

PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for the Orange Grove Power) 08-AFC-4
Plant Project by)
Orange Grove Energy, LLC)
_____)

CALIFORNIA ENERGY COMMISSION

HEARING ROOM B

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

MONDAY, DECEMBER 1, 2008

9:00 a.m.

Reported by:
Ramona Cota
Contract No. 170-07-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

James D. Boyd, Vice Chair and Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Kenneth Celli, Hearing Officer

Susan Brown, Advisor to Commissioner Boyd

David Hungerford, Advisor to Commissioner
Rosenfeld

STAFF AND CONSULTANTS PRESENT

RoseMary Avalos

Jared Babula

Felicia Miller

PUBLIC ADVISER'S OFFICE

Nick Bartsch

Elena Miller

APPLICANT

Thomas Henry, Downey Brand
Nicholas Rabinowitsh, Downey Brand
representing J-Power USA

Hiroshi Chiyomatsu, J-Power USA

Richard M. (Mike) Jones, J-Power USA

Stephen Thome, J-Power USA

Elisha M. Back, TRC Solutions

Bob Mantey, subcontractor to TRC Solutions (via
telephone)

Doug Murray, TRC Solutions (via telephone)

Joseph L. Stenger, TRC Solutions

INTERVENOR

Anthony Arand, Envirepel Energy, Inc. (via
telephone)

ALSO PRESENT

Taylor Miller, Sempra Energy

Steve Taylor, San Diego Gas and Electric Company

Rod Watkins, Pala Pauma Band of Mission Indians,
Environmental Section

I N D E X

	Page
Proceedings	1
Introductions	1
Background	5
Prehearing Conference Statements	9
Exhibits List	27
Witness List	32
FSA Public Comment Matrix	33
Briefing Schedule	41
Public Comment	43
Closing Remarks	57
Adjournment	57
Reporter's Certificate	58

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

2 9:09 a.m.

3 PRESIDING COMMISSIONER BOYD: All right,
4 good morning, everybody. This is the Prehearing
5 Conference on the proposed Orange Grove project.
6 I am Commissioner Jim Boyd, the Presiding Member
7 of this Siting Case Committee.

8 The purposes of this Prehearing
9 Conference are pretty well spelled out in the
10 hearing notice that was issued some time ago that
11 covered both this Prehearing Conference and the
12 Evidentiary Hearing which is scheduled for Friday,
13 December 19.

14 So I think what I would like to do
15 before turning this over to the Hearing Officer is
16 just to have the Committee Members introduced, or
17 I will do some introductions. To my right is
18 Susan Brown, my advisor working with me on this
19 case. To my far left is David Hungerford, who is
20 advisor to Commissioner Rosenfeld. Commissioner
21 Rosenfeld is, I believe, in Seattle today and
22 unable to be here. And of course Ken Celli is our
23 Hearing Officer.

24 So with that I think I will turn it over
25 to Hearing Officer Celli who will have the parties

1 introduce themselves, the staff introduce
2 themselves and then carry on with the hearing. So
3 if you would.

4 HEARING OFFICER CELLI: Thank you,
5 Commissioner. Good morning everyone. You have
6 now been introduced to the Committee so I am going
7 to turn it over to the applicant. Mr. Henry, if
8 you would please introduce the people here with
9 the applicant.

10 MR. HENRY: Yes. I am Tom Henry with
11 Downey Brand for the applicant. With me is Joe
12 Stenger, Steve Thome, Mike Jones, Elisha Back and
13 Taylor Miller. We may have some other members of
14 the team too.

15 HEARING OFFICER CELLI: Thank you. And
16 staff.

17 MR. BABULA: I'm Jared Babula, staff
18 counsel. And this is Felicia Miller, the project
19 manager.

20 HEARING OFFICER CELLI: Now we have
21 three intervenors in this case. Mr. Anthony
22 Arand, are you on the line? Anyone here
23 representing Mr. Arand?

24 Seeing nobody.

25 We also have the Alliance for a Cleaner

1 Tomorrow represented by Art Moreau. Mr. Moreau,
2 are you on the line? Or any representative for
3 the Alliance for a Cleaner Tomorrow on the line or
4 here in person?

5 Seeing none.

6 Archie McPhee is our third intervenor.
7 Mr. McPhee, are you on the line or here?

8 And seeing none. I just would say for
9 the record that the legal secretary in the Hearing
10 Office, RoseMary Avalos, received a telephone call
11 from Mr. McPhee who said he was not going to make
12 it here today. Is that correct?

13 MS. AVALOS: I called him with regard to
14 WebEx and in that conversation he stated he would
15 not be attending.

16 HEARING OFFICER CELLI: Now we also have
17 certain agencies. Is there anyone here from the
18 San Diego County Air Pollution Control District or
19 on the line?

20 MS. AVALOS: That would be Steve Taylor.

21 MR. TAYLOR: Steve Taylor is with San
22 Diego Gas and Electric.

23 HEARING OFFICER CELLI: Okay. And you
24 are here Mister -- is that you, Mr. Taylor?

25 MR. TAYLOR: Correct.

1 HEARING OFFICER CELLI: Good
2 morning.

3 MR. TAYLOR: Good morning.

4 HEARING OFFICER CELLI: So you are with
5 SDG&E, Steve Taylor.

6 Do we have anyone from the Rainbow
7 Municipal Water Board on-line or present?

8 The Pala Indian tribe, on-line?

9 MR. WATKINS: Yes, this is Rod Watkins.
10 I am in the environmental section for the Pala
11 Band of Mission Indians.

12 HEARING OFFICER CELLI: Thank you. Good
13 morning, Mr. Watkins.

14 MR. WATKINS: Good morning.

15 HEARING OFFICER CELLI: Anyone from the
16 Pauma? I don't know if I am pronouncing it --
17 Pauma, Pauma tribe. Nobody.

18 San Diego County. Any agencies from San
19 Diego County present or on-line? Nobody.

20 The Fallbrook Public Utility District
21 on-line or on the phone?

22 Do we have any elected officials that
23 would like to be recognized here today, of any
24 rank, or on the telephone?

25 Seeing none. And then we have

1 representatives from the Public Adviser's Office,
2 we have Nick Bartsch and Elena Miller. Good
3 morning.

4 A little background, if I may. The
5 Committee scheduled today's Prehearing Conference
6 in a Notice dated November 6, 2008. The Notice
7 was served on all parties listed in the Proof of
8 Service. It was sent by US Mail and as an
9 attachment to an e-mail from me which explained
10 that the instructions in the Notice regarding the
11 Prehearing Statement were to be strictly followed.

12 As explained in the Notice, the basic
13 purposes of the Prehearing Conference are to
14 assess the parties' readiness for hearings, to
15 clarify areas of disagreement or dispute, to
16 identify witnesses and exhibits. To determine
17 upon which areas parties desire to cross-examine
18 the other parties' witnesses, and to discuss
19 associated procedural matters.

20 To achieve these purposes the Notice
21 stated that any party interested in participating
22 at today's conference or any future Evidentiary
23 Hearings would be required to file a Prehearing
24 Conference Statement by November 25, 2008. Timely
25 Prehearing Conference Statements were filed by the

1 applicant, Orange Grove Energy LLC, the staff,
2 that would be the Energy Commission staff,
3 hereinafter staff, and Archie McPhee.

4 Anthony Arand, intervenor Anthony Arand
5 did not file a Prehearing Conference Statement and
6 we therefore infer that he did not wish to
7 participate in this conference or present or
8 cross-examine witnesses at future evidentiary
9 hearings.

10 Intervenor Alliance for a Cleaner
11 Tomorrow also did not file a Prehearing Conference
12 Statement and we therefore infer that the Alliance
13 for a Cleaner Tomorrow did not wish to participate
14 in this conference or present or cross-examine
15 witnesses at any future evidentiary hearings.

16 The way we will proceed today -- And
17 also if anyone calls in just let me know that we
18 have a new person, please.

19 MS. AVALOS: Well it will show there. I
20 already put it on up there. But as they speak I
21 can ask the name of the person. They come in as
22 Caller 1, 2, 3.

23 HEARING OFFICER CELLI: Okay. Do you
24 know if these folks are all using the WebEx or are
25 they just on the phone?

1 MS. AVALOS: Correct. What I see is
2 they are all WebEx users. Just these two, Douglas
3 and myself. The others are on the phone.

4 HEARING OFFICER CELLI: On the phone but
5 we don't know whether they are on the computer or
6 not?

7 MS. AVALOS: No, it would show a marking
8 as this. See how it's done, how Murray is on
9 there.

10 HEARING OFFICER CELLI: So Douglas
11 Murray is or is not on the computer?

12 MS. AVALOS: He is.

13 HEARING OFFICER CELLI: Okay. So the
14 little symbol says that they are on the computer.

15 MS. AVALOS: Correct.

16 HEARING OFFICER CELLI: Okay. And so
17 for the record folks, what we are doing and what
18 we have projected on the wall is the WebEx meeting
19 management system and it tells us who is on the
20 line and gives people the opportunity to raise
21 their hand if they wanted to make a comment or
22 participate. The way we are going to -- But since
23 I am not really paying attention to that I am just
24 asking that you let me know if we get new people.

25 MS. AVALOS: Okay.

1 HEARING OFFICER CELLI: Today's agenda
2 is divided into six parts. First we will discuss
3 matters contained in the Prehearing Conference
4 Statements. We will discuss after that the
5 Exhibits List. I hope everybody received a copy
6 of the Exhibits List. If not, they are on that
7 little table in the back of the room on my left,
8 your right.

9 We will also discuss the witness list,
10 which is also available on the little table. And
11 after that we will determine which public comments
12 are covered in the FSA and which are not, going
13 through the matrix that the staff prepared. After
14 that we will discuss a briefing schedule and
15 finally we will provide an opportunity for public
16 comment, as we always do.

17 After this Prehearing Conference today
18 the parties have asked for a workshop, which we
19 are going to allow. That would be the applicant
20 has requested a workshop. And we would like that
21 to take advantage of the fact that you are going
22 to have hopefully anybody who wants to participate
23 on-line on the phone so they can participate in
24 the workshop as well. So we would afford that
25 opportunity.

1 So any questions about how we intend to
2 proceed? Seeing none we will move right on to our
3 discussion of the Prehearing Conference
4 Statements.

5 What we were able to glean from reading
6 the Prehearing Conference Statements is that the
7 topics that seem not to be in dispute by any party
8 would be Cultural Resources, Land Use, Public
9 Health, Socioeconomics, Transmission Line Safety
10 and Nuisance, Visual Resources, Waste Management,
11 Worker Safety, Facility Design, Geology and
12 Paleontology, Power Plant Efficiency and
13 Reliability, Transmission Systems Engineering and
14 Alternatives.

15 Topics that appear to be complete but
16 are in dispute according to the applicant, and I
17 am taking this off the Prehearing Conference
18 Statement because it seemed that there were some
19 open questions in some areas so I am just saying
20 that these appear to be, shall we say, open:
21 Hazardous Materials, Noise and Biological
22 Resources. According to staff it appears that
23 there was no dispute. Do I have that right?

24 MR. BABULA: (Nodded).

25 HEARING OFFICER CELLI: Okay. And under

1 Mr. McPhee's Prehearing Conference Statement he
2 cites Soil and Water, Traffic and Transportation
3 and Noise.

4 Topics which are not complete are,
5 according to the applicant, Air Quality, which is
6 pending an FDOC. And according to staff,
7 Biological Resources, which is pending comments
8 from CDFG and USFWS. Correct?

9 MR. BABULA: Right.

10 HEARING OFFICER CELLI: Okay. As to
11 topics any party claims are incomplete or are in
12 dispute we expect the parties to work together to
13 determine whether or not any of these topics can
14 be moved into the undisputed column between now
15 and the Evidentiary Hearing on December 19 in the
16 city of Fallbrook.

17 The Notice asked that the parties bring
18 all documentary and written testimonial evidence
19 to this conference in two formats with copies for
20 the Committee, all parties and the hearing
21 advisor. The Committee has received all their
22 exhibits from the applicant already and staff,
23 which is the FSA. I understand that there is a
24 Revised FSA coming out; is that correct?

25 MR. BABULA: That's correct.

1 HEARING OFFICER CELLI: Are we going to
2 make that Exhibit 201 rather than Exhibit 200 so
3 that we can see the difference between the old and
4 the new? How do you want to handle that?

5 MR. BABULA: We can do that if you think
6 that's clearer than just having one, this is the
7 final one. There will be, the copy -- As we said,
8 the copy will have the strikeout and underline so
9 that you can tell what is different from the prior
10 version, so that would get submitted. But if you
11 prefer we could do a 200, 201.

12 HEARING OFFICER CELLI: Actually that
13 might be, that's probably unnecessary if you went
14 with -- Since we haven't moved any documents in
15 you can move the new one in as 200.

16 MR. BABULA: Right.

17 HEARING OFFICER CELLI: But what I would
18 appreciate is some sort of summary of what the
19 changes are, apart, so that we can -- Rather than
20 having to go through the whole thing again I can
21 quickly look at some digest that you provide.

22 MR. BABULA: Right.

23 HEARING OFFICER CELLI: Is that
24 acceptable?

25 MR. BABULA: That would be -- What we

1 could do, I could put together just a little
2 summary of like the main, the main stuff that
3 changed. Some of the grammatical changes might be
4 not worth --

5 HEARING OFFICER CELLI: Right.

6 MR. BABULA: Is/are, stuff like that.
7 But if it is something more notable.

8 HEARING OFFICER CELLI: A change to a
9 condition.

10 MR. BABULA: That's significant, I'll
11 highlight that in like a cover page to it or
12 something like that.

13 MS. MILLER: Summarizing it section by
14 section, okay.

15 HEARING OFFICER CELLI: Thank you, that
16 would be most helpful.

17 MS. MILLER: We can do that.

18 MR. HENRY: Mr. Celli, we had some
19 revisions to our Exhibit List in the form of
20 documents that came in from other agencies. I can
21 provide that to the staff. I'm not sure of the
22 procedures here but let me provide that to you
23 also.

24 HEARING OFFICER CELLI: Which documents
25 were those?

1 MR. HENRY: It's our exhibit list we
2 filed. We had some revisions to it, the
3 evidentiary record. I'm not sure --

4 HEARING OFFICER CELLI: Do you know when
5 that went out?

6 MR. HENRY: We just got it today.

7 HEARING OFFICER CELLI: I received by e-
8 mail from Jane Luckhardt a revised exhibits list
9 on Wednesday.

10 MR. HENRY: I believe this would have
11 been revised after that, I believe. Is that
12 correct?

13 MR. RABINOWITSH: Yes.

14 HEARING OFFICER CELLI: Okay. We are
15 going to talk about the exhibit list in a moment.

16 MR. HENRY: Okay.

17 HEARING OFFICER CELLI: And then we can
18 talk about what changes need to be made. Okay?

19 MR. HENRY: Okay.

20 HEARING OFFICER CELLI: Thank you.
21 Okay, so that being the case, we did not receive
22 any evidence from Anthony Arand, intervenor, nor
23 intervenor Alliance for a Cleaner Tomorrow.

24 As to Mr. McPhee, we have received an
25 eight page document consisting of a Prehearing

1 Hearing Statement, a Stipulation, and a Financial
2 Hardship Petition, all on a sort of fill-in-the-
3 blank, pre-printed form with check boxes and blank
4 lines to be filled in.

5 Attached to that we received a three
6 page letter signed by Archie McPhee on November
7 23, 2008 in which he sets forth his education and
8 engineering background, followed by six enumerated
9 points of discussion. Attached to Mr. McPhee's
10 letter is a sheet entitled Attachments and a sheet
11 containing a table that appears to be page 6.5-8
12 of the Orange Grove Project's Application for
13 Certification regarding the -- do we say F-PUD or
14 the F-P-U-D? The abbreviation for Fallbrook
15 Public Utilities District. A reclaimed water
16 quality chemistry profile for 2006 to 2007.

17 Mr. McPhee appears to be a highly
18 educated, licensed engineer with a depth of
19 engineering experience. And according to
20 Mr. McPhee, or according to his Prehearing
21 Conference Statement, stipulations of fact and law
22 are attached. There's a check box for that. And
23 then another check box that says that issues and
24 witness identification is not attached.

25 So the Committee will infer that

1 Mr. McPhee is proceeding by declaration and
2 submitting these eight pages as his expert
3 testimony in support of the six points raised in
4 the stipulation. He will not be calling any
5 witnesses nor requesting an opportunity to cross-
6 examine any other party's witnesses because there
7 was no mention of that in the filing.

8 And at the Evidentiary Hearing
9 Mr. McPhee will have an opportunity to submit
10 these documents under oath since these documents
11 were not submitted under oath unless any of the
12 parties have any objection to that. Applicant,
13 any objection?

14 MR. HENRY: No objection.

15 HEARING OFFICER CELLI: Staff.

16 MR. BABULA: No objection.

17 HEARING OFFICER CELLI: And we have no
18 other parties here today. Is that still the case?

19 MS. AVALOS: Correct.

20 HEARING OFFICER CELLI: Thank you. So
21 unless there's any further question about the
22 Prehearing Conference Statements themselves what I
23 wanted to do was get to that part of the
24 Prehearing Conference Statement that addressed
25 questions that were sent out by e-mail to the

1 parties on 11/20/2008.

2 The first question was, what is the
3 status of the San Diego County habitat loss permit
4 and when is the permit expected to be issued? The
5 applicant responded that the habitat loss permit
6 is to issue around March 1, 2008.

7 MR. HENRY: And obviously we need to
8 correct that, that should be 2009.

9 HEARING OFFICER CELLI: Okay, 2009.
10 Thank you. I didn't even catch that. Okay,
11 anything further on that question or that point,
12 applicant?

13 MR. HENRY: No other, no other points.

14 HEARING OFFICER CELLI: Staff?

15 MR. BABULA: No.

16 HEARING OFFICER CELLI: Question 2 was,
17 the final documents referred to Hazardous Waste
18 condition HAZ-2. It indicates that the final
19 documents referred to -- we would probably change
20 the wording of that condition rather than say -- I
21 understand what they were saying, the final
22 documents. But I think it is better to be precise
23 and just refer only to business plan and risk
24 management, okay.

25 Section 3, the language was changed so

1 that the question we had with regard to the major
2 use permit seems to be cleared up unless there is
3 any further comment from applicant or staff?

4 MR. BABULA: No.

5 HEARING OFFICER CELLI: Okay. Item 4,
6 staff is currently revising the section of the
7 Staff Assessment to clarify the circumstances
8 under which staff would revisit the issue. Staff
9 will provide these revisions to the Committee in
10 an addendum to the staff assessment. I assume
11 that is going to be the Revised FSA.

12 MR. BABULA: Correct, yes.

13 HEARING OFFICER CELLI: On or around
14 December 5. Is that your expected?

15 MR. BABULA: Right. In our -- For the
16 -- We will have everything finalized no later than
17 the 13th. But we are trying to get the 9th or
18 10th, December 9th or 10th as our target date to
19 have the whole entire, however you want to call
20 it, supplemental or post-workshop FSA.

21 HEARING OFFICER CELLI: The earlier the
22 better, of course.

23 MR. BABULA: Yes, we understand.

24 HEARING OFFICER CELLI: I like December
25 9th.

1 MS. MILLER: Do you?

2 HEARING OFFICER CELLI: That would work
3 for me. So really the concern I had there was
4 that it seems to me that if that was the final
5 FSA, since we didn't really have a PSA or an FSA
6 in this case, that the whole idea of revisiting
7 something that wasn't going to be revisited is a
8 problem. So I'm hoping that language comes out.

9 MS. MILLER: It will.

10 MR. BABULA: Specifically on the
11 transportation we have already, we already have a
12 draft. We just made a couple of changes to
13 clarify that so that's already been done.

14 HEARING OFFICER CELLI: Very good.
15 Thank you.

16 MR. BABULA: I sent it, I don't know. I
17 sent it to Jane so I don't know if she sent -- we
18 can talk after but --

19 HEARING OFFICER CELLI: Okay, moving on
20 to Question 5. The Committee had questions with
21 regard to whether water trucks can safely travel
22 at the speed limit, uphill from the FPUD reclaimed
23 water filling station, to the site on SR-76 while
24 carrying a full load of water, which appears to be
25 18 tons or more. If not what would the effect be

1 on the level of service?

2 Now the response we received from the
3 applicant is that Orange Grove does not anticipate
4 the grade of SR-76 to substantially affect the
5 speed of water trucks. Orange Grove therefore
6 expects no impact to the level of service. The
7 staff didn't really address that issue but did you
8 want to today?

9 MS. MILLER: Yes. I talked to the
10 transportation person regarding the question and
11 he said that the water trucks were designed to
12 deliver water, a full load of water at that speed.
13 So he said he didn't anticipate any problems.

14 HEARING OFFICER CELLI: Do you have any
15 questions?

16 ADVISOR HUNGERFORD: When I read that I
17 imagine that they are talking about the trucks
18 achieving the speed limit for the entire length of
19 SR-76. An automobile can't go the speed limit for
20 the entire length of SR-76 between 15 and the site
21 without slowing down for the turns. So that
22 raises a question in my mind as to whether those
23 trucks can negotiate those turns at the speed
24 limit.

25 MR. BABULA: The speed limit of the turn?

1 ADVISOR HUNGERFORD: No, the speed limit
2 of the, the speed limit of the roadway.

3 MR. BABULA: Well it would be -- I
4 imagine the truck will be driving at a safe speed.

5 ADVISOR HUNGERFORD: Will traffic slow
6 down?

7 MR. BABULA: Would it have to slow down
8 so much that it would cause a traffic backup? Is
9 that -- I am not clear. Obviously the speed limit
10 changes if it is straight.

11 ADVISOR HUNGERFORD: That's the concern.
12 Has the analysis gone into the detail of looking
13 at what impact on the traffic on that section of
14 road, having those trucks moving along those tight
15 turns, slowing down for those tight turns would
16 have and risks from people trying to pass and that
17 sort of thing.

18 MR. BABULA: Well understand, of course,
19 that none of this stuff we are saying right now is
20 going into any record. But staff has done an
21 analysis and according to the FSA that they put
22 out there was no problem or impacts regarding
23 water trucks on the road.

24 ADVISOR HUNGERFORD: I didn't see, I
25 didn't see that detail of that analysis in the

1 traffic analysis. That's the question I'm
2 raising. Was there care taken to look at the
3 details of how the trucks were operating on that
4 road? As opposed to calculating how many, how
5 many vehicles were on the road during, you know,
6 on a particular segment for a certain amount of
7 time.

8 MR. BABULA: Right.

9 ADVISOR HUNGERFORD: And if it didn't
10 exceed the standard number of vehicles on that
11 road then the level of service remained high,
12 which is a rather simplistic analysis and doesn't
13 go into the detail of how truck traffic would
14 affect the rest of the traffic on that road.

15 MR. BABULA: Well we can, for the
16 Evidentiary Hearing we can have Jim Adams and
17 traffic staff present to address specific
18 questions.

19 HEARING OFFICER CELLI: I think that is
20 what the Committee is pretty much asking for is to
21 have witnesses available to answer questions on
22 Traffic. I understand that Traffic is deemed an
23 undisputed area between staff and the applicant so
24 far, although Mr. McPhee raises the issue of
25 traffic. So when we get to that we probably

1 should note that we will need witnesses available
2 to address traffic issues. Moving on.

3 MR. HENRY: Mr. Celli.

4 HEARING OFFICER CELLI: Yes.

5 MR. HENRY: We also had a change too on
6 our exhibit there, the Attachment B to that
7 question, which I think is at page 17 in your
8 brief. About the middle line there. Instead of
9 "east of I-15" it should be "west of I-15."

10 HEARING OFFICER CELLI: Okay. So that
11 change is noted.

12 MR. HENRY: And just for the record
13 also: With Attachment A those dates should also
14 reflect the 2009 date rather than 2008. That was
15 with your first issue. That's the page in front
16 of that.

17 HEARING OFFICER CELLI: Thank you.
18 Okay, moving on to Item 6. VIS-1 mentions the
19 HRSG. We received that there is no HRSG in this
20 one so --

21 MR. BABULA: That has been corrected.

22 HEARING OFFICER CELLI: Okay, thank you.
23 WASTE-1. This is one of those sort of dangling
24 participles or something like that where it was
25 kind of an awkwardly worded sentence that left you

1 questioning what the "if needed" referred to. I'm
2 sure that is not that big a deal.

3 MR. BABULA: Yes, that's been corrected
4 as well.

5 HEARING OFFICER CELLI: Okay, that can
6 be changed.

7 The language was changed in Worker
8 Safety-6 about that 60 days prior to start
9 business. I don't know if that is really a rule
10 or just a convention but that seems to be
11 corrected.

12 And finally the matrix. Staff has
13 indicated that it will provide the Committee with
14 an identification of public comments, which we
15 have received. Ms. Miller sent us a matrix with
16 the comments attached. We will discuss that later
17 in the Prehearing Conference.

18 Are there any questions from any of the
19 parties about any matters contained in the
20 Prehearing Conference Statements? Applicant?

21 MR. HENRY: No questions.

22 HEARING OFFICER CELLI: Staff?

23 MR. BABULA: No. I just wanted to
24 comment that -- going back to, quickly, the first
25 one where you were discussing what areas are being

1 contested or not. And we are hoping that these
2 will get worked out and that there won't be any
3 contested. I feel pretty optimistic that that
4 will be possible by the Evidentiary Hearing.

5 HEARING OFFICER CELLI: So where are we
6 with regard to what is outstanding? What are the
7 outstanding issues right now?

8 MR. BABULA: Right now. I mean, with
9 Biology they made -- during the workshop they came
10 up with sort of a modification on one of the, on
11 distance for construction.

12 HEARING OFFICER CELLI: That was BIO-7?

13 MR. BABULA: Yeah. And they provided
14 some additional information. We wanted to run
15 that by Fish and Wildlife, Fish and Game, to get
16 their input that's slightly different. After
17 discussion, discussing between our staff and the
18 agencies they agree that what they provided us was
19 sufficient. So we were just tweaking the
20 condition to incorporate so our biologist is
21 working on that. And as I indicated, she will be
22 available to testify, for questions and so forth,
23 during the Evidentiary Hearing. So Biology I
24 think will be fine.

25 We are going to use the additional

1 workshop time today to address some of the issue
2 with noise and hazardous materials.

3 MS. MILLER: Air Quality. The FDOC
4 won't be out until hopefully then end of this
5 week. So the revised Air Quality sections should
6 be contained in the December 9th or 10th document.

7 HEARING OFFICER CELLI: Okay.

8 MS. MILLER: We can't even touch that
9 until we have an FDOC.

10 MR. BABULA: I believe that the
11 applicant is pretty agreeable that whatever comes
12 out of that is going to be put in there. So I
13 don't anticipate any problems there.

14 HEARING OFFICER CELLI: Well the only
15 problem would be if it didn't come out before the
16 December 19 date because then we would be looking
17 at subsequent hearing dates.

18 MR. BABULA: Well I think it should, it
19 should come out. Let's just go with that. That's
20 the indication we're getting, it should come out.

21 MS. MILLER: If not we can submit it
22 later or we can hold up the document a couple of
23 extra days, the December 9 doc.

24 MR. BABULA: He's wanting it by the 19th
25 if it doesn't come out.

1 MS. MILLER: It will be out by the 19th,
2 you bet.

3 HEARING OFFICER CELLI: So with regard
4 to, so the 100 feet rather than 300 feet setback
5 was acceptable to staff and all of that.

6 MR. BABULA: With the sound barrier
7 curtain, yeah.

8 HEARING OFFICER CELLI: Okay. So that's
9 not longer an issue.

10 MR. BABULA: Right.

11 MS. MILLER: Right.

12 HEARING OFFICER CELLI: And you are
13 going to work out the language today on Bio.
14 Noise. Without getting too detailed, what are we
15 looking at there in terms of resolution?

16 MR. BABULA: Good question.

17 MS. MILLER: We don't have resolution
18 yet.

19 MR. BABULA: I don't know. Do you want
20 to talk about that or should we put that off?

21 HEARING OFFICER CELLI: Well, you know
22 what.

23 MR. BABULA: I don't want to waste our
24 time on that.

25 HEARING OFFICER CELLI: Right, I am not

1 going to, I won't go there.

2 And Hazardous Materials, how are we
3 doing on that?

4 MR. BABULA: That one I think should be
5 pretty close.

6 HEARING OFFICER CELLI: Should resolve
7 today.

8 MR. BABULA: Yeah. Right now --

9 MS. MILLER: I don't know whether --

10 MR. BABULA: Unfortunately Alvin missed
11 his flight so he's in the airport in transit. So
12 there may be a --

13 HEARING OFFICER CELLI: We can call him.

14 MS. MILLER: I am going to try to hook
15 him up with that but if not it will have to roll
16 over. But I don't anticipate that is not
17 resolvable.

18 HEARING OFFICER CELLI: Okay. And
19 RoseMary can give you the phone number. Then he
20 will get a telephone call to join in that.

21 Okay, let's move on to the Exhibit List.
22 This portion of the conference will be devoted to
23 verifying the information contained in the Exhibit
24 List. For purposes of this discussion we will
25 proceed with each party in turn. Please indicate

1 any corrections to the Exhibit List starting with
2 the applicant. And just to be clear, I have the
3 most recent Exhibit List that I received last
4 Wednesday. So any changes to that document,
5 applicant?

6 MR. HENRY: I believe we have added --
7 Nick, can you come up here.

8 MR. RABINOWITSH: Sure.

9 MR. HENRY: Exhibits 50 through 60. Is
10 that correct?

11 MR. RABINOWITSH: That's right, yes.

12 MR. HENRY: This is Nick Rabinowitsh; he
13 is also an attorney with our firm.

14 HEARING OFFICER CELLI: Good morning.

15 MR. RABINOWITSH: Good morning.

16 MR. HENRY: And these are actually
17 documents that I think have been provided by
18 public agencies so we wanted to make them part of
19 the evidentiary record.

20 HEARING OFFICER CELLI: What happened to
21 26 through 49?

22 MR. RABINOWITSH: Those are reserved,
23 they are not actually exhibits yet.

24 HEARING OFFICER CELLI: Okay. So 26
25 through 49 will be reserved.

1 MR. RABINOWITSH: There are a few
2 additional changes on top of that as well.

3 HEARING OFFICER CELLI: Okay, I am
4 interested in those changes. And then can I get
5 an e-mail today with the new Exhibits List?

6 MR. RABINOWITSH: Absolutely, yes.

7 MR. HENRY: The other ones were
8 editorial.

9 MR. RABINOWITSH: The exhibits that had
10 to do with confidential cultural resources
11 submittals have been removed. So I can point
12 those out to you if you'd like now.

13 HEARING OFFICER CELLI: Please.

14 MR. RABINOWITSH: Exhibit 3 is removed.

15 HEARING OFFICER CELLI: It is withdrawn?

16 MR. RABINOWITSH: Yes.

17 HEARING OFFICER CELLI: Okay.

18 MR. RABINOWITSH: Exhibit 11 is
19 withdrawn.

20 HEARING OFFICER CELLI: Thank you.

21 MR. RABINOWITSH: And we have also added
22 exhibits 23 and 24.

23 HEARING OFFICER CELLI: And 23 is what?

24 MR. RABINOWITSH: Twenty-three is the
25 Orange Grove Energy supplemental testimony, which

1 we brought with us today.

2 HEARING OFFICER CELLI: Okay. And 24?

3 MR. RABINOWITSH: Exhibit 24 is a site
4 layout plan for the Orange Grove Project. It was
5 filed with the Prehearing Conference Statement.

6 HEARING OFFICER CELLI: Which I don't
7 think I received. I also didn't get the document.
8 Was that from TRC? As long as it has been
9 docketed I can get it from Dockets.

10 MR. RABINOWITSH: I have copies of
11 everything.

12 HEARING OFFICER CELLI: Okay, so that's
13 Exhibits 23 and 24.

14 MR. RABINOWITSH: Yes.

15 HEARING OFFICER CELLI: And what other
16 exhibits?

17 MR. RABINOWITSH: That's it. Exhibit 57
18 and 58 were included in the Prehearing Conference
19 Statement. But we have removed those as well
20 because they deal with confidential cultural
21 resources submittals.

22 HEARING OFFICER CELLI: Okay. So you
23 said that it was 50 through -- What is the last
24 exhibit you have?

25 MR. RABINOWITSH: Fifty through 60.

1 HEARING OFFICER CELLI: Okay. So my
2 request would be that today, if you could, send an
3 e-mail with the new exhibit list in the format
4 that we sent it to you. That would be greatly
5 appreciated.

6 MR. RABINOWITSH: Sure.

7 HEARING OFFICER CELLI: Thank you very
8 much.

9 MR. RABINOWITSH: No problem.

10 HEARING OFFICER CELLI: Staff, we have
11 Exhibit 200. Anything else?

12 MR. BABULA: That is still correct, 200.

13 HEARING OFFICER CELLI: And I have not
14 received anything from Anthony Arand or intervenor
15 Alliance for a Cleaner Tomorrow.

16 So I am marking the entire Prehearing
17 Conference Statement, the full eight pages that we
18 received from Archie McPhee as Exhibit 500.
19 That's an eight page document consisting of a
20 Prehearing Conference Statement, stipulation,
21 financial hardship petition, a three page letter
22 signed by Archie McPhee on November 23, 2008, a
23 sheet entitled attachments and the table from page
24 6.5-8 showing the FPUD reclaimed water quality
25 Chemistry profile for 2006 and 2007.

1 Anything else on the exhibit lists,
2 applicant?

3 MR. HENRY: No other.

4 HEARING OFFICER CELLI: Staff?

5 MR. BABULA: Nothing further.

6 HEARING OFFICER CELLI: Good. Let's
7 move on to Witness List. We prepared a Witness
8 List. I hope everybody has gotten a copy of it
9 and had a chance to look at it. I took the
10 liberty to add Mr. McPhee as a witness in Traffic
11 and Transportation, Soil and Water and Noise,
12 assuming he is going to serve as his own expert.

13 MR. HENRY: And I am not sure how we
14 typically file objections but I think our only
15 objection would be that we are not contesting his
16 expertise, I think as to water. But as to the
17 other topics I think we would object to that.

18 HEARING OFFICER CELLI: All right. I
19 would expect that and we will deal with that at
20 the hearing.

21 MR. HENRY: Okay.

22 MR. BABULA: And I also noted in my
23 statement that we follow the Evidence Code, or at
24 least review the qualifications for any of the --
25 I would question, I agree with his statement that

1 his area of expertise seems to be water. I don't
2 know about noise at this point.

3 HEARING OFFICER CELLI: We will give you
4 an opportunity to make that record when we get to
5 the Evidentiary Hearing. So that concludes our
6 discussion of the Exhibit List. Applicant, any
7 changes to the Witness List?

8 MR. HENRY: I don't think we have any
9 changes?

10 HEARING OFFICER CELLI: Staff, any
11 changes?

12 MR. BABULA: I have no changes.

13 HEARING OFFICER CELLI: Okay. And if
14 there are any changes please just go ahead and
15 make the changes and send them to the POS, the
16 proof of service list in advance of the hearing so
17 that we stay current with you. It will be greatly
18 appreciated by the Committee. Okay, that
19 concludes the discussion of our Witness List.

20 The public comments which are covered in
21 the FSA. Actually the Hearing Office prepared a
22 matrix and sent it out to all parties. We only
23 received one response, which came from staff,
24 which is now up on the screen. And if you are on-
25 line you can see it.

1 These are all of the comments. This is
2 a listing of all of the comments that we believe
3 have been received in this case. And all of them
4 appear to be addressed in the FSA, however, there
5 are four that I had a question about.

6 The first one is, on 8/13/08 Jacob M.
7 Armstrong, Chief Development Review Branch.
8 That's blank. On 8/13 up at the top. Where it
9 says "Response." Did you intend that be covered
10 under that same comment on the right as the 8/19?

11 MS. MILLER: No. I could not verify
12 whether or not that was incorporated into the SA.

13 HEARING OFFICER CELLI: So?

14 MS. MILLER: So I couldn't verify it
15 either way.

16 HEARING OFFICER CELLI: Very good. The
17 9/17/08, which would be on the next page,
18 RoseMary, shows that the workshop facilitated a
19 detailed discussion with J. Chismohl and provided
20 a response to his concerns. J. Chismohl
21 apparently was the author of the letter from the
22 Pala Pauma Indians.

23 MS. MILLER: He was.

24 HEARING OFFICER CELLI: Regarding a
25 major use permit. I thought there were some other

1 issues of traffic and things like that.

2 MR. BABULA: Was he the visual guy?

3 MS. MILLER: No, it was a conversation.

4 It had to do about -- strictly visual.

5 HEARING OFFICER CELLI: Okay.

6 MS. MILLER: He was worried about the

7 landscaping around the project.

8 HEARING OFFICER CELLI: Well the

9 question I have is, as a function of that

10 discussion that you had at a workshop are the

11 comments going to be addressed in the Supplemental

12 FSA that is coming out?

13 MR. BABULA: The comments, the FSA

14 section will discuss the rationale for what trees

15 are being planted there, the restrictions

16 regarding the fire requirements. And in the

17 biology section, wanting native, native shrubbery

18 or native plants to be there.

19 I think the applicant has had some

20 discussions with that particular person. I don't

21 know if there's any, are there going to be any

22 changes or did anything come out of that?

23 HEARING OFFICER CELLI: So at the

24 workshop, I take it, the applicant had a

25 conversation also with Mr. Chismohl.

1 MR. BABULA: Right.

2 HEARING OFFICER CELLI: But what I am
3 trying to ascertain is whether the evidence that
4 we receive, either from the applicant or staff, is
5 going to contain those comments so I can actually
6 say in the Decision whether those comments have
7 been addressed by applicant or staff. If not,
8 fine, I just need to know what is or isn't covered
9 in the FSA or in the evidence.

10 MR. STENGER: I think you are referring
11 to the letter from Joe Chismohl that was filed.

12 HEARING OFFICER CELLI: Right.

13 MR. STENGER: I actually had a
14 discussion with him during the workshop and
15 pointed out to him some items that he didn't
16 notice were -- his concepts that he identified to
17 us early on were incorporated in the project
18 design already. I went over the revised site plan
19 with him. His comment letter was more relevant in
20 the old project design under the SPPE submittal
21 and there were some changes in project design made
22 to address his issues. I pointed those out to him
23 and he seemed to be satisfied.

24 He did make a couple of additional
25 comments during the workshop but I think that the

1 bulk of his letter was addressed in project
2 revisions that are now in the AFC.

3 HEARING OFFICER CELLI: Very good, thank
4 you very much. On 10/21 Elisha Back from TRC.
5 There was an e-mail to Michelle Moreno of FWS
6 regarding Rod Mountain mitigation. And the note I
7 have is there was an e-mail received after the SA
8 completed for publication. And my question to
9 staff is, will the revised Exhibit 200 that is
10 coming out address Elisha Back's comments?

11 MS. MILLER: The Michelle Moreno, Rod
12 Mountain mitigation?

13 MS. BACK: She hasn't responded.

14 HEARING OFFICER CELLI: I have not seen
15 this so I don't know what it contains.

16 MR. STENGER: It's Red Mountain.

17 MS. BACK: Red Mountain.

18 MR. BABULA: It's Red Mountain?

19 MS. MILLER: Is that what it is?

20 MR. STENGER: That is the interaction on
21 the status of the mitigation, correct?

22 MS. BACK: That's correct. It's
23 normally dealt with, it's part of the --

24 THE REPORTER: Mr. Celli, she needs to
25 come to a microphone.

1 HEARING OFFICER CELLI: Yes. Are you
2 Elisha Back?

3 MS. BACK: I am.

4 HEARING OFFICER CELLI: If you wouldn't
5 mind, please, coming up to the podium. Folks,
6 everything we are saying is being taken down by
7 the court reporter and we need to be clear that no
8 two people talk at the same time. And also,
9 people going to address the Committee from the
10 audience, you are going to need to come up so you
11 can be heard and be a part of the record. So
12 thank you, Ms. Back.

13 MS. BACK: The e-mail regarding Red
14 Mountain had to do with allowing us to mitigate
15 for, I believe this e-mail was for allowing us to
16 mitigate for out of kind mitigation. So allowing
17 for non-native grassland mitigation, out of kind.
18 That is being handled as part of the habitat loss
19 permit through the County. And so that process is
20 being handled right now and we expect that permit
21 to be issued by March of 2009.

22 So there is a agency comment period that
23 should be started this week, which is a 45 day
24 comment period. And that issue will be handled as
25 part of that. But we were asked by the County to

1 send a e-mail to Michelle Moreno, by Susan
2 Sanders, to address that.

3 MS. MILLER: Okay.

4 HEARING OFFICER CELLI: Is this really a
5 comment? I mean, that's what I am trying to
6 figure out, is this a public comment? Who did the
7 comment come from?

8 MS. BACK: It wasn't a public comment.
9 I was asked by Susan to send the e-mail to
10 Michelle to try to get a response. But trying to
11 get responses from the agencies isn't always
12 something that happens.

13 HEARING OFFICER CELLI: Okay.

14 PRESIDING MEMBER BOYD: So an applicant
15 comment.

16 MS. MILLER: Correct. So we threw a
17 question out there to get clarification. So it
18 wasn't a voluntary comment, we asked a question
19 and got a response.

20 HEARING OFFICER CELLI: Right. What I
21 am trying to make sure is that we are covering the
22 public comment. It doesn't sound to me like this
23 is a public comment.

24 MS. BACK: It wasn't a public comment.

25 HEARING OFFICER CELLI: Very good.

1 Thank you for clearing that up.

2 And finally on 10/30/08 I have Archie
3 McPhee apparently sent a letter regarding SDCO AQ
4 District. This was on 10/30. Okay, you are
5 looking at it on the screen, the letter to John
6 Annicchiarico, County of San Diego Air Pollution
7 Control District. It says the letter was received
8 after the SA section was completed. Mr. Walters
9 has no scientific merit to the question. Workshop
10 discussion covered author's concerns about
11 recycled water and health concerns. I wanted to
12 know whether those concerns are dealt with in the
13 new FSA or not.

14 MS. MILLER: The FDOC is being delayed
15 by the AQ District so they can address Archie
16 McPhee's letter. I am going to assume that
17 because it was a public letter addressed to the AQ
18 District that the FDOC will contain some comments.
19 If not I will instruct Will to address that
20 analysis in his addendum that he will have.

21 But again, we haven't received anything
22 from the AQ District and that is what is holding
23 it up. The AQ District said they needed to do
24 some additional research to address Archie
25 McPhee's letter. And when they were able to

1 address that then they could address the FDOC. So
2 it should all be done at the same time.

3 MR. BABULA: Also, the applicant, I
4 guess, is providing Exhibit 23, which addresses
5 McPhee' comments on most all his comments besides
6 that.

7 HEARING OFFICER CELLI: Very good. So
8 that is all included in Exhibit 23. Thank you,
9 Ms. Back.

10 MR. STENGER: The AD also did ask us for
11 some input on Archie McPhee's comment in their
12 letter to them so we are certain that they are
13 addressing the letter that's directed to them.

14 HEARING OFFICER CELLI: Very good, that
15 covers all the public comment unless there is any
16 other public comment that didn't make the list
17 that anyone is aware of. Applicant?

18 MR. HENRY: Nothing else.

19 HEARING OFFICER CELLI: Staff?

20 MR. BABULA: I think that is everything.

21 HEARING OFFICER CELLI: Okay. Next
22 let's go to the briefing schedule. The only
23 proposal for a briefing schedule that we received
24 came from the applicant, who proposes opening
25 briefs due on January 9 and reply briefs due on

1 January 23, 2009. Is there any further discussion
2 about the briefing schedule, applicant?

3 MR. HENRY: Nothing else.

4 HEARING OFFICER CELLI: Staff?

5 MR. STENGER: Just a question of exactly
6 what to brief. If there are specific --

7 HEARING OFFICER CELLI: It all depends
8 on what comes out of the Evidentiary Hearing. I
9 have no idea at this moment.

10 MR. BABULA: Right, right. Well I'm
11 fine with that schedule.

12 HEARING OFFICER CELLI: Okay, so that
13 will be part of the Hearing Order.

14 Is there anything from the Committee,
15 any further questions before we launch into public
16 comment?

17 MR. BABULA: No, I have no questions.

18 HEARING OFFICER CELLI: It sounds, to
19 me, that the parties should be prepared to have
20 their Traffic and Transportation people available
21 at the Evidentiary Hearing.

22 Soil and Water looks like it's going to
23 be an issue.

24 So I am hopeful that Bio is going to be
25 resolved today in the workshop.

1 And Noise and Hazardous Materials. I'll
2 leave that up to the parties to decide whether
3 they need witnesses, today, if it doesn't get
4 resolved. Noise. Applicant mentioned something
5 about Noise. I already talked about Noise, sorry.
6 Soil and Water and Noise.

7 So I don't know that there would be a
8 need for any other witnesses other than Traffic,
9 Soil and Water. Unless these other issues are not
10 resolved by these two parties. Does that seem
11 correct to everyone?

12 MR. HENRY: Yes.

13 HEARING OFFICER CELLI: Staff?

14 MS. MILLER: Yes.

15 HEARING OFFICER CELLI: Very good. Then
16 with that let's move on to public comment. This
17 is the point where people may address the
18 Committee on any matter having to do with the
19 Orange Grove Project. I am going to first ask --
20 Let's deal with the people on the telephone first.
21 So who do we have on the phone?

22 MS. AVALOS: As far as the names we have
23 Rod --

24 MR. TAYLOR: We have Steve Taylor with
25 San Diego Gas and Electric Company.

1 HEARING OFFICER CELLI: Okay.

2 MR. WATKINS: Rod Watkins with the Pala
3 Pauma Band of Mission Indians.

4 HEARING OFFICER CELLI: Rod, what was
5 your last name?

6 MR. WATKINS: Watkins, W-A-T-K-I-N-S.

7 HEARING OFFICER CELLI: Okay. And who
8 else?

9 MR. MURRAY: Doug Murray from TRC.

10 HEARING OFFICER CELLI: Doug Murray. Is
11 that everyone on the phone?

12 MS. AVALOS: There would be also Bob
13 Mantey. Is Bob Mantey still on the line?

14 HEARING OFFICER CELLI: Bob Mantey, are
15 you still there? He might be on hold or something
16 and that leaves the phone on. Is that how this
17 works?

18 MS. AVALOS: It shows that, it shows
19 that he is still there but he may have us on mute,
20 I don't know.

21 HEARING OFFICER CELLI: Mr. Mantey, if
22 you are there you are welcome to pipe up at any
23 time during the comment period as we are going
24 through this. First let's hear from Mr. Steve
25 Taylor please.

1 MR. TAYLOR: I am just here, again, in
2 support of the Orange Grove Project. I am very
3 pleased that the applicant and staff have worked
4 through what looks like most of the issues on the
5 project and, you know, just want them to proceed on
6 good a tack. Thank you.

7 HEARING OFFICER CELLI: Thank you for
8 your comments, Mr. Taylor. Rod Watkins.

9 MR. WATKINS: Yes, representing the Pala
10 Band of Mission Indians. Our interest in the
11 project, we don't see a major environmental issue
12 but we are concerned about the transmission gas
13 line going to the Orange Grove Project.

14 We have discussed this with San Diego
15 Gas and Electric and I understand it is in the
16 process of the line being changed so that it
17 doesn't terminate there at the Orange Grove
18 Project. And that the line will, in fact, be
19 built by San Diego Gas and Electric and allow us
20 the opportunity to extend that line onto the
21 reservation. And that's our interest.

22 HEARING OFFICER CELLI: And just so I am
23 clear, the gas line currently does terminate. Is
24 that the plan, to have it terminate at the site?

25 MR. STENGER: Yes, and with regard to

1 this project, it still is the plan, that it will,
2 that the gas line will be built to the project.

3 But in response to comments by the Pala
4 Band it will now be owned by SDG&E. And the
5 difference there would be, with SDG&E owning the
6 line it would not prohibit the Pala Band from
7 tying into that line in the future. Whereas the
8 way the line was previously proposed, with the
9 applicant being the owner, it would have
10 prohibited them from tying in in the future.

11 HEARING OFFICER CELLI: Very good.

12 MR. STENGER: The project does not
13 include extending the line up to the casino but
14 the ownership has been changed and the location of
15 the metering station has been changed so that that
16 future modification is not prohibited.

17 HEARING OFFICER CELLI: So they can do
18 whatever they want later between them and SDG&E.

19 MR. STENGER: That's right.

20 HEARING OFFICER CELLI: Okay.

21 MR. WATKINS: And with that change the
22 Pala Band of Mission Indians is very satisfied
23 with the project, thank you.

24 HEARING OFFICER CELLI: Thank you.

25 Thank you for your comments, Mr. Watkins.

1 Doug Murray.

2 MR. MURRAY: Yes. I am with TRC
3 supporting the applicant on air quality issues.
4 And I would just simply like to thank the
5 Commission and the staff for their responsiveness
6 on the project.

7 HEARING OFFICER CELLI: Thank you. Bob
8 Mantey. Bob Mantey, are you on the line?

9 MR. MANTEY: Yes I am.

10 HEARING OFFICER CELLI: Would you care
11 to make a comment.

12 THE REPORTER: Mr. Celli, may I get him
13 to spell his name for the record.

14 HEARING OFFICER CELLI: Please spell
15 your name, Mr. Mantey.

16 MR. MANTEY: M-A-N-T-E-Y.

17 HEARING OFFICER CELLI: Thank you.

18 MR. MANTEY: The first name is Bob.

19 HEARING OFFICER CELLI: You have the
20 floor, Mr. Mantey.

21 MR. MANTEY: With respect to Noise-4
22 condition. The staff put in to comply with the
23 CEC criteria for noise that the project should
24 meet the modeling results rather than what is
25 historically and by precedent been established as

1 meeting the CEC criteria for noise, which is five
2 dB above late-night, L-90 ambience.

3 The project put in comments to the
4 original staff assessment and put in the
5 modification or the desired modification to meet
6 CEC's requirements, i.e. late-night ambient plus
7 five, and staff reasserted meeting the modeling
8 results. Which in many cases are significantly
9 below the CEC criteria. So it is --

10 We are a little confused and uncertain
11 as to why the CEC wants significantly lower
12 restrictions on proving what the plant produces
13 for noise than what they have historically
14 established as their impact assessment criteria.

15 HEARING OFFICER CELLI: That is a good
16 question. And while they are here then I am going
17 to have, I am going to direct the question to the
18 staff and they will be able to answer your
19 question.

20 MR. BABULA: I have a quick question.
21 Is this your staff person?

22 MR. STENGER: Yes, actually we asked Bob
23 to be on the line. We can certainly address that
24 now if you'd like to. We had anticipated that
25 this would be the workshop discussion.

1 HEARING OFFICER CELLI: I see.

2 MR. STENGER: The noise workshop
3 discussion.

4 HEARING OFFICER CELLI: Okay.

5 Mr. Mantey, I'm sorry, when we are operating
6 remotely like this I don't get a chance to see who
7 is here. I understand that you are with TRC and
8 you are working with the applicant.

9 MR. MANTEY: Yes, I am a subcontractor
10 to TRC on behalf of the applicant.

11 HEARING OFFICER CELLI: What we
12 anticipate -- because at this moment we are really
13 looking for public comment from non-parties,
14 although parties are certainly welcome to make
15 comment as well.

16 MR. MANTEY: Okay.

17 HEARING OFFICER CELLI: But what we are
18 going to do is at the close, after we receive all
19 of the public comment, which is coming up pretty
20 quickly, you will be having a workshop. And we
21 would ask that you stay on-line so that the
22 parties can have a workshop and still take
23 advantage of the WebEx on the issue of, among
24 other things, noise. So if you could please stand
25 by and then you can participate in that workshop.

1 Is that acceptable to you?

2 MR. MANTEY: That's fine. I just wasn't
3 sure if now was the time to throw that out on the
4 table or not. And apparently it's not so that's
5 fine.

6 HEARING OFFICER CELLI: Okay, I
7 appreciate that.

8 Okay, we have Anthony Arand on-line.
9 Good morning, Mr. Arand.

10 PRESIDING MEMBER BOYD: Good morning,
11 staff. Sorry about that. The fog delayed flights
12 and I had to return to my office and dial in, I
13 apologize.

14 HEARING OFFICER CELLI: Well, you are
15 really just in time for the sign-off here I am
16 sorry to say. We have already had the hearing
17 pretty much. And we note that you did not submit
18 a Prehearing Conference Statement. Is that true
19 or did we just not get it?

20 MR. ARAND: I submitted it, you guys may
21 not have posted it yet. But short summaries, I am
22 in support of the project. There's a couple of
23 holes in data that I identified and provided some
24 information for staff but no issues.

25 HEARING OFFICER CELLI: Well, it sounds

1 like you have some issues.

2 MR. ARAND: None that are material and
3 worth the time to discuss.

4 HEARING OFFICER CELLI: Okay. Were you
5 asking for, are you intending to call any
6 witnesses of your own?

7 MR. ARAND: No sir.

8 HEARING OFFICER CELLI: And are you
9 intending to or are you requesting to cross any
10 witnesses in the witness list of the other
11 parties? In other words what I am asking is, are
12 you requesting that we require the presence of any
13 particular witness so that you would be able to
14 cross-examine them? I'm talking about the 19th
15 Evidentiary Hearing.

16 MR. ARAND: From the list that I have
17 been able to review I don't see any need to do
18 that on my behalf. The questions that I have
19 staff has answered. And the supplemental
20 information I have sent is simply to support them.

21 HEARING OFFICER CELLI: Okay. And we
22 will be getting that.

23 PRESIDING MEMBER BOYD: Staff has
24 apparently not seen this, based on the looks on
25 their faces.

1 HEARING OFFICER CELLI: Okay. We have
2 Felicia Miller looking befuddled and shaking her
3 head no and the applicant is doing the same thing
4 so at this moment none of us have received your
5 documents yet, Mr. Arand. When did you file them?

6 MR. ARAND: The end of last week.

7 HEARING OFFICER CELLI: Okay. Does it
8 include any exhibits that you wanted submitted
9 into evidence?

10 MR. ARAND: Three of them, yes.

11 HEARING OFFICER CELLI: Air emissions
12 historic calculations for other projects in the
13 area that were not included by the applicant's
14 submission.

15 HEARING OFFICER CELLI: But at this
16 point you are saying that you are not happy. Are
17 you claiming that you have a dispute with regard
18 to the air quality?

19 MR. ARAND: No, no. From my perspective
20 the entire time, my reason for intervening was to
21 make sure that the procedure was followed and the
22 project followed the right permitting path, and it
23 has.

24 There are data holes that the applicant
25 did not submit to staff in regards to other

1 projects in the area. If the project maintains
2 its air quality issues as calculated there's no
3 issue. But staff needs to be aware that it helps
4 round out a more complete picture. I have no
5 issues with the project.

6 HEARING OFFICER CELLI: Okay. And if
7 you were to submit it as evidence you would need a
8 sponsoring expert witness with a declaration
9 attached to that exhibit. Did you do that?

10 MR. ARAND: These are drawn out of own
11 Title 20 application as a basic change factor of
12 power plant equipment. We actually qualify for
13 that. We did not attach a third party engineering
14 air quality expert.

15 HEARING OFFICER CELLI: Or anybody.
16 Does it have any declaration attached?

17 MR. ARAND: It does.

18 HEARING OFFICER CELLI: It does?

19 MR. ARAND: Yes.

20 HEARING OFFICER CELLI: Is that your
21 declaration?

22 MR. ARAND: It is.

23 HEARING OFFICER CELLI: Okay. And
24 included in that are your qualifications to
25 qualify as an expert?

1 MR. ARAND: Yes.

2 HEARING OFFICER CELLI: Okay, very good.

3 And you want that to be included in the Exhibit

4 List as Exhibit 400? Exhibit 300.

5 MR. ARAND: The 300 series was for me.

6 HEARING OFFICER CELLI: So you will the

7 one exhibit; is that correct?

8 MR. ARAND: Yes sir.

9 PRESIDING MEMBER BOYD: I thought three.

10 HEARING OFFICER CELLI: No, that's

11 right. I thought you had other exhibits besides

12 the air quality.

13 MR. ARAND: Air quality is the only one

14 that I am going to proceed on.

15 HEARING OFFICER CELLI: Okay. And how

16 many pages of documents are you submitting?

17 MR. ARAND: There might be 12 pages.

18 They are Excel spreadsheets.

19 HEARING OFFICER CELLI: Okay, so 12

20 pages of Excel spreadsheet and we are going to

21 treat that as a single exhibit. Is that what you

22 want?

23 MR. ARAND: That would be fine by me.

24 HEARING OFFICER CELLI: Very good.

25 Anything further about the Prehearing Conference

1 on the 19th that you have any questions?

2 MR. ARAND: Not at this time.

3 HEARING OFFICER CELLI: Okay, very good.
4 Thank you for calling in. I appreciate your
5 participation, as you know. You have been a part
6 of this for a long period of time and we
7 appreciate your participation.

8 Are there any other members of the
9 public on-line at this time?

10 MS. AVALOS: No.

11 HEARING OFFICER CELLI: Any members of,
12 anyone wishing to make a public comment who is
13 here present? Mr. Taylor I see. I'm sorry,
14 Mr. Miller.

15 MR. MILLER: I'll just take about 15
16 seconds to reiterate SDG&E's --

17 HEARING OFFICER CELLI: Please identify
18 yourself.

19 MS. MILLER: Sorry, Taylor Miller,
20 Sempra Energy, on behalf of SDG&E. Just to
21 reiterate our support for the project. And in
22 particular our appreciation to staff as well as
23 our own consultant and the Committee to keep the
24 project on schedule. This is an unusual project
25 schedule and we just want to acknowledge that and

1 express our appreciation for being able to resolve
2 the issues that have come up. No project is
3 simple, really, so I want to commend the staff for
4 their efforts and keeping this on track. Thank
5 you.

6 HEARING OFFICER CELLI: Thank you. And
7 I am sure the Committee would join in that. Both
8 staff and applicant have done an excellent job of
9 keeping to the schedule with only minor
10 deviations. If we can keep that going that would
11 be a good thing.

12 PRESIDING MEMBER BOYD: I would concur
13 with that.

14 HEARING OFFICER CELLI: Anyone else who
15 would like to make a comment, a public comment,
16 who is here in the room today?

17 With that I am going to hand the meeting
18 back over to Commissioner Boyd who will adjourn.
19 And then following the adjournment of the
20 Prehearing Conference all those people who wish to
21 participate in the workshop that is going to
22 follow immediately, and I would encourage
23 everybody on the telephone to remain on the
24 telephone so they can participate in the workshop,
25 that will follow right after the adjournment.

1 Commissioner Boyd.

2 PRESIDING MEMBER BOYD: Thank you. In
3 that there is no other business to be brought
4 before this Prehearing Conference I want to just
5 reiterate my thanks and the thanks of the
6 Committee to all of you. This is a rather unusual
7 process. Not so much the project as the process.
8 We appreciate everybody's understanding of the
9 legal nuances involved and appreciate the hard
10 work everybody has done.

11 So with that we will adjourn this
12 Prehearing Conference and leave everything open
13 and on for the workshop that will follow
14 immediately. Thank you all.

15 HEARING OFFICER CELLI: Thank you. At
16 this point the workshop begins and the Committee
17 is now leaving the room.

18 (Whereupon, at 10:13 a.m., the
19 Prehearing Conference was
20 adjourned.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of December, 2008.

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