

PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification)
Victorville 2 Hybrid Power) Docket No.
Project) 07-AFC-1
_____)

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

TUESDAY, APRIL 1, 2008

10:09 A.M.

Reported by:
Peter Petty
Contract Number: 170-07-001

COMMITTEE MEMBERS PRESENT

James Boyd, Presiding Member

Jackalyne Pfannenstiel, Associate Member

HEARING OFFICER AND ADVISORS

Raoul Renaud, Hearing Officer

Timothy Tutt

Susan Brown

STAFF AND CONSULTANTS PRESENT

Caryn J. Holmes, Staff Counsel

John Kessler, Project Manager

Maggie Read

Rick York

Alvin Greenberg (via teleconference)

APPLICANT

Michael J. Carroll, Attorney
Latham and Watkins, LLP

Thomas M. Barnett, Executive Vice President
Inland Energy, Inc.

INTERVENOR

Gloria D. Smith, Attorney
Adams, Broadwell
California Unions for Reliable Energy

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

2 10:09 a.m.

3 PRESIDING MEMBER BOYD: Sorry to be
4 late, meetings overlapping. This is the
5 prehearing conference for the Victorville 2 Hybrid
6 Power Project. And we have an interesting agenda
7 of issues today. And I'm going to turn the
8 hearing immediately over to our Hearing Officer
9 Raoul Renaud in order to get us started, because I
10 think things are going to be a little more complex
11 than they appear on the surface. Raoul.

12 HEARING OFFICER RENAUD: Okay, thank
13 you, Commissioner Boyd. I'm Raoul Renaud; I'm the
14 Hearing Advisor assigned to this matter. And I'd
15 like to introduce those of us who are up here on
16 the dais, and then we'll introduce representatives
17 of the parties who are in the room today.

18 To my far right is Tim Tutt, Advisor to
19 Commissioner Pfannenstiel. To my immediate right
20 is Commissioner Jackalyne Pfannenstiel, Chairman
21 of the Commission and Associate Member of this
22 Committee.

23 To my far left is Susan Brown, Advisor
24 to Commissioner Boyd. And to my immediate left is
25 Commissioner James Boyd, who is the Presiding

1 Member of this Committee.

2 Could I ask, please, that the
3 representatives of the applicant introduce
4 themselves.

5 MR. CARROLL: Good morning. Mike
6 Carroll with Latham and Watkins; and to my right
7 is Tom Barnett, Vice President with Inland Energy,
8 who's been retained by the applicant, the City in
9 this case, to develop the project.

10 HEARING OFFICER RENAUD: Thank you. And
11 representatives of the Energy Commission Staff,
12 please introduce yourselves.

13 MS. HOLMES: Good morning. My name is
14 Caryn Holmes; I'm Staff Counsel. To my right is
15 John Kessler, who is the CEC Staff Project
16 Manager.

17 HEARING OFFICER RENAUD: Okay, thank
18 you. And are there representatives of either of
19 the intervenors, California Unions for Reliable
20 Energy or Alliance for a Cleaner Tomorrow?

21 MS. SMITH: Gloria Smith, California
22 Unions for Reliable Energy.

23 HEARING OFFICER RENAUD: Thank you very
24 much. Are there representatives of any government
25 agencies here today? Or elected officials?

1 And we do have an open phone line for
2 anybody interested to phone in and participate.
3 Do we have anyone on the telephone?

4 MS. READ: I have Alvin Greenberg; and
5 he wants to speak on hazmat issues.

6 HEARING OFFICER RENAUD: Okay, thank
7 you. Alvin Greenberg is a member of the Energy
8 Commission Staff.

9 All right, very good.

10 This is the prehearing conference for
11 the Victorville Solar Hybrid project. The docket
12 number is 07-AFC-1. We scheduled today's
13 prehearing conference in a notice dated March 13,
14 2008.

15 Our main purpose today is to determine
16 the parties' readiness to proceed with evidentiary
17 hearings; to try to clarify any areas of argument,
18 disagreement or dispute; identify witnesses and
19 exhibits; and other procedural matters.

20 We have received prehearing conference
21 statements timely filed from the applicant, City
22 of Victorville, the California Energy Commission
23 Staff, and the Intervenor, California Unions for
24 Reliable Energy.

25 We're going to first discuss matters set

1 forth in the prehearing conference statements; and
2 then we'll provide an opportunity for public
3 comment.

4 Now, in order to organize the areas of
5 testimony and evidence for the evidentiary hearing
6 I'm going to propose that we use the applicant's
7 prehearing conference statement as a kind of a
8 roadmap.

9 Table 1 in that document, which starts
10 on page 2, sets forth a chart summary of each of
11 the topic areas, followed by a brief description
12 of the amount of testimony, and whether or not
13 there's a dispute.

14 And I think what we need to do first is
15 focus on the disputes. In the last several days
16 there has been a great deal of information filed
17 in this matter by both the applicant and on behalf
18 of the staff, as well as on behalf of the
19 intervenor.

20 And I must say that the Committee is
21 somewhat concerned at the amount of areas that
22 appear now to have significant disputes. And I
23 think what we are focusing on today is making an
24 honest and candid assessment of whether or not, in
25 fact, there has been sufficient time for these

1 areas that are still in dispute to be developed
2 and fully explored and discussed. And whether or
3 not, in fact, it's ready to proceed to evidentiary
4 hearing this Thursday, April 3rd.

5 And we're fully prepared to postpone
6 that hearing if, in fact, it appears by the end of
7 today that we're not in readiness to conduct a
8 proper evidentiary hearing which will allow
9 preparation of a complete record.

10 So, just with that in the back of your
11 minds, let's proceed. At some point I am going to
12 ask representatives of the parties to address that
13 particular issue, that is the general issue of
14 readiness to proceed with evidentiary hearings on
15 April 3rd.

16 Let's start by getting out of the way
17 those issues which, I believe, or topics which, to
18 my understanding, are not in dispute. And which
19 will be presented by way of declaration.

20 And those, I believe, are project
21 ownership; project description; land use; public
22 health; worker safety and fire protection;
23 socioeconomic resources; transmission line safety
24 and nuisance; waste; geology and paleontology;
25 efficiency; reliability and transmission system

1 engineering.

2 As far as I can tell from what's been
3 filed there are no areas of dispute with respect
4 to those topics. And all evidence will be
5 submitted by declaration and written evidence.

6 Anyone wish to address any of that
7 before we proceed? That all comports with
8 everyone's understanding here? Yes.

9 MR. CARROLL: With the caveat that it
10 was my understanding that there may be some other
11 topics that are also completely resolved.

12 HEARING OFFICER RENAUD: That may be
13 completely resolved?

14 MR. CARROLL: Yes.

15 HEARING OFFICER RENAUD: Okay. Well,
16 when I bring those up you can tell me if there
17 have been some late-breaking developments. But as
18 of yesterday afternoon the information I had --
19 well, I'll let you know what information. Okay.

20 The next category of topics are those
21 which appear to me, based on what I have and what
22 the Committee has, to have a minor area of
23 dispute, but nothing that couldn't be resolved
24 with a five-minute chat.

25 That would be hazardous materials, first

1 of all. Applicant requesting a modification to
2 proposed condition haz-1.

3 Facility design, modification is
4 requested to gen-1, allowing the GE equipment to
5 conform to the 2001 building code.

6 Traffic and transportation. The
7 applicant is requesting deletion of proposed
8 condition trans-4 regarding filing of a plan for
9 the monitoring of tracking of the solar arrays.
10 And the staff, on the other hand, is requesting an
11 additional trans-5 requiring the applicant to
12 provide an FAA determination that the HRSGs are
13 not a hazard to navigable airspace.

14 Under visual resources, staff requesting
15 a minor deletion of subpart (d) of proposed
16 condition vis-1 regarding photo simulations. I
17 don't think there's going to be a problem with
18 that.

19 Alternatives. Staff is requesting a
20 change to page 6-5 of the biological resources
21 section of the FSA to reflect that the
22 compensatory lands need not necessarily be located
23 in San Bernardino County.

24 And finally, under soil and water
25 resources, this is a request by the Committee. We

1 don't see in the FSA anywhere a discussion of the
2 potential alternative for using dry cooling here.
3 And we would like to see, for the completion of
4 the record, at least some mention or discussion of
5 that, either in written or oral testimony.

6 That leaves four topic areas which I
7 think we apparently have some major open issues.
8 And those are air quality, biological resources,
9 cultural resources and noise.

10 Why don't we see if we can go through
11 that middle category first; and maybe we can get
12 some of those taken care of before we proceed to
13 the big ones. Sound good? All right.

14 Hazardous materials. The applicant has
15 requested a modification to haz-1, condition haz-
16 1, at pages 10 to 11. Does staff have any comment
17 on that?

18 MR. KESSLER: I believe Alvin Greenberg
19 is on the phone. Alvin, can you respond to those,
20 please?

21 DR. GREENBERG: Can I be -- am I heard?

22 HEARING OFFICER RENAUD: Yes, you are.

23 Please go ahead.

24 DR. GREENBERG: There are three issues
25 here, number 16, number 17 and number 18. Number

1 18 refers to haz-9. That was an error and a
2 reference to vulnerability assessment will be
3 removed. So we can take care of that one.

4 HEARING OFFICER RENAUD: So, number 18
5 from the applicant's prehearing conference
6 statement we can simply cross off?

7 DR. GREENBERG: Correct.

8 HEARING OFFICER RENAUD: All right.

9 DR. GREENBERG: We agree with that.

10 Number 17 is also very quick. I'd be happy to
11 make that modification if they would agree to
12 adding the word formula after the word equivalent.

13 HEARING OFFICER RENAUD: Okay. Just for
14 the record, let me explain. The appendix B of the
15 hazardous materials section of the FSA currently
16 refers to the brand for the heat transfer fluid
17 for the solar arrays as Therminol BP-1.

18 Applicant has requested that they have
19 the option for using a different brand. And the
20 wording would be Therminol BP-1 or equivalent.
21 And what's being proposed, as I understand it now,
22 is it would say Therminol BP-1 or equivalent
23 formulation. Is that what you said?

24 DR. GREENBERG: Formula.

25 HEARING OFFICER RENAUD: Formula. Is

1 that acceptable to the applicant?

2 MR. CARROLL: Yes, it is.

3 HEARING OFFICER RENAUD: Okay. Formula.
4 Good. So that leaves --

5 DR. GREENBERG: The applicant's request
6 in number 16 to have a blanket exemption for any
7 hazardous material used or stored at the facility
8 in quantities equal to or less than 55 gallons for
9 liquids, or 500 pounds for solids, and 200 cubic
10 feet for gases is more problematical.

11 That would be inconsistent with all
12 other conditions of certification haz-1 for all
13 other projects that this Commission has certified.
14 We always use the words, as you see written before
15 you in haz-1, that the applicant or the project
16 owner would be limited to those identified in a
17 table.

18 And the applicant, you know, was asked
19 to identify all these hazardous materials. And
20 that is consistent with what we've asked other
21 applicants, where they have identified even
22 cleaning materials, laboratory reagents,
23 laboratory gases, welding gases, et cetera.

24 And for guidance the Committee can look
25 at the two most recent PMPDs, one for the Colusa

1 Generating Station, March 2008, and the other for
2 the Walnut Creek Energy Project of February 2008.

3 So, we ask that the applicant be
4 consistent with all other power projects. Despite
5 that, I'm certainly willing to compromise and
6 perhaps remove certain of the materials from haz-
7 1. But I think it's very important that the
8 applicant identify the amount of propane or
9 gasoline or herbicides or pesticides that would be
10 stored onsite, and their identity.

11 Not providing that information in
12 essence prevents staff from conducting the
13 thorough analysis required to assess risk to
14 workers onsite, and perhaps even the offsite
15 public.

16 HEARING OFFICER RENAUD: Let me ask the
17 applicant what your rationale is for requesting an
18 exemption for materials under 55 gallons, or 500
19 pounds for solids or 200 cubic feet for gases.

20 MR. CARROLL: The rationale was not
21 related to any particular chemicals or materials
22 that we expect to be onsite. The rationale was
23 based on the possibility that at some point over
24 the course of the operation, small quantities of
25 materials might be brought onsite, household

1 cleaning type operations, or landscape type of
2 materials.

3 So, at this point, we don't have any
4 specific list of chemicals that we believe to be
5 onsite that we haven't identified. We were just
6 contemplating the possibility that at some point
7 in the future there might be small quantities of
8 materials that would be brought onsite.

9 HEARING OFFICER RENAUD: Would it be a
10 problem for you simply to obtain approval in
11 advance from the CPM?

12 MR. CARROLL: No. I was going to
13 suggest I think we could do that, if we will
14 either now or at some point in the future, if we
15 believe that we're going to have to bring
16 materials onsite that are not included on the
17 list, we could provide that information to the CPM
18 and obtain approval.

19 HEARING OFFICER RENAUD: If I understand
20 you, then, the proposed haz-1 would be acceptable
21 as written?

22 MR. CARROLL: I believe it is, yes.

23 HEARING OFFICER RENAUD: All right.

24 Thank you, Dr. Greenberg.

25 DR. GREENBERG: Okay, thank you. You're

1 welcome.

2 HEARING OFFICER RENAUD: Good.

3 DR. GREENBERG: Bye, now.

4 HEARING OFFICER RENAUD: Thank you.

5 Bye.

6 All right, well, one down. Facility
7 design. Hopefully this will be easy. The request
8 is simply to modify proposed condition gen-1 to
9 allow the GE equipment to be under the 2001
10 building code. Does the staff have comments?

11 MS. HOLMES: That's acceptable to staff.

12 HEARING OFFICER RENAUD: Very good,
13 thank you.

14 Okay, under traffic and transportation,
15 we have the subject is two proposed conditions,
16 trans-4 and trans-5. The applicant has requested
17 deletion of trans-4. This is a proposed condition
18 that would require preparation of a written plan,
19 as I understand it, for how the tracking of the
20 solar arrays is going to be monitored.

21 All of which has the goal of limiting
22 the amount of glare from the solar arrays. And a
23 particular issue I saw was when say a solar array
24 is out of commission for whatever reason, that
25 this would address how it's positioned so that

1 it's not left in a position where it's causing a
2 lot of glare.

3 Does the staff wish to comment on that?

4 MR. CARROLL: Perhaps I can interject at
5 this point.

6 HEARING OFFICER RENAUD: Okay, Mr.
7 Carroll, go ahead.

8 MR. CARROLL: While we continue to
9 question the need for the plan at this point,
10 we're prepared to accept that condition as
11 proposed.

12 HEARING OFFICER RENAUD: Okay. So we'll
13 leave trans-4 in place.

14 Now, staff has requested adding trans-5
15 regarding an FAA determination that the HRSGs are
16 not a hazard to navigable airspace. I would
17 assume that such a determination is forthcoming or
18 at least in the works. Am I --

19 MS. HOLMES: We believe it is. We just
20 wanted to insure that we would get a copy of it
21 when it is received, and that we didn't have a
22 condition to state that. And given that we were
23 filing cleanup testimony last Friday, we thought
24 it appropriate to include that one.

25 HEARING OFFICER RENAUD: All right.

1 Applicant?

2 MR. CARROLL: Generally that condition's
3 acceptable to us with one requested modification.
4 We would ask that the condition read prior to
5 initiation -- I'm sorry, prior to initiating
6 construction of aboveground structures the
7 project, and then it would continue, as opposed to
8 prior to initiating construction, which would
9 allow us -- we anticipate that this will be in
10 place prior to initiating any construction at all.

11 But should there be some delay in
12 obtaining a determination from the FAA we'd like
13 to get underway with construction, at least begin
14 grading of the site.

15 But with that caveat, we would find this
16 condition acceptable.

17 HEARING OFFICER RENAUD: Staff, okay?

18 MS. HOLMES: That's acceptable.

19 HEARING OFFICER RENAUD: All right. Can
20 you two work out --

21 MS. HOLMES: Yes.

22 HEARING OFFICER RENAUD: -- final
23 wording of that and submit it? Thank you.

24 Visual resources. Staff has requested
25 deletion of subpart (d) of this one. Applicant,

1 are you okay with that?

2 MR. CARROLL: That's acceptable to us.

3 HEARING OFFICER RENAUD: Good.

4 MR. CARROLL: That was requested by us.

5 HEARING OFFICER RENAUD: Thank you.

6 Glad to hear you're getting along so well.

7 (Laughter.)

8 HEARING OFFICER RENAUD: Thank you.

9 Under alternatives, the staff has requested a
10 change to reflect in biological resources that the
11 compensatory lands need not be in San Bernardino
12 County.

13 MS. HOLMES: I believe that's the
14 applicant --

15 HEARING OFFICER RENAUD: Yeah, I thought
16 that; that didn't make sense. Applicant must have
17 requested that, right? Okay. Staff, do you wish
18 to comment on that? Do the lands have to be in
19 San Bernardino County?

20 MR. KESSLER: No, they do not. And we
21 agree with the applicant's comment; and we've
22 revised that subpart accordingly.

23 HEARING OFFICER RENAUD: All right, very
24 good.

25 Moving right along, soil and water

1 resources. As I indicated earlier, we're just
2 looking for some brief discussion or mention of
3 the dry cooling alternative. And I would ask that
4 staff and the applicant be prepared to make some
5 sort of offering about that at the evidentiary
6 hearing.

7 MS. HOLMES: Staff will be prepared to
8 do that.

9 HEARING OFFICER RENAUD: All right,
10 fine.

11 MR. CARROLL: As will applicant.

12 HEARING OFFICER RENAUD: Good. Thank
13 you.

14 Okay, let's take a deep breath and move
15 into our bigger disputed topics. And we'll just
16 go in alphabetical order, I guess.

17 Air quality. There appears to be a
18 dispute over whether or not there is going to be a
19 need for mitigation of PM2.5. And it all seems to
20 revolve around the standard that's being used for
21 measuring the ambient level.

22 Have you been able to have any further
23 discussions between staff and applicant about
24 this, anybody?

25 MS. HOLMES: The applicant provided a

1 sheet of paper with a set of numbers on it
2 relating to background PM2.5 levels. We've
3 provided a copy of that to the Intervenor CURE;
4 and will be docketing it later today.

5 I don't believe it's new information. I
6 believe that that information has previously been
7 provided, perhaps buried in some cases, in
8 previous filings.

9 Staff is considering that information at
10 this moment.

11 HEARING OFFICER RENAUD: All right.
12 Applicant, your response?

13 MR. CARROLL: Depending on the outcome
14 of staff's reconsideration of that information we
15 may or may not have an issue with respect to PM2.5
16 mitigation. We continue to believe that it's not
17 required. So should staff's position, upon review
18 of that information, remain consistent with the
19 FSA, then this would be a disputed issue.

20 Obviously, if staff should change its
21 position, it would not.

22 HEARING OFFICER RENAUD: Where does the
23 Air District stand on this, do we know? On the
24 2.5. Anybody?

25 MR. CARROLL: I believe that the Air

1 District supports the applicant, but I'm hesitant
2 to speak for them. But my understanding is that
3 they will testify to that effect at the
4 evidentiary hearing should this issue remain in
5 dispute.

6 HEARING OFFICER RENAUD: All right.
7 Well, that's something we can certainly address at
8 the hearing, then. I don't see a problem with
9 that. That's not insurmountable.

10 PRESIDING MEMBER BOYD: Well, I'd just
11 add, we certainly want, for sure, to hear from the
12 Air District on this subject.

13 HEARING OFFICER RENAUD: Yeah, I take it
14 that a representative of the Air District will be
15 available; that's required under the code.

16 MS. HOLMES: Right. Staff has made
17 arrangements for Mr. Alan DeSalvio to appear at
18 the hearing at the beginning, so he will be there
19 at 10:00 on Thursday morning.

20 HEARING OFFICER RENAUD: Okay. Good.
21 Thank you.

22 MS. SMITH: Can I just weigh in on that?

23 HEARING OFFICER RENAUD: Please.

24 MS. SMITH: This is --

25 HEARING OFFICER RENAUD: Please identify

1 yourself.

2 MS. SMITH: -- Gloria Smith,
3 representing California Unions for Reliable
4 Energy.

5 HEARING OFFICER RENAUD: Thank you.

6 MS. SMITH: Mitigation of both PM10 and
7 PM2.5 are a concern for CURE. And part of our
8 complaint about the PM10 offsets plan has to do --
9 and I won't get into all the details here, but it
10 has to do with the fact that we believe that
11 reducing road dust doesn't adequately get to the
12 PM2.5 issue.

13 I just received this piece of paper from
14 John just a couple of minutes ago, so I haven't
15 had time to look at it. But we would be in favor
16 of at least CEQA-relevant mitigation for PM2.5.

17 HEARING OFFICER RENAUD: Very good,
18 thank you. I think we'll have a full discussion
19 of that at the evidentiary hearing.

20 PRESIDING MEMBER BOYD: And hopefully
21 that presumes examples of PM2.5 mitigation that
22 have occurred elsewhere in the state. If they,
23 indeed, differ from the approach being taken here.

24 HEARING OFFICER RENAUD: All right. The
25 applicant's prehearing conference statement in the

1 air quality issue or area, referred to a number of
2 its comments on the FSA in this area, which had
3 not been addressed.

4 And they have since been addressed in a
5 document from the staff dated March 28th. This is
6 the one which refers to bullets 1 through 19?
7 Everyone know what I'm talking about? Okay.

8 Reading through that it looked to me
9 like there was really, again, the same single area
10 of disagreement, it was over 2.5. Other than
11 that, it looks to me like there have been
12 satisfactory responses and no major areas of
13 disagreement. Does anyone wish to correct me on
14 that?

15 MR. CARROLL: I believe that is correct,
16 with one correction, one clarification. In
17 looking at applicant's issues 1 through 8 under
18 air quality, with the filing of the staff
19 supplement to the prehearing conference statement
20 issues 3 through 8 have been resolved.

21 The clarification being issue number 5.
22 There are actually two discrepancies between
23 permit condition AQT-13 and the verification.
24 There was a seven- versus ten-day discrepancy,
25 which has now been corrected.

1 But there was also a 45- versus 60-day
2 discrepancy. I'm assuming we can get that
3 resolved. The question is just when do the source
4 test results need to be submitted. The condition
5 indicates 45 days, and the verification indicates
6 60 days after completion of the source test.

7 So we jus need to clean that up.

8 MS. HOLMES: We plan to make those
9 consistent at the hearing on the record.

10 HEARING OFFICER RENAUD: All right,
11 sounds good.

12 MR. CARROLL: So, with that, our air
13 quality issues 3 through 8 have all been resolved
14 with the staff's filing of its supplement to its
15 prehearing conference.

16 Issue 2 is the one related to PM2.5
17 mitigation, which we've just discussed. The one
18 correction that I have also outstanding is issue
19 number 1. And this relates to the ability to
20 continue construction up to one-half hour prior to
21 sunset versus up to one hour prior to sunset.

22 We believe that the modeling supports
23 allowing construction up to a half-hour before
24 sunset. Staff is proposing one hour before
25 sunset. And it doesn't seem like a lot of time,

1 but you multiply that half hour by all the days of
2 construction, and it becomes significant. So that
3 issue is still outstanding.

4 HEARING OFFICER RENAUD: Yes. And thank
5 you for bringing that up. Staff, what about that
6 half? I'm honestly in the dark about --

7 (Laughter.)

8 HEARING OFFICER RENAUD: I knew you were
9 going there.

10 (Parties speaking simultaneously.)

11 HEARING OFFICER RENAUD: About whether
12 or not the -- about the position of staff on this.
13 It looks like you're indicating that it's to be an
14 hour before sunset, but --

15 MS. HOLMES: I have to confess to you
16 that I don't know how staff will respond to that.
17 Keep in mind that we received this filing at 4:59
18 on Friday --

19 HEARING OFFICER RENAUD: 4:59.

20 MS. HOLMES: -- and today is the first
21 working day since then. And staff spent this
22 morning, the air quality staff, looking at what we
23 considered to be the bigger issue, which was
24 number 2 in the applicant's prehearing conference
25 statement.

1 But we will be prepared to address it
2 obviously at the hearing. We don't think that
3 it's an issue that can't be addressed, whether
4 there's a reconciliation or whether we need to go
5 forward and litigate it. We're prepared either
6 way.

7 HEARING OFFICER RENAUD: Maybe you make
8 it 45 minutes?

9 MS. HOLMES: Thank you.

10 (Laughter.)

11 HEARING OFFICER RENAUD: Okay.

12 PRESIDING MEMBER BOYD: I'll be looking
13 for precedent.

14 (Laughter.)

15 HEARING OFFICER RENAUD: Yes, and
16 relative to your comment about the amount of
17 material that's come in, I appreciate that. We
18 all appreciate that. And everybody's working very
19 hard to try to put this thing together for
20 Thursday.

21 So, we're trying to bear with all of
22 this, but on the other hand we also want to make
23 sure that we are, in fact, ready for hearing,
24 honestly and candidly.

25 Okay, well, I think we've got the air

1 quality taken care of with the understanding that
2 there are a couple of issues that still need to be
3 worked out. But they sound workable.

4 MS. HOLMES: Well, either there will be,
5 as I said, some sort of a reconciliation or staff,
6 at least, will be prepared to go forward and
7 represent its position on Thursday.

8 HEARING OFFICER RENAUD: And we'll
9 make --

10 MS. HOLMES: We don't need additional
11 time to do that.

12 HEARING OFFICER RENAUD: Right, so we'll
13 make a record and then it will be ready for
14 adjudication.

15 MS. HOLMES: Correct.

16 HEARING OFFICER RENAUD: Exactly. Good.

17 MS. SMITH: Can CURE weigh in here for a
18 second?

19 HEARING OFFICER RENAUD: Please.

20 MS. SMITH: We will be ready to go on
21 Thursday with respect to air quality, because, as
22 you know, we've raised a purely legal issue here
23 that doesn't require any evidence on our part.
24 We've actually submitted all our evidence with our
25 prehearing conference.

1 We did receive the supplemental
2 testimony on air quality from staff. And it's
3 clear that there's still a disconnect between what
4 CURE's saying and how staff is responding.

5 What staff appears to be focusing on is
6 the fact that there is an outstanding CEQA case
7 with respect to both types of offsets the
8 applicant is seeking. And CURE has actually
9 brought a case with respect to the PM10.

10 The argument that we're making to the
11 Committee is that the offset package does not
12 comply with the federal Clean Air Act. We have
13 not brought any litigation in that regard, because
14 we remain hopeful that this will be resolved.

15 So, again, with the supplemental
16 testimony staff says, we understand that there's
17 this outstanding litigation out there, but
18 regardless of pending litigation we still view the
19 offset package as legal.

20 We're not asking you to even consider
21 those outstanding CEQA cases. We're looking for a
22 review of whether or not the offset package
23 complies with the Clean Air Act. And that's the
24 briefing that we put in our prehearing conference
25 statement. So I just wanted to make that

1 clarification.

2 HEARING OFFICER RENAUD: Thank you very
3 much for that.

4 Okay, let's move on to biological
5 resources. Until late last week I thought this
6 was all about the desert tortoise, but apparently
7 there's more at this point. More creatures and
8 other forms of life, including plants.

9 I think the biggest issue appears to be
10 a dispute over the amount of compensation habitat
11 land. Staff, in a nutshell, is saying three-to-
12 one. Applicant has been saying one-to-one, but it
13 looks like now you've come up to 1.5-to-one?

14 MR. CARROLL: That's correct.

15 HEARING OFFICER RENAUD: Okay. Hand in
16 hand with that is the question of the location of
17 that land. And then there are some other things,
18 but maybe we'll talk a little about that later.

19 The compensation land issue first.
20 Let's hear from the applicant about that first.

21 MR. CARROLL: I think you've correctly
22 identified the primary issue related to biological
23 resources. And it's covered by issues 9, 10 and
24 11 to some extent, in our comments, which is what
25 should the required amount of land be; and where

1 are the potentially acceptable locations for that
2 land.

3 And at this point I believe that that
4 issue remains in dispute between the staff and the
5 applicant.

6 HEARING OFFICER RENAUD: It appears to
7 me that you're placing reliance on the argument
8 that the land that's being taken out of service,
9 if you will, the land where the plant will be, the
10 project will be, is category 3 habitat. And thus
11 subject to a one-to-one ratio.

12 Can you address the response that, in
13 fact, that those categories don't apply to
14 privately held lands?

15 MR. CARROLL: Yes. I don't think that
16 we are in fundamental disagreement with the staff
17 of either the Energy Commission or the California
18 Department of Fish and Game about how one assesses
19 these impacts.

20 We don't disagree that you need to
21 analyze each project on a case-by-case basis.
22 However, we don't think case-by-case means random
23 and arbitrary. And we think that existing
24 guidance and past decisions, this agency and other
25 agencies, are relevant to a case-by-case analysis

1 of this project.

2 So, I don't think we're in a fundamental
3 disagreement over the approach. I think we are in
4 a fundamental disagreement over once you get into
5 that case-by-case analysis and you begin to
6 evaluate the specifics of the land that is, as you
7 put it, is being taken out of service here, is
8 very poor quality habitat. The presence of
9 species is extremely limited, if existent at all.
10 And a number of other factors, all of which we
11 will be prepared to go through at the evidentiary
12 hearing. Lead us to the conclusion that a case-
13 by-case analysis of this particular project
14 dictates a one-to-one or 1.5-to-one compensation
15 ratio.

16 HEARING OFFICER RENAUD: All right.
17 Staff, any response?

18 MS. HOLMES: Well, obviously staff and
19 the California Department of Fish and Game
20 disagree. It came to my attention this morning
21 that a letter that the California Department of
22 Fish and Game filed late Friday supporting the
23 staff position may have not been distributed to
24 the Commissioners.

25 And so I have asked the staff biologist

1 to go get copies for you now. I don't know why
2 that didn't occur.

3 But, in any event, staff and the
4 Department of Fish and Game disagree. We believe
5 it is good quality habitat; it does support the
6 species that are at issue here. And we plan to
7 present both oral evidence, as well as pictures,
8 to demonstrate that.

9 We're also prepared to talk about the
10 kinds of distinctions between the precedents that
11 the applicant has cited with respect to other
12 incidental take permits and this project, to
13 explain why it was reasonable to reach a different
14 conclusion in those cases than in this case.

15 And, in short, we are fully prepared to
16 go forward and make our case for a three-to-one
17 ratio.

18 HEARING OFFICER RENAUD: And has Fish
19 and Game completed any analysis it needs in terms
20 of studying the land or anything else?

21 MS. HOLMES: Fish and Game has been
22 involved, working with the staff from the
23 beginning of this process. They have been out and
24 visited the site. They have looked at the site.\

25 Their letter states that the analysis

1 that the staff provided is the same type of
2 analysis that they would provide were they issuing
3 an incidental take permit. And that they agree
4 with the analysis and support its conclusions.

5 HEARING OFFICER RENAUD: All right.

6 MS. HOLMES: And they are prepared to be
7 at the hearing on Thursday and testify.

8 HEARING OFFICER RENAUD: All right.

9 PRESIDING MEMBER BOYD: You're correct
10 in that the letter's not here, but we have a nice
11 letter about Carrizo Plain in the file. Yeah,
12 electronically I saw it this morning. It's there
13 in the docket.

14 MS. HOLMES: Correct. And I apologize.
15 It came in late on Friday And I saw that it went
16 out on the docket distribution list. And I had
17 erroneously assumed that the Commissioners were on
18 that list. And apparently you are not, which was
19 a surprise to me. This morning.

20 HEARING OFFICER RENAUD: Okay.

21 MS. SMITH: Can I weigh in on that,
22 please?

23 HEARING OFFICER RENAUD: Yes, CURE,
24 please.

25 MS. SMITH: CURE has reviewed the March

1 28th letter. One of our concerns about this
2 particular topic, biological resources, not being
3 ready for evidentiary hearings for Thursday is
4 there's still outstanding documents that need to
5 come in from the wildlife agencies.

6 The most significant would be an
7 incidental take permit from CDF&G, with respect to
8 California-listed species. I don't think this is
9 the equivalent of an incidental take permit for
10 either Mojave ground squirrel or desert tortoise.
11 They merely are concurring at this point with
12 staff, which CURE concurs with staff, as well.

13 But I think that maybe some outstanding
14 documents with respect to CDF&G, and we won't be
15 ready to -- no one should be ready to proceed to
16 hearing until these documents are in.

17 And this is just for this particular
18 species. But we're also concerned about the
19 desert tortoise translocation plan, as well.

20 HEARING OFFICER RENAUD: All right,
21 thank you.

22 MS. HOLMES: I'd like to respond to
23 that, but --

24 HEARING OFFICER RENAUD: Ms. Holmes,
25 yes.

1 MS. HOLMES: -- first of all, would you
2 like -- Mr. York has got copies of the letter.

3 HEARING OFFICER RENAUD: Sure, thank
4 you.

5 MS. HOLMES: It's the staff's position
6 that the incidental take permit that would be
7 required under the Fish and Game Code is subsumed
8 within the Energy Commission's license.

9 And our approach in this case has been
10 to work with, consult with Fish and Game; insure
11 that together we provide to the Commission the
12 same type of analysis that Fish and Game would
13 provide, were they issuing an incidental take
14 permit.

15 And to include all the conditions in the
16 Commission's license, those conditions that would
17 apply were an incidental take permit to be issued.

18 Energy Commission Staff has been working
19 with the legal department at the California
20 Department of Fish and Game to memorialize this in
21 a memorandum of understanding. We have not
22 reached a point where we have signatures on that
23 document, but we are obviously far enough along
24 that we have taken this approach for this case.

25 And we would anticipate that Fish and

1 Game does not need to issue an incidental take
2 permit for this project because all of the
3 analysis and the conditions that would apply to
4 this project from an incidental take permit will
5 be included in the Commission's decision.

6 PRESIDING MEMBER BOYD: Ms. Holmes, is
7 this a first?

8 MS. HOLMES: I believe it is.

9 MS. SMITH: Can I respond?

10 HEARING OFFICER RENAUD: Please; and I'd
11 like to hear from the applicant after you. Go
12 ahead.

13 MS. SMITH: California Fish and Game has
14 separate statutory obligations it must meet. And
15 part of that does have to do with, you know, a
16 full sunshine of the process.

17 And we just don't feel comfortable with
18 this happening after conclusion of the evidentiary
19 hearings. Then, you know, at that point the ship
20 has sort of sailed. And we don't have any
21 capacity of participating. And I just don't see
22 what the hurry is. This is an extremely important
23 issue.

24 HEARING OFFICER RENAUD: Let me just
25 respond briefly by saying that in the event that

1 any new evidence were to surface or become
2 necessary after the evidentiary hearing, we would
3 have another hearing. We would reopen the record
4 and make sure that that information was put out
5 there in a public manner and with the public's
6 ability to respond and comment.

7 Applicant, response?

8 MR. CARROLL: Applicant concurs with the
9 staff's analysis regarding the fact that the
10 authority of the California Department of Fish and
11 Game to issue incidental take permits is subsumed
12 by the Energy Commission process.

13 The way the process has been laid out in
14 this case, there won't be any incidental take
15 permits issued after the California Energy
16 Commission issues a license for this project.
17 That has all been subsumed, as it should be under
18 the Warren Alquist Act, within the Energy
19 Commission's decision.

20 HEARING OFFICER RENAUD: All right,
21 thank you. Let me ask you briefly, the applicant
22 has raised -- I guess I'm asking staff this.

23 Ms. Holmes, applicant has raised an
24 objection to the declaration of Dr. Leitner.
25 Wants the opportunity to cross-examine him. Will

1 you be able to produce him live?

2 MS. HOLMES: We will not. And, as you
3 know, under the Commission's rules of evidence,
4 California Code of Regulations, Title 20, section
5 1212, hearsay evidence is allowed.

6 I understand that the fact that it is
7 hearsay does go to the weight that the Committee
8 would give the evidence, as does presumably Dr.
9 Leitner's credentials, which I think are
10 unchallenged.

11 HEARING OFFICER RENAUD: All right. So
12 you understand, Mr. Carroll, that that's how we'll
13 proceed? The declaration will be given the weight
14 to which it is due. Apparently Dr. Leitner will
15 not be available.

16 MR. CARROLL: Understood.

17 HEARING OFFICER RENAUD: All right.
18 There were a number of objections by the applicant
19 to timing requirements in the proposed conditions
20 of certification. Mostly the applicant wanted to
21 shorten periods of time in order to keep the
22 project schedule moving.

23 Has the staff had an opportunity to
24 review those?

25 MS. HOLMES: No, we have not.

1 HEARING OFFICER RENAUD: All right.

2 MS. HOLMES: We've been focused on,
3 again, the bigger picture issues.

4 HEARING OFFICER RENAUD: All right.
5 Now, Commissioner Boyd just mentioned the fact
6 that there is a document from Carrizo in amongst
7 all these materials. And I think that was
8 intentional --

9 MS. HOLMES: Yes, it was.

10 HEARING OFFICER RENAUD: -- as an
11 example of CDFG work. Right.

12 MS. HOLMES: Correct.

13 HEARING OFFICER RENAUD: Okay.

14 MS. HOLMES: It was an attachment to Mr.
15 York's supplemental testimony. We included the
16 communication from the California Department of
17 Fish and Game with respect to this project. And
18 we also included the communication from the
19 California Department of Fish and Game to an
20 applicant for another project so the Committee
21 could see the case-by-case, project-by-project
22 approach that the CDFG uses, which is similar to
23 what the Energy Commission Staff does with its
24 CEQA responsibilities. That's the sole purpose.

25 HEARING OFFICER RENAUD: The only reason

1 I raised it is because I was reading it and I saw
2 the mention of the blunt-nosed leopard lizard.

3 And I remember when we went to the site
4 visit I saw a lizard. And I don't know if it was
5 a blunt-nosed leopard lizard, but apparently that
6 is an endangered species. And --

7 MR. KESSLER: What time of year were you
8 there?

9 HEARING OFFICER RENAUD: When was the
10 site visit? Was it June? Yeah, I think it was
11 June. Anyway, I don't see any mention of that
12 creature. I see another kind of lizard, long-
13 nosed leopard lizard, mentioned.

14 Anyway, I don't know if it's necessary
15 to at least bring up that type of lizard for this
16 case. Perhaps it's not even known to exist in
17 that area.

18 MS. HOLMES: There's no need to address
19 the blunt-nosed leopard lizard in this case.

20 HEARING OFFICER RENAUD: I just thought
21 I should ask.

22 MS. HOLMES: Thank you.

23 MS. SMITH: Just for the record, the
24 lizard was standing on my shoe.

25 (Laughter.)

1 HEARING OFFICER RENAUD: I took a
2 photograph of it and it's still on my phone if
3 anyone wants to see. He was a nice lizard.

4 MS. SMITH: He was.

5 (Laughter.)

6 MS. HOLMES: Common.

7 HEARING OFFICER RENAUD: Common?

8 MS. HOLMES: Common lizard.

9 HEARING OFFICER RENAUD: Don't tell him
10 that.

11 (Laughter.)

12 PRESIDING MEMBER BOYD: Were you at
13 ease?

14 MS. SMITH: We're both common.

15 HEARING OFFICER RENAUD: He really
16 appreciated the shade of the van.

17 It's also pointed out in the materials
18 we recently received that -- in the FSA that the
19 2008 rare plant survey is not performed or
20 complete. Is that something that we will need in
21 order to conduct the evidentiary hearing, either?

22 Mr. Carroll, why don't you go.

23 MR. CARROLL: We do not believe that it
24 is something that's required to conduct the
25 evidentiary hearing. That rare plant survey will

1 take place this month, April.

2 HEARING OFFICER RENAUD: Meaning April?

3 MR. CARROLL: Yes.

4 HEARING OFFICER RENAUD: All right.

5 MS. HOLMES: We agree that it's not
6 needed to conduct the hearings. It is, as we have
7 repeatedly stated, needed for the initiation --
8 before construction is initiated.

9 HEARING OFFICER RENAUD: And the other
10 concern I saw was whether or not the United States
11 Fish and Wildlife Service will need to -- Fish and
12 Wildlife Service will want to re-initiate a
13 federal Endangered Species Act consultation
14 process, and issue an amended biological opinion.

15 Again, anybody want to comment on that?
16 Applicant, CURE, Staff?

17 MS. HOLMES: We don't know whether -- we
18 know that there was a biological opinion issued.
19 And subsequent to that the applicant submitted a
20 second revised biological assessment, which means
21 that they will be looking at that and see whether
22 or not they need to review the biological opinion.

23 But we have no additional information.

24 HEARING OFFICER RENAUD: All right.

25 MR. CARROLL: Our understanding is that

1 it will not re-initiate anything at the federal
2 level. The addendum to the biological assessment
3 that was submitted after the biological opinion
4 was submitted in response to an issue that was
5 raised very late in the process by the California
6 Department of Fish and Game about whether or not
7 the project affected the Arroyo Grande Wash.

8 So, in order to respond to Fish and
9 Game's late issue, we submitted the supplement.
10 But that -- or I'm sorry, the second addendum to
11 the environmental assessment. But the issue dealt
12 with there was, number one, that the federal
13 agency had any concern with. And based on
14 informal communications with them we don't expect
15 that to affect the federal analysis at all.

16 HEARING OFFICER RENAUD: Thank you.
17 CURE, anything?

18 MS. SMITH: Well, again we're just
19 concerned about this late-breaking documents and
20 information coming in the month of March.

21 And with respect to the rare plant
22 assessment, it assumes that there are not going to
23 be any endangered plant species found on the
24 project site. And I don't know that that's a fair
25 assumption to make at this time.

1 So, again, I mean you asked initially
2 whether we felt we were ready to go on all of
3 these issue areas, and we don't think so with
4 respect to biological resources.

5 HEARING OFFICER RENAUD: All right,
6 thank you.

7 MR. CARROLL: If I could just respond to
8 that on behalf of the applicant. If questions
9 come up late in the process we feel that we're
10 obligated to respond to those questions late in
11 the process. And that's the basis for the new
12 information. We don't think that any of it is
13 significant new information.

14 And with respect to the rare plant
15 surveys we're not assuming that we won't find
16 them. If they are found they'll be properly
17 handled in accordance with applicable protocols.

18 HEARING OFFICER RENAUD: All right,
19 thank you.

20 All right, that's all I have noted for
21 biological resources. Anyone else have anything
22 further you want to bring up about that issue
23 before we move on?

24 MR. CARROLL: Yes. I think the one
25 issue that we didn't cover is the one identified

1 in our item number 12. And this is similar to the
2 incidental take permit and Fish and Game's
3 reluctance to relent to the authority of the
4 California Energy Commission.

5 And what we have here is a very open-
6 ended condition, in our view, that allows the
7 California Department of Fish and Game, at some
8 undefined point in the future, to conclude that a
9 streambed alteration agreement would be required
10 for this project.

11 And to us that's just a completely
12 untenable situation. We could be six months into
13 construction, 12 months into construction and have
14 them make this determination.

15 And what that triggers, if you've looked
16 at the condition in the final staff assessment, is
17 an eight-page long condition that is full of
18 requirements, some of which we think are
19 inconsistent with other conditions that have been
20 proposed by the CEC Staff.

21 So, we think that there's sufficient
22 evidence in the record for a finding to be made
23 that if the California Department of Fish and Game
24 have authority over this project, there would not
25 be a need for a streambed alteration agreement.

1 And this issue should be put to bed in the CEC's
2 decision. And Fish and Game should not have a
3 remaining outstanding ability to meddle in the
4 decision of this Commission.

5 HEARING OFFICER RENAUD: Response?

6 MS. HOLMES: Yes. I have several
7 points. First of all, I think that to the extent
8 that the condition gives CDFG the final word on
9 something, with respect to this condition that
10 needs to be changed.

11 For example, the first sentence I'm
12 noticing of bio-18 would probably better read if
13 the CPM decides in consultation with CDFG. And
14 that was our intent throughout.

15 Again, this is related to the issue of
16 trying to subsume within the Energy Commission's
17 decisions permits that we have not subsumed
18 before. And we struggled with the streambed
19 alternation agreement requirements because they
20 are, as he points out, quite extensive.

21 So we don't have a problem with making
22 sure that the final responsibility rests with the
23 Energy Commission in consultation with Fish and
24 Game, not with Fish and Game.

25 Secondly, I would also state that we

1 have talked to Fish and Game about the additional
2 information that was provided in the second
3 addendum to the biological assessment. And they
4 indicated, and we'll be able to talk about this on
5 Thursday, that they still did not have enough
6 information to know whether or not such a
7 streambed alteration agreement would be required,
8 but for the Energy Commission's jurisdiction.

9 They can talk, I think, Thursday at more
10 length about what additional information it is
11 they're looking for. Whether it will be available
12 for the hearings or whether it requires waiting
13 until the applicant has started providing us with
14 final design types of information, I cannot
15 answer.

16 But they have looked at it. They are
17 not satisfied that they know yet whether or not
18 this condition would be triggered. And we'll just
19 have to, I think, wait till Thursday to resolve
20 that.

21 But, as I said, my first point is I
22 don't have any difficulty with changing this to
23 make sure that the responsibility rests with the
24 Energy Commission.

25 HEARING OFFICER RENAUD: And, Mr.

1 Carroll, if we were to modify bio-18 as Ms. Holmes
2 suggests, would you withdraw your objection to it?

3 MR. CARROLL: Quite honestly I think we
4 would want to have some discussion with the staff
5 and work out the language, and consider that. I'm
6 not really prepared to say that we would drop it
7 at this point. But there's a possibility that we
8 could work something out.

9 And, finally, with respect to Fish and
10 Game, I guess we'll hear what they have to say.
11 But I'd just like to point out, this is not a new
12 issue; it's not a new element to the project.

13 This is an element of the project that
14 was in the application for certification. We've
15 been at this for over a year, and I think it's
16 time for them to make up their minds about whether
17 or not these are jurisdictional waters that are
18 affected or not.

19 HEARING OFFICER RENAUD: Any comment
20 from CURE?

21 MS. SMITH: No. You know, I'm concerned
22 about taking this precedential step and subsuming
23 these authorities. And I just don't know why it's
24 occurring at this particular project.

25 HEARING OFFICER RENAUD: All right,

1 thank you.

2 All right, anything else on biological?

3 MS. SMITH: Yes.

4 HEARING OFFICER RENAUD: Yes. Go ahead,
5 please.

6 MS. SMITH: This has to do with -- we
7 have a concern with respect to the desert tortoise
8 translocation plan. The applicant's plan was
9 submitted to both wildlife agencies on March 3rd.
10 And I'm not sure, but I assume it implicates both,
11 since this desert tortoise is both federally and
12 state listed.

13 The translocation plan could ultimately
14 be a pretty big deal if -- it could implication
15 section 9, the taking provision of the Endangered
16 Species Act. And I think this is something that
17 really needs to be worked out. And CURE wants to
18 be involved in that process.

19 And then changing the subject a little
20 bit, CURE's also looking at another legal issue --
21 another issue after reviewing all these documents,
22 has sort of come up in our mind. It's not
23 something that's going to involve evidentiary
24 hearings, but I just wanted to let the Committee
25 know that we are looking at researching another

1 legal issue.

2 We're not prepared to talk about it yet.
3 We don't want to raise something that is
4 prematurely.

5 And then the last I want to say, which
6 just goes to the whole project, CURE has been
7 negotiating in settlement with the applicant for
8 months. And we actually settled all the labor
9 issues back, I think, in October or November. And
10 we have not been able to resolve an environmental
11 settlement. And we're still trying to do that.

12 So I just wanted to let the Committee
13 know. I'd mentioned that to John at one point,
14 so.

15 HEARING OFFICER RENAUD: All right,
16 thank you.

17 As I recall the translocation document
18 involved four or five alternatives. Is that the
19 one we're --

20 MR. CARROLL: That's correct, which is
21 very typical --

22 HEARING OFFICER RENAUD: I think it's
23 going to depend on timing of everything, which
24 alternative is selected. And obviously the
25 evidence that comes out at the evidentiary hearing

1 will play a major role in that.

2 MR. CARROLL: And it's very typical for
3 a desert tortoise translocation plan to identify
4 several alternatives. And the process is that for
5 the agencies to engage in a discussion about which
6 of those alternatives they think is the most
7 suitable.

8 And, of course, we will not be
9 translocating any tortoises until the fall. So
10 there's plenty of time between now and then to
11 work with the agencies to identify the particular
12 lands to which they would be translocated.

13 And we obviously have some preliminary
14 disputes over that in light of Dr. Leitner's
15 testimony. And our view is that all of the lands
16 which have been identified should remain on the
17 table for discussion.

18 We don't see any reason at this early
19 stage to, in our view prematurely, eliminate any
20 of the lands that were identified in the plan from
21 consideration. Which is our primary objection to
22 the substance of Dr. Leitner's declaration.

23 HEARING OFFICER RENAUD: Okay, thank
24 you. Response?

25 MS. HOLMES: No response.

1 HEARING OFFICER RENAUD: All right.

2 That's biological resources.

3 Let's move on to cultural resources. As
4 I see it, there are -- I guess the biggest
5 question is over the extent of archeological
6 monitoring that's to take place.

7 The applicant has requested that it be
8 limited to facilities near the Mojave River
9 through a modification to proposed cultural-6. Is
10 that still the request of the applicant?

11 MR. CARROLL: With the clarifications
12 and the proposed changes to conditions that were
13 reflected in the staff's supplement, we have no
14 further outstanding issues with respect to
15 cultural resources. All these issues have now
16 been addressed.

17 HEARING OFFICER RENAUD: Good. Okay,
18 you confirm that, Ms. Holmes, I take it from your
19 smile?

20 MS. HOLMES: That's correct.

21 HEARING OFFICER RENAUD: Well, good,
22 thank you. Great.

23 And then we can move on to noise.
24 There's a dispute over noise-4, proposed condition
25 noise-4. The staff wishes to word it so that the

1 noise due solely to plant operations, and I assume
2 that means without respect to the background, --

3 MS. HOLMES: Correct.

4 HEARING OFFICER RENAUD: -- would be 39
5 dba. Applicant is requesting a number of 44, but
6 including background. Am I summarizing correctly?

7 MR. CARROLL: I believe that is
8 generally correct. Perhaps I can short-circuit
9 his discussion and say that --

10 HEARING OFFICER RENAUD: All right.

11 MR. CARROLL: -- in light of the
12 proposed changes in the staff supplemental filing,
13 our concerns regarding the noise issues have been
14 resolved.

15 HEARING OFFICER RENAUD: All right. Ms.
16 Holmes, can you confirm that?

17 MS. HOLMES: That's my understanding, as
18 well.

19 HEARING OFFICER RENAUD: Good. All
20 right.

21 Okay, is there any member of the public,
22 either on the phone or in present, who wishes to
23 comment?

24 Okay. Maggie, is anyone on the phone,
25 as far as you know?

1 MS. READ: No.

2 HEARING OFFICER RENAUD: There's no one
3 on the phone. All right.

4 Just one moment, please.

5 (Pause.)

6 HEARING OFFICER RENAUD: All right, at
7 the beginning I asked the parties to think about
8 providing a brief and very candid assessment of
9 the readiness of this matter to proceed to
10 evidentiary hearing on Thursday.

11 I can tell you at this point that to the
12 Committee it appears that while there are some
13 open issues, it does appear that substantial
14 evidence is prepared for presentation, and that it
15 would be acceptable to go ahead. With the
16 understanding that there may be some evidence that
17 will need to come in later, in which case we'll
18 have to reopen the record. But that's not
19 uncommon, that happens.

20 Does anyone, staff, CURE, applicant,
21 wish to comment on readiness for evidentiary
22 hearing?

23 MS. HOLMES: Staff is ready to proceed
24 to hearing.

25 MR. CARROLL: As is applicant.

1 HEARING OFFICER RENAUD: All right.

2 MR. CARROLL: We believe we have two
3 outstanding topic areas, air quality and biology.
4 And we think that the issues are well defined, and
5 that the evidence is in the record and we should
6 proceed on Thursday.

7 HEARING OFFICER RENAUD: Thank you.

8 CURE?

9 MS. SMITH: Well, as we've already
10 mentioned, and I'll just reiterate, that we feel
11 like there's a lot of outstanding information,
12 things either still outstanding or just so
13 recently submitted, and legal and statutory
14 obligations that have not yet been met, that we
15 don't think it's ready. But we're certainly --
16 will do the best we can.

17 HEARING OFFICER RENAUD: All right, very
18 good. Thank you.

19 Just to check one more time. Anyone on
20 the phone or any public comment?

21 MS. READ: No.

22 HEARING OFFICER RENAUD: All right. The
23 Committee will issue an evidentiary hearing order
24 very shortly, within the next few hours. And
25 we'll send that out electronically so that you all

1 have it. It'll just provide some final procedural
2 instructions for Thursday's hearing.

3 And other than that, if there's no
4 further comment, we'll adjourn this hearing. And
5 we will see you in Victorville Thursday morning.

6 (Whereupon, at 11:05 a.m., the
7 prehearing conference was adjourned.)

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CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission 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 hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of April, 2008.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345