COMMITTEE PREHEARING CONFERENCE

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of: )
Complaint/Request for Investigation ) Docket No. 08-CRI-01
Regarding Energy Sense/MASCO )

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

WEDNESDAY, NOVEMBER 12, 2008
9:35 A.M.

Reported by:
Peter Petty
Contract No. 150-07-001

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
COMMISSIONERS PRESENT
Arthur Rosenfeld, Presiding Member
Jackalyne Pfannenstiel, Associate Member

ADVISORS, STAFF and CONSULTANTS PRESENT
David Hungerford, Advisor
Tim Tutt, Advisor
Dennis Beck, Senior Staff Counsel
Bill Pennington
Eurlyne Geiszler

ALSO PRESENT
Brett L. Dickerson, Attorney
Gianelli and Associates
on behalf of California Living and Energy
and DuctTesters

Bill Lilly, President
California Living and Energy
William Lilly and Associates, Inc.

Dave Hegarty
DuctTesters

Ivor E. Samson
Brett Crawford
Sonnenschein Nath and Rosenthal, LLP
on behalf of Energy Sense/MASCO

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
## Index

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proceedings</td>
<td>1</td>
</tr>
<tr>
<td>Introductions</td>
<td>1</td>
</tr>
<tr>
<td>Opening Remarks</td>
<td>2</td>
</tr>
<tr>
<td>Compliance with Committee Order re: Production of Documents and Information</td>
<td>3</td>
</tr>
<tr>
<td>Need for Additional Documents, Information and/or Committee Orders</td>
<td></td>
</tr>
<tr>
<td>Respondent's Application for Subpoena to Take the Videotaped Deposition of Tom Hamilton</td>
<td></td>
</tr>
<tr>
<td>Procedural Issues for Hearing</td>
<td>40</td>
</tr>
<tr>
<td>Hearing - Wednesday, December 10, 2008 at 9:00 a.m., Hearing Room A</td>
<td></td>
</tr>
<tr>
<td>Specific Issues to be Addressed at the Hearing</td>
<td></td>
</tr>
<tr>
<td>Specifics Regarding How Hearing Will Proceed (e.g. presentation of evidence)</td>
<td></td>
</tr>
<tr>
<td>Closing Remarks</td>
<td>60</td>
</tr>
<tr>
<td>Presiding Member Rosenfeld</td>
<td></td>
</tr>
<tr>
<td>Associate Member Pfannenstiel</td>
<td></td>
</tr>
<tr>
<td>Adjournment</td>
<td>61</td>
</tr>
<tr>
<td>Certificate of Reporter</td>
<td>62</td>
</tr>
</tbody>
</table>

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
PRESIDING MEMBER ROSENFELD: This is the Energy Efficiency Committee prehearing conference on a complaint and request for investigation regarding Energy Sense/MASCO, docket number 08-CRI-01.

I'm Art Rosenfeld, the Presiding Member of the Energy Efficiency Committee. On my right is Commission Chairman Jackalyne Pfannenstiel, who is the Associate Member.

And apart from saying welcome, I think we're probably ready to have the staff tell us what's going on.

MR. BECK: I'm Dennis Beck; I'm Senior Staff Counsel with the Chief Counsel's Office. And with me today are --

MR. PENNINGTON: Bill Pennington.

MS. GEISZLER: Eurlyne Geiszler.

MR. BECK: And, if at this point the parties could state their appearances, please.

MR. LILLY: Bill Lilly, California Living and Energy.

MR. DICKERSON: Brett Dickerson, attorney.
MR. HEGARTY: Dave Hegarty.

MR. SAMSON: Ivor Samson, appearing on
behalf of Energy Sense and MASCO.

MR. CRAWFORD: Brett Crawford, appearing
on behalf of Energy Sense and MASCO.

PRESIDING MEMBER ROSENFELD: Good
morning, everybody.

MR. BECK: And one question I have
for --

PRESIDING MEMBER ROSENFELD: Dennis, is
your mike -- are you --

MR. BECK: Yes, it's on.

PRESIDING MEMBER ROSENFELD: -- it's on,
you just have to talk a little bit closer.

MR. BECK: Can you hear it?

PRESIDING MEMBER ROSENFELD: Yeah, now I
do.

MR. BECK: One question I have for Mr.
Dickerson is, Mr. Dickerson, are you going to be
representing both California Living and Energy and
DuctTesters?

MR. DICKERSON: That is correct, yes,
sir.

MR. BECK: Okay.

I would note that the CEC Staff and the
Commissioners are not -- the CEC is not a party to this proceeding under the rules of Title 20. The parties are the complainants which consist of California Living and Energy and DuctTesters. And the respondents which are MASCO and Energy Sense.

So the CEC Staff is not a party to the proceeding.

The nature of this prehearing conference is procedural, it's not substantive. We have a hearing set for next month and we'll talk about later in this prehearing conference.

So, at this point we will not be having any testimony and accepting any exhibits or any other evidence. It's merely to discuss issues in preparation for the hearing for next month.

The first issue that we have on the agenda is compliance with the Committee order, the Committee order of October 2, 2008, which was directed primarily to the respondents' request for documents and information.

The Commission did receive response. And at this point we'd open it up to the parties, first the complainants and the respondents to address their understanding of compliance with the Committee order.
PRESIDING MEMBER ROSENFIELD: I didn't get all the names when you were going through and introducing yourselves. And I forgot to introduce my Advisor, Dave Hungerford.

So, for the first few minutes when you -- also it will help the reporter, when you talk, if you'd say who you are.

MR. DICKERSON: Okay, thank you. Brett Dickerson, attorney for California Living and Energy and DuctTesters.

I guess in regards to just the PODs, the request for production of documents, it did seem to be very comprehensive and are likely what we would have expected be promulgated by anybody who's trying to look to the issue of a conflict of interest.

It did not appear that they were as responsive and as comprehensive as they could have been. There was an awful lot of information there that I believe remains to be seen, and is going to have to be produced prior to the ability to carry out any manner of meaningful hearing in this procedure.

Obviously the issue of shared employees, shared officers, shared directors, commingling of
funds in the most innocuous -- using that term -- in the most innocuous of senses here. And the manner in which work, in terms of both construction and/or HERS testing is referred back and forth is pivotal to this inquiry.

And many of the questions in the documents that were demanded which would shed some light on the extent to which MASCO and these related entities are interconnected, and thereby creating an illegal conflict of interest simply have not been provided.

So, in the absence of those documents I think we're going to be very precluded in our ability to move forward with the hearing next month.

But I think there's a lot that needs to be seen. I don't know procedurally what the subpoena powers are of this Board. I apologize for that. Most importantly, I don't know what the powers are to compel production, if the production has not been deemed to be adequate, in terms of Mr. Beck and/or the Commission. That's something that we'll need to clarify here so that we can follow the appropriate channels to get what we need so that everybody can go forward from here.
and make a fair decision for all concerned.

MR. BECK: In terms of the Commission's ability to request --

PRESIDING MEMBER ROSENFELD: Dennis, I'm sorry to nag at you, but can you talk a little closer to the mike.

MR. BECK: Okay, sure. In terms of the Commission's ability to request and receive documents, we do have the general -- there is a general authorization to request and receive any documents that are necessary for the Commission to carry out its duties. It's been interpreted very broadly. So we would have the ability to do that.

What I'm thinking is that perhaps the parties, and this goes also for the respondents, could perhaps come up with a list of documents, or proposed questions or proposed requests for information. And submit those to the Commission. And I think it would be by way of another Committee order to the parties in question to produce those documents and responses to those questions.

MR. DICKERSON: Okay. Just anticipating what may come down the line, obviously counsel at the other table and everybody here recognizes that
discovery issues are fairly common. And occasionally within the context of the civil world, you know, motions need to be done to compel production in the event that we haven't received what the parties reasonably believe should have been received.

What mechanism is available to us here to compel that production absence of going outside of this forum and possibly see -- is judicial intervention something that is down the line? Or do we generally try to keep it inhouse here? I apologize if I'm asking very rudimentary questions here, but I want to insure I understand the mix between procedure within the context of a Commission hearing and where we go in the event that that's not going to be effective in securing compliance with what I consider to be a very comprehensive document demand that I think would be adequate if we just had everything that was there.

MR. BECK: Generally we do like to keep things inhouse. This is an adjudicatory hearing but it is not obviously formal civil litigation. We do have the power to issue subpoenas, as Mr. Samson knows, in his motion which we will
discuss later regarding Tom Hamilton's testimony.

So, we would just have to see how things proceed. Whether or not there's compliance, substantial compliance; and what remains to be produced, whether or not some of that information can be produced via testimony at a hearing.

So, it's difficult to anticipate exactly what might be needed later on down the line.

MR. DICKERSON: Okay, our only concern would be that when we're talking about seeing what will happen down the line and possibly sort of playing it by ear, to use the legal term, and what that effect that has on our ability to meaningfully carry out a hearing on the 12th of next month. I think that could be pretty tight.

MR. BECK: That's possible. And we can, the Chairman does have the authority to extend any timeframes. In fact, that was done in this case to have the hearing, the prehearing, set out farther than the timeframe that was set out in the regulations.

MR. DICKERSON: Okay.

MR. BECK: But again we're hoping that everybody will be cooperative and comply with -- because what it will be is not just something that
is promulgated by the parties. This will be
something that will be submitted to the
Commission; and the Committee will issue a
Committee order requiring the submission of
documents or answers to any questions.

So, hopefully that will go some ways
towards gaining compliance quickly and within
enough time to have the hearing that's currently
set.

MR. DICKERSON: Well, because, again, I
haven't gone into this is any detail, but I think
we'd be willing to discuss any kind of a
reasonable extension or waiver of the time limits
in terms of statutes or rules or regulations
regarding getting these things done.

I would rather go more than the 90 days
and have something that's meaningful, rather than
to try to push something through that's
perfunctory and benefits no one at the end.

MR. BECK: True, but at this point we'd
like to keep it as set. If there is something
that does come up subsequently that we feel we
need to continue the hearing beyond that time,
then --

MR. DICKERSON: Well, I think I
mentioned I'll be in Las Vegas that day, so, on a pre-planned trip.

PRESIDING MEMBER ROSENFIELD: Sorry, can't hear you. Can you talk a little closer to the mike?

MR. DICKERSON: I'm sorry, yes. I think I had mentioned to Mr. Beck that I would be in Las Vegas on the 12th of December which could create, potentially create a problem for me to attend.

MR. BECK: Scheduling is difficult, but, of course, the schedule of the Commissioners involved is a primary concern.

ASSOCIATE MEMBER PFANNENSTIEL: But I understand -- excuse me, Dennis -- I think that the hearing is scheduled for the 10th of December.

PRESIDING MEMBER ROSENFIELD: Yeah, in my notebook it's still the 10th.

MR. DICKERSON: The 10th, yeah. Still in Vegas that day, too; that entire week.

ASSOCIATE MEMBER PFANNENSTIEL: -- the day you're in Vegas.

PRESIDING MEMBER ROSENFIELD: Not your favorite day.

MR. DICKERSON: Yes, ma'am.

ASSOCIATE MEMBER PFANNENSTIEL: Let me
just put in here though, we really would like to meet that schedule. I mean that's a schedule that was derived where we believe we could get the evidence, the information that we needed to put on a hearing that day.

So we are still attempting to make that schedule. And we will use whatever authority this Commission has to get the information that's necessary to do that.

MR. BECK: Mr. Samson.

MR. SAMSON: Yes, if I may respond.

Ivor Samson on behalf of the respondents.

We filed our responses to the Committee's request for information at the end of October in good faith to provide the information that was requested. And I'm disappointed to hear for the first time today that Mr. Dickerson finds those responses, in some measure, unsatisfactory.

The normal procedure in a case like this is where a party feels that discovery that has been propounded and responded to is inadequate is to set forth in some detail, in writing, what the perceived inadequacies are in what we call a good faith meet-and-confer effort so that the party that propounded the information can say, gee, I
hadn't thought that they wanted this. Now that I
understand it, I can provide this, or I won't
provide that, whatever it may be. But it gives
the responding party an opportunity to know, with
clarity, what the deficiencies are, as opposed to
hearing just the general gripe that it wasn't
adequate.

So I would respectfully invite Mr. Dickerson to do that. And if you let us know
where you feel that our responses weren't
adequate, then we will obviously take a look. And
if we didn't meet the mark, and what you request
is reasonable, then we'll certainly provide it.

Just one caveat, however. In our
responses you saw that we were willing to provide
certain contractual information, but subject to a
mutually agreeable confidentiality agreement. And
I haven't heard any requests or offer to comply
with such a confidentiality agreement.

What we have here is a situation, and
without attempting to get into substance because I
realize reasonable people can differ on this, on
the one hand we have a complaint that alleges that
the respondents are in violation of the conflict
of interest rules. On the other hand, from our
point of view, we have a competitor who is trying
to seek a competitive advantage and maybe drive my
client out of business. And maybe, you know,
depending on which part of the elephant one is
patting.

So, we're very concerned about making
confidential and proprietary information available
to a business competitor. A business competitor
that has put draft Energy Commission Staff reports
on the internet.

So, we're going to be guarded. I
certainly want to comply both with the letter and
the spirit of the Commission's order, but we need
to be careful to do it in a way which does not
create a competitive disadvantage for my client.

MR. BECK: This leads me to ask
questions to clarify. On page 4 of the response
of the respondents, that is where the
confidentiality, request for satisfactory
confidentiality agreement comes into play, or
where it's mentioned by the respondents.

To clarify, the information that you're
seeking to keep confidential is not from the
Energy Commission. Your concern is not that
Energy Commission Staff or the Commissioners would
see or have access to the information. Your concern is that the complainants, as a business competitor, would have information?

MR. SAMSON: That's correct. Correct. The Commission, as the fact finder, obviously is going to need to review certain, or may need to review certain information we would consider confidential and proprietary. I understand that as part of the process. I would expect the Commission to treat that information as confidential.

I'm concerned with making that information available to our competitor.

MR. BECK: And to the extent that if you can do so, could you elaborate on what aspects of those documents you feel are requiring confidentiality.

MR. SAMSON: Certain business terms in the contracts, themselves, may be considered proprietary. And to the extent those documents discuss business plans going forward, potential business opportunities. And there may be more, but those are the two things that I'm thinking of off the top of my head.

MR. BECK: Since it appears to be an
issue between the complainants and the
respondents, as far as information, I don't know,
and I would encourage both parties to try and come
to some agreement as to what information can be
provided to the Commission.

Obviously anything that's provided to
the Commission at this point is subject to public
disclosure. So it would be -- and especially to
the parties. So it obviously would be shown to
the complainants.

But since the issue seems to be
disclosure of information to the complainants,
perhaps there is something that could be arranged
between the two parties that would allow the
Commission to have access to the documents under
some grant of confidentiality, or perhaps the
documents can be redacted to take out the
proprietary information.

And that the evidentiary value of those
documents to this proceeding would not be
compromised or mitigated in any way by the
redaction of those documents.

MR. SAMSON: All I can say is I'm
certainly willing to look at any way in which we
can supply the information that the Commission
needs to make its decision in a way that doesn't compromise my clients' business interests.

And I think it's easy to talk about things in a conceptual fashion. I think what we really need to do is have Mr. Dickerson explain in some detail, and again preferably in writing so the client can see it and we can respond to it, understand what his concerns are, where he feels the information wasn't provided.

If, in fact, his point is valid and that information wasn't provided, and we can do so, we will.

MR. BECK: Do you have any response to that, Mr. Dickerson?

MR. DICKERSON: Well, I guess my first response is that I didn't promulgate the discovery. The discovery was promulgated by the Commission. Okay. And I guess what I need to know is at what point in time has the baton passed, or will it pass, pass to us to follow up on inadequate discovery responses.

MR. BECK: Well, that's what the baton, to some degree, is passing --

MR. DICKERSON: Um-hum.

MR. BECK: -- at this hearing --
MR. DICKERSON: Okay.

MR. BECK: -- has not passed completely.

The Commission still has the ability to request documents, and to elicit testimony on the record that it feels it needs to, to come to a decision in this matter.

But, at this point, we are throwing open the opportunity to the parties to submit requests to the Commission, to the Committee, to ask the Committee for a subsequent order regarding additional documents and additional information.

MR. DICKERSON: Okay, because, you know, obviously, Mr. Beck, I don't want to get in the middle of your discovery, you know, start communicating directly with him without you being aware of it. And it would appear to me that the appropriate procedure that we would follow is if I do not believe that the discovery that I recently received copies of is inadequate, I should apparently probably serve Mr. Samson with whatever notice I am providing to your request from you in which I outline why I -- the concerns I have with their responses to the Commission's discovery, so you see it all at the same time, very much the same way we would do a service to the court and a
service to the opposing party in the event that there is a dispute regarding a discovery response.

    MR. SAMSON: Although normally one gets a meet-and-confer letter so that the responding party has an opportunity to assess the merits of the propounding party's claim.

    MR. DICKERSON: Sure. I wouldn't have a problem with doing any manner of the meet-and-confer with you before we had to bring them involved. But, again, --

    MR. SAMSON: I think that makes --

    MR. DICKERSON: That's okay, I just didn't -- again, I did not promulgate the discovery, okay.

    MR. SAMSON: Right.

    MR. DICKERSON: And consequently, if the discovery was deemed in any way to be inadequate, I perhaps naively assume that the followup would be done by the Commission unilaterally, without a request from us.

    More than happy to do that if that's what the procedure would be, because this is kind of a learning experience for me today, too.

    MR. BECK: It would be -- there may be some concerns on the part of the Committee
regarding the adequacy of the information that was provided. But because you are the party, your clients are the parties, and that they have the burden in this matter of proving that there is a conflict of interest, then it is incumbent upon the parties to request whatever documents or any other evidence they believe is necessary to prove that case. So, --

MR. DICKERSON: Okay, you've clarified one point for me, and that was going to be my question. Who assumes the responsibility of meeting burdens of persuasion and burdens of proof in this matter? Is it my clients here at this table? Or does the Commission appoint a staff attorney to take that, such as you would see with EDD or the Department of Industrial Relations or any of those?

MR. BECK: At this point it's your -- the burden of proof is on the complainants, as the entity that indeed made the complaint. Our regulations allow for CEC Staff or a party outside of the Commission to file a complaint in this manner. And this matter was filed by your clients.

So the burden of proof would fall on
you. And as I said, at this point the Commission is acting as a neutral fact finder.

And as this is an adjudicatory proceeding, but yet not civil litigation, the rules of evidence, of course, are different. They can be found in our regulations, as well as some of the other requirements, and rules and procedure.

MR. DICKERSON: Have there been any rules such as, you know, --

PRESIDING MEMBER ROSENFELD: I'm going to ask you to keep your mouth a little closer to the mike.

MR. DICKERSON: Okay, I'm sorry. Is there any rules, regulations, et cetera, that have been promulgated that cover the manner in which these hearings are held that would be the equivalent of the Code of Civil Procedure, so that we would know what they would be before we get started with it.

MR. BECK: Well, under the Code of Civil Procedure, no. It's --

MR. DICKERSON: I mean a reasonable facsimile that's used here.

MR. BECK: Well, they are in section
1230, et cetera, of Title 20.

MR. DICKERSON: Okay.

MR. BECK: That is the complaint/request for investigation.

MR. DICKERSON: Okay, now --

MR. BECK: There are also section 1200, et cetera, of Title 20.

MR. DICKERSON: Okay, I think --

MR. BECK: That contains the general rules governing procedures by the Commission including adjudicatory proceedings.

MR. DICKERSON: Okay, I think I've seen those. Okay, thank you.

MR. BECK: Um-hum.

MR. DICKERSON: So I guess, if anything, what we've come to the conclusion here, Mr. Samson, is if need be we'll forward the equivalent of a meet-and-confer to you that we can discuss. And then if we can't resolve what we're talking about at that point, I'll be contacting Mr. Beck with whatever needs to be sent to him. And hopefully he'll be able to maybe act as a mediator or something to resolve whatever our discovery matter, if that works for you.

MR. SAMSON: Yeah, that's perfectly
fair.

And I would just ask, since the clock is ticking, if you could do it sooner rather than later.

MR. DICKERSON: Probably not before I leave today, but shortly thereafter.

MR. BECK: And obviously we do encourage the parties to talk to one another to speed up and enhance the compliance with -- and to prepare for the hearing.

So what I'm contemplating is that the parties will meet, discuss the matters, discuss additional documents that may be needed by either side. And if there is an agreement to produce those documents, a voluntary agreement to produce those documents, then you can go ahead and submit that to the Commission, to the Committee, to the docket saying we have agreed that these particular documents will be produced --

MR. SAMSON: Stipulation in other words.

MR. BECK: Basically, in the way of a stipulation. And if not, if there is still the need to compel some documents by way of a Committee order, then that should be stated. That needs to be filed again to the docket by whichever
party feels that's necessary.

And then the Committee will issue an order. We'll look at that and issue an order.

MR. SAMSON: Hopefully we won't, but if Mr. Dickerson and I should get to that impasse, and he files a request or motion to compel, whatever it may be, whatever the nomenclature may be, I would assume then that both parties would have an opportunity to be heard on the substantive merits of that request?

MR. BECK: Yes. Probably via writing, though. We would probably not convene another prehearing conference or hearing on that. It would probably just be submitted --

MR. DICKERSON: Via briefs.

MR. BECK: -- briefs. But any order would have to come through the Committee rather than propounding discovery directly from one party to the other. If there's -- obviously if the parties again reach some sort of stipulation in terms of production of the documents, then that's probably preferable and also would enhance the speed of getting the necessary documents to the Commission, the Committee.

And there also may be additional --
after that is done there still may be some
additional documents from either side, or from any
of the other parties, that the Commission, or the
Committee, I should say, may need. And so the
Committee would obviously still reserve the right
to propound an additional request via Committee
order.

So, obviously the timeframe for this is
somewhat close, and I would encourage you
gentlemen to meet and confer on this as quickly as
possible; and to report to the Commission in
writing what the results are. So the Committee
could then do what it needs to do in terms of
either drafting a Committee order requiring the
production of documents that are in dispute. Or
again, seeing what additional documents that the
Committee might need to make decisions.

MR. SAMSON: And would you view that as
a joint status report? For example, Mr. Dickerson
and I say we've been able to agree on the
following items, but unable to agree on these
remaining items.

MR. BECK: Because it's less formal than
civil litigation, position is it need not have any
specific title or name. It could be stipulation,
or joint status report, however you want to term it.

MR. SAMSON: But I guess my question, whatever the terminology may be, would you expect it to be in a joint status report submitted jointly by the complainant and the respondent?

MR. BECK: I think that would probably be -- one document is probably preferable if you gentlemen, if the parties can agree on one single document to be submitted.

MR. DICKERSON: That would just about have to be an imperative if we're going to meet a December 10th date, to be doing statements of everything we did.

MR. SAMSON: And I mean, generally, you know, with responsible counsel that's not an issue. We all know what we agree on and what we disagree on. And that's pretty straightforward.

MR. DICKERSON: It's like a scheduling order in federal court. Essentially the same thing. We say what we agree on and what we don't, and that's it.

MR. BECK: And we did schedule the hearing -- the hearing is obviously five weeks from today's date. And the Committee did
anticipate, I think it's -- is it only four?

   MR. DICKERSON:  Four, 12th to the 10th,

   28 days. Thirty days has November.

   MR. BECK:  Regardless. Whether it's
four or five weeks, we did pick those dates
thinking that those would be an appropriate amount
of time for any additional work to be done. And
we encourage the parties obviously to be as
diligent as possible.

   MR. DICKERSON:  I'll just say that's
going to be a tough, that's going to be a tough
nut for my folks to crack. Because really, again,
I'll confess to my own ignorance as to the
procedure. I do not anticipate, nor did my
clients, that the burden of proof and persuasion
would lie with them in this matter.

So really what we're finding ourselves
in is not necessarily bringing a complaint and
having it investigated. We're essentially in full
blown -- truncated, but full blown litigation
here.

   MR. BECK:  Well, not a full blown

litigation hearing. At this point the Committee
is anticipating this will take no more than a day.
And this is another thing that we will discuss.
Because the issues are, and we'll discuss the issues a little bit later, the issue is a narrow one of whether or not there is a conflict of interest under the Commission's regulations.

There were, in various documents that have been submitted, there were discussion of other matters of a code of ethics, of some questions about the workmanship that may be involved. Those are, the Committee does not see that as an issue in this hearing. It's particularly whether or not there is a conflict.

Also it is anticipated that a number of the issues about whether there is or is not a conflict will be borne out by documentation and by answers, both in requested documents, as well as the answers to specific questions.

So, I'm not sure that the actual testimony portion of the hearing would take very long.

MR. SAMSON: I respectfully disagree, Mr. Beck. Maybe when we get to that point we can talk about it a little bit more.

MR. DICKERSON: What is the procedure that we have for subpoenaing witnesses? Because I think that may be where he's getting into some of
what he's talking about here, may require more
than just one or two people to get up and take the
stand and testify in this matter. Is it --

MR. BECK: Subpoenas are issued by the
Commission, or by the Committee in this case.

MR. DICKERSON: Based on input from us?

MR. BECK: Yes.

MR. DICKERSON: Okay.

MR. BECK: Yes. And hopefully that will
not be necessary. Hopefully, again, the counsel
can work together to agree on having witnesses
which we may as well go to that part of the agenda
that talks about Mr. Samson's application for a
subpoena for the videotaped deposition of Tom
Hamilton.

I have read the application and the
declaration and my understanding is that the
problem at this point is that Mr. Hamilton now
works for California Living and Energy, or at
least is retained by California Living and Energy.
Is that right?

MR. SAMSON: Well, to be clear, he was
the Executive Director of CHEERS for some period
of time. He left CHEERS, I believe it was early
2007, I'm not sure.
But for roughly the last year, being approximate in those dates, but for roughly the last year he's been employed by a consulting firm. I think it's CTI or it's CIT --

SPEAKERS: ICI.

MR. SAMSON: Well, I have the letters right, but in the wrong order. He's been employed by a third-party consulting firm.

I have talked to Mr. Hamilton, as set forth in my declaration, and asked if he would be willing to appear on December 10th at the hearing in this matter. And he said that he would, subject to checking with his management. And that was a discussion that I had with him I think the end of September, whatever the dates are in my declaration.

I called Mr. Hamilton, not having heard back from him, I called him I think it was the 29th or 30th of October, to find out the status, if he had talked to his management and gotten permission to be able to come and testify.

And he said that within the last week, within the last week from October 30th, the end of October, his consulting firm had been retained by California Living. And that therefore he felt
that there was a relationship conflict of interest
such that he couldn't voluntarily testify.

I explained to him that I simply wanted
him to talk about certain historical events,
primarily conversations that he had had with
officials of MASCO and Energy Sense, and with the
Energy Commission in 2006 regarding the
organization of Energy Sense, the structural
organization and compliance with the Energy
Commission's regulations.

I wasn't asking him to say anything
about California Living at all, just simply the
historical events in which he had been involved.
He said he understood; he was very gracious; but
he said he felt that he could not voluntarily come
up here.

And I told him that, you know, based on
that I had no desire to cause him any either
personal or professional inconvenience, but his
testimony is exceedingly important and therefore I
was going to seek a subpoena from this Commission,
therefore the documents that have been filed.

MR. BECK: Mr. Dickerson, it appears
that -- well, first of all, is Mr. Hamilton
retained in some sense by California Living and
Energy?

MR. DICKERSON: My understanding is that Mr. Hamilton's company is doing some work with California Living and Energy. He is not an employee of California Living and Energy.

MR. LILLY: There's no contracts.

PRESIDING MEMBER ROSENFELD: Sorry, just didn't hear you. He is not?

MR. DICKERSON: He is not an employee of California Living and Energy.

MR. SAMSON: It's like a third-party consultant.

MR. DICKERSON: Yeah.

MR. BECK: Well, it seems that from what Mr. Samson is saying is that Mr. Hamilton is concerned that voluntarily coming and testifying at the hearing would somehow run afoul of Mr. Lilly's company.

And if that's not the case, then something much easier than a subpoena would be for Mr. Lilly to talk with Mr. Hamilton and say, tell him that we have no problem with you coming and testifying in this hearing. And, in fact, Mr. Lilly may even wish to have Mr. Hamilton come and testify.
MR. SAMSON: The only problem with that, and I'm totally surmising at this point because I don't know anything about Mr. Hamilton's company, but perception is everything. And notwithstanding the fact that Mr. Lilly may call Mr. Hamilton or Mr. Hamilton's boss and say, I don't have a problem with this, his company may still decide that for reasons dealing with business relationships, company policy, that they will only allow him to testify in response to a properly authorized subpoena.

And so at this point, given the initial reservations that have been expressed, given the fact that we don't know what actions Mr. Hamilton's management may take regardless of Mr. Lilly being very cooperative, I would prefer to get the subpoena. That's the only way that we can be assured of having Mr. Hamilton's testimony.

And then, quite frankly, it gives both Mr. Hamilton and his company a cushion in that down the road, whatever the outcome of this proceeding may be, there's no awkwardness with California Living and Hamilton and his company. Mr. Hamilton is simply responding to a properly authorized subpoena, telling the truth as he knows
it. He's not appearing here as a favor, if you will, to one party or another. It protects the impartiality of his testimony, if you will, to the greatest degree possible.

MR. BECK: Mr. Dickerson, do you have any response to that?

MR. DICKERSON: No. I understand exactly where he's coming from. Anybody who's, you know, done this stuff knows that that could be a little bit of an issue. And the subpoena is kind of the well, - they're-making-me document. So it doesn't appear that you're coming in.

Again, whichever way you need to compel to have him here, I can have Mr. Lilly have a discussion with him. Obviously we're not -- I think we've made clear we're not going out of our way to try to stop him from coming in.

We don't have a problem with it. So, whichever way works best, I'm certainly not going to object to any subpoena that Mr. Samson may want to have issued.

MR. BECK: What I would suggest, and we're going to ask the parties to do, is to have Mr. Lilly or Mr. Dickerson have whatever discussions with Mr. Hamilton or Mr. Hamilton's
MR. DICKERSON: He'll do it.

MR. BECK: And that you, again, at that point you contact Mr. Hamilton and see if he is, indeed, willing to come and testify. And you can note that in the joint statement that you would be submitting to the Committee.

If, at that point, you believed that a subpoena was still necessary, then the Committee would decide that and would issue one if we found that it was necessary.

I do think that there is good cause for having, I do think that his testimony, as you've characterized it in your pleadings, are relevant. So I think there would be good cause.

MR. SAMSON: Could I offer this as a suggestion?

MR. BECK: Sure.

MR. SAMSON: Because I am concerned, and I realize we're going to talk about scheduling later, but nonetheless, where we are the calendar's rapidly turning. And Mr. Hamilton's a consultant. My impression is that, you know, he's in his office one day a week, maybe, and traveling around, doing a lot of stuff.
That the Committee issue a subpoena, but not serve it. If Mr. Hamilton is agreeable and we get a written commitment from his company that he can and will appear, then the subpoena need not be served. And he would agree to come based on --

I'm not sure who's Mr. Hegarty and who's Mr. Lilly, I'm sorry -- based on, you know, the request that's made that he voluntarily come. That would be great.

But I am concerned that unless we get a written commitment from his senior management that, you know, company policies; we don't know what his company policy is. Policies can change at the last minute. One of their inhouse attorneys said okay; a more senior attorney who hadn't heard about it till the last minute says, no, I don't think this is a good idea.

I think we need to have the assurance of an issued subpoena. And absent a written commitment from a senior-level person of their company, I think we have to go forward with a subpoena, is the only way of being assured. If we get that written commitment then we won't serve the subpoena.

MR. BECK: I'm going to ask the members
of the Committee if they have any input at this
point on this matter.

PRESIDING MEMBER ROSENFIELD: Makes sense
to me to go ahead and issue it, but not serve.

ASSOCIATE MEMBER PFANNENSTIEL: My
feeling is why don't we see what's needed here. I
mean, it seems like we don't need to issue a
subpoena today. If you have the discussions with
Mr. Hamilton and others in his organization
tomorrow and discover that they're not
comfortable, we can always issue a subpoena.

But it just seems to me why go to that
level if we don't need to.

MR. SAMSON: I guess my response is
we're all here to maybe talk about the merits of
it. And I don't know how long it's going to take
to have discussions with Mr. Hamilton and whatever
management at his company is necessary. And then
how much longer it's going to take to get a
written commitment or not.

So we could be a couple weeks down the
road before we know for sure whether he will or
won't.

ASSOCIATE MEMBER PFANNENSTIEL: So your
point, counsel, on a subpoena is simply that it
would accelerate the decision on his part? I guess I'm just not sure of the value of --

MR. SAMSON: If it's not served, no. But if it is issued, then we wouldn't have to take the time to come back to you and ask to have the subpoena issued, we would have it in our pocket, if you will. And then as soon as -- if we find out that Mr. Hamilton cannot make a commitment, then we could immediately then serve him.

MR. BECK: What we could do is have the Committee rule that a subpoena would be issued for Mr. Hamilton should his appearance not be able to be secured otherwise. We could have that ruling made today, but not necessarily draft up the subpoena at this point, which wouldn't take very long at all to do once we were notified that a subpoena was going to be necessary.

MR. SAMSON: Again, the problem -- I understand what you're saying. We just have to come to a resolution, or Mr. Hamilton's organization needs to come to a resolution on it very quickly.

Because we can't compel Mr. Hamilton to come, you know, 500 miles from Los Angeles to Sacramento. It would have to be a videotaped
deposition in the Los Angeles area, and that takes
time to set up and notice.

MR. BECK: Well, my point is just
echoing what the Chairman said, is that the
subpoena is not going to be issued at this point
anyway. We agree that it's not going to be
issued.

We can make a determination here that
Mr. Hamilton's testimony is relevant, and that a
subpoena will be issued for him shall his
voluntary appearance not be secured.

And that the actual -- so, in a sense,
we are -- the Committee would be saying, yes, we
are going to issue a subpoena for him, so they
would be half a step less than actually having it
issued at this point and holding it. It's
functionally, I think, the same thing.

ASSOCIATE MEMBER PFANNENSTIEL: Mainly
you say if we need a subpoena we'd be glad to
issue one.

MR. SAMSON: Okay, that's fine. My --
PRESIDING MEMBER ROSENFELD: Promptly.

MR. SAMSON: I'm sorry, sir?
PRESIDING MEMBER ROSENFELD: And

promptly.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
MR. SAMSON: Thank you. Could we just -- I guess what I would like, assuming just for the moment that we're still staying with the December 10th hearing date. I realize that's open to discussion, but just assuming that for the moment. Could we have sort of a cut-off date that unless we hear from Mr. Hamilton's organization by X date, then the subpoena would issue?

MR. BECK: That's, toward the end of this hearing I was going to broach the subject of specific dates that we would like to have things, which would include notification of whether or not a subpoena will be necessary for Mr. Hamilton. As well as an expectation of when we would get back, get some sort of joint --

MR. SAMSON: That's fine.

MR. BECK: -- statement from the parties.

MR. SAMSON: Okay, thank you.

PRESIDING MEMBER ROSENFELD: And I'm going to welcome Tim Tutt, who's Chairman Pfannenstiel's Senior Advisor. Glad to see you, Tim.

(Pause.)

MR. BECK: Now I would like to talk
about the procedural issues for the hearing. As we've already discussed, the hearing is set for December 10th.

There has already been some discussion, some concern that the sides will not be ready by December 10th. As the Chairman has already indicated, we hope that the amount of time that we have -- it is set for December 10th, and we hope that amount of time is sufficient to get the information necessary, to secure whatever witnesses.

If you have anything additional to say on that matter, other than what's already been discussed?

MR. DICKERSON: Other than I'm out of the state all that week. Prepaid.

MR. BECK: I'm sorry, say again?

MR. DICKERSON: Prepaid. I'm out of the state that week, so it's not readily cancelable.

MR. BECK: All right. Mr. Samson, anything additional?

MR. SAMSON: Yeah, two comments. One I would have to discuss with my client, but it's normal, and I realize in a court setting one always accommodates the court. In this setting I
guess we always accommodate the Commission.

But generally, between counsel, one extends a professional courtesy to try and work out with counsel dates that would work.

So subject to my client's approval, which I don't, you know, just been raised for the first time, obviously if it would work for the Commission's schedule, we would endeavor to accommodate Mr. Dickerson.

MR. DICKERSON: I appreciate that, thank you.

MR. SAMSON: Again, that's between Mr. Dickerson and myself, and I'm not speaking for the Commission.

We would be prepared to go forward on December 10th and had planned to do so. Part of the problem is, you know, this is the first time we've gotten together, other than reading I'm going to call them allegations in the complaint.

And I realize Mr. Dickerson probably didn't draft it.

We are kind of at a loss to know what the nature of our case is, simply because the complaint is kind of a shotgun, if you will.

And so without knowing what witnesses or
at least even if not names, the subject areas of
which the witnesses are going to testify on behalf
of the complainant, I have an obligation to my
client to present a case that responds to the
allegations.

And I anticipate right now calling seven

witnesses.

MR. BECK: I'm sorry, seven or --

MR. SAMSON: Seven.

MR. BECK: Seven.

MR. SAMSON: Seven. And as the
complainant with the duty of going forward, Mr.
Dickerson is going to call however many witnesses
he wants to. And I'm going to cross-examine them.

He's going to want to cross-examine my
witnesses, and I just simply don't see how it's
going to be done in a day.

MR. BECK: Mr. Dickerson, do you have
any comment?

MR. DICKERSON: I would concur with
that.

MR. BECK: How long do you think it
would take? If not a day, how long?

MR. SAMSON: Well, I can only speak for
my witnesses. I know I'm going to put on seven
witnesses, so I figure that's at least a day and a
half of direct testimony. I don't know how long
Mr. Dickerson is going to take to cross-examine
those witnesses. And I don't know how many
witnesses he's going to have and how long it's
going to take me to cross-examine them, because
neither of us has had the benefit of depositions
or discovery.

MR. BECK: Well, as I have stated, the
Committee does anticipate that it would not go
longer than a day. And the reason is that again
that the nature of the allegation, which is a
conflict of interest in the way that the companies
are doing their business. A lot of that can be
fleshed out and shown one way or another via some
of the documentation.

So, I encourage both sides to be
judicious in their use of -- in their calling of
witnesses.

The Committee will, during the hearing,
will probably not be shy about saying, if evidence
becomes duplicative, if it goes beyond the
boundaries that we've discussed, I don't think the
Committee would be shy about saying we've heard
this testimony, or this is already contained in
the documents that have already been submitted.

So, I would again encourage both sides to be very judicious in planning testimony at the hearing, considering that it seems to be a matter that is documentary to a large degree.

MR. SAMSON: It is to a degree. But not exclusively documentary. And that's why live testimony is important. And I do understand and am well aware of your admonition with regard to not having cumulative testimony.

I know that this also is not going to get into, you know, technical aspects of how insulation is laid or not laid, or things like that. We're focusing on corporate structure, organization and finances. And I need to have a number of witnesses to do that.

MR. BECK: Mr. Dickerson, at this point do you have an idea of how many witnesses you will be calling?

MR. DICKERSON: This is just the roughest of estimations. I would expect I would be calling, myself, between three and five.

ASSOCIATE MEMBER PFANNENSTIEL: Mr. Beck.

MR. BECK: Yes.
ASSOCIATE MEMBER PFANNENSTIEL: We may want to -- I don't think we'll be able to do it here and now, but if we start looking at calendars to find a couple days together, we're probably not talking December then.

I just think people should understand that if it is going to be more than a day, and preferably, I think, from everybody's standpoint, a couple days together, we are probably talking after the first of the year. So people just need to think about that when we try to finalize the schedule.

MR. BECK: Yes. And unfortunately, the date that was set, December 10th, was before I think Mr. Dickerson was brought into the case, that we did endeavor to find a date where everybody was available, which was virtually impossible.

PRESIDING MEMBER ROSENFIELD: Tried, but failed.

MR. BECK: We tried, but failed, valiantly, but miserably to try and find something where everybody fits it into their schedule.

Again, that is something that we should probably address again. If there are, again, in
this joint statement that you would be -- the
parties would be submitting. One of the things
that would be discussed in there would be
potential dates.

And, of course, the availability of the
Committee Members is of primary concern. And that
if things need to be canceled, vacations need to be
truncated or other matters need to be
rescheduled, so be it. Of course, if counsel's
otherwise engaged in trial, but --

MR. SAMSON: Or gone to Vegas?

(Parties speaking simultaneously.)

MR. DICKERSON: Or going to Vegas.

MR. BECK: That's right.

MR. DICKERSON: Mr. Beck, would it be
possible for Mr. Samson and I -- forgive me if I'm
speaking on your behalf -- to see dates of
availability or non-availability for the
Commission after the first of the year so we would
have that information available to us when he and
I are trying to come up with dates?

MR. BECK: I think that that's possible,
we can do that.

MR. DICKERSON: Because we could spend a
lot of time coming up with a date, and then find
out that something else is going on.

PRESIDING MEMBER ROSENFIELD: Didn't
work.

MR. BECK: Should also note that one of
the Chairman's Advisors, Tim Tutt, also came in
subsequent to us starting off. So he's here, as
well.

I've already discussed primarily what
the issues are that are going to be discussed.
They revolve around a conflict of interest, as
those are set forth in the regulations. As I
said, the Committee will definitely keep the scope
of the inquiry narrowed to that. I just want to
emphasize that to the parties.

In terms of specifics of how the hearing
would proceed, and the complaints would put on
their case, all their witnesses, submit any
additional documentation.

Witnesses would be subject to cross-
examination by the respondents. After the
complaints were done calling witnesses,
respondents would then be allowed to call
witnesses who would be subject to cross-
examination by the complainants. And also to
submit any additional documentation.
There would be some time for rebuttal, but only rebuttal, not obviously to reemphasize issues or matters of testimony that was already presented.

MR. DICKERSON: I'm assuming we're under a preponderance standard here?

MR. BECK: Yes.

MR. SAMSON: I'm sorry, I didn't hear that.

MR. BECK: Preponderance is the standard.

Now we get to the specifics of the subsequent Committee order, or before that, the joint statement by the parties. What we have discussed here at this prehearing conference would be, is a statement by the parties regarding documents that are going to be in agreement, as to those documents that are going to be produced.

Documents that one side or the other believes are relevant and should be compelled to be produced by the Committee, but have not been able to get voluntary compliance to do so by the other party.

I think a witness list by both parties, at least a tentative witness list by both parties
to be contained in that statement.

Availability of the parties for a two- to three-day hearing.

And are there any other issues? Also, of course, the status of Mr. Hamilton, whether or not he has agreed to come voluntarily to the hearing, or whether the parties believe that a subpoena is necessary.

Are there any other issues that counsel believe should be addressed in the statement?

MR. SAMSON: May I ask that we go off the record for a moment so I can consult with my colleague?

MR. BECK: Sure.

(Off the record.)

MR. SAMSON: Mr. Beck, there's one other thing that I think might be helpful, actually, to both sides in the joint statement. As part of the witness list, if we could have similar -- forget the -- you know, federal court, state court disclosures -- just sort of a one-paragraph summary identifying who the witness is, and a one-paragraph summary of their expected testimony.

MR. DICKERSON: Sort of like under initial rule 26 disclosures?
MR. SAMSON: Yeah, I was trying to think of the rule and I couldn't. Yes.

MR. DICKERSON: I don't have a problem with doing that, that's fine.

MR. BECK: And that sounds good.

MR. SAMSON: You know, because there may be motions by either party to preclude a witness on the grounds that that testimony isn't relevant, for example. And if we had at least a snapshot peek at what the testimony is, it would help both of us in our preparation for cross-examination, which would make the hearing, itself, go more efficiently.

MR. BECK: Okay. Any other matters that you think need be included?

MR. DICKERSON: No, I think that will cover it. We may talk in the interim and, you know, maybe go through and see if there's anything else that looks like it could be included.

MR. SAMSON: Yeah.

MR. DICKERSON: Maybe just pulling stuff off that scheduling conference and see if there's any headings there that would work, something like that.

MR. SAMSON: Yeah. I'm presuming, you
know, additional items that we're in agreement on and want to put in this information would be acceptable.

MR. BECK: Would be acceptable to the Committee?

MR. SAMSON: Yes.

MR. BECK: Well, I guess that would be acceptable, but the Committee still reserves the right to request additional items.

MR. SAMSON: Oh, of course. But I mean, I'm just saying, if we come up with a scheme, for example, on marking -- a cooperative scheme for marking exhibits or something like that, that we want to suggest. I'm looking at just sort of housekeeping things that one normally puts in a pretrial order.

MR. DICKERSON: Sure. If we're going to get the thing done quickly, even in a day from two days, we would probably need to have some type of a stipulation as to the admissibility and the foundation for certain --

MR. SAMSON: Yeah.

MR. DICKERSON: -- exhibits. If it's going to be document intense the last thing the Commission needs is for us to be going through and
laying foundation for every document that's going
to be put in front of them. That could go
forever.

MR. BECK: And the rules of evidence for
these hearings are set forth in section 1212 of
Title 20. And, of course, because it is in an
informal, but yet adjudicatory, proceeding, strict
compliance with the rules of evidence are not
necessary.

Now, we go into the timeframe for
getting that particular document. What do the
parties think is a reasonable timeframe for
submitting that document to the Committee?

MR. SAMSON: I think, if I may, the
first thing that needs to happen is that Mr.
Dickerson needs to send me a letter identifying
what he believes to be the deficiencies in our
responses to the Committee's order.

Then we need to look at that and then
Mr. Dickerson and I need to be able to talk and
say, you're right on this one, I disagree with you
on that one. So that we can identify what, if
any, additional documents are going to be
produced. And where we agree to disagree. And he
may or may not wish to make a motion to compel.
So it's going to take us a bit of time for that process to occur in order to be able to include that in the joint statement.

MR. BECK: So then by the end of the week you're saying?

(Laughter.)

MR. BECK: We'd like to, at this point, have a date in mind that we can expect something by.

MR. DICKERSON: Can you tie the date to whatever we decide on if we're going to move the hearing date?

MR. BECK: I'm sorry?

MR. DICKERSON: In other words, we're talking about the possibility, as I understand, of moving the hearing date?

MR. BECK: Yes.

MR. DICKERSON: Can we tie the date at which it will be due to a certain number of days prior to the hearing date, whether that be the 10th or whether it's a new date?

MR. BECK: What I was thinking is that there would be this -- the document, itself, would have -- we wouldn't set the date for the new hearing at this point, or prior to receiving that
document. I was anticipating that we would receive that document and there would be the list of available dates. And at that point we would come up with a date, rather than setting a date and then saying, so many weeks prior to this date.

MR. DICKERSON: Okay. Just so long as the Commission will understand that if we have to do it sooner rather than later many of the items addressed may fall under the heading of coming attractions, because he and I may not have decided on everything, given the meet-and-confer nature, some of what we're doing from the document demands.

Do you concur with that?

MR. SAMSON: I agree. That's fine. I thought that would be sort of the first thing that should be done.

MR. BECK: What realistically are we thinking about? Two weeks? Three weeks?

MR. DICKERSON: Just from my own experience, by the time you get in a meet-and-confer, writing letters, discussing what's here, because that is a fairly extensive document demand, I'd be surprised to see if anything prepared in sight of two and a half weeks. Just
to split a difference. That's pretty quick.

MR. SAMSON: If it takes you a week or
ten days to prepare your letter, --

MR. DICKERSON: Um-hum.

MR. SAMSON: -- I mean I'm sure you've
got other things on your calendar, too.

MR. DICKERSON: Yeah, um-hum.

MR. SAMSON: It's going to take me an
equal time to consult with my client and determine
our response. So, that's probably a fair
guesstimate.

MR. BECK: So if we did it three weeks
from today's date, which would be the 26th. It
would be the day before Thanksgiving, I believe.

MR. SAMSON: It would be the 3rd.

MR. BECK: That would be the 3rd?

MR. SAMSON: Three weeks from today
would be the 3rd of December.

MR. BECK: Is that sufficient,
Committee?

PRESIDING MEMBER ROSENFIELD: Well, I'm
puzzled, Dennis, because Dickerson has said he
just can't make the 10th anyway. So, --

MR. BECK: I think at this point it
seems fairly clear that we're not going to make
the date of the 10th.

PRESIDING MEMBER ROSENFIELD: That's right.

MR. BECK: But still try to keep everybody on a timeframe.

ASSOCIATE MEMBER PFANNENSTIEL: I think, you know, from what people have said, I think a three-week timeframe for providing this information makes sense. We've already agreed that to find a couple days together we're going to be pushing this out much beyond what we had expected or wanted.

But, if we're going to do it right and get all this information it will take some time.

MR. DICKERSON: We can always do a supplement, if necessary.

ASSOCIATE MEMBER PFANNENSTIEL: But three weeks from today should get us the information that we're asking for.

MR. SAMSON: The joint statement.

MR. DICKERSON: Um-hum.

MR. BECK: And at that point once we receive that, once the Committee receives that and reviews it, as I said, the Committee may decide to sui sponte request, make additional requests of...
any of the parties, as well as some of the
interested parties. As you know, we may request,
the Committee may request of CHEERS for documents
that they would then receive.

MR. SAMSON: And am I safe in assuming
that in that joint statement or separately, then,
that respondents would have the opportunity to
request discovery from the complainants?

MR. BECK: Well, hopefully there would
be able to be a joint statement regarding
documents to be submitted by both sides. So that
it wouldn't be something where you agree on a
group of documents from the respondents, and oh,
by the way, the respondents are requesting these
documents from the complainants, but we have no
agreement on that.

We'd like to see an agreement.

Agreement as to all of the documents that are to
be submitted. And if there are not, if there are
additional documents that you would have discussed
the submission of those additional documents and
had failed to come to an agreement. And that one
side or the other would be requesting the
Commission to compel the production of those
documents.
And also at that point we would take the schedules of all the parties and try and come up with a date. And in the Committee order, have the new date or dates involved.

I don't know what the best way to get the dates available to the Committee Members, too. I suppose that the Committee Members can provide me with available dates during the month of January. And that I will take on the responsibility of transmitting those to counsel via email. I have both of your email addresses. So you'll have those and you can play with them as you will.

PRESIDING MEMBER ROSENFELD: To make that clear, you will inform these two --

MR. BECK: Yes.

PRESIDING MEMBER ROSENFELD: -- attorneys of Chairman Pfannenstiel's and my two-day, consecutive-day windows.

MR. BECK: Yes.

PRESIDING MEMBER ROSENFELD: And meanwhile, they will also provide windows when they can make two days consecutively. And you're going to put it all together?

MR. BECK: Well, what I'm anticipating
is that prior to getting this joint statement from
counsel, that I will have provided them with --

PRESIDING MEMBER ROSENFIELD: Yeah, okay,
that's as much as we can offer.

MR. BECK: -- availability, so then they
can say, these days are -- we've looked at our
calendars, as well as the availability of the
Committee Members, and these are the dates we're
requesting.

PRESIDING MEMBER ROSENFIELD: Good.

MR. SAMSON: And if I could just throw
one slight complication into the mix. Just in
terms of dates, maybe we could go out even a
little into the first week in February or so. I'm
supposed to be leaving to go out of the country on
December 30th. And we're due to get back either
the 14th or 15th, I forget when. And that's
pretty much locked in cement.

And I will defer to the Committee's
calendar, but it will create great family problems
at home if I am not on the plane with my family
when we go out of the country.

PRESIDING MEMBER ROSENFIELD: We can
provide January and February days.

MR. SAMSON: Thank you.
PRESIDING MEMBER ROSENFELD: I'm sympathetic.

MR. SAMSON: Thank you. My wife will be grateful.

ASSOCIATE MEMBER PFANNENSTIEL: I just want to make sure, though, that the complainant in this is okay with putting this off what will then end up being a month to two months from where we had originally thought it would be.

MR. DICKERSON: We're fine with that.

ASSOCIATE MEMBER PFANNENSTIEL: Thank you.

MR. BECK: Is there anything, any other issues that the parties want to address at this point?

MR. DICKERSON: I think we've pretty much covered it, at least from the complainants' standpoint.

MR. BECK: Anything else, Mr. Samson?

MR. SAMSON: No. Give me just a moment to go back through my notes and see, but I think you've --

(Pause.)

MR. SAMSON: I would just have one slight request, if we could change one date.
Rather than the joint statement being due on the 3rd, can we make it the next day, the 4th. I've got depositions out of town the 1st, 2nd, and 3rd. And it would make it a whole lot easier if I was back in my office. So if we could just slip that one day to the 4th.

MR. BECK: Yes, that's exactly, the 4th, so it will be December 4th.

MR. SAMSON: Thank you.

MR. BECK: And, again, submit those to the docket; submit that docket to the docket as you have in the past.

MR. SAMSON: Yes.

MR. BECK: Is there anything else?

PRESIDING MEMBER ROSENFELD: No, I think we got a lot cleared up today. Thanks to everybody.

And Merry Christmas and Happy New Year.

MR. SAMSON: Thank you.

MR. DICKERSON: Same to you.

(Whereupon, at 10:51 a.m., the Prehearing Conference was adjourned.)

--o0o--
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 conference, nor in any way interested in outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of November, 2008.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345