

STATUS CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Small Power Plant) Docket No.
Exemption for the Orange Grove) 07-SPPE-2
Project)
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA 95814

TUESDAY, FEBRUARY 19, 2008

1:17 P.M.

Reported by:
Peter Petty
Contract No. 170-07-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

James D. Boyd, Presiding Member

HEARING OFFICER AND ADVISORS

Susan J. Brown, Advisor

Kenneth Celli, Hearing Officer

STAFF AND CONSULTANTS PRESENT

Jared Babula, Staff Counsel

Felicia Miller, Project Manager

Maggie Read

Susan Sanders

PUBLIC ADVISER

Nick Bartsch

APPLICANT

Jane E. Luckhardt, Attorney
Downey, Brand Attorneys, LLP

Joseph L. Stenger, Senior Project Manager
TRC Solutions

Richard M. (Mike) Jones, Project Director
J-Power Group
J-Power USA Development Co., Ltd.

INTERVENOR

Anthony Arand (via teleconference)
Enviropel

ALSO PRESENT

Taylor Miller, Attorney
Sempra Energy

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P R O C E E D I N G S

1:17 p.m.

PRESIDING MEMBER BOYD: Good afternoon, everybody. Sorry to keep you waiting; I was at a meeting, I guess I could say out of town even though it was just West Sacramento, with another group all morning. And just got here ahead of the --, I think. They hadn't closed the bridge yet.

This is the Orange Grove Power Plant project status conference. I'm Jim Boyd, Commissioner and Chair of this Committee. With me on my right is my Advisor, Susan Brown. And on my left is our Hearing Officer, to whom I will turn the microphone over to in just a moment.

First, I guess, we'd like to have the representatives of the applicant introduce themselves. And we'll go from there to the staff, intervenors and the Public Adviser. So, applicant.

MS. LUCKHARDT: Hi, my name is Jane Luckhardt and I'm counsel for the applicant.

MR. SPEAKER: Hello, this (inaudible), hello.

PRESIDING MEMBER BOYD: Excuse me?

1 MR. SPEAKER: This is (inaudible).

2 PRESIDING MEMBER BOYD: Yeah, let's go
3 ahead. Folks on the phone, I'll call on you
4 shortly.

5 MS. LUCKHARDT: Okay. And with me to my
6 right is Joe Stenger from TRC, the consultant on
7 the project. And to his right is Mike Jones from
8 J-Power.

9 MR. STENGER: And I'm the Project
10 Manager.

11 PRESIDING MEMBER BOYD: Staff.

12 MS. MILLER: Felicia Miller, Project
13 Manager. And with me is Jared Babula, Staff
14 Counsel.

15 PRESIDING MEMBER BOYD: Okay. I see a
16 bevy of other staff in the audience but we'll
17 leave them to, any time they may introduce
18 themselves.

19 Are there any intervenors here in the
20 audience? Okay. Are there intervenors on the
21 phone who want to introduce themselves?

22 MS. READ: No, there is not.

23 HEARING OFFICER CELLI: We will be
24 having Mr. Arand should be on the phone. He
25 called and said he wanted to appear by phone.

1 PRESIDING MEMBER BOYD: Okay. Well,
2 we'll let him introduce himself if and when he
3 arrives on the phone to make any comments.

4 Finally, a representative of the Public
5 Adviser's Office, Nick Bartsch, in the back of the
6 room.

7 Okay. With that, I'm going to turn the
8 microphone over to Mr. Celli; let him, as our
9 Hearing Officer, conduct this hearing and take
10 care of the rest of today's agenda.

11 HEARING OFFICER CELLI: Thank you,
12 Commissioner. Can you all hear me okay? Okay.

13 This is a status conference on the
14 proposed Orange Grove Power Plant project's
15 application for small power plant exemption from
16 the regular certification processes of the
17 California Energy Commission.

18 July 19, 2007, the applicant, Orange
19 Grove Energy, LP, filed their application for
20 small power plant exemption, or what we call an
21 SPPE. On September 28, 2007, this Committee
22 issued a scheduling order that projected that all
23 discovery, status reports and final initial study
24 would be completed by December 17, 2007.

25 Title 20 of the California Code of

1 Regulations, section 1945, calls for a final
2 decision 135 days after the filing of the
3 application or later it deems necessary to permit
4 full and fair examination of the issues.

5 As of today the application for Orange
6 Grove's project is 245 days old. And a draft
7 initial study has not yet been filed.

8 The Commission scheduled today's status
9 conference by notice dated January 29, 2008. The
10 purpose of today's conference is to hear from the
11 parties regarding the status of Orange Grove's
12 SPPE application and to assess the scheduling of
13 future events in this proceeding.

14 Applicant and staff last filed status
15 reports on December 11th and 12, 2007; and have
16 previously filed briefs clarifying their positions
17 on the standard to be applied in weighing the SPPE
18 application.

19 I should mention that CURE, who is an
20 intervenor, also filed a brief. And I would like
21 to know as soon as the intervenors are on the
22 phone, so that we can include them in this.
23 Maggie, if you would just let me know as soon as
24 they get on the phone.

25 MS. READ: Anthony Arand is on the line.

1 HEARING OFFICER CELLI: Okay.

2 MS. READ: He wants to speak on topics
3 two and four.

4 HEARING OFFICER CELLI: Good. But I
5 would like him to introduce himself, please, on
6 the record.

7 MS. READ: Mr. Arand, your line is open.

8 MR. ARAND: My name is Anthony Arand.
9 I'm online.

10 HEARING OFFICER CELLI: Thank you, Mr.
11 Arand. Are there any other intervenors on line?
12 No, okay.

13 Basically what we're going to do is use
14 these briefs and status reports to serve as the
15 basis for today's discussions. We have received,
16 in addition, a document from applicant's attorney
17 involving approved natural gas pipeline and some
18 maps attached to that.

19 What we're going to do today is first
20 we're going to inquire as to whether the discovery
21 issues have been resolved between intervenor
22 Anthony Arand and the other parties. The
23 Committee received an email from Anthony Arand on
24 February 10, 2008, indicating that he has not
25 received all documents that he requested.

1 Following that, the Committee would like
2 to inquire into whether the parties find -- but
3 before we get to that, we're going to inquire, or
4 the applicant is going to present their changes to
5 their application, if I'm describing that
6 accurately.

7 Followed by a discussion based upon
8 everybody's briefs and status reports as to the
9 utility of converting an SPPE to an AFC if
10 necessary.

11 Following that we will discuss
12 scheduling and when we finish that discussion we
13 will open for public comment.

14 Any questions about the way we're going
15 to proceed today?

16 Hearing none, let's get to the first
17 question. Mr. Arand, can you hear me?

18 MR. ARAND: Yes, sir.

19 HEARING OFFICER CELLI: Okay. Did you
20 receive the requested discovery?

21 MR. ARAND: Yes, sir. I sent a letter
22 to Mr. Celli late this morning confirming I'd
23 received everything I'd asked for, thank you.

24 HEARING OFFICER CELLI: Thank you. And
25 is Mr. Arand on everybody's proof of service?

1 Applicant?

2 MS. LUCKHARDT: Yes, he's been on our
3 proof of service ever since he was added to the
4 service.

5 MR. ARAND: I'm pretty sure I'm there;
6 I've been getting reasonably most of the
7 information.

8 HEARING OFFICER CELLI: Very good. And,
9 staff?

10 MS. MILLER: That's correct.

11 HEARING OFFICER CELLI: Thank you.
12 Let's move on then to applicant's presentation.

13 MS. LUCKHARDT: Okay. We thought it
14 made sense for us to take a moment to explain to
15 all of the parties in this proceeding, as well as
16 the Committee, what we've been doing in the
17 interim.

18 And the project has really focused on
19 trying to solve problems. And we did hear loud
20 and clear from staff and the Committee at the
21 informational hearing that the proposed water use
22 would be considered or could be considered a
23 problem by both staff and the Committee.

24 So the applicant took some time and went
25 on a hunt for water, and reclaimed water to use

1 for cooling specifically. We were able to
2 successfully secure an agreement for reclaimed
3 water with the Fallbrook Public Utilities
4 District. We are feeling very good about that.

5 We do have to truck the water in.
6 Nonetheless it is a reclaimed water source. It is
7 good both for Fallbrook and the project. And we
8 believe will provide a good source for cooling
9 water.

10 As a part of that change, and the
11 information in regards to the Fallbrook water
12 supply was filed in January of this year.

13 Now, consistent with that the water uses
14 of the project are roughly in three different
15 parts. One part is the inlet cooling need, which
16 is being solved by Fallbrook. And then there are
17 two other parts. The other two parts are water
18 injection for NOx control and water injection for
19 power augmentation.

20 For the last two uses, for power
21 augmentation and NOx control, the project does not
22 believe that they can use a reclaimed water
23 source. And the original project design was to
24 use Rainbow Water District water and pipe it to
25 the project, and build a pipeline.

1 With the addition of trucking the
2 Fallbrook water supply in, the project has now
3 moved to -- and what we handed out this morning,
4 and I apologize that Mr. Arand won't have this in
5 front of him since this was just completed
6 shortly, a little bit ago.

7 It's a figure showing the trucking
8 location from the pickup station to the site; it's
9 approximately three miles in length. And Mr.
10 Stenger, who's with me here, will describe it in
11 more detail here in a little bit.

12 But because we were already trucking the
13 Fallbrook water, we moved to trucking the Rainbow
14 water for the power augmentation and NOx control
15 water, as well. And that, like I said, Mr.
16 Stenger will be describing that in more detail in
17 just a little bit.

18 We looked into the option of using
19 Fallbrook water, at least I queried the project
20 about using Fallbrook water for the entire water
21 use for the site. And there are two problems with
22 that.

23 One is that there's more water treatment
24 that will be required to use reclaimed water
25 directly for NOx control, and directly into the

1 turbine for NOx control and for power
2 augmentation.

3 And, in addition, the distance -- helps
4 if you turn it on -- the distance between the
5 Fallbrook water supply and the site is of such a
6 length that it becomes a difficult issue for
7 financing. If we don't have inlet cooling water
8 the project and the facility can continue to
9 operate, we just won't get the same efficiency
10 levels.

11 If you lose the process water for NOx
12 control the facility cannot operate. And so it
13 became a project constraint, and so we needed to
14 find a water source that was closer. And
15 therefore we have the new trucking route between
16 the proposed pickup station for Rainbow water and
17 the site.

18 The other change came about as a result
19 of discussion with local stakeholders; in
20 conversations with Caltrans, in conversation with
21 local businesses and local residents.

22 The natural gas pipeline was to go down
23 state route 76, and that would have required at
24 least one lane closure to construct portions of
25 that. That would have impacted traffic along the

1 route. And in listening to stakeholders we found
2 that that was something that they found of great
3 concern.

4 And what the project's really been
5 trying to do is to, like I said, solve problems;
6 take issues off the table; reduce the level of
7 potential community or local business concerns
8 whenever possible. And this was one of those
9 areas where the project felt they could make a
10 change that would not impact state route 76, and
11 therefore not impact local residents or businesses
12 along the route.

13 Therefore, the project has spent, and in
14 coordination with San Diego Gas and Electric, a
15 considerable amount of time investigating
16 potential alternative routes. We believe we have
17 located one that involves the least impact to
18 natural resources and undisturbed property. Most
19 of the route is along disturbed property or within
20 existing roads. And that is -- just an outline
21 of that information was provided in the documents
22 we filed on Friday.

23 And so I think at this point I will turn
24 this over to Joe Stenger and have him go through a
25 description of the improved pipeline route, as

1 well as the fresh water supply trucking route
2 between the Rainbow pickup location and the site,
3 itself.

4 MR. STENGER: Thank you. The fresh
5 water pickup location that's been identified has
6 been coordinated with the Rainbow Water District.
7 The Rainbow Water District has an existing water
8 main on Rice Canyon Road which is about a mile
9 west of the project site, as the crow flies.

10 The pickup location would just involve
11 construction of a small turnaround and metering
12 station and a stand-pipe from the water main. And
13 the water would be picked up there via water truck
14 and transported south on Rice Canyon Road about a
15 mile to state route 76. And then eastward on
16 state route 76 about two road miles to the project
17 site. So the total haul distance is approximately
18 three miles.

19 The trucking would involve about two
20 water trucks per hour when the plant is operating
21 at peak capacity.

22 The haul route is shown in the figure
23 that was passed out here this morning; and, again,
24 it's a fairly simple haul route, just southbound
25 about a mile on Rice Canyon Road and then

1 eastbound approximately two miles on state route
2 76 to the project site.

3 The pickup location for the water has
4 been defined. It's about a one-acre site, and it
5 is on disturbed property. It's at the
6 southeastern corner of an existing parcel in an
7 area that is currently used for agriculture.

8 The improved gas pipeline route was
9 depicted in a topographic map and five aerial
10 photograph maps that were submitted to the
11 Commission last Friday by Downey Brand.

12 Figure 1 in that submittal package is
13 the USGS topo base that shows the improved gas
14 pipeline route in blue. And then the subsequent
15 five figures are detailed, high resolution aerial
16 photographs that show clearly where the pipeline
17 would go and what kind of terrain it crosses.

18 And the pipeline route has been laid out
19 to have as little impact as possible on any type
20 of natural habitat. It is almost exclusively in
21 disturbed terrain, aside from about 400 feet of
22 the route close to the project site where it would
23 traverse a natural habitat.

24 Starting from the west end of the
25 pipeline route, as you can see in the aerial

1 photograph maps, starting with figure 2-A there,
2 the initial portion of the pipeline would follow
3 state route 76, although it would no longer be in
4 the roadbed or road shoulders as previously
5 proposed.

6 That's flat terrain, farmland terrain in
7 there, so the issues with the previous pipeline
8 route related to constructability and traffic
9 control and so forth are alleviated along that
10 segment.

11 And then the pipeline would leave the
12 state route 76 area and traverse southbound about
13 200 feet; and then continue eastward toward the
14 project site through some old dairy farms and
15 along disturbed terrain.

16 There's a private road in there that was
17 associated with the dairy farms that the pipeline
18 would traverse. There are some areas that would
19 be set up for staging again in an area that's
20 completely disturbed by previous dairy farm
21 activities.

22 And about a half a mile west of the
23 project site the pipeline would leave the dairy
24 farm areas and turn up to the north and cross
25 highway 76 to the north side and follow some

1 overland terrain. It would go up over an existing
2 road, over a ridge and then drop back down into
3 the project site.

4 That route was selected to avoid
5 disturbance to some sensitive habitat that occurs
6 on the south side of state route 76 in that area.
7 There is riparian vegetation along the south side
8 of state route 76 in that area, so that area has
9 been avoided.

10 And the route would follow existing
11 roads until a point very close to the existing
12 substation just west of the project site where
13 there is a segment that would cross natural
14 terrain that would be coastal sage scrub habitat
15 for about, there would be about a 400-foot segment
16 of the pipeline that would cut through currently
17 undisturbed coastal sage scrub.

18 And then the pipeline would come out
19 approximately at the Pala Substation, and then
20 just traverse further eastward a short distance to
21 the project site.

22 The improved pipeline route alleviates
23 the construction issues that were associated with
24 constructing the pipeline in state route 76. And
25 the two locations where the improved pipeline

1 route does cross state route 76 would be bored
2 with horizontal drilling so that there would be no
3 need to stop the traffic on state route 76 during
4 that construction.

5 The presence of the coastal sage scrub
6 habitat along a portion of the pipeline route and
7 the proximity of the pipeline route to some
8 riparian habitat that occurs on the south side of
9 state route 76 would result in some additional
10 interaction with Fish and Wildlife and Fish and
11 Game for endangered species issues.

12 And the pipeline route also would cross
13 some areas that would be considered jurisdictional
14 waters of the state or jurisdictional waters of
15 the United States, and therefore there would be
16 some additional permits and approvals that would
17 be required compared to putting the pipeline down
18 state route 76 as was previously proposed.

19 But the improved route has been field
20 surveyed and we don't see any issues there that
21 are going to pose any severe constraints. Most of
22 the route is disturbed, as I had indicated, and
23 the interaction with the agencies shouldn't be
24 difficult. We just have to go through all the
25 processes.

1 The permits that will now be required
2 that would not have been required before include a
3 404 nationwide permit. And that would be for
4 impacting waters of the U.S. And, again, that
5 would occur just at some isolated locations where
6 the pipeline would cross narrow drainage channels
7 that would be considered waters of the U.S.

8 The need for a 404 permit would trigger
9 the need for a 401 water quality certification
10 from the Regional Board, as well. And with the
11 federal action of the 404 permit, that would also
12 trigger the need for the section 106 consultation
13 with the State Historic Preservation Office for
14 cultural resources.

15 The cultural resource survey work has
16 been done along the pipeline and there were no
17 cultural resources found within 100 feet of the
18 pipeline route.

19 General biology studies and the cultural
20 resource studies were completed as of recent, and
21 reports are currently being prepared. That work
22 was performed by TRC. And the terrain and the
23 findings are basically as we had expected. The
24 route can follow roads and disturbed terrain right
25 until it reaches almost the eastern end where it

1 does have to cut across a small amount, about 400
2 feet, of the coastal sage scrub.

3 The previous pipeline -- the project
4 previously would have required streambed
5 alteration permit from the Department of Fish and
6 Game because there is a normally dry channel that
7 would be crossed by the transmission line
8 interconnection. So that permit was already
9 required. With the improved pipeline route, it's
10 going to be -- there will be more scope added to
11 that permit. But the same permit will still be
12 required. The streambed alteration permit will be
13 required to cross the same drainages that will
14 require the section 404 permit.

15 The jurisdictional waters delineations
16 have been completed. The general biology surveys
17 have been completed. The cultural surveys have
18 been completed.

19 The studies that remain to be done along
20 the new route are protocol studies for several
21 endangered species that we know occur in the
22 general vicinity. And those include the
23 gnatcatcher, least Bell's vireo, and the
24 southwestern willow fly catcher, all of which are
25 birds. And then the arroyo toad, which may or may

1 not occur on the south side of state route 76,
2 because that area is near the river, the San Luis
3 Rey River.

4 So there are timing constraints for when
5 those protocol surveys can occur. And a schedule
6 was provided, along with the maps, in the February
7 15th submittal that identifies when those surveys
8 can occur. And they won't be finished until June
9 of '08.

10 And I think that is about it as far as
11 the differences in permitting. My discussion
12 there was really primarily a focus of the
13 differences in permitting compared to where the
14 gas pipeline was before.

15 MS. LUCKHARDT: And I think we just have
16 one more thing that we'd like to add here. And
17 that is under whenever you have a project delay we
18 understand that the Commission may be concerned
19 about whether the project is truly going to go
20 forward, and whether you're spending your time
21 adequately in processing this application.

22 So, I'm going to ask Mike Jones to
23 address that at this point, where the project
24 stands.

25 MR. JONES: The project is actually

1 quite far along. Engineering is virtually
2 complete. Virtually all materials, equipment have
3 been purchased. And right now we're slated to go
4 into storage, because we're not ready to begin
5 construction unfortunately.

6 As Jane indicated, we've been working
7 hard to resolve the issues that seem to be of
8 concern to the CEC, namely reclaimed water. We've
9 modified the plant in order to accept the
10 reclaimed water. Added treatment equipment, added
11 storage for the reclaimed water.

12 We are in discussions with the County as
13 to their requirements. We are in advanced
14 discussions with Gregory Canyon Landfill over
15 pipeline route, you know, getting those easements.
16 We have verbal approval from them and we're just
17 now working on language.

18 So we are, as far as the project,
19 itself, goes, we are really ready to go, virtually
20 ready to go. There are a few details left, but,
21 you know, we really could break ground in very
22 short order.

23 MS. LUCKHARDT: So I guess now we're
24 available to answer any questions you may have on
25 the three changes that we've described. One we've

1 already filed, which is the Fallbrook new gas
2 pipeline route. And then the new haul route for
3 the Rainbow Water District.

4 And just as a summary, you know, the
5 project really has been trying to work with local
6 stakeholders to listen to their concerns, as well
7 as the concerns expressed by staff and the
8 Committee. And wanted to kind of get all of those
9 things resolved before we started pushing forward
10 and moving on.

11 We felt it was very important to be
12 responsive to the local community and to be out
13 there interacting and understanding what issues
14 they may have.

15 HEARING OFFICER CELLI: Thank you.
16 First, Commissioner Boyd, do you have any
17 questions for the applicant?

18 PRESIDING MEMBER BOYD: No, I think I'll
19 let it go. I think I understand the changes at
20 the moment.

21 HEARING OFFICER CELLI: Susan, do you
22 have any?

23 MS. BROWN: No.

24 HEARING OFFICER CELLI: Applicant -- I'm
25 sorry, staff.

1 MR. BABULA: I have two questions.

2 Jared Babula, Staff Counsel.

3 One has to do with the real basic
4 question, but at the initial site visit and
5 workshop we had, someone from Rainbow stood up and
6 said, we don't have water to give you. So I would
7 like to confirm that you are able to get water
8 from Rainbow and there's some letter that you'll
9 be providing to us, or some evidence of that.

10 I don't want to get into this mixed
11 issue where part of the board of Rainbow says
12 there's water, and part is coming to us saying
13 there is no water. Can you talk to that issue?

14 MR. JONES: Sure. Yes, Rainbow is able
15 to supply the water to the facility. And the
16 board, in a meeting, I think it was December 10th,
17 indicated to staff that there was no reason why
18 they could not sell us water.

19 We have paid our meter fees and, you
20 know, we're now just waiting for the rest of the
21 project to catch up.

22 MR. BABULA: Okay. A second question
23 has to do, can you just review -- what would be
24 the total truck trippage when you combine both the
25 wastewater truck trips and the Rainbow water truck

1 trips? What are we looking at per hour when
2 you'll be operating?

3 MR. JONES: Approximately three trucks
4 per hour, one of reclaimed and two of potable.

5 MR. BABULA: Thank you, no further
6 questions.

7 HEARING OFFICER CELLI: Nothing further,
8 thank you. Anthony Arand, are you still on the
9 line?

10 MR. ARAND: Yes, sir, Commissioner.

11 HEARING OFFICER CELLI: Thank you. Any
12 questions for the applicant regarding their
13 presentation on the additions to their
14 application?

15 MR. ARAND: Yes, sir, Commissioner, I
16 do. I've sent my comments in writing to Mr.
17 Celli, but to briefly summarize them. I'm a
18 Rainbow ratepayer. I live in the area.

19 And to my knowledge, I'm being requested
20 to cut back my water use by 30 percent. I am not
21 aware of any documents that the Water District has
22 provided the applicant to guarantee water supply.

23 In regards to easements going across
24 Gregory Canyon project, the applicant has not
25 provided anything in writing that says that the

1 State Clearinghouse published environmental impact
2 report for the Gregory Canyon Landfill project
3 reflects the implementation of a natural gas line
4 down that area which is, I believe, an SDG&E
5 aboveground local distribution -- 69 kV circuit.

6 That area is proposed to be habitat when
7 the Gregory Canyon project, if it goes in,
8 reclaims that site. And the EIR documents, I'm
9 very familiar with, do not address the type of
10 activities that that would entail.

11 And if the applicant is in discussions
12 with Gregory Canyon I would simply ask that they
13 provide correspondence with the various agencies,
14 state and federal, that show that they concur that
15 that easement is usable.

16 The applicant is proposing to run
17 natural gaslines in very close proximity to the
18 County Water Authority aqueduct pipelines 1 and 2.
19 To my knowledge they have not been in front of the
20 Authority to ask permission to cross that
21 easement. And since that is one of the biggest
22 stumbling blocks, the Gregory Canyon Landfill, I
23 know for a fact firsthand that the County Water
24 Authority takes it very seriously if somebody
25 wants to cross that line. I haven't seen anything

1 from the applicant that says that they have
2 discussed this with CWA and have a plan to address
3 that.

4 The other one is on the interconnection
5 study that the applicant has provided, the
6 reconductoring of the lines. The environmental
7 impact is not part of this process. And since the
8 CPUC published a 7000-page environmental memo
9 about the environmental impacts of a
10 reconductoring project called the Sunrise Power
11 Link for SDG&E, I think it's an important area
12 that the applicant has omitted. And supports our
13 position that this should be a full 12-month AFC
14 permit.

15 Thank you.

16 HEARING OFFICER CELLI: Thank you. Is
17 CURE online, Gloria Smith?

18 MS. READ: No.

19 HEARING OFFICER CELLI: Or anyone from
20 California Unions for Reliable Energy?

21 MS. READ: No, no Gloria. Just Anthony.

22 HEARING OFFICER CELLI: Okay, thank you.
23 We're going to hold off on public comment until
24 the very end, so at this time I'm going to allow
25 the applicant to respond, if they see fit, to any

1 of the questions. Any further comment?

2 MS. LUCKHARDT: Okay, as I understand
3 it, and granted, we just got this recently, so,
4 you know, we're just scanning Anthony's points.
5 But, in general, his concern about the EIR we are
6 aware of and are coordinating with Gregory Canyon
7 to make sure that the pipeline construction and
8 the habitat restoration areas are compatible and
9 that things are done in coordination with Gregory
10 Canyon.

11 In regards to his second point which, I
12 think, was the County Water Authority aqueduct, we
13 have been in discussions with them, and are
14 working to meet all of their requirements in
15 construction near the two aqueducts that he
16 mentioned. So we are aware of that and are
17 working on that.

18 Another point. Mr. Arand had a concern
19 about the reconductoring of the 68 kV circuit. We
20 are waiting for the final studies to be completed
21 by San Diego Gas and Electric. And once we are
22 aware of exactly what they are going to require,
23 then that information will be provided.

24 And this I'm actually finding to be
25 typical on most of these projects as we're waiting

1 for the California ISO and the individual utility
2 to complete those studies before that final
3 analysis can be done.

4 And I think those were the three points
5 that he made verbally. There is a comment within
6 Mr. Arand's letter regarding Fallbrook and the air
7 permit requirements for the trucking. And it is
8 our intention, and we have analyzed in our filing
9 in January, to provide -- analyze the trucking
10 from Fallbrook to the facility within this permit,
11 within the project permit for the Orange Grove
12 project. So we believe that that will be subsumed
13 in this project and had that intent the entire
14 time.

15 And that analysis will include the
16 trucking from the Rainbow facility, as well, when
17 that information is provided.

18 At this point I understand that Mr.
19 Arand and other folks may have some additional
20 questions. We've just provided a brief sketch of
21 the additional information we will be providing on
22 the gas pipeline and the new fresh water pickup
23 location and trucking haul route. Of course, more
24 information will be provided as we complete the
25 environmental reports.

1 HEARING OFFICER CELLI: Thank you.
2 We're going to move on to the next agenda item,
3 which goes to the heart of our status conference
4 today. The question is whether it would be more
5 beneficial for Orange Grove Energy to convert
6 their SPPE application to an AFC in light of
7 changed circumstances and the responses to the
8 Committee's request for clarification of the legal
9 standard for exempting small power plant
10 exemption.

11 The Committee's concern is that the SPPE
12 application should be well on its way to a
13 prehearing conference after about 250 days. The
14 applicant wants to extend this out about a year
15 from the filing of the application, if I read your
16 proposed schedule correctly, till September of
17 2008. And I think that staff's proposal even
18 takes it out a little bit longer.

19 We're wondering whether applicant has
20 taken a look at whether it would be beneficial to
21 convert this SPPE to an AFC in light of the
22 complexities that seem to be unearthed as we
23 proceed.

24 MS. LUCKHARDT: We have looked at that,
25 and we've looked at the project changes, and

1 looked at the project, itself. And a lot of the
2 design of the gas pipeline that the project is
3 proposing was designed with the idea of keeping
4 the impacts from the construction of the pipeline
5 to as few impacts as possible.

6 And that's why all the disturbed ground
7 and that's why it frankly has taken so long to get
8 the pipeline design to the Commission and
9 completed.

10 And so, you know, it is our belief that
11 this project will not result in a significant
12 environmental impact. And that those impacts that
13 result from disruption of the coastal sage scrub
14 or construction along that route will not result
15 in a significant environmental impact.

16 The project will have to provide some
17 additional mitigation based upon the additional
18 route and the distances and the locations.
19 There's no question about that. And I think
20 actually that helps to respond to some of staff's
21 concerns about wanting us to do some additional
22 consultation with Fish and Wildlife Service in
23 regards to the gnatcatcher, and wanting some
24 additional studies, which the project will now be
25 doing.

1 The project will now be doing those
2 protocol studies. I'm not convinced, you know, I
3 don't know exactly that that will answer all of
4 staff's concerns, but I think that that was one of
5 the things that they wanted to see.

6 And we also are, and I know when a
7 project has its own delays it's hard then to argue
8 that, well, time is a consideration. But
9 unfortunately, it is. And the project is still an
10 important project to San Diego Gas and Electric.
11 That's what they are telling us.

12 The project does intend to be producing
13 power in '09. And in looking at the schedule if
14 we shift to an AFC, close this proceeding down and
15 file a brand new application for a brand new
16 application for certification, looking at the
17 timelines there is no way we could get a permit
18 out of this Committee before June of next year.

19 And given my experience with the heavy
20 siting load that the Commission is facing, and the
21 delays that projects are taking regardless of
22 whether information is available, I think that the
23 timeframe to get a completed application would be
24 considerably beyond that.

25 And then there is absolutely no way this

1 project could be online in '09. And then it
2 cannot provide electricity to San Diego in '09,
3 which would be very important.

4 That's a big consideration for us. And
5 like I said, I know it's difficult with project
6 delays, but we really felt that it was important
7 to respond to stakeholder concerns and local
8 community concerns because, as we've all
9 experienced, if you can resolve local community
10 concerns it really helps the project move forward
11 and I think responds more to the local community
12 if we have lots of opposition to the project and
13 we keep going on the original project design,
14 that's not necessarily improving or speeding up
15 the timeframe for permitting the project.

16 We've been working very hard with the
17 County to resolve their concerns. We have worked
18 with LAFCO to make sure that their interests and
19 concerns are being resolved. So there's been a
20 lot of work going on even though you haven't seen
21 it.

22 And like, you know, Mike spoke of
23 earlier, all the equipment is purchased and it's
24 going to be sitting in a warehouse somewhere
25 waiting for this project to go forward. So that

1 as soon as the project can go forward, they are
2 going to be ready to construct.

3 HEARING OFFICER CELLI: But that would
4 be the case in either, whether this were an AFC or
5 an SPPE.

6 MS. LUCKHARDT: Well, it would be
7 excepting that if this were an AFC, I don't think
8 there's any way this project could be online in
9 '09. You're looking at a 2010 online date.

10 HEARING OFFICER CELLI: Have you had any
11 discussions with staff about that?

12 MS. LUCKHARDT: We spoke to staff, I
13 think Joe spoke briefly with Felicia about the
14 schedule. And I don't think that she was in a
15 position yet to respond.

16 The schedule that we received from staff
17 we received just before we walked in here today.
18 So we haven't had an opportunity to discuss their
19 proposed schedule.

20 I see what they're saying, and at the
21 appropriate time we can comment on that.

22 HEARING OFFICER CELLI: We'll talk about
23 schedule in a minute. I just, I want to begin,
24 though, by basically saying that this Committee
25 has not opened an evidentiary record. We have no

1 facts before us upon which to base any decision.

2 So, as such, the Committee has no
3 position, per se, as to whether an SPPE or an AFC
4 is preferable, since we don't really know what
5 kind of a power plant you have at this time.

6 However, I do want to lodge that there
7 are some serious concerns that have come up,
8 especially with these changes and the length of
9 time it's taken to get this thing off the ground.

10 This is our first opportunity to meet,
11 that is the Committee, with the applicant and
12 staff and intervenors since our informational
13 hearing and since we asked you to submit those
14 briefs back in October. So this is really our
15 first chance to get together and find out what's
16 going on since we really ran out of schedule.

17 Commissioner.

18 PRESIDING MEMBER BOYD: Well, as Hearing
19 Officer Celli said, we don't have an evidentiary
20 record open on this, so I have to carefully parse
21 my words. And I am curious to hear from the
22 staff.

23 But I will confess to being a little
24 troubled. We seem to be backing into this project
25 rather than moving forward in this project. And

1 discovering issues as we go along rather than
2 having seen them coming in advance.

3 But we're all human, so I'll leave that
4 question hanging a little bit. But I would like
5 to hear the rest of the discussion on this
6 question and any reaction our staff has to the
7 question.

8 HEARING OFFICER CELLI: Thank you. Yes.
9 Before I do that, though, I just wanted to take
10 this opportunity to sort of re-summarize some of
11 the points that everybody seems to have agreed on
12 and your motions.

13 And basically that everybody agrees that
14 we're going to be applying a fair argument
15 standard in this area. And if I'm saying
16 something that you don't agree with, please let me
17 know.

18 Basically we're clear that the standard
19 is substantial evidence in the record which
20 supports a fair argument that the project may have
21 a significant adverse effect on the environment or
22 energy resources.

23 Substantial evidence is fact or
24 reasonable assumption predicated upon fact or
25 expert opinion supported by fact. Statements of

1 members of the public may qualify as substantial
2 evidence if they are supported by an adequate
3 factual foundation.

4 The Committee may consider proposed
5 mitigation measures in applying a fair argument
6 standard, but in applying the fair argument
7 standard this Committee will not weigh contrary
8 evidence, but instead limits its view to whether
9 the record contains substantial evidence to
10 support the proponents' fair argument of a
11 potential adverse impact on the environment or
12 energy resources.

13 We're all on the same page about this,
14 yes? Applicant and staff is nodding yes.
15 Applicant? Yes, thank you.

16 And everybody agrees that this is a low
17 threshold, which really means that for the
18 applicant this is a higher risk than an AFC.

19 The law reflects a preference for
20 resolving doubts in favor of an AFC, as opposed to
21 an SPPE. That's basically I lifted that from
22 CURE's brief. But do you have a question or
23 problem with that? Because it seems to be an
24 accurate reading of the law.

25 MS. LUCKHARDT: In general, it is, to a

1 certain extent. I think that you also, though,
2 need to weigh it to see whether it is truly
3 evidence or simply speculation.

4 HEARING OFFICER CELLI: Oh, sure, but
5 we're speaking that assuming evidence means
6 competent evidence.

7 MS. LUCKHARDT: Yes, I think if you're
8 assuming that it's expert related or it's
9 competent evidence.

10 HEARING OFFICER CELLI: Yes. Okay. So,
11 there are certain disadvantages to the applicant
12 by proceeding by way of an SPPE in that you lose
13 the opportunity for an override if there is some
14 sort of possibility where, you know, the
15 convenience or necessity would require an
16 override. We can't do that with an SPPE; there's
17 no provision for that.

18 MS. LUCKHARDT: Right. And we're aware
19 of that. At this point we don't see any issues,
20 either laws, ordinances, regulations and
21 standards, or environmental impacts that would
22 need to be overridden in this case, I'm happy to
23 say.

24 HEARING OFFICER CELLI: Well, only you
25 would know that. But I just want to make sure

1 that we're all operating under the same facts, we
2 have the same understanding of what this
3 Committee's going to be doing, so that, you know,
4 right now all the applicant's eggs are in the
5 basket that staff or the intervenors will not be
6 able to come up with some evidence of a
7 significant impact.

8 MS. LUCKHARDT: Right, that cannot be
9 mitigated.

10 HEARING OFFICER CELLI: That's right.
11 Because otherwise it's a denial.

12 MS. LUCKHARDT: Yes.

13 HEARING OFFICER CELLI: And so I'm
14 saying this really as a service to you basically
15 to say, you know, we're asking that you take a
16 look at that. Because we hate to spin our wheels
17 every time you have a change, trucks, pipelines,
18 staff has to run around and re-assess the impacts.
19 And I just was -- well, basically I think that's
20 enough of a point that it seems to me that it
21 might be more beneficial to -- it certainly would
22 increase your chances of having a successful
23 application if it were an AFC than an SPPE. I'm
24 sure you agree with that.

25 MS. LUCKHARDT: An AFC has certain

1 advantages, especially from a litigation
2 standpoint.

3 HEARING OFFICER CELLI: Section 1934 of
4 Title 20 states that it is the policy of the State
5 Energy Resources Conservation and Development
6 Commission to promote the development of
7 electrical energy supply technologies that
8 prudently conserve and economically use energy
9 resources.

10 A major purpose of these regulations is
11 to encourage the use of those technologies by
12 expediting the procedures necessary for the
13 approval and development of alternate sources of
14 electric generation.

15 That's the purpose behind an SPPE. As I
16 understand it, this is a gas-fueled, garden-
17 variety, simple-cycle power plant. And I'm
18 concerned that the SPPE is the best vehicle.

19 MS. LUCKHARDT: It's been used quite
20 often for this purpose, though, I will say, in the
21 Commission's history. There have been many many
22 gas-fired peaker projects with LM6000s that have
23 gone through the SPPE process. And maybe some of
24 the most recent ones are the ones down in Imperial
25 Irrigation District.

1 HEARING OFFICER CELLI: Yes, and we're
2 aware of that. And the only other thing I wanted
3 to raise is that there is a 99 megawatt cap on the
4 sales -- 100 megawatt cap so that if something
5 came along, some sort of technology that, you
6 know, a turbocharge inlet chiller or something
7 like that, could knock this thing up over 99, that
8 this project would not be able to take advantage
9 of that.

10 MS. LUCKHARDT: Yes, yes, without an
11 additional permit or change or an amendment the
12 output has to remain below.

13 HEARING OFFICER CELLI: Okay. The only
14 other point I wanted to bring up, since we're
15 talking about regulations, is section 1947,
16 modifications of deadlines.

17 The applicant may, at any time,
18 stipulate to a more lengthy time schedule than is
19 provided in these regulations in order to permit
20 full and fair exploration. Such stipulation shall
21 be made in writing to the Committee. Have you
22 filed such a stipulation?

23 MS. LUCKHARDT: We have not. If you
24 would like us to file one, we would be happy to.

25 HEARING OFFICER CELLI: I would like one

1 by close of business on Friday.

2 Staff, any -- I'm sorry to take up so
3 much air time here. Please go ahead, if you have
4 any comments.

5 MR. BABULA: Just a few comments. Staff
6 takes the position that really it's the
7 prerogative of the applicant on whether or not
8 they would like to withdraw and resubmit as an
9 AFC.

10 Staff, in looking at the facts and the
11 information we have so far, we feel we'll be doing
12 an EIR for this project, giving the biology. And
13 on that point, just to kind of get out in the open
14 here, I would like to have our staff biologist
15 just discuss some of the issues that she sees that
16 lends itself to being more of an EIR process
17 within an SPPE unless the applicant wants to
18 change.

19 I would say though, that if, at some
20 point, it looks like there is impacts that are not
21 mitigable, then we would come forward to the
22 Committee and suggest there be a hearing on that
23 so that we no longer waste our time, and move
24 forward when this has a potential of being denied.

25 But ultimately at this point it is

1 really the applicant who needs to determine
2 whether they want to file the AFC, or if the
3 Committee finds that there is a substantial
4 impact; then it could be on the Committee.

5 But let me introduce Susan Sanders here
6 to discuss some of the biology issues that we're
7 looking forward, which also kind of addresses the
8 applicant's position that they're ready to break
9 ground. And we're not quite -- I don't think
10 we're as close as the applicant seems to indicate.
11 So, with that, I'll introduce Susan.

12 MS. SANDERS: My name's Susan Sanders;
13 I'm the biologist for this project. And what I've
14 reviewed so far is your SPPE application, your
15 update that you submitted in December, I think;
16 and then just this morning I've been looking at
17 the aerial that show the new alignment.

18 And I do have some concerns. When I
19 look at the schedule here, first I'm concerned
20 about the schedule. Because we're being asked to
21 review reports before the surveys are complete.
22 We've got the end of the surveys in June, and both
23 Energy Commission Staff, Fish and Wildlife
24 Service, the biologist at the Department of
25 Planning and Land Use of San Diego County are all

1 being asked to do the same thing, is to review
2 information before we have all the data.

3 I'm concerned about the lack of
4 floristic surveys on the -- you've got general
5 biology down. I'm not sure if you've covered the
6 sensitive species of plant species that are of
7 concern.

8 I know there's one within the plant site
9 that was undetected when you submitted the SPPE,
10 but you found you have impacts unanticipated when
11 you submitted your update. I'm afraid it'll be
12 more of the same when you start surveying your
13 alignment. Have you completed floristic surveys
14 yet?

15 MR. STENGER: The general biology
16 survey is done and the plant surveys have been
17 completed. The reports are not completed yet.

18 MS. SANDERS: Okay. I don't know if
19 those species, there's about, I think, seven or
20 eight that are of concern. And I don't know if
21 those are ones that need to be surveyed at a
22 certain time. If they're only identifiable in the
23 spring or summer, if they bloom at a certain time.

24 I also don't know if you've been able to
25 do a quantitative assessment of how much coastal

1 sage scrub that you're affecting. I think you
2 said 400 feet; in your update you mention that
3 you'll be qualifying for a de minimis impact?

4 MR. STENGER: And that most likely will
5 no longer be the case. With the improved pipeline
6 route that the project was going to impact less
7 than one acre of coastal sage scrub. And in
8 discussions with the County, County Staff
9 indicated that they were willing to go to the
10 resource agencies and propose that the impact be
11 considered de minimis. Now the impact to coastal
12 sage scrub may exceed an acre.

13 And my understanding will be it would no
14 longer be eligible for the de minimis. But that
15 would be part of the trigger that would cause the
16 project now to have to go through at least
17 informal consultation. And the U.S. Fish and
18 Wildlife would determine whether formal
19 consultation was necessary.

20 MS. SANDERS: I think the NCCP would
21 cover both the coastal sage scrub impacts and the
22 gnatcatcher impacts. I think if you had least
23 Bell's vireo or willow flycatcher or arroyo toad,
24 then you definitely would be looking at a section
25 7. And I think this perhaps is an under-estimate

1 even if you started later, started after the
2 surveys were complete. And I don't know how the
3 Carlsbad office is, but they can take a long time.
4 I have one that lasted three years; that was the
5 Sacramento office.

6 So, in terms of ability to move this
7 along quickly, you know, those are big unknowns
8 right now that perhaps you've thought about, but
9 I'm not very comfortable with the schedule, both
10 in terms of the timing that staff's being asked to
11 abide by and reviewing things before we have
12 complete surveys.

13 And the same issues apply to the
14 biologist at the County Fish and Game and Fish and
15 Wildlife Service.

16 I don't have enough information right
17 now to say oh, I think you're going to have a
18 significant impact, but I'm concerned that that's
19 a possibility. And I haven't enough evidence to
20 say no. Based on looking at the aerials, it looks
21 like there is a fair amount of undisturbed
22 habitat, both north and south of Palo Road, that
23 most of it is disturbed, but some is not. You're
24 close to some very sensitive resources there.

25 So, all I can say, given I would have

1 had a chance to review, is that I'm worried about
2 the potential for substantial impacts.

3 MR. STENGER: And the only thing I would
4 add to that is we clearly realize that in order to
5 achieve the schedule that has been outlined here,
6 there would have to be very close coordination
7 with the resource agencies. And we had intended
8 to do that all along the way, to keep them abreast
9 of the developments as they're occurring.

10 And the goal would be to keep, in fact,
11 all of the permitting agencies up to speed every
12 step of the way so that when the Commission
13 ultimately reaches a decision, and there's a CEQA
14 document in place, all of the other agencies are
15 ready to issue permits.

16 HEARING OFFICER CELLI: May I just ask,
17 just to be clear, that is the reason that the new
18 pipeline is going to be cutting through these
19 threatened habitats is to avoid congestion on the
20 road?

21 MR. STENGER: The primary reason for the
22 pipeline being moved off of the road is issues
23 related to traffic. Traffic during construction.

24 HEARING OFFICER CELLI: Just the
25 temporary construction?

1 MR. STENGER: Yes.

2 MS. LUCKHARDT: Right, there are some
3 businesses that are along that road that are very
4 concerned about impacts to them that we are
5 working to avoid.

6 MR. STENGER: And you can see on the
7 maps there are some areas where that road is
8 fairly intricate, and there's limiting topography
9 there, not a lot of room to work. You've got
10 good-sized equipment needed for a pipeline
11 installation, so through those sections of the
12 road where the topography is very tight, there
13 would be some challenging traffic control to
14 construct on the road.

15 HEARING OFFICER CELLI: And just -- I'm
16 looking at figure 2-D, and my question is, is the
17 pipeline going to be laid on top of the surface,
18 or is it going to be below grade?

19 MR. JONES: Below grade.

20 HEARING OFFICER CELLI: The reason I'm
21 asking is on page, figure 2-D and others, there's
22 this sort of model -- Mr. Stenger, I'm pointing to
23 this right here. It's hard to tell, but that
24 looks like rock to me.

25 MR. STENGER: It is.

1 HEARING OFFICER CELLI: So, are you
2 going to be cutting through rock?

3 MR. STENGER: The bedrock is shallow
4 throughout that area, yes. And that whole route
5 was walked with a team of engineers. And they're
6 aware of the construction conditions.

7 MR. JONES: I'd like to point out, that
8 is an existing maintenance road that runs through
9 there. It's really not perfectly clear. So
10 that's why the specific route.

11 PRESIDING MEMBER BOYD: So this is being
12 laid in an existing roadbed?

13 MR. JONES: Correct.

14 PRESIDING MEMBER BOYD: Earthen road, I
15 presume.

16 MR. JONES: Earthen road.

17 PRESIDING MEMBER BOYD: The whole thing
18 or just a part up the hill?

19 MR. JONES: The portion we're discussing
20 right now.

21 MR. STENGER: And there is about a total
22 of 400 feet as you get very close to the
23 substation that shows up at the right side of that
24 figure. That last segment of the pipeline that
25 would cut down off of that road, --

1 PRESIDING MEMBER BOYD: Right.

2 MR. STENGER: -- about half of that
3 follows a smaller existing road, and about half of
4 that little segment would actually be cross-
5 country.

6 HEARING OFFICER CELLI: Thank you.
7 Those were my questions. Staff, did you have any
8 further questions in this regard?

9 MR. BABULA: No, we're fine.

10 HEARING OFFICER CELLI: Thank you. Mr.
11 Arand, comments?

12 MR. ARAND: Commissioner, --

13 HEARING OFFICER CELLI: On the subject
14 of -- this is Hearing Officer Celli -- on the
15 subject of an SPPE versus an AFC application.
16 Please go ahead, Mr. Arand.

17 MR. ARAND: Having written one AFC and
18 still trying to do the last parts of our
19 formalization before we bring it before the
20 agency, and having an intimate working knowledge
21 of the exact topography and all of the topics
22 being discussed and the geography of this site, is
23 SDG&E had offered it to us in 2004, what the
24 applicant is proposing may seem reasonable, but
25 knowing the details of the geology of the site,

1 this cries to be processed in a full 12-month AFC.

2 We evaluated both 6- and 12-month AFCs
3 for our -- in my knowledge, as an engineer in the
4 State of California, the 12-month AFC is the only
5 vehicle that adequately allows a developer to put
6 all of the environmental impacts of the project
7 that they're proposing to do in context so the
8 State of California can evaluate it.

9 Within three miles of this site there
10 are five projects, industrial, housing, energy
11 development, rock quarry and landfill all that
12 have environmental documents, including the water
13 district, of which this developer seems to ignore.

14 And there's reasons that these other
15 five have taken so very long to try to get the
16 permission because this is an extremely sensitive
17 area. The Paulette's Casino has 12- to 20,000
18 people trips a day running down that street. And
19 it has been deemed a scenic highway. To do
20 construction in and around it is not something
21 that's done on a casual basis.

22 This stuff needs to be in the hands of
23 staff in a format that staff can address it, in a
24 way that the developer and the utility can have
25 this presented and evaluated, in a reasonable

1 time.

2 I don't see any other way other than in
3 a full AFC that a developer would want to develop
4 it. As I told them in February in my offices here
5 in Vista last year, we offered all of the work
6 that we had done on the environment of this entire
7 valley within six miles of that site to them. And
8 they declined it.

9 There's an enormous body of work that
10 should be addressed and evaluated by staff prior
11 to any project going in in this area. Biology
12 only being one.

13 And this is the point that we've tried
14 to make. We do not oppose the project. My god,
15 we need it. But we do oppose the way it's trying
16 to be permitted. There's a set of rules and they
17 should be followed.

18 Thank you.

19 HEARING OFFICER CELLI: Thank you, Mr.
20 Arand. I just want to reiterate that only the
21 applicant, at this point, can convert it from an
22 SPPE to an AFC because we don't have any
23 evidentiary record whatsoever.

24 But if this project continues in the way
25 it seems to be going, I would hope, Ms. Luckhardt,

1 that you would have conversations ongoing with
2 staff. I am sure that since all of the heavy
3 lifting is pretty much done in terms of the
4 upfront preparations for the application, that the
5 staff would probably find a way to streamline the
6 process if this were to convert, if that was your
7 choice.

8 We, like I said, we have no evidence, we
9 have no information one way or the other at this
10 point. And so what we're doing is looking at, in
11 general, where this is going. And we wanted to
12 voice some concerns about that.

13 MS. LUCKHARDT: And we understand your
14 concerns. I think there would have to be some
15 significant discussions with staff regarding what
16 they could do schedule-wise for it to be something
17 that we could consider. And if that is -- and we
18 will pursue that with staff to see whether there
19 are any opportunities there that we could take
20 advantage of.

21 There are advantages, as you noted
22 earlier, to an AFC. The question is could we
23 accommodate the AFC schedule. And we will discuss
24 with staff as to whether that's possible or not,
25 or what accommodations they may or may not be able

1 to make.

2 HEARING OFFICER CELLI: Thank you. At
3 this time let's move on then to -- if there are no
4 further questions?

5 PRESIDING MEMBER BOYD: Well, let me
6 make a comment, not a question. Ms. Luckhardt,
7 you mentioned that we've used the SPPE process, or
8 rather it's been used in hearings before this
9 Commission, on several occasions. She referenced
10 Imperial County.

11 I'd just let the record show that I've
12 been either the Presiding Commissioner or the
13 Second Commissioner on several SPPE cases, both in
14 the San Joaquin Valley and the Imperial Valley.
15 So we're quite familiar with the issues and the
16 process.

17 So, to keep that in account.

18 HEARING OFFICER CELLI: We're going to
19 move on now to scheduling. And I have received
20 from the applicant a table 1, Orange Grove project
21 permitting schedule, which we've been working off
22 of. And also I've received the Energy Commission
23 Staff proposed schedule.

24 Mr. Arand, I don't believe I've received
25 any proposed schedule from you. Did you submit

1 such a proposed schedule?

2 MR. ARAND: No, sir, we did not.

3 HEARING OFFICER CELLI: Okay. So what
4 we have to work off of are these two schedules
5 here.

6 I wanted to hear from staff about you
7 had mentioned some concerns about the schedule and
8 that you thought it would go a little longer than
9 proposed by the applicant. And I wonder if you
10 would address that.

11 MS. MILLER: What I did when I put the
12 proposed schedule together was to take a template
13 for putting an EIR together. And I built in
14 review periods that are required. And that
15 extended the schedule somewhat.

16 I've also padded staff time a bit. And
17 in the middle where it talks about the draft EIR,
18 if you'll notice my schedule's out past the
19 applicant's proposed schedule. And that accounts
20 for the completion of those biological surveys
21 before staff has an opportunity to do their own
22 assessments.

23 I talked to my biologist and Susan
24 assured me that it was necessary for a number of
25 those services to be conducted and reviewed, and

1 findings made to those surveys before she wanted
2 to review the outcome and incorporate that into
3 her environmental assessment.

4 If you'll look at the schedule that the
5 applicant put together, some of their surveys are
6 running concurrently to staff's assessment.
7 That's not going to work.

8 HEARING OFFICER CELLI: Okay, --

9 MS. MILLER: So that accounts for the
10 lengthiness of it.

11 HEARING OFFICER CELLI: -- can you show
12 me where on table 1 you're --

13 MS. MILLER: Sure.

14 HEARING OFFICER CELLI: -- what you're
15 referring to.

16 MS. MILLER: Let's see, talks about
17 under the biological survey, field work and
18 reports. Talk about the general bio survey, the
19 gnatcatcher, vireo, those surveys.

20 HEARING OFFICER CELLI: I see, okay.

21 MS. MILLER: And when I talked to Susan
22 she told me that a safer course would be to extend
23 those surveys another 30 to 60 days just to be
24 practical.

25 HEARING OFFICER CELLI: So what that

1 means is that will take us from June to July?

2 MS. MILLER: For the applicant to
3 complete their surveys at least until the end of
4 July. More likely into August.

5 HEARING OFFICER CELLI: Okay, which
6 means that the draft initial study, which was
7 proposed to be filed somewhere it looks like the
8 beginning of July, would go out beyond that?

9 MS. MILLER: Correct.

10 HEARING OFFICER CELLI: So the draft
11 initial study would be filed about when are you
12 proposing?

13 MS. MILLER: October, mid-October.

14 HEARING OFFICER CELLI: October.

15 MS. MILLER: Now, in addition to the
16 biological surveys I've also built in time for the
17 applicable agencies to do their review. So, the
18 applicant needs to conduct their surveys; and then
19 U.S. Fish and Wildlife, Fish and Game needs to
20 have time to review the studies and come up with
21 their findings.

22 That's why I've added another 60 days.
23 Actually you can't see it, I've got it on my
24 schedule here, but that's I don't show them ending
25 in July or the end of June, I show them ending

1 more like August, end of August, mid-August.

2 Because I built that timeline in.

3 HEARING OFFICER CELLI: So, --

4 MS. MILLER: And we believe the timeline
5 is reasonable because we don't know what the
6 outcome of the field surveys will be.

7 HEARING OFFICER CELLI: So the draft
8 initial study would be filed in October?

9 MS. MILLER: Correct.

10 HEARING OFFICER CELLI: Then the
11 workshop and comments, that would probably remain
12 the same. Prehearing conference then would be it
13 looks like November or December?

14 MS. MILLER: No, I show --

15 HEARING OFFICER CELLI: Oh, according to
16 yours it's --

17 MS. MILLER: -- my schedule I show it
18 out in January.

19 HEARING OFFICER CELLI: January 5th of
20 '09. Okay. I'm trying to work these two together
21 so I understand where their overlap is.

22 Applicant, do you have a comment on --

23 MS. LUCKHARDT: I think -- we understand
24 the general staff's hesitancy. I think what we're
25 talking about here is that these are surveys that

1 have to be redone a number of times.

2 If you look at table 1 there are numbers
3 in there like nine surveys, eight surveys, five
4 surveys, six surveys. So it's not like the survey
5 is done once. The survey is repeated to make sure
6 that they are really there or really not there and
7 in finding the specific species.

8 So, the reports that will follow that,
9 those surveys will be in process and being written
10 while the surveys are being done. And then the
11 final surveys will be added to the back of the
12 studies once they are completed.

13 So although staff is concerned that the
14 survey time period may extend out, these survey
15 time periods are the only time periods that are
16 allowed within the protocol in some instances.
17 And so, you know, the number of times, once you
18 can actually start the survey, that it is done, we
19 believe, can be completed in the time period
20 that's shown on table 1.

21 In addition, we will be drafting the
22 reports while we're doing the surveys, since they
23 are repeats of the surveys. So you're not re-
24 describing what you're surveying and how you're
25 doing it. You're simply adding the results of the

1 last survey to the end when you're finished.

2 So the report should come out shortly
3 after the final survey is done.

4 We understand their concerns about other
5 agencies acting. And as Joe indicated earlier, we
6 are going to be working with those agencies
7 because those can be some of the slowest things to
8 get turned around in a project, exceeding air
9 districts and the Commission definitely in some
10 proceedings.

11 But what is really important to get out
12 of those agencies is the mitigation that they will
13 want to see. So we think we'll be able to
14 negotiate and resolve the mitigation issues if the
15 impacts are as we expect, to be relatively small.

16 And there are also often specific ratios or
17 mitigation banks that can be used.

18 So, as long as we can resolve the
19 mitigation issues fairly quickly with the other
20 agencies, that being Fish and Game and Fish and
21 Wildlife, we think that we'll be able to get the
22 information that staff would like to have to draft
23 their report to them in a much shorter timeframe
24 than they're estimate is showing at this point.
25 With a draft document out in the first of October.

1 HEARING OFFICER CELLI: So, if we set it
2 for October then you're confident that all that
3 reporting would be done by October?

4 MS. LUCKHARDT: Oh, yeah. The studies,
5 the surveys will definitely be done by then. I
6 think that, you know, our concern is that if we
7 set it to October, then if we're done earlier we
8 won't have a chance to get a document out earlier
9 because the schedule allots staff time to other
10 projects.

11 HEARING OFFICER CELLI: What will happen
12 in that regard is we will build in status reports
13 probably on a monthly basis. So, if it looks like
14 you could get something moving faster, then by all
15 means we would do that.

16 MS. LUCKHARDT: We would appreciate
17 that.

18 HEARING OFFICER CELLI: Right now it
19 seems reasonable to sort of come up with some sort
20 of hybrid between the two just so I can have some
21 sort of schedule I can work off of and we're all
22 on the same page there.

23 Staff, any comment on that?

24 MR. BABULA: I've just got one comment.
25 Certainly a lot of this really depends on what

1 happens with these biological surveys. So, in the
2 sense that if nothing really comes out of it,
3 that's one scenario and staff can then go from
4 there.

5 If there's dodo birds found, then maybe
6 there's another scenario and that may delay
7 things.

8 So, certainly up until these reports are
9 done we have a fairly good view of what's going
10 on. And to try to project now how -- what exactly
11 the schedule will be is a little tough because we
12 don't have all the information.

13 So what we tried to do is put together a
14 schedule based on the studies, and then putting in
15 some factor we built in just in case there's
16 either additional information is needed, or
17 there's a species out there and more mitigation is
18 needed.

19 So, certainly we're flexible and try to
20 accelerate things, if that's the case.

21 HEARING OFFICER CELLI: Thank you.

22 MR. STENGER: If I could make one
23 comment. I think something that's important to
24 keep in mind on this is that the pipeline, the
25 improved pipeline is primarily in disturbed

1 habitat. There's very little -- there is not a
2 real high likelihood of significant direct
3 impacts.

4 So in all likelihood the worst case
5 scenario would be that if some of these species
6 are found near the pipeline route, you're probably
7 talking about mitigating for indirect impacts.
8 And there certainly are ways to do that that would
9 be easier to get through the process with the
10 resource agencies than if we were talking putting
11 two miles of pipeline through native habitat.

12 HEARING OFFICER CELLI: Okay. Mr.
13 Arand, any comment?

14 MR. ARAND: Yes, sir. Once again I'm
15 concerned that the applicant is adhering to the
16 SPPE format. And, you know, I'm at a loss. I
17 have worked with the Army Corps of Engineers. We
18 have worked with Fish and Wildlife and all
19 agencies involved in this.

20 The schedules that we see here on paper
21 are wishful thinking, at best. The Gregory Canyon
22 landfill project, for example, took almost eight
23 years for a permit with the Army Corps.

24 That was our understanding of the 12-
25 month AFC application was to be able to do

1 equivalent evaluations through one agency as the
2 clearinghouse. I think it serves this developer
3 in every way, shape or form fathomable to pursue
4 that route.

5 SDG&E will not pull their contract.
6 They can go back and renegotiate it. I'm terribly
7 sorry that they spent money to buy equipment
8 before they had a permit to construct. That's not
9 part of this process.

10 I think that the agency is looking at a
11 long way if they allow it to be piecemealed at
12 local permitting, in the nature of all other
13 projects that are going on around it and their
14 documented history of not being able to obtain
15 permits.

16 Once again, I scratch my head as to why
17 they don't want to do an AFC. Thank you.

18 HEARING OFFICER CELLI: Thank you. I
19 think I will put out a schedule within the next
20 week based on the information you've given me.

21 I do acknowledge that an SPPE is an
22 expedited application process, and now we're going
23 into our second year with the schedule as it is.
24 And we don't like to do that.

25 So, with that, Mr. Bartsch, do we have

1 public comment?

2 MR. BARTSCH: No, Mr. Celli, we are not
3 aware of any. Our office has not been contacted
4 for any public -- and I don't see any public
5 comment, anyone here wanting to make public
6 comment. No blue cards.

7 HEARING OFFICER CELLI: Okay, there's a
8 gentleman indicating. Thank you, Mr. Bartsch.

9 Mr. Miller is here; also, Maggie, if
10 there's anyone on the phone?

11 MS. READ: No, just Mr. Arand.

12 HEARING OFFICER CELLI: Thank you. Mr.
13 Miller.

14 MR. MILLER: Good afternoon,
15 Commissioners. I'm Taylor Miller with Sempra
16 Energy here speaking on behalf of San Diego Gas
17 and Electric, only to express support for the
18 project and the hope that when this is all said
19 and done that it can be moved forward in time to
20 allow for power to be delivered for the summer
21 peak in '09.

22 That's obviously our goal. In fact,
23 peak of 2008 was our goal originally. The project
24 has gone through a review in an RFO process with
25 the Public Utilities Commission; it's been

1 approved in that process.

2 It's part of our plan and planning
3 that's been worked out. And we certainly would
4 like to see it go online. So that's my only
5 comment today. And thank you very much for your
6 consideration and for staff's efforts in this
7 matter, as well.

8 So we look forward to a successful
9 project. Thank you.

10 HEARING OFFICER CELLI: Thank you, Mr.
11 Miller. Anyone else wish to make a comment,
12 public comment?

13 For the record I have received Mr.
14 Arand's letter today at noon that was three pages.
15 And we will take that up to dockets for you, Mr.
16 Arand.

17 Anything else from any of the parties?
18 Commissioner, do you want to adjourn.

19 PRESIDING MEMBER BOYD: I have no
20 comments for fear of saying more than I should.
21 So I'd like to thank everybody and we look forward
22 to a speedy resolution of this issue.

23 I'm very cognizant of the energy
24 concerns in the San Diego area. Projects in the
25 San Diego area seem to be always quite complicated

1 for whatever reasons.

2 And I'm looking forward to the
3 resolution of some of the environmental issues,
4 particularly in the arenas with which I've had
5 lots of experience, but we'll let it go at that.

6 And I'll thank everybody for being here.
7 I guess we can adjourn this hearing today.

8 (Whereupon, at 2:35 p.m., the status
9 conference was adjourned.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of February, 2008.

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