

STATUS CONFERENCE  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Application for Certification ) Docket No.  
for the Lodi Energy Center ) 08-AFC-10  
Northern California )  
Power Agency )  
\_\_\_\_\_ )

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

THURSDAY, NOVEMBER 19, 2009

10:00 a.m.

Reported by:  
Ramona Cota, CERT  
Contract No. 170-07-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Karen Douglas, Chairman and Presiding Member

Jeffrey D. Byron, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Kenneth Celli, Hearing Officer

Kristy Chew, Advisor to Commissioner Byron

Galen Lemei, Advisor to Commissioner Douglas

STAFF AND CONSULTANTS PRESENT

Rod Jones

Melanie Moultry, Staff Counsel

APPLICANT

Scott Galati, Attorney  
Galati and Beck

Ed Warner  
Northern California Power Agency

ALSO PRESENT

Steve Hill, Modesto Irrigation District

Michael E. Werner, California Department of Water  
Resources

Kenneth A. Weisel, Lodi Electric Utility

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P R O C E E D I N G S

10:07 a.m.

PRESIDING MEMBER DOUGLAS: Welcome to  
the status conference for the Lodi Energy Center.

My name is Karen Douglas; I am the  
Presiding Member of the Committee. To my right is  
Ken Celli, our Hearing Officer; to his right,  
Commissioner Byron, the Associate Member of this  
Committee. To his right is Kristy Chew, his  
advisor. My advisor, Galen Lemei, will be sitting  
right here.

So welcome. And with that I would like  
to turn this over to the Hearing Officer.

HEARING OFFICER CELLI: Thank you,  
Commissioner, Chairman Douglas.

To continue with the introductions I am  
going to ask that the applicant please introduce  
your people.

MR. GALATI: My name is Scott Galati  
representing NCPA.

MR. WARNER: Ed Warner, the project  
manager for NCPA.

MR. GALATI: And Mr. Celli, we will have  
some participants in the project speak to you  
later. I'll have them introduce themselves at

1 that time. Would that be okay?

2 HEARING OFFICER CELLI: That's great,  
3 thank you.

4 MR. GALATI: Thank you.

5 HEARING OFFICER CELLI: Staff, please.

6 MR. JONES: Good morning, I'm Rod Jones,  
7 the project manager.

8 MS. MOULTRY: Melanie Moultry, staff  
9 counsel.

10 HEARING OFFICER CELLI: Thank you.

11 Do we have any public agencies that  
12 wanted to introduce themselves at this time?

13 If you are going to speak later you can  
14 do that too. If you are here requested by the  
15 applicant to speak you can introduce yourself when  
16 you speak. But if there is anyone who is here  
17 from a public agency who was not invited by the  
18 applicant to speak, please come forward.

19 Seeing none. And members of the public.  
20 Are there any members of the public who wish to  
21 make a comment today? I see none.

22 I note that we don't have a public  
23 adviser here today but if anybody comes in I'll  
24 give them an opportunity.

25 The Committee scheduled today's event by

1 notice dated November 9, 2009. This status  
2 conference was calendared at the request of the  
3 applicant, NCPA, to obtain a new scheduling order  
4 that ensures that the Lodi Energy Center's AFC can  
5 be processed in time to meet its construction  
6 schedule.

7 Currently the Committee's scheduling  
8 order of January 22, 2009 has lapsed, with  
9 scheduling events lagging approximately seven  
10 months behind their originally scheduled due  
11 dates.

12 To assist the Committee and participants  
13 in understanding the issues, applicant and staff  
14 were ordered to file proposed schedules for the  
15 remainder of the siting process on or before  
16 November 15, 2009. I did receive one from the  
17 applicant.

18 The way we will proceed today is we will  
19 first provide the applicant an opportunity to  
20 summarize their view of the case status and their  
21 recommendations for future scheduling. Then we  
22 will hear from staff. We will then provide an  
23 opportunity for any general public comment.

24 So with that we'll turn it over to the  
25 applicant.

1                   MR. GALATI: Thank you very much. We  
2 appreciate the Committee. And it is not lost on  
3 me that we have both members of the Committee,  
4 which in this day and age is hard to get  
5 Commissioner time, so I am very thankful that the  
6 Committee is here with your advisors.

7                   I think the way we'd like to proceed  
8 today is I'd like to turn over the microphone to  
9 Mr. Ed Warner who is the project manager. Then  
10 have you hear a little bit from the participants,  
11 and then follow-up with the schedule that we're  
12 asking for and why. Will that work okay?

13                   HEARING OFFICER CELLI: Please.

14                   MR. WARNER: Thank you. My name is Ed  
15 Warner. I'm the project manager for NCPA. I'd  
16 just like to give a little background and why  
17 we're here speaking in front of you today.

18                   NCPA filed the Lodi Energy Center AFC on  
19 September 10, 2008, approximately 14 months ago.  
20 And on November 20, 2008, approximately 12 months  
21 ago, we received data adequacy.

22                   This project is a publicly-funded  
23 project and any delays associated with that are  
24 paid for by public funds. I just want to point  
25 that out to everyone.

1                   The members making up this project are,  
2                   13 public entities and one co-op are the project  
3                   participants for the Lodi Energy Center.

4                   The Lodi Energy Center has come a long  
5                   way in its permitting process. We have a CAISO  
6                   interconnect agreement signed by all the parties,  
7                   it's executed.

8                   We have a Preliminary Determination of  
9                   Compliance by the San Joaquin Valley Air Pollution  
10                  Control District and the Final Determination of  
11                  Compliance is due out any day. It's in publishing  
12                  is what we understand.

13                  The project will also be one of the  
14                  first in the state to utilize fast-start  
15                  technology.

16                  All the emission reduction credits are  
17                  owned by NCPA, not options. We own the ERCs.

18                  The engineering contract is in place.

19                  The power equipment is under contract  
20                  under a purchase option contact agreement with  
21                  Siemens.

22                  NCPA's intent all along is to have this  
23                  project available for the summer peak of 2012 to  
24                  meet its public entities' needs to having the  
25                  power available.

1                   During construction the project will  
2                   bring a peak workforce of between 200 and 250  
3                   crafts people in the San Joaquin Valley region.

4                   And also to support our, to support our  
5                   goal of bringing this plant on-line in 2012 NCPA  
6                   has entered into a power purchase agreement with  
7                   Siemens to provide the major equipment for the  
8                   Lodi Energy Center.

9                   The second payment of this option is due  
10                  in April of 2010. If this payment is not made --  
11                  and this payment will come from the financing of  
12                  the project. And to close the financing NCPA  
13                  needs the, needs the license from the Energy  
14                  Commission. If this payment is not made we risk  
15                  termination of the agreement or delay in equipment  
16                  delivery, which will delay our construction  
17                  schedule, which we won't be able to meet the needs  
18                  of our public owners.

19                  Also in NCPA's financing we are, we are  
20                  planning on utilizing a bond program called Build  
21                  America Bonds. They are bonds that are subsidized  
22                  by the Treasury Department for capital improvement  
23                  for government agencies. And one of the -- one of  
24                  the criterias of them are for the projects, the  
25                  capital project to be built in either 2009 and

1 2010.

2 The Treasury Department will subsidize  
3 the interest rate 35 percent. It's a significant  
4 amount of subsidies in this financing. Over the  
5 30 year life of the project it is estimated by our  
6 financing people that the savings by going with  
7 these Build America Bonds is approximately 120 to  
8 130 million dollars over the 30 year financing.  
9 Which is equivalent to a little over \$4 million a  
10 year a year to the public entities that are  
11 participants in this project.

12 These Build America Bonds do, the  
13 program does terminate in 2010. So extensive  
14 delays in the AFC process could jeopardize NCPA's  
15 having access to this program.

16 We understand that staff is burdened.  
17 We understand that the number of applications into  
18 the Energy Commission is at a record level. But  
19 we also -- we appreciate that fact but we also  
20 really want to point out to you the importance of  
21 this public project and the costs associated to  
22 the public with any delays of the licensing.  
23 Delays in construction which will be passed on to  
24 consumers in the public entities' service area.

25 Now I'd like to, I'd like to turn it

1 over to some of the participants. First of all  
2 we'd like to go with Mr. Steve Hill from the  
3 Modesto Irrigation District.

4 HEARING OFFICER CELLI: Mr. Hill, if you  
5 wouldn't mind sitting right in front of that  
6 microphone. Is that microphone working? Do I  
7 have to turn another microphone off in order for  
8 that to work?

9 MR. GALATI: I turned one off.

10 MR. HILL: First of all, thank you very  
11 much. I do appreciate, along with Ed, the  
12 opportunity to speak to the Siting Committee.  
13 Please forgive me if I take these glasses on and  
14 off. I have a \$500 pair on order, these are the  
15 \$2 cheap replacements.

16 (Laughter)

17 MR. HILL: Again, as Ed said, my name is  
18 Steve Hill and I am here representing the Modesto  
19 Irrigation District.

20 As one of the major participants in the  
21 ownership of the Lodi Energy Center, MID wants to  
22 add its voice to the message of support that NCPA  
23 and State Senator Dave Cogdill have recently sent  
24 to the CEC.

25 To summarize this statement as plainly

1 as I can, please give the LEC the same priority  
2 status being given to renewable projects so that  
3 we can complete the licensing process by March  
4 2010, as Ed has so aptly explained.

5 I would like to maybe just amplify a  
6 couple of things on what he says in the areas of  
7 resource adequacy, the need for local generation  
8 and reduced transmission losses, job creation, and  
9 again, finance.

10 The LEC, or Lodi Energy Center, is an  
11 important part of MID's long-term resource plan.  
12 As such it's expected and planned to be commercial  
13 for the summer of 2012. We update our plan  
14 several times a year, and these plans go out 20  
15 years, and the Lodi Energy Center has been on the  
16 books for several years now to be completed in the  
17 summer of 2012.

18 History shows that not hedging against  
19 market volatility has the potential to lead to  
20 catastrophic losses as was experienced during the  
21 2001 energy crisis. The California Public  
22 Utilities Commission recognizes that the potential  
23 for this volatility is just as valid today.

24 In the development of the PUC's physical  
25 resource adequacy program the PUC stated in its

1 final decision that it would be moving to phase  
2 out long-term contracts that are not directly  
3 linked to a physical resource.

4 The adopted policy encourages the  
5 development of more local, iron in the ground so  
6 to speak, projects such as the Lodi Energy Center  
7 in order to meet California's load with more  
8 stable products that are now backed by physical  
9 resources.

10 MID has a number of these long-term  
11 contracts that terminate in the next couple of  
12 years. These long-term contracts are primarily  
13 from the northwest. And as such this LEC or Lodi  
14 Energy Center will replace those long-term  
15 contracts in our resource mix. Timely permitting  
16 of the LEC is important in order to maintain the  
17 schedule for replacement of these long-term  
18 contracts to meet our local resource adequacy  
19 needs.

20 Second, in regard to local generation  
21 and reduced transmission losses. The Lodi Energy  
22 Center is located within a 50 mile radius of  
23 Modesto Irrigation District's service territory.  
24 It's not easy these days to find a nice project  
25 site.

1                   The Lodi Energy Center will be one of  
2                   the most efficient combined-cycle designs built to  
3                   date.

4                   This resource will replace, as I  
5                   indicated, the long-term contracts MID has from  
6                   the Northwest that we import over the California-  
7                   Oregon Transmission Project or COTP lines.

8                   This also gives the benefit -- well, not  
9                   only will this reduce transmission line losses.  
10                  It also frees up available capacity on that line  
11                  to import potential renewable resources from the  
12                  Northwest, which is important to us.

13                  In regard to job creation: California's  
14                  average unemployment rate for 2009 now exceeds 12  
15                  percent. This is more than double what it was two  
16                  years ago. You probably all kind of knew that.  
17                  What I didn't realize was that California  
18                  construction jobs are approximately 19 percent  
19                  lower this year than what they were last year.  
20                  And unemployment in the San Joaquin Valley now  
21                  approaches 17 percent. I think Ed described  
22                  appropriately the number of potential jobs,  
23                  construction jobs in particular this project can  
24                  add to the San Joaquin Valley.

25                  And finally in regard to finance. If

1 the project process continues to be delayed it  
2 could increase MID rates. You probably heard  
3 maybe on the radio the last few days even about a  
4 potential rate increase at MID; it could increase  
5 those rates even more. And I think Ed has given  
6 the reasons for that.

7 So I just again wanted to thank you for  
8 the time to be able to address you and appreciate  
9 your consideration. Thank you very much.

10 HEARING OFFICER CELLI: Thank you,  
11 Mr. Hill.

12 MR. WERNER: Good morning. I appreciate  
13 the opportunity to address the Siting Committee  
14 today. I am Michael Werner and I am representing  
15 the California Department of Water Resources here  
16 today.

17 DWR is a participant in the Lodi Energy  
18 Center project and supports NCPA in requesting  
19 that the Energy Commission give the Lodi Energy  
20 Center the same priority status being given to  
21 renewable energy projects, such that the Lodi  
22 Energy Center's licensing process can be completed  
23 by March 2010 and the facility on-line by the  
24 summer of 2012.

25 As a participant the energy from the

1 Lodi Energy Center will be used to meet part of  
2 DWR's need for energy to operate the state water  
3 project. The Lodi Energy Center will help  
4 stabilize the cost of energy needed to operate the  
5 project, and consequently, help stabilize the cost  
6 of water delivered by the state water project.

7 As one of the first projects in the  
8 nation to employ a fast-start technology, carbon  
9 monoxide, NOx and SO2 and greenhouse gas emissions  
10 from the Lodi Energy Center will be significantly  
11 reduced, making it one of the cleanest plants of  
12 its kind in the nation.

13 Operation of the Lodi Energy Center will  
14 result in a significant reduction in the  
15 production of greenhouse gas emissions compared to  
16 current market energy sources. On the state water  
17 project's part, low greenhouse gas emission energy  
18 produced by the Lodi Energy Center will be used to  
19 replace high energy greenhouse gas emission energy  
20 produced by a coal-fired power plant located in  
21 Nevada that is under contract to the state water  
22 project, thus significantly help the state water  
23 project meet the AB 32 greenhouse gas emission  
24 reduction goals.

25 Lastly, if the project approval process

1 continues to be delayed participants in the Lodi  
2 Energy Center may lose access to favorable  
3 financing through the Build America Bond program,  
4 which expires at the end of 2010, which Ed Warner  
5 talked about. This will affect the cost paid by  
6 DWR in proportions to its share of the project,  
7 since DWR's share will also be financed through  
8 NCPA by the Build America Bonds.

9 Thank you for allowing me to make  
10 comments today.

11 HEARING OFFICER CELLI: Thank you,  
12 Mr. Werner.

13 MR. WEISEL: I also appreciate the  
14 privilege of addressing the Siting Committee  
15 today. I am Ken Weisel, I'm the interim director  
16 of the Lodi Electric Utility.

17 As a participant in the Lodi Energy  
18 Center project Lodi wants to add its voice also to  
19 the message that NCPA and State Senator Cogdill  
20 have recently sent to the Energy Commission.  
21 Please give the LEC the same priority status that  
22 is being given to renewable projects and complete  
23 the licensing process by March 2010.

24 The energy from the Lodi Energy Center  
25 will be used to supply existing load, replacing

1 baseload contracts that expire in the spring of  
2 2012.

3 This project is not being built for  
4 market speculation. Lodi is committed to serving  
5 the needs of its residential business customers  
6 who will use the energy from the plant.

7 Lodi Energy Center will be one of the  
8 cleanest plants of its kind. It will be one of  
9 the first projects in the nation to employ fast-  
10 start technology, significantly reducing carbon  
11 monoxide, oxides of nitrogen and oxides of sulfur.  
12 With its highly efficient use of natural gas  
13 operation of the Lodi Energy Center will result in  
14 only 800 pounds per megawatt hour of greenhouse  
15 gases, replacing market purchases averaging around  
16 1,000 pounds per megawatt hour.

17 The current licensing delay is  
18 jeopardizing NCPA's ability to complete the  
19 project in time for the summer peak of 2012. As a  
20 participant in the project it is important to Lodi  
21 that the Lodi Energy Center be on-line by the  
22 summer of 2012 to meet the needs of our customers  
23 for clean, affordable, reliable energy.

24 Lodi Energy Center will stabilize Lodi's  
25 rates because efficient energy is low-cost energy.

1 Further, if the project approval process  
2 continues to be delayed participants in the Lodi  
3 Energy Center may lose access to favorable  
4 financing through the Build America Bonds.

5 The project will bring 150 jobs during  
6 construction and nine permanent jobs to San  
7 Joaquin County. These jobs are much needed in the  
8 county, where unemployment now stands at 16  
9 percent.

10 Thank you very much for the opportunity  
11 to address you.

12 HEARING OFFICER CELLI: Thank you,  
13 Mr. Weisel.

14 MR. GALATI: Thank you very much for  
15 listening to the participants and giving us an  
16 opportunity to tell you why the project is  
17 important and I certainly think you have a flavor  
18 for why it is important. But let me now turn to  
19 what is it we want you to do so I'll try to get  
20 right to the point.

21 First I want to say that this in no way,  
22 shape or form should reflect poorly on staff,  
23 okay. We understand that they are burdened. But  
24 we are at a position where we don't know what else  
25 to do. So we huddled up and we came up with a

1 program that tried to accomplish a couple of  
2 goals.

3 Number one, obviously, give the  
4 Commission a chance to make a decision in time for  
5 our construction.

6 Two, make sure that we weren't doing  
7 anything that limited public involvement.

8 Three, make sure that we weren't  
9 proposing something that would put additional  
10 burdens on staff.

11 Those were our three goals and that's  
12 why we came up with the program that you have in  
13 front of you.

14 What we're asking is that staff publish  
15 the PSA. Publish the PSA. If it is not complete,  
16 publish the PSA anyway. We need to have a  
17 document. Our understanding is it has been nearly  
18 complete for many months.

19 I will make sure that you understand  
20 that we are responsible for some part of the  
21 delay. And that was long ago. It was in the  
22 summertime of this year and earlier when NCPA as a  
23 public entity cannot select a vendor, it must go  
24 through a public bidding process. That public  
25 bidding process resulted in a different vendor.

1 It was the Siemens equipment. It was equipment  
2 that lowered emissions. We did change the turbine  
3 on staff, it did cause them to re-analyze.

4 But I want to downplay that from this  
5 perspective. We did that work largely for staff.  
6 The Preliminary Determination of Compliance had  
7 come out with the other turbine. We had marked up  
8 that Preliminary Determination of Compliance in a  
9 redline/strikeout fashion to show everywhere that  
10 things needed to change.

11 We met with the district, the district  
12 was on board. And that's why the district was  
13 able to go to an FDOC, because the changes are all  
14 positive. There are slight -- no additional ERCs  
15 required and there was very little reconfiguration  
16 from our perspective that needed to be studied.

17 We met with staff and staff was very  
18 open and very helpful with us. We had a good  
19 working relationship with staff and I still think  
20 that we do.

21 But we need the PSA out and we need it  
22 out now. We want to go to a PSA workshop so we  
23 can have the dialogues with staff about the  
24 conditions of certification and come to agreement.  
25 We are dedicated to resolving issues the same way

1           that we have resolved issues in other projects.  
2           It's to bring something to the Committee that  
3           isn't litigated, that isn't highly contested and  
4           doesn't take a lot of time, both Committee and  
5           Hearing Officer time to write a complex decision.

6                         We also recognize that staff's normal  
7           process of a PSA/FSA, that we would just be asking  
8           you to do one piece. I'm here to tell you that we  
9           are on the five yard line. We are not at the 50  
10          yard line, even though we don't have a PSA. We  
11          are at the five yard line. We are about ready to  
12          get an FDOC. We have everything else completed.

13                        We have a project that if this project  
14          were proposed to you today it would meet the six  
15          month standards that were available to a project  
16          during the energy crisis.

17                        This is the exact project the Commission  
18          should be looking for. It's on an existing site.  
19          It doesn't have opposition. We held open houses  
20          on our own and had very few people attend. There  
21          has not been public participation or interest in  
22          the project. And I can address that there is a  
23          recent intervenor. And I can address that if  
24          you'd like or you can read my opposition.

25                        So that is why we're here. Here's what

1 we're asking. Set a date for evidentiary  
2 hearings. Set them now. Order staff to produce  
3 the PSA, whatever they have done. We'll take care  
4 of the rest. We will take care of the rest.

5 There is no reason why you can't. We  
6 have produced five, six, probably ten volumes of  
7 information that we have submitted to the  
8 Commission at one time or another on this project.

9 I am prepared to go to evidentiary  
10 hearing without any staff assessment. I don't  
11 know if the regulations would allow me to do that  
12 but I am prepared to do that and to put the  
13 project in front of you. Because it is that  
14 clean, it is that easy. And you have done  
15 conditions of certification exactly like this  
16 hundreds of times so there isn't a bunch of  
17 thought process that needs to go into this.

18 If we could get staff's assessment we  
19 would use staff's assessment as the primary  
20 document, whether it's preliminary or final, and  
21 what we would do is augment with anything that  
22 needed to be changed, anything -- and the  
23 Committee can hear -- staff doesn't have to write  
24 a staff assessment. We'd like them to come to the  
25 hearing and either agree or disagree.

1                   That's what our idea was. We have a  
2 points and authority of why we think you are  
3 legally allowed to do what we are asking. We have  
4 tried to ruin your Christmas and New Year by  
5 asking for December 28, to give the Hearing  
6 officer an opportunity before Beacon, before the  
7 new renewable projects take hearing officer time,  
8 such that they cannot write a decision.

9                   So we are prepared, and we will be  
10 prepared with testimony on the 14th and  
11 evidentiary hearing on the 28th if you allow us to  
12 take the burden from staff.

13                   HEARING OFFICER CELLI: Thank you,  
14 Mr. Galati. What I want to -- first of all I  
15 should probably tell you that -- I don't know if  
16 you're aware that Beacon just bumped out into next  
17 year.

18                   ASSOCIATE MEMBER BYRON: I'm sure  
19 Mr. Galati is aware.

20                   (Laughter)

21                   HEARING OFFICER CELLI: What I'd like to  
22 do is hear from staff. Hear what staff has to  
23 say, what's your position, and then we'll have  
24 some discussion about it. So please, Mr. Jones.

25                   MR. JONES: Thank you. First of all the

1 staff is definitely in support of expediting the  
2 project as quickly as possible. We are definitely  
3 concerned about the time lapsed in the project.

4 We actually would like to recommend a  
5 staff assessment in lieu of a PSA. Essentially  
6 not counting on a Final Staff Assessment but a  
7 staff assessment with an errata or perhaps  
8 something attached to it to reduce the time.

9 However there are a couple of concerns  
10 that we have. One being the FDOC, which is  
11 essentially a draft FDOC, which will require a 30  
12 to 45 day public comment period. So we're sort of  
13 held at that situation by the air district. So  
14 staff cannot render a final conclusion regarding  
15 that particular discipline, which will definitely  
16 impact a staff assessment.

17 As far as the other disciplines involved  
18 with the staff assessment. We feel relatively  
19 comfortable that we have a fairly solid document.

20 HEARING OFFICER CELLI: May I ask --  
21 first of all, Commissioners, do you have any  
22 questions, please? Chairman Douglas?

23 PRESIDING MEMBER DOUGLAS: I don't have  
24 any questions right now. I'd like to thank  
25 Mr. Galati for bringing forward some ideas and

1 concrete suggestions for how this particular case  
2 might be expedited, given the fact that it does  
3 appear to be less controversial.

4 And there has been a lot of work done,  
5 obviously. I appreciate the staff's thinking that  
6 we might move straight to an FSA. That has  
7 certainly been done in the past at this Commission  
8 and this may well be an appropriate type of case  
9 to take that kind of action.

10 So I think my only question is to staff  
11 is whether the document that you were working on  
12 to release as a PSA is more or less the same  
13 document that you would like to release as an FSA?  
14 Or what is your timing? What changes might you  
15 need to make for that to happen?

16 MR. JONES: Well it's essentially the  
17 same document. If anything it's probably been  
18 improved considering the length of time we have  
19 worked on it. I believe we are very close to  
20 moving to a final document.

21 Of course, you know, there are some  
22 editorial things that we would have to do to the  
23 document. And we also are dependant on the air  
24 district's Final Determination of Compliance. So  
25 that is very important to us as well.

1                   And of course the applicant may have  
2                   some concerns about what is in the document. They  
3                   will have to review it. But I think it's in a  
4                   pretty good shape to where we can sort of wrap it  
5                   up and move toward publication. We just have to  
6                   determine a specific date.

7                   HEARING OFFICER CELLI: Commissioner.

8                   ASSOCIATE MEMBER BYRON: Thank you,  
9                   Hearing Officer Celli. I'm not sure I have a  
10                  comment at this -- a question at this point but I  
11                  do appreciate the response on the part of staff.

12                  Of course I think the applicant has done  
13                  an excellent job with their presentation and put  
14                  forward before this Committee the issues that are  
15                  of the utmost importance to you. And Mr. Galati,  
16                  as usual, very creative in your approach and have  
17                  thought these things through very well.

18                  No apologies on behalf of staff. We  
19                  know that they are worked very hard. And we are  
20                  going to press you on schedule here and see what  
21                  we come up with. But I want to make sure I  
22                  understand. Did I understand you to say that the  
23                  PSA would likely become the final, would be  
24                  equivalent to the Final Staff Assessment with an  
25                  errata?

1 MR. JONES: Potentially, yes.

2 ASSOCIATE MEMBER BYRON: Okay, all  
3 right. Thank you.

4 HEARING OFFICER CELLI: Thank you,  
5 Commissioners. I have a few questions. We're  
6 going to have to get into the nuts and bolts part  
7 now. We roll up our sleeves and talk about this.

8 But before I do I just want to remind  
9 everybody that last when we were all together  
10 there was a wetlands issue, there was a land use  
11 issue regarding a gas line near the airport, there  
12 was a final system impact study issue. This was  
13 way back a year ago. Am I to understand that  
14 those have all been cleared up, all those issues,  
15 Mr. Jones?

16 MR. JONES: Yes, yes they have.

17 HEARING OFFICER CELLI: And the other  
18 question I had is, does the PSA -- the only  
19 comments that I have in my file came from  
20 Mr. Sarvey back in May of last year. And I wanted  
21 to make sure that those comments are addressed in  
22 the -- I guess they are air quality comments. Are  
23 those addressed in the PSA now?

24 MR. JONES: Yes, yes they are.

25 HEARING OFFICER CELLI: Okay. So that

1 takes us, that makes us current, issues-wise.

2 MR. GALATI: And Mr. Celli, if I could  
3 add to that. Again, Mr. Sarvey commented on the  
4 PDOC.

5 HEARING OFFICER CELLI: Yes.

6 MR. GALATI: The turbine changed and  
7 many of the concerns raised by Mr. Sarvey were  
8 addressed in the FDOC. Not only just addressed  
9 and commented on but some of the recommendations  
10 taken.

11 So the FDOC, as Mr. Jones has pointed  
12 out, when he says it's a draft. It does have the  
13 word "draft" on it. Because we and the district  
14 agreed, since things had changed it might be  
15 beneficial to circulate it for public comment one  
16 more time. But it can be used as the Final  
17 Determination of Compliance. If there is public  
18 comment obviously the district would address it.  
19 But it represents the final determination of this  
20 particular district.

21 Again, with the issues of emissions  
22 lower than anywhere else that you'll see, and  
23 offsets completely purchased. And it's the same  
24 offset package so any new comments on the offset  
25 package were the same comments or not on the new

1 package. So all we're talking about now is the  
2 turbine change, where the emissions for the most  
3 part went down. The small amount of emissions  
4 that went up are already offset and had to do  
5 with, I believe, fuel use. But start-up emissions  
6 and everything else went down. It moved in the  
7 exact right direction of any commentor.

8 And again, staff has had our markup of  
9 that PDOC for quite some time as to what the  
10 changes were. So I'm encouraged that staff is  
11 willing to go to an FSA but I'm not sure that  
12 answers any of my questions. Whether I call it a  
13 PSA or an FSA, if we don't get it and get  
14 evidentiary hearing, we can't win.

15 HEARING OFFICER CELLI: All right.

16 MR. GALATI: So again, I'm prepared to  
17 go without a staff assessment. I would like staff  
18 to, today, spend no time changing it from a PSA to  
19 an FSA and doing editorial comment. And I would  
20 like them to publish what they have. And again,  
21 we'll make up the rest and staff can stipulate or  
22 disagree. We will provide them a document that  
23 says, this is what we think needs to be updated,  
24 this is our proposal. Staff only need read it and  
25 comment.

1                   The problem is not that staff is not  
2 willing to work on it. The problem is staff  
3 cannot get anything through review and publication  
4 so that it becomes a document. That's the problem  
5 we're solving here. It's not to stop staff's  
6 input. It's that I don't think they physically  
7 can get that done. We have been told it's going  
8 to come out for so many -- and Mr. Jones has been  
9 trying. You know, two weeks from now, three weeks  
10 from now, two weeks from now. It's beyond the  
11 control of the people in this room except you  
12 guys.

13                   So again I want to make the strongest  
14 plea possible, let us do this work. If it is not  
15 credible, if it is not thorough staff can comment  
16 and you can deny our project or delay our project.  
17 We'll take that risk. But I see no other way to  
18 get there by the time we need to get there.

19                   HEARING OFFICER CELLI: Well what do you  
20 think about -- Mr. Jones is suggesting that this  
21 just be an SA.

22                   MR. GALATI: If it came out today or  
23 tomorrow or the next day that's great. If it's an  
24 SA and it comes out in January or February, it  
25 doesn't help us.

1 HEARING OFFICER CELLI: What is you  
2 estimated arrival date of this SA?

3 MR. JONES: Essentially perhaps the week  
4 of November 30 we may be able to publish.

5 HEARING OFFICER CELLI: And what we're  
6 talking about here now, Mr. Jones, is a complete  
7 staff assessment?

8 MR. JONES: Well, it will be complete up  
9 to the point of not having the -- perhaps the  
10 final, final from the FDOC, from the air district.

11 HEARING OFFICER CELLI: But everything  
12 else?

13 MR. JONES: Yes, everything else.

14 HEARING OFFICER CELLI: And Mr. Galati  
15 had indicated that the -- that you were interested  
16 in some sort of PSA workshop. Which sort of leads  
17 me to the -- maybe I misunderstood but coming into  
18 this I sort of got the sense that this case was so  
19 non-controversial that it would probably be the  
20 kind of thing that would be by stipulation in its  
21 entirety, all of the testimony. Yet now I'm kind  
22 of, I have doubt about that from what you said  
23 about the need for a workshop.

24 MR. GALATI: Unfortunately, with the  
25 Commission's interpretation of ex parte rule

1           between staff and the applicant, we can't exchange  
2           drafts of conditions. So sometimes we get a  
3           condition that is written in such a way that we  
4           say, ouch, that hurts. Can we accomplish the same  
5           goal by tweaking this language and this piece and  
6           that piece. And I would like to have a workshop  
7           opportunity as soon as staff tells me what the  
8           conditions are so that I can negotiate and work  
9           with staff to say, is there another way to  
10          accomplish this.

11                         It has worked extremely well in other  
12          projects where staff may not understand that by  
13          making the condition written in such a way it  
14          causes the applicant a burden. And so we can  
15          propose changes in language. My understanding is  
16          staff cannot or won't do that except in a public  
17          workshop setting.

18                         HEARING OFFICER CELLI: Okay.

19                         MR. GALATI: If we can exchange, if I  
20          can get it we can comment and we can have a  
21          dialogue in a settlement conference between  
22          applicant's attorney and staff's attorney I don't  
23          need a workshop. I just want the ability to talk  
24          to staff about, can we, can we move this 30 days,  
25          can I put an "or" instead of an "and" and is this

1 condition, is it still applicable.

2 HEARING OFFICER CELLI: So let's say the  
3 staff assessment comes off. You know, I'm always  
4 reluctant to start picking dates around here just  
5 because, you know, we have heard wolf cried so  
6 many times on dates. But let's just say November  
7 30 is the SA date.

8 MR. JONES: The week of.

9 HEARING OFFICER CELLI: The week of,  
10 okay. Well what that does, Mr. Galati, is that  
11 bumps you up, essentially, a week or two on your  
12 proposed November 19th date, according to this.  
13 So the FDOC you say is coming off, is in  
14 publishing, as somebody mentioned.

15 MR. GALATI: Yes it is. It is so close  
16 that we actually made a call just a few minutes  
17 before the hearing to see if it had come out. We  
18 haven't been able to contact them. But we know  
19 that it is signed off and being published.

20 HEARING OFFICER CELLI: Okay.

21 MS. MOULTRY: I'm sorry, I believe a  
22 draft of the FDOC is going to be -- a draft of the  
23 FDOC is going to be published and it will require,  
24 I believe, a 30 day public comment period. So the  
25 Final Determination of Compliance isn't going to

1 be issued for another month or so.

2 HEARING OFFICER CELLI: Well we've  
3 bifurcated before.

4 MR. GALATI: And Mr. Celli, I want to  
5 put this in perspective. Staff's done a complete  
6 air quality impact analysis. That will not change  
7 from the FDOC. What would change is the  
8 conditions. So I tell you, I'm willing to take  
9 the FDOC as Exhibit number 2, staff's assessment  
10 as Exhibit number 1 and say, please when you write  
11 the conditions, all the ones that say AQ-1 through  
12 whatever, don't use staff's conditions, use the  
13 district's.

14 That's what staff is going to do with  
15 this document. There is going to be nothing in  
16 this document than evaluates anything different  
17 than what staff has already evaluated. They have  
18 the full modeling, they have the full offset  
19 package, the construction emissions don't change.  
20 Everything staff is going to do in its air quality  
21 as staff conditions is done or should be done.

22 So the reason that we called this a  
23 draft and did not fight for this to be a final was  
24 to afford additional public review on the changes  
25 that were made to the district. And we recognize,

1 just like when you write a PMPD, public comment  
2 could come in and change things. So there's no  
3 reason to delay because of this draft status.  
4 That was a responsible status from our  
5 perspective. And we shouldn't be punished for it,  
6 we should be applauded for it.

7 HEARING OFFICER CELLI: And you agree  
8 with that, Mr. Jones?

9 MR. JONES: I agree to a certain extent.  
10 I still want to be a little cautious here. We  
11 don't know what kind of public comment there will  
12 be on the FDOC, draft FDOC, so we have to really  
13 keep that in mind.

14 However, I think definitely taking an  
15 expedited approach in terms of completing the  
16 staff assessment or FSA is a good idea from a time  
17 perspective. But we must not lose sight of the  
18 potential of comments to come from the public that  
19 may drastically change the outcome of the FDOC.

20 MS. MOULTRY: I just wanted to add that  
21 the reason that we don't want to publish the staff  
22 assessment now is because the air quality  
23 specialists are actually in the process of  
24 incorporating the changes that they have received  
25 within the draft air quality document. And so

1           they basically just want to create a staff  
2           assessment that is as final as possible. So we  
3           would prefer the week of November 30 just so we  
4           can get it in as good a shape as we possibly can  
5           before we publish it.

6                         HEARING OFFICER CELLI: And Ms. Moultry  
7           you're saying that that week of the 30th gives us,  
8           the Committee, a complete staff assessment with  
9           Air.

10                        MS. MOULTRY: As complete as possible.

11                        HEARING OFFICER CELLI: Okay. So  
12           looking at November 30th, which is a week from  
13           next Monday, which is after Thanksgiving. I'm  
14           sure you have taken that all into consideration  
15           too. And I'm just going to take the FDOC out of  
16           the picture. When would you be able to have a  
17           workshop?

18                        MR. GALATI: If the staff assessment  
19           really does come out I would ask you to schedule  
20           evidentiary hearings for the afternoon of the  
21           28th. And that we could schedule a workshop for  
22           that morning and we could present with you our  
23           solutions.

24                        HEARING OFFICER CELLI: You know, that's  
25           actually pretty tight. I would rather we get to

1 an evidentiary hearing/prehearing conference with  
2 a little more settlement than that. In other  
3 words, I just think that it would be fair to the  
4 committee to have parties meet and confer.

5 Maybe that 28th day would be the day  
6 that you have your workshop and then we put it  
7 over when actually the Committee can actually be  
8 here. And have a day in early January for a  
9 prehearing conference and evidentiary hearing but  
10 hopefully everything would be settled by then.

11 MR. GALATI: I think what I'm worried  
12 about is that unfortunately, and Mr. Celli, you  
13 know this happens to you all the time. Is then  
14 the burden for the license date is on you to meet  
15 the date we're asking. And I'm asking for  
16 something earlier to relieve the requirement for  
17 you to write a Presiding Member's Proposed  
18 Decision in record time so that it can then  
19 publish and circulate for 30 days and then get on  
20 a Business Meeting agenda that allows us to meet  
21 the requirements. So that's why I'm pushing the  
22 staff instead of pushing you.

23 HEARING OFFICER CELLI: Well I  
24 appreciate that but, you know, we still have to go  
25 through our processes. We still have to, you

1 know, we have to have public comment on the PMPD,  
2 et cetera.

3 MR. GALATI: Yes.

4 HEARING OFFICER CELLI: And it will take  
5 -- we have, as you know, help now so I can get a  
6 PMPD out in pretty quick order, comparatively.

7 But what I want to do is kind of nail  
8 down some actual date right now with the parties.  
9 So I'm starting with November 30th and I'm hoping  
10 that that's a safe start date as, you know,  
11 something to the effect of staff analysis no later  
12 than November 30th.

13 MS. MOULTRY: I was just going to  
14 request that if you actually do schedule something  
15 please don't schedule anything that week of  
16 December 28. I will be out of the office the  
17 entire week.

18 HEARING OFFICER CELLI: I won't.

19 MS. MOULTRY: Okay. And several people  
20 will be.

21 MR. GALATI: By the way, so was I. But  
22 I was coming back.

23 (Laughter)

24 HEARING OFFICER CELLI: And that's the  
25 kind of guy you are.

1 MR. GALATI: That's exactly right. Like  
2 I come back for all of the hearings scheduled on  
3 my vacations.

4 HEARING OFFICER CELLI: That's right.  
5 And I apologize for having dragged you out in the  
6 past from vacations. I know you do do that.

7 But the week of November 30th. When  
8 would you have your workshop if an SA comes out on  
9 November 30th?

10 MR. GALATI: I think our team could be  
11 ready within a week.

12 HEARING OFFICER CELLI: Staff?

13 MR. JONES: Well, the staff tentatively  
14 scheduled a workshop for December the 14th for the  
15 PSA. So perhaps we could just use that.

16 HEARING OFFICER CELLI: You've already  
17 got that date?

18 MR. JONES: Yes.

19 HEARING OFFICER CELLI: That's December  
20 14th?

21 MR. JONES: Yes.

22 HEARING OFFICER CELLI: Okay, 12/14 for  
23 a PSA workshop or SA workshop.

24 MR. JONES: Yes.

25 HEARING OFFICER CELLI: Okay. Now

1           you're talking about errata to the SA and the FSA.

2           Is that necessary?

3                         MR. GALATI:  And again, with the way  
4           things have gone, asking staff to produce yet  
5           another document.  I would prefer them not to  
6           produce another document after this assessment  
7           comes out.  We will do a proposal of changes.  And  
8           staff can come to the hearing and say, agree or  
9           don't agree and we'll kick it to you.  And you  
10          guys can make the decision on that point as  
11          opposed to staff stating and writing an errata to  
12          the FSA.  There is no need for it.

13                        HEARING OFFICER CELLI:  Well my concern  
14          would be the missed -- the opportunity for the  
15          public to participate in that side of things.  
16          Because normally what would happen is there would  
17          be some public PSA or an FSA workshop.  The public  
18          can come, comment on the changes.  What you're  
19          doing is sort of saying, we're going to have a  
20          discussion outside of the public purview and the  
21          come back and then have a prehearing conference  
22          without giving the public an opportunity to  
23          comment on the changes that -- what you would  
24          deem, the errata on the SA.

25                        MR. GALATI:  In the six month process,

1           which was legal. In the six month process the  
2           staff produced one staff assessment and no errata.  
3           Applicant produced testimony. Those were both  
4           docketed and available and at prehearing  
5           conference and evidentiary hearing the public  
6           could comment.

7                         If staff wanted to agree to a change  
8           that the applicant presented staff would say,  
9           here, change this testimony, basically agreeing.

10                        HEARING OFFICER CELLI: All right. You  
11           just stipulate at the evidentiary hearing, I  
12           imagine.

13                        MR. GALATI: Right.

14                        HEARING OFFICER CELLI: I'm just trying  
15           to -- I just want to make sure that we have all  
16           the safeguards and that we have an opportunity for  
17           the public to weigh in on any changes. Do you  
18           have any ideas on that, Ms. Moultry?

19                        MS. MOULTRY: Well we're just concerned  
20           about the air quality analysis and the fact that  
21           we are have been told from our air quality staff  
22           that they are not going to be able to reach a  
23           determination regarding LORS compliance until they  
24           have actually received the Final Determination of  
25           Compliance. And so for that reason if they are

1 going to have to adjust anything based on the air  
2 analysis that they have completed, we just want to  
3 have some sort of errata or addendum.

4 HEARING OFFICER CELLI: We are going to  
5 go off the record if we can for just one moment.

6 (Off the record.)

7 HEARING OFFICER CELLI: So where were  
8 we? You were saying that we would -- so let's  
9 take that. So let's assume then that we don't  
10 necessarily have to calendar that errata, right?  
11 Because essentially the SA is going to be the  
12 staff's testimony.

13 We would then have an opportunity for  
14 the parties to stipulate to any changes to staff's  
15 testimony, hopefully before a prehearing  
16 conference. Which under these circumstances I'm  
17 inclined -- and I'll let the parties address this.

18 But I'm just going to say that I'm  
19 inclined to have the prehearing conference, even  
20 if it's a week. But a prehearing conference  
21 separated from the evidentiary hearing just  
22 because there will be these loose ends. And I  
23 want to make sure these loose ends are tied up  
24 before we go forward on an evidentiary hearing.  
25 Applicant, your thoughts on that?

1                   MR. GALATI:  Again, I don't think we  
2                   have a strong opinion on them having to be  
3                   together.  Our idea would be giving the Committee  
4                   more time to work and write the PMPD.  So if there  
5                   was a prehearing conference in which we came to  
6                   you and say, here are our resolutions, here are  
7                   the things we disagree with.  It also has been my  
8                   practice to limit those disagreements to ones we  
9                   can still do by declaration.

10                   HEARING OFFICER CELLI:  Okay.  Staff,  
11                   anything further on that?

12                   MR. JONES:  I think that would be  
13                   sufficient.

14                   HEARING OFFICER CELLI:  You just turned  
15                   it off, actually.

16                   MR. JONES:  Well somehow it won't turn  
17                   on.

18                   HEARING OFFICER CELLI:  There you go.

19                   MR. JONES:  Okay.  Really that's  
20                   sufficient.  I don't know what's going on with the  
21                   microphone but it's not, not working.

22                   HEARING OFFICER CELLI:  Are you getting  
23                   this, Ramona?

24                   THE REPORTER:  (Nodded affirmatively.)

25                   HEARING OFFICER CELLI:  You're able to

1 get this? Okay.

2 All right, let's look at January. We'll  
3 have to pick a date. And I'm going to have to  
4 find a date that works for the Commissioners in  
5 January. That first or second week.

6 As I said, I'm inclined to say that we  
7 should have a separate prehearing conference from  
8 the evidentiary hearing, just so we can tackle  
9 those loose ends that we're talking about. Get  
10 all the stipulations. Find out what's in and  
11 what's out.

12 And hopefully that will give you both an  
13 opportunity to caucus at the prehearing conference  
14 and hopefully settle everything up. Because we  
15 are proceeding under the assumption that, as in  
16 all the papers that we have received, that all of  
17 the ducks are in a row on this project and that  
18 really are no areas of controversy anymore.

19 So I'll pick a date, get a date in  
20 January for a prehearing conference and an  
21 evidentiary hearing date.

22 The question I have is, will staff be  
23 ready and able to go forward in the first or  
24 second week of January for evidentiary hearings  
25 given this FDOC question? When are you going to

1 have closure? When can we say that --

2 MR. JONES: I would think we would have  
3 closure probably near the middle or end of January  
4 as opposed to the early part of January regarding  
5 the FDOC.

6 HEARING OFFICER CELLI: So let's just  
7 say -- looking at January again. The last week of  
8 January is the 25th through the 29th. If we went  
9 that late on evidentiary hearings, assuming that  
10 we have a complete SA from the staff with the FDOC  
11 complete, then are we still on schedule here? And  
12 I'm asking the applicant.

13 MR. GALATI: Here is the problem. The  
14 problem is in order to finance and make that  
15 payment in April we have to have the license prior  
16 to April. So that puts us at a Business Meeting  
17 in March. That puts us at a PMPD circulated in  
18 the beginning of February or end of January.  
19 That's why we proposed December. That's why we  
20 proposed to take on the entire burden of the  
21 evidence.

22 And I know that we brought this to you  
23 at a difficult time. We have been trying to work  
24 with staff and waiting and being patient and doing  
25 the best we can but we really are at our last

1 stage here. That's what we were thinking here.  
2 If we move the evidentiary hearings to the end of  
3 January, assuming you can get out a PMPD in two or  
4 three weeks.

5 HEARING OFFICER CELLI: Probably not.

6 MR. GALATI: Probably not. So let's say  
7 four weeks. We're looking at, you know, the end  
8 of April or May for the Business Meeting by the  
9 time that plays out.

10 HEARING OFFICER CELLI: Now a PMPD  
11 wouldn't suffice? As you are in the process of  
12 dealing with your financing. I mean, a PMPD is  
13 pretty much the next best thing to a  
14 certification. Or at least the last, the last  
15 publication that comes out of the Energy  
16 Commission after comment before we bring it before  
17 the full Commission.

18 MR. WARNER: I am not, I am not a  
19 finance expert but my understanding from our CFO  
20 is that we need the license to execute the bond  
21 offering.

22 MR. GALATI: And I can't speak to that  
23 but it has been my experience in the past that  
24 it's a hard time -- it's hard to get lenders to  
25 ignore the appeal period of the license, let alone

1 the non-finality of the license.

2 HEARING OFFICER CELLI: We're going to  
3 go off one more time. We're off the record.

4 (Off the record)

5 HEARING OFFICER CELLI: Thank you,  
6 ladies and gentlemen for your indulgence.

7 You know, one of the great things is  
8 that you get a committee of two commissioners  
9 together and they have an opportunity to meet and  
10 confer. And it's very efficient to have them do  
11 that now, it's hard to get them together.

12 We had a couple of questions. One is  
13 that we had initially started off with an 11/19/09  
14 date for the FDOC to be published and then we had  
15 a 30 day comment period on top of 11/19. That  
16 takes you to 12/19 let's say. So we're trying to  
17 figure out how did we get to the end of January on  
18 that instead of the end of December? In other  
19 words the question is, in terms of the finality of  
20 the FDOC, getting through the comment period.  
21 Right now it's in publishing. It's due to be off  
22 today, tomorrow.

23 MR. JONES: Next week.

24 HEARING OFFICER CELLI: Whenever. And  
25 there's a 30 day comment period or a 45 day.

1 Which is it, do we know?

2 MR. JONES: My understanding, there is a  
3 30 day public comment period, 45 days EPA, I  
4 guess. So potentially 45 days.

5 HEARING OFFICER CELLI: Okay.

6 MR. GALATI: What I can, I can confirm  
7 that but again I want to put it in context. EPA's  
8 comments were to lower a particular emission  
9 limit. They have commented on the PDOC. We  
10 lowered to that number. We don't expect any EPA  
11 comment on this issue.

12 HEARING OFFICER CELLI: Okay.

13 MR. GALATI: Also it is quite common to  
14 not have EPA comment, as you know, on PDOCs.

15 HEARING OFFICER CELLI: Does that, does  
16 that initiate that extra 15 days?

17 MR. GALATI: Yes, I think we have to  
18 have the additional 15 days. But we certainly  
19 will work our hardest to get EPA to say "no  
20 comment" before that 45 days for that extra 15.  
21 But it for EPA. And we certainly can because  
22 their issue has been addressed.

23 HEARING OFFICER CELLI: Okay. Now  
24 11/19. So that takes us to the first week of  
25 January, not the last week of January. Do I have

1           that correct?

2                         MR. JONES:  Yes.

3                         HEARING OFFICER CELLI:  Okay.  So really  
4           if we're having -- let's say within the first week  
5           of January the prehearing conference followed by  
6           maybe a couple of days with an evidentiary  
7           hearing.  And you would have a workshop in the  
8           meanwhile, right?  Now we're looking at -- you've  
9           already had your workshop I'm sure at this point.  
10          And you've got it as December 14, correct?

11                        Then we would be looking at an  
12          evidentiary hearing in mid-January, right?  Let's  
13          say the second week of January, somewhere in  
14          there.  The second week in January is the week of  
15          the 11th.

16                        Then let's say mid-March to later March.  
17          There's always some kind of creep in there.  But  
18          we get a PMPD out let's say the middle to end of  
19          March.  There's a 30 day period on a PMPD.  
20          There's a 30 day comment after which we have a  
21          PMPD conference.

22                        Now we're into April something, right?  
23          Followed by a May, probably, Business Meeting.

24                        Now the question is, you are not going  
25          to have a -- I mean, this is as compact and as

1           efficient as we can make it. You will still not  
2           have a license off in time and what is the effect  
3           of that?

4                       MR. GALATI: The immediate effect comes  
5           as somehow we have this payment to be made without  
6           having full financing. I think we need to go back  
7           to the drawing board to say, is there any other  
8           possibility with that kind of certainty in the  
9           schedule, to find, borrow, come up with that  
10          money. I think I'd have to -- I don't know if we  
11          can speak to that.

12                      MR. WARNER: I can't speak to what  
13          Siemens would do but it would seriously jeopardize  
14          our equipment delivery pushing that payment back.  
15          There are critical paths to meeting the summer of  
16          2012 in their equipment delivery schedule as it  
17          stands right now.

18                      HEARING OFFICER CELLI: Okay.

19                      MR. WARNER: So pushing that date back  
20          would jeopardize that equipment delivery schedule.

21                      HEARING OFFICER CELLI: I understand  
22          that. What I'm dealing with over here,  
23          Mr. Warner, is that we've got statutory -- we're  
24          bound by regulation. We have statutory deadlines.  
25          We can't legislate from over here. We're pretty

1 much, we have to follow these rules and go with  
2 these deadlines. And as we're sitting here  
3 figuring this out -- and it really -- there's not  
4 a lot of fat in the schedule just proposed. That  
5 looks like the way it would probably go. I think  
6 that's a reasonable projection of how this would  
7 flow if we have everybody working on it.

8 MR. GALATI: First of all I appreciate  
9 the Committee doing that and I understand. I know  
10 the schedules well enough to know that what you  
11 have just done is an incredibly skinny schedule on  
12 your part.

13 I again ask, it appears that staff has a  
14 draft or an advance copy of the FDOC. Why the  
15 30th? Could it come out Monday?

16 HEARING OFFICER CELLI: Staff?

17 MR. JONES: Well it's not just the FDOC,  
18 it's the overall document. Revising it based on  
19 the new information that we have here today. And  
20 it's just also staff's availability. So that's  
21 why. If it could happen today I'd make it happen  
22 today but I can't.

23 MR. GALATI: I know that, Mr. Jones.  
24 And you have been, you have been trying for many  
25 moons to make it happen. And it's the same story,

1 it's the same story about staff availability.

2 Today what we have heard is the word PSA would be  
3 determined FSA and that the air quality section  
4 would be more final because of the FDOC.

5 So my concern is that even if you said  
6 the 30th, based on what we have heard in the past,  
7 I am not confident that will happen. So I don't  
8 know how to get a confidence level that there will  
9 be a document. And that's why I asked for the  
10 Committee's commitment that if there is not we can  
11 do it ourselves.

12 I don't know any other way to do it.  
13 But, I mean, if Mr. Jones does not have the  
14 capability to get the staff resources allocated to  
15 get the work done how confident are we in any of  
16 the dates? And I don't mean that to denigrate  
17 Rod, it's not his fault. But at some point we  
18 need a document. And things haven't changed for a  
19 very long time. I don't know why there's  
20 additional publication and additional work that  
21 needs to be done.

22 MS. MOULTRY: If you did have complete  
23 confidence that we will be able to meet the week  
24 of the 30th then would that be acceptable? I  
25 mean, if you knew with absolute certainty that we

1           could meet that date.

2                       MR. GALATI:  It already misses our April  
3           date.  So yes, I'll take that date over no date.  
4           And I appreciate what the Committee has done.  It  
5           doesn't get us where we need to be.  We have to go  
6           back and see if it's fatal to us.  I hope it's  
7           not.

8                       HEARING OFFICER CELLI:  Well that --

9                       MR. GALATI:  But yeah, the 30th as a  
10          firm commitment that actually came out on the 30th  
11          would certainly be helpful.  Because now I know we  
12          can meet this schedule.  If it doesn't come out on  
13          the 30th we may not meet this schedule.

14                      HEARING OFFICER CELLI:  True.  I had a  
15          couple of thoughts as you were speaking about  
16          that.  The problem if we bifurcate, you  
17          understand, is that if we did bifurcate we would  
18          have to have separate hearings for the lagging  
19          section or sections.

20                      MR. GALATI:  Yes.

21                      HEARING OFFICER CELLI:  And that doesn't  
22          get us where you want to go anyway because you are  
23          only as fast as that last section coming through  
24          the pipeline.

25                      MR. GALATI:  The only times that I think

1 bifurcation is good is if you have significant  
2 issues that you need to resolve with staff. We'd  
3 love to have that analysis come out so we can  
4 engage in the dialogue while other sections are  
5 lagging. But if you don't have significant issues  
6 it has not been my experience that bifurcation  
7 helps you at all.

8 HEARING OFFICER CELLI: True. And then  
9 you have to factor in getting the Committee  
10 together and having the hearings.

11 So really as with so many of these  
12 things it all really depends on, all of this  
13 depends on having a staff assessment out. And  
14 everything springs from that date. Essentially  
15 their testimony is already done minus whatever you  
16 are going to stipulate to after the fact. Once  
17 the staff assessment comes out then we can pretty  
18 much keep the rest of the schedule it seems to me,  
19 assuming that the air district is on board and  
20 gets their work out in a timely fashion.

21 So what I am proposing to do then is put  
22 together a schedule that starts out with not later  
23 than November 30th as a staff assessment.  
24 Followed by the 12/14 staff workshop. Followed by  
25 -- and I'll have to, I'm going to have to get with

1 the secretaries and the Committee and see what we  
2 can do.

3 An errata to the SA from applicant will  
4 be essentially the discussions that applicant and  
5 staff are going to have. At this time there's no  
6 other parties in the case.

7 Then we will have a prehearing  
8 conference. I'm looking at the first week of  
9 January.

10 Followed by an evidentiary hearing the  
11 following week let's say, of January. Okay. Now  
12 testimony comes in. Let's just assume in a  
13 perfect world that everything comes in, there's no  
14 testimony to be taken. It's all by declaration.  
15 And no intervenors show up. Because, you know,  
16 there's all sorts of other possibility there. But  
17 assuming that that's the vacuum that we're going  
18 to operate in.

19 Then the second week -- from the second  
20 week of January to let's say the second week of  
21 February, in March the PMPD comes out. Thirty  
22 days, the PMPD conference. And then assuming  
23 there's not any revision throws a wrench in the  
24 works because if we have to revise we have to give  
25 another 30 day comment period.

1                   So assuming that everything is -- and  
2                   this is why it's so very important that this  
3                   workshop be highly productive. Because to the  
4                   extent that we get complete documents at the  
5                   prehearing conference we are ready to go. That  
6                   will speed up the process as well.

7                   So then, again assuming in a perfect  
8                   vacuum that we are not going to have to revise the  
9                   PMPD, we are looking at a -- what did we say, an  
10                  April, April or May Business Meeting date.

11                  Hopefully a PMPD will carry you in your  
12                  negotiations with whoever. We are mindful and do  
13                  apologize for the slippage in the schedule. It's  
14                  something that has really been beyond our control  
15                  and we are dealing with it the best we can. And  
16                  the staff is dealing with it. The applicants are  
17                  having to put up with it.

18                  And it's just -- it's no longer anyone's  
19                  particular fault. It's almost like a force that's  
20                  bigger than any of us. And that seems to be the  
21                  condition we're in. But that is what I'm  
22                  proposing to put together as a schedule.

23                  We're off the record for the moment.

24                  (Off the record)

25                  HEARING OFFICER CELLI: Here's a little

1 carrot. It's possible that if all of the issues  
2 are resolved at the time of the prehearing  
3 conference that we could proceed directly with a  
4 prehearing conference, immediately followed by an  
5 evidentiary hearing.

6 But my concern is the state of the  
7 record. I need to make sure that we don't have --  
8 because of the rush that things are coming that  
9 are not completely tied up. Loose ends are -- all  
10 the holes filled, like that.

11 It really would require a lot of work on  
12 the part of the applicant and staff at your  
13 workshop to really fill all the holes and come up  
14 with all the stipulations if we can save a week by  
15 having the evidentiary hearing immediately  
16 following the prehearing conference. But that  
17 would only be in the circumstance that there is no  
18 testimony, everything is going to be by  
19 declaration.

20 MR. GALATI: Mr. Celli, first of all,  
21 again, thank you for that. I think that we can  
22 be. I mean, here's how we are going to be  
23 productive at the workshop. If we get that on the  
24 30th we can turn around in a week detailed  
25 comments on where we think the staff assessment

1 needs changes, tweaks, modifications, so staff can  
2 have that written document. So that when we come  
3 on the 14th we're not raising issues. We're  
4 actually talking about the issues we've raised. I  
5 think that we're able to do that. Obviously we  
6 need that document to be able to do it.

7 The other thing that we can commit to,  
8 and when I say "we" I think I mean me, is filing  
9 our testimony by the end of december so that when  
10 we come in the first week of prehearing conference  
11 you can see what is remaining or what little  
12 disputes we might have.

13 And to give you an example, I go back to  
14 the Kings River project where we had some minor  
15 disagreements where we agreed on the concept but  
16 didn't know the language and so we resolved that  
17 right at evidentiary hearing. We put it in our  
18 testimony. These are the three changes we'd like  
19 and staff commented on those three changes. It  
20 was very simple to do that way.

21 We'll do our best to have everything  
22 agreed to. If there are a few minor things left  
23 over we'll put them in our testimony so you have  
24 it in writing before that prehearing conference.

25 HEARING OFFICER CELLI: Well if we do

1           that that's pretty much it. I mean, I just don't  
2           see anyplace else I can cut out any fat in this  
3           schedule.

4                       MR. GALATI: We appreciate what the  
5           Committee has done, we very much do. I understand  
6           that there is not anything else you can do on the  
7           Committee end, thank you.

8                       HEARING OFFICER CELLI: While we have  
9           everyone here -- So is there anything else from  
10          staff about the scheduling?

11                      MS. MOULTRY: No.

12                      HEARING OFFICER CELLI: Okay. Then,  
13          Mr. Galati, this is your status conference so  
14          anything you would like to say in conclusion.

15                      We'll get to the intervenor. I'm  
16          leading up to the intervenor next.

17                      MR. GALATI: Okay.

18                      HEARING OFFICER CELLI: I just want to  
19          pretty much put the cap on anything schedule-wise.

20                      MR. GALATI: Once again, we do  
21          appreciate the Committee, both members of the  
22          Committee and their advisors participating and  
23          caucusing here today. It's not lost on us that  
24          you are really trying to help us. And that you  
25          are trying to maintain the integrity of the

1 process but also have heard what we said. So  
2 thank you again very much for that.

3 MR. WARNER: I'd just like to thank the  
4 Committee also and thank Mr. Jones and staff and  
5 the CEC attorney for participating here with us  
6 and working with us to hopefully meet our schedule  
7 in a timely manner. Thank you.

8 HEARING OFFICER CELLI: Thank you. And,  
9 you know, one of the things that's clear is that  
10 everybody here is committed to doing their best to  
11 making things run as smoothly as we can. And  
12 that's what we're trying to do so hopefully that  
13 will happen.

14 Now we are going to talk about the next  
15 newest glitch, which is we received a petition to  
16 intervene from the CFEC yesterday. We did receive  
17 applicant's opposition. We haven't heard from  
18 staff whether staff has a position on this  
19 intervenor or not. I don't know if staff intended  
20 to file any opposition.

21 MR. JONES: No.

22 HEARING OFFICER CELLI: Ms. Moultry?

23 MS. MOULTRY: Staff doesn't have a  
24 position regarding the opposition.

25 HEARING OFFICER CELLI: Assuming let's

1 just say, that there's a denial. The denial would  
2 be without prejudice. Then they come back. I  
3 don't know what their agenda is. I have no idea  
4 who these people are.

5 And the Committee can limit their  
6 participation certainly. But as you know the  
7 Commission is pretty liberal and committed to  
8 having as much public participation and inclusion  
9 as possible.

10 So I don't know what that means in terms  
11 of our scheduling discussions. But I just wanted  
12 to know if there was anything further on the  
13 intervenor issue?

14 MR. GALATI: The only thing further on  
15 that is why we filed our opposition right away, so  
16 that there could be a decision made. If there is  
17 another petition, we know that there is an  
18 opportunity for that and if there is we'll deal  
19 with it at that time.

20 We also think that currently whatever  
21 the stated reason becomes, we know what the stated  
22 reason is now. We believe that the issues raised  
23 by that particular intervenor can be dispensed  
24 with very, very simply, very easily. And the  
25 Commission, if they wanted to file testimony it

1 appears that they will have some time into the  
2 second week of January to do so.

3 HEARING OFFICER CELLI: That's correct.  
4 Okay.

5 With that I am going to -- if there's  
6 nothing further I am going to open up the podium  
7 for public comment. We have a room of about ten  
8 people here, all of whom seem to be associated  
9 with one party or the other. There doesn't appear  
10 to be any public and we have no phones today.

11 So with that I am going to hand it over to  
12 the Chairman to adjourn.

13 PRESIDING MEMBER DOUGLAS: Seeing no  
14 public comment we are adjourned. Thank you.

15 (Whereupon, at 11:30 a.m. the  
16 Status Conference was adjourned.)

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## CERTIFICATE OF REPORTER

I, Ramona Cota, a Certified 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 1st day of December, 2009.

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