

COMMITTEE CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

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

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

THURSDAY, AUGUST 19, 2010

10:00 a.m.

Reported by:
John Cota
Contract No. 170-09-002

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INTERVENORS

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Adams Broadwell Joseph & Cardozo
representing California Unions for Reliable Energy (CURE)

ALSO PRESENT

Dr. Robert Shearer (via teleconference)

Marie Ann Hogarth (via teleconference)

Jack Stewart (via teleconference)
Rosamond Community Service District

Frank

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1 MR. SOLORIO: Eric Solorio, project manager.

2 PRESIDING MEMBER DOUGLAS: Thank you. Intervenor?

3 MS. GULESSERIAN: Tanya Gulesserian with
4 California Unions for Reliable Energy.

5 PRESIDING MEMBER DOUGLAS: Great. Are there any
6 elected officials in the room or on the phone? Or public
7 officials?

8 DR. SHEARER: Dr. Shearer.

9 PRESIDING MEMBER DOUGLAS: I'm sorry, please
10 introduce yourself.

11 DR. SHEARER: This is Dr. Robert Shearer. I'm the
12 vice president of the Rosamond Community Service District.

13 PRESIDING MEMBER DOUGLAS: Thank you. Anyone
14 else, elected officials?

15 What about government agencies in the room or on
16 the phone?

17 It sounds like we don't have any government
18 agencies on the phone at this time. Is the Public Adviser's
19 Office here? Jennifer Jennings from the Public Adviser's
20 Office is in the room with us.

21 Very well, I'll turn this over to Hearing Officer
22 Celli.

23 HEARING OFFICER CELLI: Good morning, Chairman
24 Douglas and everyone, welcome back.

25 So what we have received as of today with regard

1 to errata and comments on the PMPD is that the applicant
2 filed comments on the PMPD on August 12, 2010. And I have,
3 I hope everybody received that. Then I received, staff's
4 comments were filed yesterday, August 18. And I have some
5 extras on the back table there if anybody needs to see them.

6 Ms. Gulesserian, I don't know if you have staff's comments.

7 MS. GULESSERIAN: Yes I do, thank you.

8 HEARING OFFICER CELLI: Okay. But if anyone needs
9 there's a couple of extras in the back. Thank you very
10 much.

11 CURE, are we correct that CURE has yet to file
12 comments?

13 MS. GULESSERIAN: That's correct. We will be
14 filing comments today.

15 HEARING OFFICER CELLI: I also have, and put in
16 the back of the room, a draft errata that is very much of a
17 draft, incorporating the comments that have been received.
18 But I'm not sure if staff's, because they were received so
19 late, we received them yesterday, so I have the feeling this
20 is only going to be applicant's comments in what our
21 secretary put together today.

22 So I would like to proceed as usual. We'll start
23 with Applicant, go to Staff, listen to Intervenor CURE, then
24 we will go to public comment. But we would like to hear
25 from the parties on their position with regard to the

1 various comments and errata. So with that, applicant,
2 please.

3 MS. LUCKHARDT: I'd just like to note that we just
4 got a copy of what you put out this morning so we haven't
5 had a chance to look at that. We filed our comments and so
6 you have our initial comments on the PMPD. We received
7 staff's comments yesterday.

8 I've handed out to all of the parties as well as I
9 believe the Committee a response to staff's proposed changes
10 to Condition of certification HAZ-2. In looking at what
11 staff had requested in HAZ-2, which was the inclusion of a
12 process safety management plan. In our evaluation of HTF
13 and the constituents which it breaks down to we don't
14 believe that a process safety management plan will be
15 required under the standards that exist at this time.

16 So what we have asked and asked staff to consider,
17 as well as the other parties, is whether they would be
18 willing to accept a revision to their proposed language that
19 instead of "will apply" is "may apply." That this standard
20 may apply to the project. And that the project will consult
21 with Cal-OSHA or the Kern County Environmental Health
22 Services Department to determine if a process safety
23 management plan is required. And that if one is required it
24 will be provided but if it is not we will not provide it.
25 So it's basically if the law requires that it be provided

1 the project will comply and if not the project will not.

2 ASSOCIATE MEMBER BYRON: Ms. Luckhardt, could you
3 point us to right document and page so we can take a look at
4 it and refresh ourselves with regard to this condition.

5 MS. LUCKHARDT: Okay. What I've handed out this
6 morning is a document that is entitled Beacon -- it's about
7 four pages in length. It is entitled Beacon Solar, LLC,
8 Supplemental Comments on the Presiding Member's Preliminary
9 -- it should be Proposed Decision regarding Condition of
10 Certification HAZ-2. We'll try and fix that before that
11 gets filed. Dated August 19th. And it's in response to
12 what staff filed late yesterday. And it should be in -- our
13 proposed changes to what staff proposed should show up in
14 red on the document.

15 HEARING OFFICER CELLI: Okay. Now, I had a chance
16 to go through your proposed revisions or errata last night.

17 Let me begin by asking, are there any changes to the
18 original August 12 proposed changes that you submitted?

19 MS. LUCKHARDT: No, we don't have additional
20 changes on our changes.

21 HEARING OFFICER CELLI: Other than HAZ-2.

22 MS. LUCKHARDT: Other than HAZ-2, which was in
23 response to what staff filed last night.

24 HEARING OFFICER CELLI: Which is in addition to.
25 In other words, it is not changing something that is already

1 in here.

2 MS. LUCKHARDT: Right.

3 HEARING OFFICER CELLI: Okay.

4 MS. LUCKHARDT: It is not changing something that
5 is already in here.

6 HEARING OFFICER CELLI: Let me go to staff first.

7 Staff, any comments on Beacon Solar's comments on the PMPD?

8 MR. BABULA: On the process safety management
9 plan. We did note on our page 13 of our comments, this is
10 where we introduced this, which had been noted in our
11 prehearing statement. It's based on this process safety
12 management Title 8, CCR Section 5189. So in principle we
13 agree with the applicant's change because the basis of it is
14 a belief by staff that it is required under this regulation.

15 We haven't been able to confirm with our technical
16 staff yet on whether they would the applicant's proposed
17 changes. But I believe in principle that it makes sense
18 since the triggering effect is a belief that this section
19 cited requires it. So if, in fact, OSHA doesn't require it
20 because it doesn't meet the little summary here of a toxic,
21 reactive, flammable then it wouldn't make sense to require
22 the applicant to do it.

23 I propose that we extend possibly the comment
24 deadline from 3:00 to maybe close of business today at 5:00
25 so we have time to check with our technical staff. I

1 believe Jeff Lesh is going to be here today. Rick Tyler is
2 out. So we want to be able to run this by staff.

3 HEARING OFFICER CELLI: I saw Rick Tyler this
4 morning.

5 MR. BABULA: Did you?

6 HEARING OFFICER CELLI: Yes I did. I just saw him
7 walking by here.

8 MR. BABULA: We'll try to chase him down today as
9 soon as possible to get this sort of sorted out.

10 HEARING OFFICER CELLI: Thank you.

11 MR. BABULA: Other than that I don't have any
12 other comment.

13 HEARING OFFICER CELLI: Okay, great. Because I
14 read -- I'm looking at page 13, Waste Management. Is that
15 what we're talking about?

16 MR. BABULA: Above it. Where it says, Processes.
17 The little column that's underlined.

18 HEARING OFFICER CELLI: Oh, got it. Thank you.

19 CURE, can we hear your comments on applicant's
20 comments, please.

21 MS. GULESSERIAN: I just received this proposed
22 change and I'm trying to look it over now.

23 HEARING OFFICER CELLI: Before you get to that let
24 me ask you if you have any comment on the original set that
25 came out on August 12?

1 MS. GULESSERIAN: On August 12. We are providing
2 detailed comments in a comment letter this afternoon.

3 With respect to the August 12 comments, two areas
4 that we will address, we are addressing are the verification
5 for BIO-14 was subsequently changed. And it looks like
6 staff put the correct verification in their comments so we
7 would agree with this changes.

8 HEARING OFFICER CELLI: So you agree with staff's
9 proposed verification in staff's --

10 MS. GULESSERIAN: As the most, yeah, as their most
11 recently agreed upon verification between staff and the
12 applicant.

13 HEARING OFFICER CELLI: Okay.

14 MS. GULESSERIAN: As in the record. So that 502.

15 HEARING OFFICER CELLI: Got it. So that's one.
16 What was the other one?

17 MS. GULESSERIAN: Yes. And the other one is,
18 which I'd like to address in some larger comments that I
19 wanted to make today, is the proposal to add more findings
20 regarding significant impacts from wastewater treatment
21 facilities. We disagree that further findings should be
22 made.

23 HEARING OFFICER CELLI: Okay. That's sort of a
24 new topic. So what I'm going to do is go through hers --

25 MS. GULESSERIAN: Right.

1 HEARING OFFICER CELLI: Get through theirs. Then
2 we'll talk to that.

3 MS. GULESSERIAN: Those are all the comments that
4 I have at this point, thank you.

5 HEARING OFFICER CELLI: Thank you.

6 So anything further from applicant?

7 MS. LUCKHARDT: I'm just trying to locate
8 specifically where the additional findings are so I can see
9 whether we have got a response to that.

10 HEARING OFFICER CELLI: What as the area,
11 Ms. Gulesserian that those were related to?

12 MS. GULESSERIAN: Which one?

13 HEARING OFFICER CELLI: The added finding.

14 MS. GULESSERIAN: The applicant wrote about that
15 in their, in their comment letter. They suggested adding to
16 the Soil and Water Resources section some findings on
17 Biological Resources, Cultural Resources, Traffic and Land
18 Use.

19 MR. SOLORIO: Mr. Celli, it's page 17 of the
20 applicant's comments and it goes into 18.

21 MS. GULESSERIAN: Thank you, Mr. Solorio.

22 HEARING OFFICER CELLI: Thank you.

23 MS. LUCKHARDT: There's a change on page six but
24 that's a change from natural gas to propane, so that's not a
25 concern.

1 HEARING OFFICER CELLI: So this was having to do
2 with BIO? Not BIO, this is on page 309 of the PMPD. Okay.

3 Let's hold that on the shelf for a minute and we'll get
4 back to you on it, okay.

5 MS. GULESSERIAN: Thank you.

6 HEARING OFFICER CELLI: Anything further from
7 applicant on applicant's proposed changes?

8 MS. LUCKHARDT: No, because you're holding
9 discussion on that.

10 HEARING OFFICER CELLI: Okay. Staff, let's go to
11 you with regard to your proposed changes. If you could kind
12 of give us the highlights.

13 MR. BABULA: I think they sort of speak for
14 themselves. I think the majority of them are similar to
15 applicant's. I don't really have anything really to add to
16 this unless there's a specific question of something in
17 ours. And I know it came in yesterday so you didn't have as
18 much time.

19 HEARING OFFICER CELLI: I read them last night.

20 MR. BABULA: I was here until 10:30 last night.

21 HEARING OFFICER CELLI: Yes, I understand a lot of
22 people were.

23 I noted as I was reading it that there seemed to
24 be a lot of overlap. What I'm interested in knowing is, is
25 there anything where you're pretty much opposed to

1 something, where there's a real departure from what the
2 applicant was proposing here?

3 MR. BABULA: We're basically on the same page.
4 It's just to check with Rick on this most recent change.

5 HEARING OFFICER CELLI: Okay. Applicant, anything
6 on staff's proposed changes?

7 MS. LUCKHARDT: You know, in our review of staff's
8 changes. You have our comments on HAZ-2. We've just done a
9 quick check of the verification language on BIO-14 and we
10 don't see a problem with using staff's verification language
11 for BIO-14.

12 HEARING OFFICER CELLI: On your page 14?

13 MS. LUCKHARDT: On staff's page 16, applicant's
14 page 16. We both propose verification language for
15 condition of certification BIO-14.

16 HEARING OFFICER CELLI: BIO-14.

17 MS. LUCKHARDT: Right. Ms. Gulesserian just
18 pointed out that the verification language may be slightly
19 different. We just read staff's verification language and
20 we're fine with using verification language for BIO-14, we
21 don't have an objection to that. So that's fine, you can
22 pull it from there to add a verification.

23 Our only other comment on staff's comments was the
24 HAZ-2 question that we provided in redline.

25 So that's our comments on staff.

1 HEARING OFFICER CELLI: Thank you. CURE, please,
2 on staff's proposed changes. Ms. Gulesserian, if you have
3 any comments.

4 MS. GULESSERIAN: On staff's proposed changes, I
5 don't have any general comments right now for their changes.

6 HEARING OFFICER CELLI: Thank you. Anything
7 further from staff with regard -- other than the pending
8 resolution of HAZ-2, anything further from staff on your
9 proposed changes?

10 MR. BABULA: I do have one.

11 HEARING OFFICER CELLI: Okay.

12 MR. BABULA: I do have one slight change on, let's
13 see, what am I looking at. This would be applicant's page
14 16, which is this BIO-22. The verification. We'd like to
15 add, besides informing us that they want to use the in-lieu
16 process, also to provide a copy of like the check or any
17 money, some indication in the verification that they should
18 provide us with a copy of the money that was transmitted for
19 the in-lieu.

20 HEARING OFFICER CELLI: To the CPM kind of thing?

21 MR. BABULA: Right.

22 HEARING OFFICER CELLI: Okay. So page 16 of
23 applicant's --

24 MS. GULESSERIAN: CURE will also be providing just
25 some clarification language for that new condition, BIO-22.

1 HEARING OFFICER CELLI: Any opposition to BIO-22?

2 MS. GULESSERIAN: Not in principle but some
3 clarifying language. Just a few words to make it, to make
4 sure it's consistent with Senate Bill X8-34.

5 MS. LUCKHARDT: Do you have that language here?

6 MS. GULESSERIAN: I do. It is in the latter half
7 of BIO-22. The part where it starts, to the extent. The
8 way it was written by the applicant. "To the extent the in-
9 lieu fee provision is found by the Commission to be ..." We
10 would propose that we make that the same language as is in
11 the verification that's referred to as the project's in-lieu
12 fee proposal. So it would say, "To the extent the project's
13 in-lieu fee proposal is found by the Commission to be
14 compliant with CEQA and CESA." And then in the verification
15 we would ask to add language regarding notification to the
16 Commission and all parties that it is seeking a new
17 determination.

18 MS. LUCKHARDT: It would be unusual that a
19 verification and a condition of certification would require
20 notification to all parties. That's something that doesn't
21 appear in any other condition in the entire PMPD. So just
22 at first blush we would be concerned about that condition
23 requiring notice to all parties because it is not required
24 in any other condition in the PMPD.

25 MS. GULESSERIAN: There are --

1 HEARING OFFICER CELLI: Let me ask you this. Did
2 you make these points in your written comments?

3 MS. GULESSERIAN: Yes.

4 HEARING OFFICER CELLI: Okay.

5 MS. GULESSERIAN: So that it's clear that you have
6 the language that we're proposing. This condition is also
7 different than every other condition in the PMPD because the
8 actual condition requires the Commission to make a finding.

9 It's a late addition of a new mitigation measure regarding
10 a future in-lieu fee program. And as the applicant wrote
11 it, it's to the extent that the in-lieu fee provision is
12 found by the Commission to be consistent. So since it's
13 different than every other condition that's why, you know,
14 asking the Commission to make a decision on the in-lieu fee
15 proposal opens the door to having involvement of the public.

16 HEARING OFFICER CELLI: It's interesting because
17 the Commission has to make a finding that the project is in
18 compliance with all LORS. So I'm just wondering whether
19 this language is redundant anyway because we have to make
20 such a finding. In other words, you're saying, if found the
21 Commission to be in compliance with CEQA and CESA
22 requirements. Well, if there were a finding to the contrary
23 we couldn't even proceed with that.

24 MS. GULESSERIAN: Well generally then we would
25 object to a new condition regarding an in-lieu fee proposal

1 because there's nothing in the record about this issue
2 whatsoever.

3 HEARING OFFICER CELLI: But the point is, if you
4 take a step back and look at the big picture, what we're
5 interested in is, is this impact mitigated. And this is now
6 a potential alternative means of mitigation.

7 MS. GULESSERIAN: And this --

8 HEARING OFFICER CELLI: And, you know. So that's
9 the big picture. That's really all the Committee cares
10 about is, is there a mitigation for the impact? This
11 provides a possibility for another means of mitigating.
12 It's an alternative, right?

13 MR. BABULA: But one thing too is the Senate Bill
14 does in itself say that that meets CESA requirements, the
15 in-lieu program. And BIO-11 actually has a lot of elements
16 already in the record that have, that are similar to in-lieu
17 fee programs. If you look at BIO-11 it discusses issues
18 such as third parties acquiring and the funding to a third
19 party or to Fish and Game to acquire the land. Ability to
20 aggregate monies with other things to get larger blocks of
21 land. Stuff like that is already in the record and already
22 in a existing condition.

23 I mean, Staff's perspective is BIO-22 isn't really
24 necessary because it's already kind of conceived in BIO-11
25 in that if it's an available mitigation component that it's

1 already been determined outside of this process to be
2 sufficient, it'll work. But that language, I don't have a
3 problem with what CURE proposed with the proposal as opposed
4 to a provision. I agree with the applicant though that the
5 conditions aren't -- there's nothing in any condition I have
6 ever seen that requires it going to parties.

7 HEARING OFFICER CELLI: We have notice provisions
8 in everything that we do. But what I'd like to do, parties,
9 is go off the record for a moment. So we will go off the
10 record for just a moment.

11 (Off the record at 10:26 a.m.)

12 (On the record at 10:36 a.m.)

13 HEARING OFFICER CELLI: Welcome back. Thank you,
14 thank you for indulging us.

15 Hello, Mr. Lesh, welcome back to Beacon.

16 The Committee discussed BIO-22 as proposed by the
17 applicant on page 16 of applicant's proposed changes to the
18 PMPD and the Committee has concerns. And I'm addressing
19 these comments right now to the applicant because the
20 Committee has some concerns. There's unusual language
21 proposed by the applicant that the Commission needs to make
22 a finding whether this new code section 2069 and 2099 of
23 Fish and Game would be in compliance with CEQA and CESA.
24 And we would like, if the applicant would, to create more of
25 a record of the background of a request in your proposed

1 BIO-22, please.

2 MS. LUCKHARDT: Okay. You know, in looking at
3 this, just to respond to your initial comment. What we
4 attempted to do was pull language from draft conditions or
5 conditions that staff had created for other projects, in an
6 attempt not to create something that was brand new.
7 Nonetheless, based on the discussion that we had today, we
8 went back and looked at BIO-11. And condition of
9 certification BIO-11 is the existing condition that requires
10 the compensatory mitigation and the standards for that.

11 HEARING OFFICER CELLI: Excuse me, what page is
12 BIO-11?

13 MS. LUCKHARDT: On page 269 through -- it's a long
14 one. Through 274 of the PMPD.

15 HEARING OFFICER CELLI: Got it.

16 MS. LUCKHARDT: And that condition requires CPM
17 findings and CPM approval of the selection. And so we would
18 propose having the condition modified to provide CPM review
19 and approval of using the in-lieu fee requirement as opposed
20 to Commission findings and determinations.

21 We also agree with the comments that staff made.
22 This is coming, this request is coming out of Senate Bill
23 34. And Senate Bill 34 established an in-lieu fee program
24 for renewable projects in the desert as a way of creating
25 large mitigation areas and an opportunity to provide a

1 defined amount that would be charged for mitigation and a
2 specific program that would in a way encompass and allow
3 large blocks of land to be preserved.

4 Because when you have individual projects doing
5 individual mitigation strategies -- and that's true,
6 especially when you look at Beacon, which has a relatively
7 small biological resources impact, a relatively small
8 mitigation requirement for compensatory lands. And the
9 program established by SB 34 is a program that will develop
10 larger tracts of land that would enhance and meet a lot of
11 the requirements of BIO-11 such as contiguous blocks of land
12 that are included in the selection criteria of BIO-11 on
13 page 270.

14 And Fish and Game has come out with a draft
15 interim mitigation strategy that isn't final but it
16 specifically includes the Beacon project. It's listed as
17 one of the solar-thermal projects that have been evaluated
18 as part of this program. And it describes and shows
19 locations proposed or potential locations for acquiring
20 these lands and has specific or the beginnings of the
21 criteria that they would use to obtain the land, the goals,
22 the mitigation strategies. Portions for improving the land.

23 If there's a way in which that can be done to enhance the
24 habitat value of it.

25 And so what we're responding to is basically a

1 change in law that occurred. It was approved by the
2 Governor on March 22 of 2010 and is now a new law that the
3 project feels would be appropriate to have applicable to
4 this project as well as the other solar projects that are
5 under review by this Commission as well as the photovoltaic
6 projects that are under review by the various other
7 agencies, whether it's the Bureau of Land Management or
8 otherwise.

9 In evaluating and looking at this the applicant is
10 not, I would say, wed to the language of BIO-22. We were
11 attempting to craft something that was consistent with what
12 we felt that staff proposed on other projects. Now that may
13 have evolved since then. And so the goal of what we were
14 trying to obtain with the introduction of BIO-22 was to
15 enable Beacon to avail itself of this program, which is now
16 a new state law and a new state program.

17 When we looked at it in comparison to the
18 requirements that are in condition of certification BIO-11
19 they were very similar. BIO-11 contemplates off-site
20 compensatory mitigation and off-site land purchase. It
21 contemplates and requires that the land selected be a
22 contiguous block of land located so it's a part of other
23 lands that are preserved. It's not just small acreage
24 sitting out by itself. Because the general theory and
25 understanding for mitigation is that it's better if you can

1 have larger blocks of land. It's better for the species and
2 the habitat.

3 In fact, that was an issue that we went back and
4 forth with with staff and staff's expert. And staff's
5 expert absolutely insisted that the language in BIO-11 1C
6 remain, which was, be a contiguous block of land located so
7 that they result in a contiguous block of protected habitat.

8 And that is the goal. And we believe will be one of the
9 things that will be obtained by Senate Bill 34 and the lands
10 that are acquired as a result of Senate Bill 34.

11 And so we -- to our evaluation, based on review of
12 what is evaluated in this PMPD, which is the use of off-site
13 compensation land. That has been evaluated and we believe
14 that Senate Bill 34's program, the in-lieu fee program, is
15 roughly equivalent to the compensatory mitigation
16 requirements that have already been evaluated in the staff
17 assessment and included in the Presiding Member's Proposed
18 Decision and included as BIO-11. So this is simply shifting
19 the location and the mechanism with which we would obtain
20 the compensatory mitigation lands.

21 HEARING OFFICER CELLI: Let me ask you, or maybe I
22 should direct my question to staff. Ms. Luckhardt mentioned
23 other projects. Are you aware of any other projects that
24 have some similar or analogous language in their conditions?

25 MR. BABULA: I think the other projects do. But I

1 haven't worked on biology on them so I'm not -- Ridgecrest.

2 MR. SOLORIO: Yes, generally I am aware that the
3 other projects, the other solar projects we're processing
4 now do provide the alternative to utilize this in-lieu fee
5 mitigation program. And I absolutely agree that it's
6 entirely consistent with BIO-11 and the discussion of third
7 parties. And the fact that CDFG and the Wildlife Service
8 are the two resource agencies identified in approving the
9 lands in BIO-11, they happen to also be the same agencies
10 involved in the in-lieu fee program. Functionally you have
11 the same outcome.

12 HEARING OFFICER CELLI: Thank you.

13 MR. BABULA: Also that program too, one of the
14 advantages, it doesn't eliminate the other conditions. I
15 don't want people to think, oh, they're just going to go
16 write a check and ignore everything else. What it does is
17 it allows for this \$10 million fund to acquire lands now.
18 So then as projects come on-line there's a pool of land that
19 they can then buy into and pay back. So all the other
20 conditions will still be in effect.

21 As they say, it's sort of changing the mechanism
22 of acquiring specific land. As opposed to they themselves
23 going out and finding a piece of land that meets all the
24 requirements of BIO-11, there would be a land block that
25 Fish and Game or another agency would have already have

1 purchased. Then they could say, okay, we want to pay into
2 that and that will be our land and requirement mitigation.

3 HEARING OFFICER CELLI: Perhaps Mr. Stein or
4 Mr. Busa, I just -- just so you know, Genesis is being
5 published today. I just don't remember whether this is in
6 there.

7 MR. STEIN: This is the exact language from the
8 Genesis project. We had originally actually not wanted the
9 language in there about the Commission having to make a CEQA
10 finding. That was staff's attorney's language. In carrying
11 that over and proposing it for Beacon we just figured that
12 we would take staff's proposed language and bring it over
13 here. It was not ours.

14 HEARING OFFICER CELLI: Thank you. I'll look into
15 those.

16 And now I'd like to hear Ms. Gulesserian. You
17 have been patiently listening.

18 MS. GULESSERIAN: Thank you.

19 HEARING OFFICER CELLI: I'd like to hear your
20 comments.

21 MS. GULESSERIAN: With respect to Senate Bill X8-
22 34. The sole effect of the mitigation action is, which is
23 some future plan developed as a result of X8-34. The sole
24 result of that incomplete plan is to relieve the applicant
25 of directly purchasing lands. It doesn't relieve the

1 applicant of its obligation to provide substantial evidence
2 that its compensation lands comply with CEQA or CESA or the
3 Warren-Alquist Act. It doesn't relieve the Energy
4 Commission from any of its obligations.

5 HEARING OFFICER CELLI: So you --

6 MS. GULESSERIAN: In other words, the Commission
7 still needs to make the findings of whether there's
8 substantial evidence in the record that the projects, the
9 Beacon project's in-lieu fee proposal complies with CEQA and
10 CESA. There's no evidence in the record regarding this
11 issue whatsoever in this proceeding.

12 HEARING OFFICER CELLI: Wouldn't that be mostly a
13 legal call?

14 MS. GULESSERIAN: It is a question of fact whether
15 the in-lieu fee proposal is satisfying CEQA or CESA. There
16 is no plan right now that as --

17 HEARING OFFICER CELLI: I'd like to hear more
18 about that.

19 MS. GULESSERIAN: Sure.

20 HEARING OFFICER CELLI: You've mentioned the
21 incomplete plan.

22 MS. GULESSERIAN: Yes.

23 HEARING OFFICER CELLI: Can you give us a little
24 record on that, please.

25 MS. GULESSERIAN: Sure. From what I'm able to

1 keep up with, there is currently some efforts to do a Draft
2 Interim Mitigation Plan to try and set forth a program of
3 identifying lands that would compensate for the impacts, the
4 cumulative impacts of all of these solar projects. There's
5 no evidence -- first of all the Draft Interim Mitigation
6 Plan isn't in the record for this proceeding.

7 HEARING OFFICER CELLI: What stage is that at? Is
8 this a regulation?

9 MS. GULESSERIAN: What stage? It's not a
10 regulation, it's not proposed as a regulation, it's not
11 proposed as a guideline. It is called a Draft Interim
12 Mitigation Plan. There is no process by which there is a
13 required public comment period. There is no process for
14 responding to comments on the Draft Interim Mitigation Plan.

15 HEARING OFFICER CELLI: So what would you
16 characterize --

17 MS. GULESSERIAN: There is also --

18 HEARING OFFICER CELLI: Is this a policy within
19 CDFG? I mean, what is it?

20 MS. GULESSERIAN: I don't frankly know what it is
21 and I'm waiting to find out whether the California
22 Department of Fish and Game and the California Energy
23 Commission and other agencies that reply on it are going to
24 go through some sort of process for complying with CEQA and
25 CESA with respect to the plan.

1 At this point all of the notices, which I have
2 reviewed regarding the plan -- actually there haven't been
3 any. You learn about it if you asked to be on a service
4 list. Several environmental groups, various interest
5 groups, many specific renewable energy companies have
6 submitted comments on the Draft Interim Mitigation Plan.

7 The comments are -- they're opposed. There's
8 several wind companies that are opposed to the Draft Interim
9 Mitigation Plan as identifying lands that are not suitable
10 as compensation. Several environmental groups have
11 submitted --this is very general--have submitted comments on
12 the Draft Interim Mitigation Plan that's wrought with
13 problems. At this point it is, I suppose, some sort of
14 working document.

15 We have no indication that it's been -- of what
16 the process is going to be here on out. And so far there
17 hasn't been any environmental review process for that plan
18 under CEQA.

19 HEARING OFFICER CELLI: Is that what you had in
20 mind, though? I don't mean to put words in your mouth. My
21 notes show that you had a concern with the language about --
22 oh, you were talking about having some sort of a notice
23 language in the proposed condition.

24 MS. GULESSERIAN: Right. It would sort of be like
25 a modification to the conditions. Where if they decided to

1 come back with something different then they would notify
2 the parties that were involved in this proceeding. That's
3 what I thought I was reading from the applicant's proposal
4 because that's what the language actually says.

5 But that makes sense because this process that's
6 going on to try and find, try and create a program, is not
7 done and there's no indication that there is going to be an
8 environmental review process. So it's a decision on whether
9 there is an environmental review process on that plan or if
10 it's going to be done on a project by project basis.

11 At this point since we don't know, and this
12 proceeding has not gone through that environmental review
13 process, the language proposed by CURE would at least
14 preserve the opportunity to either do it here or perhaps the
15 state is going to do it there. Not really sure.

16 HEARING OFFICER CELLI: But it might be premature.
17 And what I'm thinking and I'm wondering and I'll just put
18 this out to the parties is, if the Committee just did not
19 adopt this proposed BIO-22 then the parties would be back in
20 the same situation they were initially, which is, they would
21 have to go find a compensation land.

22 I wonder if there is any comment on that? First
23 with the applicant.

24 MR. STEIN: I guess the state and a lot of parties
25 went through a great trouble to create SB 34 for the very

1 reason, for these ARRA projects, to come up with something
2 better than just piecemeal mitigation. I'm kind of
3 surprised that CURE is opposing this because it's actually a
4 much better solution for mitigation. It's all the same
5 agencies involved, and as Mr. Solorio pointed out, has a lot
6 of the same criteria. It has the benefit of allowing for
7 mitigation land to be done in a more landscape level.

8 HEARING OFFICER CELLI: Just the verification.
9 One of the concerns I have with this verification is it has
10 no "by when" provision. In other words there is no "before
11 construction" or "30 days" or "90 days" or anything like
12 that. When was this election supposed to take place?

13 MS. LUCKHARDT: And if you make it consistent with
14 BIO-11, which would be --

15 THE REPORTER: Your mic, please, your mic.

16 MS. LUCKHARDT: Sorry. I'm trying to keep them
17 off in the previous, can't have too many mics on.

18 HEARING OFFICER CELLI: This is the new, updated
19 Hearing Room B.

20 MS. LUCKHARDT: The new, updated hearing room. We
21 can all leave our mics on?

22 HEARING OFFICER CELLI: Yes, I think we can.

23 MS. LUCKHARDT: Oh, fabulous. Okay.

24 You know, I'm trying to go back to BIO-11 and the
25 requirements there as far as the timing.

1 HEARING OFFICER CELLI: Well there's an endowment
2 fund prior to construction-related ground disturbance.

3 MS. LUCKHARDT: Yeah. So easily the funding could
4 take place before whatever that was, construction ground
5 disturbance or whatever --

6 HEARING OFFICER CELLI: Excuse me one second.
7 Rick Tyler just went walking out there if you wanted to go
8 grab him. I'm sorry. Ms. Gulesserian's point --

9 MS. LUCKHARDT: I mean, that same language could
10 apply to this. I mean, the difficulty we're dealing with is
11 that this is a new law that provides a new program. And we
12 understand that all of the details are not, have not been
13 finalized at this point in time. My guess is that that may
14 be why staff counsel in the other proceeding left in a
15 Commission determination as opposed to a CPM determination.

16 So it's not that we're saying that we can't accept
17 that. It's just it is different and unusual. We can add
18 timing to the verification. I could generally assume that
19 the timing would be that you would fund prior to
20 construction. That's typically what is required of all
21 mitigation requirements before you go to construction so I
22 don't think there is a problem with funding prior to
23 construction and paying into the in-lieu program. So I
24 think that things like timing of funding we can lift from
25 BIO-11 and that can be added and we wouldn't have any kind

1 of objection to that.

2 HEARING OFFICER CELLI: Would it be fatal to the
3 project to go by way of an amendment later maybe as things
4 gel with AB 34 (sic). I'm sorry, SB.

5 MR. SOLORIO: I would like to just make a
6 suggestion here or comment, if you will. As it is right now
7 BIO-22 is an either/or, either they can acquire the lands on
8 their own or there is another door left open for them. And
9 presumably that is once the program is established, once the
10 Interim Draft Mitigation Plan becomes a final mitigation
11 plan, which then legitimizes, if you will for lack of a
12 better word, the whole SBX-34 intent, if you will. It's
13 just an implementation mechanism to acquire the lands.

14 I don't understand it as purporting to be the CEQA
15 review for the projects. In fact, I understand the
16 mitigation strategy is to incorporate and adopt the
17 mitigation land requirements from the decision documents of
18 the respective projects that want to use the program. And
19 as Jane points out, Beacon is identified in there.

20 So in other words, if they use the program, if it
21 was established with a final document, a final mitigation
22 strategy, and the applicant chose to use it, they would
23 obviously need to make sure that it adopted the
24 characteristics for the lands as described in here, which
25 more than likely are going to be the same, contiguous to

1 other, you know, offset areas, et cetera.

2 It doesn't seem to me to be mutually exclusive and
3 I don't think the Commission needs to make findings that in
4 fact the interim draft strategy is adequate under CEQA. I
5 think it's kind of out of place.

6 MR. BABULA: Yeah, I would agree. I don't even
7 think that this bill is intended to have any real project-
8 specific mitigation. What it's going to do is look at --
9 like for example if we in our document here had said, you
10 have to acquire land that has a 10,000 foot mountain on it
11 and that land wasn't acquired as part of 34, they wouldn't
12 be able to go and use it because it doesn't meet the
13 mitigation requirements in our document.

14 Now because the goal of 34 is habitat for
15 tortoises and different things and that's what we have in
16 here and it's the same agencies that helped develop the
17 mitigation we have in here, presumably the lands acquired as
18 part of 34 will, there will be ample land for them to be
19 able to say, okay, we'll pay into it. It has lands that
20 meet the needs of the specific conditions of certification
21 in this document.

22 So my understanding is this is really just
23 another, as Eric pointed out, an alternative if it's up and
24 running in time. BIO-11 has a whole bunch of timing
25 mechanisms in there. If it happens to fit into this and its

1 up and running and its there they could pay into it and it's
2 got the land that meets are what our conditions are then
3 they're good to go. If not they'll have to acquire it on
4 their own. And again, we're not talking about, this isn't
5 like some of these other projects where we're talking about
6 5,000 acres of land, this is a much smaller plot of land.

7 MS. LUCKHARDT: I mean, we're talking about 115
8 acres of land in this instance so it's not a lot by
9 comparison. And the whole reason that we brought it up at
10 this point was to avoid the need to file an amendment and go
11 through the whole amendment process. You know, if there is
12 no other way to do it obviously that's an option. But it
13 seemed to make sense since the bill was out that we bring it
14 up at this point and at least consider whether it can be
15 added as a mitigation alternative to the compensation, The
16 individual compensation that is contemplated in BIO-11.

17 PRESIDING MEMBER DOUGLAS: There is one ambiguity
18 that I'm trying to understand in terms of what I'm hearing
19 from the staff and applicant. The ARRA mitigation program
20 -- the in-lieu fee program, excuse me, would obviously have
21 a set amount per acre price that participants in that
22 program would pay for their mitigation and so it would not
23 be -- so there is a distinction there if you want, if you go
24 into using that program. You would pay a certain amount per
25 acre. And that's potentially a little different than what I

1 might be hearing from staff and I'm trying to understand
2 exactly what the staff is saying in terms of this just being
3 another mechanism to meet the new mitigation requirement in
4 Beacon.

5 MR. SOLORIO: I think you're referring to what
6 they're calling the deposit document, which in that program
7 development basically identifies the price per acre of the
8 lands. And I would assume, I mean, when the Committee
9 reviews or refers to BIO-11 1-A through H, that lays out the
10 criteria for the lands. You know, provide moderate to good
11 quality habitat, Mojave Ground Squirrel, contiguous block of
12 land. They're very straightforward and I think easily --
13 not unachievable. I can't imagine that this in-lieu fee
14 program has not already made this the siting criteria for
15 their lands.

16 But you are correct from what I understand. There
17 is going to be a price per acre for Desert Tortoise habitat,
18 Mojave Ground Squirrel habitat. It may be overlapping, it
19 may not be. The applicant is still subject to hang that
20 mitigation cost, whatever it is.

21 PRESIDING MEMBER DOUGLAS: So what I'm asking is,
22 are you confident that the price per acre in the plan will
23 be sufficient to acquire land of sufficient quality to
24 mitigate the impacts of the project?

25 MR. SOLORIO: From what I understand, and I'm sure

1 the applicant can speak to this also, that's what's being
2 debated right now in that working group is exactly how much
3 the agencies re going to be able to charge the developers
4 and whether or not they're going to be able to leave the
5 door open and come back for more money if it's insufficient
6 to acquire land for each project. You want to speak to that
7 at all?

8 MR. STEIN: Actually I was just going to say that
9 very thing. I mean, SB 34 is set out to require the
10 agencies to ensure that the dollar amounts are sufficient to
11 implement the mitigation. So that's just part and parcel to
12 SB 34 is an in-lieu fee program designed to fund the
13 mitigation.

14 MR. SOLORIO: There's two components to the
15 funding. One where the SBX-34 can use NFWF as the
16 implementation arm or it can use another NGO like Desert
17 Tortoise Preserve Council, for instance, to acquire the
18 lands. I'm not sure which one it is but I believe it's NFWF
19 though where there's a five percent cap. Once they ask for
20 the deposit they can only go back for five percent more.
21 But what I understand is the other agencies are discussing
22 now is it's basically an open door, they can come back for
23 as much as they need. That's what is being negotiated.
24 But, you know, it's a business decision that I'm sure will
25 be, you know, well vetted.

1 PRESIDING MEMBER DOUGLAS: I am generally familiar
2 with the interim mitigation program and I've got a copy of
3 the draft upstairs on my desk and so I'm relatively familiar
4 with it. And I strongly support the goals of the program,
5 which is to make sure that mitigation is as effective as
6 possible by consolidating it, by focusing it on critical
7 corridors, key conservation areas and with the guidance of
8 the agencies that have the most expertise in doing that. So
9 I'm both familiar with and strongly supportive of the
10 program.

11 The question that this is raising for me is the
12 right way of bringing that program into our process, given
13 the fact that it's currently just draft. And given the fact
14 that we are moving, moving quickly, and the fact that it
15 isn't currently in our record. So this is just raising
16 issues of law and issues of fact. So we'll have to think
17 about how to deal with it. And we are very interested in
18 your input for how you think we can deal with it.

19 HEARING OFFICER CELLI: I also wanted to ask a
20 question. Eric Solorio had mentioned basically a possible
21 language that says something to effect of, if we put in BIO-
22 22 as it stands right now something that says, pending or
23 dependent upon the confirmation of this plan, this
24 implementation plan that Ms. Gulesserian described then
25 would that, I mean basically what I'm saying is, you know,

1 you have, apparently, this incomplete document or this
2 incomplete process that's out there.

3 But do we have to wait around for this process to
4 complete itself or can we create language that says, when
5 this, as this process completes itself and when it does then
6 if all of these conditions are present then this is an
7 option that they could avail themselves of.

8 MR. SOLORIO: Yeah, that's precisely the point I
9 was making. I mean, the first sentence of BIO-21 is, the
10 project owner may choose.

11 I'm sure they, as prudent business people, they
12 wouldn't choose to use a program that wasn't finalized yet.

13 ASSOCIATE MEMBER BYRON: Did you mean BIO-22?

14 MR. SOLORIO: Yes. I'm sorry. That --

15 HEARING OFFICER CELLI: But the language that you
16 said was something to the effect of the confirmation, I
17 don't even know how to speak to this.

18 But the confirmation of the implementation plan or
19 subject to or something like that. I can't remember now.

20 MR. SOLORIO: In terms of, yeah, I think you were
21 talking about you could add language in there, you know, if
22 you want to go belt and suspenders in terms of making sure
23 the implementation plan for this particular project that's
24 tied also to a deposit document, in fact, incorporates, I
25 mean, you could even copy and paste the mitigation land

1 criteria out of BIO-11 which describes this is what the
2 landscape is going to look like.

3 HEARING OFFICER CELLI: Yeah, I think you can
4 incorporate that by reference.

5 What I'm trying to cover, I just want to cover the
6 fact that you've got an inchoate plan out there.

7 MS. GULESSERIAN: May I make some suggestions?

8 HEARING OFFICER CELLI: Yes.

9 MS. GULESSERIAN: And I also wanted to address
10 since Commissioner Douglas recognized that it's a question
11 of fact, a few factual points that the applicant and staff.

12 I just want to provide my perspective on those
13 facts.

14 And first of all, CURE does not oppose, as the
15 applicant suggested, the use of a potential plan under SB
16 X8-34. We support it, that Senate bill and believe in its
17 goal of trying to target large swaths of land in order to
18 provide compensation for the loss of lands from these
19 projects.

20 So that said, the correcting questions of fact,
21 the Draft Interim Mitigation Plan does reference the Beacon
22 Project but it is not correct.

23 It's incomplete. It's outdated. It doesn't have
24 the mitigation that the Commission is ultimately proposing
25 to require for the project.

1 So, you know they've put in names of projects.
2 But it's not an accurate document yet.

3 So to say that it's doing that analysis of the
4 Beacon Project and including it is not factually correct.

5 Second, there's no, the applicant stated that the
6 Draft Interim Mitigation Plan will be --

7 PRESIDING MEMBER DOUGLAS: Actually, let me, I'm
8 sorry Tanya --

9 MS. GULESSERIAN: Yes.

10 PRESIDING MEMBER DOUGLAS: -- let me just ask you
11 a question on that point.

12 MS. GULESSERIAN: Yes.

13 PRESIDING MEMBER DOUGLAS: My understanding is
14 that the document was not so much required to analyze the
15 Beacon project, in fact, not at all.

16 MS. GULESSERIAN: Right.

17 PRESIDING MEMBER DOUGLAS: It was required to, DFG
18 was required to determine whether these projects were
19 inconsistent with a future NCCP or future conservation plan
20 for the area.

21 They looked at a very different level analysis
22 that you would need to make that kind of finding as opposed
23 to a full analysis of a project.

24 MS. GULESSERIAN: That's true. It's not analyzing
25 the Beacon Project. And that's why we shouldn't rely on it

1 to do the analysis for the Beacon Project.

2 My, my --

3 PRESIDING MEMBER DOUGLAS: But we're analyzing the
4 Beacon Project.

5 MS. GULESSERIAN: Right.

6 PRESIDING MEMBER DOUGLAS: And so that document is
7 about mitigation or conservation of species. Mitigation but
8 in the context of, what is the best way to, what is the best
9 way to focus mitigation to achieve the maximum, to achieve
10 good conservation?

11 MS. GULESSERIAN: Uh-hum. I think that I was
12 responding to the applicant's suggestion that the mitigation
13 plan addresses Beacon.

14 And my response to that fact is that it doesn't
15 even include all of the mitigation that the Commission is
16 requiring in its PMPD.

17 So to say that, for example, the Beacon Project is
18 impacting, you know, 2,012 acres when the PMPD says it's
19 impacting more you have a discrepancy in the facts.

20 PRESIDING MEMBER DOUGLAS: I understand that.
21 I'll just say I don't think that particular one is relevant.

22 MS. GULESSERIAN: Okay. Another thing I'd like to
23 point out is that I disagree with the applicant that the
24 Draft Interim Mitigation Plan or the final one that will
25 ultimately be produced will necessarily have compensation

1 that is roughly equivalent to BIO-11.

2 I agree with the point that you made that it's my
3 understanding that the program is going to have a set amount
4 per acre. That's what it's going to be. It's going to be a
5 set amount per acre that a participant can pay to relieve it
6 of its obligations to buy the compensation land.

7 So I don't agree that if our, if the Beacon
8 decisions conditions BIO-11 says you need to buy a mountain
9 and there in-lieu fee proposal isn't buying a mountain but
10 that's going to mean that BIO-11 doesn't apply, I don't
11 agree with that.

12 Because it's my understanding that the purpose of
13 the program is to avoid making those determinations and just
14 to allow the fee to be paid.

15 ASSOCIATE MEMBER BYRON: While you're thinking,
16 Madame Chair, there's a little bit of mischaracterization, I
17 think, going on as to regards to what this proposed plan
18 does. It's my understanding, I mean, we have a law in
19 place. They're working on the plan. It's an interim
20 document. It's playing catch up with the facts of all these
21 cases. That doesn't make it inaccurate as Ms. Gulesserian
22 indicates.

23 I'm much more interested rather than the legal
24 aspects of all of this, if this plan, indeed, benefits
25 Californians, and indeed, sets aside land and mitigates the

1 impacts of this and other cases then we should be very
2 interested in the potential for its use as mitigation in
3 this project and all our projects.

4 And that's, as a member on this and other cases,
5 what I'm certainly interested in.

6 PRESIDING MEMBER DOUGLAS: I agree with you,
7 Commissioner. I want to say that the reference I made to
8 questions of fact is the fact that we don't know what's in
9 the final plan and that's the issue.

10 So given that we don't know the full form of what
11 might change between the draft and the final plan and we
12 don't know exactly when the plan would be finalized.

13 The question that that raises for me is how do we
14 use that plan at this point sitting here today with where we
15 are in our process.

16 MS. GULESSERIAN: I have a suggestion. I only
17 have three words that change from the applicant's proposal.

18 I mean, we do not, we're not opposing outright the
19 inclusion of a condition.

20 So we had proposed to the extent that the
21 project's in-lieu fee proposal is found by the Commission to
22 be in compliance with CEQA and CESA requirements would could
23 also add, or to the extent that the Commission, you know,
24 makes a determination that the, some future plan complies
25 with CEQA or CESA.

1 I mean, we don't know what the process is going to
2 be at this point but we can leave the doors open for at some
3 point the Commission is going to make a determination on
4 whether either this project or that plan complies with CEQA
5 and CESA.

6 HEARING OFFICER CELLI: So your language was, to
7 the extent the project's in-lieu fee provision --

8 MS. GULESSERIAN: Proposal.

9 HEARING OFFICER CELLI: -- proposal. And then the
10 rest of the language remains the same?

11 MS. GULESSERIAN: Uh-hum.

12 HEARING OFFICER CELLI: Okay. Any further
13 questions Chairman?

14 PRESIDING MEMBER DOUGLAS: No.

15 HEARING OFFICER CELLI: On BIO-22 or Commissioner
16 Byron.

17 ASSOCIATE MEMBER BYRON: Just in case I wasn't
18 clear, I'd very much like to make sure that the possibility
19 of this provision for the use of in-lieu fee mitigation is
20 included for this and all other projects, if indeed, we can
21 do that in the decision then that would be my preference.

22 HEARING OFFICER CELLI: Thank you. Anything
23 further from CURE on this point?

24 MS. GULESSERIAN: No, thank you.

25 HEARING OFFICER CELLI: Applicant?

1 MS. LUCKHARDT: I'm not really sure if we have
2 anything further. I don't think we have anything further at
3 this time although I do think it would be helpful if the
4 Commission at some point made a general determination on the
5 mitigation strategy.

6 HEARING OFFICER CELLI: Now our comment period is
7 open until three o'clock today. And it's 11:16 by this
8 clock.

9 And it might be useful if the parties could,
10 perhaps, come up with some sort of language that sort of
11 reflects these discussions, that talks about and accounts
12 for the unsettled nature of the implementation plan in such
13 a way that we could craft a condition that accounts for that
14 and creates a performance standard. That would be a
15 suggestion.

16 MR. SOLORIO: I would just like to note that the
17 fact that the interim strategy is being developed shouldn't
18 prohibit the Commission from including it as an option.

19 If that were the case then all these projects
20 would not get the benefit that was intended by SBX 34.

21 And a quick comment regarding the per acre fee,
22 that also includes the transactional costs, the enhancement
23 costs and the endowment. So it is a comprehensive fee that
24 would accomplish the exact same thing that BIO-11 is
25 attempting to accomplish.

1 HEARING OFFICER CELLI: Very clear. Where we're
2 at is with CURE now, CURE's comments on the PMPD.

3 MR. BABULA: Would you like us to just dispose of
4 this Hazardous-2 now that Jeff entered the --

5 HEARING OFFICER CELLI: Oh, let's do that if you
6 don't mind, Ms. Gulesserian. I'm going to go back to staff
7 and let them take care of this HAZMAT-2 issue.

8 Now I have Beacon. For the record, we have
9 received Beacon Solar's supplemental comments just regarding
10 Hazardous Materials Condition-2, which is a three page
11 document. Have you had a chance to see that?

12 MR. BABULA: Yeah, we've looked at it and we, I'll
13 just let Jeff kind of state staff's view of this.

14 MR. LESH: Okay, basically in response --

15 THE REPORTER: Please identify yourself.

16 MR. LESH: Oh. I'm Jeffrey Lesh, L-E-S-H, with
17 the Energy Commission.

18 HEARING OFFICER CELLI: No, this isn't a hearing,
19 it's a conference. But we still expect you to tell the
20 truth (laughter). This being a conference we'll just let
21 you shoot from the hip today.

22 MR. LESH: Basically, we agree with the intent of
23 the changes from the applicant or find them acceptable.

24 We would like to propose a minor simplification of
25 the language that they proposed. That being that, there

1 being a question of whether PSM is going to be required.

2 We would say in this proposed condition that the
3 project owners shall concurrently provide a business plan,
4 and if required, a process safety management plan to the
5 Kern County, et cetera, et cetera.

6 If required, I mean up here, insert, if required
7 by the appropriate administering agency.

8 HEARING OFFICER CELLI: Do we, okay, wait a
9 second. The project owner shall consult with the
10 appropriate agency, it's either Cal-OSHA or, what is KCEHSD?

11 MR. LESH: That's the Kern County Environmental
12 Health and Services --

13 HEARING OFFICER CELLI: Okay, so --

14 MR. LESH: -- Environmental Health and Services
15 Department.

16 HEARING OFFICER CELLI: -- is that the total
17 possibilities? It's one or the other?

18 MR. LESH: Yes.

19 HEARING OFFICER CELLI: In terms of the
20 appropriate agency?

21 MR. LESH: Yes.

22 HEARING OFFICER CELLI: So we are saying, the
23 appropriate agency. I could use that same parenthetical
24 listing of the two and drop that in there for --

25 Okay, go ahead.

1 MR. LESH: Yes.

2 HEARING OFFICER CELLI: So, and if required by
3 Cal- OSHA or KCEHSD, anything further?

4 MR. LESH: And then, again, I think, a couple of
5 lines, about four lines down, again where it says, and if
6 required, a process safety management plan.

7 HEARING OFFICER CELLI: Where is that?

8 MR. LESH: I'm looking at these comments, page two
9 where it says, PMPD pages 185 --

10 HEARING OFFICER CELLI: Well, I'm in the red
11 section there --

12 MR. LESH: Okay.

13 MR. BABULA: I think you start at the top with the
14 first strikeout on the where it, can if you see here, on the
15 top line. HAZ-2, the project owner shall concurrently, he's
16 up here first.

17 HEARING OFFICER CELLI: Oh, okay.

18 MR. LESH: The actual condition language.

19 HEARING OFFICER CELLI: The project shall
20 concurrently provide a business plan to Kern County
21 Environmental. And after receiving comments from the KCEHSD
22 and the CPM the project owner shall reflect all
23 recommendations in the final document.

24 That remains as proposed.

25 MR. BABULA: I think actually the part that they

1 crossed out, and a process safety, didn't you have language
2 that said, and if required?

3 HEARING OFFICER CELLI: Oh, I see what you're
4 saying.

5 MR. LESH: And then down here, we don't need this.

6 HEARING OFFICER CELLI: All right.

7 MR. BABULA: He's actually crossing out this whole
8 bottom part and just making the language up here. You want
9 to --

10 MR. LESH: Okay.

11 MR. BABULA: Since this is a --

12 MR. LESH: We're crossing out this part and
13 instead inserting, before this phrase whenever they say,
14 process safety manual and will say, if required by the
15 administering agency.

16 HEARING OFFICER CELLI: Okay.

17 MR. LESH: And then the same thing here, if
18 required.

19 HEARING OFFICER CELLI: And to this period there
20 and the rest of it --

21 MR. LESH: Yeah.

22 HEARING OFFICER CELLI: -- okay, thank you. I'm
23 just going to clarify the record if I can. On page two of
24 the applicant's proposed plan --

25 MR. BABULA: Can we show Tanya that? Can you show

1 her your marks.

2 HEARING OFFICER CELLI: Oh, perfect.

3 MS. GULESSERIAN: Thank you.

4 HEARING OFFICER CELLI: There's, the sentence
5 beginning PMPD, pp. 185 through 186, HAZMAT or HAZ-2, the
6 proposal is to keep the language that's, the existing
7 language, and not include the added language that staff put
8 in in its entirety.

9 In other words, to take everything from, in
10 addition the project owner shall to CPM for approval comes
11 out. And then, after the, provide a business plan comma, if
12 required, so about up to the first sentence, the project
13 owner shall concurrently provide a business plan comma, and
14 if required by --

15 MR. LESH: Yeah, by the two agencies.

16 HEARING OFFICER CELLI: -- by the two agencies a
17 PSMP to the Kern County Environmental Health Services
18 Department. The rest of the sentence remains the same
19 except that the stricken language and, process safety
20 management plan would --

21 MR. LESH: Would, to remain --

22 HEARING OFFICER CELLI: -- comes back.

23 MR. LESH: -- right before it we say, if required.

24 HEARING OFFICER CELLI: Again, and again, if
25 required. Is that clear to everyone applicant?

1 MS. LUCKHARDT: I think the --

2 THE REPORTER: Mic please.

3 MS. LUCKHARDT: Are you also planning to make a
4 similar change to the verification?

5 MR. LESH: Yes.

6 MS. LUCKHARDT: So that the verification, the
7 additional red line at the bottom of the verification would
8 go out then and then where the red line of, and process
9 safety management plan has been stricken out, it would
10 instead read, and if required, a process safety management
11 plan?

12 MR. LESH: I agree.

13 HEARING OFFICER CELLI: What about the remaining
14 language in the verification, the added language after, CPM
15 for approval.

16 MR. LESH: Yeah, we're okay with that.

17 HEARING OFFICER CELLI: That remains.

18 MR. LESH: Yeah.

19 HEARING OFFICER CELLI: Okay.

20 MR. BABULA: Would you like us to put that in
21 those, submit it in writing or do you have it enough that
22 you're okay?

23 HEARING OFFICER CELLI: I would like to submit a
24 clean copy, if you would, to Katherine Nicholls and myself.

25 MR. BABULA: Okay.

1 HEARING OFFICER CELLI: Today, so we can get that
2 put in. Thank you for that clarification. Thank you both
3 for being here today.

4 So we're back with, if that's everything on the
5 HAZ-2 which I believe it is. So we're with CURE's comments.

6 So we've tackled your concerns with regard to BIO-
7 22 and, I believe, in BIO-11. And anything further from
8 CURE with regard to comments on the PMPD?

9 MS. GULESSERIAN: Yes, thank you.

10 HEARING OFFICER CELLI: Please.

11 MS. GULESSERIAN: Thank you for the opportunity to
12 comment on the PMPD today. It's clear that the Committee
13 desires to move forward with approving the Beacon Solar
14 Power Plant.

15 We've reviewed the PMPD very thoroughly and spent
16 a lot of time preparing comments that are being filed today
17 with corrections throughout the document including things
18 that need to be corrected like CURE's final exhibit list is
19 missing, some exhibits.

20 But that's just one example. We respectfully
21 request that you look at the comments in detail and correct
22 errors so that we can have an accurate representation of
23 CURE's positions in this proceeding.

24 What I'd like to talk to you about here is one of
25 our main comments would be that the document requires some

1 corrections so it's at least legally consistent and doesn't
2 set a bad precedent for future siting cases.

3 The PMPD concludes that the wastewater treatment
4 facilities are not part of the project and need not be
5 considered in the environmental analysis of the project.

6 Instead, review of the upgrades will properly be
7 performed by Rosamond and California City as the appropriate
8 lead agencies under CEQA.

9 The PMPD's analysis is, at times, very careful to
10 focus on Beacon's proportional share of the impacts in order
11 to conclude that that portion results in a less than
12 significant impact.

13 However, the PMPD in other parts of the document
14 are, makes conclusion that both the Beacon Project and,
15 vaguely, the wastewater treatment facilities will not result
16 in, for example, growth inducing impacts.

17 The conclusion is over broad and is inconsistent
18 with what we understand to be the rationale of the decision
19 which is to focus on the Beacon Project's portion of those
20 proposed upgrades.

21 HEARING OFFICER CELLI: Can you just, do you
22 happen to have a citation so we can be following along
23 looking at it while you're talking?

24 MS. GULESSERIAN: There's many places in the
25 document. I think we can look at page 11. I'm going to

1 talk about a couple of examples.

2 PRESIDING MEMBER DOUGLAS: And Tanya at page 400
3 are you calling, is everything that you are saying in your
4 comments called out in your letters as well?

5 MS. GULESSERIAN: Yes, very specifically with
6 highlighting our suggestions on the exact pages where the
7 language should be stricken and then, perhaps, written in
8 Beacon's portion of the proposed facility.

9 So we don't have conclusions that the facilities
10 are being analyzed.

11 So the comment is that the Committee should either
12 analyze the wastewater treatment facilities as part of the
13 project which we believe is required by law or not draw
14 conclusions regarding those facilities expansions since to
15 do so would also violate CEQA's requirement.

16 We provide notice to the public that we're
17 reaching conclusions on those expansions now in this
18 decision.

19 As released it says, we are not reviewing the
20 wastewater treatment facilities as part of the project.

21 So instead of concluding that the wastewater
22 treatment facilities will or will not result in impacts the
23 Committee should only conclude whether the Beacon Project
24 will.

25 The wastewater treatment facilities expansions,

1 the definitions of those projects have not been finalized by
2 their respective agencies and they remain unidentified in
3 the PMPD.

4 For example, Rosamond's expansion throughout this
5 proceeding changed from one existing flow of 1.3 million
6 gallons per day to a 2.0 million gallon per day project and
7 then at the last evidentiary hearing the testimony of
8 Rosamond was that it's going to be another half a million
9 gallons per day greater, 2.5.

10 So the record is not clear on what the proposed
11 expansion is going to be. This is just one example of how
12 those projects, those ultimate expansions are not yet
13 defined.

14 Specifically because they weren't, well, because
15 Rosamond said that they are going to be expanding at to
16 greater than existing flows they, the representative
17 testified that those larger projects, and this is a quote,
18 would provide treatment for all of the existing flow and
19 room for future growth.

20 So this goes back to the point that if we're going
21 to result in a, if we're going to have conclusions that
22 there are less than significant growth inducing impacts it
23 means that we need to change those findings with regards to
24 the entire expansions to just Beacon's portions share.

25 Now an example is on page 400. And it says, the

1 PMPD, it says, the proposed upgrade of RCSD Wastewater
2 Treatment Facility is not an expansion of the wastewater
3 treatment facility's capacity to process incoming wastewater
4 and would not induce additional population growth.

5 We will propose language specifically in our
6 letter that says, the Beacon's portion of the upgrade to
7 RCSD provides Beacon with 1400 acre feet per water. That
8 would not induce additional population growth. Rather than
9 just saying that the proposed upgrade, since we don't know
10 what it is.

11 Based on this rationale, the PMPD -- we recommend
12 having the PMPD eliminate one of the bases for a finding
13 that there is no growth-inducing impacts. And that is that
14 the increased availability of tertiary treated water would
15 not provide a source of public water to serve additional
16 customers. The finding is inconsistent with nearly every
17 water planning document in the state of California and
18 documents in the record for Rosamond that show that
19 developing tertiary treated water is a tool in the water
20 conservation toolbox for reducing dependence on groundwater
21 and State Water Project water in order to enable future
22 growth.

23 If some language is left in regarding that issue
24 we propose fixing it to say that the Beacon project's
25 portion of the upgrades would not provide a source of public

1 water to serve additional customers.

2 HEARING OFFICER CELLI: And you have that in your
3 written comments?

4 MS. GULESSERIAN: Yes we do.

5 HEARING OFFICER CELLI: Okay, good.

6 MS. GULESSERIAN: With CURE's changes the PMPD
7 would properly limit its conclusions to be consistent with
8 its rationale.

9 If the changes aren't made we request that the
10 PMPD be revised and recirculated with an adequate
11 description of the proposed project. The Commission is well
12 aware of the public notice requirements and the requirement
13 to have an accurate, stable, finite project description
14 necessary to evaluate impacts and to inform the public about
15 what the Commission is deciding today.

16 My second point is what I alluded to earlier and
17 that is that we urge the Committee to reject the applicant's
18 and the staff's proposal to add even more findings regarding
19 potentially significant impacts from the wastewater
20 treatment facilities. They can't have it both ways, either
21 they are being analyzed or are not.

22 HEARING OFFICER CELLI: That was in --

23 MS. GULESSERIAN: In pages 16 to 17 of the
24 applicant's comments they propose a number of suggestions on
25 additional language that should be added to the PMPD. These

1 include findings that the wastewater -- Rosamond wastewater
2 treatment facility expansion is not expected to
3 significantly impact or lower traffic service levels.
4 California City's and Rosamond's wastewater treatment
5 expansions are not expected to cause significant adverse
6 impacts.

7 The Rosamond expansion will not cause any
8 significant impacts to biological resources. There is no
9 reason to believe any cultural resources will be discovered
10 during construction of the expanded Rosamond project.

11 Fugitive dust would be the main quality impact
12 from Rosamond's wastewater treatment facilities. These
13 issues were not analyzed in this proceeding. They go beyond
14 the scope of what we understand the PMPD to be limiting its
15 analysis to and we urge the Committee not to include that
16 proposed language in the decision.

17 MR. BABULA: Can I ask you a question on that?

18 HEARING OFFICER CELLI: Wait, wait, wait. Hang
19 on.

20 MR. BABULA: Okay.

21 HEARING OFFICER CELLI: I'm going to ask for --
22 we'll go around.

23 MR. BABULA: Okay.

24 HEARING OFFICER CELLI: I want to hear all of
25 CURE's points first and then we'll go around.

1 MS. GULESSERIAN: Thank you.

2 HEARING OFFICER CELLI: Just keep a note.

3 MS. GULESSERIAN: I'm almost done. I just wanted
4 to say that the Commission doesn't need to do it, doesn't
5 need to make those findings. The Commission is finding that
6 Rosamond and California City are the appropriate lead
7 agencies under CEQA for their projects and we don't need to
8 trample on the local agencies' decision and statements that
9 they are going to conduct environmental review for these
10 projects.

11 It is clear the Committee wants to approve the
12 projects. We ask that the Committee be faithful to CEQA and
13 the Warren-Alquist Act and to limit its finding to the
14 Beacon project's portion of the wastewater treatment
15 facility upgrades. Thank you for the opportunity to comment
16 today.

17 HEARING OFFICER CELLI: Thank you. I am going to
18 turn first to applicant. Because I know staff has issues
19 but you might get some more as we have discussions.

20 MS. LUCKHARDT: I'd just like a quick second to
21 confer because this is the first time -- sorry. This is the
22 first time we have heard, seen or in any way understood what
23 CURE's comments would be on the PMPD. So if I could take a
24 few moments to confer with the folks who are here today that
25 would give us an opportunity to get our comments a little

1 together, our responses. As opposed to it entirely on
2 the fly.

3 HEARING OFFICER CELLI: You want to go off the
4 record for a few minutes?

5 MS. LUCKHARDT: Yes.

6 HEARING OFFICER CELLI: Go ahead, let's do that.

7 (Off the record at 11:38 a.m.)

8 (On the record at 11:51 a.m.)

9 HEARING OFFICER CELLI: Just to recap, what we're
10 talking about is where we're at in the process where the
11 final comments were with CURE, CURE made their comments.
12 We're listening to applicant's responses. We're going to
13 hear staff's responses then we will have public comment and
14 we will adjourn.

15 MS. LUCKHARDT: Okay.

16 HEARING OFFICER CELLI: If I may just have a --
17 we're just going to -- just quickly.

18 (A short, off the record discussion was held.)

19 HEARING OFFICER CELLI: Let's just proceed
20 forward.

21 MS. LUCKHARDT: Okay. With the understanding that
22 we have not seen CURE's formal written comments and we're
23 just replying to what we have heard today in this Committee
24 Conference.

25 In general Beacon agrees with the position taken

1 by the PMPD that the wastewater treatment projects are going
2 forward regardless of Beacon. Nonetheless the analysis that
3 is included in the PMPD regarding the potential impacts of
4 those projects is based upon the reasonably available
5 information at this time and the information that has been
6 developed in the record, either in the hearing I believe in
7 March or the hearing in June in this proceeding. And our
8 comments that are included -- the additional information
9 that we include starting -- the description starting on page
10 16 but include on page 17 of our comments refers back to the
11 testimony that was provided in one of those two hearings,
12 predominately in the June hearing.

13 But nonetheless that information is in the record.
14 CEQA generally encourages the inclusion of additional
15 analysis, whether it's required or not, if that analysis can
16 help to enlighten the impacts and shows that the agency went
17 through a reasonable evaluation of those impacts and
18 evaluated the information that was reasonably available at
19 the time.

20 The information that was provided by both staff
21 and applicant, the Rosamond Community Services District and
22 the City of California City is additional information on the
23 potential impacts that could occur if either of those
24 projects, either of the wastewater treatment projects, go
25 forward. So it seems to us that it would be, that we are

1 simply taking additional information out of the proposed
2 decision, and potentially the final decision, that would
3 further inform the public about the potential impacts of the
4 expansion of either of those facilities.

5 Therefore, it is our position that that
6 information should remain in the decision, if nothing else
7 to provide additional information regarding potential
8 cumulative impacts of other projects that may occur in the
9 same time frame or potentially the same time frame as this
10 project.

11 HEARING OFFICER CELLI: So CURE's position was
12 that since there's a finding that those projects are outside
13 the whole of the project, shall we say, of Beacon, that this
14 additional analysis is unnecessary, if I'm properly
15 representing CURE's position. And your position,
16 Ms. Luckhardt, is that this is necessary language?

17 MS. LUCKHARDT: I believe that it supports the
18 findings that are included in the decision and that the
19 language improves the public's understanding of potential
20 impacts. And I also believe that it is supported by
21 evidence that was provided in the hearing and is not, it is
22 not something that is not supported by evidence.

23 HEARING OFFICER CELLI: The only thing that comes
24 to my mind as I read this is there's a sentence: "No
25 cultural resources were discovered during construction of

1 the existing facility and ponds and there is no reason to
2 believe that such resources will be discovered during
3 construction of the expansion.

4 Forgive me if I don't remember everything in
5 minute detail but I just don't remember that in the record.

6 And your citation as to Exhibit 519, which was what? Was
7 that the testimony of LaMoreaux from RCSD?

8 MS. LUCKHARDT: It probably is but I don't have
9 the exhibits memorized. I don't know if staff remembers
10 what 519 is.

11 HEARING OFFICER CELLI: And also, you know,
12 fugitive dust. I remember there was some discussion in his
13 comments, in Mr. LaMoreaux's discussion about fugitive dust.
14 And I just wonder.

15 MS. LUCKHARDT: Yeah, 519. Exhibit 519 is the
16 Rosamond Community Services District wastewater treatment
17 plant conversion to additional tertiary treatment capacity
18 that was sponsored by staff and received in the March 22nd.

19 MR. BABULA: Yeah. Mr. LaMoreaux, the information
20 that he testified to was they would be using some of their
21 wastewater for dust suppression.

22 HEARING OFFICER CELLI: Okay.

23 MR. BABULA: So that's --

24 HEARING OFFICER CELLI: I remember that part. But
25 in any event, I don't need to drag this out. I just wanted

1 to hear your position in terms of the necessity of the
2 additional language.

3 MS. LUCKHARDT: It is always our concern and we
4 are always nervous about what motives CURE may have in
5 trying to take information out of the record. So we would
6 ask that the Committee carefully consider the comments that
7 CURE may make in light of a potential appeal.

8 HEARING OFFICER CELLI: And we have, we have still
9 yet to see those comments and so we'll be mindful of that
10 I'm sure. Anything further from applicant?

11 MS. LUCKHARDT: Not at this time.

12 HEARING OFFICER CELLI: Staff, comments as to
13 CURE's comments?

14 MR. BABULA: Okay. Sorry for being late. I'm
15 working on the Imperial Valley brief, which is due shortly.

16 While I was writing it I was listening to the Calico
17 hearing so I'll probably have the facts mixed up.

18 I think the main thing -- I'm not exactly clear
19 why we can't have, CURE indicated you can't have it both
20 ways. If the purpose of CEQA is to have an informed
21 decision-making body and an informed public, including
22 information that we went ahead and collected because CURE
23 brought up some concern and I went forward and said, okay
24 staff, let's take a look and try to add to the record. Even
25 though our position was those upgrades are going to happen

1 anyway, that's been thoroughly vetted, we went ahead and
2 said, okay, we're going to -- let's make the effort, collect
3 some additional information.

4 In order to provide that information at CURE's
5 request staff took a look at the project. So now that
6 information is in the record. The decision-makers can make
7 a decision and they can say, here's what we used. The
8 public can look at that information and say, okay, the
9 decision was made and this is the record.

10 Now if we took it out the decision might still be
11 the same, but from the public's perspective, from the
12 perspective of the decision-makers, it's a larger body of
13 work to point to and say, the record is this, here's what we
14 based our decision on. So I don't see why we would need to
15 take it out, it just seems like it just bolsters. Where
16 there is more information it bolsters the decision.

17 ASSOCIATE MEMBER BYRON: Mr. Celli, if I may make
18 a brief comment.

19 HEARING OFFICER CELLI: Yes.

20 ASSOCIATE MEMBER BYRON: I found Ms. Gulesserian's
21 comments to be very constructive. I think it's incumbent
22 upon us to look at this additional language as to whether or
23 not indeed it is reflected in the record before we put it
24 in. Thank you.

25 MS. GULESSERIAN: And I'd like to just clarify.

1 HEARING OFFICER CELLI: Please.

2 MS. GULESSERIAN: That it is not just unnecessary
3 to include the language but it is not permitted under CEQA.

4 The PMPD notifies the public that those aspects of the
5 project are not being analyzed and will be analyzed by other
6 agencies. So to analyze and reach conclusions regarding
7 their impacts now would violate CEQA's public notice
8 requirements.

9 And then regarding the evidence in the record so
10 that we're clear. I put in our written comments the
11 substantial evidence that we have also put into the record
12 regarding those wastewater treatment facilities' potentially
13 significant impacts, including the Wildlife Agency's
14 identification of bio-resources on those sites. The air
15 permits from the air district. And it remains unresolved
16 after the last hearing of what the impacts are going to be
17 from those wastewater treatment facilities.

18 So those are three different reasons why I think
19 it's reasonable for the PMPD to reach the conclusion that it
20 reached by narrowly finding that the Beacon's portion of
21 those projects, those that have agreed to provide 1,400 acre
22 feet of water per year to this project would not result in
23 significant impacts. So we support the reasonable
24 conclusion of the PMPD.

25 HEARING OFFICER CELLI: Thank you for that

1 clarification.

2 MS. GULESSERIAN: Thank you.

3 ASSOCIATE MEMBER BYRON: And I just wanted to add
4 one more thing. We look forward to your written comments.
5 Hope we provide enough time for you this afternoon to
6 complete them.

7 MS. GULESSERIAN: Thank you.

8 MR. SOLORIO: If I can make a quick comment?

9 HEARING OFFICER CELLI: Please.

10 MR. SOLORIO: I am not entirely clear on CURE'S
11 position because I have heard in previous hearings, and I
12 think I'm hearing it now, that it appears that CURE thinks
13 the wastewater treatment facility upgrades should be part of
14 the project, or analyzed as part of the project.

15 HEARING OFFICER CELLI: It appears that CURE has
16 had a change of position in that initially that was CURE'S
17 position. But now CURE accepting that the PMPD is coming
18 out and it's not part of the project, has a different view
19 of what should be included in the PMPD.

20 MS. GULESSERIAN: We believe that the whole of the
21 project legally includes the wastewater treatment
22 facilities. But if the Commission wants to go the way of
23 finding that they are not part of the project then it's the
24 conclusions it has reached that it is only analyzing the
25 portion of the project's -- only analyzing significant

1 impacts from Beacon's portion of the project is properly
2 limited.

3 MR. SOLORIO: That's what was causing me heartache
4 on the one hand, that the issue has been raised. Standing
5 has been established by raising that issue in the hearings
6 that it is part of the project. At the same time I hear
7 CURE asking for language to be taken out of the PMPD which
8 would inform the public and the decision-makers under CEQA.

9 And even if -- let's assume there's two different
10 situations, either its part of the project or it's not.
11 Assuming that the upgrades are not part of the project I
12 still think you have very good reason to include the
13 information that's there in terms of cumulative impacts
14 analysis. You should absolutely consider other projects in
15 the area and their cumulative impacts.

16 Now we don't, we're not aware of the Committee's
17 rationale when they look at the facts and they look at the
18 record but such findings about these other known projects in
19 the area not having impacts could very well come into play
20 when the Committee reaches a decision about whether or not
21 there's cumulative impacts.

22 MS. GULESSERIAN: The PMPD can properly conclude
23 that the Beacon project does not result in cumulative
24 impacts. That's the correction we're making. Don't
25 conclude that the wastewater treatment facilities do not

1 result in project impacts, cumulative impacts for the Beacon
2 project.

3 HEARING OFFICER CELLI: That's reasonable and
4 fair. I think that the point that Ms. Gulesserian is making
5 is that we may exceed what's necessary by making a
6 pronouncement on the impacts of the Cal City or RCSD's
7 wastewater treatment facility. They are not part of Beacon.

8 And therefore since it's not necessary to do any analysis
9 on that which is not part of this project then, because
10 that's a specific finding of the Committee, then there is no
11 need or there may not be a need to delve further into the
12 implications of their upgrades.

13 MR. SOLORIO: Understood. And I just wanted to
14 point out that having that information in the record, if
15 there was an appeal and the court looked to what could the
16 decision-makers possibly have considered, for instance under
17 cumulative impacts, those findings would support the
18 findings that are currently existing under cumulative
19 impacts. So it doesn't hurt anything to inform the public
20 and to have a stronger record.

21 PRESIDING MEMBER DOUGLAS: I'd like to understand
22 better, Ms. Gulesserian, why you believe it would be somehow
23 a violation of CEQA to look at this information.

24 MS. GULESSERIAN: CEQA requires that the
25 Commission provide notice regarding the project that it is

1 analyzing and it's going to reach conclusions on to give,
2 not just the parties here but the public at large, notice
3 that particular activities may occur in their communities.

4 So it would be improper because the premise of the
5 project description as set forth in the first section of the
6 PMPD explains that those projects are not part of the Beacon
7 project. We believe findings cannot be made within that
8 document that the wastewater treatment facility expansions
9 will not result in growth-inducing impacts. That is a
10 conclusion that is being made when it is not part of the
11 project description.

12 HEARING OFFICER CELLI: But it was raised in the
13 record.

14 MS. GULESSERIAN: It's not part of the project
15 description for this project. It's not -- you're not
16 notifying -- well let's just say. Let's say that there's
17 somebody in Rosamond or California City that has the sewer
18 expansion occurring down their street. They have a right to
19 be notified of whether the Commission is making a finding
20 regarding significant impacts related to that project before
21 the Commission makes a decision.

22 So if it's going to be included as part of this
23 project, which if the Commission desires to go that way then
24 we agree that the wastewater treatment facilities are part
25 of the project under CEQA, then we need to re-notice that

1 they are part of the project and then explain to the parties
2 where the Commission is -- what the substantial evidence is
3 that is being relied upon to make the conclusions that there
4 are no significant or less than significant biological
5 resource impacts, less than significant traffic impacts as
6 suggested by the applicant.

7 And you had asked what --

8 HEARING OFFICER CELLI: What violations?

9 MS. GULESSERIAN: What violation? CEQA -- I can
10 get out my citations.

11 HEARING OFFICER CELLI: I'll give you --

12 MS. GULESSERIAN: 21092 requires an adequate
13 project description. CEQA also requires the Commission to
14 provide public notice that includes the address where public
15 comments will be accepted. A description of the proposed
16 project, an explanation of the environmental impacts, and
17 the comment period upon which comments will be received. So
18 it all relies on, you know, what is the project that you're
19 noticing to the public you are analyzing now.

20 PRESIDING MEMBER DOUGLAS: Right. But we're not
21 the permitting agency so you're just raising a question
22 about whether we can make a finding of fact based on
23 information that we developed and vetted in our record about
24 something that's not formally part of the project that we
25 are approving. That's the question you're raising.

1 MS. GULESSERIAN: Right. We don't think you
2 should make findings about projects that you're not
3 analyzing at this time.

4 PRESIDING MEMBER DOUGLAS: Right. Not you don't
5 think we should, you believe it's a violation of CEQA if we
6 were to make --

7 MS. GULESSERIAN: To make findings.

8 PRESIDING MEMBER DOUGLAS: -- findings of fact
9 that are not strictly within the project that we're
10 approving.

11 MS. GULESSERIAN: Yes, regarding those projects.

12 PRESIDING MEMBER DOUGLAS: Is there -- I'll just
13 ask applicant and staff if they have a view on that legal
14 argument?

15 MS. LUCKHARDT: I think that our difficulty with
16 the comments that are being made -- and I think we all
17 understand here that the Commission cannot approve the
18 wastewater treatment plant expansion. So we are not talking
19 about there being no additional CEQA review of those
20 projects. What we're talking about is an analysis that at
21 least under cumulatives and other areas, other aspects of
22 CEQA can take into account the impacts of other projects.

23 We agree with Ms. Gulesserian that this Commission
24 cannot approve the wastewater treatment plan expansions.
25 Nonetheless, this Commission did evaluate and did conduct a

1 reasonable -- the staff and the applicant provided an
2 evaluation of the information that was reasonably available
3 at the time.

4 And that information helps to further inform the
5 public. We're with total agreement with what staff had
6 said. It helps to further inform the public and provide
7 anyone who is reading the decision with an understanding of
8 the breadth of the analysis that was done in this
9 proceeding. It was not limit itself from looking at the
10 information that was available at the time.

11 This decision is not going to approve the
12 wastewater treatment plants. The person who lives down the
13 street where the expanded pipeline, wastewater pipeline, may
14 proceed -- who may have a concern about it going down their
15 street or in their neighborhood or otherwise would still
16 have an opportunity and wouldn't be precluded from
17 expressing that opportunity within the CEQA process that the
18 agencies who are permitting the wastewater treatment plant
19 expansions would go through.

20 There is nothing in this decision that would
21 require that the individual, project-specific analysis that
22 will be done by either of those agencies once they have the
23 final engineering for their projects, would not have an
24 opportunity to evaluate that information, comment on that
25 information under CEQA.

1 And I see nothing, nothing in the regulations that
2 Ms. Gulesserian has mentioned, that would prohibit this
3 Commission from including the discussion in the PMPD. And
4 that's essentially what I have yet to hear.

5 I hear Ms. Gulesserian talking about the project
6 description. We are not talking about changing the project
7 description, we're talking about an evaluation of other
8 projects that could occur near the same time, could be
9 considered a cumulative impact, although their distance is a
10 great deal from this project, and that this Commission has
11 had developed before it and evaluated information in regards
12 to those projects and what is reasonably available at this
13 time.

14 Again, this is not a final decision on the
15 wastewater treatment plant expansions nor is this Committee
16 or this Commission interested in approving those.

17 HEARING OFFICER CELLI: So wouldn't it be akin to
18 dicta? It seems to me that if -- let's just say we
19 accidentally slipped into a PMPD some sort of statement that
20 passed judgment on a wastewater treatment facility over
21 which we have no jurisdiction. Then wouldn't that just be
22 really something on the order of dicta and not a violation?

23 MS. GULESSERIAN: I believe that at some point in
24 the future when these communities rely on your dicta that we
25 have -- we have great respect for the California Energy

1 Commission and its findings. And when these local agencies
2 say, the California Energy Commission already found that the
3 expansion of our wastewater treatment plant will not result
4 in growth-inducing impacts, that is going to hold great
5 weight to those local communities.

6 PRESIDING MEMBER DOUGLAS: So your argument is
7 that our findings would have persuasive impact. Not
8 efficacy, not --

9 MS. GULESSERIAN: It would be --

10 PRESIDING MEMBER DOUGLAS: They would have a legal
11 impact.

12 MS. GULESSERIAN: Thank you. It has legal and
13 persuasive. And substantively would be --

14 PRESIDING MEMBER DOUGLAS: How does it have legal
15 impact? We are not approving these wastewater treatment
16 plants.

17 MS. GULESSERIAN: Because those communities --
18 let's just say, for example, that somebody believed there
19 were growth-inducing impacts from an expansion of Rosamond.
20 They might later decide to go with their maximum that they
21 said at the last hearing, a 2.5 million gallon per day
22 project. And there was a concern -- whatever. Even from a
23 different company, that there was going to be impacts to
24 their property in that area.

25 As a result of that the agency would say, you

1 should have commented on the decision that there were no
2 growth-inducing impacts, that the Energy Commission is
3 making today. And you're precluded from raising that
4 finding now. That's just one example. So the decision
5 would be whether someone needs to challenge those now.

6 Or I would say the better course is to not make
7 those decisions for the local agencies, keep the scope of
8 your decision to Beacon's share of the wastewater treatment
9 facilities so that we don't have to have a decision that's
10 over-broad now that, you know, would that could later raise
11 issues, like for example, regarding the statute of
12 limitations for challenging a decision that is related to
13 some future project.

14 PRESIDING MEMBER DOUGLAS: And what would you say
15 about the possibility that somebody living where they could
16 be impacted by the project might benefit from reading the
17 analysis in the PMPD because of the review that did occur
18 and the record that was developed on these questions?

19 MS. GULESSERIAN: Well we would -- I think they
20 will benefit in any case from whatever the Commission has in
21 its PMPD. If the Commission wants to make, the Committee
22 wants to make findings regarding various impacts we would
23 request that you look at our comment letter that shows you
24 the evidence that all came up at the last hearing that staff
25 did not look at regarding the biological resource, traffic,

1 air quality impacts from these facilities.

2 So if there's some additional information added to
3 the record we would ask that it be not added to the record
4 lightheartedly and that there be a thoughtful consideration
5 of whether staff evaluated the substantial evidence in the
6 record. Because we believe that did not occur on the last
7 day when all of that information was entered at the same
8 time.

9 Whatever the decision, the ultimate decision
10 includes we think that it is, it will be thoughtful and we
11 are hoping that it be accurate and narrowly tailored to the
12 power plant that's being approved here and the portion of
13 the wastewater treatment facilities that are going to be
14 providing the recycled water to the project. And we hope
15 that it gives the local community some comfort in knowing
16 that what the recycled water upgrades that will occur to
17 provide the Beacon project with 1400 acre-feet per year have
18 been, have been considered thoughtfully.

19 HEARING OFFICER CELLI: Okay, I think we've got an
20 adequate record on that. We've heard from applicant. Did
21 we hear from staff?

22 MR. SOLORIO: I'd like to make a comment or two if
23 you don't mind.

24 I appreciate the Committee focusing in on the
25 distinction here that the Energy Commission is not approving

1 the expansion of these facilities and that we have
2 explicitly identified those respective agencies who are
3 going to permit their own expansions. Rosamond has already
4 completed Phase I of its expansion. It's done, on-line.

5 This is the first instance I've ever heard of a
6 party or an entity having a problem with the depth of the
7 analysis as being too deep, too informative for the
8 decision-maker and/or the public. I find that interesting.

9 Aside from that I think the claims of somehow Cal
10 City or Rosamond being able to use our document don't
11 necessarily have a lot of merit. Because no matter what
12 they still need to comply with CEQA and go through a NegDec
13 or mitigated NegDec or EIR process. Sure, they can choose
14 to adopt the staff's FSA and/or the PMPD. But nevertheless
15 there will be proper notice to all the rest and some people
16 who would be affected. Thanks.

17 HEARING OFFICER CELLI: Thank you for those
18 comments. I believe we have heard from all of the people.

19 I want to thank you all for being here and for
20 your comments today. Applicant having the burden I just
21 wonder if there is anything, since you bat last, if there is
22 anything further from applicant that we need to hear today
23 at this conference? Before we get to public comment.

24 MS. LUCKHARDT: No, we have nothing further, thank
25 you.

1 HEARING OFFICER CELLI: Well thank you. Thank you
2 all for being here.

3 I want to acknowledge that there are no members of
4 the public here. We have an empty house pretty much except
5 for members of the applicant's side.

6 I have on the phone Sara Head. Did you wish to
7 make a comment?

8 MS. HEAD: No, I do not at this time.

9 HEARING OFFICER CELLI: Thank you. I have Marie
10 Ann Hogarth. Did you wish to make a comment?

11 MS. HOGARTH: I don't wish to make a comment at
12 this time.

13 HEARING OFFICER CELLI: Thank you. I have -- it
14 looks like Jennifer Jennings hung up.

15 Jack Stewart at RCSD, you're on the phone, did you
16 wish to make a comment, Mr. Stewart?

17 MR. STEWART: Yes, RCSD would like to make the
18 following comment. Number one, we were under orders from
19 Lahontan to expand our waste treatment plant from a
20 secondary treatment to a tertiary treatment, which we have
21 done, the first phase. We are required from Lahontan and
22 from County of Kern to adhere to CEQA with full disclosure,
23 full impact, full public notice, which we will do and are
24 currently doing with additional studies.

25 We agree that the depth of the analysis that the

1 Commission staff has done has been very thorough, very
2 complete and we will continue to utilize the information for
3 public disclosure in the future.

4 We do not agree with CURE that by the Commission
5 giving us incorporation of our expansion a blank check and a
6 blank approval that we'll do anything to appease or assist
7 or give approvals for our expansion. That's a local matter.

8 That's not CURE's matter, that's not the Energy
9 Commission's jurisdiction. That is Kern County and
10 Lahontan. We will adhere to CEQA under Kern County,
11 Lahontan and in our connections with the Air Force.

12 HEARING OFFICER CELLI: Thank you. Anything
13 further, Mr. Stewart?

14 MR. STEWART: No, thank you. We appreciate the
15 ability to comment.

16 HEARING OFFICER CELLI: Thank you and thank you
17 for your participation today. I know that you have been
18 sitting in and listening in on the entire conference so we
19 are glad to have you.

20 I have Frank with no last name. Did you wish to
21 make a comment, Frank?

22 FRANK: No thank you.

23 HEARING OFFICER CELLI: Thank you. And then I
24 have an unidentified user on the phone. Do you wish to make
25 a comment at this time, anyone who is left on the telephone?

1 Hearing none and there is no one here then I'm
2 going to hand the podium back to Chairman Douglas to
3 adjourn.

4 PRESIDING MEMBER DOUGLAS: I'd like to thank
5 everybody for being here today. For lasting through
6 virtually the entire lunch hour or I guess the first half of
7 the lunch hour as we wrap this up.

8 We look forward to getting final comments before
9 three today and look forward to moving forward with the
10 final decision.

11 Thank you very much, we're adjourned.

12 HEARING OFFICER CELLI: Thank you.

13 (Whereupon, at 12:24 p.m. the Committee
14 Conference was adjourned.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of August, 2010.

JOHN COTA