

PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of the)
Application for Certification)
for the:)
Watson Cogeneration Steam and) Docket No. 09-AFC-1
Electricity Reliability)
Project)
-----)

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

MONDAY, OCTOBER 17, 2011
1:06 P.M.

REPORTED BY: PETER PETTY, AAERT CER**D-493
TRANSCRIBED BY: JAMES F. PETERS, CSR 10063

Contract No. 170-09-002

APPEARANCES

COMMITTEE MEMBERS

Carla Peterman, Presiding Member

Karen Douglas, Associate Member

HEARING OFFICERS, ADVISERS

Raoul Renaud, Hearing Officer

James Bartridge, advisor to Commissioner Carla Peterman

Galen Lemei, advisor to Commissioner Karen Douglas

STAFF

Jeff Ogata, Staff Counsel

Alan H. Solomon, Project Manager

Matthew Layton

APPLICANT

Christopher T. Ellison
Ellison, Schneider & Harris

Ross Metersky
BP Products North America, Inc.

Greg Darvin

ALSO PRESENT

Dr. Alvin Greenberg, Consultant

Jay Chen, South Coast Air Quality Management District

Mia McNulty, NAACP

INDEX

	<u>PAGE</u>
Opening remarks by Hearing Officer Renaud	1
Introductions	1
Discussion regarding issues of agreement/disagreement	3
Public Comment	23
Recess for workshop	23
Discussion regarding issues agreed to in workshop	23
Public Comment	27
Adjournment	32
Reporter's/Transcriptionist's Certificates	33

EXHIBITS

<u>NUMBER</u>	<u>FOR</u> <u>I.D.</u>	<u>IN</u> <u>EVIDENCE</u>
1-23	5	
200	4	
201	4	
202	5	

1 MR. ELLISON: Thank you. Good afternoon,
2 Commissioners, staff. Christopher Ellison, Ellison,
3 Schneider & Harris on behalf of the applicant. And I'll
4 have the rest of my team introduce themselves.

5 MR. METERSKY: I'm Ross Metersky with BP,
6 developer for the Watson Cogen Project.

7 MS. KYLE-FISCHER: Cindy Kyle-Fischer with URS.
8 I'm the permitting project manager for Watson
9 Cogeneration.

10 MR. COLLACOTT: I'm Bob Collacott. I'm with
11 the -- on the water section.

12 HEARING OFFICER RENAUD: All right. Thank you.
13 And the actual name of the applicant, as I understand it,
14 is Watson Cogeneration Company, is that correct?

15 MR. ELLISON: Correct.

16 HEARING OFFICER RENAUD: All right. Good. And
17 introductions from the staff side, please.

18 PROJECT MANAGER SOLOMON: My name is Alan
19 Solomon, Project Manager with the STEP Division. To my
20 right is Jeffrey Ogata, staff counsel. To my left are
21 water staff, Matt Layton and Paul Marshall.

22 HEARING OFFICER RENAUD: All right. Thank you
23 very much. We also have an intervenor in this case,
24 California Unions for Reliable Energy, also known as CURE.
25 Are you -- I don't see you in the room. Are you present

1 on the phone?

2 CURE?

3 Unmute all.

4 You're present?

5 No. Okay. All right. Leave those phones
6 unmuted for the moment, if you would, please. Are there
7 any government officials on the phone lines who would like
8 to introduce themselves or representatives of government
9 agencies?

10 MR. CHEN: Hi. My name is --

11 HEARING OFFICER RENAUD: All right. Thank you.
12 Yes. Go ahead. I'm sorry, sir.

13 MR. CHEN: Yes. This is Jay Chen with South
14 Coast Air Quality Management District.

15 HEARING OFFICER RENAUD: All right. Thank you
16 for participating.

17 MR. CHEN: Sure.

18 HEARING OFFICER RENAUD: Anyone else on the phone
19 who'd like to introduce themselves?

20 MR. DARVIN: Greg Darvin, air quality consultant
21 for the applicant.

22 HEARING OFFICER RENAUD: Great. Thank you very
23 much.

24 Anyone else?

25 Okay. Let's proceed then. The Committee sent

1 out a notice of the prehearing conference and evidentiary
2 hearing in this matter on September 12th, 2011. And as
3 was indicated in the notice, the purpose of the prehearing
4 conference is to assess the parties' readiness for the
5 evidentiary hearing, to clarify areas of agreement or
6 dispute, to identify the witnesses and the exhibits,
7 determine which areas parties wish to cross-examine other
8 parties' witnesses, and discuss other procedural matters.

9 We therefore asked that each party submit a
10 prehearing conference statement, which each of you did,
11 the staff and the applicant. We did not receive a
12 prehearing conference statement from CURE.

13 Staff published the Final Staff Assessment, or
14 the FSA as we call it, on August 31st. And this will
15 serve as staff's testimony on all topics. And it's been
16 marked as Exhibit 200 for identification.

17 (Staff's Exhibit 200
18 marked for identification.)

19 HEARING OFFICER RENAUD: Staff has also submitted
20 a revised General Condition of Certification, number 15,
21 which is going to be Exhibit 201.

22 (Staff's Exhibit 201
23 marked for identification.)

24 HEARING OFFICER RENAUD: And usually the staff
25 offers the FDOC. Were you going to do that in this case

1 or are you anticipating there will be a revised one?

2 PROJECT MANAGER SOLOMON: We can sponsor the
3 FDOC. It might be revised.

4 HEARING OFFICER RENAUD: Right. So for -- I
5 guess just for a placeholder, we could use the existing
6 one and we'll call it Exhibit 202.

7 PROJECT MANAGER SOLOMON: Yes. And staff will
8 sponsor that.

9 HEARING OFFICER RENAUD: Is that acceptable to
10 the applicant?

11 MR. ELLISON: Yes.

12 HEARING OFFICER RENAUD: All right.

13 (Staff's Exhibit 202
14 marked for identification.)

15 HEARING OFFICER RENAUD: Okay. We also received
16 Applicant's exhibit list. And you have Exhibits 1 through
17 23. Are there any exhibits you wish to add at this point?

18 MR. ELLISON: No.

19 HEARING OFFICER RENAUD: All right. Very good.
20 Those are marked for identification.

21 (Applicant's Exhibits 1 through
22 23 marked for identification.)

23 HEARING OFFICER RENAUD: We didn't receive any
24 testimony from CURE. So the prehearing conference
25 statements basically informed the Committee that the

1 parties are ready to proceed to hearing on all topics with
2 the possible exception of air quality and soil and water.
3 From applicant's perspective, all topics are ready to
4 proceed. From staff's perspective, I think you indicated
5 some concern about the air quality issue, mainly because
6 the tailoring rule issues have arisen.

7 PROJECT MANAGER SOLOMON: That's correct.

8 HEARING OFFICER RENAUD: Would you care to
9 summarize that for us perhaps, Alan, or Jeff, or one of
10 you, any of you?

11 PROJECT MANAGER SOLOMON: I can summarize it.
12 Thank you. As I indicated in Status Report number 11, and
13 Response to Committee Order, which is dated October 7th,
14 2011 and docketed on that date, at the September 28th
15 workshop, representatives from South Coast Air Quality
16 Management District provided a letter to staff discussing
17 their concerns regarding the Prevention of Significant
18 Deterioration, or PSD, permit requirements for the
19 greenhouse gases.

20 As of September 28th, the applicant had not filed
21 its PSD application with either the air quality management
22 district or the U.S. EPA.

23 Because of this, the appropriate entity right now
24 for filing the PSD application is the U.S. EPA, but that
25 will shift to the South Coast Air Quality Management

1 District once they have determined to have the delegated
2 authority or once their rule, 1714, is approved in the
3 State Implementation Plan.

4 The timing of these is uncertain. And presently
5 the EPA has not delegated the authority, and they have not
6 approved the SIP.

7 South Coast at the workshop had stated that if
8 they received the PSD permit application, they would
9 conduct an analysis and issue a PSD permit as an addendum
10 or supplement the March 16th, 2011 FDOC. If the FDOC
11 addendum revises or adds Conditions of Certification that
12 are State or locally enforced, then the Energy Commission
13 will need to adopt those changes, so that the Conditions
14 of Certification in the air quality greenhouse gas section
15 are the same as the conditions listed in the FDOC.

16 If the Committee has any questions, we did invite
17 a representative from South Coast to attend this hearing.

18 HEARING OFFICER RENAUD: Thank you for that
19 summary. Let me just ask the applicant, is there any
20 update to that status? Maybe you can fill us in where
21 things stand today.

22 MR. ELLISON: One update and a couple of brief
23 comments. The update is we are preparing a PSD
24 application. We expect to file it shortly. The status of
25 the law, as we speak, is that that application goes to the

1 U.S. EPA. The Commission has, in the past, dealt with
2 cases where there was a U.S. EPA permit of this nature.
3 This is not unprecedented for the Commission. And we
4 believe that this case can be handled, as those other
5 cases were handled, which is essentially to acknowledge
6 that in the Commission's decision, to acknowledge that we
7 have to get that permit from U.S. EPA and proceed
8 accordingly.

9 We do not think that there's any reason to delay
10 the evidentiary hearings or the schedule in response to
11 this issue. And I'd be happy to answer any questions
12 beyond that.

13 HEARING OFFICER RENAUD: Okay. Thank you for
14 that. So there might be a permit forthcoming, which would
15 come in after the November 1st evidentiary hearing,
16 though, would that be correct?

17 MR. ELLISON: Yes. It is certain. In fact, I
18 would say it's a certainty, at this point, that we will
19 have a filing with as -- and again, this is as we speak
20 today. The law may change or may not change. But as we
21 speak today, U.S. EPA is the appropriate jurisdiction to
22 file the PSD permit with. They are not preempted by the
23 Energy Commission. They are not subject to the FDOC
24 requirement.

25 So, as has happened in the past, we would file a

1 permit application with U.S. EPA. We are perfectly
2 comfortable with the Energy Commission recognizing that in
3 its decision, if -- and we can talk about in more detail,
4 perhaps appropriate stipulations to deal with that.

5 But that permit will be issued after the
6 evidentiary hearing, and we will have to await that permit
7 before we can start construction.

8 HEARING OFFICER RENAUD: And just as a practical
9 matter then, we would have to hold some sort of a hearing,
10 an evidentiary hearing, just to admit that permit, I
11 believe, for purposes of the record.

12 MR. ELLISON: Well, in the past, the Commission
13 has not done that. In the past, what the Commission has
14 done when there was a federal permit of this nature that
15 was not State enforced, is simply, in cases like this, to
16 recognize that the Energy Commission's permit does not
17 preempt, nor does it incorporate this other federal
18 permit. And that permit is handled separately without an
19 evidentiary hearing in front of the Commission. We think
20 that's the simplest and most straightforward way to deal
21 with this current situation.

22 If, for some reason, the law were to change, in
23 other words, if the delegation were to occur, you know, in
24 the very near future, and we have no -- you know, we've
25 been trying to follow this issue closely, and we've been

1 given no indication that that's about to happen. But if
2 it were to happen, such that the South Coast became the
3 jurisdiction, then we would have to solve for that
4 problem, but we can do that. We can certainly incorporate
5 provisions that the South Coast might come up with into
6 the FDOC in various ways depending on the timing.

7 HEARING OFFICER RENAUD: All right. Thank you.
8 I know we have representatives of South Coast on the
9 phone. Perhaps, you'd care to add anything to that? Do
10 you have any news flashes for us?

11 MR. CHEN: No. No. This is Jay Chen. And I
12 don't have anything else to add. In the meantime, my
13 boss, Mohsen Nazemi -- I think he's in San Francisco. I
14 think he's probably in transit, and he may or may not call
15 in for this meeting. And he essentially is going to meet
16 with EPA this afternoon on a different topic, but he would
17 bring this up. I understand that he would bring this
18 issue up in his discussion with EPA, and he might get some
19 update from EPA about the litigation status.

20 HEARING OFFICER RENAUD: All right. Thank you
21 very much for that. Well, it does sound, parties, as
22 though this is something that we needn't delay the
23 evidentiary hearing over. We'll just deal with it as it
24 comes. All right. Good.

25 Okay. And you have both indicated that there is

1 an ongoing difference of opinion as to the project's water
2 use. And I understand that you have been in discussions
3 over that, and would like the Committee to offer you a
4 workshop format this afternoon, in which you could
5 continue those discussions and then report back when
6 they're concluded.

7 PROJECT MANAGER SOLOMON: That is correct. We
8 would appreciate -- we feel that it could be worked out
9 within about 30 minutes.

10 HEARING OFFICER RENAUD: All right. Okay. Maybe
11 it would be helpful to the Committee to hear briefly from
12 each of you as to the kind of the nature of the water
13 issue. And then I think we may have some questions from
14 up here. Shall we start with, I don't care, applicant?

15 MR. ELLISON: Let me first begin by saying that
16 we have worked very closely with staff and staff has
17 worked very hard and diligently on this case. This case
18 is two years old for a variety of reasons. The staff has
19 done, I think, an excellent job in their FSA. We've
20 worked very closely with them, and have achieved a
21 consensus, I think, among all parties - and CURE is not
22 represented here - but with respect to 99 percent of the
23 issues.

24 So what we're talking about here is the one
25 percent where we don't agree, but it is an important one

1 percent. And absent some solution in the workshop, then
2 we will have some issues to discuss on November 1st.

3 Briefly, what Watson has proposed with respect to
4 water use, and at the risk of telling you things that you
5 already know, there are four existing cogeneration units
6 at the refinery now. We are proposing, in this case, to
7 add a fifth.

8 What we have proposed with respect to water use
9 is to limit the five units, in other words, the fifth one
10 that we're adding, plus the existing four, to the amount
11 of fresh water that's already being used by the existing
12 four. In other words, to not increase fresh water use as
13 a result of adding the fifth terrain and to commit to only
14 use recycled water to go above that existing baseline, if
15 you will.

16 And we believe that that addresses all the issues
17 that one might have with respect to CEQA, as well as
18 issues that one might have with respect to other laws
19 governing the use of fresh water in California.

20 The issues that remain are -- just to sort of
21 briefly summarize them. One, the exact time period over
22 which that baseline should be set. We believe it should
23 be set over the amount of time that we had data for at the
24 time that we proposed this, in other words, sort of the
25 full history of the four projects. Staff has proposed the

1 most recent three years. We're in discussions around that
2 issue and hope that, you know, maybe we can find some
3 middle ground on that question.

4 Another issue that we disagree with staff on is
5 that the staff has proposed that as a condition of
6 operation of the project that we have a contract for
7 recycled water, even though we would be allowed to not use
8 recycled water if we stayed within the budget that we have
9 proposed. And we have expressed concerns about being
10 required to, as a condition of commencing operation of the
11 project, to have a contract with a third party that we do
12 not control for a substance that we may not need. But
13 again, we're in discussions with staff and we hope to
14 resolve that.

15 And then the last issue has to do with the fact
16 this is a cogeneration project. It supplies steam to the
17 refinery. And I should, by the way, emphasize one of the
18 issues that may come up is, although they're located on
19 the same site, and although they certainly have a complex
20 contractual relationship, the owner of the refinery, BP,
21 is not the applicant. They are separate companies with a
22 contractual relationship with each other.

23 So Watson cannot dictate to BP, its steam host,
24 any requirement that might come out of this proceeding and
25 the Energy Commission doesn't have jurisdiction to order

1 BP, the steam host, to do anything. They are separate and
2 independent parties, even though they are related to one
3 another by the provision of water from the refinery to the
4 electric generation facilities, and steam back from the
5 electric generation facilities to the refinery.

6 One of the issues that's come up is that we
7 provide steam to the refinery. The refinery uses that
8 steam for various refinery purposes and sends condensed
9 water back from the steam to the electric generation
10 facilities. All of the refinery's boilers that also feed
11 into this condensate process use reclaimed water.

12 But the staff has expressed a concern that
13 somehow we might be able to -- and I don't mean to make it
14 sound pejorative. I don't mean -- the staff has expressed
15 a concern that somehow by virtue of this condensate
16 process that we might exceed the water budget that we've
17 talked about. We're still searching for, you know,
18 solutions to this problem, but I guess we would emphasize
19 three things.

20 One, we cannot compel BP in the operation of the
21 refinery as Watson to do anything. They are a separate
22 party.

23 Two, they currently use nothing but reclaimed
24 water for their processes that might somehow feed into
25 this condensate process, so that if, for some reason,

1 their water came back to us through the condensate
2 process, it would be reclaimed water, at present.

3 And thirdly, and probably most importantly, we
4 are not proposing any change in the relationship of the
5 existing four units, hopefully to be five, in their
6 relationship with BP, in terms of condensate.

7 So in terms of a CEQA-based line, we're proposing
8 no change in the amount of water, no change in the way
9 that the condensate is returned. And so we don't think
10 there is any argument that there's a significant change
11 that could trigger a significant environmental impact. So
12 that's a summary of the three issues from our perspective.

13 HEARING OFFICER RENAUD: Let me just ask you a
14 question before we hear from staff, because this puzzled,
15 I think, all of us from your prehearing conference
16 statement. The question about control of BP, does that
17 refer to the amount of steam that Watson would be able to
18 produce, based on the amount of water or something else?

19 MR. ELLISON: Well, I think that is --

20 HEARING OFFICER RENAUD: That is, is the Watson
21 BP relationship one where Watson is to provide all the
22 steam BP wants?

23 MR. ELLISON: I don't think the staff's
24 concern -- and staff, of course, can speak for themselves,
25 but I don't think their concern is the amount of steam

1 that we would supply to the refinery. The concern is that
2 the refinery -- the water that comes to Watson comes from
3 the refinery. They are our water supplier. They in turn
4 have a relationship with the water agency that provides
5 water, both reclaimed and not reclaimed to them.

6 So our proposal for living within the existing
7 water use budget is based upon metering of the water
8 that's provided by the refinery to the electric
9 cogeneration projects. So we take that water, and we
10 propose to live within a budget based on the metering of
11 that water. We then produce steam that goes to the
12 refinery. That steam is used, condensed, returned back to
13 us.

14 But in the process of being used at the refinery,
15 it is potentially commingled with reclaimed water that the
16 refinery uses in its own boilers.

17 Now, let me stop and remind everybody. The whole
18 purpose of this is the refinery has boilers that it uses
19 to generate steam too. That process is not nearly as fuel
20 efficient as the cogeneration that produces both
21 electricity and steam. But the refinery does have some
22 boilers, and it uses reclaimed water in that process.

23 Because it's commingled, I think the staff's
24 concern, if I were to summarize it, is that the refinery
25 might, in effect, be providing us water in the form of

1 condensate -- fresh water, in the form of condensate, that
2 wouldn't go through the metering of the water that comes
3 to us as water, as opposed to condensate, and that somehow
4 we might be exceeding our water budget through the
5 condensate return, even though we were living within it,
6 as metered in the water use.

7 And again, our response to that is one, that the
8 water we're talking about is reclaimed water, in the first
9 place. Secondly, it's provided to us by an entity that we
10 cannot control and direct. And third, we're not proposing
11 any change from the status quo with respect to the
12 condensate return.

13 HEARING OFFICER RENAUD: All right. Thank you
14 for that. Let's hear from staff -- staff's perspective
15 what the issues are here.

16 PROJECT MANAGER SOLOMON: Staff agrees with what
17 the -- with the differences of opinion that were outlined
18 by the applicant. I will add there is one additional
19 issue that I don't believe they touched upon, which is if
20 the water use exceeds the cap, then the applicant would
21 like -- proposes allowing the compliance project manager
22 to adjust the fresh water cap. It is staff's preference
23 to have a hard cap that cannot be adjusted. And if
24 additional water would need to be -- if additional fresh
25 water would need to be used, then the -- it would be done

1 through an amendment.

2 MR. ELLISON: Actually, if I could just comment
3 on that quickly. What we proposed was not just that if we
4 exceeded the water budget, but rather if reclaimed water
5 was not available, and that would be a decision that the
6 Commission or the staff, or whoever the Commission chooses
7 to make that decision makes, makes it.

8 But in the circumstance of where -- in essence,
9 we would be being required to use reclaimed water that was
10 not available, that we couldn't get it. In that
11 circumstance, on a temporary sort of basis, we had
12 proposed that the water -- the fresh water budget be
13 increased for that duration of the unavailability of the
14 reclaimed water.

15 The issue about whether this be handled as an
16 amendment versus handled through the compliance project
17 manager is really a difference in the amount of time. We
18 had proposed that it be an amendment if we needed that for
19 more than two years. Staff had proposed a much shorter
20 period of time, so it's really just a disagreement about
21 the period of time.

22 That issue, if it needed to be an amendment,
23 that's probably something we could live with, unless the
24 unavailability of reclaimed water were to happen suddenly,
25 like an emergency kind of condition. So this is not, in

1 our view, an insurmountable issue at all. We think we
2 should be able to work this out. But the concern is just
3 don't put us in a position of being forced to use
4 something that isn't there, particularly if it comes up on
5 a very short-term kind of emergency basis.

6 PROJECT MANAGER SOLOMON: I would -- staff would
7 like to add that we do not view these as insurmountable.
8 It is our opinion that if we have a workshop, we will be
9 able to work out our differences.

10 HEARING OFFICER RENAUD: All right. Thank you.
11 Commissioners, any questions?

12 PRESIDING MEMBER PETERMAN: Thank you for that
13 background. That helped to clarify some of the questions
14 I had. And I look forward to hearing the outcome of the
15 workshop.

16 The one thing that I'm particularly interested in
17 hearing is how you resolve the issue of whether to require
18 a contract for the reclaimed water. It seems almost sort
19 of a circular argument that the availability -- if you
20 don't have a contract, that you won't have it available,
21 and therefore you might push up against this fresh water
22 limit. But defer to you to see if you can work it out in
23 a workshop.

24 Thanks.

25 MR. ELLISON: Well, let me be clear that our

1 position is not that reclaimed water would be unavailable
2 simply because we hadn't contracted for it. It has to be
3 unavailable for reasons beyond our control. And we are
4 also not opposed to having a contract for reclaimed water
5 in place to exceed the budget, the water budget.

6 The issue really comes down to do we have to have
7 a contract for reclaimed water to operate the project,
8 even though we're allowed to operate it without reclaimed
9 water? That's the issue.

10 Thank you.

11 HEARING OFFICER RENAUD: Okay. Thank you.

12 Commissioner Douglas, any questions on this?

13 No. All right.

14 So from reading the prehearing conference
15 statements and some of the background, I mean, it really
16 sounds like with respect to just the cap or the amount of
17 water, it's a question of establishing the baseline, all
18 right. You're saying ten years, which gives you one
19 number and you're saying three years, which gives you a
20 lower number. And it could be either of those or neither.

21 What the Committee needs to have evidence on
22 though, I'll remind you, in the record, is impacts. So
23 whatever you discuss or come up with, at the end of the
24 day we're going to need in the record expert opinion on
25 impact.

1 Please.

2 PRESIDING MEMBER PETERMAN: So I understand,
3 applicant, your rationale for the longer time period based
4 on that's where you have the records from. What was
5 staff's rationale for the three years?

6 PROJECT MANAGER SOLOMON: I'm going to ask Matt
7 Layton to answer that question.

8 MR. LAYTON: It's in the FSA. We've had many
9 discussions with the applicant on this particular issue.
10 They have clarified repeatedly that the refinery is out of
11 our purview, which we fully agree, but they've also
12 elaborated on how much effort they've gone into to improve
13 the efficiency of the refinery and its processes and its
14 water use. And so we think the most recent three years
15 are reflective of that.

16 We also have numerous other reasons, water use,
17 and water availability in the basin. We think the most
18 recent three years also reflects that. So we think the
19 three years is a starting point.

20 HEARING OFFICER RENAUD: Okay. It looks then
21 like we could ask each of you to, whether or not you would
22 agree, that in all topics areas, except soil and water and
23 air quality, all testimony and evidence will be submitted
24 by declaration and there will need be no live witnesses
25 called.

1 Applicant?

2 MR. ELLISON: We would certainly agree to that.
3 If the Committee wanted a live witness to sort of do an
4 overview, we'd be happy to do that as well, but, yes, we'd
5 be happy to stipulate to the submission of all testimony
6 without live witnesses in the undisputed areas.

7 HEARING OFFICER RENAUD: Thank you. And staff?

8 PROJECT MANAGER SOLOMON: Staff also agree.

9 HEARING OFFICER RENAUD: All right. Very good.
10 So I think we've covered the main points that we came here
11 to cover. And what remains then is that you would like to
12 conduct a workshop. Is there anything before that that we
13 should discuss further?

14 Applicant, you did actually raise the issue of a
15 briefing schedule. Are you thinking -- do you have any
16 topics in mind honestly? Unless the water issue remains,
17 I could see that as certainly being a briefing topic, but
18 other than that, did you have any topics in mind?

19 MR. ELLISON: No. Other than the disputed issues
20 and hopefully we'll resolve those. But if we don't, those
21 would be the issues. And, frankly, it's entirely, you
22 know, up to the Committee's pleasure. If you don't need
23 briefs, we'd be happy to dispense with them.

24 HEARING OFFICER RENAUD: All right. Good. Thank
25 you. Before we send you to your workshop, let me just

1 check with the people on the phone to see if there's any
2 public comment?

3 We'll also have -- ask for public comment after
4 the workshop is over. Anyone on the phone who wishes to
5 make a public comment?

6 No. All right. The workshop will take place in
7 here. The Committee obviously will leave. Mr. Solomon,
8 if you would just give me a call or an Email when you're
9 ready, then we can come back on the record and get a
10 summary of what you discussed and adjourn.

11 And I think before we adjourn, after that, we'll
12 also have -- ask for public comment one more time, just in
13 case.

14 Okay. So off you go. Thanks.

15 (Thereupon a recess was taken.)

16 HEARING OFFICER RENAUD: Okay. Thanks, everyone.
17 I understand you have -- this is Raoul Renaud, the Hearing
18 Officer for the Watson Cogeneration Project. And we're --
19 I understand you -- the parties have completed your
20 workshop for the day, and have asked that we reconvene.

21 Is there any summary or other news you care to
22 pass on to the Committee?

23 PROJECT MANAGER SOLOMON: Yes, we do. In theory,
24 we agree with one another. We worked out the -- we feel
25 like we have worked out the differences. We want to

1 research one number. Specifically, this number is
2 regarding the reclaimed water that Watson had purchased
3 in, I think, it's 2010. There are two different numbers
4 that we're looking at, and we would like to research that
5 to see which number is, in fact, accurate.

6 Both sides are generally in agreement with one
7 another. And the applicant would like to take a look at
8 some of the conditions just to make sure that they are in
9 agreement with everything that is in there. They just
10 want an opportunity to read it one more time.

11 HEARING OFFICER RENAUD: Okay. Thank you.

12 PROJECT MANAGER SOLOMON: And what we are -- what
13 we would appreciate is if the Committee would sponsor
14 another workshop. We are supposed to meet for the
15 evidentiary hearing on November 1st at 1 o'clock. We
16 would appreciate if we could -- if the Committee would
17 sponsor a workshop on November 1st at 12:30, so that we
18 would -- both sides would have the opportunity to have
19 read everything at that point, and make sure everything
20 lines up with one another.

21 Okay. So that would be 12:30, basically.

22 PROJECT MANAGER SOLOMON: Correct.

23 HEARING OFFICER RENAUD: Yeah, and I think we
24 have the hearing room starting at 12, so that shouldn't be
25 a problem. Does that sound good?

1 All right. That's what we'll do then. And, at
2 that time, you'll be able to tell us what if -- what
3 additional evidence or declarations you may have or if we
4 need to go ahead and adjudicate that issue.

5 PROJECT MANAGER SOLOMON: Correct.

6 HEARING OFFICER RENAUD: All right.

7 PROJECT MANAGER SOLOMON: Do you want to add?

8 HEARING OFFICER RENAUD: Applicant?

9 MR. ELLISON: Yeah. I guess I would just say two
10 things. We agree that, you know, we think we have an
11 agreement, which is wonderful. And we appreciate the
12 staff's efforts in that regard.

13 There is one other issue that I'll just mention,
14 and that is both sides have agreed to continue talking
15 about whether or not there should be a very short-term
16 mechanism in the permit in the case of an emergency, where
17 the recycled water suddenly becomes unavailable for
18 reasons beyond the control of the applicant. We've agreed
19 that we would, if it were a longer term event, that we
20 would have to file an amendment to the condition and the
21 Commission would have to do all of its environmental
22 analysis and all of that.

23 The question where we're still under discussion
24 is should there be very short-term relief available
25 for -- from the staff for the amount of time that it would

1 take to do the amendment, to file the amendment and get
2 the Commission to process that.

3 And recognizing that the staff would have
4 discretion to say yes or no to that, we think that that
5 might be a useful mechanism for the Commission to include
6 in the permit. So it's not a major issue. We haven't
7 reached absolute agreement on it. We're still discussing
8 it, but we're cautiously optimistic.

9 PROJECT MANAGER SOLOMON: Staff are currently
10 considering that.

11 HEARING OFFICER RENAUD: All right. Good. Well,
12 that's always good to have some sort of flexibility in
13 case of an emergency. So see what you can come up with.

14 Okay. Anything else to add before we move into
15 public comment?

16 Anybody?

17 Nothing.

18 PROJECT MANAGER SOLOMON: Nothing from staff.

19 HEARING OFFICER RENAUD: Okay. Commissioner
20 Peterman?

21 PRESIDING MEMBER PETERMAN: Regarding the issue
22 about staff flexibility, is that something that would then
23 need to be signed off by the Executive Director?

24 STAFF COUNSEL OGATA: Jeff Ogata, staff counsel.
25 That's one of the things that we're looking at, in terms

1 of the mechanism. You know, if we're not that comfortable
2 with the compliance project manager, we think the
3 Executive Director at least should have to sign off on
4 that. You know, our position typically is that only the
5 Commission can make changes to a Commission decision. So
6 that's another sort of a factor, but we do understand the
7 position of Watson. So we're going to think about a way
8 we can try to accommodate that, in a way that seems
9 legally appropriate as well as, you know, functionally
10 appropriate.

11 PRESIDING MEMBER PETERMAN: That would be good.
12 Also, I don't know if there's a process for doing it as a
13 Committee order that doesn't need to be adopted by the
14 Commission or something like that, but welcome your
15 consideration of all the options short of having a full
16 business meeting, if that's too time consuming.

17 HEARING OFFICER RENAUD: All right. That's
18 great. Thank you again. As I indicated earlier, we would
19 have another opportunity for public comment at this time.
20 And I understand we do have someone on the phone line who
21 wishes to make a public comment, and it's Mia McNulty.
22 Are you there?

23 MS. McNULTY: Yes.

24 HEARING OFFICER RENAUD: Thank you for patiently
25 waiting. We can hear you loud and clear, so please

1 proceed with your comment. And Commissioner Peterman is
2 here to listen to your comment.

3 MS. McNULTY: I'm -- we're commenting on the
4 asthma levels, and specifically Carson -- the northern
5 Carson region, that we don't know how much that will
6 increase the rate of asthma in our area due to the
7 increased levels of the diesel trucks going down
8 Wilmington, and also the lights are coming across our
9 homes. So we were concerned about that. We just received
10 the information regarding the documentation that was done.
11 So we're in a meeting now discussing that, as we speak,
12 but I wanted to make sure I brought it up and that it was
13 on record.

14 HEARING OFFICER RENAUD: All right. Thank you.
15 We appreciate your comment. And I did state your name. I
16 didn't state whether or not you are representing yourself
17 individually or an organization. Is that --

18 MS. McNULTY: I'm doing both. NAACP, I'm
19 community outreach and liaison for NAACP Carson/Torrance
20 Branch.

21 HEARING OFFICER RENAUD: Thank you.

22 PRESIDING MEMBER PETERMAN: I appreciate that
23 you're going through the documentation now, but since we
24 have staff and applicant here, would anyone like to
25 comment on the concern raised?

1 PROJECT MANAGER SOLOMON: Dr. Alvin Greenberg is
2 on the line. He did respond in a docketed item. It was
3 docketed on Friday. Dr. Greenberg, would you like to
4 comment?

5 DR. GREENBERG: Yes. Please excuse me, in that
6 if I Bluetooth here while I'm driving is not the clearest.
7 I heard the comments from the member of the public who is
8 also representing the NAACP. And if I heard correctly,
9 there is concern about a cumulative impact on asthma
10 rates. I heard something about diesel trucks. And am I
11 mistaken on that or should I ask for clarification?

12 MS. McNULTY: You're not mistaken.

13 PRESIDING MEMBER PETERMAN: Go ahead then.

14 DR. GREENBERG: I'm sorry. I'm having a hard
15 time hearing that.

16 HEARING OFFICER RENAUD: Dr. Greenberg, this is
17 Raoul Renaud. The commenter says you are not mistaken.
18 You got it right, so you can go ahead.

19 DR. GREENBERG: Okay. Thank you very much for
20 that clarification. The analysis that I conducted looked
21 at the incidence of asthma and other respiratory diseases
22 in the project area, and it did not -- my analysis did not
23 quantitatively address the increment or the cumulative
24 impacts from the project and/or other sources.

25 Rather, it made a qualitative assessment that

1 given the present levels of asthma rates and what we know
2 about what would be emitted from the Watson Project, and
3 offsets that are required in those pollutants that could
4 cause or exacerbate asthma, that any increment would be
5 below the level of significance.

6 Now, in all honesty, I did not take into account
7 if there were going to be any additional increases of
8 asthma causing or exacerbating pollutants from other
9 sources in the area. I was addressing only the increment
10 that would come from the Watson facility.

11 PRESIDING MEMBER PETERMAN: Thank you, Doctor.

12 DR. GREENBERG: You're welcome.

13 HEARING OFFICER RENAUD: Okay. And, Ms. McNulty,
14 do you have any further comment you wish to add or are you
15 done?

16 MS. McNULTY: The only further comment that I
17 wanted to add is also that Carson sits like in a kind of a
18 hole. And when the wind blows, it doesn't blow out the
19 toxins in our air. And as I said, we didn't have time to
20 go over it. I received the documents on Friday, but we
21 will, and we will also have other questions. But I thank
22 you for your time and the response that the Doctor gave
23 me. I think it's -- I can't remember his name.

24 HEARING OFFICER RENAUD: Dr. Greenberg, yes.

25 MS. McNULTY: Greenberg. But we will have other

1 comments at that time when we finish reading his report.

2 PRESIDING MEMBER PETERMAN: And, Hearing Officer,
3 can you just repeat, especially for our callers on the
4 phone know when we are having the evidentiary hearing and
5 when comments are due by and public comment and all that
6 jazz.

7 HEARING OFFICER RENAUD: Oh, let's see. Well,
8 the -- yes, the evidentiary hearing -- today is the
9 prehearing conference. The evidentiary hearing is
10 scheduled for November 1st at 1 p.m. And it will be here
11 in the same location, Hearing Room A, at Energy Commission
12 headquarters. The notice has instructions for how to
13 participate by phone or computer.

14 Public comment can be submitted at any time up to
15 and including during the hearing. And pretty much
16 everything you need to know about participating in the
17 process is set forth in the notice, which you can find on
18 the Commission website.

19 MS. McNULTY: Okay. Thank you.

20 HEARING OFFICER RENAUD: Yes. And I'm being
21 reminded also that the Public Adviser's office stands
22 ready to assist members of the public in understanding how
23 to participate in the process.

24 MS. McNULTY: Thank you.

25 HEARING OFFICER RENAUD: So feel free to contact

1 them as well.

2 MS. McNULTY: I sure will.

3 HEARING OFFICER RENAUD: Okay. Thank you. All
4 right. Well, it appears then that we've completed
5 everything we came here to do today. So I wanted to thank
6 you all for your attendance and we will adjourn the
7 meeting at this time.

8 Thank you.

9 (Thereupon the prehearing conference
10 adjourned at 3:28 p.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of October 2011.

PETER PETTY
AAERT CER**D-493

