STATUS CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:

Application for Certification Docket No.
for the Beacon Solar Energy 08-AFC-2
Project by Beacon Solar, LLC

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

MONDAY, OCTOBER 5, 2009
1:00 p.m.

Reported by:
John Cota
Contract No. 170-07-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
COMMITTEE MEMBERS PRESENT
Karen Douglas, Presiding Member
Jeffrey D. Byron, Associate Member

HEARING OFFICER, ADVISORS PRESENT
Kenneth Celli, Hearing Officer
Kristy Chew, Advisor to Commissioner Byron
Galen Lemei, Advisor to Commissioner Douglas

STAFF AND CONSULTANTS PRESENT
Jared Babula, Senior Staff Counsel
Eileen Allen
RoseMary Avalos
Eric Knight
Eric Solorio

APPLICANT
Jane Luckhardt, Attorney
Downey Brand
Scott Busa
NextEra Energy Resources
Kenneth Stein
NextEra Energy Resources/Beacon Solar

INTERVENOR
Rachel Koss
California Unions for Reliable Energy (CURE)
ALSO PRESENT

Chuck Curtis
Lahontan Regional Water Quality Control Board

Henry Gause
California City Landowners Association (via telephone)

Dennis LaMoreaux (via telephone)

Julie Ryan (via telephone)

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
PRESIDING MEMBER DOUGLAS: Welcome to the Energy Commission. I'm Chairman Karen Douglas, the Presiding Member of the Beacon Siting Committee. With me to my left, Hearing Officer Ken Celli, to his left Commissioner Jeff Byron, to my right Galen Lemei, and to my far left Kristy Chew, Commissioner Byron's advisor and Galen Lemei is my advisor.

Now I will start with my comments. As you know the Energy Commission has a very large number of applications for certification pending. Many of these present us with complex issues and because of this it's very important for us to pursue resolution of each application as efficiently as possible.

We've asked for this status conference to maximize the efficiency of the presentation of evidence in this matter to make sure that we are on track or work on scheduling issues and obviously with the hope of reaching a final decision as quickly as possible.

We've reviewed Beacon Project Proponent's Application for Certification and it
was anticipated when we initially set this status conference that the Final Staff Assessment would be completed.

While that's still not before us, hasn't been completed yet, we see value in taking this opportunity to confer with the parties and work on the schedule.

One aspect of this project that the Committee would certainly like to hear about is the anticipated use of fresh water. As you all know fresh water is a scarce resource in California.

And the Energy Commission has policy related to fresh water use that we have fairly consistently or consistently upheld in siting cases.

We very much hope to gain a better understanding of the current positions of the parties, intervenors and any interested members of the public on these and other critical issues.

And again, welcome you to the Energy Commission. Commissioner Byron, would you like to make opening remarks --

ASSOCIATE MEMBER BYRON: No thank you.

PRESIDING MEMBER DOUGLAS: -- for the
HEARING OFFICER CELLI: Thank you Chairman Douglas. Did we introduce the parties on the record? I think we'd better do that.

Starting with the applicant, please,

Ms. Luckhardt.

MS. LUCKHARDT: Hi, my name is Jane Luckhardt and I am counsel for Beacon Solar and --

MR. BUSA: My name is Scott Busa and I am director of the business development group with Beacon Solar, Nextera Energy Resources.

MR. STEIN: I'm Kenny Stein, environmental and permitting manager with Beacon Solar.

HEARING OFFICER CELLI: And then staff please.

MR. BABULA: Yeah, hi, Jared Babula, staff counsel.

MR. SOLORIO: Eric Solorio, project manager.

MR. KNIGHT: Eric Knight, manager of the Environmental Protection Office.

HEARING OFFICER CELLI: Thank you for being here.

MR. KNIGHT: You're welcome.
HEARING OFFICER CELLI: And CURE.

MS. KOSS: Good afternoon, Rachel Koss on behalf of intervenor CURE.

HEARING OFFICER CELLI: Thank you very much. Do we have anyone here from the water district or anybody from air districts or any other agencies? Please come to the podium and identify yourself.

MR. CURTIS: Hello, my name is Chuck Curtis. I'm a supervising engineer with the Lahontan Regional Water Quality Control Board.

HEARING OFFICER CELLI: Thank you for being here. Any other elected officials?

Seeing none, I'm going to proceed then.

A little background.

The Committee scheduled today's status conference on the proposed Beacon Solar Energy Project in a notice dated September 14, 2009. We had put a few out on the table as you came into Hearing Room A.

Back in June 18th of 2008 the Beacon Committee issued a schedule that envisioned December 2nd as the Final Staff Assessment due date.

The furloughs began on Friday, February
6, 2009. They're still in force.

The staff published a Preliminary Staff Assessment on April 1, 2009.


On August 25, 2009 Beacon filed a motion requesting the Committee to set the hearing schedule.

On August 28th CURE submitted a status report citing 60 instances of incomplete or missing information in the PSA.

And on September 14th the Committee issued a hearing schedule which is part of the notice that we put out for you and hopefully you all have.

The FSA has not been published and the most recent projected publication date that I've seen shows the FSA coming out around October 14th of 2009 which would have been the same day that the intervenors' testimony was due if we were keeping to the original or the most recent schedule.

It's pretty clear that the schedule isn't going to work and so the purpose of today's conference is to hear from the parties regarding
the status of the project itself and to discuss a revised schedule.

The procedure we will follow is we're going to give the parties an opportunity to summarize their views of the case status, their comments regarding scheduling.

And the parties should also comment on any other legal or procedural matters that may affect the timing.

The applicant will go first followed by staff then the intervenor. And then after these discussions we will provide an opportunity for general public comment.

So to be clear I think the first thing we need to talk about will be the schedule. And we'll hear from the applicant first.

MS. LUCKHARDT: Okay in regards to the schedule we have been proceeding under the assumption that our testimony that was scheduled to be filed on Wednesday October 7th is still due on Wednesday October 7th until we are so relieved from that.

Therefore we are printing and have been printing for three or four days to get our testimony, our affirmative testimony, out to all
the parties in a hard copy per the schedule.

So that is in process and proceeding.

Recalling that our affirmative testimony is primarily consists of documents that we've already filed in the proceedings.

So it's the AFC. It's the data responses. It's our comments on the PSA. It's supplementary information that we have filed. It's the design refinements.

And it's all put together as a completed evidence package, testimony package in hard copy.

And so we were proceeding to prepare it both in numerical, chronological order as well as in an order by subject matter.

There is as is in the schedule an opportunity for all parties to file rebuttal evidence.

And obviously we need the FSA to understand what it is that we would be filing as rebuttal evidence.

We could make some assumptions based on the PSA but we would absolutely want to see the FSA before creating rebuttal testimony.

But our affirmative testimony is the information that we have already provided to you,
staff and the other parties to the case in one
form or another or filed with the docket unit.

So that material is under preparation
and is not dependent upon the filing of the FSA.

We would also note in this instance that
that should, to a certain extent, also apply to
other parties because there is an opportunity for
rebuttal testimony.

So simply because the FSA is not out
do not relieve other parties of the obligation
to prepare their affirmative testimony.

We are extremely concerned about the
schedule. We understand that there have been
furloughs. We understand that this as far as we
can tell is the first solar project to be moving
through the Energy Commission.

At this point there are a lot of
different projects moving at different speeds.

It appears to us based on a review of
the various projects and their status that this
may be the first FSA coming out on a pure, large
pure solar project.

Nonetheless, this particular project was
data adequate on May 5th of 2008. And so we do
feel it is important to continue to move the
project forward.

We have looked at various arrangements
to the schedule. We are very concerned about
losing the Evidentiary Hearing date on the 16th.

Other dates between now and then can
definitely float.

If the FSA truly is coming out on
October 14th that would give plenty of time
according to the regulations between the time
period of an FSA and the Evidentiary Hearings.

In fact, I think it's approximately
double, the amount of time.

So in our opinion we should be making
every effort to hold the hearing dates on the
16th.

We understand how difficult it is to get
hearing dates from two Commissioner who are very
busy with other obligations as well as the Hearing
Officer who also has yet a third level of
obligations.

In addition, many of our witnesses, we
have quite a few, in this instance because of the
detailed analysis that has been done, have been
rearranging schedules to hold those days open.

And so, if at all possible we really
urge the Committee, in this instance, to hold the
hearing dates.
And like I said we've got a lot of
flexibility in between the hearing dates, between
when the FSA comes out and when the Evidentiary
Hearings actually occur as far as what the time
period is for various filing requirements.
I think our biggest concern at this
point is holding those hearing dates.
If there is further information that I
can provide on schedule, please let me know.

HEARING OFFICER CELLI: Thank you
Ms. Luckhardt. I think we need to hear from staff
next on the FSA. I'd love to hear about what the
status of that is and what's going on with the
FSA, please.

MR. SOLORIO: In regards to the FSA, we
have essentially one section outstanding, the Soil
and Water Section. Minor edits due on the
Alternatives analysis, which needs to closely
track the Soil and Water. That's the only reason
it's still outstanding.
Other than that all other sections of
the FSA are completed. They're formatted, ready
to go to print. So we're right there.
It's my understanding from the Environmental Office that we will see, at least the Project Manager will see the Soil and Water come to us at the end of this week.

And that's with staff working on the furlough day.

It takes approximately one week of lead time to actually get it through formatting and repro towards actually ready to publish.

So that puts us at next Thursday end of day. So to actually physically get it out in the mail we're, more than likely, looking at October 19th, the following Monday.

HEARING OFFICER CELLI: The 19th of October is the publication date?

MR. SOLORIO: Yes, I'd say that's the most realistic date working off of what I just described. So unless we happen to see the Soil and Water Section come out of the Environmental Office sooner than this Friday that's the date we're looking at.

HEARING OFFICER CELLI: Okay, October 19th. Anything further on scheduling from staff?

MR. BABULA: I agree with Jane and try to keep it to the 16th. And the fact that they've
already, their primary --

ASSOCIATE MEMBER BYRON: You mean to November 16th?

MR. BABULA: Yeah, November 16th. And that their testimony is in the process of being printed and distributed for the October 7th date.

I would agree that they can't do any rebuttal until they see the FSA. So possibly floating the FSA rebuttal time would be the most practical thing but allow to keep the original November 16th hearing date.

One other note too on issues with scheduling of facilities. Under the Warren-Alquist Act 25521 we don't necessarily have to have it hearing at California City. It can be in LA, which is the nearest city, city nearest to the county where the project is, which could give us more flexibility in location if California City doesn't have any dates on that one facility we needed, their City Council.

ASSOCIATE MEMBER BYRON: I have a couple of questions.

HEARING OFFICER CELLI: Please,

Commissioner Byron, go ahead.

ASSOCIATE MEMBER BYRON: Directed to our
staff. I missed a couple of things. Maybe these were stated, maybe they're obvious elsewhere. But the first one would be the particular section, Mr. Solorio, you mentioned as not complete or was not complete in the FSA has to do with water. That's one of the key issues in this case. Is there any particular reason why that's late?

MR. SOLORIO: There's three consultants involved with writing that section in addition to our own staff internally. And we have, we've seen approximately eight or nine projects were filed recently. And so, you know, according to the regs we have 30 days to do the data adequacy and unfortunately we only have approximately four people in the Soil and Water Unit.

So we're constantly being pulled off of the projects we're working on even though they're priorities to try to fill the gaps.

But, yes you're correct. Soil and Water is the outstanding section.

ASSOCIATE MEMBER BYRON: And are there any substantial differences, any differences of note between the FSA and the PSA?
MR. SOLORIO: At this time I can't say sir because I'm not altering the section. My understanding is that there should not be any changes to what was in the PSA versus the FSA. But again, I'm not writing the section.

ASSOCIATE MEMBER BYRON: Will we have to wait until the document is out in order to be able to answer that question?

MR. SOLORIO: Unless Eric Knight would like to answer it.

ASSOCIATE MEMBER BYRON: Mr. Knight, one of the things we try and do is make sure that the public and the intervenors have access to all the issues around these cases.

The PSA is an effort to get those out early. But, of course, there could be others that arise. Do we have any other issues of substance that have come up between the PSA and the FSA?

MR. KNIGHT: In terms of the Water Section?

ASSOCIATE MEMBER BYRON: The entire report.

MR. BABULA: I could answer. Well one of the things that did come out is after the PSA we, the staff continued to study alternatives.
And one of the alternatives was the higher TDS water source. And so staff in conjunction with some contractors and working with the applicant did some studies out there. And so those studies had to be incorporated into the Local Soil and Water Section. An additional analysis was put regarding the ground water and some additional modelling was done to try to get a better handle on what is a fairly complex ground water system out there. And then finally there's this Rosemont option that was more fully developed post-PSA, the Rosemont, folks at Rosemont presented a proposal which was then incorporated into our analysis regarding the quality, quantity and cost of water and using and getting a pipeline from Rosemont to the project site. So there was a number of developments that happened after the PSA that had to get incorporated into the PSA. And as Eric mentioned the resources were a little stretched. Even when using contractors, they have other things. But primarily it was really incorporating these studies into a fluid document that had a number of authors.
ASSOCIATE MEMBER BYRON: Thank you.

HEARING OFFICER CELLI: Anything further Commissioner Byron.

ASSOCIATE MEMBER BYRON: There may be later but right now it's what I want to understand is where we are, the differences between the FSA and the PSA.

HEARING OFFICER CELLI: Okay, and Chairman Douglas did you have any? Please, Mr. Solorio.

MR. SOLORIO: Yeah, if I may. I didn't quite understand your question originally. I thought that you were asking if there were changes specifically to Soil and Water.

And so just to elaborate on Jared's response. There was an alternative that was, came to light if you will at the PSA workshop based on comments from the public including agencies.

And that was essentially the fact that there was non-potable water available from the community of Rosemont as well as from California City.

So both of those sources were fully developed in the FSA and we've gone to the extent of having he various staff in different
disciplines address those alternatives according to CEQA. So that they are truly viable.

HEARING OFFICER CELLI: Thank you.

Let's hear from CURE please.

MS. KOSS: Thank you.

HEARING OFFICER CELLI: Ms. Koss.

MS. KOSS: CURE has commented several times that the PSA should be revised and recirculated due to a lack of analysis and mitigation measures. And in fact in numerous resource areas in the PSA staff said that they intended to incorporate further information analysis and mitigation measures in the FSA.

So we believe that the schedule set out in the notice is reasonable. The intervals are reasonable and we would like to stick to them.

We think that three weeks between publication of the FSA and intervenor testimony due date is proper.

Intervenors and the public are going to have to take a lot of time to evaluate the numerous additional information, analysis and mitigation measures in the FSA.

So if we could stick to that we'd appreciate it. And everything else, all of the
other intervals in the schedule we believe are reasonable.

So if we could just push back everything according to the date of release of the FSA. That would be reasonable.

HEARING OFFICER CELLI: May I ask if CURE anticipates any sort of motions or anything, I'll tell you why I'm asking this question.

I want to make sure that this next schedule we get right, that we follow it, we stick to it, it works for everybody to the extent that we can.

And I wanted to know whether any of the parties anticipate any motions or anything that would slow the process down because we have some sort of in limine motion to be heard.

MS. KOSS: I don't anticipate any motions. We just look like the time to thoroughly evaluate the FSA due to, you know, the information that is going to be included in it that we have not seen.

At this point we don't know what will be in the FSA. There's numerous resource areas that are going to require additional information and analysis and mitigation measures.
And we just want the proper amount of time to review that. I don't anticipate anything else.

HEARING OFFICER CELLI: Do you think three weeks is adequate?

MS. KOSS: Yes.

HEARING OFFICER CELLI: Good. With that I wanted to, I'll ask the Commissioners whether, I was going to open it up to the gentleman from the Lahontan Water District. Let him speak.

ASSOCIATE MEMBER BYRON: Just a quick question directed towards the applicant. And Ms. Luckhardt, I believe you said earlier that you'd still want to hold the dates and there's no hidden meaning behind my questions. I'm just trying to understand the basics here.

You wanted to try to hold the dates for the applicant's testimony being due as given in the schedule. How can we do that if there's substantial changes between the PSA and the FSA and they haven't seen those?

MS. LUCKHARDT: Well we wanted to hold in particular was the hearing date. It was the date that we had scheduled for hearing which is November.
We held to the October date for a couple of reasons which I mentioned. One is, we haven't been given schedule relief.

And so as far as we are concerned we have been operating under the order that was issued by the Committee.

And so until we receive schedule relief we are in production to hit the 7th.

The second issue is that there is both affirmative testimony and rebuttal testimony.

And rebuttal testimony is the opportunity for all parties to review the testimony of the other parties and file their response to it.

So we're talking about our initial testimony and our rebuttal testimony. Those are two different things.

Rebuttal testimony is in response to that of the other parties. So in order for us to file our rebuttal testimony we must see the FSA.

We must see the filing that CURE is going to make, whatever testimony they are going to file. We can't file rebuttal testimony until we can see that.

But each party can file, just as staff
under the original schedule was to file the FSA
before applicant was to file their testimony, each
party can file their individual testimony without
seeing the testimony of another party.

It's the rebuttal testimony which must
follow the filing of each party's affirmative,
initial testimony.

So that is how we are viewing and
looking at the schedule. And that's why we held
to the date on the 7th. That's one of the reasons
we held to the date on the 7th.

And that's one of the reasons why we
feel that all the parties can file their
affirmative testimony without seeing the testimony
of the other parties.

Not to mention that they have, you know,
CURE has been involved in this case since the
beginning. They're a knowledgeable intervenor.
They understand the process.

And they have seen virtually all of our
testimony. It's either in the docket or it's
already been filed.

And they at least have the benefit of
the PSA even though the FSA won't look exactly
like the PSA.
And there are often changes between an FSA and a PSA. And I don’t see this case as being that different.

ASSOCIATE MEMBER BYRON: Of course the last date to file petitions to intervene as currently scheduled is October 5th. I believe that is today.

But that was based upon, you know, the FSA being out two weeks ago. So I don’t know that we would anticipate any other intervenors in this case. But there is always that possibility, isn't there?

MS. LUCKHARDT: There is always that possibility. Although intervenors when filing as late as the final date to intervene are required to accept the status of the record that it is in at the point in which they intervene.

So if they choose to intervene late in the process they have to live with the schedule, the information and the documents that have been filed to date.

They cannot go back without showing of good cause and reopen issues that have already been dealt with.

HEARING OFFICER CELLI: Yes, before we
get to that I just wanted to, I happen to have a calendar here. And by my calculations if the FSA doesn't come out until the 19th of October, and for the people on the phone I'm just holding up your standard calendar.

The 19th knocks everything up about five weeks. So that, in other words, if everything is pushed forward five weeks that means that we couldn't even, we could not preserve the November 16th and 17th hearing date because on the 18th CURE's testimony would be due.

So we will have to rework the schedule.

MS. LUCKHARDT: Well, I think again, CURE's affirmative testimony does not need to wait for the FSA. That's the opportunity for rebuttal testimony not for the affirmative testimony.

So I guess I'm having difficulty understanding why CURE gets to wait for the FSA to file their testimony when there is an opportunity to rebuttal testimony for all parties.

HEARING OFFICER CELLI: CURE, go ahead.

MS. KOSS: But generally, the FSA is published before any testimony is due. And we're going to base our testimony on what is in the FSA.

And there's a point to having opening
testimony and rebuttal testimony subsequent to the release of the FSA.

The PSA and the FSA are going to be very different due to the lack of information and analysis and mitigation measures.

And all we're asking for is a reasonable opportunity to review that new information before we testify to anything.

MS. LUCKHARDT: In that case I don't understand why CURE needs then another opportunity to file rebuttal testimony because they will have seen staff's testimony. They will have seen our affirmative testimony.

So what are they filing rebuttal testimony on?

HEARING OFFICER CELLI: Actually that's all parties rebuttal testimony. The way that we have set it up here is that once the intervenor files then the following week all parties rebuttals is due.

And whether CURE chooses to file rebuttal or not because, actually, as an intervenor they're testimony really is rebuttal testimony in itself.

So if the FSA comes out and they're in
opposition to the FSA well then that's essentially rebuttal testimony.

If they want to file more rebuttal testimony the week later, they're welcomed to. But they won't have anything new to base it on.

The only people who will be empowered with new information would be the applicant's staff who'd been waiting to get the intervenor's testimony.

So that would be the flow of the argument.

MS. LUCKHARDT: You know I understand that to a point. Although I've also often argued that all parties' testimony should be filed at the same point. And then all parties rebuttal should be due at the same point.

Are we inherently giving CURE an advantage here by having them file twice after all other parties filed?

HEARING OFFICER CELLI: Well actually, the applicant's work is pretty much always done right up front with the AFC for the most part.

Yes, there's additions as you go along but all of that, the front end work is really the testimony of the applicant and so --
MS. LUCKHARDT: In this record I think you will find that there's a substantial amount of work that has been done since the AFC.

HEARING OFFICER CELLI: Yeah, I'm aware of that including the 700 pages of design refinements. But I don't think it's unreasonable to give any intervenor opportunity to deal with the FSA.

And I don't think three weeks is unreasonable. Actually it cuts it down because I thought I gave them a full month.

So what I think is going to happen, I think it's an impossibility for us to keep the current schedule as we have it just because if we do then the day the FSA comes out intervenors' testimony is due. And I don't think that's fair.

So what we're going to have to do is issue a new scheduling order. And that would come out this week as quickly as I can get one put together.

Well actually the problem, you know I just want all the parties to know, we don't pull those dates out of the air. I've been in communication with staff to get dates and I have good-faith estimates of dates from staff on
several occasions.

And when I created this particular schedule I had padded it for three weeks out from their outermost date.

Now I understand events have occurred and things happened that made it impossible for them to meet those dates.

But the point is it's like the boy who cried wolf at this point. I'm a little hesitant to start creating a schedule date right now until I have more of a sense that the FSA really is going to come out on October 19th. I'm a little gun shy at this point. So I don't think that's unreasonable either.

So I'll put it out to the parties and hear what you all have to say about the possibility of getting a schedule out in light of the fact that I've got squishy dates for an FSA.

MS. LUCKHARDT: Yeah, I understand that.

We actually have been and I put it together and not in any way to attack staff.

But I put together a list of dates on when they initially they anticipated they'd be able to get the FSA out.

And so I understand your concern. It is
also ours.

HEARING OFFICER CELLI: Yes.

MS. LUCKHARDT: We have also requested that staff bifurcate it. And so that they'd put out that portion of the FSA that's available now.

So that CURE and the other parties have an opportunity to look at it. That portion of the FSA has been available for some time.

I understand staff is reluctant to do that and has been recently. And they may still be. But that was one way of getting a large majority of the document out.

My understanding is that this document is a thousand pages or so. So if it is truly that large it would make sense to give parties an opportunity to see those portions of it that are available.

And I understand the hesitancy to that. But, you know, we're, as long as this schedule continues to slide we are looking at a two year siting process for this case.

And, you know, that gives us great concern on the pressure that it puts on this particular project but also going forward on future projects.
So, you know, I just want to make everyone aware of that. And I'm not saying that in any way to assume that staff hasn't been working hard. I think they have. They're very diligent and hard-working folks.

It's just taken a long time. It's a very, very long siting process.

HEARING OFFICER CELLI: Staff did you have, what can you offer into this? What I'm trying to figure out is how am I supposed to put together a scheduling order when if we etch in stone again another date for an FSA and everything springs boards from the FSA publication date and then that slides again. What do you have in mind?

MR. SOLORIO: Let me offer a few thoughts here. We did float the idea of bifurcating publication of the document.

As I mentioned, 95 percent of it is ready right now to go to print. Part of the problem with that is in order to file something and make it available to the public we need to serve the POS list.

HEARING OFFICER CELLI: Twice.

MR. SOLORIO: Exactly. And so therefore we've got to send to repro and any other evidence
and there is a two and a half lag time, et cetera.

HEARING OFFICER CELLI: Bifurcation. I have some experience with bifurcation in the Sentinel Case and I'm not a fan of bifurcation because of a whole lot of things happen between the one and the other.

And I would rather see it come out as a single document. But what I'm trying to figure out is when we will have a date certain?

MR. SOLORIO: Mr. Celli, unfortunately I don't have any authority in this process (laughter). I'm responsible for everything but.

HEARING OFFICER CELLI: Mr. Knight.

MR. KNIGHT: Mr. Celli we'll do our best, in other words, you know, commit to making the date or completing the Water and Soil Section this week. So that means staff will be working on this Friday.

But we're going to get it done this week. It's been a complicated analysis and as you know that the Committee sent us pretty early on a directive that, you know, fresh water use for cooling, we're very concerned about that.

So it's probably a 250 page section alone and it does analyze the various
alternatives. So it's a complicated undertaking but we'll get it done.

HEARING OFFICER CELLI: Well, I know you will. What I want to know is, Mr. Solorio mentioned October 19th. It seemed like a pretty adequate amount of time.

What are the odds (laughter)?

MR. KNIGHT: Well, you know, once it leaves our hands, I mean it's going to go back over to the Siting Office. It's been there once in a draft form.

So it won't be like they're reviewing this section, you know, 250 pages from scratch. So it's going to go over there and then it's going to get, you know, reviewed by Eric, the attorney and management in Siting.

And then there's the production end of it. I mean it's a big document. It's got some formatting issues. So who knows what happened there.

HEARING OFFICER CELLI: But if it gets to production that means we've got a final iteration which could electronically be served on all the parties.

MR. KNIGHT: Sure, yeah. I mean it
doesn't, I mean this always becomes an issue for the POS. That is if you say you are positive something in the station mail, if we can alter the POS list to actually reflect what we're doing then that's an electronic filing only.

HEARING OFFICER CELLI: Well I'm not necessarily suggesting you deviate but what I am trying to do is give the parties a chance to get to work on the FSA.

MR. KNIGHT: Sure.

HEARING OFFICER CELLI: And so if at least you know that it will be out and ready for publication by X date the rest of it however long it takes for publication then we don't really have to worry about.

It'll come out. It'll be published and the public will see it. But really it's a question of when is it going to be docketable.

MR. KNIGHT: I think I heard that actually that would be the Thursday, we have a calendar here, October 15?

MR. SOLORIO: The bottom line is we need five days from the time that reaches me, assuming that it's in perfect shape. And Jared and I have done our best to, we've actually reviewed it three
different times as it's been drafted.

Part of the document includes language that was provided by the Water Board. There's a number of things built into that section, streambed alteration agreements, waste discharge requirements, things that we don't normally do but are under our authority.

Nevertheless, assuming that it's in perfect shape when it gets to me we still need five days before it actually gets out in the mail.

HEARING OFFICER CELLI: So what if it's not in perfect shape?

MR. SOLORIO: Then it has to go back for revisions.

HEARING OFFICER CELLI: Isn't that the condition that we've been in?

MR. SOLORIO: Yes, that, that, well essentially that loop, again, Jared and I have been doing informal reviews as it's being put together to try to cut back on what the final form in terms of any revisions that need to be done.

HEARING OFFICER CELLI: Ms. Allen, I see Eileen Allen is here. I wonder if you would like to weigh in on this. We're having a hard time putting together a schedule that we can count on.
That's what we're talking about.

MS. ALLEN: I'm not going to add a lot but --

THE REPORTER: Would you please identify yourself for the record, please.

MS. ALLEN: Eileen Allen. I'm the Manager of the Siting Compliance Office. So as I'm listening to the question marks associated with the time needed for production once the hopefully perfect analysis comes over.

We're also dealing with the unknowns. A key person involved in the production process being sick or having to be out for some other reason. So ideally I'd add another week in there as a contingency.

HEARING OFFICER CELLI: So the date that staff believes it was October 15th as, it's ready, it's perfect, it's ready to go, we're going to carry it down to reproduction. If I add a week to that that's October 22nd.

What's your feeling about that Mr. Knight, Mr. Solorio? Is that, if I make that day the FSA publication date, October 22nd, because you had said October 19th, gives you a little extra time.
MR. KNIGHT: I told you that.

HEARING OFFICER CELLI: Can I get a commitment (laughter)?

MR. KNIGHT: Yes sir.

HEARING OFFICER CELLI: Okay. October 22nd then is, and I will, so I think the official, let me just confer if I can for a moment with the Commissioners.

Thank you we're back on the record, oh, now we're not. Now we're back on the record.

And so, Ms. Luckhardt we're going to vacate the current schedule and I will put out a new schedule based on this October 22nd date this week.

I pretty much based as close as I can because I'm sort of at the mercy of the Commissioners' schedules because I need to get two Commissioners at the same hearing, at the same place, at the same time.

And I know that Commissioner Douglas is going to be out of the country from the 19th?

PRESIDING MEMBER DOUGLAS: Uh-hmm.

HEARING OFFICER CELLI: Of December.

PRESIDING MEMBER DOUGLAS: December?

HEARING OFFICER CELLI: December. I'm
hoping we're not going to be going in after but, from the 19th until the 7th of January.

So depending on the availability of hearing space. And I'm not really sure we would go anywhere else than to California City because that's where the people who are affected live.

Then everything would bump up ideally four weeks. And it's really just a question of being able to get the space, get the room and have two Commissioners who aren't committed to something else on those dates.

So what we're looking at is a Prehearing Conference in December. So since our Prehearing Conference is in December the likelihood is that our Evidentiary Hearings will be in January, which will give Ms. Koss an opportunity to have her baby.

MS. KOSS: Thank you.

HEARING OFFICER CELLI: Sure. But that's realistically what we're looking at now.

ASSOCIATE MEMBER BYRON: These are expanded powers of this Commission it seems now (laughter).

MS. LUCKHARDT: I guess, you know, we just need a second to kind of look at that and
look at the schedule and adjust.

I mean what you have essentially done now is given us a two month delay in this project. And so I'd just like to be able to confer with my folks before I provide any response since I wasn't anticipating a two month delay.

HEARING OFFICER CELLI: Certainly.

We'll go off the record.

( Off the record )

MS. LUCKHARDT: Okay. I would like to propose a different schedule for your consideration.

CURE just indicated that they need three weeks from the publication of the FSA to filing their testimony.

If the FSA comes out on the 22nd, three weeks from the 22nd is November 12th. In your original schedule you had a week between intervenor's testimony and all parties' rebuttal testimony.

So that would mean all parties' rebuttal testimony would be due November 19th.

HEARING OFFICER CELLI: Correct.

MS. LUCKHARDT: Assuming that, you know, not knowing whether or not parties would be
amenable to the two days before the Thanksgiving holiday for a Prehearing Conference, we were thinking that on the long side you could hold a Prehearing Conference the week of December 1st and you could have hearings the second week of December.

This is essentially a month's slide in staff's FSA. And so we think it makes more sense to do a month's slide in the schedule as opposed to a two month slide in the schedule.

We don't know if the week of November 8th is possible but that seems like a potentially viable hearing week. I'm sorry, December 8th.

HEARING OFFICER CELLI: Okay, we're back on the record. And I appreciate that, you know, so all parties heard the proposal which was to have the intervenors' testimony.

So assuming on October 22nd that the FSA comes out, the applicant's testimony would be due on the 29th.

The intervenors' testimony would be out on the 12th.

All parties' rebuttal would be due on the 19th of November.

Now the 26th and the 27th are
Thanksgiving. If we could pick a Prehearing date sometime the first week of December what we're left with is the possibility of one or the other of those next two weeks to start the Evidentiary Hearing.

I don't know how long we'll go. And we'll have more of a sense of that at the Prehearing Conference. But if it's going to go more than a couple of days we're now going into January, you understand, because there's a break there due to the holidays.

So what we'll do is this. I will take this back and put out a new scheduling order. The Committee has now vacated the existing scheduling order and we will put out a new one.

And we intend to get it out sooner than the end of this week. And with that let me just ask.

Before I close out the scheduling conversation, anything from staff on what I've just described in general terms?

MR. BABULA: That sounds fine. I don't have any problem with that.

HEARING OFFICER CELLI: Ms. Koss.

MS. KOSS: I don't think we have any
problem with that. I think we would prefer not to have multiple weeks between hearing dates if possible, ideally.

HEARING OFFICER CELLI: Well you know that's all a function of how well the parties communicate with each other and how much they can get done in the meanwhile so that if we limit witnesses and cross-examination we can really streamline this thing. And I'm a big fan of that.

MS. KOSS: Sounds good.

HEaring OFFICER CELLI: Yes.

MS. KOSS: We'll do our best.

HEARING OFFICER CELLI: Great. So I'll do my best to come up with something that accommodates everybody here.

Anything else on scheduling before we move on? Seeing none, Commissioner Byron.

ASSOCIATE MEMBER BYRON: If I may, Hearing Officer Celli. You know in these conferences we deal with schedule and process to a great extent. This would be maybe a good opportunity to get into, although it's not an Evidentiary Hearing, but get into some of these issues just to a little bit greater extent because this is the only time the Commissioners can do
this really in a public setting.

And again, I realize this is not
evidence. This is not what we're going to be
basing our decision upon. But it is helpful to
understand these issues a little bit more as it
informs scheduling, as it informs the issues that
will be before us.

And the Chairman mentioned this, I
believe, in her opening remarks to some extent as
well.

So without any bias, clearly the use of
groundwater is a major issue in this case. And I
guess I direct my question towards the applicant.

I assume that you're aware that it's
been the policy of this Commission since, I think
2003, that we don't use groundwater, or surface
water for that matter, in the cooling of power
plants. Are you aware of that?

MS. LUCKHARDT: We are aware of the
Commission's policy. We are aware of the State
Board's policy.

I think that we have a substantial or a
substantive disagreement as far as what is a
feasible alternative and what is feasible from the
perspective of when you're dealing with a solar
When you're dealing with a combined-cycle project you're dealing with a different, completely different capacity factor. I'll let my client kick me if I'm wrong. I'm guessing, we're talking about a 20 --

MR. STEIN: Twenty-six.

MS. LUCKHARDT: -- about a 26 percent capacity factor out of a solar thermal facility --

ASSOCIATE MEMBER BYRON: For this project.

MS. LUCKHARDT: -- for this project. So we aren't talking about capacity factors in the 50, 60, 70, 80 percent like you are with a combined-cycle gas-fired power plant where the Commission has set a policy that if you can't find a degraded water source or a reclaimed water source, essentially a dry-cooling option is a competitive and effective option that is both commercially available and economically viable for a project.

In this instance we're talking about a project that has a much reduced capacity factor that is in some ways more akin to a large or heavily operated peaker.
So we're talking about a very different situation. We're talking about a pipeline that's, these guys will correct me if I'm wrong, I think it's around 40 miles long.

ASSOCIATE MEMBER BYRON: And this is one of the alternatives.

MS. LUCKHARDT: One of the alternatives for reclaimed water is essentially a 40 mile pipeline.

The amount of water that they may or may not have, we're talking about not only a 40 mile pipeline but a large storage reservoir because the water that would be required for the peak months is insufficient.

And so there has to be a very large storage facility in order to store the water to be able to handle the requirements of the project.

And if you're talking about the California City option which is a lot closer and, in fact, the project proposed initially, running a line to California City and taking whatever reclaimed water they have available.

Now in order for that city to be able to provide all of the water for the project they would need to hook up, they have many residences
and businesses on septic systems. So they'd have to run lines down streets to individual houses and hook up individual additional septic systems in order to get enough flow to supply the project.

So, you know, whether that is truly a feasible alternative to what the project has proposed we think is in question.

There has been some investigation of degraded groundwater options. That's what staff was talking about. In fact, the project applicant funded the additional work that was done on the degraded water options.

So in addition to that in the analysis from the applicant's perspective the ability to permit, and not only that, when the project was originally proposed these other water options were not available.

The folks at Rosemont did not propose providing water to the project. And in fact the project did check with these entities.

With the permitting process at this time the efforts of staff some additional proposals have come forward.

Permitting a 40 mile linear is a difficult task especially when you're outside of
the time periods where you have to do protocol
surveys.

The amount of additional analysis has
been required. Now we understand that staff has
been doing quite bit of work.

That they have been out there and done
some biological analysis. They've done a variety
of other levels of analysis and that that will be
included in the FSA.

And we are interested in seeing that as
well as all the other parties to see what they
have been able to find and the cooperation that
they have been able to get from Fish and Wildlife
and Fish and Game and other entities.

But we still have concerns about whether
there truly is a financiable, viable, water source
that the project can finance so that this project
can actually get built and go forward.

So there have been a series of
disagreements between the applicant looking at,
here's our project, here's, you know, where the
power market is.

They are out there discussing what they
can actually sell for and what works and at this
point it's the project's position that it is not a
viable alternative.

You know, ultimately you all may be placed in the position of having to determine that.

But at this point the project's position is looking at those other options and those other alternatives that none of them are truly viable and provide a truly alternative water source option for this project.

ASSOCIATE MEMBER BYRON: Well, Ms. Luckhardt you've always give thorough answers. I'll take that as a yes (laughter). And I just want to let you know that this is going to be a high bar for this Commissioner with regard to this case.

And I think the applicant is going to need a very good showing when it comes time in our Evidentiary Hearing looking at these alternatives. Because I know that I'm quite concerned about this and although I never speak for my fellow Commissioners I suspect you may get some serious concern elsewhere.

Mr. Celli maybe there's others that would like to speak on this but I got the answer to my question.
And I just want to make sure that the applicant knows the bar will be very high.

HEARING OFFICER CELLI: Thank you Commissioner Byron. Chuck Curtis is here from Lahontan Water District and I wonder if he wouldn't mind, sir, coming to the podium and addressing the Commissioners I think since you're in the best position to talk about water, so, please.

MR. CURTIS: Chuck Curtis with the Regional Water Control Board. My agency doesn't deal with water quantity, for example, groundwater use. That is solely the authority of the State Water Resources Control Board not the Regional Water Quality Control Board.

But we do agree with the State Water Board's policy of using other sources than fresh groundwater, potable water when that water is available.

For use of recycled water which the Water Board, the Regional Water Board as well as the State Water Board are very much in favor of and we support that wholeheartedly.

If Rosemont or California City were identified as the source of water, recycled water
for this project there would be permitting that
would be required. It's not trivial but the Water
Board certainly would entertain granting a permit
for those uses just as we have for similar uses
for other producers.

And, in fact, California City has a
permit right now for use of recycled water for a
golf course.

But they would need to file a new
application. We would consider that, draft new
requirements and then our Board much the same as
the Commission here would act to consider that and
approve such water recycling requirements.

I'm pleased that the current schedule
has been vacated. I had put the Water Board in a
uneasy situation. We've been working with your
staff closely on the water part of the conditions
for certification.

And we anticipate that those water
quality based conditions would essentially
substitute for a Water Board permit which is the
design of this act to consolidate those.

But since we haven't seen that document,
the Final Staff Assessment, there is some unease
there with the Water Board.
And we did consider filing as an intervenor this morning which we needed to do that by one o'clock today in order, according to your schedule.

We did not do that. But I know that it will make my Executive Officer much more comfortable knowing if we, that we'll have an opportunity to see the document, to review that and consider whether there's a need to intervene.

We don't expect that that will be the case because we, of the indications from staff that our requirements are essentially being rolled into those conditions of certification.

HEARING OFFICER CELLI: Well you'd certainly be welcomed to intervene. And because we vacated the dates we will have to calculate a new deadline for petition to intervene probably about the same, about two weeks after the FSA comes out.

So we invite you to do so.

MR. CURTIS: Well we, we would only do so, you know, in a rare case where we thought that the conditions for certification that staff was putting forward were not protective of water quality.
HEARING OFFICER CELLI: Which is why we
do it after the FSA comes out (laughter). So as
you can see staff, the FSA is, many things are
dependent on the FSA.

ASSOCIATE MEMBER BYRON: I'm glad to
hear that Mr. Curtis. I think staff does a very
thorough job on these and --

MR. CURTIS: Yeah and I can tell you --

ASSOCIATE MEMBER BYRON: We do welcome
your review of their work.

MR. CURTIS: -- I can tell you that, you
know, the staff has been very good working with my
staff. And, you know, it's partly due to delays
in receiving information from the Water Board that
has caused delays of your staff being able to get
this FSA out. So I wanted to let you know that.

And talking to Ms. Luckhardt's opening
comment about this delay and how that might impact
future projects, I'll let you know that from the
Water Board's standpoint we've learned a lot here.

This is our first time doing this
combined in lieu of permitting. And we are
already working from the early stages on the new
applications and even before applications come out
working on other solar projects so that your staff
and the public know what the Water Board
expectations will be.

HEARING OFFICER CELLI: Thank you very
much. Any questions?

MR. CURTIS: Any questions?

MR. SOLORIO: I'd like to just offer a
comment. We have been working very closely with
Richard Guzman of the Lahontan Office and they've
been extremely cooperative.

And we've actually relied on them to
provide us with the language for the waste
discharge requirements. And staff has
incorporated that language verbatim. We made very
minor changes just to adjust to our format.

And we'll be glad to send a draft copy
of the Soil and Water Section over to Richard and
his team so they can look at it, get more
comfortable with staff adopting the suggested
language if that will help.

HEARING OFFICER CELLI: Ms. Koss any
questions of Mr. Curtis?

MS. KOSS: No. If we're all done with
Mr. Curtis I have something else to address.

HEARING OFFICER CELLI: Ms. Luckhardt,
anything further since we have Mr. Curtis here.
MS. LUCKHARDT: No.

HEARING OFFICER CELLI: Thank you very much for coming, we greatly appreciate it. With that --

MR. BABULA: I'd like to make a few comments --

HEARING OFFICER CELLI: Yes.

MR. BABULA: -- that we forgot to make.

This is just that in response to what Ms. Luckhardt said. I agree that the real and fundamental crux here is the water usage.

And staff has gone through a lot to put together alternatives that we believe will show that it is both environmentally superior and economically feasible to do these alternatives,

The pipeline has been analyzed. I also just to kind of mention what Mr. Curtis said, actually we think the pipeline is part of the Energy Project and that permitting would be in lieu of so it wouldn't be a separate permit that they would have to get from the Water Board. It would be incorporated into our Conditions of Certification.

But really it does come down to the financial component. And the staff is going to
work on that to try to show that the feasibility
is there.

And that's in the end what it's going to
be, we believe dry cooling. The Rosemont, Cal
City alternatives are all viable.

HEARING OFFICER CELLI: Thank you. Now
before we open it up to public comment I just
wanted to hear from the parties. Ms. Koss you're
indicating you'd like to speak so please go ahead.

MS. KOSS: Thank you. Jared just
mentioned dry cooling. And I'd just like to point
out that CURE thinks that is a truly alternative,
truly viable alternative as shown by other large
solar projects that are proposing the use of dry
cooling that are currently going through the CEC
permitting process.

I urge, I know staff is doing a thorough
job of evaluating it and I urge the Committee to
take a hard look at this alternative.

Dry cooling would eliminate numerous
environmental impacts including, for example,
biological impacts from evaporation ponds.

So I just want to urge the Committee to
take a hard look at it. I believe that staff's
analysis will show it's economically viable.
And it's certainly the environmentally superior alternative.

HEARING OFFICER CELLI: Thank you. That leaves you Ms. Luckhardt. Any further questions or comments? This is your opportunity to address the Committee on anything. This is a status conference.

MS. LUCKHARDT: I guess I'll just take a second to see. I think that's all we have. We also are interested to see what all staff has been able to do on the alternatives and we have not had an opportunity to see that yet.

So, we're also waiting and looking at what they've been able to pull together on that.

HEARING OFFICER CELLI: Thank you. At this time then we will open up this hearing to public comment. Is there anyone who is here presently in person, in Hearing Room A who wanted to address the Committee who is a visitor?

Member of the public? Seeing none then we'll just go to the phones then, RoseMary, in the order. Is it Denise LaMoreaux? Denise --

MR. LAMOREAUX: I have no comment at this time.

HEARING OFFICER CELLI: Oh, Dennis
LaMoreaux, I'm sorry. No comment. Thank you.

Elizabeth McCarthy?

MS. AVALOS: She's not on the phone.

HEARING OFFICER CELLI: She's not on, oh, because there's no phone icon. I see that.

Henry Gause? Henry Gause are you there?

MR. GAUSE: Yes I am.

HEARING OFFICER CELLI: Could you please speak up and make your comment please.

MR. GAUSE: Yes sir I am. I'm President of the California City Landowners Association. I'm somewhat concerned about the water use too.

We have several thousand property owners that really have long-term investments. Their property would no longer be viable if there wasn't adequate water supply in California City.

HEARING OFFICER CELLI: Thank you.

Anything further?

MR. GAUSE: No sir.

HEARING OFFICER CELLI: Thank you for your comment.

Julie Ryan.

MS. RYAN: No comment.

HEARING OFFICER CELLI: Well I think that's it. Is there anyone else who would like to
make a comment before we adjourn? Hearing none,
Commissioner Douglas do you have comments that you
want, the status of the contract?
PRESIDING MEMBER DOUGLAS: Well thank
you to everybody. We look forward to moving
forward with a new scheduling order as soon as
possible. And with that we're adjourned.
(Whereupon, at 2:15 p.m., the
Status Conference was adjourned.)

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CERTIFICATE OF REPORTER

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

I further certify that I am not of counsel or attorney for any of the parties to said conference, nor in any way interested in outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of October, 2009.

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