

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

In the Matter of:

Docket No. 98-AFC-2

Application for Certification of
the La Paloma Generating Project

1516 9th Street
Sacramento, California

Reporter's Transcript

April 21, 1999

--oOo--

Reported By: Keli Rutherford, CSR No. 10084

APPEARANCES

1

2

3 Commissioners Present:

4 Robert Laurie

5 David A. Rohy, Ph.D.

6

7 Staff Present:

8 Stanley W. Valkosky, Hearing Officer

9

10 For the Staff of the Commission:

11 Marc S. Pryor

12 Jeff Ogata

13 Kerry Willis

14

15 For the Applicant:

16 Allan Thompson, Attorney at Law

17 Roger Garratt, U.S. Generating Company

18 William Chilson, U.S. Generating Company

19

20

21

22

23

24

25

26

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

INDEX

Page

| | |
|---|-----|
| Introductory Remarks by the Committee | 4 |
| Opening Statements | 6 |
| Presentation of Witness' Testimony in Subject Areas | |
| Project Description | 18 |
| Alternatives | 31 |
| Compliance Monitoring and Closure | 58 |
| Conformance with the Integrated | 68 |
| Assessment of Need | |
| Facility Design and Geology | 73 |
| Power Plant Reliability | 95 |
| Power Plant Efficiency | 104 |
| Waste Management | 111 |
| Worker Safety and Fire Protection | 128 |
| Transmission Line Safety and Nuisance | 137 |
| Public Health | 146 |
| Noise | 155 |

--oOo--

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

P R O C E E D I N G S

WEDNESDAY, APRIL 21, 1999, SACRAMENTO, CALIFORNIA 10:03 a.m.

COMMISSIONER LAURIE: Well, good morning. I'd like to call the meeting of the La Paloma Generating Project evidentiary hearing to order. Good morning. My name is Robert Laurie. I'm the presiding member of the committee assigned to hear the case.

It should be noted, first off, that these proceedings are being transcribed. Therefore, I will ask you all to speak as slowly and reasonably as possible and to avoid overspeaking with any other individual at the same time. As may be necessary, I will call upon you to temporarily cease speaking if the court reporter has any problem with anything.

I'd like to first get some introductions out of the way as far as the committee goes. To my right is Mr. Stan Valkosky. Mr. Valkosky is the designated hearing officer. He's the legal counsel to the committee. To Mr. Valkosky's right is vice chairman of the Commission, Dr. David Rohy, who is the second member of the committee. And to Dr. Rohy's right is Mr. Bob Eller, who is the advisor to Dr. Rohy.

At this point, then, I'd like to ask for some additional introductions, starting from the applicant.

Mr. Thompson, if you can introduce yourself and your associates, please.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 MR. THOMPSON: Thank you very much,
2 Mr. Commissioner. My name is Allan Thompson. To my right
3 is Mr. Roger Garratt, who is project manager, U.S.
4 Generating Company, for this project. And to his right is
5 Mr. Bill Chilson, who is project manager/environmental, or
6 some such title, with U.S. Generating Company. And behind
7 us we have an array of witnesses who are scheduled today,
8 mostly from URS Greiner Woodward-Clyde.

9 COMMISSIONER LAURIE: Mr. Pryor?

10 MR. PRYOR: Commissioner Laurie, my name is Marc
11 Pryor. I'm the project manager assigned by Energy
12 Facilities Sites. To my left are staff counsel Kerry Willis
13 and Jeff Ogata.

14 COMMISSIONER LAURIE: Is CURE present?

15 MS. POOLE: Yes, good morning. Kate Poole for CURE.

16 COMMISSIONER ROHY: Thank you very much.

17 And is a representative from Elk Hills present?

18 MR. MILLER: Yes, Commissioner. Taylor Miller
19 representing Elk Hills Power.

20 COMMISSIONER LAURIE: Thank you. These hearings are
21 being held pursuant to notice dated March 24th, 1999. There
22 has been prepared testimony that has been submitted and
23 filed. It will be our intent to proceed as outlined in the
24 hearing order. I will call upon Mr. Valkosky for some
25 opening comments.

26 First I'd like, however, to ask Dr. Rohy if he has

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 any opening comments. Dr. Rohy?

2 COMMISSIONER ROHY: I have no opening comments.

3 Thank you.

4 COMMISSIONER LAURIE: Stan?

5 HEARING OFFICER VALKOSKY: Thank you, Commissioner.

6 These evidentiary hearings are formal in nature. The
7 witnesses will testify under oath or affirmation. Parties
8 sponsoring the witness will first briefly establish the
9 witness' qualifications and have the witness orally
10 summarize any prepared testimony before requesting that the
11 testimony be moved into evidence. The sponsoring party
12 should also identify any relevant exhibits at that time and
13 move them into evidence as appropriate.

14 At the conclusion of the direct testimony, the
15 committee will provide the other parties the opportunity for
16 cross-examination, followed by recross and redirect as
17 appropriate. As warranted, multiple witnesses may testify
18 as a panel.

19 Before we begin, as Commissioner Laurie indicated,
20 the agenda for today is as contained in the hearing order
21 for Wednesday, April 21st.

22 Are there any changes to that list of topics and/or
23 witnesses, Mr. Thompson?

24 MR. THOMPSON: There may be some -- there may be --
25 No. 1, there is no changes that we would request to the
26 topic areas and are ready to proceed with them in the order

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 as specified in the hearing order. There may be --

2 (Discussion off the record.)

3 MR. THOMPSON: We may have a witness substitution
4 later in the day that I'll introduce at the time, but
5 generally we are ready to go.

6 HEARING OFFICER VALKOSKY: For which topic?

7 MR. THOMPSON: Transmission Line Safety and Nuisance,
8 we believe that our witness will be here and -- let me
9 suggest that we act on supposition that the witness will be
10 here. We've had trouble getting a hold of everyone, but we
11 believe we are ready to roll as they are.

12 HEARING OFFICER VALKOSKY: Thank you. Mr. Ogata?

13 MR. OGATA: Staff is prepared to go forward as with
14 the schedule.

15 HEARING OFFICER VALKOSKY: There are copies of
16 today's agenda in the back.

17 Next, I'd like the parties to address their intention
18 to the document which was faxed to them on Monday entitled
19 Tentative Exhibit List.

20 The purpose of this exhibit list is to provide
21 reference numbers for the document of exhibits which the
22 committee was aware, and there are also copies of this in
23 the back, and the court reporter will attach it to
24 transcript.

25 At this point I would like the make two additions to
26 it. As Exhibit 40 I would like to have added witness

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 resumes contained in the applicant's March 9th, 1999,
2 prehearing conference statement. This, of course, will be
3 sponsored by the applicant.

4 And as Exhibit 41 I'd like to add the revised
5 testimony for Cultural Resources dated April 19th, 1999,
6 which will be sponsored by staff.

7 MR. THOMPSON: Mr. Valkosky, if I may, could I ask
8 your indulgence to possibly make those Exhibits 43 and 44?

9 The reason being that when I received your exhibit
10 list, I redid ours and added three exhibits that we would
11 propose to move into the record. And these are documents
12 that we filed with this Commission between the time when we
13 submitted our material and today.

14 And it would be easier -- I've ground them into our
15 testimony, and if the committee is indifferent, I would
16 request your indulgence in naming those 43 and 44.

17 HEARING OFFICER VALKOSKY: We are always
18 accommodating. If you can identify them and provide copies?
19 Those would be Exhibits 40, 41, and 42 that you are going to
20 identify?

21 MR. THOMPSON: That's correct.

22 HEARING OFFICER VALKOSKY: All right. Okay. In that
23 case, Exhibit 43 will become the witness resumes contained
24 in the applicant's prehearing conference statement and
25 Exhibit 44 will become staff's cultural resources testimony.

26 If you could now identify 40, 41, and 42, please.

1 MR. THOMPSON: Yes. Thank you. Exhibit No. 40 is a
2 letter to the staff dated April 6th, 1999, concerning the
3 impact of the project on fire protection services. The
4 witness for that will be Mr. Garratt, and we will sponsor
5 this witness when Mr. Garratt takes the stand in the fire
6 area, not in the introductory material earlier this morning.

7 The second, which we propose to be labeled Exhibit
8 41, is the revised construction information for Class I UIC
9 wells filed April 8th, 1999. Mr. Ray Ouellette will be the
10 sponsor of that exhibit.

11 And lastly, what we would propose as Exhibit 42 is a
12 letter to the staff, which is a response to the Chevron
13 letter regarding source water for La Paloma, similarly dated
14 April 8th, 1999. Mr. Alan Williams will be the sponsor of
15 that exhibit.

16 I apologize for not having copies here right now.
17 These were filed with this Commission and served on all
18 parties with your note we will have copies available for
19 passing out after the lunch break, if that's sufficient. I
20 don't believe any of these areas -- we'll see how we
21 progress through the day, but I assume these will not be
22 moved into the record this morning.

23 HEARING OFFICER VALKOSKY: With that caveat, we'll
24 accept that. I have two more points on the exhibits. It
25 seems to me that Exhibit 15 and Exhibit 20 were identified
26 in the applicant's proposal are duplicate documents; is that

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 correct?

2 MR. THOMPSON: That's correct.

3 HEARING OFFICER VALKOSKY: Given that, we'll keep the
4 identification of the SCONox and ERC status update as
5 Exhibit 15, and for present purposes, we'll designate
6 Exhibit 20 as vacant.

7 MR. THOMPSON: Again, this was a mistake that I made.
8 There's actually a document I intended to put in there, and
9 I mislabeled it. Exhibit 15 is properly labeled the status
10 report on SCONox and ERCs. Exhibit 20 should have read PM10
11 Precursor Offset Ratio Analysis and revised emissions
12 calculations, which will be Mr. Steiner's exhibit.

13 HEARING OFFICER VALKOSKY: Again, okay. We will
14 identify that as Exhibit 20. And again, that will be
15 something else we'll need copies of. When I say "us," not
16 only the committee but also the other parties.

17 And last question on the exhibit list is Exhibit 22.

18 Could you more completely identify that document?

19 MR. THOMPSON: Exhibit 22 was filed with this
20 Commission on February 12th, 1999. And copies are presently
21 being made for the committee, and I don't have it here.
22 When Sandra returns, I'll be able to read the title.

23 (Pause in proceeding.)

24 MR. THOMPSON: It's entitled Hazardous Waste
25 Management Information Request, La Paloma Generating
26 Project. It's a letter responding to request of staff dated

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

10

1 February 10, 1999. It concerns accidental ammonia release
2 analysis and the applicant's plans for the transfer of
3 ammonia.

4 HEARING OFFICER VALKOSKY: Okay. With those
5 corrections, are there any other changes to the tentative
6 exhibit list and the identification of the exhibits as we've
7 just discussed?

8 Mr. Thompson?

9 MR. THOMPSON: No. With the -- let me add that since
10 receiving the committee's exhibit list, we have prepared two
11 documents which we will be using as a road map to go through
12 here.

13 The first I've entitled the La Paloma Detailed
14 Exhibit List. This goes into more detail. The reason we
15 wanted to do that is because -- let me give you two
16 examples. For example, identified Exhibit 2 are the
17 applicant's responses to staff data requests. These, of
18 course, cover a number of areas, and we would have the
19 appropriate witness testify to the appropriate area so that
20 this exhibit identifies those data requests and the
21 appropriate witness that we would intend to have sponsor
22 that.

23 The second is, for example, when we have submitted
24 errata or supplementals to the AFC, there are a number of
25 witnesses that will testify to parts of that and this does
26 that. We have plenty of copies here if anybody else wants

1 to follow along.

2 The second is our road map. It's about a ten-page
3 document by topic area, so it starts off "Project
4 Description," then lists the witnesses that we would propose
5 to put before this committee and the project description
6 area and the exhibits they will be sponsoring, so these,
7 while these were done for us to keep our own house in order,
8 I made copies if anybody else wants to follow along.

9 HEARING OFFICER VALKOSKY: Okay. Thank you.

10 Mr. Ogata?

11 MR. OGATA: Mr. Valkosky, yesterday staff filed a
12 supplemental testimony in the area of soil and water
13 resources. We would like to have that marked as Exhibit 45.

14 HEARING OFFICER VALKOSKY: Can you provide us with a
15 copy of that, please?

16 MR. OGATA: Yes.

17 HEARING OFFICER VALKOSKY: Is that all, Mr. Ogata?

18 MR. OGATA: Yes. That's everything.

19 HEARING OFFICER VALKOSKY: Are there any other
20 procedural matters that need discussing before we begin?

21 Mr. Thompson, anything?

22 MR. THOMPSON: Thank you very much.

23 COMMISSIONER LAURIE: I'm sorry. The question was do
24 you have any more comments before we start the proceeding?

25 HEARING OFFICER VALKOSKY: Procedural matters.

26 MR. THOMPSON: No, we do not.

1 HEARING OFFICER VALKOSKY: Mr. Ogata, anything?

2 MR. OGATA: We will have some questions relating to
3 process, and you know, probably at the conclusion of the
4 hearings, and so just wanted to just raise that as a -- so
5 that we're all reminded of that. Probably dependent upon
6 what we get accomplished during the hearings, but we do have
7 concerns in areas of air quality and biological resources we
8 do want discussed at some point.

9 HEARING OFFICER VALKOSKY: To the extent that those
10 concerns focus specifically on that topic, I suggest it may
11 be appropriate to address it when we address that topic and
12 at the conclusion of these hearings, the committee will
13 provide all parties an opportunity to make whatever closing
14 statements they wish, so you will have another chance.

15 MR. OGATA: That's fine.

16 HEARING OFFICER VALKOSKY: Any other procedural
17 matters from any other party or any member of the public? I
18 see none. Thank you, Commissioner.

19 COMMISSIONER LAURIE: Thank you, Mr. Valkosky. Just
20 one more comment, and this is directed to Mr. Thompson and
21 his parties and to the other parties as well.

22 At the conclusion of the testify over the next couple
23 days, it will be the intent of this committee to close the
24 hearing; that is, we consider this, the next couple days, to
25 be the hearing. It is our intent to close the record.

26 I cannot anticipate what would cause us to reopen the

1 record without prejudging any evidence. It is certainly
2 possible that we may find the record to be incomplete, thus
3 providing a substantial barrier to certification of this
4 project.

5 The law provides for the parties, and we consider it
6 to be the applicant, to request an extension of time to
7 allow a record to be completed. To this day and to this
8 moment we have no such request. We are ready to proceed.

9 I would note, however, that this committee would be
10 prepared to acknowledge and to give strong consideration for
11 a request to extend time to allow the record to be
12 completed.

13 Given that, I'm going to adjourn this meeting for ten
14 minutes and upon return I'm going to ask, Mr. Thompson, if
15 you wish to continue with this proceeding. Okay? Meeting
16 stands adjourned for ten minutes.

17 (A brief recess was taken.)

18 COMMISSIONER LAURIE: Meeting is called to order.

19 Mr. Thompson, is it your desire to proceed?

20 MR. THOMPSON: Thank you, Mr. Chairman. We would
21 request that we be given until the end of the day to try and
22 reach an agreement with staff on a schedule to present to
23 the committee that would take into account the events that
24 we foresee coming up in this case and a way to handle them
25 in an expeditious manner so that the remainder of the
26 hearings can be held at one time, which is your wish.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 You may have wondered why we appear steadfast on
2 schedule to the point of possibly antagonism, and I feel
3 like I owe you a brief word about that.

4 If you look at the project schedule, a decision in
5 August would allow us to bring the units on line for the
6 summer peak of '01. A delay in the schedule will probably
7 threaten that. I think it's safe to assume that we're
8 talking tens of millions of dollars. That's not to say that
9 we probably still have a project, but it is extremely
10 serious.

11 Number two, I had hoped that precedent, I had hoped
12 that the catch-22 of having a PMPD to give to other
13 agencies, for other agencies' environmental review of
14 required permits and approvals would lead us to a point
15 where we could agree on a bifurcated case, and that is one
16 of the reasons why -- two of the reasons why we have not
17 come forward today.

18 And as a personal note, something that has not been
19 approved by my clients and probably wouldn't be: I
20 recognize, as I'm sure many do, the view of California
21 regulation by my clients, who are headquarter in other areas
22 of the country.

23 A brief history of the last four or five cases to
24 come through this Commission is not one of one-year
25 licensing. And I think if this case is delayed, as it will
26 be, I think it really tells the world that there are no

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

15

1 projects that will go through this commission in the
2 statutory one-year time frame.

3 We would appreciate your indulgence to take to the
4 end of the day, to come to an agreement with staff and can
5 count on a schedule slippage. I've heard that message loud
6 and clear. You probably won't see a smile, but at the end
7 of the day we'd like to be able to present a schedule to
8 you.

9 COMMISSIONER LAURIE: Thank you. Commissioner Rohy,
10 any comment?

11 COMMISSIONER ROHY: I'll rely on your judgment in
12 this case, Commissioner.

13 COMMISSIONER LAURIE: Mr. Thompson, in light of the
14 fact that there are a lot of people here today, not only
15 your clients, members of the public, and staff, which -- and
16 it would create a great inconvenience to terminate the
17 meeting at this moment, I would consider allowing testimony
18 to go through today and remain on the record and then give
19 you time, during the course of the day, to reach a
20 determination whether or not you want the rest of the
21 proceeding to go forward.

22 Now, in regards to time limit: This committee and
23 this Commission is very cognizant of its mandated time
24 requirements, and this committee has scheduled its hearings
25 appropriately. This committee is not the project proponent.
26 We cannot and do not take it upon ourselves to resolve the

1 issues on behalf of the client. We understand that some of
2 those issues are complex and many involve working with other
3 federal or state agencies, some of which we have no control
4 over. Therefore, a great degree of cooperation among all
5 parties is necessary in order to move in a timely manner.

6 This committee, and I would hope all parties -- and I
7 believe all parties have in this case moved in what I
8 believe to be a timely manner, and we will continue to do
9 so.

10 The point being, however, is that your ultimate goal
11 is certification of a project. Our ultimate goal is a fair
12 hearing on all evidence that is presented. You have the
13 discretion of controlling, to a certain extent, when that
14 will occur. If you need more time to allow introduction of
15 sufficient evidence to have your project being positively
16 considered, then this committee would accommodate that, and
17 I don't think it could be more clear than that.

18 I do not know why there has not been a discussion of
19 extensions before this date. Frankly, I think we would have
20 anticipated it. When we issued an order that this hearing
21 would be held on all issues, we do not believe that it could
22 not have been more clearly stated.

23 Therefore, it would be our intent to proceed through
24 the schedule as proposed today. We would expect all parties
25 to indicate to the committee by the end of the day whether
26 you wish to proceed as scheduled or you wish an extension of

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 time to allow additional evidence to be submitted to the
2 committee.

3 With that in mind, we will proceed, and I'll call on
4 Mr. Valkosky to initiate the process.

5 HEARING OFFICER VALKOSKY: Thank you, Commissioner.

6 First topic on the agenda is Project Description.

7 Mr. Thompson, call your witness, please.

8 MR. THOMPSON: We'd like to call Mr. Garratt.

9 HEARING OFFICER VALKOSKY: Swear the witness, please.

10 (Witness sworn.)

11 BY MR. THOMPSON:

12 Q. Mr. Garratt, will you state your name for the record,
13 please.

14 A. Roger Garratt.

15 Q. And are you the same Roger Garratt who's been
16 prepared for testimony in Exhibit 34 of this proceeding?

17 A. Yes, I am.

18 Q. And if I were to ask you the questions contained in
19 that question and answer, would your answers be the same
20 except for the identification of exhibits?

21 A. Yes.

22 Q. Do you have any corrections, additions, or deletions
23 to make to your material?

24 A. No, I don't.

25 Q. Will you briefly summarize the project description
26 area of your responsibility for the committee?

1 A. Sure. The La Paloma project we began development in
2 the fall of 1997 with the identification of the site and a
3 number of meetings in Kern County with the local community,
4 local agencies, state agencies.

5 The project itself was actually conceived sometime
6 earlier, a few months earlier, in own offices as we brought
7 together appropriate teams of people in the areas of
8 environmental permitting, engineering, construction,
9 transmission, fuel supply, marketing.

10 And then really, over the course of that time, we've
11 assembled a full development team. Many of the people that
12 will testify in these hearings: URS Greiner Woodward-Clyde,
13 Toyon Environmental, Matrix Environmental, Black & Veatch
14 Engineers, TriAxis Engineering, Kennedy/Jenks Engineering, a
15 number of U.S. Gen people, and over the course of the last
16 year and a half have worked with the local, state, federal
17 agencies. We've worked with the local communities, and
18 we've also worked with the labor unions and come to an
19 equitable agreement with the unions that we're happy with,
20 that they are happy with. And as a result there's no
21 opposition to the La Paloma project. It's an extremely
22 clean project.

23 Would acknowledge there's a few open issues. The CEC
24 staff and the La Paloma team have been working very hard to
25 resolve the issues. We believe the resolutions are taking
26 shape and would come in to pass very quickly, and thank you

1 for consideration.

2 MR. THOMPSON: Thank you, Mr. Garratt.

3 Mr. Garratt is tendered for cross-examination.

4 HEARING OFFICER VALKOSKY: Mr. Ogata?

5 MR. OGATA: We have no questions.

6 BY HEARING OFFICER VALKOSKY:

7 Q. Mr. Garratt, you mentioned opened issues.

8 Can you specify which issues those are at the
9 present?

10 A. Those are issues that are identified in the Final
11 Staff Assessment.

12 Q. So specifically that would be biology, air, and
13 water?

14 A. Right. It would be my understanding that those
15 issues would be addressed when those topic areas arose.

16 Q. That's correct. Are you the appropriate witness to
17 ask about which elements compose the project description,
18 specifically which alternate transmission line routes or
19 water supply routes or --

20 A. If you are asking general questions, yes. If you
21 want to get in very specifics about the routes, then you
22 might want to direct those questions to Bill Chilson.

23 Q. Well, I'll ask the question. You decide if you are
24 the appropriate witness to answer it.

25 You've identified two alternate water supply routes.

26 Are you seeking certification for both of these or

1 for only one of them?

2 A. It's my understanding that only one, and that in one
3 of our exhibits, which may be -- if Allan Thompson can help
4 me with -- we went through the other route.

5 Q. And which water supply route would that be, one or
6 two?

7 (Pause in proceeding.)

8 THE WITNESS: According to my key map, the water
9 supply routes are labeled Route 2 and Route 3, and Route 2,
10 that follows Highway 58, is the route that we are seeking
11 certification for.

12 BY HEARING OFFICER VALKOSKY:

13 Q. So you are only seeking certification for the single
14 water supply route, which you have identified as Route 2; is
15 that correct?

16 A. Yes.

17 Q. Thank you. For which transmission tie line route are
18 you seeking certification?

19 And I would characterize these as the one that
20 crosses the Fish and Game property or the one that goes
21 around it?

22 A. I'd like to defer that question to Bill Chilson.

23 Q. When will the project decide whether or not to use
24 SCONOX technology?

25 A. At this point as one of the exhibits, we have a
26 letter from ABB stating their issues related to SCONOX and

1 the testing program that they are undertaking.

2 It's my understanding that the testing program has
3 begun, but it's still in progress, and it would appear, --
4 based on conversations that I've had with ABB, it would
5 appear that fairly early in the project's schedule, at the
6 notice commencement, is when a decision would need to be
7 made whether SCONOX could be used or not.

8 Q. This would be approximately how long after licensing?

9 A. This would be virtually immediately upon licensing.

10 Q. And then, I take it -- I realize it's not your area
11 of expertise, but I would presume that you are seeking a
12 determination of compliance from the air district, which
13 would allow for use of either SCONOX or conventional
14 technology on the one unit; is that correct?

15 A. That's correct.

16 HEARING OFFICER VALKOSKY: Any recross -- excuse me
17 -- redirect, Mr. Thompson?

18 MR. THOMPSON: Only, I think, to point out to the
19 committee that Exhibit 26 is the identified exhibit where
20 the linear -- alternate linear routes were dropped.

21 Exhibit 34 is the one where -- I'm sorry -- Exhibit
22 28 is the one where we added the new transmission jog, if
23 you will, but 26 is the one that dropped the linear route.
24 That's what you were asking about.

25 Nothing further from applicant.

26 HEARING OFFICER VALKOSKY: Mr. Ogata, anything?

1 MR. OGATA: No questions.

2 HEARING OFFICER VALKOSKY: Anything from any other
3 party?

4 Thank you, Mr. Garratt.

5 Mr. Ogata?

6 MR. OGATA: Thank you. Staff's witness is Marc
7 Pryor.

8 (Pause in proceeding.)

9 HEARING OFFICER VALKOSKY: Before we swear the
10 witness, Mr. Thompson, I notice there's no resume on the
11 record for Mr. Pryor.

12 Do you have any reservations about his
13 qualifications?

14 MR. THOMPSON: Absolutely none.

15 HEARING OFFICER VALKOSKY: Proceed.

16 (Witness sworn.)

17 BY MR. OGATA:

18 Q. Mr. Pryor, could you please tell us what your job
19 title is at the Energy Commission?

20 A. I'm a planner one, and I'm project manager, Energy
21 Facilities Siting Division.

22 Q. What are your job duties?

23 A. Currently I'm the project manager for two power plant
24 projects.

25 Q. Do you have before you the testimony entitled Project
26 Description, Testimony of Marc Pryor?

1 A. Yes, I do.

2 Q. Did you write this testimony?

3 A. Yes, I did.

4 Q. Do you have any changes or corrections you'd like to
5 make at this time?

6 A. I have one change to the Executive Summary. Under
7 Biological Resources, page 4, it's Roman numeral IV. First
8 two sentences of the paragraph should read "California
9 Department of Fish and Game, paren, CDFG, end paren, will
10 need to issue an incidental tank permit. This permit would
11 be issued after CDFG receives the federal biological
12 opinion."

13 Q. So that correction is to the Executive Summary, not
14 to the description of the project description?

15 A. That's correct.

16 Q. Do you have any other changes, corrections?

17 A. I do not.

18 Q. Could you summarize your testimony, please?

19 A. Yes. On April 7th, staff filed its Final Staff
20 Assessment or FSA. The FSA presents staff's conclusions and
21 proposed conditions the staff recommends applied to the
22 design, construction, operation, and closure of the proposed
23 facility, if certified. Supplements and/or revisions were
24 filed on April 14, 1920 (sic).

25 Some background: On August 12th, 1998, La Paloma
26 file an AFC with the Energy Commission to construct and

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 operate the LPGP. On August 26th, 1998, the Energy
2 Commission deemed the AFC data accurate, at which time staff
3 began its analysis of the proposal.

4 The analyses contained in the FSA are based upon
5 information from one, the AFC; two, subsequent amendments;
6 three, responses to data requests; four, supplementary
7 information from local and state agencies and interested
8 individuals; five, existing documents and publications; and
9 six, independent field studies and research.

10 The project description: The La Paloma project will
11 be located in Western Kern County, approximately forty miles
12 west of Bakersfield and two miles east of McKittrick. The
13 project's planned site is about twenty-three acres in size
14 and is a former oil production field. The project will be
15 owned and operated by the La Paloma Generating Company, a
16 subsidiary of U.S. Generating Company, otherwise known as
17 U.S. Gen.

18 Electrical energy produced from the proposed merchant
19 plant will be sold in California's newly created electricity
20 market, pursuant to sales agreements with municipalities or
21 customers.

22 Construction of the facility is expected to begin in
23 late 1999 and commercial operation is expected to begin late
24 2001.

25 The project costs are estimated to be five hundred
26 million dollars. The project is expected to create an

1 average of four hundred fifty-one construction jobs and
2 thirty-five permanent operational jobs.

3 The project as proposed is a one thousand forty-eight
4 megawatt, natural gas-fired, combined cycle facility, and
5 electricity generated would be transmitted over a maximum
6 fourteen-point-two mile long 230 kV double circuit
7 transmission line to PG&E's Midway Substation at
8 Buttonwillow.

9 Cooling or raw water would be conveyed from the
10 California aqueduct by an eight-mile long pipeline. Waste
11 water, as proposed, would be disposed into onsite deep
12 injection wells. Fuel for the natural gas-fired turbines
13 would be piped three hundred seventy feet from a large
14 interstate pipeline.

15 Staff's assessment: Each technical area section of
16 the FSA contains a discussion of impacts direct, indirect,
17 and cumulative, mitigation measures, and conditions of
18 certification. The FSA concludes staff's assessments of
19 project's conformity with the integrated assessment of need,
20 the environmental setting of the proposal, impacts on public
21 health and safety, and measures proposed to mitigate these
22 impacts, environmental impacts, and proposed to mitigate
23 these impacts, the engineering design of the facility and
24 engineering measures proposed to ensure the project can be
25 constructed and operated safely and reliably.

26 Project alternatives: Compliance with the project of

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 all applicable laws, ordinances, regulations, and standards,
2 otherwise known as LORS, during construction and operation
3 and proposed conditions of certification where these can be
4 identified at this time. Most technical areas contain a
5 cumulative impacts analysis. I want to clarify that.
6 Examples of those that do not are the alternatives and need
7 to conform.

8 Other foreseeable projects in the area include Elk
9 Hills Power Project, Sunrise Power and Cogeneration, Midway
10 Sunset, and Pastoria.

11 Staff is prepared to address cumulative impacts
12 during their respective sections of this proceedings. Staff
13 believes its analysis of the project is substantially
14 complete for twenty technical areas. Two areas that are
15 outstanding are air quality and biological resources.

16 Staff believes that any significant environmental
17 impacts associated with the project can be mitigated to less
18 than significant levels. I would defer to the staff air
19 quality and biological technical experts to address their
20 items during the course of their respective testimony.
21 Staff believes the resolution of the remaining air issues
22 and the air quality and biological resources area will be
23 crucial to the Energy Commission's decision on this project.

24 Therefore, at this time, staff is unable to recommend
25 that the project be certified.

26 MR. OGATA: Thank you, Mr. Pryor.

1 That concludes Mr. Pryor's testimony. He's available
2 for cross-examination.

3 HEARING OFFICER VALKOSKY: Mr. Thompson?

4 BY MR. THOMPSON:

5 Q. Thank you. Mr. Pryor, just one or two questions.

6 You gave some additional testimony today on the
7 department of -- California Department of Fish and Game
8 procedures by which we would hope that they would be able to
9 help give a resolution of the biological areas; is that
10 correct?

11 A. I imagine that you are speaking of the correction I
12 had?

13 Q. Yes.

14 A. Yes.

15 Q. Has this accommodation been recently arrived at?

16 A. The incidental tank permit?

17 Q. Yes.

18 A. All I'm saying here is that in the FSA, what was
19 written as a biological opinion should have been incidental
20 tank permit from Fish and Game.

21 MR. THOMPSON: I have no other questions.

22 BY HEARING OFFICER VALKOSKY:

23 Q. Mr. Pryor, you indicate that -- I'm sorry.

24 You indicate that staff believes the analysis is
25 incomplete only on two areas. I take it this means that, in
26 your opinion, the staff analysis is complete on the areas of

1 water, cultural, and paleo, which were recently identified
2 as being incomplete?

3 A. Yes, we believe that.

4 Q. When you say it's staff's position that all impacts
5 could be mitigate below a level of significance, does this
6 assume that all staff proposed mitigation measures are
7 adopted?

8 A. Yes, it does.

9 Q. Is it your understanding that the applicant is
10 seeking certification of only Water Supply Route 2?

11 A. Yes.

12 Q. And what is your understanding of the transmission
13 tie line route for which applicant is seeking certification?

14 A. It is my understanding that Route 1 and alternative
15 Route 1B -- which is the latter, is the jog around the Fish
16 and Game property. The former would be the one going across
17 -- are both proposed at the same level.

18 Q. And staff's analysis -- does the staff analysis have
19 a preference for either of those routes?

20 A. I don't believe there's a preference. They analyzed
21 them both equally.

22 Q. Does the staff analysis in the individual technical
23 areas also analyze the recently proposed
24 seven-hundred-thousand-gallon water storage tank?

25 A. It does.

26 HEARING OFFICER VALKOSKY: Mr. Ogata, any redirect?

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 MR. OGATA: Yes.

2 BY MR. OGATA:

3 Q. Just to follow up on Mr. Valkosky's question: Is the
4 reason why we believe that cultural, paleo, and water
5 resources is complete is due to the fact that we recently
6 submitted revised testimony?

7 A. Yes.

8 Q. And would you be referring to the revised testimony
9 that we filed April 19th and April 20th? April 19th for
10 cultural, and April 20th for soil and water, and we had a
11 previous filing in paleo?

12 A. On April 14th we submitted a revised socioeconomic
13 and supplemental paleo. On the 19th we submitted a revised
14 cultural, and on the 20th we submitted a revised soil and
15 water section.

16 Q. And with those submittals we believe those areas are
17 now complete?

18 A. That's correct.

19 HEARING OFFICER VALKOSKY: Just to clarify the
20 record, I'm assuming you are referring to Exhibits 37, 44,
21 and 45; is that correct, Mr. Ogata?

22 MR. OGATA: Exhibits 37, 44 and 45, that's correct,
23 Mr. Valkosky.

24 HEARING OFFICER VALKOSKY: Thank you.

25 Mr. Thompson, anything else?

26 MR. THOMPSON: No, nothing else.

1 HEARING OFFICER VALKOSKY: Any other questions on the
2 topic of Project Description for Mr. Pryor from any other
3 party? Any members of the public wish to offer any comment
4 regarding this topic? Okay. Thank you.

5 Thank you, Mr. Pryor.

6 Next topic is Alternatives. Mr. Thompson?

7 MR. THOMPSON: Actually, we have four witnesses in
8 Project Description.

9 HEARING OFFICER VALKOSKY: I'm sorry, excuse me.

10 MR. THOMPSON: Mr. Chilson, we'd like to call
11 Mr. William Chilson.

12 (Pause in proceeding.)

13 (Witness sworn.)

14 BY MR. THOMPSON:

15 Q. Mr. Chilson, please state your name for the record.

16 A. William D. Chilson.

17 Q. Are you the same William Chilson that filed prepared
18 testimony that appears in Exhibit 34 of this proceeding?

19 A. Yes, I am.

20 Q. If I were to ask you the questions in that testimony
21 today, would your answers under oath be the same, except for
22 some exhibit numbers?

23 A. Yes.

24 Q. Do you have any corrections, additions, or deletions
25 to make to the material?

26 A. No.

1 Q. Would you please summarize your testimony.

2 A. My name is William Chilson, and my testimony pertains
3 to the location of the La Paloma project.

4 The project is located, as Mr. Pryor indicated
5 previously, in Western Kern County. It is about forty miles
6 to the west of Bakersfield, one point nine miles east of
7 McKittrick. It is located at the intersection of Skyline
8 and Reserve Road in Section 27.

9 MR. THOMPSON: Thank you very much.

10 Mr. Chilson is tendered for cross-examination.

11 HEARING OFFICER VALKOSKY: Mr. Ogata?

12 MR. OGATA: No questions.

13 BY HEARING OFFICER VALKOSKY:

14 Q. Mr. Chilson, are you the witness who can answer my
15 transmission line question?

16 A. Yes.

17 Q. Thank you. The question being for which of the
18 alternate transmission tie line routes are you seeking
19 certification?

20 As I understand, they are identified as Route 1,
21 which crosses the Fish and Game Ecological Reserve and Route
22 1B, which jogs around the Fish and Game Ecological Reserve.

23 A. We're seeking the option to be able to build either.
24 Our preference would be to build on the original alignment.
25 However, there are certain problems that California Fish and
26 Game has identified with respect to disturbing land on

1 ecological preserve properties, which led us to another
2 route which avoids us going through the property, which is
3 Route 1B.

4 We believe, and California Fish and Game is working
5 with us, that there is the possibility that ultimately an
6 arrangement could be worked out that would allow us to build
7 on the original alignment, but given the kind of the rules
8 and the time required possibly to change those rules, it may
9 not -- it may be that we ultimately need to go with Route
10 1B. So we'd like to have certification of both routes, with
11 the idea that if we can resolve our problems with Fish and
12 Game, that we would stay on the original alignment.

13 Q. When do you anticipate knowing whether or not you
14 could resolve the problems?

15 A. I think that we should know within thirty days.

16 Q. Thirty days from today?

17 A. Yes.

18 Q. So at that point, I take it, you would notify the
19 committee so that any ultimate Commission decision could
20 conceptually contain the certification for only one of those
21 routes; would that be correct?

22 A. I think we can say that. At the same time I think,
23 also, that it may turn out that somewhere during the
24 process, even after certification, that the ability to build
25 on the original alignment may come to fruition, and so I
26 would ask that we would be able to, at some point in time,

1 come back and ask for the original alignment.

2 Q. So then regardless of whether or not you achieve
3 resolution with Fish and Game, your intent would still be to
4 seek certification for both routes?

5 A. Yes. Well, unless we were, in the next thirty days,
6 able to resolve the original alignment with Fish and Game,
7 then we would drop 1B.

8 Q. Okay. Thank you. Are you the correct witness to ask
9 when the decision to use the well injection or discharge
10 well injection or zero discharge system will be made?

11 A. We submitted some testimony talking about that
12 subject, and what we asked was that we be certified to allow
13 either groundwater injection or zero D. And in our
14 application we had asked that the project be allowed to use
15 either method, and in the PDOC that was acknowledged,
16 however -- I'm sorry. Not the PDOC. In the Preliminary
17 Staff Assessment, the PSA, that was acknowledged.

18 I noticed in the FSA reference to zero D, was only
19 present in the Executive Summary. What we would like is to
20 be able to have the project certified so that we would have
21 either option available to us.

22 Q. And when would you make the decision as to which
23 option you would actually use?

24 A. In our testimony we indicated that within sixty days
25 following certification that we would come back with one of
26 the two methods and state which one we wanted to use, and

1 then if we were to use injection wells, we would accompany
2 that request, have a groundwater Class I injection permit
3 from EPA region nine.

4 And if the zero discharge system were used, we'd come
5 back with full details on that system.

6 Q. Have you filed the Class I discharge permit?

7 A. Yes, we have. And we have another witness that will
8 testify as to the status of that.

9 HEARING OFFICER VALKOSKY: Mr. Thompson, do you have
10 any redirect?

11 MR. THOMPSON: I don't believe so. Thank you.

12 HEARING OFFICER VALKOSKY: Thank you, Mr. Chilson.

13 MR. THOMPSON: We would like to call Allan Williams,
14 please.

15 (Pause in proceeding.)

16 (Witness sworn.)

17 BY MR. THOMPSON:

18 Q. Mr. Williams, please state your name for the record.

19 A. My name is Allan Williams.

20 Q. And are you the same Allan Williams that submitted
21 prepared testimony identified as part of Exhibit 34 and
22 rebuttal testimony, which has been identified as part of
23 Exhibit 39 in this proceeding?

24 A. Yes, I am.

25 Q. If I were to ask you the questions contained in those
26 two testimonies, would your answers today under oath be the

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 same except for exhibit numbers?

2 A. Yes, they would.

3 Q. Do you have any corrections, additions, or deletions
4 to make to your material?

5 A. No, I don't.

6 Q. Please summarize your testimony for the committee.

7 A. In general my testimony covers the technical aspects
8 of the -- what is presented in the Application for
9 Certification. As manager of engineering for U.S.
10 Generating Company, that work was performed substantially
11 under my direction by the consultants that Mr. Garratt has
12 identified earlier today.

13 MR. THOMPSON: Thank you. Mr. Williams is tendered
14 for cross-examination.

15 HEARING OFFICER VALKOSKY: Mr. Ogata?

16 MR. OGATA: I have no questions.

17 HEARING OFFICER VALKOSKY: Thank you, Mr. Williams.

18 MR. THOMPSON: Finally in the area of Project
19 Description, applicant would like to call Mr. William
20 Steiner, please.

21 (Pause in proceeding.)

22 MR. THOMPSON: We seem to have lost Mr. Steiner.
23 I suspect a higher calling.

24 (Pause in proceeding.)

25 (Witness sworn.)

26 BY MR. THOMPSON:

1 Q. Thank you. Mr. Steiner, will you please state your
2 name for the record, please.

3 A. Bill Steiner.

4 Q. Are you the same Bill Steiner that submitted prepared
5 testimony as part of Exhibit 34 to this proceeding?

6 A. I am.

7 Q. If I were to ask you those questions contained in
8 that prepared testimony, would your responses today under
9 oath be the same except for minor exhibit changes?

10 A. Yes. I'd like to have a copy of that. I don't have
11 that with me. Beg your pardon.

12 (Pause in proceeding.)

13 BY MR. THOMPSON:

14 Q. Would you please summarize your testimony for the
15 committee?

16 A. The subject of this exhibit -- again, I don't
17 remember what it is.

18 Q. The exhibit was merely the exhibit that contained all
19 the prepared testimony. Nod your head up and down.

20 A. Yes.

21 Q. The summary that I would like would be a summary of
22 what you were responsible for for this project and -- ready?

23 A. Thank you, yes. I am with URS Greiner
24 Woodward-Clyde. I've been the project manager for
25 environmental issues in the AFC. I directed the development
26 of all the environmental issues, and we have witnesses to

1 address each of the issues.

2 In addition, I was the air quality and task leader
3 and will be a witness next Monday, if the hearing schedule
4 proceeds.

5 Q. Thank you. Mr. Steiner, in your testimony today, is
6 in Project Description your overall environmental
7 responsibilities with regard to this application; is that
8 correct?

9 A. Yes.

10 MR. THOMPSON: Thank you very much. Mr. Steiner is
11 tendered for cross-examination.

12 HEARING OFFICER VALKOSKY: Mr. Ogata?

13 MR. OGATA: No questions.

14 BY HEARING OFFICER VALKOSKY:

15 Q. Mr. Steiner, are you generally familiar with all of
16 the conditions which staff has proposed be imposed upon a
17 project?

18 A. Generally familiar, yeah. In each of the discipline
19 areas our witnesses have investigated those proposed
20 conditions in detail. I'm personally familiar with the air
21 quality conditions of which, I guess, we don't have yet.
22 I've been studying in detail the proposed PDOC conditions of
23 that.

24 Q. Is it your opinion that the analysis is complete on
25 the La Paloma project, the environmental analysis?

26 A. Largely, yes. And as Mr. Garratt pointed out

1 earlier, there are a few issues in air quality and biology
2 that have yet to be closed out. There may be some further
3 analysis in those areas.

4 Q. So in other words, you just indicated the biology and
5 air quality are not complete?

6 A. I believe so.

7 HEARING OFFICER VALKOSKY: Thank you.

8 Anything, Mr. Thompson?

9 MR. THOMPSON: Nothing further, thank you.

10 COMMISSIONER LAURIE: Wait, wait, wait.

11 HEARING OFFICER VALKOSKY: Mr. Steiner, please.

12 COMMISSIONER LAURIE: Just a question for

13 Mr. Valkosky: It would be our intent to address the
14 proposed mitigation measures in each section as each witness
15 testifies to address --

16 HEARING OFFICER VALKOSKY: That's correct. This is
17 just an overview.

18 COMMISSIONER LAURIE: That's fine. Thank you, sir.

19 MR. THOMPSON: If it please the committee, I would
20 intend to ask each of the specialist witnesses whether or
21 not, for example, socioeconomic, whether they reviewed the
22 proposed conditions of certification and recommend them to
23 the project, that they be accepted.

24 COMMISSIONER LAURIE: That's fine. Thank you.

25 MR. THOMPSON: Whatever the committee wishes. We
26 have some of the exhibits that have single sponsor in the

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 Project Description area. I'd like to move those into
2 evidence, please.

3 HEARING OFFICER VALKOSKY: If you could identify
4 specifically those exhibits, Mr. Thompson.

5 MR. THOMPSON: Will do so. Exhibit 21 sponsored by
6 Mr. Garratt. It is the January 28, '99, filing with this
7 Commission noticing a change of land ownership along one of
8 the corridors. Exhibit 7, which is an exhibit sponsored by
9 Mr. Chilson, which contains various agency correspondence.

10 Exhibit 9, also by Mr. Chilson, another package of
11 correspondence concerning permits. That was filed on
12 November 12. Mr. Chilson's Exhibit No. 10, which is the
13 California Fish and Game section 1603 agreement, which was
14 filed on November 13. Exhibit 26, which we referenced
15 earlier, which is the correspondence regarding the alternate
16 linear routes.

17 And finally from Mr. Chilson, Exhibit 30, which is
18 the letter to the California Division of Oil, Gas, and
19 Geothermal dated March 23, '99. Lastly, Mr. Williams'
20 Exhibit 11, which contains the ABB startup costs of December
21 2nd, 1998.

22 The final exhibit that I would delay until this
23 afternoon, with your indulgence, is Exhibit 42, that will be
24 sponsored by Mr. Williams. There are no other sponsors of
25 that. However, I have not yet provided copies for the
26 record, as was your request earlier today. When provided

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 copies, I'd ask Exhibit 42 be submitted into the record.

2 HEARING OFFICER VALKOSKY: Is there any objection?

3 Mr. Ogata?

4 MR. OGATA: We have no objection moving them into
5 evidence, but I would like to be sure that the appropriate
6 times, if necessary, we have the opportunity to
7 cross-examine the witnesses on these.

8 HEARING OFFICER VALKOSKY: You shall, as we address
9 the topic, absolutely.

10 MR. THOMPSON: The exhibits I'm moving in are the
11 exhibits that have a sole -- that are only in the project
12 description area, and I have a sole witness that's on the
13 stand. I'm not moving, yet, exhibits where one or two
14 parties have responsibility or that span other areas. I
15 think I did that.

16 MR. OGATA: I guess I'm not clear. For example,
17 Exhibit 42, that's with respect to the water. And certainly
18 as part of the Project Description, that's fine, but in
19 terms of the substance of what the letter says, I'd like to
20 have an opportunity, if I deem necessary, to cross-examine
21 witnesses on the substantive matters of the document, which
22 we're not doing now. That's my concern.

23 MR. THOMPSON: I'll agree not to move that until the
24 water section, if that's what you'd like.

25 MR. OGATA: That seems more appropriate to me.

26 HEARING OFFICER VALKOSKY: I would agree. We'll take

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 Exhibit 42 off of that list. That will be dealt with under
2 the appropriate topic, which appears to be water.

3 Are there objections to any of the other exhibits
4 enumerated by Mr. Thompson? That will be Exhibits 7, 9, 10,
5 11, 21, 26, and 30.

6 MR. THOMPSON: Exactly.

7 MR. OGATA: Again, I have no objection introducing
8 them into evidence, but I want to reserve the right to
9 recall witnesses at the appropriate time, if we need to get
10 into that.

11 HEARING OFFICER VALKOSKY: That right is reserved on
12 those specific topics.

13 MR. THOMPSON: We have no problem on that. In fact,
14 our project overview witnesses in the Project Description
15 will be here for each of the hearing days. That's our
16 anticipation now.

17 HEARING OFFICER VALKOSKY: Are there any objections
18 from any of the other parties?

19 Hearing no objection, those identified exhibits are
20 admitted into evidence.

21 Is there anything that anyone else would like to
22 bring up on the topic of Project Description?

23 None. The next topic is alternatives. Mr. Thompson?

24 MR. THOMPSON: Thank you. Applicant would like to
25 call Mr. Roger Garratt.

26 BY MR. THOMPSON:

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 Q. I'd like to remind you that you were previously
2 sworn.

3 And again, you are the same Roger Garratt that's
4 submitted testimony in this proceeding?

5 A. Yes, I am.

6 Q. Would you like to -- do you have any corrections,
7 additions, or deletions to make to the Alternatives section
8 of your testimony?

9 A. No, I do not.

10 Q. Would you like to summarize the alternatives to the
11 project?

12 A. This section of the application addresses such things
13 as alternative site locations, alternative fuels,
14 alternative turbine technologies, and related technologies,
15 water disposal methods, mine alternatives, and the
16 no-project alternative.

17 Q. Thank you very much. Does that complete your
18 summary?

19 A. Yes, it does.

20 MR. THOMPSON: Mr. Garratt's tendered for
21 cross-examination in the area of Alternatives.

22 HEARING OFFICER VALKOSKY: Mr. Ogata?

23 MR. OGATA: No questions for Mr. Garratt.

24 HEARING OFFICER VALKOSKY: Questions from any other
25 party?

26 BY HEARING OFFICER VALKOSKY:

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 Q. Mr. Garratt, on page 407 of the Final Staff
2 Assessment, which we've identified as Exhibit 35, there's a
3 list of four items, which I understand is essentially a
4 paraphrase of what the applicant has presented in the AFC;
5 is that correct?

6 A. Under the no-project --

7 Q. Under the no-project alternative.

8 A. That's correct.

9 Q. Could you explain to me why these four reasons -- why
10 the applicant has presented these four reasons as going to
11 the project's feasibility as defined under CEQA rather than
12 merely to its desirability?

13 A. In terms of all four arguments?

14 Q. Take them one at a time if you like or all four at
15 once?

16 A. The I would -- essentially what we are saying is that
17 we are in the business of developing energy projects and
18 that part of that business is assessing the need for
19 facilities not only in California but throughout the United
20 States. And that there has been a need established for new
21 facilities in California, including the electricity report,
22 and we proposing the project to address that need.

23 Q. Right. But I can accept that the arguments that you
24 presented here certainly explain why you view the project as
25 desirable. And if that's what you intend them to mean, I
26 think we can stop right now.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 I guess the concern I have is that these arguments,
2 as I see them, for desirability would pertain to any project
3 and don't really apply to the feasibility of a no-project,
4 would you agree?

5 A. It depends if you are talking about the feasibility
6 from a macro standpoint. From the macro standpoint there is
7 this determination of need for new resources confirmed by a
8 number of different sources, and it's important, in my view,
9 for companies like U.S. Generating Company to develop these
10 new resources, and I think that the legislature is -- has
11 said the same thing and passing of deregulation of the
12 state.

13 Q. Right. But does that not indicate why a project,
14 such as the La Paloma project, is desirable rather than
15 anything else?

16 A. I think it addresses both desirability and
17 feasibility. To me feasibility as an economic feasibility,
18 if you will: Is there a need for the project that you are
19 proposing?

20 And then I think the other things we've addressed as
21 well: Is the project environmentally compatible?

22 It seems to me that a no-project alternative says --
23 misses the fundamental issue on need.

24 Q. Okay. So then, it would be your testimony, then,
25 that these four arguments flow from the need for
26 determinations, as you phrase them, as the Commission

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 establishes it?

2 A. Yes.

3 HEARING OFFICER VALKOSKY: Thank you. Mr. Thompson?

4 MR. THOMPSON: Thank you.

5 HEARING OFFICER VALKOSKY: Mr. Thompson?

6 COMMISSIONER LAURIE: Wait. Let me ask Mr. Valkosky
7 a question: Given the issue here, whether any alternatives
8 had been determined to be environmentally superior --

9 HEARING OFFICER VALKOSKY: Yes.

10 COMMISSIONER LAURIE: -- and it is staff's
11 recommendation that absent the biology and air quality
12 issue, in light of all other impacts being mitigated to the
13 point below significance, that they are not finding the
14 no-project alternative to be environmentally superior?

15 HEARING OFFICER VALKOSKY: I believe that's a fair
16 characterization of staff's position.

17 COMMISSIONER LAURIE: And so at such time as we
18 review and analyze in determining the issue measures for
19 biology and air quality, thus reducing such levels of impact
20 below significance, we can legally find the no-project
21 alternative not to be environmentally superior?

22 HEARING OFFICER VALKOSKY: Ultimately you can reach
23 that conclusion, that's correct.

24 COMMISSIONER LAURIE: And if we find the no-project
25 alternative not to be environmentally superior, is it
26 correct that we do not have to find feasibility for not

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 selecting it?

2 HEARING OFFICER VALKOSKY: That's correct.

3 COMMISSIONER LAURIE: Thank you.

4 HEARING OFFICER VALKOSKY: Yes.

5 BY COMMISSIONER ROHY:

6 Q. Following up on this issue, I'd like to address here
7 number three point in that page 407 on the No Alternatives,
8 and which -- the statement was made, and I'll take it as a
9 partial sentence "existing units which it will tend to
10 replace or cause to run at lower capacity factors."

11 Have you provided the evidence on the replacement of
12 power plants, question number one on that?

13 A. We have not, as part of the Application for
14 Certification, there's been no appendix to that effect.
15 It's our view that the statement -- it was our view that the
16 statement was well-understood by people, that if you look at
17 the dispatch sequence of plants, when you put in a newer,
18 more efficient, more environmentally superior project, older
19 plants tend to move down the sequence and their capacity
20 factor consequently reduced and error emissions are reduced,
21 air emissions, and these have been demonstrated in a number
22 of different forms.

23 Q. The basis is on economic dispatch that this plant
24 will be less expensive to operate, and because of that will
25 run more; is that the basis of your argument?

26 A. That's the primary basis, and that's fairly easy to

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 demonstrate, if you look at the efficiency of the project.
2 This is a project with a thermal heat rate under seven
3 thousand, and there's been projects in the state of
4 California with heat rates over ten thousand paying the same
5 prices.

6 Q. My second question is on the power plants that run:
7 Does that reduce the air emissions if they run at lower
8 capacity?

9 A. Yes.

10 Q. Have you supplied us evidence on that, or is that a
11 common knowledge answer?

12 A. I think it's a common knowledge answer that if you
13 look at the emission rates for these older plants. I would
14 suspect much of the evidence exists here at the Commission.

15 COMMISSIONER ROHY: Thank you.

16 HEARING OFFICER VALKOSKY: Redirect, Mr. Thompson?

17 MR. THOMPSON: Nothing from applicant. Thank you.

18 HEARING OFFICER VALKOSKY: Anything else from any
19 other party for this witness?

20 Thank you, Mr. Garratt. Mr. Ogata?

21 MR. OGATA: Staff's witness is Eileen Allen.

22 (Pause in proceeding.)

23 (Witness sworn.)

24 HEARING OFFICER VALKOSKY: Mr. Thompson, I will note
25 that I believe the FSA did not include a resume for
26 Ms. Allen.

1 Do you have any objections to her qualifications to
2 testify?

3 MR. THOMPSON: Not at all. We are well familiar with
4 Ms. Allen and her capabilities.

5 HEARING OFFICER VALKOSKY: Any other party? No,
6 thank you.

7 (Witness sworn.)

8 BY MR. OGATA:

9 Q. Ms. Allen, what is your job title at the Energy
10 Commission?

11 A. My job title is planner two, and I'm a project
12 manager within the Environmental Facilities Siting and
13 within the Energy Facility Siting, Environmental Protection
14 Division.

15 Q. What are your duties?

16 A. I have a variety of duties. I have been the project
17 manager for various proposed power plant cases. Currently I
18 handle alternatives analyses for a number of projects.

19 Q. You have before you testimony entitled Alternatives,
20 testimony of Marc Pryor and Eileen Allen.

21 And did you write -- you can't nod. You have to say
22 yes or no.

23 A. Marc Pryor and I wrote this testimony together. He
24 and I are coauthors for the testimony.

25 Q. Do you have any changes or corrections to this
26 testimony?

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 A. No, I do not.

2 Q. Can you summarize your testimony?

3 A. Yes. Staff is required to examine the feasibility of
4 available site and facility alternatives to the applicant's
5 proposal which substantially lessen the significant adverse
6 impacts on the environment.

7 Marc Pryor and I prepared this alternatives analysis
8 which identifies the applicant's basic objectives,
9 significantly impacts of the project, technology
10 alternatives, and alternative sites that had the potential
11 for reducing or avoiding significant impacts.

12 With respect to alternative sites, we looked at eight
13 in addition to the proposed site. The alternative sites are
14 Elk Hills Road, Cymric and Belridge in Western Kern County,
15 Kettleman City East and Kettleman City West in Kings County,
16 Gates and Panoche Road in Fresno County, and Santa Nella in
17 Merced County.

18 We also analyzed the no-project alternative. This
19 alternative assumes that the project is not built, and it is
20 compared to the proposed project. We concluded that the
21 mitigation measures proposed by La Paloma will reduce any
22 impacts to less than significant levels. Given these
23 measures and the potential environmental and economical
24 benefits of the project, the staff believes overall the
25 no-project alternative is not superior to the proposed
26 project.

1 After examining the eight alternative sites and the
2 proposed La Paloma site, staff found that using the proposed
3 site and related linear facilities with mitigation measures
4 would result in the least environmental impact.

5 Since there are no unmitigated significant adverse
6 impacts that we are aware of at this time, there are no
7 issues in this area; therefore, staff is not proposing any
8 alternative-site-related facility or technology options.

9 MR. OGATA: Thank you, Ms. Allen. Mr. Pryor has been
10 previously sworn, so if there's any questions for either of
11 them, they are both available for cross-examination.

12 HEARING OFFICER VALKOSKY: Mr. Thompson?

13 MR. THOMPSON: Thank you very much. We have no
14 questions.

15 BY COMMISSIONER LAURIE:

16 Q. Ms. Allen, I thought I heard you say that in light of
17 the mitigation measures and economic benefits, you find none
18 of the project alternatives to be environmentally superior,
19 or did I mishear your testimony?

20 A. I said the potential environmental and economic
21 benefits.

22 Q. Allowing you to reach what conclusion?

23 A. That the no-project alternative is not superior to
24 the proposed project.

25 COMMISSIONER LAURIE: Thank you.

26 BY HEARING OFFICER VALKOSKY:

1 Q. Ms. Allen, you indicate both in your testimony and
2 your oral summary that you believe all potential
3 environmental impacts will be reduced to a level of
4 insignificance; is that correct?

5 A. Yes, it is.

6 Q. How can you reach that conclusion when apparently the
7 mitigation and the analysis, I would assume that would
8 include mitigation, is at yet incomplete on at least biology
9 and air?

10 A. I'll need to confer with counsel on the best response
11 to staff for that.

12 COMMISSIONER LAURIE: Let me ask a question: Is it
13 your testimony that -- is your testimony conditional; that
14 is, if mitigation measures are found to reduce the impacts
15 in those two areas below the area of significance, then the
16 totality of impacts would be found to be insignificant?

17 THE WITNESS: Yes, that is my testimony.

18 BY HEARING OFFICER VALKOSKY:

19 Q. Does that presume that all of the proposed mitigation
20 measures recommended by staff are adopted?

21 A. Yes, it does.

22 Q. You indicated the existence of no significant
23 environmental impacts.

24 Does your testimony go to the impacts of only this
25 project in isolation or to the cumulative nature of the
26 impacts which it may create?

1 A. My testimony covers alternatives only, in that I did
2 look at the testimony of the entire staff addressing
3 cumulative impacts. I think that's been covered in their
4 individual technical sections.

5 Q. Okay. On page 392 of your testimony in Exhibit 35,
6 you indicate the analysis to transmission line route
7 alternatives.

8 Does this include the alternative recently designated
9 as 1B, which contains the jog around the Fish and Game
10 property?

11 A. My testimony does not include the potential jog.

12 Q. On the next page, page 393, again I'm just looking at
13 this just solely for my educational purposes, you indicate
14 as one of the criteria for your alternatives analysis that a
15 project be compatible with the zoning and county plan
16 designations.

17 At what point are you looking for that compatibility?

18 By that I mean this present project required, to my
19 knowledge, a general plan change.

20 If that had been known and you were analyzing the
21 present site as an alternative, would that have disqualified
22 it because it would be incompatible?

23 A. It would not disqualify it. I would have noted that
24 it was a possible disadvantage compared to a site that had
25 the appropriate zoning in place at the time. It would not
26 be what's called a show stopper.

1 Q. And that is the similar level of screening which
2 you've used for seeking alternative sites for analyzing
3 alternative sites for this project?

4 A. Yes, that's correct.

5 Q. On page 405 you indicate, as I read it, environmental
6 justice concerns as a show stopper. In other words, a show
7 stopper in the sense that it would lead to a site not being
8 further considered.

9 Can you explain that a little bit more to me and to
10 why you base the potential existence of environmental
11 justice concerns as disqualifying a site?

12 A. In the context of an alternatives analysis, if there
13 are environmental justice concerns such that it is a
14 possibility that a pattern of decisions that would result in
15 discrimination against a particular group could be shown,
16 the person looking at alternative sites would have an
17 inclination to go with sites that would be easier to deal
18 with as far as community response.

19 If there's an environmental justice issue, it's a
20 good possibility there are going to be substantial community
21 concerns about a new industrial project in the area. So if
22 there are possibilities that would result in an easier
23 siting process, those would be favored.

24 Q. Okay. So it's not that that site could not support
25 the development of a large industrial project. It's just
26 that for screening processes, it's easier to avoid that

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 site?

2 A. That's right.

3 Q. On page 408 you indicate, four lines up from the
4 bottom, in talking about the Cymric site, you say that
5 "without the dry cooling and zero discharge mitigation
6 measures, staff believes that this site is not feasible."

7 Is the converse true that if the dry cooling and zero
8 discharge were imposed as condition of certification, that
9 the Cymric site would be feasible as an alternative site?

10 A. Yes, that's true.

11 Q. So then, in reality, doesn't, at least, one possible
12 alternative site exist, namely the Cymric site?

13 A. We found the Cymric site to be feasible.

14 HEARING OFFICER VALKOSKY: Okay. Thank you.

15 Mr. Ogata?

16 MR. OGATA: No further questions.

17 COMMISSIONER LAURIE: Question on environmental
18 justice directed to our hearing officer.

19 Environmental justice is of federal nature. I
20 believe it appears in the form of federal regulation that
21 may or may not be applicable to state agencies such as
22 California. I'm aware, however, that we are aware of the
23 environmental justice regulations and seek to follow them to
24 the greatest extent possible.

25 Mr. Valkosky, I'd like your understanding of what our
26 obligations are regarding environmental justice today

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 because I see it had been used as a method of finding
2 inability to mitigate socioeconomic impacts.

3 Is it your understanding that environmental justice
4 is of sufficient authority in California that we're
5 obligated to comply with it?

6 HEARING OFFICER VALKOSKY: It is my understanding
7 that it would -- environmental justice concerns would
8 basically be similar to other concerns that we're required
9 to address under CEQA. If environmental justice concerns
10 were raised in a specific project site, and they are not in
11 this case. This is more of a theoretical discussion that
12 we're having that yes, we would be required to address them
13 --

14 COMMISSIONER LAURIE: Okay.

15 HEARING OFFICER VALKOSKY: -- and achieve the
16 appropriate mitigation or not as the case --

17 COMMISSIONER LAURIE: I probably do not want to
18 pursue that any more on the record, but I needed to know
19 your initial response.

20 HEARING OFFICER VALKOSKY: That is my initial
21 response.

22 COMMISSIONER LAURIE: Thank you.

23 HEARING OFFICER VALKOSKY: Anyone else?

24 MR. OGATA: I have no question.

25 HEARING OFFICER VALKOSKY: Mr. Thompson?

26 MR. THOMPSON: Just one or two questions.

1 BY MR. THOMPSON:

2 Q. Your discussion of the Cymric site in the
3 alternatives analysis point one, I note that you state that
4 the site may be a potential conflict with oil development.

5 Is that still true today to your knowledge?

6 A. To my knowledge, yes.

7 Q. In reviewing your material on the Cymric site, am I
8 correct that this is an environmental analysis, and when you
9 say "feasible" as if it could be a feasible site, you did
10 not analyze project economics as an applicant would do; is
11 that correct?

12 A. That's correct.

13 MR. THOMPSON: Thank you very much. That's all I
14 have.

15 HEARING OFFICER VALKOSKY: Mr. Ogata?

16 MR. OGATA: Nothing.

17 HEARING OFFICER VALKOSKY: Questions from any other
18 party for Ms. Allen?

19 Hearing none, thank you, Ms. Allen.

20 Mr. Thompson, anything further on alternatives?

21 MR. THOMPSON: Nothing.

22 HEARING OFFICER VALKOSKY: Any exhibits you desire to
23 move into the evidence at this time?

24 MR. THOMPSON: No. The alternatives material is in
25 Exhibit 1 of the AFC, which I would anticipate moving as the
26 last official act.

1 MR. OGATA: I have a question: Would you like staff
2 to move each section into evidence or wait for all the
3 testimony and just move --

4 HEARING OFFICER VALKOSKY: I would prefer it be done
5 after you've moved the individual -- identified the
6 individual pieces, then at the conclusion of the time that
7 that exhibit has been completed, move it at that time; okay?

8 Because I know there are several exhibits that have
9 multiple parts.

10 Anything else from anyone in the public on
11 alternatives?

12 Thank you. Next topic Compliance Monitoring and
13 Closure.

14 MR. THOMPSON: Applicant would like to call again
15 Mr. Roger Garratt, having previously been sworn.

16 BY MR. THOMPSON:

17 Q. Mr. Garratt, you are here testifying right now on the
18 topic of Compliance Monitoring and Closure.

19 Do you have any corrections, changes, or additions to
20 make to the Compliance Monitoring and Closure material?

21 A. No, I do not.

22 Q. At the end of this process, Mr. Garratt, I will be
23 asking you if you accept staff's recommended conditions of
24 certification and verification.

25 Recognizing that you are not yet able to answer that
26 question in the affirmative, do you anticipate that an

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 affirmative answer by you to that question will be
2 forthcoming at the close of these hearings?

3 A. Yes.

4 MR. THOMPSON: Thank you very much. Mr. Garratt is
5 tendered for cross-examination.

6 HEARING OFFICER VALKOSKY: Mr. Ogata?

7 MR. OGATA: I have no questions for Mr. Garratt.

8 BY HEARING OFFICER VALKOSKY:

9 Q. Mr. Garratt, what is your understanding of the
10 Commission's compliance plan?

11 Specifically, do you understand it to contain all of
12 the Commission's conditions for compliance and conditions
13 for closure?

14 A. As contained in the FSA?

15 Q. Correct. Are you aware -- maybe you can answer this
16 or not, that there are additional conditions specifically
17 relating to closure contained in other areas of the FSA?

18 A. Yes.

19 Q. So then, is it your belief that the applicant, in
20 determining which conditions apply either for compliance or
21 closure, needs to look at the totality of the document, in
22 this case the FSA, and not just the compliance plan?

23 A. Yes.

24 HEARING OFFICER VALKOSKY: Thank you. Mr. Thompson?

25 MR. THOMPSON: We have nothing further.

26 HEARING OFFICER VALKOSKY: Mr. Ogata?

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 MR. OGATA: We have nothing for Mr. Garratt.

2 HEARING OFFICER VALKOSKY: Thank you.

3 MR. THOMPSON: Are you going to put on Mr. Baker --
4 I'm sorry. Ms. Scott. Sorry.

5 MR. OGATA: Ms. Willis will be conducting the direct
6 examination of the next four witnesses.

7 HEARING OFFICER VALKOSKY: Ms. Willis?

8 MS. WILLIS: At this time I would like to call Geri
9 Z. Scott.

10 (Witness sworn.)

11 BY MS. WILLIS:

12 Q. Ms. Scott, please state your name and spell your name
13 for the record.

14 A. My name is Geri Z. Scott, S-c-o-t-t.

15 Q. Do you currently work for the Energy Commission?

16 A. Yes, I do.

17 Q. What is your job title?

18 A. I'm a planner two in the Environmental Siting office.

19 Q. Briefly describe your job duties?

20 A. Presently I'm compliance project manager and have
21 been for the last five years. And I oversee construction
22 and operation of facilities.

23 Q. Do you have the testimony in front of you General
24 Conditions, including Compliance Monitoring and Closure
25 plan?

26 A. Yes, I do.

1 Q. Did you author this testimony?

2 A. Yes, I did.

3 Q. Do you have any changes or corrections in this
4 testimony today?

5 A. I do not.

6 Q. Could you briefly describe -- give a summary of your
7 testimony?

8 A. Yes. Public resources Code Section 25532 requires
9 the Energy Commission to establish a lottery system to
10 assure that facilities are constructed and operated in
11 compliance with regulations, guidelines, and conditions
12 adopted or established by the Commission. The general
13 conditions which include the compliance and closure plans
14 are the result of that mandate.

15 The compliance plan is the mechanism used to ensure
16 that -- will be used to ensure that La Paloma is constructed
17 and operated according to the conditions of certification.
18 In essence, the compliance plan spells out or describes
19 exactly what is expected of the project owner and of the
20 compliance project manager in the matter.

21 What we expect is verification from the project owner
22 that they are complying with our conditions, and this will
23 be done by periodic compliance reports, site visits during
24 the construction and operation of this project. Also, there
25 are three scenarios that we will look at at the closure of
26 this project.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

61

1 The first is a plan closure, which would occur at the
2 end of the project's life. The facility would be closed in
3 an anticipated and orderly manner. The second closure would
4 occur if the facility is closed suddenly or unexpectedly on
5 a short-term basis. By this we mean that the facility will
6 be closed longer than ordinary shutdowns for maintenance
7 purposes. And the third closure occurs if the owner closes
8 the facility suddenly and unexpectedly on a permanent basis,
9 such as abandonment.

10 In order to assure that the public health and safety
11 is provided, we are requiring the project owner to submit to
12 us sixty days prior to the start of commercial operation an
13 onsite contingency plan. This plan will cover what -- well,
14 basically, let me step back a minute. This onsite
15 contingency plan must cover how this facility will be
16 protected from encroachment and trespassers and also will
17 cover how the hazardous material wastes will be removed from
18 the facility. In essence we want to know that the facility
19 is protected during the closedown.

20 The project owner will review this plan annually and
21 recommend revisions to the plan to keep it up-to-date over
22 the life of the project. At the end of the project's life,
23 the project owner shall submit a facility closure plan to us
24 twelve months prior to any closure activities. There must
25 be CEC-approved facility closure plan in place before any
26 activities occur.

1 Compliance with the general conditions and the
2 compliance and closure plan will ensure that the La Paloma
3 project is constructed, operated, and closed in compliance
4 with air and water quality, public health and safety, and
5 other applicable regulations, guidelines adopted or
6 established by the Commission.

7 Q. Does this conclude your testimony?

8 A. Yes.

9 MS. WILLIS: This witness will be available for
10 cross-examination.

11 HEARING OFFICER VALKOSKY: Mr. Thompson?

12 MR. THOMPSON: Applicant has no questions. Thank you
13 very much.

14 COMMISSIONER LAURIE: Ms. Scott, a compliance plan is
15 mandated by CEQA regs, is it not.

16 THE WITNESS: Yes, it is.

17 BY HEARING OFFICER VALKOSKY:

18 Q. Ms. Scott, is the compliance plan to be read in
19 conjunction with other conditions contained in the Final
20 Staff Assessment?

21 A. Repeat that, please.

22 Q. Is the compliance plan to be read in conjunction with
23 additional requirements specifically relating to closure of
24 a plant which may be contained in other sections of the
25 Final Staff Assessment?

26 A. Yes.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 Q. I wonder: If there is some kind of conflict between
2 the general provisions and the specific condition which may
3 appear, for example, in biology, how is that resolved?

4 A. The general conditions really cover -- let's see.
5 How shall I put this?

6 It would not be a conflict because the specific
7 conditions of certification are the ones that staff write to
8 ensure that the environmental impacts are mitigated to an
9 insignificant level. The general conditions are more of a
10 guideline as to how to comply with those conditions and to
11 ensure compliance with the Commission decision so there
12 would not be a conflict.

13 Q. Again, let's just focus on closure for the time
14 being.

15 So it would be your opinion that an applicant
16 involved in a closure situation had best be aware of both
17 the specific conditions of certification and the general
18 conditions of the compliance plan and read those as a whole;
19 is that correct?

20 A. That is correct.

21 Q. In your testimony on pages 423 and 424 of Exhibit 35,
22 you indicate three areas which I take to include the
23 specific conditions of certification for closure. These are
24 hazardous material management, transmission line
25 engineering, and waste management.

26 Are those still the current topics which contain

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 additional conditions of closure?

2 A. Yes, that is correct.

3 Q. I just would -- just like to be aware. I didn't find
4 the specific conditions in those. I did find specific
5 closure conditions in facility design and geology and
6 biology.

7 So could those be added to your testimony at this
8 point?

9 A. Yes, they could be.

10 Q. Last question, page 128 of the Final Staff
11 Assessment, this is the section dealing with land use.
12 There's an indication that the author of the land use
13 section -- I realize you are not that person -- believes
14 that in a review by Kern County of the closure plans --
15 excuse me -- an advisory review by Kern County of the
16 closure plan is desirable.

17 Is that type of review provided for in the closure
18 plan as contained in your testimony?

19 A. My testimony is on the general aspect of the facility
20 closure plan. When we look at the closure plan, each
21 technical area will review the closure plan and come and
22 make recommendations.

23 So if the author of the land use section has
24 indicated that in their expert opinion that a review of the
25 Kern County -- by Kern County is necessary, that would be
26 taken into consideration when we review the facility closure

1 plan.

2 HEARING OFFICER VALKOSKY: Okay. Thank you.

3 Appreciate that.

4 Any further questions? Ms. Willis, anything else for
5 Ms. Scott? Mr. Thompson?

6 MR. THOMPSON: Nothing else for Ms. Scott,
7 Mr. Valkosky, only to say that applicant has no difficulty
8 with the recommendations that you just referred to in land
9 use with coordination with the Kern County authorities.

10 HEARING OFFICER VALKOSKY: Thank you for that
11 clarification.

12 Any other questions on Compliance Monitoring from any
13 party or member of the public?

14 Thank you, Ms. Scott.

15 COMMISSIONER LAURIE: We'll take a lunch break now,
16 Mr. Valkosky. Well, I'm sorry. Sure. Go ahead.

17 HEARING OFFICER VALKOSKY: Mr. Thompson, do you have
18 any exhibits you wish to move into the record at this time?

19 MR. THOMPSON: We do not.

20 HEARING OFFICER VALKOSKY: Thank you.

21 COMMISSIONER LAURIE: 1:10 okay?

22 MR. THOMPSON: If it would please the committee,
23 could we have an hour and a half. This is, I think, the
24 only opportunity we're going to have to get together with
25 staff and make some much needed phone calls.

26 COMMISSIONER LAURIE: I was going to suggest we do it

1 at the end, but if you do it now, fine. So we'll reconvene
2 at -- we'll be ready at 1:30. If you need a few more
3 additional minutes, that would be fine, and then we'll go
4 through until 5:00 o'clock and get as much accomplished
5 today as we can.

6 MR. THOMPSON: Thank you.

7 (Whereupon the lunch recess
8 was taken at 12:06 p.m.)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

AFTERNOON SESSION

(Whereupon, the appearances of all parties having been duly noted for the record, the hearing resumed at 1:36 p.m.)

COMMISSIONER LAURIE: The hearing is reconvened.
Mr. Valkosky?

HEARING OFFICER VALKOSKY: Thank you, Commissioner.

I understand from discussions with the parties off the record that they would prefer to have until the end of the day to report on the scheduling matter, so we'll defer that discussion to that point.

Now we'll proceed with the next topic, which is Conformance with the Integrated Assessment of Need.

Mr. Thompson?

MR. THOMPSON: Having told everyone I'm ready, I'm not.

(Pause in proceeding.)

MR. THOMPSON: Thank you for your indulgence. My apologies. We would like to call Mr. -- surprise -- Roger Garratt in the subject of Demand Conformance, Mr. Garratt having been previously sworn.

BY MR. THOMPSON:

Q. Mr. Garratt, with regard to demand conformance, do you have any corrections, additions, or deletions to be made to your Demand Conformance testimony at this time?

A. No, I do not.

Q. Would you like to offer a brief summary of that

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 material for the committee.

2 A. The exhibit referenced explains the compliance of the
3 La Paloma to the applicable standards, and that completes my
4 summary.

5 MR. THOMPSON: A little wordy but that was great.

6 Mr. Garratt is tendered for cross-examination.

7 HEARING OFFICER VALKOSKY: Point of clarification:
8 Can you explain which exhibit you reference?

9 THE WITNESS: The reference section in the ISC, I
10 think number two, sections within the AFC that I was
11 sponsoring.

12 HEARING OFFICER VALKOSKY: Within Exhibit 1. Thank
13 you.

14 MR. THOMPSON: If I may, Mr. Valkosky, I'd like the
15 committee to understand that we have not tried to update the
16 Demand Conformance material to keep up with recently filed
17 applications. And what this Commission is doing with regard
18 to Demand Conformance, so we will probably be relying very
19 heavy on staff's analysis, which we believe is up-to-date.

20 HEARING OFFICER VALKOSKY: Thank you.

21 Ms. Willis, any questions?

22 MS. WILLIS: No questions.

23 COMMISSIONER LAURIE: There should be no need to
24 amend, my understanding, any of the issues relating to
25 Demand Conformance because any modifications, I believe,
26 takes place July 1.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 COMMISSIONER ROHY: July 1 is the date.

2 COMMISSIONER LAURIE: So that would be inapplicable
3 to this project.

4 HEARING OFFICER VALKOSKY: Questions from any party
5 on this topic for Mr. Garratt?

6 Thank you, Mr. Garratt. Ms. Willis?

7 MS. WILLIS: Staff would like to call Terry Ewing.

8 HEARING OFFICER VALKOSKY: Mr. Thompson, I notice
9 there is no resume for Mr. Ewing in Exhibit 35.

10 Do you have any objections to his qualifications?

11 MR. THOMPSON: None at all, sir.

12 HEARING OFFICER VALKOSKY: You may proceed.

13 (Witness sworn.)

14 BY MS. WILLIS:

15 Q. Mr. Ewing, do you currently work for the California
16 Energy Commission?

17 A. Yes, I do.

18 Q. Would you please state your job title?

19 A. I'm an energy analyst.

20 Q. Briefly please describe your job duties.

21 A. I've been working on the nexus and power calculation,
22 which is an annual report, and then I'm also working on the
23 Table 1011, which is another annual report that -- the
24 electricity generation in California.

25 Q. Do you have a copy of your testimony entitled Need
26 Conformance in front of you?

1 A. Yes, I do.

2 Q. Did you author this testimony?

3 A. Yes.

4 Q. Do you have any changes or corrections in this
5 testimony?

6 A. No, I do not.

7 Q. Could you please briefly summarize your testimony
8 today?

9 A. In order to obtain a license from the California
10 Energy Commission, the proposed power plant must be found in
11 conformance with the integrated assessment of need. The
12 criteria given this determination are contained in the 1996
13 electricity report, otherwise known as ER 96.

14 In sum, ER 96 need criteria is this: During the
15 period when ER 96 is applicable, the proposed power plant
16 shall be found in conformance with integrated assessment of
17 need as long as the total number of megawatts permitted does
18 not exceed six thousand seven hundred and thirty-seven.

19 ER 96 was adopted by the Commission in November of
20 1997. The La Paloma Generating Project was found date
21 adequate on August 26th, 1998, therefore, ER 96 is the
22 electricity report adopted most recently prior to the
23 project being found data adequate. I have found this
24 project on ER 96 in conformance. I found that the La Paloma
25 Generating Project meets the need conformance criteria
26 contained in ER 96.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

71

1 The certification of this La Paloma generating plant
2 would not cause a number of megawatts permitted in this case
3 and any previously approved by the Commission under ER 96 to
4 exceed six thousand seven hundred thirty-seven. That's it.

5 Q. Does that conclude your testimony?

6 A. Yes.

7 MS. WILLIS: This witness is now available for
8 cross-examination.

9 HEARING OFFICER VALKOSKY: Mr. Thompson?

10 MR. THOMPSON: We have no questions. Thank you very
11 much.

12 BY HEARING OFFICER VALKOSKY:

13 Q. Mr. Ewing, when you refer to any other power plants
14 previously approved by this Commission, I assume you are
15 referring solely to the Sutter project; is that correct?

16 A. Yes. Well, during the period that ER 96 was
17 applicable.

18 Q. Yes. That is only the Sutter project thus far;
19 correct?

20 A. Yes.

21 MS. WILLIS: No further questions.

22 HEARING OFFICER VALKOSKY: Questions from anyone for
23 Mr. Ewing? Any other parties?

24 Thank you, Mr. Ewing.

25 Are there any members of the public who wish to offer
26 comment upon this topic at this time?

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 Facility Design and Geology section?

2 A. No, I do not.

3 Q. Would you please summarize your testimony.

4 A. In general we retained a combination of Black &
5 Veatch, Kennedy/Jenks, and others to assist us in preparing
6 the application. They did that work under my guidance and
7 direction and in accordance with the guidelines set by the
8 Commission.

9 All of what we have in the AFC, the work product
10 coming from that, we believe, in general, that the project
11 is a fileable project, the site and geology, etcetera, is
12 suitable for such a purpose, and the several pages of
13 application I believe support that.

14 MR. THOMPSON: Thank you very much.

15 Mr. Williams is tendered for cross-examination.

16 HEARING OFFICER VALKOSKY: Ms. Willis?

17 MS. WILLIS: We have no questions at this time.

18 BY HEARING OFFICER VALKOSKY:

19 Q. Mr. Williams, I note that staff's testimony,
20 specifically page 322 of Exhibit 35, indicates that
21 additional studies will be conducted prior to the final
22 design of facilities to identify and mitigate any expansive
23 soils that may be present in the foundational areas.

24 Could you explain to me two things: When this will
25 be done, and two, what sort of review will happen to ensure
26 that the proper mitigations are applied?

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 A. Yes. Your first question is as to when that is being
2 done. It is being done now. We have had -- additional soil
3 borings have been taken or are in the process of being
4 analyzed even this week.

5 We expect responses back from that information within
6 four to six weeks, and it will be a period of time when
7 we'll need to reevaluate the civil engineering aspects of
8 the soil and make a determination at that time of the
9 additional adequacy of the soil conditions for the heavy
10 turbine foundations and that sort of thing.

11 Q. Will you provide the analysis of your conclusions to
12 the Commission staff for review?

13 A. Yes, I presume we will.

14 Q. Do you know whether that's included in a specific
15 condition proposed -- to be imposed upon the project?

16 A. I don't recall that it was. To my knowledge it was
17 not a condition that we had put on.

18 COMMISSIONER ROHY: May I?

19 BY COMMISSIONER ROHY:

20 Q. If the groundwork found to be expansive, would that
21 require a significant removal of materials and bringing in
22 new dirt?

23 A. Yes, it could. Again, we'd want to get the
24 engineering analysis in, but the normal solution to the
25 expansive soils is an overexcavation and either coming in
26 with an engineered-filled material or some other subsoil

1 foundation conditioning to make the subsurface adequate for
2 proposed use.

3 Q. Could you tell me when you would expect the results
4 of the bored test that you just described, that that could
5 be available us to?

6 A. We tentatively expect to have them back within about
7 four to six weeks, and I have not tried to put a time
8 together as to when we would have the benefit of the
9 engineering -- civil engineering analysis from that.
10 Tentatively something in a two to two-and-a-half-month time
11 frame would be -- six weeks would be about the time I would
12 expect to have something that we could present back.

13 Q. Because of that, I presume, and you can correct me,
14 that you have not identified a source of fill of engineering
15 material, as you called it, nor have you identified a place
16 to deposit the overexcavation; is that correct?

17 A. That is correct. I would point out that we have done
18 soil borings on a preliminary basis and were encouraged by
19 that preliminary effort that we did not face a soil
20 condition that would require this overexcavation or worse,
21 normal expansive, nor were expansive soils specifically
22 called out as a major problem.

23 So we are optimistic that we have already attended to
24 the problem, but we're going to the next level, taking more
25 soil borings, and this is the results that I was referring
26 to, had come into us in the next four to six weeks and take

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 a while to do the engineering analysis on this.

2 COMMISSIONER ROHY: Thank you.

3 HEARING OFFICER VALKOSKY: One final question.

4 BY HEARING OFFICER VALKOSKY:

5 Q. On page 318 of Exhibit 35, staff indicates that
6 certain equipment structures and components are likely to be
7 subject to a dynamic analysis requirements of the 1998 CBC.
8 Staff also indicates that applicant and staff, I'm quoting,
9 "agree to a list of such items before the design
10 progresses."

11 Could you explain to me when this will happen?

12 A. We have not launched the next phase of engineering
13 design work so that has not started as of now. As
14 Mr. Garratt testified earlier this morning, we anticipate
15 our engineering work beginning in earnest in the next two to
16 four months, and it would be at or near that that initiation
17 of more detailed engineering work that such a list would be
18 drawn up.

19 HEARING OFFICER VALKOSKY: Okay. Thank you.

20 (Discussion off the record.)

21 BY HEARING OFFICER VALKOSKY:

22 Q. Mr. Williams, at what point will the Commission --
23 and by "Commission" I include Commission staff -- be aware
24 of which structures, etcetera, will be subject to the design
25 analysis?

26 Specifically would that likely be before or after the

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

77

1 Commission is called upon to license the project?

2 A. Assuming certification in August, we should have
3 something available ahead of that time.

4 Q. That will be prepared to submit to the Commission?

5 A. Yes.

6 HEARING OFFICER VALKOSKY: Thank you. Mr. Thompson?

7 MR. THOMPSON: Thank you. I have a couple things.

8 BY MR. THOMPSON:

9 Q. Number one, Mr. Williams, if I could draw your
10 attention a minute to the blue binder you have in front of
11 you, which are the responses to the data request,
12 specifically if you could look at two and three.

13 HEARING OFFICER VALKOSKY: Which exhibit are you
14 referring to, Mr. Thompson?

15 MR. THOMPSON: Two.

16 HEARING OFFICER VALKOSKY: I'm sorry, exhibit?

17 MR. THOMPSON: Two.

18 THE WITNESS: I have number two in front of me, yes.

19 BY MR. THOMPSON:

20 Q. There was a question raised by the committee
21 regarding the location of the borrowed pit and how we would
22 get fill from the borrowed pit to the site.

23 Please take a minute and look at those data requests
24 to review your recollection and see if you can give us an
25 answer that has a little more basis in the record.

26 (Pause in proceeding.)

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 THE WITNESS: Generally I would point out that this
2 information was based upon preliminary engineering work and
3 that as we move in through the final engineering phases of
4 the project, some of these numbers and the need for the
5 borrow pit may change significantly.

6 We at this moment, based on the contrary information
7 available to us, we're not expecting to have to have any
8 soil from the borrow pit. However, as was pointed out just
9 a moment ago, we are undergoing additional soil analysis,
10 which, again, may change that expectation so --

11 BY MR. THOMPSON:

12 Q. That's very helpful. And one last -- and bear with
13 me on this, please, sir, Commissioner Rohy will certainly
14 recognize this and you obviously, but some of us laymen may
15 not.

16 Will you please go through the sequence of
17 engineering to a project. For example, I know you do
18 preliminary engineering or design engineering and some of
19 that continues on after certification, and I suspect even
20 after you start construction.

21 Could you give the committee kind of a very brief
22 overview of the engineering work that goes on through the
23 length of project?

24 A. Certainly. The first step is kind of a feasibility
25 and development analysis to identify general technology,
26 rough size of the facility, and do an initial performance

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 and cost estimating in support of the development effort in
2 front of the company to make an economic decision, business
3 decision to proceed with the project.

4 The next step is a more detailed step where we
5 usually bring in outside help, for example, Black & Veatch
6 people. We've used other engineering people in the past.
7 They provide more detailed engineering in response to the
8 requirements of the application in this case. That is
9 still, however, preliminary engineering and subject to
10 considerable, additional detailed engineering.

11 And primarily this is work that will occur inside the
12 disturbed area on the power plant site. And it involves
13 optimization such things as pipe sizes, pipe routes,
14 electric trays, and even equipment optimization that has not
15 been done in the initial permitting phase of the project.

16 About the time that we would receive certification
17 from the Commission for the project, we would begin the
18 detailed engineering phase and detailed procurement of
19 equipment, the pumps, the pipes, the gas turbines, the
20 condensers, all of that material that goes into the power
21 facility.

22 That detailed engineering is the real nuts and bolts
23 of the facility, and as I mentioned, does involve
24 considerable optimization inside the power block to yield
25 the most cost-effective performance dollar per kilowatt
26 package that we can produce.

1 Q. One final lead on question to that: Is the dynamic
2 structural analysis a normal and typical part of the
3 detailed engineering phase of the project?

4 A. Yes. That's when we do the -- in this case we would
5 pull out the then current version. I believe staff
6 referenced the 1998 version of the California Building Code.
7 We would -- I use either use that version or if there's
8 another version out, we'd use the most current version, and
9 that would be the guidance that we would follow to then
10 perform a design on those structures.

11 MR. THOMPSON: Thank you very much, Mr. Williams,
12 that concludes.

13 HEARING OFFICER VALKOSKY: Ms. Willis?

14 MS. WILLIS: No questions.

15 HEARING OFFICER VALKOSKY: Questions from any other
16 party for Mr. Williams? Thank you.

17 MS. WILLIS: At this time we have four staff
18 witnesses for facility design, and if it pleases the
19 committee, we'd like to have all four be sworn in and
20 available for cross-examination but have one summarize the
21 testimony.

22 HEARING OFFICER VALKOSKY: That's fine.

23 MS. WILLIS: First I'd like to call Steve Baker.

24 (Pause in proceeding.)

25 (Witness sworn.)

26 BY MS. WILLIS:

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 Q. Mr. Baker, do you currently work for the Energy
2 Commission?

3 A. Yes, I do.

4 HEARING OFFICER VALKOSKY: Excuse me one moment,
5 Ms. Willis, did you want your other three witnesses sworn in
6 at the same time.

7 MS. WILLIS: We can do that or establish their
8 qualifications.

9 COMMISSIONER LAURIE: Go ahead and swear them in. If
10 you are going to call them, then you can call them.

11 State their names for the record, please.

12 MS. WILLIS: Al McCuen with Bob Anderson, Kisabuli,
13 and Steve Baker.

14 (Witnesses sworn.)

15 HEARING OFFICER VALKOSKY: Thank you. Are we going
16 to have Kisabuli instead of Mr. Baker?

17 MS. WILLIS: That's correct. He'll be doing the
18 summary.

19 BY MS. WILLIS:

20 Q. Mr. Kisabuli?

21 A. Yes, ma'am.

22 Q. Are you currently employed with the California Energy
23 Commission?

24 A. Yes, I am.

25 Q. Could you please state your job title?

26 A. I'm an associate civil engineer.

1 Q. And could you please briefly describe your job
2 duties?

3 A. I do the review of applications in the area of civil
4 engineering and structural engineering, and I also
5 coordinate the facility design.

6 Q. Do you have a copy of the testimony entitled Facility
7 Design in front of you today?

8 A. Yes, I do.

9 Q. And did you coauthor this testimony?

10 A. I coauthored the testimony.

11 Q. Do you have any changes or corrections to this
12 testimony?

13 A. No, I don't.

14 Q. Could you briefly summarize the testimony for us?

15 A. Okay. Facility design is a combination of five
16 technical areas and those are civil, structural, mechanical,
17 and electrical engineering and geologic hazards.

18 When the application is filed, the project is usually
19 at the either conceptual or preliminary stage, and for
20 analysis we have verified that applicable laws, ordinances,
21 regulations, and standards have been identified and the
22 project and ancillary facilities have been described in
23 sufficient detail, including analysis metals provide
24 reasonable assurance that the project can be designed and
25 constructed in accordance with identified applicable laws
26 and in a manner that protects environmental and public

1 health and safety.

2 We also examine whether the special design features
3 should be considered during final design and to deal with --
4 I'll reread that. We also examine whether special design
5 features should be considered during final design to deal
6 with conditions unique to the site which could impact public
7 health and safety, environmental protection, or the
8 operational reliability of the project.

9 And finally we establish conditions of certification
10 to ensure that the final design and construction of the
11 project complies with identified facility design laws and
12 that the construction inspection will be carried out to
13 satisfy the intent of the laws and any special design
14 features.

15 The power plant will be sited on twenty-three acres
16 that is located about a mile and a half east of the town of
17 McKittrick. It's expected that construction will last
18 approximately twenty-four months and the power plant will
19 enter commercial operation in the summer of two thousand and
20 one.

21 The power plant site and ancillary facilities are
22 located in California Building Code Seismic Code 4. This is
23 the highest level of potential shaking in California. The
24 project site is located twenty kilometers or twelve and a
25 half miles from the San Andreas Fault, one of the many
26 active faults in California.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 Megastructures and equipment, as we define them, are
2 those structures and equipment that are costly to repair or
3 replace or that require a long lead time to repair or
4 replace.

5 We have two proposed modifications that we included
6 in our facility design. The first modification deals with
7 the design code. The 1997 Uniform Building Code was
8 identified as the applicable code for the design of the
9 power plant. We propose to change that to the 1998
10 California Building Code. And furthermore, in the event
11 that the design of the power plant is submitted to the chief
12 building official for review when the successor to the 1998
13 California Building Code is in effect, that the new
14 successor edition be used for design.

15 And our second modification is that we have called
16 out the megastructures equipment and components required in
17 order to comply with Section 1629.5 and Table 16-M and 16-L
18 of the 1998 California Building Code.

19 And then we have a list of structures and components,
20 and these are the combustion turbine generator pedestal and
21 foundation, steam turbine generator pedestal and foundation,
22 heat recovery steam generator structure and foundation,
23 exhaust stack foundation, and the cooling tower. Other
24 structures and components may also be candidates for dynamic
25 analysis, and this list would be developed between staff and
26 the owner of the project.

1 Other ancillary facilities were reviewed. The
2 transmission line facilities, the pipelines, and other
3 pipelines. We have the portable water supply line, the
4 natural gas supply line, the raw water supply pipelines.

5 Geologic hazards: The geologic hazards staff
6 assessed in the project area includes seismic shaking,
7 ground rapture surface faulting, liquefaction,
8 hydrocompaction, landsliding, expansive soils, and design
9 limitation to mineral deposits. The principal geologic
10 hazard is seismic shaking. To mitigate the seismic shaking
11 potential, project facilities shall be designed to Seismic
12 Zone 4 requirements or greater.

13 Compliance monitoring: Staff has developed
14 conditions of certification to ensure that the design and
15 construction of the project complies with applicable laws
16 and is also carried out in a manner that results in the
17 protection of the environment and public health and safety.

18 Some of these facility design conditions address the
19 roles and responsibilities and qualification of engineers
20 responsible for design and construction of the project.
21 These are general conditions one through nine.

22 Engineers responsible for design of the civil,
23 structural, mechanical, and electrical portions of the
24 project are required to be registered in California and
25 design and stamp each submittal of design plans and
26 specifications submitted to the chief building official.

1 These conditions require that no element of
2 construction proceed without an approval from the local
3 building official. The conditions also require that
4 qualified special inspectors be assigned to perform or
5 oversee special inspection required by Section 1701 of the
6 1998 California Building Code.

7 Facility closure: Under facility closure we have
8 three scenarios. The first one is plant closure.
9 Decommissioning as a result of the project -- may arrange
10 the removal of all equipment and associate facilities.
11 Future conditions that may affect the decommissioning
12 decisions are largely unknown at this time.

13 In order to ensure decommissioning of the facility
14 will be completed in a manner that is environmentally sound
15 and to protect public health and safety, the applicant shall
16 submit a decommissioning plan to the California Energy
17 Commission and Kern County for review and approval prior to
18 commencement of the decommissioning activities.

19 This plan shall include a discussion of four items:
20 The first one the proposed decommissioning activities for
21 the project and all other associate facilities be carried
22 out be submitted for Energy Commission review before
23 commencement; all applicable LORS, local/regional plans, and
24 a discussion of the conformance of the proposed
25 decommissioning activities to the applicable LORS and the
26 local/regional plans; the activities necessary to restore

1 the site if the plan requires removal of all equipment and
2 appurtenant facilities; and decommissioning alternatives,
3 other than complete site restoration.

4 Under unexpected temporary closure as the second
5 scenario, under this scenario it's expected that the
6 facility is closed unexpectedly on a short-term basis.
7 Natural disasters, such as an earthquake or severe storms
8 can cause an unexpected temporary closure of the facility.
9 If damage to the facility is too great, the temporary
10 closure may become permanent.

11 Under unexpected permanent closure, the project owner
12 closes the facility unexpectedly on a permanent basis. In
13 this case, the project owner shall implement the closure
14 procedures outlined above for "planned closure." The above
15 requirements should serve as adequate protection even in the
16 unlikely event of project abandonment. Staff has proposed a
17 condition of certification, that's general condition nine,
18 to ensure that these measures are included in the facility
19 closure plan.

20 We have three conclusions and four recommendations.
21 The first conclusion is that the laws, ordinances,
22 regulations, and standards identified in the AFC, that's the
23 application, and supporting documents are those applicable
24 to the project.

25 Staff has evaluated the application and the project
26 LORS and design criteria on record. Staff concludes that

1 the design, construction, and eventual closure of the
2 project are likely to comply with the applicable LORS. If
3 properly implemented, design criteria, including staff
4 proposed modifications will ensure that LORS are met during
5 the project design and construction phases.

6 And the last conclusion is that the conditions of
7 certification proposed will ensure what the proposed
8 facilities are design, constructed, operated and eventually
9 closed in accordance with applicable LORS. This will occur
10 through the use of design review, plan checking, and field
11 inspections, which have to be performed by the local chief
12 building official or other Commission delegate agents.
13 Staff will audit the CBO or delegate agents to ensure
14 satisfactory performance is achieved.

15 Recommendations: We have four recommendations and
16 they are as follows: First recommendation is that
17 conditions of certification proposed here be adapted to
18 ensure that the project is designed and constructed to
19 comply with the applicable LORS and also to protect the
20 environmental quality, assure public health and safety.

21 Second recommendation that the project be designed
22 and reviewed with the California 1998 building code or
23 successor edition. Number three, building official should
24 review the final designs, conduct plan checking and perform
25 field inspections during construction, and staff audit and
26 monitor the CBO to ensure satisfactory performance.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 And number four, a transmission line should be routed
2 to avoid impacting existing oil field facilities and any
3 maintenance activities associated with them.

4 That concludes my summary.

5 MS. WILLIS: All four witnesses are available for
6 cross-examination.

7 HEARING OFFICER VALKOSKY: Mr. Thompson?

8 MR. THOMPSON: Thank you. We have no questions.

9 COMMISSIONER ROHY: One of staff's recommendations,
10 as I understood it, was to use the 1998 or successor edition
11 of the Uniform Building Code.

12 Is that an item that has been discussed previously
13 with the applicant? Does staff have an answer for that
14 question?

15 MR. BAKER: Yes. The applicant is aware of our
16 requirement, and I believe they agree with it.

17 COMMISSIONER ROHY: May I ask the applicant then?

18 MR. THOMPSON: You may. We are aware of that
19 requirement, and we agree to use the applicable building
20 code at the time. We agree with that condition.

21 COMMISSIONER ROHY: I believe I heard a different
22 answer to the question I asked. At the point you get your
23 permits there is an applicable building permit or building
24 code. That I believe is what I heard you say, Mr. Thompson,
25 that you would agree to.

26 However, I heard successor permits in here also in

1 the staff recommendation, and I would like to clarify to
2 which set of building codes the applicant would adhere to
3 when building said facility.

4 MR. BAKER: We are suggesting the applicant adhere to
5 the California Building Code version that is in effect when
6 the plans are first submitted.

7 THE WITNESS: At this time we believe it will be the
8 1998 building code, but in the event that the project is
9 delayed and they don't start construction immediately, then
10 whatever the successor edition to the 1998 California
11 Building Code is the one we will expect the project to be
12 designed to.

13 COMMISSIONER ROHY: Mr. Thompson, I see you --

14 MR. THOMPSON: With the imprecision that comes with a
15 law degree instead of an engineering degree, I was trying to
16 say that, but that is precisely what we agree to.

17 COMMISSIONER ROHY: Thank you. I just wanted a
18 clarification.

19 BY HEARING OFFICER VALKOSKY:

20 Q. Do the modifications you mention in your testimony
21 require any changes to the conditions of certification as
22 contained in the Final Staff Assessment?

23 A. No. The modifications that we recommended result in
24 us making sure that the conditions did cover those
25 recommendations, our recommended changes.

26 Q. So the conditions are fine as they stand?

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 A. Yes.

2 Q. Are all the recommendations that you make captured in
3 these conditions?

4 A. They are captured in the conditions, yes.

5 Q. Do the conditions you are proposing include
6 measurements to ensure appropriate setbacks in this as
7 appropriate clearance for work in the oil field?

8 I bring this to your attention because it's referred
9 to in the land use -- staff's land use testimony on page 125
10 of the FSA.

11 A. In our analysis we have never looked at the setback
12 requirements. We believe that's what -- taken facility
13 design.

14 HEARING OFFICER VALKOSKY: I would make staff aware,
15 then, we probably seek further clarification of that when we
16 get to land use. If I understand your recommendation
17 regarding the closure.

18 BY HEARING OFFICER VALKOSKY:

19 Q. As I understand your recommendation regarding
20 closure, it's that your proposed condition, general
21 condition nine, essentially supplements the general closure
22 provision contained in the general compliance plan; is that
23 correct?

24 A. That's correct.

25 Q. Also I note that you in your description of the
26 transmission system, you indicate that its thirteen point

1 six miles long. As I understand one of the alternatives,
2 alternative B, is approximately fourteen point two miles
3 long.

4 For present purposes, I would like to know if you
5 have done a facility design analysis of that extra
6 six-tenths of a mile, which was done to prevent the Fish and
7 Game property?

8 A. I will defer to Mr. Al McCuen.

9 MR. McCUEN: For the record, my name is Al McCuen.
10 The little section that goes around the Fish and Wildlife
11 property from a transmission engineering perspective, yes,
12 there is no particular problems with those. I'm not sure if
13 the question was more to structural engineering or to the
14 electrical portions that I'm responsible for.

15 HEARING OFFICER VALKOSKY: Well, it actually goes to
16 both, certainly the electrical portions and the other
17 questions, as far as civil and structural, etcetera, would
18 -- whether someone's proposing to place a pole or power on
19 an active fault or something like that.

20 MR. McCUEN: I'm confident that that section will
21 comply with General 95 and the rules that relate to
22 electrical. There's no problem with that.

23 HEARING OFFICER VALKOSKY: So far as electrical, how
24 about the structural? Are there -- rephrase it -- are there
25 any structural and civil concerns about the six-tenths of a
26 mile jog that's proposed for transmission line Route 1B?

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 MR. McCUEN: There aren't any.

2 HEARING OFFICER VALKOSKY: On page 318 of your
3 testimony, this concerns the dynamic analysis that we
4 discussed earlier, again, you indicate the staff proposes
5 the applicant and staff agree to a list of such items before
6 design progresses. You heard Mr. Williams' reply when he
7 expected to have that.

8 Does that suit your purposes?

9 MR. McCUEN: At this point we have a list of those
10 structures and companies that we expect the analysis and the
11 applicant has supplemented this list, then the time frame
12 that has been identified would be adequate.

13 MR. BAKER: Mr. Valkosky, can I expand on that?

14 Back on page 337 requires that the list of the
15 equipment items and components that would be subjected to
16 this dynamic analysis be submitted prior to the start of
17 that increment of construction on which they are a part.

18 The project's actual schedule would -- when these
19 lists will actually be submitted, but they will be submitted
20 on that portion of the project.

21 HEARING OFFICER VALKOSKY: Thank you. Condition one
22 also indicates that the project owner shall submit to the
23 chief building official for review and approval. That
24 material and testimony indicates that applicant, and I
25 emphasize staff, agrees to certain things.

26 Is this a distinction without a difference or --

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 MR. BAKER: If you go to the verification portion of
2 that you'll see we are requiring that be submitted to the
3 CBO with a copy to the staff in the present.

4 HEARING OFFICER VALKOSKY: So for your review that
5 suffices for your purpose of analysis?

6 MR. BAKER: Yes.

7 HEARING OFFICER VALKOSKY: Thank you.

8 HEARING OFFICER VALKOSKY: Ms. Willis?

9 MS. WILLIS: No further questions.

10 HEARING OFFICER VALKOSKY: Any other questions from
11 any other party on this topic? Mr. Thompson?

12 MR. THOMPSON: Just as a point of information,
13 previously identified Exhibit 30, which Mr. Williams
14 discussed, I believe, is the Department of Oil and Gas
15 letter, and that letter to the staff discusses the distances
16 between wells, and that might answer some of your questions
17 on that topic.

18 HEARING OFFICER VALKOSKY: Thank you for that
19 clarification.

20 Anything else on the topic of facility and design
21 geology from anyone here? Thank you.

22 Next topic Power Plant Reliability.

23 COMMISSIONER LAURIE: Mr. Valkosky, do we have
24 applicant's consent to propose mitigation issues on under
25 the last topic?

26 HEARING OFFICER VALKOSKY: Mr. Thompson?

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 MR. THOMPSON: Thank you, sir.

2 Mr. Williams is tendered for cross-examination.

3 MS. WILLIS: We have no questions.

4 BY COMMISSIONER ROHY:

5 Q. Mr. Williams, just to help us understand some terms,
6 will you define "reliability" in a technical term and
7 availability. Those are two different terms, and give us
8 some idea of the percentage numbers what reliability might
9 be on a typical installation of this type. I'm not asking
10 for your predicted one in your case.

11 A. I'll try.

12 Q. They are different items.

13 A. They are different, and there's formal and official
14 definitions that the Western States Coordinated Council and
15 Electric Liability Council -- I won't try to confuse us with
16 those. Well, it would confuse us to try to explain those.

17 In simple terms, to me, availability is the
18 availability of the facility -- and I will interchange the
19 term "unit" and "facility" in the case, although strict
20 interpretation we would have four units for a single
21 facility.

22 Availability is those units being available to be
23 called upon to deliver electricity at full output
24 capability, generally. Reliability, to me, is the amount of
25 time that equipment is used, is available to be called upon.

26 Q. Let me give my version and see if you agree then:

1 Availability is the percentage of time that you expect it to
2 give full output if we remove the overhaul time, maintenance
3 time, and you expect it to operate for a certain number of
4 time.

5 Reliability may encounter the unexpected. Again, a
6 layman's term I'm just looking for.

7 A. Yes, I would agree with that.

8 Q. Can you give us some idea of the percentages in each
9 case that are typical in the industry?

10 A. Yes. We plan on a two to two and a half percent
11 forced outage rate in most of our economical calculations.
12 And forced outage, I'll explain, is those things that are
13 outside of our control. We would be -- the analogy a flat
14 tire is out of your control. We expect to have a flat tire
15 on any single unit no more than two, two and a half percent
16 of the time.

17 Availability starts to look to the capacity factor of
18 the facility, and that is the number of hours in a year that
19 we expect the unit to be run. And we generally plan on an
20 availability capacity factor, including that two percent
21 forced outage factor, of about ninety-three percent. And
22 that ninety-three percent is an average and takes into
23 consideration a one- or two-week outage every three to six
24 years for major maintenance events.

25 COMMISSIONER ROHY: Thank you. That was very
26 helpful.

1 BY HEARING OFFICER VALKOSKY:

2 Q. Mr. Williams, a fuel supply would affect the proposed
3 project's availability or ability to operate; is that not
4 correct?

5 A. Yes, sir.

6 Q. In calculating the availability of the fuel supply,
7 did you also consider the other projects which are likely to
8 be built in the area, the other power plant projects?

9 A. When we initially began the effort to cite this
10 project near McKittrick, to my knowledge, not all of the
11 projects that are presently announced were known to us, so
12 the short answer is when we started, no. Since that time,
13 we have looked at it, and in discussions with the pipeline
14 supplier, there appeared to be adequate capacity in the
15 pipeline and adequate deliverability in through that
16 transportation system to service our project in addition to
17 the other two projects that I'm aware of that might feed off
18 that same pipeline.

19 Q. Those other two projects would be specifically which
20 ones feeding off the same pipeline?

21 A. The two that I'm aware of are the Occidental
22 Petroleum Elk Hills project and the Texaco-Sunrise project.

23 HEARING OFFICER VALKOSKY: Thank you. Any questions?

24 MS. WILLIS: No questions.

25 HEARING OFFICER VALKOSKY: Mr. Thompson?

26 BY MR. THOMPSON:

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 Q. Mr. Williams, let me follow that up on a question
2 with regard to natural gas supply, not just transportation,
3 and the ability to get the gas into the plant, but the
4 overall supply: Does the applicant have any concerns about
5 the inability to contract for sufficient supply for the
6 plant?

7 A. No, we do not.

8 MR. THOMPSON: That's all I have. Thank you very
9 much.

10 HEARING OFFICER VALKOSKY: Anything else for
11 Mr. Williams? For anyone? Other parties?

12 Thank you, Mr. Williams. Ms. Willis?

13 MS. WILLIS: We'd like to call Steve Baker back to
14 the stand.

15 (Pause in proceeding.)

16 BY MS. WILLIS:

17 Q. Mr. Baker, remind you that you are still under oath,
18 and we'll continue with the questioning we started.

19 If you can please describe your job duties at the
20 Energy Commission?

21 A. My job title is senior mechanical engineer. I
22 perform the power plant setting case analysis in the topic
23 areas of efficiency, reliability, noise, and mechanical
24 portion of facility design, and I'm the technical senior
25 providing technical oversight for all of those areas, plus
26 the civil, structural, electrical areas of facility design,

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

100

1 geology, paleontology, and hazardous materials handling.

2 Q. Do you have a copy of your testimony entitled Power
3 Plant Reliability in front of you today?

4 A. Yes, I do.

5 Q. And do you have any changes or any corrections in
6 that testimony?

7 A. No.

8 Q. And did you prepare this testimony?

9 A. Yes.

10 Q. Could you briefly summarize your testimony?

11 A. The Warren Alquist Act requires the power plant's
12 reliability be examined that specific no criteria that must
13 be met. In order to identify any potential adverse impacts
14 on electric system reliability, staff examines the
15 application to determine whether the project will be built
16 typical electric power industry norms of reliability. If
17 the project is built and operated to typical industry
18 standards, it is assumed that no significant adverse impacts
19 will assume.

20 The elements of power plant reliability are equipment
21 availability, fuel and water availability, and resistance
22 and natural hazards. The equipment availability will be
23 ensured by the use of standard -- industry-standard quality
24 assurance and quality control programs, and during the
25 design, procurement, and construction of the project, and by
26 the implementation of industry-standard maintenance program.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

101

1 Natural gas fuel will be supplied by either or both
2 of two pipelines companies, Kern River or Mojave, from vast
3 resources in California, Canada, the southwest, and Rocky
4 Mountains. Staff believes this is an adequate and reliable
5 supply.

6 Water supply is discussed in that portion of the
7 Final Staff Assessment entitled Soil and Water Resources, in
8 which it was concluded that an adequate supply of water is
9 available for the project.

10 As for resistance to natural hazards, neither an
11 earthquake or flooding is likely to present a significant
12 hazard to the power plant's reliability. No other natural
13 hazards threaten the project site.

14 So in conclusion, the La Paloma project is likely to
15 be built to typical industry norms of reliability and create
16 no adverse impacts on electrical system reliability. No
17 condition of certification are required for this subject
18 area.

19 Q. Does that conclude your testimony?

20 A. Yes, it does.

21 MS. WILLIS: We'd like to make this witness available
22 for cross-examination.

23 HEARING OFFICER VALKOSKY: Mr. Thompson?

24 MR. THOMPSON: We have no questions. Thank you,
25 Mr. Baker.

26 BY HEARING OFFICER VALKOSKY:

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 Q. Mr. Baker, do you agree with the previous witness
2 that two power plants -- foreseeable power plants are likely
3 to seek their gas fuel from the same pipeline as this
4 project?

5 A. As I understand, I believe it's the Elk Hills project
6 will be using gas produced at its own oil field, or is that
7 the Sunrise project? One of those two will use its own gas
8 and may be selling gas into the system at the same time it's
9 burning a portion in the power plant.

10 But regardless, even if all three power plants were
11 drawing fuel from the pipelines, we see no reason at this
12 time to believe that either the ultimate supply of gas nor
13 pipelines to carry it to these sites is stressed at all by
14 these projects.

15 HEARING OFFICER VALKOSKY: Thank you.

16 BY COMMISSIONER ROHY:

17 Q. As a follow-up question, Mr. Baker, there was a
18 potential natural gas supply problem last December. I
19 believe it may have been at this end of the state, not that
20 part of the state.

21 Would these power plants have any effect on such
22 possible curtailment?

23 A. I'm not an expert on that area, but it's my
24 understanding power plants such as this would be some of the
25 first curtailed by the gas suppliers.

26 COMMISSIONER ROHY: Thank you.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 HEARING OFFICER VALKOSKY: Any redirect?

2 MS. WILLIS: We have no questions.

3 HEARING OFFICER VALKOSKY: Mr. Thompson?

4 BY MR. THOMPSON:

5 Q. Mr. Baker, do you know who takes gas off the

6 Kern-Mojave line?

7 A. No, I'm sorry, I don't.

8 HEARING OFFICER VALKOSKY: Any questions from any of
9 the other parties for Mr. Baker? Any comments from any
10 member of the public on the topic of Power Plant
11 Reliability?

12 Seeing none, thank you, Mr. Baker.

13 Mr. Thompson, do you have any exhibits you would like
14 to move in at this time?

15 MR. THOMPSON: We do not. The testimony is all in
16 Exhibit 1, which is the AFC, sir.

17 HEARING OFFICER VALKOSKY: Next topic Power Plant
18 Efficiency.

19 MR. THOMPSON: Call Mr. Williams.

20 (Pause in proceeding.)

21 BY MR. THOMPSON:

22 Q. Mr. Williams, having been previously sworn, however,
23 you are now on the topic of Power Plant Efficiency.

24 Will you briefly summarize the anticipated efficiency
25 or the design efficiency of the La Paloma project?

26 A. Yes, I will. We're proposing an advance technology

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 gas turbine-base combined cycle facility. The new and clean
2 heat rate of that plant annual average operating conditions
3 is just a little bit over sixty-six hundred of the net
4 higher heating guide heat rate. That's an efficiency, if
5 you work out the math, of about fifty-two percent efficient.

6 That compares, we think, very favorably with existing
7 fossil technology, the older steam boiler kind of technology
8 that has efficiencies in the thirty-four to thirty-eight
9 percentage range or heat range in the nine thousand to ten
10 thousand BTU range.

11 Q. Thank you. For those of us just learning this, a
12 heat rate is?

13 A. The heat rate is the -- literally, it's the amount of
14 fuel burned per unit of time divided by the megawatts
15 generated by that amount of fuel.

16 MR. THOMPSON: Thank you. Mr. Williams tendered for
17 cross-examination.

18 HEARING OFFICER VALKOSKY: Ms. Willis?

19 MS. WILLIS: No questions at this time.

20 BY COMMISSIONER ROHY:

21 Q. Mr. Williams, question on the heat rate: Do you
22 intend to install a combined cycle as the preferred
23 configuration immediately rather than installing a single
24 cycle and later retrofitting it?

25 A. Yes. We have no plans to begin with a single cycle
26 and change that later on to combined cycle.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 Q. This is a water-cooled heat exchanger that results in
2 a fifty-two percent efficiency?

3 A. That's correct.

4 COMMISSIONER ROHY: Thank you.

5 BY COMMISSIONER LAURIE:

6 Q. Mr. Williams, staff's report, which is not admitted
7 into evidence yet, indicates a fuel efficiency of 59.

8 What could the discrepancy be?

9 A. The numbers I was quoting are perhaps fresher and
10 reflect minor changes in auxiliary power modes. We are now
11 planning on installing gas compressors to compress the gas,
12 and I believe the number I gave you reflects that number or
13 reflects that additional auxiliary mode that may not have
14 been in the initial work in front of the staff.

15 COMMISSIONER LAURIE: Thank you.

16 HEARING OFFICER VALKOSKY: Redirect, Mr. Thompson?

17 MR. THOMPSON: No, thank you.

18 HEARING OFFICER VALKOSKY: Questions for Mr. Williams
19 on this topic of Power Plant Efficiency from any of the
20 other parties?

21 Thank you, Mr. Williams. Miss Willis?

22 MS. WILLIS: We'd like to call Mr. Baker back to the
23 stand.

24 BY MS. WILLIS:

25 Q. Mr. Baker, having been previously sworn in, I'd like
26 to ask you a few questions.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 Do you have the copy of your testimony Power Plant
2 Efficiency in front of you?

3 A. Yes, I do.

4 Q. Did you author this testimony?

5 A. I did.

6 Q. Do you have any corrections or changes in your
7 testimony?

8 A. No.

9 Q. And could you please summarize that for us?

10 A. The California Environmental Quality Act requires
11 identification of the project's significant adverse impacts
12 on energy resources, in this case the natural gas fuel
13 supply.

14 Significant adverse impacts could occur and the
15 project will create adverse effects on local and regional
16 energy supplies and resources. If the project establishes a
17 requirement for additional energy supply capacity, if the
18 project does not comply with existing energy standards, or
19 if the project will result in a wasteful, inefficient, and
20 unnecessary consumption of fuel.

21 Regarding adverse impacts on energy supplies and
22 resources, the fuel supply comes from natural gas purchased
23 on the open market. Sources available can supply far more
24 gas than the project will require. The La Paloma project is
25 thus expected to create no adverse impacts on energy
26 supplies or resources.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

107

1 Regarding requirement for additional energy supply
2 capacity, fuel for the project will be supplied by two major
3 gas pipeline systems, and I foresee no problems in this
4 area, no requirement for the development of any new fuel
5 supply or delivery mechanisms. Regarding compliance with
6 existing energy standards, there are no laws or standards
7 that apply to this project.

8 The project's energy consumption could be considered
9 wasteful and inefficient if an alternative source of
10 electricity were available that was significantly more fuel
11 efficient; however, this is not the case. The La Paloma
12 project represents the current state of the art in electric
13 generation efficiency.

14 The project will be composed of modern F class
15 combined cycle turbine generators producing electricity at a
16 lower heating efficiency of approximately fifty-six percent.
17 This compares to traditional utility boiler plant efficiency
18 of thirty-five percent. The project's machines are among
19 the most efficient currently available. Also note that
20 turbine generators such as these operate most efficiently at
21 full load. Part load operation is also slightly reduced
22 efficiency.

23 By configuring the project with four generators, part
24 load operation can be achieved by shutting down illegal
25 trains, allowing anyone to operate in full load. The
26 project can then operate at twenty-five percent load while

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 maintaining peak efficiency.

2 In conclusion the La Paloma project will represent
3 one of the most fuel efficient power plants possible. It
4 will create no significant adverse impacts and energy
5 resources. No conditions of certification are required for
6 this subject.

7 Q. Does that conclude your testimony?

8 A. Yes.

9 MS. WILLIS: This witness is available for
10 cross-examination.

11 HEARING OFFICER VALKOSKY: Mr. Thompson?

12 MR. THOMPSON: No questions, thank you.

13 HEARING OFFICER VALKOSKY: Cross by any other party?

14 BY HEARING OFFICER VALKOSKY:

15 Q. Mr. Baker, in response to Commissioner Laurie's
16 earlier inquiry, I believe you heard Mr. Williams testify to
17 an efficiency which was somewhat different than your
18 testimony.

19 Could you explain that, please?

20 A. Certainly. Mr. Williams was using the basically
21 world standard of higher heating value. One minor segment
22 of the world, gas turbine manufacturers, uses another
23 concept called lower heating value. When you express
24 efficiency in lower heating value, it looks better. It's a
25 bigger number than the higher heating value. That's perhaps
26 why the gas turbine folks use it.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 COMMISSIONER LAURIE: We'll reconvene at five of.

2 (A brief recess was taken.)

3 HEARING OFFICER VALKOSKY: Could I have your
4 attention? We're going to reconvene now. The next topic is
5 Waste Management. Mr. Thompson?

6 MR. THOMPSON: Thank you. Applicant would like to
7 call Mr. David Marx to be sworn in.

8 (Witness sworn.)

9 BY MR. THOMPSON:

10 Q. Mr. Marx, will you please state your name for the
11 record.

12 A. David Marx.

13 Q. You are the same David Marx that submitted prepared
14 testimony as part of Exhibit 34 to this proceeding?

15 A. Yes.

16 Q. Do you have any corrections or additions or deletions
17 to make to your testimony?

18 A. Yes, I do. The exhibit lists Exhibit 23 Hazardous
19 Waste Management Report dated 02/10/99 as being sponsored by
20 me. That exhibit is actually Exhibit No. 22 and not 23, and
21 I will not be sponsoring that exhibit.

22 Q. And am I correct the sponsor of that exhibit will be
23 Mr. Koehler?

24 A. John Koehler.

25 Q. For the record that will be jointly sponsored by
26 Mr. Williams and Mr. Koehler.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

111

1 Will you briefly summarize your testimony in this
2 proceeding?

3 A. Yes. We reviewed the waste treatments that are
4 projected to be generated by the facility both during the
5 construction and operation phases. We reviewed the disposal
6 capacity available in the region by consulting with regional
7 waste management plans, agents, regulatory agencies, as well
8 as facilities themselves.

9 We reviewed the waste streams with respect to the
10 applicable regulatory requirements for managing each of the
11 waste streams, and with the mitigation measures proposed in
12 the AFC, we've concluded that there will be no significant
13 impacts to the waste management facilities.

14 Q. Thank you very much. Does that conclude your
15 presentation?

16 A. Yes, it does.

17 MR. THOMPSON: Mr. Marx is tendered for
18 cross-examination.

19 HEARING OFFICER VALKOSKY: Mr. Ogata?

20 MR. OGATA: No questions.

21 BY HEARING OFFICER VALKOSKY:

22 Q. Mr. Marx, do you agree with the conditions of
23 certification proposed by staff on this topic?

24 A. Yes, I agree with the conditions in the Final Staff
25 Assessment.

26 COMMISSIONER LAURIE: Question clarification. If you

1 can turn -- ladies and gentlemen, if you could turn to page
2 109 of the FSA, looking at proposed mitigation measures, and
3 in the following pages there appears to be three proposed
4 conditions to the project.

5 Under the topic of mitigation, however, I'm looking
6 at page 109, it says "The applicant intends to implement the
7 following mitigation measures during construction and
8 operation," and there's eight bullets. Only three of those
9 bullets are specifically listed as proposed conditions to
10 the project.

11 So I will be asking staff what their intent is,
12 whether it is their intent that all of the bullets be
13 included as mitigation measures and thus conditions or just
14 the three mitigation measures, so perhaps you want to be
15 prepared for further question once staff clarifies as to if
16 there, in fact, is inconsistency in their recommendation,
17 whether you agree with all the bullets or just WASTE-1, -2,
18 and -3.

19 HEARING OFFICER VALKOSKY: Any other questions for
20 Mr. Marx? Thank you, sir. Mr. Ogata?

21 MR. OGATA: Staff's witness is Ellen Townsend-Smith.

22 MR. THOMPSON: We actually have three witnesses under
23 waste management.

24 HEARING OFFICER VALKOSKY: I'm sorry. I apologize
25 for that. I didn't have three witnesses listed.

26 Would you prefer to continue with your other two

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

113

1 witnesses at this point.

2 MR. THOMPSON: We would, if it's acceptable to the
3 committee.

4 HEARING OFFICER VALKOSKY: Proceed.

5 (Witness sworn.)

6 BY MR. THOMPSON:

7 Q. Would you please give your name for the record and
8 correct pronunciation for your counsel.

9 A. My name is Ray Ouellette.

10 Q. Are you the same Ray Ouellette who submitted rebuttal
11 testimony that is now included in Exhibit 39 of this
12 proceeding?

13 A. Yes, I am.

14 Q. If I asked you those questions, would your responses
15 today under oath be the same?

16 A. Yes, they would.

17 Q. Do you have any corrections, additions, or deletions
18 to your testimony?

19 A. There would be one minor clarification I would like
20 to make, and that's with regards to the injectivity test
21 that was done on our initial well, and that was that the
22 four-hundred-twenty-gallons-per-minute injection took place,
23 and there was no pressure at the surface. The statement had
24 a reference to a service pressure.

25 Q. Is there a place in an exhibit or testimony where we
26 could correct that for the record, sir?

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 A. I do not have the official page of where that --

2 Q. Is that in the staff's analysis?

3 A. No. This was a response to the question of
4 injectivity testing.

5 MR. THOMPSON: One minute.

6 (Pause in proceeding.)

7 MR. THOMPSON: My apologies.

8 BY MR. THOMPSON:

9 Q. Mr. Ouellette, turn to your prepared testimony that's
10 contained as part of Exhibit 39, and I would direct your
11 attention to page 2.

12 Is the correction you wish to make contained within
13 your response to question four?

14 A. Yes, it is.

15 Q. Would you again go over that correction for us?

16 A. In the second paragraph of that response there is a
17 response concerning injectivity tests that indicate the test
18 well accepted four hundred twenty gallons per minute of
19 water at a pressure of a hundred thirty-one PSI. That
20 pressure is incorrect. There was no pressure on this well.
21 It was taking water by gravity.

22 Q. So at the tail end of that paragraph, the last of
23 that sentence, instead of "at a pressure of 131 PSI, it
24 would be --

25 A. You would eliminate the pressure. There was no
26 pressure.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

115

1 Q. You would close the sentence after the word "water?"

2 A. Correct.

3 MR. THOMPSON: Thank you. If I can ask that that
4 change be made to that portion of Exhibit 39?

5 HEARING OFFICER VALKOSKY: That's fine, Mr. Thompson.

6 MR. THOMPSON: Thank you.

7 BY MR. THOMPSON:

8 Q. Would you please briefly summarize your testimony for
9 the committee?

10 A. Okay. I was asked to prepare an application for an
11 injection well, and the well was based on -- the
12 classification of the well was based on the concentration of
13 total solids in the water.

14 Our initial look at this area indicated the water had
15 less than ten thousand TDS, and therefore, a Class 5
16 application was put together. Upon doing a pump test in
17 January of this year, the water concentration that we
18 obtained had increased to fifteen thousand -- fourteen
19 thousand TDS, which clearly signaled that it was a Class I
20 well. The difference being that Class I wells fall under
21 the jurisdiction of the region nine EPA.

22 We put the application together and submitted it in
23 February, and we are now working with the EPA on getting a
24 permit approved.

25 MR. THOMPSON: Thank you very much. Mr. Ouellette is
26 tendered for cross-examination.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

116

1 HEARING OFFICER VALKOSKY: Mr. Ogata?

2 BY MR. OGATA:

3 Q. Maybe I just need a procedural clarification at this
4 point. I believe staff addressed this issue in the water
5 and soil section of the FSA?

6 A. That's correct.

7 Q. You are testifying in the area of hazard -- of waste
8 management?

9 A. Yes.

10 Q. Maybe you can explain why we're doing it this way?

11 MR. THOMPSON: If I may explain, I probably put him
12 there. I probably erroneously believe that this was the
13 proper place for it. It may also be in the soils and water
14 area as well, if we can find that exhibit.

15 MR. OGATA: I don't have any questions of him
16 particularly. I was just confused. I want to make sure
17 what his testimony was addressing. Thank you.

18 HEARING OFFICER VALKOSKY: Mr. Ogata, to the extent
19 that you think he would be a relevant witness at such time
20 that we reach soils and waters, I could just have him
21 subject to recall.

22 MR. OGATA: That would be fine. I appreciate that.

23 HEARING OFFICER VALKOSKY: Mr. Ouellette, you will be
24 subject to recall at the time we get to the soil and water
25 portion.

26 MR. THOMPSON: Mr. Valkosky, if you note in my road

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

117

1 map, I called it, we have him listed under soils and water
2 as well, so he will be there.

3 HEARING OFFICER VALKOSKY: Thank you. Are there any
4 further questions for Mr. Ouellette? Cross-examination from
5 any of the parties? Thank you.

6 HEARING OFFICER VALKOSKY: You indicated you have
7 another witness.

8 MR. THOMPSON: Before that, Mr. Valkosky, can I move
9 the admission into evidence of Exhibits 14, 24, and 41?

10 HEARING OFFICER VALKOSKY: Exhibits 14, 24, and 41.
11 Any objection, Mr. Ogata?

12 MR. OGATA: No objection. Again, just on 41 subject
13 to us having the opportunity to cross-examine if necessary
14 at the time soil and water is brought up.

15 HEARING OFFICER VALKOSKY: You will have that right.

16 Hearing no objections, Exhibits 14, 24 -- sorry what
17 was the middle exhibit again, Mr. Thompson?

18 MR. THOMPSON: Twenty-four.

19 HEARING OFFICER VALKOSKY: Exhibits 14, 24 and 41 are
20 admitted into evidence.

21 MR. THOMPSON: Thank you, sir. As our final witness
22 in the waste management area we would like to call Mr. Ernie
23 Ralston.

24 (Witness sworn.)

25 BY MR. THOMPSON:

26 Q. Mr. Ralston, please state your name for the record.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 A. My name is Ernie Ralston.

2 Q. Are you the same Mr. Ernie Ralston that has prepared
3 rebuttal testimony which is filed as a part of Exhibit 39 in
4 this proceeding?

5 A. I am.

6 Q. Do you have any corrections, additions, or deletions
7 to that material?

8 A. No, we don't.

9 Q. Please briefly summarize that material for the
10 committee.

11 A. Certainly. I was asked by La Paloma to take a look
12 at or review the Final Staff Assessment of the soil and
13 water resources section. And in that section I found three
14 areas that I provided comments on.

15 The first area deals with waste discharge
16 requirements. In the Final Staff Assessment they make a
17 statement that staff of the Regional Water Quality Control
18 Board could not get the waste discharge requirement
19 conditions yet, and that's part of the reason they feel they
20 are not able to recommend approval for the technical area of
21 soil and water at that time.

22 The waste discharge requirements that staff was
23 looking for typically are issued after a CEQA type review is
24 completed. The regional board, when there is another
25 environmental proceeding occurring, holds off on their
26 actual action on that certification until the CEQA review is

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 complete.

2 So in that regard, if that's part of the reason why
3 they are withholding recommending approval of this section,
4 then we have a chicken and egg situation, so I wanted to
5 point that out.

6 Also, the regional board for situations such as this
7 where the process of federal drainages, there's not any
8 issues associated with water quality but are required to act
9 on it pursuant to Sections 400, 401, and 404 of the Clean
10 Water Act.

11 What they typically issue is a waiver of discharge
12 requirements and certification of the water quality
13 requirements, so this is what I would expect them to issue
14 once the Commission approves the project or approves the --
15 but in terms of what the staff is expecting, I don't believe
16 it's going to happen that way. It typically doesn't happen
17 that way procedurally.

18 The second item that I found was in reference to two
19 specific conditions of approval. There was a requirement
20 that there's erosion control and restoration plan.

21 HEARING OFFICER VALKOSKY: Sorry. Two conditions of
22 approval in which section of the Final Staff Assessment?

23 THE WITNESS: Soil and water resources.

24 HEARING OFFICER VALKOSKY: In the soil and water
25 resources. Okay. Thank you.

26 THE WITNESS: In there they require that -- there's

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 two conditions, basically, in summary that require
2 preparation of effectively -- plans. The first condition is
3 preparation of erosion control and restoration plan, which
4 is essentially along the same elements as the storm water
5 pollution prevention plan that's required in the NPDES
6 permit that the project will be obtaining.

7 My recommendation is that, basically, we delete
8 number two, the soils and water number two, and in deference
9 to the storm water pollution prevention plan that is
10 required by soil and water one.

11 My third comment deals with soil and water three.
12 Basically I believe it's just a typo. This particular
13 condition deals with an industrial storm water activity
14 permit. But currently the way the condition reads is that
15 this particular permit be obtained and a storm water
16 pollution plan permit -- prevention plan for that permit be
17 provided two weeks prior to the start of project
18 construction. And since it's an operation type plan, I
19 believe it should be changed to two weeks prior to
20 commercial operation.

21 That's the summary of my comments that are included
22 in my rebuttal testimony.

23 MR. THOMPSON: Thank you, Mr. Ralston. Mr. Ralston
24 is tendered for cross-examination.

25 HEARING OFFICER VALKOSKY: Mr. Ogata, or would you
26 prefer that the witness be subject to recall at such a time

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 that we get into the soil and water resources?

2 MR. OGATA: We reserve to hold our cross-examination
3 for soil and water testimony. Thank you.

4 HEARING OFFICER VALKOSKY: I think that's
5 appropriate.

6 Mr. Ralston, you will be subject to recall at such a
7 time that we address the soil and water resources topic.

8 Are there any questions presently for Mr. Ralston
9 from anyone? Thank you.

10 Does that conclude your waste management
11 presentation, Mr. Thompson?

12 MR. THOMPSON: Yes. And our soils and water -- yes,
13 it does.

14 HEARING OFFICER VALKOSKY: Mr. Ogata?

15 MR. OGATA: Staff's witness is Ellen Townsend-Smith
16 on waste management only.

17 (Witness sworn.)

18 BY MR. OGATA:

19 Q. Ms. Townsend-Smith, please tell us your job title at
20 the Energy Commission?

21 A. I'm an associate mechanical engineer.

22 Q. What are your duties?

23 A. My duties are reviewing applications on worker
24 safety, waste management, and public health.

25 Q. You have before you the testimony that's entitled
26 Waste Management, testimony of Ellen Townsend-Smith?

1 A. Yes, I do.

2 Q. Did you write this testimony?

3 A. Yes, I did.

4 Q. Do you have any corrections or additions you would
5 like to make at this time?

6 A. Yes, I do. On page 107 of the FSA under operation,
7 second paragraph, I move that we strike that, take that out
8 of the application.

9 Q. So the paragraph beginning with the words "chemical
10 feed area drain" you want to strike that entire paragraph?

11 A. Yes, I do.

12 Q. Any other changes or correction?

13 A. No.

14 Q. Please summarize your testimony.

15 A. I reviewed the La Paloma Application for
16 Certification to make sure that the applicant proposed
17 adequate measures to ensure waste generated during
18 constructing and operating the proposed project will be
19 managed in an environmentally safe manner, that the disposal
20 of project waste will not result in significant adverse
21 impacts of existing waste disposal facilities, and that
22 management of the waste will be in compliance with
23 applicable laws, ordinances, regulations, and standards.

24 The applicant proposes various means of waste
25 management, including using Class 1 and 3 landfills and also
26 using recycling. The applicant has identified LORS, that

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 they will follow those in terms of working with this
2 particular project.

3 There is significant capacity for waste disposal in
4 the area, and staff agrees with La Paloma's proposed
5 mitigation measures. The mitigation measures are consistent
6 with waste management practices supplied with previous
7 projects that we have looked at.

8 Staff concludes that the waste generated during
9 construction and operation of the proposed project will not
10 result in any significant adverse impacts, if the applicant
11 implements the mitigation measures proposed and follows the
12 proposed conditions of certification.

13 Q. Ms. Townsend-Smith, I'd like to direct your attention
14 to page 109. Commissioner Laurie's question. In your
15 testimony you have set forth eight bulleted mitigation
16 measures proposed by the applicant, but you are only
17 proposing three conditions.

18 Can you please explain why you did that?

19 A. The mitigation measure no. 1, mitigation measure no.
20 2 are mitigation measures that are regulations and LORS
21 already written for those particular items, especially in
22 worker safety under Cal OSHA.

23 There's conditions of certification for the next two.
24 There are LORS. I don't have a condition of certification
25 for storage of hazardous waste onsite. I don't have a
26 condition for that, but we've used that previously. I've

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 just never written a condition of certification for that.
2 It's just been a standard in terms of the length of time
3 that waste can be stored onsite.

4 Next one I wrote a condition of certification for,
5 and spilled control management procedures that's covered in
6 LORS and regulations and the process safety management plan
7 and hazardous materials. And the last one, hazardous
8 materials training, that's also covered in workers safety
9 under time waste.

10 So I haven't written condition of certification for
11 things that -- other than the license hazardous waste holler
12 identification number. Those I usually don't write
13 conditions of certification for all the mitigation.

14 Q. It is your intent, however, it is not, that all the
15 measures that are proposed by the applicant be carried out
16 by the applicant because that information is what you base
17 your review upon in terms of determining whether there is a
18 significant impact or not; is that right?

19 A. Yes, exactly.

20 MR. OGATA: No further questions.

21 HEARING OFFICER VALKOSKY: Mr. Thompson?

22 (Discussion off the record.)

23 MR. THOMPSON: No questions.

24 BY HEARING OFFICER VALKOSKY:

25 Q. Ms. Townsend-Smith, concerning your fifth bullet
26 item, the hazardous waste storage, in your opinion, does the

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 Commission need a condition of certification memorializing
2 that as a requirement upon the project?

3 A. I don't think we need a condition of certification.

4 Q. If the committee elected to require a condition of
5 certification memorializing that, how long would it take you
6 to prepare one?

7 A. Ten minutes.

8 Q. Under cumulative impacts on page 109 you indicate
9 cumulative impacts -- I'm quote from this -- and other
10 projects will be insignificant.

11 Please define what you mean by the phrase "other
12 projects."

13 A. Right now we're looking at the possibility of there
14 being five projects in that area, so when I looked at --
15 when I made my analysis, what I did was I looked at La
16 Paloma, Sunrise, Elk Hills, Pastoria, and Midway-Sunset and
17 sort of estimated the amount of waste that could be possibly
18 generated from all of the projects. And then what I did was
19 looked at the landfills in reference to all five of the
20 projects to determine if there would be any cumulative
21 impacts.

22 Q. Thank you. Concerning facility closure, the
23 compliance plant portion of the Final Staff Assessment
24 indicates that there are additional specific conditions
25 concerning closure contained in the waste management area;
26 is this a correct statement?

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 A. I do not have any conditions of certification on
2 closure.

3 Q. Are any specific conditions of certification on
4 closure needed, in your opinion, for this topic area?

5 A. Possibly. Because I've written closure conditions on
6 previous projects that have been closed by the Commission,
7 so there could possibly be some need to write a closure
8 condition.

9 Q. Would you recommend that a closure can't be
10 specifically made part of the conditions of certification
11 for this project?

12 A. We can do that. I could too that. That could be a
13 recommendation.

14 (Pause in proceeding.)

15 BY HEARING OFFICER VALKOSKY:

16 Q. At this time the committee, Ms. Townsend-Smith, would
17 take advantage of your skills in drafting the conditions and
18 would request that you submit a condition of certification
19 concerning your bulleted item number five, specifically the
20 hazardous waste storage and a specific closure condition.

21 A. I'll do that.

22 Q. When can you have those available?

23 This, of course, will be subject to inspection by the
24 applicant and the other parties.

25 A. Tomorrow? Actually, I might have to wait until
26 Monday. I have Sunrise all day tomorrow. Maybe Monday.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 Q. That's fine. Maybe Monday -- is next Wednesday,
2 whatever that date is, would that provide you certainly
3 enough adequate time?

4 A. I think that would be fine.

5 HEARING OFFICER VALKOSKY: If we could have that by a
6 week from today, whatever that date is, the 28th of April.

7 Mr. Thompson?

8 MR. THOMPSON: I guess I'm curious about the
9 mechanism for this condition.

10 Would this be a supplement to the FSA, or would it be
11 a one-page supplement to the FSA that would be filed so we
12 can review and comment?

13 HEARING OFFICER VALKOSKY: It would be final so that
14 you could review it. You could then complete your review by
15 the following Friday.

16 Would that be appropriate? Is that enough time or a
17 week after --

18 MR. THOMPSON: You know, if we're going to help the
19 case move along, we'd complete it by midnight the day it was
20 issued, but I think that will be acceptable. We'll get our
21 wheels back soon.

22 HEARING OFFICER VALKOSKY: Okay. Anything further?
23 Any questions from any of the other parties? Any comments
24 on the general area of waste management? Thank you.

25 Next topic Worker Safety and Fire Protection.

26 MR. THOMPSON: Thank you. Applicant would like to

1 call Denise Clendenning.

2 HEARING OFFICER VALKOSKY: Mr. Thompson, are you also
3 having Mr. Williams as a witness or not?

4 MR. THOMPSON: We hadn't anticipated, but we could
5 throw him back up there.

6 HEARING OFFICER VALKOSKY: I'm not trying to suggest
7 you should or not.

8 MR. THOMPSON: No.

9 HEARING OFFICER VALKOSKY: Thank you.

10 (Witness sworn.)

11 BY MR. THOMPSON:

12 Q. Ms. Clendenning, will you please state your name for
13 the record?

14 A. Denise Clendenning.

15 Q. Are you the same Denise Clendenning who has submitted
16 prepared testimony that is now part of Exhibit 34?

17 A. I am.

18 Q. If I were to ask you the questions contained in the
19 testimony, would your responses today under oath be the same
20 except for minor exhibit number identifications?

21 A. Correct, yes.

22 Q. Do you have any corrections, additions, or deletions
23 to make to your material?

24 A. Not to my material, no.

25 Q. Would you please summarize the Worker Safety and Fire
26 Protection area for the committee, please.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 A. Sure. What we did, we reviewed the rules of practice
2 and procedures that was developed by the CEC and the most
3 recent Title 8 California Code of Regulations to develop
4 outlines for the construction, operation, health and safety
5 plans that are contained in the worker safety section. We
6 also did Internet searches with Kern Valley Fire Department
7 to find out their capabilities for the area.

8 What we found was that there would be no significant
9 adverse impacts to workers safety from -- there are no
10 adverse impacts anticipated for workers safety based on the
11 plans that will be developed.

12 Q. Does that complete your summary?

13 A. That completes my summary

14 MR. THOMPSON: Thank you very much. Ms. Clendenning
15 is tendered for cross-examination.

16 HEARING OFFICER VALKOSKY: Mr. Ogata?

17 MR. OGATA: We have no questions for her.

18 HEARING OFFICER VALKOSKY: I take it, Mr. Thompson,
19 is it your intent to cover the worker -- the topic which
20 we've entitled Worker Safety and Fire Protection and leave
21 the issue of the provision of a ladder truck and extra
22 personnel to the Kern County Fire Department for later
23 consideration under the topic of socioeconomics?

24 MR. THOMPSON: Yes. After Miss -- my intention was
25 after Ms. Clendenning was excused, to ask that Mr. Garratt
26 and his testimony on the fire truck be put off to

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 socioeconomic, which I think is a topic that equally can
2 handle this, which would give us time so that hopefully we
3 can present the committee with resolution that would be
4 satisfactory with staff and the fire department.

5 HEARING OFFICER VALKOSKY: Acceptable, Mr. Ogata?

6 MR. OGATA: Yes.

7 HEARING OFFICER VALKOSKY: Are there any questions
8 for Ms. Clendenning at this time? Any of the parties?

9 Thank you. Mr. Ogata?

10 MR. OGATA: Staff would recall Ellen Townsend-Smith,
11 please.

12 BY MR. OGATA:

13 Q. Ms. Townsend-Smith, you've been previously sworn.

14 You have before you the testimony entitled Workers
15 Safety and Fire Protection?

16 A. Yes, I do.

17 Q. Did you write this testimony?

18 A. Yes, I did.

19 Q. Any changes or corrections to this testimony?

20 A. No, I do not.

21 Q. Please summarize this for the committee.

22 A. I reviewed La Paloma's Application for Certification
23 to make sure the applicant's proposed adequate measures to
24 apply with applicable LORS, protect workers during
25 construction and operation, protect against fire, and
26 provide adequate emergency response procedure.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 Q. But before you leave, is it fair to say that if
2 condition SOCIO-2 as proposed by staff or it's equivalent
3 were not adopted, that you would then recommend that the
4 project not be certified?

5 A. That's sort of the dual edge. Yes, if no parts of
6 the condition is certified. Granted, with SOCIO-2 there's
7 some funding associated with that particular condition. I
8 guess that part could be negotiated.

9 But in terms from a technical standpoint and the
10 ladder truck, and the Kern County Fire District does need a
11 ladder truck, which is associated with SOCIO-2, I think that
12 that condition maybe not entirely but the majority of the
13 condition would have to be accepted.

14 Q. And we'll pursue this matter certainly under the
15 topic of socioeconomics when we get to that. Thank you for
16 the clarification.

17 Next question I have for facility closure on page 63
18 under your portion of testimony under Exhibit 35, you
19 indicate that project owner and operator is responsible for
20 maintaining fire protection system during closure
21 activities.

22 Is this the type of thing that will be included in
23 the general compliance plan, or do we need a specific
24 condition at this point to ensure that such is included?

25 A. Actually, I don't know if it's going to apply to the
26 general compliance plan. I really don't know that. But I

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 will say that this has been a condition in the previous
2 closure.

3 Q. An it is something that you view as necessary in the
4 event of closure?

5 A. Yes. They do need operational fire protection
6 facilities when a plant is being dismantled.

7 HEARING OFFICER VALKOSKY: Mr. Ogata, do you know if
8 that's the type that's typically included in a closure plan?

9 MR. OGATA: My understanding is that that is an
10 element that is included in the closure plan. The closure
11 plan itself has a number of different elements, not in great
12 detail, but when we receive the closure plan, it is
13 circulated to all the staff, and they are allowed to give
14 comments on it in terms of what additional conditions may be
15 included, so basically when it comes to writing conditions
16 such as these, we ask that to include conditions for those
17 elements that they feel are so critical that we want to make
18 sure they are flagged.

19 For other kinds of things they feel are not critical
20 yet still important, the staff is asked to comment upon that
21 at the time the closure plan is submitted.

22 HEARING OFFICER VALKOSKY: Okay. Thank you. Any
23 questions? Any other questions on this general topic?

24 COMMISSIONER LAURIE: Let me ask a question of
25 clarification, Mr. Valkosky: You asked the witness whether
26 absent SOCIO-2 whether they would recommend

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 noncertification; correct?

2 Is it more correct to suggest that if a given
3 mitigation measure is not accepted, then their
4 recommendation is that there not be a finding of mitigation
5 impact?

6 Lack of finding of mitigation impact does not at all
7 necessarily mean failure of the project. It means we had to
8 introduce some kind of override, so I'm going to distinguish
9 between recommending denial of a project because an impact
10 cannot be mitigated and recommending lack of ability to make
11 a finding of mitigation -- excuse me -- of impact
12 mitigation, which could result in lack of certification but
13 it could also result in certification with an override.

14 Is my analysis correct or incorrect?

15 So the witness is saying without this condition the
16 project goes down; is that necessarily correct?

17 HEARING OFFICER VALKOSKY: That is certainly not the
18 only provision. That is certainly not the only course of
19 action. That was possible. I tailored my question to the
20 style of the testimony contained in the FSA which tends to
21 say that the staff either recommends or does not recommend
22 certification at this point.

23 I think at this point I was just trying to establish
24 the linkage between the topic of Worker Safety and Fire
25 Protection and the specific condition which is contained in
26 the socioeconomic section so this thing doesn't get swept

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 under the table or forgotten.

2 COMMISSIONER LAURIE: Thank you. Second point of
3 clarification: It's my understanding that the Commission is
4 not under a legal obligation to accept proposed mitigation
5 measures offered by any party, including staff, but rather
6 we're obligated to conduct what we view as a process which
7 we believe adequately mitigates impacts that may or may not
8 be consistent with proposed mitigation measures.

9 HEARING OFFICER VALKOSKY: Thank you. That's
10 absolutely correct. And of course the purpose we're
11 exploring today are the mitigation measures proposed by the
12 participating parties, of course, subject to committee
13 review as to appropriateness, desirability, and whatever
14 else.

15 COMMISSIONER LAURIE: And the law would say, this is
16 a question, the law would say in regards to mitigation
17 measures: If we find some other mitigation measures that
18 arguably mitigates the impact and that decision is supported
19 by evidence in the record, well, then, we're permitted to do
20 that; is that correct?

21 HEARING OFFICER VALKOSKY: That's correct. Thank
22 you.

23 Mr. Thompson, do you have any exhibits relating to
24 Worker Safety and Fire Protection?

25 MR. THOMPSON: We do not.

26 HEARING OFFICER VALKOSKY: The next topic

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 Transmission Line Safety and Nuisance.

2 MR. THOMPSON: Mr. Gordon Ormsby.

3 (Witness sworn.)

4 BY MR. THOMPSON:

5 Q. Mr. Ormsby, please give your name for the record.

6 A. My name is Stanley Gordon Ormsby.

7 Q. Are you the same Gordon Ormsby that submitted
8 testimony that is now included in Exhibit 34?

9 A. Yes.

10 Q. If I were to ask you those same questions today,
11 would your responses under oath be the same?

12 A. Yes.

13 Q. Do you have any corrections, additions, or deletions
14 to that testimony?

15 A. No.

16 Q. Would you briefly summarize Transmission Line Safety
17 and Nuisance, please.

18 A. Well, I prepared those sections after doing
19 preliminary design of the line and determining
20 configurations and conductor heights of wires above the
21 ground and conducted analysis of audible noise, radio
22 interference, the anticipated audible or aviation safety
23 concerns and several other related aspects of the safety and
24 nuisance issues.

25 Q. And your conclusions?

26 A. My conclusions were this line is relatively very

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 conventional line having very minimal impact.

2 Q. Have you reviewed the condition -- proposed
3 conditions of certification and verification that are
4 contained in the staff's Final Staff Assessment?

5 A. Yes.

6 Q. Would you recommend to your client, the applicant,
7 that they accept those conditions?

8 A. Yes.

9 MR. THOMPSON: Thank you very much. Mr. Ormsby is
10 tendered for cross-examination.

11 HEARING OFFICER VALKOSKY: Mr. Ogata?

12 MS. WILLIS: We have no questions.

13 BY HEARING OFFICER VALKOSKY:

14 Q. Mr. Ormsby, just a question, general information:
15 Staff indicates that the line will be built in accordance
16 with CPUC criteria --

17 HEARING OFFICER VALKOSKY: And maybe Mr. Thompson,
18 you can answer this question better than the witness, but
19 are the CPUC criteria applicable as a matter of law to
20 merchant power plants?

21 MR. THOMPSON: I'm not exactly sure of the
22 applicability. If we talk about things like GO 95, it has
23 become industry standard. In California at least, maybe.

24 THE WITNESS: GO 95 would be a standard applied by
25 the CPUC.

26 ///

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 BY HEARING OFFICER VALKOSKY:

2 Q. Right. And we're now dealing with the power plant
3 which is not subject to the jurisdiction of the PUC?

4 A. Transmission lines are from the power plant.

5 Q. Transmission tie line is subject to the CPUC
6 criteria; is that correct?

7 A. That's correct. GO 95.

8 Q. Any additional CPUC criteria that would apply?

9 A. No, not that come to mind immediately.

10 Q. Staff indicates in its testimony that the applicant
11 may or may not provide appropriate lighting on the
12 transmission towers in accordance with the federal
13 aeronautics requirement.

14 Do you know whether or not the FAA has, in fact,
15 required any lighting?

16 A. To my knowledge it's not required. All of our towers
17 are under the two-hundred-foot rule for lighting. In fact,
18 we're paralleling other towers that -- in a section of the
19 line that tends to be taller and they are not lighted
20 either.

21 Q. So there would be no independent requirement for that
22 in this case?

23 A. No.

24 HEARING OFFICER VALKOSKY: Anything else for this
25 witness?

26 MS. WILLIS: We have no questions at this time.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 HEARING OFFICER VALKOSKY: Thank you, Mr. Ormsby.
2 Ms. Willis?
3 MS. WILLIS: We'd like to call Dr. Odoemelam.
4 (Witness sworn.)
5 BY MS. WILLIS:
6 Q. Would you please state and spell your name for the
7 record.
8 A. Obet Odoemelam, O-b-e-t O-d-o-e-m-e-l-a-m.
9 Q. Do you currently work for the California Energy
10 Commission?
11 A. Yes, I do.
12 Q. Could you please state your job title?
13 A. Staff toxicologist. I deal with the issues that have
14 a bearing on Commission programs that relate to public
15 health, air quality, EMF, and toxicology.
16 Q. And do you have a copy of your testimony entitled
17 Transmission Line Safety and Nuisance in front of you today?
18 A. Yes, I do.
19 Q. Did you author this testimony?
20 A. Yes, I did.
21 Q. Do you have any changes or corrections in your
22 testimony?
23 A. No, I don't.
24 Q. Would you please summarize that for us?
25 A. Analysis was done to assess the line design,
26 operation proposed by the applicant for the line and just to

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 ensure that especially in light of old and new concerns
2 about transmission lines operation and construction that the
3 line will be designed in a way that staff considers in
4 keeping with -- on the relevant issues.

5 The old issues related to aviation safety, the
6 potential for hazards, nuisance hazards, and hazard of
7 shocks that could lead to electrocution, interference with
8 aviation in the general aviation or aviation related to
9 agricultural operations, crop dusters, and the possibility
10 of effects from electricity from such lines.

11 I assessed the line, in particular in regard to the
12 PUC requirements which staff adheres to. These requirements
13 show that we keep to specific on general requirements that
14 we have for all sorts of lines. This is intended for staff
15 to ensure that all these lines are constructed so that the
16 fields from these lines are similar and the amount of
17 reduction measures will be similar to lines or similar
18 voltage and current capacity.

19 Now, the reduction measures that were mitigation
20 measures that are proposed for the lines are in keeping with
21 CPUC requirements and staff's own requirements as far as
22 fuel reduction approach, and we find that the lines --
23 estimated for this line would be appropriate for line of
24 this voltage class in current carrying capacity, but it's
25 not enough to propose that this measure be implemented.

26 We have recommended several conditions of

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 certification. These are standard to ensure that when the
2 line is operational, we have the measurements as reflected
3 by field strengths to make sure all the conditions, all the
4 measures that allowed us to accept the line design will be
5 implemented.

6 Q. Does that conclude your testimony?

7 A. That's correct.

8 MS. WILLIS: We'd like to make this witness available
9 for cross-examination.

10 HEARING OFFICER VALKOSKY: Mr. Thompson?

11 MR. THOMPSON: We have no questions. Thank you,
12 Doctor.

13 BY HEARING OFFICER VALKOSKY:

14 Q. Do the conditions that you propose include measures
15 to ensure that adequate clearances are maintained under the
16 power lines when working?

17 A. Yes.

18 Q. Could you specify which?

19 A. That's covered under the very first condition, and
20 its covered under requirement for compliance with Title 8,
21 California Code of Regulations Section 2700.

22 Q. Thank you. Last question you indicate on the
23 conclusions paragraph on page 75 that field reducing
24 measures will be incorporated to the extent considered
25 appropriate by staff for lines in PG&E service area.

26 How does staff determine what is appropriate?

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 A. Under the present PUC policy, which we help recommend
2 to the PUC in the eighties, each utility entity jurisdiction
3 of PUC was required to prepare specific design guidelines
4 that have to follow the design in that utility service area.

5 And the applicant -- this project will be designed
6 according to the PUC design guidelines for the area for its
7 own service areas.

8 Q. So it is an existing standard. It's not something
9 that's done at the discretion of staff?

10 A. No. Staff makes sure that these are done according
11 to those guidelines.

12 HEARING OFFICER VALKOSKY: Thank you very much.

13 Mr. Eller?

14 MR. ELLER: I had a question there.

15 BY MR. ELLER:

16 Q. Nationally we're changing our TV system in the next
17 couple of years.

18 Have you looked at that new system and impact of
19 transmission lines on that system?

20 A. No.

21 Q. Thank you?

22 A. The only thing is that the possible effect, health
23 effects probably won't change.

24 Q. I was not concerned with health effects. I was
25 concerned with interference. It's a completely different --

26 A. Again, FCC requires the owner of each line to

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 mitigate any interference. That requirement of the owner
2 will remain even when there's new sets come to be.

3 MR. ELLER: Thank you.

4 BY HEARING OFFICER VALKOSKY:

5 Q. As part of your analysis, did you include the
6 approximate six-tenths of a mile rerouting of the
7 transmission line proposed by the applicant? In other
8 words, a little jog around the Fish and Game territory?

9 A. Yeah, in terms of what?

10 Q. In terms of the potential for creating any
11 transmission line safety and nuisance effects because there
12 has been a reroute, which we've been calling Route 1B, which
13 is, I understand it, partially traces around the perimeter
14 of the Fish and Game ecological preserve.

15 And my question is whether you included that reroute
16 in your analysis?

17 A. Not directly. So long as a line is designed the same
18 way, which route it is, that's what staff is concerned with.

19 Q. It would be inconsequential as to that route?

20 A. Yes.

21 HEARING OFFICER VALKOSKY: Any other questions?

22 MR. THOMPSON: None from applicant.

23 HEARING OFFICER VALKOSKY: Any questions? None.

24 Mr. Thompson, any exhibits to move into evidence on
25 the topic of Transmission Line Safety and Nuisance.

26 MR. THOMPSON: No, sir.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 HEARING OFFICER VALKOSKY: Any public comment on this
2 topic? There is none.

3 Second to last topic of the day Public Health.

4 COMMISSIONER LAURIE: Mr. Valkosky, can I get
5 applicant's response to proposed conditions on the project?

6 HEARING OFFICER VALKOSKY: Certainly. Would you like
7 the witness recalled, Commissioner?

8 MR. THOMPSON: Was this the Transmission Line Safety?
9 I believe I asked him if he would recommend that the
10 applicant accept those conditions of certification. I
11 believe he responded yes.

12 COMMISSIONER LAURIE: Thank you.

13 HEARING OFFICER VALKOSKY: That comports with my
14 recollection, Mr. Thompson.

15 MR. THOMPSON: Is it acceptable for me to call
16 Mr. Koehler in the area of Public Health?

17 HEARING OFFICER VALKOSKY: Yes.

18 COMMISSIONER LAURIE: Beginning the topic of Public
19 Health, we do want to leave adequate time before 5:00
20 o'clock for additional communications. I would expect,
21 hopefully, we can be done by 4:30 and allow that additional
22 time.

23 What's your expectation?

24 MR. THOMPSON: Everybody that I was looking for is
25 out of here on the phone, but my expectation is that we
26 could finish this up 4:15, 4:30ish, maybe break for half an

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 hour, then come back and wrap it up.

2 COMMISSIONER LAURIE: Thank you.

3 (Witness sworn.)

4 BY MR. THOMPSON:

5 Q. Would you please state your name for the record.

6 A. My name is John Koehler.

7 Q. Are you the same John Koehler who submitted prepared
8 testimony that is now included as part of Exhibit 34 of this
9 proceeding?

10 A. Yes, I am.

11 Q. If I were to ask you those same questions contained
12 in that testimony, would your answers today under oath be
13 the same?

14 A. Yes, they would.

15 Q. Do you have any corrections, additions, or deletions
16 to that material?

17 A. I do have a minor correction and clarification
18 question. First clarification: One of the exhibits that I
19 am cosponsoring with Al Williams, Exhibit 22, the one you
20 are receiving plant and off-site consequence analysis, my
21 understanding is that would be a topic for Hazardous
22 Materials Management portion of these proceedings, though I
23 would be prepared to speak to that now.

24 MR. THOMPSON: If the committee wishes, we'll move
25 Exhibit 22 to the Hazardous Materials Management area, deal
26 with it at that time.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 HEARING OFFICER VALKOSKY: That comports with my
2 understanding.

3 Does staff have an opinion on it?

4 MS. WILLIS: We would like that to happen as well.

5 HEARING OFFICER VALKOSKY: We'll deal with it in
6 Hazardous Materials.

7 THE WITNESS: The minor correction I have is my job
8 title has changed from senior project scientist to
9 consultant.

10 BY MR. THOMPSON:

11 Q. Is that a step up, sir?

12 A. Yes.

13 Q. Congratulations.

14 A. Depends how you look at it.

15 Q. Briefly summarize your testimony for the committee.

16 A. In the area of Public Health, this study was
17 concerned with the airborne emissions of toxic air
18 pollutants. Those are chemicals that have no known human
19 health effects but for which they don't have adopted air
20 quality standards.

21 Potential health impacts of those air pollutants with
22 standards are the subject of the air quality impact
23 analysis. For the public health impact analysis, the only
24 source of toxic air pollutants determined to be significant
25 were operational emissions from the gas turbines. Public
26 health impacts from the construction phase and from the

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 operation of the cooling tower with fresh water were
2 determined to be insignificant.

3 So emissions of toxic air pollutants from the gas
4 turbines were calculated under maximum conditions, assuming
5 continuous maximum firing of all turbines with natural gas.

6 The California Air Toxics Commission Factor Database
7 published by the California Air Resources Board was used to
8 make those calculations, and in addition, we also looked at
9 maximum potential emissions of ammonia from the operation
10 from the proposed selected catalytic reduction error
11 emissions control system.

12 So with these emissions, air dispersion modeling was
13 performed using EPA approved methods to assess potential
14 airborne concentrations of these pollutants in the
15 surrounding area. Potential public health impacts were
16 calculated from these predicted airborne concentrations
17 using toxicity factors published by the California EPA.

18 And now resulting maximum lifetime cancer risk from
19 these estimated exposures was calculated to be about .017
20 chances in a million, which is far below the one in a
21 million significance threshold. Noncancer health impacts
22 were also evaluated by calculating recalled hazardous
23 indices, and those are the ratios of assessed exposures to
24 levels of concern.

25 For chronic noncancer health effects, this index was
26 calculated at a value .093, where a value of one is

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 considered significant. And for acute noncancer health
2 effects, this value was calculated at a value .058. So both
3 of these were well below one. Therefore, in conclusion, the
4 maximum cancer or noncancer health impacts were calculated
5 to be well below applicable significance criteria.

6 Q. Thank you. Have you reviewed the Public Health
7 conditions of certification?

8 A. Yes, I have.

9 Q. And your recommendation to the applicant?

10 A. There were no conditions.

11 Q. Pretty easy to accept.

12 A. That was pretty easy.

13 MR. THOMPSON: Thank you very much. Mr. Koehler is
14 tendered for cross-examination.

15 MS. WILLIS: We have no questions at this time.

16 BY COMMISSIONER ROHY:

17 Q. Mr. Koehler, I understand your testimony on -- I
18 believe I understand your testimony on the health effects.
19 My question deals with what I would call an annoyance index.

20 From the ammonia slip from the gas turbine, will
21 there be perceptible ammonia smell within a region of
22 habitation around the power plant?

23 A. I'd have to look that up specifically, but those
24 values were so low that my assessment would be that there
25 should not be any perceived ammonia smell.

26 COMMISSIONER ROHY: Thank you.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 BY HEARING OFFICER VALKOSKY:

2 Q. Mr. Koehler, you indicated you did a health risk
3 analysis with SCR as a control technology; is that correct?

4 A. Hm-hmm.

5 Q. Did you also do one with SCONOx on one of the power
6 trains?

7 A. When I looked at -- well, the answer, I guess, would
8 be yes. The toxic error emission factors were calculated as
9 maximum combustion emissions and we added ammonia slip if
10 SCR is selected. Ammonia is not used for SCONOx. So it
11 would be contained in our analysis, yes.

12 Q. And to what extent does your Public Health analysis
13 rely upon the outcome of a mitigation proposed as a result
14 of the air quality analysis?

15 A. I don't believe the maximum firing rates would
16 change. If there are any adjustments to the aspersion
17 parameters, it would be a slight adjustment in values, but I
18 don't believe any conclusions would change, the impacts were
19 so low.

20 Q. So that basically what you are saying regardless of
21 whatever conditions were imposed as a result of the analysis
22 in the air quality, that would not change your testimony?

23 A. No, it would not. These impacts were calculated at
24 max condition.

25 BY COMMISSIONER ROHY:

26 Q. Mr. Koehler, my question deals with the construction

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 aspects of the project.

2 A. Hm-hmm.

3 Q. Have you examined the potential release of chemicals
4 from the soil as they exist today? Certain things such as
5 serpentine that may become airborne during construction? My
6 question deals with have you examined the soils?

7 A. No, I have not.

8 HEARING OFFICER VALKOSKY: Mr. Thompson?

9 MR. THOMPSON: We have nothing -- we have no
10 redirect.

11 HEARING OFFICER VALKOSKY: Anything else for this
12 witness from any other party? Thank you, sir.

13 MS. WILLIS: We'd like to recall Dr. Odoemelam.

14 (Pause in proceeding.)

15 BY MS. WILLIS:

16 Q. You are still under oath.

17 Do you have your testimony in front of you entitled
18 Public Health?

19 A. Yes, I do.

20 Q. Did you prepare this testimony?

21 A. Yes, I did.

22 Q. Do you have any changes or corrections to this?

23 A. No, I don't.

24 Q. And could you please summarize your testimony for us?

25 A. I assessed the potential for the known factor of
26 pollutants from all significant sources within facility of

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 this sort to be emitted at levels that will likely pose a
2 significant risk to both the public or to workers.

3 This analysis was conducted corresponding to --
4 conducted according to specific information provided by the
5 applicant and health risk assessment guidelines of
6 California Air Pollution Control Officers Association that
7 helped develop in the 1980s, information provided by the
8 applicant with regard to the types of pollutants expected
9 from the facility of this sort, and the fuel to be used,
10 information given by the ARP for assessing the types of
11 pollutants to be -- that one could expect from a facility of
12 this sort.

13 I assessed the potential for health effects by using
14 the results of the analysis of modeling done by the
15 applicant and verified by our air quality staff. The
16 analysis was in Public Health, specifically for toxic air
17 pollutants, which are called noncriteria pollutants, for
18 which there are established air quality standards.

19 The potential for effects is rather complicated in
20 that there are -- the analysis calls for reduction --
21 corresponding reduction in other areas, and that analysis is
22 conducted in our air quality section.

23 And the results of my analysis shows that the risk
24 from this facility and those related to cancer or no cancer
25 health effects are significant at all levels, that the
26 applicant considers significant for facilities, and fuel

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 sources of this sort proposed.

2 And for staff it is a matter of ensuring that
3 emissions from the facility from a facility like this is
4 controlled using the most available and effective control
5 protocols while also ensuring reliable and safety and
6 efficiency.

7 And our conclusion is that the plant as the facility
8 is proposed to be controlled at this point, emissions would
9 not pose a significant public health risk to the public and
10 would have not recommended any specific conditions if the
11 Commission decides to certify the facility.

12 Q. Does that conclude your testimony?

13 A. That's correct.

14 MS. WILLIS: We'd like to make him available for
15 cross-examination.

16 HEARING OFFICER VALKOSKY: Mr. Thompson?

17 MR. THOMPSON: No questions, thank you.

18 COMMISSIONER ROHY: May I ask the same question I
19 asked of the applicant's witness?

20 BY COMMISSIONER ROHY:

21 Q. Have you examined the elements in the soil that may
22 become airborne during construction?

23 A. No. Experience has shown that this short-term
24 constructional impacts really deal with certain types of
25 pollutants, and when you serpentine, it will be very rare
26 for it to be emitted at levels that will pose a significant

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 health risk and besides, there's a short-term impacts. And
2 the analysis would have to be -- would be two different
3 types of health effects.

4 And for you to be exposed at that level, I think you
5 probably have to have a sea of serpentine soil, but not
6 levels that you will find an area -- that area the
7 concentration will be so low you will almost be declared
8 nontoxic outside that area.

9 COMMISSIONER ROHY: Thank you for the witness.

10 BY HEARING OFFICER VALKOSKY:

11 Q. To what extent at all do your conclusions depend upon
12 the results of the air quality analysis?

13 A. To a significant extent in that modeling, the
14 modeling that's applied for determining aspersions modeling
15 is applied for evaluation of potential exposure levels.
16 It's the same modeling that is done with regard to air
17 quality on the exposure to the criteria pollutant that I
18 addressed in the opening section.

19 HEARING OFFICER VALKOSKY: Any other questions for
20 this witness? Any comments on the topic of Public Health
21 from anyone? Thank you.

22 Mr. Thompson, do you have any exhibits at this time
23 on the subject of Public Health?

24 MR. THOMPSON: We do not. Thank you.

25 HEARING OFFICER VALKOSKY: And the final topic on
26 today's agenda Noise. Mr. Thompson?

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 MR. THOMPSON: Applicant would like to call

2 Mr. Greene.

3 (Witness sworn.)

4 BY MR. THOMPSON:

5 Q. Mr. Greene, state your name for the record.

6 A. My name is Rob Greene, and I'm manager of noise and
7 vibration for URS Greiner Woodward-Clyde.

8 Q. Are you the same Mr. Greene that submitted prepared
9 testimony?

10 A. Yes. Like the prior gentleman, I'm a consultant
11 scientist at this point in time.

12 Q. You know whether it's a step up?

13 A. It's more work.

14 Q. If I were to ask you the questions contained in your
15 prepared testimony in Exhibit 34, would your responses be
16 the same?

17 A. Yes.

18 Q. Do you have any corrections, additions, or deletions
19 to make to your material?

20 A. Not to the material submitted.

21 Q. Would you please summarize the noise area.

22 A. Generally my role was to evaluate all of the noise
23 impacts, including construction noise, operations noise,
24 from the facility in the areas of community noise impact as
25 well as worker safety impact, power line noise. You've
26 heard some of those already addressed, but that was the

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 general assignment.

2 Q. And?

3 A. Would you like me to continue as far as our analysis?

4 Q. Please. Pardon me.

5 A. We looked at the baseline noise that exists in a
6 community. We look at the LORS that are present, Kern
7 County regulations, CEC regulations, and the baseline is
8 measured in field study. Plant noise is modeled by
9 comparing the levels we expect with the LORS with the
10 baseline study, make a determination whether adverse affects
11 may or may not occur. If they would occur, if they would
12 need mitigation to be reduced to a level below significance.

13 And the results of my analysis and my conclusions are
14 that the plant and linears as proposed and with mitigation
15 measures would not result in adverse effects on the
16 environment.

17 Q. Mr. Greene, have you been in conversations with the
18 staff regarding the mitigation measures?

19 A. Yes, we have.

20 Q. And is it your understanding that staff has made
21 offers to changes on those mitigation measures?

22 A. That's correct. Myself and staff have been in close
23 communication. It is my understanding they will be offering
24 clarifications to the mitigation measures. Those
25 clarifications, based on my preliminary analysis, are
26 acceptable, and I would recommend their acceptance by the

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 client and the applicant.

2 MR. THOMPSON: So a preacceptance of summary has yet
3 to hit the record. We may reserve the right to call you
4 back after we hear it. I'm nervous about that. Thank you
5 very much. Mr. Greene is tendered for cross-examination.

6 MS. WILLIS: We don't have any questions at this
7 time, but to clarify: We do have copies and will be reading
8 those changes into the record.

9 BY HEARING OFFICER VALKOSKY:

10 Q. Mr. Greene, I understand that the ambient noise
11 survey was conducted on a weekday, Monday through Wednesday;
12 is that correct?

13 A. I believe that is correct.

14 Q. Is there any reason why it was conducted during the
15 week rather than a weekend?

16 I would suspect that the ambient noise would be lower
17 on a weekend and thereby be able to achieve a more
18 conservative ambient noise level.

19 A. It generally depends on the nature of the source of
20 ambient noise. If it is a highly industrialized area or an
21 area that's only used to great intensity during the week,
22 whereas the weekends it's quieter. If it's generally rural,
23 agricultural, or some form of densities and activities that
24 are pretty consistent throughout the week, it doesn't make
25 that much difference whether someone picks a middle weekday
26 or works on the weekend.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 Q. That's what you are saying, that this project setting
2 wouldn't make a difference?

3 A. I don't believe it would have made a difference.

4 HEARING OFFICER VALKOSKY: Thank you. Any other
5 questions for this witness? Thank you, Mr. Greene.

6 MS. WILLIS: Staff's witness we'd like to recall
7 Kisabuli.

8 (Pause in proceeding.)

9 BY MS. WILLIS:

10 Q. Do you have a copy of your testimony entitled Noise
11 in front of you today?

12 A. Yes, I do.

13 Q. Did you prepare this testimony?

14 A. Yes.

15 Q. I understand you have changes to this testimony?

16 A. Yes, I do.

17 Q. Do you have those changes with you?

18 A. Yes, I do.

19 Q. Could you please read your changes into the record
20 and refer to the page numbers?

21 A. Okay. On page 157, first paragraph, Steam Blows.
22 Third paragraph under Steam Blow, the fourth line, change
23 one hundred to one hundred and ten so it should read "reduce
24 noise levels to a hundred and ten dBA."

25 On page 160 under Community Noise Impacts, second
26 line after the word "noise levels" insert "from the plant."

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 On the next line after the comma and the word "will be,"
2 strike out "below," and after the word "dBA" add "L50 or
3 less." At the end of the parentheses add the following
4 "under normal operating conditions." The second line that
5 starts with "Since 40 dBA," add the word "L50."

6 On page 166 NOISE-4, the fourth line, change the word
7 -- change 100 to 110. Back up line before that after the
8 word "100 dBA," add "L50."

9 Page 167 after the word -- seventh line after the
10 word "complaints," add the following: "The noise
11 contributed by the LPGP operations at the nearest residence
12 in McKittrick shall not exceed 40 dBA L50 under normal
13 operating conditions." And strike the word "operation of
14 the," that's the next line below that. And also strike
15 "causes" in the same line, and add the word "are" after
16 "noise levels." The next line after the word "40 dBA" add
17 "L50," and strike out the next two words. One is in
18 parentheses that says "Leq" and the next word after that is
19 "measured."

20 We added a protocol, and I'll read the protocol:
21 "The measurement of power plant noise for purposes of
22 demonstrating compliance with this condition may
23 alternatively be made at an acceptable location closer to
24 the plant, e.g four hundred to one thousand feet from the
25 plant boundary, and this measured level then mathematically
26 extrapolated to determine the plant noise contribution at

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 the nearest sensitive receptor in McKittrick. However, not
2 withstanding the use of this alternative method for
3 determining the noise level, the character of plant noise
4 shall be evaluated at the nearest sensitive receptor to
5 determine the presence of pure tones or other dominant
6 sources of plant noise."

7 Page 168 NOISE-8. After the first line -- after the
8 word "to," include the following: Avoid adverse noise
9 effects" and strike out the words, including the
10 parentheses, that say "comply with the community noise
11 equivalent level or CNEL."

12 On page 169, Table A, under item five --

13 MR. ELLER: Excuse me. I believe that's 170.

14 THE WITNESS: 170, thank you. Table 1A, item five,
15 in the second column, add the word "energy" after "the," so
16 it should read "The energy average A-weighted noise level
17 during the noise level measurement period."

18 Those are the changes.

19 BY MS. WILLIS:

20 Q. That is all the changes you are prepared to make at
21 this time?

22 A. Yes.

23 Q. Please summarize your testimony.

24 A. Yes. The construction and operation of any power
25 plant creates noise or sound. The character and loudness of
26 this noise, the time of day or night during which it is

1 produced, and the proximity of the facility to the nearest
2 sensitive receptor provide with whether the project will
3 meet applicable noise laws and ordinances and to significant
4 environmental impacts.

5 The purpose of our analysis is to identify likely
6 noise impacts from the La Paloma Generating Project and to
7 recommend procedures to ensure the resulting noise impacts
8 will comply with applicable laws and ordinances and will be
9 adequately mitigated.

10 Before satisfying the La Paloma project, the Energy
11 Commission must find that the La Paloma Generating Project
12 will likely be built and operate in compliance with all
13 applicable noise laws, ordinances, regulations, and
14 standards and that the La Paloma Generating Project will
15 present no significant noise impacts or mitigated to the
16 extent feasible.

17 Kern County general plan noise element establishes
18 environmental noise limits based on the land use of the
19 property receiving the noise. The nearest sensitive
20 receptor to the project includes residences within
21 McKittrick.

22 According to the Kern County noise element, these
23 single family rural dwellings will be classified as highly
24 sensitive land uses. As such, the maximum allowable noise
25 level from the La Paloma project to the residential property
26 is the forty decibels.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 The proposed facility site is located approximately
2 eight thousand feet or a mile and a half from the town of
3 McKittrick. The existing ambient noise level is very quiet
4 in nature.

5 Construction noise impacts: The approximate eight
6 thousand feet white buffer zone to the nearest sensitive
7 receptor will allow for significant sound levels produced
8 during both construction and operation.

9 Exposure: The noise levels required during
10 construction on whether a worker is closer to or conducting
11 noisy activity but the noise levels are expected to average
12 between seventy-five and eighty-five decibels. Undoubtedly
13 some markets will be exposed to noise levels that exceed
14 eighty-five decibels.

15 The applicant recognizes the need to protect
16 construction personnel from these noise hazards, and the
17 applicant has agreed to limit the noise that these workers
18 will be exposed to. To ensure the workers are adequately
19 protected, staff has proposed a condition of certification,
20 condition three.

21 Community noise impacts: The applicant commits to
22 incorporating noise communication measures into the design
23 of the project that will ensure that noise levels from the
24 plant to the nearest receptor will not exceed forty
25 decibels.

26 Facility closure: Upon closure of the facility, all

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 operation noise will cease. No further impacts will be
2 possible. The remaining potential noises will be that
3 caused by dismantling of the structures and equipment and
4 any site restoration may be performed. Since this noise
5 will be similar to that caused by the original construction
6 of the project, it may be treated similarly; that is, noisy
7 work can be performed during daytime hours with machinery
8 and equipment properly equipped with mufflers. Any noise
9 ordinances in existence will apply.

10 Under conclusions and recommendations we have two
11 conclusions and four recommendations for what exposures and
12 two recommendations for community.

13 The conclusions: Staff concludes that the La Paloma
14 Generating Project will likely be built and incorporated to
15 comply with all applicable noise laws, ordinances,
16 regulations, and standards, and further that the La Paloma
17 Generating Project will likely present no significant noise
18 impacts.

19 Recommendation: The applicant shall conduct two
20 occupational noise surveys: One during plant construction,
21 and the second during plant operation. The operational
22 noise shall be conducted only after the facility has
23 achieved at least eighty percent of the plant capacity no
24 later than ninety days after the plant, which is eighty
25 percent of the running capacity.

26 Both sides shall attempt to verify that workers are

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 not exposed to noise intensities, including those identified
2 by Cal OSHA. If such exposure occurs, the applicant shall
3 implement at the minimum the following, and we have four
4 conditions.

5 The first is place signs in conspicuous locations
6 warning employees that specific areas are applicable to Cal
7 OSHA north standards, and number two, that access to such
8 area shall be limited only to workers that are using
9 properly hearing -- train personnel in the proper use of
10 individual hearing, protective glasses. As needed, employee
11 engineering and controls to reduce employee exposure to
12 noise, and employ a specialist to participate in the design,
13 procurement, and installation of the project in order to
14 ensure the project will comply with Cal OSHA.

15 For community, we recommend that the applicant
16 conduct an ambient noise survey to make sure the La Paloma
17 Generating Project is within the estimated levels as
18 provided in the application for all sensitive receptor and
19 to identify that no new component are introduced. Secondly,
20 to employ the noise complaint resolution procedure that has
21 been filed as part of the application in a document entitled
22 Noise Complaints. That concludes my summary.

23 MS. WILLIS: Thank you. Kisabuli is now available
24 for cross-examination.

25 HEARING OFFICER VALKOSKY: Mr. Thompson?

26 BY MR. THOMPSON:

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 Q. Thank you. Kisabuli, if I could turn your attention
2 to NOISE-4, the new material that you submitted for the
3 record today.

4 A. Yes.

5 Q. Yes. We think that two numbers may have been
6 exchanged for each other. In the end of the first sentence
7 we anticipated seeing one hundred and ten dBA measured at a
8 distance of a hundred feet instead of a hundred dBA measured
9 at the distance of a hundred and ten feet.

10 Do you have any comment?

11 A. I think you are right. This is what happens when you
12 do things at the eleventh hour.

13 Q. Mr. Kisabuli, our knowledge is that you worked more
14 than eleven hours in the last day on these, and I would take
15 this time for the record to tell everyone how much we
16 appreciated your extremely hard work and cooperation with us
17 in trying to reach this resolution. We truly thank you.

18 A. You are welcome.

19 HEARING OFFICER VALKOSKY: Is that all, Mr. Thompson?

20 MR. THOMPSON: That's it.

21 HEARING OFFICER VALKOSKY: First I'd like to instruct
22 the court reporter to attach a copy as an appendix to the
23 transcript so that we will have that at a convenient place,
24 that is a copy of the changes.

25 (Pause in proceeding.)

26 BY HEARING OFFICER VALKOSKY:

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 Q. You indicate on page 162 of your portion of the Final
2 Staff Assessment six measures you believe the applicant
3 should implement.

4 Are these measures specifically included in the
5 conditions of certification which you are proposing?

6 A. Yes, they are.

7 Q. Is there any realistic possibility that the
8 construction and operation of the La Paloma Generating
9 Project in concert with the other power plants reasonably
10 anticipated would result in a significant cumulative noise
11 impact?

12 A. The La Paloma project by itself has not -- as we
13 identified in our analysis does not cause impacts to
14 McKittrick, which is the nearest receptor. I have not
15 looked at either project to see what their contribution will
16 be, but I have not gotten to that point where I can make
17 that assessment as yet.

18 Q. Okay. Do you know whether any of the other projects
19 are, in fact, in proximity to McKittrick?

20 A. I need the applicant to help me out on this.
21 Sunrise, how far is Sunrise?

22 MR. PRYOR: About eight miles.

23 THE WITNESS: So that would not contribute. It's
24 just too far away.

25 BY HEARING OFFICER VALKOSKY:

26 Q. Okay.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 A. The projects have to be within a mile to a mile and a
2 half of each other to contribute sufficiently, but if they
3 are farther than that, they should not.

4 Q. Okay, fine. So that would be a mile to a mile and a
5 half buffer, that's what I'm looking for. Thank you.

6 Lastly, page 161 of your testimony you indicate
7 certain measures are appropriate in case of facility
8 closure.

9 In your review, are these measures adequately
10 included in the closure provisions of the compliance plan,
11 or is it necessary to adopt a specific condition dealing
12 with noise in the case of a project closure?

13 A. I don't see a need to include a specific condition of
14 closure. If the facility ceases operation, essentially the
15 noise goes away. The only noise will be associated with
16 dismantling of the facilities, if that comes to pass, but at
17 this point we don't see a need to include that condition.

18 HEARING OFFICER VALKOSKY: Okay, thank you. Bob?

19 COMMISSIONER LAURIE: Let me call your attention to
20 proposed mitigation six. One, I prefer the language as
21 revised. I think it is a better language. Two, I am
22 concerned, however, under CEQA, whether you can have a
23 proposed mitigation measure that says this is what you will
24 do and if that doesn't work, you will do something
25 different. I have a concern about that.

26 Frankly, I would feel more secure if the mitigation

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

167

1 -- or if the condition simply read you will not exceed 40
2 dBA. I would express that concern on the record. I will
3 have discussions with -- the committee will have discussions
4 with its legal advisor on the question if the parties do not
5 have a concern about that, and I am less concerned.

6 Secondly, on NOISE-8 where the condition is created
7 to address construction work, I'm wondering if all the
8 parties can deal with a condition that says noisy
9 construction work from 7:00 to 7:00? I have a concern that
10 there may be some debate or discussion at some point in time
11 what "noisy construction" work is.

12 Again, if all the parties believe they can enforce
13 that condition, then I would withdraw my objection. I do,
14 however, have a concern about it. I do not know -- if I
15 were an applicant, I'm not sure I would know what "noisy
16 construction work" is that I cannot start until 7:00 a.m.

17 BY HEARING OFFICER VALKOSKY:

18 Q. Do you have anything to offer as to your
19 interpretation of the word "noisy" in condition eight?

20 A. I don't have anything at the moment to offer any more
21 than what we have. I could take this back to the office and
22 consultation with the applicants with some language -- I
23 know you are there. I did that on purpose because I want to
24 finish my thought. Let's see if we can come up with some
25 acceptable language. Steve?

26 HEARING OFFICER VALKOSKY: Mr. Baker, you keep

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 popping up.

2 MR. BAKER: Commissioner Laurie, if I might. For the
3 record I'm Steve Baker. I'm the senior technical lead with
4 some sort of oversight responsibility for the area, and I
5 kind of looked over Mr. Kisabuli shoulder while he prepared
6 the testimony.

7 To try to respond in part to your two questions.
8 First one was NOISE-6. Most of the environmental impacts
9 that are identified and mitigated under a CEQA process are
10 impacts that we convinced ourselves can be measured and
11 quantified. We can measure the number of acres of habitat
12 that are destroyed, so we can come up with a compensating
13 habitat purchase or some sort thing. We can measure the
14 tons of pollutants put in the air and then decide how many
15 offsets have to be purchased.

16 Noise from a power plant is something that can be
17 roughly calculated, but cannot be precisely defined until
18 the plant is actually built and turned on. We engineers
19 like to think that we can calculate things like this fairly
20 closely in advance, but we are not so hubris that we promise
21 to do so without any real accuracy.

22 Therefore, the plant is designed with all good
23 intents of being as quiet as required, but no one knows for
24 sure until it's actually turned on if we've met the goal, so
25 in order to avoid spending a lot of money, and I mean, a lot
26 of money unnecessarily, the plant is designed and built to

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 be as quiet as we think it should be, and if it's a little
2 too noisy, we can go back and spend a little money to make
3 it quiet.

4 But this approach here that's outlined in condition
5 NOISE-6 is the industry standard approach to this problem.

6 COMMISSIONER LAURIE: As long as my legal advisor
7 assures me that we're in legal compliance, I don't have a
8 problem with it.

9 MR. BAKER: And your question on NOISE-8, noisy
10 construction. It's a rather open term, I agree, but we have
11 a condition NOISE-2 and noise complaint program. That's
12 there specifically for the purpose of identifying --

13 COMMISSIONER LAURIE: That, sir, is exactly my point.
14 My guess is McKittrick folks get up pretty early, but there
15 has to be some understanding of what a legitimate complaint
16 is and what an illegitimate complaint is. And if the
17 neighbors read the condition as saying no construction work
18 noise before 0700, that's what their expectation will be.
19 I want to make sure that the neighbors' expectation are the
20 same as the applicant's expectations, and I don't know that.

21 MR. BAKER: I can't say as to the applicant's
22 expectations, but I can assure you that residents'
23 expectations would be the same as staff's. Our intent is
24 noise, if it annoys anyone to the point where they file a
25 complaint, that's noisy construction.

26 COMMISSIONER LAURIE: There's no question whether the

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 complaint is legitimate or not legitimate, I mean --

2 MR. BAKER: That's part of the process.

3 COMMISSIONER LAURIE: -- establish violation of a
4 condition?

5 MR. BAKER: The process outlined in NOISE-2 will step
6 through a process which includes determining if there is a
7 legitimate complaint.

8 COMMISSIONER LAURIE: Okay. Thank you.

9 THE WITNESS: Thank you, Steve.

10 HEARING OFFICER VALKOSKY: Thank you. Any redirect
11 for your witness?

12 MS. WILLIS: No, we do not.

13 HEARING OFFICER VALKOSKY: Are there any other
14 questions?

15 MR. OGATA: Mr. Valkosky, if I can, I'd like to add a
16 clarification for NOISE-6. Commissioner Laurie has touched
17 upon something that could be a problem. Normally we do try
18 in our testimony and conditions to list the types of
19 possible mitigation that would be available in case the
20 primary mitigation fails.

21 Because I do believe that there is a CEQA issue with
22 leaving that loose end unavailable for public review and
23 comment, so in fact, normally we do try to have a menu of
24 possible option alternatives, so we can probably fix this
25 very simply by just adding that list to the condition as
26 examples of possible mitigation that might be applied.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 There's no guarantee that that will be the final
2 outcome, but certainly to allow the public an opportunity to
3 comment on what kinds of options are available, we ought to
4 add more information about what possible alternatives exist.

5 I understand Mr. Baker's point. We've had this
6 discussion before about the difficulty of ascertaining some
7 real possible alternatives because of the different kind of
8 connotations that are available in terms of noise and how to
9 control the noise, but nevertheless, I think it may be good
10 for staff to attempt to list some possible alternatives.

11 THE WITNESS: I don't think we'd have a problem
12 listing possible mitigation as part of the condition.

13 HEARING OFFICER VALKOSKY: You are proposing that you
14 be given an opportunity to submit revisions to that
15 condition?

16 MR. OGATA: Since we're going to come back in a week
17 with some things from Ms. Townsend-Smith, perhaps we can
18 include that in the filing.

19 COMMISSIONER LAURIE: If you think it's necessary or
20 preferable.

21 HEARING OFFICER VALKOSKY: Fine. If you could
22 include that with your filing on the 28th.

23 THE WITNESS: Should we only address condition six or
24 also attempt to address condition eight?

25 MR. OGATA: Well, I think my preference is just to do
26 six at this point. Eight is a different can of worms.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

172

1 THE WITNESS: Thank you.

2 HEARING OFFICER VALKOSKY: We'll leave it. Committee
3 will consider whatever you submit.

4 COMMISSIONER LAURIE: If it's a can of worms today,
5 Mr. Ogata, you just wait until we start the --

6 MR. OGATA: I have faith in the resolution process,
7 Commissioner Laurie.

8 COMMISSIONER LAURIE: Mr. Thompson, is your client
9 still in concurrence with the conditions as modified?

10 MR. THOMPSON: We would prefer the condition as read
11 into the record. We recognize that it is the committee's
12 prerogative and staff's prerogative to suggest or adopt
13 changes to these measures. We're a little concerned with
14 what they may entail. However, as some of that concern is
15 lessened, as long as they are examples of what could be
16 used.

17 As you all appreciate dealing with vendors half a
18 world away, our hands are somewhat tied as to what we can do
19 as well, so with that, we'll wait and review it.

20 COMMISSIONER LAURIE: So you are going to in the
21 interim, withhold concurrence with the conditions until you
22 see what revisions are coming forth from staff?

23 MR. THOMPSON: Yes, sir.

24 COMMISSIONER LAURIE: Thank you.

25 COMMISSIONER ROHY: Ask a question of our hearing
26 advisor here, directed to all parties also: Why is it not

1 possible to just say to keep it at 40 dB or below and have
2 no other conditions on there?

3 I mean, if the applicant has to do something, the
4 applicant has to do something. Why do we need to specify
5 anything further than that?

6 HEARING OFFICER VALKOSKY: Well, not speaking for
7 staff, I would have to say this is an attempt to become
8 relatively typical in our process to pose a variety of
9 mitigation measures as contingencies and to explore the
10 possibilities and posing various ones depending on
11 conditions not yet knows. That's the basic thrust. I don't
12 want to speak for staff.

13 Do you want to add anything, Mr. Ogata?

14 MR. OGATA: We attempt to try to build some
15 flexibility into the conditions so that the applicants have
16 the ability to do what they need to do to comply with our
17 conditions. So by having an absolute condition, I
18 understand what you are saying: If we just set that
19 condition and leave it to them to do what they need to do to
20 reduce it to that level, that may be the cleanest way to do
21 it.

22 I think we have a concern about possible impacts or
23 affects of certain types of mitigation that they may try to
24 accomplish, so we might be in a position where we might want
25 to analyze some proposed mitigation before they actually do
26 it. That's why we build in a review of some of these

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 measures.

2 COMMISSIONER ROHY: I'm not suggesting that you not
3 review it, if that double negative works. I'm suggesting
4 why do we put the type of mitigation device in there as an
5 example. We should tell the applicant, in my belief, what
6 we want, not how to do it. And if you need to review it,
7 that's acceptable.

8 I stated that as a statement rather than a question,
9 but I'm looking for your comments back on that statement.

10 MR. OGATA: Well, again, Commissioner Rohy, our only
11 concern -- again, I understand -- I think I understand what
12 you are saying.

13 Again, our concern is more geared towards looking at
14 the affects of a particular type of mitigation, so I don't
15 know exactly how you'd write a condition that says you will
16 meet 40 dBs, and then if we put in "and we want to review
17 any mitigation you are going to do in order to achieve that
18 goal," I think that's fine, but that doesn't give the public
19 an opportunity to see what those types of mitigation is.
20 And that's what's a concern to me.

21 In order for us to meet our CEQA responsibilities,
22 the public has a right to see the type of mitigation that,
23 maybe, applies so they can comment on desirability, the
24 feasibility, a number of things on a particular set of
25 mitigation possibilities.

26 If they want us to do something, put a big hot air

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

175

1 balloon over the noise maker to stop it from making noise,
2 there maybe some objection, visual, a number of things. Not
3 to be facetious, but the public should have an opportunity
4 to comment on a particular mitigation measure. That's why
5 we attempt to address that concern by having a menu of
6 different things so the public has an opportunity to say "I
7 like A, B, C, but D and E is totally out."

8 COMMISSIONER ROHY: If F comes along after the fact,
9 how do we deal it with?

10 MR. OGATA: We try to make this list as examples of
11 categories of types of things, not specific measures but a
12 category measure of mufflers or insulation or try to
13 categorize those things so that if they can put it in a
14 particular category of mitigation, the public has an
15 opportunity to say "We like insulation, but we don't like
16 the mufflers." At least we'll have a range of things within
17 a category that we can accept without coming back to the
18 Commission to amend the decision.

19 COMMISSIONER ROHY: I understand your position.

20 COMMISSIONER LAURIE: No. We're out of time. We
21 have to stop talking.

22 HEARING OFFICER VALKOSKY: I will make this very
23 brief. I just want to make sure that I have everything.

24 Mr. Ogata, first of all, is there any --

25 COMMISSIONER LAURIE: Stan, let me interrupt just for
26 one second.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

176

1 Mr. Thompson, did you have to make telephone calls to
2 Fish and Game before 5:00 o'clock, or are you going to be
3 able to reach folks?

4 MR. THOMPSON: I think those calls have been
5 occurring as we've been proceeding here.

6 HEARING OFFICER VALKOSKY: Is there any other
7 comments from any person here present on the subject of
8 noise? Mr. Thompson?

9 MR. THOMPSON: Thank you. We concur with
10 Commissioner Rohy. We like the clean and simple forty
11 approach, and I guess what we're looking at is a mitigation
12 on a mitigation, maybe. We believe that reaching forty is
13 mitigation.

14 And mitigating beyond that mitigation on mitigation,
15 we would like to have as much freedom as possible to design
16 a plan or mitigation beyond that that will work. And my
17 fear is that a laundry list is probably going to leave out
18 one of the things that can work, so not to make a huge point
19 of it, but we would concur with Commissioner Rohy.

20 HEARING OFFICER VALKOSKY: As I understand it, and
21 Mr. Thompson, please bear with me, we have received into
22 evidence today Exhibits 7, 9, 10, 11, 14, 21, 24, 26, and
23 30; is that correct?

24 MR. THOMPSON: That's what I have.

25 HEARING OFFICER VALKOSKY: Mr. Ogata, do you have any
26 changes to that?

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

177

1 MR. OGATA: No, I believe that's correct.

2 HEARING OFFICER VALKOSKY: Secondly, on the topic of
3 waste management, Mr. Thompson, your witnesses Ouellette and
4 Ralston are subject to recall specifically when we go to the
5 water and soil resources topic.

6 Does that comport with your understanding?

7 MR. THOMPSON: It does.

8 MR. OGATA: Mr. Ogata, Ms. Townsend-Smith is subject
9 to recall on the topic of socioeconomics; is that correct?

10 MR. OGATA: (Nods head.)

11 HEARING OFFICER VALKOSKY: And lastly, the committee
12 has requested that staff make an additional filing a week
13 from today concerning the topics of worker safety and noise.

14 I would propose, Mr. Thompson, and I'd like to get
15 your reaction right now, very brief reaction, if we put that
16 filing off for an additional week that would conceptually
17 give you and staff an opportunity to meet in a workshop and
18 discuss reaching any sort of agreement on these issues.

19 Would you prefer to do that, or would you prefer that
20 we continue with the original schedule and have staff file
21 it in a week subject to your review?

22 (Discussion off the record.)

23 MR. THOMPSON: We don't believe that this should be
24 controversial at all, and we would go forward without the
25 workshop. I think it can be handled fairly easy in that
26 way.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 HEARING OFFICER VALKOSKY: Staff have any alterations
2 on that?

3 (Discussion off the record.)

4 MR. OGATA: Mr. Valkosky, I guess I need some
5 clarification here. You said that staff has additional
6 filing on worker safety?

7 HEARING OFFICER VALKOSKY: Yeah, concerning the
8 conditions that Ms. Townsend-Smith was going to.

9 MR. OGATA: I understood that was waste management.

10 HEARING OFFICER VALKOSKY: I'm sorry. Sorry. Waste
11 management.

12 MR. OGATA: Fine.

13 HEARING OFFICER VALKOSKY: I'm having trouble reading
14 my own handwriting.

15 MR. THOMPSON: This does make me feel better though.

16 MR. OGATA: Yeah. In terms of proceeding with waste
17 manage and noise condition, we're happy to do that, whatever
18 you decide. Again, I don't know if we need a workshop to do
19 that. I think we can file it.

20 HEARING OFFICER VALKOSKY: Then we'll look forward to
21 your input a week from today, and the applicant, your
22 comments on staff's product a week after; okay?

23 MR. THOMPSON: Fine.

24 (Discussion off the record.)

25 HEARING OFFICER VALKOSKY: How long will parties need
26 before they are prepared to address the committee again

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 concerning whether or not we proceed with the balance of
2 these hearings?

3 MR. OGATA: I believe we're in agreement, ten minutes
4 is what we --

5 MR. THOMPSON: Everybody can read that.

6 COMMISSIONER LAURIE: See you at 5:10.

7 (A brief recess was taken.)

8 COMMISSIONER LAURIE: Gentlemen, Mr. Ogata,
9 Mr. Thompson, what's the proposal, if any?

10 MR. OGATA: Commissioner Laurie, we do have a
11 proposal. Before we make that proposal, however, I would
12 like to seek clarification from you regarding schedule. I
13 believe what we heard was that the committee was not
14 inclined to bifurcate the hearings, that you wanted to keep
15 all the hearings at one point in time.

16 I guess what I'm hoping is that that is not exactly
17 true, that we could proceed with the hearings tomorrow and
18 Monday for a number of different reasons: One, we know that
19 the Commissioners' time is very valuable, trying to get
20 additional hearing time in the future is very difficult.

21 Secondly, the public has already been notified we'd
22 have to do things to notify them that they aren't going to
23 occur. Third, as you are painfully aware, we have a number
24 of siting cases coming in and staff's time will also be
25 difficult to organize in a good way. And we have the time
26 available tomorrow and Monday to continue the hearing.

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 So we do have a proposal, but I'm hopeful that with
2 the applicant agreeing to extend the schedule, that we could
3 still proceed on most of the subjects that have already been
4 scheduled.

5 Now, having said that, I believe what we have agreed
6 to do is extend the schedule by two months and to have
7 hearings on biology and air quality, at least those two
8 items, January 29th, beginning January 29th -- I'm sorry --
9 June, June 29th -- I'm going backwards or forwards -- and
10 conclude the hearings on all the other areas as scheduled.

11 Having said that, I believe we also may have an issue
12 in soil and water that we have to work out, and we may need
13 a little bit of time, so we may have to seek your indulgence
14 on that as well. At this point in time, clearly air quality
15 and biological resources need extension.

16 COMMISSIONER LAURIE: Any additional comments,
17 Mr. Thompson, before the committee responds?

18 MR. THOMPSON: No. I think that that is the gist of
19 the proposal. And I would only note for the record that I
20 was too much of a coward to advance to continue the hearings
21 tomorrow and next week, so I let Mr. Ogata go first and
22 propose that.

23 COMMISSIONER LAURIE: He needs civil service
24 protection.

25 MR. THOMPSON: We would concur with that.

26 HEARING OFFICER VALKOSKY: Mr. Thompson, does your

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 proposal include an extension by a similar time of the date
2 by which you expect the Commission to reach a decision on
3 this project?

4 MR. THOMPSON: It does. It is our understanding that
5 was a prerequisite. We do that reluctantly. We lose a
6 summer season, enormous cost, but that is, we believe, what
7 was expected of us.

8 HEARING OFFICER VALKOSKY: So under your calculations
9 when would the final decision date -- what would the final
10 decision date be?

11 MR. THOMPSON: I don't know that. We had gone out to
12 two months for hearings, so that would put the hearings in
13 the end of June. We would hope that we could retain a two
14 months' slippage all the way along, but losing the
15 protection of the law, we understand that that is only a
16 hope.

17 HEARING OFFICER VALKOSKY: Thank you.

18 COMMISSIONER LAURIE: Okay. Let me comment. Two
19 things: You are protected by the law as far as this
20 committee is concerned. You can demand and expect the
21 Commission's decision in twelve months, and that is how
22 we've been proceeding, and you have the option of proceeding
23 to here. We have the legal obligation to base our decision
24 on the impotence before us. I think your protection under
25 the law is a mandate to us to proceed in a timely manner.

26 The law does not give us control -- sufficient

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 control over either you or other agencies, at least other
2 federal, state agencies. Certainly true, to a large extent,
3 over other state agencies. Those folks are not our
4 employees. They are not our staff. We can direct them. We
5 cannot solve your problems for you, so we're prepared to go.

6 Now, if, however, there's an understanding that those
7 barriers to a successful outcome from your perspective are
8 there, and you desire additional time, the committee is
9 prone to consider that positively, and that's where we are
10 today.

11 Now, in regards to bifurcation, we will take a few
12 minutes' break and consult as a committee, but I think we've
13 attempted for a long time to give the message that although
14 parties may want to bifurcate, that not only this committee,
15 but I think commissioners as a whole, find that that is not
16 in the best interest of either our process or the public to
17 proceed with half a part, a third, three-quarters of a
18 hearing, close the record, and then move on with no telling
19 in any given case how long a delay may occur.

20 Thus, I thought we made it clear when we denied
21 staff's request for a continuance, when we issued an order
22 that we were going to conduct hearings on all issues, that
23 we did not intend to bifurcate, and that is still my view
24 that the public in the process is not well served.

25 Now, all that means to me when we continue the
26 hearing is that we need to add an extra day, but at least

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 Monday April 26th, and if necessary Tuesday, April 27th.
2 These topics are land use, visual resources, traffic and
3 transportation, socioeconomics, soil and water resources,
4 and air quality. And in the committee's view, these are all
5 of potential considerable local concern and are best dealt
6 with as a block in the vicinity of the power plant,
7 specifically the town of McKittrick.

8 Since air quality and soil and water are included in
9 these, and these are two of the topics which obviously need
10 further development, the committee would not view it
11 productive to conduct Monday's hearing at this time.

12 Rather we will request the applicant and the staff by
13 next Wednesday to file a proposed schedule detailing all of
14 the interim filings which need to be made so that we can, at
15 the end of June, approximately the time frame suggested by
16 the parties, the 29th or 30th, conduct hearings on the
17 balance of the topic areas outstanding, and we will conduct
18 those in McKittrick.

19 Does that comport with your understanding,
20 Commissioner?

21 COMMISSIONER LAURIE: Yes. I want to confirm that
22 the parties concur with this extension of time.

23 HEARING OFFICER VALKOSKY: Mr. Thompson?

24 MR. THOMPSON: We will file next Wednesday a filing
25 which details, to the best of our knowledge, material that
26 is needed by the parties to go forward. Recognizing that

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 some of this material is in the hands of other agencies,
2 whether under the influence of this Commission or not, and
3 we can speak to the issues that we have some control and
4 knowledge over, and we will make that filing.

5 Number two, we will do our best to retrieve witnesses
6 for tomorrow and will be working tonight to try and have
7 them here, and we await a schedule that sets forth further
8 hearing dates.

9 Do I concur with the delay? I guess on behalf of my
10 client I will.

11 COMMISSIONER LAURIE: Thank you. Mr. Valkosky, I
12 believe this committee is prepared to go to hearing tomorrow
13 to accommodate the applicant, not to accommodate our own
14 staff.

15 HEARING OFFICER VALKOSKY: That is my understanding
16 as well, Commissioner.

17 COMMISSIONER LAURIE: So that is our purpose and
18 intent, Mr. Thompson. If it creates a burden or hardship
19 for you to go forward tomorrow, then we will not.

20 MR. THOMPSON: No, sir. I didn't mean that. What
21 creates a burden is to be told at one time that we don't
22 have hearings, then four hours later be told we have
23 hearings. That's what creates the burden. Having said
24 that, we will do our best to get our witnesses here and go
25 forward. That's what we want to do. We want to go forward.

26 COMMISSIONER LAURIE: Then perhaps we can talk about

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 that a little bit. We left the decision at your request to
2 proceed to hearing to the end of the day. At your request.
3 As a result of that, we went through a day's full of
4 hearings in order to accommodate you and your clients.

5 As previously stated, we're prepared to proceed on
6 all issues, if that is what you want to do. An extension is
7 an accommodation to you, sir, so that we can have a complete
8 record to rule on. Now, you tell me how we have burdened
9 you by any decision we have made today.

10 MR. THOMPSON: I guess where the burden comes in,
11 sir, is in ignoring precedents set by this Commission and
12 committees before where hearings have been bifurcated in
13 many, many cases, where committees have given applicant and
14 staff flexibility to work out issues that hang behind or
15 need resolution, issues which may be caused by agencies,
16 other state agencies, local governments, which require,
17 often, a presiding member's report to start an environmental
18 review or agencies of the federal government or changes in
19 the project that occur for whatever reason that.

20 That flexibility seems to be leaving, and I think
21 it's that lack of flexibility, particularly in a
22 deregulating world, which causes me angst, and if I show
23 that, I apologize. But it is a flexibility I think that we
24 have seen with other committees and probably inappropriately
25 counted ongoing forward.

26 COMMISSIONER LAURIE: Okay. Well, I think this

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 particular committee, and I will take responsibility, at
2 least -- well, no. I'll take responsibility for only
3 expressing my own view that given the applicant's awareness
4 that we have a statutory mandate to acting twelve months and
5 freely expressing that inside and outside that Commission,
6 that there's a feeling we're obligated to act in twelve
7 months, that we feel it's our obligation to do so.

8 We also believe that everybody is entitled to a fair
9 hearing, and that means giving the applicant's sufficient
10 time, provided they are acting in good faith. And there is
11 no reason to believe that you folks have not been acting in
12 good faith, time to get the job done, and that is what we
13 have urged you to do.

14 It boils down to a question of what does this
15 committee and future committees believe is a better way to
16 run a hearing. And this committee believes that if you are
17 ready to go, you are ready to go. If you are not ready to
18 go, you are not ready to go. And I believe we have given
19 all parties very adequate notice of what our views are.

20 So we have on the record concurrence that as to the
21 extension as proposed, and absent any further comment, that
22 will be the decision of this Commission.

23 Dr. Rohy, do you have any comments?

24 COMMISSIONER ROHY: I have no further comments.

25 COMMISSIONER LAURIE: Parties? Yes, Jeff.

26 MR. OGATA: Commissioner Laurie, staff concurs with

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1 the schedule.

2 I have a question: Before this happened we were
3 ordered to provide conditions on waste management and noise.

4 Would you still want us to file that by next
5 Wednesday or should we wait?

6 COMMISSIONER LAURIE: Yes. Thank you.

7 (Whereupon the hearing
8 concluded at 5:40 p.m.)

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

I, KELI RUTHERDALE, a Certified Shorthand Reporter licensed by the State of California, and empowered to administer oaths and affirmations pursuant to Section 2093(b) of the Code of Civil Procedure, do hereby certify:

That the said proceedings were recorded stenographically by me and were thereafter transcribed by me via computer-assisted transcription;

That the foregoing transcript is a true record of the proceedings which then and there took place;

That I am a disinterested person to said action.

IN WITNESS WHEREOF, I have subscribed my name on April 27th, 1999.

KELI RUTHERDALE
Certified Shorthand Reporter #10084

NORTHERN CALIFORNIA COURT REPORTERS (916) 485-4949

