

STATUS CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of the)
Application For Certification:)
) Docket No. 11-AFC-2
Hidden Hills Solar Electric)
Generating System)
_____)

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

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INTERVENORS

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Center for Biological Diversity

ALSO PRESENT

Dana Crom, County Counsel
Inyo County

William Ross
Southern Inyo Fire Protection District

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PROCEEDINGS

PRESIDING MEMBER DOUGLAS: All right. Good morning. Welcome to the Status conference for the Hidden Hills Solar Energy Generating Systems.

I'm Commissioner Karen Douglas. I'm the lead Commissioner on this Committee. Commissioner Carla Peterman should be down shortly. To my left is our Hearing Officer, Ken Celli. To his left, Commissioner Peterman's advisor, Jim Bartridge. And to Jim Bartridge's left is Eileen Allen, the technical advisor on siting to the Commission.

On my immediate right is my advisor, Galen Lemei, and on his right is my advisor Jennifer Nelson. Let me ask the applicant if you could introduce yourselves.

MR. HARRIS: Yeah. Good morning. This is Jeff Harris here on behalf of the Applicant.

MR. JENSEN: Clay Jensen, BrightSource Energy.

MS. STRACHAN: Susan Strachan, permitting consultant for the applicant.

MR. HARRIS: And then in the audience we have John Carrier from CH2MHill; Tracie Wheaton, who's the environmental compliance manager at Ivanpah and working on this project; and Gary Kazio who's a project manager.

PRESIDING MEMBER DOUGLAS: Thank you.

And staff.

1 STAFF COUNSEL RATLIFF: Dick Ratliff, Staff
2 Counsel. With me is Mike Monasmith, the project manager.

3 PRESIDING MEMBER DOUGLAS: Thank you.

4 Let's see, do we have any -- were the intervenors
5 on the phone?

6 HEARING OFFICER CELLI: No one answered.

7 PRESIDING MEMBER DOUGLAS: Is Jon Zellhoefer --
8 Jon Zellhoefer, are you on the phone?

9 Lisa Belenky or Ileene Anderson from the Center
10 for Biological Diversity, or Jack Prichett from the Old
11 Spanish Trail Association?

12 Okay. Are there any representatives of public
13 agencies here at this point, federal, State, or county
14 agencies or cities?

15 MS. CROM: This is Dana Crom, Deputy County
16 Counsel for Inyo County, and with me is Joshua Hart,
17 Planning Director.

18 PRESIDING MEMBER DOUGLAS: Great. Thank you for
19 being here.

20 MR. ROSS: William Ross, I'm. The District
21 Counsel for the Southern Inyo Fire Protection District.

22 PRESIDING MEMBER DOUGLAS: Thank you.

23 Anyone else?

24 Great. With that, I'll turn this over to the
25 Hearing Officer.

1 HEARING OFFICER CELLI: Thank you, Commissioner
2 Douglas. For the record, and for the folks on the
3 telephone, Commissioner Peterman is on her way down.
4 She's not here yet, but Commissioner Douglas is the
5 Presiding Member, so we will begin.

6 Also, I wanted to acknowledge that the Public
7 Adviser was here, Jennifer Jennings, and she'll probably
8 be in and out all day.

9 With that, a little background. These status
10 conferences on the proposed Hidden Hills Solar Energy
11 Generating Systems were scheduled in a notice dated
12 January 11th, 2012. And we would also like to remind you
13 that the May 22nd status conference, which was listed in
14 that January 11th notice has been canceled. So the next
15 status conference after today's will be the June 4th
16 status conference. We've also scheduled a July 9th status
17 conference, and an August 16th status conference. These
18 were all added in a notice that was dated April 18th,
19 2012, copies of which are on the website, and we have
20 physical copies here in the foyer available to anybody
21 who's in the room today.

22 The purpose of today's conference is to hear from
23 the parties regarding the status of the Preliminary Staff
24 Analysis, to help resolve any procedural issues, and to
25 assess the scheduling of future events in this proceeding.

1 We will first provide the applicant an opportunity to
2 summarize their view of the case status and scheduling,
3 followed by staff. Then if we hear from Intervenor Jon
4 Zellhoefer, followed by the Center for Biological
5 Diversity, followed by the Old Spanish Trail Association,
6 if they choose to show up today. We will then provide an
7 opportunity for general public comment.

8 Regarding the schedule, the Committee
9 acknowledged the proposed schedule from staff at the last
10 status conference. Staff's schedule aims to publish a PSA
11 or a Preliminary Staff Assessment -- you'll be hearing us
12 use the PSA and FSA today. PSA stands for Preliminary
13 Staff Analysis, and FSA is Final Staff Analysis.

14 Staff's schedule aims to publish a Preliminary
15 Staff Analysis on June 1st, 2012, and the Final Staff
16 Analysis on August 1st, 2012. And although staff did
17 characterize their proposed FSA date as optimistic in our
18 last hearing, the Committee expects staff to hold true to
19 its schedule.

20 Regarding the status conference, and in previous
21 conferences, the parties indicated that the following
22 subject areas were, well, if not resolved, at least
23 complete. That would be project description, hazardous
24 materials, soils, transmission line safety and nuisance,
25 facility design, geological resources and paleontological

1 resources, efficiency, general conditions of compliance
2 and closure, air quality, public health, noise and
3 vibration, and reliability.

4 And it appears from staff's most recent status
5 report that the transmission systems engineering has moved
6 from the complete column to the incomplete column due to a
7 change in the location and configuration of the
8 switchyard, and undergrounding of transmission lines. And
9 we'll, I'm sure, hear more about that.

10 Thus, the subject areas that continue under the
11 heading of what we'll call an incomplete or unresolved for
12 the time being, according to the latest status reports,
13 are water resources, waste management, socioeconomic, and
14 worker safety and fire protection, traffic and
15 transportation. And, in that, we talked last time about
16 the impacts to loss of services to Tecopa Road. Also,
17 there's some new questions regarding setbacks.

18 In biology, staff expressed new concerns
19 regarding the undergrounding of transmission lines. Also,
20 in visual, there's glint and glare on the drivers on
21 Tecopa Road. Land use, there appears to be some question
22 having to do with setbacks, at least in the status
23 reports. And then in cultural, there had been a
24 discussion earlier in previous status conferences
25 regarding a petition to compel.

1 But according to the applicant the Data Requests
2 105 and 106 were resolved by agreement with staff and the
3 BLM regarding the project area of analysis. Data Request
4 number 125 required some feedback from BLM and staff
5 before the applicant could finalize their report on
6 historic roads and trails.

7 Data Request 127 has been resolved, where Phase 2
8 testing is limited to six agreed upon sites. And data
9 Request 128 was not mentioned by either party. And staff
10 didn't mention cultural resource at all in their status
11 report, so maybe today we'll find out that cultural has
12 been moved into the completed column. We'll hear from you
13 on that.

14 Similarly, alternatives was not mentioned in
15 staff's status report, and applicant mere listed
16 alternatives as a topic for discussion at the April 28
17 workshop. So perhaps that's another one we might be able
18 to move into the completed column.

19 So that is the recap of where we are, based upon
20 the last status conference, and the interim status reports
21 we received from applicant and staff, but, of course, it
22 doesn't include any of the changes that came out of the
23 August 28th and 29th workshops. So we're going to let the
24 parties bring us up to date on that.

25 We'll start first with the applicant. Please go

1 ahead, Mr. Harris

2 MR. HARRIS: Thank you, and good morning. It's a
3 pleasure to be here again. And once again, thank you for
4 having these status conferences. I'm going to say that
5 every time, because I still mean it. I think they're very
6 important. I think they've been very helpful in moving
7 staff and applicant forward. And I just want to comment
8 that our working relationship with staff continues to be
9 great.

10 We have -- I didn't put the word schedule in my
11 forehead today. I didn't think that was appropriate. But
12 we've actually asked them to step up, and they have
13 stepped up in every way, in terms of trying to move things
14 along. And I know Mr. Jensen has some further comments
15 along those lines, so I'm going to stop there.

16 But you see before you, I think, a pretty happy
17 applicant for this stage of the proceeding. I think
18 things are moving well. Hearing Officer Celli, your list
19 was a little more extensive than what we had planned to
20 cover today, but we'll come back and pick up anything.

21 I think part of that is the successful resolution
22 of issues at the workshops that we'll be talking about.
23 And also some of these areas, I don't know that they're
24 closed, but I think we've got at least the areas of open
25 issues narrowed down. And we're -- I think we're ready

1 for a PSA essentially. We are familiar with the
2 possibility that in some issues, we may get a PSA that
3 says, you know, here's significant or not, and here's
4 another issue which we can't decide yet. That's part of
5 the process. That's exactly where we ought to be at this
6 stage in the process.

7 And I think that's a good thing, because that
8 will allow the dialogue on those open issues to occur.
9 And we're also hopeful that staff, in identifying any open
10 issues, will say and here's the information we need to
11 close this out, because then that then gives us a very
12 clear path forward.

13 So we think things are going, as I said, very
14 well. There are a couple of outstanding things that we
15 still are going to be providing to staff, and I want to go
16 over those real quickly.

17 And then I want to turn it over to Mr. Jensen
18 who's got three issues that he wants to cover. And sort
19 of breaking with our tradition of going issue by issue by
20 issue, I think it would be good at this stage, since
21 there's so few issues, to allow Mr. Jensen summarize those
22 three open issues from his perspective. We've got one
23 visual aid that kind of relates to all three of them.

24 So a little change in how we typically go
25 forward, if the Committee will indulge, I think it would

1 be helpful to allow Clay to go through those things. In
2 terms of what is still outstanding to staff, there were
3 two sets of data requests that came in after the close of
4 discovery. That's 2E and 2F.

5 Again, both those came in after the 180 days. We
6 objected, to reserve our right to object, because I needed
7 to prove that I'm still a lawyer.

8 (Laughter.)

9 MR. HARRIS: But we're going to be answering
10 those. And, in fact, we have drafts of both those things
11 internally here. And part of what I expect is that those
12 will be filed this week. And I think they'll be providing
13 satisfactory answers. So not withstanding the objections
14 on those two sets of data requests, we're going to be
15 providing answers, and we'll have further discussions with
16 staff and the other parties if they want further
17 clarifications.

18 And then there's also some more information on
19 cultural resources related to the switchyard, which has
20 been an issue that I think we want to really take some
21 time to clarify for the Committee today the genesis of
22 that issue, why it was where it was, why it possibly got
23 moved, where it may be moving again. And it all really
24 relates to protection of biological resources, and
25 sensitivity to cultural resources. They aren't related at

1 all to any of the preferences of the applicants or any of
2 the other parties. And so I think it's important we take
3 some time to do that.

4 So with that kind of opening summary, I'm going
5 to turn it to Mr. Jensen and ask Mr. Carrier to put the
6 one item up on the screen, which I think will be helpful.
7 And, John, if you can stay over there, and maybe work the
8 mouse people the people on the WebEx when Clay is
9 referring to areas, that would be very helpful.

10 And again --

11 HEARING OFFICER CELLI: If I may, I just wanted
12 to let the record reflect that Commissioner Peterman is
13 here.

14 Good morning.

15 MR. HARRIS: Good morning.

16 HEARING OFFICER CELLI: And just wanted to check
17 in and see if any of the intervenors, CBD, Mr. Zellhoefer,
18 or Old Spanish Trail Association are on the phone, any
19 intervenors?

20 Still not. Go ahead. I'm sorry, Mr. Harris, go
21 ahead or Mr. Jensen.

22 MR. HARRIS: Yeah, I think at this point, I'll
23 turn it over to Mr. Jensen, who again has three things
24 we're going to kind of go through for you, and then make
25 ourselves available obviously to answer any questions.

1 HEARING OFFICER CELLI: Thank you.

2 MR. JENSEN: Good morning. Clay Jensen with
3 BrightSource Energy. Appreciate that, Jeff. I'm going to
4 take a few minutes to outline three key issues, as Jeff
5 pointed out, that I think we can walk through rather
6 quickly, that we consider to be three outstanding issues
7 that are going to resolve themselves in the near future,
8 but wanted to give you a little background history of why
9 we are where we are on those three issues.

10 But first wanted to echo Jeff's remarks regarding
11 staff's commitment to the project and the schedule. We
12 feel we've seen a lot of recent activity, and really feel
13 encouraged by the direction of the proceeding overall.

14 We feel confident that the Preliminary Staff
15 Assessment, when that is issued, will adequately capture
16 the issues. And we're encouraged by that. The workshops
17 last week on the 28th and 29th were very helpful in
18 identifying these remaining issues, as well as clearly
19 communicate what questions or concerns staff may have
20 regarding those disciplinaries that were discussed. So I
21 just wanted to thank the staff on that again.

22 So three key areas that I'm going to touch on.
23 The first is the switchyard relocation. Walk through the
24 history of that a little bit. The second issue is a
25 relatively recent issue that's come up and it's regarding

1 retention areas for storm drainage water, and the
2 potential for having very small duration water on the site
3 of a flood event. I want to walk you through that issue a
4 little bit. Then the last issue I'd like to address is
5 the aquifer performance test, the APT test for the
6 groundwater. At the last status conference, we had a
7 little bit of dialogue, but staff hadn't had a chance to
8 review the documents that we provided. And that was, in
9 our minds, a very engaged discussion on the 29th that we'd
10 like to provide a status of where we think we are on that
11 issue.

12 So with the switchyard relocation -- and John
13 Carrier is at the computer, so hopefully can help navigate
14 with the mouse cursor. So as a general framework and as
15 everybody involved with the process knows, the natural gas
16 and the electrical transmission corridor is coming from
17 the Nevada side of the border. And it approaches the site
18 from the east. The original alignment for that corridor
19 actually was to the south, and John's pointing that out,
20 where it came up the State border and entered the common
21 area to the -- centrally in the common area.

22 We had proposed that corridor through BLM, and
23 we're going through the BLM process. And it was
24 identified that there's mesquites, a mesquite batch on the
25 Nevada side of the border that was in conflict with our

1 proposed corridor. Keep in mind, that this isn't just the
2 electrical, it's also natural gas, so it is actually a
3 buried pipe. And there is a maintenance access road that
4 goes along with that. So there is some ground
5 disturbance -- some significant ground disturbance
6 associated with that.

7 So BLM, through the preparation of their Draft
8 EIS, identified what they consider to be a preferred
9 corridor, which is what's shown on the exhibit here, and
10 John is pointing that out.

11 With that effectively did was move the location,
12 instead of approaching the site along the border from
13 Tecopa Road, it's now actually entering directly across
14 from the common area. So initially, we had planned to
15 bring that in that alignment directly into the common
16 area, but there actually is a sensitive, or what could
17 have been a sensitive, cultural area in the north part of
18 the common area.

19 So we started to look at turning that system back
20 down to the southeast and bringing it into the common
21 area. But what we realized was that taking too steep
22 angles you can see that you'd be doing an over 90 degree
23 angle requires considerable amount of construction and
24 additional design and ground disturbance associated with
25 turning that, only to have it turn around and go back up

1 to the northwest, where it would be split between the two
2 solar plants, which is the ultimate location where those
3 systems need to go.

4 So that was the genesis of how we got to the
5 recommendation that we actually keep the switchyard and
6 the gas meter location in Nevada, rather than do the
7 turning structures to bring it back down into the common
8 area, because there was a potential conflict in the north
9 part of the common area.

10 We preferred or decided that the best route that
11 we consider to be having the least amount of impact would
12 be to keep that in Nevada and extend that corridor to the
13 north. Subsequent conversations between Energy Commission
14 staff and BLM, informal information exchanges, we've
15 learned that there's additional sensitivity on the Nevada
16 side of the border, or potential sensitive activity.
17 There's some additional potential socio impacts that were
18 pointed out by Inyo County by relocating the switchyard
19 into Nevada that were of concern.

20 Additionally, there's some additional cultural
21 sites that may need to be explored. And then there's also
22 a potential for State water analysis, or a jurisdictional
23 waterway issue that we would need to look into.

24 So, for a variety of reasons, we've been
25 exploring is it possible to go back to the previous or

1 something closer to the previous configuration. We've
2 done completed field analysis on a sensitive -- or what we
3 thought might have been a sensitive cultural site in the
4 north part of the common area. And our teams have
5 determined that that site does not pose a concern or an
6 issue.

7 The Energy Commission staff has not had a chance
8 to look at that report yet. We are going to be submitting
9 that report shortly for their review and concurrence. If
10 staff agrees with that approach that, in fact, there's no
11 concern with moving those facilities back into the north
12 part of the common area, that would be the preferred
13 route.

14 So we anticipate at this point bringing the
15 switchyard and the gas metering station back into the
16 common area, and it does not appear that there's going to
17 be a culturally related conflict in doing that. So we
18 think this issue goes away in the next several weeks as
19 the Commission staff has an opportunity to review that.

20 But I wanted to walk through the history of that
21 and point out that, as Jeff suggested, this wasn't a
22 preferred option for us. We're indifferent frankly of how
23 this moves forward, and that we are doing our best to try
24 to balance several resource areas, including cultural,
25 biology, transmission system engineering, socio. There's

1 a lot of issues that came up as a result of this. So we
2 hope to have that resolved shortly.

3 The next issue is the retention area that I
4 described before. In essence, in short, the entire site
5 drains. It's a relatively flat site, as most of you have
6 seen, that drains from the east to the west. As part of
7 that, we have designed the drainage so that instead of
8 increasing offsite flow as a result of the project, we
9 have to return the flows to its historic path and historic
10 velocities and volumes as it exits the site.

11 So for that reason, we -- the drainage and the
12 design includes a slight elevation to the roadway along
13 the western boundary of the project, that effectively acts
14 like a weir facility. It retains some water during
15 significant flood events that would be within the boundary
16 of the project.

17 Staff has asked some questions about that
18 retention area, the duration of how long that would retain
19 water after certain incremental floods events. We're
20 consolidating that formation for staff's review. And I
21 won't attempt to describe staff's potential concerns with
22 that, other than to say that there's some biology
23 concerns, potential for bird attractants or -- and other
24 sorts of concerns related to that that staff will probably
25 elaborate on.

1 This is another one of those similar to the
2 switchyard where we've got competing interests in that we
3 do the lower impact design. We don't like to do a lot of
4 drainage facilities, because that leads to more impact on
5 the ground. And for us, there is private property
6 ownership on the other side of our western boundary road,
7 and so we don't want to be in a position where we're
8 increasing flow volume and causing downstream adverse
9 impacts.

10 So you're really left with few options. You
11 either do a retention area and let the water drain out
12 over time, or you build expensive and more
13 ground-disturbing facilities to slow the water and release
14 it in its historical path.

15 We've opted for the less construction design to
16 keep -- to minimize the impacts. So what you end up with
17 is, during certain events, the two-year, five-year,
18 10-year, 25-year and 100-year flood event, there is an
19 area that would have water for a short duration of time
20 that would go through infiltration and evaporation.

21 We're going to be working with staff to
22 understand the staff's concerns with that, and work our
23 way through a mutually acceptable solution to make sure
24 that we've got an opportunity to address the concerns that
25 are raised by that. But I wanted to point out that that

1 is an issue area that we continue to look at.

2 The third and -- great point. Jeff's pointed out
3 to give a little more specifics that the way the weir
4 condition sits, if you have a significant flood event, a
5 two-year or more -- actually, a five-year or more flood
6 event, that you would end up with water standing, and it
7 would be shrinking over time, but the maximum time that
8 that would be out there would be 39 hours. So we're not
9 talking something that's going to be, you know, weeks at a
10 time. It's a relatively short duration of a maximum of 39
11 hours.

12 And then obviously the footprint of that area
13 shrinks incrementally with time as evaporation and
14 infiltration happens and that water disappears, but the
15 maximum -- so the last sliver of water adjacent to that
16 roadway would be gone after 39 hours.

17 So the last issue is the aquifer performance test
18 related to the groundwater. You've heard us talk a lot
19 about this test and some of the challenges in getting that
20 originally set up. And we had the act of vandalism that
21 cut that test a bit short. We were anxious to get staff's
22 feedback on that process, and we received that feedback
23 last week.

24 And staff's position is that there doesn't
25 appear -- that they're not going to require a new test be

1 conducted. That some of the approach and assumptions in
2 that test they continue to ask more questions about, and
3 we won't go into the details, but does it fit this type of
4 curve or that type of curve? Is it a leaky curve or a
5 non-leaky curve? And there's a lot of questions that
6 could have an impact on the resulting assumptions made or
7 the resulting analysis that we'll continue to work with
8 staff through that process.

9 We're keeping our options open as the applicant
10 and getting a better feel for the sensitivity of if we
11 were to conduct a test for a longer duration, what impact
12 might that have on the results? If we were to slightly
13 modify the procedures and methods, what might that have on
14 the -- what impact might that have on the results to get a
15 better feel?

16 We're not opposed to going back out and doing
17 testing again. But based on our recent understanding of
18 staff's concerns, a lot of those concerns may still exist,
19 and is it -- does it make sense to go back out and do
20 something that's going to have some of the same concerns
21 on the other end?

22 And to be clear, it's the applicant's position
23 and our experts are saying that if we follow staff's
24 suggestion on approach of the analysis of the results
25 we've got, that there's not going to be a material or very

1 significant change in the outcome of the results. So
2 we're compelled to modify our study to take an approach
3 that's recommended by staff, and see where the results
4 land after that result.

5 So I just wanted to let you know that the
6 communication channels have been opened. We understand
7 the concerns, and we'll be addressing those concerns and
8 determining whether it makes sense to go back out and
9 collect more data, or if, in fact, we can just change the
10 assumptions approach and come to a common understanding.

11 HEARING OFFICER CELLI: Thank you. Anything
12 further from applicant at this time?

13 MR. HARRIS: Those are the three issues we wanted
14 to cover, but if you have questions for us now or later,
15 we cover the other ones as well.

16 So thank you.

17 HEARING OFFICER CELLI: Well, let's hear from
18 staff next. Mr. Ratliff, please.

19 STAFF COUNSEL RATLIFF: I think I'll let Mr.
20 Monasmith summarize where we are.

21 SITING PROJECT MANAGER MONASMITH: Hi. Mike
22 Monasmith, Project Manager.

23 The schedule that we provided on Status Report
24 number 4, the high point being the May 24th PSA
25 publication date, we are on track to meet that date.

1 As the applicant mentioned, there are some
2 outstanding issues that will require some additional
3 analysis in terms of staff findings and proposed
4 mitigations. Those hopefully will be worked out at the
5 last of our issues resolution workshops coming up on May
6 9th, which will have a particular focus on Inyo County.

7 Issues that came up were also, at that time, were
8 the subject of our last two sets of data requests that Mr.
9 Harris mentioned, sets 2E and 2F. Those included
10 questions regarding the fiscal impact analysis, as we try
11 to make a good determination on the revenues that the
12 County of Inyo can anticipate, as well as getting a better
13 handle on the kind of costs that will be associated with
14 providing county services to this project once built --
15 during construction and operation.

16 We also have a few outstanding issues that need
17 resolution in terms of setbacks, which involve our traffic
18 and trans, land use, and visual resource analyses, but we
19 feel we can work that out as well. May 9th we'll be
20 talking about that.

21 So those, socio, traffic, trans, visual are some
22 of the primary areas that we still need some resolution.
23 In terms of the big 3 that we continually talk about, bio,
24 cultural, and water, I think we are working through that,
25 and, to a large extent, staff has the information they

1 need to move forward on their PSA. Bio, we worked through
2 a number of those issues at the workshop we had last week
3 on Thursday and Friday the 26th and 27th.

4 Cultural continues to move forward. And water,
5 as was just indicated, we had a very robust discussion on
6 Friday the 27th about water.

7 One issue that did creep up that Hearing Officer
8 Celli mentioned was transmission system engineering, and
9 issues in terms of the Phase 2 study with Cal ISO, and we
10 had discussed those issues with the applicant and all
11 parties on the 26th. And we are anticipating some
12 clarification on those issues. May not see it necessarily
13 in the PSA. We certainly will mention the issue, and
14 certainly will have that clarified by the time we publish
15 the FSA next August -- or this coming August.

16 So we're on track, and we look forward to the
17 last remaining workshop. A lot of review obviously needs
18 to occur in terms of management and legal review of
19 sections, as they're coming in this week pretty hot and
20 heavy and next week, but we anticipate meeting the May
21 24th deadline.

22 HEARING OFFICER CELLI: Excellent. That's good
23 news. I'm going to see -- I've got to unmute everybody,
24 first.

25 STAFF COUNSEL RATLIFF: Mr. Celli, if I could

1 just --

2 HEARING OFFICER CELLI: Please, go ahead.

3 STAFF COUNSEL RATLIFF: If I could just
4 supplement that a little bit. We had requested that we
5 have an early June date for publication. Our
6 understanding is that we got that. Our intent is to
7 publish the PSA before the end of the month, and we think
8 we can do that.

9 In the realm of not overpromising, I think you
10 understand, and certainly the applicant understands, that
11 some areas -- in some areas, the issues will still be
12 being developed and will not have final conclusions.
13 Those areas would probably be in biology, to some degree
14 at least, and water and the socioeconomics area regarding
15 the impacts to the County's finances, which we're
16 continuing to discuss and we'll have a workshop on in the
17 near future.

18 But those are areas that are going to be
19 developed further. And I think the -- to the extent we
20 have conclusions at all, those will be soft conclusions
21 that will have to be developed further for the Final Staff
22 Assessment.

23 HEARING OFFICER CELLI: So if I can just recap to
24 make sure I'm following. You're suggesting that bio,
25 water, and socio would probably need further refinement

1 between PSA and the FSA?

2 STAFF COUNSEL RATLIFF: I'm saying at a minimum
3 those issues will -- there may be other areas where there
4 are loose ends that will have to be further developed for
5 the Final Staff Assessment. This will not be the Final
6 Staff Assessment. This will not be the end of the story.

7 HEARING OFFICER CELLI: My question really, as I
8 was looking over all of these, would be land. Has there
9 been movement in that? And we'll get to County of Inyo in
10 a moment, I guess, but just would like to hear from
11 staff's perspective on land.

12 STAFF COUNSEL RATLIFF: Well, we think that is
13 better addressed by the applicant and the County. It's
14 our understanding that the applicant is preparing and will
15 file an application with the County to conform -- seeking
16 to conform -- to get the County the conformance land-use
17 provisions with the characteristics of the project. And I
18 assume that they will discuss that later.

19 HEARING OFFICER CELLI: Thank you very much for
20 that clarification. This sounds like everything is coming
21 along swimmingly and everybody is getting along and we're
22 making progress. I'm very eager to see the PSA out. So
23 congratulations, staff, on making things work, and moving
24 it along.

25 I'm going to next go to the intervenors in the

1 order that they intervened in, which is the way we usually
2 do it. I don't know if they're here today.

3 First, Jon Zellhoefer. Are you on the phone, Mr.
4 Zellhoefer?

5 I don't hear anything from Mr. Zellhoefer.

6 How about anyone from the Center for Biological
7 Diversity, CBD?

8 Ms. Anderson or Belenky, or anyone?

9 Next, the last intervenor we have is the Old
10 Spanish Trail Association. That was Jack Prichett. Jack,
11 are you out there, or anyone from Old Spanish Trail
12 Association?

13 Hearing none.

14 Let's hear, Ms. Crom, from the Inyo County.

15 MS. CROM: Good morning.

16 HEARING OFFICER CELLI: Good morning.

17 MS. CROM: This is Dana Crom Inyo County. Just a
18 couple of points. First of all, on the land-use issue, we
19 have been in negotiations with BrightSource over some
20 requested contract amendments that the applicant has made
21 on our standard form contract that we use in CEQA cases.
22 And as of today, we do not have a finalized contract and
23 nor do we have an application for a general plan
24 amendment. But I understand from our discussions last
25 week, that applicant expects to file that shortly. So

1 we're hopeful that applicant will actually do that.

2 With -- we are prepared for the socioeconomic
3 workshop on May 9th, and we do have a number of members of
4 our staff and department heads that will be present for
5 that issues resolution workshop. And we look forward to
6 having a meaningful discussion with applicant and the
7 staff over the economic impacts to the County.

8 And Mr. Jensen did mention briefly that the
9 County had raised a concern about the switchyard being
10 placed in Nevada or at least requested that there be an
11 assessment of the socioeconomic impacts since that would
12 impact the property taxes that would be paid by applicant
13 if that switchyard were actually in the State of Nevada,
14 but it sounds like we're not going to have to worry about
15 that.

16 And then as the Committee is likely aware, the
17 applicant filed its site security plan under a
18 confidential seal. After some discussions last week and
19 email exchanges, it appears clear that the County will be
20 able to review and comment on that plan, to the extent
21 that it may or may not impact the Sheriff's Department's
22 anticipated budget increases resulting from the project.
23 And there is a meeting scheduled tomorrow between the
24 Sheriff and a member of the applicant's staff and myself
25 to review that plan.

1 So I think we're moving ahead on our issues, and
2 we appreciate everyone's patience in working with
3 everyone.

4 HEARING OFFICER CELLI: Thank you, Ms. Crom.

5 Let me -- I'm just going to ask now we have Mr.
6 William Ross who is representing the Fire Department. Are
7 you going to be -- Mr. Ross, are you going to be
8 participating in any of these meetings that Ms. Crom just
9 talked about?

10 MR. ROSS: We are going to be there on the 9th.
11 It's the Fire Protection District. I'd like to emphasize
12 again it's a separately legal entity from the County. We
13 filed something yesterday. And there have been
14 discussions, but nothing that has risen to the level of
15 the formal communications that we think have taken place
16 between the County and the applicant.

17 We would note there was brief mention at the
18 beginning of this meeting of the worker safety and fire
19 protection data request and resolution of that issue. We
20 will be submitting a proposed budget. And it would be our
21 intention to utilize someone for peer review of the fire
22 needs assessment.

23 Specifically, we're going to be proposing Ron
24 Coleman, the State -- former State Fire Marshal, who has
25 extensive background and participation in energy projects

1 and their impacts on fire agencies. We would also
2 respectfully note that the determination for Southern Inyo
3 as being the most efficient governmental provider was made
4 by a State agency, that's LAFCO, the Local Agency
5 Formation Commission. And although I have not reviewed
6 all the communications, the District does take issue with
7 the apparently preliminary consideration of the applicant
8 that fire and emergency medical services can be provided
9 by the town of Pahrump to this site.

10 We would respectfully note that there are
11 emergency medical services standards that are particular
12 to California regarding both basic life services and
13 advanced life services, in an exclusive operating area,
14 among others, that we will comment upon on the 9th that
15 bear on this issue, as well as the issue of Cal/OSHA
16 standards. One that would come to mind, just listening to
17 today's discussion, would be that with respect to confined
18 spaces depending upon their location, and this facility.

19 We would note that Mr. Coleman has a great deal
20 of experience in this. We've reviewed past projects where
21 the same -- I believe he's going to be -- the applicant is
22 going to be using Wes Alston as someone who might prepare
23 a fire needs assessment. Mr. Coleman would be
24 particularly able to address those concerns from the Fire
25 District's point of view.

1 The Fire District itself noted in a transmission
2 to the Commission staff back in February that it does not
3 share in the one percent property tax levied under AB 8
4 with respect to this site. So there is going to need to
5 be some type of revenue allocation to the District under
6 State law, whether it's a special tax, an assessment.
7 We've -- the District has suggested a variety of matters
8 on that issue also.

9 But again, in summarizing, we will certainly
10 present the District's point of view on the 9th in
11 Sacramento.

12 HEARING OFFICER CELLI: Thank you very much, Mr.
13 Ross. And I just want to welcome you aboard. And I did
14 receive your filings yesterday. I want to encourage you
15 to stay in close contact with the applicant and staff,
16 because it's really only during communication that any
17 movement can happen in this thing. And we're pretty well
18 down the road in this process.

19 We're looking at a late summer or early fall
20 evidentiary hearing, it looks like, at the rate staff is
21 going, if they're going to get their FSA out on August
22 1st.

23 MR. ROSS: I understand that. And I would
24 respectfully note that the efforts will be made by the
25 District to improve communications with the applicant, but

1 we would also respectfully note that this is a unique
2 situation with respect to fire and emergency services.
3 And with Mr. Coleman's involvement, which we hope
4 applicant will agree to, we're going to focus considerable
5 experience and expertise on it to reach a resolution. We
6 heard the time frame involved and we're prepared to
7 address that.

8 HEARING OFFICER CELLI: Very good. Well, thank
9 you very much. Appreciate your participation.

10 Is there anyone on the phone from -- is Mr.
11 Zellhoefer -- have you called in, Mr. Zellhoefer?

12 Or anyone from the Center for Biological
13 Diversity on the phone?

14 Or anyone from the Old Spanish Trail Association
15 on the telephone?

16 Okay. Hearing none. I'm going to go back to
17 applicant and see if there was anything that you wanted to
18 respond to from any of the parties or speakers?

19 MR. HARRIS: No, I don't think so. Thank you.

20 HEARING OFFICER CELLI: Very good. Then with
21 that, we are on to public comment.

22 I'm going to -- first of all, I just want to say
23 that --

24 STAFF COUNSEL RATLIFF: Mr. Celli, before you go
25 there, could I raise one small -- hopefully small matter.

1 HEARING OFFICER CELLI: This is Dick Ratliff
2 speaking. Go ahead.

3 STAFF COUNSEL RATLIFF: Yes. The applicant
4 understandably, from a lawyer's point of view, when they
5 file their responses to our data requests, frequently, or
6 at least occasionally, file objections to answering those
7 requests, and then proceed to answer them and say that
8 they will attempt to answer them as such.

9 And I understand what that's about. At the same
10 time, it puts me, as staff's counsel, in a bit of an
11 uncertain place. We don't really want to file motions to
12 compel when we think we're getting answers or we
13 optimistically believe we're getting answers to the
14 questions that we've asked, and therefore, force the
15 Committee to listen to legal argument about the necessity
16 of the information that we have requested.

17 But if I do not file these, I risk, I fear, being
18 foreclosed from doing so if we don't get satisfactory
19 answers ultimately. And for that reason, I either need to
20 know from the Committee whether they want me to file such
21 motions to compel and justify the reasons that we've
22 requested certain information or I would like to have the
23 committee leave that issue open until we see what
24 information we get, and allow this -- any future motion to
25 compel to be filed in the future.

1 HEARING OFFICER CELLI: Okay. Let's just review
2 to be clear though. The 2E was filed, oh, within the week
3 of our last status conference, as I recall.

4 STAFF COUNSEL RATLIFF: Yes.

5 HEARING OFFICER CELLI: And then 2F came about
6 two weeks after that or so.

7 STAFF COUNSEL RATLIFF: Yes.

8 HEARING OFFICER CELLI: The applicant has 30 days
9 to respond. They did object, but they stated that they
10 would answer the question. And I understand your quagmire
11 you're basically trying to figure out, you know.

12 STAFF COUNSEL RATLIFF: We believe we have good
13 cause for the requests, good cause for going beyond the
14 180 days. We don't want to make a fight if a fight is
15 unnecessary, but we don't want to neglect to raise the
16 issue for fear of being foreclosed from raising it later.

17 HEARING OFFICER CELLI: Right.

18 STAFF COUNSEL RATLIFF: That's really what it's
19 about.

20 HEARING OFFICER CELLI: So if we let it -- let's
21 just say we played out the whole scenario according to the
22 regulations, then there would be, let's say, another week
23 or two after which staff didn't get the answer that they
24 wanted, let's say, to some request.

25 Then staff has, is it 20 days or 30 days, to file

1 a petition? Twenty is ringing around in my brain. I have
2 that here.

3 This is -- for the record, we're looking at 1716
4 of our regulations. "A party petitioning the Committee
5 for an order to provide information must do so within
6 either 30 days of being informed in writing by the
7 responding party that such information will not be
8 provided or within 30 days of the date the information was
9 provided or was due".

10 So I think -- I read that to mean that that's
11 really -- there's 30 days for applicant to fail to give
12 you what you need, and then you have 30 days to hopefully
13 work it out, or at least get certainty as to whether
14 they're going to respond or not. And then you have within
15 that time the ability to file your petition, unless other
16 people read that differently. I think that's how it
17 works.

18 STAFF COUNSEL RATLIFF: Right. The applicant
19 certainly has not informed us that they will not give us
20 the information.

21 MR. HARRIS: If I could -- could I add a couple
22 things here, Hearing Officer?

23 HEARING OFFICER CELLI: Yes.

24 MR. HARRIS: I guess I want to clearly
25 distinguish between the 2E and 2F versus everything else

1 before that, and 1A, B through -- I think there were 10
2 before that.

3 As to all the ones that were filed prior to the
4 180 day cutoff, you know, I'll stipulate on the record to
5 Mr. Ratliff that for any of those that we've objected and
6 for which he has not filed a motion to compel, as far as
7 I'm concerned the period for filing a motion is tolled
8 during the time that they're reviewing our responses.

9 So in other words, for those timely filed ones
10 again -- and I'll talk about the other ones later in a
11 mine. But those that were timely filed, we've objected
12 and provided answers, if staff is still not satisfied,
13 we'll meet with staff and try to satisfy them. If -- and
14 I don't anticipate this happens on any of them, but as to
15 those ones that were timely filed, if we cannot reach an
16 agreement, I will stipulate that Mr. Ratliff has 15 days
17 from the time we reach loggerheads to file a motion to
18 compel as to those timely filed ones. There's no issue
19 there, in my mind whatsoever. But I think it would be --
20 I think that's the way the process works.

21 As to the late filed ones though, I have a
22 different posture on those. They are late filed. And I
23 think on that basis alone can be dismissed. And my
24 understanding of the regulations is that you have to seek
25 from the Committee an order showing good cause before

1 those are promulgated. And there was no request for good
2 cause for the late filed ones that I saw on those
3 petitions. There was a mention of good cause in one line.

4 I think I'd have a different posture as to
5 whether those are even subject to a motion to compel.
6 Now, having played lawyer, let me say I also think we can
7 work out any issues we have with staff in terms of
8 providing information. I don't think we'll get to the
9 point where they feel like they need to have a motion to
10 compel on those late filed ones. I think we'll be able to
11 satisfy them or agree to disagree on them, one or the
12 other. But I do think those are very different in terms
13 of this question about a motion to compel.

14 HEARING OFFICER CELLI: Just to be clear, so
15 everything -- all of the data requests before the set 2E
16 and 2F you're willing to stipulate that after loggerheads
17 is established, staff has 15 days to bring a petition.

18 MR. HARRIS: Yeah, as long as he uses the word
19 "loggerhead" in his email, I'd flag it.

20 (Laughter.)

21 MR. HARRIS: I think that's correct. I think
22 that's the way the process works. And that way, staff is
23 not required to go through the exercise of filing a motion
24 if we can ultimately work things out. But if we do reach
25 loggerheads, yeah, I will stipulate then that that's

1 correct that we'll follow that process.

2 HEARING OFFICER CELLI: Okay. But you've
3 preserved your right to object to the untimeliness of 2E
4 and 2F as being outside the 180 days. You know, it's
5 funny, I would -- when I read the regs, I think that they
6 call for a party to come to the Committee with a request
7 or a showing of good cause, and then propound data
8 responses, but it never works that way. I've never seen
9 anyone do that. It always works that requests are sent
10 out, objections are filed, and then if a showing of good
11 cause is going to come, it comes in the process of the
12 petition. That's just -- that seems to be the way it
13 works out, but that isn't necessarily the way I read it.

14 STAFF COUNSEL RATLIFF: You're right. And we're
15 happy to do it either way. But the important thing to us
16 is not to be foreclosed from getting answers. Now, I
17 feel -- I guess I emphasize that this may not, in fact, be
18 a real conflict, because I think it's in the applicant's
19 best interest to give us the information we need for a
20 complete document, but -- and that's why I'm reluctant to
21 try to file a motion to compel, but if it's -- I don't
22 want this issue to languish until it's too late for us to
23 do anything to get the information we think we need.

24 HEARING OFFICER CELLI: Right. You don't want to
25 be sandbagged and I understand that. So you have a

1 workshop coming up, but it seems to me that the workshop
2 coming up is outside the boundaries at least of set 2E. I
3 don't know about 2F, but it's beyond the 30 days of the 2E
4 set. So if that's the case, because 2E was, I think, came
5 in on April 5th or something like that, and then 2F came
6 in --

7 SITING PROJECT MANAGER MONASMITH: The 17th.

8 HEARING OFFICER CELLI: -- like two weeks.

9 You're saying the 11th.

10 SITING PROJECT MANAGER MONASMITH: The 17th.

11 HEARING OFFICER CELLI: The 17th. So what I'm
12 trying to figure out here is by your next workshop,
13 clearly staff would be on notice that 30 days has come and
14 gone with regard to the set 2E, and then you'll know
15 whether you've gotten satisfaction or not on 2E.

16 And as to set 2F, it seems to me that this would
17 be your last workshop. Do I have that right, or is
18 it looking like --

19 PROJECT MANAGER MONASMITH: The last.

20 HEARING OFFICER CELLI: The record should reflect
21 Mr. Monasmith is saying yes. Your mic isn't on. He's
22 nodding in the affirmative.

23 STAFF COUNSEL RATLIFF: Right. I mean the other
24 way it could, of course, be handled is if we don't get the
25 information that we need, then we come back to the

1 Committee with a request that we be allowed to re-ask the
2 question.

3 HEARING OFFICER CELLI: Right.

4 STAFF COUNSEL RATLIFF: And that would be another
5 way of bringing it to the Committee's attention that we
6 have data needs that we feel have not been fulfilled.

7 HEARING OFFICER CELLI: I think though really, at
8 that point, if you're not getting what you need at that
9 point, then it's a full blown petition to compel with
10 justification and good cause.

11 STAFF COUNSEL RATLIFF: It's just like it. I
12 mean, it's the same issue, I think.

13 HEARING OFFICER CELLI: Yes. So I'm not hearing
14 a need for anything extraordinary right now, because it
15 sounds to me like you're well within the timeframes within
16 the regs to preserve both of your rights at this time.

17 STAFF COUNSEL RATLIFF: Well, we did file two
18 sets of data requests very shortly after the 180 days ran.
19 And those were objected to, and yet, I think that the
20 applicant is responding to them. Those are the ones that
21 I'm concerned about. Otherwise, yes, I can use the word
22 loggerheads, and we'll be okay, but for these last two I
23 think the suggestion is that if they don't respond to
24 those, we're out of luck, unless we filed a motion to
25 compel that's timely.

1 HEARING OFFICER CELLI: That's true.

2 STAFF COUNSEL RATLIFF: That's why I've raised
3 the issue.

4 HEARING OFFICER CELLI: I see what you're saying.
5 So basically, then we're going to have to really strictly
6 adhere then to the timeframes in order to preserve staff's
7 rights?

8 STAFF COUNSEL RATLIFF: Yeah.

9 HEARING OFFICER CELLI: And that would mean that
10 assuming it's a 30-day month from April to May, then May
11 5th would be the day at which time staff has certainty
12 that those data responses that were insufficient, unless
13 you get further probably written assurances from
14 applicant, that would be the time to act onset 2E. And
15 the same with the May 17th date for set 2F. And that's --
16 I'm thinking that's the route you would have to take.

17 And, Mr. Harris, do you have anything to shed
18 some light on that?

19 MR. HARRIS: Yeah. And just to prove Dick and I
20 are both lawyers, maybe we're bogged down in semantics
21 here. I think this is the way I understand it, the
22 regulations do require that you ask for good cause first.
23 So all requests within the 180 days, unless the Committee
24 allows requests for information at a later time for good
25 cause shown.

1 So my view of the way this thing would play out
2 is that our objections stand. If there are one or two or
3 three of these that the staff feels like they would like
4 more information on, that at that point they could file a
5 petition to make a showing of good cause and attach the
6 one, two, or three that they have requests on. We could
7 deal with it that way.

8 But again, at the end of the day, I don't think
9 this is going to be a problem from a practical
10 perspective. It may be unsatisfying to staff to write in
11 there that they wanted this additional information, and
12 based upon that, they find the impact to be significant or
13 that they need more information, but I don't really see us
14 coming to this -- the day of the -- word of the
15 loggerhead, but that's the way I would see it resolving.

16 If staff wants these at the end of the day after
17 they receive our information, they would file a motion to
18 have those with good cause shown and attach the actual
19 requests.

20 HEARING OFFICER CELLI: If I can just have a
21 moment, one moment.

22 We are still on the record.

23 So getting back to where we were after the
24 comments from Mr. Harris. It seems to me that staff is
25 going to have to watch the clock and preserve and file a

1 petition on the date, if the date should come. You know,
2 I think in good faith, it sounds to me like the parties
3 are working very well together. You're in good
4 communication. I think that in fairness to staff --
5 because, Mr. Harris, you've got to look at Section (a) of
6 1716, which pretty much gives a generalized right to staff
7 to receive information they need in order to do their job.
8 That's the overarching umbrella.

9 And notwithstanding that, I understand that there
10 are certain limitations. We'd have to see what sort of
11 prejudices arise and what the facts bear out. But I think
12 that the best thing we can do, at this time, is just
13 adhere to the regs.

14 I think staff you're in a good position in terms
15 of time. You'll know better whether -- you know, and
16 you'll file whatever you need to in order to preserve the
17 date, and you'd probably make -- be allowed to make a
18 further showing at a hearing on the petition.

19 So I'm not saying come in with something really
20 skeletal, but at least I think you'll know what your good
21 cause is and whether there's any prejudice suffered by the
22 applicant.

23 STAFF COUNSEL RATLIFF: So I should file that
24 within 30 days?

25 HEARING OFFICER CELLI: I think so. I think we

1 need to do that, because I have no idea what the situation
2 is with regard to that, but they have preserved the
3 objection.

4 STAFF COUNSEL RATLIFF: Okay.

5 HEARING OFFICER CELLI: So that would be the way
6 I think it needs to be handled. So there's my suggestion
7 on that.

8 Anything further with regard to discovery from
9 applicant?

10 MR. HARRIS: I think -- I appreciate the
11 clarification on that. I also want to commend the
12 Committee for their order in another case, the Rio Mesa
13 case. And it's not directly related to this case, but
14 there's a very good discussion of the law of discovery in
15 that order. And I think you all did a really great job on
16 that. So I'd commend that to the other parties' reading
17 too. I think it's a really good summary, and one that I
18 made my associates read, by the way. So thank you.

19 I think again, at the end of the day, we'll be
20 able to work these things out with Mr. Ratliff and Mr.
21 Monasmith, I think. We do have a very good working
22 relationship.

23 HEARING OFFICER CELLI: That's Excellent. I
24 think that's great. I hope you continue with that.

25 I'm sorry we haven't heard from any of our

1 intervenors. Is there anyone out there. Mr. Zellhoefer,
2 are you on the phone?

3 Or anyone from the Center for Biological
4 Diversity?

5 Or anyone from the Old Spanish Trail Association?

6 Because with that, then I think we're ready to go
7 to public comment. Ms. Jennings, do we have any public
8 commenters here today in the room?

9 PUBLIC ADVISER JENNINGS: No.

10 HEARING OFFICER CELLI: She's indicating no.

11 So we will go to the telephones. I have a number
12 of people who have identified themselves and some who have
13 called in on the phone and haven't.

14 I have Ann Chu. Is she associated with any of
15 the parties? She's with staff.

16 Okay. Bradley Brownlow?

17 He's with applicant.

18 MS. BROWN: Hi. No comments on end. Thank you.

19 HEARING OFFICER CELLI: Thank you.

20 Christina Snow is with staff. Christopher Moore
21 is with applicant. Dana Crom, was there anything further
22 from you, Dana?

23 MS. CROM: No, we're fine. Thank you.

24 HEARING OFFICER CELLI: Thank you. Jeanine Hinde
25 is with staff. Karen Parker is with Applicant. Kerry

1 Willis is with staff. Mavis Scanlon. I think she's with
2 the press. Ms. Scanlon, any comment?

3 MS. SCANLON: Yes, I have no comment, Ken.

4 Thank you.

5 HEARING OFFICER CELLI: Thank you. I have Mike
6 Conway. I'm going to unmute him. Mike Conway.

7 SITING PROJECT MANAGER MONASMITH: He's with us,
8 with staff.

9 HEARING OFFICER CELLI: Oh, is with staff. Thank
10 you.

11 Mr. Taylor, is that with staff.

12 SITING PROJECT MANAGER MONASMITH: Marylou
13 Taylor. She's with us.

14 HEARING OFFICER CELLI: Okay. And then we --
15 anything further from Mr. William Ross.

16 MR. ROSS: No, nothing.

17 HEARING OFFICER CELLI: Thank you.

18 Then I have two more telephone callers who are on
19 the line. I wonder if you wanted to make a comment. If
20 you did, please speak up right now?

21 MR. LEVY: Yes. This is Larry Levy.

22 HEARING OFFICER CELLI: Hello, Larry. Go ahead,
23 you have the floor.

24 MR. LEVY: I'm currently Chief with Southern Inyo
25 Fire Protection District. I came on about 10 minutes

1 after your meeting commenced. I just want to say that
2 myself and the Board concur with everything that Mr. Ross
3 presented.

4 HEARING OFFICER CELLI: Thank you very much.
5 Thanks for participating.

6 And I have one last call-in user who we haven't
7 accounted for yet. Is there anyone else on the phone who
8 wishes to make a comment at this time?

9 Okay. Hearing none. Then I want to thank the
10 parties.

11 Mr. Ratliff, go ahead.

12 STAFF COUNSEL RATLIFF: Mr. Celli, one final
13 thing that Mr. Harris just reminded me of is there was the
14 issue that arose, I guess, during the workshops that we
15 have received from the applicant a confidential filing for
16 the security plan for the site. And the County, of
17 course, needs to see that in order to determine if this
18 affects, I think, their calculus of what law enforcement
19 requirements they have in that part of the county. So
20 they need to review the plan to determine what security it
21 provides the site and what -- how that affects their own
22 view of the costs imposed on the County.

23 Our regulations allow us to share with other
24 agencies confidential plans, so long as those agencies
25 preserve the confidentiality of the document. Ms. Crom

1 has indicated that the County is more than willing to do
2 that. With her stipulation, if she's still on the line, I
3 would like to go ahead and plan for staff to transmit the
4 confidential document to the County, with the
5 understanding that it will only be viewed by a limited
6 number of people who are on a need-to-know basis for their
7 assessment of the plan.

8 HEARING OFFICER CELLI: Ms. Crom?

9 MS. CROM: This is Dana Crom. And, yes, we would
10 agree to that. And if Mr. Ratliff needs us to sign
11 anything, we will. I would also presume that Southern
12 Inyo Fire Protection District may need to review that
13 plan, and I'll leave that to Mr. Ross to address it, but
14 thank you.

15 MR. ROSS: This is Mr. Ross. We would have the
16 same concerns. I would just indicate that the individuals
17 that I've referenced have had experience with the
18 exceptions for proprietary information like this with
19 respect to maybe more volatile energy facilities, such as
20 refineries, so we're familiar with the restrictions.

21 HEARING OFFICER CELLI: So does that mean, Mr.
22 Ross, that your client is willing to sign a non-disclosure
23 agreement say?

24 MR. ROSS: Yes, it does.

25 HEARING OFFICER CELLI: Okay. Very good. Is

1 that satisfactory to you, Mr. Ratliff?

2 STAFF COUNSEL RATLIFF: Yes. And with regard to
3 that, should we provide the plan then to Mr. Ross as well
4 or to somebody else?

5 MR. ROSS: I would suggest you provide it to me
6 and to Chief Levy.

7 HEARING OFFICER CELLI: Okay. And that was Mr.
8 Ross for the record.

9 Anything further from staff?

10 STAFF COUNSEL RATLIFF: No.

11 HEARING OFFICER CELLI: Well, I'm very -- oh, Ms.
12 Jennings, please.

13 PUBLIC ADVISER JENNINGS: Excuse me. Jennifer
14 Jennings, Public Adviser. I did just hear from Ms.
15 Belenky. She's on a bus. Apparently, Ms. Anderson was in
16 court, so she is -- I just texted her the call-in number.
17 I think she would like to make a comment.

18 HEARING OFFICER CELLI: Oh, excellent.

19 PUBLIC ADVISER JENNINGS: And then while we're
20 waiting for her to get on line, I'm not sure where
21 Prichett is from the Old Spanish Trail Association, but I
22 hope all the parties received his report.

23 He will also be asking for confidential
24 designation for the way points, the precise GPS points,
25 that they have outlined for the caravan trace. And I

1 think the Committee can expect an application to review
2 the applicant's confidential data. And I hope the
3 applicant would consider that they have -- they are
4 professionals in the field and would also be willing to
5 sign a non-disclosure agreement, so they can review the
6 applicant's submissions on the cultural matters. Mr.
7 Prichett, I know, is going to be out of the country for a
8 couple weeks, so Mr. Smith will be participating for him
9 during that time.

10 HEARING OFFICER CELLI: Mr. Smith?

11 PUBLIC ADVISER JENNINGS: Yes. Scott Smith.

12 HEARING OFFICER CELLI: I didn't get the first
13 name?

14 PUBLIC ADVISER JENNINGS: Scott Smith.

15 HEARING OFFICER CELLI: Scott Smith?

16 PUBLIC ADVISER JENNINGS: Um-hmm.

17 HEARING OFFICER CELLI: Thank you for that
18 update, Ms. Jennings.

19 PUBLIC ADVISER JENNINGS: So I hope Ms. Belenky
20 is on line?

21 HEARING OFFICER CELLI: Is Ms. Belenky on the
22 phone?

23 MR. HARRIS: Well, before we go, can I ask a
24 question. First off, is there going to be -- I guess two
25 questions. Will Old Spanish Trail be refiling their

1 document with the confidential information redacted?

2 PUBLIC ADVISER JENNINGS: The information that
3 they submitted already they are comfortable with being
4 public. It's the way points, the precise GPS points that
5 they'll be submitting under confidential cover.

6 MR. HARRIS: Okay. Then maybe in a separate
7 discussion we might suggest there are a couple of issues
8 in that report that our experts are uncomfortable with,
9 and maybe it's just a professional disagreement, but let's
10 talk off-line about whether some of the other sections of
11 that report ought to be redacted.

12 And I don't have the specifics on that, nor
13 should I put them on the record here. We'd like to have
14 that conversation with you and the Old Spanish Trails
15 Association.

16 PUBLIC ADVISER JENNINGS: Okay.

17 HEARING OFFICER CELLI: That would be Ms.
18 Belenky.

19 MS. BELENKY: Yes. Hi. Sorry. I'm on a bus
20 right now going between meetings. Sorry. Somehow we
21 didn't have this on the calendar this morning.

22 HEARING OFFICER CELLI: Well, I'm glad you were
23 able to call in. It sounds look you were on a plane
24 heading down --

25 (Laughter.)

1 HEARING OFFICER CELLI: -- and at a high rate of
2 speed.

3 (Laughter.)

4 MS. BELENKY: No, just a bus, but I can put this
5 on mute.

6 MR. HARRIS: Before she goes, there was a second
7 question for --

8 HEARING OFFICER CELLI: Yes. I just would want
9 to say though I did read the submission from the OSTA and
10 I don't recall there being any specific GPS points
11 identified in that report.

12 MR. HARRIS: That's correct. There was another
13 issue. And again, I don't want to be specific about what
14 our experts were concerned about being disclosed.

15 HEARING OFFICER CELLI: I'm going to mute you for
16 a moment, Ms. Belenky, just to turn down the background
17 noise and then I'll unmute you in a moment.

18 Okay. Go ahead, Mr. Harris.

19 MR. HARRIS: And then the second question was
20 about, I think, a request to see the applicant's
21 confidential filings on cultural resources and whether
22 those can be made available to the Old Spanish Trail.
23 I've seen the agency to agency disclosure provisions in
24 regulations, but I'm not aware of a process by which an
25 applicant would make those confidential materials

1 available to a non-agency, and maybe there is a process --

2 HEARING OFFICER CELLI: It has been done.

3 There's a non-disclosure --

4 PUBLIC ADVISER JENNINGS: There is a provision in
5 our regulations that permits someone from the outside to
6 petition to see confidential information that was
7 submitted.

8 MR. HARRIS: I'm sorry. So this is the mechanics
9 then, they petition the Commission, then the Commission
10 provides the information? We're very sensitive to not
11 providing that information to third parties that we can't
12 control.

13 HEARING OFFICER CELLI: I appreciate that. And,
14 in fact, my recollection serves that you participated in
15 the last time we went through that was in the -- I think,
16 it was the Ormat case, where the applicant did provide --
17 well, what would be the applicant in that case -- it was a
18 respondent, but they provided the information with a
19 non-disclosure agreement.

20 The problem is that, okay, great, everybody has
21 got the information. What do we do with the record? We
22 ended up having to proceed with a confidential record that
23 wasn't of much use until all the parties stipulated that
24 it could be made public, so that we could actually include
25 it in the decision.

1 So there are problems with that. And anything we
2 can do to avoid confidential information coming into the
3 record during the evidentiary hearing, we should pursue,
4 because otherwise it really makes a mess of the record.
5 It's hard to know how to deal with it.

6 MR. HARRIS: Agreed. And I didn't participate in
7 that proceeding, but I know that was a slightly different
8 set of facts too, because I think that was a proprietary
9 information. In this case, we're dealing with something
10 that by statute has to remain confidential. So I don't
11 think the parties could stipulate to make it public in
12 this case.

13 So there's some complexities about that, but --
14 and we're willing to follow whatever the Commission's
15 establish precedent on that. I'm just -- I'm concerned
16 about -- as you can see, in both cases, I prefer that the
17 Commission be the party providing the information to the
18 third party. And if we can work that through, we'll be
19 happy with that result.

20 HEARING OFFICER CELLI: I'm hoping that the
21 parties can work that out. Maybe we can do something
22 without rather than say providing copies, but allow for an
23 inspection or something like that.

24 STAFF COUNSEL RATLIFF: Does anyone know if the
25 document submitted by the applicant has actually been

1 granted confidentiality. I didn't think it had been.

2 MR. HARRIS: I believe it's still pending.

3 HEARING OFFICER CELLI: Not that I'm aware of.

4 PUBLIC ADVISER JENNINGS: I thought it had been,
5 but --

6 STAFF COUNSEL RATLIFF: The last I heard it was
7 an open issue.

8 PUBLIC ADVISER JENNINGS: All right.

9 MR. HARRIS: We're not anticipating any problems,
10 but that process of getting something -- an approval for
11 the application can take days or weeks or months, and I'm
12 not sure exactly why that it is, but I think it's still
13 pending is my understanding.

14 HEARING OFFICER CELLI: Well, it's unfortunately
15 we don't have Mr. Prichett on the phone now, but it would
16 be -- I think it's -- it's just simply a matter of
17 narrowing down exactly what the information is that he's
18 going to need to see and how important is that. That's
19 something I think you all can work out.

20 PUBLIC ADVISER JENNINGS: Yes. And I think it
21 will be hopefully relatively easy to work out. It may be
22 unique, but I mean they're professionals in their field
23 and have no interest in having any confidential
24 information being disclosed that endanger the resources.

25 HEARING OFFICER CELLI: Well, thank you for that

1 update, Ms. Jennings.

2 We've now -- we're going to go -- I'm going to
3 unmute Ms. Belenky. I have you unmuted now.

4 Can you hear me now, Ms. Belenky?

5 MS. BELENKY: Yes. I had to unmute mine also.

6 Yes, I see.

7 HEARING OFFICER CELLI: What -- just to give you
8 a quick little recap. We've had our status conference and
9 it appears that the parties are reaching agreement on a
10 good many subjects. We are now in the public comment
11 period, so if you wish to make a public comment, go ahead.

12 MS. BELENKY: I don't have a public comment. I
13 mean, we are a party. Sorry we missed this. I think
14 there was just a scheduling mix up with the timing. It
15 was confusing. These hearings were all scheduled -- these
16 status conferences were all scheduled when I had a
17 previously scheduled meeting. And I believe that Ms.
18 Anderson had something else come up today.

19 So I apologize for not being at the status
20 conference, but -- and I, you know, don't feel we need to
21 comment on the issues that you are speculating are going
22 to be resolved. I'm not certain that the Center would
23 agree that they're being resolved, but perhaps they're
24 being resolved between some of the parties.

25 HEARING OFFICER CELLI: So you're aware, Ms.

1 Belenky, that there's a workshop coming up on May 9th?

2 MS. BELENKY: Yes.

3 HEARING OFFICER CELLI: Okay, and you'll be at
4 that?

5 MS. BELENKY: I believe Ms. Anderson will be at
6 that.

7 HEARING OFFICER CELLI: Okay. Well, that's good.
8 So we can hopefully streamline whatever concerns CBD has
9 at the next workshop. So anything further from CBD?

10 MS. BELENKY: And I'm saying I believe she will
11 be there, but I will have to double check when I'm in my
12 office.

13 HEARING OFFICER CELLI: Okay. Well, thank you
14 very much for calling in. Anything further, Ms. Belenky?

15 MS. BELENKY: No, not at this time.

16 HEARING OFFICER CELLI: Thank you. Then without
17 anything further, I'm going to hand the meeting back to
18 the Presiding Member, Commissioner Douglas for
19 adjournment.

20 PRESIDING MEMBER DOUGLAS: All right. Well, I'd
21 like to thank everybody. It's been helpful and it always
22 is helpful to have these status conferences. I also want
23 to express the Committee's appreciation to staff for
24 moving forward on the schedule. And we're looking forward
25 to seeing the PSA.

1 So with that, the status conference is adjourned.
2 (Thereupon the California Energy Commission
3 status conference concluded at 11:20 a.m.)
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CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California Energy Commission Status Conference was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and thereafter transcribed under my direction, by computer-assisted transcription.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of May, 2012.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
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