California Energy Commission
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STATUS CONFERENCE

BEFORE THE

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT

COMMISSION OF THE STATE OF CALIFORNIA

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

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

TUESDAY, OCTOBER 16, 2012

10:30 a.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

Galen Lemei, Advisor to Commissioner Douglas

Jennifer Nelson, 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

John Collins
Lori Ziebart
Quail Brush Generation Project

INTERVENORS

Rosalind Varghese (via WebEx)

Rudy Reyes (via WebEx)

Dorian S. Houser (via WebEx)

Kevin Brewster (via WebEx)

Phillip M. Connor (via WebEx)
Sunset Greens Home Owners Association

Valentine S. Hoy, Attorney at Law
John T.Kaup, Paralegal
Allen Matkins
representing HomeFed Fanita Rancho, LLC

Van Collinsworth (via WebEx)
Preserve Wild Santee

ALSO PRESENT

Rob Anderson (via WebEx)
San Diego Gas and Electric

Andy Wilson
California Pilots Association

Gretel Smith (via WebEx)
Helping Hand Tools

Theresa Mullins (via WebEx)

Nicole Capretz
Environmental Health Coalition

Bill Powers
Powers Engineering

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P R O C E E D I N G S

11:00 a.m.

HEARING OFFICER RENAUD: Good morning. My name is Raoul Renaud, I am the hearing officer for the Quail Brush Generation Project at the California Energy Commission.

We are still working out the problems with the WebEx password but apparently most people who want to participate have been able to get on and so we are going to get started. Just taking care of some preliminary introductions and the like.

My name is Raoul Renaud, I am the hearing officer appointed by the Committee for the Quail Brush Generation Project. To my right is Commissioner Karen Douglas, who is the Presiding Member of the Committee. To her right is Galen Lemei who is her advisor and to her right is -- to his right, I'm sorry, is Jennifer Nelson who is also an advisor to Commissioner Douglas. To my left is Andrew McAllister; Commissioner McAllister is the Associate Member of the Committee. And to his far left is Eileen Allen, who is the Commissioners' technical advisor for siting.

Let's begin now with some introductions of the parties and we will start with the applicant, if you would introduce yourselves, please.

MS. FOLEY GANNON: Good morning, my name is Ella Foley Gannon and I am counsel to the applicant. To my right

is John Collins, vice president of Cogentrix, the applicant. And to John's right is Lori Ziebart who is project manager for the Quail Brush project. We also have on the phone this morning Rob Anderson, who is the Director of Resource Planning for SDG&E.

HEARING OFFICER RENAUD: Okay, thank you. And for staff, please.

MR. ADAMS: Legal counsel to staff, Steve Adams. And to my right is Eric Solorio, the project manager.

HEARING OFFICER RENAUD: Good morning. Now, do we have any of the parties in the room, any intervenors?

All right, I think all the intervenors then will have phoned in so let me just do kind of a roll call of intervenors. Let's start with Rosalind --

(Interference.)

HEARING OFFICER RENAUD: That came from outer space, it sounded like.

Rosalind Varghese, are you there?

MS. VARGHESE: Yes I am.

(Interference.)

HEARING OFFICER RENAUD: Did you find it? Okay, we found the source of that sound, all right. Let me try again. Rosalind Varghese, are you there?

No? I know you're trying to so we'll --

MS. VARGHESE: I am. No, I am.

HEARING OFFICER RENAUD: Good morning.

MS. VARGHESE: Can you hear me?

HEARING OFFICER RENAUD: Okay, thank you, we've got you, okay, good. Rudy Reyes?

MR. REYES: Yes, I'm here.

HEARING OFFICER RENAUD: Good morning. Dorian Houser?

MR. HOUSER: Yes, I am here.

HEARING OFFICER RENAUD: Thank you. Kevin Brewster?

MR. BREWSTER: I'm here.

HEARING OFFICER RENAUD: Thank you. Phil Connor, Sunset Greens Home Owners Association?

MR. CONNOR: I am here but I am not able to get any sound out of the WebEx.

HEARING OFFICER RENAUD: All right, so you are still having difficulty. We can hear you. We'll be working on getting these things sorted out.

Okay, HomeFed Fanita Rancho?

MR. HOY: Good morning, this is Val Hoy and John Kaup from Allen Matkins on behalf of HomeFed Fanita Rancho. And we are about to enter the hearing room, we are just outside.

HEARING OFFICER RENAUD: What was that last part?

MR. HOY: We're --

HEARING OFFICER RENAUD: You're on your way. All right, thank you. Preserve Wild Santee?

MR. COLLINSWORTH: Yes, this is Van Collinsworth of Preserve Wild Santee.

HEARING OFFICER RENAUD: Thank you.

MR. COLLINSWORTH: And if I could add, I am also getting a lot of emails from people that are trying to get in, including Council Member Jack Dale that hasn't been able to connect.

HEARING OFFICER RENAUD: All right, we're working on that.

MR. COLLINSWORTH: If you mute the phone that will help too.

HEARING OFFICER RENAUD: All right. Center for Biological Diversity?

(No response.)

Anyone representing CBD here today?

MR. COLLINSWORTH: Preserve Wild Santee and CBD are joined so I don't know if CBD is going to join us.

HEARING OFFICER RENAUD: All right, thank you.

(Discussion about sound.)

Okay, just a couple of suggestions for those of you on the phone if you are having any audio difficulties. First of all, if you are using a speaker phone I would suggest you not use that and use your handset instead, that

can cause some echoing and feedback.

And second, we can hear so. So if you can try to keep the noise to a bare minimum at your end, that would be much appreciated. You'd be amazed how loud we can hear the rustling of a piece of paper. So if you can keep your end of the line quiet that would be appreciated. Obviously you'll have an opportunity to speak at the appropriate point in the proceedings.

Okay, I think we'll go ahead then. Status conferences are not held regularly in most cases, they are held kind of on an as-needed basis or to determine how things are going just because the Committee wants to make sure that progress is being made.

In this case we noticed a status conference and we asked that the parties submit status reports. I want to thank all those parties who did submit the status reports. We received those in a timely fashion from each of you and we appreciate it very much.

What prompted our calling the status conference was the San Diego City Council meeting at which it was determined by the City Council that the applicant would not be permitted to initiate the proceedings for a zoning change. I think -- as I understand it, it is undisputed. Everybody agrees that the zoning currently for the proposed site is open space and it would need to be changed to

industrial.

If the zoning is incorrect that is what we call a LORS conflict, a conflict in the laws, ordinances, regulations and standards. And under California law, if the Commission is to approve the project the Commission would have to do what is called an override. In other words, the Commission would exercise its authority to override a local law, in this case that zoning ordinance.

I think what I'd like to do -- and so what we want to do today is just discuss kind of where that puts us all. Does that affect the proceedings from here on out. And I think I'd like to start by asking the applicant if you want to just tell us a little bit about where the issue with zoning stands as far as the applicant is concerned and what your future plans are, if any, with respect to zoning.

MS. FOLEY GANNON: Certainly. One point of clarification to begin. The site is actually zoned residential, it is not zoned open space. It is designated open space but it is not zoned open space, it's zoned residential.

HEARING OFFICER RENAUD: Okay.

MS. FOLEY GANNON: But it is correct that we were seeking to have a change in the zoning to allow for the industrial use on the site. And as you noted the city of San Diego did deny the request for initiation of that plan.

So where that leaves us at this point in our view is that we will be requesting and seeking a LORS override. And we anticipate that we will be able to meet the requirements for the necessary findings with related to both the public necessity and convenience and with the consideration of feasible and prudent alternatives.

So kind of in a nutshell that's where we think we are. We recognize that there is going to need to be a LORS override and we will proceed with presenting the evidence that we think will be necessary for the Commission to make the determination.

HEARING OFFICER RENAUD: I appreciate that, thank you, that really sums it up very, very nicely.

And I think I should explain to everybody here and listening in that we are not here today to decide anything about the merits of the case. We are not here to decide whether or not we like the project. All we are here to talk about is where we go from here procedurally. How do we handle the case.

Ms. Foley Gannon is suggesting that we would proceed pretty much as we proceed in all siting cases. We would go through the fact-finding process, which we are in now. We would await the staff's Preliminary Staff Assessment, hold workshops on that, eventually get to the Final Staff Assessment and then move into evidentiary

hearings.

And where this case would differ from most cases is that in addition to covering the environmental topics that we always cover, we would have another topic to cover which would be override, making the override findings under Section 25525.

So I just want to make sure everybody understands that we are here just to talk about that procedural question and not really to talk at all about whether or not the Committee could make override findings. In fact, at this point we couldn't. Override findings, like all findings in the case, need to be based upon the evidentiary record and at this point there is no evidentiary record. That does not get created until the evidentiary hearings.

All right, staff, is there anything you would like to bring up today with the Committee?

MR. ADAMS: Well, we came prepared to discuss the LORS override standard as requested in the scheduling order. Just by way of introduction I guess I'd note that the relevant section, Public Resources Code 25525, requires that those findings be made based on the entirety of the record, which in staff's view precludes dealing with those now, as many of the intervenors are urging. We would not presume to say whether the facts to support an override finding will be there at the end of the day or that they won't. We think

that will become clearer as the record develops.

And I think that's about it other than the City Council action does seem to ensure that we are going to have LORS non-conformance at the end of the day.

HEARING OFFICER RENAUD: All right, good, that's helpful and thank you for that.

Perhaps one thing we can begin to glean from this discussion so far is the importance of the override section of this decision. The override section, if the Committee is not able to make the override findings then the Committee is not able to approve the project.

So the parties need to focus in their evidence on ensuring that the Committee has an ample evidentiary record upon which it can base its override decision, yea or nay. But we need to have a very, very thorough, complete record of evidence upon which to base that portion of the decision.

Obviously part of the override findings pertains to the alternatives analysis. And that's the second part of 25525 which says if there are not more prudent and feasible means of achieving public convenience and necessity. Whether or not there is a more prudent and feasible means is, by definition, a discussion of alternatives.

25525 also calls for a determination that the facility is required for public convenience and necessity. And those of you who are lawyers will understand that that

1 particular phrase is not clearly defined anywhere. And in
2 fact in previous decisions the Commission has pointed that
3 out. But I would encourage you and anyone to look back at
4 previous decisions of the Commission that involved override
5 just to kind of get a sense of the issues that became
6 important in other cases. Okay.
7 Let's see. I see HomeFed Fanita Ranch, you have
8 entered the room here, thank you for coming. Is there
9 anything you would like to add to the discussion here?
10 MR. HOY: At this point I think our position is
11 that additional time is needed and the schedule needs to be
12 adjusted based on recent developments. I was kind of
13 surprised to see that staff had no objection to the
14 Committee's revised schedule. It would seem to me it would
15 be prudent for all concerned to extend time.
16 HEARING OFFICER RENAUD: All right, sorry about
17 that. The microphone is -- if the green light is on you're
18 live.
19 MR. HOY: If necessary HomeFed can file a motion,
20 obviously, and request a decision. But I thought it might
21 be useful for us to appear in person today and talk about
22 doing it without the necessity for a formal motion. And I
23 don't know whether that's something that the hearing officer
24 would consider.
25 HEARING OFFICER RENAUD: You're referring to

adjustments in the schedule?

MR. HOY: Yes, sir.

HEARING OFFICER RENAUD: That's entirely appropriate to talk about today and we should. Is there anything in the -- we just issued a revised Committee schedule; I don't know if you have had a chance to take a look at that. But if you have it I'd maybe ask if you could give us some suggestions about what you think would be appropriate adjustments.

MR. HOY: The revised schedule provides for a final date of exchange of information on October 31, 2012, if I am not mistaken.

HEARING OFFICER RENAUD: Right.

MR. HOY: And at this point our understanding is that additional submittals will be made on approximately that same date by the applicant. In addition we have only just recently had major project changes disclosed and so our suggestion would be that we extend that date by 45 days. And there are certain other dates that would then follow on such as the Preliminary Staff Assessment being filed.

HEARING OFFICER RENAUD: All right. Let me just turn to the applicant about that. Do you have, in fact, additional submittals coming at the end of October?

MS. FOLEY GANNON: We do have some of the data responses, As we had provided in our status report filed

yesterday, some of the data responses that will be filed at the end of the month. However, we don't think that that should necessitate at this time an extension of the discovery period, the official discovery period.

If there is a particular piece of information that is submitted that triggers a need for additional information, the way I have seen it done usually, is there would be a request for -- to be allowed to make a specific request. And we would deal with it at that time about whether it is appropriate and necessary.

We don't think, you know, basically the project changes are what put the date out to October 31st, that was the filing of our Supplement 3. And at a previous status conference, I think before you were actually intervenors in the process, but at the previous status conference it was discussed that it would be 60 days following our submittal. Which this is what, you know, is reflected in this current schedule. So we don't know of any recent changes or developments that would in any way affect this previously-agreed to -- the schedule that we're all operating under.

HEARING OFFICER RENAUD: All right, thank you. I'm sorry, I didn't get your name.

MR. HOY: Valentine Hoy, H-O-Y.

HEARING OFFICER RENAUD: All right. Mr. Hoy, is there a specific applicant submittal that you're thinking of

that might necessitate additional time?

MR. HOY: Obviously the submittals that we haven't yet seen will necessitate additional time. But in addition to that we had approximately two-and-a-half months of delay in submitting the project changes that are in Supplement number 3. And I think it would be appropriate if what the Commission is looking for is a thorough and complete record, particularly on this issue of overriding considerations, it would certainly be appropriate not to rush this process through and to provide additional time for all discovery.

HEARING OFFICER RENAUD: Let me, let me turn to staff, Mr. Solorio, I think particularly. Currently the PSA date is December 12. Does that still seem realistic to you in light of the override issue?

MR. SOLORIO: Yes it is. It's still a realistic date, assuming that the rest of the submittals come in as they're called out for. There were changes in Supplement 3 but it wasn't the entire project so we're continuing.

HEARING OFFICER RENAUD: Okay. Ms. Foley, Gannon, will the applicant be submitting additional material on override other than what is already in the AFC?

MS. FOLEY GANNON: Well we will certainly be providing, as part of our testimony, evidence that would support the necessary findings that need to be made as an override. We will -- I think in the near future we will

probably be submitting some additional information that has either been as part of the CPUC proceeding or as part of other proceedings that have been before this Commission that have had LORS overrides, decisions which we think is relevant to the consideration, just to make sure that it's part of our record. But we don't have any official submittals at this point that we were going to be doing separate and apart from our testimony.

HEARING OFFICER RENAUD: And would any of that material be coming in after October 31st?

MS. FOLEY GANNON: No, it would not be.

HEARING OFFICER RENAUD: Okay.

MS. FOLEY GANNON: I mean, our testimony would be but the other submittals, no, they would be coming in in the next week or so.

HEARING OFFICER RENAUD: Well, your testimony has got to be based pretty much on what you have filed so far. You know, the AFC and additional filings, data responses and that sort of thing. I am wondering if there is going to be additional material that no one will have seen before you file your testimony?

(Ms. Foley Gannon confers with her client.)

HEARING OFFICER RENAUD: And you might not know yet.

MS. FOLEY GANNON: Yes, I'm sorry, I just wanted

to confirm something. We will be submitting additional information on the alternatives analysis and that we do intend to submit before October 31st.

HEARING OFFICER RENAUD: All right, okay, okay. So, you know, I think what we probably should do is let's, let's take a look in a couple of weeks at how these things are. The Committee is obviously not going to foreclose anybody from obtaining information. If it appears reasonable to extend the time I think that would be something the Committee would certainly entertain.

MR. HOY: There is certainly almost nothing in the record so far on alternatives, there is going to have to be some substantial additional information. So it would seem to me that it would be unfair to the intervenors to cut us off on October 31.

HEARING OFFICER RENAUD: We will not -- we will be fair. The Committee will be fair, I assure you.

MR. HOY: Thank you.

HEARING OFFICER RENAUD: We are going to err on the side of ensuring people have the opportunity to obtain and exchange all the information they need.

Let me ask the other intervenors if they would care to weigh in on the discussion so far. Let me start with Rosalind Varghese, anything you'd wish to add to the discussion?

(Interference.)

MS. VARGHESE: Can you hear me?

HEARING OFFICER RENAUD: Yes.

MS. VARGHESE: Okay. I do want to say that I would like the Commissioners to carefully consider that intervenors (indiscernible) to do this. We have full-time jobs, families to care for. And the little bit of time that we have extra we are focusing in this fight. So please consider that and give us sufficient time. We don't do this for a living. So we need ample time to review information and participate adequately in the process. That's all, thank you.

HEARING OFFICER RENAUD: Okay, thank you very much, Ms. Varghese, appreciate that.

Mr. Reyes, are you there and would you care to offer anything to the discussion this morning?

MR. REYES: Yeah, okay. I'd like to officially ask the Committee to reject the proposal. We're at that point now where 25525 just basically allows them to reject so I'd like to officially ask them to reject the proposal.

From there, as far as alternatives are concerned, they need to weigh in the fact that solar has gone to a new level already and that's not counting the next five years of time. Where Germany has produced in one day 22.1 gigawatts of power, not megawatts, gigawatts, more than 22 of these

gas-powered plants combined. So this gas-powered is out of date, not needed, unnecessary.

And as towards need. San Diego just put in a power link. A hundred megawatts, 24/7, less than 30 miles away. There is no need for this project.

I have run for county supervisor, I am currently running for mayor of Santee. People need to weigh in on the fact of what is going on around and what is going in right now. Again, this is not needed.

If that's the situation of weighing for need, I would also like to officially ask for us to freeze this project until it gets to go in front of the CPUC, they're the ones who determine need. Not this group, not the CEC. We need to sit and wait for the CPUC to oversee this project before we can continue on at this point. That's it.

HEARING OFFICER RENAUD: All right, thank you, Mr. Reyes. And let me just say that while we appreciate your comments, as I said earlier, the Committee is making no decisions pro or con concerning the project today.

MR. REYES: It's a request.

HEARING OFFICER RENAUD: The Committee can't do that until there is an evidentiary record and that will be created during the evidentiary hearings. Just to remind you. And as an intervenor, of course you will have the right and opportunity to present evidence during those

hearings and we encourage you to prepare for that.

All right, let's move to Dorian Houser. Would you care to add to the discussion this morning?

MR. HOUSER: Yes. First, can you hear me okay?

HEARING OFFICER RENAUD: Fine, thank you.

MR. HOUSER: Great, thank you. My concern is probably with the scheduling as well. But given the previous conversation, I guess it's somewhat depends upon what changes may occur over the next couple of weeks based upon the applicant's materials that are provided.

I do have a concern for when we get to evaluating the Preliminary Staff Assessment, just based upon the potential volume of information that might be there; whether we could request sufficient time to better evaluate that. But, again, I will postpone that comment or request until we know better the schedule that's forthcoming.

HEARING OFFICER RENAUD: Very good, thanks very much. Kevin Brewster, do you care to weigh in today?

MR. BREWSTER: I would suggest at this point that we consider doing an extension after the alternatives analysis has been submitted by the applicant. The current alternative analysis is very thin.

I have submitted extensively with data requests trying to get additions to that. If we look at -- (sound breaking up) on the override in that the public necessity.

Prudent alternatives is the terminology used. And it will really be those prudent alternatives that we will need to explore and we will need some time to do that.

Additionally I would like to say that having attended the last meeting, outreach meeting here in San Diego, there seemed to be a number of items outstanding on the environmental and biological elements. I thought that the staff was surprised that some of those hadn't been forthcoming and I call into question the general plan as it stands now. Thank you.

HEARING OFFICER RENAUD: All right, thank you very much. And I think the applicant appreciates the importance of making sure there is ample evidence in the record concerning override findings and we will be looking forward to seeing the additional submittals that are coming.

Okay, Phil Connor, Sunset Greens.

MR. CONNOR: Thank you, sir. Can you hear me?

HEARING OFFICER RENAUD: Yes.

MR. CONNOR: Okay, I had a number of points. A point of clarification. Ms. Foley Gannon had commented early on at the beginning of the meeting that the site was zoned residential but Mr. Renaud was correct that it is -- there is an overlay zone, an open space overlay zone which has an intent and purpose to keeping the property open space so let's not, let's not forget that in the process.

The second point was that I was concerned that when you said, Mr. Renaud, that nothing was going to happen today regarding the project. It seems to me that at the very minimum today the Committee needs to make a finding of non-conformity. I mean, you expressed it but it needs to make a finding of non-conformity under 25525.

And then that opens up a whole new focus of a issue and there should be separate time for discovery on that issue. Because as someone mentioned, there has been very little, very little discussion by the -- by the applicant, who really at this particular point needs to come forward and put it out on the table and tell us, you know, what the rationale for is keeping this. And then we should have an opportunity to do discovery after that point to -- to test these and find these allegations and contentions out and the scheduling order to reflect those things.

We have a whole new issue if the Commission makes a finding. If the Commission doesn't make a finding today we still have this anomalous situation that I referred to at the workshop. That we are in this bizarre world where the -- the staff is counting on the City of San Diego to provide them information to help them go along and continue planning this project when the City has said, no.

I was cut off at the point of bringing that up and raising the -- the nature of it. But it's -- the finding

needs to be made today to direct the staff in a different direction. And that is, accumulating the information for and against whether, you know, there's a public convenience and necessity on this issue. That's our position, thank you.

HEARING OFFICER RENAUD: Okay, thank you. And I'll just briefly respond on behalf of the Committee. As I said earlier, we are not here to make findings today. In fact, we can't make findings until there is an evidentiary record.

We are aware of the city council's determination concerning the zoning. Furthermore, it is not disputed by any of the parties that there is a zoning conflict. I don't think we need -- anybody needs a stronger signal than that, that identifying what the issue is and that there would need to be override findings.

Okay, let's move on to Preserve Wild Santee and CBD, Mr. Collinsworth.

MR. COLLINSWORTH: Yes.

HEARING OFFICER RENAUD: We can hear you.

MR. COLLINSWORTH: It sounds like we still have the echo, unfortunately.

HEARING OFFICER RENAUD: It's pretty good, we can hear you fine.

MR. COLLINSWORTH: Well let me start with the

zoning issue. There is an open space overlay and it limits the residential use of that property to 25 percent.

Then I'd like to go into the schedule. And we have asked that the schedule be extended to February 28 in terms of the comment deadline, February 28, 2013.

I'd also like to discuss a little bit just what we have done in terms of organizing the community. The response has been overwhelming. Both the jurisdictions, Santee and San Diego, have had unanimous votes in opposition to the AFC. So from my perspective, although the applicant may have the right to continue processing the AFC, it would seem to be an enormous waste of all parties' time and resources and I'd encourage the application to be withdrawn.

I also think that really considering the public's response and the Land Use Authority's response at this point, really the only reason that this is continuing on is because there is a potential for an override.

And so I would like to move to the issue of the alternatives. As was mentioned, the alternatives up to this point is extremely thin and from our perspective there really aren't any alternatives being offered. And I do think that that is a strategy in -- I guess offered by the applicant. Because it's pretty clear that the Commission will have to make a finding that there aren't more prudent and feasible alternatives.

So I believe it's extremely important for staff to make sure that there is an extensive and rigorous alternatives analysis, which will include demand response, distributive rooftop solar, energy storage, bridge-scale energy storage and, you know, combinations of that. And at this point all of that is entirely lacking. And we just don't think this can be an honest process without this, an extensive and rigorous alternatives analysis.

HEARING OFFICER RENAUD: All right, well thank you very much for those comments. Again, I'll just say briefly that the purpose of this conference is not to make findings or make decisions concerning the project, we are simply trying to kind of chart our course from here on out.

I think we have successfully, I hope, focused people's attention on the override issue and the need to ensure that there is a strong evidentiary record for the Committee to consider. And that is all the parties' responsibility, the staff, applicant and intervenors, to ensure that any evidence that they want to be considered is in the record and will be considered by the Committee.

As far as the schedule is concerned, we are not going to try to make any decisions today about future dates. The Committee is going to take everything you have said to us today back and consider revisions to the schedule. We will also be watching the filings that come in. And as

indicated, we are not going to cut anyone off unfairly, we will make sure that anybody who shows good cause for needing additional time will get that time. Yes, Mr. Hoy.

MR. HOY: It seems that without any set schedule today that my client will probably file a formal motion in the next week.

HEARING OFFICER RENAUD: That's fine.

MR. HOY: All right.

HEARING OFFICER RENAUD: That's perfectly appropriate and the Committee will consider that. Just make sure that your showing of good cause is in there, that's really the standard that we need to apply.

MR. HOY: Yes.

HEARING OFFICER RENAUD: All right. When we are done today of course we'll open this up for public comment. But I'd like briefly also to call the parties' attention to another section of the Warren-Alquist Act that came up while we were looking at 25525. And if I could ask Mike to put that document up for us and scroll down to the second bolded area.

This is Section 25527 of the Warren-Alquist Act. And it is a prohibition on siting facilities in certain types of areas unless certain exceptions are met. And I am not sure if any of you have looked at this before today or in preparation for today but among the prohibited areas

would be state, regional, county and city parks, wilderness, scenic or natural reserves, areas for wildlife protection, recreation, historic preservation, or natural preservation areas in existence on the effective date of this division.

So I think I want the parties to have that in the back of their minds. Perhaps be considering whether you want to include evidence concerning or that would be applied to that statute as well. And I would anticipate that when we get to the evidentiary hearings and creating that record we will be asking the parties to brief this statute as well as the overrides and provide arguments and point to the evidence for the Committee concerning both of those sections.

All right. Again, the Committee is not saying one way or the other whether we think this applies, we honestly don't know. It is not a terribly specifically-written statute. And who knows, so it will be very interesting to see what people's arguments and evidence that they can come up with regarding that statute would be. But we wanted to alert you to it because we may well need to address it.

Okay. Mr. Adams, during your remarks you indicated staff had come prepared to discuss 25525, I believe. Did I paraphrase that correctly? I just want to make sure we are allowing you to say whatever you wanted to say. As indicated, we are not discussing the merits of the

case vis-à-vis that section or deciding about overrides today. But if there was something you wanted to add concerning that I just want to give you that opportunity.

MR. ADAMS: No, I pulled out what I consider the high points at this stage of the proceeding. We just weren't sure from the Notice where this was going.

I think your advice for people to look at the past decisions where this has been applied is a good one. That's what we have done.

HEARING OFFICER RENAUD: All right.

MR. ADAMS: But nothing more right now if you don't have specific questions of us.

HEARING OFFICER RENAUD: All right, very good, thank you.

Okay, does any of the parties wish to add anything before we go to public comment? Ms. Foley Gannon.

MS. FOLEY GANNON: There's just a couple of small housekeeping matters. One is there was one error in our status report, which was on page two, the last bullet point. We reference a discussion which says it was with Andrea Martine and it was not, it was with Gerry Bemis. So that's just a correction we wanted to make for that status report.

And then one request is for intervenor Rudy Reyes. We have been getting -- we have sent him the hard copies of the submittals that we are making as requested and the hard

copies are being returned to us. So if there is another address that we need to be directing those documents to we would like to have that so we can, we can get that cleared up.

HEARING OFFICER RENAUD: All right, thank you. Mr. Reyes, did you hear that?

MR. REYES: Yes I did, yes I did.

HEARING OFFICER RENAUD: We have your address in the proof of service on Graves Avenue in Santee; is that correct?

MR. REYES: Correct, there's a change. Instead of 8527 it's 8655, I just moved a month ago.

HEARING OFFICER RENAUD: All right. Is it the same zip code, 92071?

MR. REYES: The same everything, the change is in the front numbers.

HEARING OFFICER RENAUD: All right. You know what you should do is email that out to everybody and we'll change the proof of service.

MR. REYES: I will. I will. Okay.

HEARING OFFICER RENAUD: Thank you, okay. All right, good. Any other party? Mr. Adams and then I'll get to you, sir.

MR. ADAMS: Sorry. One other minor housekeeping. The applicant in its status report had indicated it would

seek relief from a data request for a copy to staff of its application to the city. And staff has no objection to granting that relief given the fact there is not going to be an application.

HEARING OFFICER RENAUD: So there is no dispute there.

MR. ADAMS: This is Data Request 38.

HEARING OFFICER RENAUD: All right. Well if you could just -- and maybe the applicant can sum that up in an email or something so that we have a record of what the agreement is.

MS. FOLEY GANNON: Certainly. Thank you, Mr. Adams.

HEARING OFFICER RENAUD: All right, thank you. Okay, on the phone any of the intervenors wish to add anything before we go to public comment?

MR. BREWSTER: (Sound breaking up), I would like to.

HEARING OFFICER RENAUD: Okay, who is this, please.

MR. BREWSTER: This is Kevin Brewster.

HEARING OFFICER RENAUD: Go ahead, sir.

MR. BREWSTER: Yeah. I'm curious since there seems to be discussion about the override. I am curious on what basis the need discussion is held. I've tried to look

through a lot of the material. It seems like the CPUC would be making the decision based on need, however (sound breaking up).

HEARING OFFICER RENAUD: You kind of faded out but I gather what you are asking is how the Committee gets to a discussion of need when that's not really an area we would otherwise address.

MR. BREWSTER: Yes, and specifically that the CPUC is charged with determining need, right, for Californians.

HEARING OFFICER RENAUD: Right, yes.

MR. BREWSTER: However, with the material I see other sources referenced like CA-ISO. I was wondering who the true source is?

HEARING OFFICER RENAUD: Well, I can tell you in general the Committee reviews all the evidence in the record that pertains -- that could have a bearing on the need for the project and it is sprinkled throughout many, many different sections of the evidence.

And generally a Committee also will kind of come up with its own definition of public convenience and necessity. As I said earlier, that term has never been really firmly defined in connection with CEC proceedings and would make a determination supported by evidence concerning the meaning and application of that phrase. But I can't give you any black and white set of rules about how that is

done at CEC. Commissioner Douglas is going to --

MR. COLLINSWORTH: This is Van Collinsworth.

HEARING OFFICER RENAUD: Hold on one second, Commissioner Douglas is going to add to the discussion about need.

PRESIDING MEMBER DOUGLAS: I just wanted to add in response to that question that it is correct that evidence from, for example, the California Independent System Operator and other sources may come into the process in terms of highlighting the role that this proposed plant could play and, you know, the importance or lack thereof of the plant in the system.

And so evidence -- parties in past cases have brought in evidence about, you know, whether or not there was a contract from the PUC as another point of reference. The Energy Commission does not make a formal need determination, that's something that's done at the Public Utilities Commission just in the process of procurement.

But the Energy Commission does weigh this kind of evidence in a situation where we are considering public convenience and necessity and the request that applicant is going to put forward for an override. So it is context and it is information the Energy Commission will look to.

HEARING OFFICER RENAUD: Thank you, Commissioner Douglas.

MR. BREWSTER: Can I?

HEARING OFFICER RENAUD: Yes, go ahead.

MR. BREWSTER: So there's a lot of planning discussions going on at the CPUC. If they were to come out and find that no dispatched need was founded and peakers weren't really needed in the system but you had contrary evidence to -- from CA-ISO, which they seem to be looking towards. You know, how does that weigh in, those two differing groups? Is CPUC giving deference in that situation?

HEARING OFFICER RENAUD: All right. Well, the Committee just weighs all of the evidence including that. I mean, as Commissioner Douglas said, material from many sources is considered but there isn't a black and white set of rules that we have that we can follow. The Committee will try to make the best supported determination that it can make.

Okay, I know there was another intervenor who wished to speak. Was that Mr. Connor? No.

MR. COLLINSWORTH: Van Collinsworth.

HEARING OFFICER RENAUD: Go ahead, please.

MR. COLLINSWORTH: And this is a separate issue actually. The city of San Diego had nine pages of cycle issues. And I am concerned that because the applicant is not funding the city of San Diego staff and the city of San

Diego staff has no authority at this point to be working with the applicant or the CEC, that the Preliminary Staff Assessment is not necessarily going to be as accurate and complete as it should be. So I am wondering if staff or the Commission has any input on how to deal with that issue?

HEARING OFFICER RENAUD: Okay, I am going to ask staff to -- if they can address that. You might not be prepared but if you can that would be great, thank you.

MR. SOLORIO: Sure. This is Eric Solorio. Staff is fully capable of writing the Preliminary Staff Assessment and the Final Staff Assessment with or without the involvement of the city of San Diego, although we prefer that they do be involved -- they are involved, rather.

For the record, the staff does continue to work with, that is the city of San Diego staff. We are working with their engineering department and planning departments, et cetera. Not only is there a reimbursement account available to them but our siting regulations provide that actually other agencies shall provide their analysis and input to our process and we also have a reimbursement mechanism for that. So we are continuing to work with them.

HEARING OFFICER RENAUD: All right. So it sounds like -- I'm sorry, Mr. Adams, go ahead.

MR. ADAMS: Sorry. This is Steve Adams. I may just add that the city involvement at this point is with the

caveat that this is a staff level comment on the project and the questions we are discussing with them and not -- does not reflect the city overall.

MR. SOLORIO: And one more thing, if any of the intervenors want to look at the Notice of Availability that went out when the AFC was filed, the staff cited the relevant regulations that request the cooperation of other agencies that would otherwise have permitting authority.

HEARING OFFICER RENAUD: All right.

MR. SOLORIO: And that letter went to the city of San Diego as well.

HEARING OFFICER RENAUD: Okay, thank you. I hope that's helpful. It sounds as though it's not an issue for staff, not a concern for CEC staff in connection with its job.

Other intervenors wish to speak before we turn to public comment?

MR. CONNOR: Mr. Renaud?

HEARING OFFICER RENAUD: Yes.

MR. CONNOR: Yes, this is Phil Connor.

HEARING OFFICER RENAUD: Hi. Go ahead.

MR. CONNOR: On that last point of the city staff continuing to participate. I only request that the -- any communications by the CEC staff be copied to the city manager and the city council. Because my experience with

the city of San Diego is that they are finding -- if the city council finds out that the city manager is still participating, that's going to change the dimensions of them participating pretty fast.

But the reason why I had requested that we make a finding now is to get out of this anomalous situation where the elements of the plan, of the proposed project, that need the cooperation of the city staff but the city has said no, that they do not have to (audio breaking up) city.

And so I dispute strongly Mr. Solorio's contention that the staff of the CEC can -- to do their job. I agree with Van Collinsworth that the full Final Staff Assessment becomes virtually impossible without the participation of the city staff unless -- unless the entire staff of the CEC is working toward planning an override. And that is, that is contrary to both the spirit and intent of where 25525 gets them at this point. There should be a finding first before anything else is done by the staff of the CEC. And that will direct the staff on working on necessity and the public convenience issue. That's all.

HEARING OFFICER RENAUD: All right, thank you. Any response from staff?

MR. SOLORIO: Sure. The city of San Diego staff is very much aware of their council's decision and they are sensitive to it. And once the council issued that decision

there was a pause by the staff and discussion at the highest levels of their management with their mayor's office and the city CEO.

They have come back and said, okay, you know. Respecting the council's decision the technical staff is still allowed to cooperate with regard to addressing environmental concerns. And any reports or recommendations that the city of San Diego's technical staff have would be sent to the CEC in a letter that would disclaim any endorsement by the city council or elected officials. So that distinction would be made clear.

HEARING OFFICER RENAUD: And wouldn't such correspondence also be docketed?

MR. SOLORIO: Yes, correct.

HEARING OFFICER RENAUD: So it would become public.

MR. SOLORIO: Yes.

HEARING OFFICER RENAUD: All right. Okay, thank you. Okay, other intervenors wish to say anything?

MR. HOUSER: Mr. Renaud, this is Dorian Houser.

HEARING OFFICER RENAUD: Yes.

MR. HOUSER: A question about the schedule. The information that the applicant will provide to support their position on public convenience and necessity and whether there are more prudent or feasible needs of achieving the

public convenience. That information will be completed and filed by October 31st?

HEARING OFFICER RENAUD: That's what I have been told, yes.

MR. HOUSER: Okay. And in that regard then are the intervenors allowed to file comment to the staff on that topic after that point or do we have to wait until the release of the Preliminary Staff Assessment?

HEARING OFFICER RENAUD: Well, by comment -- if by "comment" you meant literally "comment," anybody can file comment any time. If you are talking about obtaining evidence, that is the formal discovery process, currently the cutoff date is October 31st.

If the materials that come in from the applicant or from any party appear to warrant it I think the Committee would be disposed to allow for some additional time for parties to analyze that and request information for clarification purposes and that sort of thing. I am not sure if that answers your question but if it doesn't let me know.

MR. HOUSER: I guess the question is, is there opportunity for the staff to act on information? What I see happening is that I am pretty sure the intervenorship overall is going to challenge the scope of alternatives and ho they will eventually be used in determination of LORS

non-compliance or compliance. Or non-compliance in this case and it would be override.

But since the modifications to the alternatives are not going to be due until the end of the month we won't have an opportunity to really talk about that in the discovery phase. So post-discovery do the comments bear weight? Will the staff take them into account? Will these be part of the evidentiary filings?

HEARING OFFICER RENAUD: Okay, okay. Well any filings from any party, that is staff, applicant, intervenors, that go into the evidentiary record need to be made as part of your evidentiary filings at the time that the Committee will direct in the future.

But with respect to being able to review and respond to the applicant's upcoming filings. As I've sated before, the Committee will be disposed toward allowing additional time for review and response to those materials depending on how extensive they are. And we'll either do that voluntarily or upon request. Steve. Mr. Adams.

MS. VARGHESE: I have something to say. Can you hear me?

HEARING OFFICER RENAUD: Mr. Adams is raising his hand here, I'll get to you next, okay. Go ahead, Mr. Adams.

MR. ADAMS: This is Steve Adams. I just wanted to add in response to Mr. Brewster that staff is also

conducting its own alternatives analysis as part of its FSA -- excuse me, PSA, Preliminary Staff Assessment. And that will be available for comment by intervenors and the public once that's published. So that will be, I would say, an independent. And we are aiming for a very robust alternatives analysis separate from what the applicant is submitting. I wasn't sure Mr. Brewster had his eyes on that fact as well.

HEARING OFFICER RENAUD: Is that material that would be -- do you have a date when you would have that material available?

MR. ADAMS: Well, at the publication of the --

HEARING OFFICER RENAUD: The PSA?

MR. ADAMS: The PSA in mid-December.

HEARING OFFICER RENAUD: All right.

MR. ADAMS: We are -- still, it's very much a work in progress at this point.

HEARING OFFICER RENAUD: Understood, understood.

MS. VARGHESE: I have a question.

HEARING OFFICER RENAUD: Okay, yes, go ahead. Who is speaking, please?

MS. VARGHESE: There seems to be a lot of noise. Can you hear me clearly?

HEARING OFFICER RENAUD: Yes.

MS. VARGHESE: Okay. So I still want to address

the issue of the schedule. It seems to me that --

HEARING OFFICER RENAUD: Let me ask who is speaking?

MS. VARGHESE: -- that schedule needs --

HEARING OFFICER RENAUD: Let me ask who is speaking, first, please, just for the record.

MS. VARGHESE: It's Rosalind Varghese.

HEARING OFFICER RENAUD: Rosalind Varghese.

MS. VARGHESE: Rosalind Varghese.

HEARING OFFICER RENAUD: Got you, thank you.

MS. VARGHESE: So it seems to me that the schedule, a decision should be made today because the discussion of alternatives should have been in the original application. Previous CEC decisions have made it clear that alternatives needed to be discussed. And in cases where they weren't extensively discussed it was rejected.

Why it was even deemed complete, application being complete at the end of last year, is beyond me. But it seems to me that many intervenors have asked repeatedly for the applicant to expand their discussion of alternatives and we were shut down. We were not provided an answer.

And it seems to me that this is a game being played that on the final date we are allowed for discovery that they want to present these alternatives. It seems to me it's a no-brainer that the extension of discovery should

be made now to allow us time to evaluate the alternatives that they will present, which they have avoided from the beginning. That's all, thank you.

HEARING OFFICER RENAUD: Okay, thank you very much, appreciate that. Mister --

MR. HOY: Hoy.

HEARING OFFICER RENAUD: Hoy, yes.

MR. HOY: I'd like to concur in those comments. I don't think it's an accident that we have seen no analysis of alternatives and it is disturbing. It is also disturbing that we are going to see the first thorough analysis of alternatives in a staff report after all the opportunity to conduct discovery is closed. I think that's a glitch in the process and I merely point that out.

HEARING OFFICER RENAUD: All right, thank you. Ms. Foley Gannon.

MS. FOLEY GANNON: If I could just respond. Up until the time where the city denied the request for initiation the alternatives standards we were meeting were the CEQA standard of alternatives. And as we have replied to data requests we thought that what we had presented was adequate. We knew that the staff was going to be making its own determination and publishing the EIR-equivalent document as the staff always does so we were going through the normal process.

Recognizing that we are in the LORS override situation now we are recognizing that there will be this additional finding that you are going to need to make and that is why we are presenting additional information and preparing it currently. We will get it in as soon as possible. It certainly has not been sandbagging in any, way, shape or form.

The LORS override -- the city's denial of the request for initiation just happened. And so just like we hadn't presented information on public necessity and convenience, that's because you wouldn't be making that decision without the LORS override being in play. And now that we know clearly it is we are putting together the information and we'll get it in as soon as possible.

HEARING OFFICER RENAUD: All right.

MR. HOY: I think counsel makes my point. I don't believe the LORS override comes as a great shock at this point in time, or did at the time of the vote.

HEARING OFFICER RENAUD: Well, shocking or not we now know what that is. And that's why we are here today and we have a date certain from the applicant for submission of additional materials. And I don't want to have to say it again but I'll say it again, that the Committee will review that and ensure that appropriate time, if warranted, is provided for everybody to review and respond to those

materials.

In addition, when the PSA comes out everybody, parties, intervenors, the public, has an opportunity to review and comment upon that as well. And there will be a workshop or workshops concerning the PSA.

MS. VARGHESE: I just have an additional thing to say. This project is no different than other power plant applications that have gone before the CEC before. And if the rules are the same, which is part of the application having to address alternatives, why should it be any different now for this one? And they did play by CEQA rules as well so how is the CEQA rules being applied to this application different from the others?

HEARING OFFICER RENAUD: What's different from the others is that we have a really very clear determination by the city of San Diego that the zoning is not right and that they are not willing to change it. So that gives us a kind of advance warning of a very clear override situation.

MS. VARGHESE: Yes, I am aware of that.

HEARING OFFICER RENAUD: And so we are preparing for that.

MS. VARGHESE: I am aware of that. But my point is, the details of the application specify that alternatives needed to be addressed, correct?

HEARING OFFICER RENAUD: Yes.

MS. VARGHESE: Is that not right? And they were not sufficiently addressed. Three other locations in the same spot is not an adequate assessment of alternatives. We the intervenors have asked repeatedly for other alternatives to be discussed and we were shut down. They refused to do that. So, you know, this answer provided by Ms. Ziebart doesn't seem to hold any water. Thank you.

HEARING OFFICER RENAUD: All right, thank you.

Okay, let's turn to public comment. Andy Wilson, California Pilots Association. Mr. Wilson is present here in the room in Sacramento.

MR. REYES: I have been sitting waiting to speak and raising my hand for a minute, are you not going to allow me a chance? I'm an intervenor.

HEARING OFFICER RENAUD: Mr. Reyes? I'm sorry, I didn't --

MR. REYES: Yes.

HEARING OFFICER RENAUD: I didn't see or hear that. Okay, go ahead.

MR. REYES: Okay, let me explain my situation here. Number one, with the fact that we are now in this odd limbo again with the city rejecting and you guys trying to say we need to override but not officially saying to the Committee that we need to override, that's a problem. You need to recommend to the Committee that this needs to be

done and handled a certain way, which you are not doing.

And my more prevalent question is, is the problem today and the reason no decision is being made, the simple fact that all the Committee members are not present to make a decision?

Because if that is the real problem, I mean, then again we are being, we are being sandbagged. It's an ongoing problem with this. When will the Commission be able to make any decisions and can the city of San Diego still become an intervenor?

HEARING OFFICER RENAUD: Well, let me start by saying that the Committee consists of two Commissioners, both of them are here so we don't have that issue.

MR. REYES: Okay.

HEARING OFFICER RENAUD: Now with respect to making a decision about override. I've said it before, I'll say it one more time, we can't make -- we aren't and we can't make a decision about whether or not to override the city of San Diego here today. We have to do that on the basis of the evidentiary record. The evidentiary record is created during the evidentiary hearings. Those don't start until after the Final Staff Assessment comes out. It's at that time that the evidentiary record will be created. And then based on that record --

MR. REYES: When (audio cutting out)?

HEARING OFFICER RENAUD: Pardon me? No, we are not putting the cart before the horse, we are following the procedures that are set forth in the Commission regulations and the Warren-Alquist Act. All right?

MR. REYES: You're interpretation from what I'm understanding because we are going by what you understand being the correct method. I don't know what we are really doing right now is the correct method under that Act.

HEARING OFFICER RENAUD: Well, the Committee is comfortable that we are -- we are proceeding according to the regulations and laws that govern us. If you want to point to something that you think we are not following correctly perhaps you should do that in writing and submit it and we can respond but so far I am not hearing anything specific from you about that. Commissioner McAllister has a response as well.

ASSOCIATE MEMBER McALLISTER: Mr. Reyes, thanks for your participation here. I guess to your insinuation that the -- that the Commission has made some determination that we need to override, that's absolutely not the case. This is what the record is being developed to allow us to make a decision as to whether to override.

But there is no prejudgment about whether that will or will not happen. It depends on the record, it depends on the quality of the information submitted to the

record. As Commissioner Douglas said, it depends on weighing in of other knowledgeable actors and agencies here such as the ISO and the CPUC. So there's a lot of information to get together to be able to make the determination of necessity.

So I don't -- we are definitely not putting the cart before the horse. We are actually making sure we have got the right horse to tell us which way we're going to pull the cart.

MR. REYES: But again, you just said, with the CPUC needing to determine need. And that's what we keep all going back to. It's not happening.

ASSOCIATE MEMBER McALLISTER: I didn't, I did not -- I did not say that the CPUC would determine need for the Commission. The PUC has a role in their procurement process, which is whether or not they allow the utility to buy energy from this plant through a PPA that has been negotiated. That will or -- I believe there is one in place between -- but that's -- that's informing our process but that is not substituting for our process. So the PUC --

MR. REYES: Okay, the question --

ASSOCIATE MEMBER McALLISTER: -- is not the agency that determines need in the Energy Commission context about permitting.

MR. REYES: Is there an outline somewhere I can

look at to understand what the situation we're in now and how to follow it and where to go about that? Because I can't find a single outline or any public information as to what the next steps are in this process that we are in now.

HEARING OFFICER RENAUD: What the Committee looks at for guidance on how to proceed is the regulations in the Warren-Alquist Act. And I'd refer you to Jennifer Jennings, the Public Adviser for assistance in locating those materials and interpreting them. Okay, thank you.

MR. CONNOR: Mr. Renaud?

HEARING OFFICER RENAUD: Yes.

MR. CONNOR: Mr. Renaud, this is Phil Connor again.

HEARING OFFICER RENAUD: Yes.

MR. CONNOR: The point that I was making is a little bit different than what Rudy was making. I think that most of the intervenors accept the fact that some time later there is going to be consideration of an override to vote yes or no on the override.

But to get to that point and to focus the process I am raising the question of why the Commission or this subcommittee of it would not have to vote that we are now at, and make a finding, that we have a non-conforming LORS. And that the -- the only issues before the house, the only agenda is the public convenience and necessity, et cetera,

in the statute. And why that is not taking place (audio cutting out) and why that is not scheduled and why that is not directing and informing the work of the staff of the CEC is what is baffling me.

HEARING OFFICER RENAUD: Well, if I am understanding you correctly you are suggesting that the fact that the Committee is going eventually to need to make override findings should become a priority and put the rest of the case kind of on hold or on ice or something. And I'll do my best to explain why that doesn't work.

In order to determine -- well, 25525 requires, among other things, that the Committee make a determination that there are not more prudent and feasible means of achieving public convenience and necessity. Prudent and feasible really means, is there another way to do this, is there a different location, is there a different technology, that sort of thing.

In order to do that the Committee needs evidence concerning the environmental impacts of other possible sites, other possible technologies and that sort of thing. That means that we really do need to go through the entire evidentiary process in order to be able to do a proper set of override findings. We can't just do that in a vacuum.

The alternatives section in itself, in fact, takes into account many other environmental issues. It would look

-- for example, let's say you were looking at two other sites. You would be comparing the three sites for the relative severity of biological impacts, the relative severity of visual impacts, noise impacts and so on. So you can't just put the rest of the case away, you need to actually do all of the topics. I hope that's helpful.

MR. CONNOR: It's helpful but it doesn't answer the question posed by the word "unless" in 25525. So my question is, how can the Commission go forward on any other issue other than what's posed in 525 if you are -- if this big LORS bump in the road of the 8-0 vote and the Santee 5-0 vote is staring you in the face at this particular point? How can -- how can the staff go forward? Because the statute is very clear that says you cannot unless. And so it seems to me the procedures are pretty clear as set forth in that statute. That's all and I'll shut up now, thank you.

HEARING OFFICER RENAUD: All right, I understand your comments and we appreciate that. We have done our best to explain why we need to proceed the way we are proceeding and that's what we are going to do.

Okay, now let's turn to Mr. Wilson, thank you for your patience, the California Pilots Association.

MR. WILSON: Mr. Hearing Officer, my name is Andy Wilson, I am a Director for California Pilots Association.

The California Pilots Association is a non-profit, public benefit California corporation formed in 1949. The mission of our statewide volunteer organization is to preserve, protect and promote the state's general aviation airports as well as pilots' rights.

What I'd like to do is go back to the city -- the San Diego City Council. We did have a speaker there opposing the project and the change of the zoning. That was Mr. Bob Eppers. I'm sure that staff and the applicant have seen that. We also submitted a document and we now know that decision that the city of San Diego has refused or denied or stopped the applicant from proceeding.

So I want to kind of jump back to the October CEC workshop. I did call in. I also logged in with a computer. I listened, I think it was well over an hour. And then, if you noticed, there is a text box that can be pulled up. And that text box informed those people that called in would not be heard from. So it also went on to say that if any callers had any objections or comments for this project they should contact Jennifer Jennings. Well, Jennifer Jennings is probably not the person to be contacting. So -- And it also said to send her an email but it didn't give her email address.

So I'd just like to spend a moment on that. And I did call Jennifer Jennings. We had spoken before on other

projects. And she said that she would look into it and take care of it. So my concern today is just to make sure all those people that are calling in have access to this hearing. And it's -- technology is great. Sometimes it doesn't work but it was working for me, I was just denied to speak. So one of the --

Moving on, the technology allows people not to travel, pay for plane fares, we cut down on energy costs, exactly what this Commission is trying to do. So thus I am here today, otherwise I would have called in. So let me move on.

After taking a little bit closer look to the Gillespie airport and the location of the power plant we have a number of concerns that I am not going to go into here. But one of them is on the VFR -- there's a number of VFR landmarks that pilots use to report in to the tower and report where they are relative to other pilots in the area. This power plant is among those reporting points.

So my immediate concern is if the power plant is approved, we go through the siting process, the evidentiary hearing and it's approved, the airport may have to relocate some of those reporting points.

Also in the Aeronautical Information Manual, sometimes referred to as the AIM, in 7-5-15 the FAA addresses plumes as a hazard. So if we are in this area

where aircraft are coming in we may have to move those or somehow relocate those to keep aircraft away from the power plant.

We would also, Cal Pilots, like to request that based on the city's decision, the city of San Diego, in the zoning, that it remain the same and the CEC not override the city's decision.

Currently we are also reevaluating some other issues about the airport and the location of the power plant. And we have -- Cal Pilots has been an intervenor in the past on at least two projects and we are looking to become an intervenor on this project. Now, the scope of what our concerns are are narrow but difficult and that takes some time.

So as other intervenors have been -- and understanding I am not an intervenor now but we are considering to become an intervenor, this could -- if and when we do become an intervenor we will request a schedule change. Because typically the aviation issues require a workshop unto itself, sometimes located here in Sacramento, sometimes located, in this case, where the power plant is going in in San Diego.

So the other issue is it appears at this point in time we may have new evidence that we have not submitted in prior sitings for power plants -- in power plants near

airports.

I think that's all I have. I'd like to thank you for your time. And if you have any questions I'd be more than happy to answer them.

HEARING OFFICER RENAUD: Thank you and we appreciate your participation in our proceedings, thank you.

Okay, I have a request from Gretel Smith, attorney representing Helping Hand Tools, who is a petitioner for intervention. I don't think we have the formal order concerning that petition but would you like to speak, please?

MS. SMITH: Yes, thank you very much, Gretel Smith, Helping Hand Tools. And we have submitted a petition and we are just awaiting the order to intervene.

The only thing I'd like to bring up is it would be nice if when you do look at the schedule if you maybe put in a briefing schedule for the intervenors to fully brief the override issue and perhaps even schedule an evidentiary hearing specifically just dealing with the override issue.

HEARING OFFICER RENAUD: Okay, thank you for those ideas, we'll take them into consideration.

MS. SMITH: Okay, thank you.

HEARING OFFICER RENAUD: All right. Other members on the public, in the room or on the phone who wish to make a comment?

MS. MULLINS: I would like to ask a question.

HEARING OFFICER RENAUD: All right, if you could state your name, please.

MS. MULLINS: My name is Theresa Mullins.

HEARING OFFICER RENAUD: Okay.

MS. MULLINS: I live in the San Diego area.

Given the proximity of the proposed power plant to Marine Corps Air Station Miramar, have representatives of the base been officially notified regarding the power plant proceedings or has an opinion been solicited from base reps at all? They seem to be conspicuously absent from all of this. And given Mr. Wilson's current statement just a few minutes ago from Cal Pilots Association I would think they would have the same -- some of the same concerns. And if they have been asked for input is it possible to get copies of any of that correspondence?

HEARING OFFICER RENAUD: Okay. And Mr. Wilson has come back to the microphone. I think he may have some information on this.

MS. MULLINS: Okay.

MR. WILSON: Yes, Andy Wilson, California Pilots Association. Yes, we do have an email out and a telephone call in to Miramar. I would also like to say that we -- although we are a California corporation we have helped other military bases outside the state of California. So

yes, whether -- we are not quite there yet with Miramar but yes, we have -- we are talking to Miramar now.

HEARING OFFICER RENAUD: Thank you very much.

MS. MULLINS: Great.

HEARING OFFICER RENAUD: Staff, anything that you can add to that concerning Miramar? Do you know if they are on the list of --

MR. SOLORIO: Yes, they have been contacted as well as Gillespie Field and I have also spoken with the manager over there regarding the environmental analysis.

HEARING OFFICER RENAUD: Excellent, okay, thank you very much. Okay, other members of the public wishing to comment just speak up, give us your name.

MS. CAPRETZ: My name is Nicole Capretz.

HEARING OFFICER RENAUD: Hi.

MS. CAPRETZ: I'm with the Environmental Health Coalition. We are a nonprofit, grassroots organization and we have been an intervenor in a previous application. And we are not an intervenor in this proceeding but we are a party to the long-term procurement plan. And I'd just like to raise for the record some of the issues that have been raised at the CPUC related to your public necessity or need just so the different parties hopefully can address some of these issues, particularly California Energy Commission staff.

One of the -- as Commissioner Douglas had mentioned, I guess, in previous applications intervenor responses have mentioned the fact that sometimes the CPUC has not yet approved these contracts and that is the case with Quail Brush. You know, no need for this plant has been established by the CPUC. There is an intensive hearing happening now and we are at the end of that hearing process but I just want to kind of reiterate the fact that the only PPA that exists between Quail Brush and SDG&E is a provisional contract.

The second thing is that -- and this is an email I've sent. I was concerned at the city council hearing when the California Energy Commission submitted a letter to the city council and mayor relying on the CA-ISO transmission study to conclude that there was a need for Quail Brush. And I guess that raised a huge red flag to me because of all of the conversations happening at the CPUC about challenging the CA-ISO study, including from CPUC staff. And so I just really encourage conversation and more study about, you know, the CA- ISO study and how it relates to need and that kind of thing.

The second -- the third thing that we found in the proceeding is that not all generation located in the San Diego area is created equal. It has to be deliverable to the local area to meet local area reliability needs.

It turns out, we learned through the evidentiary process, Quail Brush is not deliverable to the local area. So in the evidentiary proceeding we learned SDG&E will have to pay to interconnect and delver the energy from the facility in order for it to impact the LCR, the local capacity requirements. When we cross-examined SDG&E and CA-ISO neither could explain how this would happen, nor could they tell us how much it would cost.

So again I just raise it when you're evaluating the overall need, public necessity for this plant. This plant doesn't even -- it isn't even in the right location or even close to it.

Also we have heard a lot so far from the applicant about how this plant is just critical to meet the intermittent needs of renewable energy. However, and I know I stated this at the city council hearings, the flex capacity needs (audio cutting out) that's Track 2 of the long-term procurement plan at the CPUC. As it stands today, SDG&E signed an agreement with the CPUC in 2010, a long-term procurement plan agreeing it did not flex capacity for renewable generation until 2020. Again, just speaking to need.

Lastly, about the -- we also learned -- amazing what you learn in these evidentiary processes, is that SDG&E has criteria they use when distinguishing their responses.

So they are supposed to choose brownfield options over greenfields. It turns out they didn't do that. Again, when we cross-examined SDG&E staff the procurement expert was not even aware of this guideline. And so we think that just kind of again gets to the alternatives analysis, the fact that there were other alternatives available that SDG&E could have chosen and chose not to.

And then, you know, really encouraging the CEC staff to look at the loading order. And SDG&E, as you know, is required to follow the loading order and has not. There are tons of undervalued procurement opportunities from efficiency, from demand response and renewable energy. And again, all of that is laid out in the long-term procurement plan proceeding at the CPUC.

Yes. And so I think that's it. I just -- we just wanted to weigh in. We are still evaluating whether to become an intervenor. But at this point we just wanted to weigh in with what's happening with your sister agency and some of the issues that have come to light in that process. Thank you.

HEARING OFFICER RENAUD: Thank you. And let me just remind you -- well you know, I don't need to remind you but I'll remind everybody. That although we are not here for the purpose of taking evidence today we are listening to comment. And any materials such as the ones you have just

referenced that you wanted to become part of the evidentiary record would need to be put into the record by a party such as an intervenor. So you know that, you need to -- if you want to intervene that would give you that opportunity to present that evidence formally. Okay, is there any other --

MS. CAPRETZ: Okay, great.

HEARING OFFICER RENAUD: Any other member of the public who wishes to make a public comment?

All right, hearing none I think we don't. Okay, I see Steve Adams, Mr. Adams, staff counsel.

MR. ADAMS: Steve Adams. I just wanted to respond to a couple of the comments that came in pertaining to staff.

The last caller mentioned a statement by staff in a letter to the city of San Diego. That was a explanation provided by David Vidaver of staff as to what an intermediate peaker was, which were issues that came up at the planning commission level. And we submitted -- actually I think it ended up getting attached by the applicant. We submitted it to the city but it wasn't included in the record through that avenue.

The statement about need was -- when I heard about the concern we looked at it. There was one sentence in it that used the word "need." We probably should have said that the plant, if built, would be employed in that fashion.

And that was the sense of the use of that term. And I think in context it was clear staff was not testifying that this project was needed. There was certainly no intent to testify to that degree.

And then Mr. Wilson mentioned a chat message that went out during the staff workshop two weeks ago and I want to apologize. I guess it was widely misinterpreted. And I say "misinterpreted" because I spoke before today's meeting with the staff member who was moderating the WebEx and put it out. And the context was that there were several people expressing in the chat window their opposition to the project. And his response to that was to say that if you have opposition to the project please email Jennifer Jennings so it can be docketed.

He did not specifically state that we were not taking public comment. In fact, several times during the workshop we did turn to the phones to see if anyone had comment. But I certainly -- we understand why that was open to misinterpretation and apologize. It's certainly not our intent to not encourage public comment at staff-sponsored events.

HEARING OFFICER RENAUD: All right, well we appreciate that. And maybe a lesson we can all take for the future is when we are using WebEx to explain what the chat window is for. Because it really is a way for the

participants to communicate amongst themselves and with the host.

Okay, is there any other public comment?

All right, any closing remarks from the Commissioners? Oh, I'm sorry.

MS. VARGHESE: I have a --

HEARING OFFICER RENAUD: Go ahead, go ahead. Who is calling, please? Who is speaking, please?

MS. VARGHESE: Okay, this is Rosalind again and I want to follow-up on what Theresa Mullins said earlier. She had asked if contact had been made with members on the military base with regard to the power plant and the application and proceeding. Mr. Solorio said that they had been contacted. Can we get copies of those letters?

Secondly, shouldn't they be an interested party in the proceeding just like the city of San Diego and Santee are and why are they not? Thank you.

HEARING OFFICER RENAUD: Okay. Mr. Solorio, any response?

MR. SOLORIO: To the extent that staff has contacted any agencies in writing, those letters are always docketed so they're available.

To the extent that staff makes a phone call and contacts somebody, that is not docketed unless we are going to rely on that conversation in our staff assessment and at

that point we would docket a record of conversation. Otherwise it's just simply an agency to agency consultation.

HEARING OFFICER RENAUD: All right, thank you. And as far as their becoming an interested party, I believe that's up to them to decide whether or not they want to participate in that manner.

MS. FOLEY GANNON: And I would say that the applicant also did reach out to representatives as well and we were informed that they would be reviewing the environmental document that was released and they would possibly provide any comments, if they had any, at that time.

HEARING OFFICER RENAUD: All right, great, thank you. Other public comment from anyone, please?

MS. MULLINS: Can I just say one more thing, please? This is Theresa Mullins.

HEARING OFFICER RENAUD: Yes.

MS. MULLINS: Yeah, I've spoken to the community liaison office at Miramar and they said they have to be asked for an opinion before they will provide one.

HEARING OFFICER RENAUD: All right.

MS. MULLINS: Which is really not the same as providing an opinion if they want to. So I just wanted to point that out.

HEARING OFFICER RENAUD: All right, well thank

you. Obviously then they have the opportunity to do that.

Okay, any -- any further comment from the public?

MR. POWERS: This is Bill Powers. I don't know if you can hear me.

HEARING OFFICER RENAUD: Yes.

MR. POWERS: Hello?

HEARING OFFICER RENAUD: Yes, we can hear you.

MR. POWERS: Good. I think I was on mute the whole time I was attempting to speak. I'll make this very brief. I did speak at both the -- Bill Powers, Powers Engineering. But the Sierra Club California will be intervening shortly and I will be submitting testimony under their aegis. But I have commented at the planning commission and at the city council and at the public workshop that was held a couple of weeks ago.

And I do want to take a little bit of issue with staff's interpretation of the need that was expressed by the CEC when it delivered the letter to -- as part of the package to the planning commission. Mr. Vidaver stated explicitly that our once-through cooled, 1,000 megawatt plant on the coast would have to shut down to meet the State Water Resources Control Board requirements and that simply is not true.

In that same letter that was used as the context to say, we are going to have a 600 megawatt gap in a few

years and we have to fill it with Quail Brush. So the CEC letter was very explicit in citing to the ISO data and the phase-out of that plant that we would have to have Quail Brush and they really shouldn't be going that far at all based on the discussion that has gone on today.

Another point I want to make, since I noticed there has been a lot of talk about the SONGS shutdown as justifying this plant. The ISO, which the staff seems to prefer to use over the PUC, indicated that we have for the summer of 2012 nearly a 30 percent planning reserve margin, without San Onofre it's about 25 percent. That's a huge reserve margin.

And the issue that ISO brought up at a meeting I had with ISO in Folsom about a month and a half ago was, voltage support, ancillary services. They indicate they covered that by turning Huntington Beach 3 and 4 into synchronous condenser units and by addressing a transmission bottleneck at La Barielles (phonetic).

And so I think it is very important for the Commission to understand that from the ISO's perspective, we have the same transmission import capability that we had prior to the SONG's outage and that we're running a huge reserve margin.

And interestingly enough, the ISO stats indicate that the ISO's planning area, the peak load -- the peak one

hour load in 1999 was about the same as the peak one hour load in 2012, even though the planning reserve or the population has grown considerably. So the CEC should feel some, some satisfaction. All of these energy efficiency and demand response and Title 24 actions are dropping the peak load despite an increase in population.

One other final comment on the alternatives analysis is that in the Chula Vista denial, the Chula Vista Energy Upgrade Project, 100 megawatts, the lead commissioner did admonish staff for an erroneous interpretation of local solar, which was analyzed in the FSA in that project. The staff asserted that we would need several acres per megawatt on the ground in the city to do local solar and the lead commissioner pointed out the obvious in the denial that of course the solar would go on rooftops and parking lots and that those facilities would continue to operate the way they do today whatever their function is.

And I think that it would be unfortunate -- I would really encourage the CEC staff to read the Chula Vista Energy Upgrade Project, which at the Pio Pico hearing they indicated they had not done and it didn't appear they had done two weeks ago at the public hearing. Just read the document.

And the commissioners are right, that you're going to put it on the roof, you're going to put it in the parking

lot. And if the cost-effectiveness of solar is -- was asserted to be about the same as a peaking plant back in 2009 it would be much less than that today.

And I'll include all of this in testimony. But it would be unfortunate if the same mistakes that were made in the Chula Vista Energy Upgrade Project PSAs and FSAs, and Pio Pico as well, are repeated in this project.

HEARING OFFICER RENAUD: All right.

MR. POWERS: Thank you.

HEARING OFFICER RENAUD: Thank you, Mr. Powers. Okay, other members of the public who wish to make a comment?

All right, any final --

(Interference.)

HEARING OFFICER RENAUD: No. Final comment, any final remarks from the Committee? Commissioner Douglas.

PRESIDING MEMBER DOUGLAS: This is Commissioner Douglas. I just wanted to thank the parties and the members of the public for participating in this status conference and we'll look forward to hearing from you more as the process continues.

HEARING OFFICER RENAUD: Okay, thank you and this hearing is adjourned.

(The Status Conference adjourned at 12:33 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 23rd day of October, 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.

October 23, 2012

Ramona Cota, CERT*00478