COMMITTEE MEMBERS PRESENT
Jeffrey D. Byron, Presiding Member
James D. Boyd, Associate Member

HEARING OFFICER, ADVISORS PRESENT
Paul Kramer, Hearing Officer
Susan Brown, Advisor to Commissioner Boyd
Kristy Chew, Advisor to Commissioner Byron

STAFF AND CONSULTANTS PRESENT
Richard Ratliff, Staff Counsel
Eric Knight
Che McFarlin

APPLICANT
Jeffery D. Harris, Attorney
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Steve De Young
BrightSource Energy

Arthur Haubenstock
BrightSource Energy

Keely Wachs
BrightSource Energy

John L. Carrier
CH2M HILL
INTERVENOR

Tanya Gulessarian, Attorney
Adams Joseph Broadwell & Cardozo
on behalf of California Unions for Reliable Energy
(via telephone)

ALSO PRESENT

Tom Hurshman, Bureau of Land Management (via telephone)

Robert M. Doyel, Bureau of Land Management

Allan Thompson (via telephone)

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
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PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
HEARING OFFICER KRAMER: Good morning, this is Paul Kramer, the Hearing Officer for the Ivanpah Solar Electric Project.

The applicant and the staff have asked for a little bit of time to talk about a late-breaking proposal regarding the schedule and we have already sent them off to go ahead and have those talks. So at this point we are going to postpone the start, the official start of the Committee Conference until approximately 20 minutes from now. Those of you on the telephone please just stay on the line and we will let you know when we are ready to begin. Thank you.

MR. HURSHMAN: Are we able to hang up and then call back in on this number in 20 minutes?

HEARING OFFICER KRAMER: Yes, I would think so.

MR. HURSHMAN: Okay.

HEARING OFFICER KRAMER: We have got the line open so we will keep it active.

MR. HURSHMAN: Okay. All right, bye.

HEARING OFFICER KRAMER: Off the record.
(Whereupon, a recess was taken off
the record.)

HEARING OFFICER KRAMER: Good morning
again. My name is Paul Kramer. I am the Hearing
Officer for the Ivanpah Solar Electric Generating
System AFC Committee. Let me introduce the people
up here on the dais first. To my right is
Commissioner Jeffrey Byron. He is the Presiding
Member in this case. And to his right is his
advisor, Kristy Chew. To my left is Associate
Member of the Committee, Jim Boyd, and his
advisor, Susan Brown. Now I will ask the parties
to introduce themselves next beginning with the
applicant. Mr. Harris.

MR. HARRIS: Good morning. My name is
Jeff Harris, I am here on behalf of BrightSource.
And I will let Arthur introduce himself and the
rest of our team.

MR. HAUBENSTOCK: Yes. I am Arthur
Haubenstock with BrightSource Energy. And we have
with us Steve De Young, also with BrightSource
Energy and Keely Wachs with BrightSource Energy.

MR. HARRIS: And then Jed Gibson with my
office is here and then John Carrier with CH2M
HILL.
HEARING OFFICER KRAMER: And does the court reporter have the spellings of your names?

MR. HARRIS: We will make sure that she gets cards.

HEARING OFFICER KRAMER: Okay, thank you. Staff.

MR. RATLIFF: Yes.

HEARING OFFICER KRAMER: Introduce yourselves.

MR. RATLIFF: Dick Ratliff, staff counsel.

HEARING OFFICER KRAMER: I don't think your mic is on.

MR. RATLIFF: You're right. Dick Ratliff, staff counsel.

MR. KNIGHT: Eric Knight, manager of the Siting and Docket Office.

MR. McFARLIN: Che McFarlin, staff sitting project manager.

MR. DOYEL: And I am Bob Doyel with the Bureau of Land Management, Sacramento State Office.

HEARING OFFICER KRAMER: Thank you. We have two or three people on the telephone. I'll just go down the list I think I have.
Mr. Thompson, are you still there?

MR. THOMPSON: Yes.

HEARING OFFICER KRAMER: Introduce yourself, please.

MR. THOMPSON: Allan Thompson. I am here as an observer.

HEARING OFFICER KRAMER: Okay. And Ms. Gulesserian.

MS. GULESSERIAN: Good morning. Tanya Gulesserian on behalf of CURE.

HEARING OFFICER KRAMER: Okay. And Mr. Hurshman, did you make it back?

MR. HURSHMAN: Yes I did. This is Tom Hurshman, BLM project manager.

HEARING OFFICER KRAMER: And anyone else on the telephone?

Okay, hearing none, does either party wish to -- The purpose of today's hearing is a continuation of a Committee Conference on October 15. The parties thought it would help them to take some additional time to meet and see if they could work out a schedule that was more optimum from their standpoint. So who would like to go first in describing their negotiations and any result? Do I need to flip a coin?
MR. RATLIFF: I would be glad to. Dick Ratliff, staff counsel.

We met with BLM last week and discussed at length whether and how to embrace the alternative schedule that has been proposed by BrightSource. After a good deal of discussion we decided that we could do the schedule in terms of the process the way BrightSource has proposed to do it. That there might be some disadvantages to it but that there were advantages, enough advantages to it both in terms of saving some time and in terms of protecting the process that we thought made it worth doing.

And so the Energy Commission and the BLM have, the staffs of those two agencies have agreed that we will go along with the process that BrightSource proposes. And that would in essence, and the most significant parts of that are that the Draft Environmental Impact Statement will be the staff FSA. And the Final Environmental Impact Statement will be the PMPD as well as other documents as yet to be defined. And those would be the two sort of critical items of the NEPA process that would be tied to our process.

We thought that on of the advantages,
schedule-wise, by doing this would be it
eliminates the dead time that the NOA process, the
Notice of Availability required for BLM to publish
its documents, it allows us to make use of that
time in the Energy Commission process while that
continues. So you don't have that dead time, that
wasted time.

It also allows -- An additional
advantage that I think it provides is that it
allows the staff to put out the PSA before the
DEIS and allows us to get a document out there for
the public to look at and respond to and comment
on. It allows us to go to workshops on that
document to get a discussion going about the
issues that might be of interest with regard to
this project.

So we think that those are all
advantages that come with this change in the way
we identify the documents and process the
application. Having said that, when we looked
hard at how that schedule would work, I think BLM
and staff believe that the time advantages are
still not ones that achieve the summer, the
conclusion of the proceeding in the summer that
BrightSource has said that they need.
Not surprisingly when we met with BrightSource prior to this hearing there is some disappointment that the schedule that we believe comes out of this agreement is not one that gets them to where they believe they need to be. And they can talk about that more, and I am sure they will elaborate on that in a moment.

But I think the staff and BLM staff too are very, we want to accelerate the schedule as much as we reasonably can, we just don't want to over-promise in ways that will make sure that we will not meet the milestones that we put forth in the document, in the draft schedule that we provided to you just now.

So this is what we think is probably a possible schedule if things go well. There may be ways to make it go faster. There may be things that do go faster. There may be things that make it go slower. But we propose this to be the schedule because we think it is probably the most likely picture of how things will work as we see them now.

HEARING OFFICER KRAMER: Mr. Harris.

First let me ask Mr. Ratliff. We just received a copy of CEC and BLM staff's probable date
projections for Ivanpah. I gather this is the staff's estimate of the time.

MR. RATLIFF: Yes, that's right.

HEARING OFFICER KRAMER: It isn't necessarily agreed to by the applicant.

MR. RATLIFF: No it's not. And it was prepared Friday after discussions concluded with BLM and BrightSource only received it this morning. I am not sure -- I hope Tom Hurshman has it, I don't know if he does or not.

MR. HURSHMAN: Yes I do, Dick.

MR. RATLIFF: Great. So the applicant is reacting to it for the first time. And truthfully, so am I. I didn't see the dates on here. We did discuss them in our meeting on Friday but this is the first time we have actually had it down on paper in a completely integrated way.

HEARING OFFICER KRAMER: Okay.

Mr. Harris.

MR. HARRIS: Thank you. Jeff Harris on behalf of BrightSource. I want to begin by thanking the staff and the BLM's -- when I say staff I mean the BLM staff and Commission staves together, for sitting down and working with us.
We are really looking at ways to efficiently integrate these processes. And notwithstanding the fact that you are all at a dais and we are at opposite tables like this is a litigation situation, it has been a very collaborative process.

We have some good faith disagreements on how quickly things might proceed and we are going to put those out for you to consider. But I really want to emphasize how much we appreciate the BLM folks coming down to talk today and then talk about these issues and the staff's time to talk to these issues. So while you will see some disagreement on where we can save time, please understand that we do appreciate the work that has gone into this.

And we are just looking for ways to cut a new trail, frankly. No one in California has done this. We think we have some good ideas. You know, we are not that far off, even with what we have seen for the first time this morning here. We have been talking about a summer of 2009 decision sort of as a shorthand. We would obviously like it as early as possible in the summer of 2009.
What we have seen for the first time this morning is only off by three months and we think that there are some ways that we can make up that time. That is going to require accountability for everybody sitting at our table, sitting at the other table and from everybody involved in the process and really making this a priority.

I have got some specific suggestions on how we might try to capture back that minor three month difference and I can go through those specifically. But before I do that I would like to turn it over to Arthur with BrightSource so he can explain his position with the company and explain why do three months really matter to us. That's a fair question in how long power plants typically take in California. Three months is a relatively short period of time but it is a significant period of time. So let me ask Arthur to say a few words on the summer of 2009.

MR. HAUBENSTOCK: I'm Arthur Haubenstock, Chief Counsel and Director of Regulatory Affairs for BrightSource. And again, I want to underline what Jeff just said. We very much appreciate both BLM and the Energy
Commission's staff's ability to come around and to look at this creatively and to recognize some of the benefits of the approach that we have outlined.

We strongly believe that this provides for a more meaningful and more robust process with greater information going to the public during public comment periods. And we think that it will ultimately provide a significant savings in time and allow us to provide renewable energy to California sooner than we would otherwise. And that is much of what it comes down to.

We are very concerned about the process and being able to create a strong foundation for the Energy Commission and BLM moving forward. We are the first one out of the box and what we do here makes a big difference, not just to us but to the solar industry at large. And we are convinced that this is going to be a very good story, not just for BrightSource but for the Energy Commission and for BLM as well.

We want to make this a good and solid experience and something that the public will look to with pride and something that will show that the Renewable Portfolio Standard Program is not
just a paper program but that it will deliver energy. And it will deliver energy on time, within the confines of the existing contracts, and also in a way that is environmentally responsible.

One of the things we are very concerned about, and it is very much a part of BrightSource's DNA, is to act in an environmentally responsible manner and to try to do our work in a way that it is the most environmentally responsible, the most environmentally sustainable, that we possibly can.

What we are informed is the best time to address tortoise mitigation issues, for example, would be in the fall. If we don't have a decision in the summer then we will not be able to take advantage of that optimal time for tortoise management. And that is of tremendous concern. We want to do things in such a way as we can, again, set the best possible precedent for the solar energy industry moving forward.

We also are very cognizant of what is happening in the economic environment right now. And we certainly get a lot of calls from our investors and from potential backers of our projects that are looking to see what happens.
They are looking to see if California means business and whether we can count on the commitments that we are getting from our governmental regulators.

We have been saying very much that is the case. That we strongly believe that we are working in partnership with state and federal partners and that we can work together to achieve renewable energy deliveries within the times that are required by the contracts. That we are not going to be exposed to substantial penalties or have any other risks associated with it because we are convinced this can be done and will be done.

We are very cognizant of the resource constraints. BLM and the Energy Commission have a tremendous amount of work to do with this incredible increase in interest in solar energy. And we, again, recognize we are first out of the box. We believe that many of the time savings that Jeff will go into is something that can be done in a way if resources are directed to it.

We recognize it is going to require more assistance. We were among a group of companies and environmental organizations that have requested that the federal government, for
example, provide more resources to BLM so that BLM
and CEC can work together more efficiently and
more effectively and with greater time efficiency.

So we are ready and willing to roll up
our sleeves and to try to find whatever time
savings we can so we can get out there, provide
the energy on time, build at a time that is
environmentally optimal. And again, make a strong
showing for what California can do. This is the
first, as you know. The first, major solar
project in California for 20 years. And it is
important to all of us, absolutely on every side
of each of these tables that it be a success. And
we want to help work with you and make it that
success. So Jeff.

MR. HARRIS: Thank you. In 2009 is an
important deadline for us to be able to make our
contractual commitments as well.

Let me walk through kind of at a high
level where we think things are and then get into
specific time savings. And one of the things that
-- I have couple of handouts that I will be giving
out here. And I will file and serve these,
Mr. Kramer, afterwards.

HEARING OFFICER KRAMER: On that point,
will staff be docketing their exhibit later today as well?

MR. RATLIFF:  Yes.

MR. HARRIS:  And I apologize to the folks on the phone. They won't be able to see these visuals. There are two documents and they are color-coded just so I can refer to them that way. One is color-coded in red and one is color-coded in green. I want to start with the one that is color-coded in red if you have those in front of you. All this is intended to show is an attempt to link the Energy Commission's considerable, additional processes with the BLM's processes.

So again focusing on the document that is in red. The MOU creates some linkages between Energy Commission documents and BLM documents. The first linkage is the Draft EIS being linked to the Preliminary Staff Assessment. And the second linkage is the Final EIS being linked to the Final Staff Assessment. That is currently the way the MOU envisions your processes integrating.

And as you can see from the right-hand column, there's a whole lot more process that the Energy Commission goes through in your certified
regulatory programs. It is not typical CEQA, it is something quite different, I think, in that respect. There is a lot more public process and a lot more time to participate in those processes.

What we have suggested with our compromise schedule. And I think maybe where the staff and BLM may be heading as well, is towards now the green document. If I could get you to --

PRESIDING MEMBER BYRON: Mr. Harris, if I could just interrupt for a moment just to make sure that we are understanding where these documents are coming from. We are trying to do this in real-time here at the dais.

MR. HARRIS: Sure.

PRESIDING MEMBER BYRON: These are not in response to the staff's document. So this is your own proposed schedule. And it is -- And the red one, does this -- well, I'll let you, I'll let you answer the question but just briefly tell me why. Why do you have two of them?

MR. HARRIS: Okay.

PRESIDING MEMBER BYRON: What is the difference between the red and the green?

MR. HARRIS: Okay, let me get there. And first off, let me give you a little more
context. What I am doing now is kind of a high-level, a high-level look at how you integrate the Energy Commission process with BLM. I'll be moving down to talk about specific dates for these various acts but what I wanted to show with these two documents are how your two processes line up together.

PRESIDING MEMBER BYRON: So the red one represents the existing MOU.

MR. HARRIS: The red one represents the existing MOU. And again, without dates or without regard to, you know, 90 days for this, 30 days for that. I am just really trying to show how you have intended to link these two permitting processes together.

One of the things that is different about your process that is not a typical CEQA: In a typical CEQA process you have a Draft EIR and a Final EIR. The linkages are very clear between documents there. One of the things that's not as clear with your certified regulatory programs is exactly which documents kind of line up.

This is -- The red, again, is the linkage that is envisioned in the MOU. So Commissioner, on page 13 or 14 of your MOU there
is a time line that shows your activities lining up with the BLM activities. And that is exactly what this document is intended to show. That the Draft EIS would be the Preliminary Staff Assessment and the Final EIS would be the Final Staff Assessment.

What we have suggested now, moving to the green document. And again, these are all the same time lines so you can literally lay these things side by side if you would like to see how they line up. Is that the linkages between the two processes can come at a later date. And for reasons we will explain, we think it is better if they come at a later date.

I the compromise schedule what we have suggested is that the Draft EIS be equated with the Final Staff Assessment. I think there are a lot of good reasons to have that linkage between those two documents. The Final Staff Assessment is always better than the Preliminary Staff Assessment, that's the way the process has been moved forward. You have a workshop period and comments on that preliminary staff document. It is intended to be the staff's testimony for the proceeding moving forward.
So in making the linkages between the documents in this scenario we have the Draft EIS linked with the Final Staff Assessment and we have the Final EIS linked to the Presiding Member's Proposed Decision. So we have just moved back in time the linkage of those documents.

HEARING OFFICER KRAMER: Let me pause you there for a second. I think I heard staff this morning saying they were willing to go along with the green schedule. Is that correct, Mr. Ratliff?

MR. RATLIFF: That is correct.

HEARING OFFICER KRAMER: In concept.

MR. RATLIFF: I think this is replowing ground that we have already been over.

HEARING OFFICER KRAMER: I know Commissioner Boyd needs to leave at about 10:30 so I wonder if we need to discuss that point much further. It appears to have been conceded already.

MR. HARRIS: We'll move on.

MR. RATLIFF: We concede nothing but we have agreed to the schedule. We think it works. And we think there are certain advantages to it and we think it gets to the end process faster.
HEARING OFFICER KRAMER: Now to be fair to the intervenor. Ms. Gulessarian, were you intending to object at all to the process that the staff described and Mr. Harris is calling the green process?

MS. GULESSERIAN: No. I mean, this is the first time and we don't have the documents in front of us. But as I understand, the Draft EIS coming out with the FSA. That would not be, we wouldn't have any objections to that.

HEARING OFFICER KRAMER: I think that's all the parties.

MR. HARRIS: Okay. Well, as a long way of teeing up my first, my first point, I think it is important, though, that we all recognize that this is an improvement on the existing process. One thing that it does allow you to do is to issue that Preliminary Staff Assessment then, as really as an Energy Commission-only document. So the first place we were looking to potentially save some time is by getting that document out sooner than the staff has proposed in their compromise schedule.

The existing Committee Order has a Preliminary Staff Assessment coming out on 11/14.
That was our understanding from the document. We are hearing from staff now that that date is not holding. We would like to see -- We think we can gain up to a month by issuing that PSA sooner. Because what that will allow us to do is to have PSA workshops in December of this year. So that's the first, I guess significant potential savings of the three months we are looking for is having that Preliminary Staff Assessment out about a month sooner.

HEARING OFFICER KRAMER: Now do you feel that would allow the subsequent efforts to move forward as well?

MR. HARRIS: Yes, actually. We feel that -- The workshops are an Energy Commission-only activity. They are not required by the federal process and so you definitely control your own schedule there. We think you will be able to get those hearings and those workshops -- not the hearings. The workshops started in December of 2008. As opposed to, I think what staff is proposing being January. So there's a month of the three we are looking for right there.

HEARING OFFICER KRAMER: Then you must be proposing to move forward some of the other
deadlines like the publication of the Final Staff Assessment. Am I correct in that guess?

MR. HARRIS: You are correct, sir.

HEARING OFFICER KRAMER: Go ahead and explain that.

MR. HARRIS: The second area where we are looking to kind of gain some time is to cut down the time between this preliminary document and the FSA/FEIS or Draft EIS, excuse me.

In your typical schedule between the Preliminary and the Final Staff Assessment there's 60 days. From what we see from staff's proposal today there's, I think, four months so that's 120 days. We wouldn't necessarily need to have all that time taken back but there's probably at least a month and a half or maybe two months of time we could save by having that document, the Final Staff Assessment produced closer to the 60 day schedule that is typical for the Commission.

HEARING OFFICER KRAMER: So roughly what date would that be then?

MR. HARRIS: Roughly around February 1.

HEARING OFFICER KRAMER: I am going to ask staff to respond but I think it would be better if you would draw out all the other dates...
that were suggested.

MR. HARRIS: Okay.

HEARING OFFICER KRAMER: Your estimate for those.

MR. HARRIS: All right. So the Final Staff Assessment around February 1. The same
thing with the BLM Notice of Availability, around 2/1. A prehearing conference on 2/15.
Evidentiary hearings on 3/1. I am going to skip the Biological Opinion. I want to talk about that
issue separately if we could.

Moving down the next thing would be the BLM DEIS 90 day comment period closes. That would be 5/1. PMPD issued on 5/15. PMPD hearing on 5/30. PMPD comment period ends on 6/15. BLM NOA/FEIS on 6/30. Governor's Consistency Review 60 day period would end on 8/30, although the Governor could act sooner. The second page. I need to check the 30 day protest period. I have it as 7/30 in my schedule. Resolution of protests, 8/30. Energy Commission Decision 9/1, ROD 9/1, BLM grant 9/1.

And some of those dates may be Saturdays for all I know. We were working on this this morning. But those are roughly the dates we are
looking at. So the main places we pick up time
are really one month at the issuance of the PSA,
which we had anticipated on 11/14. And a couple
of months between the PSA and the FSA through your
scheduling purposes.

PRESIDING MEMBER BYRON: And just so I
can understand. The staff dates that are on the
first document, Mr. Ratliff, that you handed us.
Are those real dates or are those rounded dates as
well? When I say rounded I mean, Mr. Harris
obviously indicated he hasn't really had a chance
to even look at a calendar. He's just doing two
week intervals it seems, between each of these
dates.

MR. McFARLIN: I think we would have to
truth it but I think they should be, there may be
one or two that falls on a weekend, we'll have to
truth those. We'll do that before we docket it.

PRESIDING MEMBER BYRON: So they haven't
been truthed.

MR. McFARLIN: But this is pretty close.
This was put together Friday afternoon after we
met.

PRESIDING MEMBER BYRON: I'm sorry,
Mr. Harris, please continue.
MR. HARRIS: Those are the main points.

I guess the thing that we like about the schedule, and the reason I apologize for wasting your time going through the linkage in each document, is I think there is a significant opportunity for the two agencies to use the time in the remaining October, November and December and early January to figure out exactly what their documents are going to look like.

We have considered the possibility of a single document with a single cover. I don't know that there is even agreement among the staff and BLM about what the Final EIS will look like. We'd like to hear a little bit more from staff on that. It could be a single document with a single cover. It could be a compilation of multiple documents as was the case in the Sutter Project that WAPA was the federal lead agency.

But in any event, those are the critical linkages we are looking to make. We think that there is a real opportunity for staff and the BLM to use that time between now and the end of the year to figure out exactly what they want the documents to look like. We have opinions on that but there's many ways to do that. We think that
time is well-spent allowing the PSA workshops to go forward.

HEARING OFFICER KRAMER: Okay, we'll come back to the Biological Opinion. Staff, do you want to respond to Mr. Harris' proposals?

MR. RATLIFF: Well, Commissioners, I would like to speak to them and I would also like Tom Hurshman to have a chance to speak to them as well. I think the first suggestion that you heard was that we accelerate the process for putting out the PSA and to initiate the workshops. Their schedule would have the PSA being issued more than a month before ours would be. We don't believe that's practical from a process --

PRESIDING MEMBER BYRON: Mr. Ratliff, didn't we in our September 12 Order stipulate a date for PSA completion of 11/15, November 15?

HEARING OFFICER KRAMER: I have the 14th and that came from staff's status report, I believe. So has something changed between your last status report and today that makes you need the extra time?

MR. McFARLIN: Yes. That status report presumed that -- well again, keep in mind we are moving forward on a joint document the entire
time. And at that point we presume that primarily
the biological information would have been full
and complete at that point. That is still no
longer the case. So that's been the driving
force. We thought up until, on the process we
were on that was the driving mechanism at that
point. So we have been focusing our efforts on
resolving that so that we could get to the point
of the joint document.

If we go with just a PSA only, obviously
that is no longer a limitation. But then we need
to, today, turn around and rework those documents.
Step back a foot. You would have, obviously, a
gap in the biological information to be sure. So
this would allow us one week from today to
reorient staff's direction, two weeks for staff to
revise the document. And that would allow for
some review by CEC management and BLM prior to
formatting and publication.

MR. RATLIFF: So Commissioners, I think
it is possible to get the PSA out relatively
quickly, given the fact that we had until this
week and thought that it would be next year that
we would be putting it out. We are now going to
be changing our focus rather quickly to try to get
the document out as quickly as reasonably we can. Finishing up the sessions that are unfinished, leaving unresolved certain issues in at least a couple of areas, like biology and transmission planning. But trying to get a document that is useful to the public and that BLM has had an opportunity to review and find no major disagreements with, out as quickly as possible.

But the fundamental thing about this document, this PSA document as reflected in the sheets that BrightSource distributed to you earlier, is that it is really extraneous to the federal process. And I don't think whether we put it out November 14 or December 15 is going to change much in terms of how fast we get to the end of the process. I think it really is beside the point so I don't want to spend too much time arguing about how possible whether we could get it out three days earlier or one week earlier or whatever it is because I don't think it matters.

I think what is the critical path here for getting to a license is the Draft Environmental Impact Statement and the Biological Opinion, which appears further down the list. And we have it in the schedule as being a March 3
document. The question that arises, and perhaps
Mr. Hurshman can address it better than I can, is
to how difficult it is to get it out by March 3 or
how much we can accelerate that process. I am not
entirely sure. This is not entirely within the
Energy Commission staff's power to say when that
is going to be ready.

One of the issues which in our
discussions, it is my understanding has to be
resolved for the biological assessment will be
accepted by US Fish and Wildlife Service for the
beginning of the Biological Opinion process, is
the issue of what will be done with the tortoises
that have to be relocated, first of all. And
second of all, what is going to be the mitigation
for the disturbance of that endangered species'
removal from that area.

Those things I think we had previously
thought could be deferred until a later point.
But our understanding now is that those will --
clearly now that we are switching the FSA to being
that document it has to be determined by the time
our FSA comes out and it has to be determined by
the time the DEIS, that joint document comes out.

That takes a coordinated agreement
between state agencies and federal agencies about
the appropriateness of the mitigation that is
being discussed. And so the Department of Fish
and Game, the US Fish and Wildlife Service, the
Energy Commission's biological staff and BLM staff
will all be meeting to try to work out what that
should be. But it hasn't occurred yet. And it
has to occur and it has to be resolved in time for
that document to be published.

Now my understanding is that it is ambitious to have that done by March. It may be possible that it can be done faster. But I would like perhaps Mr. Hurshman to give his view on that as well.

MR. HURSHMAN: Thank you. Actually that was a very good summary. We have been in discussions with the Fish and Wildlife Service and we have a much better idea of what they are looking for in their document.

But there are a lot of decisions that need to be discussed between state and federal agencies in order to put together the completed biological section for a Draft EIS. And at this point I think our March, early March time frame that we put on this probable date projection is
probably a best case situation for how long those things are going to need to put it together.

And from a federal process point of view, BLM is in a little bit different situation than the Energy Commission is perhaps in terms of releasing a document that is not a complete and full analysis. When we put our Draft Environmental Impact Statement out it does need to contain those measures in there, just as if it will be a Final Staff Assessment for the Commission. It does need to have a complete analysis of what the appropriate mitigation is going to be for the project.

So from my perspective as Project Manager, the March 3 time frame is probably a best case as to when all of that can take place. In addition to the biological section there is a number of other issues that have yet to be worked out regarding mitigation in the full description of the project. And those things will just take time to pull together with other agencies.

HEARING OFFICER KRAMER: Okay, thank you. Did you have anything else to add, Mr. Hurshman?

MR. HURSHMAN: Well, I assume we will go
down the schedule and get into a discussion of why some of the dates between when say a Draft EIS and a Final EIS should come out. I'll address those at that time.

HEARING OFFICER KRAMER: Mr. Ratliff, did you have anything else to add or should we go into that right now?

MR. RATLIFF: Well I think perhaps you should because, I mean, I could go down it as well. I think the dates that follow from the issuance of the Draft Environmental Impact Statement/FSA are dates that are very optimistic. In some cases they may be possible, in some cases they may not be. But I think they are all dates which understandably have been chosen because they get to a set, final point by a time that BrightSource feels they need to have a decision.

And we are sympathetic to that. I understand why they need to get to that decision and we would like to make it happen if we could. But frankly I don't think that they are realistic ones. And if we say that we are going to meet those dates I think we will be back probably arguing about the dates again.

I am not sure, frankly, that even if we
did meet these dates that it would get you to a
position, would get BrightSource to a position to
do the biological relocation work that they are
talking about in the time frame that they are
talking about, in any case.

Because even after the Energy Commission
process is finished and our license presumably has
been issued, there will still be a protest period
for the BLM ROD, which according to BLM is almost
predictable. And that is another period of I
believe -- Tom, correct me if I'm wrong, I think
90 days, which gets tacked on to the schedule
before that ROD gets issued. And I believe that,
again tell me if I am wrong, Tom. I believe that
that construction and relocation cannot begin
until the end of the protest period.

MR. HURSHMAN: That's correct.

MR. RATLIFF: So I am not sure you can
meet that, even with the applicant's schedule.
I'm not sure you can serve that purpose. But even
if you could I don't think that this schedule, the
alternative dates that are being proposed onto our
schedule, are ones that are likely to be realized,
even under a best case.

HEARING OFFICER KRAMER: Mr. Hurshman,
did you want to add anything about the dates?

MR. HURSHMAN: Sure, I would. The other factor that involves, that we see that plays into this March 3, '09 joint document date has to do with the BLM review period on the Notice of Availability. That is a fairly lengthy process that takes place outside the realm of what BLM can control at the state level here, where those notices do have to be approved by our Washington Office and sent over to the Assistant Secretary for approval. And my experience with those is that those time frames are very long. A typical process is an eight to ten week process.

And so the, you know, it places a burden on BLM locally to prepare briefing papers and spell out what is going on with this project and therefore we pretty much have to have those mitigation requirements spelled out to be able to start our Notice of Availability review process. So again that plays into the practicality of making it fairly impractical to move that March 3 date up any sooner.

As we follow down the list here, what staff has shown as a probable date projection on our schedule is roughly a seven month period
between the time a Draft Environmental Impact Statement is published and the time that a Final Environmental Impact Statement can be published. And the reason for that lengthy period of time is that there is a mandatory 90 day public comment period on the EIS because of the BLM Plan Amendment that takes place.

(Whereupon Associate Member Boyd exiting from the Hearing Room.)

There will be a certain amount of staff time required to analyze those comments and respond to all of those comments and actually then prepare the Final Environmental Impact Statement. Again, before that document can be published I have another very similar, lengthy Notice of Availability review process that has to take place. And basically we have to summarize what the comments have been, what the issues are at that point and what the final document says.

So seven months is probably the minimum time frame that BLM needs to be able to respond and actually be able to publish a Notice of Availability for that Final Environmental Impact Statement. So while I appreciate Mr. Harris' wanting to shorten that time frame down in there,
I just don't see that BLM can make that happen through that NEPA process any faster than that seven month time frame.

When the Notice of Availability does come out for that Final Environmental Impact Statement it does initiate a 30 day protest period for the plan amendment portion of the decision that BLM has to make. Again, our staff, you know, you know, probable day projections here, are kind of betting that that -- we are making assumptions that no one is going to file a protest on that plan in order to reach our estimated November 3 decision date for that Record of Decision.

I think it is -- You know, I don't how to guess whether or not protests will be filed. But we feel fairly certain that if there are issues that are unresolved with the public that is one forum where the public would question what is going on by the agencies and are likely to file a protest action. The resolution of those protests is not done locally, that is also done by the Director of BLM. So the time frame involved in reviewing those per BLM guidance is a minimum of 90 days. So again, that's --

If a protest if filed it does carry the
decision date for BLM, the soonest decision date, over into the first quarter of 2010. And so there's very few options BLM has available to be able to expedite the schedule much sooner than what we have shown on the staff version.

MR. HARRIS: Mr. Kramer, could I respond to a couple of things?

HEARING OFFICER KRAMER: Mr. Harris.

MR. HARRIS: First off I guess I want to emphasize one thing. Friday is day 365 of this siting case. It is our one year data adequacy anniversary on Halloween, so you can make your own joke up there I guess. And that's one of the reasons, I guess, when I hear people talk about moving the schedule along, you know, from our perspective we are moving fairly slowly. We are, like I said, one year into this on Friday.

I understand the concerns about the biological issues. The biological issues are the largest issue in the case and recognize that. I guess I want to make a few points. Number one, biology is one section of 23 or 24 in the Preliminary Staff Assessment. It's a single section. We haven't had data requests on air quality, for example, since May. It seems like
there's a whole lot of sections that are probably ready to go.

Additional contacts on the biological issue as well. You know, we prepare a biological assessment and submit it to the agencies. And I mean by agencies to mean state and federal resource agencies for their review. We did that six weeks ago. It's completely out of our hands. And we are being told that things just can't move faster. I think there are meetings that are set for November 12 or 13. So in the future three to four weeks to talk about that biological assessment.

We have heard indirectly that staff, you know, has concerns about the information that has been provided but we haven't heard anything for six weeks. So I guess I want to make sure that we are all clear that we are only talking about one section here and we are talking about something that is now in the agency's control and not our's.

It is very clear that we have to have a Biological Opinion, not a BA, a Biological Opinion before there is a ROD. That is absolutely the legal requirement.

And one of the things that I think you
all need to do as a committee is distinguish
between things that you can't do legally and
things that people are telling they don't want to
do as a matter of policy. You can proceed down
this course with the Biological Assessment.
Moving as it is moving now we definitely need it
pre-ROD but it is not an obstacle to writing other
sections. It is not an obstacle to getting out
the staff's preliminary document.

One of the reasons to have workshops in
December is to take issues off the table. And as
I said, biology is one of 23. By the time we get
through the draft, you know, the Preliminary Staff
Assessment, we hope to be down to just a handful
of issues. That will expedite the process as
well.

It is clear that we will move no faster
than the schedule you actually set. If you set
something that assumes a seven month period it
will take seven months and we will face issues
about whether, can you accelerate those things
once they have been set. We realize that things
may happen that are unforeseen but clearly you are
not going to get things to move faster than the
schedule you set.
We think it is really important to get
the first document out the door. We are, I guess,
surprised to hear that 11/14 isn't a real date. I
am also surprised to hear that somehow the staff
has to reorient that first document. I don't know
what that means exactly. It's an Energy
Commission document that will be workshopped. And
the value to us is getting issues off the table.
And that's how we think we are going to move
things along more quickly.

So being in a hearing room in December
to talk about issues to get efficiency and, you
know, a power plant transmission licensing -- what
is it, TSLN, the safety and nuisance? Getting all
the little issues out of the way and focusing on
the real issues of the case may allow us to
accelerate some of these things.

I agree the biology issues are important
but they are not the ones that should be driving
the schedule, at least at this point. And if you
set a schedule that assumes failure we will never
move any faster than that.

MR. HAUBENSTOCK: And on the other side,
if we set a schedule that shows what we can do and
we do everything we can to live up to it, if
things happen that are beyond the agency's control
or beyond BrightSource's control, that will be
self-explanatory. But if we set a schedule that
is less than the optimum and it is less than what
we are capable of -- I know, for example, that
NOAs can move quite a lot faster.

I understand that given the current
state of resources it would be a difficult thing
to do in less than seven months. But this is our
opportunity to show what the agencies are capable
of doing. What we are capable of doing to show
that RPS renewable energy is actually really a
priority and that we are going to do everything we
can to move it forward as quickly as possible
while, again, remaining environmentally
responsible and making sure that we are doing this
the right way.

We are not looking to cut any steps, we
are not looking to do anything any faster than can
be done. But again, I very much appreciated what
Mr. Ratliff opened up the hearing with, which is
that there are areas in the schedule that we
really can cut back. And what we really would
like to see is a schedule that shows what we are
capable of.
HEARING OFFICER KRAMER: Okay. I have a question for staff. If the PSA were produced in mid-November as the current schedule has it. Let me ask it another way. If it were produced in December as you are proposing how would it differ from a PSA that you produced in November? I am gathering that the biological issues aren't going to be that much clearer during that one month period. What would be the advantage to waiting?

MR. RATLIFF: I think there are a couple of things that have to happen. One is that I don't believe our biological section is written yet because it was waiting for, it was waiting to be the Draft Environmental Impact Statement. So although there has been a great deal of work in that area and a great deal of attention focused on it there isn't actually a draft, to my knowledge. I certainly haven't seen one. She can speak to this as well but I haven't seen one.

And I think that would have to be put together and completed as quickly as we could do it. Recognizing that the person who has been assigned to this is now out on maternity leave, that doesn't make it any easier but we would still get it done. We have to get it done without her...
now.

Secondarily, if we put it out in two weeks this makes it almost impossible for management to review it, or at least review it with any care. And it makes it almost impossible to get any kind of consultation with BLM because our intent has been to move in parallel with BLM and have them on board with our analysis.

And I don't think there, frankly, would be time for the BLM people to react to our draft if we said, we are going in two weeks. They certainly could not react to the ones such as biology because that still has to be completed. So I think it would put the PSA in a more perilous state if we had to go forward without, you know, even internal, you know, proper internal review or BLM review to get that document out. But I'll let Che speak to it further because he is more the nuts and bolts guy on getting the document finished.

MR. McFARLIN: I was just going to say I think Dick captured it nicely. He is absolutely correct about the -- what I was leading to earlier about we were presuming there would be information
available allowing us to complete some of that analysis on that joint process. That has been what we have been trying to resolve.

If we change paths today we will have to go to the biology in particular and wrap that up in some form or fashion. It won't be in the form that it would be for the Draft EIS but it will be something that allows the public to be as informed as possible given what we know today about the status of that subject area. So that is the primary driving mechanism behind what we are proposing today.

HEARING OFFICER KRAMER: But is that section going to be appreciably more informative if you wait until December to publish it?

MR. McFARLIN: I would say that it allows a couple of weeks for that to be completed to start the review of BLM and CEC, which would proceed concurrently. And so that section currently isn't written up, hasn't been reviewed because of this very reason. We are trying to resolve the informational need such that it could be put together in this joint fashion for review. So now today we are saying, hey, stop now, don't pursue all that other information. Wrap it up as
best you can today, produce that in the next
couple of weeks and then start the reviews.

HEARING OFFICER KRAMER: But if it comes
out in December you do not expect it to be
complete and ready as a DEIS?

MR. McFARLIN: No, not as much as the
Draft EIS would be. But I think that given the
path the agencies are on with resolving or trying
to resolve some of the questions in early
November, it would certainly get us further to
that. But of course the section would have
already been written up by that point in time so
I'd have a hard time saying, you know. I don't
think it would be entirely complete but it would
hopefully be substantially so. At least to allow
the public and other agencies to have enough
information to have a real discourse on the
subject.

HEARING OFFICER KRAMER: And would there
be any advantage to perhaps producing a PSA
without the biological section and then maybe
producing that section in the next month?

MR. RATLIFF: We wouldn't want to do
that because biology has been the issue which has
drawn the greatest attention, the most public
comment and presumably the most controversy. To put out a PSA that addressed everything else would be, I think, a mistake.

And I do think that there is important information that we can provide in a PSA now about the nature of the impacts that would be of great use if we do put it out and we do begin the workshops to include biological resources. I think to leave that out would probably reduce the value of releasing the document at all. So our preference, I think, is to have that be part of it. I think a great deal of discussion and attention has gone into the area, it is just that the document is not complete in a form that is ready to be reviewed.

MR. HARRIS: If I could. That is always staff's preference. I guess I would make a couple of observations. Number one, you know, the legal obligation is to produce a single assessment. A draft, a Preliminary Staff Assessment and a Final Staff Assessment is by practice, it is not by statute or regulation. So we have a lot of flexibility.

In the past you have what they usually call bifurcated a PSA. And there is no reason
that if that section lags that you couldn't notice
a further workshop on that one section. I do
think there would be a lot of value in getting
those other sections out in front of people so
they can take a look at them, figure out what the
issues are and get those issues off the table
which would make the overall process move more
quickly. So we would not object at all to the
idea that some of the sections may lag. And that
is one of our overall themes in this entire
process is we don't want the lagging item to be
the one that drives the schedule.

PRESIDING MEMBER BYRON: But don't you
agree, Mr. Harris, with Mr. Ratliff, that the
biological section of the PSA is, in fact, the key
section?

MR. HARRIS: Do I agree that it is the
key section of the environmental review document?
Yes, it is the most controverted issue in the
case. I mean, it is a large project with a large
footprint. I guess the point is they do have to
come together eventually. I think when you get to
the DEIS stage you are going to need all the
sections together in a single document. And at
that point BLM will have started their processes.
And really what we are talking about in
November and December is an Energy Commission-only
process, which I think gives you the flexibility
to bifurcate this thing if you need to. It is
important that the Draft EIS cover both those
sections. But I think in December we can probably
get through most of these sections and take them
off the table.

MR. RATLIFF: Could I respond to that?

HEARING OFFICER KRAMER: Mr. Ratliff.

MR. RATLIFF: I think Mr. Harris' point
that the PSA is optional is correct. And I think
it well illustrates the extraneous nature of the
data of that release as it affects the actual
schedule. We could do no PSA at all and have no
workshops on those issues and still the issue for
the overall schedule will be the issuance of the
Draft Environmental Impact Statement and the staff
FSA.

So, I mean, whether we dump the PSA
entirely or whether we bifurcate it, which I think
would be a mistake, or whether we go ahead and
issue it in the time frame that staff has proposed
to do so, it is not going to make any difference.
You aren't going to gain any time because the real
issue is when the Final Environmental Impact
Statement comes out.

Now one caveat to that is I think that
by putting out the PSA and by having it be as
complete a document as we can make it now, I think
we will get feedback that will make the FSA a
better document for the DEIS and which will allow
us to respond more fully to the issue, to the
comments that we get from the public on the PSA.

So I think there actually is an
advantage to having the PSA as part of this
process. I think you may be aware of there have
been times when we have dropped the PSA or left
important parts of it out and not workshopped
those issues before we put out an FSA and usually
that added to the process later on.

My inclination I think the best way to
do this is to go ahead and put out the PSA as soon
as we can but as a complete document with the most
important issue in it to go ahead and have
workshops on that. But in the meantime try to
make sure that the real critical path item for the
overall schedule, the Draft Environmental Impact
Statement/FSA, is proceeding because the
biological agencies are working out the issues of
mitigation and relocation.

HEARING OFFICER KRAMER: That leads me

to another question, which is about -- I think the
Committee would like to get a flavor for what,
what other unresolved issues are lurking out there
and how they might affect the progress of the
case. And that could be just areas of dispute, if
the parties could briefly summarize those. But
also if there are any open or unanswered data
requests that we might find out later if they are
not answered or dealt with properly will further
delay the schedule. I'll begin with the staff.

MR. McFARLIN: Yes, I mean, to date

staff has identified all their informational needs
for the PSA and the applicant has been responsive
and provided that information. And I think
there's a couple of items, although I couldn't
pick them off the top of my head, that need to be
addressed to some greater level of detail prior to
the publication of the Final Staff Assessment but
I don't have a list of that information here in
front of me today. There's just a couple of, you
know. There's just a lot of minor questions.

For socioeconomics, is the, you know,

the optimization plan that came about in May, does
that change any of the construction, you know, projections and things like that. So there's a lot of just those minor pieces of information which we didn't think were necessary to be pursued at this point, given that our focus was on trying to produce a PSA document. Those seemed to be rather extraneous details. The biology thing just goes on and on and I couldn't even speak to all the complexities of that. But we are waiting.

HEARING OFFICER KRAMER: What about the transmission issues? I think somebody specifically mentioned that.

MR. McFARLIN: Transmission issues. We have seen parts of the System Impact Study to date, not in its entirety. We have some scant information upon, you know. Obviously that is not part of this action but that's an indirect part of the project. And we would like to see the full and complete System Impact Study so that we can be assured that that is the extent of the work that is needed. Which SCE should be filing a preliminary environmental assessment with the CPUC in the near future and we hope to use that document to better inform the FSA as well.

HEARING OFFICER KRAMER: So it may be
the case that you will be summarizing the impacts
of that project as part of your analysis?

       MR. McFARLIN: Yes, yes. Just to inform
everyone of, you know, of likely, you know,
projects down the road.

       HEARING OFFICER KRAMER: Mr. Harris.

       MR. HARRIS: Just to reiterate what Che
said. I think we've responded to all the data
responses, the data requests. There's nothing
outstanding from us in that regard. The
transmission issues, as he has characterized it.
We have two of the SISs and the third one is any
day, depending on Edison's ability to deliver to
us. So again we are hung up with something else
there. But the minor kind of things that he is
talking about, the workforce and those kinds of
things, are exactly the kind of issues that are
ripe for workshops in my mind.

       MR. RATLIFF: Just to clarify the
transmission issue. We hope that transmission
won't be an issue. We expect that it won't but
there are some pieces that are still missing.

       There is a three phase, as I understand it. I
hope I characterize it correctly. A three-phase
System Impact Study which has to be performed for
this project. Two phases have been performed, one is still outstanding, and we are waiting for that. That should answer all of those questions but that hasn't arrived yet.

Other issues I think to me seem to be relatively small and I don't think they would be controverted at hearing. At least they wouldn't be by the staff. Eric is looking at me. Do you want to say --

MR. KNIGHT: No. No, you're fine.

MR. RATLIFF: No? Okay, no problem with that. So we don't expect there to be other big issues. There are some issues regarding cultural resources and the assessment of one particular resource that hasn't -- I think we haven't received that, is that correct?

MR. McFARLIN: Yes and we are moving forward as best we can with the PSA. And that would have been something that would have been needed for the joint PSA/Draft EIS document.

MR. HARRIS: Was that the cultural issue you just referenced?

MR. McFARLIN: Yes, that we were, that was going to be part of the joint document.

MR. HARRIS: Just for your edification.
The outstanding cultural issue is something that has to be filed under confidential seal and will not be discussed at the hearings. I don't think that is probably holding up the publication of the public document.

And to be honest too, we agreed to do some additional work at a workshop on the express condition that it would not hold up the environmental document. But it is not going to be an issue. We have got the preliminary results to staff and they are going to get the final results and it will go safely into your vaults and be hidden from the public as it should be to prevent the resources from being impacted.

HEARING OFFICER KRAMER: Commissioner Byron, did you have a few questions?

PRESIDING MEMBER BYRON: Well, I think we are probably getting close here. Yes, I think we are probably getting close here and I do have a few things I want to get some clarifications on.

You know, some of the things that go unstated here is that I really appreciate the efforts of staff and BLM to work with the applicant to see if there is a way that we can improve the schedule. That was agreed to as part
of the Memorandum of Understanding that these two
agencies entered into I think well over a year
ago. So just starting from that point.

As I understand it, and I was trying to
jot down dates as Mr. Harris was going through his
discussion on the schedule. It looks to me as
though the best effort here is to take about a
month out of the PSA issue date and then maybe a
month of what I'll call optimism in terms of
setting the fastest schedule that we can.

If I recall, Mr. Harris, you indicated
the BLM -- everybody says ROD. That's Record of
Decision, correct? Would be issued by your
schedule around September 1, which is about two
months ahead of the staff's schedule. And you
started off by saying that there was as much as
three months as we could get out of the schedule
but I am not sure that is correct. Two months,
correct?

MR. HARRIS: Based on my chicken scratch
from the document I saw this morning, yes, that's
correct.

PRESIDING MEMBER BYRON: Okay.

MR. HARRIS: One of the things we are
going to do is go back and make sure we hit all of
the legal requirements. There are very few legal
requirements, as you know, in the schedule but a
lot of practice.

PRESIDING MEMBER BYRON: And I also
appreciate the comments made by the applicant that
we can't move faster than the schedule we set.
But of course the reason we are here today is to
see if we can set a schedule that we could
realistically meet. Because I am not interested
in an unrealistic schedule that just looks
optimistic on paper and two or three months from
now we find out that all we were doing was setting
an impossible goal here.

I have some more fundamental questions.
If we go back to the linkages of the Draft
Environmental Impact Statement to the Final Staff
Assessment. Have we thought through -- And the
other linkage, the Final Environmental Impact
Statement linked to the PMPD. I suppose my
question is to staff. Have we thought through all
the implications of this? Are you comfortable
that those documents can perform? And maybe this
question goes to the BLM as well. Are you
comfortable that those documents can indeed
perform each other's agency obligations?
MR. RATLIFF: Yes.

MR. DOYEL: I believe so.

MR. RATLIFF: We haven't decided exactly how that compilation of documents will look but we think --

PRESIDING MEMBER BYRON: It may take on a slightly different form and appearance as well then.

MR. RATLIFF: Yes. We think that it can serve the legal purpose, the legal requirements of the federal Final Environmental Impact Statement.

PRESIDING MEMBER BYRON: Good. And I would like to acknowledge that as a major con -- I'm sorry, agreement. Because I know, Mr. Ratliff, you said you concede nothing.

(Laughter)

PRESIDING MEMBER BYRON: But I think that is a major agreement and I think that is very helpful. And you had indicated, Mr. Ratliff, a number of risks associated with these linkages and accelerations. Could you go into a little bit more detail there? Are we risking a schedule or are we risking our ability to do our jobs here?

MR. RATLIFF: I am not sure how I used that term so I am not sure what the question was.
I think when I spoke the first time I said that we had discussed with the applicant and with the Solicitor General for the Federal Resources Agency the issue of how to avoid the necessity of having to do a supplemental EIR if it should turn out that the project or its mitigation should change in any substantial way between the -- going with the original schedule for the issuance of the FSA/Final Environmental Impact Statement and the PMPD at the Commission.

There is always a possibility that new issues arise after the FSA is issued. There is always the possibility that the PMPD resolves the issues differently than the staff would have or the staffs in this case would have in the FSA. And if that should occur the Solicitor General believes, and I agree it's plausible, that you would have to do a Supplemental EIS, which would add considerably more process time to the overall process, to the end point that BrightSource wants to get to.

The hope and the belief here is that by using the PMPD as part of the Final Environmental Impact Statement you will avoid the potential necessity for that kind of supplemental work. And
BLM in the end agreed that that would be something that they think will work for them. And that is what is important to us because we can do it either way. But the important thing is that it has to work for BLM and in the end they said that it could.

So I don't know quite how I used the word so I am a little unsure if I am answering the question. But I think when I used the term risk I thought I used it to indicate that the schedule we have now agreed upon does eliminate certain process risks that we hadn't really considered when we did the original MOU.

PRESIDING MEMBER BYRON: In fact that was another question. Are we going to have to revise the MOU and will that impact the schedule at all?

MR. RATLIFF: I don't know the answer to the former but it certainly -- I don't think it impacts the schedule if we have to revise it. And since we have arrived at this one in concurrence with BLM and it has not been forced upon them I don't think that should be a problem.

PRESIDING MEMBER BYRON: Well my primary interest, besides this project of course, is that
it is the first of what we hope will be many.

That is really my primary interest in making sure we set a reasonable schedule but one that we feel very confident we can meet for future projects as well. So I know we are learning as we go along here so that's why I asked about the MOU. Perhaps it can be revised following the completion of this project. Although we have more projects coming. They are already --

MR. RATLIFF: Right. And we will probably want to go back over it with BLM as to whether they think it is appropriate to revise it. But if we do so it will be on a different path that we do that.

PRESIDING MEMBER BYRON: Okay.

MR. HARRIS: Commissioner, if I could on the point of revising the MOU. I don't think you have to revise the MOU. In our filing of whenever it was, I'll give you the date, I think it was the October 14 filing. We quote out of the MOU. There is a section that talks about the flow chart at the end. And it is Attachment B and quoting from the MOU.

"Attachment B consists of a flow chart describing how the
integrated CEC/BLM process is expected to function. This flow chart may be modified by agreement of the parties without amending the MOU as we continue to work the process."

And that is from page three of the MOU.

So I think you actually had the foresight to create a living document there so I don't think you need to worry about amending the MOU.

PRESIDING MEMBER BYRON: Okay, thank you. And I guess it is not really a question but I do take Mr. Hurshman's comments to heart as well when he said that we have probably a seven month minimum time required by the BLM in order to conduct their review process. We are quite concerned that we don't do anything to short-change either agency's processes here.

I was given a copy of a letter this morning that I am sure Mr. Hurshman has as well from the Western Governors Association signed by a couple of Governors to the Director of the BLM, Mr. Jim Caswell. Asking them to do everything they can to assure all applications, and these are for solar projects, are promptly reviewed and
final decisions are rendered as quickly as possible.

So I think all the agencies are feeling sufficient, say we say encouragement, to expedite these. I am hopeful that that would shorten the review time for some of the, and I am sure I will get my acronyms wrong, NOA or NOI that the BLM has to do that he indicated earlier this morning could take as much as eight to twelve weeks, I believe, back in Washington DC. So I am hopeful that that could be expedited as well.

I guess I only have one other question and that is, is the applicant aware of a letter that was written, I believe about two weeks ago, from Pacific Gas and Electric to Governor Schwarzenegger with regard to the financial crisis and how some of these projects may be affected.

MR. HARRIS: I looked at that letter, yes, it came into my email. But I would be lying if I said I read it closely or without bias.

PRESIDING MEMBER BYRON: And I have read some responses since then as well. It seems to be a pretty self-serving letter in that it indicates the investor-owned utility may be the only agency, or let's say company, capable of doing these kinds
of projects in the future.

    Have you had opportunity to discuss what
is driving all of this is the power purchase
agreement that you have entered into -- Have you
had opportunity to discuss with this particular
utility, which happens to be the one, I believe,
that you are contracting with on this project,
whether or not there is any latitude in that power
purchase agreement schedule that is driving all
this discussion right now?

    MR. HAUBENSTOCK:  The contract with PG&E
is currently before the Public Utilities
Commission for its review and we have not engaged
in any negotiations with PG&E further to that
contract.  We know that PG&E is relying on that
contract and many others to achieve its RPS
compliance.  And it is certainly our hope and our
expectation that we will work together with PG&E
and with the state agencies and federal agencies
to try to move forward to try to get that energy
on-line as quickly as possible.

    PRESIDING MEMBER BYRON:  Well,
Mr. Haubenstock, thank you for your answer and I
don't mean to put you on the spot.  We are all
working here diligently to do this as quickly as
we can. We are going to be issuing a Revised
Order here, I think, based upon the information
that we have gotten today. But let's just say
that the company that is entering into this
agreement to purchase your power has a role in all
of this as well. So we will be looking to them
for what they can do to help us as well in this
process.

MR. HAUBENSTOCK: Absolutely. And we
will be working with all stakeholders. And we do
very much appreciate not just the staff's
tremendous work and willingness to look at things
in a new way but also the Commission's and the PUC
and PG&E's willingness to try to work with us to
try to get this, again, done as quickly as
possible and done in the right way. So thank you.

PRESIDING MEMBER BYRON: Thank you.

HEARING OFFICER KRAMER: With that,
Ms. Gulesserian, did you wish to make any
statements on behalf of Intervenor CURE?

MS. GULESSERIAN: No, I do not have any
comments, thank you.

HEARING OFFICER KRAMER: Let's see.

Mr. Hurshman, you have already spoken.

Mr. Thompson, you were just observing, is that
correct? He is probably muted.

PRESIDING MEMBER BYRON: Mr. Hurshman may have further comments. Do you?

MR. HURSHMAN: I guess -- You asked a little bit ago how the staff felt about kind of changing the direction on here. And I guess I would respond by saying that BLM does feel very comfortable that our process here to align our Draft Environmental Impact Statement with the FSA is -- we are very comfortable with that and we think that that will make an adequate document. It will explain to the public and will make a good, complete record.

I personally have more question marks in my mind just because we have not had the staff time to be able to ferret out exactly what our Final Environmental Impact Statement will look like and how we would suggest melding that to one degree or another with the PMPD.

I guess it is fair to point out that if there are major differences that are developed through the PMPD public process that would differ from what the Draft EIS and Final Staff Assessment say, that those are really going to need to be very closely coordinated with the BLM. Because it
would not do BrightSource or anyone any good if there were some sort of measures that were proposed different from the joint analysis that were unacceptable for some reason for BLM.

And I am thinking, you know, we could end up with some sort of a non-compliance issue with our land use plans out there that could be very detrimental to the project. So it will take some closer coordination with BLM and the Committee at the PMPD stage. And we not having experienced that we are still struggling a little bit visualizing that. But those are going to be discussions that we will have with the staff and with BrightSource over the next few weeks probably, as we are trying to work through exactly how these documents are going to be crafted.

HEARING OFFICER KRAMER: And we look forward to seeing you at our hearings so we can have those discussions in the public context that they have to be held.

MR. HURSHMAN: Exactly. BLM will definitely needs and wants to participate in those hearings.

PRESIDING MEMBER BYRON: Mr. Hurshman, I would like to reiterate my commitment to BLM that
we are trying to do a process here that does not just work for this project but works on all future projects. I want to assure you that we have your agency's requirements and the laws you have to fulfill in mind in everything we are doing here as well.

MR. HURSHMAN: Great, thank you.

HEARING OFFICER KRAMER: On my checklist I think that covers all the business we had before us today. Does either party wish to --

MR. HARRIS: There's a representative of the BLM here too, Bob Doyel. I don't know, Bob, if you wanted to say anything. We didn't introduce Bob.

MR. DOYEL: No. What I heard today I think was important and accurate and I appreciate everybody getting together and working together on this process.

PRESIDING MEMBER BYRON: Absolutely.

HEARING OFFICER KRAMER: Do we have any members of the public in the audience here who wish to make a comment?

Anything final from the staff or the applicant?

Hearing nothing I guess we will be
adjourned. Thank you.

MR. RATLIFF: One question.

HEARING OFFICER KRAMER: Mr. Ratliff.

MR. RATLIFF: Did I hear anything about the modification of the schedule coming from the Committee in those final statements? If so, I would like to make sure that we understand them. Commissioner Byron, are we with the dates that we have in the staff handout that we gave you or are we with something else?

PRESIDING MEMBER BYRON: Mr. Ratliff, I can appreciate your interest in getting an answer. We need to caucus here as a committee and we hope to get an order out in the next couple of days --

MR. RATLIFF: Okay.

PRESIDING MEMBER BYRON: -- with regard to our revised schedule.

MR. RATLIFF: Okay, thank you.

PRESIDING MEMBER BYRON: We do not want to be the cause of slowing the schedule down.

MR. RATLIFF: Okay.

MR. HARRIS: And we will -- I have given you dates orally and we will try to reduce those to writing and get them to you today so you will have those as well.

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PRESIDING MEMBER BYRON: That would be very helpful.

MR. HARRIS: We also want to make sure we haven't scheduled things on Saturdays and that kind of stuff.

HEARING OFFICER KRAMER: I think the schedule will be, it won't be as precise as a day. And if we do give a date in the schedule the parties are -- for workshops and stuff that we are not involved, you are certainly free to adjust it by plus or minus a couple of days to make it work for your own schedules.

Seeing nothing further we are adjourned, thank you.

MR. RATLIFF: Thank you.

MR. DOYEL: Thank you.

MR. HAUBENSTOCK: Thank you.

(Whereupon, at 11:07 a.m., the Committee Conference was adjourned.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of November, 2008.

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