STATUS CONFERENCE
BEFORE THE
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the: 

Application for Certification 

for the Quail Brush 

Generation Project 

Docket No. 

11-AFC-03

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

MONDAY, JUNE 25, 2012
2:00 p.m.

Reported by:
John Cota
Contract No. 170-09-002
COMMITTEE MEMBERS PRESENT
Karen Douglas, Presiding Member

HEARING OFFICER, ADVISORS PRESENT
Raoul Renaud, Hearing Officer
Galen Lemei, Advisor to Commissioner Douglas
Eileen Allen, Commissioners' Technical Adviser for Facility Siting

CEC STAFF PRESENT
Stephen Adams, Staff Counsel
Eric Solorio, Project Manager

OFFICE OF THE PUBLIC ADVISER
Jennifer Jennings, Public Adviser

APPLICANT
Ella Foley Gannon
Camarin Madigan (via WebEx)
Bingham McCutchen LLP

Lori Ziebart
Cogentrix Energy, LLC

INTERVENORS
Kevin Brewster (via WebEx)
Roslind Varghese (via WebEx)

ALSO PRESENT
Tina Nagle
Sophie Akins (via WebEx)
Best, Best & Krieger - City Attorneys to the City of Santee
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P R O C E E D I N G S

2:10 p.m.

PRESIDING MEMBER DOUGLAS: We are ready to start the status conference. This is Commissioner Karen Douglas; I am the Presiding Member of this siting committee. And to my left is our hearing officer, Raoul Renaud, to my immediate right my advisor, Galen Lemei, and to his right is Eileen Allen, the technical adviser for siting matters for the Commission.

Let me ask now for the applicant, if you could introduce yourselves.

MS. NAGLE: Tina Nagle.

MS. FOLEY GANNON: This is Ella Foley Gannon, counsel to the applicant, and to my right is Lori Ziebart, the project manager for Quail Brush.

HEARING OFFICER RENAUD: Thank you.

MS. NAGLE: Sure.

PRESIDING MEMBER DOUGLAS: And staff?

MR. SOLORIO: Yes, hi. This is Eric Solorio, the project manager for the Energy Commission.

MR. ADAMS: And Steve Adams, staff counsel for the Energy Commission.

PRESIDING MEMBER DOUGLAS: Thank you.

And at this point we'll go through the intervenor list. We're just pulling up the list now to make sure we
call on everyone in order. All right. Rosalind Varghese, are you on the phone?

    MS. VARGHESE: Yes I am.

PRESIDING MEMBER DOUGLAS: Great. Rudy Reyes?

    (No response.)

PRESIDING MEMBER DOUGLAS: Okay, not yet. Dorian Houser?

    (No response.)

HEARING OFFICER RENAUD: I believe she couldn't attend today.

    PRESIDING MEMBER DOUGLAS: Okay. Kevin Brewster?

    (No response.)

PRESIDING MEMBER DOUGLAS: Phillip Connor?

    (No response.)

PRESIDING MEMBER DOUGLAS: All right, I think that's the list.

    Is there anyone from any government agencies participating in the status conference today?

    (No response.)

PRESIDING MEMBER DOUGLAS: All right. I'll point out the Public Adviser, Jennifer Jennings, is here in the room with us today. And with that I will turn this over to the Hearing Officer.

    HEARING OFFICER RENAUD: Excuse me, I just want to note. I don't know if the WebEx is muted but you called
Kevin and his name is on the WebEx menu there.

PRESIDING MEMBER DOUGLAS: Thanks. It is not muted because we got a few answers but let me ask Kevin again. Kevin Brewster, are you on? Can you hear us? Are you on the phone or the WebEx?

(No response.)

PRESIDING MEMBER DOUGLAS: He might have walked away for a moment. Okay.

HEARING OFFICER RENAUD: All right. Thank you, Commissioner Douglas. This is Raoul Renaud, the Hearing Adviser.

We conduct these status conferences roughly once a month just to give the parties an opportunity to advise the Committee about how progress is going on the review of the Application for Certification, any obstacles or problems that may have been encountered that could affect the schedule and to keep the Committee informed generally as to any major issues that have cropped up.

We have in person in the room today representatives of the staff and the applicant and then we have on the phone some of the intervenors, and we have other people on the phone as well.

We conduct these hearings using our WebEx phone and computer system so that members of the public can participate without having to come here to Sacramento.
Those of you who are listening in on the phone please remember that we can hear you so if you could keep it quiet at your end we'd appreciate that. If you have noises or something that are unavoidable then perhaps you could mute your phone. You could still hear us but then we won't be able to hear you.

Eventually we will get to a portion of the proceeding where we will ask for public comment and at that point members of the public who are not parties to the Quail Brush matter will have an opportunity to address the Committee.

We also ask each party to submit a status report to the Committee about once a month and typically these are roughly a week or so before the status conference takes place. And again, these status reports just give the Committee kind of a written summary of how things are going. And I did receive, we did receive status reports from the staff and the applicant, from Mr. Reyes, Mr. Dorian Houser, Roslind Varghese and from Kevin Brewster and we thank you for those.

And I think having said all of those introductory things what we will do is go ahead with asking each party to briefly summarize where things stand for the Committee and highlight anything that you wish. And I think we'll start with the applicant.
And I will throw in a question for the applicant, which you can address in the course of your statements, and that is concerning the Supplement 3. I haven't seen that yet, now that doesn't mean you didn't send it, but I don't find it anywhere.

MS. FOLEY GANNON: Unfortunately it does mean we didn't send it, I'm sorry, Hearing Officer Renaud.

HEARING OFFICER RENAUD: Okay.

MS. FOLEY GANNON: That was the -- that is the main thing we do have to address with you today and update you on. As we were putting together the supplement and conducting the analysis we ran into some issues with civil engineering which were outside of the scope of what we had anticipated. And those concerns or issues that we addressed have ramifications that have to be analyzed in all the different subject matters.

So I know it's unheard of in project development that there are delays but this is one of those unusual situations where it is going to take us more time. We didn't want to submit something piecemeal, we don't think that makes any sense, and we wanted to make sure that, again, all of the analysis is done and it's done correctly so that we can go back and revise the other areas that we need to as we get the answers to the civil engineering questions. So it is, unfortunately, still a work in
And I don't know, Lori, if you wanted to speak to the timing of it or -- we're anticipating it's probably going to be about a month before -- or so before it's going to be submitted. We can go back and, you know, dig deeper with all of our technical leads and engineers and put together a schedule based upon the answers that we get from them. But at this time we think it's going to be around a month.

HEARING OFFICER RENAUD: All right. Ms. Ziebart, anything to add to that?

MS. ZIEBART: No, nothing.

HEARING OFFICER RENAUD: All right. Well, as you know, the Committee just issued a new scheduling order and that was based on the schedule submitted in these latest status reports. It sounds like that schedule is not going to work because a 30 day, roughly 30 day delay on that is --

MS. FOLEY GANNON: Yes.

HEARING OFFICER RENAUD: A lot of things depend on that supplement. One question that occurs to me is to ask how, if you know, what impact the lack of that supplement may have on the city of San Diego proceedings?

MS. FOLEY GANNON: It doesn't have any impact on the city of San Diego proceedings because what the city of San Diego is doing is just having a hearing to initiate
their review of the requested land use changes. So it's just, it's a process that is not into the details of the project itself. There is the project description which is stable and isn't changing at the level that it is being considered for that process. So we will be going forward with them on Thursday.

MS. ZIEBART: Right. And the decision that they would make if they were a vote to approve, it would allow us to submit our application so they could begin their review process.

MS. FOLEY GANNON: Right. So it could have an impact on some of the application material but not on the actual process before the city to allow us to be able to submit an application.

HEARING OFFICER RENAUD: All right. Is that -- I'm just curious. Is that vote that they'll take on whether to initiate the process -- I don't know, what do they consider there? Is that something that could be denied for some reason?

MS. FOLEY GANNON: There is. They have a series I think of like five findings that they need to make about, you know, there's different public interest considerations and other factors that they make an evaluation on. So they make their findings and then they either vote to say yes you can submit an application or no you cannot submit an
application. This is at the Planning Commission level. If they didn't approve it you could go, you could appeal that decision. But we are hopeful that on Thursday we will get approval.

HEARING OFFICER RENAUD: All right, thank you. Anything further from the applicant?

MS. FOLEY GANNON: I think those are -- that's the major driving issue.

HEARING OFFICER RENAUD: Okay. I think what we will need again is another revised schedule. It sounds like you might not be quite ready to do that. You may need a little time to make sure you have a date that's pretty reliable.

MS. FOLEY GANNON: That's right.

MS. ZIEBART: That's right.

MS. FOLEY GANNON: I think we want to make sure. And again, we do apologize to staff and to you for the schedule slipping. But we do want to make sure that when we present a revised schedule it's something that we can -- we're sure we can make those dates.

HEARING OFFICER RENAUD: All right, thank you. Okay, let's turn now to the staff. Any news for us? Anything you would like to highlight for the Committee?

MR. SOLORIO: Well, I think it's pretty apparent that we are going to also submit a revised schedule once we
learn from the applicant those dates those are and our
schedule will move out accordingly.

    We are also going to cancel the workshop that's
apparently scheduled for Friday because in part we were
counting on at least some of the information if not all of
it coming in, in particular Visual Resources is one of the
items that we don't have any simulations of the new project.

    We do expect another filing from the applicant in
July, the comprehensive bio report. So we think it's a
better use of staff resources to just simply combine those
topics and have one workshop in mid to late July.

    HEARING OFFICER RENAUD: All right, thank you. I
do want to ask a question, Mr. Solorio, and that is
concerning, this is really kind of a technical or a
housekeeping matter concerning the use of hard copies in
filings by intervenors. It sounds to me as though there may
be some issue or concerns about that ongoing. It's
sometimes a hardship for intervenors to have to submit paper
copies to everybody and I'm wondering, has that come up
lately with any of the intervenors that you have needed or
requested paper copies and it has been a hardship for them
to do that?

    MR. SOLORIO: I haven't heard the hardship aspect
of it, no. There has been one filing, I don't know who it
was, that submitted a electronic filing. And I did notify
the intervenor that there was multiple parties on the POS list that requested or required hard copies. But I am not aware of any hardship or anything that followed after that.

HEARING OFFICER RENAUD: And right. And you're talking about then anybody who is on the POS list who does not say -- whose name does not say "e-mail service preferred?"

MR. SOLORIO: Correct.

HEARING OFFICER RENAUD: Does that include staff, by the way? Are you accepting --

MR. SOLORIO: I know I'm one of them. I believe Galen also is another. I'm not sure. I know that there's more than one person on there who is not electronic preferred.

HEARING OFFICER RENAUD: All right. I wonder if the Public Adviser would like to address this issue at all? I know it can be -- sometimes it goes across your desk, Ms. Jennings.

MS. JENNINGS: Yes. It's my position and I thought that the Committees were soon going to issue general orders that especially for small documents and especially with regard to intervenors that they be allowed to serve all parties with e-mail all matters, status reports, everything else. Unless it's a huge document and then someone else would need to reproduce it I think that would be a
reasonable accommodation to make to intervenors.

HEARING OFFICER RENAUD: All right, thank you.

You know, in looking at the POS list, I mean, I think everybody on here has an e-mail address, which means they can receive electronic documents, so I am sort of puzzled why anybody is asking for paper.

I understand there is a general order in the works that will address this issue but in the meantime, I don't know. It seems to me that, particularly with an intervenor, not having to mail multiple paper copies to people who have e-mail, makes sense.

So unless it comes up as a particular complaint, and I assume that would either go to you, Eric, or to me or to Ms. Jennings, we should allow electronic copies, electronic service.

MR. SOLORIO: If you're asking or directing me to take a look at the (WebEx interference) electronic copies in place of a PDF from intervenors, that's fine, I'm happy to.

And I do realize that everyone has an e-mail, but the directions on service say a hard copy must be served unless it specifies that it's e-mail preferred. That's all. And there are multiple parties on here who are not e-mail preferred. And me personally, you know, I have probably 10,000-plus pages of documents to deal with and I just simply can't deal with PDFs for everything so I prefer hard
HEARING OFFICER RENAUD: And you prefer they be sent to you as opposed to your just receiving an electronic copy and making your -- you printing it?

MR. SOLORIO: If it's an accommodation that the Public Adviser feels the intervenors need I'm happy to take electronic copy of their status reports. But generally for all other documents that I get, because I have so many documents to work off of when I'm talking and dealing with people and issues, I like to be able to pull it off the shelf and look at it when I'm dealing with somebody.

HEARING OFFICER RENAUD: Okay. I think it would be the preference of the Committee that for the most part accept electronic filings and when you need a hard copy then print that. It saves paper and --

MR. SOLORIO: Are you talking about just from intervenors or across the board in general?

HEARING OFFICER RENAUD: I think I'm addressing intervenors specifically.

MR. SOLORIO: Okay.

HEARING OFFICER RENAUD: In particular because I think it is for intervenors that this can be a problem.

MR. SOLORIO: Not a problem for me, that's fine.

HEARING OFFICER RENAUD: All right. And anybody else who has a problem having to send paper copies, bring
that up with me or with the Committee or the Public Adviser and we'll see what we can do to accommodate that. All right.

PRESIDING MEMBER DOUGLAS: Just a brief comment on this. You know, I definitely hear the concern that staff may have because you deal with so many documents and for substantive, long documents it's helpful to have a file.

So I think that what you should do is for intervenors who find it challenging, and I understand this, to go get a bunch of envelopes and stamps to send in their one-page status reports, I think that it would be really helpful for you to not only yourselves but, you know, work with people on the staff team and let's get as few people -- let's get those in electronically. For longer documents, technical documents, I understand your wanting paper.

I think we also need to make sure that our processes are very clear for people who actually want to change their preference because sometimes I am aware of people who would like to be in as electronic and find that that preference just isn't effectuated in the next draft that goes out. So we need to make sure that we do that as well.

HEARING OFFICER RENAUD: All right, we'll work to clarify this and make sure everything is the way it should be. And that procedures are being followed and hopefully be
able to report on that by the next status conference.

All right, let's turn to intervenors who are on the phone. Roslind Varghese, you did file a status report for which we thank you. Is there anything you wish to bring up specifically with the Committee concerning the status of the case?

MS. VARGHESE: Tell me if you can hear me.

HEARING OFFICER RENAUD: Yes, we can hear you now, thank you.

MS. VARGHESE: Okay. And you had asked -- I'm sorry, you had asked me to go over my status report?

HEARING OFFICER RENAUD: No. We've read your status report and we thank you for that. But this would be an opportunity if there is anything in your status report you wish to highlight to the Committee or anything else that you care to bring up concerning the status of the case. Again, we are not here to discuss or argue the pros and cons of the project but we are here basically to discuss people's progress.

MS. VARGHESE: I do -- I do have comments on what the applicant said regarding changes in the design and the impact to what's going on in San Diego. So besides the Planning Commission, the delay in their report will also impact the review that the air control -- air pollution control board is working on at the moment, so their report
will be delayed as well.

HEARING OFFICER RENAUD: Yes, that makes sense. This will, this will impact a lot of, a lot of steps that are dependant on receipt of that, those revisions to the design. So that's --

MS. VARGHESE: I do also want to say that the applicant refusing to answer many of the intervenors' questions, particularly those on noise, does impact our ability to accurately assess the project. And we think that many of those questions are relevant. So we wonder what the staff could do and if they think those questions are relevant and how they can pursue those answers?

HEARING OFFICER RENAUD: All right. This is Raoul Renaud speaking. Usually if a party submits data requests and the party to whom they are submitted objects to them and the two parties are not able to work out their differences over that, the matter could be brought before the Committee for review and a decision in the form of a motion. And you can work with the Public Adviser concerning how to actually go about preparing that. But the Committee does stand ready, willing and able to review disputes like that and resolve them for you, but we need to have it brought up in the formal terms of a written motion.

MS. VARGHESE: And just for clarity, because the submission of supplementary is delayed by a month, we
estimate that this extends data response time to -- the
deadline on data response to September, the middle of
September.

HEARING OFFICER RENAUD: As I recall we said that,
we created a 60 day window.

MS. VARGHESE: Right.

HEARING OFFICER RENAUD: So whenever the
supplement is filed then 60 days after that.

MS. VARGHESE: Thank you, that's all I have.

HEARING OFFICER RENAUD: All right, thank you very
much. Okay, Mr. Brewster, are you on the line, Kevin
Brewster?

MR. BREWSTER: Yeah, hi, I'm on the line.

HEARING OFFICER RENAUD: Okay. I see you
submitted a status report, thank you for that. Is there
anything you wish to bring up with the Committee?

MR. BREWSTER: No, I think Roslind spoke for all
of us when she made those comments.

I did want to comment, I do appreciate the
electronic filing of our materials as intervenors. That is
burdensome to produce all those paper copies. So anything
you can do along those lines is greatly appreciated.

HEARING OFFICER RENAUD: All right, thank you.

MR. BREWSTER: Thank you.

HEARING OFFICER RENAUD: Okay. Mr. Reyes, Rudy
Reyes, are you on the line?

(No response.)

No, all right. Okay.

Phil Connor, Mr. Connor, Sunset Greens Home Owners Association. Are you on the line?

(No response.)

Okay, I think we've covered all the intervenors.

Any comments or questions from the Committee before we move to public comment? All right.

Okay, at this point we will move to public comment. I don't see any members of the public here in the room. We do have a number of people on the phone and so let me ask, if you're a member of the public and you wish to address the Committee concerning the Quail Brush application for certification this would be your opportunity to do so. Is there anyone out there who wishes to speak?

MS. NAGLE: I'd like to speak.

HEARING OFFICER RENAUD: Yes, please. Just identify yourself and proceed.

MS. NAGLE: My name is Tina Nagle and I am calling to express my opposition to the Quail Brush Generation project. There are so many reasons why this power plant is not a good idea, including it being right next to the Mission Trails Regional Park, nearby schools, the water supply issue, laws and regulations, air and noise pollution,
endangered species. The project is inconsistent with the
city of San Diego LORS, the East Elliott Community Plan, the
General Plan, the Municipal Code and the Multi-Species
Conservation Program Subarea Plan. I think that piping in
natural gas to a power plant here is a poor use of our
resources and that we really need to focus on alternative
energy and renewable energy sources.

HEARING OFFICER RENAUD: All right, thank you very
much for your comment.

MS. NAGLE: Thank you.

HEARING OFFICER RENAUD: Is there anyone else on
the line who wishes to make a public comment?

MS. AKINS: This is Sophie again from the law firm
of Best, Best and Krieger. We serve as City Attorney to the
city of Santee. Will the status reports be made available
on-line?

HEARING OFFICER RENAUD: Yes, they are part of the
public record. If they're not they should be. Is there a
problem with that? We can check into it if they're not
there.

MS. AKINS: No, I haven't, I haven't checked on-
line today.

HEARING OFFICER RENAUD: All right. We did have a
couple that were filed just in the last day or two but they
should all be there, yes.
MS. AKINS: Thank you.

HEARING OFFICER RENAUD: You're welcome. Anyone else wish to address the Committee?

Ms. Jennings. This is our Public Advisor, Jennifer Jennings.

MS. JENNINGS: Thank you. I understand the reason for the cancellation of this Friday's workshop but it is last-minute notice. I know of a number of people who made arrangements to attend that workshop. And I understand the reason is because the applicant hadn't filed the supplement. So I just ask that there be some advanced notice from the applicant as to when you're going to file the supplement so if it affects Commission proceedings we can give the public a greater length of time to adjust their schedules.

HEARING OFFICER RENAUD: Does that sound like something the applicant can help us with?

MS. FOLEY GANNON: Absolutely.

MS. JENNINGS: Thank you.

MS. FOLEY GANNON: And again, we were -- it came up at the last minute for us as well.

MS. JENNINGS: Okay.

MS. FOLEY GANNON: So we apologize for this and apologize to the public. And we will make sure that our next schedule is something that we can, that we can adhere to and there will be plenty of notice to the public.
MS. JENNINGS: Thank you.

HEARING OFFICER RENAUD: All right, thank you.

All right, is there anyone else calling in who wishes to speak?

Okay, Steve Adams, staff counsel, has indicated he wishes to speak.

MR. ADAMS: I just wanted to inform the Committee and other parties that the city of San Diego planning staff has asked for Commission staff to be present Thursday in case Planning Commissioners have questions about the CEC process so Mr. Solorio and I were planning to attend. Not to support or oppose the proposed action at the city but simply to respond to questions if they have any.

HEARING OFFICER RENAUD: All right. That sounds like that could be quite useful to the City Council so thank you for doing that and thanks for letting us know.

All right, anyone else on the phone who wishes to speak?

(No response.)

Okay. Applicant, staff, anybody here wish to say anything further?

MS. FOLEY GANNON: Not at this time, thank you.

HEARING OFFICER RENAUD: All right, very good.

PRESIDING MEMBER DOUGLAS: All right. Well with that I would like to than everybody for being with us today.
This has been helpful. We'll look forward to getting the applicant's material into the process in the supplement and then getting on to a revised schedule so that we all have a good sense of how the timing of the proceeding will work. But in any case, no doubt, we'll be here again for another status conference in -- I guess we'll set a new date for that when we have the other elements of the proposed schedule. So anyway, thank you and with that we're adjourned.

HEARING OFFICER RENAUD: Thank you.

MS. FOLEY GANNON: Thank you.

MS. ZIEBART: Thank you.

(The Status Conference adjourned at 2:34 p.m.)

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CERTIFICATE OF REPORTER

I, JOHN COTA, 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.

I further certify that I am not of counsel or attorney for any of the parties to said conference, or in any way interested in the outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of July, 2012.

JOHN COTA

CERTIFICATE OF TRANSCRIBER

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

RAMONA COTA, CERT**478

July 2, 2012