

COMMITTEE MEMBERS PRESENT

William J. Keese, Chairman, Presiding Member

Ellen Townsend-Smith, Commissioner Advisor

Terry O'Brien, Commissioner Advisor

Major Williams, Jr., Hearing Officer

STAFF PRESENT

Lisa DeCarlo

Cheri Davis

Tuan Ngo

Lorraine White

John Kessler, Consultant

PUBLIC ADVISER

Grace Bos, Associate Public Adviser

APPLICANT

Greggory L. Wheatland, Counsel for Applicant
Ellison, Schneider & Harris, LLP

Alicia Torre, Calpine

Kris Helm, Calpine

Jim McLucas, Calpine

Ali Amivali, Calpine

Susan Strachan, Consultant
Strachan Consulting

Gary Rubenstein, Consultant
Sierra Research

Tom Priestley, Consultant
CH2MHill

APPEARANCES

APPLICANT

Mark Bastasch, Consultant
CH2MHill

ALSO PRESENT

Virgil Koene
Town of Discovery Bay

Eric Teed-Bose
Mountain House Communities, LLC

Sandra K. Dunn
Somach, Simmons & Dunn
Counsel for Byron-Bethany Irrigation District

Rick Gilmore, General Manager
Byron-Bethany Irrigation District

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1 P R O C E E D I N G S

2 CHAIRMAN KEESE: Good morning. This is
3 a Scheduling Conference by a Committee of the
4 California Energy Commission on the proposed East
5 Altamont Energy Center, our Docket Number 01-AFC-
6 4. I'm Bill Keese, Presiding Member. My advisor,
7 Terry O'Brien, will be joining me in a moment.
8 Commissioner Pernell will not be able to join us
9 today. His advisor, Ellie Townsend-Smith, will be
10 joining us. On my left is our Hearing Officer,
11 Major Williams.

12 The Commission's Public Adviser is
13 represented by Grace Bos, and has a handout that's
14 available for distribution in the foyer, and
15 personally. If anyone has any questions about the
16 process here today and the purpose of the Status
17 Conference, bring it to Grace's attention.

18 Do we have anybody on the phone?

19 MR. AMIVALI: Yeah. This is Ali
20 Amivali, from Calpine.

21 CHAIRMAN KEESE: Thank you.

22 MR. AMIVALI: That's Ali Amivali, from
23 Calpine.

24 MR. McLUCAS: And Jim McLucas, from
25 Calpine.

1 MR. KOENE: Virgil Koene, with the town
2 of Discovery Bay.

3 CHAIRMAN KEESE: Is that it? Are we
4 okay there on those names?

5 MR. McLUCAS: We will provide you with
6 the names.

7 CHAIRMAN KEESE: I think Calpine can
8 supply the Calpine -- and, sir, from Discovery
9 Bay?

10 MR. KOENE: Yeah.

11 CHAIRMAN KEESE: For our court reporter,
12 your name?

13 MR. KOENE: Yes. My name is Virgil, my
14 last name is Koene, and I'll spell that, and
15 that's K-o-e-n-e.

16 CHAIRMAN KEESE: Thank you.

17 MR. KOENE: Thank you.

18 CHAIRMAN KEESE: We set forth our agenda
19 for today's hearing in the notice for this hearing
20 that is dated August 21, 2000. Apologize for
21 those who didn't get the notice that the hearing
22 hour changed from 10:00 to 1:00, which was
23 noticed.

24 We'll go down the list of parties and
25 participants. Major, would you like to run

1 through who's in attendance.

2 HEARING OFFICER WILLIAMS: Sure. Thank
3 you, Commissioner Keese.

4 Let's begin with Applicant. Would you
5 state your appearance, and those appearing for
6 you?

7 MR. WHEATLAND: Yes. Good afternoon.
8 I'm Gregg Wheatland. I'm attorney for the
9 Applicant. And with me here at the table is Susan
10 Strachan, who is one of our co-environmental
11 project managers. And we have additional
12 representatives from the Applicant who will be
13 available to address the Committee at appropriate
14 times later this afternoon.

15 HEARING OFFICER WILLIAMS: Okay. Do you
16 know if there's anybody here from the Air
17 District?

18 MR. WHEATLAND: No, there's not.

19 HEARING OFFICER WILLIAMS: Okay. Is
20 there anybody here from Byron-Bethany?

21 MR. WHEATLAND: Yes.

22 HEARING OFFICER WILLIAMS: Could you
23 come forward and state your appearance, sir?
24 Also, do you have a business card for those
25 speakers, please provide the court reporter with

1 the business card so that we can get the names
2 correct on the spelling.

3 MR. GILMORE: Yes, thank you. My name
4 is Rick Gilmore, General Manager with the Byron-
5 Bethany Irrigation District. And I also have with
6 me today Sandra Dunn, special counsel for the
7 District.

8 HEARING OFFICER WILLIAMS: Thank you,
9 sir. Ms. Dunn.

10 Let me see. Who else is here? Do we
11 have any other governmental agencies, any other
12 jurisdictions present, who can come forward and
13 state their appearance? Please do so, if you're
14 here.

15 None. Staff. I almost forgot Staff.

16 MS. DeCARLO: Thank you. My name is
17 Lisa DeCarlo, I'm Staff Counsel for the Energy
18 Commission. To my left, Cheri Davis, is the
19 Project Manager for the Energy Commission. And in
20 the audience we have John Kessler, who is a
21 consultant working with the Energy Commission, and
22 he'll be available to discuss water issues.

23 HEARING OFFICER WILLIAMS: Thank you.
24 Thank you.

25 Okay. To date, I don't believe we have

1 any -- oh, Western. Is Western here today? Okay.
2 I take it you have consulted with them.

3 We don't, to date, have any individual
4 intervenors. CURE has intervened. Is CURE
5 present? CURE is not present.

6 Also, the Committee received a petition
7 to intervene filed by San Joaquin Valley Unified
8 Air Pollution Control District. Applicant, have
9 you seen that?

10 MR. WHEATLAND: No, we have not yet seen
11 it yet, but we would have no objection to their
12 intervention.

13 HEARING OFFICER WILLIAMS: Okay.

14 CHAIRMAN KEESE: Is there is no
15 objection, then, we will grant them Intervenor
16 status.

17 HEARING OFFICER WILLIAMS: Okay. For
18 purposes of our discussion today, the Committee's
19 agenda will be taken from our October 31st
20 Scheduling Order and the Status Report Number 3,
21 which the parties recently filed. At the end of
22 each section we will take any comments or
23 questions from the participating agencies and
24 Intervenor. During the course of our discussions
25 under each section, there will perhaps be issues

1 concerning the Committee's issuance of a new
2 schedule for this project, and we will take up
3 scheduling issues as they arise.

4 After that, the Committee then will
5 entertain questions from the public. Do we have
6 any public members present here? Sir, could you
7 come forward and give us your name, and if you
8 have a business card please give it to the
9 reporter.

10 MR. TEED-BOSE: I've already given my
11 business card to the reporter. My name is Eric
12 Teed-Bose, I'm the Director of Planning for
13 Trimark Communities, the master developer of the
14 Mountain House Community located to the east of
15 the proposed project.

16 HEARING OFFICER WILLIAMS: Thank you,
17 sir.

18 Any other public members? Okay. I
19 think we'll just -- Mr. Wheatland.

20 MR. WHEATLAND: May I ask one indulgence
21 of the Committee. One of our staff people is on
22 the phone from the airport to embark an airplane
23 at 2:00 o'clock, and if we could take up the issue
24 of Transmission first, please, that would allow
25 him to participate in the discussion, if

1 necessary, and then board his plane.

2 HEARING OFFICER WILLIAMS: Okay.

3 CHAIRMAN KEESE: A much better way to do
4 is than do it on an airplane. I have found out.

5 HEARING OFFICER WILLIAMS: Well, why
6 don't we proceed to that section. And, Mr.
7 Wheatland, you may begin.

8 MR. WHEATLAND: Well, we have provided
9 the Committee with a Status Report, Status Report
10 Number 3. And that Status Report indicates that a
11 system impact study was performed by the Wester
12 Area Power Administration and PG&E, with a study
13 group including the Modesto Irrigation District,
14 Turlock Irrigation District, Transmission Agency
15 of Northern California, Sacramento Municipal
16 Utility District, the ISO, and the Applicant. And
17 that has been submitted to the Commission Staff
18 for their evaluation.

19 HEARING OFFICER WILLIAMS: Staff, do you
20 have any comments on that Transmission System --

21 MS. DAVIS: Yes. I'd just like to
22 elaborate on what we put in our status report
23 about Transmission System Engineering. We said
24 that we have some concerns about the system impact
25 study. We just want to make sure that the other

1 transmission owners are indeed satisfied with this
2 interconnection. We know that there are some
3 overloads, and we want to make sure that SMUD and
4 PG&E, in particular, know about these impacts to
5 their system, and have identified any mitigation
6 that they think may be necessary.

7 HEARING OFFICER WILLIAMS: Okay.

8 MR. WHEATLAND: The Applicant has been
9 in discussions with the Staff and these other
10 parties, and, Ali, are you on the phone?

11 MR. AMIVALI: Yes, sir, I am.

12 MR. WHEATLAND: Could you please explain
13 what we are doing presently in response to the
14 concerns and discussions we've had from the
15 Commission Staff?

16 MR. AMIVALI: Absolutely. I apologize
17 if you hear some background noise. I'm sitting in
18 an airport, do if they start announcing on the PA
19 I will get quiet. So I would extend my apologies
20 to the Commission.

21 Sir, what we are in the process right
22 now is to answer all the outstanding questions
23 that the Staff has on the East Altamont
24 Interconnection process. The approach that we
25 have adopted is to bring all the parties that have

1 a impact on their system, or system impact, the
2 ones that were named before, and we brought them
3 all on the table and we are preparing a joint
4 letter, which has responses to all the outstanding
5 questions. We anticipate the letter to go out
6 early next week, and should -- we should be able
7 to address all the questions.

8 The -- as far as the -- as for the
9 information that we have in hand today, there were
10 no additional impacts than the ones that have
11 already been identified in the previous studies,
12 that were observed based on the responses that
13 were being prepared.

14 CHAIRMAN KEESE: So your indication is
15 that this joint letter will be signed by SMUD and
16 PG&E also?

17 MR. AMIVALI: As far as the input that
18 is being provided for each section, well, it is
19 being prepared by each individual party. The
20 letter, if it is more appropriate for the
21 Commission to have the letter signed by all
22 parties, we can address -- we can have it in such
23 a way, make it a joint letter.

24 CHAIRMAN KEESE: I was just trying to
25 clarify what the nature of a joint letter was.

1 MR. AMIVALI: Yeah. Basically, sir,
2 what we have done is to have all the parties
3 prepare a response that is -- that addresses their
4 own system, and in the cover letter mention that
5 the responses were prepared, and cc all the
6 parties.

7 CHAIRMAN KEESE: Okay, that's fine.

8 MR. AMIVALI: Okay.

9 CHAIRMAN KEESE: Thank you.

10 HEARING OFFICER WILLIAMS: Staff, were
11 you aware that that was coming down the pike?

12 MS. DAVIS: I was not aware, no.

13 HEARING OFFICER WILLIAMS: Okay.

14 We should have the record reflect that
15 Ms. Ellie Townsend-Smith has also joined us at the
16 dais.

17 What's the timeframe for receipt of that
18 letter?

19 MR. WHEATLAND: We've indicated in our
20 Status Report that we will have the letter
21 available to be filed by the end of November. Mr.
22 Ali indicates that it may be even a bit earlier,
23 but certainly by the end of November.

24 MR. AMIVALI: The -- there is all -- we
25 are hoping to get it out earlier, but, you know,

1 with the holidays coming, and there is a lot of
2 factors that -- there's a little bit of a variable
3 that either comes in with other people's
4 schedules, sir.

5 HEARING OFFICER WILLIAMS: Okay. You
6 know, this kind of dovetails quite nicely into one
7 scheduling issue that we're going to be taking up,
8 that's certainly of high import with the
9 Committee. And that is the PDOC, which we
10 understand now is about six weeks off target, and
11 we understand that Staff is prepared to issue its
12 Preliminary Staff Assessment, at least in part.
13 And the Committee's concern is, if I can state it,
14 is that, and keep this in mind during your
15 presentations, that I think the Committee feels
16 that it would be better, if possible, to have a
17 complete Preliminary Staff Assessment on the front
18 end, rather than to have delays associated with
19 receiving documentations on the back end, in terms
20 of an FSA.

21 So I want to get the parties to address
22 this particular issue during the course of its
23 presentation, as to how the parties foresee the
24 issuance of the Preliminary Staff Assessment, in
25 terms of the various reports and letters, and

1 things that ultimately will have to be made a part
2 of Staff's Final Environmental Assessment.

3 So I think we'll move right into the Air
4 Quality. And, Mr. Wheatland, if you could address
5 for us your expectation as to when we will see a
6 PDOC from the Air District.

7 MR. WHEATLAND: Gary, if you could
8 introduce yourself, please.

9 MR. RUBENSTEIN: Gary Rubenstein, with
10 Sierra Research. We're air quality consultants
11 for the project.

12 We expect, based on discussions with the
13 Bay Area Air Quality Management District, that we
14 will be seeing the Preliminary Determination of
15 Compliance issued by mid-December, which is
16 consistent, Mr. Williams, with what you just
17 indicated, about six weeks later than originally
18 expected.

19 HEARING OFFICER WILLIAMS: And, Staff,
20 how is that going to impact what you need to do in
21 terms of your preliminary environmental -- taking
22 in mind what I just said, that the Committee
23 probably, you know, in a perfect world, would like
24 to see complete and full Preliminary Staff
25 Assessment.

1 MS. DAVIS: I would need to look at the
2 exact scheduling requirements, but obviously we
3 would need time to incorporate the mitigation from
4 the PDOC into our PSA. I can't say right now --

5 HEARING OFFICER WILLIAMS: Well, I'm
6 talking about the -- yeah, okay. Excuse me. Go
7 ahead.

8 MS. DAVIS: I can't say right now how
9 many days we would need between receiving the PDOC
10 and the PSA, but I probably can work that up while
11 we're sitting here.

12 HEARING OFFICER WILLIAMS: Have you been
13 in touch with the district at all? Has Staff been
14 in touch --

15 MS. DAVIS: We've tried.

16 MS. DeCARLO: We've made numerous calls
17 to the district, both on the attorney level, the
18 lower staff level, and have been unable to get a
19 return call from the district.

20 HEARING OFFICER WILLIAMS: Do you know
21 what the problem is, by any chance?

22 MS. DeCARLO: No. We're investigating
23 on a management level right now. They're really
24 busy at this point, so it could just be that
25 they're involved with analysis and don't have much

1 of a time to consult with us.

2 CHAIRMAN KEESE: Since three -- the
3 PDOCs on three cases have slipped this morning.
4 Mr. Rubenstein, do you -- have they given you any
5 reason for the slippage? Have they given you any
6 suggestion that there's a queue here, and --

7 MR. RUBENSTEIN: The other two are a
8 surprise to me, if they're the two I'm thinking
9 of. The -- with respect to this project, the
10 reason for the slippage is twofold. First, we
11 have not yet submitted one modeling analysis that
12 the district requires. That's the PSD increments
13 analysis. The hold-up there was that it was not
14 until October 23rd that we received from the Bay
15 Area District the information we need to complete
16 that analysis. And I'm glad to hear that the San
17 Joaquin District is now an Intervenor, because we
18 still have not received from that district the
19 information we need to complete the analysis.

20 Because -- and that is one of the two
21 sources of delay. Because of that delay, and we
22 have not presented this to your Commission Staff
23 yet, this will be new to them, we have been
24 working this part week with the Bay Area District
25 to find a way to re-do our analysis to avoid the

1 need to do the increments analysis, so that we no
2 longer will need any information from the San
3 Joaquin Air District. We have reached agreement
4 in principle with the Bay Area District on how to
5 re-do that analysis, have committed to them to get
6 the revised analysis to them and to the Commission
7 by the end of this month, which will hopefully
8 enable us to maintain that schedule of having the
9 PDOC out by mid-December.

10 The second issue that was a cause for --

11 MR. O'BRIEN: Mr. Rubenstein, can I
12 interrupt you for a moment.

13 MR. RUBENSTEIN: Sure.

14 MR. O'BRIEN: Can you elucidate a little
15 bit in terms of what additional analysis may or
16 may not be required, and what information you're
17 looking -- you are either looking for, or have
18 submitted, that you're hoping will satisfy the air
19 districts, or if only one air district, Bay Area
20 Air Quality Management District?

21 MR. RUBENSTEIN: The specific analysis
22 I'm talking about is referred to as a PSD
23 increments analysis. It is a very prescribed form
24 of a cumulative impact analysis that's required if
25 a project exceeds certain thresholds. And this

1 project exceeds one of those thresholds for PM10.

2 That analysis requires us to take a look
3 at all sources of emissions that have had any
4 increases since January 6th, 1975, and requires us
5 to look at those sources within a -- I believe
6 it's a 50 kilometer radius of the project site.
7 So as you might imagine, getting the data to do
8 that analysis is quite time-consuming, and it's
9 taken the Bay Area District many months to collect
10 that information. And the San Joaquin Valley
11 District, we understand, just last week had
12 several boxes of material delivered to their
13 Modesto office, which they would have to review in
14 order to cull out the information we need.

15 That analysis has become so time-
16 consuming, that we explored with the Bay Area
17 District an alternative. That alternative
18 involved reducing the PM10 emissions from our
19 project, and in doing that we will be able to get
20 below the threshold, and consequently we will no
21 longer need to do that PSD increments analysis, so
22 the San Joaquin Air District can send those boxes
23 from Modesto back to Fresno, and won't need to
24 open them up.

25 And that is the only way that we saw, at

1 this point, to regain some measure of certainty
2 regarding the timing for our completing this bit
3 of the work. So, Mr. O'Brien, that was the
4 specific analysis that I was referring to, and
5 that's how we propose to avoid the need to do it,
6 reduce the project emissions, and make sure that
7 we get the PDOC on time.

8 MR. O'BRIEN: And that will require, I
9 take it, then, additional conversations between
10 you and the Bay Area on this issue.

11 MR. RUBENSTEIN: Well, those
12 conversations have already occurred. It will
13 require the Bay Area District to review our
14 revised modeling analysis, and the Bay Area
15 District has indicated that if we get the analysis
16 to them by the end of November, they will be able
17 to complete their review and still issue the PDOC
18 by mid-December.

19 MR. O'BRIEN; So the ball is their
20 court, then.

21 MR. RUBENSTEIN: Well, no. The ball is
22 in our court to re-do --

23 MR. O'BRIEN: To get them the --

24 MR. RUBENSTEIN: -- that analysis.

25 MR. O'BRIEN: -- analysis. And then

1 once you get that to them, they've indicated that
2 they will be able to issue a PDOC by mid-December.

3 MR. RUBENSTEIN: That's correct. And
4 the reason why the timing can be that quick is
5 that there is very little writing that is
6 necessary to confirm our analysis. Basically, the
7 entire PDOC can be written, and there is simply a
8 one-page memorandum that hopefully confirms our
9 analysis and indicates that they verified our
10 results, and that's all that needs to be added in.

11 MS. DeCARLO: If I may, this is Lisa
12 DeCarlo, Staff counsel. I have a question. Would
13 this modeling, this revision, impact what -- the
14 modeling that Staff has been relying on for their
15 analysis?

16 MR. RUBENSTEIN: It will, and it will
17 show lower impacts.

18 MS. DeCARLO: So Staff will have to re-
19 do something, or have to do some more modeling, or
20 more analysis?

21 MR. RUBENSTEIN: Only if the Staff wants
22 to confirm the lower numbers. The analysis the
23 Staff has already done remains valid and will be
24 conservative for this project. Our impacts are
25 only going down.

1 HEARING OFFICER WILLIAMS: I'm looking
2 at Staff's Status Report Number 3, on page 2, the
3 bullets there. And I'd just like to look at these
4 and discuss the bullets. We've already touched on
5 the first one, in terms of scheduling.

6 The second bullet talks about the best
7 available control technology, and sets forth some
8 concerns that Staff had. Applicant, can you
9 comment on where you are with respect to the
10 second bullet there?

11 MR. RUBENSTEIN: Certainly. There are
12 three issues that are outlined in the second
13 bullet. The first is the issue of best available
14 control technology. The second is adequacy of
15 mitigation for several pollutants. And the third
16 is the provision of additional specific
17 information regarding equipment at the site. If I
18 may, let me take those in reverse order.

19 We have, to the best of our knowledge,
20 provided to the Commission Staff all of the
21 information that they have requested regarding
22 specific information regarding the design of the
23 plant. And to the best of our knowledge, they are
24 not missing any data necessary to verify the
25 modeling analysis. I had a meeting with

1 Commission Staff on November 2nd to exchange
2 information, and make sure I understood what
3 additional information was required. At that
4 meeting, they did not identify any additional
5 technical information that was necessary. So if
6 there is some additional information that Staff
7 requires, we'd appreciate receiving some kind of a
8 data request so we know what it is, because at the
9 moment I'm at a loss.

10 The second issue, going in reverse
11 order, has to do with mitigation. There are four
12 pollutants, and actually there are three different
13 issues in play here. With respect to the
14 mitigation for PM10, that issue revolves around
15 the road paving issue, which is the third bullet,
16 and I will get to that shortly.

17 With respect to sulfur dioxide
18 emissions, this is an issue that was discussed at
19 the early September workshop. The Commission
20 Staff has asked that we mitigate the impacts from
21 our SO2 emissions. We have indicated in -- both
22 at the workshop and in data responses, that the
23 Commission has not consistently required
24 mitigation for this pollutant. And the Commission
25 Staff has asked us for additional information, and

1 they've made this request informally, to confirm
2 that our sulfur dioxide emission rates are as low
3 as we expect them to be.

4 We are working on collecting that
5 information, and will provide that to the Staff by
6 the end of November.

7 With respect to mitigation for NOx and
8 hydrocarbon emissions. That issue is related
9 solely to the Staff's concern that we have
10 underestimated the emissions associated with
11 starting up this plant. And that is not an issue
12 that is unique to this plant. The start-up
13 emission estimates were prepared by our firm.
14 They are exactly the same start-up emission
15 estimates that we have prepared for over half a
16 dozen similar projects that the Commission's
17 reviewed.

18 We have a different engineer at the
19 Commission who has not seen any of those previous
20 analyses, so we are working to provide Commission
21 Staff with additional information to verify that
22 our analysis is correct. But, again, this is not
23 a unique issue, in the sense that somehow we're
24 proposing something different than's been proposed
25 before. That's not the case.

1 In any event, we will get that
2 additional information regarding start-ups also to
3 the Commission Staff by the end of this month.

4 And lastly, with respect to best
5 available control technology, there are two
6 elements to that issue. The first was discussed
7 at the early September workshop, and that relates
8 to a letter that the Environmental Protection
9 Agency sent to a different air district regarding
10 a different project. And Commission Staff has
11 asked us to respond to that letter in the context
12 of this project.

13 We are still not certain exactly what
14 EPA's position is regarding best available control
15 technology. We did obtain, and provide to the
16 Commission Staff on Friday, the backup information
17 that EPA relied upon in sending this letter to
18 that other air district. We don't believe that
19 backup information supports EPA's letter.
20 Commission Staff will take a look at it and either
21 they will agree with us or disagree with us. The
22 BACT issue still needs to be resolved. It will be
23 -- certainly be resolved by the time the
24 Preliminary Determination of Compliance is issued,
25 because, otherwise, the PDOC won't be issued. So

1 that issue will be dealt with one way or another
2 by the middle of December.

3 The second aspect of the BACT issue
4 relates to the ammonia emissions limit. We have
5 proposed a ten part per million ammonia slip
6 limit, which is consistent with the slip limit
7 proposed for virtually every other project in the
8 San Joaquin Valley. The Commission Staff has
9 asked that we look at a five ppm ammonia slip
10 limit, because that is the limit that currently is
11 being required by the Bay Area Air Quality
12 Management District.

13 And as the Committee is aware, we're in
14 a rather unique position where we are, from a
15 regulatory perspective, within the boundaries of
16 the Bay Area District, but physically,
17 meteorologically, we're with the San Joaquin
18 Valley. And that issue also will be resolved by
19 the time the Preliminary Determination of
20 Compliance is issued.

21 So those are the three elements of the
22 second bullet.

23 The third bullet relates to the banking
24 of emission reduction credits. This issue is a
25 little unique. In past proceedings that I've

1 participated in, the Commission Staff has
2 encouraged applicants to look at generating new
3 emission reduction credits, rather than simply
4 pulling credits out of a bank. For this project,
5 and in one other case that we're working on, we
6 have attempted to do that. We've now heard from
7 the Commission Staff, both on this project and on
8 the other project, that there's a concern about
9 timing, that there isn't enough time in the
10 Commission's review process to allow an applicant
11 to create and bank new emission reduction credits.

12 Consequently -- and this is also new
13 information for the Staff, we've not had a chance
14 to share this with them yet -- we will be
15 withdrawing our request to use road paving credits
16 for this project, and we will be using banked
17 emission reduction credits. So we will not be
18 generating any new credits, and the -- this issue
19 will disappear.

20 The last issue, the fourth bullet on
21 Air Quality, is related to the cumulative impacts
22 analysis. At the early September workshop, we
23 discussed with the Staff whether and how the
24 cumulative analysis should be performed to include
25 the two other power plant projects that have been

1 proposed in this area, the Tracy Peaker Project
2 and the Tesla Project. We suggested at that
3 workshop that the Commission Staff coordinate a
4 single cumulative impacts analysis that will be
5 prepared for all three projects, similar to what
6 the Commission Staff did in the case for the
7 Pittsburg District Energy Facility and Delta
8 Energy Center. And I believe the -- a week or so
9 after that workshop in early September, the
10 Commission Staff declined to perform that
11 coordinating function, and suggested that we
12 contact the developers of those two other projects
13 and collect the necessary information, and work
14 amongst the developers to prepare a single
15 cumulative impacts analysis.

16 We made that contact, and learned that
17 the developer of the Tesla Project had already, in
18 fact, prepared exactly the requested cumulative
19 impacts analysis, and it was filed in the AFC. We
20 informed the Commission Staff of that, and have
21 recommended that they use that cumulative impacts
22 analysis as the analysis for all three projects.

23 The only outstanding issue that's noted
24 in this bullet is related to the impacts of the
25 community of Mountain House. This, too, was

1 discussed at the early September workshop. And we
2 indicated that we would work with the Commission
3 Staff on that issue. We have not yet heard a
4 final decision from the Commission Staff as to
5 whether or not they believe that inclusion of
6 Mountain House is necessary for a cumulative
7 impacts analysis. Our reading of the Commission's
8 regulations is that the cumulative impacts
9 analysis is required to look at stationary sources
10 within a six kilometer radius, and we believe the
11 analysis that we've done satisfies that
12 requirement, combined with the analysis that was
13 in the Tesla AFC.

14 So we don't believe that there is an
15 outstanding issue here, but we again have not
16 heard confirmation from the Commission Staff on
17 that.

18 In short, with the exception of the
19 additional modeling analysis that I mentioned, to
20 deal with the PSD increments issue, and the
21 revised PM10 mitigation package to address the
22 Staff's concerns regarding road paving, both of
23 which will be provided by the end of November,
24 we're not aware of any additional data requests
25 that are outstanding from the Commission Staff,

1 nor are we aware of any reason why the PDOC would
2 not and could not be issued by the middle of
3 December.

4 MS. TOWNSEND-SMITH: So the district is
5 also looking for the PM10 mitigation package is
6 that second issue for waiting for the PDOC to be
7 submitted? Was that the second issue?

8 MR. RUBENSTEIN: The -- on the second
9 issue, on the PM10 mitigation, the district staff
10 did not have the same concern as the Commission
11 Staff. They were generally comfortable with the
12 PM10 mitigation package. They still needed to
13 review the permit application, which was filed by
14 the company that is creating the credits. Calpine
15 was not creating the credits and was not filing
16 that application. So the Bay Area District had
17 far fewer concerns about that package than the
18 Commission Staff did.

19 Nonetheless, we have to gain approval
20 from both agencies, so we're just going to take
21 that issue off the table.

22 MS. TOWNSEND-SMITH; Okay. So were
23 there any additional issues that the PDOC
24 required? Because you said there were two issues.

25 MR. RUBENSTEIN: Yes, I'm sorry. One is

1 the modeling issue.

2 MS. TOWNSEND-SMITH: The modeling. That
3 was the PSD increment analysis.

4 MR. RUBENSTEIN: Correct.

5 MS. TOWNSEND-SMITH: And --

6 MR. RUBENSTEIN: And then second is the
7 PM10 mitigation. And both of those will be
8 addressed by the end of November. We have
9 discussed those with the district, and we don't
10 anticipate any problems in having the PDOC issued
11 by mid-December.

12 MS. TOWNSEND-SMITH: Thank you.

13 HEARING OFFICER WILLIAMS: Thank you.

14 MR. O'BRIEN: Mr. Rubenstein, I have a
15 question for you. In terms of the offsets for
16 this facility, are all the offsets coming from
17 sources that are located within the Bay Area Air
18 Quality Management District?

19 MR. RUBENSTEIN: Yes.

20 MR. O'BRIEN: Okay.

21 HEARING OFFICER WILLIAMS: Staff, I'm
22 sure you have something to say about all this.

23 MS. DeCARLO: Yes, I'll try to respond
24 to all that.

25 HEARING OFFICER WILLIAMS: Now, what

1 order are you going to go in?

2 MS. DeCARLO: I'll try to follow Mr.
3 Rubenstein's order.

4 HEARING OFFICER WILLIAMS: Okay.

5 MS. DeCARLO: I'll attempt to.

6 First, with regard to information on the
7 facility itself. Staff did issue a data request
8 asking for specifically vendor guarantees with
9 regard to the equipment being used by the
10 Applicant. The Applicant is proposing turbines
11 that we have not seen before. They're -- they're
12 a 7FB. We've seen 7FA, and it's our understanding
13 that there are minor, minor differences. So we
14 were just requesting vendor guarantees for that,
15 and we have not received those.

16 Additionally, the project is proposing
17 large, very large duct burners. We have not seen
18 this before. The use of large duct burners has
19 impacts on air quality. Staff, because we haven't
20 seen this equipment before, we need more
21 information than just the modeling provided by the
22 Applicant. We, in order to feel secure in any
23 determination that the project would not have any
24 CEQA impacts, we would like to see specific
25 detailed information on the duct burners and the

1 proposed equipment in order, you know, to assure
2 ourselves that there would be no CEQA impacts.

3 We have not received the information
4 yet. We discussed this a little bit in the
5 workshop Mr. Rubenstein mentioned previously, and
6 I don't know where it's left now. The Applicant
7 stated that they could not provide us vendor
8 guarantees because they have not determined
9 specifically which equipment they will be using.
10 And Staff does not feel it could complete an
11 analysis without some specific information.

12 Now, whether that amounts to vendor
13 guarantees or something else, I'm not sure.

14 MR. RUBENSTEIN: Ms. DeCarlo, would it
15 be helpful if we address these together at this
16 point, or did you want to complete going through
17 your list? Because I can give you a couple of
18 quick answers on those two points.

19 HEARING OFFICER WILLIAMS: Yeah, let us
20 have those answers.

21 MR. RUBENSTEIN: I believe we're already
22 provided the information.

23 MS. DeCARLO: The vendor guarantees?

24 MR. RUBENSTEIN: No, as you recall, we
25 discussed at the workshop that the guarantees were

1 not going to be available, and as a result, with
2 respect to the turbines, what was requested was a
3 copy of the specification sheet provided by
4 General Electric. In particular, we indicated
5 that had been received by us by e-mail. We did
6 provide that, a copy of that e-mail and the vendor
7 specification sheet for this turbine from General
8 Electric in -- I forget which of the series of
9 data responses, but sometime within the last
10 couple of weeks. So Staff already has that issue.

11 With respect to the duct burners, as an
12 alternative to the vendor guarantees we were asked
13 to provide a letter from an equipment vendor,
14 indicating that the emission control systems were,
15 in fact, designed to take into account the higher
16 emissions associated with duct burner operation,
17 and in that same data response package we provided
18 a letter from Nooter-Erickson, who supplies many
19 of the heat recovery steam generators and emission
20 control systems and duct burners for Calpine
21 projects.

22 So, and this issue was not raised during
23 the exchange of information I had with the
24 Commission Staff on November 2nd, so I'm not sure
25 whether there might have been some

1 miscommunication. But I believe those were the
2 two main points, and that we have provided that
3 information.

4 MS. DeCARLO: Thanks. Unfortunately, we
5 don't have Air Quality Staff here to discuss this.
6 Would you like to try and get that -- I think the
7 best that we can do at this point is have -- we'd
8 either try to bring Staff down here a little bit
9 later in this Scheduling Conference, or we can
10 arrange to have Staff submit something formally in
11 writing, or contact you again to resolve this
12 apparent disagreement on what information we have
13 or don't have.

14 HEARING OFFICER WILLIAMS: Yeah. Well,
15 to the extent that the people are available and
16 you can get them down here, I think we might as
17 well do it while everybody's here.

18 MR. WHEATLAND: I'd like to add, though,
19 that from the Applicant's perspective, we have
20 provided the information. We thought we had an
21 understanding, and we provided the information.
22 And this information was provided several months
23 ago. We have not received any communication from
24 the Staff since that date. No further data
25 requests. We had a discussion to exchange

1 information on November 2nd, and there was no
2 indication of deficiencies in this area. Until we
3 received the status report, this is the first
4 indication that we've had in over two months that
5 the Staff was not satisfied with the information
6 that we had provided.

7 CHAIRMAN KEESE: Well, it may be there.
8 So let's hang on.

9 MS. DeCARLO: Now, with regard to the
10 SO2 emissions, we reviewed the status report the
11 Applicant submitted, and their offering of an
12 analysis. And Staff is comfortable with that
13 approach, and will wait to receive that
14 information.

15 MR. RUBENSTEIN: I'm starting to get
16 more concerned. That analysis was in the same
17 package as the first two items. So I think we
18 need to check on our end too, to make sure that
19 what I believe was filed has, in fact, been filed.

20 MS. DeCARLO: And with regard to NOx
21 emissions, at this time Staff does not feel that
22 any additional analysis will be required.
23 However, that's always subject to change. But as
24 it stands now, Staff is comfortable with what we
25 have.

1 With regard to BACT, it is Staff's
2 opinion that two ppm for both NOx and carbon
3 monoxide is BACT now. We have several
4 determinations with regard to this. We just have,
5 most recently, an October 25th letter from EPA
6 with regard to a cogeneration facility. I'm not
7 sure where.

8 MR. RUBENSTEIN: Southern California.

9 MS. DeCARLO: Southern California.
10 Specifically outlining two ppm as BACT. However,
11 we will await the PDOC to see how it pans out
12 there. But as of now, Staff believes that BACT is
13 two ppm for both NOx and carbon monoxide.

14 HEARING OFFICER WILLIAMS: Applicant, is
15 that news to you?

16 MR. RUBENSTEIN: Yeah, we're aware of
17 that letter. That's the second letter EPA has
18 issued this year changing their BACT
19 determination. We are filing a Freedom of
20 Information Act request, because that letter cites
21 test data from a plant in San Diego as the basis
22 for that determination.

23 HEARING OFFICER WILLIAMS: Excuse me,
24 sir. Yeah, I understand that. But what I'm
25 asking, is it news that Staff has now officially

1 on record stated that two is BACT?

2 MR. RUBENSTEIN: Yes.

3 HEARING OFFICER WILLIAMS: That's --

4 MR. RUBENSTEIN: Right. That issue was
5 not raised in our November 2nd exchange of
6 information.

7 MR. O'BRIEN: And is the Applicant
8 currently proposing that, then, as part of the
9 project?

10 MR. RUBENSTEIN: No, we are not.

11 MR. O'BRIEN: And what's the Applicant's
12 proposal?

13 MR. RUBENSTEIN: Our proposal for BACT
14 is 2.5 ppm for NOx on a short-term basis, 2.0 ppm
15 on an annual average, and 6.0 ppm for CO.

16 HEARING OFFICER WILLIAMS: So this is
17 something that will obviously need to be
18 addressed.

19 MR. RUBENSTEIN: We knew that Staff was
20 concerned about EPA's position. But I had not
21 heard articulated until just now that Staff has
22 made a very definitive determination as to what
23 they believe BACT to be.

24 MS. DAVIS: Our Air Quality Staff
25 person, Tuan Ngo, has arrived.

1 HEARING OFFICER WILLIAMS: Hello, sir.

2 MS. DAVIS: Tuan, to give you a little
3 bit of background, we were talking about the
4 information that Staff have or do not have on the
5 physical characteristics and the emission data on
6 the project.

7 CHAIRMAN KEESE: And after you stepped
8 out of the room, I believe SO2 in the same boat.

9 MR. RUBENSTEIN: Yes.

10 HEARING OFFICER WILLIAMS: Sir, before
11 you --

12 CHAIRMAN KEESE: Where they thought they
13 had submitted that, also.

14 HEARING OFFICER WILLIAMS: Before you
15 begin, could you -- could we have -- could you
16 spell your name for the court reporter.

17 MR. NGO: My name is Tuan Ngo, spelled
18 T-u-a-n, that's the first name, and then N-g-o,
19 that's the last name.

20 HEARING OFFICER WILLIAMS: Thank you.

21 MS. DAVIS: So if you could please
22 clarify what it is that we have received, and what
23 it is that we still need, that would be helpful.

24 MR. NGO: We have received -- Staff have
25 asked for information on the turbine emission,

1 specific emission. We do receive some information
2 from the Applicant about turbine emission.
3 However, it would -- with the information that we
4 received, preliminary information that we received
5 from the manufacturer, I meant by GE, Staff
6 believe that the start-up emission factor that the
7 Applicant have use in this project is not
8 accurate. We believe that the emission are
9 underestimated, and Staff will work with the
10 Applicant to somehow to get -- somehow to
11 straighten this information out.

12 MR. RUBENSTEIN: Tuan, you weren't here
13 when we had the earlier discussion. Mr. Williams,
14 if I might.

15 HEARING OFFICER WILLIAMS: Sure.

16 MR. RUBENSTEIN: What Tuan is indicating
17 is exactly correct. We are still discussing with
18 the Staff the start-up emissions estimate, which I
19 indicated to you earlier was an outstanding issue.

20 Tuan, the question as it was posed
21 earlier in the status report I think had more to
22 do with the basic emissions from the turbine, and
23 in particular the question of vendor guarantees.
24 And as you recall, at the September 6 workshop we
25 had agreed to provide to you a copy of an e-mail

1 from General Electric as an alternative to the
2 vendor guarantees. And I think that we have
3 provided that to in Data Response Set 2-G, on
4 October 12th. And there was a question about
5 whether you received that or not.

6 MR. NGO: Yeah, we -- Staff did receive
7 that information from the Applicant. I guess the
8 information that were provided was an e-mail from
9 GE that give us an estimate of the emission from
10 turbine when it normal operation. In addition to
11 that, we also receive one manufacturer guarantee
12 for the NOx emission, for the turbine, also, would
13 indicate that the proposed NOx emission level that
14 the Applicant proposed on the turbine are correct.
15 Would -- that's about 2.5 ppm.

16 HEARING OFFICER WILLIAMS: And the last
17 prong of this would be the SO2 package, I guess.

18 MR. RUBENSTEIN: That's correct. The
19 third issue, Tuan, was that with respect to SO2
20 emissions, we had agreed at the workshop that we
21 would provide an analysis of the conversion of SO2
22 to PM10, similar to what we provided for other
23 projects. And I don't know that you've had a
24 chance to review it yet, but we just wanted to
25 confirm that you have, in fact, received that.

1 MR. NGO: Yes, Staff have received the
2 information that provided by the Applicant. And
3 Staff reviewed the information and have been using
4 those conclusions from the submittal from the
5 Applicant in the Staff -- Preliminary Staff
6 Assessment. So we did receive that information on
7 the SO2 emissions.

8 MS. DeCARLO: So, I'm sorry. For
9 clarification purposes -- this is Lisa DeCarlo,
10 Staff counsel. Would that be the historical gas
11 analysis that --

12 MR. NGO: Oh, no. That not it.

13 MS. DeCARLO: Okay, I'm sorry. That was
14 what I was referring to originally --

15 MR. RUBENSTEIN: Oh.

16 MS. DeCARLO: -- when I was mentioning
17 the SO2 data.

18 MR. RUBENSTEIN: Right. The historical
19 gas analysis, we still owe to the Staff, and we'll
20 provide that by the end of this month. And that
21 was to confirm our assumptions about what the
22 actual SO2 emissions will be from the project.

23 MS. DeCARLO: I apologize for any
24 confusion for that.

25 MR. RUBENSTEIN: Okay. I'm sorry, too.

1 MS. DeCARLO: So, Tuan, if I can just
2 clarify. Do we need anymore specific data on any
3 key pieces of equipment?

4 MR. NGO: Beside the manufacturer
5 guarantee for the turbine NOx emission, we still
6 need the information on the oxidation catalyst
7 system for the turbine. We still need the
8 information on the boilers, emission and its
9 control guarantee. We also need the information
10 on the diesel fire fuel pump. And we also need
11 the information on the emergency generator. We
12 haven't received any of those.

13 However, if the Applicant had mentioned
14 to Staff that the -- some of the information may
15 not be readily available yet. Staff willing to
16 post these -- to post that requirement until after
17 the PSA date, as long as we can have -- because
18 what we're seeing from the Applicant proposed
19 emission factor for the equipment, they are within
20 the typical range for those units. And therefore,
21 we might be able to use that as a preliminary
22 number. However, Staff still want to have that
23 information submitted at a later date to confirm,
24 and make sure that we have that information in the
25 file.

1 HEARING OFFICER WILLIAMS: Well, the
2 Committee is weighing the issue, and I think in an
3 ideal world the Committee would prefer that you
4 have this information on the front end, as opposed
5 to getting in on the back end. So that's
6 something that we are keenly interested in the
7 parties' position on that. I know that you're --
8 I understand what your position is, but I just
9 wanted to let you know what we are contemplating
10 here.

11 MR. O'BRIEN: In terms --

12 HEARING OFFICER WILLIAMS: In terms of
13 our schedule.

14 MR. O'BRIEN: In terms of the
15 information that the Staff has just indicated they
16 still want, is that information that was submitted
17 to the Applicant as data requests, and the
18 Applicant has responded -- has not responded to,
19 or is this the first time the Applicant has heard
20 that this is information that the Staff requires?

21 MR. NGO: We have asked for those
22 information in the Staff data requests, but we
23 haven't received the response to those items.

24 MR. RUBENSTEIN: With all due respect,
25 Tuan, that's not consistent with my understanding

1 for those four issues. And perhaps we can discuss
2 this further and get back to the Committee, since
3 this is largely a question of fact as to whether
4 we provided the information or not.

5 MS. DeCARLO: We could always formalize
6 it in an additional data request, if that would
7 please the Committee.

8 CHAIRMAN KEESE: Sure. It sounds -- is
9 this getting confused because of the request for a
10 guarantee, a warranty? That if you had a warranty
11 all of this would've been covered, and instead of
12 warranty we're sending a lot of fact sheets on how
13 things operate?

14 MR. RUBENSTEIN: Well, it was my
15 understanding that providing those fact sheets was
16 going to be satisfactory, and that --

17 CHAIRMAN KEESE: And you think that you
18 supplied fact sheets on each of these different
19 elements that we're talking about here?

20 MR. RUBENSTEIN: No. It was my
21 understanding that the Commission Staff had
22 decided, for the reasons that Tuan laid out, that
23 they did not need additional fact sheets for the
24 boiler, the fire pump, and the emergency
25 generator, because those are typical.

1 CHAIRMAN KEESE: Because it was within
2 the parameters.

3 MR. RUBENSTEIN: Right. Within the
4 parameters. And we did provide information
5 regarding the turbine oxidation catalyst. That
6 was the same letter that covered the turbine SCR
7 system, Tuan. That was the second paragraph of
8 that letter. You may have forgotten that.

9 So that's why, again, I'm acting a
10 little surprised, because I thought that we had
11 reached an understanding as to what was going to
12 be necessary for all four of those items.

13 CHAIRMAN KEESE: Okay. But Staff now
14 does want that information for their files, is
15 that what I heard you say?

16 MR. NGO: Yes.

17 CHAIRMAN KEESE: Want to see if you can
18 -- let's see if you can get him something.

19 MR. RUBENSTEIN: We will get that by the
20 end of this month, as well.

21 MR. McLUCAS: This is Jim McLucas. May
22 I say something?

23 CHAIRMAN KEESE: Certainly. Identify
24 yourself as you -- before you speak.

25 MR. McLUCAS: This is Jim McLucas, with

1 Calpine. And I just wanted to clarify that the
2 General Electric spreadsheet that has been given
3 both in hard copy and by the e-mail version, are
4 the guaranteed values for -- from GE for these
5 turbines for this project. And the letter that we
6 received from Nooter, as well, will be the
7 guaranteed values. And I think that letter says
8 that they'd be willing to guarantee those values.

9 MR. RUBENSTEIN: And just to clarify
10 what Mr. McLucas is saying, those are not the
11 guarantees, because, of course, the equipment
12 hasn't been purchased and there are no guarantees.
13 They're merely confirmation from the vendors that
14 that's what they will guarantee at some future
15 point.

16 MR. McLUCAS: Exactly.

17 CHAIRMAN KEESE: Okay. I guess my
18 question then is, if we've -- have we moved on, is
19 that -- does that satisfy Staff, an indication
20 from GE that these will be the guarantees?

21 MR. NGO: You mentioned -- is that just
22 for the turbine, or for everything else?

23 MR. RUBENSTEIN: The e-mail that we
24 provided and sent to GE just addressed the
25 turbine. There was also a letter from Nooter-

1 Erickson, who we expect will provide the heat
2 recovery steam generator, and that covered
3 everything, the turbine, the heat recovery steam
4 generator, the duct burners, the SCR system, and
5 the oxidation catalyst. All of those were wrapped
6 up within that single letter.

7 CHAIRMAN KEESE: Okay. You know, I
8 think this -- we're not having a major dispute
9 here. Let's have Staff check the letter and see
10 if it meets your needs, and if it doesn't, then
11 Staff make another request.

12 MS. DeCARLO: We'll do that.

13 CHAIRMAN KEESE: Okay.

14 MR. NGO: Thanks.

15 HEARING OFFICER WILLIAMS: Okay.

16 MR. O'BRIEN: We're getting some
17 feedback, and it's making it at least difficult
18 for me to follow what everybody is saying. In
19 terms of the people that we have listening by
20 telephone, I don't know how the system operates,
21 but if you're on some hand-held device, I suspect
22 it would be better if you weren't moving around,
23 number one. And I'm not sure there's any other
24 advice we can give to the people on the phone, but
25 right now, it -- with the feedback, maybe that's

1 gone away, it's difficult to listen to everybody.

2 MS. DeCARLO: So if you'd like, I can
3 continue with our response to --

4 CHAIRMAN KEESE: Okay.

5 MS. DeCARLO: The second item was the
6 banking of emission reduction credits. I believe,
7 and Tuan, you weren't here, but Mr. Rubenstein
8 said they were switching to only banked credits.
9 They are not proposing to try to bank themselves
10 paving credits, so they will be using already
11 banked credits. I believe that takes away our
12 concern about schedule, how that impacts the
13 schedule. However, we would probably need to do
14 some sort of additional analysis on the credits
15 that they are proposing to use.

16 I don't know if you have anything to add
17 about that, Tuan.

18 MR. NGO: No.

19 MS. DeCARLO: Okay. And then, lastly,
20 the cumulative impacts analysis. I did receive an
21 e-mail from Mr. Wheatland about a week ago,
22 stating that they had identified this Tesla
23 cumulative impacts analysis that they would like
24 to use. We're fine with that, in concept. We
25 haven't seen the Tesla analysis yet, at least our

1 Staff working on the East Altamont Project hasn't.
2 So we're not sure about the specifics, how that
3 specific analysis relates to this one.

4 We are concerned that probably the
5 Mountain House Community isn't included in that
6 impacts analysis. We would definitely like to see
7 that addressed.

8 MR. WHEATLAND: Well, that's going to
9 raise a problem, because if you're going to do a
10 cumulative impacts analysis of three projects, you
11 want those analyses to be consistent among the
12 three projects, both in terms of the methodology
13 and the results. Would Staff be proposing that
14 the other projects would be required to
15 incorporate within their analysis all new
16 subdivisions within the impact area?

17 MS. DeCARLO: The East Altamont Project
18 is -- will be an additional source of pollutants
19 in the area. The Mountain House Community is a
20 very large community that is being proposed. I'm
21 not sure about other project areas like Tesla, I'm
22 not sure if there are small -- proposals for small
23 community developments. But the actual community
24 of Mountain House is a very large proposed
25 undertaking, and therefore we feel it rises to the

1 level that it should be incorporated in a
2 cumulative impacts analysis for the area.

3 We're not proposing that Tesla include
4 the Mountain House Community in their impacts
5 analysis, their cumulative impacts analysis.
6 However, it directly affects the East Altamont
7 analysis, and we would like to see it included
8 there.

9 HEARING OFFICER WILLIAMS: Mr.
10 Wheatland, what kind of time are we talking about
11 for inclusion of Mountain House into an impacts
12 analysis, I mean, in terms of the schedule; how
13 would it affect the schedule? Assuming that we
14 have the Tesla report.

15 MR. WHEATLAND: Well, I'm going to ask
16 Mr. Rubenstein in a minute to address the task of
17 preparing such an analysis. But as a preliminary
18 matter, we would need to make a decision about
19 what assumptions would go into that analysis.

20 Cumulative impacts means that you're
21 drawing basically a circle, in rough terms, you're
22 drawing a circle around all three projects, and
23 considering the combined effects of all three
24 projects, and everything within those boundaries.
25 So if the cumulative impacts analysis will include

1 all three projects, it must necessarily include
2 Mountain House in all three. Just as it would
3 necessarily have to include other major
4 subdivisions that may or may not occur.

5 HEARING OFFICER WILLIAMS: Yeah, I won't
6 argue with you on that point.

7 MR. WHEATLAND: Yeah. And so I'm saying
8 that there's two steps to the process. One would
9 be understanding what that analysis would consist
10 of, and this is why we had originally proposed to
11 Staff that they take the leadership in trying to
12 coordinate a unified analysis of all three.

13 But secondarily, then, would be the task
14 of preparing the analysis. Mr. Rubenstein, what
15 would that involve?

16 MR. RUBENSTEIN: We have done analyses
17 like that on many occasions, hardly ever in
18 conjunction with an industrial source. Basically,
19 you require all the information that's contained
20 in an EIR, in order to do that analysis. And so
21 I'm not sure whether an EIR has been prepared for
22 the Mountain House Community or not. If an EIR --

23 HEARING OFFICER WILLIAMS: You would
24 assume it would, though, wouldn't you?

25 MR. RUBENSTEIN: If there is an EIR,

1 then we'd have to obtain that, the back-up traffic
2 and transportation studies, cull the information
3 necessary to do the modeling analysis. My
4 estimate is that it would probably be at least
5 four weeks to put an analysis like that together.
6 If the necessary information was not included in
7 the EIR for some reason, then you're talking about
8 a matter of several months, because original
9 studies would have to be done.

10 CHAIRMAN KEESE: Let me ask you. The
11 nature of a joint cumulative analysis, it would
12 take into consideration development in that area,
13 wouldn't it? Generically, at least?

14 MR. RUBENSTEIN: My experience with this
15 Commission is that cumulative impacts analyses
16 have only looked at stationary sources. There's
17 only one exception I can think of that was unique.
18 Every other cumulative impact analysis we've done
19 have only looked at industrial sources and --

20 CHAIRMAN KEESE: Industrial -- so this
21 is a new --

22 MR. RUBENSTEIN: From my perspective,
23 this is a new requirement. Yes.

24 CHAIRMAN KEESE: Does Staff agree that
25 this is a new --

1 MS. DeCARLO: I'm not sure about past
2 history. However, I'm not sure we've encountered
3 a project development that's proposing to add an
4 additional 40,000 houses in the area.

5 HEARING OFFICER WILLIAMS: We have a
6 representative from Mountain House here, don't we?
7 Sir, could you step forward?

8 CHAIRMAN KEESE: This is probably what
9 you're interested in.

10 MR. TEED-BOSE: Among other things.

11 (Laughter.)

12 HEARING OFFICER WILLIAMS: Was there an
13 EIR prepared?

14 MR. TEED-BOSE: Yes, there was. There's
15 actually been a series of EIRs.

16 HEARING OFFICER WILLIAMS: Excuse me.
17 Before you begin, for the court reporter --

18 MR. TEED-BOSE: Oh, I'm sorry. Eric
19 Teed-Bose, Trimark Communities, Director of
20 Planning for the master developer of the Mountain
21 House Community.

22 A few things clarify. The first thing
23 is, is that there were a series of environmental
24 analysis that satisfied CEQA that have been done
25 since as early as 1993, I believe. So there are

1 existing analysis that exist, including cumulative
2 analysis.

3 There are also master traffic impact
4 analysis mitigation programs that exist. What
5 were some of the other issues that were brought
6 up? Oh, I'm not sure if the Commission is aware,
7 but we not only have the housing, but we also have
8 a complementary provision of industrial and office
9 development, as well.

10 As a matter of fact, one of the things
11 that I brought with me was a booklet that would
12 provide the Commission with a snapshot of the
13 project, as well as the progress of construction.
14 I was saving that for another time, but if you'd
15 like to see that now, I could submit that into the
16 record.

17 HEARING OFFICER WILLIAMS: Could you
18 give it to the court reporter, please.

19 MR. TEED-BOSE: Certainly.

20 HEARING OFFICER WILLIAMS: Thank you.

21 MR. O'BRIEN: So, let me see if I
22 understand what the Staff knows and doesn't know.
23 The Staff has not looked at the environmental
24 impact reports or reports that have been prepared
25 on Mountain House?

1 MR. NGO: No.

2 MR. O'BRIEN: Okay. So the Staff has
3 not looked at the EIRs. But its position is that
4 the Applicant needs to include the Mountain House
5 project in a cumulative impact analysis. Has the
6 Staff communicated this in writing to the
7 Applicant, and asked for it in a data request?

8 MS. DeCARLO: I believe it was discussed
9 during our discussion with the applicant on the
10 September 6th, workshop we had, with regards to a
11 cumulative impact analysis.

12 MR. O'BRIEN: And discussed, means what?
13 Does discuss mean that the Applicant -- told the
14 Applicant to prepare that as part of the analysis,
15 and that Staff needed that?

16 MS. DeCARLO: I believe Staff issued a
17 data request asking for a cumulative impacts
18 analysis. At the workshop we discussed what
19 should be included in that. I believe Mountain
20 House Community was at the top of our list. The
21 Applicant then responded that they would like to
22 work with us to determine how to go about doing
23 such cumulative impact analysis, and they had
24 expressed their interest in having Staff try and
25 coordinate such an analysis among the various

1 applicants here.

2 Unfortunately, Staff has been very
3 limited on time, and was unable to do that
4 coordination process. And then we recently heard
5 from the Applicant, about a week and a half ago,
6 that they were interested in using the Tesla
7 analysis for this project.

8 MR. O'BRIEN: So does the Applicant
9 agree with the Staff's recitation of the
10 chronology of this event?

11 MR. WHEATLAND: The Staff did issue a
12 data request asking us to prepare a cumulative
13 impact analysis. The data request did not specify
14 that Mountain House needed to be included within
15 that analysis.

16 CHAIRMAN KEESE: Well, I want to step
17 back to the question we had earlier. Mountain
18 House, you know, is a large project over a number
19 of years. Is -- are you going to recommend that
20 it be included in the cumulative analysis of the
21 other projects?

22 MS. DeCARLO: I'm not sure.
23 Unfortunately, I'm not the attorney on the other
24 projects. I don't know about how close they are
25 to the other projects to be incorporated into such

1 a cumulative impacts analysis. All I do know is
2 that it is very close to this proposed project.
3 It is potentially a major source of pollution.
4 CEQA does not differentiate between major sources
5 and other sources in regards to cumulative impacts
6 analysis, and therefore Staff would like to see
7 some discussion of this proposed development for
8 East Altamont.

9 CHAIRMAN KEESE: Well, I think it looks
10 like we have quite a document here. I don't know
11 if you've gotten a copy, but --

12 MR. RUBENSTEIN: A couple of points, if
13 I could. The data request regarding the
14 cumulative impacts analysis was Data Request 37.
15 And that specifically said please advise on the
16 status of obtaining a list of projects that meet
17 the criteria listed in Section 8.1H, cumulative
18 impacts analysis protocol. That refers to the
19 cumulative impacts analysis protocol that was
20 included in the AFC, and which has not been
21 questioned by the Staff.

22 That protocol very clearly was limited
23 to industrial sources. And so I don't think it's
24 correct to say that there was any -- even an
25 inference that we were to be taking a look at

1 housing projects in cumulative impacts. And while
2 the issue was discussed at the September 6th
3 workshop, it was, to my recollection, more in the
4 context of should we include Mountain House, and
5 we will need to discuss whether we do or not.

6 MS. DeCARLO: And I don't believe we
7 ever formally said that it was not necessary.

8 CHAIRMAN KEESE: Okay. Well, it seems
9 to me, then, that we now have in front of -- I
10 mean, if we're talking about a discussion of what
11 was Mountain House, it looks to me like Mountain
12 House has just told us what Mountain House is.
13 And Staff should -- this should give you a chance
14 to start -- would this be a good starting point
15 for an analysis of Mountain House by Staff?

16 MS. DeCARLO: Yes. It would be a very
17 good starting point. However, since the Applicant
18 is proposing to do the modeling of the cumulative
19 impacts, and I believe the EIR probably contains
20 some information as to the potential emissions
21 from the project, it would be nice if --

22 CHAIRMAN KEESE: Well, Applicant was
23 suggesting that they were going to use the Tesla
24 cumulative statement.

25 MS. DeCARLO: But it is possible to add

1 in the Mountain House Community into that
2 analysis.

3 CHAIRMAN KEESE: So the Staff might
4 consider the Tesla submission, with an addendum
5 dealing with Mountain House, is that --

6 MS. DeCARLO: Right. We're comfortable
7 with the whole concept. We just haven't seen the
8 particulars of the Tesla analysis. And we are
9 concerned that it probably does not include the
10 community of Mountain House.

11 CHAIRMAN KEESE: Okay. Well, I think
12 I'm hearing Staff saying that they haven't been
13 through it yet, and reviewed it, so we really
14 don't know whether we're at a -- we're at cross
15 purposes here yet. Is that what you're hearing?

16 MR. WHEATLAND: Well, yeah, I'm hearing
17 that they haven't really looked at the Tesla
18 analysis to see whether it's legally sufficient.
19 We believe that once they look at the Tesla
20 analysis, they will conclude that it meets all of
21 the requirements for a cumulative impacts analysis
22 under CEQA, and under the Commission's past
23 precedent. And if they wish to add additional
24 requirements beyond that which is legally
25 required, we just urge the Commission to be sure

1 that those requirements are added on a consistent
2 basis that apply equally to all competing
3 projects, and that we don't --

4 HEARING OFFICER WILLIAMS: Well, but,
5 Mr. Wheatland, this project clearly has a close
6 connection to Mountain House, in terms of the
7 water, the recycled -- long-term recycled water
8 use. So this project is a little different from,
9 perhaps, from other projects before the
10 Commission, in that there seems to be, at least on
11 the face, a direct connection in some vein between
12 Mountain House and East Altamont.

13 MR. WHEATLAND: Well, that's correct.
14 But the cumulative impacts analysis that would be
15 applied to all three projects would cover the same
16 geographic area as East Altamont. It would be --
17 they would be under -- all would be under the same
18 umbrella.

19 MR. O'BRIEN: I think it's reasonable
20 for the Committee to hear from the Staff, perhaps
21 formally, in terms of a written filing as to the
22 Staff's position on the issue of cumulative
23 impacts for this project, insofar as why the
24 Mountain House project should be included, number
25 one. Number two, what Staff's position is on the

1 other projects in the immediate geographic
2 vicinity. And, number three, it appears as if we
3 have gone down the road quite a ways, and the
4 issue of cumulative impacts is still hanging out
5 there vis-a-vis the Mountain House Community.

6 It would also seem to me that this
7 issue, and the position of the two parties, needs
8 to be further clarified before the Committee can
9 make a decision as to what the scope of the
10 cumulative impacts analysis should be. What I'm
11 hearing is that Staff believes the Mountain House
12 project should be included. What I'm hearing from
13 the Applicant is that, barring one other case, the
14 Commission in the area of cumulative impacts has
15 not required this sort of analysis. In other
16 words, most of the other cumulative impact
17 analysis have been for major stationary sources.

18 And to the extent that the Applicant
19 believes that the Staff's request is
20 inappropriate, the Committee needs to hear that.
21 And the Committee also needs to understand what
22 the scheduling implications are. It would seem to
23 me, based upon what we've heard so far, that this
24 isn't necessarily an easy issue to come to a swift
25 agreement on what the scope of the analysis would

1 include for Mountain House, even if it is
2 included.

3 MR. RUBENSTEIN: Mr. O'Brien, if I could
4 just clarify one thing. It's been mentioned a
5 couple of times now. There is no distinction in
6 the CEC Staff's requirements for cumulative
7 impacts analysis between major sources and non-
8 major sources. The key distinction is between
9 stationary or industrial sources and other types
10 of facilities. But the analysis reaches to very
11 small industrial facilities.

12 HEARING OFFICER WILLIAMS: So I think --
13 what I think I'm hearing is that the Committee
14 would like a briefing on this whole issue, in
15 terms of the subparts that were identified by Mr.
16 O'Brien. And I think probably -- how much time do
17 you think you need for that, Staff?

18 MS. DeCARLO: About a week and a half.
19 Would that be too long? I mean, I can do this in
20 whatever timeframe the Committee would like. But
21 a week and a half should be sufficient.

22 HEARING OFFICER WILLIAMS: Do you have a
23 calendar?

24 MS. DeCARLO: Not with me.

25 CHAIRMAN KEESE: I think that's fine.

1 HEARING OFFICER WILLIAMS: I'm sorry?

2 CHAIRMAN KEESE: That was fine.

3 HEARING OFFICER WILLIAMS: And
4 Applicant, you're invited to respond to that.

5 MS. DeCARLO: And if I can just
6 reiterate the different subparts that the
7 Committee would like to see. I have, number one,
8 why Mountain House should be included in a
9 cumulative impact assessment. Number two, Staff's
10 position on other projects and whether Mountain
11 House should be included in those projects.
12 Number three, scheduling implications of including
13 such -- the Mountain House Community in such a
14 cumulative impacts analysis.

15 Was there another item?

16 CHAIRMAN KEESE: No, I -- amplify those
17 three with the discussion, which was why should
18 Mountain -- why a community, a residential
19 community should be included when they -- when
20 it's been industrial sources in the past. And
21 then, on your second one, why it should be
22 included in a joint cumulative impact report with
23 other entities, and the implications of that. And
24 then the third would be the scheduling.

25 I don't want to create a precedent here

1 that interferes with other cases significantly, so
2 I think we just have to -- we're getting a lot of
3 these complex cases now, and this obviously is a
4 complexity. Let's try to straighten it out.

5 HEARING OFFICER WILLIAMS: So, Staff,
6 excuse me, Applicant, you have five days to submit
7 your response.

8 MR. WHEATLAND: Thank you.

9 CHAIRMAN KEESE: Okay. Were we at the
10 bottom? Were we done yet? Mountain House was the
11 end?

12 MS. DeCARLO: Yes, I believe so, for Air
13 Quality.

14 CHAIRMAN KEESE: All right.

15 HEARING OFFICER WILLIAMS: Do we have
16 any public comment on the Air Quality issues? Is
17 the public, any member of the public still there
18 on the telephone?

19 MS. BOS: Major, we do have someone that
20 has a written comment.

21 HEARING OFFICER WILLIAMS: Okay. Could
22 you give us that, please, Grace.

23 MS. BOS: Shall I read it?

24 HEARING OFFICER WILLIAMS: Sure. Sure.

25 MS. BOS: I'll just --

1 CHAIRMAN KEESE: Just summarize what it
2 is.

3 MS. BOS: Yes. My name is Grace Bos,
4 and I'm the Associate Public Adviser. I'll
5 summarize, I'll extract.

6 This is from a Dolores Kuhn. A question
7 about air quality, that's the only thing we want
8 to address right now?

9 HEARING OFFICER WILLIAMS: Yes.

10 MS. BOS: She says that since the San
11 Joaquin Valley ranks highest in the worst ozone,
12 that what consideration has been given to the
13 impact on the air quality in San Joaquin County,
14 which is already in non-compliance, according to
15 what she says, which would be directly affected by
16 the proposed plant. And that's just on air
17 quality. There are several other questions.

18 HEARING OFFICER WILLIAMS: Okay.

19 MS. BOS: But that's just --

20 HEARING OFFICER WILLIAMS: Thank you.

21 CHAIRMAN KEESE: Thank you.

22 HEARING OFFICER WILLIAMS: Okay. I
23 think that probably wraps up Air Quality.

24 Again, looking at Status Report Number
25 3, Biological Resources. I know the Applicant

1 addressed Biological Resources in its Status
2 Report Number 3, also. So perhaps we should just
3 go down the bullets again. And let's see if we
4 can reach a -- some kind of resolution on where we
5 are in these three bulleted areas.

6 MR. WHEATLAND: All right. We'll
7 respond first to the first bullet, and I'll ask
8 Mr. Helm to comment on bullet number one.

9 MR. HELM: Yeah, we can address bullet
10 number one under Water.

11 HEARING OFFICER WILLIAMS: Sir, would
12 you just state your name --

13 MR. HELM: Sorry. Kris Helm, I'm a
14 consultant working with the East Altamont Energy
15 Center on water issues.

16 And so the first bullet under Biology
17 really pertains to the diversion of water by
18 Byron-Bethany. So if we could address that when
19 we have folks from Byron-Bethany here, and others.
20 Or else we can address it now.

21 This really pertains to whether Byron-
22 Bethany is using their historic water supply, or
23 some new diversion from the Delta, and how they're
24 operation relates to operation of the Department
25 of Water Resources in federal facilities in the

1 area.

2 HEARING OFFICER WILLIAMS: Are you
3 looking at -- where are you -- what are you
4 looking at?

5 MR. WHEATLAND: We're on Biological
6 Resources.

7 MR. HELM: Biological Resources, the
8 first one pertains to --

9 CHAIRMAN KEESE: Whether this will
10 change the historical --

11 MR. HELM: That's correct. And --

12 CHAIRMAN KEESE: -- draw.

13 MR. HELM: And we have submitted in our
14 application a description of Byron-Bethany's water
15 rights. Byron-Bethany has submitted additional
16 information, as well, to the Staff on this. We
17 believe we've responded to all data requests on
18 this point, and we continue to believe, as
19 represented by Byron-Bethany Irrigation District,
20 that this water is served within their pre-1914
21 water rights.

22 CHAIRMAN KEESE: Okay.

23 HEARING OFFICER WILLIAMS: Well, I think
24 you're getting a little bit ahead of us here. The
25 agenda that I have, I'm reading from Staff's --

1 yeah, I got that -- Staff's report. And it has to
2 do with the impact on fish species.

3 MR. HELM: That's correct.

4 HEARING OFFICER WILLIAMS: Okay.

5 MR. HELM: Since, again, under the water
6 supply, Byron-Bethany is a pre-1914 water rights
7 holder, they are the, if you will, the first user
8 of water from the Delta. Many other users of
9 water come after them.

10 HEARING OFFICER WILLIAMS: Right.

11 MR. HELM: Many other users of water do
12 have obligations to mitigate impacts in the Delta
13 associated with water diversions.

14 HEARING OFFICER WILLIAMS: Okay.

15 MR. HELM: Those obligations do not flow
16 to BBID. They do flow to other agencies, because
17 of the complex way in which the Delta is operated
18 by the state and federal government, under a
19 coordinated operating agreement. Those are the
20 applicable provisions of mitigation in the Delta
21 that pertain to these major water diversions. And
22 we are of the opinion that this does not change
23 the supply allocated to Byron-Bethany Irrigation
24 District in those complex rules.

25 CHAIRMAN KEESE: Okay. And Staff

1 disagrees with that position, or --

2 MS. DeCARLO: Yes. We feel the
3 Applicant has not shown that their withdrawal of
4 water will be completely offset by junior water
5 rights holders than limiting their withdrawal. I
6 don't know if I clearly stated that.

7 We don't believe the Applicant has shown
8 us that there will be no net withdrawal.

9 CHAIRMAN KEESE: Okay. And so perhaps
10 Byron -- we should hear from Bethany as to whether
11 that -- they feel they are going to be --

12 MR. HELM: We are at a loss for what
13 additional information is certainly being
14 requested from us, at this time.

15 CHAIRMAN KEESE: Right.

16 MR. HELM: We are unaware of any
17 inquiries for information from us on this point.
18 We are aware that since September 6th, Byron-
19 Bethany has provided a detailed -- in August,
20 Byron-Bethany provided a detailed explanation of
21 their water rights, and since September the
22 Applicant has prepared, had an expert prepare a
23 document of all the operating criteria for the
24 Delta. We have urged the Staff to have a workshop
25 to deal with these complex issues in the Delta

1 when we provided this information as follow-up to
2 the September 6th inquiry, which was please show
3 us the operating rules for the Delta.

4 We have submitted a very detailed set of
5 operating criteria and the operating rules for the
6 Delta.

7 CHAIRMAN KEESE: Okay. And if I
8 understand it, the Applicant and Byron-Bethany are
9 saying that they will operate within the old
10 parameters and handle this plant.

11 MR. HELM: That's correct. Byron-
12 Bethany is --

13 CHAIRMAN KEESE: And Staff is --

14 MR. HELM: Excuse me.

15 CHAIRMAN KEESE: And your question is
16 what more -- does Staff need more than you've
17 already submitted.

18 MR. HELM: Yeah. We aren't aware of
19 anything -- any requests that have come since we
20 submitted --

21 MR. WHEATLAND: If I could sum it up.
22 Staff seems to be -- what the Applicant has said
23 is that there will not be an increase, significant
24 or otherwise, in water withdrawals from the Delta
25 as a result of this project. Staff says --

1 HEARING OFFICER WILLIAMS: So no
2 impacts.

3 MR. WHEATLAND: We're saying no increase
4 in water withdrawals. And the Staff has said you
5 have to have an increase in water withdrawals in
6 order to have an impact. We're saying there will
7 be no increase in water withdrawals.

8 HEARING OFFICER WILLIAMS: Okay.

9 MR. WHEATLAND: And so --

10 CHAIRMAN KEESE: Let's have Staff
11 explain -- some members of Staff are going to try
12 to explain more clearly.

13 MS. WHITE: I appreciate Mr. Wheatland's
14 comments. My name is Lorraine White, I'm with the
15 Energy Commission Staff. With me is John Kessler,
16 who is also working on the water resources
17 analysis.

18 The Applicant has made it clear that
19 based on what they understand about the 1914
20 rights and BBID's historical operation, that they
21 don't anticipate any increased diversions that are
22 outside of their historical right.

23 However, Staff has been looking at
24 particularly the last five years or so of the
25 diversions that BBID has, in fact, made in the

1 Delta. And we have found that it is far below
2 their pre-1914 right. What we have been trying to
3 do is investigate with other agencies,
4 particularly DWR, whether or not that constitutes
5 any concern, because it is a very complicated
6 system. The Applicant has described what they
7 anticipate to be the operation once BBID does
8 increase their diversions to serve the project.
9 BBID has also offered Staff some information
10 regarding that, and we have recently been trying
11 to confirm with other agencies that are involved
12 in withdrawals and diversions in the Delta, for
13 things like the State Water Project and Central
14 Valley Project, whether or not what the Applicant
15 and BBID has told us is, in fact, how they will
16 operate their systems.

17 And so what we have been trying to do
18 recently is go through with those other agencies
19 what is actually being proposed here, and whether
20 or not those types of operations are, in fact,
21 allowable under this pre-1914 right will not be
22 disputed by other water right holders and
23 diverters of Delta waters, and whether or not
24 there are going to be any impacts associated with
25 that.

1 The way we interpret CEQA is that it's
2 not necessarily if you have the right then there's
3 no impact. They're two separate things. One's a
4 legal question of whether or not you have the
5 right to do something, and the other is as a
6 result of executing that right, would you have an
7 environmental impact.

8 And that's how we've been approaching
9 this analysis to date. And what we're expressing
10 in the Staff's Status Report is essentially where
11 we are in that investigation.

12 And we do, we recognize that BBID and
13 the Applicant have invited us to have a workshop,
14 but we've been in the process of trying to make
15 contacts with the other agencies that are involved
16 in these other diversions, to make sure we have
17 enough information to have a meaningful workshop
18 on. We're getting closer to that, and we're
19 hoping that with the Preliminary Staff Assessment,
20 there'll be enough foundation there to have a
21 meaningful workshop on the water issues.

22 MR. O'BRIEN: So, Ms. White, is it true
23 that the Applicant has provided Staff with all the
24 information that Staff has requested, and so, if
25 you will, the next step sounds as if Staff needs

1 to then complete its analysis.

2 MS. WHITE: Well, actually, there have
3 been some items that are still outstanding that we
4 would like to see. I know John has identified a
5 few things yet that we need to complete our
6 analysis. In waiting for that information from
7 the Applicant, we have also been trying to
8 initiate these contacts with the other agencies
9 that are very much involved in Delta operations,
10 to try and see if we could get some of the
11 information that way to confirm what the Applicant
12 and BBID have told us.

13 MR. O'BRIEN: And the Applicant is
14 aware, then, of the information that it has been
15 requested from Staff, and it has not yet
16 submitted? I mean, I didn't think I heard that
17 from the Applicant.

18 MR. HELM: No, I'm certainly not aware
19 of what information has been requested from us
20 that has not been provided.

21 MR. KESSLER: This is John Kessler, and
22 the issues are additional information that we
23 identified goes back to October 25th. I'm not
24 aware of how or whether this information was
25 conveyed to the Applicant. This is information

1 that we provided through our channels to Ms.
2 Davis. But we asked for a demonstration of the
3 proposed freshwater supply from BBID would not
4 result in a change in quantity of diversion and
5 season of use, and suggested that if what we have
6 been provided is an average over a three-year
7 period between 1998 to 2000. And based on that
8 snapshot it appears that there could be some
9 change in the season of use and the quantity of
10 use that BBID would make in serving the proposed
11 project. We suggest a longer historical data
12 summary, if that could be available, of at least
13 ten years.

14 The second item has to do with relevant
15 excerpts of the Bay Delta programmatic EIR that
16 discussed the accounting for existing and senior
17 water rights to the CVP and the State Water
18 Project. As Mr. Helm indicated, we were provided
19 a summary of the CVP and the State Water Project
20 operations, and we were provided some information
21 about where there's some consideration of water
22 rights. But still it isn't clear to Staff from
23 that submittal that how the programmatic EIR for
24 Bay Delta took into account the senior water
25 rights.

1 And lastly, and more recently, as of
2 October 30th, we have had some discussions, and we
3 framed some questions with regard to stormwater
4 discharge for the project. And those have to do
5 with providing us the -- what they have quantified
6 is the stormwater that would be generated on the
7 project. What isn't clear is what would actually
8 be discharged off the property. And the general
9 rule of thumb is that is kept at or below the pre-
10 project levels in order to avoid any kind of
11 impact. And so we have just simply asked that the
12 Applicant give us an idea of what their retention
13 facility would be in terms of the size and storage
14 capability, and secondly, to actually give us
15 their calculated discharges and the return periods
16 of 10, 25, 50, and 100 year return storms, and 24
17 hour events.

18 CHAIRMAN KEESE: I gather Byron-Bethany
19 is at the podium.

20 MS. DUNN: Yes.

21 CHAIRMAN KEESE: Do you have a comment,
22 please?

23 MS. DUNN: Yes, I'd like to comment on a
24 couple of things. My name is Sandra Dunn, and I'm
25 special counsel for Byron-Bethany Irrigation

1 District.

2 With regard to the whole issue of
3 whether or not there's an impact in the Delta as a
4 result of BBID's diversions, I think part of the
5 concern that we have is that that whole issue of
6 impacts is inextricably linked with the water
7 rights issue and the entitlement issues that BBID
8 has. It is -- I know that in the past we -- there
9 are basically two issues. There's issues of
10 impacts from flows, there's also an issue of
11 entrainment. I know that we have provided
12 information to the CEC Staff that demonstrates
13 that BBID's diversions do not result in additional
14 entrainment of fish, because they are behind --
15 BBID's diversions are behind the fish screen for
16 the State Water Project. And so it does not
17 result in any impact as a result of entrainment.

18 The issue of flow, however, is the issue
19 that really does involve the whole question of
20 water rights. And because BBID has pre-1914 water
21 rights, those water rights are not within the
22 jurisdiction of the State Water Resources Control
23 Board. They are senior to the State Water
24 Project. They are senior to the Central Valley
25 Project. And as a consequence, that when they

1 developed their operations, BBID's diversions are
2 part of the baseline of those operations, and
3 because they are senior if there are additional
4 impacts, as long as BBID is taking water under its
5 entitlement, the State Water Project and CVP are
6 responsible for Bay Delta water qualities and for
7 complying with flow issues associated with
8 endangered species.

9 So we're very sensitive to these issues.
10 We are -- we've asked the CEC Staff to involve us
11 in the discussions with DWR. We're currently in
12 discussions with DWR about different operational
13 issues that involve both the district and the
14 State Water Project, because of our unique
15 position on the intake of the State Water Project.
16 And so we've asked that we be involved. We put
17 forth that request as early as August, to be
18 involved in the discussions with the DWR staff,
19 and we really never have gotten a response back to
20 the Staff about -- or notification, we got
21 notification actually after the fact, when they've
22 had those discussions. We've asked, and thought
23 that it would be more fruitful if all of the
24 parties who have information with regard to the
25 operations met concurrently to discuss those

1 issues.

2 HEARING OFFICER WILLIAMS: Well, Ms.
3 Dunn, it sounds like that's forthcoming. It's
4 just a matter of timing. But in terms of the
5 information that Staff has identified that it
6 needs, where are we on that?

7 MR. WHEATLAND: Well, to my knowledge,
8 even though Mr. Kessler may have provided it to
9 the CEC Project Manager on October 25th, to my
10 knowledge, that information has not been
11 communicated to the Applicant. Here we are,
12 November 13th, and we haven't seen those requests.

13 HEARING OFFICER WILLIAMS: Have they
14 been -- were they in the form of a data request?

15 MR. KESSLER: These were framed as data
16 requests. They were transmitted via e-mail. It
17 was part of an e-mail message.

18 MS. DeCARLO: I believe they're still
19 undergoing internal review.

20 CHAIRMAN KEESE: They're in-house.

21 MS. DeCARLO: In-house review. And we
22 will be issuing those after the review period.

23 MS. WHITE; Actually, what they all
24 relate to are previous data requests that we've
25 had, where the responses we received, reviewed,

1 and realized that there wasn't an adequate
2 response there. So these are supplemental
3 requests related to supplement, or submittals that
4 the Applicant has made in the last couple of
5 months.

6 The one thing I'd like to respond to
7 BBID is that the -- we recognize the analysis that
8 was done, the programmatic EIR, and we're going
9 through that material. But at the same time, we
10 can't rely wholly on a programmatic EIR for a
11 project specific impacts analysis. So we've been
12 looking at that. And what we're trying to really
13 address is not just the direct impacts from both
14 water and biological resources, but the indirect
15 and cumulative impacts. And that's where we've
16 been having to focus most of our attention, in
17 fact.

18 CHAIRMAN KEESE: I do have -- well, my
19 question, as I heard the discussion going on here,
20 is how far back do we go. I mean, our -- we're
21 going to start with the Applicant using water,
22 then we're going to -- they're going to assure us
23 that a water district can supply them, which is
24 typical in most every case we have. Now we're
25 going to step back and say all right, but does

1 that water district really have it, and what are
2 the impacts, and then we're going to go back to
3 the State Water Project and see how the State
4 Water Project is being impacted?

5 I mean, at what point do we cut this off
6 and say well, there are other people who are
7 responsible for making sure the water system
8 operates.

9 MS. WHITE: Well, but it's not just --
10 what we've been trying to look at is confirming
11 what has been said about no net diversion, or no
12 net increase in diversion.

13 CHAIRMAN KEESE: Right. And --

14 MS. WHITE: Okay.

15 CHAIRMAN KEESE: -- and the response
16 from the water district is not adequate.

17 MS. WHITE: Well, but we have to --
18 because it's contingent on a change in how DWR
19 operates their system. So BBID --

20 CHAIRMAN KEESE: Well, it will have that
21 -- but what I heard from counsel was it will have
22 that impact as they're senior, and they get to do
23 it first.

24 MS. DUNN: In addition to that, just let
25 me add that we have provided to the CEC Staff

1 information to demonstrate that BBID's diversions
2 are less than one percent of the diversions out of
3 the Delta. And in the modeling exercises and in
4 the operational exercises that the DWR and CVP go
5 through, they can't even discern that in the --
6 that small of a diversion in the model. And so
7 the opportunity for BBID's diversions to actually
8 have any sort of impact are just non-existent.

9 MR. KESSLER: If I can add, Chairman, to
10 the benefit of understanding the programmatic EIR,
11 it's simply to lay the groundwork of understanding
12 DWR's position. The DWR has advised us, at least
13 through one representative when we were trying to
14 get further clarification, is in the future, the
15 very near future, that they consider themselves or
16 the Bay Delta to be injured as a result of
17 proposed diversions, the change in diversions that
18 would occur by BBID to serve this project.

19 We have not concluded that that's the
20 case. We just consume that information and are
21 trying to analyze it and understand it and
22 appreciate it.

23 MS. WHITE: This is one point of
24 diversion that we're looking at. And that's the
25 scope of what we're analyzing here, and the

1 relationship between BBID's operation and what
2 that in fact does to the DWR system operations.
3 And what we have to do is not only rely on BBID
4 and their input, but then also get confirmation
5 from DWR that, in fact, that is how they would
6 operate.

7 HEARING OFFICER WILLIAMS: Okay.

8 CHAIRMAN KEESE: Okay. At some place
9 along the line, I think I'm going to have to be
10 convinced that there's a reason, you know. We can
11 -- I'm not going to say we stop this exercise, but
12 I will need to be convinced there's a reason why
13 we go beyond BB, Byron-Bethany.

14 MS. WHITE: Right. And I would suggest
15 to you that --

16 CHAIRMAN KEESE: And if it'll be --

17 MS. WHITE: -- it has to do with DWR's
18 comments that they consider themselves to possibly
19 be injured by the increase of these diversions.
20 We have also had contacts with the State Water
21 Resources Control Board, which suggests that there
22 may be an opportunity to challenge pre-1914
23 rights. When you increase diversions above what
24 you have been operating at for the last five or so
25 years.

1 CHAIRMAN KEESE: And we're going to
2 settle that in this licensing case?

3 MS. WHITE: Pardon?

4 CHAIRMAN KEESE: And we're going to
5 settle that in this licensing case?

6 MS. WHITE: No. We're just trying to
7 find out if, in fact, they legally have the right
8 to these increases in diversions, because they are
9 based, if you look at their historical five-year
10 diversions, it would be an increase. They haven't
11 been operating at their 60,000 acre/feet a year
12 right. They've been operating quite below that.
13 And, in fact, this would be an increase of almost
14 a quarter of their operation.

15 So, you know, from our standpoint, it's
16 trying to find out if, in fact, everything's okay,
17 and confirming that, verifying that, and going
18 forward.

19 CHAIRMAN KEESE: And that's what we do
20 in all cases with any water district that offers
21 to give money -- or water to a power plant. We
22 check --

23 MS. WHITE: Yeah, is it --

24 CHAIRMAN KEESE: -- we check to see that
25 they --

1 MS. WHITE: -- is it there and do they
2 have a right to it.

3 CHAIRMAN KEESE: -- have the authority
4 to get all the water they've got?

5 MS. WHITE: Uh-huh.

6 MR. KESSLER: I think the bottom line
7 question here is will the proposed supply of
8 freshwater from BBID cause injury to another party
9 or to the environment. And I think it's also fair
10 to recognize that BBID and the Department of Water
11 Resources are apparently in dispute in recognizing
12 BBID's rights. We're not trying to take sides as
13 to who is right and who is wrong. We're just
14 trying to understand the issues, and present that
15 information to the Commission in their decision,
16 and get to the bottom line of making a
17 determination, is there a party injured or is the
18 environment potentially injured.

19 And we are diligently pursuing the kind
20 of information that will help us reach that
21 conclusion and recommendation.

22 CHAIRMAN KEESE: I feel -- it would seem
23 to me rather natural that if somebody has a senior
24 water right and exercises it, the junior water
25 right will probably be harmed. Right?

1 MR. KESSLER: I agree with --

2 CHAIRMAN KEESE: I mean, that --

3 wouldn't that be something that would naturally
4 happen?

5 MR. KESSLER: I agree with that thesis,
6 but --

7 CHAIRMAN KEESE: And then there is a
8 total quantity of water, also, so --

9 MR. KESSLER: In looking at the water
10 use and the potential to injure others, it's
11 related to not just an annual quantity, it's
12 related to a seasonal use and the quantity that's
13 used within those seasons.

14 HEARING OFFICER WILLIAMS: Who has the
15 ultimate jurisdiction on this question?

16 MR. KESSLER: When challenging a pre-
17 1914 right it boils down to a judicial challenge.
18 It's not the State Water Resources Control Board.

19 HEARING OFFICER WILLIAMS; Well, what
20 does the water -- State Water Resources Control
21 Board have authority to do here?

22 MS. DUNN: Sir, if I might answer that
23 question. DWR, if they thought that BBID's
24 diversions were unlawful or somehow injuring them
25 beyond what BBID's entitlement, their alternative

1 is to file litigation against BBID, and end up
2 adjudicating, you know, all the rights in the
3 Delta.

4 HEARING OFFICER WILLIAMS: No, my
5 question relates to the State Water Resources
6 Control Board.

7 MS. DUNN: The State Water Resources
8 Control Board has no jurisdiction over the pre-
9 1914 water rights. They only have jurisdiction
10 over water rights that were issued post-1914, that
11 are permitted water rights. And so the only forum
12 in which to resolve, you know, whose water -- who
13 has exactly what water rights, as far as BBID is
14 concerned, is a court.

15 CHAIRMAN KEESE: Identify yourself.

16 MR. GILMORE: Rick Gilmore, General
17 Manager of Byron-Bethany Irrigation District.

18 Commissioner Keese, I just wanted to
19 make a comment that my Board of Directors shares
20 your concern and frustration as where do we stop
21 this. Mr. Kessler made a comment regarding the
22 pre-'14 water rights. The district hasn't
23 utilized its full entitlement for beneficial use.
24 Senior water right holders call that surplus
25 water.

1 Regarding the Staff's handling of this
2 situation, we indicated to Staff on September 8th
3 that we would like to be directly involved with
4 the Staff relative to this water supply. We have
5 not been. We have been excluded.

6 MS. DeCARLO: If I may --

7 MR. GILMORE: And the Board of Directors
8 is very concerned about this, and we would like to
9 be involved in this process.

10 MS. DeCARLO: If I may respond to the --
11 that remark. We have not intended to exclude
12 anyone from this process. Staff is currently in
13 an investigation phase. We have been talking with
14 agencies to kind of get a feel for the background
15 information. Once we have enough information that
16 we feel we can carry on a discussion with all the
17 agencies together and have some sort of concrete
18 results that would be beneficial, we will, and
19 fully intend to have a full workshop with all the
20 interested agencies involved.

21 However, up to now we have been truly in
22 investigation --

23 CHAIRMAN KEESE: But you can understand
24 how an agency feels, you're messing with their
25 legal water rights.

1 MS. DeCARLO: Oh, I completely
2 understand their concern. However, we have made
3 all of our discussions public through our reports
4 of conversations, so they have been able to track
5 what agencies we have been talking to, and what we
6 have gleaned from those agencies. And we are --
7 we fully intend to have a discussion with all the
8 agencies, including BBID.

9 MS. DUNN: But we are concerned, because
10 in the investigation we do feel that some of the
11 issues have just been overlooked, or perhaps
12 assumptions have been made in answering the
13 questions that are not necessarily true. And we
14 feel that by being involved in those discussions
15 we can make sure that there is a forum in which
16 both sides of the story get heard, and that the
17 issues are fully out there, and that everybody
18 understands and appreciates the concerns on both
19 sides of that issue.

20 And if I could say one other thing with
21 regard to the change of season of diversion, in
22 the past, in our discussions with the Department
23 of Water Resources, in particular Steve Macauley,
24 who's a deputy of the Department of Water
25 Resources, we have been -- DWR has actually

1 encouraged BBID to change the season of diversion
2 to the wintertime, because it takes more pressure
3 off the Delta. There's more water available. And
4 so BBID has not been actually increasing the
5 quantity of water that they're diverting, but
6 they're changing the season to make it more
7 beneficial for everybody's operations. And I
8 believe if, you know, if we had a discussion with
9 the department and BBID, we could air those issues
10 out.

11 But I do know what Rick is referring to
12 is that this isn't the forum to make any sort of
13 determination as to the entitlements of a public
14 agency, and there are other more appropriate
15 forums for doing that.

16 HEARING OFFICER WILLIAMS: Well, I
17 think, at least there is an understanding that
18 down the road there will be a workshop where
19 everybody will be allowed to participate. So at
20 least in one sense, we're on the right track
21 there.

22 But I think that certainly the issues,
23 at least, are out there on the table. And to the
24 extent that we can reach some agreement, the
25 opportunity certainly will present itself. I

1 think -- I don't think we can go any further.

2 MR. HELM: Yes. I just would like to
3 clarify one point. They stated several times that
4 the Applicant has said that we won't increase
5 diversions from the Delta. We've tried to be
6 clear on that. It -- there may be an increase in
7 total diversions from the Delta, but not during a
8 period where it would cause environmental harm to
9 the Delta because of DWR's obligation to work
10 around the diversion pattern of BBID. So when DWR
11 issues an opinion then it gets easier in the
12 Delta, this is in this work around context of --
13 and we did prepare a, to our thinking, a
14 comprehensive list of the operating criteria for
15 the Delta. So that those criteria and how they
16 could be affected by theoretical changes, should
17 they occur, we've tried to provide that
18 information.

19 MR. O'BRIEN: I would have one
20 admonition for Staff. And it would be regarding
21 this issue, and also what we heard earlier in
22 terms of air quality, going back to cumulative
23 impacts, we're four and a half months into this
24 case, and it seems to me there's an issue as to
25 whether or not these issues, very important

1 issues, have been addressed in a timely enough
2 manner by the Staff.

3 The PSA is due out in a very, very short
4 period of time. And to the extent that these are
5 difficult issues to resolve, to the extent that
6 there's going to be disputes between the parties
7 on these issues, it seems to me that the Staff has
8 to move in a more expeditious manner than it has
9 been moving to try to resolve these issues, and
10 get them out on the table.

11 So, at least from my perspective,
12 there's a concern as to whether or not these
13 issues have been addressed in a timely enough
14 manner. And I would certainly urge the Staff and
15 the Applicant, and all the interested parties to,
16 on these issues, to work as expeditiously as
17 possible to ensure at least an understanding and a
18 full airing of them, regardless of whether or not
19 the parties in the end are going to come to
20 agreement or not.

21 MS. WHITE: I would like to respond to
22 that. Staff has, from the beginning, identified
23 this particular water proposal as a concern to us.
24 The fact that it's a freshwater inland diversion,
25 which is not consistent with state policy; the

1 fact that they have proposed the use of recycled
2 water when and if it becomes available, based on a
3 project that they have no control over. And we
4 have been trying investigate all of the elements
5 of this water proposal. It is complicated. It is
6 difficult.

7 Trying to get information from the
8 various agencies to confirm what the Applicant has
9 provided us has been, at most, a challenge. And I
10 think that we have been endeavoring to work with
11 the information that the Applicant has provided us
12 to verify what they have suggested, what they have
13 claimed, and we are, in fact, putting forth an
14 effort to do so in as efficient and expeditious a
15 way as possible.

16 Having said that, there's also a need to
17 recognize that to try and pull all of the parties
18 together whenever there is a desire to have a
19 meeting would not be, in fact, efficient, because
20 in having some of these contacts you may find that
21 what you thought was an issue is, in fact, not.

22 So to have called all these parties together when
23 you haven't fully investigated whether or not you
24 have an issue to be dealing with, I think would be
25 premature. And it has been Staff's attempt, in

1 trying to confirm the information that the
2 Applicant has provided us, to do this as
3 efficiently and cost effectively as possible.

4 HEARING OFFICER WILLIAMS: I think --
5 and I think that that's something that the
6 Committee can agree, that we want to do it as
7 efficiently as possible. And, again, we, as I
8 said before, in a perfect world we'd like to see
9 this information received and analyzed on the
10 front end, as opposed to the Committee trying to
11 backfill and make up ground on some of these very,
12 terribly complex issues.

13 MS. WHITE: Agreed.

14 HEARING OFFICER WILLIAMS: So --

15 CHAIRMAN KEESE: And I'll say I
16 recognize the issue of freshwater versus recycled
17 water. I'll have to be convinced that we should
18 look at where the recycled water came from, or
19 where the freshwater came from.

20 MS. WHITE: Right.

21 CHAIRMAN KEESE: I mean, I --

22 MS. WHITE: And whether or not one of
23 the other is available.

24 CHAIRMAN KEESE: Yeah.

25 HEARING OFFICER WILLIAMS: Well, with

1 that, I think --

2 MS. WHITE: So, we have been trying to
3 take each element of this proposal and verify that
4 this proposal could work.

5 HEARING OFFICER WILLIAMS: Understood.
6 Why don't we just move into a discussion of the
7 recycled water, since Mr. Gilmore is here at the
8 podium now.

9 MR. WHEATLAND: May we -- before we move
10 into that, can I just clarify one other point.

11 HEARING OFFICER WILLIAMS: Sure.

12 MR. WHEATLAND: We've been -- we were
13 discussing Mr. Kessler's list of questions from
14 October 25th. He also mentioned some questions on
15 October 30th, regarding the stormwater drainage
16 information. And I wanted to let the Committee
17 know that the Staff did communicate that question
18 to us informally. We would've preferred to have
19 seen a formal data request. It came to us
20 informally. We are preparing that information,
21 and we will have that available, on stormwater
22 drainage, available to the Staff by the end of the
23 month.

24 HEARING OFFICER WILLIAMS: So, as I
25 understand it, the questions that you set forth

1 will be put down in written data requests, and
2 transmitted to the Applicant.

3 MR. KESSLER: My understanding is those
4 are being formalized --

5 HEARING OFFICER WILLIAMS: Right.

6 MR. KESSLER: -- and should be going out
7 very soon.

8 HEARING OFFICER WILLIAMS: Okay.

9 Recycled water. Mr. Gilmore.

10 MR. GILMORE: Yes.

11 HEARING OFFICER WILLIAMS: What does the
12 irrigation district have to tell us about recycled
13 water?

14 MR. GILMORE: Well, we really don't have
15 anything else to provide, other than what we've
16 already provided in the AFC, and we've mentioned
17 at the data response workshop. And in a
18 subsequent letter to Ms. Davis. The district has
19 prepared a recycled water feasibility study
20 identifying the Mountain House Community Services
21 District, for a long-term water supply for
22 recycled water re-use.

23 HEARING OFFICER WILLIAMS: And when you
24 say long-term, what do you mean?

25 MR. GILMORE: Basically, the -- that I

1 think this plant's designed for 30 years, so what
2 we would do is, is we would use BBID surface water
3 in the interim, as Mountain House expanded,
4 develop additional recycled water. We would use
5 that as a resource to supply this project.

6 HEARING OFFICER WILLIAMS: And what kind
7 of infrastructure would be required from the
8 district?

9 MR. GILMORE: Well, basically, Eric
10 Teed-Bose, from Trimark, can address some of the
11 infrastructure that the Mountain House Community
12 Services District has at their plant. They are
13 constructing a tertiary treated plant. Therefore,
14 basically what we would need was, is we would need
15 to negotiate with the Community Services District
16 to put in a pipeline, stations to pump the water
17 back uphill to the project site.

18 HEARING OFFICER WILLIAMS: And what
19 length of pipe, what kind of length are we talking
20 about, pipelines?

21 MR. GILMORE: I can't recall here.
22 We've got the report here. I don't know. Kris,
23 do you recall?

24 MR. HELM: I believe it's four to six
25 miles. Four and a half miles.

1 MR. GILMORE: Have you folks seen a copy
2 of this? You should have that, and we've got that
3 in there. So that's basically what the district
4 envisions. What we've also done is the Board of
5 Directors recently adopted a policy regarding use
6 of recycled water within the district, just at
7 their last board meeting, and I have not yet
8 forwarded a copy of that to Ms. Davis, but she
9 does have a draft of it.

10 And so we're proceeding forward on that
11 front. We do have some disagreements with Staff
12 on the utilization of water from the City of Tracy
13 or Discovery Bay. We think that the water supply
14 that BBID has, and the use of recycled water from
15 the district, makes sense, economical, and we'd
16 like to see that go forward.

17 HEARING OFFICER WILLIAMS: And your
18 position is that the provision of recycled water
19 from any other source would be essentially a
20 violation of your territorial rights?

21 MR. GILMORE; Yes. If you've seen the
22 policy, seen some of the communication that we've
23 had with Staff, you'll see that that's our
24 position. And Ms. Dunn here can respond to some
25 of those issues. But it really doesn't make a

1 whole lot of sense for the CEC to force Calpine to
2 go to the City of Tracy, when there's recycled
3 water in their back yard. And that's what we're
4 trying to do. We're trying to utilize all of the
5 water resources in our district to supply our
6 customers.

7 MR. O'BRIEN: This recycled water would
8 be available on what date and for what percentage
9 of the Applicant's total use?

10 MR. GILMORE: Well, I'd have to go back
11 to take a look at the AFC and this report. This,
12 I think we -- Kris, do you have some of those
13 numbers, offhand?

14 MR. HELM: Ultimately, I recall it's 62
15 percent, and the timing of initial facilities
16 could be within the next five years on -- for
17 conservatism, we've included it in our application
18 as part of our project. We have been
19 conservative, in that we've endeavored to present
20 the full impacts of our freshwater use as though
21 the recycled water use does not occur. We have
22 tried to also identify all the impacts associated
23 with using recycled water, including construction
24 impacts of the linear facilities, impacts to such
25 parameters as the quality of water in our drift,

1 and impacts to our engineering on site.

2 We have endeavored to design this as a
3 zero liquid discharge facility, and so the design
4 parameters on that are quite sensitive to water
5 quality. And the zero liquid discharge system is
6 being designed larger, and to be sufficient to
7 take lower quality recycled water. So in various
8 ways, we have tried to include the potential
9 adverse impacts associated with using recycled
10 water use, and the potential adverse impacts
11 associated with freshwater use.

12 MS. WHITE: I'd like to make just a
13 point of clarification for the Committee's
14 benefit.

15 The proposal, as it has been presented
16 to Staff, is that that 62 percent availability
17 would actually not occur until 2020. In fact,
18 there would be incremental increases in the
19 availability of water from a small percentage in
20 2005, to the ultimate maximum of 62 percent in
21 2020.

22 So it has been Staff's goal, since
23 Calpine has stated their intent, to try to
24 maximize the use of recycled water, to investigate
25 where, in a more immediate sense, there is

1 recycled water that could be available in much
2 larger quantities, earlier than 2020.

3 MS. DeCARLO: Additionally, the
4 availability of that water is dependent upon full
5 build-out of the Mountain House Community, which
6 in itself isn't a done deal.

7 MS. WHITE: Right. So what we've been
8 trying to do is look at if, in fact, the objective
9 is to maximize the use of recycled water, what
10 options are available.

11 MR. HELM: We did make it very clear on
12 September 6th.

13 MS. WHITE: So that's the point that I
14 wanted to clarify.

15 MR. HELM: If I could. One of the
16 little ironies of this project is the Mountain
17 House project that the Staff does not recognize as
18 being viable for the purposes of recycled water is
19 the same Mountain House project they want us to
20 analyze for cumulative air impacts.

21 CHAIRMAN KEESE: Thank you. I recognize
22 that.

23 MS. DeCARLO: We're not saying it's not
24 viable. We, Staff just wants to take a very
25 conservative view of this project.

1 CHAIRMAN KEESE: I think we're talking
2 about timing here. If we're going to consider
3 that it's going to be built for the other purpose,
4 we're going to consider it's going to be built for
5 this. Timing of when it has an impact is --
6 that's a valid --

7 MS. WHITE: Sure. And the timing issue
8 has been one that we've been sensitive to, in that
9 the stated objectives of the AFC is to utilize
10 recycled water when it becomes available. And
11 based on what we have looked at in terms of
12 alternatives, we have been trying to investigate
13 where there is also other sources of recycled
14 water that could be considered available to the
15 project.

16 CHAIRMAN KEESE: Now, let me ask a
17 question. It would be my assumption that until
18 there -- if it's five and half miles of line, or
19 something, that until there's a significant amount
20 of recycled water you wouldn't put in that line,
21 is that -- you'd have to reach a certain amount of
22 recycled water before you put the line in, or do
23 you just --

24 MR. HELM: That seems logical, yes.
25 It's -- there are a couple objectives potentially

1 associated with the use of recycled water. There
2 are objectives, potentially minimize discharge to
3 the Delta, which would be certainly drivers for
4 those responsible for the discharge. All of these
5 objectives could drive the timing, the specific
6 timing. We have tried to be conservative in
7 presenting that the construction could occur
8 within certainly the next five years, and thus
9 have included it in our application.

10 HEARING OFFICER WILLIAMS: Okay. Now --

11 CHAIRMAN KEESE: Are we --

12 MS. DUNN: I just wanted to make a -- I
13 know Rick's looking for something else, but I
14 wanted to make one point with regard to the whole
15 issue of the availability of recycled water.
16 Under the Water Code, availability is more than
17 whether or not recycled water is physically there.
18 You know, it is also a question of economics. And
19 BBID, in the policy that they adopted, you know,
20 has indicated that they will look for and will
21 work with other developers of recycled water
22 where, you know, it makes financial and economic
23 sense, and can be provided to the water users at a
24 rate similar to its current water supply.

25 And also, I'd also like to point out

1 that the whole issue of recycled water, the public
2 policy behind recycled water is to use recycled
3 water to avoid new diversions of water. And so,
4 you know, we end up, you know, I think that that's
5 a question of whether or not you really accomplish
6 that purpose by, you know, bringing in recycled
7 water from other sources. I think that's one
8 thing that's got to be looked at, as well.

9 HEARING OFFICER WILLIAMS: So as I
10 understand it, on this pipeline question with
11 Mountain House, five years, if everything goes
12 well, five years you would begin utilizing some
13 recycled water from this development, Mountain
14 House development.

15 When would the pipeline be built out to
16 accept this recycled water?

17 MR. HELM: Whenever the use would
18 initially occur, we would expect the pipeline
19 would probably be built full size, just because of
20 economies of construction. That's just
21 speculation on my part, but that's what sort of
22 makes sense engineering-wise. You'd build the
23 pipeline at one time.

24 CHAIRMAN KEESE: And did the 62 percent
25 come that -- this development would supply 62

1 percent, or 62 percent is the maximum that you
2 could take?

3 MR. HELM: Sixty-two percent is an
4 estimate that we used, provided by BBID from their
5 master plan as to the quantities of recycled water
6 that would be available for Mountain House, over
7 and above their own irrigation demand.

8 CHAIRMAN KEESE: Okay. But if they
9 wound up with some other recycled water you might
10 go to 100 percent, or is --

11 MR. HELM: The district has adopted
12 policies, BBID has adopted policies pertaining to
13 recycled water use which would mandate our water
14 use at any time, from any source, recycled water
15 of appropriate quality were brought to our door,
16 and we would certainly comply with that, with such
17 a requirement. If recycled water becomes
18 available to East Altamont, East Altamont intends
19 to use that water.

20 CHAIRMAN KEESE: Okay. Thank you.

21 HEARING OFFICER WILLIAMS: Are there
22 diagrams included in the AFC for the pipeline?

23 MR. HELM; Yes. And biological surveys
24 on the right-of-way, and those type of things,
25 exactly.

1 HEARING OFFICER WILLIAMS: Right.

2 MR. O'BRIEN: Is there information
3 available from the Applicant in terms of the AFC
4 and their filings, and/or -- and this is a
5 question for both the Staff and the Applicant --
6 and insofar as the Staff is concerned, on the
7 issue of cost and feasibility. CEQA talks about
8 alternatives, it talks about feasible
9 alternatives, and one component is an economic
10 component.

11 The question I would have is in the AFC,
12 has the Applicant individually costed out the cost
13 of that pipeline to the Mountain House Community,
14 in terms of what that's going to cost, number one.
15 Number two, is there any information in this case
16 to date that shows what the cost differential
17 would be between recycled water coming from
18 Mountain House, and freshwater being diverted by
19 Byron-Bethany.

20 And, number three, insofar as the issue
21 of feasibility is concerned, and it has come up at
22 least insofar as communications on the issue of
23 the City of Tracy, is the Staff going to be able
24 to provide the Committee with information on the
25 economics of that possibility, so that the

1 Committee will be able to look at what is the
2 feasibility of using recycled water, and recycled
3 water not just from Mountain House, but from
4 another potential source.

5 MS. WHITE: Do you want the quick
6 answer?

7 MR. O'BRIEN: Well, as long as it's a
8 correct answer.

9 MR. WHITE: To number one, yes. To
10 number two, partially, at this point; hopefully,
11 more completely by the time the FSA is published.
12 And, number three, yes.

13 MR. KOENE: Mr. Chairman.

14 CHAIRMAN KEESE: Yes.

15 MR. KOENE: This is Virgil Koene, with
16 the town of Discovery Bay. And we would like to
17 -- we could provide recycled water from our
18 wastewater treatment plant today, if there was a
19 pipeline of about five and a half to six miles to
20 your site. And I want to make sure that's
21 analyzed as well, as, you know, for the cost of
22 delivering that water to that project.

23 MS. WHITE: Mr. Koene, what quantity of
24 water are you --

25 MR. KOENE: Currently today, we --

1 HEARING OFFICER WILLIAMS: Ms. White,
2 would you identify yourself for him?

3 MS. WHITE: Oh, I'm sorry. This is
4 Lorraine White, with the Energy Commission.

5 MR. KOENE: Discharge into the Delta
6 right below south of Contra Costa Water District's
7 intake, roughly of about 1.1 to 1.2 million
8 gallons a day.

9 MR. KESSLER: Mr. Koene, this is John
10 Kessler, another component of the water staff of
11 the Commission. And I can reply, let you know we
12 have taken into account the potential contribution
13 from Discovery Bay, and in a couple of scenarios
14 we've been provided adequate information from the
15 Applicant in order to make that determination as
16 to what might be in quantity of water contributed,
17 and also what the cost might be. And so we have
18 included that in our Preliminary Staff Assessment
19 to develop a full range of scenarios and
20 associated cost with -- under those scenarios.

21 HEARING OFFICER WILLIAMS: Are there any
22 other public members who would like to comment on
23 this issue? I see the representative from
24 Mountain House.

25 MR. TEED-BOSE: Eric Teed-Bose, Trimark

1 Communities.

2 One of my favorite things to talk about
3 publicly is whether or not Mountain House exists.

4 (Laughter.)

5 MR. TEED-BOSE: And the package that
6 we've put together for you and Staff is a package
7 that is really intended to just demonstrate that
8 we exist, in its purest form.

9 If we have maybe just a few minutes, I'd
10 like to not take you through every sheet --

11 HEARING OFFICER WILLIAMS: Go right
12 ahead.

13 MR. TEED-BOSE: -- but at least just
14 highlight what I've submitted.

15 HEARING OFFICER WILLIAMS: Before you
16 begin, just let me make one comment. The
17 Committee, after this presentation, will probably
18 take about a ten-minute break. I know people
19 probably need to make phone calls, or whatever.
20 So, after your presentation, we'll take a ten-
21 minute break.

22 MR. TEED-BOSE: I'm here today because I
23 do understand that there are does seem to be some
24 miscommunication, or at least the need for some
25 clarification about the status of our project,

1 where we are, who we are, what our schedule is.

2 The packet that I have submitted today,
3 if you'd just open the first page, basically
4 includes five sections. The first one is an
5 information overview, which just generally
6 speaking has a corporate brochure, as well as an
7 article that was published in the Urban Land
8 Institute Journal several years ago.

9 The second section is -- includes
10 project exhibits, which includes our land use plan
11 -- excuse me -- an aerial photograph, a Phase 1
12 infrastructure diagram that indicates what is
13 currently under construction now, and, in some
14 cases, what's already been finished. The
15 tentative map, or, excuse me, the subdivision map
16 for the first phase, which generally includes
17 about a thousand single-family homes and 480
18 multi-family units, as well as a construction
19 schedule for what is currently going in the
20 ground.

21 The third section, then, is kind of the
22 proof is in the pudding section, which includes a
23 series of photographs of all of those individual
24 infrastructure projects, again, that are currently
25 under construction.

1 And then section four are some excerpts
2 of some studies that we've done, both historically
3 and recently, about the market viability of this
4 project. Again, just to try to demonstrate that
5 we are here. Again, one of my favorite things to
6 talk about.

7 And then the last section is just some
8 clippings from local newspapers, talking about
9 market demand for such a project.

10 Just glossing to the second section.
11 The first exhibit there is the land use plan. And
12 just to clarify for the Commission, just very
13 quickly, Mountain House is made up of 12
14 residential neighborhoods that cumulatively
15 proposes 16,000 homes for a population of 44,000
16 people at build-out. The timing by which build-
17 out could be achieved -- and build-out, what I
18 mean by build-out is true absorption of those
19 units -- has been modeled really to occur anywhere
20 from 15 to, say, 25 years. So that's relative
21 timing.

22 Also in the land use plan, you'll see
23 about a thousand acres of industrial and office
24 land uses. Mountain House is a whole new town.
25 Certainly not a subdivision, but it is a new town

1 project.

2 Turning to the next page, there's an
3 aerial photograph that basically superimposes the
4 community boundaries and arterials on top of the
5 existing fields. If you look real closely, you
6 can actually see in a few areas where -- and
7 microscopic scale here -- where the construction
8 is going on.

9 The next exhibit is, then, a
10 infrastructure diagram that shows all the
11 infrastructure that has been approved and is
12 currently going in the ground, which does include
13 a wastewater treatment facility that generates a
14 tertiary level of effluent, a water treatment
15 facility, and then all of the corresponding
16 pipelines that are all oversized to accommodate
17 the build-out of the community, which certainly
18 represents our commitment. We have upwards of \$65
19 million worth of infrastructure going in the
20 ground right now. So, we do exist.

21 Turning to the third section are a
22 series of photographs, just documenting the
23 status. Some of these photographs may be a week
24 old, some may be two days old, some may be two
25 weeks old. Our effluent winter storage reservoir

1 is the first picture. Various facilities that are
2 under construction on both the wastewater and
3 water treatment facilities. And then, I think the
4 last photograph in that section -- let's see.
5 Actually, there's a couple of fold-out aerial
6 photographs that do show more of a cumulative
7 perspective of the infrastructure that is ongoing,
8 including water quality basins, pipelines, et
9 cetera.

10 And then, in the fourth section, excuse
11 me, there are two different market surveys. We've
12 included just excerpt pages that kind of jump to
13 the basic conclusion that the project is viable,
14 one that was done in 1997 by Anthony Hurt and
15 Associates, which generally concludes that this
16 project can easily absorb five to, say, 700 units
17 a year, annually. Followed up with a more recent
18 survey by the Meyers Group, a prominent real
19 estate consulting firm, as well as an appraisal,
20 that generally conclude that we could achieve as
21 many as 1200 units a year if the project is phased
22 appropriately.

23 So I guess I'm just really here to say
24 that we exist, we're a big project, we are moving
25 forward. And historically, I would say for the

1 last six years the other favorite question to
2 answer is when are you going to get started. And
3 finally, I can stand in public and say we are
4 started.

5 So with that, I would just -- if there's
6 any questions, either from the Applicant or Staff,
7 or from the Commission, I'm here to answer them.

8 HEARING OFFICER WILLIAMS: Applicant, do
9 you have any questions?

10 MR. WHEATLAND: Just one, actually. How
11 does the Applicant's acceptance of recycled water
12 from Mountain House fit into your plans, and do
13 you see that as a benefit or a detriment?

14 MR. TEED-BOSE: I see it as a benefit.
15 I would like to just publicly indicate that
16 notwithstanding other concerns we may have about
17 the project, certainly that aspect is very
18 attractive to us.

19 HEARING OFFICER WILLIAMS: Staff.

20 MS. WHITE: If I may ask, just a
21 clarifying point for me. The pipeline that would
22 serve this project, is that part of the
23 infrastructure you're installing today?

24 MR. TEED-BOSE: It is not in our
25 program.

1 MS. WHITE: Okay. Applicant, then, it
2 has always been my assumption that that has been
3 part of your program. And you would be the
4 responsible party for building that pipeline when
5 a certain trigger is reached, related to the
6 recycled water. And I'd like to have you kind of
7 clarify when and if that is a true assumption.

8 MR. WHEATLAND: Well, let me start by
9 stating a very important premise, that this
10 project is going to be the customer of BBID. BBID
11 is a public agency, and we are going to be
12 accepting water from BBID in accordance with the
13 rates that are set by that public agency.

14 With that context, Kris can explain to
15 you the context of that pipeline.

16 MR. HELM: Yeah. I think this has come
17 up in several of our inquiries, and we have said
18 it is very difficult for us to determine what the
19 cost to us from various proposals that are
20 incomplete, that involve various parties. And we
21 have not determined our cost of this facility, or
22 our obligation within that. That's a commercial
23 term. We recognize BBID's obligation to serve us,
24 and we recognize our status as their customer. We
25 intend to work through BBID on these issues, and

1 will comply with all LORS with respect to our
2 recycled water use.

3 And so the question is, is it part of
4 our project, for conservatism, as part of our
5 environmental documents, we have included it as
6 part of our project. With respect to our cost
7 obligation for that project, I would say that
8 that's really an off point to the environmental
9 evaluation of this project.

10 MS. WHITE: And, actually, I agree. I
11 have no interest in understanding the contract or
12 the cost obligation. I'm just trying to figure
13 out what the trigger is for when that pipeline
14 would, in fact, be built, and you would, in fact,
15 be able to start using recycled water. It's still
16 unclear to me. I've made some assumptions based
17 on the proposal outlined in the AFC, but I would
18 particularly at this point, if we can, get some
19 clarification of that.

20 MR. TEED-BOSE: Could I add one other
21 thing.

22 CHAIRMAN KEESE: Sure.

23 MR. TEED-BOSE: Your Staff actually
24 triggered this thought in my mind. One of the
25 things I didn't cover is, is that all of these

1 facilities that are under construction are
2 contractually obligated to be finished by no later
3 than August of next year. At that point is when
4 building permits will initiate, and houses will
5 start flushing toilets.

6 CHAIRMAN KEESE: And did I hear you
7 indicate it's probably somewhere between the 97
8 and 99 analysis, you'll be putting out 500 to 1200
9 homes a year?

10 MR. TEED-BOSE: Certainly.

11 CHAIRMAN KEESE: That's where you're
12 going to start?

13 MR. TEED-BOSE: Yeah. And probably the
14 first year might be less than that. I think in
15 the model that was produced, I think we went also
16 with a very conservative estimate. And so the 500
17 minimum is probably like a second year number,
18 rather than a first.

19 CHAIRMAN KEESE: And, I didn't look at
20 much on commercial and industrial. Is that -- you
21 had said that there was going to be some
22 commercial and industrial?

23 MR. TEED-BOSE: Yes. And actually, one
24 of the other exhibits in the --

25 CHAIRMAN KEESE: And when would that be

1 built-out?

2 MR. TEED-BOSE: It could start as early
3 as the residential. We actually included 70 acres
4 of office and industrial in our first subdivision
5 map. And the facilities that are being
6 constructed are sized to accommodate that
7 development, as well.

8 CHAIRMAN KEESE: Thank you.

9 MS. DeCARLO: I have some questions.

10 CHAIRMAN KEESE: Lisa.

11 MS. DeCARLO: Of the Mountain House
12 representative. I'm sorry.

13 MR. TEED-BOSE: Oh, I'm sorry.

14 MS. DeCARLO: That's okay. So have all
15 16,000 --

16 HEARING OFFICER WILLIAMS: Well, excuse
17 me, counsel, but I think your question is still
18 pending.

19 MS. DeCARLO: Oh, okay.

20 MS. WHITE: Yeah. If possible, I'd like
21 to get some --

22 MR. HELM: We haven't identified any
23 trigger with respect to our project. There's no
24 phase of our project or anything that is dependent
25 on recycled water use. As we've said, we have

1 presented and expected that the environmental
2 impacts of our project would be evaluated as
3 though no recycled water use were occurring. That
4 would be the conservative standpoint. Again,
5 we've tried to be conservative and assume that the
6 facilities will go in within the timeframe. And
7 so we've tried to assess maximum impacts.

8 MS. WHITE: So you guys don't know
9 when --

10 MR. WHEATLAND: Yeah. In summary, we
11 haven't determined --

12 MR. HELM; There's no trigger, from our
13 perspective.

14 MS. WHITE: Okay.

15 MR. WHEATLAND: -- because it's tied up
16 in the commercial discussions of this issue.

17 MS. WHITE: Okay. That's actually the
18 clarification that I -- I appreciate. Thanks.

19 MS. DeCARLO: Just a quick couple of
20 questions. Have all 16,000 units been approved
21 for construction?

22 MR. TEED-BOSE: Let me answer that
23 question in the following way. Approximately
24 12,000 of the units have been secured through
25 master development agreements with the county. In

1 terms of our regional water quality control board
2 permits to discharge effluent, and to -- excuse
3 me, to treat and discharge effluent, those have
4 been sized for the entire 16,000 unit community.
5 We have vested subdivision maps for the first
6 thousand units. We have hard zoning for about
7 4,000 units. But, again, master development
8 agreements that cover 12,000 plus or minus units.

9 MS. DeCARLO; So there will still need
10 to be performed some more CEQA review for the
11 specific -- the rest of the development, on a
12 specific basis?

13 MR. TEED-BOSE: Yeah. Every time we
14 process an implementing discretionary permit,
15 whether it's a subdivision map or a future phased
16 rezone, we always have to visit CEQA.

17 MS. DeCARLO: Okay.

18 MR. TEED-BOSE: The other thing to
19 clarify is, is that Trimark Communities is a
20 majority landholder in the community, which
21 generally represents why we have a development
22 agreement for 12,000 units, as opposed to the 16.
23 However, the entire project, including all the
24 mitigation programs, infrastructure programs, have
25 all been sized for that.

1 MS. DeCARLO: Okay. And then one
2 further question. I notice that the market
3 studies you provided, the most recent is from
4 1999. Are there any more recent studies that take
5 into consideration the recent economic downturn
6 experienced by the Bay Area and the nation, in
7 general?

8 MR. TEED-BOSE: No.

9 MS. DeCARLO: Okay. Thank you.

10 HEARING OFFICER WILLIAMS: I have just
11 one question. Will the entirety of the project be
12 in Alameda County?

13 MR. TEED-BOSE: The entirety of the
14 project is all in unincorporated San Joaquin
15 County. The western boundary of our community is
16 the San Joaquin County/Alameda County line.

17 And, just as a side note, Contra Costa
18 County actually comes in at the very northern
19 western tip, as well.

20 HEARING OFFICER WILLIAMS: Okay.

21 CHAIRMAN KEESE: We'll take ten minutes.
22 Thank you.

23 (Off the record.)

24 CHAIRMAN KEESE: Are we done with water
25 supply?

1 MR. WHEATLAND: Yes. I think we've
2 exhausted water supply.

3 (Laughter.)

4 CHAIRMAN KEESE: We've exhausted the
5 water supply.

6 MS. DAVIS: If we're done, okay, we'll
7 be going now.

8 CHAIRMAN KEESE: That sounds good to me.
9 Where do we want to go next.

10 Let's take something simple.

11 (Laughter.)

12 CHAIRMAN KEESE: Visual.

13 MS. DAVIS: Visual, relating to Biology,
14 or Visual, relating to Visual.

15 CHAIRMAN KEESE: Well, I see on my
16 agenda here it says visual impacts to include a
17 discussion of Applicant's revised landscaping
18 plan.

19 MS. DeCARLO: Yes. We've just recently
20 received the revised landscaping plan, and Staff
21 is currently going through it to digest the
22 information contained therein. We have no
23 comments on it at this time.

24 CHAIRMAN KEESE: All right. That's
25 nice.

1 MR. O'BRIEN: Is there any outstanding
2 information that's due to Staff from the
3 Applicant, in the area?

4 MS. DAVIS: I'd like to turn to the
5 Applicant. I know for the plume analysis
6 purposes, we received some data last week or the
7 week before, regarding the heat recovery steam
8 generator exhaust parameters. Cheri Davis -- is
9 my microphone on? Is my microphone on? Okay.
10 The green light is on. But I'm not hearing myself
11 amplified, either.

12 So the Applicant did submit some
13 information regarding the heat recovery steam
14 generator exhaust parameters. And I am actually
15 not clear myself as to whether that answered all
16 of our technical Staff, Bill Walters, questions
17 about the plume analysis data, or not.

18 MR. WHEATLAND: Well, it was intended to
19 answer all of his questions, so if it doesn't, let
20 us know. But it was intended to cover it all.

21 MS. DAVIS: All right. I was not sure
22 if it was a partial response, or a full response.

23 CHAIRMAN KEESE: Okay. So we think
24 we're okay on Visual. Where would you like to go
25 next?

1 MR. O'BRIEN; Now, does that address the
2 issue of Visual/Biology, in terms of the
3 landscaping and the concerns that the biologists
4 had regarding the landscaping, or is that -- are
5 we talking about both of those, or --

6 MR. PRIESTLEY: If we could, I'd like --

7 MR. WHEATLAND: Identify yourself,
8 first.

9 MR. PRIESTLEY: Yeah, my name is Tom
10 Priestley. I'm an environmental planner with
11 CH2MHill, and I am helping the Applicant with the
12 Visual Resources issue.

13 Before we move on to the landscape plan,
14 I just want to touch base on one element of the
15 plume analysis, and that is, now that you have --
16 now that the Commission Staff has received the
17 data it needs to run the plume model, we need to
18 receive back the results of that modeling to
19 complete two of the data request items that were
20 given to us. So as soon as we get those, we will
21 proceed with Items 106 and 107.

22 MR. O'BRIEN: And 106 and 107 are visual
23 impact --

24 MR. PRIESTLEY: They have to do with the
25 context for understanding the potential impacts of

1 whatever visible plumes might be associated with
2 the power plant. 106 requires us to prepare a
3 view shed map, identify the areas from which any
4 plume associated with the plant might be visible.
5 And 107 requires us then, in this area, to
6 identify any existing plumes that might exist and
7 provide, you know, a map showing the locations of
8 those plumes and an inventory of what they are,
9 how big they are, and so on.

10 MR. O'BRIEN: So --

11 CHAIRMAN KEESE: So you need Staff's
12 response to what you've submitted of how many
13 plumes there are going to be, and where, so you
14 can do your analysis. You can answer these
15 questions.

16 MR. PRIESTLEY: Right. They need to
17 tell us how tall they think this plume is going to
18 be, so we can then do 106 and 107.

19 CHAIRMAN KEESE: Okay.

20 MS. DeCARLO: And we have no problem
21 providing that information, once we've completed
22 our analysis.

23 MR. PRIESTLEY: Any estimate as to when
24 you might be able to provide that data to us?

25 MS. DAVIS: I believe Staff just

1 received the electronic information over the
2 weekend, so I don't know that we can turn this
3 around in the next week or so, but I'm sure within
4 the next month. I would have to talk to Staff to
5 find out exactly how much time it's going to take
6 them to complete the modeling.

7 MR. O'BRIEN: And as soon as --

8 MS. DAVIS: I know that our plume
9 modeling staff have a number of projects that they
10 are working on right now, and they all require
11 modeling.

12 MR. O'BRIEN; The Committee, I think,
13 would appreciate the Staff getting back to the
14 Applicant as quickly as possible. And when you do
15 that, you do that in a manner of communication
16 whereby the Committee will also be informed.

17 MS. DAVIS: We will docket that.

18 HEARING OFFICER WILLIAMS: Well, it
19 appears as if we've covered the second bullet on
20 page 3, under Biological Resources. And we've
21 also covered Visual Resources, as well.

22 CHAIRMAN KEESE: Mr. O'Brien had a
23 question of have we covered the -- all of that
24 bullet. And --

25 MR. PRIESTLEY: No, we haven't. The

1 second bullet has to do with the revised landscape
2 plan.

3 CHAIRMAN KEESE: Right.

4 MR. PRIESTLEY: And I think that there
5 still needs to be some discussion about that.
6 Yeah, so as you know, the state and federal
7 wildlife agencies have expressed some concerns
8 about the landscaping that we had proposed at the
9 project site. Their concern was that raptors,
10 most specifically the Golden Eagle, could use the
11 trees that we indicated for the -- on the
12 landscape plan, for roosting, from which they
13 could then swoop down on -- potentially on kit
14 foxes that might be in the area. They were also
15 concerned that any landscaping we might provide
16 might provide cover for coyotes, which would also
17 put the kit foxes at risk.

18 So we have met with representatives of
19 these agencies, and we have taken their concerns
20 very, very seriously, and have gone to, actually,
21 extraordinary lengths to try to respond to their
22 concerns in a very constructive kind of way.

23 For starters, we have revamped the
24 landscape plan to reflect the fact that the ponds
25 are no longer part of the project, which has meant

1 that we've been able to contract the landscaping,
2 bring it around -- bring it closer around the
3 facilities, which thus creates kind of a smaller
4 island of landscaping.

5 Secondly, we have done some very careful
6 analyses to identify where tall trees are really
7 needed to screen views, because one of the
8 concerns of the wildlife agencies had to do with
9 the heights of the trees. The, kind of the
10 conceptual model they had was well, the taller the
11 tree, the more of a concern it was in terms of
12 providing perches that the Golden Eagles might use
13 as a place for hunting. So we have revamped the
14 plan to greatly reduce the numbers of tall trees.

15 And then, finally, we have gone to great
16 lengths to try to identify plant species that we
17 could use in the landscape plan that would make
18 the landscape scheme what we want to call raptor
19 resistant. We've tried to identify trees that
20 would not provide raptors, more specifically the
21 Golden Eagle, a place to perch and use for
22 hunting.

23 And we went through kind of an involved
24 process in doing this. We talked to the Fish and
25 Wildlife Service, learned that they had developed

1 such a scheme at a project in San Mateo County. We
2 obtained a copy of the analysis that had gone into
3 that, and have used it as a model for an analysis
4 process we used for this project. We talked to
5 several biologists at CH2MHill, who are
6 specialists in raptors, to get a better idea of
7 what kinds of criteria we should have in mind in
8 selecting trees.

9 Then, as subconsultants, we hired a
10 couple of specialists in trees. One, an Emeritus
11 Professor of Landscape Architecture in the
12 Department of Landscape Architecture at UC
13 Berkeley, who is a specialist in trees and has,
14 you know, many years of experience in selecting
15 trees for the northern California environment.
16 Also, a very senior horticulturalist, who, again,
17 is a specialist in trees. And with their
18 assistance, we were able to develop a rating
19 system for evaluating trees in terms of their
20 branch structure patterns, and branch strength, to
21 rate trees in terms of the extent to which they
22 would be resistant to perching by raptors.

23 And then, based on that, we were able to
24 develop a plant palette involving large -- where
25 we -- in which we identified large trees, medium

1 size trees, and small trees that would, you know,
2 maximize their resistance to perching by eagles.
3 And then use those in the redesign of the
4 landscape.

5 And I think, I believe it was on
6 November 6th that members of our team met with the
7 representatives of the CEC and the wildlife
8 agencies in the field, and reviewed the plan with
9 them. And then a copy of our revised plan, and
10 then the background report as to how we developed
11 this plan was filed with the Commission, on which
12 date?

13 MR. WHEATLAND: November 9th, I think.

14 MR. PRIESTLEY: The 9th of November.

15 And I do have a copy of the revised plan and the
16 report here, that I can pass on to you now, if you
17 like.

18 HEARING OFFICER WILLIAMS: If you would
19 just give it to the court reporter.

20 MR. WHEATLAND: So that brings you up to
21 date where we are on this issue.

22 CHAIRMAN KEESE: Okay. Staff?

23 MS. DeCARLO: Yes, we have received the
24 plan, and Staff is currently going through it.
25 We're going to make sure that our visual staff

1 meet with our biology staff on this, and try to
2 figure out where this leaves us.

3 HEARING OFFICER WILLIAMS: Okay. So I
4 think we are fairly far along on this prong.

5 CHAIRMAN KEESE: We'll find out in the
6 PSA.

7 HEARING OFFICER WILLIAMS: Okay. Bullet
8 3, the Section 7 consultation process. Where are
9 we there?

10 MS. DeCARLO: I believe the Applicant
11 and Western are still going through drafts of the
12 biological assessment. Once that's finalized, it
13 will go on to U.S. Fish and Wildlife Service.

14 MS. STRACHAN: That's correct. This is
15 Susan Strachan. Western was given a copy of the
16 draft of the biological assessment at the
17 beginning of October. We received their comments,
18 responded to their comments, have given them a
19 revised draft to review, which they're currently
20 doing. And at this point, we anticipate that
21 it'll be formally submitted to Fish and Wildlife
22 by Western by the end of the month.

23 Simultaneously to the preparation of the
24 biological assessment, we have been having
25 informal consultation with Fish and Wildlife

1 Service and Fish and Game to discuss the
2 mitigation approach to the project. That's
3 obviously a key component in ultimately getting
4 their sign-off and what's put into the biological
5 opinion. We had a site visit with Fish and Game
6 on November 6th, CEC was also there, to exchange
7 information, or hear our information, and discuss
8 our mitigation approach. And based on that site
9 visit, we believe that Fish and Game concurs with
10 that approach, and that representative believes
11 Fish and Wildlife Service will, also.

12 We consequently think that that will
13 help expedite the issuance of the biological
14 opinion.

15 HEARING OFFICER WILLIAMS: Okay.

16 MR. O'BRIEN: Could I just get a little
17 more clarification on that, because Staff says
18 that delays in the Section 7 consultation process
19 could significantly affect the overall project
20 schedule.

21 Does the Applicant have a feeling at
22 this time when they think everything is going to
23 be wrapped up on this? And do the Staff and the
24 Applicant have a feeling at this time as to if
25 it's wrapped up on a certain day, what that means

1 for Staff's analysis, in terms of when that would
2 be completed?

3 I'm assuming that Staff's biological
4 analysis is not going to be complete in the PSA;
5 that it's going to mention the fact that the
6 Section 7 consultation process is still ongoing.
7 So if that's the case, if that assumption is the
8 case, then where does that leave us down the road,
9 in terms of when this issue can be resolved?

10 MS. STRACHAN: I'll take the first stab
11 at that. And excuse our laughter, but schedule
12 and Fish and Wildlife Service is somewhat of an
13 oxymoron. They have 135 days to complete the
14 Section 7 consultation. That does not always
15 happen. And I think that's why we've focused on
16 having these informal consultations with them for
17 the past 14 months.

18 It's been our experience and
19 understanding with the Energy Commission that if
20 the Applicant has agreement with Fish and Wildlife
21 Service, Fish and Game, on the mitigation approach
22 and other aspects of the biological opinion, that
23 the CEC process can continue without the actual
24 issuance of the biological opinion. I know in
25 past cases there's been permit conditions that

1 specifically state that requirements of the
2 biological opinion have to be incorporated, for
3 example, into the biological resources
4 implementation mitigation plan.

5 So, given the somewhat open-endedness of
6 the Fish and Wildlife schedule, we've taken the
7 approach to focusing on the mitigation and getting
8 that aspect tied up, and not necessarily, you
9 know, focusing on getting that biological opinion
10 by a certain date, since we don't have a whole lot
11 of control on that.

12 MS. DeCARLO: Ms. Strachan is correct,
13 and we don't need the biological opinion in hand
14 at the hearing stage. But we do need some idea of
15 where the biological opinion is going. We need
16 some sort of concrete idea of what mitigation will
17 be required, what impacts are anticipated. We
18 don't need the actual formal document in hand.
19 However, we do need to be fairly near the end
20 process.

21 CHAIRMAN KEESE: So our mitigation plan
22 would do it.

23 MS. STRACHAN: And again, we've had the
24 informal consultation. We're working on our
25 mitigation. It does involve land negotiations and

1 purchases, and once we get to the point where we
2 can submit something without -- that can be
3 publicly disclosed, we hope that that will be very
4 soon, and we'll obviously do that.

5 CHAIRMAN KEESE: Thank you.

6 HEARING OFFICER WILLIAMS: Okay. Is it
7 safe to move on to Efficiency and Reliability, at
8 this point? Let's do it.

9 MS. STRACHAN: We need to find out if
10 Jim McLucas is still on the phone. He was our
11 staff person on this issue.

12 MR. McLUCAS: I am.

13 MS. STRACHAN: Oh, great.

14 HEARING OFFICER WILLIAMS: Did we take
15 any public comment? Grace, do we have any public
16 comment on the biological issues? No public
17 comment on biological impacts.

18 So let's move on to Efficiency and
19 Reliability.

20 MR. WHEATLAND: I think as, just as a
21 preliminary matter, both the Staff and the
22 Applicant agree that this issue is not one that
23 will affect the schedule. The Staff has indicated
24 in their status report that this will not affect
25 the schedule, and we agree with that.

1 HEARING OFFICER WILLIAMS: Okay. Staff,
2 do you -- is that --

3 MS. DeCARLO: Yes, that's correct.

4 HEARING OFFICER WILLIAMS: -- correct?

5 MR. WHEATLAND: Now, the Committee --
6 Mr. McLucas is on the line and he can walk you
7 through the response to the points that are raised
8 in the Staff status report.

9 MR. McLUCAS: Okay. This is Jim
10 McLucas, with Calpine. Are you hearing feedback,
11 or is that just me that's hearing that?

12 CHAIRMAN KEESE: No, we're hearing it
13 fine.

14 MR. McLUCAS: Okay. In the first
15 paragraph there, there's a statement made that the
16 plant will generate 820 megawatts without duct
17 burners, and 1065 with duct burners. And that's
18 essentially a true statement. What we've got is a
19 plant that blends the high efficiency of a
20 combined cycle process with the additional output
21 of a peaker plant, but we get it without the
22 addition of any additional combustion turbines,
23 and through use of duct burning within the HRSG.

24 We really like this design, because it
25 gets us peaking capacity that is about ten percent

1 more efficient than the simple cycle peakers that
2 are mentioned here, at a cost that's about half
3 the cost on a dollars per kilowatt hour basis. In
4 addition, there's no additional environmental
5 footprint associated with that. We've got still
6 the same number of combustion turbines as we had
7 before. We've got the same steam turbine,
8 although it's a little larger. The cooling
9 tower's a little larger. But it's not -- no
10 additional site for additional combustion turbine.

11 There's reference made to the
12 reliability of this system. And basically you've
13 got a steam turbine that is a utility class steam
14 turbine, so in that category it's very reliable,
15 compared -- even more so than the steam turbine
16 that we would've had, had it been half the size.
17 And with this we have a four flow exhaust on the
18 low pressure section, and it will have two
19 condensers. And what that allows us to do is
20 operate the condensers in parallel, which actually
21 improves the efficiency of the steam turbine.

22 In terms of the cooling system
23 reliability, we've got a 19 cell cooling tower.
24 Therefore, if you had a problem with one cell in
25 the cooling tower, each cell is individually

1 isolatable. The basin itself is split in half, so
2 if we had a problem where we needed to muck out
3 half the basin and could not schedule that with a
4 plant outage, we can do that online. We've got
5 two 50 percent capacity circulating water pumps.
6 Those are some of the more reliable equipment in
7 the facility. We routinely don't have problems
8 with them.

9 Even so, if we were to lose one of the
10 circulating water pumps, because they're operating
11 in parallel, if you lose one pump you still get
12 about 70, 75 percent of the flow rate with the one
13 additional pump. So we don't lose much output
14 there.

15 Because this is a zero liquid discharge
16 plant, the condenser will be made of titanium, so
17 that we can cycle the cooling tower water up to
18 the maximum extent possible and not have to worry
19 about metallurgy. And with that, we get a
20 condenser that's very robust. All of the tubes
21 are welded. So the potential for condenser leaks
22 would be much less than on a plant with either a
23 yellow metals or stainless steel.

24 Even so, we've got split water boxes on
25 our condensers. And what that allows us to do is

1 if we have a tube leak, we can isolate one half of
2 the condenser, repair the leak without shutting
3 down the plant. If we were to have a problem with
4 the steam turbine itself, we do have full capacity
5 bypasses built into our plant, where the steam can
6 bypass the steam turbine and go right into the
7 condenser.

8 In terms of the duct burners, there's a
9 duct burner on each HRSG, so that we've got three
10 duct burners. Loss of one duct burner would still
11 mean that we would be able to run the other two,
12 and would only result in loss of one-third of the
13 peaking output.

14 So we basically see this as a great
15 design, and the last paragraph, making reference
16 to this new configuration greatly reducing capital
17 costs, that's exactly what we're intending it to
18 do. And we don't understand why this is a
19 disturbing trend. Calpine is using this type of
20 design on about half of our projects now. And on
21 the other half, we're using duct burners with
22 somewhere around half the amount of duct firing.
23 And I think other applicants are following suit,
24 because I think they're seeing that this is a
25 great design. It gives us a good amount of high

1 efficiency combined cycle baseload, with the
2 benefit of having additional peaking capacity with
3 no additional units.

4 CHAIRMAN KEESE: Let me ask a clarifying
5 question here. Are you indicating that when
6 you're operating at 820 megawatts you will be
7 operating in efficiency, say, of 56 percent?

8 MR. McLUCAS: That's correct.

9 CHAIRMAN KEESE: And it's only when
10 you're generating the additional 245 megawatts
11 through the use of the duct burners that your
12 overall efficiency goes down to 40 percent?

13 MR. McLUCAS: No. The overall
14 efficiency stays still up near 50 percent. It's
15 the incremental capacity is what we're talking
16 about.

17 CHAIRMAN KEESE: Incremental comes in at
18 40 percent, and the baseload still stays in the 56
19 percent --

20 MR. McLUCAS: Right. We've got a
21 baseload would in 56 percent, and the incremental
22 output -- and this is where the combination of
23 duct firing and power augmentation, which are two
24 different peaking schemes that would not
25 necessarily be used at the same time, that use

1 would be market driven with the duct firing having
2 a heat rate itself of somewhere around 8500, on a
3 higher heating value basis. And then the power
4 augmentation scheme somewhere up in the vicinity
5 of 10,000.

6 But the combination of those two results
7 in an additional peaking efficiency of about 41 to
8 42 percent, as compared to about 38 percent for a
9 simple cycle combustion turbine.

10 CHAIRMAN KEESE: Okay. So Staff's
11 analysis of the peaking portion of this should
12 compare it with peaking plants.

13 MR. McLUCAS: Correct.

14 CHAIRMAN KEESE: And the baseload is not
15 affected.

16 MR. McLUCAS: Correct.

17 CHAIRMAN KEESE: Staff.

18 MS. DeCARLO: Well, I think our point
19 here is that if you're going to compare this to a
20 1,065 megawatt combined cycle plant, purely
21 combined cycle, then it is a little bit less
22 efficient than that.

23 CHAIRMAN KEESE: Right, but it sounds
24 like, in fairness, what you should compare it to
25 is an 820 megawatt combined cycle and a 245 --

1 that has an ancillary 245 megawatt peaker.

2 MS. DeCARLO: Right. And we just wanted
3 to bring to your attention the efficiency issues
4 that may be involved with this project.

5 CHAIRMAN KEESE: Right.

6 MS. DeCARLO: With regard to
7 reliability --

8 CHAIRMAN KEESE: But when it's operating
9 as a baseline, we agree it's 56 percent. It's
10 only when they --

11 MS. DeCARLO: Right. With only the 820
12 megawatts. Right.

13 With regard to reliability, our main
14 concern is that -- and I won't attempt to get into
15 the specifics that I know very little about -- but
16 our main concern is that if the condenser system
17 goes out, or if the cooling system goes out, then
18 the system loses the 1100, or 1065 megawatts all
19 at once, and Cal-ISO has raised some concerns
20 about this, as well, is whether the system in
21 general can handle an outage of that magnitude. I
22 don't think it's been faced before, because we
23 haven't had plants this big before.

24 Staff compares this to a four on two
25 configuration, where you don't have the issue of,

1 I believe, of a single condenser failure because
2 there would be two separate systems.

3 MR. McLUCAS: Yeah. With this,
4 actually, we would never lose 1100 megawatts with
5 a -- in the cooling system. Eleven hundred
6 megawatts would be all three combustion turbines,
7 plus the steam turbine. And most of the failures
8 that would occur in the cooling system would not
9 even result in a steam turbine trip.

10 So with that, you know, we're talking
11 about losing just a portion of the output. If we
12 lost a cell in the cooling tower, we'd be losing
13 one, you know, probably less than five percent of
14 the output. If we were to lose a circulating
15 water pump, we'd probably lose less than ten
16 percent of the plant output. We can operate with
17 half the condensers, and still get the majority of
18 the plant output. We might have to back down on
19 the duct firing a little bit to keep the steam
20 turbine backpressure within limits.

21 But there's not really conditions that
22 would result in tripping 1100 megawatts, and
23 that's one of the things with out full capacity
24 bypass that helps us, is that even if we did have
25 something that resulted in a steam turbine trip,

1 it would not necessarily trip the three combustion
2 turbines.

3 MS. DeCARLO: If I may ask the
4 Applicant, would you be willing to provide some of
5 that information in writing for our Staff to look
6 over?

7 MR. McLUCAS: Absolutely.

8 MR. WHEATLAND: Yeah, we -- if the Staff
9 wanted to provide us some questions in writing,
10 we'd be happy to do that. Or, I should say, the
11 Staff -- the Applicant's also available any time
12 to meet with the individual Staff person and share
13 information directly. We're very happy to do
14 that, as well.

15 MR. McLUCAS: Or, if they'd just like me
16 to write down everything I've just mentioned, I'd
17 be happy to do that, as well.

18 MS. DeCARLO: That would be great.
19 Thank you.

20 CHAIRMAN KEESE: Thank you. Okay.
21 Anything else on this issue?

22 MS. DeCARLO: No, that's all.

23 CHAIRMAN KEESE: Okay. Thank you very
24 much. That was a very clear explanation.

25 HEARING OFFICER WILLIAMS: Do we need a

1 by day so that that's no confusion about when this
2 will be provided, within the next three, four
3 days, maybe?

4 MR. WHEATLAND: The written summary of
5 what he just said?

6 HEARING OFFICER WILLIAMS: Yes.

7 MR. WHEATLAND: Can I just ask, when is
8 the transcript available?

9 HEARING OFFICER WILLIAMS: Well, the
10 transcript is going to be fairly long, so we're
11 talking probably about a week.

12 MR. WHEATLAND: Okay. Jim, when would
13 you be able to provide a summary of what you just
14 presented here?

15 MR. McLUCAS: Well, I'll be on vacation
16 next week, so I'd have to have it to at least our
17 internal team by Friday.

18 MR. WHEATLAND: So we could provide it
19 to you -- we can provide it to Staff on Monday.

20 HEARING OFFICER WILLIAMS: Okay. Great.

21 CHAIRMAN KEESE: Thank you.

22 HEARING OFFICER WILLIAMS: Okay, thank
23 you.

24 Okay. Land Use. I guess Staff has a
25 concern about the Alameda County land use

1 policies.

2 MS. DeCARLO: Yes. We received a letter
3 from Alameda County stating that the project was
4 in conformance with all their LORS. However, our
5 own Staff has some concerns about this,
6 particularly with regard to Measure D -- is it D
7 -- D, which is a new initiative passed last
8 November, which limits, has some implications on
9 zoning and expansion of development. The county
10 is currently struggling with how to interpret this
11 and incorporate it into their land use decisions.

12 We are now, we have just scheduled a
13 meeting to meet with the County of Alameda
14 planning staff for this coming Friday, to discuss
15 our concerns with the LORS compliance, and to
16 receive kind of their analysis, how they came to
17 determine that it was in compliance. We're not
18 looking to put in place our own determination in
19 place of the County of Alameda's staff. We just
20 want some kind of clarification as to how they
21 arrived at their analysis.

22 So we're hoping to work with the county
23 to resolve these issues.

24 HEARING OFFICER WILLIAMS: With a
25 specific eye towards Measure D, I take it.

1 MS. DeCARLO: Yes. That's our big
2 concern.

3 HEARING OFFICER WILLIAMS: The
4 Applicant.

5 MR. WHEATLAND: For the record, the
6 Alameda County Community Development Agency, the
7 director of that agency, who is responsible for
8 determining the conformance of the project with
9 Measure D, and the planning ordinances of the
10 county, sent a letter to the Staff on April 15th,
11 2001 -- I'm sorry, August 15th, of 2001, saying on
12 behalf of the county, in our estimation, and as
13 confirmed by the Alameda County Council, this
14 provision would allow -- that is, the provisions
15 of Measure D -- would allow the development of a
16 power generation facility with adequate
17 discretionary review such as that provided by the
18 California Energy Commission siting process.
19 So --

20 MS. DeCARLO: Yes. In our -- I'm sorry,
21 go ahead.

22 MR. WHEATLAND: Okay. Well, I'm just --
23 it comes as a surprise to us that the Staff has
24 further questions or doubts about the
25 determination of the county, as confirmed by the

1 County Counsel, that the project would be in
2 conformance with Measure D.

3 MS. DeCARLO: Our confusion arises from
4 -- Measure D doesn't specifically address power
5 plants, and we can find nowhere in Measure D that
6 would specifically allow for the power plant.
7 Therefore, we're just seeking clarification from
8 the county as to how they arrived at that
9 determination from a reading of Measure D.

10 MS. DAVIS: We are preparing a letter to
11 the county which outlines our specific questions,
12 and when that is docketed then you'll have a more
13 clear idea of where our questions come from.

14 MR. WHEATLAND: Could I ask the Staff,
15 does the letter question the determination by the
16 county's director and County Counsel? Is it
17 asking somehow to elevate this issue to the Board
18 of Supervisors, or is it just asking for
19 clarification from the people that the county has
20 designated to provide you a response?

21 MS. DeCARLO: Currently, we're seeking
22 clarification just on how they arrived at their
23 conclusion. Potentially, we may be asking the
24 Board of Supervisors to make a formal
25 determination. We haven't decided yet.

1 MR. WHEATLAND: In the Applicant's view
2 that would be entirely inappropriate. Where the
3 Commission asks for a consultation from local
4 agencies, the Commission hasn't second guessed the
5 person who has been authorized by the local agency
6 to speak on behalf of that agency. We think it's
7 very important that if the Commission were to take
8 the step of saying that they don't accept the
9 determination of the County Counsel and the
10 Director of Planning, and somehow require a
11 ratification of these communications by the board,
12 that that come from the Commission itself and not
13 just from the Staff, because it would be a
14 significant departure from the way that the
15 Commission has traditionally accepted local agency
16 comment.

17 MS. DeCARLO: I believe we've requested
18 consistency determinations from counties in other
19 instances, such as variances for height variances.
20 We've requested a board of supervisors to issue a
21 consistency, a formal determination that the
22 project is consistent.

23 MR. WHEATLAND: Well, there sometimes
24 has been where there's a discretionary review that
25 would otherwise be required by the local agency,

1 but for the jurisdiction of the Commission. That
2 is, if an agency was required to have the
3 decision-making body make a discretionary
4 determination, like a variance, then a consistency
5 determination would be appropriate.

6 But here, there is no discretionary
7 review that's required by the county, under
8 Measure D. And so it's not a matter of
9 discretionary review. It's a matter of second-
10 guessing the determination of the agency staff,
11 and we think, if the Commission were to do that,
12 that should come from the Commission itself, and
13 not from the Staff.

14 MS. DeCARLO: Our only concern is that
15 Measure D specifically allows for the Board of
16 Supervisors to be the solid body which implements
17 Measure D, and so pursuant to that we're just
18 requesting -- we would be, and it hasn't been a
19 formal determination by Staff yet as to whether
20 we're going to take that step -- requesting a
21 formal determination from the county.

22 But that's why the county is involved
23 there, because Measure D specifically sets forth
24 the County Board of Supervisors as the authority
25 to implement Measure D.

1 MR. WHEATLAND: Yes. And here they've
2 chosen to exercise their authority to implement
3 the measure by delegating that authority to their
4 planning department, and to their County Counsel.

5 HEARING OFFICER WILLIAMS: Well, I think
6 that's probably a statutory interpretation issue
7 that --

8 CHAIRMAN KEESE: Yeah. I don't, you
9 know, my first impression of it would be that with
10 all the siting cases we have around here, we're
11 looking -- we're spending time on backing up
12 documentation that we've gotten that says it's
13 okay. I mean, I guess it's somewhat analogous to
14 the water decision we looked at earlier, where
15 we're hearing from an agency we have authority,
16 and we haven't had DWR intervene or other people
17 intervene. And if we're going to get our workload
18 done, at a certain point we say -- I mean, I'm
19 giving you first impressions here, I'm not -- this
20 is -- I'm not trying to give any ruling yet. But
21 when we get our work done by somebody else, we say
22 thank you, and move on.

23 That would be my first reaction, why we
24 would go beyond that. But Staff is a party here.

25 MS. DeCARLO: Right. But Staff is just

1 -- we haven't seen the line of logic by which the
2 county came to its determination, so we're just
3 seeking clarification from the staff as to their
4 line of logic, considering that this is a brand-
5 new initiative that hasn't been fully implemented
6 by the county yet. This affects other projects as
7 well. It's not just East Altamont, this affects
8 Tesla, as well, and some others that might be
9 coming down the pike.

10 So we just want to make sure that since
11 this is our first time addressing it, that we do
12 it correctly, we do it with as much detail as
13 possible, and we satisfy our own staff that this
14 is an accurate determination.

15 HEARING OFFICER WILLIAMS: Well,
16 Applicant, down the road, if you think that -- if
17 you still think, as this matter progresses, that
18 Staff is going beyond what they need to do, then
19 you can let us know, and we'll take it up then.
20 But it sounds to me like they're just trying to
21 apply an abundance of caution here. And as long
22 as it's not disruptive of our schedule, then we
23 can just -- we can go along with it to a certain
24 extent.

25 Is there any public comment on the Land

1 Use issues?

2 MS. DeCARLO: Do you want to just read
3 that --

4 MS. DAVIS: Sure. This is also from a
5 letter from Dolores Kuhn that she read from
6 earlier. At Calpine meetings we were led to
7 believe that the power would benefit the
8 surrounding counties, or at least California.
9 Calpine, being a merchant plant, the owners may
10 sell the power from this merchant plant into the
11 energy system to any buyer willing to make a
12 purchase. Rumors have it that this may be Nevada
13 and Oregon. Why would Alameda County allow a
14 plant to be built on prime agricultural land when
15 it possibly will not even benefit our state, and
16 how is it allowed on a scenic highway.

17 HEARING OFFICER WILLIAMS: Well, there
18 are several --

19 CHAIRMAN KEESE: Let's get it in the
20 record.

21 HEARING OFFICER WILLIAMS: Do you want
22 to address any of that, Applicant?

23 MR. WHEATLAND: Response on how we sell
24 the power?

25 MS. TORRE: What I was thinking of. My

1 name is Alicia Torre, and I'm the Project
2 Development Manager for the East Altamont Energy
3 Center.

4 Calpine does not usually do considerable
5 contracting for a plant that has not even made it
6 through permitting, let alone construction.
7 However, the only plan for the output of this
8 plant, for a portion of it, is that it is named in
9 the contract that the State of California, DWR,
10 has, with Calpine -- there are several contracts
11 with Calpine -- but there is one which names about
12 four or five plants, and East Altamont Energy
13 Center is one of the plants that is named as a
14 source of potential supply backing up that
15 contract.

16 So there are no other -- I have not
17 heard of any rumors, internally or externally to
18 the company, that we would have any plans to sell
19 power to Nevada or Oregon, and obviously would not
20 be as valuable, given the transmission costs to
21 move it that far away. There's plenty of need for
22 power right here in California, where we're
23 suffering blackouts, so. Again, the only -- the
24 only plans for power sale at this time are that is
25 named in the contract with the State of

1 California.

2 CHAIRMAN KEESE: That doesn't
3 specifically demand that all the power from this
4 power plant be --

5 MS. TORRE: No.

6 CHAIRMAN KEESE: It's just from this
7 group, you will deliver this much.

8 MS. TORRE: Correct. There's, in fact,
9 no commitment to provide a single kilowatt hour
10 from the East Altamont Energy Center, as would
11 indeed be appropriate, since we have not permitted
12 it.

13 HEARING OFFICER WILLIAMS: Is there any
14 comment on the question about scenic highways?

15 MS. TORRE: Oh, this --

16 HEARING OFFICER WILLIAMS: Do you wish
17 to address that?

18 MS. TORRE: Do you want to answer that?

19 MR. PRIESTLEY: Yeah, this is Tom
20 Priestley, again.

21 I guess there are several parts to this
22 answer. One is that we do have documentation from
23 the company itself that this project will be
24 consistent with their LORS, including those
25 pertaining to scenic highways. And it is true

1 that back in the 1960's, Alameda County designated
2 virtually every road in the unincorporated
3 portions of the county as a scenic highway. And
4 the ways in which those regulations have been
5 enforced is -- has been very inconsistent, let's
6 say.

7 Our project is consistent with the
8 spirit of these regulations, in that from one of
9 the scenic highways it more than maintains the
10 setback established in the scenic highway
11 regulations. The other scenic highway is Mountain
12 House Road, and you might, if you're familiar with
13 the site, you know that Western Area Power
14 Administration has a very large substation right
15 on the other side of this road. So our contention
16 is that our power plant project would not
17 necessarily change the visual quality and
18 character of this particular segment along this
19 road.

20 In addition, to the extent that there is
21 a scenic value along this road, it's the view
22 towards the hills toward the west. Our project is
23 located on the east side of the road, and would
24 not impact those views.

25 In addition, you've heard about our

1 landscape plan, and, actually, it's one I'm proud
2 of, because we have gone to great lengths to try,
3 first of all, to pick plant species that are going
4 to be appropriate for the wildlife in the area,
5 and on the other hand, to pick species that are
6 going to provide effective screening toward the
7 power plant from the surrounding roads,
8 particularly Mountain House Road. And in addition
9 to providing screening, to create a level of
10 visual interest, as well, in terms of selection of
11 trees that have, you know, some foliage interest,
12 and so on.

13 So, you know, I believe, in fact, that
14 we are consistent with the county's scenic highway
15 regulations.

16 HEARING OFFICER WILLIAMS: Thank you.

17 Did we tackle all the components of that
18 question? I know there were --

19 MS. DeCARLO: With regard to Staff's
20 analysis with the scenic highway issue, I believe
21 we're addressing that in our Visual Resources
22 analysis. And I think our conclusion is basically
23 with adequate screening, there's no problem.

24 HEARING OFFICER WILLIAMS: Right. Okay.
25 I think we're just about there.

1 (Inaudible asides.)

2 HEARING OFFICER WILLIAMS: If we turn to
3 the Committee's questions that were presented in
4 the scheduling order. I think the only things we
5 have not covered are -- completely, are the noise
6 impacts.

7 CHAIRMAN KEESE: That's it.

8 HEARING OFFICER WILLIAMS: That's it.

9 MS. DeCARLO: I believe we haven't
10 discussed, either, the agricultural land and
11 proposed mitigation for that.

12 HEARING OFFICER WILLIAMS: Yeah, we did
13 that first. Okay, why don't we proceed with the
14 noise impacts first, and a discussion of noise
15 level predictions.

16 MR. BASTASCH: Mark Bastasch, for
17 CH2MHill.

18 And as far as the status on the noise, I
19 spoke with the CEC's consultant this morning, Jim
20 Buntan, and he stated to me that he had received
21 all the data that he's requested, and that he's --
22 actually has drafted, or very close to finishing
23 his draft of the PSA, and didn't indicate that
24 there was any additional data required.

25 CHAIRMAN KEESE: Wonderful.

1 (Laughter.)

2 CHAIRMAN KEESE: Wonderful. All right.

3 And what, agricultural land, did you say?

4 MS. DeCARLO: Oh, the Committee has
5 listed as one of the topic areas the Applicant's
6 discussions with Alameda County over mitigation
7 for loss of agricultural land.

8 HEARING OFFICER WILLIAMS: Yes. I was
9 presuming that that was a part of the agreement.
10 I don't know if it's come up, but --

11 MS. TORRE: We have an agreement in
12 draft, which has gone back and forth and I think
13 is in its final form, but they're doing a final
14 review, a farmland mitigation agreement with
15 Alameda County. They have -- plan to have the
16 Board of Supervisors, it'll be on the agenda for
17 the Board of Supervisors meeting of December 4th.
18 So after it's approved, we would then provide it
19 into the record here. And we see no issues with
20 it. I mean, the --

21 HEARING OFFICER WILLIAMS: Has Staff
22 seen that at all?

23 MS. TORRE: No, we've --

24 HEARING OFFICER WILLIAMS: Is it still
25 confidential, sort of?

1 MS. TORRE: We said that we would
2 provide it as soon as it was approved by the
3 board, and that is, you know, that's -- they have
4 to notice that, just like you do, and so that's
5 why it's for the December 4th board meeting.

6 CHAIRMAN KEESE: Okay. And it's an
7 Alameda County requirement?

8 MS. TORRE: They raised the issue of
9 cumulative impacts from taking prime farmland out
10 of use, and we agreed to mitigate. And so it's
11 been a very friendly process.

12 CHAIRMAN KEESE: Okay.

13 HEARING OFFICER WILLIAMS: Staff, is
14 that your understanding of --

15 MS. DeCARLO: We are waiting to see the
16 mitigation plan. It's a cumulative CEQA land use
17 impact.

18 MS. TORRE: Bruce Jensen, the senior
19 planner, did -- is not here today, but he did say
20 to me that if you, you know, wanted to call him,
21 that, you know, he'd be happy to take any question
22 about that.

23 MS. DeCARLO: And actually, we're
24 meeting with, I believe, Bruce, on Friday, so we
25 can discuss this with him, as well.

1 CHAIRMAN KEESE: Okay.

2 MS. DeCARLO: I'm not sure if the
3 Committee wanted any Staff to elaborate on its
4 noise analysis or significance criteria.

5 CHAIRMAN KEESE: If you have any
6 comments.

7 MS. DeCARLO: It's not really a schedule
8 impact. Just to give you a heads up.
9 Traditionally, our significance criteria is
10 basically a five dBa change. Now, this project
11 will go over that. It'll be somewhere around
12 maybe 16 dBa, or so. This is a bit much. Staff's
13 a little bit concerned. Applicant has suggested
14 that they can mitigate that down to a total of 45
15 dBa. Staff would like to see more in the area of
16 40 dBa. Just to kind of give you a heads up.

17 This doesn't impact schedule. Staff
18 will elaborate its analysis in the PSA.

19 MR. WHEATLAND: I think it would be
20 better if we comment on that once we've seen their
21 analysis.

22 CHAIRMAN KEESE: Okay. Thank you.
23 Anything else?

24 HEARING OFFICER WILLIAMS: Do the
25 parties have anything further to offer? Have we

1 missed something?

2 CHAIRMAN KEESE: So, we've got to ask
3 what the impact -- unless you've got something
4 else.

5 MS. STRACHAN: No. This is Susan
6 Strachan.

7 CHAIRMAN KEESE: We're going to talk
8 about schedule.

9 MS. STRACHAN: Well, I was just going to
10 say that Facility Design was mentioned in the
11 scheduling notice. We just wrote a brief
12 paragraph in our status report, acknowledging the
13 supplement that we filed eliminating the
14 evaporation ponds and the recycled water ponds,
15 and some other sign enhancement, planter sign
16 enhancements.

17 HEARING OFFICER WILLIAMS: Any comment
18 on that, Staff?

19 MS. DeCARLO: No.

20 MS. DAVIS: We do have comments from the
21 public, though. I'm reading from the same letter
22 on Facility Design, Noise, and Visual Impacts.

23 CHAIRMAN KEESE: Okay.

24 MS. DAVIS: Would you like me to go
25 ahead?

1 Facility Design. A, why not locate the
2 plant on the far north side of the project site,
3 away from residence and school. B, why not aqua
4 ammonia instead of anhydrous ammonia. Accidents
5 do happen. And then, parentheses, article faxed.
6 I don't know about the article that was faxed.

7 Noise and Visual Impacts. I visited
8 other plants both under construction and partially
9 running. The noise and commotion from all the
10 construction going on and the noise from the plant
11 in operation was not living up to the description
12 that Calpine described as quiet as a library.
13 Calpine can debate all they want on what kind of
14 tree or landscaping is going to do the best job.
15 Bottom line is, there is no tree or landscaping
16 that can hide the enormous size of this plant.

17 The Yuba-Sutter plant we visited was not
18 hidden, an indication of what our visual impact
19 will be. Our visual quality will be diminished
20 for life. Our view of Clifton Court Forebay will
21 be gone. When all is done, we will be the ones
22 left out -- we will be the ones left to have to
23 look at and hear the plant every single day of our
24 lives.

25 Then another comment at the very bottom

1 is, I would like to know if Calpine has addressed
2 the resolution R01-406 from the Board of
3 Supervisors of San Joaquin County. And that's on
4 the back side of this comment sheet. I believe
5 that this was docketed, this resolution from the
6 San Joaquin County Board of Supervisors at an
7 earlier date.

8 HEARING OFFICER WILLIAMS: Applicant, do
9 you want to take a stab at some of those?

10 MR. WHEATLAND; Would it be appropriate
11 to say that we always appreciate public comment,
12 and we will definitely take a look at the
13 resolution that's been referenced. But I --

14 MS. TORRE: I would actually like to
15 speak to that.

16 MR. WHEATLAND: Oh, okay.

17 MS. TORRE: The resolution that was
18 referenced was provided to the Energy Commission,
19 and we -- I'm sorry, I'm not a pro at this. The
20 resolution -- we also sent a letter to San Joaquin
21 County in response to all of the area's concern
22 that they had raised in the resolution, and that
23 was also copied to the Commissioners and to the
24 Energy Commission.

25 So all of that occurred several months

1 ago.

2 CHAIRMAN KEESE: Okay. I guess the
3 final question, then, is opinions about what this
4 does to our schedule. Do you have anything --

5 MS. DeCARLO: Staff is prepared to go
6 ahead with the PSA, as scheduled, November 30th.
7 We do definitely have concerns about issuing a PSA
8 without the PDOC and without some of this other
9 information. But we are ready and willing.

10 CHAIRMAN KEESE: Okay. Just because of
11 the season it is and people have to plan, let's
12 stick with that. We'll do what -- you'll do what
13 you can do on the PSA. And if there's things you
14 can't do --

15 MS. DeCARLO: We'll let you know.

16 CHAIRMAN KEESE: -- you can't do. Okay
17 with Applicant?

18 MR. WHEATLAND: Oh that's fine. We
19 would like to see the PSA be issued --

20 CHAIRMAN KEESE: We'll get what we can
21 get.

22 MR. WHEATLAND: -- yes.

23 CHAIRMAN KEESE: And if there's things
24 that just haven't happened, that's the way it'll
25 be.

1 MR. WHEATLAND: Yes. That's right. So,
2 as far as the PSA, we would be happy to see it
3 issued on the 30th.

4 CHAIRMAN KEESE: Okay. Then the
5 question is, do we have to go any further than
6 that?

7 MR. WHEATLAND: Well, I would like to
8 ask if, for example, the original Staff -- the
9 Committee schedule had PSA workshops held in early
10 and mid-December. We would like to see that we go
11 ahead with those workshops, both to put away the
12 issues for which there is no significant dispute,
13 and there should be many of those in the PSA, and
14 also to address any outstanding differences on the
15 areas that are in dispute. We think the earlier
16 that we talk about these together in the
17 appropriate forum, the better off we will be.

18 CHAIRMAN KEESE: Staff.

19 MS. DeCARLO: Yeah, that's fine. We
20 fully intend to go forward with those workshops.
21 And we agree that the sooner we air out these
22 issues, the better for all parties.

23 I would just like to emphasize that
24 while the PSA schedule is on track, the FSA
25 schedule may not be, depending upon receipt of

1 PDOC/FDOC, and then the other items we listed in
2 our status report.

3 MR. O'BRIEN: Perhaps the Committee
4 might want to consider, then, for the Staff and
5 the Applicant and the other parties some time in
6 early December, after the issuance of the PSA and
7 after the first of the PSA workshops, to inform
8 the Committee as to where they think the schedule
9 stands. And then it might be appropriate --

10 CHAIRMAN KEESE: In this status report
11 on December 3rd?

12 MR. O'BRIEN: Yeah. If -- December 4th,
13 that might be appropriate, or perhaps a little
14 later, after they've had a couple of workshops. I
15 don't know, in terms of what the Staff and the --
16 what the Applicant think. You know, my impression
17 was given the uncertainty over several issues that
18 came up today, it's a little hard at this point in
19 time to predict where we're going to be with the
20 FSA. And so it might behoove the parties, Staff,
21 et cetera, the Applicant, to, after the release of
22 the PSA, then after there's been some discussion
23 between the Staff and the Applicant, to come back
24 to the Committee as to where they think the
25 schedule needs to go in terms of a FSA release

1 date.

2 MR. WHEATLAND: I think the Applicant
3 would like to see another status conference. I
4 think the best time would be after the conclusion
5 of the workshops on the PSA. That would be, I
6 think, a good time to do it.

7 CHAIRMAN KEESE: I think that's a good
8 idea. And we just all have to remember that we're
9 all, every one of us in this room is juggling
10 cases, and there's a number of them that are going
11 to peak early next year. So the earlier one can
12 get on the schedule in a firm manner, the better.
13 And the -- with the caveat that since everybody's
14 going to be lining them up, changes are going to
15 result in -- changes are not going to be happily
16 received, probably, by anybody here, because we're
17 going to have a difficult time rescheduling into a
18 very crowded schedule that we see extending for
19 some period of time, starting in December and
20 moving through January, February, and March.

21 So we're --

22 MS. DeCARLO: I would just like to note
23 that until Staff receives the actual PDOC we might
24 not know much more.

25 CHAIRMAN KEESE: Right.

1 MS. DeCARLO: Even though a significant
2 time has passed, we might not --

3 CHAIRMAN KEESE: No, I understand. I'm
4 just -- I'm saying this at all my hearings now,
5 that we've got to remember that we're -- we have
6 already blocked stuff out way out forward, as
7 tentative. Just to try to keep our schedules
8 loose. And if something slips out, then something
9 can slip in. But it's going to be more difficult
10 the further we get along here. A lot of people
11 have deadlines of next -- of the first six months
12 of next year.

13 HEARING OFFICER WILLIAMS: So if I can
14 summarize, we're looking at the PSA, as indicated,
15 on November 30th. The workshops, there's a status
16 report number four that's due in early December,
17 where the Committee will be interested in hearing
18 from the parties about impacts to the schedule.
19 And then we're looking at a pre-hearing scheduling
20 conference again, sometime in mid-December.

21 CHAIRMAN KEESE: Mid-December status
22 conference.

23 HEARING OFFICER WILLIAMS: Status
24 conference.

25 MR. WHEATLAND: Could we move the status

1 report that's due December 3rd a few days forward,
2 so we'd have an opportunity to receive the PSA and
3 digest that before we comment to you on the next
4 status report?

5 CHAIRMAN KEESE: So you want to move the
6 December 3rd later?

7 MR. WHEATLAND: Yeah, just a few days
8 later.

9 MR. O'BRIEN: Maybe the Committee ought
10 to issue a --

11 HEARING OFFICER WILLIAMS: Revised.

12 MR. O'BRIEN: Yeah, a revised schedule
13 in a few days, based upon, you know --

14 HEARING OFFICER WILLIAMS: Okay. The
15 Committee will issue a revised scheduling
16 conference within the next several days. And
17 we'll take that into account.

18 MR. WHEATLAND: And also, may I ask to
19 comment just -- I know the issue of the FSA will
20 be discussed at the next conference, but can I
21 comment just briefly on the --

22 HEARING OFFICER WILLIAMS: Sure.

23 MR. WHEATLAND: We agree that there
24 needs to be an appropriate interval between the
25 issuance of the FDOC and the Final Staff

1 Assessment. That is, we need the FDOC first, and
2 then the Final Staff Assessment. The normal
3 interval in Commission proceedings under the
4 Commission's scheduling guidelines is 20 to 40
5 days, that the FSA comes out 20 to 40 days after
6 the issuance of the FDOC.

7 The Committee's schedule currently
8 provided a 37 day interval. I just wanted to note
9 that the Staff is requesting in their status
10 report a 45 working day interval, or a 63 day
11 interval in total, between the issuance of the
12 FDOC and the issuance of the FSA. And I know this
13 will come up at the next conference, but I wanted
14 to note that the Staff -- the Applicant believes
15 that that's too long a time, and that we need to
16 compress that time.

17 HEARING OFFICER WILLIAMS: Well, we're
18 dealing with Western, as well. Have you taken --
19 you have taken that into consideration?

20 MR. WHEATLAND: Yeah, and I think the
21 Committee took that into account in going to
22 allowing 37 days, rather than 20.

23 But the other thing, too, I'd like to
24 mention, is the Staff is also saying that there
25 needs to be other certain information received in

1 order to trigger, their suggestion was a trigger.
2 If that's the case, then we need to be as specific
3 as possible as to what those other events or
4 informational needs are. We certainly know the
5 FDOC, but I didn't hear with any clarity or
6 specificity today other informational needs that
7 are outstanding from any other agencies, or the
8 Applicant. And so if the Staff is to propose --

9 CHAIRMAN KEESE: All right. Let's --
10 we'll have those at our next -- we'll call for
11 that in our next --

12 HEARING OFFICER WILLIAMS: Yeah. And I
13 think we --

14 CHAIRMAN KEESE: -- status report, and
15 take it up at the next conference.

16 HEARING OFFICER WILLIAMS: Right. And I
17 think Staff has also some data requests that are
18 pending, as well.

19 MS. DeCARLO: Yes, we will formalize
20 those data requests and issue them shortly.

21 HEARING OFFICER WILLIAMS: Okay. So
22 we'll have to take that into account, as well.
23 But we, the Committee will produce a revised
24 schedule within the next several days, taking into
25 account everything that we've talked about today.

1 MS. DeCARLO: And if I can just state
2 about our coordination with Western. It has been
3 a task to try to coordinate review with Western
4 over all these subject areas, and considering that
5 the Final Staff Assessment will be their -- not
6 their final EIS, or EA, depending on how they go,
7 but pretty close to it, I think they will want --
8 I'm positive they want a couple more weeks to be
9 able to review that and send it to their highest
10 person, which impacts our review schedule. And
11 that's why we're requesting the increased days for
12 review, or for our ability, our working days.

13 HEARING OFFICER WILLIAMS: Yes, that
14 certainly is a consideration that we have to deal
15 with.

16 CHAIRMAN KEESE: You know, we've had
17 ones that we've done jointly with Western. We're
18 not doing this one jointly with them, right?

19 MS. DeCARLO: We are, yes.

20 CHAIRMAN KEESE: Oh, we are doing it
21 jointly?

22 MS. DeCARLO: Yes.

23 CHAIRMAN KEESE: It might be nice if
24 they could have somebody come to our next one.

25 MS. DeCARLO: Yes. They were

1 apologizing that they couldn't make it today.

2 CHAIRMAN KEESE: Okay. A two-hour
3 conference has been finished.

4 (Laughter.)

5 MS. BOS: There was a Sheldon Moore this
6 morning from the public, with four other people
7 that came at 10:00 o'clock, because they didn't
8 know of the change. And he drove over 80 miles,
9 and he wanted it on the record that he was very
10 unhappy. He brought four people, four from the
11 public, and it only went in the Internet on the
12 Web site today, so there was no way for them to
13 know that it was changed.

14 So I just wanted to mention his name,
15 Sheldon Moore. He was going to speak to you
16 today. So, thank you.

17 HEARING OFFICER WILLIAMS: Thank you.

18 CHAIRMAN KEESE: If he calls you again,
19 you can tell him we -- that was the first thing we
20 did, was apologize.

21 MS. BOS: Yeah, no phone number on
22 there. Thank you.

23 MR. O'BRIEN: Could I ask the Staff to
24 contact that gentleman and discuss with him what
25 his concerns were, and to the extent that he has

1 concerns that the Staff is addressing in its
2 analysis, if you could make him aware of that.
3 And if you think there's anything that should be
4 brought to the attention of the Committee, if you
5 could let us know.

6 MS. DeCARLO: Sure, we'll do that.
7 (Thereupon the Committee Conference
8 was adjourned at 4:43 p.m.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of November, 2001.

VALORIE PHILLIPS

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