

COMMITTEE CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for the Palmdale Hybrid) 08-AFC-9
Power Plant Project)
_____)

LARRY CHIMBOLE CULTURAL CENTER
38350 SIERRA HIGHWAY
PALMDALE, CALIFORNIA
THURSDAY, JULY 14, 2011
11:09 A.M.

Reported and transcribed by:
Martha L. Nelson, CERT

APPEARANCES

COMMITTEE MEMBERS

Karen Douglas, Commissioner and Presiding Member

HEARING OFFICER AND ADVISORS

Kenneth Celli, Hearing Officer

Galen Lemei, Advisor to Commissioner Douglas

Tim Olson, Advisor to Commissioner Boyd

STAFF, CONSULTANTS AND STAFF WITNESSES

Lisa DeCarlo, Staff Counsel

Felicia Miller, Project Manager

Steve Radis

APPLICANT

Michael Carroll, Attorney

Laurie Lile, City of Palmdale, Assistant City Manager

Thomas Bennett, Inland Energy, Inc.

Sara Head, AECOM

INTERVENERS

John Buse, Center for Biological Diversity

APPEARANCES (Continued)

ALSO PRESENT

PUBLIC SPEAKERS

Mike Mischel, City of Palmdale
Joseph Yore
James Griggs
R. Lyle Talbot
Gary Burgess
David Abber
Ron Miller
Vianna Friss
Ryan Drake

PROCEEDINGS

11:09 A.M.

1
2
3 COMMISSIONER DOUGLAS: Good morning. My name is
4 Karen Douglas. I am a commissioner at the Energy
5 Commission, and I'm also the presiding member of the citing
6 committee. To the far left on this table is Tim Olson. He
7 is the advisor for Commissioner Boyd, the associate member
8 on this committee. To my immediate left is our Hearing
9 Officer, Ken Celli. And to my right is Galen Lemei, my
10 advisor.

11 This is the committee conference for the presiding
12 members proposed decision on the Palmdale Hybrid Power
13 Project. At this point I'd like to take introductions from
14 the parties, beginning with the applicant. If you can
15 introduce yourselves.

16 MR. CARROLL: Thank you. Good morning. Mike
17 Carroll with Latham and Watkins. We're outside counsel for
18 the project. Since we only have the one mike I'll go ahead
19 and introduce the rest of the team.

20 On my left is Sara Head with AECOM, the
21 environmental consulting firm responsible for conducting the
22 technical and environmental analysis of the project on
23 behalf of the applicant. On her left is Tom Barnett,
24 Executive Vice President with Inland Energy, who has been
25 retained by the city to develop the project on behalf of the

1 city. And on his left is Laurie Lile, the Assistant City
2 Manager for the City of Palmdale. Thank you.

3 COMMISSIONER DOUGLAS: Thank you. Staff?

4 MS. DE CARLO: Good morning. Lisa De Carlo,
5 Energy Commission Staff Counsel. To my left is Felicia
6 Miller, Energy Commission Project Manager.

7 COMMISSIONER DOUGLAS: Thank you. And is there
8 anybody here who is representing the Center for Biological
9 Diversity who will be participating in the -- in the -- in
10 the hearing, as opposed to appearing publicly?

11 MR. BUSE: Yes. Good morning. This is John --

12 COMMISSIONER DOUGLAS: I'm sorry. Go ahead.

13 MR. BUSE: John Buse, the Center for Biological
14 Diversity.

15 HEARING OFFICER CELLI: John Buse, is it?

16 COMMISSIONER DOUGLAS: John Buse?

17 MR. BUSE: Yes.

18 COMMISSIONER DOUGLAS: Could you spell that,
19 please?

20 MR. BUSE: It's B-u-s-e.

21 COMMISSIONER DOUGLAS: Thank you. Great. So --
22 so you'll be participating by phone?

23 MR. BUSE: I'm also getting a fair amount of echo
24 here.

25 COMMISSIONER DOUGLAS: I hear that, too.

1 HEARING OFFICER CELLI: I think the -- that, Mr.
2 Buse, the technical people are working on that. Let me ask
3 you some questions. Are you calling from a cell phone or a
4 land line?

5 MR. BUSE: It is a cell phone.

6 HEARING OFFICER CELLI: I didn't get that. Say
7 again.

8 MR. BUSE: A cell phone.

9 HEARING OFFICER CELLI: Cell phone. Okay. And
10 are -- you're not using the speaker function, I hope?

11 MR. BUSE: No, I'm not.

12 HEARING OFFICER CELLI: Okay. Is there any -- are
13 you -- any chance you could use a land line?

14 MR. BUSE: Yes. I'm not sure that the quality
15 will be much better, but I'll try.

16 HEARING OFFICER CELLI: Okay. Whatever you just
17 said was completely unintelligible.

18 COMMISSIONER DOUGLAS: He's not sure the quality
19 will be better.

20 HEARING OFFICER CELLI: Oh. Okay. Thanks.
21 Luckily I have translators.

22 We -- what you have to say is very important. And
23 I want to make sure that not only can we hear and understand
24 you, but that it makes the court reporters transcript. So
25 I'm -- I'm just trying to pull out the tricks, the little

1 tricks I know that improve the quality of the sound. From
2 past experience we know that speaker phones don't work very
3 well. Cell phones have their inherent problems of -- of
4 coming in and out of, you know, contact.

5 So I guess the best we're going to be able to do,
6 Mr. Buse, is to ask that you speak very deliberately and
7 clearly into your cell phone, and we hope that it works.

8 COMMISSIONER DOUGLAS: All right. Thank you, Mr.
9 Buse. And if you do have the opportunity to try a land line
10 that might work better.

11 Is Jane Williams here with Desert Citizens Against
12 Pollution, or on the phone? All right.

13 And I see that we have members of the
14 organization, Desert Citizens Against Pollution. But -- but
15 I don't -- it doesn't appear that we have the attorney or
16 the representative who is -- who would participate in the
17 hearing; is that correct so far? We may get them later.

18 The Public Advisor, Jennifer Jennings, is standing
19 up in the back of the room. So if you have questions about
20 the process, questions about how to -- how to participate
21 more effectively, how to make comments until the close of
22 the comment period, how to either get on WebEx or otherwise
23 get on the phone, or go to Sacramento when we have the
24 commission decision on this project, Jennifer Jennings will
25 be able to help you with that.

1 Is anybody here from any -- are any elected
2 officials here today? All right. Is anybody here from any
3 other state agencies? Is anyone here from any other
4 government agencies, county of city, for example? All
5 right. Are there -- is anyone here from any federal
6 government agencies? Is anyone here from the Antelope
7 Valley Air Quality Management District? The L.A. County --
8 any L.A. County department? Any departments of cities,
9 Palmdale or Lancaster in particular?

10 If you could identify yourself for the record,
11 please, at the microphone?

12 MR. MISCHEL: My name is Mike Mischel. I'm the
13 Public Works Director for the City of Palmdale.

14 COMMISSIONER DOUGLAS: Thank you. Is anybody here
15 from any water board, representing any of the water boards?
16 All right.

17 And as I ran through this list we were listening
18 for the phone line. But if there's anyone on the phone line
19 in any of those categories, if you could speak up now we'd
20 appreciate it. And, of course, people might join us later,
21 but we like to get a sense of who's here and give -- make
22 sure we give an opportunity to speak when people are here.
23 All right.

24 In that case I will turn this over at this point
25 to the Hearing Officer, Mr. Celli.

1 COMMISSIONER DOUGLAS: Thank you, Commissioner
2 Douglas.

3 And you all can hear me okay if I'm at this
4 distance from the microphone? Good.

5 Good morning, everyone. It's great to be back in
6 Palmdale. Today we're here on the presiding members
7 proposed decision conference. The presiding members
8 proposed decision, which we call the PMPD, and so all day
9 today we're going to be talking about the PMPD, what we're
10 talking about is the presiding members proposed decision.
11 It was published on June 16th, 2011. On that date the
12 notice of availability went out to the proof of service list
13 which noticed today's conference, and the July 27th Energy
14 Commission business meeting. The notice of availability of
15 the PMPD asked the parties to file written comments on or by
16 July 11th, 2011

17 The Energy Commission staff, the intervener,
18 Center for Biological Diversity, and the applicant filed
19 comments on the PMPD, all filed on -- on July 11th, 2011.
20 Desert Citizens Against Pollution has not filed any
21 comments. We did not receive any. Is that -- is anyone
22 here with information to the contrary? Hearing none, then
23 we have not heard from Desert Citizens Against Pollution
24 with regard to the PMPD.

25 We also received comments from the City of

1 Lancaster. And we did receive a letter yesterday from the
2 applicant that came from the United State Air Force Plant
3 42.

4 I want to make -- say a work on the comments filed
5 by CBD, Mr. Buse, especially. The comments that we did
6 receive from CBD were a little more in the nature of
7 argument, as opposed to certain findings contained within
8 the -- or rather argument that was opposed to certain
9 findings contained within the PMPD, or rebuttal arguments to
10 testimony contained in the evidentiary record. These types
11 of comments were not included in our draft errata. The
12 draft errata lists errors of fact which are an unfortunate
13 but, seemingly, inevitable part of every PMPD, even though
14 we try our best to catch and correct errors.

15 So we are interested in changes to conditions or
16 errors of fact, for example. So let's say, for example,
17 that there was a statement that says that this tower would
18 be 8,000 feet, when, in fact, the tower would be 80 feet.
19 That's the kind of error we're looking to be apprised of so
20 that we can make those corrections. So I hope that's clear.

21 But we did not include argument in the errata. We while
22 are interested in all comments, only the actual errors
23 listed in staff's and applicant's comments have been
24 incorporated into a draft errata, copies of which are we
25 have made available to the parties. I can -- as needed, we

1 could -- we have that we could put up.

2 Oh, thank you. Ms. Jennings just informed me that
3 there are extra copies of the errata in the back where the
4 public advisor is, Jennifer Jennings. If you are interested
5 you can get a copy from her.

6 Do you know, how many copies did you make?

7 MS. JENNINGS: Fifteen.

8 HEARING OFFICER CELLI: Fifteen copies. So if we
9 run out, because the record should reflect there's more than
10 15 people here, please share with your neighbor. It looks
11 like we have about 16, 17, 18, a little better than 20
12 people here.

13 So we're going to talk with the parties and ask
14 for their comments on the errata. But before we do that, we
15 wanted to respond to CBD's motions -- CBD brought several
16 motions to reopen the record -- and for the committee to
17 take official notice of certain documents. And there's a
18 motion for a continuance to reconsider the question of need
19 and the impact of 2.5 from the -- particulate matter, 2.5
20 micrometers or less -- from the Palmdale Hybrid Power Plant,
21 which you're going to hear us referring to today as either
22 Palmdale Hybrid of PHPP. We refer to it throughout the --
23 throughout the PMPD as PHPP; that stands for Palmdale Hybrid
24 Power Plant. And also, CBD wanted to reopen on the question
25 of alternatives.

1 We are also going to quickly respond to CBD's
2 concern that the committee did not rule on the City of
3 Lancaster's letter requesting suspension of proceedings. I
4 want to state for the record, the committee was not
5 obligated to respond directly to the letter, per our
6 regulations. But nevertheless, the committee did respond to
7 the letter at page 3-19 and at page 6.2-33 in the PMPD.

8 We also received a letter containing an official
9 statement from the Air Force, that we received yesterday,
10 that the Air Force has not identified any issues or impacts
11 arising the PHPP, Palmdale Hybrid Power Plant. So obviously
12 the committee declined the request to suspend proceedings.
13 But the position is that there was no obligation to directly
14 respond to a comment letter, nevertheless we did. That was
15 addressed and considered.

16 Now, Mr. Buse, I'm going to ask that you speak
17 very clearly now. Because we're going to first take the
18 question of the request for official notice that was brought
19 by the Center for Biological Diversity, which I'm going to
20 shorthand refer to as CBD, Center for Biological Diversity.
21 They brought a motion to -- for the committee to take
22 official notice. I'm going to read a regulation to you.
23 This is from Title 20, which are the regulations that govern
24 the Energy Commission. Section 1213 says,

25 "During the proceeding the commission may take official

1 notice of any generally accepted matter within the
2 commission's field of competence and with of any fact
3 which may be judicially noticed by the courts of this
4 state. Parties to a proceeding shall be informed of
5 the matters to be noticed, and those matters shall be
6 noticed, or rather noted in the record or attached
7 thereto. Any party shall be given a reasonable
8 opportunity on request to refute the officially noted
9 matters by evidence or by written or oral presentation
10 of authority."

11 And that was 1213 of Title 20 of the California
12 Code of Regulations.

13 On February 8th, 2011 CBD specifically identified
14 purpose and need as an issue at page 7 of its pre-hearing
15 conference statement, stating that the FSA failed to explain
16 why the project is needed, if at all, and in particular why
17 a new gas-fired power plant of over 500 megawatts is needed
18 in light of the recent approval of over 4,000 megawatts of
19 solar energy by the commission in the Mojave Desert region.

20 The February 18th, 2011 hearing order expressly
21 acknowledged purpose and need as a disputed area upon which
22 the committee expected the parties to proffer evidence. The
23 evidentiary hearing in this matter, which was conducted in
24 this room here in -- March 2nd of this year, March 2nd,
25 2011, all parties were given an ample opportunity to proffer

1 and test evidence on the question of purpose and need.

2 So CBD's motion, which was on -- which was filed
3 on July 11th, 2011 sought to -- if you'll give me a second
4 here I'll tell you exactly what it contained -- sought to
5 put in four documents. One moment, folks, as I'm scrolling
6 through to find the description of the documents. Four
7 documents. Oh, here it is.

8 The motion seeks to reopen the record to take
9 judicial notice of four documents: the California -- CAISO
10 Integration of Renewable Resources report published on
11 August 21st, 2010; a PowerPoint presentation purportedly
12 containing a summary of the CAISO Integration of Renewable
13 Resources, apparently docketed at the CPUC on May 20th,
14 2011; a list from CEC of renewable projects; and a map --
15 well, I guess a map showing renewable projects under review
16 in 2011, which would also be from CEC.

17 And just for the record, Mr. Buse, I went to our
18 website and tried to view that list. And I got a page that
19 said something like this has been archived and is no longer
20 on the -- on the web. So I don't -- I don't -- I haven't
21 seen that yet.

22 In any event, at this time the committee would
23 like to hear from CBD with regard to a good cause showing,
24 which we acknowledge is not present in your moving papers as
25 to why we would need to take judicial notice of these

1 documents after the publication of the PMPD and not during
2 the evidentiary hearing.

3 So with that, Mr. Buse, you have the floor. Go
4 ahead.

5 Is he still on the line?

6 MR. BUSE: Yes. It seems I'm still getting an
7 echo.

8 HEARING OFFICER CELLI: Yeah, but we can hear you.

9 MR. BUSE: I will try to proceed. Our view is
10 that the presentation as evidenced as to the project purpose
11 and need is a bit like CEQA principle. This information
12 needs to be presented by and established by the CEQA lead
13 agency and/or the applicant. In the absence of information
14 presented by the applicant and/or the lead agency, we
15 proffered this information at this point in the process. We
16 believe that the -- the commission must take account of
17 information as to the project's purpose and need, or that
18 the record will simply show that this information is absent.

19 HEARING OFFICER CELLI: Did you say this
20 information is absent?

21 MR. BUSE: Yes. In other words, we -- we are
22 asking that you recognize that good cause exists --

23 HEARING OFFICER CELLI: Could you articulate --

24 MR. BUSE: -- to accept --

25 HEARING OFFICER CELLI: -- that thought?

1 MR. BUSE: -- the information that we proffered,
2 because that information was not presented by the lead
3 agency or the application.

4 HEARING OFFICER CELLI: Well, the -- the committee
5 would like to hear more on the -- the good cause, why these
6 documents could not be filed at the evidentiary hearing.
7 Why did they have to be received now and reopened now?
8 That's really the focus of the committee's question. What
9 is the good cause to justify reopening -- reopening the
10 record now to take this evidence this late in the game?

11 MR. BUSE: Good cause exists because that
12 information was not presented at the time of the pre-
13 conference hearing by the lead agency or the applicant.

14 HEARING OFFICER CELLI: I'm sorry. I was -- I was
15 distracted. You said -- could you say your last sentence
16 again, sir?

17 MR. BUSE: We contend that good causes exists
18 because that information was not presented at the time of
19 the pre-conference hearing by the lead agency or the
20 applicant.

21 HEARING OFFICER CELLI: Thank you. Go ahead,
22 Commissioner.

23 COMMISSIONER DOUGLAS: Mr. Buse, I had a couple of
24 questions. How does CBD intend to use this information?
25 What -- what would this information help you attempt to

1 demonstrate?

2 MR. BUSE: This is information that not only
3 relates to whether the project is -- is needed, and also to
4 the evaluation of -- of a reasonable reach of alternatives
5 to the project.

6 HEARING OFFICER CELLI: Could you be more specific
7 on that, please? What does it show? What does it prove?

8 MR. BUSE: I'm not sure that -- that it's a
9 question of what the information proves. It's what the
10 information allows us and other members of the public to
11 evaluate.

12 COMMISSIONER DOUGLAS: Well, this is getting
13 closer to what we're interested in. In a good cause
14 determination we're weighing the prejudice to you for not
15 allowing you to submit some documents that you're submitting
16 quite late in the process versus the prejudice to the
17 applicant and staff and others. And one, it is -- it's
18 helpful for us to know how you think you might use this
19 information, at what stage in the process. Is this is
20 information that you would use in argument in briefs? Is
21 this information that you think we should use in certain
22 ways? Because at this point I don't have a good sense of
23 the importance of this information to the center.

24 MR. BUSE: For example, we believe that the
25 purpose and need information would be helpful, if not

1 essential, in evaluating the feasibility of alternatives,
2 including and all solar alternative.

3 COMMISSIONER DOUGLAS: I'm still trying to
4 understand what the content of that information -- how the
5 content of that information would help us in the analysis,
6 or how it would help you argue that our analysis might not
7 have been well considered in some aspect that you might want
8 to raise. I also -- I'd like you to try to clarify that.

9 And I'd also like you to explain more what you
10 mean by purpose and need being kind of a central overriding
11 or -- or critical part of an analysis versus project
12 description and what is in the project description that
13 helps us ascertain the purpose of the project.

14 MR. BUSE: And my apologies, again, for the
15 echoes. It's -- it's very difficult to state -- state this
16 as I'm hearing this feedback.

17 HEARING OFFICER CELLI: Please speak very slowly
18 and clearly.

19 MR. BUSE: When I referred to the fundamental
20 purpose of the -- of the purpose and need analysis under
21 CEQA, in -- in essence I'm referring to the -- the
22 obligation to consider whether the project approval itself
23 is justified relative to the required no-project
24 alternative.

25 Secondly, this information is necessary to

1 evaluate the project's relative benefits and impacts in
2 connection with other alternatives to the proposed project.

3 Clearly we believe that the information we presented in --
4 in this month's submittal is capable of showing that the
5 purported need for the project is already being met and
6 served by other projects in existence or proposed throughout
7 the state.

8 COMMISSIONER DOUGLAS: Thank you. That's helpful.

9 I think we'll turn to other parties, now.

10 HEARING OFFICER CELLI: Thank you, Commissioner.

11 Let's hear from the applicant with regard to the
12 motion for -- to take judicial notice of these four
13 documents, please.

14 MR. CARROLL: Thank you. From Applicant's
15 perspective, with -- with all due respect, we believe that
16 CBD is -- is confusing two related but separate issues in
17 the argument made in their filing and just made by Mr. Buse.

18 And those arguments or those issues are the
19 objectives or the purpose of the project, on the one hand,
20 and the need for the project, on the other hand.

21 The applicant -- it's within the applicant's
22 discretion to determine the objectives for the project given
23 the applicant's business or -- or civic purpose in -- in
24 pursuing the project in the first place. We think that the
25 objectives for the project were very clearly laid out in

1 what became Applicant's Exhibit 2, the project description
2 section of the Application for Certification. And again, we
3 believe it is within the applicant's discretion to determine
4 the objectives for its project.

5 Separate and apart from the objectives analysis is
6 the needs analysis. And whether or not a project that meets
7 the objectives of the applicant is needed is a separate
8 question. It's a question that under the current legal and
9 regulatory structure this committee or this commission no
10 longer addresses. It's a question that gets addressed in
11 the market through a competitive RFP process with the
12 utilities and the issuance of power purchase agreements
13 subject to review and approval by the CPUC. So a needs
14 analysis is no longer something that this commission
15 conducts for projects. And as I said, it's really a
16 determination that gets made by -- by the market.

17 Those two issues really are related but separate.
18 And -- and I think what CBD seems to be suggesting in its
19 argument is that the -- the -- because there hasn't been a
20 determination of a need for a project that meets the
21 objectives set forth by the applicant, that therefore the
22 objectives are not a legitimate basis for dismissing
23 alternatives to the project. And we don't believe that
24 that's the case. And, in fact, we don't think that could be
25 the case because in the vast majority, if not all at this

1 point, of the projects that are subject to review under CEQA
2 there is no needs analysis. Yet inconsistency with the
3 project objectives is probably the most common basis for
4 dismissing alternatives to the project.

5 And so it can't be the case that you must
6 establish in the record a need for a project that meets your
7 stated objectives before you can rely upon those objectives
8 as a basis for dismissing alternatives to the project, which
9 I think is really sort of the heart of the CBD argument as I
10 understand it.

11 So with respect, just to summarize, with respect
12 to the purpose or the objectives of the project, we think
13 that that's been well established in the evidentiary record.
14 With respect to a needs analysis as set forth in the PMPD,
15 we don't think that's an inquiry that is properly before
16 this committee or -- or the commission in its review of the
17 proposed decision.

18 Having said all of that, we don't object to taking
19 official notice of these documents. They're publicly
20 available documents. We -- you know, without making any
21 concessions as to their relevancy we don't object to the
22 committee taking official notice, as long as doing so
23 doesn't have any implications with respect to the schedule
24 for these proceedings. Thank you.

25 HEARING OFFICER CELLI: Thank you, Mr. Carroll.

1 Staff, please.

2 MS. DE CARLO: I agree with Mr. Carroll's comments
3 about -- about the fact that CEQA, not any other law,
4 requires the Energy Commission to make a determination on
5 the need of this project. There was once a requirement a
6 decade ago that has since been removed. CEQA, there's no
7 case law under CEQA that -- that CBD can cite to that
8 requires the commission to make such a determination, nor
9 has staff asked the commission to make a determination.

10 CBD cites to two instances where they claim staff
11 has rendered a conclusion on whether this project is needed,
12 one Mr. Carroll referenced with regard to whether or not
13 alternatives meet the project objective. I believe Mr.
14 Carroll has adequately responded to that assertion.

15 And the other assertion is within our GHG
16 analysis. And -- and there we do not ask the commission to
17 render a decision on whether or not the project needed -- is
18 needed. We simply review the project in light of the
19 existing electricity grid, the likely impact of -- of
20 integrating the project into the grid, and the potential for
21 that integration to result in any potential significant
22 impacts as a result of greenhouse gas emissions. Neither --
23 neither of those instances call upon the commissioner to --
24 to render a decision on whether or not this project is
25 needed.

1 Staff does still oppose the -- the official
2 noticing of these documents. I don't believe any of them
3 rise to the level required under our regulations to accept
4 them as -- as under our official notice. CAISO, in my -- my
5 understanding, is not an executive or a legislative
6 department. And therefore documents from them, even if they
7 were considered official, which I do not believe at least
8 the PowerPoint presentation is, they would not be allowable,
9 per a court of law under Evidence Code Section 452,
10 subsection (h).

11 Also, none of these, I believe, are documents of
12 common knowledge or address a generally accepted matter, I
13 think, especially in terms of how CBD has stated they --
14 they intend to use these documents or they would like to use
15 these documents. I don't believe that -- that they present
16 any irrefutable facts that -- that Staff would not want
17 to -- to comment on.

18 So for those reasons we believe that the -- the
19 committee should reject CBD's motion for -- for official
20 notice of these four documents.

21 HEARING OFFICER CELLI: Thank you, Ms. De Carlo.

22 I just want to -- I'm going to inquire, and I'll
23 be doing this throughout the day, Ladies and Gentlemen, just
24 to see if there's anybody who has shown up from Desert
25 Citizens Against Pollution on the telephone. Jane Williams

1 or anyone from Desert Citizens Against Pollution on the
2 phone, please speak up. Hearing none -- oh. Is there
3 someone on the telephone from Desert Citizens Against
4 Pollution?

5 I think I should at least make the record clear to
6 everyone that we allow pretty much anybody to intervene in a
7 case. And anybody can participate as a party, such as
8 Center for Biological Diversity did or Desert Citizens. You
9 don't have to be an organization. You could be John Doe and
10 be an intervener in one of our cases as long as you petition
11 within the -- the timeframe.

12 In this case Desert Citizens Against Pollution
13 participated in the hearings. But after the hearings, at
14 the time of briefs, we received a brief from Desert Citizens
15 just saying basically we join in everything that CBD has to
16 say. That's been the last contact we're officially received
17 from Desert Citizens Against Pollution.

18 So I just -- I'm saying this because I'm really
19 not expecting anyone from Desert Citizens Against Pollution
20 to show up today. So if you're wondering where are these
21 people, well, there's a member here, and I'm happy to see
22 you. But this does happen. People have busy lives, you
23 know, and they're -- these are volunteers who are not
24 getting paid to show up, so anything can happen in that
25 regard.

1 What I'd like to do, Mr. Buse -- am I pronouncing
2 your name right? Is it Buse or Buse?

3 MR. BUSE: It's Buse.

4 HEARING OFFICER CELLI: Buse. Thank you. I'll
5 try to get it right from here on out.

6 My name is Celli, by the way, and it's spelled
7 C-e-l-l-i. It's got no H in it. And yet I insist that
8 everybody call me Celli, so I will call you whatever you
9 want me to call you, Mr. Buse.

10 So what I'd like to do is hear -- you have the
11 burden in this case. We'd just like to hear you wrap up
12 your position with regard to the taking of the official
13 notice and the reopening of the record for that purpose.
14 And then I believe the committee might take a short break
15 and -- and confer. So go ahead, Mr. Buse.

16 MR. BUSE: Just two brief responses on that issue.

17 First, as the applicant has indicated, the issues
18 of project objectives and the purpose and need for the
19 project aren't related, particularly where, as here, the
20 project objectives include a statement that the project is
21 intended to meet a demand for generations.

22 Second, we believe that the PMPD correctly
23 recognizes that current law does not entirely foreclose
24 consideration of the need for the project, recognizing that
25 need information in evidence could be used to support other

1 findings required by law.

2 HEARING OFFICER CELLI: Anything further, sir?

3 MR. BUSE: That's all. Thank you.

4 HEARING OFFICER CELLI: Okay. At this time,
5 folks, we're just going to go off the record for a moment,
6 let the committee confer, and then we'll be right back.
7 This will just be momentary, I think.

8 (Off the Record From 11:45 a.m., Until 11:49 a.m.)

9 HEARING OFFICER CELLI: Okay. Ladies and
10 Gentleman, sorry for the interruption. We'll do this from
11 time to time when there's a point of decision that the
12 committee needs to make. We're back on the record. Thank
13 you.

14 And at this time the committee has determined that
15 the documents purported to be -- or proposed and sought to
16 receive official notice, the four documents offered by the
17 Center for Biological Diversity, do not seem to meet the
18 minimum standard of a judicial or rather official notice
19 within our regulations or the evidence code.

20 Further, the committee finds that the CBD's motion
21 contains an insufficient showing of good cause why this new
22 evidence was -- should come in, why it was unavailable at
23 the evidentiary hearing, and why it should be entered into
24 the record now. Moreover, the question of purpose and need
25 is addressed and considered at page 3-18 of the PMPD, the

1 presiding members proposed decision. The PMPD explains the
2 history of the determination of the need for a power plant
3 and how pursuant to Senate Bill 110, which is now codified
4 in Public Resources Code Section 25009, the California
5 Energy Commission no longer makes a need determination
6 because the legislature excised that responsibility from
7 CEC's or from the Energy Commission's jurisdiction.

8 Further, CBD did not show any relevance, which is
9 their burden at this point, with regard to these documents
10 as vis-à-vis the record. CBD clearly disagrees with
11 decision, which is CBD's right. But without a showing of
12 how CBD was prevented from entering this evidence into the
13 record at the evidentiary hearing the committee sees no
14 reason to reopen the record to admit this new evidence now.

15 Accordingly, the motion to reopen the record to
16 take official notice of these documents is denied. That is
17 the ruling on the motion to take judicial notice.

18 There is another motion from CBD. CBD brought a
19 motion for a continuance to consider the question of need
20 and the impact of 2.5 from the PHPP, the Palmdale Hybrid
21 Power Plant, and alternatives.

22 Now I want to just state for the record, Mr. Buse,
23 that you did kind of tackle already the question of need,
24 and -- and a little bit on alternatives. We didn't really
25 hear from you on the question of 2.5s.

1 I do want to read to you from our California Code
2 of Regulations Section 1720. And this -- this relates to a
3 motion for reconsideration that goes to the full commission.
4 CBD's motion was not directed to the full commission, it was
5 directed to this committee, so I'm not sure of the
6 applicability. But I think this is a useful regulation
7 because it talks about what the standard is in considering
8 whether to reconsider. So it says as follows:

9 "The petition for reconsideration must specifically set
10 forth either, one, new evidence that despite the
11 diligence of the moving party could not have been
12 produced during evidentiary hearings on the case or,
13 two, an error in fact or a change or error of law. The
14 petition must fully explain why the matter set forth
15 could not have been considered during the evidentiary
16 hearings and their effects upon a substantive element
17 of the decision."

18 And that was a quote from California Code of
19 Regulations, Title 20, Section 1720, Subdivision (a).

20 So with that, Mr. Buse, I'm going to go back to
21 you and ask you to explain, please, for the committee the
22 good cause for a motion to consider -- motion to continue,
23 rather, this is a motion to continue the proceedings to
24 consider the question of need, the impact of 2.5 -- I'm
25 sorry -- the impact of particulate matter emissions 2.5

1 microns or less from the PHPP and alternatives.

2 So is that clear, Mr. Buse?

3 MR. BUSE: Yes. Sorry. I was on mute.

4 HEARING OFFICER CELLI: Oh, that's fine.

5 Actually, that's a good idea, because otherwise we get your
6 noise.

7 But if you could please answer that question.

8 We're looking for a good cause. Go ahead.

9 MR. BUSE: I think we've covered the issue of need
10 and alternatives.

11 As -- as for the particulate matter issue, I think
12 we have both a fundamental disagreement with the analysis of
13 particulate emissions contained in the -- in the staff
14 analysis. And to some extent we're talking at cross-
15 purposes.

16 HEARING OFFICER CELLI: Could you --

17 MR. BUSE: The staff analysis contends that
18 because the project related PM 2.5 emissions will meet
19 applicable standards there is no impact. We set forth in
20 our response to the PMPD -- if that was inaudible that's --

21 HEARING OFFICER CELLI: You --

22 MR. BUSE: We set forth in our response to the
23 PMPD our explanation as to why that -- that approach is
24 legally incorrect. But notwithstanding, the purported
25 compliance of the project -- I should say consistency of the

1 project's PM 2.5 emissions with applicable standards, the
2 project related PM 2.5 impacts, including those associated
3 with road paving, need to be evaluated and mitigated.

4 HEARING OFFICER CELLI: Anything further, Mr.
5 Buse, on that motion?

6 MR. BUSE: Not at this time. Thank you.

7 HEARING OFFICER CELLI: Let's hear from the
8 applicant, please.

9 MR. CARROLL: Thank you. With respect to the
10 issue of need, I think that that has been adequately
11 covered. Obviously, since we don't believe that the
12 question of the need for the project is properly before the
13 committee, we don't see any basis for continuing the
14 proceedings or reopening the evidentiary record to further
15 address that particular issue.

16 With respect to PM 2.5, we believe, without
17 rehashing all of the evidence that was presented, that there
18 was more than sufficient evidence presented during the
19 evidentiary hearings as reflected in the PMPD regarding the
20 project's PM 2.5 emissions. That analysis was conducted in
21 accordance with long- and well-established procedures by the
22 Energy Commission for evaluating a project's compliance with
23 applicable laws, ordinances, regulations and standards, as
24 well as with CEQA. And as I said, we believe that the --
25 the record is abundantly clear that the project does not

1 result in any significant impacts or violates any LORS as a
2 result of its PM 2.5 emissions.

3 CBD seems to be to some extent weaving into its --
4 into its argument on PM 2.5 that the Energy Commission
5 should have conducted an increments analysis, which is a new
6 upcoming federal requirement. It is not a current LORS
7 requirement, and therefore we don't believe something that
8 the Energy Commission is currently required to analyze. So
9 we believe that the PM 2.5 analysis that was completed for
10 the project meets all currently applicable LORS requirements
11 and all CEQA requirements. And we would see no basis for
12 reopening the evidentiary record to further analyze the PM
13 2.5 issue.

14 And then finally with respect to alternatives,
15 we've already covered that to some extent, as well. We
16 believe that the alternatives analysis that was completed by
17 the applicant and by the staff as reflected in the PMPD more
18 than meets the requirements set forth in Title 20, the
19 regulations covering the Energy Commission proceedings, as
20 well as the CEQA regulations for analyzing a reasonable
21 range of alternatives to the project.

22 In fact, if anything, you know, we think this
23 project went above and beyond what's typically done as a
24 result of the extensive analysis of alternative transmission
25 line routes, which is -- can -- you may recall was conducted

1 over Applicant's strenuous objection. So if anything we
2 have a more robust than usual alternatives analysis in the
3 record of these proceedings.

4 HEARING OFFICER CELLI: Thank you. Let's hear
5 from Staff, please.

6 MS. DE CARLO: Staff believes that -- believes
7 we've adequately addressed the alternatives and the need
8 discussion.

9 With regard to PM 2.5, Staff believes the record
10 contains substantial evidence on which the committee could
11 base their decision that the project will not result in any
12 significant adverse impacts as a result of PM 2.5 emissions,
13 and that the project conforms with all applicable LORS.

14 Mr. Buse mischaracterizes Staff's analysis. It's
15 not a simplistic deference to solely the standards. We do
16 an independent evaluation, as well.

17 Let me address two of the -- the points that --
18 that were fleshed out in CBD's comments. With regard to the
19 PM 2.5 increment analysis, it's clear from the -- the rule
20 adopted, the EPA adopted rule on October 20th, 2010, that
21 the increment requirement itself is not effective until
22 October 20th, 2011. And it's clear that if the applicant is
23 able to obtain their PFD permit prior to that date, that
24 that increment analysis or that increment requirement will
25 not apply to the project.

1 With regard to the two other items in that rule
2 making that are arguably applicable right now, the -- the
3 SILs and the SMC and --

4 HEARING OFFICER CELLI: Significant --

5 MS. DE CARLO: Yeah. Let me get the --

6 HEARING OFFICER CELLI: -- impacts levels and --

7 MS. HEAD: Significant monitoring concentrations.

8 MS. DE CARLO: Right.

9 HEARING OFFICER CELLI: -- significant monitoring
10 concentrations. We're going to try to give you -- spell out
11 these acronyms for you, folks.

12 MS. DE CARLO: Those two requirements are -- are,
13 in fact, de minimis standards. So if they are indeed
14 applicable to the project they would simply allow the
15 applicant, if they do meet those standards, to forego any
16 further modeling to enable the EPA to streamline their
17 permitting process and not have to require a substantial
18 amount of modeling from projects that do not necessitate it.

19 Staff has already required the extensive modeling
20 that the SILs and SMC would have required in any event. So
21 the fact that staff hasn't weighed in specifically on the
22 application of -- of this rule making does not have any
23 bearing whatsoever on the Energy Commission's decision on
24 this project.

25 In addition, if any of these provisions did apply

1 they will be enforced by EPA. There's no question that this
2 project would be able to go forward without complying with
3 all PSD requirements that EPA imposed.

4 With regard to the road paving analysis, CBD
5 claims that the committee was unjustified in disregarding
6 their expert witness's testimony with regard to the
7 potential for road paving to increase PM 2.5. I believe
8 there was substantial evidence in the record for the
9 committee to find that the road paving would not result
10 in -- in a potential significant increase.

11 The applicant -- or, I'm sorry, CBD's expert
12 witness testified that he had no knowledge of the particular
13 roads being proposed to be paved. The expert witness's
14 testimony also indicated that the basis for his conclusion
15 that road paving can result in PM 2.5 increases is because
16 road paving in general leads to increased traffic.

17 Both Staff and the applicant's witnesses testified
18 that these particular roads proposed to be paved will not,
19 in fact, increase traffic, or is not likely to because
20 they -- they are not connector roads. They would not be
21 utilized by people trying to take shortcuts or to get
22 anywhere in particular. These are roads mainly in current
23 residential developed areas. And any -- any potential
24 increase would be slight and would result in a reduction of
25 emissions that would generally occur from the dust

1 generated. So Staff and the applicant testified and there
2 was substantial evidence in the record for the committee to
3 base its decision.

4 So Staff therefore recommends that the committee
5 reject CBD's petition to continue the evidentiary hearings
6 for further information in evidence.

7 COMMISSIONER DOUGLAS: Thank you. I just --
8 something you said I wasn't clear on. You -- I thought you
9 said that Staff actually did an analysis of the SILs and the
10 SMCs.

11 MS. DE CARLO: No. If we would have --

12 COMMISSIONER DOUGLAS: Oh.

13 MS. DE CARLO: -- there -- there was -- it would
14 not likely result in any different analysis, because they
15 would just require -- the SILs are base level, phase one
16 level analysis that requires that you go to phase two if you
17 meet the SILs or the SMCs. Staff has already required that
18 modeling, which -- and the applicant, correct me if I'm
19 wrong. It basically requires the project to be modeled for
20 cumulative impacts, its contribution to the local area.

21 HEARING OFFICER CELLI: Very good. Thank you.
22 Thanks for that clarification.

23 MR. CARROLL: Mr. Celli, may -- may we provide
24 some further response with respect to that issue, that being
25 the analysis that would be required under the SILs and the

1 SMC, brief?

2 HEARING OFFICER CELLI: Certainly.

3 MS. HEAD: Yes. This I Sara Head. All I wanted
4 to add is that SMC is actually a threshold, that if you're
5 over you might have to do background monitoring. And in
6 this case we had more than adequate background monitor from
7 the City of Lancaster. So we had very good background
8 monitoring data.

9 But in -- in terms of the SILs and requiring the
10 accumulative analysis we absolutely agree, we did do that
11 and more.

12 HEARING OFFICER CELLI: Thank you.

13 MR. CARROLL: So without conceding the
14 applicability of those two requirements to the project at
15 this time the evidence reflect that, in fact, we did meet
16 those requirements.

17 HEARING OFFICER CELLI: Understood. And the
18 committee has read the statute many times now.

19 I'm going to ask again on the phone if there's a
20 representative for -- from Desert Citizens Against Pollution
21 on the telephone. Would you please speak up if you're hear?
22 Or -- or anyone from Desert Citizens Against Pollution
23 against pollution who showed up today who's representing
24 Jane Williams? Okay.

25 Sorry, folks, I have to do this just to make sure.

1 Then, Mr. Buse, I'm going to take -- give it back
2 to you. Any reply?

3 MR. BUSE: Yes. The point of the SILs was that it
4 provided a threshold of significance towards elevating the
5 project's 2.5's impacts, and a threshold that will be
6 exceeded by the project's emissions. So on a basis for a
7 finding of significance, based on the applicability of the
8 SILs.

9 HEARING OFFICER CELLI: Anything further, Mr.
10 Buse?

11 HEARING OFFICER CELLI: As for the increased PM
12 2.5 emissions associated with road paving, our expert
13 testimony did indicate that paving is associated in general
14 with increased particulate emissions, 2.5 emissions, I
15 should say.

16 It is correct that this information was general
17 and not applied to the specific road segments in question.
18 But that hadn't adequately been rebutted by the evidence
19 provided by the staff and the applicant as to the expected
20 levels of traffic on the proposed road segments. That's
21 all. Thank you.

22 HEARING OFFICER CELLI: Thank you. And thank you
23 for speaking so clearly. It helps when you speak that
24 slowly. We -- we got all of that, so thank you very much.

25 HEARING OFFICER CELLI: Again, Ladies and

1 Gentlemen, we're going to go off the record briefly for a
2 quick committee conference, and we'll be right back.

3 (Off the Record from 12:08 p.m., Until 12:09 p.m.)

4 HEARING OFFICER CELLI: Thank you. We're back on
5 the record.

6 The motion of the Center for Biological Diversity
7 to continue the adoption hearing -- I'm sorry. The petition
8 or motion to continue the hearing to reconsider the question
9 of need and the impact of PM 2.5 from the PHPP and
10 alternatives is denied because all of these questions have
11 been fully analyzed in the record, and CBD has not shown
12 good cause for the continuance nor shown the existence of
13 new evidence that despite the diligence of CBD could not
14 have been produced during evidentiary hearings on the case,
15 nor an error in fact or a change or error of law. So as
16 such the adoption hearing would remain set as July 27th,
17 2011.

18 With that we have covered all the points brought
19 by way of motion from Center for Biological Diversity. And
20 now we can finally, an hour later, get into the errata
21 itself.

22 I want to first turn to Applicant. Generally,
23 Ladies and Gentlemen, the applicant has the burden of proof
24 in an application for certification of a power plant. So
25 that's why we turn to the applicant first, and let them also

1 have the last word.

2 Any questions or statements or comments on the
3 draft errata -- first of all let me ask you this, Mr.
4 Carroll. Did you receive the draft errata that we sent by
5 email yesterday?

6 MR. CARROLL: Yes, we did.

7 HEARING OFFICER CELLI: Oh. Okay. Great. And go
8 ahead, if you have any particular comments.

9 MR. CARROLL: We have just two minor comments. In
10 general we felt that the errata adequately and accurately
11 reflected the comments that were submitted by the applicant.
12 We have some minor corrections to the air quality standards
13 table, which I'm going to let Ms. Head address, that's on
14 page 4 of the draft errata.

15 MS. HEAD: Yes. Basically, in terms of the
16 corrections that were made, the particular matter PM 10
17 annual standard should be in terms of an annual arithmetic
18 mean, not an annual geometric mean.

19 And secondarily, in terms of the lead standards,
20 there's also a 30-day ruling average standard of 0.15
21 micrograms per cubic meter, a federal standard that could be
22 added to the table. If it's helpful I do have a copy of the
23 California Air Resources Board Standards Table attached to
24 this errata that I would be happy to give somebody if you
25 want to agree to those corrections.

1 HEARING OFFICER CELLI: What I'm -- what I'm going
2 to do for the benefit of all of the people who are here, and
3 the folks on the telephone, is I'm going to try to get the
4 draft errata that we're all talking about up on these
5 screens so that we can -- we can be on the same page, quite
6 literally. Oh, good. It actually showed up. Okay. So
7 this is on page 4. Oh, I hope I get more than page 1 on
8 this thing. Oh, I see the way it's got to be done. There
9 we go. This is the table that Ms. Head is referring to,
10 Ladies and Gentlemen.

11 And, Ms. Head, I'm sorry, but I'm looking at it
12 and I -- and I don't see where -- where I need to change,
13 what change needs to be made.

14 MS. HEAD: Okay. And --

15 HEARING OFFICER CELLI: I see particulate
16 matter --

17 MS. HEAD: Particulate matter --

18 HEARING OFFICER CELLI: -- PM 10.

19 MS. HEAD: -- PM 10.

20 HEARING OFFICER CELLI: Okay.

21 MS. HEAD: And see, it says ann or annual
22 geometric mean?

23 HEARING OFFICER CELLI: Yes.

24 MS. HEAD: That ought to be annual arithmetic
25 mean.

1 HEARING OFFICER CELLI: Arithmetic?

2 MS. HEAD: You -- you can see down in fine
3 particulate where it says ann arith mean. It should be the
4 same.

5 HEARING OFFICER CELLI: Oh. Good.

6 MS. HEAD: Yes.

7 HEARING OFFICER CELLI: And also?

8 MS. HEAD: And then down under the lead standards
9 we have 30-day calendar quarter. There should be a new line
10 added that is a 30-day rolling average. And then over in
11 the federal primary standards it should say 0.015, and I
12 already just gave our notes away, so I think that's right.

13 Michael?

14 HEARING OFFICER CELLI: 0.1 -- 0.015?

15 MS. HEAD: 15, is that -- is that right? Okay.
16 I'm just trying to remember for sure if there was that extra
17 zero in there -- micrograms per cubic meter.

18 HEARING OFFICER CELLI: So let me be clear that
19 we're -- we're -- since lead is included it should also
20 include the rolling three-month average standard. So you
21 want to split this -- oh.

22 MS. HEAD: This is the ARB table.

23 HEARING OFFICER CELLI: I see what you're saying.

24 MS. HEAD: Okay. I'm sorry. It's just 0.15.

25 HEARING OFFICER CELLI: Okay. Thank you. So the

1 record should reflect that we've received a document which
2 is -- I'm just going to -- it says Ambient Air Quality
3 Standards. It looks just like the table that we're working
4 off of that's been updated.

5 Have you had a chance to see this, Ms. De Carlo?

6 MS. DE CARLO: Just briefly a minute ago. Let
7 me -- Steve Radis, our air quality analyst, is on the line.
8 Let me see if he has any comments.

9 HEARING OFFICER CELLI: Well, before I get to your
10 comments I just want to -- I want to determine whether
11 everybody has seen this. I know --

12 MS. DE CARLO: Oh. Okay.

13 HEARING OFFICER CELLI: -- this is the first I've
14 seen of this document. Can -- did mister -- did CBD get a
15 copy of this?

16 MR. CARROLL: No. We did not distribute the
17 document. The document that you're looking at is the
18 ambient air quality standards, all from the California Air
19 Resources Board website.

20 HEARING OFFICER CELLI: Okay. So just to be clear
21 and for your benefit, Mr. Buse, we've got a document that
22 purports to show the corrections as recommended by the
23 applicant. I'm going to ask that the applicant send it to
24 the POS today as soon as possible. It's -- just to be
25 clear, it just shows -- if you've been listening to our

1 discussions here you can understand what those changes are
2 that are reflected in this new document.

3 So we will accept the new document as a
4 recommended change.

5 Any question about that, Mr. Buse?

6 MR. BUSE: No question at this point. Thank you.

7 HEARING OFFICER CELLI: Okay. And then from --
8 anything further from Applicant?

9 MR. CARROLL: No. I would just add on that
10 particular issue, just to be clear, all we're really doing
11 here is adding an additional requirement on the project,
12 just if there are any concerns about it. We're not
13 eliminating requirements, we're pointing out that there is
14 an additional requirement that applies that the project does
15 comply with.

16 HEARING OFFICER CELLI: Okay. Because you're just
17 taking on more burden because --

18 MR. CARROLL: Yes.

19 HEARING OFFICER CELLI: -- that's the way you are.
20 Okay.

21 MR. CARROLL: And then -- and then we did have
22 one --

23 COMMISSIONER DOUGLAS: Oh, yes. Go ahead.

24 MR. CARROLL: -- one additional comment on the
25 errata on page 42.

1 HEARING OFFICER CELLI: Of the errata, of the
2 draft errata?

3 MR. CARROLL: Correct. Item 54 there --

4 HEARING OFFICER CELLI: I don't -- I have on page
5 42, Item 60. So Item 54 on the copy that I have occurs on
6 page 40.

7 MR. CARROLL: Okay. Well, maybe the pagination
8 came out different in the printing. But it's Item 54, page
9 8.3-4, second paragraph.

10 HEARING OFFICER CELLI: Got it.

11 MR. CARROLL: Okay. There -- this is a staff --

12 HEARING OFFICER CELLI: Let me -- actually, let me
13 get to that in the -- I'm going to go so everyone -- can you
14 still hear me okay when I turn away from the mike? Good.
15 Good. Okay.

16 We're on page 40 here of the draft. Oh, boy, I --
17 this always drives me nuts when -- what page was it for you?

18 MR. CARROLL: Forty-two.

19 HEARING OFFICER CELLI: Oh, let's go to 42 then.

20 MR. CARROLL: There it is.

21 HEARING OFFICER CELLI: Okay. Apparently -- oh, I
22 see why, because I've got a word and you've got a .pdf, and
23 I think that's what happened. Okay.

24 So, Ladies and Gentlemen, what you're looking at
25 is Item 54, page 8.3-4, second paragraph. And the people on

1 the telephone can look at it with us.

2 Go ahead.

3 MR. CARROLL: The comment that we have is with
4 respect to the new sentence at the end of that paragraph,
5 and in particular the last phrase which states, "and limited
6 the paving proposal to road number two, four, six, seven and
7 eight," and then it cites to Exhibit 146.

8 We don't believe that the evidence in the record
9 supports that statement in the sense that Applicant did
10 identify of the ten proposed road segments five that were
11 preferred, and those were two, four, six, seven and eight,
12 and made a commitment to focus on and utilize those -- those
13 road segments initially, but did not take off the table
14 entirely the possibility of utilizing the other five road
15 segments.

16 And so I think our primary comment or concern
17 would be with respect to the word limited, which suggests
18 that the only road segments that would be considered for
19 paving are two, four, six, seven and eight. And while those
20 are the preferred road segments that we intend to focus on
21 and that we believe some portion of will be paved to meet
22 the offset requirements, the other five road segments are,
23 in our view, still available, if necessary, to be used for
24 paving to generate the offsets.

25 HEARING OFFICER CELLI: In that regard I'm just --

1 what I'm looking -- I'm frantically dragging between
2 versions right now because I had addressed this same
3 question.

4 MS. DE CARLO: It was on page 23 of the .pdf
5 version.

6 HEARING OFFICER CELLI: Twenty-three. But it was
7 item number -- was it still Item Number 54?

8 MS. DE CARLO: The one you addressed where you
9 were proposing to cross out that exact language is Item 35.

10 HEARING OFFICER CELLI: Oh. Okay. That was --
11 that's 7-1. So I need to get to the 8s. Let's see. And
12 then we get into bio. Bio. Soil and water. Cultural.
13 Land use. Where did it go? Transportation. This was in
14 socio, socioeconomic. Vis. Visual resources. Noise and
15 vibration. Socio. Oh. Okay.

16 Now this also doesn't have it. So page -- page
17 40, there's -- there's two places where this occurs. Oh.
18 Page 40 of our errata, which is what we're looking at,
19 this -- this enumeration of roads. There is also -- I have
20 at page 4, Item 6. Oh, man, it's -- or items -- page 7,
21 Item 12. Oh. Okay.

22 Does yours have an item -- do you have Item 12,
23 which is page 6.2-33, "the committee adds the following
24 language," after the first paragraph? Does yours say that?

25 MS. DE CARLO: On page 8.

1 HEARING OFFICER CELLI: On page 8?

2 MS. DE CARLO: For the .pdf version.

3 HEARING OFFICER CELLI: Okay. Great. Same --
4 same situation. The -- oh, wait. No. That wasn't -- that
5 wasn't it either.

6 MS. DE CARLO: I believe you were looking for Item
7 Number 35, which is the exact same language.

8 MR. CARROLL: Right.

9 HEARING OFFICER CELLI: So it's 35. And what page
10 is that on?

11 MS. DE CARLO: It's on 23 for the .pdf version.

12 HEARING OFFICER CELLI: Oh, I got you. Oh, thank
13 you very much. Thank you, Jennifer Jennings.

14 And if -- if any of you want to make a comment
15 we'll be taking comments pretty shortly, I hope. You'll
16 need to see Jennifer Jennings and fill out a blue card that
17 indicates that you want us to take your comment. So if you
18 haven't done that already please do so.

19 No, it doesn't have it in this. The situation is
20 that what happened at the evidentiary hearing is that
21 Exhibit 146 was admitted into evidence. It had other
22 documents attached to it that CBD objected to. Rather than
23 rule on the objection Applicant withdrew the other documents
24 and put in the map only.

25 MR. CARROLL: That is correct. Exhibit 146 as

1 initially proffered by the applicant included a memo which
2 provided all the explanation for the reason for identifying
3 preferred road segments and what the meaning of the
4 preferred road segments were, and then a map attached that
5 identified the preferred road segments. CBD objected to the
6 memo but not the map. So as a result only the map came in,
7 and I think that's what's contributing to some of the
8 confusion here is that the memo that explained what the map
9 was did not end up being admitted into evidence. So think
10 that's contributed to some of the confusion.

11 HEARING OFFICER CELLI: So there's two places
12 where that shows up, in biology and in socioeconomics?

13 MR. CARROLL: Correct.

14 HEARING OFFICER CELLI: And what I had proposed,
15 and I'm sorry to say it doesn't look like it made it into
16 this, was to strike the first sentence.

17 MR. CARROLL: Yes.

18 HEARING OFFICER CELLI: Page 23. Okay.

19 MR. CARROLL: So I think one of the other things
20 that's a little bit confusing here, Mr. Celli, is that the
21 version that's reflected on the screen isn't matching with
22 the hardcopy version that we're working off of. So in the
23 hardcopy version 35 --

24 HEARING OFFICER CELLI: Actually, it is. So right
25 now Item 35 is accurately reflected. So what we all have

1 now, we're all on the proverbial same page, Ladies and
2 Gentlemen. What the committee proposed to do to correct the
3 record here is to strike the first sentence altogether --

4 MR. CARROLL: Yes. I --

5 HEARING OFFICER CELLI: -- and strike the --
6 change the word in the first -- the new first sentence,
7 Applicant's consultants conducted surveys on "the" rather
8 than "those" road segments. And I think that's cures the
9 defect.

10 Is that acceptable?

11 MR. CARROLL: Yes, that does. I'm not sure what
12 we were looking at a minute ago, but all that's corrected
13 that wasn't there. But as it currently appears Item 35, we
14 believe, accurately reflects what is in the evidentiary
15 record.

16 HEARING OFFICER CELLI: And you agree with that,
17 Staff, Ms. De Carlo?

18 MS. DE CARLO: Yeah, that's fine. I mean, our --
19 our proposal for the change in Item 54 was merely to make
20 sure that the PMPD was consistent. So if you're -- if
21 you're proposing to strike it on Item 35 we're find with it.
22 We're moving on Item 54. Although, I don't know if the --
23 the sentence preceding our proposed insertion needs to be
24 altered to reflect the record.

25 HEARING OFFICER CELLI: Well, let me just make

1 sure.

2 Mr. Buse, are you looking at that -- the change to
3 Item 35? Can you see that?

4 MR. BUSE: Yes.

5 HEARING OFFICER CELLI: Do you have any comment on
6 that change?

7 MR. BUSE: Well, I'm trying to figure out how that
8 proposed change relates to the -- the purposed edit to
9 paragraph 54.

10 HEARING OFFICER CELLI: Okay. Let's -- that's
11 good. I'll turn now to page 54. I just wanted to make sure
12 that you and I and the other parties were all talking about
13 the same -- the same thing. So Item 54 is on page 42. We
14 have that up now, I believe. And what it purports to do
15 is -- is -- this was staff's recommended change. And I'm
16 wondering whether the change needs to happen at all or
17 whether we would just go with the original one.

18 MS. DE CARLO: Right. Our -- our intention with
19 the change was, again, just to make sure the PMPD was
20 consistent. Because otherwise there were two inconsistent
21 statements about what the applicant was proposing with
22 regard to the road paving.

23 We're fine with withdrawing this proposed change.
24 Staff's analysis was performed on all of the roads proposed,
25 all of the ten. And based on an analysis of all those roads

1 we concluded that there would not be any significant adverse
2 impacts. So we're fine with this change. We believe it
3 still retains substantial evidence in the record to support
4 the committee's decision.

5 HEARING OFFICER CELLI: Okay. So the committee
6 will treat as withdrawn that Item 54 offered by Staff.

7 MR. CARROLL: The -- let me just make sure that I
8 understand, because I think changes were submitted at
9 different times. So that what the change that's being
10 withdrawn is the addition of the last sentence; is that
11 correct?

12 HEARING OFFICER CELLI: And -- and the removal of
13 the strikeout.

14 MR. CARROLL: Okay. The removal of the strikeout
15 actually needs to stay because that -- that addresses a
16 separate issue, which is whether or not a rule is required.
17 And so we had extensive discussion at the evidentiary
18 hearings about that. So from Applicant's perspective the --
19 the new sentence that shows up in Item 54 should not be
20 there, but the sentence that is shown stricken in Item 54
21 needs -- does, in fact, need to be stricken.

22 MS. DE CARLO: And Staff agrees with that.

23 HEARING OFFICER CELLI: Okay. And staff agrees.

24 Mr. Buse, any comment on that?

25 MR. BUSE: We figured retention of the language at

1 the end of Paragraph 54 -- the presumed reason for inclusion
2 of that sentence was the staff's acknowledgment that the
3 surveys of the potential road segments were cursory. And
4 therefore, if the full range of unspecified road segments
5 were available for paving it was accordingly more difficult
6 to determine what the actual impacts of paving those
7 segments were.

8 HEARING OFFICER CELLI: I understand that. The --
9 the predicament we're in is that the document that actually
10 enumerated and identified these roads was not received into
11 evidence because of an objection voiced by Ms. Belenky at
12 the hearing. And therefore we have no record. We're not
13 allowed to put anything into the decision that isn't
14 reflected in the record, and we don't have any record of a
15 identification of the exact roads that the applicant intends
16 to pave. So that -- that's -- that's the only issue here
17 that -- that's the reason I'm moving to strike that
18 language, is because it's not -- it's just not reflected in
19 the exhibit. Do you understand that?

20 MR. BUSE: Thank you. I understand. Let me note
21 for the record that this still leaves unresolved the
22 problem -- the problem of adequate identification of impacts
23 when the road sections -- when the road segments are not
24 specified.

25 HEARING OFFICER CELLI: Okay. But you also

1 understand that the -- the road segments were identified in
2 a pool of originally 11. It was during evidentiary hearing
3 reduced to ten. These would have been a subset of those
4 ten. But the -- the pool remains the same, it's still the
5 same ten roads --

6 MR. CARROLL: And just --

7 HEARING OFFICER CELLI: -- and it could be any of
8 them.

9 MR. CARROLL: Okay. And just to be clear --

10 MR. BUSE: Yes.

11 MR. CARROLL: -- we believe that the record does
12 identify the ten roads from which the applicant may select
13 to pave. So it's not as though the roads have been -- not
14 identified. The only thing that's not in the evidentiary
15 record from Applicant's perspective is a commitment to limit
16 the paving to the preferred road segments. They are
17 preferred by they're not the only.

18 HEARING OFFICER CELLI: Well put. And I think
19 that that explains the situation, Mr. Buse.

20 So with that, then we would note then that the
21 recommendation of Staff is to -- well, actually the
22 recommendation of Applicant is to preserve the stricken
23 language as stricken. And Staff would move to strike their
24 recommended last sentence in Item 54.

25 MS. DE CARLO: That's correct.

1 HEARING OFFICER CELLI: And that covers it. Good.
2 Thank you.

3 Anything -- any other matters with regard to the
4 errata?

5 MS. DE CARLO: Well, can I check with my expert
6 witness on the phone?

7 Steve, do you have any comments on the applicant's
8 proposed changes to the air quality table? Is he able to --

9 HEARING OFFICER CELLI: The record should reflect
10 we're addressing Steve Radis --

11 MS. DE CARLO: Yes.

12 HEARING OFFICER CELLI: -- from the California
13 Energy Commission.

14 MR. RADIS: Yes, this is Steve Radis. I do not
15 have any additional comments to the table. So it's
16 acceptable.

17 MS. DE CARLO: Okay.

18 HEARING OFFICER CELLI: I'm going to take that to
19 mean that he had no further comment and that it was
20 acceptable. And thank you, Mr. Radis.

21 MR. RADIS: Correct.

22 HEARING OFFICER CELLI: Oh, good. Okay. Good.

23 MS. DE CARLO: Now --

24 HEARING OFFICER CELLI: Thanks for calling in.

25 MS. DE CARLO: Mr. Celli, I do have two comments

1 that aren't reflected in the errata. I don't know if you
2 want to take those up now or --

3 HEARING OFFICER CELLI: Yes, I do.

4 MS. DE CARLO: Okay. In going through the PMPD I
5 noticed there are two potential omissions --

6 HEARING OFFICER CELLI: Oh, I'm sorry.

7 MS. DE CARLO: -- of the conclusions of law.

8 HEARING OFFICER CELLI: One moment.

9 MS. DE CARLO: Okay.

10 HEARING OFFICER CELLI: Are these -- these are --
11 are these in the draft errata or these are not contained in
12 the draft errata?

13 MS. DE CARLO: No. No. They're just -- there are
14 omissions that I have noticed in --

15 HEARING OFFICER CELLI: Okay.

16 MS. DE CARLO: -- in going through the PMPD.

17 HEARING OFFICER CELLI: Hold those for the moment.

18 MS. DE CARLO: Okay.

19 HEARING OFFICER CELLI: Okay. Now what I want to
20 do, since we're heard from all of the parties with regard to
21 their comments on the errata, is I wanted to share a few
22 that the committee had, some questions. We already talked
23 about, is it Item 4 -- or, no, that would be page 4, Item 6.
24 Okay. That's -- that's clear where those changes came from.
25 Page 7, Item 12, here you go. The committee intends to add

1 the following language. I just -- I wanted to share this
2 with everybody publicly on the record so that you understand
3 that these are not recommendations of any of the parties.
4 This comes from the committee.

5 The Department of the Air Force -- this is new
6 language that would be contained in the section under public
7 comment. So this comes at the -- after the first paragraph,
8 and this is on page 8. Let me put this up for everyone to
9 see. It says,

10 "The Department of the Air Force and Plant 42
11 contractors, Boeing, Lockheed Martin, and Northrop
12 Grumman, submitted an official statement on July 8th,
13 2011 to the effect that they have not identified any
14 issues or impacts to their programs and operations at
15 Plant 42 from the PHPP."

16 I included that because we only received that
17 comment last night -- or yesterday during the day, and I
18 wanted that comment to be included in the public comment
19 section.

20 I also wanted to address an issue raised by CBD in
21 that they pointed out, and I think correctly so, that the
22 committee never really addressed the request from the City
23 of Lancaster to suspend proceedings. So I added the
24 sentence at the end of the paragraph that says,

25 "The changes to the PSD rules relative to PM 2.5

1 emissions in the area do not warrant a suspension of
2 the proceedings."

3 So I just wanted to show you that we put that in.
4 I wanted to bring that to everybody's attention. If anybody
5 has an objection I'd like to hear it from Applicant or
6 Staff. Any objection?

7 MR. CARROLL: No objection from Applicant.

8 HEARING OFFICER CELLI: Or Staff, any objection?

9 MS. DE CARLO: No objection.

10 HEARING OFFICER CELLI: And any objection from Mr.
11 Buse?

12 MR. BUSE: No objections. I think as to the --
13 the explanation that the changes to the PSD rules do not
14 warrant a suspension of the proceedings, I'd suggest that
15 that be expressly tied to the City of Lancaster's request.

16 HEARING OFFICER CELLI: It actually is. It
17 comes -- there's -- this section just -- I know it's a
18 little weird to see it out of context in this errata. But
19 what this is tagged to is their comment in the public
20 comment section of that section. So it's not -- it's not
21 just this paragraph floating out by itself. It's actually
22 the rest of their -- it's the tag to their comment. Is that
23 clear?

24 MR. BUSE: Yeah. Let me take a look at that.

25 HEARING OFFICER CELLI: Okay. And while you're

1 looking at that I just want to, once again, ask if there's
2 anyone from the Desert Citizens Against Pollution on the
3 phone or here in the room? No? Seeing none, hearing none,
4 other than a member, a couple members, but no
5 representative.

6 MR. BUSE: Okay. I see how that change will work
7 in context.

8 HEARING OFFICER CELLI: Right. I just -- I just
9 thought it was appropriate. I think you -- your point was
10 well taken, that it wasn't addressed expressly. And I
11 wanted to -- I thought that that was a worthy correction to
12 make. So thank you for that.

13 Also, page 11, Item 6 -- oh, come one. Page 11,
14 or maybe I've got that wrong. Item -- page 6. Why -- oh,
15 you know, I don't think that I've got that right. Okay.
16 Page 19. There was a section I'm looking for that doesn't
17 relate. Maybe it's in this one. I'm going to have to go
18 back and forth between two versions in order to cross-
19 reference. Page 11, Item 6. You know, isn't it great that
20 we have computers? Because they used to have to do this
21 sort of thing by hand. Anyway, let's see. No, that's not
22 it either. Okay.

23 Let's move on to Item 19 -- page 19, Item 32.
24 There we go. Item 32 on my page 19. Item 32, page -- page
25 21 on your -- on yours. It says,

1 "Additional surveys not recorded in the record were
2 conducted for this species by Staff in the Spring and
3 Summer 2011. The recommended additions identified
4 below clarify the species -- that this species is
5 expected to have a low potential to occur on the
6 project site."

7 And my question was, it sounded like these
8 supplemental surveys are not in our record, and that's -- if
9 that's the case then I wouldn't be able to put this
10 correction in. This was a staff recommended. So perhaps
11 you could explain.

12 MS. DE CARLO: It is. And our biologist
13 recommended this just to clarify the record. Unfortunately,
14 he was on vacation when it occurred -- came to my attention
15 that -- that perhaps we -- we didn't have support for this
16 in the record. And so we had his supervisor check the
17 record, and he couldn't find any indication that -- that we
18 had testified to this. So Staff is -- is fine withdrawing
19 this clarification.

20 HEARING OFFICER CELLI: So that is -- on page 19,
21 Item 32 is withdrawn by staff. Thank you for that
22 clarification.

23 On page 21, did I already do that? Item 35, yes,
24 we talked about that.

25 Page 25, a question about relocation of tortoises.

1 On page 25, Item 3, in my -- my Word version, so relocation,
2 it's Item 3 of -- of that rather long bio condition. And I
3 think it's bio, Bio 13. And I just wanted to know what
4 happened to the -- the tortoise relocation. Because this --
5 from my reading of this it looks like it's just been
6 stricken. And I didn't know whether that is reflected in
7 the record or not.

8 MS. DE CARLO: It is. This condition comes from
9 our pre-hearing conference statement where we proposed this
10 as a result of a workshop we engaged in with the applicant,
11 a publicly noticed workshop where we agreed -- the applicant
12 requested to have the option because the potential for
13 encountering on this tortoise is extremely low. The
14 applicant requested the option to -- to put together the --
15 the report only if they encounter tortoise. And they agreed
16 to stop all construction if that event did occur. So Staff
17 agreed that that approach would be sufficient to ensure
18 proper mitigation.

19 HEARING OFFICER CELLI: Okay. So this was one of
20 the -- we received a number of showing from the staff and
21 Applicant that there were previously agreed to conditions
22 that were in the record, and then because of clerical error
23 didn't make it into the PMPD. They were the old FSA version
24 rather than the new updated. So -- and this apparently is
25 one of them?

1 MS. DE CARLO: Yes.

2 HEARING OFFICER CELLI: Okay.

3 MS. DE CARLO: That's correct.

4 HEARING OFFICER CELLI: And then lastly, let's
5 see, I've got page 37, 37, Item 50. Oh, the TRANS-4, I just
6 wanted to make sure that that blinking light was in the
7 record somewhere. It's in the FSA.

8 MS. DE CARLO: Yeah. It's in our discussion of --
9 of what should be required or what is presumed to be
10 required in the condition of certification, but it never
11 made it into the actual condition. And that was Staff's
12 error.

13 HEARING OFFICER CELLI: But the -- I recall
14 actually even seeing it in a PMPD. So it was in the FSA.

15 MS. DE CARLO: Yeah. Right.

16 HEARING OFFICER CELLI: The discussion was in
17 the --

18 MS. DE CARLO: It's referenced in the PMPD. Yeah.

19 HEARING OFFICER CELLI: Okay. And is there any
20 comment on that from Applicant?

21 MR. CARROLL: No.

22 HEARING OFFICER CELLI: And, Mr. Buse, any comment
23 on the new bullet in TRANS-4, which is under Traffic and
24 Transportation, Number 50? I'll put it up.

25 MR. BUSE: I don't believe so. I'm not there yet.

1 HEARING OFFICER CELLI: What page is that, 37,
2 Item 50. Yeah. I want to acknowledge, this is in the
3 record but it wasn't -- it wasn't -- it didn't make it into
4 the PMPD. But it -- it seems like a reasonable thing to
5 have if you're going to have a tower near an airport.

6 MR. BUSE: No comment on Item 50.

7 HEARING OFFICER CELLI: Thank you very much.

8 MR. BUSE: I did have questions about the errata
9 related to the Arroyo Toad.

10 HEARING OFFICER CELLI: Do you know which item?

11 MR. BUSE: I'm not sure that I followed the -- the
12 proposed changes that were just discussed.

13 HEARING OFFICER CELLI: Can -- can -- I wonder the
14 best way to do this. Those changes came from Staff, as I
15 recall. Perhaps, Ms. De Carlo, you could summarize what the
16 changes were with regard to Arroyo Toad for the record so
17 that everybody can recall.

18 MS. DE CARLO: I believe we were just trying to
19 clarify the record in terms of -- of the presence or
20 potential presence of the Arroyo Toad and what the studies
21 did find.

22 HEARING OFFICER CELLI: Do you have any item? Mr.
23 Buse, are you looking at any particular item in the draft
24 errata?

25 MR. CARROLL: Item 32, I believe.

1 HEARING OFFICER CELLI: Thirty-two.

2 MS. DE CARLO: Which we're agreed to withdraw.

3 MR. BUSE: Also, Item 30.

4 HEARING OFFICER CELLI: Okay. Before we get to
5 Item 30, I just heard you say that you agree to withdraw
6 Item 32?

7 MS. DE CARLO: Yeah. We discussed that a couple
8 minutes ago.

9 HEARING OFFICER CELLI: Oh. But I had that in a
10 different context. Okay. I'm sorry. I'm working between
11 two versions, and so withdrawn. Okay.

12 And Item 30, Mr. Buse, what was your concern?

13 MR. BUSE: On my reading Item 30 and Item 32 were
14 linked. The text relating to Arroyo Toads in Item 30
15 appeared to be based on the -- the additional surveys
16 described in Item 32.

17 HEARING OFFICER CELLI: Perhaps you can explain,
18 Ms. De Carlo, more fully what this -- this correction does.

19 MS. DE CARLO: Well, it just -- it just explains
20 what the applicant found, what they observed when they were
21 walking the transmission lines. I believe it's in the
22 record, but I can double check.

23 HEARING OFFICER CELLI: Okay. Let's take a look.
24 I'm going to get this up for everybody to look at. Item --
25 everyone take a look at that -- this. What we're talking

1 about is this paragraph here. My cursor is sort of circling
2 it. The new language is the -

3 "The applicant also observed amphibians such as Western
4 Toad and tree frogs at Little Rock Creek where the
5 transmission line spans the wash near Mt. Emma Road."

6 That would be the new language. And the language
7 proposed to be stricken is,

8 "The evidence also includes a few amphibians that are
9 expected to occur in the project area, such as the
10 Arroyo Toad, a federally endangered species and
11 California species of special concern which occurs in
12 Little Rock Creek approximately 2.6 miles south of the
13 transmission line crossing of Little Rock Creek at Mt.
14 Emma Road," and cites to the FSA, which was Exhibit
15 300.

16 MR. CARROLL: From Applicant's perspective, excuse
17 me, the proposed changes to Item 30 are good changes that --
18 that make the PMPD more accurately reflect the evidentiary
19 record. We did not have any sightings of Arroyo Toad during
20 the surveys. And so we think these are good changes that
21 make the PMPD more reflective of the evidentiary record.

22 HEARING OFFICER CELLI: Okay. But these were
23 submitted by staff.

24 MR. CARROLL: That's right.

25 HEARING OFFICER CELLI: Okay.

1 MR. CARROLL: But we think they're good.

2 HEARING OFFICER CELLI: So these are Staff's
3 conditions -- or Staff's corrections.

4 And so, Mr. Buse, any comment from you then,
5 please?

6 MS. DE CARLO: And if -- if I may interject, there
7 is evidence in the record on page 4.2-19 of Staff's FSA
8 supporting that insertion. Our -- our analysis states,
9 "Western Toad was observed at Little Rock Creek, and
10 riparian vegetation on portions of Little Rock Creek in
11 segment two likely support California Tree Frogs and
12 Pacific Tree Frogs."

13 HEARING OFFICER CELLI: That's -- and I remember
14 that. Just so everyone understands that the record is
15 thousands, maybe tens of thousands of pages of -- of volume.
16 And what the PMPD tries to do is squinch it down into bite-
17 size pieces that summarizes what the evidence is. And
18 sometimes it hits and sometimes it doesn't exactly
19 accomplish what it's trying to do by abbreviating things.
20 And so this sounds like one of those situation.

21 We're just waiting to hear from Mr. Buse regarding
22 this -- this proposed change. Go ahead, Mr. Buse.

23 MR. BUSE: Yeah. My concern is that the shrinking
24 of the language at the end of paragraph three suggests that
25 the record does not show that Arroyo Toads are expected to

1 occur in the project area. I'm not sure that that's
2 accurate.

3 HEARING OFFICER CELLI: Okay. Do you have a
4 citation?

5 MR. BUSE: I don't have a citation at this point.

6 HEARING OFFICER CELLI: Okay. Mr. Carroll, you
7 were going to make a comment?

8 MR. CARROLL: We would agree with Mr. Buse's
9 characterization of the -- of what the change accomplishes.
10 But what we would add is that, in fact, that is an
11 inaccurate depiction of the record, that the Arroyo Toad was
12 not detected during the surveys.

13 HEARING OFFICER CELLI: That was -- that was my
14 general recollection, but I wanted to -- if Mr. Buses had a
15 citation where someone had said they'd seen one I wanted to
16 hear it. But apparently there is -- there is none. Okay.

17 Then with that --

18 MR. BUSE: My point is more that there is a
19 difference between the observation that the surveys did not
20 show the presence of the Arroyo Toad, and the statement that
21 the Arroyo Toad is expected to occur in the project area.
22 These are two different things.

23 HEARING OFFICER CELLI: Well, I think that the --
24 the statement, "The evidence also includes a few amphibians
25 that are expected to occur in the project area such as the

1 Arroyo Toad," which we know to be federally endangered,
2 is -- is not tantamount to an observation of -- of an Arroyo
3 Toad on the site. And I -- so I'm -- and since the record
4 did not, as I understand it, the record does not include,
5 unless -- let's see. I'm getting a motion here --

6 MS. DE CARLO: Yeah. I do --

7 HEARING OFFICER CELLI: -- from Staff.

8 MS. DE CARLO: I do believe the FSA does include a
9 statement to the effect of what Staff has proposed to be
10 stricken. Perhaps our biologist requested that that be
11 stricken because more recent surveys contradict this. But
12 the FSA does include a statement to that effect.

13 And I would just say, regardless of this statement
14 Staff's analysis still stands. So Staff is find with --
15 with withdrawing that proposed strike, as well.

16 HEARING OFFICER CELLI: Okay. And so Item 30 that
17 we've been talking about, Staff is now proposing to strike
18 Item 30, to change it. So essentially we would revert back
19 to the language that's existing in the PMPD as it is today
20 without the -- without the change? Okay.

21 So with that, 30 is withdrawn. And I believe that
22 covers everything that we were able to capture in the draft
23 errata.

24 And now, Staff, you had a new couple of errata --

25 MS. DE CARLO: Yes. Just in the interest of being

1 really, really, really thorough, I noticed that the air
2 quality conclusions of law did not include a conclusion that
3 the project would not result in significant adverse,
4 indirect, direct, or cumulative impacts to air quality. Now
5 there was a conclusion of fact to that effect. But I think
6 it would be consistent with the other sections that we --
7 that the committee include a conclusion of law --

8 HEARING OFFICER CELLI: So --

9 MS. DE CARLO: -- as well.

10 HEARING OFFICER CELLI: So you're recommending
11 that we move it from finding of fact into the finding --
12 conclusion of law?

13 MS. DE CARLO: Or duplicate it. And I noticed in
14 some of the other sections you have both the finding of fact
15 to that extent, and a conclusion of law. So either would
16 work.

17 HEARING OFFICER CELLI: Well, that's a very
18 important observation. Thank you for raising that one. We
19 will certainly do that conclusion of law.

20 MS. DE CARLO: And --

21 HEARING OFFICER CELLI: Okay.

22 MS. DE CARLO: And then with regard to traffic and
23 transportation, there didn't appear to me to be any finding
24 of LORS conformance in the conclusions of law.

25 HEARING OFFICER CELLI: No finding of LORS

1 conformance. Good. Thank you. Anything further?

2 MS. DE CARLO: That was all that I found.

3 HEARING OFFICER CELLI: Anything further from
4 Applicant?

5 MR. CARROLL: Nothing further from Applicant.
6 Thank you.

7 HEARING OFFICER CELLI: Anything further from you,
8 Mr. Buse, in regard to the -- any errata in the PMPD?

9 MR. BUSE: Nothing further. Thank you.

10 HEARING OFFICER CELLI: Thank you. Is anyone from
11 Desert Citizens Against Pollution on the telephone? Okay.
12 Jane Williams, you're not out there. Okay.

13 Then with that, Ladies and Gentlemen, let's get
14 back to where we are.

15 I want to thank all of the parties for their
16 participation. This makes for a better document, a clearer
17 document.

18 PMPD, as we said, was published on the 16th of
19 June. The PMPD and the errata will be on the agenda before
20 the full commission at the business meeting on Wednesday,
21 July 27th, 2011. And just as people are doing now, and I
22 can assure you that the audio at the Energy Commission is
23 much better than what you've experienced today and so it's
24 safe to actually use the WebEx and call in, you can
25 participate by calling into the business meeting on the --

1 on Wednesday, July 27th. Go to the website. The way I
2 would do it is I'd go to the commission's website and click
3 on business meetings, and there's a list of the business
4 meetings. And you click on that date, July 27th, and it
5 will open up the agenda and it will explain how you can
6 participate at that.

7 Also, Jennifer Jennings, who is our public
8 advisor, is available to -- it's her job to make sure that
9 your participation is facilitated and to make -- make your
10 life easier in terms of participating in these proceedings.

11 And she does a very good job of that, so I recommend you
12 take advantage of that.

13 At this time we, unless there's anything further
14 from any of the parties, we're going to go to public
15 comment. Anything?

16 MR. CARROLL: Nothing further from Applicant.

17 HEARING OFFICER CELLI: Nothing from --

18 MS. DE CARLO: Nothing from Staff.

19 HEARING OFFICER CELLI: And nothing from Mr. Buse.

20 So we have a number of people who are present in
21 the room who would like to make a public comment. And the
22 way I think I'm going to proceed today, Ladies and
23 Gentlemen, is we'll take the people who are in the room who
24 filled out the blue card first and take their comments. And
25 then we will take the people's comments who are the people

1 on the phone. If you signed in and told the system what
2 your name is I'll be able to call you by name. And if I get
3 to a point where I'm having to call out caller number one,
4 caller number two, and you don't know who you are but you
5 want to make a statement and comment you're just going to
6 have to speak up at that time.

7 So with that, Ladies and Gentlemen, I'm going to
8 ask that you come to the podium and speak right into the
9 microphone. And we start with Joseph -- is it Yore or Yore?

10 MR. YORE: Joseph Yore.

11 HEARING OFFICER CELLI: Joseph Yore. Sorry if I
12 mispronounce names. Go ahead, Mr. Yore.

13 MR. YORE: Dear gentle people, I am Joseph Yore,
14 City of Palmdale. Twenty-five years in Palmdale, I've seen
15 every environmental act that was ever written in the laws
16 violated. Violated. This issue has been going on a long
17 time. The City of Palmdale has wasted over \$30 million,
18 over \$30 million, and they haven't done one good deed toward
19 the disabled American veterans that live in the City of
20 Palmdale and the Antelope Valley. Issue number one, Clear
21 Water Act. Number two, Species Act. Number three, Safety
22 Act. I can go on all day long.

23 I want put in record and recorded anything I say.

24 If you make any mistake on any environmental issue the
25 cities of Palmdale can -- the people and citizens of

1 Palmdale can hire an environmental lawyer to put a class
2 action lawsuit against the power people here that are
3 sitting here in the City of Palmdale. The City of Palmdale,
4 the citizens can put a class action lawsuit.

5 I just came back from Pennsylvania where
6 Halliburton is going under another name, Mersalli Shell
7 (phonetic), contaminating people in Ohio and Pennsylvania
8 and all over the place because they have billions of dollars
9 to put on their project. Billions of dollars, Halliburton
10 behind that whole project.

11 I don't believe this project -- when I first asked
12 you under the Freedom Act to send me the material you have
13 you kind people did send me the material. I read most of
14 the material. You haven't done the one thing I asked for;
15 you're in the wrong location. Under 9/11 now you're under
16 the wrong location. Every shuttle out in Plant 42 was built
17 there. Secret planes are built there, and they're working
18 on one right now. When you hire people you don't ask them
19 for complete identification because you have all
20 nationalities that come under there, under different
21 nationalities. Any person who worked with the Marine Corp,
22 or what have you, from where you're putting that plant on
23 Sierra Highway and Avenue M can go down there where they're
24 building any of these secret planes.

25 Millions and millions of dollars. Where have you

1 ended up with? One thing I asked for, wrong location,
2 people, wrong location, yet you persist because Palmdale
3 pumped \$18 million for that piece of property. Why did you
4 choose that location? Why didn't you go over there where
5 they have their water plant -- water thing over there?
6 There's a lot of locations you could have.

7 Now pollution. Pollution is a lot like second-
8 hand cigarette smoke. Right now I come back sick and
9 hacking from Pennsylvania where they're drilling. Pollution
10 can be a clear substance mixed with another substance
11 floating in the air where you have -- down there where
12 they're planting potatoes and corn and what have you, now
13 contaminating that soil down there. When it contaminates
14 the soil, E. coli. You can cause E. coli. Yet you choose
15 to build your plant on Avenue M and Sierra Highway. Safety
16 act; the main thing, the Safety Act, Clear Water Act, you
17 name it.

18 I was with Wright Patterson Air Force Base and
19 that area was contaminated a long time ago, yet you didn't
20 do an environmental impact. Why? Why didn't you do an
21 environmental in that area? Why didn't you plow that whole
22 area? Mayor Ledford wanted that area. The city manager
23 wanted that area.

24 You people get paid big bucks, and this project
25 has been going on a long time. Us citizens don't care. You

1 want our impact.

2 I was with -- at a Gettysburg impact. They one
3 that issue where they wanted to put Wal-Mart and a gambling
4 casino. I was on that issue over in Gettysburg. I was with
5 Wright Patterson many years. That area had -- the soil was
6 contaminated. You guys didn't do an environmental impact.
7 Maybe the soil is clean now.

8 I'm here mainly for two projects. You don't know
9 what pollution is in the air. I'm not a power plant
10 architect. I don't know how that power plant works. I'm
11 not an architect at all. I work for that man up there. And
12 I'm a Christian that works for that man up there.

13 I just filed today 14 pages to the Governor of
14 Pennsylvania and a few senators in Pennsylvania what's going
15 on up there. I can't beat Halliburton, but I may be able to
16 stop some of the trucks roaming through a little town called
17 Emporium, Pennsylvania which sits in the mountains. I might
18 be able to win one project. I can't beat your project. You
19 won't move from that area because the City of Palmdale
20 already pumped \$18 million in that project over in that
21 area. Why I don't understand when they could have went over
22 that direction a long time ago.

23 I asked you for one thing. Like I said, I'm not a
24 power plant architect. I don't know what type of pollution
25 will come out of that power plant. But you can move the

1 location. If you don't move the location I will file papers
2 to make you move the location. Thank you. My name is
3 Joseph Yore, City of Palmdale, environmentalist.

4 HEARING OFFICER CELLI: Thank you, Mr. Yore.

5 I just want to say for the record that the Energy
6 Commission licenses power plants. But the Energy Commission
7 itself does not say where the location would be. The
8 applicants come in and say we want to put a power plant
9 here. Staff takes a look at it, does an analysis of that
10 location. And then PMPD addresses the location as
11 proposed by applicant. But I appreciate those comments.

12 I have James Griggs, who is representing himself.

13 He's a power plant electrician. Come on forward, please,
14 and speak clearly into the microphone.

15 MR. GRIGGS: Good afternoon, everyone. I'm
16 basically here as an advocate for the power plant. I think
17 it's an historic opportunity to not only sustain an industry
18 that's probably been a cornerstone of this valley for some
19 time, for some decades, in fact, and that's the aircraft and
20 aviation industry. And also a power plant with reduction in
21 electrical-commercial-industrial electrical rates will
22 sustain that industry. And also it's -- it's beneficial to
23 the fellow citizens, not just Palmdale but the valley as a
24 whole because reduced rates are an economic positive, as I
25 see it.

1 And also, for -- to address certain environmental
2 issues, I work in a power plant now that's over 40 years
3 old -- actually, over 70 years old. It was commissioned in
4 1941. So from that perspective power plants produce good
5 jobs for at least two generations. So I don't see that as
6 negative at all.

7 And I'm also an asthmatic, and I was an asthmatic
8 before I even entered into this industry. I've lived here
9 since probably -- since 1990 and I've been diagnosed with
10 asthma since the mid-'90s. And I've worked in probably one
11 of the cleanest parts of the industry. I've worked at
12 hydroelectric pumping and generation stations. So what's
13 basically aggravated or induced my asthma is environmental,
14 vegetation, particularly tumbleweeds. So this area
15 hasn't -- hasn't -- you know, power plants don't cause
16 asthma.

17 What probably would impact me more is I work at
18 the intersection of two -- of two major freeways, the 134
19 and the 5. So I probably get more pollution from
20 automobiles than I do a power plant. Power plant emissions
21 are regulated. They're tested and monitored on a regular
22 basis, so the emissions are minimal.

23 So I just kind of inform my fellow citizens about
24 the operations of a power plant and what I think the impact
25 would be for this area. And I think having 36,

1 approximately 36 more middle class jobs, that can't be a bad
2 thing. We could even support more big box stores. They've
3 got to pay electrical rates, as well. So Wal-Mart's got to
4 pay electrical rates. If we can reduce that for them bring
5 them on.

6 So that's -- in conclusion, that's -- that's my --
7 my commentary on the -- on the -- on the topic. Thank you
8 very much for listening.

9 HEARING OFFICER CELLI: Mr. Griggs, do you mind if
10 I ask which -- which power plant you're -- you're --

11 MR. GRIGGS: Glendale, Grayson Power Plant, steam
12 generation.

13 HEARING OFFICER CELLI: Oh. Okay.

14 MR. GRIGGS: Yeah.

15 HEARING OFFICER CELLI: Thank you.

16 MR. GRIGGS: Sure.

17 HEARING OFFICER CELLI: R. Lyle Talbot, Desert
18 Citizens Against Pollution.

19 MR. TALBOT: Thank you. You wonder why so many --
20 few officials showed up here today. My explanation would be
21 this is an exercise in futility. And by the way, it's a
22 very expensive exercise. All these people have to travel,
23 and all this equipment.

24 The citizens of Northeast Lancaster will suffer
25 from Palmdale's misdeeds years down the road, especially

1 those with COPD, and then those who will become in that --
2 to that category over the years.

3 I suggest adding a new acronym to the Palmdale
4 HPPP. We'll call it the Palmdale Hazardous Polluting Power
5 Plant. And as they say on TV and a lot of those shows,
6 we'll see you in court. Thank you very much.

7 HEARING OFFICER CELLI: Thank you, sir. Is Gary
8 Burgess here? Burgess? Thank you. And again, I'm sorry if
9 I mispronounce people's names.

10 MR. BURGESS: My name is Gary Burgess. I'm a
11 citizen of -- or resident of Lancaster, but also I consider
12 a citizen of the Antelope Valley. As I drove down here this
13 morning I noticed a brown haze kind of over Palmdale near
14 the mountains. I don't know if anybody else saw that. But
15 is that a preview of things to come if we continue to do
16 things that pollute our air? And that's a question.

17 From all indications that I've been reading in the
18 paper, whether you -- whatever, and on the internet, this
19 power plant doesn't benefit the citizens of Antelope Valley.
20 As it explains, many places it goes on a grid. Not that
21 we're not here to help the whole world, but we got to think
22 primarily first of ourselves and our family, and then do
23 good for others.

24 But I think that anything that compromises our air
25 quality here in the Antelope Valley should be questioned by

1 the citizens and officials. The power plant physically is a
2 very small item. It's contained in, what, 300-some acres
3 and all that. But so is the atom bomb a very small item.
4 But in Hiroshima and Nagasaki there was a number or large
5 population that was denied the quality of life that all
6 humanity is entitled to because of that small item. I know
7 it may seem silly to bring that up in relation, but just a
8 point.

9 If solar power is good, which seems like pretty
10 much everything you read in the news is promoting that
11 nowadays, and pollutants in the air is bad, which I think a
12 lot of us agree on, why doesn't this project address
13 strictly solar produced electricity. Maybe I need to delve
14 into that a little further myself. But -- but myself and my
15 family are against this project for two reasons: air
16 pollution, and from all reports this project will not
17 benefit the citizens of AV. It may benefit a few monetarily
18 that is pushing the project, that's what it appears, but I
19 have no facts to base that on.

20 The one thing I'll comment on, I may be out of
21 line, but buying credits to pollute -- to pollute our air is
22 in my opinion one word, stupid. How -- how you can justify
23 that, the law that's been passed where we can do that by the
24 Air Management Board, I don't understand that. That's like
25 me doing good for the citizens and helping out in the city

1 and doing a lot of good and then go do something really bad
2 and say, wait a minute, that's only ten percent of the good
3 I did so let me off the hook. Don't punish me. It's -- I
4 don't understand that. Maybe I'm just a dumb old country
5 boy, but that don't -- that don't float me.

6 So I thank you for your time today and -- and --
7 and for your attention to my comments.

8 HEARING OFFICER CELLI: And thank you for your
9 comments.

10 And I just want to say that if you take advantage
11 of Ms. Jennings, Jennifer Jennings in the back, she can
12 explain to you how to go online and read the PMPD. Because
13 there's -- there's a section on air quality, there's a
14 section on public health, there's a section on alternatives.
15 This thing has been looked at every which way. And I'd just
16 invite everybody, if you haven't had a chance to read the
17 PMPD to please do. Because I think a lot of the questions
18 are answered in there. So take a look.

19 Thanks for your comment.

20 David Abber, are you still here?

21 MR. ABBER: Yes.

22 HEARING OFFICER CELLI: Please come forward.

23 MR. ABBER: Good afternoon, Commission, Staff and
24 Applicant.

25 My friend Mr. Talbot had brought to the attention

1 to the Lancaster City Council back in February of 2010 the
2 possibilities of the hazardous public safety issue with the
3 health issue. And as I stand here today I don't see
4 Lancaster here. I understand they submitted the letter.
5 There's nobody here from Lancaster. And I really take issue
6 with the fact that the start a fire and, you know, run as it
7 rages. And that -- that they will endanger the citizens of
8 Lancaster, because I do believe this project will probably
9 go forward. Palmdale has been at it for -- since about
10 2005, to my understanding.

11 And you know, it's just time for this valley to
12 come together and quit fighting between the two cities, as
13 Mr. Burgess and other speakers before me have pointed out,
14 that this is the Antelope Valley. And you know, due to the
15 fact that maybe Lancaster didn't bring the 10,000 jobs they
16 promised back in April of last year, this is another way of
17 sidetracking the failures that occur in their city for their
18 leadership that -- that lacks accountability. And
19 hopefully, you know, as the decisions are made with respect
20 to this I hope that -- that Lancaster's leadership is held
21 accountable for the possible bad air, and their failure to
22 heed Mr. Talbot's message over a year ago instead of, you
23 know, yelling foul at the 12th hour and trying to undermine
24 the project.

25 And I appreciate your time and your efforts.

1 Thank you very much.

2 HEARING OFFICER CELLI: And thank you for the
3 comments.

4 We've got Ron Miller. And, folks, this is my last
5 blue card, which indicates to us that this is the last
6 person who wishes to make a comment. If any of you would
7 like to make a comment please fill out a blue card with
8 Jennifer Jennings in the back. Because if this is my last
9 commenter here I'm going to go start taking comments from
10 the people on the phone.

11 So go ahead, Mr. Miller.

12 MR. MILLER: Good afternoon. I'm Ron Miller. I'm
13 with the L.A./Orange County Building and Construction Trades
14 Council. And the council represents 140,000 craftsmen and -
15 women, many thousands that live here in Palmdale, Lancaster
16 and the Antelope Valley area. Currently we have about 40
17 percent unemployment across all the trades.

18 This project will create thousands of jobs, good
19 paying jobs, middle class jobs that will benefit the
20 community and provide health benefits and retirement to a
21 community that has been hit hard by the recession. It will
22 put many local residents to work which are the best trained
23 and certified in this type of construction. Many people say
24 that it will only create temporary jobs. But in
25 construction we get up every morning with the intent and

1 goal of working ourselves out of a job and the prospect of
2 securing the next project. So temporary jobs they may be,
3 but they're careers for us.

4 So I want to, you know, hope you guys approve this
5 project. Thank you.

6 HEARING OFFICER CELLI: Thank you. Ms. Jennings
7 has another blue card in her hand. I'd like to hear from
8 Vianna Friss. Please come forward and speak right into the
9 microphone, please. Thank you.

10 MS. FRISS: Thank you very much. I'm Vianna
11 Friss. I've lived here since 1947. I've moved in and out
12 but I'm back here now, and I want to protect this valley.
13 It's very special. All we have is sun out here. Why can't
14 we be using solar?

15 I'm asthmatic. And have we learned anything from
16 Japan? Gas gives off fumes. We just have our head under
17 the -- in the ground as Americans. Why can't we use the
18 solar that's here and stop all this spending of billions?
19 You're cutting my federal retirement, and we have to spend
20 money at billions like this for this atrocity that we know
21 is going to pollute the area. So can't we do like Germany
22 is doing and get with the program and try to save the world?
23 The world is being destroyed by you businessmen. Thank you.

24 HEARING OFFICER CELLI: Thank you for your
25 comments. If -- I don't see any further comments from

1 anyone who's in the room.

2 So with that I'm going to go to the phones. Let's
3 see, I've got Steven -- Steve Radis who works for Energy
4 Commission, Bob Werle (phonetic), Laura Murphy, John Buse
5 we've heard from, Gary Bemis (phonetic).

6 So I have -- it looks like we've got one person on
7 the phone unidentified, call-in user number three. If
8 you're on the telephone and wish to make a public comment
9 this would be your time. Please speak up now.

10 MR. DRAKE: Yes. This is -- this is Ryan Drake on
11 behalf of Antelope Valley Groundwater Agreement Association.

12 HEARING OFFICER CELLI: Can you spell your name,
13 please?

14 MR. DRAKE: Yeah. Ryan Drake, D-r-a-k-e.

15 COMMISSIONER DOUGLAS: Thank you. Go ahead. Go
16 ahead and make your statement, Mr. Drake.

17 MR. DRAKE: Oh, yes. I'm calling on behalf of
18 Antelope Valley Groundwater Agreement Association. And
19 we're a coalition of farmers and small land owners in the
20 Antelope Valley. And we previously filed comments on water
21 supply issues.

22 And I'd just like to bring it to the commission's
23 attention that yesterday the court in that litigation, the
24 Antelope Valley groundwater litigation, finalized the
25 decision that found that the total of groundwater supply in

1 the valley is 110,000 acre feet. And some amount of the
2 stake yield of that basin is return flows from municipal
3 wastewater which the project relies on in part.

4 And we'd just like to make the comment that using
5 recycled water for the power plant will consume at least
6 some of these return flows which would result in a lower
7 stake yield for the entire basin. And based on evidence
8 presented in that lawsuit by L.A. County there's not enough
9 water to meet current demands.

10 So because of this we're protesting the project
11 because the only way there will be sufficient water for the
12 project is if other existing water users are cut back, which
13 includes farmers in our organization. And we thank you for
14 the opportunity to comment, and that's all we have to say.

15 HEARING OFFICER CELLI: Thank you, Mr. Drake, for
16 your comments.

17 Is there anyone else on the telephone who wishes
18 to make a comment? I don't think there's anyone left.

19 With that, then I want to thank you all for your
20 comments. I'm going to hand the podium back to Commissioner
21 Douglas who will adjourn.

22 COMMISSIONER DOUGLAS: I'd like to thank all of
23 the parties for being here, and in particular the members of
24 the public who have come here to speak or who have spoken on
25 the phone. It's been helpful for us to hear from you. The

1 Antelope Valley, we know, is a major area for -- with solar
2 potential. So those members of the public who raise the
3 issue of solar energy potential in the Antelope Valley and
4 the interest of seeing more and more of the energy that
5 California uses going to renewables, I think the good news
6 is that we are on that track. And we have a 33 percent RPS
7 bill, and we have climate initiatives and law, a law that
8 will probably take us over that 33 percent bill -- or 33
9 percent number before we really know it. You know, we have
10 completed an environmental review of this proposed project
11 and we've put out a proposed decision.

12 We've heard from a number of people today. It's
13 not too late to send in additional comments or written
14 comments. We'll go back one more time based on what we're
15 heard, we'll look again at the record, we'll look at any new
16 comments that come in, and we'll be looking to propose a
17 decision to the full commission.

18 We haven't talked about the date, Hearing Officer.
19 Should we?

20 HEARING OFFICER CELLI: The -- the date for the --
21 for the business meeting is July 27th. The last day for
22 comments is the 18th of July which --

23 COMMISSIONER DOUGLAS: We have some questions
24 about July 27th.

25 (Colloquy between Commissioner and Hearing Officer)

1 COMMISSIONER DOUGLAS: So I think I want to ask
2 the parties if August 10th, as opposed to July 27th, is a
3 possibility for a PMPD -- for the PMPD to be heard at the
4 business meeting?

5 MS. DE CARLO: If that's the second week of -- for
6 August then that's fine with Staff. I'll be gone the first
7 week of August, then I'll be back.

8 COMMISSIONER DOUGLAS: It is the second week of
9 August.

10 MS. DE CARLO: Okay. Great.

11 MR. CARROLL: From Applicant's perspective the
12 July date is highly preferred. We have a number of
13 commitments.

14 Well, first of all, let me just say we've been in
15 the process for a very long time. So as a general matter
16 we're very anxious to complete the process. Beyond that,
17 August, as I'm sure you can appreciate, is a difficult date
18 in terms of vacation schedules. And August 10th does
19 present some conflicts for us. So we would greatly prefer
20 keeping it on the July 27th calendar, if possible.

21 COMMISSIONER DOUGLAS: Okay. I think the primary
22 problem with the July 27th date is that you won't have the
23 presiding member of the committee there. So -- and I won't
24 be within cell phone range. So I think that, you know, it's
25 usually helpful to have the commissioner who is proposing a

1 decision and who has sat through the hearings present.

2 Although there is an associate member of the committee who
3 we could ask to -- to speak for the decision, it's still, in
4 my opinion, preferable to go to the August 10th date.

5 MR. CARROLL: We'll defer to the committee's best
6 judgment on the matter.

7 COMMISSIONER DOUGLAS: All right. So what we will
8 do is if there any other comments on the date we'll take
9 that under advisement and we'll send something out.

10 HEARING OFFICER CELLI: I just think we should ask
11 Mr. Buse if he has any thought --

12 COMMISSIONER DOUGLAS: Absolutely. Mr. Buse, are
13 you still on the line?

14 HEARING OFFICER CELLI: Yes, on mute.

15 MR. BUSE: Yes.

16 COMMISSIONER DOUGLAS: All right. Do you have a
17 strong feeling between July 27th and August 10th?

18 MR. BUSE: No, I have no basis for preferring one
19 over the other.

20 COMMISSIONER DOUGLAS: All right. Thank you. You
21 won't be on vacation or anything in either date, it looks
22 like?

23 MR. BUSE: I won't be. I'm not sure about Ms.
24 Belenky.

25 COMMISSIONER DOUGLAS: All right. Well, if we can

1 why don't we take this under advisement. We'll let Mr. Buse
2 confirm Ms. Belenky's availability or non-availability and
3 we'll send something out as soon as possible saying --

4 MR. CARROLL: I would just reiterate --

5 COMMISSIONER DOUGLAS: -- the date.

6 MR. CARROLL: -- what I would not want to see
7 happen is it gets set for August 10th and then Ms. Belenky
8 indicates that she can't be there and, of course, wants to
9 be there. And then we are, you know, pushing into
10 September. So --

11 COMMISSIONER DOUGLAS: Well, we'll have to see
12 what happens.

13 HEARING OFFICER CELLI: Right. We would have to
14 notice. We have noticing. Right now everything is noticed
15 and set for July 27th. And I think the appropriate way to
16 operate is unless or until a notice of continuance of that
17 date comes out, which it would have to be at the least ten
18 days before the hearing, then we should just assume it's the
19 27th until you receive a notice. And those of you who
20 aren't on -- on mailing lists, all these notifications are
21 put up on the website. So continue to check in with the
22 website to see the dates.

23 MR. CARROLL: And if I may, if I could also ask
24 that Ms. Williams' availability be confirmed. She's not
25 participating today. But again, I wouldn't want us to

1 select a date and then find that one of the parties had an
2 irreconcilable conflict and then we end up getting pushed
3 off even further.

4 HEARING OFFICER CELLI: That's important.

5 COMMISSIONER DOUGLAS: That's a very good idea.
6 So -- so we are set for the 27th, but we will explore with
7 the parties availability both on the 27th and on August
8 10th. And if we are changing that date we will send that
9 out. You know, I think that we would be able to go forward
10 and bring this to the commission on the 27th. But for my
11 own reasons I usually like to be there when it's the case
12 I'm presiding on.

13 So thank you to everyone who is left who has
14 indulged us in that conversation. We're adjourned.

15 (Thereupon the California Energy Commission,
16 Palmdale Hybrid Power Plant Committee Conference
17 adjourned at 1:26 p.m.)

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CERTIFICATE OF REPORTER

I, MARTHA L. NELSON, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Status Conference; that it was thereafter transcribed 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 19th day of July, 2011.

/s/ Martha L. Nelson

MARTHA L. NELSON - CERT 00367

CERTIFICATE OF TRANSCRIBER

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

/s/ Martha L. Nelson

July 19, 2011

MARTHA L. NELSON - CERT 00367