

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY COMMISSION

DOCKET	
BUS. MTG	
DATE:	SEP 29 2010
RECD:	OCT 06 2010

In the Matter of:)
)
Business Meeting)
_____)

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

WEDNESDAY, SEPTEMBER 29, 2010

10:00 A.M.

Reported by:
Peter Petty

 ORIGINAL

Commissioners Present

Karen Douglas, Chair
James D. Boyd, Vice Chair
Jeffrey D. Byron
Anthony Eggert
Robert Weisenmiller

Staff Present:

Melissa Jones, Executive Director
Michael Levy, Chief Counsel
Pippin Brehler, Senior Staff Counsel
Harriet Kallemeyn, Secretariat

Agenda Item

John Butler	2
Gabriel Herrera	2
Raoul Renaud	3
Christine Hammond	3
Christopher Meyer	3
Kenneth Celli	4
Robin Mayer	4
Jared Babula	4

Also Present (*On Phone)

Interested Parties

Ella Foley Gannon, Esq., Bingham McCutchen, LLP	3
Sean Gallagher, Tessera Solar	3
Loulena Miles, Esq., Adams Broadwell, et al	3
*Tom Budlong	3
Scott Busa, NextEra Energy	4
Scott Galati, Galati & Blek	4
Lisa Belenky, Center for Biological Diversity	4
Rachel Koss, Esq., Adams, Broadwell, et al	4

Public Comment

Steve Taylor, SDG&E	3
Lisa Belenky, Center for Biological Diversity	3
*Bridget Nash Travis, Quechan Tribe	3
*Preston Arroweed	3
*Edie Harmon	3

I N D E X

Page

Proceedings

Items

1. CONSENT CALENDAR. 6
 - a. Alternative Energy and Transportation Expo. Possible approval of \$4,950 and use of the Energy Commission's name and logo for co-sponsorship of the City of Santa Monica AltCar Expo. (ARFVTF funding.)
2. State Energy Program Guidelines. Possible adoption of a resolution to revise the American Recovery and Reinvestment Act (ARRA) State Energy Program Guidelines (Publication CEC-150-2009-004-CMF-REV3) to allow the ARRA Committee to modify the interest rate charged under the Low-Interest Energy Efficiency Financing Program EEFP. The EEFP is one of several program elements funded under the Energy Commission's State Energy Program. The EEFP will provide up to \$25 million in ARRA SEP funds as low-interest loans to eligible applicants for energy efficiency and/or renewable energy projects that provide energy cost savings sufficient to repay the loan principal and all accrued interest within a maximum repayment term of 15 years. 6
3. Imperial Valley Solar Project (08-AFC-5). Possible adoption of the Presiding Member's Proposed Decision on the Imperial Valley Solar Project and Errata. The Imperial Valley project would utilize SunCatcher technology with a generating capacity of approximately 750 megawatts to be built in two phases. 9
4. Genesis Solar Energy Project (09-AFC-8). Possible adoption of the Committee's Presiding Member's Proposed Decision on the Genesis Solar Energy Project and errata. The proposed project would be a solar electric generating facility using solar parabolic trough technology with a generating capacity of 250 megawatts. 96
5. Minutes: Possible approval of the minutes of the September 22, 2010, Business Meeting. Postponed
6. Commission Committee Presentations and Discussion. 127

I N D E X

	Page
Items	
7. Chief Counsel's Report: The Energy Commission may adjourn to closed session with its legal counsel [Government Code Section 11126(e)] to discuss any of the following matters to which the Energy Commission is a party:	129
a. California Communities Against Toxics et al v. South Coast Air Quality Management District (Los Angeles County Superior Court, BS124624);	
b. Western Riverside Council of Governments v. Department of General Services (Riverside County Superior Court RIC10005849);	
c. In the Matter of U.S. Department of Energy (High Level Waste Repository), (Atomic Safety Licensing Board, CAB-04, 63-001-HLW);	
d. Public Utilities Commission of California (Federal Energy Regulatory Commission, Docket No. EL10-64-000); and Southern California Edison Company, et al. (Federal Energy Regulatory Commission, Docket No. EL10 66 000).	
8. Executive Director's Report.	130
9. Public Adviser's Report.	130
10. Public Comment.	130
Adjournment	130
Certificate of Reporter	131

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

SEPTEMBER 29, 2010

10:08 a.m.

CHAIRPERSON DOUGLAS: Good morning. Welcome to the California Energy Commission Business Meeting of September 29th, 2010.

Please join me in the Pledge.

(Whereupon, the Pledge of Allegiance was received in unison.)

CHAIRPERSON DOUGLAS: Commissioners, before we begin with the agenda, I'd like to take a moment to recognize the passing of one of our former Commissioners, Alan Pasternak, who died last week at his home in Lafayette, California.

Commissioner Pasternak was one of the original five Commissioners appointed in 1975 by former Governor Jerry Brown. During his tenure at the Energy Commission, Dr. Pasternak - and he avidly avoided using "Dr." - was instrumental in developing California's first Energy Policy Report and initial regulations for Energy Forecasting. He was a vigorous participant in hearings on nuclear waste issues where the Commissioner was to make certain findings, and he always considered input on energy conservation regulations, which helped set the foundation for the State's first Appliance and Building Standards. Coming from a career at Lawrence Livermore

1 Lab, Pasternak was also a champion of moving the State
2 towards new energy technologies, including coal
3 gasification and methyl alcohol for fuel. After leaving
4 the Energy Commission, Dr. Pasternak consulted on energy
5 issues, becoming the Technical Director of the California
6 Radioactive Materials Management Forum. He returned part
7 time at Lawrence Livermore Lab to focus on energy policy
8 and wrote the well-received and read analysis, *Global*
9 *Energy Futures and Human Development* that addresses the
10 importance of electricity to the developing world.
11 Thirty-five years later, Alan Pasternak's efforts
12 continue to help guide California energy policy and
13 leadership, and for that we are grateful. Our thoughts
14 are with his wife, Meta, children, and his grandchildren.

15 And with that, we will begin and,
16 Commissioners, take up Item 1, the Consent Calendar.

17 VICE CHAIR BOYD: Move Consent Calendar.

18 COMMISSIONER BYRON: Second.

19 CHAIRMAN DOUGLAS: All in favor?

20 (Ayes.)

21 The Consent Calendar is approved.

22 Item 2. State Energy Program Guidelines.

23 Possible adoption of a resolution to revise the American
24 Recovery and Reinvestment Act (ARRA) State Energy Program
25 Guidelines. Mr. Butler.

1 MR. BUTLER: Good morning, Madam Chairman and
2 Commissioners. My name is John Butler. I am a
3 Supervisor in the Special Projects Office, and am before
4 you today to request adoption of the Fourth Edition of
5 the Energy Commission's State Energy Program, or SEP
6 Guidelines, these proposed revisions primarily pertain to
7 the Low Interest Energy Efficiency Financing Program.
8 The Energy Commission established this program to provide
9 Federal Stimulus Funds as low interest loans to local
10 jurisdictions, public schools, and public hospitals, for
11 energy efficiency and renewable energy projects.
12 Recipients repay the loans from the project's energy cost
13 savings.

14 When this program was originally established in
15 October 2009, the SEP Guidelines established the interest
16 rate under this program at one percent. These proposed
17 guideline revisions allow the Federal Stimulus Committee
18 flexibility to establish the interest rate for these
19 loans that match market conditions and availability of
20 funds. The interest rate established may not be less
21 than one percent and will be documented through the loan
22 solicitation documents. Additionally, staff is proposing
23 minor clarifying edits to the Guidelines, including an
24 update to the mailing address for submitting Requests for
25 Reconsideration. The proposed revisions were made

1 available to the public on September 14th, 2010, and the
2 mandatory 15-day public comment period has elapsed. The
3 Energy Commission has not received any public comment on
4 the proposed revisions and requests your adoption of the
5 Fourth Edition of the SEP Guidelines. And I am available
6 to answer any questions. Thank you.

7 MR. HERRERA: Good morning, Chairman,
8 Commissioners. My name is Gabe Herrera; I'm with the
9 Energy Commission's Legal Office. I would like to make a
10 couple of quick comments concerning CEQA and the adoption
11 of these Guideline revisions.

12 When staff proposes Guideline revisions such as
13 these, the Legal Office takes a look at the revisions to
14 see if they constitute a "project" under CEQA and are
15 thereby subject to an environmental review. In the case
16 of these Guideline revisions, the Commission's adoption
17 is not a project under CEQA because the Guidelines
18 themselves fall within a list of excluded activities
19 under Title 14 of the California Code of Regulations,
20 Section 15378, Subdivision (B)(4), and that the
21 Guidelines are the creation of a governmental funding
22 mechanism which does not involve any commitment to any
23 specific project which may result in a potentially
24 significant physical effect on the environment. In
25 addition, the adoption of these Guidelines is exempt

1 under what is commonly known as the Common Sense
2 Exception, and that is set forth in Title 14 of the
3 California Code of Regulations, Section 15061(B)(3).
4 That section indicates that CEQA only applies to projects
5 that have a significant effect on the environment, which
6 is defined in Public Resource Code Section 21068 and
7 Section 15382 of Title 14 of the California Code of
8 Regulations, as being a substantial adverse change in the
9 environment. And that concludes my comments. Thank you.

10 CHAIRMAN DOUGLAS: Thank you both.

11 Commissioners, are there questions or comments?

12 VICE CHAIR BOYD: I just was going to say I
13 didn't know there was such a thing as a Common Sense
14 Exemption, I didn't think we were capable of that, quite
15 frankly.

16 MR. HERRERA: That might be a misnomer.

17 COMMISSIONER EGGERT: I'll go ahead and move
18 the item.

19 COMMISSIONER BYRON: Second.

20 CHAIRMAN DOUGLAS: All in favor?

21 (Ayes.)

22 The item is approved. Thank you.

23 MR. BUTLER: Thank you.

24 CHAIRMAN DOUGLAS: Item 3. Imperial Valley
25 Solar Project.

1 COMMISSIONER BYRON: Are we sure that Imperial
2 Valley goes next, Madam Chair? I mean, alphabetical
3 order, wouldn't Genesis come before Imperial Valley?

4 VICE CHAIR BOYD: Come, come, Commissioner.

5 CHAIRMAN DOUGLAS: Commissioner, you are
6 correct that, alphabetically, Genesis comes before.

7 VICE CHAIR BOYD: We live by the agenda.

8 CHAIRMAN DOUGLAS: But we live by the agenda,
9 and taking the agenda in order.

10 VICE CHAIR BOYD: Nice try, though.

11 MR. RENAUD: I would have to caution the
12 Commission against changing the agenda without due
13 notice.

14 VICE CHAIR BOYD: Thank you, that's the best
15 answer.

16 CHAIRMAN DOUGLAS: Thank you, Hearing Officer
17 Renaud. Item 3. Imperial Value Solar Project (08-AFC-
18 5). Possible adoption of the Presiding Member's Proposed
19 Decision on the Imperial Valley Solar Project and Errata.
20 Hearing Officer Renaud.

21 HEARING OFFICER RENAUD: Good morning, Chairman
22 Douglas and Commissioners. Before you today is the
23 Imperial Valley Solar Project. The AFC was issued on
24 January 30th, 2008, and the Commission found it data
25 adequate in October 2008. November 24th, 2008, the

1 Committee held a site visit in El Centro and the
2 Committee, at that time, consisted of Commissioner
3 Pfannenstiel and Commissioner Boyd. Upon Commissioner
4 Pfannenstiel's term ending, Commissioner Eggert took her
5 place. The pre-hearing conference - well, after the site
6 visit and informational hearing in November of 2008,
7 throughout 2009, the parties worked back and forth
8 addressing the issues, particularly the cultural
9 resources issues. The land is Bureau of Land Management
10 Land and the goal was to develop a programmatic agreement
11 under Federal Law, which would assist with mitigation of
12 cultural resources impacts. That took a lot of time and
13 it was March 25th, 2010, when we finally held the pre-
14 hearing conference and conducted the first two sessions
15 of the Evidentiary Hearings on May 24th and 25th in El
16 Centro. That was followed by two more sessions in
17 Sacramento on July 26th and 27th, and a final session on
18 August 16th in Sacramento. The five sessions totaled at
19 least 50 hours of Evidentiary Hearings, we went well into
20 the night on some of those occasions.

21 The PMPD was issued August 26th, 2010, and the
22 Notice of Availability required the parties to submit
23 their comments by September 16th. We had Interveners in
24 the case, the parties consisting of California Unions for
25 Reliable Energy, or CURE, an individual named Hossein

1 Alimamaghani, the Center for Biological Diversity - no, I
2 am sorry, the California Native Plants Society - that was
3 another case, and an individual named Tom Budlong. The
4 Committee held a committee conference to discuss the PMPD
5 on September 20th, and the 30-day public comment period
6 ended on September 27th. After the Committee conference,
7 the Committee issues the Errata, which you have before
8 you and I will discuss some portions of that as we go
9 along here this morning.

10 The project itself is about 100 miles east of
11 the City of San Diego and 14 miles west of the City of El
12 Centro. The project site is about 6,400 acres, 6,140
13 acres of that are Bureau of Land Management land, and 160
14 are under County jurisdiction, but that acreage is not
15 part of the project, itself. One of the big differences
16 between this project and some of the other solar projects
17 you've seen of late is technology; it is using SunCatcher
18 technology. Do we have the slides there? I thought I'd
19 show you a picture of a SunCatcher. There it is, okay.
20 That's a picture of a SunCatcher. It consists, as you
21 can see, of a roughly circular parabolic mirror array,
22 which is focused on a power conversion unit. The power
23 conversion unit contains a Stirling engine, which is a
24 closed cycle, but otherwise conventional 4-cylinder
25 automotive-type engine. It is filled with hydrogen and

1 the heat from the mirror array focuses on the PCU,
2 expands the hydrogen, and causes the pistons to move up
3 and down. The output shaft then turns and it is
4 connected to a generator. The SunCatchers would be
5 placed in arrays of 60 and each 60 SunCatcher group would
6 generate 1.5 megawatts. The cooling of the SunCatcher is
7 done by automotive-type radiator which is part of the
8 power conversion unit, and other than that there is no
9 other cooling water use. And it is a sealed system, much
10 like an automobile. So, other than for maintenance and
11 servicing, that would not be actually a consumer of
12 water.

13 As proposed, the project was 750 megawatts,
14 which amounts to about 30,000 of these sun captures. As
15 the analysis went along, the Army Corps of Engineers
16 determined that there were washes running through the
17 site, which constitute waters of the United States, and I
18 will put up the next slide here. This gives you an idea,
19 first, of the site itself, it a little bit hard to see
20 with the lighting, but the lower border is roughly
21 Interstate 8. At the northern tip, you can see a white
22 area, that is the Placer City wall board factory, on the
23 north is Evan Hughes Highway, to the north of that is an
24 off-highway vehicle open area managed by the BLM. The
25 washes I was referring to are the bright blue areas. The

1 original design had SunCatchers in those areas. As a
2 result of consultation with the Army Corps, the Applicant
3 determined a design that would eliminate most of the
4 SunCatchers for most of the washes, and would reduce the
5 output by 279 megawatts, I believe they removed a little
6 over a thousand of the SunCatchers. The impact to waters
7 of the United States, thus, was reduced from over 100
8 acres to about 38 acres, with the small reduction of
9 generation capacity. And any other impacts caused by the
10 original 750 megawatt project were either the same or
11 slightly reduced, so there really wasn't any increase in
12 any impacts based on that. The BLM has since adopted
13 that configuration as its preferred alternative. The
14 Army Corps has issued it as the preliminary Least
15 Environmentally Damaging Practicable Alternative, or
16 LEDPA. And so that explains to you, I think, the issue
17 of the waters of the United States, as far as the
18 placement of SunCatchers and the change in the output.

19 The Committee has also obviously adopted the
20 alternative with the fewer SunCatchers and note the lack
21 of placement in most of the washes, and is recommending
22 that to you in the PMPD. Water, of course, is always an
23 issue in these cases, being in the desert. This project
24 uses a relatively small amount of water. The water usage
25 during construction was estimated at slightly over 40

1 acre feet a year, but the Applicant has agreed to limit
2 its use to 39-acre feet a year, and we have a Condition
3 of Certification that requires that, that the initial
4 water will come from a well nearby called the Boyer Well,
5 and again, it is licensed or registered to pump 40 acre
6 feet a year. The 39 will go to the Applicant, the
7 remainder, the one-acre foot is there for incidental
8 sales that Boyer Water Company makes to local residents,
9 and so on, who cart or truck water to their dwellings.
10 Ultimately, the project proposes to use recycled tertiary
11 treated water from the Seeley Wastewater Treatment
12 facility, which is about 12 miles away, and a pipeline
13 would be constructed to carry that water. The facility
14 needs to be upgraded to comply with the various federal
15 and local permit requirements, and the upgrades are
16 currently undergoing environmental review process at that
17 level, in that jurisdiction. When that is complete and
18 the facility is ready to deliver water, the use of the
19 well water will stop and then they will have the tertiary
20 treated water for use throughout the life of the project.

21 Okay, the Errata, which you have before you, is
22 as we have been seeing in many of these projects, lengthy
23 mostly just due to the complexity of the biological
24 resources Conditions of Certification. In this case,
25 those conditions run from pages 14 to 67, so they are by

1 far the bulk of the document. That they are in here
2 reflects the fact that, at the Committee conference and
3 both before and after that, the parties were working out
4 details of these Conditions of Certification. What is in
5 the Errata reflects the comments that we received from
6 the parties. We received extensive comments from staff,
7 from Applicant, and from CURE, and we received numerous
8 other comments from members of the public. All of that
9 is reflected in the PMPD and the Errata. And the
10 Committee would recommend your adoption today of the PMPD
11 and the Errata. And I am available for questions if you
12 have any.

13 CHAIRMAN DOUGLAS: Thank you, Hearing Officer
14 Renaud, for that thorough presentation of the project.
15 Before I call on the parties, let me just make sure I
16 have my list of Interveners who are here, who would like
17 to speak, so CURE, very well. Are there any other
18 Interveners who would like to speak? Hearing none, very
19 well. Applicant.

20 MS. FOLEY GANNON: Good morning, Chairman and
21 Commissioners. I am Ella Foley Gannon, and I am counsel
22 to Tessera, the Applicant. With me this morning is Marc
23 Van Patten, Senior Manager from Development at Tessera.
24 I also have Mr. Sean Gallagher with me, with Regulatory
25 Affairs from Tessera. First, I would like to thank

1 Commissioner Byron and Commissioner Eggert for all of
2 their work on this matter. As Hearing Officer Renaud
3 pointed out, we had extensive evidentiary proceedings
4 where we had a very thorough airing of the issues and
5 discussion, and we appreciate all the effort that the
6 Commissioners put into this matter, as well as Hearing
7 Officer Renaud and the staff members. And we think that
8 the end of this process has resulted in a extremely
9 favorable project, which is going to bring 709 megawatts
10 of renewable energy to California, and has significantly
11 minimized impacts to environmental resources. And we
12 encourage approval of the 709 megawatt project.

13 We do have a few comments on the Errata that we
14 would like to discuss with you this morning. As Hearing
15 Officer Renaud reflected, many of the comments, the
16 changes that are in the Errata, do reflect the
17 discussions that we had at the hearing on the PMPD and we
18 are in agreement with what is included in the Errata.
19 There are two conditions, however, which we would like to
20 discuss, and some of the analysis we would like to
21 discuss. Most importantly are the changes to the
22 Mitigation Measure BIO 17, which is related to the
23 mitigation required for the Bighorn Sheep, the Peninsular
24 Bighorn Sheep. In the PMPD, there was a discussion about
25 the fact that the impacts to the Bighorn Sheep were

1 considered, or that Bighorn Sheep had determined to be
2 potentially present on the site, and using the site, but
3 that it was not likely based on all the evidence in the
4 record, that this site was regularly utilized by the
5 Peninsular Bighorn Sheep, or that it was really
6 representing an important part of foraging habitat, or
7 part of the movement corridors. And we agree with that
8 determination and we think that the record adequate
9 supports that finding. And we think, significantly, the
10 Errata did not suggest that that analysis should be
11 changed, but what is suggested to be changed is the
12 mitigation that is going to be required. In the PMPD, as
13 it was released, there was a requirement that we provide
14 247 acres of mitigation, which was going to be done as a
15 part of a mitigation for our impacts to the Waters of the
16 United States. As part of the Corps process, the Corps
17 permitting process, we have worked closely with the U.S.
18 Army Corps of Engineers and the U.S. Fish and Wildlife
19 Service, to identify the mitigation which is necessary to
20 offset impacts to aquatic resources, as well as to the
21 Bighorn Sheep. As a part of that process, the Corps
22 suggested that we look at doing mitigation on Carrizo
23 Creek and Marsh on State Park lands, and it is going to
24 be rehabilitation and restoration efforts of the Creek.
25 This is an area that has had significant infestation of

1 tamarisk, which has essentially taken an area that was
2 regularly used by the Bighorn Sheep, historically, and
3 made it inaccessible. There is no documented use
4 currently by Bighorn Sheep in this area. We will be
5 carrying out mitigation on 247 acres, what was included
6 in the PMPD under the draft permit that is being
7 developed by the Corps right now, it is going up to 253
8 acres. But, essentially, it is a 5:1 mitigation ratio
9 for impacts to Waters of the United States, which is, as
10 Hearing Officer Renaud said, it is 38 acres approximately
11 for permitted impacts, and there are 14 acres of
12 temporary impacts. This mitigation measure, as I have
13 said previously, has been done in coordination with the
14 Federal agencies. We have also been in discussions with
15 the California Department of Fish and Game, and we have
16 recently received, last week, on September 22nd, the
17 Biological Opinion from U.S. Fish and Wildlife Service, I
18 have copies of that Biological Opinion here if you would
19 like to have them distributed to you, or I can make them
20 available after the hearing. In this Biological Opinion,
21 the Service goes through and thoroughly discusses what it
22 finds to be the potential impacts to the Peninsular
23 Bighorn Sheep, and it determines that the 247 acres of
24 mitigation on Carrizo Creek and Marsh are adequate to
25 offset the impacts of the species, and it does approve

1 the project as it is described in the PMPD, which is a
2 709 megawatt project, the same alternative that was
3 identified by the Corps as the Least Environmentally
4 Damaging Practicable Alternative. So, we would
5 encourage the Commission to not include the provisions in
6 the Errata, which address the 881-acres of mitigation
7 and, specifically, there's been discussion which is on
8 page 10, which is numbered Paragraph 34, we would suggest
9 that the Commission not include that in the decision,
10 which we hope will be adopted this morning, as well as
11 the revisions to BIO 17, which are found on page - I'm
12 sorry, I will get there -

13 COMMISSIONER EGGERT: Is it page 29?

14 MS. FOLEY GANNON: Yes, 29, Paragraph 43. And
15 we would request that, in lieu of these changes, that the
16 Commission adopt the requirements that were included in
17 the PMPD, as well as the analysis that was included in
18 the PMPD. As I stated previously, we believe that the
19 record adequately supports the determination about the
20 level of impact to the Peninsular Bighorn Sheep, as well
21 as the adequacy of the mitigation. I can give you, if
22 the Commission is interested, additional sites to parts
23 of the transcript, or evidence that is in the record.
24 The record sites were also included in our Briefs that we
25 submitted on these issues, post-hearing, so, as I said, I

1 can provide those for you, but they are there in the
2 record, and it is consistent with the analysis that was
3 included in the PMPD. And, again, that analysis was not
4 changed by the Errata.

5 The other mitigation measure that we would like
6 to just briefly discuss with you this morning is related
7 to BIO 10, which is the Mitigation Measures that are
8 being provided for the Flat-tailed Horned Lizard, and we
9 do not have any disagreement with the substance of the
10 Condition as it is presented in the PMPD, as well as it
11 is presented in the Errata. We do find that there has
12 been some confusion about the numbers that are included.
13 What the mitigation is essentially requiring, 1:1
14 mitigation for all impacts on the project site to offset
15 impacts of Flat-tailed Horned Lizards, and also a 6:1
16 mitigation ratio for the offsite linears which go through
17 the Flat-tailed Horned Lizards, DWMA, and the Special
18 Management Areas that have been established by the BLM.
19 And, again, we have no disagreement or argument with that
20 level of mitigation, we think that that is appropriate.
21 In BIO 10, both in the PMPD and in the Errata, there is a
22 basis for calculating what level of compensation is
23 likely to be required to provide that level of
24 mitigation, and it is contemplated that there will be
25 security that will be provided for the impacts, and it

1 does allow for a phasing of that compensation. To
2 calculate that compensation, the staff had relied on
3 numbers that were provided by the Renewable Energy Agency
4 teams, and again, we have no argument with that basis for
5 those numbers and most of the calculations. What has
6 happened, however, because these have gone through so
7 many different iterations, is that there are a number of
8 inconsistencies that are included in the Errata, so the
9 numbers don't match up, and you can look at, as an
10 example, if you look on page 20 and 21 of the Errata, on
11 page 20 there is an estimated land acquisition cost per
12 acre on parcel, and if you look at the bottom part of
13 that table, it says "Agency's cost to accept," and it
14 calls out a number of \$580,896; that number was the same
15 number that was used in the Supplemental Staff
16 Assessment, and it was a number that we were also using
17 when we were providing our calculations; now, if you go
18 to page 21, you look at Agency's Cost to Accept, and this
19 has been replaced with the number which is \$614,406, and
20 we're not sure where that number comes from, but what
21 we're most concerned about is just that these numbers
22 don't add up, and that there is this inconsistency in
23 this Decision. What we suggest doing is to utilize one
24 single table, rather than the multiple tables that are
25 kind of sprinkled throughout here, and have that one

1 table include all of the information about this is the
2 number of acres that is required, this is the cost of
3 acquiring that, this is the cost of managing it, and this
4 is how it will be phased. And I would like to pass out
5 to you this morning two different versions of this table,
6 which just have - there is a slight difference in it, if
7 we can hand that out, then I can discuss with you what we
8 are proposing the Commission to include to help clarify
9 and make sure that some of these inconsistencies are
10 cleaned up. If that is acceptable, then we can pass that
11 out now?

12 CHAIRMAN DOUGLAS: Please pass it out and make
13 it available to all the parties.

14 MS. FOLEY GANNON: Yes, we will. And I
15 apologize, I should have labeled these A and B, they have
16 the same title, which is "IDS BIO 10, Flat-tailed Horned
17 Lizard, Mitigation Table 1." If you look at the bottom
18 line on the chart that has a total in the lower right-
19 hand corner of \$10,538,000, that and some, that number
20 utilizes the same acquisition numbers that have been
21 provided in the SSA, and that the Applicant had included
22 in his earlier chart. The other table, which for
23 purposes of the discussion this morning, we will call
24 "B," has the total of \$10,572,000. And, again, you can
25 see the difference in these numbers is not very

1 significant, you know, about a \$40,000 difference, but we
2 do think it's important to have the condition be
3 consistent. So, again, what we're recommending, these
4 numbers are just taken from these charts, we think that
5 these charts incorporate all of the different
6 calculations that are included in BIO 10, which are
7 important for establishing the security, and we would ask
8 that this be included and that the other tables that are
9 included in the Errata not be included in the decision,
10 as is adopted.

11 COMMISSIONER BYRON: Ms. Foley Gannon, of
12 course we are going to give folks a chance to respond to
13 these suggestions, but I'm just trying to understand why
14 it's so important that these numbers be accurate, given
15 that they are estimates, and they will be adjusted to
16 reflect the final approval of funds that will be
17 necessary for mitigation.

18 MS. FOLEY GANNON: Our thought was that this
19 would make it much easier for the Compliance person to
20 understand exactly what is being used if we have one
21 chart, if we have one table; you know where these figures
22 are derived. There is this recognition that these
23 numbers are going to be possibly changed later based upon
24 maybe input from the agencies or from other things. This
25 clearly, we think, sets forth where that input would be

1 coming in, so that -

2 COMMISSIONER BYRON: Okay, I just want to make
3 sure everybody understands, these are estimates.

4 MS. FOLEY GANNON: These are estimates.

5 COMMISSIONER BYRON: And it is somewhat
6 misleading when we have 10 digits of accuracy in these
7 numbers, all the way down to the penny.

8 MS. FOLEY GANNON: This is when you use Excel
9 Charts, this is the way that it comes out, so, again, we
10 were trying to not change any of the numbers that had
11 been given by the agencies, or anything else, we were
12 just inputting it and trying to make it useful, again, so
13 that the Compliance Manager would know, if there were
14 changes made, the Applicant would know if there were
15 going to be changes made, the agencies would know when
16 they were getting input, we just think it would help
17 clarify. Again, it is not as important to us as the
18 change that we were just discussing and that we're asking
19 for with the Peninsular Bighorn Sheep, but we just
20 thought this was a clarification that could be helpful.

21 CHAIRMAN DOUGLAS: All right, do you have
22 additional comment before we go to other parties?

23 MS. FOLEY GANNON: No, that is the end of my
24 comments. Thank you very much.

25 CHAIRMAN DOUGLAS: All right, thank you. Let's

1 hear now from staff.

2 MS. HAMMOND: Thank you, Chairman. And thank
3 you to the Committee and the Commissioners for its very
4 careful and reasoned Errata. And staff is appreciative
5 of the Committee's efforts. Oh, I am sorry, I am
6 Christine Hammond from staff, I'm Staff Counsel. To my
7 right is Christopher Meyer, the Project Manager.

8 So, I would like to just first identify one
9 change that staff would like to see in the Errata, we
10 believe it is an inadvertent omission of a single
11 sentence and I can identify that now. It would be to
12 Paragraph 4 on Page 27, and it concerns security. Staff
13 in its comments on the PMPD had included some redlined
14 language that most of that redlined language was
15 incorporated, but a single sentence was, we believe
16 inadvertently omitted. And that sentence is, "The CPM
17 may draw on the security if the CPM determines the
18 project has failed to comply with the requirements
19 specified in this condition." And that is just language
20 that empowers the CPM to actually call on the security,
21 should the project owner fail to comply with the
22 requirements. That language is in BIO 17 and BIO 19, and
23 should be included in this condition.

24 There are a couple of other changes, internal
25 inconsistencies we believe can be handled by an

1 administrative Errata. To respond to the Applicant's
2 comments regarding BIO 17, staff had set forth the
3 reasons for requiring the Applicant to mitigate 881 acres
4 of land, which is Peninsular Bighorn Sheep foraging
5 habitat. Staff had based that number and this is a
6 repetition of staff's briefs and comments on the PMPD.
7 Staff had based that number on the amount of potential
8 foraging habitat that is permanently lost to Peninsular
9 Bighorn Sheep. It is very different from the amount of
10 vegetative cover that was determined in these washes.
11 And on that basis, we believe 881 acres with the full
12 support of the Department of Fish and Game is the correct
13 number of mitigation. Now, the record does reflect that
14 there was a difference of opinion between the U.S. Fish
15 and Wildlife Service and Fish and Game on the amount of
16 acreage that should be mitigated, but we have the full
17 support and encouragement from Fish and Game on the 881
18 acres.

19 Just to briefly go through staff's arguments,
20 which is there is a qualitative difference between the
21 vegetation that is at Carrizo Creek and at the project
22 site. To think that enhancement at existing habitat,
23 which is at Carrizo Creek, and that evidence is in the
24 record, could be used to mitigate the permanent loss of
25 habitat, which is of a different quality, is simply not

1 the case, it is different habitat, it is different types
2 of vegetative cover that provides a different type of
3 support to the Peninsular Bighorn Sheep. We are also
4 concerned about the permanent loss of 881 acres of
5 potential foraging habitat. And for these reasons, we
6 believe the Committee correctly issued its Errata and
7 modified the number of acreage to 881 acres. Now, it is
8 desirous for the Commission's conditions to align with, I
9 guess, the conditions in the permits issued by other
10 agencies; the Commission is in no way required to modify
11 its conditions to match the conditions in the BO. The BO
12 Is a minimum and the Commission is certainly empowered to
13 require more, and with the full support and encouragement
14 of a California state agency, the Department of Fish and
15 Game, staff encourages and urges the Commission to
16 require 881 acres of Peninsular Bighorn Sheep foraging
17 habitat mitigation.

18 CHAIRMAN DOUGLAS: Thank you, Ms. Hammond. Do
19 you have any other - does staff have any other comments
20 before we turn to other parties?

21 MS. HAMMOND: I do, and it concerns the table
22 that was distributed by Applicant just moments ago. And
23 the Applicant has correctly said, there is some internal
24 inconsistency in the Errata with the numbers. Some of
25 staff's numbers in its PMPD comments have been

1 incorporated into the Errata, but not all. And whether
2 the Commission adopts staff's numbers or the Applicant's
3 numbers, staff will rest on that, but there is admittedly
4 an internal inconsistency. There are some, we think,
5 clarifying and substantive elements to the tables in the
6 Errata and would encourage the Commission not to modify
7 the Errata at this point. We have not had a meaningful
8 opportunity to review these tables. If there is some
9 confusion at the compliance level before construction
10 commences, we believe that the Compliance Managers of
11 staff and the Commission and the Applicant can work that
12 out, so we do not believe a change to the Final Decision
13 is necessary.

14 MR. MEYER: Madam Chair and Commissioners, this
15 is Christopher Meyer, Project Manager for staff on this,
16 and I just want to take just a really brief moment to
17 both thank the staff, who have made some amazing
18 turnarounds in the technical staff on getting some
19 documents back to me, and to share with parties on this
20 case, as it has been sort of a mercurial process going
21 forward. But also, my counterparts at the BLM, Jim
22 Stobaugh, the Project Manager, Daniel Steward, who was
23 instrumental in a lot of the biology and some policy
24 issues, and Amy Fesnock from the State Office, have been
25 amazingly helpful in aligning our process. And both

1 Magdalena Rodriguez and Randy Botta at CDFG have not just
2 reviewed documents on the way, they've been instrumental
3 in the development of a lot of our conditions and
4 positions, and they're availability to staff has been
5 essential in our getting a good document. Also, Felicia
6 Sirchia from U.S. Fish and Wildlife Service, and Michelle
7 Madsen from the U.S. Army Corps of Engineers have been
8 sort of beyond the call - available to us to help in our
9 development of our position and our mitigations. I just
10 wanted to make sure that I took a moment to thank they
11 all.

12 CHAIRMAN DOUGLAS: Thank you for doing that.
13 If staff has no further comments at this time, we'll go
14 to the Interveners here.

15 MS. MILES: Good morning. My name is Loulena
16 Miles and I am here as Counsel for California Unions for
17 Reliable Energy. CURE intervened in this project soon
18 after it was deemed data adequate. And, first, I'd just
19 like to thank the Hearing Officer and the Committee for
20 the Errata decision to go forward with the Peninsular
21 Bighorn Sheep mitigation for foraging habitat, I think
22 that was a very scientifically defensible and well
23 supported decision, and I just would like to point out
24 that it's not - we had the testimony of an expert, Dr.
25 Vernon Bleich, come to the hearings and he testified that

1 it's not as important that it's regularly utilized, that
2 the land is regularly utilized by Bighorn, but that it
3 may be utilized occasionally, but that could be essential
4 for the long term survival of the endangered Peninsular
5 Bighorn Sheep. And there is also evidence from the
6 agency, I believe it was Randy Botta from Fish and Game,
7 that he said he was excited about the fact that Bighorn
8 were witnessed in this area because this may be evidence
9 of range expansion, and that's something that would be
10 really important for the recovery of the species, and so
11 we urge the Commission to adopt mitigation that would put
12 long term land into long term management and purchase
13 this land so that it can be enhancing the long term
14 survival for Bighorn Sheep.

15 We do still have a number of concerns regarding
16 this project and, specifically as it was described in the
17 PMPD and Errata, I'm going to limit my comments today to
18 my four major concerns, and I won't go into more, but
19 first I want to say that the Commission has to decide
20 whether to approve a project that is substantially
21 different than the original project that was presented by
22 the Applicant and, more importantly, the project that is
23 before you is substantially different than the project
24 that was analyzed by the staff in the two-year site
25 certification process, and as you know, the original

1 project was the 750 megawatt project that would put
2 SunCatcher units into the ephemeral streams on the
3 project site, and the Army Corps reviewed that proposal
4 and determined that it would cause unacceptable impacts
5 to Waters of the United States under Section 404 of the
6 Clean Water Act. As a result, the Corps notified the
7 Applicant that they could only permit the Least
8 Environmentally Damaging Practicable Alternative, or
9 LEDPA. And the Applicant has been aware of this for a
10 long time, however, the problem is that the Applicant
11 only provided the new draft redesign of the project two
12 working days before the final Evidentiary Hearing. So,
13 as a result, no party, including staff, was given an
14 opportunity to meaningfully analyze the new project
15 configuration. And this redesign is not simply a smaller
16 project than was initially proposed, that we believe it
17 will result in new and different potentially significant
18 impacts that were not analyzed. The 709 megawatt
19 project, as it has been referred to in the PMPD, has
20 attempted to address impacts to water, or reduce impacts
21 to Waters of the U.S., by not building small roads off of
22 major roads in between the SunCatcher units, however,
23 this change does not eliminate the off-road travel to and
24 from the SunCatcher units and, instead, the removal of
25 roads will result in the driving in areas where there is

1 no soil stabilization and there are not best management
2 practices that are normally associated with the siting of
3 a road. And it will result in off-road travel through
4 ephemeral washes. And I brought a photograph today, this
5 is from the Applicant's presentation, Tessera Solar's
6 presentation, and my colleague, Rachel Koss, is going to
7 pass it out to you right now so that you can see it, I
8 know this is rather small. But this shows the Maricopa
9 facility, the installation of the SunCatcher units, and
10 as you can see, there is pretty much complete disturbance
11 around the units and that large equipment has to be
12 brought in, in order to move the SunCatcher units. And
13 so, we don't believe that removing roads is actually
14 going to reduce impacts and, in fact, may increase the
15 impacts. And we're really concerned that, also, if you
16 remove roads, then there isn't necessarily specific areas
17 where you would have impacts, you might have impacts in
18 areas where the roads - because people can drive in
19 different ways between the units. And the desert
20 environment is very fragile and can take centuries to
21 recover, if ever. We did submit evidence that the
22 allowance of offered travel in areas not subject to soil
23 stabilization and best management practices is a
24 significant impact. That was not analyzed by staff.
25 Unfortunately, we were not able to submit that at the

1 Evidentiary Hearing, but we did submit it in our PMPD
2 comments. Staff explicitly stated in their opening brief
3 that the Commission should not approve a Draft LEDPA that
4 has not been the subject of thorough analysis of
5 potential impacts and feasible mitigation that may be
6 needed, and I am quoting their opening brief on this, so
7 I don't mean to put words in staff's mouth, but this is
8 in the record, and staff did repeatedly tell the
9 Committee that the redesign was not studied in detail by
10 staff's technical experts, and recommended that it not be
11 approved. Nonetheless, the PMPD recommends approval of
12 this 709 megawatt redesign, or what the Errata now calls
13 the BLM Preferred Alternative. Just because the
14 Commission or the staff spent a long time analyzing the
15 original project, which they did, and they did quite a
16 commendable job, I have to say, does not make it legal to
17 approve a different project. It would be a great error
18 for the Commission to disregard its own staff on this
19 point. If the Commission wants to comply with CEQA in
20 its own siting process, it should direct staff to review
21 the new project configuration, analyze the new and
22 different impacts, and propose mitigation where
23 appropriate in keeping with state law, and circulate that
24 analysis to the public for comment and response.

25 Now, even more alarming is the PMPD's Errata

1 proposal to not decide what project to approve, but
2 instead to approve the BLM preferred alternative. The
3 reason for this change is an attempt to make the decision
4 vague enough that it will be consistent with whatever the
5 BLM eventually approves, but the BLM has not issued its
6 Record of Decision on this project and the BLM has not
7 decided which alternative that it will approve, and the
8 Army Corps of Engineers has still been actually working
9 out the reconfiguration, there have been additional
10 changes since the Evidentiary Hearings. In fact, I was
11 in communication with the Army Corps last week and I was
12 told that there have been additional changes since what
13 was presented in the Applicant's rebuttal testimony.
14 And, it is highly likely that the project will continue
15 to change because the EPA has raised numerous objections
16 to the 709 megawatt project, and has ultimately authority
17 over the Applicant's and the Corps' proposed alternative.
18 So, as a result, the Errata to the PMPD now states that
19 the Commission should approve a future project that has
20 not been defined.

21 My second point today concerns water supply.
22 The PMPD recommends that the project rely upon potable
23 drinking water from the Dan Boyer Well, that is in a sole
24 source drinking water aquifer for at least three years.
25 The potable drinking water from the Dan Boyer well is

1 taken from an Aquifer that is the only source of water
2 for small desert communities that overlie the aquifer.
3 There is no evidence that the water is available to meet
4 the Applicant's stated needs because the Applicant
5 requires more water for its first year of construction
6 than the well can provide and, in fact, we submitted
7 evidence, expert testimony, that we believe there will be
8 additional water that will be needed based on the
9 documentation that the Applicant provided in the AFC.
10 And, in fact, the staff estimated that more water would
11 be needed for dust suppression to control Valley Fever,
12 and that was never calculated into the final water
13 requirements for the project. There is no evidence that
14 the water will be available for the three years since Dan
15 Boyer's documentation that the Applicant provided said
16 that it could only supply - or that it would supply water
17 - for approximately six to 11 months, and there was no
18 amount that was provided. Staff concluded that the
19 Applicant's reliance on this water source would pose
20 significant immitigable impacts and concluded in their
21 water supply assessment that this is not a reliable water
22 source, so, in short, from our view of the evidence in
23 the record, it appears that there is no reliable water
24 for this project. We urge the Commission to condition
25 the approval of the project on recycled water from the

1 City Wastewater Treatment facility and deny the request
2 for the Applicant to rely on the Dan Boyer Well.

3 My third point concerns cultural resources. At
4 the Evidentiary Hearings, Commission staff testified that
5 the number of cultural resources that we have in this one
6 project exceeds all of the cultural resources that the
7 Energy Commission has dealt with in all other projects
8 combined, in the history of the Commission's siting of
9 power plants. It is a very significant number of
10 cultural resources on this site. For one of the cultural
11 resources, the project would wholly obstruct the most -
12 one of the most undisturbed portions of the Juan Bautista
13 De Anza National Trail, that is the first overland route
14 from New Spain to San Francisco, and that is administered
15 by the National Park Service, and the Park Service
16 submitted comments, very strong comments, about this
17 project. Historic campsites are located within close
18 proximity to the project site and it is believed that the
19 Anza Party camped on the project site. Access to this
20 section of the trail will be completely eliminated and
21 the camping and exploration of this section of the trail
22 will not be possible once the project is approved. In
23 addition, visual inspection of the ground surface on the
24 proposed site revealed at least 453 distinct cultural
25 resource sites, some of these included two prehistoric

1 districts, stone scatters with human worked bones, stone
2 tools, ceramics, geoglyphs, 11 segments of a prehistoric
3 trail system, and a considerable number of prehistoric
4 cremations on and next to the site. And, in fairness,
5 many of the cremations are not actually on the site
6 anymore, but there are still some - there is at least one
7 that is known to be on the site, and other potential
8 cremation areas. So, regardless, it is a very
9 significant site. This is ancestral and sacred land to a
10 number of tribes in the area.

11 The PMPD admits that the Commission is
12 abdicating its responsibility, I know it did not use that
13 word, but to evaluate the impacts on cultural resources
14 because the site is so rich in cultural resources, and I
15 will quote the PMDP on page 67: "The high number of
16 cultural resources for this project renders the
17 evaluation of all known resources infeasible." This is
18 like an agency saying, "We are not going to analyze toxic
19 emissions from a refinery because it will emit so much
20 benzene," or, "We are not going to analyze the likelihood
21 of an accidental explosion because the chance of the
22 explosion is so high." CEQA does not contain a provision
23 that enables the Commission to sidestep the
24 identification of significant impacts because the
25 quantity of the impacts is so great, and the quantity and

1 significance of these impacts was precisely what requires
2 the analysis in the first place.

3 The PMPD does not offer legal support for its
4 justification, indeed, the PMPD actually justifies the
5 lack of analysis on the basis of the American Recovery
6 and Reinvestment Act deadlines. On page 3 of the PMPD
7 section on Cultural Resources, it says, and I quote:
8 "Given the ARRA deadlines, the Energy Commission and BLM
9 staff have not had time to provide a detailed evaluation
10 of each resource potentially eligible for the Historic
11 Register." The Applicant's financing arrangements do not
12 trump CEQA, the PMPD's failure to analyze the wealth of
13 significant cultural resources on the project site is in
14 plain violation of CEQA. CURE recommends that the
15 Commission go back and do a good faith, legally adequate
16 analysis of the impacts.

17 My last point is about process. The Commission
18 did not provide the notice and a 30-day comment period,
19 or Responses to Comments on this Part 1 and 2 of the
20 Supplemental Staff Assessment. Now, the Commission did
21 provide a 30-day comment period on their original Staff
22 Assessment and I believe it was actually a 90-day comment
23 period, and we think that was - we are fully in support
24 of that, however, there were major changes in the project
25 after that came, and they actually found that there were

1 some new significant impacts, for example, in the
2 original Staff Assessment, the staff did not find a
3 significant impact to Bighorn Sheep, and a lot more
4 evidence came into the record after that point. The
5 mitigation was not analyzed for Bighorn Sheep because
6 there was no mitigation proposed in the original Staff
7 Assessment, and there was no mitigation included in the
8 original Staff Assessment for cultural resources, and
9 this is just not even scratching the surface of the
10 magnitude of the changes. And so we believe that a new
11 30-day comment period really was warranted for the
12 Supplemental Staff Assessment. And specifically, the
13 Public Resource Code Section 21091(D) requires the
14 Commission to consider comments it receives on the Draft
15 Assessment and prepare a written response, and really, I
16 want to highlight this idea that, you know, you have to
17 provide a written response, this is the State law in
18 California, and there has not been an opportunity for the
19 public to receive a response. And I know the Errata
20 provided a few - there were a few places in the Errata
21 where it said that specific public members' comments had
22 been considered, but there was no response to their
23 comments beyond that, and there were many members of the
24 public who commented, for example, on the Dan Boyer Well,
25 and there was never a Response to Comments, and the Dan

1 Boyer Well is another example of something that came
2 along after the original Staff Assessment was issued.

3 So, in closing, I am not here today on behalf
4 of CURE to ask you to deny this project, I am here to
5 respectfully request that the Commission not vote this
6 out today. Please go back and have staff analyze the
7 changes to the project, identify the impacts, develop the
8 mitigation, notice the comment period, and respond to
9 comments, as is required by CEQA. Thank you.

10 CHAIRMAN DOUGLAS: Thank you. And I will ask
11 staff to provide their response to some of the issues
12 that you've raised, but first, I understand there is
13 another Intervener who is on the phone, Mr. Budlong, are
14 you on the phone?

15 MR. BUDLONG: Yes, I am on the phone.

16 CHAIRMAN DOUGLAS: All right, well, as a party,
17 this is your opportunity, or one of your opportunities,
18 to speak on this project.

19 MR. BUDLONG: I presume - I got in quite late,
20 I had other things to do, I presume we are talking about
21 Imperial?

22 CHAIRMAN DOUGLAS: Yes, sorry about that. We
23 are talking about Imperial, we took the project up and we
24 have heard from Applicant, staff, and CURE at this point.

25 MR. BUDLONG: Yeah. I heard the tail end of

1 CURE's comment and I would agree with CURE that now is
2 not the time to vote this out, but to do some more
3 investigation.

4 I am specifically bothered by the fact that the
5 machinery used at this project, the SunCatchers, has had
6 essentially no field experience, they've got 60 units
7 running at Maricopa and they have been running for six
8 months, and what the approval would mean is projecting
9 that machinery to be used for the next 30-40 years, and
10 30,000 units, so we are using like 360 or 400 months,
11 thereabout, in order to project success for something
12 like, if you multiply the numbers out, 12 million months.
13 That is, I consider, not a prudent thing to do. With
14 such little field experience, you have no idea what is
15 going to happen when you actually get out in the field
16 under real working conditions for long periods of time.
17 If you look at Dr. Barry Butler's testimony on PUC three
18 years ago, his suggestion for something like this is to
19 jump up by a factor of 10 each time, say, from the
20 current 60 units, of 600 units for the next year or so
21 would be prudent, improve the amount and get operating
22 experience, and then 6,000 units after that, and then you
23 can get up to the 30,000 unit level. Without doing this,
24 we don't know what those machines are going to do, we
25 don't know what their maintenance expenses are going to

1 be. There has been a lot of talk about maintenance
2 expense and reliability and MTBF, and we all understand
3 that you can get a high reliability by very intensive
4 maintenance, even though you may have a very poor MTBF.
5 That speaks to the economics of the project and, if the
6 high maintenance turns out to be true, the project can
7 well be economic and it can fail. We talked about this
8 at one of the Evidentiary Hearings in El Centro. And if
9 the project fails, then there is no justification at all
10 for overriding environmental effects, and the Commission
11 has not taken a look at that and has, as a matter of
12 fact, refused to do it based on the idea that they are
13 not responsible for the economics of the project.
14 However, if there is significant environmental impact and
15 no project because it failed economically, then the
16 Commission has failed in doing its duty, it absolutely
17 must take care of the economics to see whether this thing
18 is going to work. This is a brand new technology, this
19 is not like solar trough or PV, it is a brand new
20 technology, it is a very fussy technology, solar
21 amendments have been around for a long time, but they've
22 never gone into high production, they've never been very
23 high used, it is a tricky difficult technology. People
24 such as Boeing, and McDonald Douglas, and Ford, and SAIC,
25 and Sandia Labs, those are not trivial outfits, have been

1 working on this thing for the last 30 years and, now,
2 finally, we see 60 units in the field. Staff has also
3 indicated that they don't have confidence in their
4 reliability, so I think it is necessary for the
5 Commission, for staff, to look at the economics to find
6 out whether - to get some confidence that this machinery
7 is really going to...

8 I have another comment which is in general, and
9 that is that California has been very careful about
10 putting together environmental laws, the CEQA, it spent a
11 lot of time putting that together very carefully, in less
12 panicked circumstances, and essentially now what it
13 amounts to is we are abandoning CEQA by saying the
14 Commission can override anything that they want, whatever
15 they say is considered CEQA adequate, and there is no
16 appeal except for the Supreme Court to do that, for
17 people to object to it if they think the Commission has
18 done this incorrectly. To me, this amounts to what is
19 considered a dictatorship. The government decides what
20 to do and there is no appeal. And to me, that is the
21 wrong way to do business in a country such as ours. That
22 is the end of my testimony.

23 CHAIRMAN DOUGLAS: Thank you for your comments.
24 I would like to ask staff if you would like to respond to
25 any of those questions or issues that CURE raised.

1 MR. MEYER: Staff feels that our filings to
2 date are fully explained.

3 CHAIRMAN DOUGLAS: Thank you.

4 COMMISSIONER BYRON: Well, I don't think that's
5 going to cover it, Mr. Meyer. We're going to try and
6 respond to some of these. If staff wants to not respond
7 at this time, that is fine. Maybe Mr. Renaud could come
8 forward. Thank you, Mr. Renaud. Let me ask, Madam
9 Chair, since you are keeping track of all the cards, just
10 in case, are there any other Intervener parties on the
11 phone that we may have missed? Okay, Mr. Renaud, let's
12 try to go through some of these if we can for the benefit
13 of the public.

14 HEARING OFFICER RENAUD: Sure. Let's see,
15 well, I'll just start at the beginning. With respect to
16 going back to the biological conditions that were
17 discussed, the change in mitigation acreage from 247 to
18 881, we understand Applicant's arguments; the Committee
19 tussled with this issue. In the end, the fact that the
20 California Department of Fish and Game favors the 881 was
21 a strong factor and we think it is fully justified by the
22 record.

23 COMMISSIONER BYRON: Despite the fact that the
24 Peninsular Bighorn Sheep do not have a project labor
25 agreement for those 881 acres?

1 HEARING OFFICER RENAUD: I don't think they do,
2 no, sir.

3 COMMISSIONER BYRON: All right, please
4 continue.

5 HEARING OFFICER RENAUD: All right. As far as
6 BIO 10, I agree completely with Commissioner Byron's
7 observation that these charts, which have driven
8 everybody crazy, are prefaced both before and after by
9 statements to the effect that they are estimates, that
10 they can be changed, trued up, subsequent to - as the
11 project goes along, and I think that's the way we ought
12 to deal with it. THE CPM will have the discretion to
13 adjust these. Staff Counsel suggested an addition to the
14 Errata, paragraph 4, page 27, we completely agree with
15 that and would include that into the Errata, as well.

16 As far as CURE's concerns, just generally, I
17 should say we've heard all of those arguments before,
18 they have all been addressed at length in the PMPD. The
19 issue of the LEDPA, again, is discussed at length in the
20 PMPD. One factor that was not pointed out is that there
21 is evidence from staff cited in the record, or in the
22 PMPD, that the alternative that was recommended by the
23 Committee is within the range of alternatives analyzed by
24 the staff, and that is what CEQA requires, in fact. No
25 one has shown - I will stop there at that point. As far

1 as the picture of the Maricopa facility, I'm not sure
2 what that does for us, other than that I should point out
3 that is not in California, and it is not subject to CEC
4 Conditions of Certification, which are extensive, and
5 which include such things as the requirements for dust
6 suppression, a 10 mph speed limit on paved surfaces, and
7 the like. We should also bear in mind that the site
8 currently is used by off-highway vehicles, that use will
9 cease as a result of this.

10 As far as the allegation that we are now
11 approving something that is not gelled, the BLM preferred
12 alternative, the reference there is to the very first
13 page of the Errata, where we had been calling the
14 alternative, the "709 Megawatt Alternative," just to make
15 things clear, we changed it to "BLM Preferred
16 Alternative." We could have also changed it to "Fred."
17 I mean, we're just saying we need to have a consistent
18 name that we'll call this thing. And that's the name we
19 chose. If somebody would like to suggest a different
20 name, that could easily be globally changed. But that's
21 the only meaning that should be taken from the use of
22 that term.

23 Ms. Miles also referred to the water issue.
24 Regardless of any estimates that exceed 40 acre feet a
25 year, the fact is that we have a very very strong

1 Condition of Certification limiting the Applicant to 39,
2 and furthermore limiting it for three years, there is a
3 extensive evidence that they won't even need it for three
4 years, but if they do, there is a requirement that that
5 all be done pursuant to permits, registrations, and so
6 on, and furthermore, there is an extensive analysis that
7 the remaining one acre foot is more than adequate for the
8 residential water needs that were testified to at the
9 hearing. There's a very very extensive discussion in the
10 PMPD about all that. As far as the issue about cultural
11 resources not being analyzed at this point, first of all,
12 Ms. Miles read to you from the PMPD a part of a
13 paragraph, but I kind of thing she should have read the
14 rest of it to you because, while it does say that staff
15 did not have time under the ARRA deadlines to do the
16 analysis in advance, the paragraph then goes on to say
17 "resources, instead, will be evaluated according to
18 protocols established by the Conditions of Certification
19 and the programmatic agreement. Furthermore, the finding
20 is that the mitigation measures will reduce impacts to
21 less than significant, but cumulative impacts will remain
22 because of the multiple projects in the area." So, I
23 think, again, we're proceeding in a very conservative and
24 well established fashion by using these Conditions of
25 Certification and the programmatic agreement.

1 I think that is everything I wanted to respond
2 to. If you have any questions for me, I'll try to
3 answer.

4 COMMISSIONER EGGERT: I guess there was one
5 other issue if I remember on the process and the 30 day
6 notice.

7 HEARING OFFICER RENAUD: Oh, yeah. Well, as
8 far as that is concerned, we have Chief Counsel here, by
9 the way, who might wish to bolster this, but we allow a
10 30-day comment period in accordance with law for anything
11 that constitutes a Proposed Decision or a Decision, that
12 is a recommendation for action. Such documents as the
13 Staff Analysis, there is no such requirement. As a
14 matter of course, typically there is plenty of time after
15 the issuance of those documents, but we don't
16 specifically denote it a comment period, there just
17 happens to be a lot of time. So, Chief Counsel may wish
18 to add to that, but when CURE started making this
19 allegation some time ago, it was thoroughly researched.

20 CHAIRMAN DOUGLAS: Thank you, Hearing Officer
21 Renaud.

22 COMMISSIONER BYRON: If I may, Madam Chair,
23 just to make sure we close on a couple of other items.
24 Yes, Ms. Miles said a number of things, and I tried to
25 jot them down and I may not have them verbatim, I was

1 curious if staff could address an accusation that we are
2 in opposition with staff conclusions with regard to their
3 preferred alternative. I may have gotten that incorrect,
4 but I just wanted to see if you could address, Mr. Meyer,
5 are your conclusions and those recommended in the PMPD in
6 opposition with regard to use of that preferred
7 alternative?

8 MR. MEYER: I'm not sure I totally understand
9 the question. I think Ms. Miles -

10 COMMISSIONER BYRON: Let me help one more time.
11 Going back to four points, I was going back to the first
12 one, "the project before us is not that reviewed by the
13 staff," and a number of other accusations that are
14 incorrect, but the one that stuck for me was that we were
15 in opposition with staff's conclusions.

16 MR. MEYER: Obviously, we are in opposition
17 with - oh, that the Committee is in opposition with
18 staff?

19 COMMISSIONER BYRON: Yes.

20 MR. MEYER: In staff's opening brief, this is
21 before there was, you know, the LEDPA had been adopted in
22 the PMPD and before it was talked about, staff related
23 concerns in that opening brief that the LEDPA was not the
24 alternative that staff had totally analyzed, and what we
25 went on in the Evidentiary Hearings to talk about

1 extensively is to see if the Committee wanted additional
2 analysis of that, and what came out of that is that the
3 Committee felt that, between the analysis that the staff
4 did of the full project, the analysis that we did reduced
5 acreage alternatives, including several that avoided
6 washes, there were actually - our drainage avoidance
7 alternatives were developed primarily by the U.S. Army
8 Corps of Engineers withheld from our staff and the BLM,
9 the resource agencies. So it was decided that the
10 coalition of that information on the Committee side
11 answered that basic question of, given enough
12 information, that a decision could be made on the LEDPA,
13 and staff subsequently did not, from that opening brief,
14 we did not make any further mention of that.

15 COMMISSIONER BYRON: Let's see, just to close,
16 Madam Chair, on the CURE comments, I'd like to go on the
17 record that the analogies and the mischaracterization of
18 the facts was very troubling. This abdication of our
19 evaluation of cultural resource significance, and
20 comparing it to releasing benzene into the atmosphere, to
21 affect people's health, I think it is important that you
22 all be aware that most all of what we heard today from
23 CURE we've heard before in earlier evidence.

24 Mr. Budlong, I would like to thank you for your
25 participation and comments, this Committee does take

1 seriously the reliability of the equipment, and I believe
2 I may have shared in Evidentiary Hearing that, as a young
3 engineer about 30 years ago, I worked on a similar design
4 as these components. The Committee was concerned about
5 reality and, indeed, we've added with the agreement with
6 staff and the Applicant, a new condition in the Errata, I
7 believe that is correct, isn't it - I'm turning to my
8 Hearing Officer - a reliability Condition 1?

9 HEARING OFFICER RENAUD: That is right. And I
10 would like to thank you, Mr. Budlong, for your
11 participation in this. I believe you really did
12 contribute significantly to the quality of the decision
13 that we've received here. Madam Chair, thank you for
14 allowing me to just close a little bit on some of the
15 comments.

16 CHAIRMAN DOUGLAS: Thank you, Commissioner
17 Byron. What I would like to do now is turn to public
18 comment. Yes, Mr. Levy?

19 MR. LEVY: Thank you very much. Just to
20 follow-up on Commissioner Byron's comments, I just wanted
21 to respond also to what I believe to be a
22 mischaracterization of what the PMPD says by CURE's
23 attorney. On page 67, the statement, "Due to the fact
24 that there is a high number of cultural resources for
25 this project renders, that the high number of cultural

1 resources for this project renders the evaluation of all
2 known resources infeasible," that's not an abdication, it
3 is an acknowledgement of the size of the project and the
4 fact that it's just not unfeasible to uncover everything
5 before the licenses are issued. And there are
6 protections in the PMPD that require the Applicant to
7 come back to the Energy Commission if the ordinary
8 mitigation measures that are analyzed already prove not
9 to be adequate for newly discovered resources; that is
10 not an abdication, it is a fact of life. And the same
11 thing on page 3, a fact of life on a resource of this
12 nature and a project of this magnitude on new land, so
13 there is only so much that environmental agencies can do
14 to evaluate what impacts there are, and at some point
15 they may reach a stopping point in their initial
16 analysis, and that is what you are saying here, is that
17 you can't feasibly do it all in advance. The second
18 comment is to suggest that the ARRA deadlines are
19 stifling review of or preventing an adequate review of
20 impacts, that is also a mischaracterization of page 3; it
21 says specifically with respect to - well, let me read it
22 again: "Given the American Recovery and Reinvestment Act
23 deadlines, Energy Commission and BLM staff have not had
24 time to provide a detailed evaluation of each resource
25 potentially eligible for Historic Register nomination.

1 Resources, instead, will be evaluated according to
2 protocols established by the Conditions of Certification
3 and Cultural Resources Programmatic Agreement." Again,
4 this is the same type of requirement that is imposed with
5 respect to the cultural resources, that we can't go
6 through each one in advance because of timeline
7 constraints and other considerations, to designate them,
8 or determine whether they should be designated in
9 advance. But, again, the PMPD acknowledges that they are
10 there and has mitigation measures and recognizes that
11 there may be others that should be designated
12 subsequently, and that is perfectly appropriate, that is
13 not an abdication.

14 CHAIRMAN DOUGLAS: Thank you, Mr. Levy. I'm
15 going to turn at this point to public comment. I have
16 four people, two in the room, and two on the phone, who
17 have indicated an interest in speaking. If there are
18 additional people in the room or on the phone who would
19 like to speak, please either fill out a blue card if
20 you're in the room, or indicate if you're on WebEx or on
21 the phone, that you would like to speak. I'll begin with
22 Steve Taylor, San Diego Gas & Electric.

23 MR. TAYLOR: Good morning, Commissioners. My
24 name is Steve Taylor with San Diego Gas & Electric
25 Company. First, I'd like to say thanks to all the folks

1 that have worked so hard to get us to this point.
2 Certainly, Commission staff for their thoroughness and
3 tireless efforts to keep this project moving forward,
4 they've sacrificed much during these recessionary times,
5 and I note their dedication. I hope they all can take
6 some vacation soon.

7 I want to thank the Applicant for their vision
8 and efforts to bring the IV Solar Project to this point,
9 hundreds of people have been working endless hours from
10 environmental surveys to providing legal expertise,
11 dealing with the various agencies, and responding to the
12 public's concerns.

13 I want to thank the Committee consisting of
14 Presiding Member Byron, Associate Member Eggert, and
15 Hearing Officer Renaud, who skillfully guided the
16 process, balancing the need for complete information with
17 the need to move the process towards completion.
18 Difficult decisions were made to balance the interests of
19 all parties and create a record that can justify approval
20 of this project. And finally, I'd like to thank the
21 Commission as a whole, whose efforts to approve large
22 scale solar projects is sincerely appreciated. This
23 project will allow all of SDG&E's 3.4 million consumers
24 to benefit from clean and efficient solar power. And
25 approval of this project will further benefit SDG&E in

1 meeting California's renewable energy goals. I've
2 witnessed a rare combination of cooperation that I wish
3 to acknowledge, between the Commission staff, Bureau of
4 Land Management, State and Federal agencies, and local
5 agencies, necessary to bring a project like this to the
6 point of approval.

7 And the Interveners, I would also like to
8 acknowledge. As Commissioner Eggert alluded to earlier
9 in the process, they ask the hard questions that must be
10 answered, such that the record is complete. What's
11 happening today in California regarding renewable energy
12 represents change on a global scale. Not since these
13 pioneering entrepreneurs got together in the late 1800's
14 to create what is now San Diego Gas & Electric have there
15 been so many changes to the way we deliver electricity.
16 I find it fascinating that the Sterling technology
17 developed some 200 years ago would be an integral part of
18 meeting today's energy challenges. It makes me very
19 hopeful for the future. SDG&E continues to do its part
20 to select quality developers as partners in bringing
21 renewable energy to our customers, the folks at Tessera
22 Solar have committed their time, money, a lot of effort,
23 and a few gray hairs, to making this project succeed. I
24 encourage the full Commission to approve the project
25 today, so that we can continue efforts to provide our

1 customers and generations of future customers with the
2 benefits of clean renewable energy. Thank you.

3 COMMISSIONER BYRON: Mr. Taylor, thank you for
4 being here. A quick question if I may. Monday was
5 pretty hot in San Diego, I believe it got up to 106 or
6 107 degrees. Did you set a new peak demand on Monday?

7 MR. TAYLOR: Yes, we did. We broke our old
8 record by about 50 megawatts.

9 COMMISSIONER BYRON: So that is about what?
10 About a 1 or 2 percent increase?

11 MR. TAYLOR: About 1 or 2 percent in excess of
12 what our prior record was.

13 COMMISSIONER BYRON: Well, I'd like to thank
14 you for being here. I think it's very astute on the part
15 of the utility and who has the Power Purchase Agreement,
16 at least for some of this power, if not all of it, to be
17 here in support of this project. Thank you.

18 MR. TAYLOR: Thank you.

19 CHAIRMAN DOUGLAS: The next card I have from
20 somebody in the room is Lisa Belenky, Center for
21 Biological Diversity.

22 MS. BELENKY: Good morning. Thank you,
23 Commissioners, for this opportunity to speak.

24 COMMISSIONER BYRON: Ms. Belenky, would you
25 make sure we're saying your name correctly?

1 MS. BELENKY: It is Belenky. My grandfather
2 used to say "like a bell and a key." But, you know, he
3 was old school. So, my name is Lisa Belenky and I am an
4 attorney with the Center for Biological Diversity, a
5 nonprofit conservation organization dedicated to
6 preserving rare and endangered species and their
7 habitats. The Center has been closely following this
8 Imperial Solar Project, formerly called the Sterling
9 Solar II Project, and we also commented on the Corps of
10 Engineers Notice, on the EIS, and we have recently
11 protested the proposed Plan Amendment by BLM for this
12 project.

13 The development of renewable energy is a
14 critical component of the efforts to reduce greenhouse
15 gas emissions, avoid the worst consequences of global
16 warming, and to assist California in achieving emission
17 reductions that are needed. The Center strongly supports
18 development of renewable energy production, generation of
19 electricity from solar power, in particular - I am sorry
20 I am reading this, I just won't remember what else I was
21 supposed to say - however, like any project, proposed
22 solar power projects must be thoughtfully planned to
23 minimize the impacts to the environment, and you will not
24 be surprised that the Center's concern is with the
25 impacts, particularly, to rare and endangered and listed

1 species. In particular, renewable energy projects should
2 be sited in proximity to areas of electricity end use, in
3 order to reduce the need for extensive new transmission
4 corridors, and the efficiency losses associated with
5 extended energy transmission, and should avoid impacts to
6 sensitive species and their habitats. Distributed
7 generation should be prioritized for development, along
8 with conservation and efficiency, that must be the
9 central part of our effort to reduce greenhouse gas
10 emissions. Only by maintaining the highest environmental
11 standards with regard to local impacts and effects on
12 species and habitats, can energy production be truly
13 sustainable.

14 Ultimately, and unfortunately, the project as
15 proposed here, the Imperial Solar Power Project, fails to
16 meet the mark on being really sustainable for several
17 reasons. The project will have impacts to over 6,000
18 acres of occupied Flat-tailed Horned Lizard habitat, this
19 is a species that is again proposed for listing under the
20 Endangered Species Act, and this area provides key
21 connectivity for the species between the existing
22 management areas. In addition, the proposed project
23 impacts foraging habitat for the Peninsular Bighorned
24 Sheep and, even with the changes in the layout, it still
25 impacts Federal jurisdictional waters, Waters of the

1 State, and washes, that are very high in biodiversity and
2 should be avoided.

3 The extensive road system, whether they are
4 called roads, or routes, or overland traveled by four-
5 wheeled machines, will impact soils, there will be
6 significant impacts to soils in this area, which will
7 increase particulate matter in the air in an area that is
8 already severely impacted, it is one of the worst non-
9 attainment areas in the country.

10 Lastly, if the Commission approves the project
11 at a size larger than the 300 megawatt alternative, which
12 was discussed in the BLM documents, the project would
13 require construction of additional transmission,
14 including the construction most likely of the Sunrise
15 Power Link. As the Commission is most likely aware, the
16 Center for Biological Diversity has opposed the Sunrise
17 Power Link project due to its significant impacts to
18 listed rare and imperiled species and their habitats
19 along the chosen route. Unfortunately, we also feel that
20 the review in this forum has been inadequate, as well as
21 the BLM's review of this project. And the biggest
22 category that we would say has been insufficient is the
23 failure to truly examine alternatives, including
24 alternative sites on degraded or disturbed lands, sites
25 closer to end-use and distributed generation. We have

1 seen repeatedly in these processes, we are involved in a
2 number of these processes before the Commission and all
3 of the processes before the BLM, that the alternatives
4 have not been robust, and that there has been a big
5 challenge to get the agencies to look at alternative
6 siting because decisions have already been made by the
7 company of where they want to go, and that's just, in our
8 view, a backwards way to do this process. The agencies
9 need to take the responsibility and do the alternatives
10 analysis, and insist that projects do move if there are
11 alternatives that will significantly avoid the impacts,
12 which we believe, in this case, and in many others, there
13 are. So, for these reasons and others, on behalf of the
14 Center for Biological Diversity and our members, I
15 respectfully request that the Commission deny the
16 application and do not approve this project today. Thank
17 you so much for the opportunity to provide public comment
18 in this matter.

19 CHAIRMAN DOUGLAS: Thank you, Ms. Belenky. I
20 am turning now to the phone. I have got Bridget Nash.
21 Are you on the line?

22 MS. NASH TRAVIS: This is Bit [sic].

23 CHAIRMAN DOUGLAS: This is Bridget Nash?

24 MS. NASH TRAVIS: Yet.

25 CHAIRMAN DOUGLAS: Please make your comment.

1 MS. NASH TRAVIS: Okay. This is Bridget Nash
2 Travis. I am the Historic Preservation Officer for the
3 Quechan Tribe. I am going to serve by echoing similar
4 concerns on both the behalf of CURE, as well as the
5 Center for Biological Diversity. There has been very
6 little - the Tribe has been issuing comments on this
7 project from the moment that we were notified that it was
8 coming forth.

9 We do have very specific concerns in regards to
10 the lack of consultation, both on the CEC side, as well
11 as the BLM. I understand that the CEC is deferring - the
12 CEC is deferring a lot of the consultation to BLM to
13 Section 106, however, SB 18 mandates that Tribal
14 consultation occur at the local level. This process does
15 mirror the Federal review process, which is Section 106,
16 and does allow for government interaction between the
17 Tribal representatives and the representatives of the
18 local jurisdiction. There is supposed to be discussion.
19 The archaeological record alone cannot explain the
20 importance of these cultural resources. As you have
21 heard CURE discuss, the cultural resources within this
22 area, and the fact that there are roughly 500 sites, and
23 this area has the most - the project areas has the most
24 sites of any of the solar projects before the CEC
25 currently, this is of tremendous concern. The area, the

1 project area, the sites in the project area, the
2 cremations, the trails, do connect to other areas outside
3 of the project area, immediately to the south is the Yuha
4 Desert, and there are other areas in there, it is very
5 much a cultural landscape, and we've submitted comments
6 to this before.

7 And there is concern about the process, is the
8 process has been inadequate on both ends, both the BLM
9 and the CEC, we have -- and I heard earlier, and I cannot
10 recall the name, but the discussion of the PA and the
11 fact that, well, the PA and even in the PMPD, it alludes
12 to on page 68 that the method that the PA would employ to
13 resolve potentially significant impacts to the full
14 complement of significant cultural resources, so on and
15 so forth, but it doesn't specify the methods because
16 everything is very general in the PMPD, there has been no
17 specifics within this.

18 The ARRA deadline, even though as stated
19 earlier that this really hasn't had an effect, has not
20 allowed adequate evaluation of the resources within this
21 area, nor has it allowed proper consultation with the
22 Tribes to occur. This has been very fast-paced, the
23 Tribes have not had an opportunity to sit down, and in
24 the PMPD, even on page 40, it states that, you know, in
25 early 2009 that Tribal members began a field visit, well,

1 the first field visit occurred in December of 2009, so I
2 mean, it has been a very very quick process, this has not
3 allowed the Tribes to sit down and discuss the impacts to
4 the sites, what needs to happen. There has been no
5 ethnographic studies for this area. A lot of the focus
6 has been on the De Anza Trail, but very little has been
7 put onto the cultural landscape as a whole, and
8 protecting that cultural landscape.

9 And so we do echo the Center for Biological
10 Diversity's assertion that there has been very few
11 alternatives. The alternatives are not adequate. There
12 was no discussion - with this particular project, it
13 comes down to the location. There is a lot of concern by
14 the Tribe that this area, this landscape, is going to be
15 destroyed for a project that is relying on new technology
16 that is currently evolving. We've been involved in many
17 other solar projects, and some of those agencies, as
18 well, have stated that, you know, the technology is
19 currently evolving, that there are new methods coming out
20 and, you know, in a couple of years it may change. So
21 there is concern that this landscape that does contain
22 these cremations and these stone sites, and the
23 habitation sites, and the trail, that it is just going to
24 be destroyed for a project that may only last a few
25 years. We do believe that the native agricultural land

1 should have been considered as a location, and we do
2 request that the project, the application for the
3 project, be denied and that the project not be approved
4 based on the lack of consultation and the fact that CEQA
5 has not been followed within - in fact, the commentary
6 within the next case states that an important principle
7 within that Appendix, Appendix K of CEQA, is the emphasis
8 on avoidance of archaeological sites, and a lot of this,
9 there has been no assertion, there has been - nobody said
10 that all of the sites would be avoided, so there is a lot
11 of concern here. And I would like to pass it off - I do
12 have a Tribal elder in the office, Quechan, who would
13 like to speak to the importance of the cultural landscape
14 that I had just referenced.

15 CHAIRMAN DOUGLAS: All right, go ahead.

16 MR. ARROWEED: Hello, my name is Preston J.
17 Arroweed, 69-years-old, I am going to be 70 on October
18 2nd, this Saturday. I have been a singer, Tribal singer,
19 for almost over 40 years, and my songs have to do with
20 the beginning and the end of a person's life, or the
21 world, whatever, it talks about the beginning and it also
22 talks about the end where they're going. But the things
23 I heard was the archaeological significance, the cultural
24 significance, but not much told on the spiritual
25 significance. The spiritual significance has a lot to do

1 with the history of my people, what we believe. You
2 don't talk too much about the spiritual significance
3 because your spirituality comes from Europe, whereas ours
4 comes from this land, and that place could be considered
5 spiritually significant of the first people that lived
6 here, and we still practice that, we still sing our
7 songs, we still talk about the path, we still go by that.
8 We believe that we go to another place when we leave this
9 world. But, now, when you look at that property there,
10 when I went over there, when we went there, before I even
11 talked to anyone, I felt the presence of something or
12 someone as I walked through there. Then they showed me
13 all the pottery that was laying around, then at one point
14 I wandered off to another area and I found some scattered
15 broken pottery, and one of the parties, some member of
16 the party saw it, too, and I said, "Have you got this
17 registered?" He said, "No, we've never seen that one."
18 So, there's too much out there. And when you see those
19 pottery, that meant that somebody broke them, or they
20 destroyed them, because somebody lived there. And I know
21 that people did live there, and when people live there,
22 when somebody dies, they break the pottery and destroy it
23 and bury it, and sometimes at the cremation, they break
24 the pottery and everything that that person owned, and
25 put it in the cremation, too, as part of the cremation.

1 Now, when they cremate, they cremate about so many -
2 maybe 50-60 feet at a distance, a short distance from the
3 house where they lived, they cremate, like that is still
4 their dwelling. Then, after they cremated, they go back
5 and burn down the dwelling and everything in it, they get
6 rid of it, and it's buried, and it's supposed to be left
7 there until we save time to - but we'll never build
8 nothing over this site because, whenever we build a home
9 here, when I grew up, we were going to build a house, and
10 they dug the whole ground, dug into the ground to see if
11 there were any ashes; if there were ashes, they moved on,
12 they never bothered it. But that place up there is so
13 much ashes all over the place, you can tell there was a
14 large village there, and this pottery scatter is all
15 over, and I think that is in your report about the
16 scattered pottery. So, to me, it was like I was walking
17 through a case of death, that people were there, I felt
18 that. And I know the songs that tell you exactly what
19 happened and step by step as you go through that, I've
20 sung them before, so I felt that this place should never
21 be bothered, you know, why even consider this place at
22 all? And of course, like I said, you don't know what we
23 feel, what I feel, what I think, and my people feel that.
24 And we always cremate - we still cremate today the way we
25 used to long ago, long before the Europeans came here, we

1 still do that today, we still believe that today. So,
2 I'm hoping that you consider the spirituality, the
3 spirituality of the people and, of course, that they
4 always talk of how important it is about the
5 spirituality, and I think this is very important to us
6 because the technical side, I don't want to talk about
7 that because I think it is beyond that point right now.
8 All the technical things have been given to you,
9 everything then talked about. You talked about also the
10 Bighorn Sheep, the sheep, I've seen sheep in that area,
11 and you must know, too, that the sheep is very important
12 to my people because the sheep in the tribal song, it
13 says that - the sheep in the tribal song says that, in
14 the early morning, the morning star, it's called the
15 Muh[ph.], which means the Sheep. So, when the morning
16 star comes, that is the Muh, the sheep, that's what
17 they're talking about, he comes out early in the morning,
18 so the morning star is named after the sheep, the Muh.
19 So, that is why that sheep is very important to us
20 because it is really recorded from time immemorial, it
21 will always be there, you can't erase that, the sheep is
22 there, you might erase the sheep, but you can't erase the
23 morning star because they're both connected, so that is
24 the importance to us. And, of course, we talk about
25 other creatures that are important to us in the

1 spirituality, we have different creatures that are
2 important. You have hawk, you have snake, and you also
3 have that lizard, he's very important to us because the
4 lizard was at the first cremation and he is the one who
5 left the four corners of the prior when the creator left
6 this world, he was there and he did it, so that lizard is
7 very important to us in our tribal belief. So, I think
8 that you better think about those lizards, these
9 creatures, all these little creatures that are mentioned
10 in our - there are other creatures that are mentioned in
11 our tribal beliefs and our history because they inhabit
12 the land, and that is to warn us, to show us that you're
13 going too far when you start invading the little
14 creatures homes and destroying them because they have no
15 way to speak, they can't speak. But all this knowledge
16 that's given to us so we can speak for them, so that's
17 what I'm doing, I'm speaking for them because you destroy
18 them, then eventually you will destroy yourself, and
19 that's what's been happening, you've been destroying
20 yourself and you won't stop because you sacrifice for the
21 greater good, but that's not going to do you any good.
22 You sacrifice this these little creatures, you sacrifice
23 the land, you sacrifice all kinds of things, you
24 shouldn't do that. You have no more moderation, you want
25 to go on and on and on and on and on. Recently, I heard

1 about a bank that had solar power put on top of their
2 bank and they've cut down on their electricity. Well,
3 you're going to put solar power over here and we don't
4 get it, it's going to go somewhere else, and that's our -
5 and you're going to sacrifice our areas where our people
6 once lived, you're going to sacrifice our spirituality,
7 our little important creatures who are very important,
8 they are meant in our tribal belief, and you're going to
9 sacrifice them, and you're going to sacrifice anything
10 else to do that. And, of course, you've already heard
11 the technical side of what you're doing is wrong, too.
12 So that's all I can tell you right now, and I wish I had
13 time to tell you some more, if you would come and listen
14 to me. And maybe you ought to spend some time and I
15 could tell you why - some more things, but that's about
16 it. Thanks for listening to me.

17 CHAIRMAN DOUGLAS: Well, thank you. Thank you
18 both for participating and for your comments. The last
19 note I have from somebody on the phone is Edie Harmon.
20 Are you on the phone?

21 MS. HARMON: Yes, I am.

22 CHAIRMAN DOUGLAS: Okay, please make your
23 comment.

24 MS. HARMON: Yes, Edie Harmon, and I've
25 submitted comments for Intervener Tom Budlong, but I

1 wanted to add just a few thoughts today. I have lived in
2 Imperial County for 33 years. One of the reasons I live
3 in Ocotillo, rather than the central part of the valley
4 is the air quality issue. The air quality in the central
5 part of Imperial County is terrible. I live out in the
6 desert to avoid the agricultural - exposure to
7 agricultural chemicals, and to avoid the exposure to all
8 the particulates in the air from dust. I'm really
9 concerned about this project and any of the other
10 projects that would be disturbing a large acreage of the
11 surface area, the amount of particulate pollution is
12 unacceptable. I was one of the original people doing a
13 declaration for the initial lawsuits on air pollution and
14 particulates in Imperial County, I can't remember exactly
15 when it was, but I do not think the air quality in
16 Imperial County has significantly improved from what I
17 see from Ocotillo when I go into the central part of the
18 county. When there are strong winds, the amount of
19 particulates in the air is incredible. But when the sky
20 is red, it's because there are so much particulates in
21 the air and this project, as any others that are going to
22 be massively surface disturbing are just going to make
23 the particulate matter near Imperial County much worse
24 and it's going to take a heavy toll on the health of
25 people in the valley, especially the elderly, especially

1 the children that already have severe respiratory
2 problems, it's an issue of concern for the State of
3 California in terms of the asthma and public health
4 issue. So I am concerned, and when I heard discussion
5 earlier about Valley Fever, that was something that I was
6 aware of even in one of BLM's early CIS documents on
7 putting a transmission line across, was the concern for
8 Valley Fever and onmycosis [ph.] for people that were
9 archaeologists that were out and exposed. And living as
10 I do, I've always been aware of that and I'm concerned
11 about the long term consequences to public health of
12 people if they are exposed. I am aware of the fact that
13 there are studies out that, when you move prisoners from
14 urban areas to rural prisons, there have been outbreaks
15 of [breaking up] on the Coast of California and Arizona
16 because people are being exposed to fungal spores that
17 are in the air, and so the more you disturb the soil, and
18 the more people you expose, the more you have the
19 potential for a number of different [inaudible]. Because
20 the technology is new and it has only been tried on a
21 small scale, I don't really understand why the need, if
22 you're going to approve a project, why would you consider
23 approving a project for a very large deal, rather than
24 say, well, if you're going to consider a project, why not
25 try it on a small scale? The amount of dust in the area

1 and just the continuation of earthquakes and the violent
2 shaking that came with the 5.7 magnitude earthquake, it
3 had its epicenter only a few miles to the south of this
4 project site. Given the damage that I saw, boxes of
5 books and papers and things flying around in my house,
6 and the way things flew, it was the first time I
7 sustained any damage, the 7.2 earthquake didn't do much,
8 but this one, I just can't even imagine that the kind of
9 structures that are proposed could have survived without
10 a significant impact because the quake was very violent
11 and, I mean, I was actually not home when it happened. I
12 thought Border Patrol Agents were trying to tip over my
13 van, and I was in the mountains, and it was very strong,
14 and knowing the damage in the community that I live in, I
15 am concerned about what would happen there and I think,
16 given a new technology that hasn't been tried on a large
17 scale, rather than considering approving a project for
18 6,000 acres, a demonstration of a smaller scale, if
19 you're going to do something, you need to prove that it's
20 going to be a technology that works, rather than grant
21 the potential disturbance and destruction of a very large
22 acreage because, once permission has been approved, if it
23 doesn't go, then something else is going to happen. When
24 it comes to the concern for things that ARRA funding
25 could be used for, I said I thought I would be able to

1 pull it up on my computer, my sister lives in Seekonk,
2 Massachusetts, it's a very small town, I don't know by
3 California standards whether you would call it
4 incorporated or not, but the city of Seekonk applied for
5 ARRA funding and they managed to do a rooftop solar,
6 they're trying to do their government's buildings with
7 rooftop photovoltaic's so that they can generate the
8 energy that they need directly for use on the facility,
9 and if you look at the pictures that were in the
10 newspaper, everything is surrounded by forests. The area
11 gets over 30 inches of rainfall a year. It's small
12 community back in Massachusetts that, elsewhere, can use
13 some of this funding and grant money to put rooftop
14 photovoltaic's, distributed solar, they feel that they
15 can use the needs of their community. I think there are
16 alternatives to large scale destruction of public lands
17 that were not adequately considered, and I'm concerned.
18 I know BLM says they could only consider alternatives
19 that were on government land, but that's not looking at
20 solving the problem, and if you want to solve a problem,
21 you don't look at just who owns the land. In Imperial
22 County, there is plenty of acreage of farmland and
23 disturbed lands that have for sale signs on them, or for
24 lease signs, and those are not considered as viable
25 alternatives, nor were the possibility, I mean, if a

1 small town in Massachusetts can apply for ARRA funding
2 and get grants to put rooftop photovoltaic's in a place
3 that's not going to be as optimal as Imperial County or
4 San Diego County, what might be an option then for
5 generating electricity if you look at all the rooftops in
6 the San Diego area, where the energy is going to be used,
7 because then, during when it's hot like it was the other
8 day, you'd have generation - electrical generation, but
9 exactly where it's needed, you wouldn't have the
10 transmission line losses. I just want to add that I
11 don't think there was adequate consideration of a wide
12 variety of alternative means of solving the problem, and
13 I still go back to improved insulation, weatherization of
14 homes, as long as you've got a large number of mobile
15 homes with very thin walls, you're going to have high
16 energy consumption, and you're never going to really
17 adequately solve the problem of reducing demand. And
18 reducing demand, I think, is very important. And another
19 concern, I did approach BLM, I am very much concerned
20 with the nature of the changes that were proposed to the
21 BLM California, the Desert Conservation, the way in which
22 multiple use Class L would be interpreted, the way the
23 definitions in the BLM document stands now is that it
24 would - I think it was either low intensity, or small
25 energy generation, solar or wind, this project can by no

1 means be considered small, nor the impacts small, and if
2 it allowed, if Class L - that district-wide changes how
3 the multiple use class definition for limited use would
4 be interpreted, and I am very worried about the dangerous
5 precedent this establishes statewide for the California
6 Desert. I know a number of people protest on BLM's
7 decision. I, at least, have not heard back in response
8 to the protest that I did, but I think, you know, the
9 land is public land, it is managed by BLM. Energy
10 Commission cannot make the decision, but what BLM - or
11 impose its decision on BLM, the Federal government, is
12 still the owner and the manager of the land, and how
13 public lands are managed throughout the California Desert
14 District, how the very specific language that relates to
15 the BLM California Desert District Plan is interpreted,
16 is extraordinarily important, all the lands throughout
17 the California Desert. And I don't think that has been
18 given adequate consideration, so I would urge the Energy
19 Commission to not make any approval at this time until
20 you know what's going on, and if there are approvals, I
21 don't think it should be the wholesale destruction of a
22 very large acreage because we don't know whether the
23 technology is going to work, we don't know if the amounts
24 of blowing sand and wind at that site - that there is a
25 site that has many problems, it's not in any way

1 comparable -

2 CHAIRMAN DOUGLAS: Ms. Harmon, this is Chairman
3 Douglas, just two things, first, you're fading out, so
4 I'd like to ask you to make sure you're close to the
5 phone when you speak, and secondly, we've gone way over
6 the time we usually allot to public comment because of
7 the importance of the issue before us today and because
8 of the clear passion that speakers are bringing to this
9 issue, but I would like you to bring this to a close if
10 you could.

11 MS. HARMON: Oh, I'm essentially done. I'm
12 sorry if you couldn't hear what I was saying because I -

13 CHAIRMAN DOUGLAS: It was really just the last
14 30 seconds or so that you started fading out.

15 MS. HARMON: I guess the last few seconds were
16 just to ask that it not - if you're considering approval,
17 that it not be for a project for the entire acreage, but
18 that there be a requirement that there be a small
19 demonstration because this proves the reliability or the
20 success of the project, because the site is totally
21 different than the place in Maricopa, which is
22 surrounding by buildings. I haven't been to the site,
23 but I've seen the aerial photographs and there would be a
24 lot in Maricopa that would apparently reduce the amount
25 of blowing sand and dust in the area, so the reliability

1 in Maricopa is likely to be much higher than it would be
2 out in the open desert near an off-road vehicle open
3 area, it's just going to have periods of, you know, just
4 wind blowing dust and sand because of the other
5 activities that are permitted in the area. Thank you.

6 CHAIRMAN DOUGLAS: Thank you. We are through
7 public comment. I'd like to turn this to the Presiding
8 member, Commissioner Byron.

9 COMMISSIONER BYRON: Well, thank you, Madam
10 Chairman. Commissioners, I guess if it's Wednesday, it
11 must be another power plant siting case in California,
12 and another renewable energy project. Mr. Renaud did an
13 excellent job of summarizing the project and, in
14 presenting a motion to you, I'd like to just add a few
15 additional facts that I think you may be interested in.
16 Like many of the thermal projects that we have been
17 considering, Imperial Valley Solar Project was another
18 complex one, with numerous issues to be resolved. There
19 were many environmental impacts that were raised by our
20 staff and the four Interveners on this project. I'd like
21 to acknowledge that the Committee felt that staff was
22 very responsive to these issues, and they revised the
23 project several times since submitting their initial
24 application. The most significant changes were
25 eliminating and minimizing the number of roads and the

1 number of SunCatchers in the washes, they selected a
2 different water source, and modified the transmission
3 interconnection as late as November of 2009. And I may
4 have my numbers wrong, but I show that we did five days
5 of evidentiary hearings, and those hearings on the record
6 show that much of the testimony on this project was over
7 the significant adverse impacts to biological resources,
8 cultural resources, water use, and the source of that
9 water, and the relatively untested technology, primarily
10 - and this was not mentioned today - but there was
11 considerable discussion around the working fluid involved
12 in this technology, which is hydrogen, at this large
13 scale. We've discussed before that these solar projects
14 are extremely land intensive, result in a number of
15 impacts. By my count, we've recommended 181 conditions
16 of compliance, 22 addressing biology, 12 on cultural
17 resources, 11 on soil and water, but there were three
18 remaining significant unavoidable impacts to biological
19 resources, and you've heard about these today, as well,
20 the Flat-tailed Horned Lizard, the Bighorn Sheep, and a
21 number of rare plants, also cultural resources, land use,
22 and visual resources. In addition to the significant
23 unavoidable environmental impacts, this project required
24 an override of an Imperial County Land Use Ordinance, the
25 project site is within an open space preservation zone,

1 which does not specifically allow for electrical
2 generation. However, there are significant social and
3 environmental benefits of the Imperial Valley project.
4 The project supports the state's efforts to move towards
5 a high renewable, low greenhouse gas electrical system.
6 Assuming the construction of both phases, the Imperial
7 Valley solar project will provide 709 megawatts of peak
8 energy, renewable energy that will assist in meeting
9 California's renewable portfolio standard. And, as you
10 all know, producing electricity from renewable resources
11 provides a number of significant benefits to California's
12 environment and economy, reducing global warming
13 emissions and developing local energy sources,
14 diversifying our energy supply, and improving our energy
15 security.

16 I believe the Commission's deliberative process
17 has resulted in a beneficial project, I recommend it for
18 your approval. Despite the apparent length of the
19 Errata, these corrections are not substantial, nor have
20 the recommendations changed from the original proposed
21 decision. So, Commissioners, if there's no further
22 comments or questions, I would like to turn to my Hearing
23 Officer to put forward a motion, and I know that both
24 Commissioner Eggert and I would probably like to make
25 some final comments, unless, Commissioner, you'd prefer

1 to speak now.

2 COMMISSIONER EGGERT: Yeah, I think I would
3 maybe like to make a few quick comments, and I think
4 you've put it quite well in terms of the level of detail
5 that we've gone into on this particular case. I came in
6 on this case in January of this year, about a year after
7 it was, I guess, deemed data adequate by the staff, and I
8 had the great pleasure of working on this case with you,
9 Commissioner. I did want to recognize and thank the
10 staff, particularly, for their hard work, and also
11 recognize and thank the Interveners, including Native
12 Plant Society, CURE, as well as Mr. Alighani [sic], and
13 the one - whom am I missing here - I'm sorry, Mr.
14 Budlong, sorry, I think they actually all contributed
15 substantially to this case, I think the testimony that
16 they brought forth, as well as the expert witnesses to
17 provide input on various impacts of the project, I think,
18 have benefitted us and made for a stronger project, and
19 the strong decision that we have before us today. I
20 think I will probably save a few other comments for
21 closing, but I would just say that I think we do have a
22 very very comprehensive policy process that is equitable,
23 it is inclusive, it is transparent, but I think that
24 equity applies to all parties, it applies to the
25 Interveners, it applies to the public, and it applies to

1 the Applicant. We do have a responsibility to consider
2 these cases, take all the information that's necessary to
3 make an adequate determination and decision, and then
4 make that decision. I think it's clear that these things
5 could drag on indefinitely, but we have a responsibility,
6 particularly as it relates to our efforts underway to, as
7 you say, clean the generation system to address our goals
8 with respect to the environment, and particularly climate
9 change. I'm very concerned that we aren't moving quickly
10 enough to address climate change in this State and in
11 this country and in this world, and it's not a matter of
12 distributed generation vs. utility-scale generation, we
13 need to do both of them responsibly, and I think we can.
14 So, I think I'll hold there and I'll turn it back to you,
15 or the Hearing Officer.

16 COMMISSIONER BYRON: I was going to suggest we
17 do a motion and do further discussion, Madam Chair,
18 unless you want to continue.

19 CHAIRMAN DOUGLAS: I think Commissioner Boyd
20 would like to make a comment, and then we will -

21 VICE CHAIR BOYD: Thank you. I'm not sure if I
22 should do this before or after the motion, but in
23 listening to the extensive testimony and some of the
24 concerns, I just wanted to address a couple or three
25 points. There has been quite a bit of discussion about

1 this technology not being, you know, not even having been
2 researched and what have you, and just reflecting on
3 that, concern by some people, the almost myth, it seems,
4 being perpetuated about this technology. People should
5 know this agency doesn't act in a vacuum of knowledge on
6 any of the issues that people have brought up. I doubt
7 very much the Applicant would have adopted this
8 technology if they hadn't done their due diligence into
9 the fact they'd have a successful project. I doubt even
10 more that the utilities would have entered into a Power
11 Purchase Agreement without doing due diligence with
12 respect to a contract for this type of technology because
13 they are highly dependent on long term power supply
14 contracts. And the CPUC goes through its procurement
15 processes and takes into account cost, the economics, the
16 cost of technology, and because it all translates into
17 cost to we, the users of electricity as ratepayers. So,
18 that issue is, I'm sure, far more developed and explored
19 than we're able to talk about here today, but I just
20 wanted to make that comment.

21 On air quality, I know the many many many
22 conditions, and we will go to great extent to protect the
23 public health of people. With regard to the last witness
24 having to reach out to a state on the East Coast to find
25 out what's going on on rooftop PV, I would encourage her

1 to look at the Energy Commission's website and see where
2 the hundreds and hundreds of millions of dollars of
3 Economic Stimulus money have gone in this State, other
4 than for these type of utility-scale solar plants.
5 Efficiency is Job 1, but renewables and rooftop solar
6 and, of all forms in the Governor's programs for a
7 million solar rooftops, so on and so forth, California is
8 doing absolutely everything, and adding more technology
9 is just there, and adding more generation is there
10 because that's what we need to feed the needs of the
11 people of the state and the economy. And BLM is a
12 partner of ours in these activities, they have
13 responsibilities, their concerns are exhibited,
14 incorporated into the actions that are taken, and the CEC
15 does not override the BLM because they are, indeed, our
16 partners, we are fully cognizant of the fact that they
17 are managers of the lands involved here. So, from those
18 perspectives, you can detect where I'm coming from with
19 regard to my feelings about this particular project. But
20 we don't get to address many audiences, a lot of people
21 don't get the benefit of the knowledge that is lodged in
22 this small hearing room every Wednesday when we're
23 dealing with these projects, and I wanted to just take a
24 little more time to share for people's sake what it is we
25 do when we consider these projects. Thank you for the

1 opportunity.

2 CHAIRMAN DOUGLAS: Thank you, Commissioner
3 Boyd. Commissioner Byron, you were asking - oh,
4 Commissioner Weisenmiller.

5 COMMISSIONER WEISENMILLER: Yeah, I was going
6 to make a few comments either before or after, but I
7 guess we seem to be on a roll at this point. First of
8 all, I'd like to thank the Committee, the staff, the
9 Hearing Office, the Applicants, the Interveners,
10 certainly the Tribal Elder today who spoke, but also to
11 really recognize the key role of our partners, both of
12 Fish and Game and also our Federal partners at BLM in
13 this process, it has been very very important, everyone
14 works together on it.

15 I think, in terms of - this has not by any
16 means been a fast track case, as you know, it's more two
17 years; certainly, when you look at the Warren-Alquist
18 Act, the vision was more of a one-year process, so in
19 terms of - we need to dispel any notion that there has
20 been a rush to judgment here. I think, certainly, all of
21 us realize the opportunities associated with the ARRA
22 money, but I think in terms of - we've had a very
23 thorough case, we've certainly looked at all the impacts;
24 as with other projects, this is not a perfect project,
25 we've certainly gone through to mitigate it the best we

1 can, and I think have really set a lot of goals on
2 mitigation. But, you know, certainly it's been a tough
3 record with a lot of evidentiary hearings. I think, at
4 the same time, obviously, as we look at these records
5 there's a certain amount of common sense we have to apply
6 to, at least, policy perspective. So one trap I don't
7 want us to get into is, when the Applicant makes changes
8 to make the project better, that somehow it's a "got
9 you," that you have to re-open the record, and for a long
10 period of time. Also, frankly, I found it ironic, and I
11 certainly appreciate CURE's activity in all these cases
12 to make them better, but that we started out with the
13 acknowledgement that mitigation for the Bighorn Sheep was
14 very important, and I certainly support that, but at the
15 end the concern was perhaps process-wise, while we got to
16 the right outcome, maybe we didn't have all the I's
17 dotted and T's crossed and, again, I think we need to
18 really mitigate stuff, and I want to make sure that
19 somehow we're not setting up obstacles to get into the
20 mitigation we need. But certainly, I'm very motivated by
21 the climate change issues, as Commissioner Eggert has
22 pointed out, I mean, we are really in a situation which
23 is pretty serious, and we need to take serious action to
24 reduce our fossil fuel consumption. A key part of that
25 is renewables, renewable development like this. And

1 frankly, we need it all, you know, if you look at the Air
2 Board's Climate Action Plan, if you look at the PUC's
3 Long Term Procurement Plan, as Commissioner Boyd has
4 pointed out, we are certainly much more aggressive than
5 the rest of the nation in Distributed Gen, but we need
6 Distributed Gen and large scale gen, utility-scale gen.
7 It is interesting, for the last 30 some years, I've had
8 the opportunity to interact with Amory Levins, and Amory
9 always sort of sets the scale, I think, on the
10 environmental conscience, so it's very interesting when
11 you look at OMI at this point is saying "we need it all,
12 we need Distributed Gen, we need utility gen, we need to
13 move seriously to deal with the climate change issues."
14 And, again, every analysis I've looked at have really
15 said we need to do both. I think, in terms of the
16 question on the technology here, it's a push, I mean,
17 certainly I'm looking at the record in this case, you
18 know, there was a fairly extensive record in Sunrise on
19 the technology, there was evidence both raising questions
20 and also there was very strong support from the staff,
21 supporting the technology. And I think, again, in that
22 decision, it certainly reflected the opportunities here,
23 you know, I think all of us really hope that the Stirling
24 technology, given its low water use, given a lot of
25 interesting aspects, that we really want to see this

1 company succeed here.

2 The other aspect that, really along with
3 climate change, is basically this is the Great Recession,
4 and we have to look at employment and investment in
5 California. If you look at Imperial Valley in July, the
6 statistics were a 30 percent unemployment rate. So I
7 think 360 jobs associated with construction here, I think
8 the 160 some jobs operating is important to California.
9 And certainly the investment in this project will have,
10 again, much benefit to California. If you think back to
11 the Depression days, it is certainly when the State built
12 the infrastructure in terms of the bridges in the Bay
13 Area, Hoover, I mean, a lot of that unfortunately
14 provided the jobs, but we made that investment at that
15 time, and I think it is equally important we make the
16 investment in renewables at this time, to move our way
17 out of the recession and move our way towards a much
18 better energy system.

19 COMMISISONER BYRON: So, Madam Chair, if there
20 is no further comments, I'd like to move, and I will look
21 to my Hearing Officer to make sure I get all these bases
22 covered, I'd like to move for your consideration approval
23 of the Presiding Member's Proposed Decision that is
24 before you, with the Errata that is dated, I believe,
25 yesterday. And, Mr. Renaud, what about the inadvertent

1 omission of a sentence in Item 4 of the Errata, what have
2 you determined from that?

3 HEARING OFFICER RENAUD: That would be page 27
4 of the Errata at the end of the first full paragraph, we
5 would add the sentence that Ms. Hammond read into the
6 record.

7 COMMISSIONER BYRON: And was there another
8 change?

9 HEARING OFFICER RENAUD: No.

10 COMMISSIONER BYRON: Okay, and any other
11 administrative changes that are determined during the
12 course of review, does that cover it?

13 HEARING OFFICER RENAUD: That covers it.

14 COMMISSIONER BYRON: That is my motion, Madam
15 Chair.

16 COMMISSIONER EGGERT: I will second.

17 CHAIRMAN DOUGLAS: All in favor?

18 (Ayes.)

19 The project is approved. I didn't comment
20 before, I'll just comment now, thank the Committee for
21 its hard work, staff, Applicant, Interveners, and members
22 of the public who participated in this process.

23 COMMISSIONER BYRON: Madam Chair, I have a few
24 other things I'd like to give, if possible. And
25 Commissioner Eggert, did you want to go now, or did you

1 want to follow?

2 COMMISSIONER EGGERT: Actually, I think pretty
3 much all of my main points were covered across, down the
4 row here.

5 COMMISSIONER BYRON: Well, if I may, before I
6 turn to you, Mr. Gallagher. I certainly would like to
7 thank my Associate member, Commissioner Eggert, I was
8 really pleased to have him on this committee. His
9 attention to detail and understanding was extremely
10 helpful. I'll tell you, he's becoming an expert Siting
11 Commissioner here in his first year. And Mr. Renaud did
12 an excellent job on this case. Thank you, Mr. Renaud. I
13 still think this is worth mentioning, as well, and
14 forgive me duplicating this same comment from earlier,
15 from last week. But I certainly appreciate the
16 assistance that we received from the Governor's Office in
17 two ways, honoring the ex parte rules, but also the work
18 through the Renewable Energy Action Team and Policy
19 Groups was extremely helpful with our Federal partners,
20 although I certainly didn't see much of that, and I mean
21 it when I say that Mr. Picker and Ms. Yamout have been
22 instrumental in providing the coordination and
23 cooperation in resolving key issues amongst all the
24 parties and agencies. Again, our Federal partners, BLM,
25 DOI, and I wasn't even really aware until Mr. Meyer

1 mentioned the U.S. Army Corps of Engineers, Fish and
2 Wildlife Services, and of course, our own internal
3 agencies here in the State, particularly the Department
4 of Fish and Game. The Interveners made this a much
5 better project and I understand some of you may still not
6 support this decision today, but I ask you to consider
7 how important it is that California move aggressively
8 towards renewables and how important these pioneering
9 projects are to California and the nation. The Applicant
10 certainly deserves a great deal of thanks for not only
11 the project it brought us, but the responsiveness to the
12 issues and the changes they've made, and finally the
13 Energy Commission staff, the tireless work and effort
14 that they have put into this, with all the agencies,
15 state and federal, and California certainly benefits from
16 their protecting the environment and their thorough
17 analysis and for moving renewables forward in this State.
18 My appreciation to all of you, once again.

19 I have to thank my Advisor, Ms. Chew, because
20 she worked tirelessly on this and not without some
21 frustration at the speed and workload in my office, and I
22 don't know how long we've been going at this, it seems
23 forever. The decision we've approved today has numerous
24 compliance provisions, there's a lot of work ahead for
25 the staff and for the project owner, the Applicant is

1 going to have to comply with an awful lot of additional
2 requirements that we've provided, as well as, I'm sure,
3 our Federal partners, your obligations to your utility
4 and also your financial partners were not even aware of.

5 I believe, Commissioners, this is another good
6 renewable project for California. I certainly hope it
7 will be built, and I hope it will successfully operate
8 for many years. My thanks to the project owner and their
9 representatives, I hope you will be successful in seeing
10 it through. And I note that you rise, Mr. Gallagher,
11 I'll give you the last word.

12 COMMISSIONER EGGERT: Actually, Commissioner, I
13 apologize for stealing the last word on the dais here,
14 but I have to take the opportunity to thank my Advisor,
15 Ms. Lorraine White, as well as Mr. Joe Loyer, who chipped
16 in his expertise and knowledge to help me work through
17 the many different details of this project, and echo all
18 of your thanks to the other parties. Thank you.

19 MR. GALLAGHER: Madam Chair, Commissioners, I
20 want to take just a moment to express our appreciation.
21 We're very excited to become a part of the California
22 market, to bring a new technology to the market, and to
23 reach the conclusion of what we agree has been a very
24 very thorough permitting process. The Imperial Project
25 is one of the largest projects you've approved to date,

1 it will make very significant contributions to
2 California's renewable portfolio standard requirements,
3 and to our greenhouse gas reduction targets embodied in
4 AB 32. And we recognize that we worked hard to bring you
5 a good project, and we brought to you a project that had
6 many challenges along the way. Between the size of the
7 project and the deadlines imposed by the Stimulus
8 Package, and the extraordinary workload, I think it is
9 not wrong to say "unprecedented workload" that your staff
10 faced during this period, it's been a truly extraordinary
11 process. Thanks have been offered to many of the people
12 I would like to thank already here this morning, but I
13 hope you will indulge me in thanking by name some of the
14 people, and really only some of the people who worked so
15 very hard to get us to this point, in particularly at the
16 Energy Commission, Terry O'Brien and the entire Siting
17 Division, Chris Meyer was an unbelievable resource and
18 put out incredible amounts of work, and digested
19 incredible amounts of material. The staff did an amazing
20 job. The Hearing Officer, Mr. Renaud, the Committee, was
21 extremely responsive to our requests and our needs and
22 worked harder than I would have imagined, Commissioners,
23 at any agency in the State of California, working. I
24 don't want to admit our thanks to the Court Reporter, as
25 well, the Court Reporter today and at other times, who

1 worked very long hours, with few breaks and, again, in
2 ways that I wouldn't have imagined possible. As others
3 have already mentioned this morning, there have been many
4 other people at other agencies, as well, who have worked
5 hard to bring this project to this point. At the BLM,
6 the State Director, Jim Abbott, and the Project Manager,
7 Jim Stobaugh, a number of other people, Rolla Queen, and
8 the cultural group down in the Regional Office, all the
9 folks down at the El Centro Field Office, Amy Fesnock
10 here at the State Office. I want to thank also the Fish
11 and Wildlife Service, in particular, Felicia Sirchia down
12 in the field office, Amedee Brickey here in the Regional
13 Office in Sacramento, at Fish and Game, Kevin Hunting and
14 Scott Flint, Scott has now moved on to your staff, and
15 Magdalena Rodriguez, who was the key person at Fish and
16 Game for this project in the field office, the Army Corps
17 of Engineers, I would like to thank Michelle Madsen and
18 Theresa O'Rourke, who worked so hard to make this project
19 - to get this project to this point. The Department of
20 the Interior has also been important to this, to all
21 these projects, Steve Black and Janea Scott, in
22 particular. I echo the appreciation of the contributions
23 made by the Governor's Office, Michael Picker and Manal
24 Yamout have made very strong contributions and keeping
25 everything moving along the right path. And I would also

1 like to thank our customers for the first phase of this
2 project, SDG&E, in particular Jim Avery, who has been a
3 tireless advocate of this project, Matt Burkhardt and his
4 team, and Steve Taylor, who is here today. And finally,
5 I would be remiss without thanking publicly some of the
6 members of my own team, including, in particular, Marc
7 Van Patten who has been the Project Developer in this
8 project, Richard Knox, who worked on the permitting,
9 Angela Leba and Karin Ladel at URS and their whole team
10 of dozens and probably hundreds of people who worked on
11 this project over the years, Ella Gannon and her team at
12 the Bingham firm, who have put in an unbelievable amount
13 of work to get us at this point, and last, but surely not
14 least, Bob Therkelsen, who has really been instrumental
15 in helping us navigate our way through the process.
16 Thank you very very much - I'm sorry, Allan Thompson, as
17 well, who has been instrumental in getting us here. And
18 thank you very very much for your decision today, we look
19 forward to working on those very hard - that hard work we
20 have left to do with compliance and getting this project
21 into construction. Thank you very much.

22 CHAIRMAN DOUGLAS: Well, thank you, Mr.
23 Gallagher.

24 COMMISSIONER BYRON: Thanks.

25 CHAIRMAN DOUGLAS: Very well, if it's

1 Wednesday, Commissioners, it's long business meeting and
2 a late lunch, apparently, so we will take up Item 4 now.

3 Item 4. Genesis Solar Energy Project (09-AFC-
4 8). Possible adoption of the Committee's Presiding
5 Member's Proposed Decision on the Genesis Solar Energy
6 Project and errata. Hearing Officer Celli, when you are
7 ready.

8 HEARING OFFICER CELLI: Good morning.

9 VICE CHAIR BOYD: Too late for "morning," Mr.
10 Celli.

11 HEARING OFFICER CELLI: Good afternoon,
12 Chairman Douglas and Commissioners. Kenneth Celli
13 appearing on behalf of the Genesis AFC Committee. The
14 Committee was made up by Commissioner Boyd, who was the
15 Presiding Member, and Commissioner Weisenmiller, who was
16 the Associate Member. The PMPD reflects the Committee's
17 careful consideration of all evidence submitted by the
18 parties, as well as all of the public comments. The PMPD
19 recommends that the Commission grant certification
20 because the Genesis Solar Energy Project is consistent
21 with laws, ordinances, regulations, and standards.
22 Pursuant to CEQA, all of Genesis' direct impacts will be
23 mitigated to less than significant levels, with the
24 exception of cultural resources. Potential direct
25 impacts to cultural resources containing Ethnographic

1 values will be mitigated to the fullest extent, but the
2 Committee found that it is possible that they may not be
3 mitigated below a level of significance. Also, the
4 Committee found that the Genesis Project may contribute
5 to cumulative impacts to land use, and visual and
6 cultural resources along the I-10 Corridor. Nevertheless,
7 the Committee found that the project is required for
8 public convenience and necessity and that there are no
9 more prudent and feasible means of achieving such public
10 convenience and necessity. The Committee also found that
11 specific overriding economic, legal, social,
12 technological, and other benefits of the Genesis project
13 outweigh its significant effects on the environment. On
14 August 31st, 2009, Genesis Solar LLC, a subsidiary of
15 NextEra Energy Resources, LLC, submitted an AFC to
16 construct and operate the Genesis Solar Energy Project, a
17 nominal 250 megawatt solar thermal power plant
18 approximately 25 miles west of the City of Blythe,
19 California, on lands managed by the BLM in the Sonoran
20 Desert. The site would occupy approximately 1,800 acres
21 just north of the four dry lakes and about four miles
22 north of Interstate 10.

23 The Project site arrangement generally consists
24 of two single unit parabolic trough solar fields, 125
25 megawatts each, that feed a single power plant having a

1 combined nominal output of 250 megawatts. The power
2 plant consists of steam turbine generators, servicing
3 scenario generators, heat exchangers, surface condensers,
4 feed water pumps, de-aerator feed water heaters, and air-
5 cooled condenser, two five-acre evaporation ponds,
6 natural gas-fired boilers, and solar thermal collection
7 field. The auxiliary boilers will be fueled by natural
8 gas supplied from a new six-mile, eight-inch pipeline
9 connected to an existing Southern California gas pipeline
10 located north of Interstate 10. The generated electrical
11 power from Genesis' switchyard will be transmitted
12 through a gen-tie line that will connect to the proposed
13 Southern California Edison Colorado River substation
14 beneath the Blythe Energy Project transmission line. The
15 project originally proposed using groundwater for
16 cooling, but decided to switch to dry cooling in July of
17 this year. The average total annual water usage for each
18 125 megawatt power plant is estimated to be 101 acre feet
19 per year, or 202 acre feet per year for the entire
20 Genesis project.

21 There were four Interveners in this proceeding,
22 Californians for Renewable Energy, the Center for
23 Biological Diversity, California Unions for Reliable
24 Energy, and Mr. Tom Budlong. As usual, the public was
25 presented a full opportunity to participate at every

1 stage of these proceedings. The Committee received
2 public comments and the comments mostly addressed
3 concerns about Native American cultural resources in the
4 vicinity of Blythe.

5 The Committee recommends that the Commission
6 adopt the PMPD on the Genesis Solar Energy Project, along
7 with the Committee Errata that was dated September 28th,
8 2010, which was served on all of the parties. The Errata
9 incorporates the parties' and public comments on the PMPD
10 and includes clarifications of the record. With that,
11 the matter is submitted, and I am happy to answer any
12 questions on procedural matters, or on the PMPD.
13 Otherwise, the parties are here to address the
14 Commission.

15 CHAIRMAN DOUGLAS: Thank you, Hearing Officer
16 Celli. Let's hear from the Applicant.

17 MR. BUSA: Good afternoon, Commissioners. My
18 name is Scott Busa, I am a Project Development Director
19 with NextEra Resources. I just wanted to take a minute
20 this morning, and Commissioner Weisenmiller has already
21 said some of this, but I wanted to point out to the
22 public, in particular, that I sit here today just under
23 12 months from when the application for this project was
24 deemed data adequate, and I have been critical in the
25 past, and particularly to Mr. O'Brien and his staff, for

1 other projects that we have brought forward, on the
2 timeframe that it has taken, but I just want to
3 acknowledge, it's important and I'm very thankful to the
4 Committee, Commissioners, and staff for reviewing this
5 project in the 12 months that was contemplated under the
6 Warren-Alquist Act. Hopefully, we will leave here today
7 and get ready to start construction, but I wanted to
8 point out, in particular, Mr. Mike Monasmith and all of
9 the efforts that staff through furlough days and a very
10 tough year, and the hours they've put in, we are very
11 appreciative of that, and that has not gone unnoticed
12 with our Management back in Juneau Beach, so hopefully we
13 will have a successful conclusion today. Thank you.

14 MR. GALATI: Scott Galati representing NextEra.
15 Madam Chair and members of the Commission, we have
16 reviewed the Presiding Member's Proposed Decision, we
17 made comments on the Presiding Member's Proposed
18 Decision, as the other parties did, we did a
19 comprehensive pre-PMPD Conference Hearing, we have
20 reviewed the Errata, we accept the Errata, even though it
21 didn't agree with every single thing that we said, we
22 understand that, we think that we had a fair shake, a
23 good opportunity to be heard, we accept the Errata. We
24 ask that you approve the PMPD and the Errata today. And
25 I just want to address two things that have come up since

1 the PMPD Conference Hearing and today, yesterday, and the
2 day before there were a couple of comment letters
3 docketed regarding the Colorado River, and specifically
4 the Colorado River Board and NWD, and unfortunately for
5 the Committee in this case, I have bored them to tears
6 about the specifics of the Colorado River law, and I'm
7 not going not going to do that to you today; what I am
8 here to tell you is that nothing in those letters was not
9 contemplated and briefed and evidence heard and committee
10 considered, so that anything that you hear today about
11 those letters being something different than what this
12 committee struggled with, and heard lots of argument on,
13 and evidence about, is not accurate. And so we ask you
14 to not be distracted with that today and that you approve
15 the Genesis Project. Thank you.

16 CHAIRMAN DOUGLAS: Thank you. Let's hear from
17 staff.

18 MS. MAYER: Thank you, Madam Chairman. Robin
19 Mayer, Staff Counsel, Jared Babula, Staff Counsel, Mike
20 Monasmith, Project Manager, and I also want to
21 acknowledge Caryn Holmes, who could not be with us today,
22 but who was the main attorney and did a tremendous
23 contribution to this project. We just have one kind of
24 late breaking comment on the Errata and I'd like to put
25 it in for the record, and that is - and I apologize for

1 its lateness - on page 12 of the Errata, it refers to
2 condition as to -- the Applicant wanted to insert the
3 words "if applicable" regarding the Process Safety
4 Management Plan that is administered by OSHA, however,
5 staff would like to have this plan happen regardless of
6 whether it is applicable in OSHA's view or not. So staff
7 proposes to take out the words "if applicable" in the
8 Condition and Verification. And that's all the comments
9 we have.

10 CHAIRMAN DOUGLAS: Thank you. Now, unless the
11 Committee or the Hearing Officer has any questions about
12 that staff comment, we'll go on to Interveners. I know
13 CURE is here. Are there any other Interveners who are
14 here to speak?

15 MS. BELENKY: Yes, Lisa Belenky for the Center
16 for Biological Diversity.

17 CHAIRMAN DOUGLAS: All right, we'll begin with
18 CURE and then we'll go to Lisa Belenky.

19 MS. KOSS: Good afternoon, I guess now I can
20 say, Madam Chairman and Commissioners. My name is Rachel
21 Koss. I am here on behalf of California Unions for
22 Reliable Energy. CURE has several concerns about the
23 Commission's CEQA equivalent certification process for
24 the Genesis project, which we explained extensively in
25 our testimony, in our comments, and in our briefing.

1 Today, I just want to focus on three of our most
2 significant concerns. First, the project is located
3 close to the Colorado River and will be pumping
4 groundwater from a basin that, according to several
5 agencies, including the United States Geological Survey,
6 the Colorado River Board, the Metropolitan Water
7 District, the Bureau of Land Management, and Commission
8 staff, is hydraulically connected to the Colorado River.
9 The United States Supreme Court has said that, if
10 groundwater pumping draws from, or induces flow from, the
11 Colorado River, a legal entitlement is required to do so.
12 That is precisely what is required here. The
13 overwhelming in the record shows that the project's
14 proposed groundwater use would induce flow from the
15 Colorado River. The PMPD unfortunately refused to
16 acknowledge this evidence and, as stated in a letter
17 docketed yesterday by the Colorado River Board, the State
18 authoritative agency for the Colorado River, inducing
19 flow from the Colorado River is using Colorado River
20 water pursuant to the United States Supreme Court Decree
21 and requires a legal entitlement to do so. The PMPD
22 failed to acknowledge this, as well. The PMPD refused to
23 include a LORS analysis of the project's compliance with
24 that Supreme Court Decree. Nonetheless, to comply with
25 Federal Law, the Commission must require the Applicant to

1 obtain an entitlement. If the Commission approves the
2 project without requiring an entitlement, the approval
3 will not be legal.

4 Second, there was extensive testimony and
5 briefing on the subject of the project's impacts on human
6 burials, which the PMPD completely failed to address.
7 This project is located adjacent to a dry lake, but a
8 lake which was not always dry, and where there is water,
9 there are people, there are villages, and where there are
10 villages, there are graves. The record shows that there
11 is a high likelihood of human burials in the project
12 area; the PMPD failed to acknowledge this. No one in
13 this room knows the extent of the project's impacts on
14 human burials. CEQA does not allow approval of a project
15 without knowing the impacts. CEQA requires the
16 Commission to analyze the project's impacts on burials
17 and it cannot approve the project until it does.

18 Finally, the PMPD's conclusion that the
19 Commission need not analyze downstream transmission
20 facilities is a complete departure from decades of
21 Commission practice, and it's a departure from the
22 Commission's decision currently for the Blythe Solar
23 Power Project. CEQA requires the Commission to analyze
24 the whole project, this includes downstream transmission
25 upgrades prior to project approval. The Commission has

1 done so for decades, the Commission should not cease
2 doing so now.

3 In light of these significant concerns, CURE
4 recommends denial of approval of this project until the
5 Commission has adequately analyzed the whole of the
6 project and has required the applicant to obtain an
7 entitlement to pump Colorado River pursuant to the United
8 States Supreme Court Consolidated Decree. Thank you.

9 CHAIRMAN DOUGLAS: Thank you. And now we will
10 hear from the Center for Biological Diversity.

11 MS. BELENKY: Good afternoon. Thank you,
12 Commissioners, for this chance to address you on this
13 project. The Center intervened in this project
14 originally because of the very extensive water use that
15 was proposed under the wet cooling alternative, and that
16 was our first reason, you know, with so many projects we
17 obviously cannot participate in all of them with our
18 limited staff, however, we do very much appreciate that,
19 through this process, that has been taken off the table.
20 And one of the main things that we also would like the
21 Commission to consider is adopting a policy across the
22 board about water use, and I think it would save a lot of
23 time in the future, and it would certainly have saved a
24 lot of time in this project, as well. So, I realize that
25 that's not going to happen at this hearing, but I do

1 think it would - this is not the only issue on which the
2 Commission probably needs to have some more clear
3 policies across the board for these projects,
4 particularly within the California Desert, but water is
5 clearly one of those issues. But the use of fresh
6 groundwater, or even brackish groundwater and surface
7 water in the desert, is clearly one that is not only
8 contentious, but the answer is quite obvious that it is
9 not a reasonable use of water. So, even with the dry
10 cooling alternative, this project still has significant
11 impacts.

12 And as I said before on the record, and I'm
13 just going to start over, you know, the Center does
14 support the development of renewable energy and solar
15 energy, in particular, and I think that we don't have
16 an across-the-board problem with these large scale
17 projects, however, we do have a problem with the level of
18 analysis and the depth of the analysis, particularly on
19 biological issues. And I realize that people may
20 disagree, but these are issues we've raised consistently
21 throughout this process and several others.

22 So, today we are asking the Commission to deny
23 this project, as well. And perhaps not for the same
24 reasons as other projects. This project, ironically, is
25 sited in an area that may not have on the project site

1 itself that many impacts to listed species, however, it
2 is an extremely remote area. This project will include
3 the development of a six and a half mile paved road into
4 an area that is extremely remote, that now has no legal
5 motorized vehicle access, and that is directly adjacent
6 to wilderness area. This is pretty much a classic sprawl
7 issue. If this were a development of housing, nobody
8 would ever think that it could go forward. This is not
9 the kind of development we want to see; we want to see
10 really well planned, sited development. And I realize
11 that the Commission may feel that you do not have control
12 over this siting to that extent, but the Commission is
13 part of this process and we really need to get a handle
14 on these issues as we go forward.

15 So, in addition to the change to the water
16 issue, we understand that the PMPD now reflects that, at
17 least the Commission is asking for a gate on the road, or
18 a guard; we would actually suggest both, we think that
19 road has to be limited and that otherwise it will lead to
20 a very large amount of use that is currently unlawful.
21 There is no lawful motorized vehicle use on this part of
22 the public lands, and this is a concern we raised
23 throughout the process, so we hope very much that that
24 condition will go in, we are certainly working with the
25 partners at BLM to ensure that it does.

1 The other issue I wanted to particularly flag
2 for the Commission, and it is a difficult one, is
3 indirect impacts and cumulative impacts, so this project
4 is in the Chuckwalla Valley, and right now there are
5 three large scale solar projects planned for that valley.
6 The documents here have not really addressed that in a
7 comprehensive way, and certainly have not looked at
8 mitigation that addresses the cumulative impacts to the
9 Valley. And we really hope that, as you move forward,
10 and as staff moves forward, those issues will be
11 addressed in a way that really is robust, so that we can
12 say it's not just a set of independent projects, how do
13 they really all impact this area, and this area, as you
14 know, has a lot of sand movement and other things that
15 make it a very special and important place to several
16 different species, including the Mojave fringe-toed
17 lizard, which is a sensitive species, and Desert Tortoise
18 and others.

19 Again, I think the alternatives analysis, we've
20 gone over that both during the hearings and I've already
21 mentioned the problem with this being a really remote
22 site, and I think there is another issue that, you know,
23 I don't want to only talk about policy today, large scale
24 policy, but I do want to flag this for the Commission,
25 these are issues, the alternatives and what it means for

1 the Commission to really look at an alternative, is very
2 important, and I was listening very carefully when
3 Commissioner Weisenmiller, I believe, a little while ago
4 was saying, you know, we need it all. Well, it's true,
5 we do need distributed generation and we do need larger
6 scale projects, but we need to do all of it right. The
7 California Deserts are also a very limited resource, and
8 the kind of fragmentation that we're seeing from these
9 projects, and especially multiple projects in areas, is
10 very disturbing, and we will lose a lot of our
11 biodiversity and a lot of these processes in these
12 biological processes in some of these valleys, and that
13 is very disturbing. The California Deserts are supposed
14 to be protected. We can see, and the Center has been
15 arguing for decades that those protections are not strong
16 enough. And we will, of course, be working with the
17 Commission and other agencies to strengthen those
18 protections and ensure that ultimately we have both
19 increased renewable energy and we are protecting the key
20 areas of our desert so that we have long term
21 biodiversity.

22 Lastly, on behalf of our members, I do have to
23 say that the Commission procedures for public
24 participation, and I have heard this from multiple
25 members, multiple times, are extremely confusing, they

1 are insufficient to provide the public with a fair chance
2 to review the actual project, that because of the way the
3 Staff Assessments come out, and then with the various
4 back and forth, and the changes, it is a moving target
5 for members of the public, and they are extremely upset
6 and frustrated by this process. Ultimately, it does not
7 provide the public with a fair chance to provide input
8 and then be heard by the Commission, and this is the
9 feedback we have gotten very clearly from our members. I
10 have to say, even as an Intervener, and as an attorney,
11 it is very hard to keep up with a moving target in these
12 cases, and I think for members of the public it is even
13 more so. As you all know, I'm sure, CEQA - under CEQA,
14 it is not just the environmental review to be handed to
15 the decision-maker, the public is a very important part
16 of that process, and the case law on public participation
17 is quite clear, that the public needs to be given a
18 chance to look at the environmental impacts and comment
19 on them, and have those comments responded to by the
20 agency. And I think perhaps in some cases, you could
21 point to things in the record that technically meet those
22 standards, I'm not sure I agree with that, but I know
23 people have pointed to it, but I could say overall the
24 spirit of CEQA on public comment and public participation
25 really is not being upheld in these hearings. So,

1 finally, I want to thank you for listening and for
2 allowing the Center and other Interveners to participate
3 in these processes, and we think they are really really
4 important, and we hope that our participation has made
5 the project better, and we think it has, we think the
6 project has improved over the life of these hearings,
7 these sets of hearings and this review. Unfortunately,
8 we don't think that you can cure a poorly sited project
9 in this remote area next to wilderness and the problems
10 that that may very well cause on other public lands,
11 simply by making little changes to the project itself.
12 So, for all of these reasons, the Center does still
13 oppose the approval of this project. And thank you very
14 much for listening.

15 CHAIRMAN DOUGLAS: Thank you, Ms. Belenky.
16 Intervener - I understand, Mr. Budlong, are you still on
17 the phone? No. All right, so I actually don't have any
18 indication that there is public comment on this -

19 HEARING OFFICER CELLI: There was - I don't
20 know if CARE, Mike Boyd was also an Intervener, I don't
21 know if they're on the phone or not.

22 CHAIRMAN DOUGLAS: I don't have a sign or a
23 note from him either. Is there anybody in the room who
24 would like to make public comment on this project? Is
25 there anybody on the phone who would like to make

1 comment? No. All right, I'd like to ask Commissioner
2 Boyd, Presiding Member on this Committee, if you'd like
3 to open this up.

4 VICE CHAIR BOYD: Thank you, Chairman. Well,
5 like cases that have preceded this one, it's not without
6 issues. You don't move into the California Desert
7 without finding yourself involved in very interesting
8 issues. Commissioner Weisenmiller coined a new term for
9 me a short time ago when he talked about trying to bring
10 a vision forward, and I would just say this has been a
11 very thorough process, but perhaps consuming 13 months is
12 a little closer to bringing you a vision, I'm not quite
13 sure. Since the application was received in August of
14 2009, and our site visit in December of 2009, we've had
15 19 publicly noticed workshops, hearings, and meetings on
16 this project. As you've heard from our Hearing Officer,
17 Mr. Celli, we feel the issues that have been brought
18 forth have been and are addressed in the PMPD and the
19 Errata thereto. And so I want to thank Mr. Celli,
20 particularly, the Hearing Officer, but I want to add my
21 thanks that you've heard many times today to the Siting
22 staff, to our Legal staff, and our Advisors for the work
23 that they've done. Sarah Michael, my Advisor, Eileen
24 Allen, Commissioner Weisenmiller's Advisor, have put lots
25 of their personal efforts into this effort and I know for

1 a fact of vacations postponed and late hours. And I want
2 to thank our other Federal partners, the other Federal
3 agencies, and the other State agencies, all of whom have
4 played a major role. And unfortunately on this case, we
5 cannot make any reference to taking the award for the
6 latest night hearing ever, I believe we went past 11:00,
7 but as some of you may have heard, one of our hearings
8 went until 4:30 a.m. here a week or so ago, so that's a
9 prize none of us wants to capture away from that
10 committee.

11 I want to thank the Applicant for the company's
12 willingness to move on this major design change that
13 brought this from wet cooling to dry cooling, I think we
14 all have expressed our appreciation for that, and while I
15 would agree with Ms. Belenky about water policy, we have
16 been setting some policy in this arena, it probably needs
17 to be institutionalized more in the future, but we've had
18 some water policies about these fresh water in the State,
19 and we are guided by that, and we look to groundwater as
20 fitting that category, and perhaps we need to document
21 that a little bit more.

22 I think Commissioner Weisenmiller and I really
23 appreciate the change in the use of the water because it
24 is very significant, 1,605 acre feet a year to 200 acre
25 feet a year is a big reduction and was going to be a

1 significant problem for the committee in the face of the
2 other actions this Commission has taken on in other
3 projects.

4 And I would thank the Applicant, Mr. Galati's
5 comment today about compromises on issues to move the
6 project along. As you've heard today, it's still
7 contended, and I guess I would just say - by CURE and
8 maybe others - that a Colorado permit is required, I
9 would say that the attorney for CURE has done a good job
10 for her client in bringing up issues, I don't think we've
11 agreed, obviously, on some of those issues, and I'm not a
12 lawyer, but very careful reading of some of those letters
13 received, the ones of late, can lead a person to a
14 conclusion other than the conclusion that she put
15 forward, so we will see what the future holds. With us,
16 there's nothing in the record that convinces us to make
17 the finding that a groundwater pump at the site of this
18 project in Chuckwalla Valley truly meets her definition
19 of a concern. And as I said, a very careful reading of
20 what people said, particularly the "if proven" part,
21 brings you to perhaps a different conclusion, and we
22 didn't reach that conclusion.

23 We've had excellent participation, though, from
24 the Interveners, it's been a very - well, the many cases
25 I've sat in, it's been an educational experience, I

1 guess, as many of those who would find themselves, if not
2 a judge, almost a judge adjudicating issues, you tend to
3 learn a lot. I have a long history in this State in
4 Water, Air, Fish and Game, and natural resources, and yet
5 I continue to learn things from these debates. I have a
6 fairly sensitive history even in Native American cultural
7 issues as I worked six years in the Golden Triangle, the
8 Colorado Plateau, with regard to air quality. And I'd
9 like to see that addressed better in the future, it was
10 revealed in another case by one of the elders that
11 perhaps people had gone to great pains, Native Americans,
12 to shield us Europeans from their culture, for fear that
13 we might do injustices to it. The downside of that is
14 making it more difficult in situations like this to
15 really document, and I think the conditions that we've
16 included, and I know my fellow Commissioners, included in
17 other cases, provide the opportunity to share knowledge
18 if knowledge is gained in the construction and even the
19 operation process, about cultural history just like the
20 many many conditions that are included, give us
21 protections on water use if our assumptions prove to be
22 slightly wrong, and on other biological issues if our
23 assumptions prove to be in particularly wrong in this
24 area. But, for now, we're acting on the record that we
25 have and the way we interpret it. Again, I want to thank

1 Mr. Celli for the work that he has done in helping those
2 of us on the Committee, and with that, I would invite my
3 fellow Commissioner, Mr. Weisenmiller, and others, to
4 make any comments before I make a motion on this item.

5 COMMISSIONER WEISENMILLER: Thank you. First
6 of all, I wanted to indicate that I really appreciate the
7 opportunity to work with Commissioner Boyd and his office
8 on this project, and it has certainly been a good
9 learning experience for me on that. I think, in terms
10 of, as with all these cases, we're still looking for that
11 magic perfect project, and haven't found it yet.

12 Certainly, I really really appreciate the Applicant's
13 change on water, that was very important to the
14 Committee, I think to all the participants in the case,
15 and I think certainly that flexibility generally has
16 helped, I think, as we go forward. You know, we are
17 looking at having a lessons learned effort and certainly
18 appreciate the participation of the Interveners in this
19 case, in helping us move forward on trying to set some of
20 the direction for future cases, and certainly also would
21 encourage participation of the DRECP, who again we would
22 like to give more guidance on what locations are suitable
23 for development and which ones are much better for
24 conservation opportunities. But certainly, as we go
25 forward with our lessons learned, I think along with what

1 sort of policy direction to give, certainly looking at
2 the public participation aspects, you know, ways we could
3 do better. I think when this agency was established in
4 the '70s, it certainly was a landmark agency for public
5 participation in that era, if you look at the literature,
6 things like Critical Mass as a book that sort of went
7 through the siting process prior to this agency, and how
8 this agency came out, the public reaction to some of
9 that, these point to the fact that the Helms project, the
10 last generation CPC given by the PUC, there were no
11 public hearings, none, period. It was just done. You
12 could certainly look at similar things, but again, it is
13 very instructive, but I'm sure we're in a different
14 century now. When the Warren-Alquist Act was passed,
15 obviously, the Internet didn't exist then, audiovisual,
16 you know, there's a whole series of things that we could
17 have a breath of fresh air on the public participation
18 side, but I still think we have had a very thorough
19 process, we've certainly gone through and tried to
20 identify the impacts where we can mitigate those as much
21 as we can, and certainly I think set a yardstick for many
22 parts of the country on sort of the mitigation measures
23 that are necessary. But, as you point out, this is
24 certainly a fragile environment that can have substantial
25 issues on biology and cultural resources, but again, I

1 think we have to move forward with the override, given
2 the need to deal with climate change, we absolutely have
3 to reduce greenhouse gas emissions. You say, certainly,
4 if we can find the perfect project, we could do that
5 better, but we have to do what we can now to reduce
6 fossil fuel emissions, and I think renewable development
7 is a key part of that. And at the same time, we do have
8 to respond to the economic challenge we're facing in the
9 state. When we look at the unemployment rate in
10 Riverside County is over 15 percent, certainly the City
11 of Blythe is higher than that. I think in terms of this
12 project will provide on average 640 some jobs, I think,
13 on peak, it is over a thousand, and in terms of long term
14 operating, 40 to 50. So the jobs are important,
15 certainly investment is important to California. And so,
16 looking at the greenhouse gas impacts and looking at the
17 jobs impacts, I think we have to go forward with the
18 override. I certainly appreciate everyone's activity on
19 the project where it is at this point, and certainly want
20 to acknowledge the critical role of my Advisor, Eileen
21 Allen, in getting us here. I was going to ask the
22 Hearing Officer, Ken, do you have any other comments on
23 the issues that were raised?

24 HEARING OFFICER CELLI: Thank you,
25 Commissioner. As I just was noting the issues raised,

1 the PMPD soundly addresses the issue of the Colorado
2 River accounting surface and there was a scoping meeting
3 early on in the process where it was determined that the
4 Colorado River accounting surface methodology was not a
5 LORS, and based on that - without prejudice to the
6 parties raising it as a question of fact later, we did
7 take some evidence, but the evidence was not compelling.
8 So, I want to make the Commissioners aware of the fact
9 that the issue was addressed thoroughly and that the
10 decision went in a way that CURE didn't want it to go in,
11 but we did handle the issue squarely.

12 The same is true with the human burials issue,
13 though human burials are not specifically mentioned.
14 There are all sorts of things that are not specifically
15 mentioned - arrowheads, etc. The point I'm making is
16 that there is an entire statutory scheme to deal with
17 human burials, and that's included in the PMPD.

18 Also, the downstream transmission impacts, we
19 have a Phase II study from the CAISO, it was vetted, it
20 was included in the July 21st evidentiary hearing, so I
21 have to say that I bristle at the statement that the PMPD
22 refuses to deal with these issues because they were
23 confronted head on, and decided in a way that CURE
24 probably didn't like.

25 The other point I would like to make that Ms.

1 Belenky raised is that we did go along with language
2 recommended by Ms. Belenky with regard to the access -
3 lending access to people getting on that road, and so
4 that is included in there. We did find direct and
5 cumulative impacts that were significant, and that needed
6 to be overridden by the Committee, so all of those issues
7 were soundly addressed by the Committee, and thoroughly
8 addressed by the Committee, so I think the Committee did
9 an excellent job of really confronting all of the issues
10 and looking at them, and weighing them conscientiously.
11 So, I would thank the Committee for that. And, other
12 than that, I have nothing specific to say.

13 MR. BABULA: I would like to add something. I
14 am Jared Babula, Staff Counsel, I handled the cultural
15 section. And one thing to bring up, well, there are two
16 things to bring up, first, I'd like to point out the
17 uniqueness of cultural Condition of Certification 1 and
18 2. That was the effort that our staff came up with in
19 conjunction with BLM, to come up with a more holistic
20 condition that took into account all the I-10 projects,
21 so that there could be a regional plan regarding cultural
22 resources. So, I think it is important to recognize that
23 staff didn't look at each project individually, but
24 recognized that these things interact and that conditions
25 should be carefully designed to account for that, so

1 cultural 1 and 2 are unique in that sense. As for CURE's
2 statement regarding human remains, while it may be that
3 their expert thought there was a strong possibility that
4 there were human remains, other experts, our staff
5 expert, Dr. Beth Bagwell, did not agree, so it is not a
6 definitive thing that there are human remains out there,
7 and as Mr. Celli pointed out, even if there are, there
8 are conditions that deal with how to handle the finding
9 of human remains and the appropriate manner, so that has
10 also been addressed in the Conditions of Certification.
11 So, the key thing I want to point out is Conditions 1 and
12 2, which look at a holistic approach, which require some
13 up front funding so that the BLM and then our staff can
14 start a research study that would help kind of close the
15 information gap, if there are any, and to ensure that we
16 did the appropriate level of analysis. So, that is my
17 point on cultural -

18 VICE CHAIR BOYD: Thank you, Mr. Babula, for
19 bringing that forward on behalf of the staff, it's a good
20 point.

21 HEARING OFFICER CELLI: Commissioner, I want to
22 raise another point if I may. Kenneth Celli appearing.
23 Unfortunately, as Murphy's Law would have it, concurrent
24 with the entire proceedings in this case came the
25 furloughs, and the restrictions on travel in the state.

1 But I wanted to make the point that we have WebEx for
2 every hearing that we had, and there was participation
3 from the public in every hearing via WebEx and via
4 telephone, so that was as efficient as we could do it, so
5 the public was given every opportunity to participate,
6 and it did participate in this quite robustly, I felt.

7 VICE CHAIR BOYD: I would agree with that, but
8 I would say within the means that were afforded us at
9 this point in time, and I guess something I would say,
10 I'll say now, is that the point has been made by
11 Commissioner Weisenmiller, you know, presuming - well,
12 I'll just say, when we return the State's economy to
13 where it was, and when that economy can afford to support
14 government agencies totally in their assigned missions,
15 such as ours, I would look forward to the opportunity to
16 handle more of these hearings closer to the sites in
17 question, and so there can be eyeball to eyeball with the
18 affected parties. It truly is most unfortunate. I would
19 probably take the Native American gentleman's invitation
20 to walk the desert with him, if I could get there. In
21 any event, you are right, I mean, we did the best we
22 could in this 21st Century, there are some pretty good
23 technologies that are helping us do that, and I
24 appreciate the Interveners' recognition of this problem
25 and only they know what we went through in scheduling and

1 trying to get everybody able to come to Sacramento to
2 have to have these hearings.

3 HEARING OFFICER CELLI: Also, I wanted to let
4 the Commission know that Dale Evenson, who is the Chief
5 of the Riverside Fire company nearest in Blythe, I
6 believe, is present. He has no comment, per se, but he's
7 available for questions if the Committee has any.

8 VICE CHAIR BOYD: I recognize him and I noted
9 he made no great effort to come up, and so I didn't want
10 to protract the hearing any longer than necessary. But
11 thank you for being here, since we can't travel to you,
12 it was nice of you to come to us.

13 CHAIRMAN DOUGLAS: I just had a few comments.
14 I've been reflecting, as have many of us, I think, on Ms.
15 Belenky's comments and, first of all, I wanted to say
16 that, as Commissioner Weisenmiller said, we are engaging
17 in a lessons learned exercise in order to fully assess
18 the experience of the last year, or more in some cases on
19 these projects, to hear from Applicants, Interveners, and
20 other stakeholders on what went right, what may not have
21 gone right in your perspective, and how we might better
22 address these issues in the future. Secondly, I'm
23 certainly interested in your comments on the difficulties
24 that you have heard from your members that they might
25 have had no process, and we are certainly open to hearing

1 about it and looking at ways to make the experience
2 easier. I think some of the issue may simply be that you
3 and your members have been less familiar with our
4 process, and it is very different than the BLM process
5 and other processes that go on, and so we've all had a
6 learning experience, and it's very hard to learn a
7 process and to go through and follow one of these complex
8 cases and, as you say, 19 public workshops, hearings, and
9 so on, is a tremendous amount of opportunity for public
10 involvement, but it is also, as you noted, a tremendous
11 commitment in order to fully follow all of the turns and
12 new information and project changes and response to
13 information, and so on. So, to some degree, this is the
14 difficulty that comes with the territory, and I
15 personally believe that having the transparency to enable
16 the public and Interveners to follow those twists and
17 turns is better than not. But whatever we can do, and
18 we'll certainly be interested in talking to you later,
19 you are welcome to talk to our Public Advisor, but
20 whatever we can do to make sure that the process is as
21 accessible as possible, we'd be very happy to consider.

22 So, I'm in support of this project. I thank
23 the Committee for its hard work. I am interested if
24 other Commissioners have additional comment at this time,
25 or if we move to a motion.

1 COMMISSIONER BYRON: Madam Chair, I may add my
2 comments now, as well. I'd certainly like to thank
3 Commissioners Boyd and Weisenmiller, I think they've done
4 a very reasoned proposed decision here for our
5 consideration, balanced, and a significant number of
6 issues in our CEQA equivalent process. And I'm certainly
7 prepared to vote based upon the recommendation they
8 provided, even though I know Commissioner Boyd, "G" does
9 go before "I," or it should, at least.

10 VICE CHAIR BOYD: Well, we got to save a lot of
11 time in my subject because you covered so much ground in
12 your subject, Commissioner.

13 COMMISSIONER EGGERT: So I will maybe just
14 chime in also for a very brief comment. I also want to
15 thank the Committee for their hard work on this project
16 and the staff, and all the parties. You know, again, I
17 would agree with the comment of the Intervener that we do
18 very much need to consider the protection of our desert
19 ecosystems and I think they're critical to the habitat,
20 the biological resources that depend upon those
21 ecosystems, and particularly as it relates to sort of the
22 remote untraveled ecosystems, I think, deserving a higher
23 level of protection, so I think the fact that we are
24 embarking upon some of the efforts through the DRECP, the
25 Desert Renewable Energy Conservation Plan, we're funding

1 a sizeable amount of research through the Public Interest
2 Energy Research Program to look at the impacts to
3 different biological resources and how those might be
4 addressed. So, I want to acknowledge that and
5 wholeheartedly agree with it, and then, of course, I
6 think also we do have the responsibility to look at these
7 projects before us today and make a proper determination
8 based on all the evidence. But my hope is that, with
9 these processes that we're putting in place, that we will
10 have the ability to direct Applicants to the best places,
11 and avoid those that should be left alone for other
12 benefits to the State and to all of the resources that we
13 care about. So, thank you.

14 VICE CHAIR BOYD: Okay, I'll step to make a
15 motion, but Commissioner Eggert reminded me - and
16 Commissioner Weisenmiller, too - the listers learned
17 thing, I just want to comment. I just realized that
18 these desert projects have mobilized one of the biggest
19 efforts I've ever seen in terms of RETI, DRECP, the PIER
20 research projects, and what have you, all aimed at
21 helping us do this right, and you know, the more we
22 learn, the easier it will be to face some of these issues
23 in the future. With that, I move the Genesis Solar
24 Energy Project PMPD, the Committee's Errata dated
25 Tuesday, September 28th, as amended by staff earlier, I

1 move that be adopted by the Commission.

2 COMMISSIONER WEISENMILLER: Second.

3 CHAIRMAN DOUGLAS: All in favor?

4 (Ayes.)

5 This project is approved. And are there any -

6 MR. BUSA: No, I'll avoid the Academy Award

7 speeches, but thank you, you guys, we really do

8 appreciate it.

9 CHAIRMAN DOUGLAS: All right, Commissioners, we

10 are on to - we're going to skip Item 5 because you don't

11 have the Minutes in your packets, so we'll take up the

12 Minutes for September 22nd in the next business meeting.

13 Item 6. Is there any Commission Committee

14 Presentations or Discussion?

15 COMMISSIONER BYRON: Commissioners, just to let

16 you know, I will be taking a weekend off. My daughter is

17 getting married this weekend and I don't want your

18 congratulations, but I certainly could use a paycheck.

19 COMMISSIONER WEISENMILLER: I was going to say

20 Bill Clinton was on TV and he indicated his contribution

21 to the economy, it was the stimulus coming from Chelsea's

22 wedding. He was sure there had to be noticeable impact

23 on the unemployment rate dropping, so I assume you're

24 following in his footsteps.

25 COMMISSIONER EGGERT: Madam Chair, just a very

1 very brief comment because I know we would all prefer,
2 perhaps, to get lunch before our next meeting, and I just
3 want to mention the IEPR Workshop that myself, you, and
4 Commissioner Byron participated in yesterday. I thought
5 that went extremely well and it was basically focused on
6 all of the activities underway through the ARRA funding,
7 addressing residential and commercial retrofit of
8 buildings to reduce our energy consumption and greenhouse
9 gas emissions. I thought it was a great opportunity to
10 demonstrate our partnership with Public Utilities
11 Commission and I look forward to attending another
12 meeting with them next week to talk about similar issues,
13 to how we best coordinate our efforts in that space.

14 VICE CHAIR BOYD: And I guess that reminds me
15 that I should mention that I represented the Commission
16 last Thursday at the Air Resources Board meeting and
17 their consideration of their renewable energy standard,
18 the 33 percent renewable goal, which they did adopt, and
19 I participated for us on the panel of all three energy
20 agencies, in addition to the ARB, which has become an
21 energy agency also in the entire hearing and in
22 commenting on the entire item, which consumed several
23 hours, but it was obviously much appreciated by members
24 of the Board, certainly by the Chairwoman, and in
25 addition by a few others who commented that, as a result

1 of that discussion, they'd learned some things about the
2 energy area that they weren't aware of. So, anyway, it
3 was good to have the exposure there.

4 COMMISSIONER BYRON: Commissioner Boyd, thank
5 you for doing that and congratulations to the Air
6 Resources Board on getting those standards out, that is
7 an extraordinary step for the State.

8 COMMISSIONER WEISENMILLER: I guess I should
9 also note, at the same time you were there, the Chairman
10 and I were up at the IEP Conference and the Chair gave a
11 presentation that was well received at IEP on our
12 activities here. Actually, certainly the members of IEP
13 were very very appreciative of the Energy Commission
14 siting activities, they made that pretty clear to both of
15 us as part of the meeting.

16 VICE CHAIR BOYD: Maybe they could transfer
17 that to the Gubernatorial candidates for future
18 reference.

19 CHAIRMAN DOUGLAS: Item 7. All right, on that
20 note, we will move off discussion and I will see if there
21 is a Chief Counsel's Report.

22 MR. LEVY: Yes, Commissioners, I'd like to
23 request a closed session to discuss facts and
24 circumstances which present a significant exposure to
25 litigation against the Commission.

1 CHAIRMAN DOUGLAS: All right, we will do that,
2 then.

3 Item 8. Is there an Executive Director's
4 Report?

5 MS. JONES: I have nothing to report today.

6 CHAIRMAN DOUGLAS: Item 9. All right, Public
7 Advisor's Report? [Inaudible response]. All right, Item
8 10. Is there any public comment? Very well, we will move
9 to Executive Session.

10 (Whereupon, at 1:25 p.m., the business meeting was
11 adjourned.)

12 --o0o--

13

14

15

16

17

18

19

20

21

22

23

24

25

REPORTER' S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF,

I have hereunto set my hand this 4th day of October, 2010.

A handwritten signature in cursive script, reading "Peter Petty", is written over a horizontal line.

PETER PETTY
CER**D-493
Notary Public