STATUS CONFERENCE

BEFORE THE

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT

COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the:	)	
	)	
Application for Certification	)	Docket No.
for the Quail Brush	)	11-AFC-03
Generation Project	)	
_____	)	

California Energy Commission
DOCKETED
11-AFC-3
TN # 2874
SEP 19 2012

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

TUESDAY, MAY 29, 2012

2:00 p.m.

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

COMMITTEE MEMBERS PRESENT

Karen Douglas, Presiding Member

Andrew McAllister, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Raoul Renaud, Hearing Officer

David Hungerford, Advisor to Commissioner McAllister

Galen Lemei, Advisor to Commissioner Douglas

Eileen Allen, Commissioners' Technical Adviser

CEC STAFF PRESENT

Stephen Adams, Staff Counsel

Eric Solorio, Project Manager

OFFICE OF THE PUBLIC ADVISER

Jennifer Jennings, Public Adviser

APPLICANT

Ella Foley Gannon, Attorney
Bingham McCutchen LLP

C. Richard "Rick" Neff
Cogentrix Energy, LLC

INTERVENORS

Phillip M. Connor
Sunset Greens Home Owners Association

Rudy Reyes (via WebEx)

ALSO PRESENT

Van Collinsworth (via WebEx)

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P R O C E E D I N G S

2:11 p.m.

PRESIDING MEMBER DOUGLAS: Welcome to the status conference for the proposed Quail Brush Generation Project. I am Karen Douglas; I am the lead Commissioner on this matter. To my immediate left is our hearing officer, Raoul Renaud. To his left is Commissioner McAllister and to Commissioner McAllister's left is David Hungerford, his advisor. To my right is Galen Lemei, my advisor.

I will now ask the parties to identify themselves for the record, beginning with the applicant.

MS. FOLEY GANNON: Good afternoon, Commissioners. Ella Foley Gannon, counsel to the applicant.

MR. NEFF: And Rick Neff, Cogentrix Energy.

PRESIDING MEMBER DOUGLAS: Thank you. Staff?

MR. SOLORIO: Yes. Eric Solorio, project manager for the Energy Commission and sitting next to me is staff counsel, Stephen Adams.

MR. CONNOR: Intervenor Phil Connor on behalf of the Sunset Greens Homeowners Association.

PRESIDING MEMBER DOUGLAS: Thank you. And now let's go to the intervenors on the phone.

MR. REYES: Rudy Reyes, intervenor.

PRESIDING MEMBER DOUGLAS: All right, thank you, Mr. Reyes. Do we have Rosalind Varghese?

MR. REYES: I believe she sent in a letter saying she couldn't make this meeting.

PRESIDING MEMBER DOUGLAS: All right, thank you for that. Is Dorian Houser on the line?

(No response.)

PRESIDING MEMBER DOUGLAS: Okay, is Kevin Brewster on the line?

(No response.)

PRESIDING MEMBER DOUGLAS: All right, thank you. If intervenors join later at an appropriate break in the action they can break in and introduce themselves for the record. We may also ask from time to time if anyone has joined us.

Are there any representatives of public agencies in the room or on the phone today?

(No response.)

PRESIDING MEMBER DOUGLAS: All right. And I will introduce the Public Adviser, Jennifer Jennings, who is in the room with us. And with that I will turn this over to the Hearing Officer.

HEARING OFFICER RENAUD: Thank you, Commissioner Douglas. This is Raoul Renaud, the Hearing Officer. And I should add that during the introductions we were joined by Eileen Allen here at the dais, who is the Commissioners' technical adviser.

Welcome to the status conference. We have scheduled these to occur roughly on a monthly basis, primarily for the purpose of giving the parties an opportunity to communicate with the Committee Members concerning their progress in review of the AFC and to let the Committee know about any issues or problems that may have arisen that might impede the schedule. We ask in advance of the status conference that each party submit a status report and I did receive those from each of you and I thank you for those.

I should note that the proceeding today is being recorded and also that we have a number of people on the phone or who are using our WebEx computer system to participate in the meeting remotely. We can hear all of you all the time so if you would refrain from rustling papers and making noise in your rooms that would be great. We do have the power to mute you individually if you persist in making noise so -- so far you're doing fine but just wanted to let you know that we can hear so do refrain from making any sound. Or you can mute your phone from your end as well, that would also resolve it.

I think maybe we'll start by simply going through the status conference statements -- the status reports that were presented by the parties. And I should say that when I refer to the parties what I mean is the applicant and the

staff and each of the formal intervenors.

The applicant's status report pretty much lays out, gives us a summary of the activities of the applicant so far. I wouldn't say there were any real surprises there. We are expecting a supplement, Supplement number 3 to the AFC to be issued by June 15th. Applicant, is that date still looking feasible?

MR. NEFF: Yeah, that's looking very good. The engineering analyses are coming to their conclusions and the various technical disciplines for the environmental sections in the AFC are working away on theirs so we're feeling pretty good about being able to hit the 15th.

HEARING OFFICER RENAUD: All right, thank you. And as you all know, in response to a motion to extend the deadline for exchange of data requests in this matter, the Committee did issue an order extending that deadline to a date, I believe it's 60 days after the issuance of Supplement 3. So if that were June 15th then we'd be looking at roughly August 15th. And that would be for the submission of data requests. It doesn't mean that all the responses need to be in by then but that if you are going to present data requests you need to do it by that time.

Okay, let me see. Now, applicant, you have filed a proposed revised schedule as well as the staff, the staff also filed a proposed revised schedule. And I noted the

date of July 31st, 2012 for the Comprehensive Biological Survey Report. And the only reason I raise that is that the staff's proposed schedule says that would be July 6th, whereas your schedule, applicant, says July 31st. And since that's a place you apparently are out of sync by about three weeks maybe we should just discuss that briefly with an eye toward finding what's a realistic date. Because the Committee is going to need to prepare a revised schedule based on our discussion today. Ms. Foley Gannon, you want proceed?

MS. FOLEY GANNON: From our perspective, part of the reason that this got pushed out is that the information that informs this report is based largely on the surveys that are being conducted, the additional surveys that are being conducted this spring. As you know It has been a very dry spring and there's been some kind of unusual weather conditions that have happened that have changed some of what we anticipated to be the survey window, some of them by as much as I think three, four maybe five weeks.

And so because of that it -- we were just trying to allow a time period where we could say, we know we can get it done by July 31st. It may be possible for us to get it done earlier than that but we were trying to set a date that we knew we would be able to get the response. We will be submitting some of the surveys to the service. We might

be able to get some feedback from them on the surveys and we can have our comprehensive report in by that date. So that was our thinking in putting the schedule together.

HEARING OFFICER RENAUD: All right. Now staff, you have got the date of July 6 for that report. If that were changed to July 31st would that impact your subsequent dates such as the Preliminary Staff Assessment and so forth?

MR. SOLORIO: Yes, it would.

HEARING OFFICER RENAUD: All right.

MR. SOLORIO: By the same amount of time. Because we are also planning to hold a workshop on biological resources. I'd like to also note, the dates in staff's proposed revised schedule for the workshops, they are basically placeholders. We're planning the workshop approximately at the end of June, end of July. And I wanted to note that because the June 28th date, again, was just a placeholder but it happens to be the same date as the San Diego Planning Commission hearing where they are going to consider accepting the application. So we will not hold a workshop on that date.

HEARING OFFICER RENAUD: All right. Well the Committee, as you know, does not involve itself in setting up or participating in workshops so we are not too concerned about those precise dates. It is nice to know that you are planning a workshop around the end of June but exactly which

date you hold it isn't really a concern of the Committee.

MR. SOLORIO: Thanks.

HEARING OFFICER RENAUD: As long as you appropriately notice it and so on, which you are quite good at. Okay, that said, that's very useful information for the Committee to have in considering the revisions to the schedule so thank you.

And currently then each of you has in your proposed revised schedule, Preliminary Staff Assessment of September 20 and Final Staff Assessment, FSA, of November 29th. Mr. Solorio, staff, I would assume that in your case if the biological report were three weeks later than your July 6th date then you would suggest we would move those two, the PSA and FSA dates up three weeks as well, right, or three weeks later?

MR. SOLORIO: Yes, that's correct.

HEARING OFFICER RENAUD: Okay. Applicant, any comment on that?

MS. FOLEY GANNON: I would just ask if we could talk to our biologist following this status conference and see if there is a way that they believe that they can move that up. Again, we were being conservative in our estimate. But if it is going to control the scheduling for the staff assessments, you know, I think we would like to try to keep as close to these dates as we can, recognizing that some of

these things can push it back. So if we can check with our technical folks after this and then get back with an update on the proposed submittal of that report we'd appreciate that.

HEARING OFFICER RENAUD: Sure. Send an email to everybody on the service list and that would be fine, thank you.

MS. FOLEY GANNON: Okay, we will do so, thank you.

HEARING OFFICER RENAUD: All right, great. Okay, moving through the status report, continuing through the status reports. You have indicated, applicant, that the PDOC, the Preliminary Determination of Compliance, is expected to be completed by the end of June. That's still a good date?

MS. FOLEY GANNON: We believe it is, yes.

HEARING OFFICER RENAUD: All right, all right, good. Anything you wish to add, applicant, regarding the status or anything else you'd like to speak to the Committee about before we move on to the staff status report?

MS. FOLEY GANNON: Not at this time, thank you.

HEARING OFFICER RENAUD: All right.

Okay, staff, I think -- let's see. You're indicating, staff, the Preliminary Determination of Compliance at the end of July, which is -- no, that's the same. Okay, that's good. So no problem there.

All right, anything you wish to add or advise the Committee at this time, staff?

MR. SOLORIO: No. With regard to the schedule, as long as the applicant stays on track with the submittals that are identified in their status report we're fine.

HEARING OFFICER RENAUD: Very good, all right. Okay. Let's move to the status reports from the intervenors. Rosalind Varghese, you're not there, right? I just wanted to double-check and make sure you haven't joined us.

(No response.)

HEARING OFFICER RENAUD: Okay.

MS. JENNINGS: Hearing Officer Renaud, sorry.

HEARING OFFICER RENAUD: Yes.

MS. JENNINGS: Ms. Varghese notified me she would not be able to participate. And Mr. Houser notified the Committee he would not be able to participate today.

HEARING OFFICER RENAUD: All right, thank you very much. Okay, I have nothing -- everything in Ms. Varghese's status report is clear to me and I don't think I have any questions about that.

The same with that of Dorian Houser.

Mr. Connor, Sunset Greens, anything you wish to advise the Committee regarding your status report or the status of this matter? Your status report is concise and

clear.

MR. CONNOR: Thank you. I had hoped that we would be able to talk more specifically about the -- having a proposed settlement conference at some point in the near future but we are not quite ready to do that. I intend to contact the applicant or the applicant's counsel directly.

HEARING OFFICER RENAUD: I noted you did mention a settlement conference in your --

MR. CONNOR: Right.

HEARING OFFICER RENAUD: -- status report. What do you mean by a settlement conference? I know what I think it means but I am curious to know what you think it means. Because it is not something we normally, that's not a term we normally use in these proceedings.

MR. CONNOR: I understand. And I would like to explore the possibility of finding out what issues are not in dispute so that we can streamline the hearing and put on a more efficient hearing if it gets to that point. And find out issues we may be able to agree with the applicant about and what we disagree about.

HEARING OFFICER RENAUD: Okay. I think as the review proceeds that will become more and more clear. But it is often not until the Preliminary Staff Assessment is filed that you can really get a sense about which topics are not in dispute. But certainly any early attempts to make

determinations about that are a good idea. Would you be thinking of the settlement conference as something that would be sponsored and run by the Committee or more in the form of a workshop where the parties would discuss these things? And again, in our kind of common usage in these proceedings, something like that would normally be done in a workshop setting where you would not be in the presence of the Committee.

MR. CONNOR: It would, you know, strictly I think be within the purview of perhaps yourself to set the boundaries or the conditions or the format. But I think that if we could do some of our homework outside that it would speed it all along.

HEARING OFFICER RENAUD: All right, okay, good. In addition to the workshops which are conducted fairly regularly in these cases before the evidentiary hearing we also hold a prehearing conference and that's sort of the -- that's the final meeting where the parties determine which issues are contested and which are not. And at that point the parties are pretty much lining up their evidence and their witnesses and so on. So there are numerous opportunities to determine which issues are disputed and which are not.

But I wold think the workshops that are upcoming might be your first resort to attend those and participate.

I think you'll have an opportunity there to see which issues are disputed and which aren't. Would staff or applicant care to comment on that whole topic of settlement and determination of which issues are in dispute and which aren't?

MS. FOLEY GANNON: I think we agree with your characterization that generally going through the process we can usually identify where there's disagreements and attempting to address them in workshops is something we support.

MR. CONNOR: Okay.

MR. SOLORIO: I'd like to add a little something and probably more for just giving you some background on the process. Generally the staff uses the workshops to try to resolve differences, or recognize that we are not going to resolve them and understand that's going to have to be resolved in a hearing.

But the staff relies on a staff assessment as our testimony, our evidence to argue our case. And so to the extent that you are not going to rely on our staff assessment you have some other evidence to develop. I would be happy to work with you to coordinate these workshops to the extent that the applicant is willing to participate if you want to discuss the issues in the same manner that the staff is in terms of air quality, bio, et cetera.

MR. CONNOR: Right.

MR. SOLORIO: But ultimately it really comes down to the impact analysis and the LORS compliance. So I don't know what you guys are doing in terms of --

MR. CONNOR: Impact analysis and what?

MR. SOLORIO: And the LORS compliance, the compliance with the laws --

MR. CONNOR: Okay. I think we're pretty much on the same page. The language I may have used and theirs may be a little bit -- I thought it was within the purview of the additional hearings or meetings provision of the rules. I don't think it's ever a problem to meet and try to resolve issues ahead of time.

HEARING OFFICER RENAUD: It's not only not a problem, it's welcomed and it's really the best way to proceed so than you for raising that. We always encourage those types of efforts regardless of what we call them. If we call them settlement conferences, workshops or anything else it's a good thing to do.

MR. SOLORIO: Thank you, Mr. Solorio.

HEARING OFFICER RENAUD: Okay, thank you. And Rudy Reyes, you submitted a status report, thank you.

MR. REYES: Yes, sir.

HEARING OFFICER RENAUD: Again, there's --

MR. REYES: Can I --

HEARING OFFICER RENAUD: Yes, go ahead, please.

MR. REYES: As intervenors can we have access to the confidential cultural data that has been collected so we can at least review it to be able to make a comment on it?

HEARING OFFICER RENAUD: You know, that depends really on the wording of the order regarding the confidentiality. Staff counsel, is that something you can speak to, for Mr. Reyes? I think it varies from case to case.

MR. REYES: Yes, yes, I understand, but I've got to make the request.

HEARING OFFICER RENAUD: Steve Adams is staff counsel for the --

MR. ADAMS: Steve Adams, staff counsel. I do not believe typically when a confidentiality order is issued the confidential material is made available to intervenors. I can explore how that might happen, or at least the avenue for raising that issue for the intervenors.

HEARING OFFICER RENAUD: Thank you.

MR. ADAMS: It may take a -- you know, it might be considered in the context of a confidentiality agreement on the part of the intervenors, I don't know.

MR. REYES: Right.

HEARING OFFICER RENAUD: Ms. Jennings --

MR. REYES: Well, as it is I -- I personally have

two degrees in archaeology and I have a professor willing to oversee. And I believe it would just be requesting -- give me one second to get the correct term. But I believe it would just be requesting a -- I apologize as I look up a terminology.

MS. JENNINGS: Mr. Reyes.

MR. REYES: It's called (audio cut out) information.

HEARING OFFICER RENAUD: Jennifer Jennings the Public Adviser has stepped to the mic and she has got something to say about this.

MS. JENNINGS: Yes, Jennifer Jennings, Public Adviser. Yes, Mr. Reyes, as I indicated to you in my emails, I will help you file a petition to inspect a copy of confidential data. And that likely if that were to be successful you would have to file a non-disclosure agreement.

MR. REYES: Perfect, that's exactly it.

MS. JENNINGS: So it has, it has to be in writing, as I said.

MR. REYES: Perfect. Okay, that's what I was asking about.

HEARING OFFICER RENAUD: All right, good, thank you. Mr. Reyes, are you still there?

MR. REYES: Yes.

HEARING OFFICER RENAUD: Okay.

MR. REYES: Yes.

HEARING OFFICER RENAUD: In your status report there isn't anything that I need to ask you about except one thing.

MR. REYES: Yes.

HEARING OFFICER RENAUD: I am reluctant to do so but I am going to anyway because you mention possible bribery. And I want to let you know that if you are aware of facts which lead you to believe that there may be something of that nature going on somewhere you probably ought to bring it to the attention of the district attorney for your county.

MR. REYES: Yes.

HEARING OFFICER RENAUD: That is not the kind of thing we deal with here at the Energy Commission. I wanted to let you know that.

MR. REYES: (WebEx faded) through the procedure and that's what we have done.

HEARING OFFICER RENAUD: All right, thank you very much. Good.

MR. REYES: A-ha.

HEARING OFFICER RENAUD: Okay. And Mr. Brewster, have you come on the line yet?

(No response.)

HEARING OFFICER RENAUD: No, okay. We received a filing from Mr. Brewster but it didn't really have any substance in it, it was just a cover page. So I did send Mr. Brewster an email and ask that he correct that but we didn't get anything further.

Okay, I think that pretty much covers the territory I wanted to cover. Do the Commissioners or Advisors have anything they want to bring up at this point? No? Anybody? All right.

We do have another status conference scheduled for June 25th and status reports due in the middle of June.

Anything the parties wish to add at this point before we turn to public comment? Applicant?

MS. FOLEY GANNON: Nothing on behalf of the applicant, thank you.

HEARING OFFICER RENAUD: All right. Staff, anything further?

MR. SOLORIO: Just to the extent that the -- you know, we have quite a few intervenors now. That they also have a desire to try to engage the applicant on these issues the same way Mr. Connor has described his desire to identify issues and work through them. They can contact me and I'll help coordinate a workshop with them to try to get some of that done.

HEARING OFFICER RENAUD: Very good, thank you for

that encouragement. I think it's good to keep the lines of communication open amongst the parties, that's excellent.

Okay, any of the intervenors on the line care to add anything before we turn to public comment? I'm sorry, Mr. Connor, you're in the room, I'll turn to you first.

MR. CONNOR: Thank you. On May 1st the applicant sent a letter that proposed to change the character of the plant. And I don't want to put a spin on it so I'll just say that they wanted to take it from a 3800 hour limit to a potentially unlimited plant and use the emissions as a standard. And I would like to hear from anyone, applicant's counsel or staff, on what the process will be our could be in dealing with that proposal because I think that there -- we have some grave concerns about it.

HEARING OFFICER RENAUD: Ms. Foley Gannon?

MS. FOLEY GANNON: Yes. We have made the request, as you see from the letter that was docketed, to the APCD for them to adopt the same approach that was used in Pio Pico as to how they set the limits. Essentially what it is is that we are requesting -- and Mr. Neff can speak to it a little bit more technically than I can.

But we are asking that we look at the sort of clustering of emissions. So instead of sort of looking at each stack individually -- as you know there's 11 stacks. There's two ways you can do the analysis, you can look at

each one individually, which just means that you're kind of doing the analysis and the compliance on a stack-by-stack basis or you can look at it as what were called clustered, looking at the 11 total.

And the same limitations apply to the emissions that would be allowed and permitted from the entirety of the plant, it just allows for, first off, more flexibility in terms of when -- which engine is being turned on at which time. But again, it has the same limitations, it just allows for more flexibility.

And then in terms of operations from the plant, it allows for a significant reduction in paperwork because the amount of compliance monitoring you have to do for each one of the limitations, if you have to do it on a stack-by-stack basis, it's just -- it's a lot of -- it's a lot of paperwork. And you can get the same information if you are looking at it as a totality. And again, that's my lay-person's presentation of the information. Maybe Mr. Neff can speak further to this issue as well.

HEARING OFFICER RENAUD: Please.

MR. NEFF: And really what we're looking at is we did not ask to extend the number of hours of the plant. The total tons emission is the same as it has been in the original applications. And tons or hours, hours or tons. Looking at some of the more recent draft Title 5 permits

that come from the agencies, really what we were looking at is we saw ourselves going down a path where every month would be 11 EDRs, electronic data reports. You know, possibly 11 EERs. And this is about one-quarter of the paperwork you generate for one EDR. And dealing with 11 of them and the maintenance of the records, we saw that as being a logistical bottleneck.

Some of the later actions that not only the San Diego APCD but some of the other AQMDs and APCD in the state are doing in writing their permits, they're looking in that clustered approach where they take the total tons. The only clarification I'll make from Ms. Gannon's statement, the monitoring will remain the same. Each stack will have the CEMS, there will be the probes for the required parameters in the CEMS. All of that data goes through our computer and it goes straight to EPA and the state.

It's the follow-on paperwork which goes along with that for all of the compliance part of the monitoring. And that was really -- it was to streamline a paperwork issue that we were looking at. The tons are the same now for all the parameters as they were as what we submitted for. You have the emission rates per hour times the number of hours, you get the number of tons.

HEARING OFFICER RENAUD: Mr. Solorio, are you familiar with this issue? If you are I'm wondering if you

have any comment on how that is going to affect the staff's analysis?

MR. SOLORIO: Happily I leave this to the air quality engineers.

HEARING OFFICER RENAUD: All right. Mr. Connor, does that satisfy your concerns or answer your question?

MR. CONNOR: Not really. The concern is that the change in the metric would actually permit the plant, all 11, to run continuously over a long period of time. And whether it would be -- the emissions would be measured daily, monthly, weekly or whatever. And that it causes a great deal of paperwork is not a great deal of concern to the people who are going to be breathing the emissions. That's frankly the least of our concerns right now.

And if it burdens the applicant, you know, that's the burden that they assumed going into this project. And I don't think that a change in the metric at this time that changes it from a peaker plant to a full-time plant, a potentially full-time plant, is something that we should leave to the issue of LORS.

HEARING OFFICER RENAUD: Okay.

MR. CONNOR: And the problem is, is that engineers could speak to engineers and make a compelling argument about the way of measuring the emissions. And Mr. Neff's contention that tons are hours, hours are tons, that is

somewhat of a disingenuous statement. And it's nothing personal. But if it's measured over six months, the plant could run six months continuously and those could be some very, very dangerous six months for the people that live near the power plant.

HEARING OFFICER RENAUD: Here is the concern I have about this discussion that we are having right now. This is a status conference and we are really here to discuss how things are progressing in the process of reviewing the AFC. The applicant has submitted a document or a request to the air board and that matter is now before the air board. If you have concerns about that request -- and I am not giving you legal advice. But it sounds to me as though the best place for your input now is at the air board.

MR. CONNOR: I don't disagree with that, Mr. Renaud.

HEARING OFFICER RENAUD: When we get to the point where we have evidentiary hearings in this matter the air board reports will be part of the evidentiary record, --

MR. CONNOR: But my specific question was this.

HEARING OFFICER RENAUD: -- as will any evidence you have to put in.

MR. CONNOR: Excuse me.

HEARING OFFICER RENAUD: Go ahead.

MR. CONNOR: My specific question was this. Will the CEC, and yourself as the hearing officer, treat the issue before the air board as dispositive, you know, resolved by LORS, if they decide to follow Mr. Neff's advice that tons are hours and hours are tons. And that when it comes back before here with a decision to approve that different metric that that is -- I don't know what better phrase to use than res judicata. It's resolved as far as LORS are concerned and it can't be before the CEC.

HEARING OFFICER RENAUD: I'll ask Mr. Solorio to comment on that. Go ahead.

MR. SOLORIO: So staff does work, obviously, very closely with the air board. Staff also does its own independent analysis, including our own modeling. And so we are in fact looking for LORS compliance and compliance with the Clean Air Act but we are also analyzing the air emissions, criteria pollutants for CEQA impacts, which is a very different standard. Not completely different but it is different from the Clean Air Act. So we do an independent analysis.

HEARING OFFICER RENAUD: So does that answer your question, Mr. Connor? The staff doesn't just rely solely on the air board, they do their own analysis as well. Not only from the point of view of compliance with LORS but also compliance with CEQA. And they do a separate public health

analysis so there's really more than just the one level of review. Nonetheless, if you have input at this point, the matter is at the air board, that's probably one place to go. When we get to the evidentiary hearing portion of this matter, if you want to weigh in on it you would need to have evidence yourself.

MR. REYES: This is Rudy Reyes, one of the intervenors.

HEARING OFFICER RENAUD: Yes, Mr. Reyes.

MR. REYES: Now from what I just heard of that, that change from limited use to unlimited use as a standard, and then I heard the flexibility and the fact there's less paperwork, and there's Title 5 with the EERs being what they are it creates less paperwork. But at the same time I heard less maintenance because it causes a logistic bottle-necking. Less monitoring through streamlining, that means less safety. I'll bring up the San Bruno fires and the fact that that was the exact same plant as this one is for the most part, and they blew out and hurt a ton of people. So where is this going to be brought up in the fire issues of the fact that this may cause a big issue. And the fact that less monitoring, less maintenance, because of the fact that you are trying to avoid less paperwork, might cause a safety concern.

HEARING OFFICER RENAUD: Well I can tell you

again, procedurally, because this is a status conference and not the forum to argue the pros and cons of the project, that part of the staff analysis and the Commission decision includes the safety aspects of the project. So that is one area that is covered.

MR. REYES: That's all at a workshop.

HEARING OFFICER RENAUD: Yes.

MR. REYES: Okay, I understand.

HEARING OFFICER RENAUD: Good, all right. Mr. Adams, yes.

MR. ADAMS: I'm sorry. Staff does believe this is the kind of issue that is effectively dealt with in workshops. So as we plan the air quality workshop we can be in touch with intervenors. And from what I am hearing from the applicant they are saying there are no more total hours of operation of the plant involved in this.

But it sounds like there is a concern about whether this could allow more intense operation during particular time periods. The staff analysis generally is predicated on the most, the worst assumptions and the worst-case scenario. So it's not that that would be overlooked in the staff analysis if this allowed for more intensive use over a certain period of time.

HEARING OFFICER RENAUD: Okay, thank you, Mr. Adams.

MR. CONNOR: I have another happy issue, Mr. Renaud, if I may?

HEARING OFFICER RENAUD: Just before we get off that topic let me -- let me -- Ms. Allen I think has something -- wants to weigh in on this as well, technical advisor to the Commissioners.

ADVISOR ALLEN: Can you hear me?

HEARING OFFICER RENAUD: Yes.

ADVISOR ALLEN: I wondered whether Mr. Solorio or Mr. Adams or perhaps Mr. Davis could talk about the role that the air quality staff has in commenting on the draft Preliminary Determination of Compliance. My understanding is that the air quality staff routinely provides the air district with comments on issues such as that raised by Mr. Connor. So there is an opportunity there for the Preliminary Determination of Compliance to be subject to some adjustment before it's published. Have I got that right?

MR. SOLORIO: Yes, that's correct. We absolutely review it and do comment on it. Quite often we do suggest, through our comments, changes in the Preliminary Determination.

HEARING OFFICER RENAUD: That's a document anybody can comment on, correct, any member of the public?

MR. SOLORIO: And we take a special interest in

it, of course, because it applies to a joint review.

HEARING OFFICER RENAUD: So any person having an interest in that proceeding can submit comment?

MR. SOLORIO: True.

HEARING OFFICER RENAUD: Including you, Mr. Connor. That's what I'm getting to. All right, you indicated you have another issue.

MR. CONNOR: Thank you. This issue is to the scope of the review of the staff and the clarification of their duty to find out while we are in this process here, this stage of the siting issue. And I think it is best exemplified by staff's data request number 74. To refresh everybody's recollection, it was a request for the applicant to clarify the evacuation plan for the plant itself and for the operators of the plant.

Separately and distinctly I had asked a question in our HOA's data requests regarding the evacuation plan for the surrounding community because this is a -- I think the language is, I may be wrong about this, but an extremely high fire danger area.

The question is, it seems to me in my reading of the rules and the law that the scope was unnecessarily narrow in that the staff should have been asking for a more broad evacuation plan for the community because of the siting of this and because it was in an extremely high fire

danger area. Am I wrong about that or do we need to request that the staff expand their scope to be more protective of the public in general?

I am not trying to diminish the need to protect the people that are in the power plant if it's built but I am talking about a ratio of 8 or 11 people operating there versus the potentially thousands in the neighborhood. And as we are one intervenor on behalf of 119 homes, of maybe 300 people.

HEARING OFFICER RENAUD: Okay.

MR. CONNOR: And I don't know that we have, we should have the burden of protecting the public at large and who does that burden fall to?

HEARING OFFICER RENAUD: So just so I am clear in my mind about your question. Is your question about expanding the scope of staff's data request or about expanding the scope of the amount of protection?

MR. CONNOR: Well.

HEARING OFFICER RENAUD: Because I don't think they have an answer to the data request yet so you don't know what that is.

MR. CONNOR: No, but it's the asking of the question that creates the scope, sir.

HEARING OFFICER RENAUD: Okay.

MR. CONNOR: It's the asking of the question.

HEARING OFFICER RENAUD: So --

MR. CONNOR: They're asking the question about the internal power plant evacuation plan. It begs the question, you know, why isn't there an evacuation plan request for the community. Because that is really the -- that is the danger, that is a much greater public danger. And that seems to me -- we are here to protect the public in this process.

HEARING OFFICER RENAUD: Okay. I see Mr. Solorio has something to say about this.

MR. SOLORIO: I think that Mr. Connor perhaps misunderstood the data request. It was asked in the context of wildfires. If there is another event, as there has been in the past, of wildfires in the area, how would the owner of the project deal with that in terms of the safety of the workers and shutting down the plant. That's the context for evacuating the plant.

HEARING OFFICER RENAUD: All right. And I will add, Mr. Connor, that as an intervenor, and you know this because you have already submitted data requests, if you want information from the applicant that has not be requested by the staff you can submit a data request.

MR. CONNOR: Okay. But remember, I started out by saying it's an issue of scope, of the issue of finding out by the staff. I understand, Mr. Solorio, what your question

was, I read it a number of times. But the question is, you know, the staff should be taking direction from the Commission. And the Commission, I would think, has a duty to protect the public at large. And since this is an extremely high fire danger zone, what is it that should be the scope of the inquiry by the staff beyond just the confines of the proposed project itself? That's the question I'm asking.

HEARING OFFICER RENAUD: Well again, I think public safety is addressed in many ways in Commission decisions and those decisions reflect the evidence that's in the record. And those decisions also reflect the compliance with the applicable laws, ordinances, regulations and standards. Something like that is probably most appropriately a LORS issue.

If when we get to the evidentiary hearings part of this case, you or the homeowners association wants to put in evidence that here is the standard rather than what staff says is the standard, you should plan to do that. Because the Committee will be very, very interested in any evidence, testimony and so on that relates to any of the issues in the review.

So I guess I'm thinking your question is premature because we aren't, we don't have the evidentiary record yet. You are anticipating what the -- what the safety standard is

or will be in advance of the Committee's having had an opportunity take evidence on it. And I say that with complete respect. And I know our process is complicated and sometimes a little bewildering. But if you have a particular position or opinion concerning what is the appropriate level or standard for public safety. That's an evidentiary issue that the Committee would be very interested in hearing from you about.

MR. CONNOR: Thank you.

HEARING OFFICER RENAUD: Okay? Does that help? I hope that helps. All right. I think staff asks the data requests that it feels it needs in order to accomplish its review. And if you would like to ask different ones or more expanded ones and so on, that's your right and you should do it. Okay. Anything else, Mr. Connor?

MR. CONNOR: I don't think so.

HEARING OFFICER RENAUD: All right, thanks.

Anything from any of the intervenors on the phone? I believe that's Mr. Reyes. Anyone else?

MR. REYES: Okay. Let me see. I think what I heard from the last move or whatever was on the table was the gentleman was asking for a higher standard be set. Just due to the fact that there is so much history with fires and the, you know, possibility of an issue of this plant having fires. So I think, honestly, that's all he was asking is

that a higher standard be set. Other than that, I'm pretty good and happy right now.

HEARING OFFICER RENAUD: All right, thank you very much. Then I think what we should do at this point is turn to public comment. We have at the end of every Commission or Committee proceeding or hearing of any sort we provide an opportunity for members of the public to address the Committee. And let me ask first if there is anyone here in the hearing room who wishes to provide a public comment?

(No response.)

HEARING OFFICER RENAUD: All right, seeing none, is there anyone on the phone or on WebEx who wishes to provide a public comment? If you do just simply speak up.

MR. COLLINSWORTH: Yes.

HEARING OFFICER RENAUD: Yes, go ahead.

MR. COLLINSWORTH: Yeah, this is Van Collinsworth in Santee, I have been listening in. I have a question and a comment. The first is I would like to know what the status is of developing any real alternatives to the project because I haven't seen any yet.

Then I'll just continue with my comment. I want to also update you on the status of the public opposition to this project. It's huge and it's growing and people in this area of San Diego are very upset with this whole thing. I'll give you just one example in terms of what the San

Diego River Coalition has just voted to send a letter of opposition, basically standing up for our local laws and ordinances and standards, many of which this project violates. And there's plenty of other organizations that will probably be doing the same thing shortly.

There's public officials that are speaking out in opposition to the changing of the local laws and ordinances. When the applicant went to Tierra Santa and asked for that town council to support the initiation of their changes that body chose not to do so. And since they were unsuccessful there they pulled it from the agenda at Navajo. So this project is failing at the local level. Why? Because it is in contradiction, it's completely incompatible with everything about this site. And so we find it highly distasteful that the state continues to advance this operation when it's a no-go at the local level.

I'll stop there, if you could address my question.

HEARING OFFICER RENAUD: All right, thank you. Yes, we'll see if we can address your question. I would like to state though, for the record, that at least as far as the -- from the Commission's point of view, the Commission is not advancing the project if by that you mean proponing it, favoring it. The applicant has filed an Application for Certification and it is the Committee's job to oversee the review of that and issue a decision and

that's what is going on here.

Does either applicant or staff have anything to offer in response to the question about alternatives?

MS. FOLEY GANNON: On behalf of the applicant, I think as we discussed at our last status conference, we have submitted in the AFC what we believe to be a reasonable range of alternatives as required by CEQA and the Commission's regulations. We have received a number of data requests about this. We will be filing our 20 day letter to Houser's data request this afternoon that addresses it.

But in sum, we believe that the project objectives here for this project to be sited near existing infrastructure necessary to support the plant, specifically the transmission line and the gas lines, without any major upgrades, is a legitimate project objective and therefore you consider a reasonable range of alternatives in light of those objectives. So we don't believe that there are other sites that meet those objectives. And again, we will be responding to data requests and that's how we have approached the issue.

HEARING OFFICER RENAUD: Staff, on the alternatives question at all, anything to add?

MR. SOLORIO: I'd like not to give real specific answers about our draft work product until we actually reach a conclusion or are ready to publish that. I would just

like to say that the alternatives analysis will be robust and we do plan to issue a very comprehensive set of data requests revolving around the range of alternatives that staff selects at the end of the day.

HEARING OFFICER RENAUD: All right and thank you. And I will -- this is Raoul Renaud. I will just add also that the alternatives analysis is a significant part of the review process as well as a significant part of the Committee proposed decision so it is taken quite seriously. And people obviously have differing opinions about the -- whether or not the alternatives analyzed are adequate. Those are ultimately complex legal questions. But the Committee and the Commission do everything in their power to ensure that a legally sufficient range of alternatives is analyzed. Okay, thank you.

Is there any further public comment?

(No response.)

HEARING OFFICER RENAUD: Okay, I am not hearing any. Mr. Connor, I see --

MR. CONNOR: I have one follow-up that I got from one of my homeowners that is on the line.

HEARING OFFICER RENAUD: Go ahead.

MR. CONNOR: And that is the question of Mr. Neff's comment tons are hours and hours are tons. The thing that makes that disingenuine (sic) -- and I wasn't

trying to make a personal comment, Mr. Neff. What makes that disingenuine is the ability of an applicant to purchase pollution credits. I don't know whether this is the appropriate forum or not but I am going to ask if the applicant would agree to make not purchasing additional pollution credits part of their permit? So that would make the hours are tons, tons are hours equation, equal. To not have that in there is what makes it unequal.

HEARING OFFICER RENAUD: Well I am not going to require the applicant to answer that question right now but that's the kind of thing you could discuss in a workshop. That would be --

MR. NEFF: Yeah, that's what I was going to say. I look forward to the workshop on it because I think there is a misunderstanding on how air emissions are calculated, monitored and reported.

HEARING OFFICER RENAUD: All right, thank you.

MR. SOLORIO: Could I add one thing?

HEARING OFFICER RENAUD: Mr. Solorio, yes.

MR. SOLORIO: Air quality is one of the primary issues that, at least that I have heard, in the public workshops and public comments, unquestionably. That's why it is one of the technical areas on the first workshop we plan to hold toward the end of June. We are coordinating with the air district as well and at this time we expect

that they are also going to attend and participate in that workshop.

HEARING OFFICER RENAUD: All right, that's good to know, thank you very much.

Okay, Commissioner McAllister.

ASSOCIATE MEMBER McALLISTER: Just a quick question to staff. Are you monitoring the application that's going on that is being evaluated over at the PUC? Are you aware of that at all? Does that affect your job at all or are you just -- are you taking that into account in your analysis of the project feasibility?

MR. SOLORIO: It does not affect our job per se. I know that some folks in our transmission unit are monitoring it. I have seen some documents they forwarded to me, public documents, declarations and such about reliability that results when you add the project to the grid. In general we are not monitoring the proceedings over there, and I assume you are talking about the PPA. Okay, yeah. A PPA is not required. If we get an AFC we evaluate it and we send it up to you guys to make a decision.

ASSOCIATE MEMBER McALLISTER: Okay, thanks.

HEARING OFFICER RENAUD: Thank you. All right, anything further from Commissioners, Advisors? All right, go ahead.

PRESIDING MEMBER DOUGLAS: All right. I just

wanted to thank the participants in the status conference. I think these status conferences are really helpful.

I am hopeful that the workshops will provide a really constructive forum to get questions answered and to clarify issues where there are points of disagreement so that the issues that come before the Committee for hearing, you know, truly are areas where the parties understand each others' views and do not agree; as opposed to parties being confused about what is being said and so on. So the workshops are really going to be beneficial from that standpoint.

So with that we will be, we will be adjourned. Thank you.

(The Status Conference adjourned at 3:06 p.m.)

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CERTIFICATE OF REPORTER

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

I further certify that I am not of counsel or attorney for any of the parties to said conference, or in any way interested in the outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of June, 2012.

JOHN COTA

CERTIFICATE OF TRANSCRIBER

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

June 4, 2012

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