EXCERPTS FROM BUSINESS MEETING

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 9, 2000

10:00 a.m.

Reported By:
Valorie Phillips

Contract No. 150-99-002

COMMITTEE MEMBERS PRESENT

William J. Keese, Chairman

Michal A. Moore

Robert A. Laurie

Robert Pernell

James D. Boyd, Ex Officio Member

STAFF PRESENT

Kent Smith, Acting Executive Director
Bill Chamberlain, Chief Counsel
Richard Ratliff
Stanley Valkosky
Kerry Willis
Connie Bruins
Eileen Allen
David Mundstock
Bob Hare
Bernard Trenton
Tim Schlemzer
Mark Rawson

Public Adviser
Roberta Mendonca

Secretariat
Lana Beckstrom

I N D E X

	Page
Proceedings	1
Item 1	2
Item 2	3
Jeffrey D. Harris Ellison & Schneider	12
Douglas W. Buchanan Delta Energy Center	13
John Gabrielli Californians for Renewable Energy	17
Emilio G. Varanini Livingston & Mattesich	31
Discussion	46
Joan J. Wood	54
Jim MacDonald Pittsburg Unified School District	61
Robert Williams	67
Jane E. Luckhardt Downey, Brand, Seymour & Rohwer	69
Adjournment	140
Certificate of Reporter	141

CHAIRMAN KEESE: Opposed?

Adopted, four to nothing.

Item 2, Delta Energy Center Final Decision. Possible approval of the Presiding member's Proposed Decision on the Delta Energy Center as proposed by Calpine Corporation and Bechtel Enterprises, and possible granting of the certificate that would allow construction and operation.

This is an 880 megawatt gas-fired power plant to be sited in Pittsburg, California. The Committee has recommended certification.

At this time I would like to mention that Joe Hawkins has asked to be involved telephonically with us. We accommodated, and let him know that he could be connected. We received a e-mail this morning at 5:56 a.m., indicating that 10:00 o'clock was too early for Mr. Hawkins to get up, and that he will probably not be participating telephonically.

COMMISSIONER MOORE: Mr. Chairman, just to clarify that. Mr. Hawkins is a resident in the area?

CHAIRMAN KEESE: I believe he is.

25 COMMISSIONER MOORE: And did he

participate during the hearings?

CHAIRMAN KEESE: He has participated in the hearings. He has asserted a disability, the high -- the toxicity -- toxics affect him seriously. We had -- we had alerted him to this hearing and we've made every arrangement for him to participate, and he's chosen, evidently, not to --

COMMISSIONER MOORE: I understand. My question to you is that the Committee members then did have access to some of his thoughts or testimony during the hearing process?

CHAIRMAN KEESE: Correct. And we will -- you will hear more about that as we proceed this morning.

COMMISSIONER MOORE: Thank you.

COMMISSIONER PERNELL: Mr. Chairman, if I may.

CHAIRMAN KEESE: Commissioner Pernell.

COMMISSIONER PERNELL: Commissioner Moore, that's correct. And also, Mr. Hawkins has, at one of the meetings that I attended, designated someone to speak on his behalf. So it is my

24 opinion that he was present at all, or certainly

25 of a substantial amount of all of the hearings,

and has additional documentation in either through e-mail or -- or written documentation to the Committee.

COMMISSIONER MOORE: Thank you.

CHAIRMAN KEESE: This item considers the Presiding Member's Proposed Decision on the Delta Energy Center, as proposed by Calpine and Bechtel. The Committee, including myself and Commissioner Pernell, released the Presiding Member's Proposed Decision on December 23rd, 1999, recommending certification of the Delta Energy Center.

The Committee also issued errata to the PMPD on February 2nd, 2000, which are incorporated by reference in the PMPD for Commission consideration.

The Delta Energy Center is an 880 megawatt gas-fired combined cycle project located in an industrially zoned site owned by Dow Chemical in the City of Pittsburg. The project is proposed by Calpine Corporation and Bechtel Enterprises, which is a joint venture that will provide steam and up to 20 megawatts of electricity to the Dow facility, and will sell the

24 majority of its output in a competitive market.

25 This is the fourth merchant plant to be

recommended for certification.

The project consists of three power trains that will connect via an overhead/underground 230 kV outlet line to the PG&E switchyard located at the Pittsburg Power Plant facility, about 3.3 miles west of the site. The project will tap into PG&E's line 400, gas pipeline about five miles east of the city, in the City of Antioch.

Delta Energy Center will use tertiary treated recycled water for its cooling tower process, which will be supplied by the Delta Diablo Sanitation District. With implementation of the mitigation measures contained in the Conditions of Certification, the project will comply with all applicable LORS.

Both Delta Energy Center and the recently certified PDEF project will coordinate construction of the underground portions of their transmission lines along the E Street corridor in Pittsburg. Both projects will also work with the

City of Pittsburg in designing and constructing a linear greenbelt along Eighth Street, after the underground lines are installed.

A Condition of Certification common to

both Delta Energy Center and PDEF requires them to install and operate a new PM10 monitoring station in the Pittsburg area that will be coordinated by the Bay Area Air Quality Management District. Delta Energy Center will also pay for upgrades to the Bay Area's existing air monitor in Pittsburg to collect data on toxic air contaminants.

Several intervenors challenged the evidence submitted by Applicant and Staff concerning the topics of Air Quality, Public Health, and Environmental Justice. In particular, Intervenors Community Health First, represented by Joe Hawkins, a resident of Pittsburg, and Californians for Renewable Energy, represented by Mike Boyd, asserts that the methodology used by the regulatory agencies was incorrect and that the data were flawed and outdated.

Although the Intervenors presented passionate arguments regarding their concerns, they did not offer reliable evidence to rebut the conclusions of the Bay Area district, or any other

22 regulatory agency. Testimony of both Applicant's

23 and Staff's expert witnesses clearly established

24 that the project would not result in any

25 significant adverse environmental or public health

impacts.

The topic of Environmental Justice, or EJ, is based on a federal executive order which is administered by the U.S. EPA, and applies only to federal agencies. In this case, the parties relied on the U.S. EPA's guidelines in reviewing demographic data and analyzing whether potential adverse impacts would occur disproportionately in minority and/or low income populations in the Pittsburg area.

Although the Intervenors challenged the methodology and scope of review, both Staff's and Applicant's expert witnesses concluded that the potentially affected populations are less than a significance level of 50 percent minority/low income, no significant impacts would result from the project to any population, and therefore no disproportionate impacts to minority/low income populations would occur.

The hearing on Air Quality and Public Health was conducted on November 18th, 1999, from

5:00 p.m. to 2:30 a.m. Mr. Hawkins, of Community Health First, filed a motion to reopen the record on these topics. He claimed that his disability, sensitivity to toxic chemicals, prevented him from

remaining at the November 18th hearing to cross examine witnesses.

The Committee denied Mr. Hawkins' motion to reopen the record because he was present at the November 18th hearing, and participated at the hearing until he left. In his absence, Mr. MacDonald, a duly acknowledged representative of his organization, also participated and cross examined witnesses.

Mr. Hawkins has now reasserted his motion to the full Commission. The Committee recommends that the motion be denied again.

Mr. Hawkins also claims that the Committee's November 18th hearing was conducted in violation of the Bagley-Keene Open Meeting Act. The Committee recommends that this claim be denied also. The November 18th hearing was duly noticed. Mr. Hawkins attended and participated, and his representative continued to participate in his absence.

None of the parties, including Mr.

22 Hawkins, requested a continuance or postponement;

23 rather, the parties participated until conclusion

24 of the hearing at 2:30 a.m.

25 Finally, last week Intervenor Mike Boyd,

of Californians for Renewable Energy, hired an attorney, John Gabrielli, to represent his organization at this hearing today. On February 4th, Mr. Gabrielli submitted a letter requesting continuance of the proceeding due to his recent engagement in this case. In his letter, Mr. Gabrielli also argues that SB 110 is unconstitutional and that the Warren-Alquist Act and Commission regulations deny the public an opportunity to participate in the proceedings.

I understand that Commissioner Pernell would now like to make some remarks, and note that the Committee will have further discussion of these matters after the parties provide comment.

Commissioner Pernell.

COMMISSIONER PERNELL: Thank you, Mr. Chairman.

As a member of the Committee I received evidence presented by all parties, including the Intervenors, and have been persuaded by the expert testimony that the project will not result in

22 significant adverse impacts to the environment or

23 the public.

24 Intervenors Community Health First and

25 Californians for Renewable Energy submitted many

1 documents, and discussed chemical reactions of
2 various pollutants that will be emitted by the
3 project. However, the evidence shows that the
4 Applicant and Staff worked together with the air
5 districts, the California Air Resources Board, and
6 the U.S. EPA in reviewing potential emissions and
7 designing a mitigation program that complies with
8 all of the applicable laws.
9 I am satisfied that the project will not
10 contribute significantly to air pollution in the
11 area.
12 Some of the items submitted by Mr.
13 Hawkins, of Community Health First, certainly
14 indicated his frustration with the process. We
15 made many efforts to accommodate Mr. Hawkins'
16 requests to have hearings in the Pittsburg area in
17 the evenings. We directed Staff to conduct
18 workshops on both the preliminary determination of
19 compliance and on the final determination of
20 compliance issued by the Air District.
21 Staff, Applicant, and the City of

Pittsburg provided responsive answers to Mr. Hawkins' data requests to explain the process to him. The Public Adviser also explained the process and engaged Mr. Hawkins -- and encouraged

Mr. Hawkins to participate.

On behalf of the Committee, we want to thank the parties and the agencies that worked with Staff for providing their -- for presenting their position to us in a professional and thorough manner. We appreciate your efficacy and participation in this process. And on behalf of the Committee, I do thank you.

Thank you, Mr. Chairman.

CHAIRMAN KEESE: Thank you.

We'll now hear from the Applicant. Mr. Harris?

MR. HARRIS: Good morning, Commissioners. My name is Jeff Harris. I'm here on behalf of Calpine Bechtel.

We were here first on this project just a little bit less than one year ago. In fact, we were here on February 17th, 1999. On that date we were found to be data adequate. So we're back again today, a little less than -- than one year since that time, to present a project that -- that

22 will be hopefully approved today, within that one

23 year statutory framework.

24 I think that's an important thing to

25 note. There's a real public interest in that one

year statute, and if things go as we hope today we're going to make that -- that deadline.

But more than just a timely project, what you have before you is really an excellent project. We have a tremendous record. You heard some of the information presented by the Commissioners today about the efforts of the Committee and the Staff and the Applicant and the public to put together a really good record, and I think that's what you have before you. And that record does form the basis for the PMPD, which is also an excellent document.

So we really just want to take the opportunity today to thank the Committee, the Staff, and the public, and really everyone who participated in the project for their participation.

And with that, I'd like to turn it over to a man you met a little less than a year ago, Doug Buchanan, from Calpine Bechtel, to say a few words about the project.

CHAIRMAN KEESE: Mr. Buchanan.

MR. BUCHANAN: Thank you.

I will keep my remarks and acknowledgments brief.

Over a year and a half ago I was on an assignment in Santiago, Chile, when I received a call from my management asking if I had an interest in developing -- in helping manage the development of an energy project in Pittsburg. And when it was further explained this was in Pittsburg, California, I jumped at the opportunity.

(Laughter.)

MR. BUCHANAN: For me, as I think this Committee is aware, it was literally coming home, having been born and raised in Pittsburg.

When I first began the process I had literally little understanding, and -- and I could say not much of an appreciation for the Energy Commission process and what was involved, what was expected, and what we would be asked to step up to.

A year and a half later, I have three things. I very much have an understanding of this process, I have a very real appreciation for the

Energy Commission process, and further to that, a very real respect for this process.

There's a number of individuals I'd like to acknowledge that were key and integral to this.

I'd like to acknowledge the -- largely for their professionalism in this process and also their sense of dedication. They are Chris Tooker of Staff, who managed the Air Resources; Joe O'Hagan, on the Water Resources; and Mike Ringer, on Public Health. I take my hat off to them.

I'd also like to acknowledge the Project Manager for Staff, Paul Richins, on two points. One, his excellent selection of neckties --

(Laughter.)

MR. BUCHANAN: -- and secondly, for really a very subtle but effective skill in managing the process between Applicant and Staff. I thank Paul, and want him to recognized for that skill.

And finally, Susan Gefter, for calmness under fire, and what I would characterize as deft skill in managing a very difficult public and evidentiary hearing process. Susan has our -- our -- very much our respect.

In closing, I'd like to say on behalf of

myself, Delta Energy Center, and Calpine and Bechtel, that we want it to be very clear that we are -- are ready, prepared, and willing to step up to the obligations and responsibilities that an

Energy Commission license would put upon us. We're ready to meet that obligation, and, again, we'd like to thank the Staff and this Commission for its consideration.

Thank you.

CHAIRMAN KEESE: Thank you.

We'll hear from Staff.

MR. RATLIFF: Staff has filed comments on the PMPD, and believes that all of those comments have been incorporated into the errata and the Final Decision.

In the interest of brevity we'll make no further comments, but are open to asking -- to answering any questions you may have at any time.

CHAIRMAN KEESE: Thank you.

At this time, then, we will move to the Intervenors. First, speaking for Mike Boyd, John Gabrielli.

Mr. Gabrielli.

MR. GABRIELLI: Mr. Chairman, if I could go at the end of any other opposing comments I

22 would appreciate it, so that I can try to cover

23 some of the questions they may raise.

24 CHAIRMAN KEESE: All right.

25 Why don't we start -- well, Mr.

Gabrielli, we're going to do Intervenors first. We have two Intervenors. You can -- I don't believe the next Intervenor is going to deal with anything you care about. I certainly hope not.

MR. GABRIELLI: Okay. I'll try to be brief, because I don't --

CHAIRMAN KEESE: Well, we'll give you a chance at the end, if you feel that you need to --

MR. GABRIELLI: Oh, I'd appreciate that.

I -- I've got to start this presentation in the same manner that I often start my conversations with my wife, which is to apologize.

(Laughter.)

MR. GABRIELLI: And I've got to apologize on behalf of my client. My clients include the Californians for Renewable Resources and others, some of whom I'm finding out I represent as we speak. So just to tell you how I've been pressed into service at the last minute.

I must apologize for them, because they waited until virtually the last minute to retain

22 counsel, and to commit themselves to the retention
23 of experts to fully participate in this manner.
24 We can certainly blame them for not having known
25 better. We can blame them for not having acted

sooner. We can blame them for having interfered with our schedules, including this agency's and including the so-called deadlines that the Applicant likes to remind us of.

But although we can castigate and criticize them, here's what you -- neither you nor I nor the Applicant, nor anyone else can do to the public. We can't penalize the public by taking away any of its right to participate in this process, or by interfering with that right, even at the last minute.

COMMISSIONER LAURIE: May I interrupt, Mr. Chairman?

CHAIRMAN KEESE: Commissioner Laurie.

COMMISSIONER LAURIE: Sir, are you suggesting that there is a statutory or constitutional right to legal counsel at a public administrative hearing? And I'm -- I'm asking for a yes or no answer to that.

MR. GABRIELLI: The answer can't -- the question can't be answered just yes or no. If you

need an answer, you can go to -- the public has -- has the right to be represented and to have whatever representative they want.

The public -- maybe the healthy way to

1 look at this is this way. The public is the boss,
2 you're the public servant, you're here to serve
3 the public, not they to accommodate you.
4 COMMISSIONER LAURIE: You are laying a
5 legal groundwork for suggesting that there's a
6 legal right for legal representation during the
7 public process. And I'm asking you to --
8 MR. GABRIELLI: Yes. There is a legal
9 right for legal representation during the process.
10 COMMISSIONER LAURIE: Could you cite
11 some authority --
12 MR. GABRIELLI: This isn't a criminal
13 matter. You're not a court of law.
14 COMMISSIONER LAURIE: I'm really
15 interested in getting some authority for that
16 suggestion.
17 MR. GABRIELLI: I'd be glad to provide
18 you -- to brief this --
19 COMMISSIONER LAURIE: If you can do it
20 orally, that'd be really helpful to me.
21 MR. GABRIELLI: Absolutely.

Now, besides, since we're talking about the public's right and your ability to penalize the public and impose conditions on the public, the public isn't really completely to blame for

not having participated more fully. Your public participation procedures had a lot to do with their failure to realize that in order to participate in this particular process they needed the assistance of experts.

To realize that their comments, that you've constantly referred to the opportunity they had to comment as laypersons in a process that's completely dominated by experts and by technical scientific data and technical scientific information, that their ability to come up here and so-called challenge the experts is absolutely useless. You and I know that. The public was not told that.

They were not told that if you come in to this process, this process where we'll call you an Intervenor and a party, thereby dragging you into the process, and if you do so unprepared, without expert assistance, you don't have a chance to do anything efficiently or effectively. All you're going to do is talk, and we're going to go

22 right on and decide what we want to decide based
23 on the deal we cut with the Applicant, and that's
24 the reality.
25 CHAIRMAN KEESE: Mr. Gabrielli, are you

-- are you aware that your client has intervened in a number of Energy Commission proceedings?

MR. GABRIELLI: Certainly. My client is under the mistaken impression, or at least some of them are under the mistaken impression that by commenting, by telling you what they think is wrong with the technical information, that that does some good. And what I'm saying is we all know it doesn't.

CHAIRMAN KEESE: This -- Mr. Boyd has appeared at a number of hearings, and he has heard experts, and he has had advice in how he would offer evidence, and he -- it seems to me Mr. Boyd has seen on many occasions how this process works. And to suggest that he's not aware of how this process works --

MR. GABRIELLI: Well, i'm not suggesting he's not aware of how the process works. I'm suggesting that if you're going to hold him accountable, if you're going to impose -- you're imposing duties on him. You're saying as a member

22 of the public -- as a matter of fact, I've heard
23 that -- and I'm not sure if this is true, but I've
24 heard it said that you tell members of the public
25 who want to participate that they can only do so

by becoming Intervenors or parties.

CHAIRMAN KEESE: That is not -- that is not correct. At the end of every hearing at which I have presided members of the public have been able to speak, and we have generally -- I don't want to educate you too much on the process, but as we start, at the beginning of a hearing, we have everybody, including the Intervenors, identify themselves. At that time, we ask members of the public who might be interested in identifying themselves for the record to do so, and we tell them that whether they introduce themselves or not, they will be allowed to speak at the end of the proceeding.

We offer very -- and I think, as you're undoubtedly aware, we are under a mandate, a legislative mandate to complete our process within 12 months, which all parties are made -- and the public, are made fully aware of as we begin the process. We attempt, as best we can, to meet that obligation. We, in the last couple of cases, have

missed it by a couple of weeks. In this case, we're going to make it by a couple of days, perhaps a week.

So that's the mandate we're under.

We're not -- we're -- the legislature did not adopt this timeframe to penalize the public. We have a very open process, year-long public process, that the public can fully participate in.

MR. GABRIELLI: Well, my -- my question to you, sir, first of all, let me again apologize if the remarks I make are -- appear to be aimed personally at this body, or any participant in it. I'm challenging the process, and I don't mean to personalize it at all, because I know you're trying to be as fair as possible, and there's no problem with that. And your Adviser was, you know, extremely fair. As a matter of fact, the reason I'm here is because of her activities. So I -- I realize that. I think the process is tainted.

Let me -- let me give you a background on why --

CHAIRMAN KEESE: The -- I don't want to short circuit you too much, but if the process is tainted there's other forums that you're going to

22 have to deal with in.

23 MR. GABRIELLI: Yes, sir. But --

24 CHAIRMAN KEESE: We -- we have

25 instructions from the legislature. We have a

legislative mandate in how we conduct our proceedings. That's how we've done it, and if you -- if you believe that process is improper --

MR. GABRIELLI: I believe that --

CHAIRMAN KEESE: -- you'll be someplace else.

MR. GABRIELLI: -- this agency's interpretation of the legislative mandate is improper, and the regulations that have been adopted that deal with public participation are a misinterpretation of what the legislature means.

To give you a background on this, and why I'm harping on public participation is I do primarily CEQA litigation, so I'm talking about public participation as it's construed under that statutory scheme.

Under that statutory scheme, and you are supposed to be conducting an environmental review consistent with that scheme, public participation is of the utmost importance. And the public has the utmost status in the environmental review

process, for various reasons. And I'm used to not having anything interfere with that in any manner. Even well-meaning procedures that on the surface appear to be aimed at increasing and facilitating

public participation.

But when they're -- they are applied as in this case, they result in the exact opposite, result by giving the public participant the false impression that by getting into the participation process and making comments they're doing anything that is at all useful to improving the project, or to mitigating it or doing anything else.

Let me give you a further example. You say that oftentimes you tell members of the public to come forth and speak. Do you tell members of the public that after you come forward and speak, at the end, at a hearing such as this, you're going to turn around and make the finding that the information that they provided is not reliable evidence, because --

COMMISSIONER LAURIE: Excuse me, Mr. Chairman.

CHAIRMAN KEESE: Commissioner Laurie.

COMMISSIONER LAURIE: In fact, sir, that is not the rule. And in fact, that is not what is

22 done because that is not the law, and that is not

23 the rule that is applied by this agency.

24 MR. GABRIELLI: I'm not sure what --

25 what rule you're talking about. Where am I wrong?

COMMISSIONER LAURIE: Where you are wrong is in any suggestion that by rule, we find non-intervenor evidence to be untrustworthy, unreliable, or inadmissible.

MR. GABRIELLI: Well, I'm talking about from a legal standpoint, to be substantial evidence in a court of law, a layperson's opinion on what an expert has determined and an opinion of an expert is meaningless, because it does not rise to the level of substantial evidence to rebut --

COMMISSIONER LAURIE: Sir, if you have done CEQA litigation, then you know in any land use hearing all sides have experts. You also know that it is not only expert testimony that is listened to and made a part of the record. Our case, and the way we proceed, is no different.

MR. GABRIELLI: If I may take issue with that. I just heard not too long ago being told that the reason that certain comments, well-meaning as they were, had been rejected was because the comments were not reliable evidence.

That is a legal finding.

COMMISSIONER LAURIE: Well, because maybe they were in the -- in the opinion -- strike that.

Mr. Chairman, I will back off, and let this gentlemen finish --

COMMISSIONER MOORE: Mr. Chairman, could --

MR. GABRIELLI: Let me get to my --

COMMISSIONER MOORE: -- could I make a -- just a suggestion --

MR. GABRIELLI: Let me -- let me get to my -- let me get to my conclusion on this whole issue.

I'm here to give you a last minute chance to eliminate that issue by giving us the requisite time to bring in the experts and bring me in to adequately address this, and to make the playing field level and actually have adequate public participation. You can do that by giving me that time.

If you don't do that, then we will be compelled to seek legal remedies, and our first remedy is just to keep the door from closing on the process because, as you know -- at least under

22 CEQA, I'm not that familiar with your statutory
23 scheme, I haven't looked it up -- but if you don't
24 act within 30 days of the filing of a notice of
25 determination, it's -- you're forever foreclosed

from -- from raising issues. So we're going to have to go into a court of law and file a petition to keep that door open.

And I'd like to make one more remark on that, if I can, real quick. I want to advise the Commission that if that becomes necessary, our primary goal in filing that will be to get the requisite time to be able to adequately participate in the litigation, so that when the process is kicked off, that'll be our primary goal and there are provisions in the CEQA process that I think you have to file in this, as well, that -- where they give you time to have pre-settlement meetings, we call them, where you can sit down and discuss the matter.

That'll be our first goal, will be to take that time to assess our position. And I want you to know that, so that -- what I'm concerned with, is that public agencies have lately, the ones that I litigate with in the CEQA area, have used that administrative record process to

22 intimidate petitioners not to participate because
23 a voluminous record, they can say to the
24 petitioners, if you go forward and file this
25 petition, even though if you don't you lose all

your rights, we are going to hit you with a bill for preparing the administrative record.

And what I'm -- I'm here to say is I want to nip that in the bud even before the litigation starts by telling you that we're willing to waive any time requirements for preparation of the administrative record, or any other cost that can be used to chill our right to legally challenge this process.

CHAIRMAN KEESE: Mr. Gabrielli, the -- I will speak for Commissioner Pernell and I. It is clear to us that Mr. Boyd participated in this case on a -- as a formal Intervenor from the date he originally requested to do so. We accorded him all rights and privileges of any Intervenor. His decision not to hire you is outside the control of this Committee. We had nothing to do with it.

Further, we have no authority to decide the legal issues that you're putting in front of us, or the constitutionality of statutes, or just what I consider a broad challenge to our

22 regulatory process. We have a mandate for 12

23 months. And we're not willing at this time to

24 reopen and miss that deadline.

25 MR. GABRIELLI: I accept that, and I

thank you for your patience with me. And thank you for bearing with my -- my kind of repulsive personality.

COMMISSIONER LAURIE: Mr. Chairman.

CHAIRMAN KEESE: Commissioner Laurie.

COMMISSIONER LAURIE: I -- no, you can be seated, sir.

I'm aware that we have a statutory deadline. I am not willing to balance that statutory deadline with the right of due process and the right to be heard. In any case, it's -- I believe it's a policy of this agency that first and foremost we're obligated to comply with our due process requirements.

And I am not supportive of an extension, not because of the 12 month statutory mandate, but because I am satisfied that this agency has by far surpassed its due process obligations in this case.

CHAIRMAN KEESE: Thank you, Commissioner Laurie. I agree with you absolutely.

COMMISSIONER PERNELL: Mr. Chairman.

CHAIRMAN KEESE: Commissioner Pernell.

COMMISSIONER PERNELL: On that, just one final comment. I agree with Commissioner Laurie

as well, and I want to say for the record that we're not blaming anyone. We're not blaming the Intervenors, or the Applicant, or our Staff, or anyone else. We don't think that there's anything wrong with the process. The public -- the process has been open. It's been a public process. We've traveled to Pittsburg. We've stayed there. We've accommodated the Intervenors, and I think the process is fine.

And I'm not -- I would agree that this is -- this has nothing to do with the statutory mandate. It has to do with the open process. We have provided a forum for the communities, for the Applicant, and I guess my concern is when we get down to the eleventh hour, then someone throws something else in to -- to disrupt that process.

But the process has been open. We've had Intervenors. We've got a record to show that. And I'm certainly willing to stand behind that process.

CHAIRMAN KEESE: Thank you, Commissioner

Pernell.

Mr. Varanini.

MR. VARANINI: Thank you, Mr. Chairman, and Members of the Commission.

I don't think it's an ethnic matter, but I won't apologize for my personality.

CHAIRMAN KEESE: We probably shouldn't go there.

(Laughter.)

MR. VARANINI: I think that we have two points today, and I think both of them are timely and they're important for both this case and for the Commission's consideration in the charge forward to deploy new power plants.

And I think the first point that we tried to make on the record in our comments was related to whether or not interconnection and your process would be interpled for eminent domain. And I think it's very important. We filed some papers in the -- the regulatory proceeding that has been going forward to look at ways to facilitate the process concerning eminent domain, and I think I'll just call that to your attention.

One of the processes going on here is that your need determination and the pleading on

22 your need determination has been used in the
23 courts to assert eminent domain authority by a
24 private entity, or a mixed entity of public and
25 private, and so we're very concerned that if on

the record the project description is is that the droplines and the other interconnection lines will be acquired by negotiation, that that be the case, on the one hand. Or, on the other, that if there's going to be eminent domain and your need determination, notwithstanding SB 110, is going to be pled in court on that matter, that you understand it and that the appropriate proceeding take place in this jurisdiction before it goes on to the courts with an implication. That's the first point.

The second point I think is even more important. We've just received information that the project definition is going to change, or potentially can change, and that an alternative interconnection plan is being reviewed and developed by PG&E on behalf of the Applicant. And we've looked at that, we only were notified on that on February the 2nd. We think to some extent that information was being withheld from the record. We're concerned about that, and we're concerned because the program, as we understand it, involves interconnecting at the Contra Costa

24 plant, which is another plant that we own on which

25 we filed an AFC to expand that plant last week.

So our concerns are that the project definition is being modified as we speak, and that alternatives are being examined that are not part of the record. And we understand and have reviewed the PUC versus the CEC case on first point of interconnection and your jurisdiction, and we feel that there is at least a probability that the first actual point of interconnection will be at Contra Costa, and not at Pittsburg.

We think that those are major considerations. They have reliability considerations, and they have additional problematic aspects in terms of how much power can get out of that region under the current configuration of the lines.

Also, we know that there have been an awful lot of presentations made to you about ISO and something called ISO Authority, and ISO Control of the interconnection points, and we would like to point out as of today our understanding of the matter is that ISO does not have control over interconnections, that the priorities are being established by PG&E in a

queuing mechanism, and essentially without regard to implications and without regard to the

reliability of the system, the entity that gets to PG&E with a check first wins.

And there's no federal supervision, there's no problem with jurisdiction, there's no problem with any of the issues that have been asserted about the simplistic view that all Gaul is divided into transmission generation and distribution. It doesn't work that way, and we don't have a system in place that rationalizes interconnection, or rationalizes the reliability of the transmission system that's just beyond the interconnection point.

It seems to us that if -- if this issue hasn't been discussed about alternatives to interconnection, then it's under the rules that it makes eminent sense that we may avail ourselves of the right of reconsideration, which as we understand it is driven by facts that aren't on the record, facts that couldn't have been known during the proceeding or during the evidentiary process, and we will reserve the right to take that action during the 30 day period that we have for reconsideration.

We have as much interest as anyone in getting projects out of here on a reasonable

basis. But I think to the extent that the velocity of the process overwhelms some of the implications of the process, I think that in our -- from our perspective, that the -- that timeline has to yield to issues that are substantive in nature and prejudice rights of parties.

I'd be happy to answer any questions that you have.

COMMISSIONER MOORE: Mr. Chairman, I actually do have a couple of questions.

Mr. Varanini, on the point about the interconnection agreement with PG&E, I have to say, as one Commissioner, I was unaware of what you speak of today. So I take particular interest in it, and I guess I'm asking myself in the Contra Costa case, which I'm likely to see some of up close, how would an agreement on interconnection potentially affect that case coming up, if you look forward?

MR. VARANINI: If, in fact, there's an attempt to move all of the power out of Pittsburg and out of the Pittsburg projects out of Contra Costa and out of the Contra Costa expansion, we're

24 talking about a $33 million potential exposure on

25 reinforcements of the transmission network outside

of Pittsburg.

MR. HARRIS: Commissioner, could I interject something?

COMMISSIONER MOORE: Yes.

MR. HARRIS: This is Jeff Harris.

This question of project definition is a non-issue, and the statements that I've made are actually not true. There's --

COMMISSIONER MOORE: Actually, Jeff, if I could ask you to just hold back. I've got a couple more questions for Mr. Varanini, and --

MR. VARANINI: Can I -- I just want to respond to that for just a second on a procedural matter.

I'm an Intervenor. I have the right to be heard, and Jeff can speak when it's his turn --

MR. HARRIS: I understand. I --

MR. VARANINI: -- and the fact that if he wants to take my integrity as a personal matter, he's going to have a very serious problem after the hearing.

COMMISSIONER MOORE: I doubt -- Gene, I doubt that he wants to do that. I -- my --

MR. HARRIS: That's not what I'm doing, Gene.

COMMISSIONER MOORE: My question really is to just try and understand how -- how the information can be put in the process so I -- how I can deal with it, as a Commissioner. I was assuming that at the end of this process we'll cycle back -- you've made a good point -- and that we'll -- we'll take it up and find out where it is in the --

MR. VARANINI: I think one of the problems is, Commissioner, is that -- is that the Commission in some ways we're in a very dynamic situation now, and I think that the reforms that have been put through in statute have many, many gaps in them. And I think that the Commission is going to have to do more on a sua sponte basis, on your command and control basis to have the Applicants rationalize the system.

It's one thing to say the Applicants put up an AFC, the AFC is voluminous, very complicated. But there are questions I'm sure that you have as to how the system operates and who's really in charge, and how do you -- how do you effectuate the development of a project and

its interconnection. And I think that the Commission from here on out, and this will

certainly fall on me, as well as others, needs to be more aggressive in its understanding.

I think a passive -- kind of a judicial passive approach is really appropriate when the system is in equilibrium, but the system currently, as we heard yesterday at the legislature, is not in equilibrium, and we've got a lot of problems out there on getting reliable power out. We can build power plants and then fight over whether we can get the power out of there, or we can try to rationalize the system up front.

COMMISSIONER MOORE: Mr. Chairman, if I may. Just, Gene, on the question of the interconnect, because there are a couple of other places in the grid statewide where this is -- is likely to be an issue, if you imagine that there was such an interconnect agreement and that it was successfully negotiated with this plant, or this Applicant ahead of time, do you think that that potentially prejudices your ability to get a similar or equal agreement in the future?

MR. VARANINI: I think the notion of

24 having PG&E by exception controlling the queue,

25 and having uncertain implications about who pays

for upgrading the system is going to drive a lot of problems in the proceeding. I think -- I think the issue has been finessed in other cases essentially because of the way the cases were pled, or lack of understanding of who isn't in charge.

But from our perspective, we think the project definition should include alternatives that involve alternative points of interconnection.

COMMISSIONER MOORE: Thank you.

CHAIRMAN KEESE: The -- I know, Mr. Varanini, I believe you commented on it at one of the early hearings, that there were a number of things relating to this project that were commercial in nature, and that there were negotiations, or at least discussions taking place.

The Committee is recommending this project with a routing, an interconnection that we -- if we approve, is the interconnection. Is that -- you're not challenging that?

MR. VARANINI: No, I'm not. What I'm

24 suggesting --

25 CHAIRMAN KEESE: What you're -- what

you're suggesting is that should we approve this with the routing that we see, that because of the dynamic nature of the Pittsburg area we're going to see an amendment coming in later?

MR. VARANINI: I don't think so. I think that the -- I think what's going to happen is there's going to be a finesse on that issue that essentially Pittsburg and Antioch are part of the integrated grid, and they're not subject to your jurisdiction. That's what I think's going to happen if, in fact, they go to Antioch.

That's why I think it's important on a factual basis to determine on the record, not between Jeff and myself -- we can argue until the cows come home -- but that's the reason for reconsideration is to, if it's necessary, to reopen the record to get this straightened out, then that's what we ought to do, not call each other liars.

COMMISSIONER MOORE: So, Mr. Chairman -- Mr. Varanini, you're literally serving notice that we ought to be aware reconsideration is a possibility, given certain parametrics that you've

24 outlined, i.e., that an agreement appears that

25 wasn't fully documented in the -- in the record

before. You're not alleging that it's already happened, but that it could happen, and that we should be prepared for a petition to reopen.

MR. VARANINI: Right. We were notified on February the second that a detailed facility study had been requested and paid for by this Applicant to interconnect in Contra Costa. And that it was a potential alternative in terms of where they're going to interconnect.

CHAIRMAN KEESE: But -- but our -- Staff, I'd ask Staff. In our process here, in our approval, we are approving an interconnection plan other than the one Mr. Varanini is talking about.

MR. VARANINI: Well, I think that's an issue. I think whether -- whether you are or you aren't is tied to whether or not you've got jurisdiction over the tie-in between Pittsburg and Contra Costa. And whether that is an alternative that may or may not be pursued by the Applicant.

COMMISSIONER PERNELL: And who would you suggest has jurisdiction?

MR. VARANINI: You have jurisdiction, Commissioner.

24 COMMISSIONER PERNELL: What is the -- I

25 don't understand what you're -- you're saying that

we don't know whether or not we got jurisdiction, and now you're telling me we do have jurisdiction. I'm just trying to figure out where you're going with this.

MR. VARANINI: I'm saying that there will be an argument that you don't have jurisdiction. My position is --

COMMISSIONER PERNELL: But you believe we do, so you're arguing in our favor.

MR. VARANINI: Yes. Always.

(Laughter.)

MR. VARANINI: Whatever -- whatever we want, it's in your favor.

(Laughter.)

CHAIRMAN KEESE: And -- and if we would approve this, you would believe that we have a reasonable chance of seeing that the route that we've chosen or approved in this project is -- is the route?

MR. VARANINI: We don't know. We don't know on a factual basis what's going on, other than there is an alternative being considered, at least that's our understanding, and that that

24 alternative would result in a different drop -- a

25 different interconnection point with different --

with other impacts that haven't been evaluated by the Commission at this point in time.

COMMISSIONER PERNELL: Mr. Chairman, if we could -- you know, for me it sounds like we need to move on. This is -- these are, you know, what ifs, and I don't know where this takes us, and I don't know that we can make a decision on if something happens or someone else does A, B, C. Maybe we can hear from Staff on this issue.

MR. RATLIFF: Well, I have to say I'm wonderfully confused by all this. If this agency is about to -- is proposing to license a power plant with a specific transmission interconnection, and that is what the license is for, I don't understand -- if the Applicant should subsequently determine that it wants to interconnect, for instance, at Contra Costa or anywhere else, it would have to come back for an amendment. And at that time there would have to be an analysis of any second transmission route.

So I don't understand exactly what is being asked for in this case. I don't know what the bottom line is to what I'm listening to.

CHAIRMAN KEESE: And I -- I would tend to think I agree with you.

MR. VARANINI: The bottom line, I think, is very simple. The bottom line --

CHAIRMAN KEESE: You're -- what you're saying is there's negotiations going on between other parties someplace, but --

MR. VARANINI: No, not negotiations.

CHAIRMAN KEESE: -- we have a project in front of us that if we approve it, goes the way we approve it.

MR. VARANINI: That's not necessarily true, because the Applicant --

CHAIRMAN KEESE: But any --

MR. VARANINI: -- can make an argument that interconnecting Pittsburg to Contra Costa is outside your jurisdiction. And we think that fact alone, you know, if the facts as we understand them are -- are correct, that study's going forward, they have a priority in the queue, and -- and they're able to take action that they can claim is outside your jurisdiction, that it's an important thing to clarify that now, or we can file for reconsideration because a fact is going forward outside of the record, evidentiary record,

24 and at that point we'll know more and we can lay

25 out what these facts are.

I'm just coming here today to alert you to what we found out. And we have a mechanism to come back to you the next 30 days, if we choose to, but I think there's a larger issue that you need to investigate, it might be outside this proceeding, and that is whether or not there are changes that are going to be made that then will be argued or extra jurisdictional. That's all.

CHAIRMAN KEESE: Thank you. At this time let's -- does the Applicant care to make any comment?

MR. HARRIS: Yes, I'd like to.

First off, on the character question, Gene, I didn't mean to question your character. I actually admire you, you're one of the few attorneys I model my practice on and hope to have some of the same accomplishments you do.

MR. VARANINI: Thank you. You're in a very small minority.

(Laughter.)

MR. HARRIS: Anyway, the point being it certainly wasn't a personal attack. I think that we have a good faith misunderstanding here, and

that's why I've been kind of chomping at the bit to speak.

There is no detail facility study that's been requested by Calpine/Bechtel, to which Mr. Varanini has been referring. This is a complete mystery to us. Factually, it's -- it's not -- not before us. And the reason I feel compelled to speak is that there have been suggestions that the evidentiary record is not complete. That's not true.

Actually, I'd like Doug Buchanan maybe to say a few words about -- about factually what's going on here. But please be aware that this is not the case.

MR. BUCHANAN: Mr. Varanini, who we all hold in great respect, he gave us the opportunity or he made the motion to get the facts straight. And with all due respect to Mr. Varanini and his counsel, his facts are -- are absolutely incorrect, in the absolute. They are wrong, and I'd like this opportunity to quickly correct them.

Mr. Varanini has commingled at least three topics in his presentation, and I'd like to segregate them for you and present them.

The first topic is interconnection.

That's where the power plant will interconnect with the California Independent System Operator

controlled grid. I think you're aware that there's a circumstance where by -- by circumstance his client happens to own all the property surrounding one of those interconnection points. As you hinted, Commissioner Keese, there is a commercial discussion that we would very much like to continue with his client on that interconnection.

For the record, there is no plan, now and in the conceivable future, to change our interconnection point as was described in our earliest of submittals in the AFC. The record should be clear that there is no change in our interconnection proposal.

Second. What Mr. Varanini is describing is really a -- a circumstance of what we refer to as congestion management and congestion mitigation on the California ISO controlled grid. Now, early in the process, early in this process, the Energy Commission elected to defer California ISO and PTO, in this case PG&E, discussion, debate, resolution on congestion mitigation, transmission upgrade, to the California ISO and the PTO. This

24 Commission elected that early in its process that

25 it would not go there, as far as our record was

concerned. I can't speak to other records.

So what Mr. Varanini is describing is not an interconnection to Contra Costa. He does correctly state that prior to his client's initiating an AFC, we had identified a number of means of mitigating the congestion problem out of the Pittsburg area, one of which does involve an interconnection with what's called the Contra Costa San Mateo line. That is a congestion mitigation proposal that PG&E, along with the California ISO, is studying. It is -- its sole purpose is to identify a cost effective means to get this energy into the marketplace, and is unrelated to interconnection or anything else.

So the AFC, your Presiding Member's Proposed Decision, there is no change proposed, conceived, or -- or anticipated in the body of that document.

The third item is one I think that Commissioner Keese keyed on, which is, as you would expect in a competitive market, there are competitive forces. And you may be seeing some of that.

Thank you.

CHAIRMAN KEESE: Thank you.

MR. VARANINI: Can I respond, Chairman?

CHAIRMAN KEESE: Yes. I -- I've reviewed with counsel our -- our condition, and we have a specific condition which the Applicant would have to come in and have amended, in our opinion, should they choose to do other than they've represented.

Yes, Mr. Varanini.

MR. VARANINI: I think Mr. Buchanan just made my point. What -- what they're doing is splitting hairs between the definition of the word "interconnection", in terms of whether they're interconnecting at Pittsburg and then reinforcing the system between Pittsburg and Contra Costa, or whether the results are, in fact, interconnection at Contra Costa.

We received this message from PG&E. This is to inform you that another generator developer has requested and paid for a revised detail facility study with a new configuration in which the project would be looped through Contra Costa. That's the information that we got from PG&E, and that project is this project. And then

24 PG&E went on to say that that project, from their

25 perspective, would have queuing priority because

of the -- of PG&E's exposure in the process. Not ISO or ISO control or ISO integrated system, or any of these other palliatives that have been really pushed around here in terms of your jurisdiction.

So all we're saying is this alternative, from our perspective, on a factual basis is tying in at -- potentially tying in at Contra Costa, and we've brought that to your attention. The definition, if you're going to play a definitional game between what's the interconnection point and what's -- what is a augmentation of the system, that's the very factual record that we would be bringing to you if, in fact, we went forward with reconsideration.

And I'm not -- I think in that sense there I think that Jeff's correct, that there may be certainly good faith misunderstanding here. But I'm trying to look at it from a practical interconnection policy. And, of course, CEQA is greater than your subject matter jurisdiction. You have a CEQA responsibility that if a project passes the but/for test, then the next increment

24 of that project is in -- under your CEQA

25 jurisdiction, when perhaps it might not be under

your Warren-Alquist jurisdiction.

So those are the facts and the process that we're alerting you to, and we can certainly, you know, sit down with Jeff and work out the details and maybe even get a stipulated set of facts, should we go forward with a reconsideration motion. But I understand, you know, that you are where you are, you have the record in front of you. I'm just bringing this to your attention, and then we certainly have the duty of -- if we believe there's a problem and it continues, then we'll bring it forward in reconsideration.

CHAIRMAN KEESE: Thank you. Thank you, Mr. Varanini.

COMMISSIONER LAURIE: Mr. Chairman, may I ask a question of Staff, please?

If during our process we analyze a project with a defined interconnection point, part of our analysis includes downstream impacts, does it not?

MR. RATLIFF: Any foreseeable impacts that are indirect would be analyzed.

COMMISSIONER LAURIE: If interconnection

24 points change which could modify foreseeable

25 downstream impacts, is that considered a

modification of the project requiring a new analysis?

MR. RATLIFF: Well, if -- if, in fact, the project were to result in foreseeable downstream impacts, as I said, we would want to examine those.

COMMISSIONER LAURIE: Even if the change is one inch beyond the point of interconnection, which is not within our jurisdiction?

MR. RATLIFF: That's correct.

COMMISSIONER LAURIE: Thank you, Mr. Chairman.

CHAIRMAN KEESE: Thank you. Thank you, Mr. Varanini.

MR. HARRIS: Could I -- Mr. Chairman, could I make a couple of observations real quickly?

First off, we'll accept Gene's invitation to sit down and talk with him. I guess you received this about a week ago. This is the first we've heard of it, though, and so we'd like to hash through the facts and make sure we understand what the issue is here.

24 But again, for the record, there's no

25 change in our interconnection point, and the

conditions are very clear on that. We take those very seriously, and will obviously be bound by those, and we do take that obligation very seriously.

Thank you.

MR. VARANINI: I think there might be one thing that could help us clarify this. Does that mean, then, if there's a functional interconnection at Contra Costa that you would agree that the Energy Commission has jurisdiction, and you should file a -- an amended --

CHAIRMAN KEESE: I don't think we're going to -- I'm aware of private discussions, but let's -- let's keep them private.

(Laughter.)

MR. VARANINI: I just thought I'd make you a party to --

(Laughter.)

CHAIRMAN KEESE: Thank you.

All right. At this, we'll ask Ms. Joan Wood to come forward.

MS. WOOD: Good morning. You've seen me here before in regard to the Sutter Power Project.

I own a farm in Sutter County, and I'm also a resident of the Bay Area, so -- and I'm associated

with Californians for Renewable Energy.

I have two points I wanted to make. I find by your comments that you seem to be concerned that you may be considered inefficient, or not to have performed your assignment by perhaps delaying the certification of this new project. And really, you shouldn't feel that way. I believe that your jobs are to represent all of us, not just a proprietary company.

I'm very well aware that California needs more energy sources, but I find that rushing through these projects in a 12-month period, which you say is legislatively mandated, and I must in my lay knowledge disagree with you, because it seems to me that you have approved 16 waivers of notice of intent, and by waiving the notice of intent you, the Commission, reduce the amount of time for the Applicant to -- to secure approval.

My understanding is that the Warren-Alquist Act and another set of regulations, all of which are seven or eight years ago, before deregulation, allowed for you to exempt certain projects, and I think it's projects that are over

49 and a half megawatts. Please forgive me if I'm a little bit off on this. But I am quite clear

that you, yourselves, are in a different configuration because your personnel has changed, have allowed the notice of intent to be waived. I don't think that it's fair for you to say it's a legislative mandate that this be rushed through, and apologize because the last project was a week late.

Energy deregulation is a whole new ballgame in California, and it's got tremendous financial potential. And Calpine is a very smart company and they have a very powerful big brother in Bechtel Corporation. And I would urge that you wait and see how the Sutter Power Project does before you rush into approving the Delta Energy Center. By waiving the notice of intent, for the very few people in this room who might not understand it, you get out from under having a CEQA study and an EIR, and that's exactly what the problem is.

Just to respond to what Mr. Gabrielli said, it should be perfectly clear from what's going on at this particular hearing why the members of the public need a lawyer. This is very

adversarial, it's obvious. And those of us of the public that thought that we would be listened to

without scraping up the money to hire experts don't find out until the end that we did need a lawyer. So I hope that you will take that into consideration.

I also want to offer something into evidence. This is kind of a last minute, kind of a new -- a new issue.

This company is $1.1 billion in debt. That's what they told the Securities and Exchange Commission. And I'm going to give this booklet to you for evidence. It talks about the risk factors, about their business operations.

It starts out by talking about their substantial indebtedness. It's in italics. We have substantial indebtedness that we may be unable to service, and that restricts our activities. We may be unable to secure additional financing in the future. Our power project development and acquisition activities may not be successful. I'm just reading the ones that are italicized. There's a lot of detail in the paragraphs that follow.

Our power generation facilities may not

24 operate as planned. We are subject to complex

25 government regulation which could adversely affect

our operations. That's fortunate in -- in a way.

CHAIRMAN KEESE: Is this a 10-K, or --

MS. WOOD: Is this a what?

CHAIRMAN KEESE: What form is this?

MS. WOOD: It's a -- excuse me. It's a mandatory Form 10-K/A filing, which companies that are --

CHAIRMAN KEESE: Correct, which all -- all companies --

MS. WOOD: They have to do it, and --

CHAIRMAN KEESE: -- are --

MS. WOOD: -- they have to be quite honest and straightforward in this. And it's -- the title is United States Securities and Exchange Commission.

CHAIRMAN KEESE: Right. And they have to be very conservative, in fact.

MS. WOOD: Yes. That's a better way to put it. Thank you.

And this is of particular interest. We may be unable to obtain an adequate supply of natural gas in the future. Then they say competition could adversely affect our

24 performance. Obviously, that's true. I would

25 offer that competition is very healthy. And I am

not too clear if all of the projects that you've already approved are all Calpine. I know of just the Sutter Power Project. But an awful lot of the 16 or 17 that have had the waiver of the notice of action are Calpine projects.

The -- there are only a couple more here. Seismic disturbance could damage our project. Gas prices fluctuation. That's it.

I want to submit this. I didn't make copies of it, so maybe the Public Adviser's Office could do that. But I'd like you to keep this as part of your record.

CHAIRMAN KEESE: Thank you.

MS. WOOD: Thank you.

COMMISSIONER MOORE: Mr. Commissioner, I have a -- I might just remark in passing that those forms, I'm not an attorney, obviously, but those forms are designed to address the caveat emptor question and make sure that every buyer of a security or every investor is fully aware of the potential range of risks. They're not meant to outline specific risks, but to generalize about the range of risks.

24 So I think it's appropriate to let us

25 know that that security issue is out there, but in

fact it seems to me that if we pulled up disclaimers for any other power plant or any other investment that has been done under a Form 10-K that's similar, you'd find similar disclaimers.

MS. WOOD: I'm an investor, and this is the lengthiest discussion of risks that I've ever seen, although I'm a very conservative investor. So --

COMMISSIONER MOORE: Well, it's appropriate -- it's appropriate that it's there. I mean, that's why they have all their lawyers putting that together.

CHAIRMAN KEESE: Thank you, Ms. Wood. We -- we've got five more speakers on this issue.

MR. HARRIS: Commissioner, a procedural question.

MS. WOOD: Who can I give this to that it will be --

CHAIRMAN KEESE: Ms. Mendonca.

MS. WOOD: Okay.

CHAIRMAN KEESE: Who is behind you. She'll take care of it.

COMMISSIONER LAURIE: Mr. Chairman --

CHAIRMAN KEESE: Commissioner Laurie.

COMMISSIONER LAURIE: -- is this in fact

going to be made part of the record? Do you need --

CHAIRMAN KEESE: That's part of her testimony for today. And so we're hearing it as in the same manner that any other member of the public would testify and offer their opinion.

COMMISSIONER LAURIE: Okay. There's no need to open up the record.

CHAIRMAN KEESE: No.

MR. HARRIS: That was actually what I wanted to ask. If it's being offered as evidence for the proceeding I would object on that basis, but if it's public comment, obviously that's --

CHAIRMAN KEESE: Public comment to the Commission.

MR. HARRIS: Thank you.

CHAIRMAN KEESE: Mr. MacDonald, Jim MacDonald.

MR. MACDONALD: My name is Jim MacDonald. I'm a Trustee of the Pittsburg Unified School District.

I think this last comment very graphically illustrates what the public has been

24 up against, that what the public says here is

25 simply comments, and not to be considered as

testimony. These general -- the general comments session at the end of your -- at the end of the day, again, it's just strictly comment and not to be considered as testimony. I'm glad for the record to have stated this quite clearly and distinctly, so that all these individuals really understand what's going on with this Commission.

This Commission is --

CHAIRMAN KEESE: Actually, what --

MR. MACDONALD: Excuse me, sir -- excuse me sir, I have the right to speak. You can ask me questions after I'm done if you wish to ask me questions.

CHAIRMAN KEESE: Thank you.

MR. MACDONALD: Thank you.

I have brought to the attention of this Commission, many of us have brought to the attention of this Commission that our concerns have not been adequately addressed.

One of our concerns is that our testimony is continuously labeled non-expert. If you look to the record, you will find that Joe Hawkins made a statement about some of the

24 testimony of the Applicant. The Applicant saying

25 that their definition, their quote, unquote,

experts did not meet the qualification as being designated an expert.

If you look at that record you will see that their reply is that there is no definition in the State of California as to what is expert testimony. This is the Applicant. Applicant has told you that our testimony is as valid as any of their quote, unquote, expert testimony. In fact, if you go back and you look at the record, you will see that I actually have shown you what the State of California does have regulations under the Health Codes, I believe, basically stating what a smog technician is, what an expert in -- in pollution control is, what the requirements for an expert in pollution control is. That is -- there is a definition. None of their quote, unquote, experts match that definition of the State of California.

You made a comment that Mike Boyd -- excuse me, Joe Hawkins was properly represented at the hearings. This hearing that we're discussing where I took over for him was held at a sewage treatment plant, with the doors open. For an

24 individual that they knew had -- had a toxic

25 syndrome problem, they deliberately ran the

meeting up until past 2:00 a.m. in the morning. I don't know who else has ever been to a public meeting, other than school boards, that run until 2:00 o'clock in the morning.

Okay. When Joe got sick and it was not my intention to represent him that night -- I was actually was supposed to be a witness -- he asked me to take over because he was too ill to continue on, and it was obvious the California Energy Commission would not postpone that hearing that night. And so I proceeded on that basis.

This Commission has violated CEQA regulations, and more importantly, you have violated Title 6 civil rights issues. Environmental Justice is simply a civil rights matter.

As being a school board member, I'm quite aware of the fact of segregation in public education and the mechanism which caused segregation in public education. And that -- that mechanism was the fact that Caucasians put African-Americans in -- in zoned areas which didn't -- supplied water, electricity, police

24 services, and poor schools. That same racial

25 mechanism is what also put industries in low

income and minority communities. And it's that same racial mechanism that is continuing to put industries in low income and minority communities.

Now, Environmental Justice is a very simple concept. It simply states, after you get through all the rigmarole, is you look at the low income and minority population, and you compare that to a non-minority, non-low income region, and if the air pollution there is greater it doesn't say you have to prove that's poisonous, it doesn't say that you have to prove that it's adverse. It simply states that if that pollution level is worse or higher than the high income, non-minority, that you cannot add anymore pollution, because it's a simple fundamental right that everyone has the right to breathe the same quality of air.

The statute is not determining what that quality of air is. Whether we as a society agree that we're all going to poison ourselves with pollution, or we're going to clean up the environment, okay, that's the society's. But Environmental Justice is simply to say that you

24 must treat all individuals within our society

25 equally. And in that, this Commission has failed

dismally.

Now, I'll take any questions. Thank you.

CHAIRMAN KEESE: Thank you.

COMMISSIONER PERNELL: Mr. Chairman, I have a -- just a comment for the record.

CHAIRMAN KEESE: Commissioner Pernell.

COMMISSIONER PERNELL: At no time, and I was on -- the Second Member on the Committee, at no time did Mr. MacDonald indicate that he was ill to the Committee, the night in question -- not Mr. MacDonald but Mr. Hawkins, indicate to the Committee that he was ill, nor did he indicate that he was leaving. When -- the first I heard of this, Mr. MacDonald represented his self as being a representative of Mr. Hawkins because Mr. Hawkins had to leave.

Secondly, Mr. MacDonald's alluding to Environmental Justice as it relates to African-Americans, I would just point out for the record that there was a representative of the NAACP at that meeting in support of the project.

So with those comments, Mr. Chairman --

CHAIRMAN KEESE: Thank you, Commissioner Pernell.

Mr. Robert Williams.

MR. WILLIAMS: Thank you, sir.

I'm Robert Williams from San Jose. I am a member of the public with respect to the Delta process, but an Intervenor on the Metcalf Center.

At considerable trouble and expense I participated in two related hearings here at the Energy Commission. The docket is 99-SIT-6, which has to do with the generic improvements to the siting process. Commissioner Laurie has done an able job of chairing those meetings.

I would like to offer you a -- a suggestion and not take too much time, and not be too argumentative.

It seems to me there have been two or three substantive points made here today that argue for a one-month continuance of this approval. I think Mr. Varanini's arguments related to the ambiguity in the Cal-ISO studies strikes a very responsive chord with me because of ambiguity I have seen in similar studies related to the Metcalf Center. I won't say more than

24 that, but -- because I shouldn't.

25 The -- I'm pleased to hear you defending

the process on which you are a Commission member. If you did not have the guts to defend the integrity of the process in which you're presiding, then you should be replaced. But I hope the flip side of that is that you will be honest enough to admit that this is a new, experimental, first of a kind process, that needs some time to work out the bumps, and not run roughshod over people. You know, Mr. Varanini's comment is the velocity of the process overwhelming the information should -- should be given some weight.

Now, I was always taught I was -- worked for General Electric, that General Electric was big, rich General Electric, and they knew their socks would be sued off at the first opportunity. So when you have the upper hand, be generous. Bend over backwards to establish a fair process.

So -- so I would urge that you demonstrate that amount of wisdom, that you bend over backwards to insert a little fairness to the process, take into account that this is only the first or second or fourth such proceeding, and

24 allow a little time for some additional facts to

25 come to the table and some additional evidence to

be heard.

Thank you.

CHAIRMAN KEESE: Thank you.

Jane Luckhardt.

MS. LUCKHARDT: Elk Hills. Different proceeding.

CHAIRMAN KEESE: Oh, Elk Hills. All right, sorry.

MR. HARRIS: You can speak on this, if you want.

(Laughter.)

CHAIRMAN KEESE: Any -- I believe that's -- anybody else from the public that wish to address this issue?

That's the end of the cards I have.

COMMISSIONER PERNELL: Mr. Chairman.

CHAIRMAN KEESE: Commissioner Pernell.

COMMISSIONER PERNELL: Mr. Chairman, I move that the motion filed by Community Health First to reopen the record on the topic of Air Quality and Public Health be denied, and that the claim regarding a violation of the Bagley-Keene Act also be denied.

CHAIRMAN KEESE: Do we have a second?

COMMISSIONER MOORE: Mr. Chairman, I'm

going to second the motion, and I have a comment in general on the process, and that is one which I've discussed at some length with Commissioner Laurie in ruminations about the siting process.

And that is that it's clear to me that in statute and in intent, the people that do or should represent the People of California, the general citizen, are our Staff. That's why they're there. So in a sense, the expertise that is represented by our Staff and by their -- the subdivisions of that Staff when they get assigned to a project, that professional talent and expertise is there not to represent the developer, not to backstop the developer, but in fact, in the most polite or political way that I can say it, is to be antagonistic to the developer, to the point where the truth is out on the table, the right decision is out on the table; that the facts and the actors have been interrogated to the point where they reveal the final plan, the best plan, and that it is the one that emerges.

Our Staff have no role, none, except to

23 represent the public to the fullest and best of
24 their ability. And in that sense, when they're
25 doing their job, when they are committed to that

process in public, that's the reason that an Intervenor can be expected to bring their own resources to bear on something like this, and that they, the public, can rely on the servants of the public agency to do their work.

So, and the Committee, I know, has gone through a tremendous process to get us to this point today, and I would simply say that they've relied on the Staff to do their job and represent the public. And in that context, I can responsibly second this motion, and commend the Committee for taking this to fruition and to the actors for going the extra mile in completing the tasks and completing the requirements to get us to today.

I believe the public purpose has been served, and that maybe there is just a miscommunication about who represents whom in the process, and perhaps we, as Presiding Members in the upcoming cases can make that clearer. But there is a role for Intervenors, and there is a

22 role for our professional Staff to represent the

23 public.

24 Thank you.

25 CHAIRMAN KEESE: Thank you.

We have a motion and a second.

All in favor?

(Ayes.)

CHAIRMAN KEESE: Opposed?

Adopted, four to nothing.

COMMISSIONER PERNELL: Mr. Chairman.

CHAIRMAN KEESE: Commissioner Pernell.

COMMISSIONER PERNELL: Mr. Chairman, I move that the request for an indefinite continuance of the proceedings filed by Mr. Gabrielli on behalf of Californians for Renewable Energy be denied.

COMMISSIONER MOORE: Mr. Chairman, I'm going to second that motion.

CHAIRMAN KEESE: Motion and a second. All in favor?

COMMISSIONER LAURIE: Mr. Chairman, comment, please.

CHAIRMAN KEESE: Commissioner Laurie.

COMMISSIONER LAURIE: Intervenors do have a responsibility to be -- to become familiar

22 with the process to the extent that it is fair and
23 reasonable for a layperson to so become. There is
24 no evidence in the record to suggest that adequate
25 opportunity to hire legal counsel was not

available to this Intervenor prior to this date.

I must suggest that I am not in full agreement with Intervenor's counsel who suggests that there's a constitutional and statutory right for legal counsel. That is simply not the case. You certainly have the constitutional right to be represented by legal counsel, and there is no barrier to allowing this Intervenor from carrying that out if he had so desired.

I intend to support the motion.

CHAIRMAN KEESE: Thank you.

We have a motion and a second.

All in favor?

(Ayes.)

CHAIRMAN KEESE: Opposed?

Adopted, four to nothing.

Mr. Valkosky. Ms. Gefter could not be here. Are we procedurally clear at this time?

MR. VALKOSKY: Stan Valkosky, Hearing Officer.

Yes, Mr. Chairman, the only remaining

matter is the consideration of the adoption of the decision as amended, the Proposed Decision as amended by the February 2nd errata.

CHAIRMAN KEESE: Thank you.

Commissioner Pernell.

COMMISSIONER PERNELL: Mr. Chairman, I move that the Commission adopt the Presiding Member's Proposed Decision and the errata to the Proposed Decision as the Commission's Decision on the Application for Certification for the Delta Energy Center.

By adopting the Committee's recommendation, the Commission approves the Application for Certification and grants a license to the Delta Energy Center Project.

CHAIRMAN KEESE: We have a motion.

COMMISSIONER MOORE: Second.

CHAIRMAN KEESE: We have a motion and a second.

COMMISSIONER LAURIE: Question on the motion.

CHAIRMAN KEESE: Commissioner Laurie.

COMMISSIONER LAURIE: Commissioner Pernell, does your motion include imposition of the terms and conditions as contained in the

Proposed Decision?

COMMISSIONER PERNELL: No, but I see no problem with including that. I didn't -- I haven't stated that, but I don't have a problem

with it.

COMMISSIONER LAURIE: So it's the motion maker's intent that the conditions as contained in the decision are, in fact, the conditions to be imposed on the project. Is that your intent?

COMMISSIONER PERNELL: That is correct.

COMMISSIONER LAURIE: Thank you.

COMMISSIONER MOORE: Second concurs.

COMMISSIONER LAURIE: Mr. Chairman, I think we have to ask for public input before we take a vote.

CHAIRMAN KEESE: We have a motion and a second.

Is there additional public input at this time?

Mr. Williams -- Mr. MacDonald.

MR. MACDONALD: I have been in contact with the California Department of Education last week, and it is my understanding, although I do not have any confirmation or anything in writing to present you, that it is their intention to

write a letter of support for our appeal in the EPA Appeals Board.

It would be my hope that you would at least hold off on approving this project until

such time that the EPA and the Department of California make decisions as to how far they're willing to wade in on the civil rights issues of your actions, and how far the EPA is willing to wade in on the civil rights actions.

I would hope that you would take this into consideration. Thank you.

CHAIRMAN KEESE: Thank you.

We have a motion and a second.

All in favor?

(Ayes.)

CHAIRMAN KEESE: Opposed?

Adopted, four to nothing.

Thank you.

And I do -- I appreciated Commissioner Moore's comments. The Committee, sitting as a Committee, does hear the testimony, the evidence, and the comments. And in particular, our Staff, who joust with the Applicant on this, participate. And I'd hope the public would recognize that.

We, as a Committee, once this proceeding

starts, are not allowed to discuss with the Applicant the project. We're not allowed to discuss with our Staff the project, because our Staff is an independent party going through the

whole proceeding and looking out for the public.

So I -- I am very glad that Commissioner Moore made his point of that, and I hope the public will understand it.

Thank you all for this proceeding.