

PREHEARING CONFERENCE  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Application for Certification ) Docket No.  
Beacon Solar Energy Project by ) 08-AFC-2  
Beacon Solar, LLC )  
\_\_\_\_\_ )

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

MONDAY, MARCH 15, 2010

10:15 A.M.

Reported by: Peter Petty, CER\*\*D-493  
Transcribed by: Margo D. Hewitt, CET\*\*00480  
Contract No. 170-08-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Karen Douglas, Presiding Member

Jeffrey Byron, Associate Member

HEARING OFFICER, ADVISERS and STAFF PRESENT

Kenneth Celli, Hearing Officer

Galen Lemei, Advisor

Kristy Chew, Advisor

Jared Babula, Staff Counsel

Eric Solorio, Project Manager

PUBLIC ADVISER

Jennifer Jennings

APPLICANT

Jane E. Luckhardt, Attorney  
Downey Brand Attorneys, LLP

Scott Busa  
Nextera Energy Resources

INTERVENOR

Tanya Gulesserian, Attorney  
Adams Broadwell Joseph and Cardozo  
representing California Unions for Reliable Energy

ALSO PRESENT

Richard Booth (via teleconference)  
Lahontan Regional Water Quality Control Board

Chris Vidal (via teleconference)  
Rosamond Community Services District

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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

2 10:15 a.m.

3 PRESIDING MEMBER DOUGLAS: Good morning.

4 This is a prehearing conference for Beacon Solar  
5 Energy Power Plant project. Before we begin we'd  
6 like to introduce the Committee and then ask the  
7 parties to introduce themselves for the record.

8 I'm Karen Douglas, Presiding Member of  
9 this Committee, and Chairman of the Energy  
10 Commission. To my immediate left is my Adviser,  
11 Galen Lemei. Commissioner -- I'll just work my  
12 way to the right here -- to my immediate right  
13 Hearing Officer Ken Celli; and to his right  
14 Commissioner Jeffrey Byron, the Associate Member  
15 of this Siting Committee.

16 We have in the room the Public Adviser,  
17 Jennifer Jennings. Jennifer, if you could wave;  
18 there you go.

19 Applicant, could you please introduce  
20 yourselves.

21 MS. LUCKHARDT: Good morning, my name is  
22 Jane Luckhardt and I am Outside Project Counsel.

23 MR. BUSA: Good morning, I am Scott  
24 Busa. I'm a Director of the Business Development  
25 Group of Nextera Energy.

1 PRESIDING MEMBER DOUGLAS: Staff.

2 MR. BABULA: Hi, I'm Jared Babula; I'm  
3 Staff Counsel. I'm sitting next to Eric Solorio,  
4 who is the Project Manager.

5 PRESIDING MEMBER DOUGLAS: Thank you.  
6 Intervenor.

7 MS. GULESSERIAN: Good morning. My name  
8 is Tanya Gulesserian; I'm an attorney for  
9 California Unions for Reliable Energy.

10 PRESIDING MEMBER DOUGLAS: Thank you.  
11 Are there any elected officials here today, state  
12 or county or local jurisdictions here today or on  
13 the phone?

14 Seeing none, what about -- is anybody  
15 here from the Kern County Air Pollution Control  
16 District? Or anybody here from any other Kern  
17 County agencies? Cities? Or the Lahontan  
18 Regional Water Resources Control Board?

19 MR. BOOTH: This is Richard Booth; I'm  
20 from the Lahontan Water Board.

21 PRESIDING MEMBER DOUGLAS: Thank you  
22 very much. Anybody else on the phone line who's  
23 participating?

24 MR. VIDAL: Chris Vidal with Rosamond  
25 Community Services District.

1                   PRESIDING MEMBER DOUGLAS: Thank you.

2                   All right, at this point we'll move to  
3                   have Hearing Adviser Celli provide us with some  
4                   background and start the proceeding.

5                   HEARING OFFICER CELLI: Thank you,  
6                   Chairman Douglas. The Committee noticed today's  
7                   prehearing conference in the revised notice of  
8                   prehearing conference and evidentiary hearings  
9                   that was issued on February 26, 2010.

10                  As explained in the notice the basic  
11                  purposes of the prehearing conference are to  
12                  assess the parties' readiness for hearings, to  
13                  clarify areas of agreement or dispute, to identify  
14                  witnesses and exhibits, to determine upon which  
15                  areas parties desire to cross-examine the other  
16                  parties' witnesses, and to discuss associated  
17                  procedural matters.

18                  To achieve these purposes we required in  
19                  the notice that any parties seeking to participate  
20                  at this conference or present evidence or cross-  
21                  examine witnesses at any future evidentiary  
22                  hearings file a prehearing conference statement by  
23                  March 11, 2010.

24                  Timely prehearing conference statements  
25                  were filed by Beacon, the applicant; California

1 Energy Commission Staff, who we refer to as staff;  
2 and the California Unions for Reliable Energy,  
3 which we refer to as CURE.

4 Staff filed its final staff assessment  
5 on October 22, 2009. This serves as staff's  
6 testimony, which has been marked for  
7 identification as exhibit 500.

8 Timely testimony was filed by applicant,  
9 which includes their AFC testimony and exhibits,  
10 on October 29, 2009, which has been marked for  
11 identification as exhibits 1 through 321.

12 Intervenor CURE's testimony was filed on  
13 November 12, 2009, and marked for identification  
14 as exhibits 600 through 624.

15 The applicant filed rebuttal testimony  
16 marked for identification as exhibits 322 through  
17 326 on March 9, 2010.

18 CURE filed rebuttal testimony marked for  
19 identification as exhibits 625 through 637 on  
20 March 9, 2010.

21 And staff submitted additional testimony  
22 which were exhibits 501 through 505 on March 11,  
23 2010.

24 All parties are required, and we're  
25 going to request that you burn a CD or a DVD

1 containing all of your exhibits and bring it to  
2 the evidentiary hearing for the Committee to use  
3 on -- that'll be next Monday in California City.

4 (Pause.)

5 HEARING OFFICER CELLI: Excuse me one  
6 moment.

7 (Pause.)

8 HEARING OFFICER CELLI: I'm sorry, we're  
9 back. We never were off the record. So, is that  
10 acceptable to all the parties to burn a DVD?  
11 Applicant?

12 MS. LUCKHARDT: Yes.

13 HEARING OFFICER CELLI: Thank you. And  
14 staff?

15 MR. BABULA: That's fine.

16 HEARING OFFICER CELLI: And, Ms.  
17 Gulesserian, can you do that?

18 MS. GULESSERIAN: Yes, we can.

19 HEARING OFFICER CELLI: Okay. You're  
20 still not coming across.

21 MS. GULESSERIAN: Yes.

22 HEARING OFFICER CELLI: Very good, thank  
23 you. That saves us the need to have to haul a  
24 whole lot of papers down to California City. So,  
25 thank you for doing that.

1                   As we speak today we're going to talk  
2                   about a lot of things, and maybe we'll make some  
3                   changes. We'll see what we can accomplish. But  
4                   I'm going to ask the parties to kind of keep a to-  
5                   do list so that we can all be on the same page and  
6                   know what's going to be required.

7                   Today's agenda is divided into five  
8                   parts. First, we're going to discuss matters  
9                   contained in the prehearing conference statements  
10                  and other issues raised by the parties.

11                  Next we will discuss the witness lists,  
12                  which Maggie Read will be passing out to you in a  
13                  moment.

14                  Then we will discuss tentative exhibits  
15                  lists. After that we will discuss a briefing  
16                  schedule. And finally, we will provide an  
17                  opportunity for the public to comment.

18                  As far as the prehearing conference  
19                  statements go, the parties have indicated that the  
20                  following topics are not in dispute: air quality,  
21                  geology and paleontology, land use, noise, traffic  
22                  and transportation, public health, socioeconomics,  
23                  transmission line safety and nuisance, worker  
24                  safety, facility design and power plant efficiency  
25                  and reliability.

1                   Do the parties agree that in these areas  
2                   all testimony will be submitted by declaration and  
3                   that live witnesses need not be present and  
4                   subject to direct and cross-examination?  
5                   Applicant?

6                   MS. LUCKHARDT: Yes, we agree.

7                   HEARING OFFICER CELLI: And staff?

8                   MR. BABULA: Yes, we agree.

9                   HEARING OFFICER CELLI: And CURE?

10                  MS. GULESSERIAN: We do not agree that  
11                  those issues are not in dispute, but we agree that  
12                  there's no need to cross-examine or actually bring  
13                  witnesses to the stand on those matters.

14                  HEARING OFFICER CELLI: Fair enough, so  
15                  we will not be having any live testimony on any of  
16                  those aforementioned topic areas. Is that your  
17                  understanding, Ms. Gulesserian?

18                  MS. GULESSERIAN: Yes.

19                  HEARING OFFICER CELLI: Okay, thank you.  
20                  Now, the topics that are in dispute and do seem to  
21                  require live testimony are: alternatives,  
22                  biological resources, cultural resources,  
23                  hazardous materials, soil and water, visual  
24                  resources, waste management, and transmissions  
25                  systems engineering.

1           As to the topics I just mentioned we  
2           expect the parties to work together to determine  
3           whether or not any of these topics can be moved  
4           into the undisputed list between now and the  
5           evidentiary hearing.

6           I'm going to go through each of these  
7           right now. We're going to talk about what the  
8           issues are. We're going to see what we can do to  
9           streamline the process to whatever extent we can.

10           First, I want to acknowledge under  
11           alternatives that the applicant has brought a  
12           motion to exclude testimony on the subject of dry  
13           cooling and photovoltaic alternatives. Before we  
14           rule on that motion, I note that CURE had  
15           mentioned that you were going to respond in  
16           writing.

17           And obviously, we haven't received any  
18           response, and there hasn't been enough time to do  
19           that. So we're going to give you an opportunity  
20           to address the issue, if you wish. So I'm going  
21           to start with CURE first. Your response to that  
22           motion.

23           MS. GULESSERIAN: Yes. Thank you for  
24           the opportunity to respond to the motion that was  
25           filed at the end of last week.

1           The FSA -- staff in the FSA finds that  
2           dry cooling is an economically feasible  
3           alternative, and mitigation measure that would  
4           substantially avoid significant impacts from the  
5           project using wet cooling from either groundwater  
6           or recycled water. CURE agrees.

7           CURE understands that Beacon does not  
8           agree -- by Beacon I'm referring to the applicant  
9           -- despite the fact that staff's conclusion is  
10          based on data and models supplied by the applicant  
11          to staff.

12          However, the applicant provided no  
13          rebuttal to either staff's October 22, 2009  
14          testimony, or CURE's November 12, 2009 testimony.

15          Beacon has had over four months to provide  
16          rebuttal to staff's and CURE's testimony, but the  
17          applicant has not.

18          Now, on the eve of evidentiary hearings  
19          Beacon files a motion for a prehearing order  
20          excluding testimony or evidence concerning cool  
21          water alternatives at the evidentiary hearings.  
22          Beacon argues that because it currently agrees to  
23          use recycled water, dry cooling need not be  
24          discussed.

25          This would set bad precedent and is

1 inconsistent with some of the same law cited by  
2 the applicant in its motion.

3 CURE urges the Committee to deny the  
4 applicant's motion.

5 The request inappropriately seeks to  
6 exclude evidence related to several key decisions  
7 that the Commission will be required to make in  
8 this proceeding. There are three independent  
9 legal obligations that will require the Commission  
10 to consider the feasibility of dry cooling.

11 First is CEQA. The Commission must  
12 determine whether the project, including the use  
13 of recycled water, will result in potentially  
14 significant impacts; and whether those impacts can  
15 be avoided or mitigated.

16 This issue is being litigated as there  
17 is currently substantial disagreement regarding  
18 potentially significant impacts from the recycled  
19 water alternatives.

20 If the Commission determines that the  
21 project, using recycled water, will result in  
22 potentially significant impacts, an issue that is  
23 currently in dispute, then the Commission will be  
24 required to determine whether there are feasible  
25 mitigation measures or alternatives capable of

1       avoiding or reducing a significant impact to a  
2       less-than-significant level.

3               This determination will involve  
4       consideration of whether dry cooling is a feasible  
5       mitigation measure capable of avoiding or reducing  
6       a significant impact to a less-than-significant  
7       level.

8               Feasibility or infeasibility requires  
9       evidence that the additional costs or a loss  
10      profitability are sufficiently severe as to render  
11      it impracticable to proceed with the project.

12              Second, the Commission will be required  
13      to consider consistency with LORS, including the  
14      Warren Alquist Act, section 25008 at the Public  
15      Resources Code, whereby it is the policy of the  
16      State of California and the intent of the  
17      legislature to promote all feasible means of water  
18      conservation and all feasible uses of alternative  
19      water supply sources.

20              Third, the Commission will be required  
21      to consider consistency with the California  
22      Constitution, specifically Article X, section 2,  
23      which prohibits the waste, unreasonable use,  
24      unreasonable method of use, or unreasonable method  
25      of diversion of water.

1                   These determinations will necessarily  
2                   involve consideration of whether the use of  
3                   recycled water for power plant cooling is an  
4                   unreasonable use of water when modestly priced  
5                   measures, such as dry cooling technologies are  
6                   available to eliminate the conception of water,  
7                   and conserve that water for other beneficial uses.

8                   In making these determinations the  
9                   Commission will require evidence regarding the  
10                  feasibility of dry cooling.

11                  As explained by Beacon in its motion,  
12                  evidentiary hearings are used to identify impacts,  
13                  to assess the feasibility of mitigation measures  
14                  for adverse impacts, and to determine consistency  
15                  with LORS.

16                  Beacon's argument, the applicant's  
17                  argument that dry cooling need not be discussed  
18                  because the technology does not address a  
19                  significant adverse environmental impact, nor a  
20                  conflict with LORS for the project is wrong and  
21                  premature.

22                  Thus CURE will seek to enter its  
23                  exhibits into the record, including exhibit 636  
24                  and 637, which include confidential appendix C,  
25                  which is part of the FSA, staff's testimony in

1           this proceeding; and other exhibits that may be  
2           deemed relevant in order to insure the Commission  
3           will be able to make these decisions under CEQA  
4           and the Warren Alquist Act.

5                       CURE urges the Committee to deny the  
6           applicant's motion. Thank you.

7                       HEARING OFFICER CELLI: Thank you, Ms.  
8           Gulesserian. We did not hear from staff on this.  
9           Did staff wish to weigh in?

10                      MR. BABULA: Yeah. I would like to. I  
11           think that the intervenors play an important role  
12           in our process, and the Commission and the  
13           Committee's always been vigilant to allow for fair  
14           participation.

15                      But in this case it kind of misses the  
16           point. The purpose of the hearing is not to  
17           explore the universe of what the project could be,  
18           but what the project is. Our own regulation 1748  
19           says the hearing shall be used to identify  
20           significant adverse impact of the proposal on the  
21           environment, and shall assess the feasibility of  
22           measures to mitigate the adverse impacts.

23                      The thing to remember is the original  
24           reason staff pushed these alternatives wasn't  
25           because of a CEQA impact or because of the water

1 policy issue. The key thing to remember here is  
2 the resolution of whether dry cooling is or is not  
3 economically feasible, would not change the  
4 outcome of this proceeding or the final decision.

5 A finding that it is economically  
6 feasible would merely allow for the option to  
7 remain on the table for the applicant to choose.  
8 A finding that it is not economically feasible  
9 would remove it as an option.

10 In any case, the applicant has chosen to  
11 use a recycled water option. So it doesn't change  
12 it. We're not looking at CEQA impacts, we're  
13 looking at water policy. For multiple reasons  
14 they have gone with the recycled water option.

15 So to determine whether dry cooling is  
16 feasible or not is a sidebar that doesn't relate  
17 to the overall conclusion or ending or any  
18 findings of this project.

19 CURE's free to argue issues of  
20 mitigation impacts on the recycled water option,  
21 either one, either Cal City or Rosamond, but to go  
22 into the issue of dry cooling would be similar to  
23 an issue we had in biology on temporary tortoise  
24 fencing. There was a question about whether  
25 temporary tortoise fencing is a functional

1 equivalent of a tortoise fence, and the Service  
2 didn't know whether it would work. But said,  
3 well, you can just have monitoring. And so the  
4 applicant said, okay, we'll monitor.

5 We could litigate whether temporary  
6 tortoise fencing is functional, but it doesn't, in  
7 the end, mean anything if the applicant says,  
8 well, we'll just monitor instead.

9 So I looked at CURE's prehearing  
10 conference statement and there's just a number of  
11 things in there that are a concern, that kind of  
12 indicate a more systemic problem.

13 Saying that this project isn't viable  
14 and the Commission shouldn't waste its time on it  
15 is absurd. We've spent -- this is two years now  
16 in this project. We've done a number of  
17 workshops, meetings, analysis.

18 I think we need to move forward now.  
19 The project is fully vetted and analyzed. And at  
20 this point, doing anything with dry cooling would  
21 just be a sideshow that doesn't get us anywhere.

22 HEARING OFFICER CELLI: Thank you, Mr.  
23 Babula. Applicant, anything in rebuttal?

24 MS. LUCKHARDT: Yes. You know, in  
25 listening to CURE's comments I find a lot of the

1 same things. I find comments about the fact that  
2 dry cooling is needed as an alternative for a  
3 significant adverse impact.

4 And yet, when I look at CURE's  
5 testimony, and I look at the testimony that they  
6 included that was in the final staff assessment, I  
7 don't find a significant adverse impact that their  
8 testimony supports that would be driven by using  
9 recycled water. Because the project, of course,  
10 is no longer proposing to use groundwater.

11 And even as Mr. Babula's pointed out,  
12 even when the project was proposing to use site  
13 groundwater for cooling there was not a  
14 significant adverse environmental impact from  
15 using that water.

16 And so I have yet to find, in any of  
17 CURE's testimony, testimony to support a finding  
18 of a significant adverse environmental impact due  
19 to the project's proposed use of recycled water  
20 for this facility.

21 So I don't find a significant adverse  
22 impact or testimony that would support such either  
23 within staff's assessment or CURE's analysis and  
24 their comments.

25 And then they talk about an

1 inconsistency with LORS. Then you go back to the  
2 position that staff originally took in the final  
3 staff assessment, where staff found, in their  
4 opinion -- we have not agreed with it -- but  
5 assuming that staff is correct and that there was  
6 an inconsistency with policy in the state with  
7 using groundwater for power plant cooling, that  
8 also has been resolved by the project shifting to  
9 recycled water.

10 That was the whole point of shifting to  
11 recycled water, was to take away that argument and  
12 the need to discuss it further on whether we would  
13 need to use all these alternatives. It was in an  
14 effort to streamline the hearings and the  
15 proceeding.

16 And then, you know, and that dealt with  
17 specifically the state water policy 7558 and the  
18 IEPR policy set by this Commission.

19 Ms. Gulesserian referred to the  
20 California Constitution, Article X, section 2.  
21 There is nothing in the testimony of her witnesses  
22 that would show that the use of recycled water for  
23 this facility violates that section of the  
24 constitution. There is nothing there.

25 And when staff evaluated that, they

1           evaluated it as an inconsistency when we were  
2           using groundwater for power plant cooling. We  
3           know that if this project were to go to dry  
4           cooling the groundwater that it is proposing to  
5           use would be the same amount of groundwater if the  
6           project was being dry cooled. You would still  
7           need water for potable uses and other uses.

8                         So, as I look at it, I see nothing, no  
9           testimony from CURE that would demonstrate either  
10          a significant adverse impact, environmental impact  
11          from use of recycled water; and I see no testimony  
12          that would support a finding of inconsistency with  
13          LORS.

14                        Therefore, we see no point in spending  
15          hearing time to discuss an alternative that there  
16          is no requirement that this Commission, or no  
17          ability frankly of this Commission, to force this  
18          project to adopt.

19                        And so to us it seems like a complete  
20          waste of time. And we see this as simply a delay  
21          tactic on behalf of CURE, and something that this  
22          Commission should not entertain, or this Committee  
23          should not entertain.

24                        HEARING OFFICER CELLI: Thank you.

25          Staff introduced evidence on dry cooling and

1 photovoltaic alternatives in the FSA, and likewise  
2 intervenor CURE was free to enter evidence on dry  
3 cooling and photovoltaic alternatives, which they  
4 did.

5 We note that neither applicant nor staff  
6 submitted rebuttal evidence to CURE's testimony on  
7 the issue of dry cooling and photovoltaic  
8 alternatives. And, in fact, entered a stipulation  
9 not to do so.

10 The Committee infers that the applicant  
11 and staff may have determined that CURE's  
12 evidence, in their view, is insufficient and have  
13 chosen to rely on the state of the evidence as it  
14 is.

15 The Committee does, however, believe  
16 that the written record on dry cooling and  
17 photovoltaic alternatives is sufficient as it  
18 currently stands. And does not think there is a  
19 need to take additional oral testimony on  
20 alternatives. And therefore, the applicant's  
21 motion would be denied as moot.

22 Of course, neither the applicant nor  
23 staff is precluded from arguing the relevance or  
24 sufficiency of CURE's written testimony on dry  
25 cooling or photovoltaic alternatives.

1                   But at this time the determination would  
2                   be that there's no need to take any oral testimony  
3                   or any further testimony on alternatives at all.

4                   There is one point I wanted to raise,  
5                   though, because, Ms. Gulesserian, you mentioned, I  
6                   can't remember which exhibit number it was, but  
7                   your last exhibit, which was the confidential  
8                   documents.

9                   MS. GULESSERIAN: Yes, that's one of our  
10                  exhibits.

11                  HEARING OFFICER CELLI: Was it 637?

12                  MS. GULESSERIAN: That's correct, which  
13                  is cited in our testimony submitted on November  
14                  12th by our witness, David Marcus.

15                  HEARING OFFICER CELLI: Yes. I just  
16                  want to state for the record that I understand  
17                  that you entered into a nondisclosure agreement,  
18                  and we had talked on the telephone about  
19                  attempting to circumvent having to put that into  
20                  evidence. It does present some problems.

21                  Now, I just want to be clear that a  
22                  determination by the California Energy  
23                  Commission's Executive Director of confidentiality  
24                  is something, you know, somebody makes a request  
25                  for confidentiality; it goes through the Chief

1 Counsel's Office. They say whether there is some  
2 privilege or not, if they can find one. And they  
3 make a recommendation to the Executive Director.

4 In this case she found that it was  
5 subject to confidentiality and was sealed. But,  
6 those determinations are subject to challenge.  
7 And if you put that evidence into the record, this  
8 is a big agency and there's a lot of opportunity  
9 to things to slip through the cracks and for that  
10 to be made public.

11 And I just want to be clear that that  
12 responsibility would not rest with the Energy  
13 Commission if that confidential information became  
14 inadvertently made public. Because we are not  
15 compelling CURE to put that evidence in. That's  
16 something that's voluntary on CURE's part. And so  
17 the Energy Commission would take no responsibility  
18 for any such eventuality.

19 What I'm saying is that it poses a  
20 problem, because it potentially puts you in a  
21 position of being in breach.

22 So my request was that the parties work  
23 together to find a way to perhaps come -- using  
24 that data, come to some conclusions that you could  
25 stipulate to that would not necessitate having to

1 enter that evidence into the record.

2 I think that the important thing for all  
3 of us to understand at this point is that the  
4 whole question of dry cooling and alternatives is  
5 really going to end up being a legal question, not  
6 a factual one. And I think you're well aware that  
7 the Commission -- the Commissioners and the  
8 Committee likes dry cooling as an alternative.  
9 But I think that -- I'm hoping that the parties  
10 can find a way to not have to put confidential  
11 records into the record.

12 MS. GULESSERIAN: Thank you. We  
13 disagree that there is not an issue of fact with  
14 respect to the alternatives that are presented and  
15 their potentially significant impacts.

16 Staff counsel's example that there was a  
17 mitigation measure, that there be fencing for  
18 desert tortoise, and that litigating that issue  
19 would be a waste of time, since it is no longer  
20 proposed, is inapplicable. Because now we have a  
21 proposal for recycled water that is still being  
22 proposed. It is not withdrawn. So the issue of  
23 whether that alternative or mitigation measure  
24 will result in significant impacts is an issue in  
25 this proceeding.

1                   I agree that if a mitigation measure is  
2                   withdrawn that it is no longer subject to dispute.  
3                   But in this proceeding there is a dispute  
4                   regarding the potentially significant impacts of  
5                   the recycled water alternatives.

6                   This is for the Commission to decide,  
7                   whether staff has analyzed these alternatives and  
8                   properly found that impacts are mitigated to a  
9                   less-than-significant level.

10                  We had an opportunity to finally review  
11                  the rebuttal testimony that was filed last week.  
12                  And we've seen nothing in the record, in the  
13                  testimony from either the applicant or staff that  
14                  analyzes potentially significant impacts from  
15                  construction of these wastewater treatment  
16                  facilities, construction and/or upgrades,  
17                  depending on which one you're talking about.

18                  So this is an issue that is subject to  
19                  cross of the applicant's and/or staff's witnesses.  
20                  And right now there is no evidence that there is  
21                  even any analysis of these recycled water  
22                  alternatives. We believe that the Commission will  
23                  not be able to approve a project without such  
24                  analysis under CEQA; and based on the evidence  
25                  that is in the record that there are potentially

1 significant impacts.

2 In that case the Commission would be  
3 required to look at other feasible measures to  
4 address impacts and consistency with LORS. If  
5 that is the case then we would need to present the  
6 feasibility of dry cooling.

7 I hear what you're saying regarding the  
8 difficulty in doing so, and CURE is willing to  
9 take whatever steps are necessary to insure  
10 confidentiality of these documents.

11 At your suggestion we proposed a  
12 stipulation to the parties regarding the  
13 conclusions reached. And we were unable to -- it  
14 really didn't even go very far. They wouldn't  
15 even begin to discuss some basic conclusions drawn  
16 from the confidential appendix.

17 HEARING OFFICER CELLI: Well, right now  
18 your evidence -- let's just assume for the moment  
19 that all of your evidence goes unopposed, and all  
20 of your evidence is in.

21 MS. GULESSERIAN: The staff's testimony  
22 does not make a conclusion that is derived from  
23 confidential appendix C. It is rather just cited.  
24 And this, for example, is that dry cooling is less  
25 costly than any other alternative proposed for

1           this project.

2                         That conclusion is not in the testimony;  
3           it is in confidential appendix C.  And saying that  
4           does not reveal any confidential information.  It  
5           is a conclusion that I could ask the parties to  
6           stipulate to, for example, that would eliminate  
7           one of the needs to have that confidential  
8           appendix in the record.

9                         HEARING OFFICER CELLI:  Let me ask.  Mr.  
10          Babula.

11                        MR. BABULA:  Well, I'd like just a  
12          general question relating to that.  What if, let's  
13          just assume that the applicant stipulated that dry  
14          cooling was feasible and they made more money  
15          doing it.  So what?  It doesn't get us to -- it  
16          just allows that's one option they can pick.  They  
17          picked a different option.

18                        So, I'm not sure, the confidentially --  
19          this is the exact point is doing this confidential  
20          information, this is the sideshow that we're  
21          getting into, which is taking time.

22                        HEARING OFFICER CELLI:  I appreciate  
23          what you're saying.  My question really was there  
24          was the allegation that staff did not address the  
25          impacts of either the Rosamond or the California

1 City options in the FSA. And I just wanted to  
2 know if that's the case.

3 MR. BABULA: We did. First, the  
4 facility had already been -- the California City  
5 already has a facility in place. The issue was  
6 connecting up houses from a septic system onto a  
7 central sewage system.

8 With Rosamond they were doing upgrades  
9 already and that is on a separate track. But the  
10 part that we're -- we dealt with the pipeline; we  
11 had a separate 40-page assessment; the biologist  
12 went down there and checked the alignment. So we  
13 did do an analysis --

14 HEARING OFFICER CELLI: I remember  
15 reading that, --

16 MR. BABULA: Right.

17 HEARING OFFICER CELLI: -- I just can't  
18 remember where it was.

19 MR. BABULA: Eric might want to add  
20 something.

21 HEARING OFFICER CELLI: Yeah, I mean was  
22 that in an appendix?

23 MR. SOLORIO: We absolutely did an in-  
24 depth analysis on the Rosamond alternative. We  
25 did also analyze Cal City. Rosamond was taken to

1 a higher level, if you will.

2 To begin with, Rosamond currently has  
3 its residents hooked up to the system. They have  
4 the effluent at the plant. It's being evaporated.

5 So water that's being evaporated being  
6 utilized somewhere else doesn't necessarily create  
7 an impact there.

8 The bottomline is in the bio section you  
9 will find 15 to 20 pages of maps showing  
10 vegetation cover, description of the resources, et  
11 cetera. Look at air quality. It will discuss  
12 impacts to air quality from truck trips related to  
13 the pipeline. It is covered. It's in the FSA.

14 HEARING OFFICER CELLI: Okay, and I  
15 remember reading it. I just, for Ms.  
16 Gulesserian's benefit I wanted to -- was trying to  
17 see if we could actually direct her to where it  
18 was in the analysis.

19 MR. SOLORIO: It shows up in multiple  
20 technical areas, both Cal City and the Rosamond  
21 alternatives show up in multiple technical areas  
22 where the impacts would be relevant to that  
23 technical area. They were addressed.

24 I think the distinction that also needs  
25 to be made here is the confidential information

1           that we're talking about, that addresses economic  
2           feasibility.

3                         HEARING OFFICER CELLI: Right.

4                         MR. SOLORIO: Is the bottom line. I  
5           don't believe there is a way to, you know, for the  
6           parties to work out some agreement without  
7           actually disclosing the bottomline information,  
8           which is confidential.

9                         We had previously talked about last year  
10          the potential for in camera proceeding, closed  
11          doors, so the Committee could see the --

12                        HEARING OFFICER CELLI: That's exactly  
13          what I'm trying to avoid. I really -- I'm just  
14          trying, for the sake of the preservation of the  
15          confidential, you have a nondisclosure agreement.  
16          We have a confidential document. When we start  
17          going into that, the public starts having a right  
18          to look into that data, as well.

19                        And I'm trying to keep everyone happy  
20          here in a way, and preserve the confidentiality.  
21          But I think, Mr. Babula, you made an important  
22          point. And, Ms. Gulesserian, it seems to me that  
23          the parties can look at this data and say, yes,  
24          this is a feasible alternative. This is a  
25          feasible alternative that could satisfy most of

1 the objectives of the project.

2 There are several feasible alternatives  
3 under the facts and every analyses that we have,  
4 so I don't understand why you couldn't come to  
5 that very high level conclusion.

6 I'll leave this to the parties to bring  
7 up, but that's what I'm saying would preclude the  
8 need to disclose this information, or put it into  
9 evidence.

10 MR. BABULA: I mean staff -- or CURE's  
11 own expert at one point in his testimony said that  
12 the Committee should require the applicant to do  
13 either dry cooling or nonpotable water for  
14 cooling. And they picked one of those.

15 I mean they weren't complaining before.

16 HEARING OFFICER CELLI: Yes. Do you see  
17 where I'm going with this? This is a legal call.

18 MR. BABULA: Right.

19 HEARING OFFICER CELLI: I don't see this  
20 as a factual call.

21 MR. BABULA: Right.

22 HEARING OFFICER CELLI: Let's hear from  
23 applicant on that.

24 MS. LUCKHARDT: Well, I think you  
25 understand where we're coming from. We strongly

1 object to bringing this information in. In fact,  
2 that was the whole reason that the project, or one  
3 of the main reasons that the project elected to go  
4 with recycled water, was so that we would not have  
5 to litigate the very issue of economic feasibility  
6 of the whole dry cooling analysis that staff  
7 conducted.

8 The project believes that it has several  
9 inaccuracies and that there are problems with that  
10 analysis.

11 And when the project elected to go with  
12 recycled water, part of the decision to do that  
13 was that we wouldn't have to go through the  
14 process of litigating that entire analysis. That  
15 is the whole point.

16 HEARING OFFICER CELLI: Right, but you  
17 understand that the Committee has to address the  
18 question of alternatives, and has to look at the  
19 analysis.

20 MS. LUCKHARDT: The Committee has to  
21 address alternatives to significant adverse  
22 impacts, or where you have a LORS problem. The  
23 Committee does not have to look at random  
24 alternatives to things that don't cause a  
25 significant adverse impact.

1 Under CEQA there's no requirement to do  
2 that. Under the Warren Alquist Act there's no  
3 requirement to do that.

4 So what -- essentially you could run  
5 down and look at many many different alternatives  
6 to this project. And as long as they are not  
7 addressing a significant adverse impact there's no  
8 reason to spend the time looking at it.

9 So, we're not saying that you don't look  
10 at alternatives. You always look at alternatives.  
11 You look at alternative sites. We've got visual  
12 issues --

13 HEARING OFFICER CELLI: Technologies.

14 MS. LUCKHARDT: -- you have to look at  
15 alternatives related to that. There's always that  
16 analysis that happens. But typically when a  
17 project uses recycled water there is not an  
18 alternatives analysis of dry cooling, because  
19 there's no requirement to evaluate that; and  
20 there's no requirement that the project go to dry  
21 cooling.

22 And so there's no need to then put in a  
23 big expansive discussion of dry cooling. And  
24 that's part of the whole point. I mean that's why  
25 the project is now using recycled water.

1                   So if we're going to go into this whole  
2                   discussion then we have to kind of step back and  
3                   say, okay, now what do we want to do. Because the  
4                   benefit of what we've done is no longer there. So  
5                   we have to analyze that.

6                   And I'd just like to comment on, you  
7                   know, CURE's comment about a significant adverse  
8                   impact. The only area where I think they're even  
9                   talking about that is impacts from a linear, from  
10                  a pipeline going down either from Rosamond or from  
11                  California City.

12                  This pipeline doesn't go through a, you  
13                  know, national park or anything like that. And to  
14                  say that there isn't the ability to mitigate a  
15                  linear of this type, it just -- it's mind-boggling  
16                  to me.

17                  So the idea that we would say that this  
18                  is -- that that impact, and I've looked at CURE's  
19                  testimony. And they basically say, well, you  
20                  haven't analyzed -- they claim that it hasn't been  
21                  analyzed enough and that maybe there's  
22                  insufficient mitigation.

23                  But there's nothing in there to say that  
24                  this is a significant adverse unmitigable impact  
25                  from a pipeline. And, yes, there is lots of

1 testimony in the record on both of those issues.  
2 It is inaccurate to say that there is no testimony  
3 analyzing the environmental impacts of Rosamond or  
4 California City.

5 MS. GULESSERIAN: May I address a few  
6 issues?

7 HEARING OFFICER CELLI: Please.

8 MS. GULESSERIAN: Thank you.

9 HEARING OFFICER CELLI: And then we need  
10 to move on, so, please.

11 MS. GULESSERIAN: Thank you. I still  
12 haven't heard whether we can stipulate to some  
13 basic conclusions that are in confidential  
14 appendix C. We are willing to stipulate to the  
15 basic conclusions that include --

16 HEARING OFFICER CELLI: Well, you  
17 understand that what this body needs to determine  
18 is what are these alternatives that are proposed;  
19 are they feasible; do they address most of the  
20 objectives of the project. Okay. And that's as  
21 far as the Committee really needs to go.

22 So, I believe that there's already a  
23 statement -- there may or may not be, I don't  
24 recall -- from staff that says this is a feasible  
25 alternative, that dry cooling was a feasible

1 alternative.

2 MR. BABULA: And --

3 HEARING OFFICER CELLI: And, really --  
4 go ahead.

5 MR. BABULA: But that's from, I mean  
6 technically everybody agrees you could technically  
7 do it. Now the question is from an economic  
8 standpoint, and the agreement is that they don't  
9 agree, but we think it is. But in order to not  
10 get into that we stipulated and so --

11 HEARING OFFICER CELLI: Right, but the  
12 point is there's a body of evidence now in  
13 existence that says these are the alternatives.  
14 And dry cooling is one of them.

15 HEARING OFFICER CELLI: Right, right.  
16 There is a number of alternatives. And they  
17 selected one. Now let's move on.

18 HEARING OFFICER CELLI: Right. That's,  
19 I mean, pretty much it's in the record. We can't  
20 exclude it. I mean the --

21 MR. BABULA: Right.

22 HEARING OFFICER CELLI: -- door's open.  
23 So, okay, great, there's dry cooling evidence.

24 MS. LUCKHARDT: But at this point there  
25 isn't, actually there isn't anything in the

1 hearing record at this point.

2 HEARING OFFICER CELLI: True. But we've  
3 received the evidence and we understand that the  
4 FSA is certainly going to come into the record,  
5 you know. I mean you're free to ask us to strike  
6 certain portions of the record if you wish, but I  
7 would say that this is a discussion that's already  
8 been opened. It's already been raised.

9 We have to analyze alternatives. And I  
10 think we have ample evidence already in what's  
11 offered on the issue, and there's no need to call  
12 any further witnesses on it. And that's really  
13 the bottomline here. We can --

14 MR. BABULA: It's just a little unclear  
15 when you say that, because the applicant has  
16 specifically not rebutted staff's testimony,  
17 because they went to the recycled water.

18 So, if we just leave it as -- I think  
19 we're okay if we just leave it like we have. The  
20 FSA came out and at the time we had to analyze a  
21 number of options. The applicant has acknowledged  
22 that they didn't agree with staff's findings, but  
23 that they selected the recycled water option. So  
24 there's no need to go any further.

25 So if you're just saying the FSA is it

1 and we're done with that discussion, and at the  
2 evidentiary hearing California City will discuss  
3 the linears and the recycled water plans, then --

4 HEARING OFFICER CELLI: And CURE agrees  
5 with the staff's assessment in that regard.

6 MS. GULESSERIAN: Not -- we agree with  
7 the staff assessment, and we will be presenting  
8 our witness to summarize our findings on the  
9 feasibility of alternatives.

10 HEARING OFFICER CELLI: That's what I'm  
11 saying is not going to happen. And the reason I'm  
12 saying that is because the Committee's already  
13 read all of the testimony, and the testimony is --  
14 well, at this moment, is undisputed. Well, I  
15 won't say it's undisputed, there will probably  
16 certainly be legal briefing on it. But there's no  
17 further evidence coming in. They're not rebutting  
18 your testimony.

19 MS. GULESSERIAN: The testimony does not  
20 conclude -- does not set forth all of the  
21 conclusions in appendix C. For example, there's  
22 no comparison in the FSA between dry cooling and  
23 recycled water.

24 HEARING OFFICER CELLI: That's the FSA,  
25 but I'm talking about CURE's testimony. We

1 received CURE's testimony. I've read your expert  
2 testimony; I've read your expert's rebuttal  
3 testimony.

4 MS. GULESSERIAN: If our witness is not  
5 cross-examined on the issue, and there's no need  
6 to cite to confidential appendix C, then we will  
7 -- I will go back and make sure that all of the  
8 findings that would be required to be derived from  
9 confidential appendix C are in the testimony  
10 that's been filed.

11 HEARING OFFICER CELLI: Okay, but you  
12 see what we do here is we -- your evidence, right  
13 now, as it stands, is not being rebutted. There's  
14 no need to call a witness, no one wants to cross  
15 your witness. They don't even want to go down  
16 that tunnel; they're not even interested in that  
17 topic.

18 And so, --

19 MS. GULESSERIAN: I foresee a problem  
20 during hearings, and this is why. Staff just said  
21 that the FSA analyzes the wastewater treatment  
22 facilities. The FSA has sections that have  
23 information on the California City pipeline, or  
24 some statements. And the Rosamond, there's a  
25 little bit more analysis on part of the pipeline.

1                   There's no analysis --

2                   HEARING OFFICER CELLI: I think your  
3 point is --

4                   MS. GULESSERIAN: -- of the facilities  
5 that are being upgraded for this project.

6                   HEARING OFFICER CELLI: You know what,  
7 we're going to discuss that under the topic of  
8 water. But as -- so right now what I'd like to do  
9 is close the discussion as it relates to  
10 alternatives. And say that we don't need any  
11 further discussion. We are not going to require  
12 any testimony from anyone on alternatives, because  
13 all of the testimony presumably that you're going  
14 to be putting in, nobody is asking to cross-  
15 examine any of your witnesses. And we've already  
16 received all of their testimony from you.  
17 So that will be alternatives. We'll talk about  
18 water in a moment, okay. So, just as a topic  
19 area.

20                   So I want to move on beyond. Let's get  
21 into biological next.

22                   MS. LUCKHARDT: Okay. I guess from our  
23 perspective I need to understand then, because  
24 part of the reason that we went to recycled water  
25 was so that we didn't litigate and carry forward

1 the economic analysis that was done by staff.

2 So if what you're saying is we're  
3 accepting --

4 HEARING OFFICER CELLI: No.

5 MS. LUCKHARDT: Okay, okay, thank you.

6 HEARING OFFICER CELLI: I'm not saying  
7 that you're accepting it. And I'm not requiring  
8 that you not address it or oppose it in your  
9 briefs later. I'm just saying that the state of  
10 the record is sufficient. There's no need to take  
11 any further evidence or take any further testimony  
12 on alternatives. I think alternatives is  
13 complete.

14 Now, there may be some issue of water,  
15 but --

16 MS. LUCKHARDT: Okay, okay, we're good.

17 HEARING OFFICER CELLI: -- I'm not --

18 MS. LUCKHARDT: All right, thank you.

19 HEARING OFFICER CELLI: I'm not  
20 precluding any party from making any argument. I  
21 want to be clear about that.

22 MS. LUCKHARDT: Thank you.

23 HEARING OFFICER CELLI: Thank you.

24 Biological resources. In the area of biology CURE  
25 has raised a number of issues and the staff and

1 the applicant seek to -- will address the  
2 following.

3 First no survey attempts to document the  
4 Mojave ground squirrel onsite. The staff assumes  
5 that there are no Mojave ground squirrel -- I have  
6 MGS, from now on I'm just going to say MGS,  
7 meaning Mojave ground squirrel -- onsite for lack  
8 of habitat. The take estimate of two transient  
9 MGS squirrels is invalid. That 150 acres of  
10 mitigation land is insufficient.

11 That burrowing owl surveys don't follow  
12 protocol. Staff requires too few artificial  
13 burrows in mitigation.

14 Staff did not support conclusions  
15 regarding desert tortoises absence with scientific  
16 literature. There's insufficient compensation at  
17 \$250 an acre with regard to desert tortoise. And  
18 that there's no basis for a conclusion that the  
19 re-routed wash mitigation is sufficient.

20 There are also some details in staff's  
21 proposed conditions of certification which need  
22 resolution. For example, in some cases staff  
23 requires a biologist to onsite during certain  
24 construction activities, while the applicant  
25 requests that the biologist be available but not

1 necessarily onsite.

2 I'm not sure whether any of these kinds  
3 of issues can be resolved, but I would first put  
4 it to the applicant whether any of these issues  
5 can be resolved now. What can we do to sort of  
6 streamline biology?

7 MS. LUCKHARDT: The issues that we have  
8 on the conditions of certification have,  
9 potentially could be resolved. Unfortunately  
10 Susan Sanders had limited time at the workshop  
11 that we had. She did come in and share with us as  
12 much time as she had. I think she had to go to  
13 hearings on Ivanpah.

14 And so there are some outstanding  
15 issues. There might be a chance to resolve that  
16 if we had an opportunity to talk about that  
17 further.

18 As far as the issues that CURE is  
19 bringing, frankly I don't think that they are in a  
20 position to try and resolve them. So,  
21 unfortunately, I think that those have to go to  
22 hearing. I just don't think that they're in that  
23 position.

24 But we could attempt to try and resolve  
25 the remaining issues with conditions of

1 certification with staff. And we could set a  
2 conference call or something with that that would  
3 involve all parties, if that would be acceptable.

4 HEARING OFFICER CELLI: How many  
5 conditions are we talking about? Ballpark it.  
6 You know, are we talking about ten, five, one?

7 MS. LUCKHARDT: Something like five.

8 MR. BABULA: It was like five, right?  
9 It was like -- it's about five.

10 MS. LUCKHARDT: About five.

11 MR. BABULA: I know Sue's input, and  
12 there's a couple that she's trying to think of a  
13 middle ground. So, if we don't get it by the  
14 evidentiary hearing, at the hearing she might have  
15 some sense of language proposed that might just be  
16 fine.

17 HEARING OFFICER CELLI: My request would  
18 be this. That all three parties have a conference  
19 call this week before we get down to California  
20 City. So this is going to go on your to-do list.  
21 And we'd like you to set up a conference call,  
22 discuss these conditions.

23 It seems to me, you know, that a little  
24 tweaking of conditions of certification is the  
25 kind of thing that we don't really need to use

1 Committee time for. It seems to me that if you're  
2 close enough you probably could resolve it on your  
3 own. And so that would be the request of the  
4 Committee that the parties get together in  
5 conversation, and try to meet and confer, or at  
6 least telephone and confer. And try to resolve  
7 these conditions to the extent that you can.

8 Ms. Gulesserian, as I look at the issues  
9 that are raised, I don't really know whether  
10 there's anything that you can do in terms of  
11 things like narrowing the issues with regard to  
12 the ground squirrel or whatever.

13 Do you have any ideas that you perhaps  
14 can offer up?

15 MS. GULESSERIAN: It's very difficult to  
16 come to resolution when there were inadequate  
17 surveys on the site to establish the environmental  
18 baseline in the first place.

19 So I anticipate that that will be an  
20 issue that needs to be discussed at the hearings.

21 HEARING OFFICER CELLI: Okay. And what  
22 we're going to end up doing is we're all going to  
23 talk later in the hearing about the witness list,  
24 itself.

25 There is -- and I'm not going to talk

1 about it now, but we need to cut back. We can't  
2 spend seven hours on biology, okay. We need to  
3 find a way to shorten things up. And so I'm going  
4 to encourage the parties in your telephone  
5 conversation to please do whatever you can to  
6 streamline the process, narrow the issues to the  
7 extent that you can.

8 MR. BABULA: Yeah, I think we've done  
9 quite a bit of this. That's why we have the  
10 supplemental filings after our workshop. With  
11 biology we made some changes. We even -- I know  
12 Susan made changes specifically addressed to some  
13 of CURE's issues.

14 Now, in this conference call, is public  
15 notice, regular, I mean what --

16 HEARING OFFICER CELLI: I'm seeing this  
17 as an informal conference between the attorneys.  
18 I don't see this as a public forum at all. I just  
19 think that that's what the attorneys are there to  
20 do.

21 MR. BABULA: More procedural?

22 HEARING OFFICER CELLI: It is absolutely  
23 procedural. What can we do to shorten the time.  
24 So, and all of these issues are going to be raised  
25 and made public at the hearing on Monday. And so

1 I don't believe that the public is being deprived  
2 of an opportunity to participate. So please take  
3 the opportunity to shorten things.

4 I'm going to move on to cultural. It  
5 says the primary dispute with cultural resources  
6 between staff and the applicant relates to the  
7 lead time needed for document submissions, and  
8 whether 10 percent or 5 percent of the solar field  
9 should be subjected to magnetometry studies.

10 What are these issues about and -- I  
11 mean we're talking about a difference of 5  
12 percent.

13 MS. LUCKHARDT: Well, we're talking  
14 about essentially staff proposed basically a year-  
15 long cultural resource program. And by the time  
16 you start by identifying the individual,  
17 developing the program, the data recovery, all of  
18 that, and we had proposed essentially a six-month  
19 process.

20 And then the magnetometry, the 5 and 10  
21 percent, and all of that, it takes an awful lot of  
22 time. And it's quite expensive. And we're  
23 concerned that if it gets too big that it will  
24 take six months or, you know, end up with that  
25 year time period that will have to be taken up

1           doing cultural resources before we can start  
2           construction on archeological zone one.

3                         And because this site involves re-  
4           routing a desert wash there is only so much that  
5           can be done before you really need access to the  
6           whole site.  Because the wash is one of the first  
7           things that has to be addressed from a downstream  
8           flooding impact situation.

9                         So it's not like you can do a lot of  
10          work on part of the site.  You really need access  
11          to the whole site.

12                        And I think that summarizes the  
13          difference, but, Jared --

14                        MR. BABULA:  Yeah, I think that's pretty  
15          close.  I do know that Mike McGuirt, our cultural  
16          specialist, has sort of been pondering the comment  
17          in the rebuttal testimony that the applicant has  
18          just filed.

19                        And so he is, I think, going to work on  
20          some middle ground-type approach regarding the  
21          lead time.  I think his concern was the quality of  
22          the information in that report that would be  
23          generated if it had too short -- like if it was  
24          too short a time period he couldn't get the  
25          information.  It wouldn't be sufficient enough.

1                   And so he wanted to say, well, you need  
2                   to have a long lead time to have the quality. But  
3                   if the quality can be there in a shorter time.

4                   So I'd like to try to get something  
5                   earlier than the evidentiary hearing. It's very  
6                   busy. I've had trouble getting him to do much  
7                   because he's got a number of projects. But I  
8                   could make, that could be the topic of this. We  
9                   could add that to the call.

10                   HEARING OFFICER CELLI: Absolutely. It  
11                   seems like you're not that far apart. You should  
12                   be able to resolve. I'm asking the parties to  
13                   compromise. CURE's not involved in the cultural  
14                   issue, didn't raise it as a concern of theirs. So  
15                   it seems to me that between applicant and staff  
16                   you should be able to resolve this.

17                   And our request is that you do resolve  
18                   this before we get to hearing. So we look forward  
19                   to hearing on Monday that you've made substantial  
20                   progress in the area of cultural, and maybe take  
21                   it off the table as a disputed issue.

22                   Let's move on to hazardous material.  
23                   Hazardous materials, CURE has raised issues  
24                   regarding the potential for heat transfer fluid,  
25                   which we refer to as HTF. CURE's raised the issue

1 of leaks and spills. Specifically they question  
2 condition of certification waste-7, which does not  
3 establish a metric of the concentration of HTF in  
4 the soil.

5 Conditions of certification waste-9,  
6 lacks a corrective action plan. And three wells  
7 are insufficient to monitor the evaporation ponds  
8 waste releases. This is a very broad statement.  
9 I know that the issues are more detailed than  
10 that, but I'm just trying to lay it out summarily.

11 Both waste management and hazardous  
12 materials experts for staff and applicant  
13 apparently are going to respond to CURE's issues.

14 I just wonder, you know, when it comes  
15 down to something like, you know, a metric or a  
16 number, it seems to me that that's the kind of  
17 thing that doesn't necessarily require Committee  
18 time. I just wonder if it's possible that these  
19 deficiencies, as raised by CURE, can't be  
20 informally settled by the parties.

21 Applicant, did you want to raise that,  
22 Ms. Luckhardt, in terms of waste-7 or waste-9?

23 MS. LUCKHARDT: Well, we've worked with  
24 staff, we've worked with CURE to the extent that  
25 CURE is able to do that, but again, I -- you know,

1 I don't -- we don't see this as a big concern.

2 There are plans that are conducted to  
3 address, hazardous materials business plans and  
4 the like, to address spills of heat transfer  
5 fluid. Nextera's been operating some of the SEGS  
6 facilities out in that area for a long time. Yes,  
7 there have been spills, but they have all been  
8 addressed. They are taking lessons learned from  
9 other facilities forward to what's proposed at  
10 Beacon.

11 But I'm not -- again, I'm just not aware  
12 that CURE is in a position to settle out any of  
13 the issues.

14 HEARING OFFICER CELLI: Well, just --

15 MS. LUCKHARDT: And they haven't  
16 proposed like, we'd like to see you do this or  
17 that. The only thing they've proposed is  
18 additional monitoring wells, which, frankly,  
19 doesn't make any sense, since there will be a  
20 water well onsite. So if there's a spill it would  
21 pull towards the well.

22 But nonetheless, they don't -- I haven't  
23 seen additional proposals, well, we want the  
24 condition to read like X or Y, that we can  
25 specifically respond to.

1                   My guess is that they would propose the  
2                   most onerous thing they could come up with, but,  
3                   you know, I have yet to see it, so I can't  
4                   respond.

5                   HEARING OFFICER CELLI: I would  
6                   encourage the parties in your telephone  
7                   conversation, and I would encourage CURE, then, to  
8                   come up with whatever that metric is that you're  
9                   interested in seeing. And whatever those measures  
10                  would be with regard to a corrective action plan,  
11                  to specify in language that's susceptible to being  
12                  inserted into a condition. And run it by the  
13                  parties. So that we can have some productive time  
14                  on that call.

15                  It would be nice if we can get past  
16                  this, because this seems pretty, you know,  
17                  something that the parties should be able to work  
18                  out informally.

19                  MR. BABULA: Additionally, you brought  
20                  that up at the last conference we had about it, so  
21                  I submitted additional testimony from Geoff  
22                  Lesh --

23                  HEARING OFFICER CELLI: Which I read.  
24                  He's the person who said that if you put any extra  
25                  valves we actually weaken the system, which makes

1 complete sense. I understand that.

2 MR. BABULA: Right. So that was to try  
3 to address your comment. And so I think between  
4 staff and the applicant we don't have any issues.  
5 So it will just be trying to address CURE's  
6 statements.

7 HEARING OFFICER CELLI: That would be  
8 great. To the extent that you can, we appreciate  
9 that.

10 Let's get on to water resources.  
11 Applicant and staff have agree that the  
12 applicant's decision to utilize recycled water for  
13 power plant cooling eliminates the need to  
14 adjudicate the use of onsite groundwater for  
15 cooling, or the use of dry cooling and  
16 photovoltaic technologies.

17 However, some details of the monitoring  
18 plan and the zero recharge baseline described in  
19 conditions of certification for soil and water  
20 remain in dispute.

21 Staff also seeks to provide testimony  
22 supporting a version of the Tamarisk removal  
23 program proposed by the applicant.

24 Also CURE observed some inconsistencies  
25 in the construction water use between 6574 and

1           8086 acrefeet per year in the FSA and the AFC. As  
2           well as some inaccuracies in the demand of water  
3           by California City.

4                        I think that's the kind of thing that,  
5           if there's a typo or it's --

6                        MR. BABULA: Well, there's a couple of  
7           things. First, actually since I wrote this, when  
8           we looked at the applicant's rebuttal testimony  
9           staff made a couple of changes. So we actually  
10          might be closer, because I submitted -- I attached  
11          to, was it at the end, the question 9 where we  
12          made changes in conditions of certification, so  
13          new testimony, or new adjustments to the language  
14          adopted some of the applicant's suggestions. So  
15          we might be closer than what this states now.

16                       As for the number change, there's  
17          initially when the applicant proposed the project,  
18          the construction water seemed low compared to what  
19          staff felt.

20                       So staff went through an additional  
21          analysis. And from the PSA to the FSA we added,  
22          we believe that it would be more because of the  
23          siltiness of the soil. So we went up to 8000  
24          acrefeet, which they may not hit, but we wanted to  
25          make sure there was an adequate analysis that was

1 somewhat conservative so we got a good full  
2 picture.

3 So that's why the numbers -- so, it's  
4 not a typo, but the number has gone up.

5 HEARING OFFICER CELLI: That's fine. My  
6 request is that you address so that the parties  
7 all understand whether there's actually a real  
8 dispute here, or just a misunderstanding, or a  
9 need for a correction of data.

10 And then exchange that information in a  
11 way so that we don't have to litigate and spend  
12 time working on that.

13 So any other of these issues, can we --  
14 are there any of these issues that can be resolved  
15 today with regard to water resources?

16 MS. LUCKHARDT: We are looking at, since  
17 staff sent in their prehearing conference  
18 statement we have been looking at whether the  
19 requirements that they've put on Tamarisk are  
20 feasible or not. We just need to run some numbers  
21 there.

22 We've also been looking at their revised  
23 groundwater monitoring requirements. So I think  
24 we could try one more time on one of these  
25 conference calls to see if we can't resolve our

1 differences on soil and water-1. That's really  
2 the condition that contains those issues. So --

3 HEARING OFFICER CELLI: We're just down  
4 to one condition here, soil and water-1?

5 MR. BABULA: It's a long condition,  
6 though.

7 HEARING OFFICER CELLI: Okay.

8 MR. BABULA: Yeah, I feel the ball is in  
9 applicant's court right now because we made the  
10 last round of changes. So they're considering it.

11 HEARING OFFICER CELLI: Okay, well, I  
12 appreciate that. And then let's see if we can't  
13 clear that up. But things like, you know,  
14 numerical differences, I think that's the kind of  
15 thing that you can resolve on your own.

16 So, with that, anything further on water  
17 issues that we can resolve today?

18 MR. BABULA: Do you have anything,  
19 Casey? No. Okay.

20 HEARING OFFICER CELLI: That could be  
21 resolved in this hearing that might streamline our  
22 hearing in any way? Hearing none, seeing none,  
23 we'll move on to visual.

24 For visual resources staff concludes  
25 that from two key observation points the project

1 will result in unmitigable adverse significant  
2 impacts. Applicant disputes this conclusion.  
3 Staff also believes that the FSA provides support  
4 for the Committee to make findings of overriding  
5 considerations to approve the project despite the  
6 unmitigable visual impacts.

7 The Committee observes that it is  
8 premature to make such a determination, but  
9 reminds Beacon that the burden rests with the  
10 applicant to show mitigation, or to persuade the  
11 Committee to find that an override is needed for  
12 public convenience and necessity.

13 The applicant may argue both, as these  
14 positions are not mutually exclusive. But it is  
15 incumbent upon the applicant to insure sufficient  
16 factual evidentiary record in either case.

17 The Committee will not hold a subsequent  
18 hearing on override. I want to make that very  
19 clear that if there's any need for an override  
20 evidence, you put it in during the evidentiary  
21 hearing, and we will resolve it prior to, you  
22 know, within the hearing. We're not going to hold  
23 separate hearings for override.

24 MR. BABULA: Okay. I also want to note  
25 I submitted with my statement, the declaration of

1 Terry O'Brien regarding a recommendation to find  
2 override. I was going to submit that, just the  
3 declaration, with no live testimony. And I had an  
4 opportunity to ask the applicant if that was okay.

5 I did not get a chance to talk to CURE.  
6 Would you want to cross Terry, or would it be okay  
7 to just accept his statement through declaration?

8 MS. GULESSERIAN: You're talking  
9 regarding the override --

10 MR. BABULA: Right.

11 MS. GULESSERIAN: -- considerations?

12 HEARING OFFICER CELLI: Actually the  
13 real question is do you dispute that there is an  
14 unmitigable visual impact. You being CURE.

15 MS. GULESSERIAN: We do not dispute  
16 that.

17 HEARING OFFICER CELLI: Okay. Now, so  
18 the next question is really, I imagine that that's  
19 the kind of thing that we can submit on  
20 declaration and that there's no need to call that  
21 witness.

22 MS. GULESSERIAN: Yes. CURE does not  
23 have any questions for the visual resources  
24 witness.

25 MS. LUCKHARDT: Yeah, and we also

1 submitted an additional declaration for Kenny  
2 Stein relating to findings of overriding  
3 consideration. So, --

4 HEARING OFFICER CELLI: Have we received  
5 that already?

6 MS. LUCKHARDT: You should have. It was  
7 in our testimony. It is one of the last exhibits.

8 HEARING OFFICER CELLI: I know that  
9 there's testimony that came in that said that  
10 there was not a visual impact, with pictures of  
11 trash and things like that along the trails.

12 MS. LUCKHARDT: Right, it's in the  
13 subject area of executive summary; it is exhibit  
14 number 322.

15 HEARING OFFICER CELLI: And that goes to  
16 the override?

17 MS. LUCKHARDT: That goes to the  
18 override. He will also be at the hearing, so we  
19 can expand on that.

20 HEARING OFFICER CELLI: Good. Thank  
21 you. I just, in that regard I'm just asking that  
22 we tackle that head-on in the hearing, and not  
23 dance around that.

24 MR. BABULA: That's what I anticipated,  
25 it would be all done at the hearing.

1                   HEARING OFFICER CELLI: Okay, thank you.  
2                   Transmission engineering. CURE has recommended a  
3                   condition of certification trans-5 be modified to  
4                   require a date certain by when an interconnection  
5                   agreement can be signed between applicant and  
6                   LADWP; as well as a statement from LADWP that it  
7                   can receive delivery of all 250 megawatts of  
8                   Beacon generation after the Owens Gorge Renaldi  
9                   line and Barren Ridge switching stations are in  
10                  service.

11                  CURE claims that the selected  
12                  transmission line cannot carry the full load from  
13                  the Beacon facility. Staff will provide testimony  
14                  to address CURE's concerns.

15                  I wonder if these are -- I mean we're  
16                  just talking about capacity here, right? So, I  
17                  wonder if these are the kinds of things that can  
18                  be resolved before we get to hearing.

19                  Let's hear from the applicant first.

20                  MS. LUCKHARDT: We believe that the  
21                  system impact study that was conducted by LADWP,  
22                  which is also -- sorry, Los Angeles Department of  
23                  Water and Power -- who is also the transmission  
24                  owner in that area. It's their system.  
25                  Adequately shows that the project can be

1 interconnected in accordance with their  
2 requirements, and also in accordance with NERC  
3 requirements. And that they used the WECC data in  
4 creating and conducting their analysis.

5 And that the points of concern that CURE  
6 has raised relate to other studies and other  
7 situations. And really are not as -- they're  
8 definitely not focused on this project like the  
9 system impact study. That's what a system impact  
10 study is to do. It's supposed to look at what is  
11 the impact of connecting this project to the  
12 transmission system.

13 We have that. It was conducted by the  
14 transmission owner. You know, we really have  
15 nothing else to add. They are the experts on  
16 their system.

17 HEARING OFFICER CELLI: Staff, any  
18 comment on system impact study?

19 MR. BABULA: Yeah, I talked to our  
20 technical people and they didn't find any issue.  
21 And they again investigated, double checked. So  
22 it's really trying to address CURE.

23 And there's no -- I understand why they  
24 mentioned this in their statement, too, that  
25 there's no PPA or interconnection agreement and

1           that needs to be done. And especially the PPA  
2           doesn't need to be done before the project gets  
3           licensed. So I'm not sure how much of this is  
4           really a technical issue.

5                         But, you know, I could have the  
6           technical people there. I prefer not to bring  
7           them all the way to California City for what could  
8           be five minutes of testimony. So we'll try to  
9           resolve it before then.

10                        HEARING OFFICER CELLI: CURE, now this  
11           is because essentially you're opposing a condition  
12           the burden would be on CURE then to make the case.  
13           So, please, go ahead.

14                        MS. GULESSERIAN: Yes, CURE is prepared  
15           to make the case. CURE has also reviewed the  
16           rebuttal testimony filed by the applicant  
17           regarding transmission engineering. And we'll  
18           have questions for that witness.

19                        HEARING OFFICER CELLI: Any --

20                        MS. GULESSERIAN: And we'd be happy to  
21           have a phone call to see if we can resolve any of  
22           the issues or propose a better mitigation measure  
23           that addresses our concern.

24                        HEARING OFFICER CELLI: That would be  
25           great. We would appreciate your efforts in that

1 regard.

2 MS. SPEAKER: Hello.

3 HEARING OFFICER CELLI: Is there  
4 somebody on the line who is speaking up? Hello?

5 MS. SPEAKER: Hello?

6 HEARING OFFICER CELLI: Yes. Who's  
7 speaking?

8 MS. SPEAKER: This is (inaudible).

9 HEARING OFFICER CELLI: I'm sorry, say  
10 again. Could you --

11 MS. SPEAKER: The (inaudible).

12 HEARING OFFICER CELLI: I'm sorry, it  
13 sounds as though we made an outgoing call to  
14 someone; it's a wrong number.

15 MS. SPEAKER: Were you trying to get  
16 ahold of Steve (inaudible)?

17 HEARING OFFICER CELLI: I have no idea.  
18 I'm sorry if --

19 MS. SPEAKER: Okay, thank you.

20 HEARING OFFICER CELLI: Bye bye now.  
21 Okay.

22 Commissioner.

23 ASSOCIATE MEMBER BYRON: Mr. Celli,  
24 before you go on I was just curious. I'm not  
25 really following what the concern is here. Could

1 CURE by chance, just for my benefit, briefly  
2 describe the concern here as to whether or not,  
3 and I should say why there may be insufficient  
4 capacity on the interconnection?

5 MS. GULESSERIAN: Let me just see if I  
6 can do it as eloquently as my expert has. The  
7 testimony is regarding insufficient capacity to  
8 enable this project to deliver to the grid. And  
9 that's what our testimony is about.

10 The rebuttal is that essentially LADWP  
11 did a system impact study and so everything is  
12 okay. We have questions about the validity of  
13 that analysis and whether this project can connect  
14 to the grid.

15 There's new information also regarding  
16 the Barren Ridge connection that we will be able  
17 to talk about on the phone with the applicant so  
18 we can get clarification before the hearings. But  
19 otherwise we would like to present those potential  
20 issues for the Commission to consider.

21 ASSOCIATE MEMBER BYRON: And the  
22 implication is that if the project didn't have  
23 sufficient transmission capacity it shouldn't go  
24 forward? Is that the point?

25 MS. GULESSERIAN: Or that some other

1 facilities would need to be constructed. What is  
2 the plan for addressing that issue?

3 ASSOCIATE MEMBER BYRON: Thank you.

4 HEARING OFFICER CELLI: Thank you,  
5 parties. We're going to move on now to the  
6 witness lists. I'm holding up -- go ahead.

7 MS. GULESSERIAN: I'm sorry, I need to  
8 address an issue. Earlier we talked about the  
9 issues that are not disputed and the issues that  
10 are. And I cannot recall, I apologize, if project  
11 description was one of them.

12 I assume that when we list the areas  
13 that are not disputed --

14 HEARING OFFICER CELLI: I didn't -- I  
15 apologize, I see that I didn't put it in either  
16 list.

17 MS. GULESSERIAN: Okay. So project  
18 description would be a disputed issue. And we  
19 would have cross-examination for CEC Staff on it.

20 HEARING OFFICER CELLI: We're going to  
21 need a little more specificity there, please.

22 MS. GULESSERIAN: Yes. So with respect  
23 to the staff analysis we are not clear whether the  
24 project includes the recycled water facilities or  
25 not. If those are being done under an independent

1 environmental analysis, or whether they're being  
2 reviewed as part of this project's analysis.

3 HEARING OFFICER CELLI: You mean at the  
4 site of where the water --

5 MS. GULESSERIAN: Whether the project  
6 description includes upgrades to the Rosamond  
7 Community Service District.

8 HEARING OFFICER CELLI: In other words,  
9 they're going to create some tertiary treatment  
10 facility. That would not be part -- we do not  
11 have jurisdiction over that.

12 MS. GULESSERIAN: Okay, so if that is  
13 the case then they would be analyzed separately?  
14 I think that's the legal issue that we would be  
15 addressing --

16 HEARING OFFICER CELLI: Right, they're  
17 under --

18 MS. GULESSERIAN: -- through briefing.  
19 So if we could get clarification?

20 HEARING OFFICER CELLI: I can tell you  
21 that that is not a part of the Energy Commission's  
22 analysis. We have no jurisdiction. We have no  
23 ability to tell them how to run or design their  
24 facilities. And that's covered by State Water  
25 Board policies.

1                   There's an entire universe of water law  
2                   that governs tertiary treatment. I can't even  
3                   remember if it's weekly or daily testing and all  
4                   of that.

5                   But that is outside our jurisdiction.  
6                   And so we would not require that.

7                   MS. GULESSERIAN: Okay. So we would  
8                   need clarification. We would request to ask for  
9                   clarification from the project manager so we make  
10                  sure that the evidence is in the record regarding  
11                  what is and is not being analyzed as part of the  
12                  project.

13                  HEARING OFFICER CELLI: The California  
14                  Energy Commission has jurisdiction over the power  
15                  plant and its linears, essentially. So what we're  
16                  talking about are the pipelines and the plant  
17                  site, itself, transmission lines, gas lines, if  
18                  there were that sort of thing.

19                  So pretty much it stops at the point of  
20                  interconnection essentially. So it would be at  
21                  the property line, I guess, of the -- I'm not  
22                  exactly sure about that. I would submit it to the  
23                  staff, but I believe it's the property line of the  
24                  water facility. Mr. Solorio.

25                  MR. SOLORIO: Yeah, if I can offer the

1 clarification now. The upgrades to the Rosamond  
2 Treatment Plant were not included in the project  
3 description because it is not part of the proposed  
4 project. It was looked at as an alternative.

5 Staff feels they did adequate CEQA  
6 analysis on that alternative that allows the  
7 Committee and the Commission to approve it if they  
8 decide to.

9 With that said, Rosamond is in the  
10 process of constructing a tertiary treatment  
11 facility as we speak, and they have approved EIRs.

12 HEARING OFFICER CELLI: Thank you. So  
13 to be absolutely clear, Ms. Gulesserian, that  
14 would not be part of this analysis. We don't go  
15 there.

16 MS. GULESSERIAN: And does the  
17 Commission go there on cumulative impact analysis?

18 HEARING OFFICER CELLI: Absolutely, yes.  
19 It would be a cumulative impact of things such as  
20 construction impacts, that would include linears  
21 and things like that. But there will not be a  
22 cumulative impact analysis of Rosamond's upgrade  
23 of their water treatment facility.

24 MS. GULESSERIAN: So it's the finding  
25 now that the construction of these two wastewater

1 treatment facilities in the area are not part of  
2 the cumulative impact analysis?

3 HEARING OFFICER CELLI: They're not part  
4 of the --

5 MS. GULESSERIAN: Properly are not part  
6 of the cumulative impact analysis?

7 HEARING OFFICER CELLI: They're not part  
8 of the project.

9 MS. GULESSERIAN: Okay.

10 MR. SOLORIO: If I can offer  
11 clarification, each discipline has a different  
12 radius for projects they consider in their  
13 cumulative analysis. So your question is answered  
14 by that particular discipline.

15 The Rosamond project is under  
16 construction. It's a separate effort by Rosamond  
17 outside of the Energy Commission.

18 HEARING OFFICER CELLI: So would it be  
19 part of your cumulative analysis of say water and  
20 soil, water resources?

21 MR. SOLORIO: Again, that's up to each  
22 individual technical area. You know, for instance  
23 public health may look at a radius a quarter mile  
24 from the project site; hazmat may only consider  
25 the project boundaries, itself. Soil and water

1           may look at the entire sub-basin. Rosamond is in  
2           another sub-basin, outside of this basin. And the  
3           water's currently being evaporated.

4                       MS. GULESSERIAN: Thank you. And what I  
5           was trying to do was avoid having cross-  
6           examination for every topic area by just  
7           clarifying with the project manager in the project  
8           description portion. So that I wouldn't have to  
9           ask each witness for visual, if it was applicable,  
10          whether that analysis included -- that cumulative  
11          impact analysis, for example, included analysis of  
12          wastewater treatment facilities.

13                      So I thought, for ease of not having  
14          every witness at the hearing, ask the project  
15          manager the project description, and, you know,  
16          general questions regarding the staff's analysis.

17                      HEARING OFFICER CELLI: Well, we will  
18          have Mr. Solorio there, so he will be available.  
19          But I wanted to make clear, though, that those  
20          wastewater treatment facilities are irrelevant to  
21          our determination.

22                      MS. GULESSERIAN: Thank you. And  
23          another example, if we need to -- I just want to  
24          make sure we have time during the schedule for  
25          project description would be additional facilities

1 related to HTF.

2 HEARING OFFICER CELLI: Oh, I think  
3 there's enough time for that because I don't  
4 expect that to take much time at all.

5 Let's get right into that now, as long  
6 as we're talking about testimony and witnesses.  
7 We have a list here that all the parties should  
8 now have. I apologize if this is not the most up  
9 to date. I believe it is. Maggie, have you  
10 provided the parties the latest witness -- topic  
11 and witness list?

12 MS. READ: Yes (inaudible).

13 HEARING OFFICER CELLI: All right, so  
14 the record should reflect that Ms. Read has  
15 provided the parties with the topic and witness  
16 list since March 15, 2010. It's the most up to  
17 date that we have. It doesn't necessarily mean  
18 it's fully accurate. We invite you to please  
19 correct so we can make the corrections before we  
20 insert it into the PMPD.

21 Let's go through that. First of all,  
22 just take a look, if you will, and see if there  
23 are any glaring errors that jump out. Right off  
24 the top. Ms. Gulesserian, do you have this?

25 MS. GULESSERIAN: No.

1 HEARING OFFICER CELLI: Maggie, could  
2 you give one, please, to Ms. Gulesserian.

3 MR. SOLORIO: Mr. Celli, if I may, I've  
4 asked our staff to come down who I think can  
5 quickly dispose of the TSE issue by explaining  
6 what the misunderstanding was regarding capacity,  
7 if you'll allow them.

8 HEARING OFFICER CELLI: You know what, I  
9 really don't think it's appropriate at this time  
10 because we're not in evidentiary hearings yet.

11 MR. SOLORIO: Okay.

12 HEARING OFFICER CELLI: To discuss that  
13 with the Committee here. However, I highly  
14 encourage all of you, the parties, to discuss this  
15 and to the extent that you can resolve it.  
16 Because it seemed to me that this is the kind of  
17 thing that you could resolve today. Let's do, all  
18 of you. And then you will report on Monday, next  
19 Monday, on whether the TSE is off the table yet,  
20 or substantially reduced.

21 MR. SOLORIO: We'll include that in the  
22 conference call.

23 HEARING OFFICER CELLI: Thank you.

24 Now, applicant, any changes to the  
25 witness list or the estimates of time?

1 MS. LUCKHARDT: I'm just going through  
2 it now. I'm not seeing further corrections or  
3 clarifications.

4 HEARING OFFICER CELLI: And this isn't  
5 do or die. If you see any as we go, please just  
6 let me know.

7 Staff, any changes?

8 MR. BABULA: Yeah, well, I had emailed  
9 you when you sent out the email last week about  
10 what witnesses. I took a whole bunch off. I  
11 think you just took it from each technical area.

12 Like, for example, cultural resources.  
13 It's just going to be Mike McGuirt. So I don't  
14 know if you want -- if you want me to go through  
15 and do that on all these, or --

16 HEARING OFFICER CELLI: Yeah, I need to  
17 -- I'm going to strike the names of those people  
18 who are not. So, Amanda Blosser and --

19 MR. BABULA: Yeah, take out Amanda and  
20 take out Beverly.

21 HEARING OFFICER CELLI: Okay.

22 MR. BABULA: And then for hazardous  
23 materials take out Rick Tyler.

24 HEARING OFFICER CELLI: Okay.

25 MR. SOLORIO: Soil and water take out

1 Vince Geronimo and Michael DiFilippo. And then  
2 transmission line safety we weren't going to have  
3 any testimony on that at all. Take out Obed.

4 HEARING OFFICER CELLI: I think she just  
5 put that in because he was the author of the  
6 written testimony.

7 MR. BABULA: Well, one is --

8 HEARING OFFICER CELLI: Was he not?

9 MR. BABULA: Well, there's two --

10 HEARING OFFICER CELLI: There's TLSN,  
11 and then there's TSE, right?

12 MR. BABULA: Yeah, -- the systems  
13 engineering. So this is safety, is Obed. So  
14 we're not going to -- that wasn't even disputed.

15 HEARING OFFICER CELLI: Right, that's  
16 why on the right you see where it says  
17 declaration/5 minutes? It's, I think in an  
18 abundance of caution, they were just putting the  
19 authors of the written testimony.

20 MR. BABULA: Okay. And then on facility  
21 design I had submitted a declaration from Steve  
22 Baker to make a correction to table 2, which had  
23 an incorrect number of pumps, I think. There's  
24 two changes. Well, Steve Baker is no longer -- he  
25 retired. So, he's not available for cross. But

1           since it's a minor, more a typo change, I think  
2           we're okay to submit it through declaration.

3                       HEARING OFFICER CELLI: That was not  
4           even, facility design isn't a disputed --

5                       MR. BABULA: Right.

6                       HEARING OFFICER CELLI: -- topic anyway,  
7           so.

8                       MR. BABULA: That wasn't one, okay.

9                       HEARING OFFICER CELLI: That's fine.

10                      MR. BABULA: Let's see if there's  
11           anything else.

12                      (Pause.)

13                      MR. BABULA: Yeah, everything else is  
14           fine. It's all by declaration then.

15                      HEARING OFFICER CELLI: CURE, any  
16           cahnages to our witness list?

17                      MR. BABULA: Oh, there is one other.  
18           We're going to have a couple questions. One, the  
19           Air Resources Board normally has -- or the air  
20           district normally sponsors the FDOC. So, we'll  
21           have them call in to do that.

22                      HEARING OFFICER CELLI: Is that that 20  
23           minutes that we estimated? And do you remember  
24           the name of the person who's going to testify?

25                      MR. SOLORIO: It's probably going to be

1 Glenn Stevens.

2 MR. BABULA: It's probably shorter than  
3 20 minutes, too. And then also there's going to  
4 be a representative from Rosamond and from Cal  
5 City to sponsor the proposed plans for the  
6 recycled water options.

7 HEARING OFFICER CELLI: And what are  
8 their names?

9 MR. BABULA: Well, I believe it'll be  
10 Mike Bevins, who's the one who came the last time  
11 and spoke.

12 HEARING OFFICER CELLI: From California  
13 City?

14 MR. BABULA: Right. And then Dennis --

15 MR. SOLORIO: For Rosamond it'll be  
16 either Jack Stewart or Dennis Lamareaux. Dennis  
17 recently took another job down there with another  
18 district, but he is available.

19 HEARING OFFICER CELLI: Okay. That's  
20 Rosamond.

21 MR. BABULA: And I also had put that  
22 someone from the regional water board may appear.

23 MR. BOOTH: This is Richard Booth with  
24 the Lahontan Water Board. I will attend in  
25 California City.

1                   HEARING OFFICER CELLI: Thank you. And  
2 do you intend -- and we assume that you would want  
3 to address the Committee, Mr. Booth. How much  
4 time do you think you would take?

5                   MR. BOOTH: I wasn't anticipating  
6 addressing the Committee. I anticipated being  
7 more available to answer questions. But I'll be  
8 glad to talk about that after this meeting.

9                   HEARING OFFICER CELLI: That's  
10 excellent. No, we appreciate that. What we're  
11 doing right now is we're trying to estimate how  
12 much time the hearing's going to take. So, thank  
13 you for your help in that.

14                  MR. BOOTH: You're very welcome.

15                  MR. BABULA: Okay, well, we may want to  
16 testify if issues come up on -- there's a septic  
17 system component to the Cal City. And we would  
18 like in the record to get the benefit of the water  
19 quality improvements that would happen when you  
20 remove the septic systems, because the leach is  
21 going to the groundwater, so.

22                  HEARING OFFICER CELLI: I thought that  
23 was going to be Mr. Bevins' testimony.

24                  MR. BABULA: He could also -- well, they  
25 both -- if you feel there's an overlap then we

1 don't need to have two, but --

2 HEARING OFFICER CELLI: If it's within  
3 his expertise and he can speak to it, then I just  
4 don't see a need to duplicate anything.

5 MS. LUCKHARDT: Excepting that we may  
6 need to have Mr. Booth testify to the benefits of  
7 removing all septic. And he may be in a better  
8 position to do that than Mr. Bevins.

9 HEARING OFFICER CELLI: That's great.  
10 And, you know, I mean let's take a look at is it  
11 necessary to have him sworn? Well, I imagine that  
12 if it's evidence that we can't get in in any other  
13 way, then absolutely you're going to need to have  
14 him sworn.

15 But if it just amplifies something  
16 that's already in the record, then maybe you just  
17 want to use it as comment. That's your decision.  
18 I'm not telling you how to run your case. You  
19 each have your own burdens.

20 But we're looking at ways that we can  
21 speed things up. And the reason that we're doing  
22 that, ladies and gentlemen, is that according to  
23 my calculations this hearing is going to take 21  
24 hours and 10 minutes. And that's just not going  
25 to be okay. We don't have 21 hours and 10

1 minutes. And something's got to give here.

2 MR. BABULA: I think we can cut bio down  
3 to about an hour.

4 HEARING OFFICER CELLI: Well, I don't  
5 know about that, because that is the heart and  
6 soul of CURE's concern. I have, first of all, air  
7 quality and undisputed things are going to take  
8 five minutes. It usually takes about 45 minutes  
9 for me to take in the evidence on the undisputed  
10 issues by having parties describe what the  
11 evidence is and move it into evidence, introduce  
12 it and determine that there's no objection, okay?

13 So let's say that's an hour right there.

14 What I have for biology is six to seven  
15 hours, based upon staff's expectation of Susan  
16 Sanders; I've got Julie Vance from CDFG, Judy  
17 Hohman from USFWS. Staff to take one to two  
18 hours. The applicant --

19 MR. BABULA: They're going to be  
20 testifying as a panel, so they're not going to  
21 individually necessarily -- the reason for that is  
22 because the section that was developed, although  
23 Susan was the primary author, there's a lot of  
24 collaborative work with the Fish and Game and the  
25 Fish and Wildlife Service.

1                   And that really goes to addressing one  
2                   of CURE's issues which was that for some reason  
3                   the applicant has to finish a section 10  
4                   consultation, and that at this point there's no  
5                   way we could know what mitigation the Service  
6                   would require. And we can't move forward. So we  
7                   have to have a second evidentiary hearing at some  
8                   other point if you look at their schedule.

9                   Judy Hohman will be able to say, in  
10                  fact, that she worked closely with Susan in  
11                  developing the conditions of mitigation. And that  
12                  what the Fish and Wildlife Service will end up  
13                  doing when they finish their section 10  
14                  consultation will end up being similar, or in fact  
15                  the same as the mitigation we've already proposed.

16                  So I see more of a panel and not  
17                  extensive each one testifying.

18                  HEARING OFFICER CELLI: Okay. So how  
19                  many witnesses is staff calling for biology? And  
20                  staff's estimate was one to two hours of direct  
21                  testimony.

22                  MR. BABULA: No, no, I don't think it  
23                  would take that long. I think fundamentally we  
24                  understand CURE believes the habitat is better  
25                  than what staff and the applicant believe. And at

1 some point you can only say that so many times.

2 And then it's time to move on.

3 So I think, let's just say half an hour  
4 or 45 minutes for them to get that point across.

5 HEARING OFFICER CELLI: I have applicant  
6 as estimating 40 minutes. Is that Jennifer  
7 Guigliano, Alice Karl, Philip Leitner and Kenny  
8 Stein in 40 minutes?

9 MS. LUCKHARDT: Together, yeah. The  
10 issue is there were issues raised by CURE in their  
11 initial testimony regarding desert tortoise.  
12 Alice Karl is our desert tortoise expert.

13 There are issues raised by CURE  
14 regarding MGS. Philip Leitner is our MGS expert.  
15 There were issues raised by CURE regarding  
16 burrowing owl. Jen Fuigliano is presenting that  
17 testimony.

18 And so those are the folks, Kenny Stein  
19 is also -- he's the environmental expert from  
20 Nextera and can provide some of the general  
21 background of the project and how it interplays  
22 with some of the biological resource issues.

23 So, unfortunately, since we need to talk  
24 about three separate species and there are three  
25 separate kind of pieces of testimony, I'm afraid

1           that it may take 40 minutes just logistically to  
2           get everybody on all their evidence in, and have  
3           them be able to have a few moments to address  
4           their concerns with CURE's testimony.

5                       HEARING OFFICER CELLI:   CURE, I have you  
6           down for three hours.

7                       MS. GULESSERIAN:   The revised list if  
8           two hours, the one that's passed out.  And we can  
9           reduce that to at least, or at most, one hour.

10                      HEARING OFFICER CELLI:   I would  
11           appreciate it.  You know, one of the things I  
12           really appreciate about this particular matter is  
13           that we have, you know, I have the Public Adviser  
14           here.  I'm not disparaging anyone.  But we have  
15           competent counsel representing all parties here.  
16           And I think that we should be able to streamline,  
17           to the extent that we can, all of the taking of  
18           testimony.

19                      We've received everybody's direct  
20           testimony and rebuttal testimony already in  
21           writing.  I don't see a need, other than perhaps  
22           by way of overview say as an opening statement to  
23           generally say this is the evidence that we've  
24           already proffered, and exhibit whatever that says  
25           this and that about the Mojave ground squirrel.

1 And these are the deficiencies that we see.

2 I think that there's no need to re-, you  
3 know, go back over that ground that we've already  
4 covered, assuming that everything comes in.

5 So, I would like to see if we can't  
6 really snip this thing down by sort of limiting it  
7 to really what the surrebuttal, after everybody's  
8 rebuttal testimony.

9 Is that acceptable?

10 MS. LUCKHARDT: Yeah, that is, in fact,  
11 what we have planned. And we would object if CURE  
12 went back over all their testimony, because it  
13 would be a disadvantage to us that they presented  
14 it live and we did not.

15 But ours is intended to be essentially  
16 surrebuttal. There was nothing on desert  
17 tortoise; we'll have Alice Karl give a short  
18 summary of her testimony, but it will not rehash  
19 the whole thing. And then it will essentially be  
20 surrebuttal to CURE's rebuttal testimony.

21 HEARING OFFICER CELLI: And is that  
22 acceptable to staff?

23 MR. BABULA: Yeah, that was our  
24 approach, is really going to just -- especially as  
25 to the applicant. Pick out the five conditions of

1 certification if we don't get them resolved by  
2 then, and say, here's exactly what the applicant  
3 is saying; here's our position; here's why. And  
4 move to the next one.

5 So I think we could do it in that  
6 format, that'd be fine.

7 HEARING OFFICER CELLI: That would be  
8 great. And, CURE, is that acceptable to you, Ms.  
9 Gulesserian, to your client?

10 What I'm looking to do is I'm trying to  
11 avoid having to go over the testimony we've  
12 already received.

13 MS. GULESSERIAN: We will not go over  
14 our testimony, but certainly we do want to present  
15 a summary of what our testimony has been so far.

16 HEARING OFFICER CELLI: And that's fine.  
17 And that can be done by way of really an opening  
18 statement. We don't need a Q&A between you and  
19 your witness, you know. You can say, this witness  
20 has already submitted testimony that says -- makes  
21 these points, one, two, three, four, five.

22 The same is true with cross-examination.  
23 I don't think the Committee's going to allow  
24 rambling or floundering around, or thinking on the  
25 fly. You're all going to need to be prepared to

1 have your cross-examination ready and at the tip  
2 of your tongue so we can move forward.

3 I don't see a big need to cross anyone  
4 more than ten minutes max if you're on your game.

5 So these ideas that you have to cross-examine  
6 somebody for an hour, I just think that that's a  
7 little exorbitant.

8 So, with that, I have it that CURE -- so  
9 with that, do you really still need two hours of  
10 testimony?

11 MS. GULESSERIAN: No, I had previously  
12 reduced that to one, just a few minutes ago. And  
13 I'm hoping that one hour is an over-estimate of  
14 our direct. I imagine more of the time that would  
15 be needed would be for cross.

16 HEARING OFFICER CELLI: So if applicant,  
17 if I've got an hour and -- an hour for staff, an  
18 hour for applicant, can I get you down to an hour  
19 on your direct testimony?

20 MR. BABULA: Oh, half hour.

21 HEARING OFFICER CELLI: Okay. And the  
22 same is true with the applicant?

23 MR. BABULA: Do I get a credit for --  
24 (Laughter.)

25 HEARING OFFICER CELLI: Yeah, that's

1 right. The gentleman from Virginia --

2 MR. BABULA: I could roll it over to  
3 some other hearing.

4 HEARING OFFICER CELLI: Right.

5 ASSOCIATE MEMBER BYRON: Your credits  
6 won't only just be in time.

7 HEARING OFFICER CELLI: No, really this  
8 is -- I mean what we're doing here is we could  
9 potentially -- let me just step back and tell  
10 everybody that we have the room in California City  
11 from 10:00 in the morning until 10:00 at night.

12 We're going to have to take a break for  
13 dinner, I imagine, and maybe a lunch break. We're  
14 going to have to take public comment. And all of  
15 these things as we, you know, the usual things,  
16 the court reporter's machinery goes funny for a  
17 minute, they have to change a tape, whatever.  
18 These things all detract.

19 When you look at how much productive  
20 time that we're going to have, we really need to  
21 get the most out of this day. And, you know, the  
22 initial estimates had it that day one was going to  
23 be biology and nothing else. And this is -- just  
24 we can't operate like that.

25 So, if we can get biology into -- I'm

1 talking about direct and cross, because we're  
2 going to really kind of limit ourselves to  
3 surrebuttal -- into an hour and a half, two hours  
4 of testimony I think that that should be -- that's  
5 feasible.

6 So, with that, that's what we're aiming  
7 for. And at some point I'm going to have to start  
8 cutting people off in order to get everything in.  
9 And we're trying to weigh -- the Chairman has  
10 asked that we tackle the issues that are most  
11 important to the locals while we're there. So  
12 we're only there for Monday and Tuesday. And  
13 what's most important, I imagine, to the locals  
14 are bio and water. And so those are the big ones  
15 here.

16 But we need to move with alacrity. And  
17 so I'm just saying that cross-examination per  
18 witness may be moved to say ten minutes on the  
19 outside.

20 MR. BABULA: That would be acceptable.  
21 I don't see needing a lot of cross just because  
22 there's so much testimony already in the record  
23 and it would start to be repetitive.

24 HEARING OFFICER CELLI: That's great.  
25 So, in cultural I'm hoping that you're going to be

1           able to work out cultural on your own and we don't  
2           have to take testimony on cultural at all.  
3           Because right now I have a 1.5 hour estimate. And  
4           that was 45 minutes of staff by phone, 20 minutes  
5           by applicant, and 15 minutes of cross by  
6           applicant. So, --

7                         MR. BABULA: Obviously Mike would be  
8           there, so it won't be by phone.

9                         HEARING OFFICER CELLI: On Monday?

10                        MR. BABULA: Yeah. He will be able to  
11           attend on Monday. But I still will shoot for  
12           getting that resolved beforehand so we don't have  
13           to have him.

14                        HEARING OFFICER CELLI: Well, let's do.  
15           It seems to me that that's the kind of thing that,  
16           his direct testimony shouldn't take more than ten  
17           minutes.

18                        MR. BABULA: I didn't catch that, sorry.

19                        HEARING OFFICER CELLI: It seems to me  
20           that ten minutes is about as much -- we're talking  
21           about one condition, right?

22                        MR. BABULA: Well, yeah, --

23                        HEARING OFFICER CELLI: Or a couple of  
24           conditions --

25                        MR. BABULA: -- for cultural, it's a

1 similar issue, but it's mostly in the verification  
2 actually on -- and the only other substantive  
3 issue would be the 10 percent, 5 percent issue.  
4 So, yeah, it's pretty limited.

5 HEARING OFFICER CELLI: Okay. Well, I'm  
6 hopeful that you'll resolve that on the telephone.

7 Hazardous materials. CURE, you  
8 suggested Matthew Hagemann is going to take an  
9 hour of testimony. Applicant, you were going to  
10 put Duane McCloud on for ten minutes. And, staff,  
11 you're going to put on Geoffrey Lesh for 20  
12 minutes?

13 MR. BABULA: Right. I actually had kind  
14 of combined waste, because the HTF seemed to cross  
15 into both waste management and hazardous  
16 materials. And so I had Ellie and Geoff are the  
17 two technical staff members. So I thought they  
18 could testify together to address both issues.

19 HEARING OFFICER CELLI: CURE, this is  
20 really -- what's driving this is Mr. Hagemann's  
21 testimony. And this is on -- we're really just,  
22 we're talking about the heat transfer fluid, and  
23 it is both waste and -- and he's the same witness  
24 on waste and hazardous materials.

25 MS. GULESSERIAN: He is the same witness

1 on waste and hazard as management. Although  
2 staff's witnesses are not. But, yes, they can be  
3 combined for Mr. Hagemann; his time can be  
4 combined for hazardous and waste.

5 And his, after reading the rebuttal,  
6 there really hasn't been any rebuttal to the  
7 issues that he's raised. So, I don't anticipate  
8 needing to do a lot of direct.

9 HEARING OFFICER CELLI: Yeah.

10 MS. GULESSERIAN: Unless there's new  
11 evidence or testimony brought up at the hearings  
12 it's really unrebutted at this point.

13 HEARING OFFICER CELLI: And there won't  
14 be, because that's why we have prehearing  
15 conferences is so there's no surprise witnesses or  
16 surprise testimony. We have the testimony  
17 already, so that isn't going to happen.

18 What I'm thinking, though, is because I  
19 have an hour down for hazardous materials, an hour  
20 down for waste management for Mr. Hagemann, and  
21 what I'm really thinking is since I've already  
22 read his testimony and his rebuttal testimony, in  
23 about three minutes you could probably explain  
24 what that testimony says in an opening statement.

25 MS. GULESSERIAN: Three is ambitious,

1 but we could try to do that in about 15 or 20  
2 minutes, yes.

3 HEARING OFFICER CELLI: And so in about  
4 15 minutes after we hear from Mr. Hagemann does  
5 Geoffrey Lesh really need 20 minutes?

6 MR. BABULA: We may not.

7 HEARING OFFICER CELLI: Mr. Babula, do  
8 we really need 20 minutes of Geoffrey Lesh?  
9 Remember, we're sort of using the model of the  
10 attorneys will introduce the testimony in a very  
11 broad-brush opening statement type, as we go topic  
12 to topic. And you'll say under hazardous  
13 materials we've already put in the evidence on,  
14 you know, that says this --

15 MR. BABULA: Right, he especially -- he  
16 had supplemental testimony that he already added.  
17 So, --

18 HEARING OFFICER CELLI: Right.

19 MR. BABULA: -- we can cut that back.

20 HEARING OFFICER CELLI: I mean it may be  
21 possible that, and I invite everyone to consider  
22 that maybe we don't necessarily have to call a  
23 witness, per se, if the parties are willing to  
24 accept the declarations on these undisputed  
25 topics. And if you feel that it adequately

1 addresses whatever comes in.

2 MR. BABULA: Well, if CURE wants to take  
3 a look at Geoff's declaration, that was submitted  
4 with the prehearing statement, I don't know if  
5 that would resolve some of the issues. But they  
6 could -- we could be notified and --

7 MS. GULESSERIAN: Yeah, we have reviewed  
8 that --

9 MR. BABULA: -- cut it down.

10 MS. GULESSERIAN: -- rebuttal testimony  
11 and we will have questions for that witness.

12 HEARING OFFICER CELLI: And CURE has the  
13 burden on this one. So they're taking only 15  
14 minutes. So your witness and applicant's  
15 witnesses certainly can't take more than 15  
16 minutes each.

17 MR. BABULA: Right, and that's fine.  
18 This was conservative estimates as they went down  
19 the list. And I never really added it all up.

20 HEARING OFFICER CELLI: And so, but, you  
21 know, I do because I'm trying to make this thing  
22 work. And so, again, I want to be clear that ten  
23 minutes if about as maximal a cross-examination as  
24 we can afford.

25 So with that in mind, if we have 15

1 minutes on Mr. Hagemann and a ten-minute cross and  
2 another 10 minutes, that's 20 minutes right there  
3 by staff and applicant. Now we're up to 35  
4 minutes. And then I've got -- and that's on  
5 Geoffrey Lesh. How much does Duane McCloud need  
6 to testify?

7 MS. LUCKHARDT: Well, he's going to need  
8 some time since CURE submitted additional  
9 testimony as rebuttal testimony. And so we will  
10 need to provide some surrebuttal to that. So I  
11 really don't feel comfortable cutting it more than  
12 that.

13 HEARING OFFICER CELLI: Well, I have --  
14 what is your estimate?

15 MS. LUCKHARDT: I have 15 minutes just  
16 on the long side. It may not take him that long.  
17 We haven't talked through it and I haven't timed  
18 it, so.

19 HEARING OFFICER CELLI: Now, since we're  
20 talking about heat transfer fluid in hazmat and  
21 waste management, we're combining them. I also  
22 have Michael Flack and Ellie Townsend Hough  
23 testifying with regard to waste management, all  
24 pretty much related to the heat transfer fluid  
25 question.

1                   MS. LUCKHARDT: Yeah, all as one topic  
2                   area. I think either put it under one or the  
3                   other. I see no reason to do it twice.

4                   HEARING OFFICER CELLI: Right. So, --

5                   MR. BABULA: I have a question on  
6                   procedure. If we resolve some of these issues  
7                   prior to the hearing, how should we -- should we  
8                   put together a declaration or how do you want to  
9                   get that issue resolved?

10                  HEARING OFFICER CELLI: Well, for  
11                  instance, if you've got a changed condition of  
12                  certification I would ask that you move it in as a  
13                  stipulation, okay. And you would draft language  
14                  and provide me the stipulation as a written  
15                  document so I can take your language and put it in  
16                  as needed.

17                  Any changes to our estimates and things  
18                  like that, when we start off, you know, the  
19                  general housekeeping in the morning on Monday  
20                  morning, if you can inform me there that we don't  
21                  need to call this or that witness because this or  
22                  that issue has been resolved, that would be great.

23                  But, yes, written stipulation as to  
24                  changes in language of conditions. If you could  
25                  give me the strike-through and underline, that

1 would be great.

2 So, getting back to this waste  
3 management thing I have staff as 20 minutes,  
4 needing Ellie Townsend Hough on 20 minutes; and,  
5 applicant, you have ten minutes on Michael Flack.

6 MS. LUCKHARDT: I'm thinking that we can  
7 probably do both in like 15 or 20. I don't think  
8 it will take any longer than that.

9 HEARING OFFICER CELLI: And, you know, I  
10 just want to say that sometimes it makes sense,  
11 especially if applicant and staff are on the same  
12 page on any particular area, to have, as they say,  
13 a panel of witnesses where you hear from several  
14 people and then we turn it over to CURE to cross  
15 whoever. I don't know how you feel about that,  
16 Ms. Gulesserian, in terms of a procedure. If you  
17 can imagine crossing several people.

18 I mean it's just in terms of keeping the  
19 record clear, you need to make sure that you're  
20 addressing -- you say the name of who it is you're  
21 examining.

22 MS. GULESSERIAN: Yeah, just thinking  
23 about it for a minute there. I don't anticipate a  
24 problem with that.

25 HEARING OFFICER CELLI: Just might make

1 for a more efficient, streamlined hearing. So,  
2 thank you, I appreciate your help on that.  
3 Because that just knocked out about three hours  
4 right there.

5 Soil and water. Staff estimated two to  
6 three hours on Casey Weaver, John Fio and a  
7 representative from Lahontan, RWQCB, the Regional  
8 Water Quality Control Board. That would include  
9 an hour from the reps. The two to three hours  
10 estimate includes your one-hour estimate from the  
11 representatives from California City and Rosamond.

12 MR. BABULA: Yeah, that was everything.  
13 And for if those witnesses and my witnesses on  
14 cross and stuff. So I think they are actually  
15 going to be pretty short. Especially if the  
16 applicant review of the recent changes, and how  
17 that goes. If they accept most of those then  
18 there won't be a whole lot remaining discussion at  
19 all. I think we would be pretty clear there. So  
20 that could go down to 15 minutes.

21 HEARING OFFICER CELLI: As direct on all  
22 of your witnesses?

23 MR. BABULA: Right. Casey and John  
24 would be just like a panel because they have a  
25 little bit different expertise in different areas.

1                   HEARING OFFICER CELLI: Well, certainly  
2 water is going to be of interest to the local  
3 public in California City. So we want to tackle  
4 that on day one.

5                   MR. BABULA: I'm not exactly sure that  
6 premise is correct actually. When we were down  
7 there with the original project there wasn't a lot  
8 of concern about the original 1600 acrefeet.  
9 There was some question, but in general the  
10 biggest concern people had was why was the Energy  
11 Commission making the applicant do all this stuff.

12                   So I think water, since they've gone to  
13 recycled water option, may not be -- I don't  
14 expect a lot of public comment or concern in that  
15 area.

16                   HEARING OFFICER CELLI: Well, that's  
17 good to know. I recall specifically Commissioner  
18 Byron asking a show of hands of how many people  
19 were in favor. And there was an overwhelming  
20 majority of people in favor at the time. But that  
21 was the informational hearing. And there's a lot  
22 of water under the bridge since then. So we never  
23 know. But if that knocks us down to 15 minutes.

24                   And then applicant, you have Michael  
25 Flack, Duane McCloud and Scott Busa testifying,

1 but your estimate was 15 minutes. Was that 15  
2 minutes per witness?

3 MS. LUCKHARDT: No, 15 minutes in total.  
4 Scott Busa is just presenting the information on  
5 the -- there was a question that you brought up on  
6 December 1st about the water rights. And so we're  
7 just introducing that information. And so if  
8 there's -- no one has cross, we can bring that in  
9 by declaration.

10 HEARING OFFICER CELLI: Let me ask that  
11 right now, because I remember there were some  
12 issues as to whether -- I can't remember the  
13 names, two families that claim water rights  
14 underneath the site.

15 MR. BABULA: John Musick?

16 HEARING OFFICER CELLI: Right, John  
17 Musick or Musack or whatever his name was. And is  
18 that in dispute by CURE? Water rights? We're  
19 talking about legal title --

20 MS. GULESSERIAN: No.

21 HEARING OFFICER CELLI: And, staff, are  
22 you disputing that?

23 MR. BABULA: No.

24 HEARING OFFICER CELLI: Then why don't  
25 we just put that in by declaration? I don't see

1 any need to call a witness on that.

2 MS. LUCKHARDT: That's fine. And so it  
3 would just be then Mr. Flack and Mr. McCloud that  
4 would be testifying. They would be -- I would  
5 have them go on and off in 15 minutes.

6 The only issue that I think remains  
7 potentially on water, we've got the soil and  
8 water-1 question that we'll try and resolve with  
9 staff. And then the issue brought up by CURE, I  
10 believe, requesting that the project use recycled  
11 water for construction.

12 HEARING OFFICER CELLI: Okay. And so  
13 that is within your 15-minute estimate?

14 MS. LUCKHARDT: Yes, it is.

15 HEARING OFFICER CELLI: Okay. And then,  
16 CURE, what is your estimated cross-examination  
17 time on soil and water?

18 MS. GULESSERIAN: I haven't completed my  
19 cross-examination on soil and water. And,  
20 honestly, given the changes --

21 HEARING OFFICER CELLI: Let me just tell  
22 you --

23 MS. GULESSERIAN: -- on alternatives  
24 this morning, I have to reassess.

25 HEARING OFFICER CELLI: We're down to

1 two witnesses there, that's Michael Flack and  
2 Duane McCloud for applicant. And then we're --  
3 and, again. I may put them on as a panel, have  
4 them sworn at the same time so you can ask  
5 questions of both.

6 And then we have the Casey Weaver and  
7 John Fio, they're only testifying now for 15  
8 minutes. And, again we're going to that  
9 surrebuttal model to the extent that we can.

10 So I know that water and soil is an  
11 important one to CURE, and so I don't want to --  
12 I'm not going to -- I don't want to jam your radar  
13 on that one, but we do need a reasonable estimate.

14 MS. GULESSERIAN: The -- sorry, I'm just  
15 trying to remind myself on the applicant's -- I  
16 think that our cross will be mostly of staff. I  
17 think of the applicant we might only have about  
18 less than five minutes of questions. And for  
19 staff, -- we'd like to clarify that staff is  
20 calling as witnesses the Rosamond and Cal City  
21 representatives --

22 HEARING OFFICER CELLI: Yes.

23 MS. GULESSERIAN: -- and --

24 HEARING OFFICER CELLI: That's right.

25 Now, that -- earlier we had an estimate of an hour

1 for those two. And you're saying 15 minutes is  
2 for Casey Weaver and John Fio. How much time is  
3 needed for the two reps from -- well, the rep from  
4 Rosamond and the rep from California City?

5 MR. BABULA: Well, really the purpose of  
6 having them is to just give a quick summary of the  
7 proposal that they have already submitted that's  
8 in the docket. And I was kind of going to use  
9 them to be sort of sponsors of that information so  
10 we kind of close the loop on the Cal City and the  
11 Rosamond proposal. And to just answer any  
12 questions.

13 So, I --

14 HEARING OFFICER CELLI: Well, I just  
15 want to be clear that although it may be in the  
16 docket, it isn't necessarily in evidence.

17 MR. BABULA: Right, --

18 HEARING OFFICER CELLI: I'm trying to  
19 remember --

20 MR. BABULA: -- which is why they are --  
21 right, it's not in evidence because they're going  
22 to sponsor those. It's mainly to sponsor an  
23 existing document that everybody's already seen.  
24 And then just to summarize it.

25 HEARING OFFICER CELLI: I want to be

1 clear about that.

2 MR. BABULA: So, it's going to be short.

3 HEARING OFFICER CELLI: Has everyone  
4 seen and received what Rosamond and California  
5 City witnesses are going to put in as evidence?  
6 I'm trying to remember --

7 MR. BABULA: It was docketed when they  
8 first -- well, I think -- which one came first?  
9 Rosamond proposal came first, and then Cal City.  
10 And then when we had the last what was going to be  
11 the prehearing conference, which then became the  
12 status conference, Mike Bevins brought again the  
13 proposal and passed it around.

14 HEARING OFFICER CELLI: And you have  
15 that, --

16 MR. BABULA: So it's in the docket.

17 HEARING OFFICER CELLI: -- Ms.  
18 Gulesserian, you know what we're talking about?

19 MR. BABULA: If they don't -- I mean  
20 either way they're just going to summarize the  
21 information.

22 HEARING OFFICER CELLI: Well, I just  
23 need to make sure that it's in my exhibit list  
24 because now as I'm sitting here thinking --

25 MR. BABULA: Well, it's part of our FSA.

1 We cite it in there, too, so.

2 MS. GULESSERIAN: So let me just  
3 clarify. I think that I did not see in the FSA  
4 the recent letters of intent that have been  
5 docketed and not served in this proceeding.

6 I did, through, of course, work over the  
7 weekend, notice that these letters were on the  
8 website. And we intend to enter them into the  
9 record as exhibits. So I'm working on getting  
10 that done today.

11 HEARING OFFICER CELLI: That may not be  
12 necessary. Let me just find something out here.  
13 Exhibit 501 is supplemental soil and water  
14 conditions of certification with supplemental  
15 appendix I and J sponsored by staff. Does that  
16 contain the testimony of the Rosamond and  
17 California City --

18 MR. BABULA: Well, it's in the original  
19 staff -- those are just the conditions of  
20 certification, so it would be in the analysis  
21 where it discusses --

22 HEARING OFFICER CELLI: It couldn't  
23 have. I mean in my recollection our last status  
24 conference occurred after the FSA came out and  
25 we'd already started to receive testimony from

1 other parties. So that then they came in with  
2 some additional --

3 MR. BABULA: Oh, no, they had already  
4 submitted that. They just -- brought it again.  
5 It's the same documents.

6 HEARING OFFICER CELLI: I'm getting  
7 older, I understand. Things may have slipped my  
8 mind, but I don't recall seeing their testimony in  
9 the FSA, itself. So I just want to know whether  
10 it's a supplement or an appendix, or where I can  
11 find it.

12 MR. BABULA: We cited the document --  
13 the Rosamond plan is cited in --

14 HEARING OFFICER CELLI: Well, let me put  
15 it this way just to save time. Actually that's  
16 applicant's concern because that's applicant's  
17 burden. So the applicant will have to determine  
18 whether that evidence is in the record or not. I  
19 don't recall --

20 MR. SOLORIO: Actually, --

21 MS. LUCKHARDT: We can identify them as  
22 additional exhibits and send them back out and  
23 around, since we did not prepare them --

24 HEARING OFFICER CELLI: Right, I'm just  
25 asking, and as long as you're all going to be

1 meeting and conferring on the phone, I don't want  
2 any surprises. I don't want to hear from any  
3 party that someone's putting in something that  
4 they haven't seen before.

5 And so the point is that I want to make  
6 sure that everybody's on the same page, everybody  
7 has the same evidence, and that whatever evidence  
8 we need to hear on whatever the issue, that it's  
9 actually in the record. Because if something's  
10 docketed and it's not moved in, it's not in the  
11 evidentiary record.

12 MR. BABULA: Right, which is why I was  
13 going to bring these two entities to discuss --

14 HEARING OFFICER CELLI: And get which --

15 MS. LUCKHARDT: So we need to get copies  
16 of them to you with exhibit numbers.

17 HEARING OFFICER CELLI: Or just tell me  
18 where it is. I mean, you know, I may not have an  
19 encyclopedic memory, and I may have read it, and  
20 it may already be --

21 MS. LUCKHARDT: No, I don't believe it's  
22 already in the record somewhere in the exhibit  
23 list. So, what we need to do is assign them  
24 exhibit numbers for one of us and get it into the  
25 record.

1 HEARING OFFICER CELLI: Or verify that  
2 it's already there, if need be.

3 MR. BABULA: I mean, okay, it's not --  
4 it's not its own exhibit. It was cited to in the  
5 FSA, which an expert can cite to anything that we  
6 knew would be used. But we can give it -- what  
7 are we up to, 505? So, 506?

8 HEARING OFFICER CELLI: Whatever. I'm  
9 just saying all of that was great comment and all  
10 that stuff, but that's not in the record. And we  
11 can't consider it otherwise.

12 And so now when it comes to calling  
13 these two witnesses there's going to be some  
14 declaration or some letter or some kind of  
15 testimony, written testimony, which you will  
16 summarize. And then how much time do you need for  
17 direct examination of these two witnesses?

18 MR. BABULA: Like five minutes.

19 HEARING OFFICER CELLI: And how much --  
20 and we were talking about your cross-examination,  
21 because they were going to take 30 minutes with  
22 Casey Weaver and John Fio, and then ten more  
23 minutes, so it's really 40 minutes on this, from  
24 these two representatives. How much time do you  
25 think you need to cross, Ms. Gulesserian?

1 MS. GULESSERIAN: I need, at this point,  
2 to have about 30 minutes of cross for these  
3 witnesses.

4 HEARING OFFICER CELLI: In total?

5 MS. GULESSERIAN: Um-hum.

6 HEARING OFFICER CELLI: We're talking  
7 about Fio, Casey Weaver and Mr. Rosamond and Mr.  
8 California City.

9 MS. GULESSERIAN: I'm hoping to reduce  
10 the amount of time we're in California City, as  
11 well. But at this point we'd like to have 30  
12 minutes for staff and 30 minutes for the applicant  
13 -- or excuse me, for Rosamond and Cal City  
14 combined.

15 HEARING OFFICER CELLI: Well, let's take  
16 -- let's see what we can accomplish on the phone.  
17 That's really 70 minutes of direct and cross on  
18 people that, you know, ostensibly we're going to  
19 get a ton of testimony, you know, in written form  
20 first already.

21 So whatever extent we can to reduce  
22 that, I think we should. I'm going to leave that  
23 one open. I'm not going to -- we can get back to  
24 that. Let's move on.

25 Visual. Now, visual, CURE, you have not

1 weighed in on visual. You're not opposed to that,  
2 so you're not calling any witnesses. But I have  
3 Mark Hamblin, he's going to take 30 minutes plus  
4 an additional 20 minutes of cross-examination.

5 And then applicant is going to call --  
6 is it Merlyn Paulson or Marilyn.

7 MS. LUCKHARDT: Merlyn.

8 HEARING OFFICER CELLI: Merlyn Paulson  
9 and Kenny Stein.

10 MS. LUCKHARDT: Right. Kenny Stein has  
11 the overriding considerations testimony. It  
12 sounded like you wanted to hear that under visual,  
13 or bring it in under visual.

14 HEARING OFFICER CELLI: Right. That's  
15 correct. But I don't know that we need to hear  
16 from Kenny Stein on that if he's unopposed. In  
17 other words, if there's no -- staff appears to  
18 believe that they've created enough evidence to --

19 MS. LUCKHARDT: We may just have him  
20 summarize it, or, you know, we can see how much we  
21 need to do on there. But I wasn't anticipating a  
22 lot of time from him. It was essentially to have  
23 Merlyn present his view of the significance of the  
24 impact on visual resources.

25 HEARING OFFICER CELLI: Okay. How much

1 time?

2 MS. LUCKHARDT: I had about 15 minutes,  
3 probably 20 to be sure that I've got enough. I'm  
4 probably over-estimating, but -- and I would have,  
5 you know, maybe five, ten minutes max on cross.

6 HEARING OFFICER CELLI: You're talking  
7 about crossing Mr. Hamblin?

8 MS. LUCKHARDT: Yes.

9 HEARING OFFICER CELLI: Okay.

10 MS. LUCKHARDT: Because we have a  
11 fundamental disagreement on the conclusion of  
12 whether there's a significant adverse visual  
13 impact from this particular facility.

14 HEARING OFFICER CELLI: Staff, what's  
15 your estimate on this?

16 MR. BABULA: Oh, what do I have here, 30  
17 minutes -- probably 15 minutes for direct, if not  
18 less. And then I don't see a large need for  
19 cross. So we could --

20 HEARING OFFICER CELLI: So that would  
21 give you five minutes for cross. There's 20  
22 minutes for your witness, and 40, that's 50. So  
23 there's an hour right there on visual. Well,  
24 that's an improvement down from two hours.

25 But, folks, let's remember that we

1 received all of the written testimony already. I  
2 just, you know, -- and we need to make sure that  
3 it's clear to the public what we're talking about.  
4 So there's going to be some amount of overview  
5 that each attorney will provide by way of opening  
6 statement, but --

7 MS. LUCKHARDT: Are you asking for an  
8 opening statement in this proceeding?

9 HEARING OFFICER CELLI: Not in the most  
10 formal sense, but what I'm suggesting is rather  
11 than say, okay, you're calling Mr. Busa. And say,  
12 Mr. Busa, would you summarize your testimony.  
13 That could take all day. Not that Mr. Busa's  
14 loquacious, but I'm suggesting that what you do is  
15 you say, we've already submitted exhibit this,  
16 this, this and this. And the points made were  
17 these points, and the evidence, you know,  
18 supporting that are these things. So we came to  
19 these conclusions.

20 And we received rebuttal testimony. And  
21 in rebuttal to that testimony we put on this. So  
22 it's a summary of where we are up till now with  
23 regard to your testimony. To the extent that you  
24 can do that.

25 MS. LUCKHARDT: And you're asking that

1 the attorneys do that, as opposed to the  
2 witnesses. Because in the past I've had the  
3 witnesses do that.

4 HEARING OFFICER CELLI: Right. And I  
5 don't think that that's really necessary. They're  
6 not going to be crossed on that. It's a summary.  
7 We have their testimony.

8 So I think that it would go faster if  
9 essentially each attorney introduces a summary of  
10 the testimony to that point.

11 MS. LUCKHARDT: It just doesn't allow  
12 the witness -- an opportunity for the witness to  
13 convey that information. I don't think it needs  
14 to be long.

15 HEARING OFFICER CELLI: Okay.

16 MS. LUCKHARDT: But in some instances I  
17 think it's better to have the witness convey that  
18 information rather than the attorney, because --

19 HEARING OFFICER CELLI: I'll leave that  
20 up to you.

21 MS. LUCKHARDT: -- you know, -- okay.

22 HEARING OFFICER CELLI: That'll be the  
23 attorney's call. But what I'm asking for is  
24 sometimes you get these guys up here who want to  
25 tell me all about their articles they've written,

1 all the history and all of that stuff. And we're  
2 not interested in that. We've already received  
3 that.

4 MS. LUCKHARDT: I understand that.

5 HEARING OFFICER CELLI: And we want to,  
6 we kind of want to get to the place where, okay,  
7 we're all current. Now let's move on and talk  
8 about what's new and take it from rebuttal.

9 So I don't care who delivers the  
10 information. But I really want -- I'm trying to  
11 streamline the operation so that we don't have to  
12 take the testimony again because presumably we've  
13 already taken that testimony in writing.

14 MR. BABULA: So we won't start cultural  
15 out at the Precambrian era.

16 (Laughter.)

17 HEARING OFFICER CELLI: Yeah, that's  
18 correct. In the beginning.

19 (Pause.)

20 HEARING OFFICER CELLI: The record  
21 should reflect that today's the first day of  
22 daylight savings time. The clock on the wall says  
23 it's 11:25, and I thought I was doing a really  
24 bang-up job of getting through this, when it turns  
25 out that it's actually 12:25. So I'm going to go

1 a little faster now if we can, to get you out of  
2 here so you can all eat. I should have noticed  
3 from everybody's glazed-over look that it was  
4 later than I thought.

5 So we took care of visual or have we  
6 taken care of visual. So visual looks like it's  
7 going to be 20 minutes, 15, 10, 5. We're going to  
8 do it under an hour, visual.

9 And then waste management we talked  
10 about before, as sort of combined with the  
11 hazardous materials.

12 Everything else except TSE is going to  
13 be submitted on declaration. TSE I have Sudath  
14 Arachchige for staff, who's going to take 20  
15 minutes, 10. And Duane McCloud and Jared Foster.  
16 How much time do they need?

17 MS. LUCKHARDT: My guess is that they'll  
18 need ten minutes.

19 HEARING OFFICER CELLI: Okay. And  
20 cross, how much time do you want to -- oh, by the  
21 way, who is your witness on TSE?

22 MS. GULESSERIAN: David Marcus.

23 HEARING OFFICER CELLI: How much time  
24 does he need?

25 MS. GULESSERIAN: Five minutes.

1                   HEARING OFFICER CELLI:  Again, I have  
2                   the suspicion, Ms. Gulesserian, that this is --  
3                   when it comes to things like numerical, maybe you  
4                   all can work this out on the phone when you have  
5                   your phone consultation.

6                   Because TSE, I don't know, I appreciate  
7                   that he's only going to be five minutes, but this  
8                   is five, ten, plus ten minutes for cross.  Well,  
9                   that's a half an hour to 45 minutes that we could  
10                  save if you all can informally take care of TSE on  
11                  your own.  So let's see what you can accomplish,  
12                  but I'm going to cap this at 40 minutes.

13                  And then we talked alternatives, we will  
14                  not be taking any testimony on alternatives at  
15                  all.  No witnesses on alternatives because that  
16                  evidence is in.  And that takes care of the  
17                  witness list.

18                  So with that I want to turn now to the  
19                  exhibit list and see if you've all had a chance to  
20                  review the exhibit list.  I think we got them all  
21                  in, but just let me know if there are any changes  
22                  to the exhibit list.

23                  In fact, rather than take hearing time  
24                  on this, my request is you take a look at this  
25                  list on your own and send me an email informing me

1           whether I have any kind of typos or changes or  
2           additional exhibits. I would appreciate that.

3                       Lastly, notwithstanding the fact that  
4           staff does not anticipate the need to file any  
5           briefs at all, there will be briefs, I'm afraid.  
6           It seems we can't get around that.

7                       MR. BABULA: One of these days it'll  
8           work.

9                       (Laughter.)

10                      HEARING OFFICER CELLI: The applicant  
11           proposes opening briefs due April 19th, and reply  
12           briefs due May 3rd. The thing I want to point  
13           out, and Mr. Petty is here, it usually takes about  
14           two weeks to get the transcript. So I want you  
15           all to be aware of that so that you kind of build  
16           that into your estimate. You're not going to get  
17           your transcript off until -- today's the 15th. So  
18           really April 1st or May 30th or something -- March  
19           30th rather, would be the date by which you would  
20           have the transcript of today's -- I'm sorry,  
21           strike that.

22                      We're talking about the evidentiary  
23           hearing transcripts. That's going to be however  
24           many days of transcripts times two weeks. Well,  
25           not times two weeks. It'll take two weeks to get

1           that off, is that correct, Mr. Petty? Two weeks  
2           from -- we're looking at the last week of March --  
3           we'll be well into like a good week, week and a  
4           half into April. Is that April 19th date  
5           realistic in light of that?

6                        MS. LUCKHARDT: That's fine. I'm just  
7           looking at a calendar to see.

8                        MS. GULESSERIAN: CURE would propose  
9           four weeks after release of the transcript for our  
10          briefs, opening briefs.

11                       HEARING OFFICER CELLI: It's convenient  
12          actually that Mr. Busa is here, because I'm also  
13          the Hearing Adviser on Genesis. And because  
14          that's an ARRA case, that's an ARRA-funded  
15          project, when that case starts, and if I haven't  
16          finished with Beacon, I hate to say this but I can  
17          only do what I can do. And the ARRA-funded case  
18          takes precedence.

19                        So we're going to need to get this thing  
20          done. And I have about a four-to-five-week window  
21          between the close of the hearings in Beacon and  
22          the start of the hearings in Genesis to get Beacon  
23          written, if that's, you know, if we can do that.

24                        One of the possibilities is that, and  
25          applicant might want to discuss this, is applicant

1           might want to look into getting their own  
2           transcript, apart from the court reporter that  
3           will be there, to see if they could expedite that  
4           process. I don't know whether you want to do that  
5           or not, but that might speed things up.

6                       MS. LUCKHARDT: The difficulty we've had  
7           is if you have two different court reporters, is  
8           you might end up with differences in the  
9           transcript. And I would hate for that to happen.

10                      In the past we have attempted to find a  
11           way to have the Energy Commission's company, you  
12           know, be able to expedite and we've run into  
13           nothing but issues of state contracting.

14                      And I would be concerned if we had two  
15           different reporters because there might be  
16           differences, and that might cause more problems  
17           than it's worth.

18                      HEARING OFFICER CELLI: We are going to  
19           -- these will be -- well, actually I was going to  
20           say we have WebEx that is -- right now all of this  
21           is being recorded by WebEx as a backup in case  
22           there's a dispute as to, you know, whose version  
23           got it right.

24                      But I just wanted to throw that out  
25           there as an option because we do not have the

1 luxury of time on Beacon. I've got a short little  
2 window to get this done. And so I thought I would  
3 present that to you.

4 If you think that you can get April  
5 19th, your briefs written by April 19th,  
6 notwithstanding the fact that you're going to have  
7 your transcript for a week, then that would be  
8 great. But I put that out to you to see what the  
9 parties think.

10 MR. BABULA: I'm not clear. At the end  
11 of Orange Grove when we were done with testimony,  
12 there was certain topics you wanted briefed. What  
13 exactly do you anticipate being briefed here?

14 HEARING OFFICER CELLI: Well, there may  
15 be certain legal issues that come up. I suspect  
16 that they will come up as relates to things like  
17 alternatives, things having to do with the water  
18 options, impacts.

19 I don't know yet, really, but I can tell  
20 you that there will be need for briefs. Because  
21 what those briefs are going to do is fill the  
22 holes for the Committee. If we have unanswered  
23 questions that's where we look.

24 MR. BABULA: So it's a little hard to  
25 gauge how long it would take to brief without

1 really knowing what we're supposed to be briefing.  
2 But I would think, for example, if it's a purely  
3 legal issue the transcript isn't that important.  
4 And so --

5 HEARING OFFICER CELLI: True. That's a  
6 good point.

7 MR. BABULA: -- it really depends. Like  
8 an example in the Orange Grove it was to address  
9 all the Archie's comments or citations to the  
10 water code, so we had to have the transcript to  
11 see what he said. But --

12 HEARING OFFICER CELLI: That was unique  
13 because --

14 MR. BABULA: Right.

15 HEARING OFFICER CELLI: -- that was a --  
16 he opted to enter as comment rather than evidence.  
17 But what I --

18 MR. BABULA: Right.

19 HEARING OFFICER CELLI: -- what I -- but  
20 in that same vein we may get comments that require  
21 a legal resolution. We may get comments that  
22 we're not aware of yet.

23 I can tell you that I will be tracking,  
24 as we're having the hearings, those issues as they  
25 come up that I would want briefed after we hear

1 from all the parties.

2 MR. BABULA: Maybe it would be best to  
3 try to nail down a briefing schedule once we're at  
4 a point where you can say, okay, this is what I  
5 need briefed. And then we can tell if the  
6 transcript is essential or not.

7 HEARING OFFICER CELLI: Okay. What I  
8 would say is this. I think that tentatively this  
9 briefing schedule looks good that is proposed by  
10 applicant, unless in light of the transcript  
11 problems everybody says that's an impossibility.

12 MS. GULESSERIAN: CURE had proposed, I  
13 don't know, a few minutes ago --

14 HEARING OFFICER CELLI: I'm getting to  
15 that.

16 MS. GULESSERIAN: Okay.

17 HEARING OFFICER CELLI: But as long as  
18 you bring it up, let me just -- let me tell you  
19 what I'm thinking of doing is when we do the  
20 hearing order today, the hearing order would just  
21 insert the April 19th date and the May 3rd dates  
22 unless any party has a real opposition to those  
23 dates.

24 And then let's hear from CURE. Because,  
25 CURE, I was curious. We received your proposed

1 schedule and it contains all sorts of things like  
2 the DEIS and USFWS and I wasn't really clear what  
3 you had in mind with that.

4 MS. GULESSERIAN: The applicant has not  
5 completed it's habitat conservation plan for this  
6 project pursuant to section 10 of the Endangered  
7 Species Act. It's not done; it's not out for  
8 review. The environmental review has not yet  
9 begun under the National Environmental Policy Act.  
10 This is a process that is required. And staff  
11 must make a determination regarding consistency  
12 with LORS. And whether there's going to be any  
13 prohibited take, and what those mitigation  
14 measures.

15 Since that process is, you know, under  
16 way, nothing has been docketed at the Energy  
17 Commission since last summer regarding the HCP.  
18 But we are aware that a draft HCP has been  
19 submitted to Fish and Wildlife Service and  
20 returned for more information several months ago.  
21 And that no further information requested by the  
22 U.S. Fish and Wildlife Service has been submitted  
23 back to them.

24 So, that is the current status of that  
25 process. We believe that once that process is

1           underway that that information will need to be  
2           incorporated into the analysis for this project.

3                       And depending on the findings of the  
4           U.S. Fish and Wildlife Service after environmental  
5           review is complete, we may need further  
6           evidentiary hearings.

7                       HEARING OFFICER CELLI: Let's hear from  
8           applicant on that.

9                       MS. LUCKHARDT: Yes. In response we  
10          would like to point out that we actually don't  
11          have to have a habitat conservation plan or an  
12          incidental take permit to go forward with this  
13          project. That it just means that we have to  
14          address the desert tortoise in a certain way,  
15          should we find one.

16                      Again, it is our position that there is  
17          very little habitat on site, and that we're  
18          looking at essentially the transmission line and  
19          any other linears,

20                      We would also like to point out that  
21          throughout this process both Beacon and the staff  
22          have worked extensively with the Service in the  
23          development of the mitigation for this project.  
24          This was not done in isolation, it was not done  
25          without their consultation.

1                   And I think that that is why staff  
2           proposes to bring the Service as a witness in the  
3           area of biological resources, is because the  
4           Service has been consulted. They do understand,  
5           and it is our opinion that they agree with the  
6           analysis that staff's witness, Susan Sanders, has  
7           done. And agree with the mitigation.

8                   And so we don't believe that there are  
9           these changes or differences that will show up in  
10          the habitat conservation plan, should the project  
11          proceed to get one, that CURE is concerned about.

12                   MS. GULESSERIAN: The comments that I'm  
13          hearing today are not in any of the testimony.  
14          There hasn't been, you know, it's an unknown. It  
15          seems to be there's going to be this surprise,  
16          perhaps at the evidentiary hearings, regarding the  
17          status of --

18                   MS. LUCKHARDT: There is no surprise.

19                   MS. GULESSERIAN: -- analysis by the  
20          Fish and Wildlife Service. There hasn't been  
21          anything docketed from the Fish and Wildlife  
22          Service or the applicant regarding compliance with  
23          the Endangered Species Act since last summer.

24                   We understand that environmental review  
25          under NEPA has not yet begun based on a telephone

1 call with U.S. Fish and Wildlife Service.

2 So the staff testimony doesn't make a  
3 finding, there's no finding in there regarding  
4 compliance with federal Endangered Species Act.  
5 All it does say is that a low effect HCP was --  
6 the applicant submitted a low effect HCP to the  
7 U.S. Fish and Wildlife Service. The U.S. Fish and  
8 Wildlife Service rejected the low effect. At a  
9 low effect, this project does not meet the  
10 criteria for a low effect HCP, which means that an  
11 HCP needs to be prepared. And that is the end of  
12 the analysis by staff in its testimony.

13 So, perhaps there will be some new  
14 information brought to hearings that we will need  
15 to work through at the hearings. But at this  
16 point I can't prepare for that because I don't  
17 have any information.

18 MR. SOLORIO: I'm not aware of any  
19 requirement in CEQA that it requires the applicant  
20 to have a federal permit before CEQA can be  
21 completed. They're subject to the federal LORS,  
22 period.

23 HEARING OFFICER CELLI: Yes. That's why  
24 I brought this up. I wanted to hear from  
25 applicant or staff about these issues raised by

1 CURE with regard to these federal requirements and  
2 how does that affect our process.

3 MR. BABULA: Yeah, I don't think it  
4 affects -- first of all, the applicant was  
5 correct. This is an optional thing. They don't  
6 need to do a section 10 consultation. They're  
7 doing that to insure that if they do come across a  
8 tortoise they are protected, and they won't get  
9 either civil or criminal liability.

10 But they are going forward with that  
11 process. But definitely the conditions of  
12 certification and the analysis and the mitigation  
13 that staff has proposed has been through a  
14 consultation process with Fish and Game and the  
15 Service so that the mitigation is consistent with  
16 everybody.

17 And I think the idea of having another  
18 staff assessment, another set of evidentiary  
19 hearings is just not practical. And isn't needed  
20 because there's no issue with the Service.

21 And as Eric pointed out, even if for  
22 some reason at the end the Service has some other  
23 requirements beyond what we have, they're going to  
24 be subject to federal law anyway.

25 And there's nothing that requires our

1 process at the Energy Commission to be held up  
2 waiting for the Service to do what they need to  
3 do, which by the way, the holdup mainly is to  
4 figure out what they're going to do with visual.  
5 And it doesn't have a whole lot to do with  
6 biology.

7 MS. GULESSERIAN: Based on the  
8 incidental take permit application and draft HCP,  
9 just enable to take a look at and not fully  
10 inform, but there is no application for any take  
11 of the threatened desert tortoise, along any of  
12 the linear corridors for the pipelines.

13 So, I mean there are going to be issues  
14 that we're going to need to address at evidentiary  
15 hearings. And, you know, at this point the  
16 publicly available documents do not show an  
17 analysis, for example, of those pipelines.

18 MR. SOLORIO: If I may, under CESA staff  
19 has addressed the desert tortoise, and mojave  
20 ground squirrel where that's concerned, and  
21 recommended mitigation measures that staff  
22 believes are sufficient.

23 Under the federal ESA mitigation, per  
24 se, is not required. Avoidance and minimization  
25 is what is required.

1                   And CURE points reviewing a quote-  
2                   unquote "draft HCP". So I just want to make the  
3                   distinction that that process is not yet complete.  
4                   And until the point in time that the applicant  
5                   ceases to participate in the process in the  
6                   section 10 consultation and goes ahead and takes a  
7                   desert tortoise without an incidental take  
8                   statement, they are in compliance with federal  
9                   LORS.

10                   HEARING OFFICER CELLI: Okay, I  
11                   appreciate that. I just wanted to really address  
12                   the issues raised by you, Ms. Gulesserian, because  
13                   I don't intend to put a lot of this in my  
14                   scheduling order because it's just not, it's not  
15                   relevant to what we're doing.

16                   So, with that, I'm about to open it up  
17                   for public comment. But I want to ask the parties  
18                   if there's anything further while I still have  
19                   you. Applicant first.

20                   MS. LUCKHARDT: No, I don't think we  
21                   have anything further.

22                   HEARING OFFICER CELLI: Staff.

23                   MR. BABULA: I don't have anything  
24                   further.

25                   HEARING OFFICER CELLI: And CURE.

1 MS. GULESSERIAN: No, thank you. I  
2 don't have anything.

3 HEARING OFFICER CELLI: Thank you. And  
4 I do appreciate your working with us to see what  
5 we can do to streamline these processes.

6 Now, the Public Adviser is here present  
7 in the room. I wonder, do we have any members of  
8 the public who wish to speak today?

9 PUBLIC ADVISER JENNINGS: Not present  
10 here. I don't know on the phone.

11 HEARING OFFICER CELLI: Well, now, since  
12 there's nobody here we're going to go to the  
13 telephone. I have Tom Weil or Weil, did you wish  
14 to make a comment?

15 Are they able to -- I can't hear  
16 anybody. Can you un-mute? Okay, Tom Weil. He's  
17 hung up, okay. S. Rowlands, that would be your  
18 associated.

19 MS. ROWLANDS: No comment.

20 HEARING OFFICER CELLI: No comment.  
21 Richard Booth, any comments?

22 MR. BOOTH: No comment.

23 HEARING OFFICER CELLI: Thank you. Meg  
24 Russell, any comment? Meg Russell, do you wish to  
25 make a comment?

1 MS. LUCKHARDT: She's Nextera.

2 HEARING OFFICER CELLI: Okay. Frank,  
3 just Frank?

4 MS. LUCKHARDT: Frank is Nextera, as  
5 well.

6 HEARING OFFICER CELLI: Okay. Duane  
7 McCloud?

8 MS. LUCKHARDT: He's also Nextera.

9 HEARING OFFICER CELLI: I see David  
10 Wiseman hung up unless he's one of the new  
11 callers. David Wiseman, are you on the line?  
12 Okay.

13 The last three callers we don't have an  
14 identification for. If you're on the line and  
15 wish to make a comment, please state your name.  
16 Does anyone wish to make a comment who's on the  
17 phone at this time?

18 Okay, hearing none, then we have not  
19 received any public comment. But there was  
20 certainly the opportunity. So, with that I'm  
21 going to hand it back to the Chairman to adjourn  
22 this prehearing conference. And thank you very  
23 much, parties, for your help.

24 PRESIDING MEMBER DOUGLAS: I'd like to  
25 join Hearing Officer Celli, as I'm sure will

1 Commissioner Byron, in thanking everybody for a  
2 very effective and I think helpful prehearing  
3 conference.

4 And we'll look forward to seeing all or  
5 most of you in California City. Thank you.

6 (Whereupon, at 12:41 p.m., the  
7 prehearing conference was adjourned.)

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## 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 Prehearing Conference; that it was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of March, 2010.

PETER PETTY

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## CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Margo D. Hewitt

March 22, 2010

Margo D. Hewitt,

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