COMMITTEE CONFERENCE

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

In the Matter of: )
 )
Application for Certification for) Docket No.
The Solar Two Power Project by ) 08-AFC-5
Stirling Energy Systems )

CALIFORNIA ENERGY COMMISSION

HEARING ROOM B

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

TUESDAY, NOVEMBER 10, 2009

2:05 p.m.

Reported by:
John Cota
Contract No. 170-08-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
COMMITTEE MEMBERS PRESENT
Jeffrey Byron, Presiding Member
Julia Levin, Associate Member

HEARING OFFICER AND ADVISORS
Raoul Renaud, Hearing Officer
Kristy Chew, Advisor
Jim Bartridge, Advisor

STAFF AND CONSULTANTS PRESENT
Christopher Meyer, Project Manager
Caryn Holmes, Staff Counsel

APPLICANT
Allan J. Thompson, Attorney
on behalf of Tessera Solar
Sean Gallagher, Vice President
Tessera Solar
Stirling Energy Systems, Inc.
Bob Therkelsen
Energy and Environmental Consulting
Tessera Solar
Marc C. Van Patten, Senior Director of Development
Tessera Solar

INTERVENORS
Loulena A. Miles, Attorney
Adams, Broadwell, Joseph and Cardozo
California Unions for Reliable Energy

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
ALSO PRESENT

Steven J. Borchard, District Manager
Bureau of Land Management

Edie Harmon

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proceedings</td>
<td>1</td>
</tr>
<tr>
<td>Opening Remarks</td>
<td>1</td>
</tr>
<tr>
<td>Presiding Member Byron</td>
<td>1</td>
</tr>
<tr>
<td>Hearing Officer Renaud</td>
<td>1</td>
</tr>
<tr>
<td>Introductions</td>
<td>1,2</td>
</tr>
<tr>
<td>Schedule Discussion/Event Sequence</td>
<td>2</td>
</tr>
<tr>
<td>Applicant</td>
<td>2</td>
</tr>
<tr>
<td>CEC Staff</td>
<td>5</td>
</tr>
<tr>
<td>Intervenors</td>
<td>12</td>
</tr>
<tr>
<td>California Unions for Reliable Energy</td>
<td>12</td>
</tr>
<tr>
<td>General Discussion</td>
<td>13</td>
</tr>
<tr>
<td>Public Comment/Questions</td>
<td>14</td>
</tr>
<tr>
<td>Closing Remarks</td>
<td>38</td>
</tr>
<tr>
<td>Presiding Member Byron</td>
<td>38</td>
</tr>
<tr>
<td>Associate Member Levin</td>
<td>38</td>
</tr>
<tr>
<td>Adjournment</td>
<td>39</td>
</tr>
<tr>
<td>Reporter's Certificate</td>
<td>40</td>
</tr>
</tbody>
</table>
P R O C E E D I N G S

2:05 p.m.

PRESIDING MEMBER BYRON: Good afternoon, everyone. I'm sorry we're a little bit late. This is Jeff Byron. I'm the Presiding Member on the Solar Energy Systems One (sic), also known as Calico, is that right? This is Two, this is Imperial Valley Solar. Forgive me. I'm the Presiding Member.

Along with me is the Associate Member, Commissioner Julia Levin. And our Hearing Officer, Mr. Renaud. And our Advisors are with us, as well. Mine, Kristy Chew, and Jim Bartridge for Commissioner Levin.

Let's go through the intros real quick and see -- we're not going to get it back on schedule, but I do have a meeting that I want to try and get to. So, let's proceed post haste, Mr. Renaud.

HEARING OFFICER RENAUD: Thank you, Commissioner Byron. So we have the Solar Two status conference. We have, I think, pretty much the same parties except in the intervenor area where we have CURE as the only intervenor.

And would you care to do a quick
introduction on behalf of --

MR. VAN PATTEN: This is Marc Van Patten with Tessera Solar. I'm the only one new on this -- on the applicant's side.

HEARING OFFICER RENAUD: All right.

Very good. Counsel is Allan Thompson. And Chris Meyer is the Project Manager, and Caryn Holmes is the Staff Counsel.

And I see that the representative for CURE is just re-entering the room. We have started Solar Two. All right.

The purpose here really is to discuss the new schedule. The schedule comparison prepared by Mr. Therkelsen is extremely useful and I thank you for doing that.

And perhaps we'll start with you if you'd like to just show us the salient points here.

MR. THERKELSEN: I won't talk about the same things on this schedule that I did on Solar One, to reduce time. Because basically many of the same proposals in terms of prehearing conferences and accelerating the biological opinion are the same.

Again, you'll notice there's a month
difference. And I think the same thing is true on
this schedule as on the previous one, where we
propose accelerating both the staff assessment,
DEIS and the supplemental staff assessment, FEIS,
two weeks, in each case, earlier than what the
staff is proposing.

There are additional items, though, on
this schedule that are not shown on Solar One
because there's activity on the part of the U.S.
Army Corps of Engineers. And so we have also
identified -- we've had meetings with the Corps
and have identified what we anticipate will be
schedule items for them, in terms of documents
that they need or decisions that they will
release.

And based on our discussions with the
Corps they do believe it's possible for them to
release their record of decision at the same time
the BLM issues its record of decision and the CEC
issues its decision.

So our anticipation is everything will
flow through here. The Corps would prefer to use
the environmental documents, the NEPA documents,
that are prepared by the CEC and BLM.

They do have another avenue to use for
preparing their own environmental documents if that doesn't work. But, right now I believe the Corps' process will dovetail with this process very well.

One exception from the schedule that I've given you is the individual permits would be issued by the Corps after the final environmental impact statement rather than before. So that was an error that I made in terms of pulling together the schedule.

The other new item on this is the programmatic agreement for cultural resources. And one of the things that is very important for the success of this project, and again, we have identified target dates for getting that program agreement draft completed and the final version of it signed to be able to allow the cultural resources work to come to its conclusion.

So those are basically highlighting the differences between this project comparison and the Solar One project comparison.

HEARING OFFICER RENAUD: Would that cultural resources work then anticipated the time?

MR. THERKELSEN: Well, in terms of the actual data requests, we have submitted the
request, response to the request, from the CEC Staff. The programmatic agreement, we are hoping for a draft of that to be completed by the middle of December. And a final version of the signed, let me see, where is it. It's down here --

HEARING OFFICER RENAUD: March 15th.

MR. THERKELSEN: March 15th. So that's what our targets are for that. We have not had discussions with the staff in terms of specific dates for those two actions. But would hope that that discussion would happen and we can get those dates, those targets again established. For not only the CEC Staff, but all the other agencies involved, as well.

HEARING OFFICER RENAUD: All right. Staff, would you care to comment on this?

MR. MEYER: Yes. Christopher Meyer for staff. On the programmatic agreement, BLM has taken the lead on writing that. And I know one of the divisions of labor is the Energy Commission Staff is working primarily on the cultural resource section for the document to free up the BLM Staff to move the programmatic agreement ahead.

And both the Energy Commission and BLM's
archaeologists have requested any help from, you know, Commission Staff and the Governor's Office, anyone that we can get to give a high priority for the review at the federal level of that programmatic agreement.

Because it could take anywhere from six months to a year in a normal situation to get that reviewed and approved. So we're asking for a highly expedited process here, so probably someone much higher than staff level needs to make a request that that gets expedited.

And otherwise on the schedule, with the understanding that the staff is not certain from the Corps of Engineers, you know, can't speak for the Corps on -- but whether the joint document that we're producing with the BLM, if it's going to be, you know, the 441(b) alternatives analysis requirements, or those set out by the USEPA in their letter early in the project where they listed all the things they wanted for alternatives.

If that is not -- if those agencies determine that that does not have the information that they would like, which might be beyond what the Energy Commission and BLM have agreed to would
be the level of detail, then, you know, it may be
a situation where the Corps of Engineers would
have to do additional work.

And so recognizing that is a possible
delay, outside our proceeding. I think staff
would agree that similarly to the schedule for
Solar One, the December 31st date is based on
opening my Christmas presents at my desk, and
therefore is highly --

(Laughter.)

MR. MEYER: -- accelerated. And these
dates are really with the understanding that
siting and environmental staff will, if not only
working on furloughs, but also getting overtime
approval, to work, you know, above and beyond
what's -- they're already doing that now, but just
sort of continuing, even expand the level of work
to that.

And also to respond to some of the
concerns about additional staff. In some
technical areas we've actually gone and brought in
additional staff, both through the BLM side and
through our contracts with Aspen to bring in staff
to expedite some areas that were more complex.

Because we, in some areas like soil and
biology, we received some additional information just recently. And they were getting additional staff resources to get that done quickly, so that it doesn't slow the schedule down.

But, as I said, it's going to be similar to my recommendation for Solar One where we adopt some of the time savings later on in the schedule, but keep the original staff assessment draft EIS date as what staff has the best chance of meeting.

PRESIDING MEMBER BYRON: Mr. Meyer, if I may, some of the comments you just made with regard to increased staff made available and accelerated work during the holidays, do those same comments apply to the earlier project. I keep getting them crossed up, and I apologize, the SES One?

MR. MEYER: Yes, the problem is I talked about it very briefly before. In our early hopes when the projects were farther apart, we used a lot of the same staff. And in some areas we tried to divide that up a little bit.

But a lot of the staff that are going to be rushing to get the Solar -- this project, Solar Two, published by the end of this year, are then going to have to, you know, take at least 10, 15
minutes off. And, you know, jump right back in at
that same accelerated schedule to get Solar One
out shortly thereafter.

PRESIDING MEMBER BYRON: Thank you. Do
you anticipate any more data requests on SES Two?

MR. MEYER: Staff does not anticipate
any more data requests unless there are any
substantive changes in the project description.
And at this point I would send that to the
applicant just to make sure that there's no change
in boundaries, roads, anything substantive that
we'd be looking at.

PRESIDING MEMBER BYRON: And I believe I
recall reading on this project that we have a new
endangered species, is that correct?

MR. MEYER: We have a species that on a
week ago Monday the Arizona District Court ruled
that the flat-toed horned lizard would be
reinstated as a proposed threatened species.
So it's not actually a threatened
species now, but it is again a proposed threatened
species.

PRESIDING MEMBER BYRON: Does that alter
your schedule, or proposed schedule, in any way?

MR. MEYER: Actually not because we've
had a lot of conversations very early with Fish and Game, Fish and Wildlife, our bio staff and
luckily the BLM has some excellent experts on this species.

So in working with those staff we anticipated this eventuality. And the applicant has been working to prepare a biological assessment dealing with this very issue so that that could, if necessary, go into a biological opinion if the status of the species changes.

HEARING OFFICER RENAUD: I have a quick question for the applicant. The applicant's proposed schedule date for the final decision is August 15th. Staff's was September 15th.

Would the September 15th date jeopardize anything about this project in terms of funding or any of the other factors you mentioned about Solar One?

MR. GALLAGHER: Possibly, I think, is the best answer. I think the reason for that is, you know, we think that a schedule that concludes much or any later than September 30th really is one that has a small chance of getting through the process of getting into construction.

We've tried to build into the schedule
here one that has sort of a reasonably aggressive
timeframe, but also gives us some wiggle room in
case something unexpected happens, as it often
does.

And so I think we'd be, you know,
significantly more comfortable with the schedule
that concludes in August than one that concludes
in September, because it does give us some room
for the unexpected to occur. Although, of course,
we'd hope to keep the schedule that we commit to,
it gives us some potential room for the unexpected
to occur and to still get into construction by the
end of the year.

HEARING OFFICER RENAUD: All right,
thank you. Comments from CURE? We have read your
statement, so perhaps if you could just --

MS. MILES: Not reiterate everything?

HEARING OFFICER RENAUD: Yeah, thank
you.

MS. MILES: I think definitely we're
concerned about the ability to move forward under
a compressed schedule. And I recognize the need
that, you know, the impetus for trying to compress
the schedule.

However, from our perspective, we
haven't been privy to a lot of the cultural
resources information that's been available
because that's all been under confidential covers.

So one of our concerns is to have time
to review that once the staff releases their
analysis, prior to evidentiary hearings. And, as
I said in the Solar One proceeding, we're also
cconcerned about the preliminary staff -- or I'm
sorry, not having a preliminary staff assessment
in this proceeding, and going forward with just a
staff assessment. Unless that staff assessment
really is fully baked, as we discussed in the last
proceeding.

Because how can we go forward with
evidentiary hearings when the staff has not
concluded their analysis; and the mitigation,
staff has not proposed the conditions of
certification. It's going to be very hard to be
holding evidentiary hearings.

So, we may end up having to have a
duplication of efforts if we go forward with
evidentiary hearings prior to the conclusion of a
fully baked staff analysis.

So those are our primary concerns.

HEARING OFFICER RENAUD: Thank you. Mr.
Meyer, just one quick question pertaining to that comment. Would it be safe to say that when the staff analysis is issued, it might not be fully baked, but it would be more than half-baked?

(Laughter.)

MR. MEYER: I feel like I'm being led into a verbal trap there.

I don't want to say that we're going to come out a half-baked project or a document. But I would say that, unlike our preliminary staff assessments, which were normal, staff recognized that the level of detail in a draft EIS, which I'm familiar with producing those types of documents, requires a much greater level of detail and completeness.

So, staff and myself and staff counsel, Caryn, are going to be looking to make sure that the draft document that staff produces is up to the standards of a draft EIS. Which would be much more in keeping with the level of detail staff produces in a final staff assessment.

So the idea is that what staff will produce, this joint document that will be a staff assessment/draft EIS, will be to the standard that staff will actually be sending this out as...
testimony, rather than just a preliminary
document. And that's what we're anticipating,
with only maybe some minor revisions similar to
the changes that we would see in response to
evidentiary hearings.

HEARING OFFICER RENAUD: All right,

thank you. Let me check now if we have anyone on
the phone that would like to speak. If you do,
please speak up and identify yourself.

MS. HARMON: Edie Harmon. I'm at the
BLM Office in El Centro.

HEARING OFFICER RENAUD: Okay, please go
ahead.

MS. HARMON: I have a question that
rather than rushing so fast to speed everything up
and meet deadlines, since the project is already
in the pipeline, would it not be potentially
possible to ask that the deadline for funding or
applying for the stimulus funding be extended for
those projects that are in the deadline, rather
than potentially rushing them through and missing
things, or doing an inadequate job. And that's
one question.

And another I would say I recently
attended a meeting in South Dakota where there
were probably half of the attendees were
indigenous people from pretty much western U.S.
and the Southwest.

   And over and over I heard the concerns
from Native Americans that they, their lands,
their culture and their religious values were
being considered as just one more sacrifice area
in the rush to provide renewable energy and reduce
costs for urban areas.

   And some of the comments came from the
people who lived on reservations where there was
not even electricity or water available. And they
were feeling really threatened and really
exploited. Not just people from the reservations,
but also some of the Native Americans with PhDs
that are academics.

   And I'm still very sensitive to the
concerns of people when, if their culture, their
traditional areas and cremation sites and whatnot,
that are at risk. Because I think we need to be
sensitive.

   And I haven't read all the details, but
my understanding is that President Obama was
trying to assure Native Americans that their
concerns and their views would be given more
consideration in this Administration.

And this project is one place where I think there needs to be a great deal of attention paid to those issues.

HEARING OFFICER RENAUD: All right, thank you for your comment. And you did ask a question. I believe Commissioner Levin would like to respond to your question about the potential expanding of deadlines for funding.

ASSOCIATE MEMBER LEVIN: Well, there's a factual answer and then there's a political answer. The factual answer is the deadlines are mandated by federal law. And, you know, short of getting a change from Congress, it's not in our power to change the deadline for stimulus funding, for funding.

I suppose it's conceivable on the other hand, the over-arching purpose of the federal stimulus money is to stimulate the economy. To bring jobs back to the U.S. To create new jobs. And there is a real time pressure to do that.

So, I don't think that the Energy Commission will be asking for an extension of that funding. We think it's really important for the state's economy, and also to get us back on track
and meet our state's renewable energy goals, that
we do move forward more quickly.

Having said that, we are very sensitive
to the cultural issues, to Native American issues.
And we are not going to whitewash over important
issues like that. We're required by CEQA and by
the Warren Alquist Act to fully consider those
issues. We just intend to do so as quickly as
possible. And to stay on schedule, both for the
RPS and the stimulus.

HEARING OFFICER RENAUD: Okay, thank
you. Is there anyone else on the phone who'd like
to speak?

All right, hearing no one, is there
anyone in the room who --

MS. HARMON: Question?

HEARING OFFICER RENAUD: A question,

yes.

MS. HARMON: Edie Harmon. What we're
looking at is the project on the site on public
lands. What about -- or what is the status of
considering an alternative site on already
disturbed land? Because that would remove the
issue of cultural resource impacts. It would also
remove some of the issues relating to the flat-
toed horned lizard, and any mitigation related to those two, the biological and the cultural resource issues.

I know earlier I thought there was going to be consideration of the project on already disturbed lands in Imperial County.

And as I drove into El Centro today, I went past a number of farm fields where there were for-sale signs up. And there's even more land available now than there was earlier.

HEARING OFFICER RENAUD: One of the areas that the Commission Staff analyzes and is required to be analyzed, by law, is alternatives. And that will be very thoroughly explored by everyone.

PRESIDING MEMBER BYRON: It's really not the scope of what we're trying to talk about today. But I think the applicant may want to offer an answer. Do you?

MR. GALLAGHER: All I can say is there was an alternatives analysis that was submitted as part of the AFC. And we do expect those issues to be fully addressed in the environmental documents.

HEARING OFFICER RENAUD: All right.

PRESIDING MEMBER BYRON: I don't want to
cut off any additional questions that come in, but
I have a few, myself, with regard to the schedule,
that I'd just like to make sure that I'm clear on.
I had the opportunity to ask staff this
question earlier. I believe that CURE is not the
only intervenor in this, Ms. Miles. I believe
there may be others, but you're the only one
present, is that correct?

HEARING OFFICER RENAUD: No, I believe
they're the only one --

PRESIDING MEMBER BYRON: The only one.

HEARING OFFICER RENAUD: -- at this
point.

PRESIDING MEMBER BYRON: Ms. Miles, have
you completed all of your data requests of this
applicant?

MS. MILES: Well, I'm sure if I had an
opportunity to submit more data requests, I would.
But I have to say that CURE is not completely
clear on the project and the impacts.
For example, the bighorn sheep. I
haven't heard any response about any mitigation or
potential study of corridors, if they're going to.
But, I understand that the timeframe for
data requests is closed. And so, it, I guess,
precludes our ability to submit additional data requests.

PRESIDING MEMBER BYRON: Good. Well, and I'm always reminded what CURE stands for, is California Unions for Reliable Energy. So although you haven't addressed it, I would suspect that you're very interested in seeing California companies get these funds, as well, for projects, aren't you?

MS. MILES: Well, certainly, my role representing our client is actually to look at the environmental issues of the project. And so I am not actually the one who's working on establishing jobs or anything like that. My role is just to look at the environmental impacts of these projects and --

PRESIDING MEMBER BYRON: Well, you also brought up cultural resource issues a little bit earlier, too.

MS. MILES: Oh, I consider that an environmental impact.

PRESIDING MEMBER BYRON: Oh.

MS. MILES: It is within the scope of the CEQA process.

PRESIDING MEMBER BYRON: Mr. Meyer, just
want to make sure that I'm clear that the schedule that you've proposed in your most recent submission reflects input in concurrence from both BLM and Fish and Wildlife Services.

MR. MEYER: Basically, my -- I can't speak as much -- BLM is willing to answer on their part. And for Fish and Wildlife Service, we've been working with them all along, and we're not anticipating a lot of input from them at this point, since the species is not threatened at this point.

But we have been working with them all along. Our Energy Commission Staff has taken the chief role in authoring this document, has been working with them and understands their issues enough that they believe that they can address mainly biology and cultural that we can address the issues of the other agencies.

But primarily Fish and Wildlife Service, we think we understand well enough that we'll be able to move forward at this point under this schedule.

PRESIDING MEMBER BYRON: Does BLM want to address the scheduling issue, please?

MR. BORCHARD: Steve Borchard, BLM. The
end of the year poses operational difficulties for BLM. Our preference would be to see the date moved up to the 18th of December.

PRESIDING MEMBER BYRON: Which date is that, please?

MR. BORCHARD: The DEIS/SA publication date. The reason for that is the clearance process that BLM uses through its various levels of the organization and the requirement to get the Secretary of Interior's Office to sign off before we publish.

The likely outcome of the 12/31 date would probably push our actual publication clearance process a week or two into the month of January. Whereas, if we could turn it to the 18th, we're likely to get approval and get that document on the street in December, rather than a week or two into January.

ASSOCIATE MEMBER LEVIN: Mr. Borchard, I'm new to the siting world, fairly new to the Commission still, but I have to say it's quite refreshing to hear BLM actually offer up an earlier deadline.

(Laughter.)

ASSOCIATE MEMBER LEVIN: What a great
example you're setting.

MR. BORCHARD: It's a brave new world --

ASSOCIATE MEMBER LEVIN: Well, thank you

for doing that. It will be a great holiday

present for everyone.

MR. MEYER: Not for me because he

actually just offered me to write it faster.

(Laughter.)

ASSOCIATE MEMBER LEVIN: Well, Mr.

Meyer, that raises a question. Commissioner, if I

may. So that would move us up almost two weeks.

Does that translate into the remainder of the

schedule gaining two weeks, or can you explain

what --

MR. MEYER: That basically --

ASSOCIATE MEMBER LEVIN: -- is of that?

MR. MEYER: I'm sorry. The BLM's role

at this point, my understanding is, the Energy

Commission Staff will write the document; present

it to the BLM. And we're actually already sending

sections to the BLM and we're getting more ready.

Then we get the comments back and we're,

on some of them we're going back and forth a

couple times at the local level.

So, it can be a fairly complex review
process. So the idea is to do this, get these several iterations back and forth between the Energy Commission Staff, BLM. And then when we get it back from the BLM, we have to -- have to then go ahead and negotiate the BLM changes with three levels, three to four levels of Energy Commission Staff, because they're going to be the testimony of Energy Commission Staff. Staff to be able to actually sign off the declaration on them.

And then once we have all that together it will go to the BLM as a completed document to go up through their full process.

So it's a fairly complex project when I'm not going to get the final sections until December from some of the technical areas.

So going through that entire process in a matter of a week or so, that's including legal review, Energy Commission management review, and several levels of BLM review, as well. I don't see any possible way when, you know, trying to get a, you know, a ten-page status report through at that time, -- trying to get a document that could run hundreds of pages through. I don't see is something I could realistically commit to.

PRESIDING MEMBER BYRON: One last
question, please. You had mentioned earlier, Mr. Meyer, about a request at a higher level of management of Fish and Wildlife Services. I don't recall specifically with regard to which item.

MR. MEYER: Oh, I'm sorry. At Fish and Wildlife Service we haven't had a lot of -- we've just been talking with staff on that, since we're not anticipating a lot of high-level input from Fish and Wildlife Service.

The talks we had had on the -- well, the biological staff were talking to their staff on the bighorn sheep. It appeared it was more of -- I'm giving you these second-hand, because they were actually through the BLM -- but they were not as concerned with the transitory nature of the bighorn sheep because they were seen as going across the site, rather than as being part of their habitat.

So they were not seeing this as a big problem. But that's something that I will follow up for you with BLM.

Oh, I'm sorry, were you talking the programmatic, or is there something else that I'm missing? The programmatic is a cultural issue, not a Fish and Wildlife Service.
MS. HOLMES: Right. The conversation earlier about needing higher level help was a
comment made with respect to the programmatic
agreement to deal with cultural issues. So
perhaps there's some confusion there as to whether
we're talking about biology or cultural resources.

MR. MEYER: Yeah, that's my -- yes, no.
Yeah, the higher level help on the Solar Two
project is definitely reviewed with regards to the
review of the cultural resource issues.

PRESIDING MEMBER BYRON: Okay. And, of
course, Fish and Wildlife Services is not involved
in this hearing today. But we would, of course,
be interested in pursuing this issue further with
them so that they can accelerate or apply the
necessary manpower for their effort.

ASSOCIATE MEMBER LEVIN: I've got a few
additional questions including follow up on the
previous issue. And forgive me because I am new
to this. This is my first scheduling conference
or hearing.

But, I asked -- I guess this is, in
part, a question back to Mr. Borchard, I don't
want to -- your name. What your expectation is
about staff, your staff availability of Fish and
Wildlife Services availability over the holidays.

To your point that if we slip past the 18th we're looking at into the first week, the end of first week in January.

And a very much related question for Mr. Meyer is given Mr. Picker's, offer may be too strong a word, but hope of additional resources, are the sort of work constraints you're talking about something that, if we had additional resources, quickly we could overcome?

I just -- I'm sympathetic to the applicant's concern that the closer we get to the deadline, you know, the more likelihood is we slip past it. And then, you know, we're not guaranteeing that there will be a permit in this case, but if there is a permit I hate to miss the window by a month or a few weeks.

So every few weeks we can build in some insurance, I think it is in all of our interests to do that.

MR. MEYER: When I ran the numbers on what I thought was realistic and feasible, I came out with a date in January. Several meetings with siting management, environmental staff management, the different technical people, it was explained
that if enough pressure was put on them and we got additional resources where we could.

And it may even come to the point of certain people not getting the review that they may like. The time, you know, to review it. It's putting a lot of pressure on people that are sort of above my pay grade, which brings me to a problem.

But the 12/31 date is a result of a significant compression of the schedule that I was looking at as realistic. So, to go beyond that I'm still struggling with how I'm going to meet that date. And that's going to take a lot of putting additional pressure on the staff that's already sort of at a breaking point with the amount of work that it has.

So, the major staff member that has sort of the highest level of work, we're getting additional resources from BLM to help him out. We're also, the environmental office is removing other projects from his desk so he can focus solely on this project.

Even with all of that, it's still a concern that this basic cultural resources; because to give people a little perspective, my
understanding is this one project has greater cultural resource, you know, more cultural resources on it than any -- well, basically every other project the Energy Commission's ever looked at combined.

So, we're talking about a ten-square-mile project with, you know, over 300 archeological resources. And we're getting down to well over 200 when you get to ones that take more detailed research.

So, as, you know, Edie mentioned, we have, you know, funerary issues, we have -- issues, there's a lot of very complex cultural resource issues here that, you know, looking at a 12,000-page or several iterations, so a 12,000-page cultural resource report on this.

And then subsequent reports to correct parts of that, update parts of it. It's a very daunting project.

You know, back when I was running cultural resource programs for large-scale projects, for an effort of this nature I would probably take two to three years, instead of trying to get it down into, you know, just about a year.
So, if that answers your question, we're giving this as many resources we can on this to expedite it. But trying to push it back into, you know, earlier part of December, recognizing that, you know, both -- you know, Jim Stobaugh, the Project Manager from BLM on this, expressed the same thing as Mr. Borchard.

I can't honestly say that I think that that's possible. Because I don't want the BLM Staff waiting for something on the 18th if I don't think that I'm going to be in a position to deliver that.

MR. BORCHARD: We've been talking about a strategy for how to complete our reviews on chapter, or a portion-by-portion basis. And I think after agreement that as individual chapters are put together they will be transmitted to BLM. And BLM will expedite the review process.

In the case that we are aware of the challenge faced to produce the cultural analysis and have made the decision that we will publish the -- forego the review for the draft EIS purpose, publication purpose of the cultural resource analysis produced by staff. And would complete our review between the draft and the
final EIS, rather than take up the time to do a
review and potentially slide the deadline.

So we'd be doing incremental reviews,
chapter by chapter, as they come in. The last
chapter we anticipate receiving, or that staff
will complete as a cultural, we will forego our
review of the cultural for the purposes of
publishing the draft EIS. And complete our review
between the draft and the final.

ASSOCIATE MEMBER LEVIN: Thank you.

Well, that brings up my other question. Mr.
Meyer, earlier you mentioned the cultural
resources, and I think you asked the Commissioners
and others to help expedite that review at higher
levels. Can you be more specific on how we can be
helpful?

MR. MEYER: I'm sorry, that's the review
of the programmatic agreement. Basically, in
order to --

ASSOCIATE MEMBER LEVIN: Actually, no.

It was earlier in your presentation you were
talking about the cultural resources and it's
usually a six- to 12-month review. But that you
need help to a higher level to expedite that. And
I'm not sure --
MR. MEYER: That's the programmatic agreement. That was the conversation about the programmatic agreement that was actually an agreement between the SHPO and the BLM where the Energy Commission is, you know, sort of an invited signatory.

But that allows the agencies to basically permit the plan without the -- excuse me, the project without the applicant having gone through and done phase two, phase three, final report, complete evaluation and mitigation of all cultural resources. Which is, you know, as I said, on this project could be very extensive.

The programmatic agreement is a tool that BLM uses a lot and different federal agencies use a lot to allow us to get to a decision point, either approving or not, in advance of the cultural resource work.

It also has another major benefit that it doesn't -- since cultural resource mitigation is a destructive science, it doesn't require the full excavation of a bunch of archeological sites on a site that may not get approved.

So you're not going out there and digging up, you know, a village site that would be
avoided by the project, and the impact was
actually the evaluation.

Does that answer your question?

ASSOCIATE MEMBER LEVIN: No. You had
said specifically that we could be helpful
expediting that process.

MR. MEYER: Yes.

ASSOCIATE MEMBER LEVIN: So where -- who
do we need to talk to about expediting that is my
question.

MR. MEYER: The SHPO. The State
Historic Preservation Officer, I'm sorry, I'm
using --

ASSOCIATE MEMBER LEVIN: Thank you.

MR. MEYER: I've been in government too
long, I've -- I love my acronyms. Probably the
SHPO would be the --

ASSOCIATE MEMBER LEVIN: And the SHPO
is?

MR. MEYER: The State Historic
Preservation Officer.

ASSOCIATE MEMBER LEVIN: Thank you.

MR. MEYER: And I will provide that
information to everyone, so that you have contact
numbers, names, everything.
ASSOCIATE MEMBER LEVIN: Great. Thank you.

HEARING OFFICER RENAUD: All right.

Before we adjourn, let me ask if there's anyone else here who wishes to comment on the scheduled matters.

MS. MILES: I have an additional comment.

HEARING OFFICER RENAUD: Is it about scheduling?

MS. MILES: Yes.

HEARING OFFICER RENAUD: All right.

MS. MILES: I'm concerned about the cultural resources, what I was just hearing about it not actually being a complete analysis prior to the draft EIS.

And I understand that it's going to take a long time to complete cultural resources. However, this proposed schedule has the evidentiary hearings ending, there's no date for the CEC Staff. But there is a date for the applicant.

I just want to point out that the applicant's date is May 21, 2009. Whereas, the final EIS the date is May 1st. So there's just
not a lot of time between these two dates to
evaluate any new information that would be
submitted about cultural resources, if it is
indeed that the analysis is being completed at the
time of the final EIS, rather than the draft EIS.

I think really that's putting the cart
before the horse, and just I need to flag that the
public and the intervenors are not privy to this
information. So we're not going to be able to
develop an analysis in such a brief amount of
time.

HEARING OFFICER RENAUD: A brief
response by Mr. Meyer.

MR. MEYER: Yeah, I'll keep this one
brief. The agreement is a legal method for
setting out exactly how all of the cultural
resource information will be gathered, processed.

In a very complex case you can spend
years implementing every step as laid forth in
this agreement, where the SHPO is sort of watching
and marshaling this through .

And the idea is that you're not going to
see the completion of all of the mitigation
treatment set forward in a programmatic agreement
prior to the decision.
In the documents coming out of the Energy Commission and BLM, it'll spell out exactly how we anticipate the project being fully mitigated for cultural resources, with the use of this tool, this programmatic agreement.

With the understanding that after the decision, you know, if the information that comes in is such that BLM and the Energy Commission decide to recommend approval of the -- or if they approve the project, then it would understand that the applicant would have extensive amount of work to do, and they could be approved to start in different areas by the SHPO depending on how the programmatic agreement is worded.

But it's not anticipated that all of the work would be done by the decision date, even though the applicant would be heavily encouraged not to wait for the decision to start doing additional, you know, to keep sort of doing the cultural work, to sort of, you know, keep the thing going as much as possible; to minimize, you know, work that needs to be done later in the process.

But, no, it's like it's not anticipated that we'll have the final cultural resource report
based on all the work that's going to be done, or that would be done, if the project's approved, under a programmatic agreement. It would not happen until much later in the process.

MS. MILES: So, you actually -- there's a possibility that this project can be shovel-ready in the time necessary to meet the funding and be able to mitigate the cultural resources impact?

I'm trying to understand even how the mitigation will move forward.

MR. MEYER: My understanding from working on similar projects with FERC, other agencies, is we've used this process, too, on, you know, several-hundred-mile pipeline that had different schedule issues, similar to this, you know, schedule issues they had to meet. And there were cultural resources in certain parts.

They did the work on the first phases early. And when they were working on those, as they were building, they were completing the cultural resource work on the subsequent phases, so that they were always trying to keep the work ahead. And the SHPO would approve them to proceed after the work was completed, and when it was
completed in the subsequent phases.

So, it's a little bit of a dance, but
the agreement would spell out very clearly that
the completion of the work would drive the
schedule, not anything else.

HEARING OFFICER RENAUD: All right,

thank you. Let me ask the Members of the
Committee if they have any final comments before
we adjourn.

PRESIDING MEMBER BYRON: I'd like to

thank you all for being here today. It was very
helpful information. I'm sure we'll be able to
come out with a revised schedule.

ASSOCIATE MEMBER LEVIN: I would just

like to ask staff to notify all of us as quickly
as possible if you sense slippage coming, or if it
actually occurs. I think you've heard loud and
clear the need to make every possible effort in
this to keep this on track.

And where I'm sure if I can speak for
Commissioner Byron and myself and others, where we
can be helpful, where the Governor's Office has
offered to be helpful where they can, don't wait
to let us know if there are delays.

We all need to do everything we can.
And we can't be helpful unless you let us know in a very timely way.

HEARING OFFICER RENAUD: And the revised schedule that will come out, we will include staff's reports so that we'll know from those.

And if there's nothing else, we'll stand adjourned. Thank you.

(Whereupon, at 2:56 p.m., the Committee Conference was adjourned.)

--o0o--
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 Committee Conference; and 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 hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of November, 2009.

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.

November 18, 2009

Margo D. Hewitt,
AAERT CET**00480

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345