

MANDATORY STATUS CONFERENCE  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Application for Certification for the ) Docket No.  
Ridgecrest Solar Power Project ) 09-AFC-9  
\_\_\_\_\_ )

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

TUESDAY, JUNE 21, 2011  
2:00 p.m.

Reported by:  
John Cota  
Contract No. 170-09-002

COMMITTEE MEMBERS

James D. Boyd, Vice Chairman and Presiding Member

HEARING OFFICER, ADVISORS

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Tim Olson, Advisor to Commissioner Boyd

STAFF, CONSULTANTS AND STAFF WITNESSES

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APPLICANT

Scott Galati, Attorney  
Dave Wiseman, Attorney  
Galati|Blek, LLP

Billy Owens  
Solar Millennium, LLC

INTERVENORS (All Present Via WebEx)

Laura Cunningham  
Kevin Emmerich  
Basin and Range Watch

Elizabeth Klebaner  
Adams, Broadwell, Joseph & Cardozo  
representing California Unions for Reliable Energy (CURE)

Ileene Anderson  
Center for Biological Diversity

Sidney Silliman  
Desert Tortoise Council

Brenda Burnett  
Kerncrest Audubon Society

Michael J. Connor, Ph.D.  
Western Watersheds Project

INTERESTED AGENCIES (All Present Via WebEx)

Janet Eubanks  
U.S. Department of the Interior  
Bureau of Land Management  
California Desert District

Paul Rodriguez  
U.S. Department of the Interior  
Bureau of Land Management  
Ridgecrest Field Office

Tim Fox  
Naval Air Weapons Station, China Lake

MEMBERS OF THE PUBLIC (All Present Via WebEx)

Don and Judy Decker  
Ridgecrest, California

Robert L. Thompson  
Ridgecrest, California

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1           PRESIDING COMMISSIONER BOYD: You might want to  
2 check the one at the end of the table if that one doesn't  
3 work. Okay, intervenors.

4           Do we have a CURE representative on the phone? Do  
5 we have a CURE representative on the phone or in the room?

6           MS. KLEBANER: Yes. This is Elizabeth Klebaner  
7 for California Unions for Reliable Energy.

8           PRESIDING COMMISSIONER BOYD: (Coughed) Excuse me.  
9 Thank you Elizabeth. How about Desert Tortoise Council?

10          MR. SILLIMAN: Ah yes, this is Sid Silliman -- I'm  
11 sorry, were you able to hear me?

12          PRESIDING COMMISSIONER BOYD: There was a little  
13 static but I did hear you.

14          MR. SILLIMAN: Okay, good. Thank you.

15          PRESIDING COMMISSIONER BOYD: Thank you. Western  
16 Watersheds Project?

17          DR. CONNOR: Yes. This is Michael Connor.

18          PRESIDING COMMISSIONER BOYD: Hello, Michael.  
19 Basin and Range Watch.

20          MR. EMMERICH: Yeah, hello. This is Kevin  
21 Emmerich of Basin and Range Watch.

22          PRESIDING COMMISSIONER BOYD: Okay, Kevin. You're  
23 a little faint. We could hear it but we may have difficulty  
24 later. Kerncrest Audubon Society.

25          HEARING OFFICER VACCARO: Ms. Burnett are you

1 still on the line? Okay, we're not hearing you but we know  
2 you were on the line a few moments ago.

3 PRESIDING COMMISSIONER BOYD: Well, let's try  
4 another one while we see if we've got somebody on mute. Oh,  
5 it's up on the screen there. What can we tell?

6 Anyway, let's try Center for Biological Diversity.

7 MS. ANDERSON: Hi, this is Ileene Anderson with  
8 the Center for Biological Diversity.

9 PRESIDING COMMISSIONER BOYD: Welcome,  
10 Ms. Anderson.

11 MS. ANDERSON: Thank you.

12 PRESIDING COMMISSIONER BOYD: Again, Kerncrest  
13 Audubon Society?

14 (No response).

15 MR. BABULA: Try caller 14.

16 PRESIDING COMMISSIONER BOYD: Kerncrest, Kerncrest  
17 Audubon Society?

18 MS. BURNETT: Correct, Kerncrest Audubon Society,  
19 Brenda Burnett.

20 PRESIDING COMMISSIONER BOYD: Thank you. You're  
21 listed here as speaker 14. We had to dig for you a little  
22 bit; excuse the delay.

23 MS. BURNETT: Right; I had to redial.

24 PRESIDING COMMISSIONER BOYD: Oh, okay, thank you.  
25 And I know BLM is on the line. Would they like to identify

1 themselves?

2 MS. EUBANKS: Hi, this is Janet Eubanks in the  
3 CDD.

4 PRESIDING COMMISSIONER BOYD: Thank you and  
5 welcome. U.S. Fish and Wildlife Service?

6 (No response).

7 PRESIDING MEMBER BOYD: Bureau of Reclamation?

8 (No response).

9 PRESIDING MEMBER BOYD: Any other federal agencies  
10 I've missed?

11 (No response).

12 HEARING OFFICER VACCARO: Do we still have our  
13 representative from BLM on the line?

14 MS. EUBANKS: Yes, Janet.

15 PRESIDING COMMISSIONER BOYD: She is the --

16 HEARING OFFICER VACCARO: The gentleman as well --  
17 I think there was also a gentleman --

18 MS. EUBANKS: Oh.

19 MR. OLSON: Paul Rodriguez.

20 MS. EUBANKS: That may be Paul Rodriguez from the  
21 Ridgecrest field office.

22 HEARING OFFICER VACCARO: Are you still on the  
23 line Mr. Rodriguez?

24 (No response).

25 HEARING OFFICER VACCARO: We are not hearing you



1 but we know that you were accounted for a few moments ago.

2 MR. RODRIGUEZ: Can you hear me now?

3 HEARING OFFICER VACCARO: Yes.

4 PRESIDING COMMISSIONER BOYD: Ah, yes.

5 HEARING OFFICER VACCARO: We do thank you.

6 MR. RODRIGUEZ: I had to turn the volume up.

7 HEARING OFFICER VACCARO: Thank you.

8 MR. RODRIGUEZ: Okay.

9 PRESIDING COMMISSIONER BOYD: Let's see, I was  
10 asking if there are any other federal representatives who  
11 didn't get identified.

12 (No response).

13 PRESIDING MEMBER BOYD: Hearing nothing I'll move  
14 on to the state of California. Are there any state agencies  
15 on the line?

16 (No response).

17 PRESIDING MEMBER BOYD: Any other boards or  
18 agencies?

19 (No response).

20 PRESIDING MEMBER BOYD: Any elected officials  
21 who'd like to identify themselves?

22 (No response).

23 PRESIDING MEMBER BOYD: Or city officials?

24 (No response).

25 PRESIDING MEMBER BOYD: Okay, with that I'm going

1 to assume we've rounded out our audience and identified the  
2 participants. So, Ms. Vaccaro why don't I let you take  
3 over.

4 HEARING OFFICER VACCARO: Thank you. And just a  
5 few pointers. For those of you on the telephone, those who  
6 are just joining or couldn't hear me a few moments ago; we  
7 would greatly appreciate if you hit the mute button on your  
8 telephone so we don't hear all of the background noise,  
9 heavy breathing and the like through the telephone lines  
10 because it makes it difficult to hear everyone.

11 I think for clarity I want to make sure that  
12 everyone is aware that all of the parties are represented  
13 today. However, only two are here in person, the applicant  
14 and staff. All the rest of you are on the telephone.

15 Everyone will have an opportunity to speak and we  
16 will have public comment at the end of the process. But  
17 because we have so many people on the telephone it's  
18 important that we give everybody their due as they're  
19 speaking and don't talk over one another because it will be  
20 very difficult to follow along.

21 I think all of you should be aware that this is a  
22 noticed status conference. The specified purpose is to  
23 discuss the applicant's request for a modification of the  
24 revised scheduling order. And we're set to hear from the  
25 intervenors because a number of you filed opposition to that

1 request.

2 I think before we begin it's important, both by  
3 way of background I think, and to address a concern of a  
4 member of the public who submitted a Public Records Act  
5 request, to provide some brief background for how we are now  
6 addressing this issue and not addressing the applicant's  
7 letter of withdrawal that was received several months ago.

8 So I will provide as much background as I can.  
9 Applicant can also respond. And I do know that that member  
10 of the public is on the line. If you have a question we  
11 certainly would be willing to answer it.

12 So, again, what was served and docketed was a  
13 letter, not written by the attorneys but written directly by  
14 the applicant, requesting withdrawal of the application for  
15 certification.

16 When that document was received by me, I reviewed  
17 it. In particular I reviewed it against the pertinent  
18 regulations and determined that the letter did not comply  
19 with the requirement that there be someone attesting under  
20 penalty of perjury to the truth and accuracy of the  
21 statements that were within that letter.

22 I then called Scott Galati's office, the legal  
23 counsel for applicant, and left a message for him with an  
24 administrative person explaining the problem and letting  
25 them know that they had the opportunity to correct that.

1 They could do it by way of an amendment or send a completely  
2 revised letter. But until that time that letter of  
3 withdrawal did not meet the requirements of the Commission's  
4 regulations.

5           Shortly thereafter I received contact from  
6 Mr. Galati that he had received my message and would be  
7 submitting a revised letter of withdrawal on behalf of the  
8 client.

9           That letter never materialized. In fact, I had  
10 not heard again, I think no one had from the applicant for  
11 quite some time. And then all of a sudden we all see this  
12 latest submission by the applicant.

13           That's the recitation of fact. The contact with  
14 the applicant was purely a matter of procedure letting the  
15 applicant know that they did not satisfy the procedural  
16 requirements under the Commission regulations.

17           So I am not going to call the member of the public  
18 out by name unless she would like to speak. And if there's  
19 a question you might have for me I'd be certainly happy to  
20 answer that question.

21           (No response).

22           HEARING OFFICER VACCARO: Okay, at this time I'm  
23 not hearing anything. I will turn this over now to the  
24 applicant. If there is something else you'd like to add to  
25 that Mr. Galati, please do. Otherwise, why don't you

1 explain for the benefit of the parties, the public and the  
2 Committee the request that was made on behalf of the  
3 applicant. And then we will go through each of the  
4 intervenors to hear what their opposition is.

5 PRESIDING COMMISSIONER BOYD: Mr. Galati, excuse  
6 the interruption. But before you respond I committed a faux  
7 pas I'd like to correct. I did not introduce Jennifer  
8 Jennings our Public Advisor sitting in the back of the room.

9 Any public knows that's who they turn to for help regarding  
10 these type hearings. So, excuse the interruption.

11 MR. GALATI: First I'll address what Ms. Vaccaro  
12 said. That is correct; that is the correct sequence of  
13 events.

14 When I started working with Solar Millennium to  
15 get the appropriate affidavit withdrawing it was discovered  
16 that Solar Millennium did not really intend to withdraw.

17 And what we have here is a mis-communication that  
18 as soon as I got to the bottom of it, which was not until  
19 March, I filed immediately a request for the revised  
20 scheduling order to reflect a suspension.

21 What Solar Millennium was attempting to  
22 communicate, and maybe poorly on my advice, was trying to  
23 attempt to communicate that it did not intend to do the  
24 Mojave Ground Squirrel Study.

25 And let me tell you why that was. At one point in

1 time we had scoped out a Mojave Ground Squirrel Study. We  
2 had a workshop for this; we had Dr. Phil Leitner  
3 participating. We've had a couple of workshops on the issue  
4 that was, we were struggling with which had to do with  
5 connectivity between the north and south along a wash  
6 between certain meta-populations of Mojave Ground Squirrels.

7 We had proposed with Dr. Leitner a particular way  
8 to address that issue. And what it was determined was that  
9 was risky and that we should do a study to determine  
10 whether, in fact, these populations do communicate and  
11 whether or not what we were proposing had a likelihood of  
12 success.

13 We set a workshop that the Committee ordered us to  
14 do, which was to scope out what this study would entail.  
15 The study ended up being a couple of years long and in  
16 excess of one and a half million dollars.

17 Staff, in response to that, filed a status report  
18 explaining and putting the applicant on notice that the  
19 issues from their perspective and the ability for them to  
20 support licensing a project at the site wasn't merely going  
21 to be solved by the Mojave Ground Squirrel Study, even if  
22 the Mojave Ground Squirrel Study came out and was of benefit  
23 or positive towards what the applicant was trying to propose  
24 because of the other impacts associated with the project.

25 And what that ended up doing was the company

1 wisely said, why would we spend one and a half million  
2 dollars studying a particular issue that even if we  
3 understand the issue and can mitigate the issue, may not  
4 result in a positive approval of the project.

5           So that's what the primary purpose of the letter  
6 in January was. Poor communication skills and we corrected  
7 that. There was no reason for us to go forward with the  
8 study.

9           We also knew, as the Desert Renewable Energy  
10 Conservation Plan has been going forward, that we are still  
11 anticipating that some day there would be a global map of  
12 those areas that would be allowed for development and those  
13 areas that would not be allowed for development.

14           And we understand from the independent Science  
15 Advisory Board that one of the issues that is going to help  
16 determine that, one of many issues, was the Mojave Ground  
17 Squirrel and how it should be preserved in the BLM land  
18 region.

19           So what we did is asked you in March to please  
20 formalize the suspension. I think I actually said the word  
21 "affirm" but I don't think you really suspended. But we had  
22 asked for an order suspending the project so that staff  
23 doesn't need to work on it.

24           Something has come up in that time frame that I  
25 would like to make you aware of. Is not only are we

1 following the DRECP but we are trying to downsize the  
2 project, switch technologies to photovoltaic and try to  
3 concentrate development on the south side of Brown Road as  
4 well as we've been working recently with BLM about  
5 alternative sites.

6           So we thought the best course of action would be  
7 two things. One, suspend the project. We'll file quarterly  
8 status reports letting you know where we are. But the  
9 purpose of this suspension is we want to redesign the  
10 project. We have no intention of building on the north side  
11 of Brown Road where all the tortoise habitat was.

12           We think that by moving to something smaller we  
13 can avoid the Mojave Ground Squirrel connectivity issue.

14           We also think we can minimize the water use which  
15 was an issue for the public.

16           We can minimize the night lighting which was an  
17 issue for the public.

18           We can minimize the visual impact with large  
19 buildings like a cooling tower which was an issue for the  
20 public.

21           And also minimize the grading, which was due to  
22 the Valley Fever issue, an issue for the public as well.

23           So we're trying to redesign the project and not be  
24 technology-specific at this time. But it looks like we're  
25 moving towards PV in the Ridgecrest area and that's what



1 we'd like an opportunity to explore.

2 That does bring up an issue that I know I filed  
3 something late about photovoltaic. And I've asked you for  
4 another order that you may hear argument today or  
5 explanation today up to the preference of the Committee.

6 But that's the plan and that's why we are where we  
7 are. I can tell you, it is intending to do something in an  
8 environmentally responsible manner.

9 HEARING OFFICER VACCARO: Thank you. After  
10 looking at all of the, well I shouldn't say all of them;  
11 there were only two documents filed in opposition to the  
12 applicant's request.

13 It looked as though Center for Biological  
14 Diversity filed the document on its own and then six of the  
15 intervenors or about five to six of the intervenors joined  
16 in on another document.

17 I do not recall seeing a document from staff,  
18 anything in writing opposing or in any way responding to  
19 applicant's request.

20 And I do not recall seeing anything from CURE.  
21 Ms. Klebaner is that correct that CURE did not file a  
22 document?

23 MS. KLEBANER: Yes, that is correct.

24 HEARING OFFICER VACCARO: Okay, thank you. Staff  
25 is that correct?

1 MR. SOLORIO: Yes, that is correct.

2 HEARING OFFICER VACCARO: Okay, so I think at this  
3 time what we'll do is let's hear from the folks who actually  
4 submitted written comments. That doesn't preclude the other  
5 two parties from speaking as well but we will move your time  
6 to talk until after we hear from everyone else.

7 So, Ms. Anderson, if you would like to make any  
8 oral comment at this point explaining the basis for your  
9 opposition the Committee would very much like to hear from  
10 you.

11 MS. ANDERSON: Sure. Our opposition, and, you  
12 know, this has been a little while ago so I think things  
13 have changed in the meantime. But our opposition at that  
14 point was just based on the fact that the workshops that CEC  
15 had had as well as the professional opinion of your staff  
16 and an expert made it clear that the project as it was  
17 proposed had significant impacts on the environment and that  
18 the, actually the project site had important conservation  
19 values for a streak of species, including Desert Tortoise  
20 and Mojave Ground Squirrel.

21 And so, you know, our feeling is that the project  
22 should be, you know, basically dismissed because these same  
23 issues are going to be uptaken in the Desert Renewable  
24 Energy Conservation Plan.

25 And we'd like to see the outcome of that which,

1 you know, is moving along and theoretically should be  
2 finalized within a year and a half or so.

3 And so we think that the Commission should deny  
4 that application.

5 And then, you know, subsequently in reading the  
6 most recent request by the applicant where the CEC will  
7 maintain jurisdiction. Well if they are transitioning to  
8 photovoltaic --

9 HEARING OFFICER VACCARO: Ms. Anderson I am going  
10 to interrupt you here just for this very specific reason.  
11 We have a very narrow issue before us today and that really  
12 is the request.

13 I know Mr. Galati alluded to the fact that there  
14 was a motion recently filed by the applicant relating to  
15 jurisdiction. But at this point in time I would like to  
16 keep the conversation focused specifically to the issues of  
17 whether or not the stay that has already been imposed should  
18 now be modified to allow the applicant to not complete the  
19 Mojave Ground Squirrel Study as was initially requested by  
20 the applicant.

21 There will be time, perhaps not today's  
22 proceeding, to hear from all of the parties on the  
23 jurisdictional question. But at this point if you could  
24 just focus on the narrow issue at hand, I'd appreciate it.

25 MS. ANDERSON: Okay. Well we think that the

1 project is in the wrong place. So, you know, if they are  
2 unwilling to do Mojave Ground Squirrels studies then we  
3 think that the application should just be dismissed.

4 HEARING OFFICER VACCARO: Thank you. I think  
5 we'll next hear from Mr. Connor on behalf of Western  
6 Watersheds Project. Same admonition, please don't try to  
7 bring in argument relating to the most recent filing on  
8 jurisdiction. I think we would really like to stay focused  
9 on the present issue. Thank you.

10 DR. CONNOR: Thank you very much. Yes, we filed  
11 our opposition; we outlined three reasons for that  
12 opposition.

13 First of all, the original suspension was so that  
14 the project (indiscernible - fading signal) Mojave Ground  
15 Squirrel Study.

16 As you're well aware the project is located in not  
17 just in Mojave Ground Squirrel habitat but half of the  
18 project area is within the designated Mojave Ground Squirrel  
19 conservation area.

20 And we remain extremely concerned about this. We  
21 think that that Mojave Ground Squirrel Study is absolutely  
22 essential if this project is to move forward at all.

23 And we don't understand how project proponents  
24 actually proposed doing a study to address certain questions  
25 then back out of the study and then, yet again, attempt to

1 continue with the project. We're really disconcerted by  
2 what's been going on.

3           Secondly, the project as the applicant  
4 acknowledged in their letter that -- their initial letter  
5 says DRECP identified the project area as a site to protect  
6 from development.

7           We don't see why there's any need for these  
8 (other voices on line interfering).

9           HEARING OFFICER VACCARO: Mr. Connor, I'm sorry.  
10 I have to interrupt you and ask if you could repeat, maybe  
11 the last part of what you were saying.

12           But just for those of you on the phone, we're  
13 picking up quite a bit of interference right now. I don't  
14 know if it's because it's coming from a cell phone or for  
15 some other reason.

16           But Mr. Connor if you could project a bit more and  
17 repeat just the last portion. That would help us hear you  
18 and block out some of the interference. Thank you.

19           DR. CONNOR: Okay, can you hear me now?

20           HEARING OFFICER VACCARO: Yes.

21           DR. CONNOR: Okay. I think what I was saying was  
22 that, the applicant pointed out back in January, and it's  
23 the January 21st letter, that the DRECP had already  
24 identified the project site as an area to protect from  
25 development. We don't see how putting the project on hold

1 for another 18 months is actually going to help the project  
2 applicant at all.

3 And thirdly, there are new questions that we think  
4 need to be addressed as regards Desert Tortoise numbers.

5 As the CEC is aware, the Ivanpah Project which the  
6 CEC approved the licensing of last year, hit a roadblock  
7 when a much larger number of Desert Tortoises were found on  
8 the site when they started doing clearance surveys.

9 We're extremely concerned given the large number  
10 of Desert Tortoises that have been recorded from the  
11 Ridgecrest site that a similar credit will happen there.

12 And we think that without doing adequate,  
13 additional biological studies, as for example would have  
14 been performed with the Mojave Ground Squirrel Study itself,  
15 there's a strong risk that we'll have a repeat of what  
16 happened in the Ivanpah situation.

17 Those are basically the points that we outlined in  
18 our opposition.

19 HEARING OFFICER VACCARO: Thank you. Mr. Silliman  
20 on behalf of Desert Tortoise Council, if there's a comment  
21 you'd like to make. And, of course, the continuing  
22 admonition to please avoid discussion of the jurisdictional  
23 issues and confine your response to the narrow issue before  
24 us.

25 MR. SILLIMAN: Certainly, and thank you. Desert

1 Tortoise Council is one of the signatories on the letter of  
2 opposition which was dated the 4th of May. And Mr. Connor  
3 has ably outlined the three points of our concern and so let  
4 me not try the Committee's patience by repeating those.

5 I would add however, it seems to me this is an  
6 opportunity for Solar Millennium to go forward. Our  
7 recommendation is that the CEC deny the application, deny  
8 the suspension.

9 And that would give Solar Millennium, hopefully,  
10 an opportunity to consider private land within the general  
11 area. And so it seems to me that by denying the application  
12 or request for suspension, denying the project itself, that  
13 allows Solar Millennium to really hopefully look more widely  
14 at possible options, specifically the private land and  
15 conserved areas. So thank you.

16 HEARING OFFICER VACCARO: Thank you. Mr. Emmerich  
17 on behalf of Basin and Range Watch. And now you've heard me  
18 give the admonition several times now. I won't repeat it; I  
19 think you'll understand what the focus is of the  
20 discussions. So if you'd like to say something orally, we'd  
21 certainly like to hear from you.

22 MS. CUNNINGHAM: This is Laura Cunningham on  
23 behalf of Basin and Range Watch. Can you hear me?

24 HEARING OFFICER VACCARO: We can hear you,  
25 Ms. Cunningham, but if you speak up just a little bit that

1 would be helpful.

2 MS. CUNNINGHAM: Yeah, we would just like to say  
3 that the Commission should --

4 THE REPORTER: She needs to speak up, Madame  
5 Chair.

6 MS. CUNNINGHAM: -- make Solar Millennium.

7 HEARING OFFICER VACCARO: I'm sorry,  
8 Ms. Cunningham. The court reporter is indicating that he  
9 cannot hear you at all. So if there's any way that you  
10 could project a bit more or move closer to your headset,  
11 whatever it might be, we're just having great difficulty  
12 hearing you.

13 MS. CUNNINGHAM: Sorry, I'm yelling as loud as I  
14 can. Can you hear me?

15 HEARING OFFICER VACCARO: We can and that'll have  
16 to do.

17 MS. CUNNINGHAM: Okay.

18 HEARING OFFICER VACCARO: Thank you.

19 MS. CUNNINGHAM: Solar Millennium should be  
20 required to do a Mojave Ground Squirrel Study if they are  
21 going to be allowed to stay at this site.

22 This year I've been in contact with several  
23 biologists who are actually doing trapping surveys for  
24 Mojave Ground Squirrel. And this year has been really wet  
25 and moist and cold so you can't say that there are no Mojave



1 Ground Squirrels in the area because people are finding a  
2 lot of ground squirrels this year. So it's really important  
3 to do a study.

4 But we also think that this is not the appropriate  
5 site because it's in a Mojave Ground Squirrel conservation  
6 area and the project should be moved. Thank you.

7 HEARING OFFICER VACCARO: Thank you. Thank you  
8 for yelling. And Brenda Burnett, are you still on the line  
9 and would you like to speak on behalf of Kerncrest Audubon  
10 Society?

11 MS. JENNINGS: She may be muted.

12 HEARING OFFICER VACCARO: Oh, I'm sorry, you might  
13 have been muted so we're going to unmute you. Ms. Burnett,  
14 are you on the line?

15 MS. BURNETT: Yes I am. Can you hear me?

16 HEARING OFFICER VACCARO: I can and we'd like to  
17 hear from you on behalf of Kerncrest Audubon Society. And I  
18 make the continuing admonition about staying, please,  
19 focused on the issue at hand. Thank you.

20 MS. BURNETT: Kerncrest Audubon Society agrees  
21 with all the previous intervenors have said. We can see no  
22 justification for suspending this application and continuing  
23 it without a Mojave Ground Squirrel Study.

24 We find the area south of Brown Road to be no less  
25 than the affected -- more of the Mojave Ground Squirrel

1 habitat than north Brown Road.

2 In addition, we're extremely confused still in  
3 spite of your explanation about how their withdrawal could  
4 not have been accepted and their application for suspension  
5 was accepted. We can see no difference in the signatures  
6 and note that nothing in-between was made public and think  
7 it should have been.

8 And thank you for not wanting to go outside the  
9 subject that was published in the notice as to be the  
10 subject for today's discussion because we're not prepared to  
11 discuss anything else. As a matter of fact, I'm camped in  
12 the woods. I don't even have access to email here.

13 HEARING OFFICER VACCARO: Thank you for your  
14 comments, Ms. Burnett. And I think one thing I would like  
15 to invite your attention to when you are no longer in the  
16 woods and have access to the Commission regulations; I would  
17 ask that you, perhaps, take a look at Regulation 1709.8  
18 which specifies the requirements for a withdrawal of an  
19 application for certification.

20 And it very explicitly states what must be done.  
21 And what the regulation is looking for is somewhat of a  
22 parallel verification and statement under penalty of perjury  
23 as was submitted with the initial application for  
24 certification. However, those penalty of perjury statements  
25 are not required for petitions and motions that are filed

1 before the Commission.

2 And all I can do as to the issue that was raised  
3 as to the withdrawal is I think what I'm doing now is  
4 ensuring that the record is clear about the very brief  
5 procedural contact with the applicant on the withdrawal but  
6 everyone's concerns are duly noted. And even when such a  
7 brief conversation is made, I will ensure on my end that a  
8 record of conversation is submitted into dockets just to  
9 allay any concerns that any of the parties might have.

10 I think with that I'm going to turn it back to the  
11 applicant. A number of comments were made in opposition to  
12 the request. If there are any follow-up comments or  
13 anything further that you'd like to say in response, this is  
14 the time.

15 MR. GALATI: The way I see it the Commission has  
16 two choices at this stage.

17 I think the intervenors are all asking you to do a  
18 third choice, which you can't do, and that is make a  
19 decision on the project on the merits. You don't have any  
20 evidence in front of you. There have been no evidentiary  
21 hearing about what the impacts to the Mojave Ground Squirrel  
22 are. And so I don't think that you can deny the project  
23 today, which is what I think the intervenors would like.

24 What you can do is you can say, we deny you  
25 request for suspension because you chose not to prosecute

1 the AFC in an appropriate manner. That is a way that you  
2 can terminate the proceeding today.

3 We are asking you not to do that. There will be  
4 no waste of staff resources during the suspension. Nothing  
5 stops you from a year from today if there is another request  
6 for suspension to act on it at that time and say you are not  
7 prosecuting the project. The Commission has suspended  
8 projects for quite some time.

9 I would point out that Solar Millennium has  
10 changed the project once to try to mitigate impacts and  
11 that's why I filed what I filed, although I will not address  
12 the merits until you tell me I can. It is what we are  
13 trying to do at this stage again.

14 So that leaves you with the option that I have  
15 asked you to do, which is to grant the suspension. There is  
16 no waste of state resources in doing so. And allow us to  
17 report to you on a quarterly basis what progress we are  
18 making.

19 I would also like to correct one part of the  
20 record and that is the idea that the study was a general  
21 study about Mojave Ground Squirrels. It wasn't. It was  
22 primarily focused on the impact that staff said was  
23 unmitigatable and that Fish and Game said was unmitigatable.

24 It was that the project configuration restricted movement  
25 and connectivity between two meta-populations.

1           So the study was going to address two things.  
2 One, is that contention correct? And two, was our potential  
3 mitigation option, which was to move them, would that help  
4 reestablish the connectivity? That's it.

5           HEARING OFFICER VACCARO: The problem, for those  
6 of you who aren't in the room, sometimes when we speak we  
7 all end up with some very interesting facial expressions as  
8 we are searching for the right words and we just had one of  
9 those moments. So if you happened to hear any chuckling it  
10 is merely because we are looking at one another's faces and  
11 Mr. Galati had an interesting look on his face as he was  
12 choosing his words correctly, I think, for closing his  
13 statement.

14           I think before we move any further I did indicate  
15 at the beginning of this proceeding that we would still like  
16 to hear from CURE and staff should they wish to make any  
17 comments, even though they did not submit anything in  
18 writing in opposition to or in any other way responsive to  
19 the applicant's request. So Ms. Klebaner, if you are still  
20 on the phone line if you would like to make a comment on  
21 behalf of CURE this is a good time to do that.

22           MS. KLEBANER: Thank you for the opportunity.  
23 CURE does not have any comments at this time.

24           HEARING OFFICER VACCARO: Thank you. Mr. Babula,  
25 on behalf of staff are there any comments that you would

1 like to make?

2 MR. BABULA: Thank you. This is Jared, staff  
3 counsel.

4 The staff's view is pretty much to do a status  
5 quo. I agree that there hasn't been any evidentiary  
6 hearing, there is no evidence as Mr. Galati pointed out.  
7 And the suspension that they are seeking wouldn't really  
8 take any staff resources.

9 It's a little confusing now because of their  
10 change to the project but if they want to move forward and  
11 in this year period do a number of things they have  
12 identified that seems to be an appropriate approach to try  
13 and rectify some of the issues that the public has brought  
14 up and to try to make a better project.

15 I just want to say too for the public that just  
16 because we give them more time doesn't mean necessarily that  
17 they are going to get approved. They are still going to  
18 have to update the project. Staff will then have to assess  
19 whether certain topical areas need to be reevaluated under  
20 CEQA. If the information is stale it will have to be  
21 updated, new surveys potentially. So it is not that there  
22 will be a year or so period of time and nothing --  
23 everything is just evaluated from what we did before. We  
24 would have to assess any changes to the project. So  
25 certainly I don't want the public to think that they are

1 basically going to have a year to stall.

2 Do you have anything to add, Eric?

3 MR. SOLORIO: I just have one thing and that is  
4 our last communication with the Committee, Status Report #5  
5 filed in November, Mr. Galati kind of touched on it earlier.  
6 The staff's position is, quote, regardless of the results  
7 of the Mojave Ground Squirrel Study the staff still believes  
8 there are significant issues why -- reasons I should say,  
9 why the site should be preserved. Particularly impacts to  
10 the Desert Tortoise. So in terms of the applicant not  
11 conducting a study, it wouldn't impact the staff's opinion  
12 one way or another.

13 HEARING OFFICER VACCARO: Okay, thank you. For  
14 the record that was the project manager, Eric Solorio,  
15 commenting.

16 The Committee had actually several questions at  
17 the outset of this proceeding and interestingly all of those  
18 questions were answered either in statements by the  
19 applicant or statements that came up from the various  
20 parties. So unless Commissioner Boyd has a question I think  
21 we will just tell you what the next steps are.

22 PRESIDING MEMBER BOYD: No. I was looking forward  
23 to asking my five carefully phrased questions and it would  
24 be rather moot right now to do so, so let's move on.

25 HEARING OFFICER VACCARO: So I think with that are

1 next steps. I think the issue before us is pretty narrowly  
2 defined. The Committee, I think it now has a better  
3 understanding of the parties' positions and an order will  
4 issue from the Committee. Within, I'd say, the next several  
5 weeks you should expect an order addressing the very  
6 specific issue before us today.

7 We do note, however, that there was a motion  
8 recently filed by the applicant. And all of the parties  
9 should be aware that under the Commission regulations you do  
10 have up to 15 days from the date of service to file any  
11 written opposition or joinder to that motion.

12 So if you choose to avail yourself of that please  
13 calendar 15 days from the date of service to submit to all  
14 parties, including the dockets unit, whatever your written  
15 response might be.

16 The Committee will consider whether or not to hear  
17 oral argument on the motion or whether it will decide the  
18 issue on paper. That is something that the Committee will  
19 apprise you of.

20 So those would be the next steps on both this  
21 issue and the issue relating to the motion on jurisdiction.

22 I think this is an appropriate time for public  
23 comment. I don't see any members of the public in the room  
24 but there may be some on the telephone who wish to speak.

25 MR. BABULA: Before you go on I have a question



1 for you. Would you entertain an idea to extend the time  
2 reply given that we have this hearing so we were kind of  
3 waiting to see the outcome of this hearing?

4 HEARING OFFICER VACCARO: I can't speak for  
5 Commissioner Boyd so I'll throw something out and he'll  
6 agree or disagree.

7 MR. BABULA: Okay.

8 HEARING OFFICER VACCARO: At this point I am not  
9 sure that the one issue necessarily precludes action on the  
10 other issue. I think that they can still continue on the  
11 same path. I think there is nothing that would preclude you  
12 from being able to address the jurisdictional question that  
13 was raised in the motion. Notwithstanding what the outcome  
14 is of the Committee Order on this issue.

15 MR. BABULA: Right. I meant, because they filed  
16 on the 17th and we were waiting to -- so there's a couple of  
17 days to today to -- you know, we didn't move on addressing  
18 anything so we could get the outcome of today. Then based  
19 on how things turned out here how staff would respond to the  
20 motion.

21 HEARING OFFICER VACCARO: Okay, i think I  
22 understand you better.

23 MR. BABULA: Right.

24 HEARING OFFICER VACCARO: You're saying if the 15  
25 days begins to run from June 17th.

1 MR. BABULA: Right.

2 HEARING OFFICER VACCARO: When only an email  
3 version was submitted to everyone. Then you're saying you  
4 think that you lost, now because it's two business days  
5 later, two days to draft. Is that correct?

6 MR. BABULA: That's right. I've got other motions  
7 I'm working on.

8 HEARING OFFICER VACCARO: So you are asking for 17  
9 calendar days from June 17th in order to file any type of  
10 written response to the motion, is that correct?

11 MR. BABULA: Correct. Any, any extra time. I  
12 think that would be good.

13 HEARING OFFICER VACCARO: I am going to do the  
14 math quickly and figure out what day that brings us to,  
15 okay?

16 MR. BABULA: All right.

17 PRESIDING MEMBER BOYD: I guess my question -- I'm  
18 not going to be allowed a question. There we go. I was  
19 going to ask, when does the clock start? On the 17th, the  
20 email filing, or on some other date?

21 HEARING OFFICER VACCARO: I think there might be  
22 room for dispute. There are some people who only receive  
23 electronic filing, there are those who receive written  
24 filing and then there's dockets that must also receive its  
25 copy. I think, why don't we start the clock effective

1 yesterday, which would be Monday, because I think there is  
2 no question that as of Monday -- and that gives you your two  
3 calendar days. So 15 days from yesterday is when the  
4 Committee would expect all written responses, whatever they  
5 might be, to the jurisdictional motion.

6 MR. GALATI: So that would be July 6th. So there  
7 is no confusion with --

8 HEARING OFFICER VACCARO: I believe that's right,  
9 July 6. We'll say July 6 will be the deadline.

10 MR. BABULA: Thank you.

11 MR. SILLIMAN: Ms. Vaccaro, this is Sid Silliman  
12 from Desert Tortoise Council. I don't mean to be facetious  
13 here but I would appreciate some clarification as to which  
14 company we are now dealing with.

15 HEARING OFFICER VACCARO: You know what, that is  
16 not being facetious at all, I think that is an appropriate  
17 question if there is any confusion on who it is that is now  
18 before the Commission and the Committee and moving this  
19 project forward. So, Mr. Galati, if you could answer that  
20 question.

21 MR. GALATI: There has been a simple name change.  
22 Solar Millennium is now Solar Trust of America. And the  
23 particular -- and the particular development company that is  
24 going forward with this is STA Development, LLC.

25 (Mr. Galati confers with Mr. Owens.)

1 HEARING OFFICER VACCARO: I'm sorry, we're having  
2 sort of a sidebar conversation. We are going to get just a  
3 bit more clarification on who owns the project and who is  
4 moving the project forward as the face of the owner.

5 MR. GALATI: Yes, it is simply a name change from  
6 Solar Millennium, LLC to STA Development, LLC to more in-  
7 line with the parent company, which is called Solar Trust of  
8 America. But the developer, Solar Millennium, LLC, which  
9 was the applicant, is now STA Development, LLC.

10 HEARING OFFICER VACCARO: And if you wouldn't mind  
11 submitting something to Dockets and all of the parties that  
12 just confirms that in writing so all our records will be  
13 accurate and complete.

14 MR. GALATI: I will and I will ask for a Proof of  
15 Service change.

16 HEARING OFFICER VACCARO: Thank you.

17 I think with that why don't we go ahead and move  
18 then to public comment. It looks as though we have a number  
19 of listeners on the line; not everyone identified  
20 themselves. But if there is a member of the public or a  
21 member of a public agency or other organization who wishes  
22 to make a comment please do so.

23 MR. THOMPSON: This is Robert Thompson. I am on  
24 WebEx and I submitted a Chat comment. Are you able to  
25 receive that?

1 THE REPORTER: Madame Chair, who is this?

2 HEARING OFFICER VACCARO: Mr. Thompson, I heard  
3 you state your name and I couldn't hear anything else. I do  
4 apologize that we are having audio problems here but if you  
5 could use, you know, project or move closer to the phone  
6 that would enable us to hear you.

7 MR. THOMPSON: Thank you. I submitted a chat on  
8 WebEx. Did you receive that to read into the record?

9 HEARING OFFICER VACCARO: I do see it. And I can  
10 read it into the record or would you like to read it into  
11 the record?

12 MR. THOMPSON: I would read it into the record.  
13 You could read it into the record better so the audio is  
14 better.

15 HEARING OFFICER VACCARO: Okay, I'll do my best.  
16 I am having to sort of move my body around; the screen is  
17 behind me. This is a comment from Robert L. Thompson to all  
18 participants in regard to the request for extension of the  
19 MGS study and project and thereby extend the life of this  
20 application. This conference seems to be an elemental  
21 discretionary decision-making milepost.

22 So if the application cannot complete the MGS  
23 study within the time frame allotted and with the CEC  
24 staff's position of denying the project, that the request  
25 for extension be denied. If the applicant has not proceeded

1 with the MGS study to keep it on schedule the applicant  
2 should submit it's revised project as a new project.

3 I believe I read that fully and correctly. Is  
4 that right, Mr. Thompson?

5 MR. THOMPSON: Yes, ma'am.

6 HEARING OFFICER VACCARO: Okay. Is there anything  
7 else you wish to add or is that your comment?

8 MR. THOMPSON: Thank you.

9 HEARING OFFICER VACCARO: Thank you. Is there  
10 anyone else who would like to make a comment?

11 I am hearing none. I will ask one more time if  
12 there are any members of the public or representatives of  
13 any agencies or organizations who wish to make a public  
14 comment. This is the time to do it.

15 DR. CONNOR: Ms. Vaccaro, this is Michael Connor.  
16 I would like to make a few comments.

17 HEARING OFFICER VACCARO: Mr. Connor, we didn't  
18 give you enough time a few moments ago?

19 DR. CONNOR: No.

20 HEARING OFFICER VACCARO: Okay, briefly.

21 DR. CONNOR: I wanted to make the simple point  
22 here that many of the intervenors are doing so -- you know,  
23 we are spending a lot of time and effort to this conference.  
24 Many of us are volunteers, many of us have a lot of other  
25 projects to work on. And we are in a situation where you

1 work diligently with the project proponents of this project,  
2 which had to come up with a Mojave Ground Squirrel Study  
3 that would answer significant questions regarding  
4 connectivity.

5 And now we are in the situation where the project  
6 proponent apparently is able to just abandon that project  
7 and carry on. And I see that as a basic sort of violation  
8 of the public trust. Also I see that as physically throwing  
9 dust in the face of the intervenors who have attempted to  
10 put a lot of effort into this project. Thank you.

11 HEARING OFFICER VACCARO: Thank you, Mr. Connor.  
12 I think I am going to make a point and then, because I did  
13 believe that all of the parties had concluded their comments  
14 I think in fairness I will allow the applicant to respond.

15 The one thing that I think is important that  
16 everyone understands, this Committee has made no decision on  
17 this request. What we are doing today is ensuring that the  
18 applicant and all of the parties have a full and fair  
19 opportunity to apprise the Committee of their concerns,  
20 whatever their concerns might be. So I am glad that you  
21 shared that but please, please keep in mind there is no  
22 decision made at this point. The applicant has not been  
23 given approval or permission to do what the applicant has  
24 requested.

25 Mr. Galati, if there is any response you would

1 like to make to Mr. Connor, otherwise we will continue with  
2 public comment.

3 MR. GALATI: I just want to remind the parties and  
4 the Committee that the process is intended to try to get  
5 good projects and so projects should be able to change if  
6 they are responding to a need.

7 The entire purpose of the Mojave Ground Squirrel  
8 study was to demonstrate that there weren't any impacts of  
9 connectivity as Phil Leitner had said in one of our  
10 workshops. Or that in understanding connectivity we could  
11 design mitigation so that the current project could go  
12 forward.

13 When the staff took a good hard look at that the  
14 staff has said, we still have problems. So we could have  
15 and probably had every right to say we disagree with the  
16 staff, let's go to evidentiary hearing on this point. Let's  
17 get all the intervenors, get all the witnesses, do  
18 testimony. Go down to Ridgecrest, have three or four days  
19 of hearings like you have in highly controversial projects;  
20 let the chips fall where they may.

21 But that is not what we are doing and that's why I  
22 filed what I filed, to let you know what we are trying to  
23 do. And that is, we are not going forward with a two-sided  
24 project on each side of Brown Road, which constricted the  
25 wash, which created the Mojave Ground Squirrel connectivity



1 issue in the first place.

2 So the idea that we are not doing that but should  
3 be required to do a \$1.5 million study is simply an attempt  
4 of the intervenors to kill the project.

5 And so, again, there is no reason to do that  
6 study, it is not going to change anyone's mind. But we are  
7 trying to design a smaller project and a project that would  
8 avoid those impacts.

9 We may not be able to do it but we are certainly  
10 going to try. We think that there is no downside to the  
11 Energy Commission approving a request for suspension. They  
12 have approved -- the Committee -- not the Committee. The  
13 Commission has approved requests for suspensions for  
14 projects in the South Coast Air Quality Management District  
15 that have no offsets, waiting for that to occur for many  
16 years. So we are asking for one year with a specific, give  
17 you an update. There is no impact on the intervenors'  
18 requirement to work other than to read our status report  
19 once a quarter.

20 HEARING OFFICER VACCARO: Any other comments from  
21 members of the public or members of any organizations?

22 Okay, hearing none, so I am going to --

23 MR. DECKER: This is Don Decker.

24 HEARING OFFICER VACCARO: Hello, Mr. Decker.

25 MR. DECKER: I have a comment. As a member of the

1 public looking in from the outside, the Commission and the  
2 Committee has been, I think, very generous and very helpful  
3 to Solar Millennium and again, Solar Millennium's attempts  
4 to perfect their AFC.

5           However, looking at it in just a calm, realistic  
6 matter, this is following to some degree I think on what  
7 Mr. Silliman pointed out. That is, the project has  
8 basically stalled out. And, you know, the question is, is  
9 Solar Millennium actually stalling here?

10           The thing that the Commission I'm sure is looking  
11 for is evidence that the applicant has, in fact, applied a  
12 standard of due diligence to the pursuit of their AFC and  
13 you could argue that, you know, lots of different ways.  
14 However, there is one piece of evidence that I think is just  
15 completely and totally obvious and that is, the project has  
16 stalled out.

17           And on the face of it, as a result of that, there  
18 has been a due diligence failure, otherwise the project  
19 wouldn't be in the condition that it's in. It is the only  
20 project here in the desert areas and I am not aware of  
21 anything in Arizona either that has met the fate that this  
22 one has. So the whole issue of due diligence and the answer  
23 to the question as to whether there has been a failure of  
24 due diligence I think just look at where the project is at  
25 right now. That's what I have to say, thanks.

1 HEARING OFFICER VACCARO: Thank you Mr. Decker.

2 Any other public comments?

3 (No response).

4 HEARING OFFICER VACCARO: Okay, I think with that  
5 I will turn it over to Commissioner Boyd to adjourn this  
6 proceeding.

7 PRESIDING MEMBER BOYD: Well thank you, everybody,  
8 for your participation. I know this is a seemingly awkward  
9 situation. As Hearing Officer Vaccaro indicated, no  
10 decision has been made. We will take under consideration  
11 all that has been submitted and all that we have heard today  
12 with regard to the question on the table today and then make  
13 a decision.

14 We will continue to deal with this case, even if  
15 it means as we understand it throughout this year, the  
16 Commission will have to make some hard choices at the end of  
17 this year into next year as to who their committee is going  
18 to be since you won't have this Commissioner to kick around  
19 any -- I mean to deal with anymore. (Laughter).

20 In any event, I'll continue to deal as best as I  
21 can with this issue and the issues until the end of my term.

22 So in any event, e will be forthcoming with some decisions  
23 and of course we are looking forward to receiving comments  
24 with regard to the other matter that was broached today and  
25 the new filing that has taken place.

1           Unless my Hearing Advisor has any other comments  
2 -- seeing no hands raised in the room I will thank you all  
3 again and we will consider this hearing adjourned.

4           (Whereupon, at 3:04 p.m. the Mandatory  
5 Status Conference was adjourned.)

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## CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter and Transcriber, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Committee Mandatory Status Conference; that it was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of June, 2011.

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JOHN COTA