure that there needs to be a hearing held  
25 on that. I think that it needs to go into the

1 docket, it needs to be part of the administrative  
2 record, but it is not evidence.

3 MR. GALATI: I would agree with you as  
4 long as there is another document. So if this  
5 testimony that you are talking about on staff's  
6 rebuttal testimony actually is staff's final  
7 opinion after a workshop then I am completely fine  
8 going to evidentiary hearing on that because then  
9 we can determine whether we really have a dispute  
10 or not. So I think that's --

11 HEARING OFFICER CELLI: That's what it  
12 sounds like to me.

13 MR. GALATI: Okay. And I wasn't, I had  
14 not yet seen a schedule that had a staff document  
15 other than this last one.

16 HEARING OFFICER CELLI: My sense so far  
17 has been that since it's a joint document. And  
18 it's a lot easier for me to sort of think of  
19 things just on our own track without the federal.

20 That really what they are going to be  
21 creating as a staff assessment right now is  
22 essentially the PSA is coming off on the 26th.  
23 Then they are going to come back with -- typically  
24 what will happen -- no, it's more like a staff  
25 assessment that's coming out. Like in Lodi there

1 was only a staff assessment but there was some  
2 addendum to it as I recall. And we are going to  
3 be getting that perhaps in the format of rebuttal  
4 testimony. But we will be getting it in this  
5 period of time here before June. Or perhaps into  
6 June but before July.

7 And that would be the last iteration of  
8 staff's analyses usually but we are leaving the  
9 record open only in the off-chance that some  
10 commentor or something comes in that would be  
11 anomalous that they would have to go back and  
12 clean up and change. I just --

13 I am not expecting to see a lot of  
14 change after July. Really you are just going to  
15 get comment from people and there may be a little  
16 correction here or there but I am not so sure we  
17 are going to see some big wholesale changes that's  
18 going to require us to create a whole new  
19 evidentiary hearing, other than to receive the  
20 evidence perhaps of errata or a little correction  
21 here or there.

22 MR. GALATI: That provides the  
23 clarification that I needed. I was not sure what  
24 the staff document would be and know that I need  
25 one other than the Draft EIS. So if it takes the

1 form of supplemental testimony or rebuttal  
2 testimony, those documents together become staff's  
3 final opinion then I think I agree with you, I  
4 think we are ready to go to evidentiary hearing at  
5 that point. We can do that before the staff  
6 prepares the staff assessment errata and Final  
7 EIS.

8 HEARING OFFICER CELLI: Do you see it  
9 that way, staff?

10 MS. HOLMES: I'm not quite sure about  
11 the labels. My point was simply that I don't  
12 believe that the response to comments, which is  
13 what we are going to be working on once the  
14 comment period is over, does not need to come in  
15 through an evidentiary hearing.

16 HEARING OFFICER CELLI: No it doesn't.

17 MS. HOLMES: That was my point.

18 HEARING OFFICER CELLI: In fact that  
19 could be submitted. It would be nice to have a  
20 stipulated submittal by all parties. An agreed-  
21 upon statement, essentially, this is the sum total  
22 of the comments that should find their way into  
23 the PMPD.

24 MS. HOLMES: Well that would be nice but  
25 I don't think it's required. I mean certainly --

1 ultimately the Committee will be drafting the  
2 response to comments. Staff puts together its  
3 reaction to the comments that were received but  
4 there's nothing that binds the Committee to take  
5 that or not. But it doesn't need to come in.  
6 It's not evidence so it doesn't need to come in  
7 through a hearing process.

8 HEARING OFFICER CELLI: Yes, it's  
9 comment on comment, essentially.

10 MR. GALATI: Yes, I just wanted some  
11 clarification on that, on that point. I agree  
12 with you, Caryn.

13 Do you agree that the staff testimony  
14 and rebuttal testimony would be staff's final  
15 testimony then in the matter so we could go to  
16 evidentiary hearing?

17 MS. HOLMES: Well again you're talking  
18 about a label. But my understanding is that we  
19 are going to put out the staff assessment. There  
20 is going to be some sort of supplement according  
21 to this schedule and then there is rebuttal  
22 testimony.

23 Now unless there is new evidence or  
24 changed circumstances that would be the extent of  
25 the staff testimony. Although we typically

1 include response to comments in an FSA I don't  
2 think it needs to be characterized as testimony.  
3 I think that that could come in after the staff  
4 assessment, the supplement and the rebuttal  
5 testimony come in.

6 MR. GALATI: Okay. That provides --

7 MS. HOLMES: It could be prepared, I  
8 should say.

9 HEARING OFFICER CELLI: That's great.

10 MR. GALATI: We're saying the same  
11 thing.

12 HEARING OFFICER CELLI: Yes.

13 MS. KOSS: May I?

14 HEARING OFFICER CELLI: And in the past  
15 we have had some difficulties sometimes with  
16 trying to find out what comments are and are not  
17 included in staff's assessment or what came after.  
18 So it is very useful to us to have some kind of  
19 written submittal from staff that says what the  
20 Committee comments were and what the response was.

21 Ms. Koss, you had a question.

22 MS. KOSS: May I ask it in a different  
23 way and hopefully this will really sink in for  
24 everybody. So is staff saying that all analysis  
25 and proposed mitigation will be issued prior to

1           hearings?

2                       MS. HOLMES:   Yes.

3                       MS. KOSS:   I think that's really what  
4           the crux of the issue is here.

5                       HEARING OFFICER CELLI:   Yes.

6                       MS. KOSS:   Great, thank you.

7                       HEARING OFFICER CELLI:   You know, the  
8           only thing that is unusual here is that instead of  
9           at the end of the evidentiary hearing closing the  
10          record and going off and writing a PMPD, we are  
11          going to leave the record open pending these  
12          comments and any major structural changes and then  
13          close the record.

14                      MS. KOSS:   Great.

15                      HEARING OFFICER CELLI:   I don't even  
16          know if -- I don't think we are going to have to  
17          have a hearing just to close the record if changes  
18          are as minor as I project they probably will be.  
19          I think that we have a sense that -- I'm sorry to  
20          say that it looks like evidentiary hearings are  
21          going into July.   That's just --

22                      MR. GALATI:   In that case that's no  
23          problem.   I'm sorry I got us off-track here.   I  
24          misinterpreted the purpose of the staff assessment  
25          errata and thought that that would be the document

1 that included staff's final changes, not just  
2 response to comments. So thanks for that clarity.

3 HEARING OFFICER CELLI: Okay. So I have  
4 something I can work with here. Now of course I  
5 am going to have to make sure that the  
6 Commissioners' schedules are clear and make sure  
7 my schedule is clear and put something out as soon  
8 as I can. But I am mostly glad to know that  
9 Friday I can pretty much count on, hang my hat on  
10 Friday March 26th as the date that the SA is  
11 coming out.

12 MS. HOLMES: Yes.

13 HEARING OFFICER CELLI: Thank you,  
14 that's great.

15 And with that, is there anything further  
16 from the applicant for today's status conference?

17 MR. GALATI: No, thank you.

18 HEARING OFFICER CELLI: And staff,  
19 please.

20 MS. HOLMES: No.

21 HEARING OFFICER CELLI: Thank you. We  
22 are on the record.

23 Ms. Koss, anything further for this  
24 status conference for the Committee to hear from  
25 CURE?

1 MS. KOSS: No, thank you.

2 HEARING OFFICER CELLI: I just want to  
3 go back, yes, as Commissioner Boyd said, back to  
4 Radio Land, and see if Mr. Boyd or Mr. Simpson  
5 from CARE, did you come on the telephone today?  
6 Are you there?

7 (No response.)

8 HEARING OFFICER CELLI: Hearing none we  
9 are going to now go to the public comment section  
10 of today's status conference. I note that there  
11 are three people in the audience here today, at  
12 least two of which I think are associated with the  
13 applicant. No comment from anyone in the room.

14 On the WebEx telephone we have, let's  
15 see. Mr. Bill Bruniga, did you want to make a  
16 comment?

17 MR. BRUNIGA: No, thank you very much.

18 HEARING OFFICER CELLI: Thank you.

19 And Magdalena Rodriguez, did you wish to  
20 make a comment?

21 MS. RODRIGUEZ: No.

22 HEARING OFFICER CELLI: Thank you for  
23 calling in and listening.

24 Meg Russell, did you wish to make a  
25 comment?

1 MS. RUSSELL: No I'm fine, thank you.

2 HEARING OFFICER CELLI: Thank you.

3 Tricia Bernhardt, did you wish to make a  
4 comment?

5 MS. BERNHARDT: No comment, thank you.

6 HEARING OFFICER CELLI: And is there  
7 anyone else on the line who wishes to make a  
8 comment at this time?

9 (No response.)

10 HEARING OFFICER CELLI: Hearing none I  
11 am going to hand the meeting back to the Presiding  
12 Member, Commissioner Boyd, who will adjourn the  
13 meeting.

14 PRESIDING MEMBER BOYD: Well I'll just  
15 thank everybody for their participation, for the  
16 lively discussion of how to fix schedules in the  
17 future. Hopefully we can import this to some of  
18 the other cases that we all are dealing with.

19 And I was wondering why we don't open a  
20 mobile office somewhere down in the desert.  
21 Because looking at my schedule it looks like I'll  
22 be going up and down the street, so to speak,  
23 across the desert time after time. But it's  
24 proving to be very interesting.

25 Hope all the issues get resolved but I

1 know there will probably be some interesting  
2 discussions.

3 So thank you for your participation  
4 today and we will be adjourned.

5 (Whereupon, at 2:46 p.m. the  
6 Status Conference was adjourned.)

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## CERTIFICATE OF REPORTER/TRANSCRIBER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of March, 2010.

/s/ John Cota

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