

SCHEDULING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for the East Altamont Energy) 01-AFC-4
Center)
_____)

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

THURSDAY, JANUARY 3, 2002
10:10 a.m.

Reported by:
Peter Petty
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William Keese, Presiding Member

Major William, Jr., Hearing Officer

Terry O'Brien, Advisor to Chairman Keese

Ellen Townsend-Smith, Advisor to
Commissioner Pernell

STAFF AND CONSULTANTS PRESENT

Lisa DeCarlo, Staff Counsel

Cheri Davis, Project Manager

Tuan Ngo

John Kessler

PUBLIC ADVISER

Roberta Mendonca

APPLICANT

Gregory Wheatland, Attorney
Ellison, Schneider and Harris

Kris Helm
Alicia Torre
Mike Summer
Calpine Corporation

Susan Strachan, Project Manager
Strachan Consulting

Gary Rubenstein
Sierra Research

E.J. Koford
CH2M HILL

INTERVENORS

Robert Sarvey

ALSO PRESENT

Kirk Sornborger
Western Area Power Administration

Rick Gilmore, General Manager
Sandra Dunn, Counsel
Byron Bethany Irrigation District

Dan Flory
Department of Water Resources

Jim Sweeney, Permit Services Manager
San Joaquin Valley Unified Air Pollution Control
District

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10:10 a.m.

PRESIDING MEMBER KEESE: This is a scheduling conference for the East Altamont Energy Center by a Committee of the California Energy Commission. I'm Bill Keese, Presiding Member, and on my left is Terry O'Brien, my Advisor. Commissioner Pernell's is not here today; Ellie Townsend-Smith is his Advisor, on my right.

Our Hearing Officer is Major Williams, and we will let Major conduct the rest of this proceeding.

There are clearly issues that we have to go over that may take some time. There may be issues that are closed out. In scheduling this, if we can complete this by the 12:30 hour, we will go straight through. If, as we approach noon, it looks like we will not be able to close by that time, we will take a break for lunch, and we will reconvene this afternoon.

So, I would suggest that those who have an interest in completing this in one run, complete the issues which we do not have to discuss, very briefly. If there are issues on which we've settled, let's just announce that

1 we've settled them and that's it. Because we do
2 have issues, as I say, that we have to spend some
3 time on.

4 Major, would you take over.

5 HEARING OFFICER WILLIAMS: Thank you,
6 Chairman Keese. Good morning and happy new year
7 to all. I am the Hearing Officer, Major Williams,
8 Jr. The Commission's Public Adviser, Roberta
9 Mendonca, is present. She has identified herself.

10 If there are members of the public here
11 who have questions as we proceed, please feel free
12 to contact Roberta.

13 The parties are present. Applicant, Mr.
14 Wheatland, counsel, is present. Susan Strachan,
15 the Project Manager, is present.

16 Mr. Wheatland, do you have any other
17 representatives here that you would like to
18 introduce this morning?

19 MR. WHEATLAND: We have a number of
20 representatives here, but I think it might be more
21 appropriate for them to introduce themselves as
22 they come up to the table during their particular
23 portions of the discussion if that will be all
24 right.

25 HEARING OFFICER WILLIAMS: That's fine.

1 Thank you.

2 Staff, Cheri Davis, the Project Manager,
3 is present; as is Lisa DeCarlo, Staff Counsel.
4 And Mr. Sornborger from Western Area Power
5 Administration is present.

6 Do we have any representatives here from
7 Bay Area Air Quality Management District? Seeing
8 none.

9 I think Mr. Gilmore from Byron Bethany
10 is present; as is Sandra Dunn, counsel for Byron
11 Bethany Irrigation District.

12 Mr. Gilmore?

13 MR. GILMORE: Yes, that's also correct.
14 Also, Mr. Dan Flory, Chief of the State Water
15 Project Analysis Office is also here. And if we
16 could indulge the Committee, if we could move --
17 if there are any water sections on the scheduling
18 conference, if we could move those ahead to
19 accommodate Ms. Dunn and Mr. Flory, it sure would
20 be appreciated. Thank you.

21 HEARING OFFICER WILLIAMS: Mr. Flory, is
22 it? Would you step forward and make your
23 introduction. And also, if you have a business
24 card, we'd like to make it easy on our court
25 reporter if you could give him a card.

1 MR. FLORY: Yes, my name is Dan Flory
2 with the Department of Water Resources, State
3 Water Project Analysis Office. We do water supply
4 and power contracts.

5 HEARING OFFICER WILLIAMS: How do you
6 spell your name, sir?

7 MR. FLORY: F-l-o-r-y.

8 HEARING OFFICER WILLIAMS: Thank you.
9 Are there any other participating agencies
10 present? I know we have, on the phone, Mr. Jim
11 Sweeney from the San Joaquin Valley Unified Air
12 Pollution Control District. Mr. Sweeney, are you
13 there?

14 MR. SWEENEY: Yes, I am.

15 HEARING OFFICER WILLIAMS: And I believe
16 we have another caller on the phone? Is there
17 another caller on the phone?

18 MR. SUMMER: Yes, this is Mike Summer
19 from Calpine.

20 HEARING OFFICER WILLIAMS: Do we have
21 anyone from CURE present? CURE is not present.

22 We have one individual intervenor, Mr.
23 Robert Sarvey, who is a local resident in the East
24 Altamont area. Is he present today? Apparently
25 he is not.

1 Do we have any other jurisdictions or
2 members of the public who would come forward and
3 introduce themselves at this time, please.

4 MS. MENDONCA: Major, I'm sure you'll
5 want the intervenor, Mr. Sarvey, to introduce
6 himself.

7 HEARING OFFICER WILLIAMS: Oh, he is
8 here? Please come forward, sir.

9 MR. SARVEY: Robert Sarvey, 501 West
10 Grantline Road, Tracy, California; intervenor on
11 the project.

12 HEARING OFFICER WILLIAMS: Would you
13 like to sit up front here, Mr. Sarvey.

14 For purposes of our discussion today the
15 Committee's agenda will be taken from our December
16 21st interim scheduling order and the staff and
17 applicant's status report number four, which the
18 parties recently filed.

19 Also, before I forget, there is one
20 housekeeping matter. For the folks on the
21 telephone, if you leave the discussion please
22 don't put us on hold. That will interfere with
23 the microphone system that we have set up here.
24 So we would ask you to indulge us on that one
25 matter. Don't place us on hold.

1 At the end of each section as we go
2 through the various topics that we'll be
3 discussing today, we will first take any comments
4 or questions from the participating agencies and
5 intervenors.

6 During the course of our discussion
7 under each section there will be issues concerning
8 the Committee's issuance of a new schedule for
9 this project. We will take up scheduling issues
10 as they arise. After that the Committee will
11 entertain questions from the public.

12 Mr. Wheatland had requested -- excuse
13 me, Mr. Gilmore had requested that the water topic
14 be advanced on our agenda. I believe that's fine
15 with the Committee.

16 So we will begin our discussion today on
17 the water supply issue. The interim scheduling
18 order had listed several issues that we wanted to
19 discuss under water supply. Of course, the
20 Committee has received the status reports and
21 reviewed those, as well. So we are familiar with
22 the issues.

23 So, Mr. Gilmore, I think --

24 MS. DeCARLO: If I may really quickly,
25 this is Lisa DeCarlo, Staff Counsel. We were

1 intending to have our water analyst call in at
2 10:30 to discuss, or to be available to answer any
3 questions. We are trying to get ahold of him
4 right this moment, so we can proceed now. But if
5 there are any substantive questions of staff --

6 HEARING OFFICER WILLIAMS: Okay, that's
7 fine.

8 MR. GILMORE: We can wait 15 minutes.

9 HEARING OFFICER WILLIAMS: Okay. Well,
10 we should probably take a topic that's not going
11 to take very long.

12 PRESIDING MEMBER KEESE: Is applicant --
13 you're okay on your witnesses for water?

14 MR. WHEATLAND: Yes, we are.

15 PRESIDING MEMBER KEESE: Why don't we
16 hold until we get him on the phone. Let's just
17 make sure we close this --

18 MS. DeCARLO: Okay.

19 PRESIDING MEMBER KEESE: But we'll start
20 at 10:30 in any event on that issue.

21 HEARING OFFICER WILLIAMS: Why don't we
22 take a topic that might not take very long. Let's
23 get Western involved. It's good to see that you
24 were able to make it today.

25 MR. SORNBORGER: Glad to be here.

1 HEARING OFFICER WILLIAMS: Thank you.
2 The Committee had some interest in talking to
3 Western about the interconnection process, if
4 there were any issues there; or just generally to
5 bring the Committee up to date on your involvement
6 in this matter, and advise us on how matters are
7 progressing, if you'd do that.

8 MR. SORNBORGER: As far as the
9 interconnection goes, Western performs a system
10 impact study which looks at the -- Western
11 performs two electrical engineering studies. They
12 perform a system impact study which looks at
13 capacity on the transmission lines; and a detailed
14 facility study which looks at the, in this case it
15 would be the Tracy substation, for
16 interconnection.

17 Both of those studies have been
18 completed. And Calpine is in receipt of them. So
19 as far as Western goes on the electrical side,
20 efforts are complete.

21 HEARING OFFICER WILLIAMS: And in
22 reviewing staff's report, apparently Western also
23 has a cultural resource component that it has to
24 fulfill. Could you tell us about that just
25 briefly, if you could?

1 MR. SORNBORGER: Actually there's
2 another study that they do. That's more on the
3 environmental side, but, yes, there's a cultural
4 resource study. I believe it's a section 106.
5 And we interface with the Native American Heritage
6 Commission and the State Historic Preservation
7 Office.

8 To kick those studies off letters are
9 sent out to the tribes that if they're to be
10 affected, are to be affected by the project.
11 Those letters have been sent out. Western is in
12 contact with those tribes.

13 As of right now the cultural resource
14 study is underway and there's no hitches. It
15 shouldn't affect the schedule at all.

16 Section 7 consultation, which is the
17 biological resource study, is performed and we
18 enter into consultation with the U.S. Fish and
19 Wildlife Service and an informal consultation with
20 the National Marine Fishery Service, or NMFS.

21 We have received, actually we've revised
22 the biological assessment provided by Calpine due
23 to information that was received during a workshop
24 having to do with delta impacts, and listings of
25 species from the U.S. Fish and Wildlife Service.

1 On the 15th we're going to have a
2 meeting with Calpine to see if there's any issues
3 with that BA, and finalize it on the 18th. And I
4 foresee submitting that BA to the Fish and
5 Wildlife Service the week of the 21st, and
6 entering into that formal consultation process.

7 After I submit it, the Fish and Wildlife
8 Service will have 30 days to get back to us to see
9 if there's any holes in that. At the end of that
10 30 days we should have a pretty good idea of what
11 the biological opinion will be as far as adverse
12 impacts.

13 Once those 30 days are up there's 135
14 days that the Fish and Wildlife Service has to
15 issue a formal response to the biological
16 assessment and a formal response will be in what's
17 called the biological opinion. And that's what
18 the Fish and Wildlife Service will issue.

19 HEARING OFFICER WILLIAMS: Applicant, do
20 you have any questions?

21 MR. WHEATLAND: No, we don't.

22 HEARING OFFICER WILLIAMS: Staff, have
23 anything to add to that.

24 MS. DeCARLO: No questions.

25 HEARING OFFICER WILLIAMS: I think

1 somebody came on the telephone. Is there somebody
2 there new?

3 MR. KESSLER: Yeah, this is John Kessler
4 and I'm helping to prepare the water and soil
5 section.

6 HEARING OFFICER WILLIAMS: Oh, yes,
7 we've been waiting for you, thank you.

8 MR. KESSLER: You're welcome.

9 HEARING OFFICER WILLIAMS: Okay, so, Mr.
10 Sornborger, we're talking then essentially 160
11 days?

12 MR. SORNBORGER: That 30 days is inside
13 of that 135 days, so it's 135 days total.

14 HEARING OFFICER WILLIAMS: Okay. Thank
15 you. All right, I think we'll move on to water.

16 MR. SORNBORGER: Could I ask?

17 HEARING OFFICER WILLIAMS: Sure.

18 MR. SORNBORGER: Did you have anything
19 else in particular for Western? I have our
20 transmission planning engineer here to address any
21 questions. If that was it as far as you were
22 looking for Western, is it okay if she goes?

23 HEARING OFFICER WILLIAMS: Yeah. Well,
24 if the parties don't have any further questions,
25 then we appreciate --

1 MR. SORNBORGER: Okay, thank you.

2 HEARING OFFICER WILLIAMS: -- your
3 addressing the Committee.

4 PRESIDING MEMBER KEESE: Thank you.

5 HEARING OFFICER WILLIAMS: Okay, water
6 supply. Apparently there's been some movement
7 here on the positive side. I guess, Mr. Gilmore,
8 would you like to initiate the discussion here?

9 MR. GILMORE: Yes, good morning, thank
10 you very much. My name is Rick Gilmore, and
11 sitting behind me here is Dan Flory with the State
12 Water Project Analysis Office.

13 I just wanted to update the Committee
14 that as you are very well aware over the last four
15 or five years, the District has been having
16 discussions, negotiations with the Department of
17 Water Resources regarding the operations of the
18 District within the intake channel of the state
19 aqueduct system.

20 We did have a meeting on December 19th
21 to discuss some outstanding issues the Department
22 and the District has. We're still working on
23 those. We're down to one issue. And we're
24 hopeful to have the issues resolved in the next
25 15, 20 days.

1 And we're hopeful, the District's
2 hopeful that after the board of directors has
3 approved the agreement with the Department of
4 Water Resources that it will satisfy all of the
5 concerns that staff has raised relative to the
6 applicant's project.

7 And if Mr. Flory has any comments he can
8 speak on behalf of the Department.

9 HEARING OFFICER WILLIAMS: Mr. Flory,
10 would you like to add something?

11 MR. FLORY: Sure. My name is Dan Flory
12 with the Department of Water Resources. I don't
13 think I have anything to add to that.

14 We have been working on an agreement
15 that I think is going to resolve a lot of these
16 issues. And we are very close. I apologize for
17 not having an agreement ready to go, but that's
18 the way things work out sometimes.

19 HEARING OFFICER WILLIAMS: Well, sir, we
20 appreciate your coming to inform the Committee
21 about the negotiations and the progress of
22 discussions. And we certainly again want to thank
23 you for taking the time out of your busy schedule
24 to come.

25 PRESIDING MEMBER KEESE: Let me ask a

1 question. Staff and applicant are aware of the
2 discussions?

3 MS. DeCARLO: Yes.

4 PRESIDING MEMBER KEESE: And you're
5 satisfied that --

6 MS. DeCARLO: We'll wait till we receive
7 a letter to make --

8 PRESIDING MEMBER KEESE: Right, but you
9 don't have anything else to add to what's --

10 MS. DeCARLO: I don't, myself. I'm not
11 sure if John Kessler, our analyst, does.

12 HEARING OFFICER WILLIAMS: Mr. Kessler,
13 do you have any questions to pose at this point?

14 MR. KESSLER: I don't have any
15 additional questions, but I just commend the
16 parties in helping to bring this to what appears
17 to be imminent closure here, and something that
18 will be a very positive development in terms of
19 supporting the project.

20 So, we're very pleased with this and we
21 feel that the issues that we have raised and
22 discussed in the preliminary staff assessment at
23 this point will, for the most part, go away as a
24 result of this development, if it comes to
25 fruition.

1 PRESIDING MEMBER KEESE: Applicant?

2 MR. WHEATLAND: We're looking, also,
3 we're looking forward to imminent closure, as
4 well.

5 PRESIDING MEMBER KEESE: Good, well,
6 then we'll thank you very much. We'll look
7 forward to 15 to 20 days in seeing some final
8 document.

9 MR. FLORY: Thank you.

10 PRESIDING MEMBER KEESE: Thank you.
11 Okay, we might get to break for lunch -- we might
12 get to break before lunch. That's very nice to
13 close that issue off.

14 HEARING OFFICER WILLIAMS: Now, Mr.
15 Sarvey, do you have any questions or input at this
16 point on the topics that we've discussed thus far?

17 MR. SARVEY: No, sir.

18 HEARING OFFICER WILLIAMS: Okay. I
19 think we'll move right on into air quality.

20 MS. DeCARLO: I'm sorry, did the
21 Committee want to address the alternate cooling
22 parameters presented by staff? It was one of the
23 agenda items under water.

24 HEARING OFFICER WILLIAMS: Go right
25 ahead.

1 MS. DeCARLO: I'm not sure exactly what
2 the question was, but it was listed under the
3 agenda item.

4 HEARING OFFICER WILLIAMS: Right.

5 MS. DeCARLO: The applicant had made
6 some suggested comments on our analysis saying
7 that some of the table items had been double
8 counted, so we --

9 HEARING OFFICER WILLIAMS: Right.

10 MS. DeCARLO: -- we are going to address
11 those in the FSA.

12 HEARING OFFICER WILLIAMS: Yeah, I
13 thought rather than get into that we'd just wait
14 until staff had had their opportunity to receive
15 the comments --

16 MS. DeCARLO: Okay.

17 HEARING OFFICER WILLIAMS: -- from the
18 applicant.

19 MR. KESSLER: This is John Kessler,
20 again, Mr. Williams, and I understand that the
21 applicant will be providing us some clarifications
22 to that analysis in writing. I just want to
23 confirm that that's the case.

24 MR. WHEATLAND: This is Greg Wheatland,
25 and that is the case.

1 HEARING OFFICER WILLIAMS: All right.

2 MR. KESSLER: Thank you, Mr. Wheatland.

3 HEARING OFFICER WILLIAMS: Okay, the
4 question of recycled water, applicant, could you
5 update the Committee on the status of the use of
6 recycled water?

7 MR. WHEATLAND: Well, I'll start it and
8 perhaps Mr. Helm will have something additional to
9 add, but in a nutshell, the applicant is committed
10 to receiving water from the Byron Bethany
11 Irrigation District, which is a public agency.

12 We're not specifying the source of water
13 that will be provided to us from the District, but
14 we have indicated that we would be willing to
15 accept any recycled water that would be part of
16 the supply of water that would be provided to the
17 project.

18 There is the Mountain House development;
19 and it's our hope that they will have discussions
20 with Byron Bethany District, and that that may
21 lead to having that supply of water be part of the
22 mix of water that's ultimately supplied to this
23 project.

24 HEARING OFFICER WILLIAMS: Well, the
25 applicant's original proposal in the AFC projected

1 the use of recycled water, a phasing period over a
2 number of years, I believe.

3 And there appears to be now some
4 indication from some jurisdictions that the level
5 of recycled water that may be provided is greater
6 than once thought.

7 Have you factored that into your design
8 plans, at all?

9 MR. HELM: Yes. We will respond to a
10 data request on this, and are prepared to use
11 recycled water if it, indeed, becomes available on
12 an accelerated schedule from what the original
13 projections that we got from Byron Bethany
14 Irrigation District as to the likely availability
15 of recycled water.

16 So if, in fact, more recycled water
17 becomes available to us sooner, we are prepared to
18 use that and will so indicate in our data
19 response.

20 There is some discussion, however, about
21 the Byron Bethany Irrigation District plan
22 envisions full use of all the available recycled
23 water from the Mountain House in some means within
24 Byron Bethany Irrigation District largely within
25 the development or at the Energy Center. And

1 there was some discussion at the workshop about
2 how that recycled water might be allocated between
3 uses within Mountain House and uses within the
4 power plant.

5 While we recognize that what we've got
6 from Byron Bethany is just a projection of what
7 will be available, and that more or less recycled
8 water may, in fact, be available, we're prepared
9 to deal with the supply that is actually
10 available, and we'll leave that to Byron Bethany
11 Irrigation District and Mountain House to work
12 together as to which is the most economical and
13 effective use of the recycled water.

14 In any event, Byron Bethany has
15 indicated that the plan is to use all the
16 available recycled water from Mountain House
17 within. And so where it is used, whether it is
18 used on a golf course or in the power plant is
19 really beyond measures that we're interested in.

20 PRESIDING MEMBER KEESE: Thank you. I
21 recall some discussion at our last conference of a
22 potential other source of recycled water. Will
23 you remind me about that? Would that go through
24 Byron Bethany, also?

25 MR. HELM: Yes. All the recycled water

1 that would be brought into Byron Bethany would go
2 through, and we are prepared to use any recycled
3 water from any source --

4 PRESIDING MEMBER KEESE: From whatever
5 source.

6 MR. HELM: -- Byron Bethany, provided
7 it's a quality that we can use. Some of the
8 sources are industrial discharges, themselves,
9 which are more difficult to use. But all quality
10 issues being equal, yes.

11 PRESIDING MEMBER KEESE: Okay, thank
12 you.

13 HEARING OFFICER WILLIAMS: Applicant --
14 excuse me, staff, do you have any comment?

15 MS. DeCARLO: Just a few. Staff has
16 been made aware that Mountain House could provide
17 100 percent of the water supply in recycled form
18 that the project would need to use. And we are
19 committed to pursuing that avenue of requiring 100
20 percent recycled water use if available.

21 HEARING OFFICER WILLIAMS: Okay.

22 MR. WHEATLAND: If I could just add,
23 that is a little problematic, though. If the
24 staff were to require --

25 PRESIDING MEMBER KEESE: If available.

1 MR. WHEATLAND: -- our project -- well,
2 yeah, if available. There may be other uses of
3 that water that would be closer to the original
4 source that may be more economic or more
5 environmentally sound.

6 PRESIDING MEMBER KEESE: Which would
7 probably mean it wasn't available. Sounded like
8 to me.

9 HEARING OFFICER WILLIAMS: Okay. Is
10 there any public comment on the water issue? Mr.
11 Sarvey, do you have anything to add on the water
12 issue? Okay.

13 With that, then, we'll move on to air
14 quality. We'll just follow the scheduling order
15 agenda here. Although I believe, except for the
16 cumulative air quality analysis, most of the
17 status reports significantly advised the Committee
18 on the issues that we've listed here, so we should
19 be able to proceed through them fairly quickly.

20 Beginning with the PSD incremental
21 analysis. Can you just give us the update on the
22 status of that? Apparently it's no longer
23 something that we need to worry about?

24 MR. WHEATLAND: Mr. Rubenstein has
25 joined us at the table here this morning and I'll

1 ask him to speak to that issue.

2 MR. RUBENSTEIN: Good morning.

3 HEARING OFFICER WILLIAMS: 'Morning.

4 MR. RUBENSTEIN: Mr. Williams, with
5 respect to the PSD increments analysis, as we note
6 in the fourth status report we filed with the
7 Commission Staff and with the Bay Area Air Quality
8 Management District, a revised air quality impacts
9 analysis which demonstrates PM10 impacts roughly
10 25 percent lower than what was included in the
11 AFC.

12 And as a result of that revised analysis
13 the project is no longer subject to a PSD
14 increments analysis. Consequently we no longer
15 have the need to wait for the San Joaquin Valley
16 Air District to provide us with the data we've
17 requested. And so that issue is now moot.

18 HEARING OFFICER WILLIAMS: Okay. Could
19 we just get on the record the status of the
20 preliminary determination of compliance from the
21 Bay Area Air Quality Management District?

22 MR. RUBENSTEIN: I had a discussion with
23 Steve Hill at the Bay Area Air Quality Management
24 District yesterday afternoon. And during that
25 conversation he confirmed that to the best of his

1 knowledge at that time that they were still on
2 schedule for issuing the preliminary determination
3 of compliance in mid January.

4 HEARING OFFICER WILLIAMS: Okay. On the
5 issue of the cumulative air quality analysis the
6 Committee has received the briefs and reviewed
7 them. And we want to hear from the parties on
8 this subject.

9 The Committee's belief is that the
10 burden of proof on this question lies with the
11 applicant, Mr. Wheatland, would you address that
12 issue before we start?

13 MR. WHEATLAND: The issue of the burden
14 of proof?

15 HEARING OFFICER WILLIAMS: Yes.

16 MR. WHEATLAND: Well, the applicant is
17 proposing to do a cumulative air impacts analysis.
18 The analysis that we propose to do is the one that
19 was prepared for the Tesla project. That analysis
20 modeled the cumulative effects of all major
21 sources, Tesla, Tracy and the East Altamont
22 project.

23 It's my understanding that staff has
24 made a motion to enhance that analysis; that's the
25 way they characterized it in their initial motion.

1 So it struck me that the burden was on the staff,
2 if they feel that an additional analysis beyond
3 what the applicant has proposed is needed to meet
4 the requirements of CEQA or meet the requirements
5 of the Commission's regulations.

6 So, I had presumed that the burden had
7 been on the staff on this issue if they wish a
8 requirement that the analysis that we've offered
9 should be enhanced.

10 HEARING OFFICER WILLIAMS: Well, as the
11 Committee understands it, staff's position is that
12 this requirement is imposed by CEQA. And as such,
13 it would fall within our regulations that require
14 the applicant to demonstrate that the project
15 complies with all laws, standards, et cetera.

16 So, if we look at it from that
17 standpoint clearly the applicant would have the
18 burden of proof.

19 MR. WHEATLAND: I'm certainly prepared
20 to address the CEQA arguments.

21 HEARING OFFICER WILLIAMS: Well, why
22 don't we do that, why don't we just move right
23 into your 15-minute presentation.

24 MR. WHEATLAND: Well, the good news is I
25 won't take 15 minutes.

1 (Laughter.)

2 MR. WHEATLAND: Because I know you've
3 read all the briefs very carefully.

4 The real issue for us is one of
5 consistency, frankly. We agree that you need to
6 do a cumulative analysis and we agree that it
7 needs to meet the requirements of CEQA.

8 But it's very important that the
9 criteria apply to all plants equally that are
10 similarly situated. That is the key for us.

11 For example, it would seem to us
12 reasonable that if we're required to model Tracy,
13 Tracy would be required to model us. The plants
14 are equidistant, and if CEQA requires modeling of
15 one plant, it should require modeling of the
16 other.

17 What we're really asking for is a
18 consideration of consistency. So all the plants
19 that come before the Commission, especially those
20 that are in the same geographic area have the same
21 criteria they have to comply with.

22 There are two issues here that the staff
23 has not addressed that we think are critical to
24 resolution of this issue. One is what is the
25 criteria if assuming for a moment that it's

1 desirable to model nonstationary sources. What is
2 the criteria by which nonstationary sources should
3 be modeled? How big does the nonstationary source
4 have to be? Does it have to be residential, or
5 does it have to be industrial? How far from the
6 plant does it have to be? Does it have to be one
7 mile or two miles or three miles?

8 We thought the umbrella was six miles.
9 But apparently the staff has a different standard
10 in mind, one that they haven't articulated to us,
11 but clearly has helped them to sort out when it
12 should be modeled for one plant and when it should
13 not be modeled for another.

14 Another criteria is does it matter which
15 direction, upwind or downwind. Do the windrows
16 apply to determining whether or not a
17 nonstationary source should be modeled?

18 These are issues that we've struggled
19 with in trying to understand what it is the staff
20 is proposing.

21 To be really clear, we're not opposed to
22 modeling nonstationary sources, as long as the
23 criteria by which those sources are modeled
24 clearly apply to all projects, and not just to
25 ours. If there's a definable set of criteria, and

1 it applies to us, as well as the other projects in
2 the same vicinity, on an equal basis, you know,
3 we're not objecting to complying.

4 But we think that those criteria ought
5 to be clearly articulated up front for all
6 projects. The staff has said that they have
7 screened by this criteria for other projects like
8 Potrero and other projects. If that is the case,
9 what we'd like to see is have those criteria
10 spelled out so that we all, everyone, knows what
11 they are.

12 Another important criteria that needs to
13 be articulated is the criteria by which we
14 determine what is the significance of an impact
15 from a power project when considered cumulatively
16 with the impacts of a nonstationary source. In
17 fairness, we ought to know in advance by what
18 measure of significance we will be using to
19 determine whether or not the impacts that are
20 modeled from East Altamont or Tracy or Tesla or
21 any other project will be considered significant
22 when combined with the cumulative effects of
23 nonstationary sources.

24 If these criteria are spelled out, for
25 example, if the staff has them in mind and has an

1 objective basis for determining them, rather than
2 perhaps doing them as they go along, but if
3 there's some objective criteria that the staff
4 could lay those out quickly in writing so that we
5 all see them, we would be prepared to do the
6 analysis that's being requested.

7 What we do object to, though, is having
8 the criteria applied unequally from project to
9 project. I've given you the example of the Tracy
10 Power Plant, which didn't model a major source
11 that was about 6.5 or 7 miles away. Yet the staff
12 is asking that we model Tracy. Again, we're happy
13 to do it as long as all of the projects similarly
14 situated meet that criteria.

15 There's a lot else I could go into, and
16 Mr. Rubenstein is also here to answer any factual
17 questions that have been raised by the staff in
18 their arguments, but perhaps it's better for me to
19 stop at this point and see if the Committee has
20 any questions.

21 PRESIDING MEMBER KEESE: Unless you have
22 something to add, --

23 MR. WHEATLAND: Yes, Mr. Rubenstein has
24 a final --

25 PRESIDING MEMBER KEESE: That's fine.

1 MR. RUBENSTEIN: Thank you. There were
2 just a couple of issues that I wanted to address
3 that were raised particularly in the staff's reply
4 brief.

5 First of all, in discussing the East
6 Altamont project the staff suggests that the
7 project has very limited plume rise. And looking
8 at PM10 in particular as a concern, staff suggests
9 that the plume would only travel a small distance
10 before the PM10 falls out of the plume. And
11 therefore arguing that impacts will be very close
12 to the project site.

13 The notion that PM10 falls out of the
14 plume is simply ludicrous. PM10 are very small
15 particles that act as a gas. They're a part of
16 the plume, they do not fall out of the plume. And
17 I believe the staff creates the impression that
18 there's going to be some kind of a fallout on the
19 Mountain House community as a result of the
20 project. That is simply not the case.

21 Second of all, staff suggests that one
22 of the main reasons why they distinguish the East
23 Altamont project from the other nearby projects is
24 because of the wind direction. And they
25 repeatedly indicate that the wind blows

1 predominately from west to east. That's not quite
2 correct.

3 If you take a look at the windrowses
4 that were provided to you this morning, and those
5 same windrowses are in the AFC, they indicate that
6 the predominate wind direction is from the west-
7 southwest.

8 And actually, Jerry, if you can go back
9 to the first slide that you had showing the
10 project location --

11 HEARING OFFICER WILLIAMS: Can we dim
12 the lights?

13 MR. RUBENSTEIN: If I could ask the
14 Committee's indulgence and place the windrows
15 slide immediately adjacent to the slide that is up
16 on the screen showing the different project sites,
17 you can get a pretty good idea of what we're
18 talking about in terms of wind directions.

19 With the predominate wind direction
20 coming from the west-southwest, what you see is
21 that again looking at predominant wind flows the
22 impacts from the East Altamont project will brush
23 across the top end, just the top northwest corner
24 of the Mountain House development.

25 Similarly, the impacts from the Tesla

1 project will brush along the southeast corner of
2 the Mountain House project.

3 There is no difference if you're using
4 wind direction as a criteria between those two
5 projects. However, I believe even that is a false
6 comparison because we're talking here principally
7 about PM10. PM10 is a regional air pollutant. It
8 is not a localized air pollutant.

9 No individual project first on natural
10 gas can create an adverse health impact associated
11 with PM10. The PM10 that we breathe is dominated
12 by aerosols that are formed from other pollutants
13 in the atmosphere. Those reactions take a long
14 period of time to occur. They do not occur in the
15 minutes to hours that it takes a plume to travel
16 from Tesla to Mountain House, or from East
17 Altamont to Mountain House.

18 Consequently, I think that the Committee
19 has to view PM10 impacts as a regional pollutant
20 and look at mitigation requirements in a regional
21 sense. That renders the whole idea of doing some
22 kind of a microscale modeling analysis that
23 includes the Mountain House project as moot.

24 Staff has pointed out in the reply brief
25 very eloquently the EIR for the Mountain House

1 project included that project represented a
2 significant air quality impact.

3 There's nothing that we can do in a
4 dispersion modeling analysis that's going to
5 challenge that. All we're going to do is confirm
6 that conclusion. And if we agree we're going to
7 confirm that conclusion, there's no reason why
8 CEQA's disclosure requirements can't be addressed
9 by simply lifting those conclusions from the
10 Mountain House EIR indicating, as a matter of
11 fact, that the East Altamont project is located
12 one mile away from the corner of a development
13 that has a significant air quality impact. Tesla
14 is located two and a half miles away from a
15 project that has a significant air quality impact.
16 And discuss in your analysis what mitigation is
17 required to deal with the regional implications of
18 that.

19 For all of those reasons I think that
20 there is absolutely nothing to be gained by doing
21 a dispersion modeling analysis of the Mountain
22 House project. And that we can address the
23 Commission's CEQA obligations without going
24 through the agony of doing that type of analysis
25 and presenting numbers and then having to throw up

1 our hands and decide what to do with them.

2 Thank you.

3 HEARING OFFICER WILLIAMS: Thank you.

4 Mr. Rubenstein, I have a clarification question.

5 Do you happen to know the location of the wind
6 monitoring station that's being used to show us
7 the data that we're using?

8 MR. RUBENSTEIN: Yes, I do. Can I get
9 the lights raised a little bit here?

10 (Laughter.)

11 MR. RUBENSTEIN: In the AFC for East
12 Altamont actually we presented windrowses from
13 four different locations, and showed that the wind
14 directions and windrowses were all similar.

15 For the record those windrowses are
16 contained in appendix 8.1(b), like in boy. And in
17 particular the modeling protocol that's a part of
18 that appendix.

19 The windrowses that were presented to
20 you today and the ones that represent the data
21 used in the analysis came from the Tracy/Patterson
22 station, and if you take a look on the map that
23 was given to you this morning showing the three
24 different project sites, and you look at the six-
25 mile circle for the East Altamont Energy Center,

1 down towards the bottom-right portion of the
2 circle it crosses the California Aqueduct, and you
3 can see the word California in blue. Right about
4 where the letter C is in California is the
5 approximate location of this met station.

6 Now, again, in the AFC we included
7 meteorological stations that ran all the way along
8 the hills up to I think a distance that's maybe a
9 half a mile or a mile southwest of the East
10 Altamont Energy Center. All of those windrowses
11 show the same predominant wind flow, which is from
12 the west-southwest.

13 HEARING OFFICER WILLIAMS: Thank you.

14 Okay, --

15 PRESIDING MEMBER KEESE: I have some
16 questions, also, but you answered a number of them
17 already. Before we get into this, can we hear
18 from the staff?

19 MS. DeCARLO: Sure. Let me just go get
20 the easel and put some maps up, just to provide a
21 little bit more clarification.

22 PRESIDING MEMBER KEESE: Sure.

23 HEARING OFFICER WILLIAMS: Why don't we
24 go off the record.

25 (Off the record.)

1 HEARING OFFICER WILLIAMS: Let's go back
2 on the record. Ms. DeCarlo, go ahead.

3 MS. DeCARLO: I just wanted to -- this
4 is a really rough map and I just wanted to use it
5 mainly for its topographical depiction of the
6 area. We were unable, unfortunately, to get the
7 topographical information onto a better map. So
8 I'll use this just for the topographical
9 information.

10 And I just wanted to point out one of
11 the statements, a part of our argument of why
12 Tesla doesn't necessarily need such a detailed
13 modeling of Mountain House is because of the hilly
14 area that exists between Tesla and Mountain House.

15 I'm not sure how well you can see, but I
16 can provide this to you up close later. But
17 between Tesla there are a bunch of hills, I
18 believe, with various heights, 475, 400
19 demarcated. So there is some hills in the area
20 that could prevent or hinder a mixing of potential
21 plumes.

22 If you'll notice with East Altamont and
23 Mountain House, they're both located on relatively
24 flat land, which I believe is part of the valley
25 floor.

1 PRESIDING MEMBER KEESE: Mixing of the
2 plumes, I would assume that if the wind is from
3 the southwest or from the west it's probably from
4 that direction at both sites. We're not going to
5 have a wind coming from the south bringing Tesla
6 north; and a wind coming from the north bringing
7 Altamont south. Is that what you're suggesting?
8 That you're going to have winds that make these
9 converge?

10 MS. DeCARLO: No. I'm saying that the
11 winds won't; are more likely to prevent any
12 convergence. I guess --

13 PRESIDING MEMBER KEESE: Well,
14 convergence doesn't -- I don't see how you can
15 have convergence if they're separated. The wind
16 will probably put the plumes separated.

17 What you're arguing, it seems to me, is
18 that the Tesla emissions plume will not get to
19 Mountain House.

20 MS. DeCARLO: Correct.

21 PRESIDING MEMBER KEESE: I mean it
22 wouldn't --

23 MS. DeCARLO: Or less likely than East
24 Altamont would.

25 MR. O'BRIEN: Because of the intervening

1 topography.

2 MS. DeCARLO: Correct. One of the
3 reasons.

4 PRESIDING MEMBER KEESE: Okay.

5 MS. DeCARLO: Would you like a close up
6 view of that?

7 PRESIDING MEMBER KEESE: No, I think
8 you'll have to deal with the issue of the nature
9 of the plume and PM10. Whether you've been asked
10 by the applicant to demonstrate why this plume is
11 going to fall in a short period -- from East
12 Altamont -- is going to fall in a short period of
13 time when the applicant's witness indicates that
14 it actually becomes a part of I'll say upper air.
15 It mixes and eventually contributes, but doesn't
16 in the short period of time.

17 I guess that argument would work if that
18 was not correct. That would be why Tesla wasn't
19 contributing to Mountain House if that argument is
20 correct. It would be difficult to see how East
21 Altamont contributed to Mountain House.

22 MS. DeCARLO: Well, staff does feel that
23 there is the potential for localized impacts with
24 regards to PM10, and the other -- I'm not sure of
25 the exact rate of fallout of PM10, and granted, it

1 isn't technically fallout, but the plumes do
2 settle at a certain point. The emissions -- and
3 staff just believes that --

4 PRESIDING MEMBER KEESE: PM10 settles
5 versus contributes to an overall, is that --

6 MS. DeCARLO: Well, it comes down enough
7 to potentially affect health and --

8 PRESIDING MEMBER KEESE: Do you buy the
9 wind pattern is from the west or southwest, and
10 therefore, at least in the chart that's behind
11 you, it would indicate that generally speaking the
12 East Altamont plume is moving north of Mountain
13 House, or further north of Mountain House,
14 generally speaking?

15 MS. DeCARLO: I would not concede that.
16 The western trend of the winds does occur
17 frequently enough. And the southwestern trends
18 noted in the windrows aren't exactly south to
19 west, it's less of an angle of degree.

20 So I would submit that, in fact, on a
21 fairly frequent basis that there's a potential for
22 the East Altamont plumes to be blown over the
23 Mountain House area.

24 PRESIDING MEMBER KEESE: Okay.

25 MR. O'BRIEN: Can I ask staff, if there

1 were no intervening topography, as you describe
2 it, between the Tesla project and the Mountain
3 House planned community, is it staff's position
4 then that it would require the same type of
5 modeling for Tesla that it's requiring for East
6 Altamont?

7 MS. DeCARLO: Tesla is at least twice as
8 far away from Mountain House community as East
9 Altamont is. I would not prefer to conjecture on
10 Tesla at this moment. It hasn't been declared
11 data adequate yet. Staff had not had a full
12 chance to specifically review the project and
13 potential impacts, aside from just determining
14 data adequacy or data inadequacy.

15 So, we do reserve the right to require
16 Tesla, at a later date, to potentially include
17 Mountain House in the modeling. However, we don't
18 want to decide that now, and we don't want to be
19 forced to.

20 We are committed to treat these projects
21 as consistently as possible, and we feel that we
22 are doing that. East Altamont clearly is very
23 close to Mountain House, and we are concerned
24 about the potential cumulative impacts, and would
25 like to see that modeled to insure that we address

1 all potential cumulative impacts.

2 The modeling would be able to show us
3 the areas that potentially a potential mingling
4 could occur, and the concentrations that might
5 occur in those areas. And we believe with that
6 information we could better analyze project
7 impacts.

8 HEARING OFFICER WILLIAMS: Why is that
9 important, counsel? The applicant says that PM10
10 is a regional problem, and there's nothing to be
11 gained by receiving this data specific model.

12 MS. DeCARLO: I think we would differ on
13 that somewhat. We do believe PM10 is more
14 localized impact-wise than just regional. It does
15 have potential health consequences. And we prefer
16 to see PM10 mitigation as close to the project
17 site as possible.

18 The applicant's map of their ERC offsets
19 are on the perimeter of the county. And I know
20 San Joaquin Valley Unified Air Pollution Control
21 District has raised concerns that the ERCs offered
22 by the applicant will not mitigate for valley
23 impacts.

24 So staff wants to make sure that we do
25 identify any potential impacts. And we are able

1 to insure that the ERCs proposed by the applicant
2 do offset any potential impacts.

3 HEARING OFFICER WILLIAMS: Well, we have
4 San Joaquin here. I'm sure that they want to
5 weigh in at some point.

6 MS. DeCARLO: Yeah, we'd be more than
7 happy to hear from them.

8 PRESIDING MEMBER KEESE: Okay. Anything
9 else? I'm sure you have --

10 MS. DeCARLO: Did you have other
11 questions about consistency? I know that's a big
12 issue, and I want to just reiterate that we are
13 trying to --

14 PRESIDING MEMBER KEESE: I -- right, --

15 MS. DeCARLO: -- to maintain
16 consistency.

17 PRESIDING MEMBER KEESE: I have a number
18 of questions, I guess, on consistency. Let's
19 start with one.

20 Clearly this is one of those areas in
21 the State of California where if Mountain House
22 did not exist we would expect development. This
23 whole area is highly likely to be developed.

24 So my question would be is this an
25 indication that if you have a large development

1 it's going to be a factor; and if you have a large
2 number of small developments, that will not be
3 taken into consideration?

4 MS. DeCARLO: Let me see how I can
5 address that. The applicant also had some
6 concerns about well, where do we draw the line, on
7 what type of development -- what size of
8 development.

9 PRESIDING MEMBER KEESE: That's sort of
10 what I'm asking. And I guess --

11 MS. DeCARLO: And unfortunately --

12 PRESIDING MEMBER KEESE: -- I guess I
13 want to also eventually drag in have we been doing
14 this for the last -- well, we don't have to go
15 back 10 or 20 years because we haven't been siting
16 power plants much till the last three or four, but
17 is this a consistent policy over the last four
18 years? And have we been bringing in mobile
19 sources? And have we been bringing in future
20 potential communities, and at what size?

21 So, I guess the whole issue of
22 consistency, it's broader than any one little
23 question.

24 MS. DeCARLO: Right And unfortunately,
25 with these nonstationary sources, we can't develop

1 a bright-line rule. It depends on the project-
2 specific information.

3 Here we feel that we can't ignore
4 Mountain House community. It's a very large
5 community that has been permitted to be developed.
6 And we need to address it.

7 Now, as to what -- how small a project
8 could get, to the point where we would not feel
9 the need to address it, I can't exactly say.

10 But at 16,000 potential residential
11 units, 44,000 potential residents, with their
12 cars, we feel this rises to the level that it
13 needs to be addressed in some manner. And we feel
14 that the best manner is to include it in a
15 cumulative model.

16 PRESIDING MEMBER KEESE: Let me just --
17 Placer County is another area of development. If
18 Placer County took another 10,000 acres and their
19 master plan suggested zoning it for residential,
20 the 10,000 acres, would that --

21 MS. DeCARLO: I'm not sure that zoning
22 would rise to the level of concern for us. This
23 project is currently being built. We know in the
24 short term it's going to be built. A simple
25 zoning change doesn't give us the concern that

1 it's going to be built within the next five, 10,
2 15, 20 years, that we would need to analyze it
3 right away.

4 And plus with just simple zoning change
5 you don't have the project-specific data on which
6 to potentially develop a model or include it
7 within a model.

8 PRESIDING MEMBER KEESE: So, I guess
9 what you're answering one of the applicant's
10 statements, which is that they would like to see
11 what your parameters were. They'd like a roadmap
12 so that for this project or other projects they
13 know what's going to be included.

14 And you're saying mostly likely you're
15 not going to get a roadmap. We're going to look
16 at each one, each project, each Siting Committee
17 will look at it independently and make a decision
18 as to their project and whether mobile sources
19 should be included.

20 MS. DeCARLO: Well, I would think if
21 they encounter another project of this size of
22 Mountain House community, then clearly we would
23 want to see that. Although there's the
24 qualification about distance.

25 But also -- just lost my train of

1 thought -- we definitely would want to see it
2 here. We have the opportunity to meet with the
3 applicant before filing to go over these issues.

4 We mentioned our concern about the
5 Mountain House community in September with the
6 applicant. And we were unable to communicate. I
7 don't know whose fault, if either, but a way to
8 proceed to include Mountain House in the modeling.
9 We would have preferred to have decided this
10 earlier so it wouldn't be such an issue.

11 PRESIDING MEMBER KEESE: The applicant
12 suggested that there was, I guess, an EIR for the
13 Mountain House?

14 MS. DeCARLO: Yes, there is an EIR for
15 Mountain House.

16 PRESIDING MEMBER KEESE: And that
17 isn't -- what would the modeling give you that
18 that doesn't?

19 MS. DeCARLO: More specific information
20 about where the plumes might interact, and
21 potential concentrations of the plumes in there.
22 Also the EIR for Mountain House doesn't mention
23 any of the power plants. So it doesn't really
24 provide us a picture.

25 PRESIDING MEMBER KEESE: You know, I

1 still have trouble with that interact. I mean are
2 you suggesting these plumes are going to come
3 together?

4 MS. DeCARLO: I apologize for my loose
5 use of terminology. I'm just concerned that the
6 plume will -- the East Altamont plume will drift
7 over Mountain House, and cause some sort of
8 cumulative impact. The exact degree to which, or
9 the exact nature of which I'm not exactly sure.

10 PRESIDING MEMBER KEESE: Okay, but
11 you're not -- again, you're not saying that it's
12 going to be the -- you're going to see the Tesla
13 plume and the East Altamont plume interact?

14 MS. DeCARLO: Correct.

15 PRESIDING MEMBER KEESE: They're not
16 coming together? I'm using very lay language.
17 They're going to blow in the same direction
18 generally speaking?

19 MS. DeCARLO: I would think generally,
20 yes.

21 PRESIDING MEMBER KEESE: And they're
22 probably -- unless the wind is blowing directly
23 from Tesla to East Altamont, straight north,
24 they're probably not going to be -- the plumes are
25 not going to be joining each other?

1 MS. DeCARLO: And yet we still require
2 just the modeling of the general, the six-mile
3 perimeter to determine what types of impacts will
4 occur.

5 MR. O'BRIEN: Ms. DeCarlo, I'd like to
6 follow up on that. And perhaps you or certainly
7 another member of staff can respond to this. And
8 it goes to the issue that the Chairman was just
9 pursuing. And also addresses what Mr. Wheatland
10 said earlier.

11 And that's this: What specifically does
12 staff expect to learn from this modeling of, from
13 what I understand it, from this new community
14 would be basically mobile sources?

15 Does staff believe that the background
16 air quality level in the area of Mountain View is
17 going to change because this new community is
18 going to come in, and because of that, there's
19 some concern over a cumulative impact from the
20 project of specific point source mixing with all
21 these mobile sources?

22 And because of that there is some need
23 for modeling because staff believes that they're
24 going to gain some knowledge from this modeling
25 that they couldn't intuitively already know what's

1 going to be out there?

2 And the reason I ask that is that staff
3 has, and the Energy Commission has, over the
4 years, permitted projects in air basins that are
5 nonattainment. And I'm thinking recently in the
6 last year or so the Mountainview project down in
7 San Bernardino where downwind from that project
8 you have severe air quality problems in the
9 Riverside and San Bernardino area.

10 So, it's unclear to me what staff
11 believes they're going to get from this analysis.
12 And I think the Committee needs further
13 clarification and understanding as to what
14 specifically staff believes it's going to get from
15 this modeling exercise.

16 MS. DeCARLO: I think I'd better let my
17 technical staff handle that question. This is
18 Tuan Ngo, our air quality analyst.

19 MR. NGO: My name is Tuan Ngo, spelled
20 T-u-a-n N-g-o. Good morning, Commissioner and the
21 Committee.

22 First of all we are all bogged down.
23 Let me clear out a few points. We are bogged down
24 with the wind direction and the wind pattern and
25 the PM10 local impact.

1 Let me try to explain a little bit about
2 the problem with the wind direction. When the
3 wind happen we don't have no problem with PM10.
4 Why? Because it blows away. And it disperses
5 into the air, so the problem with PM10 is not a
6 problem when the wind occur.

7 When the wind is not occurring, or when
8 it's very low then we have a potential for all
9 three of those facilities, the plumes from all
10 three facilities to mingle with one another, and
11 it will impact the Mountain House community.

12 Staff has made no effort of saying PM10
13 is a particulate how far out or whatsoever, as the
14 applicant suggested. All we are saying is that
15 the facility and the other two facilities in
16 addition to the Mountain House community have a
17 potential to cause a PM10 impact to the area.

18 And if I could refer back to the air
19 quality figure 1 in the PSA, we seen the air
20 quality, I guess the PM10 ambient air quality in
21 the area, getting worse and worse every year. The
22 ozone ambient air quality in the area also getting
23 worse.

24 Anyway, --

25 PRESIDING MEMBER KEESE: Help me out

1 with area. Are we talking about Tracy?

2 MR. NGO: In the general area of Tracy,
3 Livermore and I'm talking about the general area
4 here.

5 So what happen is --

6 PRESIDING MEMBER KEESE: Okay, so you're
7 talking about both east and west of --

8 MR. NGO: Yes, sir.

9 PRESIDING MEMBER KEESE: Okay.

10 MR. NGO: So what happen here is this is
11 a unique case; and this is the first time that we
12 ever have a project that will happen right next to
13 a new community that going to be developed.

14 In the past we have some case we're
15 doing that, but what happen, when we screen it
16 out, we'd look at the development from all the
17 sources besides the project, or the power plant.
18 We look at it, and it really is not a problem, so
19 we just kind of let it go. So we didn't mention
20 it. But that doesn't mean we didn't.

21 For example, in the case of the High
22 Desert, we look at the emission impact from
23 increased development of residential along the
24 corridor between South Coast and the City of
25 Victorville. I think a little bit beyond that.

1 And then what happened we already seen
2 the analysis done by the South Coast AQMD to show
3 that the emission impact were already included in
4 the state implementation plan for the whole area,
5 and therefore when we use that information it
6 already included in there. We not mention it.

7 The problem with this project here was
8 that we see it as a potential for mingling of all
9 three power plant plumes which might impact the
10 Mountain House community. In addition to that,
11 the new development here from the Mountain House
12 community will create or contribute more emissions
13 potentially from mobile source; that traveling
14 from Mountain House to the Bay Area and vice versa
15 during the working day. And therefore, the impact
16 from all three power plant and the community will
17 need to be addressed.

18 Now, your question earlier about what do
19 we gain about this. Well, first of all, we want
20 to know where it is, the impact going to be.

21 HEARING OFFICER WILLIAMS: Let me stop
22 you right there because I have a question. Have
23 you seen the Tesla model of the cumulative impacts
24 modeled from the Tesla project? Have you --

25 MR. NGO: I haven't seen the model in

1 detail, but I have screening over it, the protocol
2 that I have seen on the Tesla project.

3 HEARING OFFICER WILLIAMS: Doesn't that
4 give you some indication of the impact, especially
5 if you take the Tesla model and you look at the
6 Mountain House EIR, doesn't that give you a pretty
7 close estimate of -- what I'm getting at, is there
8 any real need to do more modeling when you have
9 the Tesla model there, and you have the Mountain
10 House EIR?

11 MR. NGO: Let me put it this way, in
12 general terms they probably be satisfy for staff
13 to do that. The question is staff has to answer
14 the question is how effective the mitigation that
15 the applicant have been proposed. And in very
16 specific.

17 Because of this, like I said, this is a
18 project that in the location that are in, rather
19 so unique that we have a problem with the, I guess
20 the state implementation plan from the Bay Area
21 that's showing an increase in ambient
22 concentration of ozone and PM10 every year.

23 So there is a need for pinpoint on not
24 very exact term, at least pinpoint where the
25 possible or the potential location of the offsets

1 so we can address that issue of whether the
2 proposed offset package or the emission reduction
3 credits that are proposed by the applicant will be
4 adequately -- will adequately mitigate the
5 potential contribution from the project, itself,
6 to the area. And that's what we are looking for.
7 And I --

8 PRESIDING MEMBER KEESE: But the
9 question, the Mountain House EIR doesn't do that
10 for you?

11 MR. NGO: No, sir.

12 PRESIDING MEMBER KEESE: Then on the
13 other hand, if this area was, we'd say if there
14 wasn't a Mountain House, we would still anticipate
15 a lot of development in this area, and you
16 wouldn't have anything at hand to use.

17 I guess I'm looking for this
18 consistency, I'm concerned about, you know, I'm
19 concerned about whether we should have a policy, a
20 Commission-wide policy, as to what we do with
21 mobile sources from new development.

22 I mean, I hesitate, I want to be very
23 cautious in what we're doing here that we're not
24 spreading beyond this one case; that we're not
25 establishing new policy as we go forward here.

1 I hear you saying that we have
2 considered this in the past, but not felt it rose
3 to the level of significance. Staff considered it
4 in the past, did not consider it rose to the level
5 of significance. But here, you do.

6 How often does the wind not blow in this
7 area?

8 MR. NGO: It's based on -- let's just
9 say based on the three month -- I'm referring to
10 the very first windrows from the Tracy/Patterson,
11 from the three-year 1997 to 1999.

12 Say for January, February, March
13 quarterly windrows, there was a percent as about
14 4, maybe 3 to 4 percent -- I'm sorry, let's just
15 say less than 4 percent of the time that the wind
16 is either calm or very low. That when we have a
17 potential problem during that time.

18 PRESIDING MEMBER KEESE: Okay. And
19 during that time when you have that potential
20 problem when the wind is now blowing, I would
21 assume that those -- let me ask, those 400 or 500
22 foot hills that exist between Tesla and Mountain
23 House wouldn't impact either, because that's when
24 the plume would rise and mingle, is that what
25 you're telling me?

1 If there's no wind and the plumes from
2 all these sources will rise together and mingle
3 and impact Mountain House together?

4 MR. NGO: Not all entirely, not --

5 PRESIDING MEMBER KEESE: If they're not
6 mingling, then you can't add them together for
7 Mountain House.

8 MR. NGO: Let me explain. What I'm
9 trying to say was when the wind is low, however
10 not blowing, or the calm, the calm day, then what
11 happen is the emission from the smoke stack which
12 has rise to a certain level and it sits. It stand
13 there. I mean it's just stand there doing
14 nothing. And what happened, it mingling.

15 And then say the next day they have a
16 wind conversion, it will come down. And that when
17 we say there is a potential, during those times,
18 during the entire year every time we have that
19 condition, there is a potential that we will have
20 an impact from all three facilities and onto the
21 Mountain House community.

22 PRESIDING MEMBER KEESE: But you would
23 also support the fact that for Tesla you don't
24 need to take into consideration Mountain House?
25 Or are you suggesting that --

1 MR. NGO: Like I say, I haven't seen the
2 Tesla, so I can't make this thing, but originally,
3 during the time in September --

4 PRESIDING MEMBER KEESE: Because your
5 argument seems to imply that all three of them
6 should have the same, because they'll all be
7 merging.

8 MR. NGO: Let me go back a little bit
9 here. In September when staff have a chance to
10 have a workshop with the applicant, staff has
11 suggest that Tesla, Tracy and East Altamont, all
12 three applicants get together to share some
13 resources, to do that one modeling for all three
14 projects that takes care of Mountain House, that
15 take into account Mountain House.

16 Staff suggest that because we were
17 thinking all three project in the same radius, and
18 therefore they should be included. And then like
19 I said, I mentioned earlier there's a unique
20 situation where the Mountain House community right
21 next to the East Altamont project, so therefore
22 it's a large development, we should look at it.

23 And we suggest, we make that suggestion
24 to, we're hoping to save the applicant some
25 resources, some money, because if all three of

1 them doing it, pay for one person or one group
2 doing the modeling, they will save some money.
3 But it never been fruitful, and I'm not sure where
4 that suggestion go, or how come it wasn't
5 implemented.

6 PRESIDING MEMBER KEESE: It sounds to me
7 like the applicant feels you're breaking new
8 ground and they weren't sure. So that's why we're
9 dealing with this issue of consistency which
10 they've raised.

11 MS. DeCARLO: And to address your
12 concern over why we feel the need to include
13 Mountain House in this, aside from the technical
14 explanation, but CEQA does require in a cumulative
15 impacts analysis the inclusion of all reasonably
16 foreseeable projects.

17 This clearly rises to the level of
18 reasonable foreseeable project. That deserves to
19 be included.

20 PRESIDING MEMBER KEESE: Right.

21 MS. DeCARLO: Whereas the piecemeal
22 potential development of the valley --

23 PRESIDING MEMBER KEESE: And although
24 applicant's suggestion was they went to the two
25 air districts and asked for significant projects

1 and didn't get Mountain House.

2 MS. DeCARLO: Well, they neither got
3 Tracy or Tesla, either, on that occasion.

4 MR. O'BRIEN: Ms. DeCarlo, in kind of a
5 follow-up question, or maybe Mr. Ngo, the point
6 was made by staff that this information is needed
7 to help staff come up with appropriate mitigation
8 for the project. I think that's what the
9 statement was, Mr. Ngo.

10 And I'd like to follow up on that. You
11 talked about whether or not the mitigation that
12 the applicant might put forward from the
13 standpoint of offsets would be appropriate. In
14 past projects has staff not accepted mitigation
15 offsets proposed by applicants and accepted by air
16 districts, and in fact, has staff gone beyond the
17 mitigation that was found acceptable by the air
18 districts based upon modeling that was performed
19 for a project?

20 MS. DeCARLO: If I can just generally
21 answer that. We generally require mitigation
22 above and beyond what the air district requires.
23 The air district merely applies the Clean Air Act.
24 They have set ratios, set ERCs that are required.

25 Staff does a more detailed CEQA

1 analysis. And if we find that there are impacts
2 that the baseline offsets provided by the
3 applicant for the district purposes aren't
4 sufficient to mitigate for those additional CEQA
5 impacts, then we do require additional offsets.
6 And we have done that in the past. And I can let
7 Tuan, if he wants to, provide more detailed
8 information on that.

9 MR. NGO: Specifically, yes, there are
10 cases that we are requesting more information,
11 that we are negotiating with the district in terms
12 of getting specific emission reduction credits
13 from sources that could mitigate the project
14 impact most appropriately.

15 The most recent case was the Three
16 Mountain project where the applicant have proposed
17 and the district have approve that road paving as
18 a way to achieve the emission reduction credit for
19 PM10 to mitigate the project. Project PM10
20 emission, and staff work with the district and the
21 applicant and come up with a wood stove reduction
22 program which specifically reduce the PM10 that is
23 the main cause of the problem in the Burney area
24 because that area PM10 problem was caused by wood
25 stoves, you know, residential wood stoves.

1 And so by doing that, we be able to
2 convince the district to go all the way beyond
3 their requirement, and get the most effective
4 mitigation for the project.

5 And there's another project that I'm
6 working on now that is in Potrero. We also
7 recommending that the applicant to provide
8 additional mitigation beyond what it required the
9 district -- what is required by the district, to
10 mitigate the local emission impact from PM10.

11 So to answer your question, if we have
12 done it in the past, yes, we did.

13 PRESIDING MEMBER KEESE: Let me ask you
14 a question about Three Mountain, because I seem to
15 recall a little bit about that one.

16 It wasn't that you modeled the
17 community, was it? It was that when the
18 mitigation package was presented there were
19 suggestions that a different mitigation might be
20 more appropriate.

21 MR. NGO: Actually, we --

22 PRESIDING MEMBER KEESE: I mean I
23 wouldn't use Three Mountain as an example as to
24 why we should model Mountain House. Because I
25 don't recall that modeling that area, the Burney

1 area, had much to do with it.

2 MR. NGO: Actually, it is. I'm sorry to
3 argue with you, Commissioner, but the case was
4 when we did it, I was the staff who work on the
5 project. And during a few of the workshops we had
6 come up with modeling that showed an impact in the
7 local area for PM10.

8 And the only problem with that modeling
9 was that the intervenor have, I guess
10 successfully, not successfully, but kind of using
11 the met data, the meteorological data. There was
12 some problem with it because it was located a
13 little up further from the site.

14 And then when we look at the model, when
15 we looked at the model and perform, we saw an
16 impact. And what happened with it, because of the
17 intervenor kind of really doesn't like the met
18 data, so we then using the screen data. We using
19 the screen model to find out the general location
20 or the general radius of the emission impact from
21 the facility. And both result coming out the
22 same.

23 That there is a potential for PM10
24 impact in the Burney area because of that
25 uniqueness of the area, and also because -- I'm

1 sorry, because of the uniqueness of the area. The
2 area behaving like a little bowl around the
3 mountain, so everything created sit there. And
4 therefore the localized PM10 impact from the
5 project were recommended by staff, and it was
6 accepted by the applicant and the district.

7 And so we be able to work out, you know,
8 the end result. And a lot of the detail like
9 that, you know, we didn't -- we are discussing in
10 the workshop, but not necessarily at the hearings.
11 And therefore maybe that's why you missed it.

12 PRESIDING MEMBER KEESE: Well, I think I
13 agree with most of what you suggested because I
14 know the Committee didn't feel, was not highly
15 impressed with the road proposal going in. And
16 suggested that rather clearly.

17 All right. I think we've heard that,
18 unless you have any more to add on that part?

19 MR. NGO: I don't have anything else.

20 PRESIDING MEMBER KEESE: Does applicant
21 have -- we have San Joaquin on the phone?

22 MR. SWEENEY: I'm here.

23 PRESIDING MEMBER KEESE: Does staff have
24 more?

25 MS. DeCARLO: No, not unless the

1 Committee has more questions.

2 HEARING OFFICER WILLIAMS: Mr. Sweeney,
3 from San Joaquin, what is your title, sir?

4 MR. SWEENEY: I'm the Permit Services
5 Manager.

6 HEARING OFFICER WILLIAMS: Are you
7 prepared to offer up on this issue?

8 MR. SWEENEY: On the cumulative impacts
9 analysis?

10 HEARING OFFICER WILLIAMS: Yes. Do you
11 have anything?

12 MR. SWEENEY: Nothing further.

13 HEARING OFFICER WILLIAMS: Okay. Mr.
14 Sarvey.

15 MR. SARVEY: Yeah, I feel that there's
16 two unusual situations going on in this particular
17 application.

18 One is that the project area is located
19 at a point where it's actually impacting a
20 different air basin than it's located in. So, in
21 this respect, most projects we can generally
22 mitigate with emission reduction credits in the
23 air basin that the project originates in. In this
24 case I don't think we can. I think the majority
25 of the emissions will impact San Joaquin County.

1 And therefore, we have an unusual situation where
2 PM10 mitigation seems a real point of concern.

3 The other thing that I feel, the
4 project's located in an area, as we have already
5 identified, where there's three major projects
6 going in. What has not been identified is there's
7 other projects in the pipeline, one which maybe
8 the San Joaquin Air Pollution Control District can
9 inform us on, is a 49 megawatt plant that's
10 actually going to be located about one mile from
11 the Tracy peaker project.

12 And another issue in addressing impacts
13 of these three plants is there's also a Tracy
14 Hills development of 5000 homes that is
15 approximately between one and four miles in
16 distance from the Tracy peaker plant. And I don't
17 know what the distances are from the East Altamont
18 plant. But I think that's something that has to
19 be taken into consideration.

20 So, I can see where staff could have a
21 lot of concern about the cumulative effects of
22 these plants, as well as these two new
23 developments, which some aren't being discussed.
24 One is the 49 megawatt plant which, as I said, Mr.
25 Sweeney perhaps can inform us on that. And the

1 other is the Tracy Hills project, which is a
2 project the size of Mountain House development.

3 HEARING OFFICER WILLIAMS: Mr. Sweeney,
4 do you have any information on the 49 megawatt
5 project?

6 MR. SWEENEY: Yes. There was a proposal
7 by Wellhead Electric for a 49 megawatt peaking
8 plant that would be located just to the east of
9 the location of the Tracy peaker project.

10 They initially wanted to go under some
11 of the Governor's executive orders in terms of
12 offsetting the plants; were unable to go under
13 those orders. And the plant is currently on hold.
14 That project is on hold.

15 So no approval has been given for that
16 project as of yet.

17 HEARING OFFICER WILLIAMS: Thank you.
18 Applicant.

19 MR. RUBENSTEIN: Thank you. Just to
20 clarify a couple of points. First of all, on this
21 issue of fallout, as I said earlier, PM10 and
22 other gases do not fall out of the plume. What
23 actually happens is the plume spreads. That's
24 what causes -- or that is the effective
25 dispersion.

1 Consequently, Commissioner Keese, in the
2 examples you were thinking of, even if you had two
3 plants that were located side by side and the wind
4 was blowing in the same direction, there would be
5 some commingling of the plumes as they spread in
6 the horizontal direction.

7 When we talk about plume impacts on the
8 ground, it's when the plume is spreading in the
9 vertical dimension from the height which it's
10 released and ultimately stabilizes, down to the
11 ground.

12 And so if you imagine a cone that's
13 spreading out, starting at the stack, you can
14 visualize how you can have plumes overlapping.
15 And also that is the effect that we're talking
16 about, not fallout, where you have concentrations
17 from the plume reaching ground level.

18 The reason --

19 PRESIDING MEMBER KEESE: Now you're
20 indication was that the plume is essentially
21 gaseous.

22 MR. RUBENSTEIN: That's correct.

23 PRESIDING MEMBER KEESE: And it's the
24 repercussions are down in time, someplace in time.

25 MR. RUBENSTEIN: With respect to PM10,

1 in terms of what we breathe, that's certainly
2 true. The plume, itself, under certain
3 meteorological conditions, can touch the ground.
4 What I was trying to distinguish, and maybe it was
5 too fine a point, was that particles don't fall
6 out of the plume. The plume remains intact. But
7 the plume, itself, can approach the ground.

8 PRESIDING MEMBER KEESE: Rise and then
9 fall?

10 MR. RUBENSTEIN: Correct. And that can
11 happen under certain weather conditions relatively
12 close to the plant.

13 PRESIDING MEMBER KEESE: Okay. And help
14 me out, naively, I heard suggested perhaps 4
15 percent of the time there is little wind?

16 MR. RUBENSTEIN: Correct.

17 PRESIDING MEMBER KEESE: During the
18 three months that we were looking at?

19 MR. RUBENSTEIN: Right.

20 PRESIDING MEMBER KEESE: Period. Is
21 that significant, that 96 percent of the time the
22 wind blows and it's not a problem, and 4 percent
23 it does? Are we looking at that 4 percent? Is
24 that what becomes our factor of significance? I'm
25 just asking the question naively.

1 MR. RUBENSTEIN: The dispersion models
2 that we use don't actually take a look at the
3 weather conditions when the winds are absolutely
4 still. The models simply don't work under those
5 conditions.

6 Those are of less concern for tall stack
7 sources like power plants because those are
8 typically stagnation conditions. And as Mr. Ngo
9 indicated, that's one of the kinds of conditions
10 that results in high PM10 levels. Those are
11 typically in California in the wintertime, and
12 they're associated with severe inversions.

13 The causes, the things that contribute
14 to high PM10 levels under those conditions, will
15 vary. In the Bay Area, for example, the peak
16 winter PM10 levels are in San Jose. The major
17 contributing sources are wood burning stoves in
18 homes, not stack sources.

19 I'm not as certain as to what the major
20 contributing sources are in the San Joaquin
21 Valley. But what Mr. Ngo did not indicate is that
22 there are two types of weather patterns in the
23 Central Valley that cause high PM10 levels.

24 One is the stagnation condition he talks
25 about. And the other is high wind speeds. And

1 when you have very high wind speeds the major
2 contributing sources are fugitive dust. And that
3 has been a big issue.

4 So, we have to make sure that we
5 understand overall the air quality issue. None of
6 either of those two conditions are the conditions
7 that cause worst case impacts from the power plant
8 plume.

9 And so --

10 PRESIDING MEMBER KEESE: Okay, and we
11 are looking at worst case.

12 MR. RUBENSTEIN: And we are looking at
13 worst case for the plume, itself.

14 With respect to the comment by Ms.
15 DeCarlo that CEQA requires the inclusion of all
16 reasonably foreseeable projects and a cumulative
17 impacts analysis, I agree completely.

18 We're not arguing that Mountain House
19 shouldn't be evaluated. What we're arguing is
20 what's the best technique for evaluating the
21 impacts of the Mountain House project.

22 So I don't believe there's a CEQA issue
23 here fundamentally, it's more of a technical
24 issue.

25 HEARING OFFICER WILLIAMS: Let me ask

1 you --

2 PRESIDING MEMBER KEESE: Yeah, let me
3 clarify that, though. So you're saying that the
4 EIR for Mountain House is good enough? I mean we
5 find it significant; we use the EIR.

6 MR. RUBENSTEIN: I have not seen that
7 EIR, but based on the quotes that were contained
8 in the staff's reply brief, it certainly seems to
9 me that there has been enough analysis and
10 sufficient conclusions about significance drawn in
11 that EIR, that that would be sufficient for the
12 staff in this case.

13 PRESIDING MEMBER KEESE: For staff to
14 use in making their recommendations regarding
15 appropriate offsets?

16 MR. RUBENSTEIN: Correct.

17 PRESIDING MEMBER KEESE: Okay.

18 HEARING OFFICER WILLIAMS: Have you
19 looked at the Tesla model? Have you reviewed that
20 at all?

21 MR. RUBENSTEIN: No. Actually what we
22 did is follow up exactly on Mr. Ngo's suggestion
23 after the September workshop. We contacted the
24 consultant for the Tesla project to coordinate on
25 doing an analysis of all three projects.

1 He informed us that he had already done
2 the analysis and it was included in the Tesla AFC.
3 And consequently we reported back to the staff
4 that we had done that coordination; the analysis
5 was done. And that if the staff accepted that
6 analysis, that we would rely upon that for our
7 project, as well.

8 MR. WHEATLAND: And then staff did, in
9 fact, accept it as part of their data adequacy
10 findings. They may be looking at other issues,
11 but at least in terms of cumulative impacts
12 they've accepted that analysis as being sufficient
13 for data adequacy. And they accepted it both in
14 the 12-month or the six-month process.

15 And I think it's important to emphasize
16 the six-month process, because this goes back to
17 the burden of proof issue that was discussed at
18 the very beginning.

19 Under the Commission's regs and 2023(b)
20 once it's accepted as data adequate, under the
21 six-month regulation, then the applicant has met
22 the initial showing that there is substantial
23 evidence that the project will not cause an
24 adverse impact on the environment. That is, once
25 it's accepted for the six-month process, the

1 burden has been met by the applicant to show that
2 there is full compliance with CEQA.

3 And that analysis was filed for all
4 three projects.

5 MR. RUBENSTEIN: And then to answer your
6 question, Mr. Williams, with respect to whether I
7 looked at that analysis. I looked at the summary
8 of that analysis that was contained in the Tesla
9 AFC.

10 And as I recall the conclusion from that
11 analysis was that using the kinds of models we use
12 in all of our proceedings, that there was not a
13 significant overlap of the plumes from the three
14 projects. That the worst case combined impact for
15 all three projects was roughly equal to the worst
16 case impact from one project. And I forget which
17 of the three it was. I know it was not East
18 Altamont.

19 HEARING OFFICER WILLIAMS: So, in terms
20 of consistency, then, much of the work has already
21 been done by Tesla. In other words, if the
22 Committee were to impose any additional
23 requirement on the applicant, it would be simply a
24 matter of imposing the requirement based upon the
25 closeness to Mountain House, rather than having

1 the applicant go back and model the impacts from
2 the three power projects?

3 MR. RUBENSTEIN: We would have to add
4 the impacts from the other projects to the
5 analysis that we have already done. But adding
6 the impacts for the other two power plants is not
7 a significant burden, I agree with that.

8 HEARING OFFICER WILLIAMS: Because that
9 work has already been done.

10 MR. RUBENSTEIN: Right. The last point
11 I wanted to make was that the staff indicated very
12 strongly that one of the main reasons for
13 requiring this model was to help them evaluate the
14 benefits of mitigation. I would respectfully
15 suggest that that is simply not true.

16 If, for example, you were to take a look
17 at the staff assessment that's recently been
18 published for the Tracy peaker project you'll see
19 that offsets for that project for NOx came largely
20 from the Elk Hills oilfield in the southern San
21 Joaquin Valley.

22 The offsets for PM10, a significant
23 fraction of them come from Fresno or from Hanford.
24 And I suggest that no one could do a dispersion
25 modeling analysis to show that those offsets

1 mitigate the impacts of the Tracy project. And I
2 don't think anybody should have to do that type of
3 analysis because we're talking about regional
4 pollutants and regional problems.

5 I think what they proposed in terms of
6 offsets for Tracy is reasonable. And it's
7 reasonable that the Commission Staff accepted it.
8 But for the staff to accept offsets of that type
9 for Tracy without doing any dispersion modeling
10 analysis, and then to suggest in the case of East
11 Altamont that a dispersion modeling analysis is
12 required for offsets that are much closer to deal
13 with the impacts of a housing development, not
14 even of our project, I think that there is a
15 fundamental question of consistency there.

16 MR. O'BRIEN: Mr. Rubenstein, I have a
17 follow-up on that. Is it your point, then that in
18 terms of mitigating impacts, air quality impacts
19 for the various pollutants, NOx, PM10, et cetera,
20 for this project you're looking at regional
21 issues. And at PM10, because it seems to me much
22 of the discussion about the need for modeling has
23 revolved around PM10.

24 So you would not differentiate PM10 from
25 the other pollutants like NOx, and that your point

1 would be that you need to look at all of these
2 pollutants from a regional level? Is that a fair
3 characterization of your position?

4 MR. RUBENSTEIN: For all the pollutants
5 that we're talking about for mitigation, yes.
6 They're all regional pollutants, and we should be
7 looking at them that way.

8 MR. O'BRIEN: And PM10 should not be
9 differentiated from those?

10 MR. RUBENSTEIN: That's correct.

11 MR. O'BRIEN: Thank you.

12 HEARING OFFICER WILLIAMS: So you
13 essentially then disagree with Mr. Ngo's statement
14 that there is a need for pinpoint, I believe was
15 the word used, pinpoint meteorological data as it
16 relates to the Mountain House project?

17 Is there a public health concern there
18 with respect to having pinpoint data that reflects
19 the impacts to Mountain House? Or is it really
20 more of a regional problem?

21 MR. RUBENSTEIN: Well, for Commissioner
22 Keese and, I think, Mr. Williams, you've heard
23 this speech before. There are two ways that
24 projects need to make sure that they address air
25 quality concerns.

1 The first is on a localized level. And
2 for that you do need to do a dispersion modeling
3 analysis, and you do need to make sure that the
4 project will not cause any violation of any air
5 quality standards. That's what all the modeling
6 analyses that you see in AFCs are based upon, is
7 making sure that you don't cause any localized
8 impacts.

9 Mitigation is not a substitute for
10 making sure that the project is safe on a local
11 level. You have to make sure that it's safe as a
12 basic fundamental requirement.

13 One you've made sure the project's safe
14 through this dispersion modeling analysis, the
15 next question is do you need to mitigate any
16 regional impacts. The air districts have a
17 formalized structure for that they refer to as the
18 emission offset program. The Commission enforces
19 that in a slightly different way under CEQA, but
20 the concept is the same. It's mitigating the
21 regional impacts.

22 And you can't use a dispersion modeling
23 analysis as a justification for avoiding regional
24 mitigation if that's required. Nor can you use a
25 dispersion modeling analysis to evaluate the

1 mitigation, because you're looking at two
2 different things.

3 The mitigation is fundamentally
4 regional, it's to make sure -- the analogy that I
5 often use is you imagine a ball that's filled with
6 water. And the water is right up to a limit line.
7 If you're going to build a new project you have to
8 scoop some water out of that bowl first by
9 providing offsets before you can add your
10 project's emissions back in. That's a regional
11 analysis. And that's what the entire offset
12 program is all about.

13 HEARING OFFICER WILLIAMS: Well, Mr.
14 Sarvey's point is that the plant will be located
15 in the Bay Area Air Quality Management District,
16 but the impacts will fall in San Joaquin.

17 Now, will the PDOC cover that unique
18 situation of the local impacts falling in San
19 Joaquin, or are they going to address the
20 standards for the Bay Area?

21 MR. RUBENSTEIN: The PDOC will evaluate
22 the air quality impacts in both air basins. The
23 project will be evaluated under the regulations of
24 the Bay Area District, but the Bay Area District
25 doesn't ignore, and they cannot ignore impacts

1 outside of their boundaries. So they will be
2 looking at that.

3 In addition, the San Joaquin Valley Air
4 District has commented on the PDOC, as well -- or
5 will comment, rather, on the PDOC, and their
6 comments I'm sure will be addressed by the Bay
7 Area District.

8 That doesn't really get to the question,
9 though, that we're dealing with which is where the
10 project's impacts, and where does the mitigation
11 come from.

12 And for that the Commission, I think,
13 does have an important role because the Bay Area
14 District is going to make sure that their offsets,
15 the offsets we provide, satisfy their rules.
16 They're not going to look at the issue you're
17 talking about which is the interbasin nature of
18 the impacts.

19 And I think if you take a look at the
20 figure that we handed out, although it's been
21 characterized that the offsets are on the
22 boundaries of the counties, in fact those offsets
23 are on the main air pathways that lead from the
24 Bay Area to the San Joaquin Valley.

25 PRESIDING MEMBER KEESE: Thank you. I

1 think we've just about had enough of this issue.
2 Staff, do you have a final word?

3 MS. DeCARLO: I'd like to clarify a
4 little bit about our consistency with regard to
5 what we look at in analysis.

6 There are three main things that we look
7 at that are not represented by background data
8 that we receive from the Air District. And these
9 are projects that are currently in the permitting
10 process; projects that have been permitted and are
11 being built; and projects that are permitted but
12 not yet built.

13 So, I believe that piecemeal development
14 of a county would not be included in those because
15 one, they don't rise to any level that we could
16 analyze, per se; and two, they're not within those
17 three parameters; however, the Mountain House
18 community, as it has been permitted, and it is
19 being built.

20 And I would just like to reiterate that
21 staff feels that it's very important to have this
22 information in order to determine the adequacy of
23 mitigation provided. The San Joaquin Valley has
24 commented that they don't believe that the
25 mitigation is adequate. We'll wait and see what

1 the Bay Area District determines in their PDOC.
2 But we feel that it is extremely important to have
3 the specific information that a model would
4 provide in order to determine the adequacy of
5 mitigation.

6 PRESIDING MEMBER KEESE: Okay, and I
7 would say that the issue of what the mitigation
8 is, we're not discussing here. We're discussing
9 the technical area of do we need to model the --

10 MS. DeCARLO: Right.

11 PRESIDING MEMBER KEESE: -- involve that
12 community, because there is -- clearly this is a
13 rather unique situation. And as the applicant has
14 just indicated, in putting together their offsets,
15 their thinking of what flows into San Joaquin
16 already.

17 So I think we're going to have to take
18 the San Joaquin into consideration as we arrive at
19 our solution eventually. So I do think that we've
20 heard enough on the issue of cumulative air
21 analysis.

22 That leaves us ten minutes if we're
23 going to -- for the whole rest of this shooting
24 match. We have an optimist on my right. So, go.
25 Do you have a -- okay. We have a couple questions

1 for San Joaquin. Are you still there?

2 MR. SWEENEY: Yes.

3 PRESIDING MEMBER KEESE: Mr. O'Brien.

4 MR. O'BRIEN: Mr. Sweeney, I have a
5 couple questions for you in regard to the December
6 18th letter that you sent to Ms. Davis of the CEC
7 Staff.

8 Specifically on the first page, the
9 third paragraph, the District makes note that the
10 Bay Area Air Quality Management rules have less
11 stringent requirements for the amount of offsets
12 required than San Joaquin Valley.

13 And you go on to state that the District
14 requires an offset ratio of at least 1.2 to 1 for
15 emissions over certain thresholds, and are
16 currently under EPA sanctions requiring ratios of
17 at least 2.0 to 1.

18 My question is first of all, if this
19 project were located one mile to the east, and
20 within the District boundaries, would the offset
21 requirements of the applicant be 2.0 to 1 for all
22 pollutants?

23 MR. SWEENEY: All pollutants except for
24 carbon monoxide.

25 MR. O'BRIEN: Okay. And the second

1 question then is on the second page you provided a
2 chart showing the offset ratio from the District
3 and BACT, and you use for the District 1.2 to 1
4 for NOx, VOC, PM10 and SOx.

5 A couple of questions on that. First of
6 all, can you tell me why San Joaquin requires SOx
7 offsets and the Bay Area does not?

8 MR. SWEENEY: I cannot address why the
9 Bay Area would not require offsets for SOx.

10 MR. O'BRIEN: Okay, but why does San
11 Joaquin require them?

12 MR. SWEENEY: We have since our
13 inception, and we just want to insure that we
14 continue to be in compliance with the regulations,
15 with the Clean Air Act.

16 MR. O'BRIEN: Okay. Another question.
17 In using 1.2 to 1, why did you use that as opposed
18 to 2.0 to 1, considering that you said you're
19 under sanctions from EPA?

20 MR. SWEENEY: The table was used purely
21 for illustrative purposes to indicate that there's
22 a difference in how the two Districts require
23 offsets. And the table is just showing that even
24 at the minimum requirements within the San Joaquin
25 Valley, say that if we were not under the EPA

1 sanctions at the moment, we still would require
2 more offsets be provided for this project than the
3 Bay Area would.

4 So the table really is for illustrative
5 purposes. And from that I've listed just --

6 MR. O'BRIEN: Okay. And in terms of the
7 sanctions, when are the -- is it an indefinite
8 period of time for the sanctions?

9 MR. SWEENEY: No. The sanctions were
10 imposed at a time when we did not have an EPA
11 approved fugitive dust rule in place. And we
12 expect that those sanctions will be lifted
13 hopefully within the next month or two. We have
14 been working with EPA on drafting a new rule, and
15 that has been sent out for their approval. And
16 it's just a matter of when they can get it through
17 their process to have it published in the Federal
18 Register. At that point then the sanctions will
19 be lifted.

20 MR. O'BRIEN: Thank you.

21 HEARING OFFICER WILLIAMS: Okay. I
22 think that the remaining air quality questions
23 have virtually been addressed. And what hasn't
24 been addressed will await arrival of the PDOC.

25 So, I don't believe there's any need to

1 necessarily discuss mitigation at this point, or
2 application of best available control technology.
3 And I believe applicant has provided to staff the
4 vendor guarantees that were requested.

5 MS. DeCARLO: Yes, we have received all
6 that information.

7 HEARING OFFICER WILLIAMS: So if there's
8 no objection I think we can leave air quality at
9 this point. I think we've covered all that we
10 can.

11 Okay, seeing none, we'll move on to
12 biological resources. The Committee understands
13 that there's a revised landscaping plan that's
14 being looked at by U.S. Fish and Wildlife. And
15 we've had Western tell us that they're reviewing
16 the biological opinion.

17 So, I think we've covered that as well.

18 MR. RUBENSTEIN: If I could there's one
19 additional piece of information that we'd like to
20 provide the Committee today. The applicant has
21 been reevaluating one of the gasline alternatives.
22 And I'd like to ask Alicia Torre to come up and
23 describe to you our latest thinking about gasline
24 routing, and how that would -- we can then discuss
25 how that would affect the timing of the biological

1 reviews.

2 MS. TORRE: Thank you, Commissioners.
3 We are going to be proposing a change to the gas
4 pipeline. We have had further discussions with
5 the U.S. Bureau of Reclamation.

6 They believe it is preferable to run
7 along the aqueduct rather than cross the buried
8 pipeline in Kelso Road. We are in final
9 negotiations with the landowners on the required
10 right-of-way for this change, and expect to file a
11 supplement with the new gasline routing by January
12 24th, if not before.

13 What you see up on the screen, and I
14 think you're just being handed out some drawings,
15 will show you the difference between what you have
16 in the AFC and what we are proposing. Let me just
17 wait a minute until you all have that.

18 Okay, so this shows three gas routes on
19 it; all of the routes would come down Mountain
20 House Road. They're all the same to the corner of
21 Mountain House and Kelso.

22 What is labeled here as the existing
23 route goes straight down Kelso Road to the PG&E
24 compressor station at the corner of Bruns Road and
25 Kelso. And you see on this map a line running at

1 an angle, and that is PG&E's line 401.

2 Also on this page, and I'm going to, you
3 know, skip down to the third one listed called
4 existing alternative, is an alternative that was
5 provided in the AFC. And that alternative ran
6 alongside the Delta Mendota Canal Aqueduct, and
7 then cut across a property at an angle to reach
8 the corner of Kelso and Mountain House.

9 What we will be filing is a proposed
10 route that is very similar to what was already
11 presented at the AFC, except that instead of
12 cutting across the property it comes up to Kelso
13 Road alongside of the U.S. Bureau of Reclamation
14 Delta Mendota Canal. And then runs down Kelso
15 Road.

16 So, what we provided in the original
17 application was information about both the
18 existing route down Kelso Road and the alternative
19 shown here in the strong red line. Both of those
20 were presented in the application for
21 certification. And this revision, as you can see
22 the first half-mile is like the existing route,
23 and then there is about 2000 feet that are new;
24 and then the remainder is the alternative proposed
25 in the AFC.

1 So, the new ground being covered is very
2 small. And the, you know, type of

3 MS. TOWNSEND-SMITH: What's the
4 distance?

5 MS. TORRE: -- ground, of course, is
6 very similar. Excuse me?

7 MS. TOWNSEND-SMITH: What's the
8 distance?

9 MS. TORRE: About 1000 feet.

10 PRESIDING MEMBER KEESE: Explain to me,
11 existing means that's the way you filed it in the
12 AFC?

13 MS. TORRE: In the AFC we provided the
14 proposed route and several alternatives. And the
15 proposed --

16 PRESIDING MEMBER KEESE: Okay, and so
17 the --

18 MS. TORRE: -- route is here called
19 existing route.

20 PRESIDING MEMBER KEESE: Okay, that's
21 good enough.

22 MS. TORRE: So that was --

23 PRESIDING MEMBER KEESE: I thought I --

24 MS. TORRE: -- that was --

25 PRESIDING MEMBER KEESE: -- I thought I

1 understood it. I do.

2 MS. TORRE: Some of the basic reasons
3 for making this change are that after further
4 meetings with the U.S. Bureau of Reclamation, you
5 know, they had indicated that they believe it
6 would be preferable to run along the aqueduct. I
7 mean they still, you know, have to do their
8 detailed review, and we have to go through a
9 permit process with them, but they have indicated
10 they think that that would be preferable.

11 And then we have been working on
12 landowner agreements in order to effect that
13 change. And without having landowner agreements
14 we would, you know, didn't want to come in here
15 saying that we are in final negotiations, and
16 expect to file a supplement with this proposed
17 change by January 24th.

18 PRESIDING MEMBER KEESE: Thank you.

19 HEARING OFFICER WILLIAMS: Can staff --
20 oh, certainly.

21 MR. SORNBORGER: Yes, I do have a
22 question. On the proposed route, and I can't
23 remember so you can refresh my memory, on the
24 proposed route wasn't there an issue about the
25 pipeline bisecting a wetlands, and you weren't

1 affecting a wetlands area?

2 Will this new route affect a wetlands
3 area? And the reason I ask that is if it does
4 affect a wetlands area, I have to get the Corps
5 involved. Can you address that?

6 MR. KOFORD: I'm E.J. Koford,
7 K-o-f-o-r-d from CH2MHILL, consultant to Calpine
8 on this project.

9 The original plan coming down the road
10 would have put the pipeline actually in the road,
11 so we wouldn't have affected any wetlands --

12 MR. SORNBORGER: Right.

13 MR. KOFORD: -- coming down in the road.
14 That's a good avoidance measure. As it turns out,
15 this parallel line that comes down next to the
16 Delta Mendota crosses three canals, canal 70,
17 canal, I think it's called 120, and 150, which are
18 all operated by BBID.

19 None of those are going to qualify as
20 jurisdictional wetlands.

21 MR. SORNBORGER: Okay.

22 MR. KOFORD: They're all anthropogenic,
23 they're all developed and operated by BBID, and
24 kept clear of vegetation by BBID. And they're dry
25 about six months of the year.

1 So, we could, if we felt it was
2 desirable to use a construction method to
3 completely avoid those area, those wet areas, we
4 could do it. We could drill underground more, or
5 do something exotic.

6 But quite frankly, they're dry. There's
7 no reason not to trench through them and recompact
8 them as long as we can do it without interfering
9 with BBID's activities.

10 Where there are concerns for species
11 being present, those species are aquatic. And
12 when the canals are dry they won't be present. So
13 the Corps would not take jurisdiction on these.
14 We wouldn't have a Corps permitting nexus. It's
15 really just an agreement with BBID.

16 MR. SORNBORGER: Thank you.

17 HEARING OFFICER WILLIAMS: Staff, do you
18 have --

19 MS. DeCARLO: Yes, I'd just like to
20 comment that we won't know how this may impact our
21 analysis or the time required to analyze this
22 until we see the formal submittal.

23 MR. SORNBORGER: I'd also like to make
24 another comment. Those dates that I gave you for
25 biological assessments and section 106 and section

1 107, I don't know if they're going to be impacted
2 on this or not.

3 I know with the 106, one of the concerns
4 was going under the Delta Mendota Canal. There
5 was an issue of eligibility of the Delta Mendota
6 Canal for state historic reasons. And now that
7 we're not going under the Canal I don't know if
8 there's an issue.

9 And also I don't know if our biologist
10 is going to have any issue with the change. I
11 can't imagine he would, but I just want to throw
12 that disclaimer out there.

13 HEARING OFFICER WILLIAMS: Okay, thank
14 you.

15 MR. KOFORD: I'd like to offer up that
16 the species and habitats that we're affecting by
17 changing this route are already in the biological
18 assessment. In other words we're not affecting
19 anything new in terms of the kinds of critters or
20 kinds of places.

21 So those issues have been addressed.
22 The exact location and quantity of area might
23 change a little bit. But red-legged frog, for
24 example, which is a concern, is already in our
25 bioassessment, as are all the other plant species.

1 So we think it will be pretty fluid,
2 actually.

3 HEARING OFFICER WILLIAMS: Thank you.

4 MS. STRACHAN: This is Susan Strachan.
5 If I might add, we're moving forward with
6 providing Western our comments on the biological
7 assessment which they redrafted. And to get that
8 biological assessment, except for this revision of
9 the gasline sewn up.

10 And then once we have our gasline
11 description and biological information together,
12 which we anticipate to be mid January, we will
13 provide them with that information.

14 So we don't expect there to be much of a
15 delay in terms of initiating formal consultation
16 with the Service.

17 MS. TORRE: And if I might just clarify
18 another issue, Kirk. The issue related to
19 historicity of the Delta Mendota Canal, I believe
20 was with regard to the intake channel, which is
21 the blue area on the map behind you. It's the
22 area north, and not where it's going under the
23 road. And there is no change to our proposed
24 water line. It's the water line coming from the
25 BBID that crosses underneath that.

1 And that does pose that issue you spoke
2 of, and it still does. And there's no change in
3 this supplement being contemplated. So, that
4 didn't factor into any reasoning about this
5 change, either.

6 MR. SORNBORGER: Okay, thanks.

7 HEARING OFFICER WILLIAMS: Okay,
8 anything further on that? Mr. Sarvey, do you have
9 anything on that?

10 MR. SARVEY: I had a comment on air
11 quality, but that discussion, I guess, has been
12 terminated.

13 HEARING OFFICER WILLIAMS: Oh, well, no,
14 go ahead and make your comment. I'm sorry.

15 MR. SARVEY: Okay. I've been looking at
16 the project from the cumulative modeling analysis
17 provided in the GWF Peaker Plant analysis for
18 their staff review. And PM concentrations
19 locally, that would be Hazelton Street in
20 Stockton; the highest level in the last ten years
21 has been 150.

22 And the data seems to indicate that any
23 contribution to that level of over 150 would
24 violate the national air quality standard for
25 PM10. And I haven't heard that brought up yet.

1 HEARING OFFICER WILLIAMS: Well, I think
2 that will probably be addressed in the PDOC, don't
3 you think. We have not received the PDOC from Bay
4 Area Air Quality Management District. So at the
5 point that we receive the PDOC we will definitely
6 all be more enlightened about where we stand in
7 that respect.

8 MR. SARVEY: Thank you.

9 HEARING OFFICER WILLIAMS: Thank you. I
10 think as to land use, the measure D interpretation
11 issues and conditional findings have all been
12 cleared up, and we're reconciled in some manner.
13 So we don't need to spend any time on these
14 issues. Am I correct?

15 MS. DeCARLO: Correct. We have received
16 the findings from the County. We haven't had a
17 chance to thoroughly review those, but in general
18 we defer on those findings. So they seem adequate
19 as of now.

20 We have received the certificate of
21 compliance with regard to the parcel, so that's
22 all done.

23 We have received the mitigation
24 agreement for the farmland impact. We haven't had
25 a chance to thoroughly review that, however we are

1 concerned that while the applicant does provide a
2 substantial amount of money, nothing in the
3 agreement itself requires the actual purchase of
4 land. It doesn't set forth any acreage or a
5 specific amount of acreage that would be
6 purchased.

7 So we will be looking into that a little
8 bit more to insure that we feel that the agreement
9 does actually mitigate for the loss of farmland.

10 HEARING OFFICER WILLIAMS: Applicant, do
11 you have a comment?

12 MS. TORRE: The farmland mitigation
13 agreement requires the East Altamont Energy Center
14 LLC to provide Alameda County with a million
15 dollars for a trust to protect farmland
16 specifically for the East County area, which is,
17 you know, a purpose and a trust envisioned by
18 Measure D passed by voters in November 2000.

19 That trust has not been established yet
20 by the County, and so the County will hold this
21 money until such time as the trust is established,
22 and can utilize it for the same purposes as that
23 trust for the County.

24 The amount of money, a million dollars,
25 if I can comment for a minute, the staff had said

1 that Alameda County had made it clear that we were
2 providing, you know, at least one-to-one
3 mitigation. Land values out in that area are in
4 the neighborhood of \$10,000 an acre. We are
5 taking approximately 40 acres out of permanent
6 farmland utilization.

7 So, a sum like \$400,000 would have been
8 closer to one-to-one mitigation, which in the
9 preliminary staff assessment the staff seemed
10 quite comfortable with that.

11 So, this agreement represents more than
12 two-to-one mitigation for farmland. We think it
13 is generous and clearly mitigates to a level of
14 less than significant impact.

15 We chose to provide mitigation in this
16 form because we believe that it was responsive to
17 the recently passed Measure D, and you know, would
18 be an appropriate response to what the voters of
19 the County had just recently indicated they were
20 concerned about.

21 HEARING OFFICER WILLIAMS: Staff, don't
22 you agree that that seems appropriate to tailor
23 the agreement to the specific Measure?

24 MR. SHAW: Correct, and we do commend
25 the applicant with trying to further the goals of

1 Measure D. However, I just want to let the
2 Committee be aware that we will be looking at it,
3 and we haven't had a chance to thoroughly review
4 this. However, I just wanted to note that the
5 agreement, itself, doesn't require any specific
6 land to be set aside.

7 PRESIDING MEMBER KEESE: Okay, thanks.

8 HEARING OFFICER WILLIAMS: Okay.

9 Visual, I think is our final topic.

10 And here I guess staff is awaiting the
11 plume analysis.

12 MS. DeCARLO: Yeah, we will be filing
13 our plume analysis shortly within the week, next
14 week. And then I do believe, based on that plume
15 analysis, the applicant still has two data
16 responses that they were waiting for the plume
17 analysis to provide us. So we will be receiving
18 that.

19 HEARING OFFICER WILLIAMS: Okay. I
20 don't believe there are any other issues here, are
21 there, in terms of visual impacts? I know the
22 question of the landscaping we pretty much placed
23 under the biological resources.

24 MS. DeCARLO: Right, we need to
25 determine first, sit down with the various

1 agencies involved to make sure that the species
2 that the applicant has suggested for the
3 landscaping plan are amenable to those agencies.

4 We've had a tough time, as the applicant
5 noted, getting ahold of Fish and Game and Fish and
6 Wildlife. Hopefully we'll have better luck
7 within the near future so we can sit down, get a
8 good idea of what species would be amenable. Then
9 the applicant can go back and actually simulate
10 the landscaping plan with those species. And then
11 visual staff can analyze that specific simulation.

12 HEARING OFFICER WILLIAMS: Okay. Any
13 comments?

14 MR. RUBENSTEIN: I'd like just to add
15 that one potential wrinkle in this area is that
16 while we're working with the Commission Staff to
17 try to find a biologically acceptable landscaping
18 plan, the Commission Staff in its visual resources
19 section has made a proposal for accelerating the
20 landscaping program that typically takes 20 years
21 to achieve, 20 years of growth, within five years.

22 That's a new recommendation that they're
23 making for this project which really makes the
24 solution of the biologically acceptable
25 landscaping plan much more difficult.

1 So we're hoping that the Commission
2 Staff, between its biologists and its visual
3 resource people, will work together to develop a
4 uniform staff position on what they deem to be an
5 acceptable landscaping plan.

6 And once we have guidance from the staff
7 in terms of what their combined expectation is, we
8 will do our best to prepare the visual simulations
9 as quickly as we can to address those issues.

10 PRESIDING MEMBER KEESE: I would hope
11 that as the biological is discussed all of staff
12 can be present.

13 MR. SHAW: Correct. Unfortunately,
14 until the simulations are done, visual staff can't
15 get a good idea of whether or not it satisfies
16 their needs. And the applicant understandably
17 doesn't want to perform the simulations until the
18 biology staff has signed off on the species.

19 HEARING OFFICER WILLIAMS: Assuming that
20 that will get worked out in the process of
21 meetings that you all have scheduled and what-
22 have-you.

23 So, I think what we have left then is
24 the schedule issues. And the Committee, of
25 course, will be rendering a decision on the

1 cumulative air quality issue. We'll need to
2 review the transcript from today. So I can't
3 really give you a timeframe as to when the ruling
4 will be issued.

5 I don't know if there's a whole lot to
6 talk about in terms of the schedule. We received
7 the proposed schedules from the parties.

8 I think --

9 PRESIDING MEMBER KEESE: We have one
10 from applicant, also?

11 MR. WHEATLAND: We provided a schedule,
12 and --

13 PRESIDING MEMBER KEESE: Yeah.

14 MR. WHEATLAND: -- we just received the
15 staff's proposed schedule this morning. If I
16 could comment on it just briefly?

17 PRESIDING MEMBER KEESE: Right. Why
18 don't we have real brief comments both ways. Your
19 comment on the staff's schedule.

20 MR. WHEATLAND: The typical AFC schedule
21 that the Commission typically uses in a 12-month
22 AFC provides for the final staff assessment to be
23 issued from 20 to 40 days after the FDOC is
24 received; and 20 to 40 days after the staff
25 receives the agency comments on the PSA.

1 And the applicant certainly feels that
2 anything within that time range of 20 to 40 days
3 is a reasonable period of time for preparation of
4 the FSA.

5 Staff, however, is asking in this case
6 for 45 working days after the issuance of the FDOC
7 to put the FSA together. In other words, they're
8 asking for about nine weeks, or 63 days, compared
9 to the typical 20 to 40 days.

10 If the Committee were to grant that
11 extensive amount of time it would make it very
12 difficult to complete this process within a 12-
13 month framework. So we'd encourage the Committee
14 to keep within the traditional framework of 20 to
15 40 days after issuance of the FDOC and the
16 submission of agency comments.

17 And I think then the 12-month schedule
18 would be achievable.

19 HEARING OFFICER WILLIAMS: Does anyone
20 have anything further?

21 MS. DeCARLO: Well, I would just like
22 to, if I can, comment on that.

23 HEARING OFFICER WILLIAMS: Sure.

24 MS. DeCARLO: In general Mr. Wheatland
25 does correctly cite our general procedures,

1 however this isn't a general case. We do have
2 Western involved, and that does add a certain
3 amount of time that we require to coordinate a
4 joint review process, which is the reason for the
5 additional number of days that we have allowed in
6 the schedule.

7 MR. O'BRIEN: Is that the only reason?

8 MS. DAVIS: Yes. I would like to just
9 add that in addition to the additional amount of
10 time that's needed to coordinate the review,
11 Western also has to do what they call an
12 administrative review of the final document, which
13 could add one to two weeks to the schedule.

14 So, in addition to the fact that when
15 we're receiving sections we're sending things out
16 to Western, and must coordinate all the comments
17 which adds a significant amount of time, there's
18 the additional administrative review.

19 PRESIDING MEMBER KEESE: Remind me when
20 our 12 months is up?

21 MR. WHEATLAND: June 27th. If I could
22 just add one thing --

23 PRESIDING MEMBER KEESE: That gives us
24 eight days to write a report --

25 MR. WHEATLAND: Yes.

1 MS. DeCARLO: Well, if I might add,
2 though, that the applicant has made changes to the
3 project along the way.

4 PRESIDING MEMBER KEESE: Right,
5 right, --

6 MR. WHEATLAND: But if I could just --

7 PRESIDING MEMBER KEESE: -- and we have.

8 MR. WHEATLAND: -- as all projects
9 do, --

10 PRESIDING MEMBER KEESE: Right.

11 MR. WHEATLAND: The keeping that I'd
12 like to stress is that we've been talking today
13 about the 10 percent of the issues that are
14 difficult issues, but the thing we need to keep in
15 perspective is that 90 percent of this case
16 there's substantial resolution.

17 We walked through many issues during the
18 workshop where the staff has all the information,
19 there's agreement with the applicant, there are no
20 significant issues.

21 If the review process with Western
22 begins now for those parts of the document there's
23 no need to take the nine weeks after the last
24 piece of information is received to begin that
25 review.

1 And we're really talking about a very
2 small fraction of the total volume of information
3 that's necessary to be reviewed that's still in
4 dispute. And we certainly support a reasonable
5 time for review of that, but we think that nine
6 weeks is excessive.

7 MR. O'BRIEN: I'd like a little more
8 clarification and a little more explanation so
9 that I, at least personally, can understand this a
10 little better.

11 The staff releases the PSA, an
12 incomplete PSA, but on December the 6th; and in
13 the staff's schedule the staff is proposing to
14 release the FSA on May the 17th.

15 And the thing that I personally would
16 like to understand is given the space between
17 those two documents, which is longer than is
18 normally average, you know, the typical amount of
19 time, which I think, based upon my experience, has
20 been about 60 days, is it the staff's position
21 that the applicant, in any way, has contributed to
22 a delay in this proceeding? And I'm not using
23 that pejoratively, but is that why we're looking
24 at a schedule now that goes out to June 19th for
25 the beginning of the evidentiary hearings?

1 Because I think it's important for the
2 Committee to understand a little more clearly as
3 to why we are where we are today; what has
4 happened on this case to get us to this point
5 today; and, you know, where do we go from here.

6 So, I'd appreciate just a little more
7 explanation as to, you know, why we're looking at
8 a May 17th FSA date, and what is bringing that
9 about, from staff's perspective.

10 And then I'd appreciate the applicant's
11 response to that.

12 MS. DeCARLO: Sure, and the applicant
13 actually admits they did contribute to a delay in
14 the PDOC which is the result -- which is why we
15 have this substantial rift between the issuance of
16 the PSA and the FSA. Ordinarily we have the PDOC
17 issued before the PSA is even issued.

18 They have the standard 60-day review
19 period for the PDOC before the FDOC is issued.
20 Here we don't have the PDOC yet.

21 So we need issuance of the PDOC. And
22 then 60 days later issuance of the FDOC.

23 MR. O'BRIEN: And let me interrupt you
24 right there. Does that make air quality in this
25 schedule the critical path item? And but for air

1 quality the FSA would be released earlier?

2 Or if there are other technical areas
3 that are as similarly delayed, can you enumerate
4 what other areas those are?

5 MS. DeCARLO: Sure. There's biology.
6 While we don't need the actual biological opinion
7 for our hearings or for the FSA, we do need some
8 sort of reassurance by the agencies involved that
9 the applicant has proposed adequate mitigation and
10 things will run smoothly. And there aren't any
11 foreseeable problems.

12 We don't have that at this time.
13 Potentially we have assurances from Western that
14 they will be getting the BA out by the 21st or the
15 end of this month potentially.

16 There's a 30-day review period for
17 adequacy or completeness that the U.S. Fish and
18 Wildlife would do. And at that point Western
19 believes that we might have some indication of
20 whether or not things will run smoothly.

21 But until issuance of that and somewhere
22 from Fish and Game and Fish and Wildlife it
23 remains an unknown.

24 I might add there's also the other
25 outstanding items that we can't really speak to

1 the schedule of those. If I had to guess I would
2 say the FDOC is probably what's going to hold us
3 up the longest. And that's the March 15th date
4 that you see in staff's proposed schedule.

5 But the other items are also
6 outstanding. And so as long as they are in by
7 March 15th we can meet the schedule. But staff's
8 proposed date for the FSA does -- it relates right
9 back to that March 15th date, which is the same
10 date that the applicant used for their proposed
11 schedule for the FDOC.

12 PRESIDING MEMBER KEESE: And I see that
13 Western releases the final EA on May 17th. Is
14 that -- we have Western, are you suggesting that's
15 about your timeframe, too?

16 MR. SORNBORGER: We would support the
17 schedule that was put out by staff, but certainly
18 I would like to add there's a little, in
19 parentheses, it's back here in the late January
20 timeframe. It says, and potentially NMFS, that's
21 National Marine Fisheries Service.

22 We didn't find out there was an impact
23 to the Delta till this last workshop we had; and
24 that was one of the things that drove the
25 rewriting of the BA.

1 I just briefly spoke to the Western
2 biologist, and he was uncertain as to the
3 potential impact for that. We will have to get
4 some kind of input from them. I don't have a good
5 understanding -- understanding is not the right
6 word -- I don't have a good insight into when we
7 would be getting that input from NMFS.

8 And although it is an informal
9 consultation at this point, if it is determined
10 that there is an impact to a federally listed
11 species, that would turn into a formal
12 consultation process.

13 MR. WHEATLAND: I should add, though,
14 that that was a part of our original project
15 description. We agree that consultation may need
16 to occur, but it's not the fault of the applicant
17 that it has not, because we flagged that as an
18 issue.

19 MR. SORNBORGER: And I'm sorry, I didn't
20 mean to throw any disparaging remarks upon that;
21 it's just that the BA had to be rewritten
22 concerning some input that was given to us at the
23 workshop. I didn't mean to say that there was
24 anything being hidden.

25 PRESIDING MEMBER KEESE: Thank you.

1 MS. DeCARLO: And if I could just
2 shortly emphasize, with regard to our schedule it
3 all hinges upon the PDOC being issued mid January.

4 Now, we've had indications in the past
5 that the PDOC was going to be issued end of
6 November, mid December. So, it's not set in stone
7 that it will be issued in mid January. And if
8 that slips, then staff's schedule also slips.

9 PRESIDING MEMBER KEESE: We've had
10 communication from the Bay Area that they won't
11 slip any more.

12 MR. O'BRIEN: Follow up for staff in
13 terms of rebuttal to the comments from the
14 applicant.

15 Unless I'm mistaken Mr. Wheatland was
16 expressing concern that the amount of time between
17 March 15th and May 17th was a lot more than staff
18 typically has taken from the release of the FDOC
19 to the publication of the FSA.

20 What's staff's response to that point?

21 MS. DeCARLO: I believe solely the
22 results of coordination with Western. They have a
23 formal review process that they have to go
24 through, and I'm informed, and I believe
25 correctly, that the top people who need to review

1 the document prefer to see it in one piece. They
2 do not want to do a piecemeal review.

3 Therefore, unfortunately we wouldn't be
4 able to even if we had the separate sections
5 completed by staff before certain other sections.
6 We wouldn't be able to forward those on and get
7 the final formal review from the top Western
8 people until the final document is wholly
9 completed.

10 MR. SORNBORGER: The EA is signed by the
11 Western Regional Manager. And the Regional
12 Manager reviews the entire document, not just in
13 piecemeal parts. And he actually does do a
14 thorough review, what I'm told. So, yeah, that's
15 a wrinkle that adds into the schedule.

16 PRESIDING MEMBER KEESE: Thank you.

17 HEARING OFFICER WILLIAMS: Thank you.

18 MR. WHEATLAND: Did you -- I just wanted
19 to -- I'm sorry, but I just wanted to point out
20 that with the exception of the PDOC/FDOC, the
21 other issues that are outstanding issue areas are
22 outstanding because this is additional information
23 that the staff has requested; in areas like water
24 resources, visual resources. These are the
25 applicant's attempt to address concerns that have

1 been raised by the parties during the course of
2 the proceeding, as opposed to a failure to provide
3 information in a timely manner.

4 HEARING OFFICER WILLIAMS: Understood.
5 Thank you.

6 MR. SORNBORGER: The Regional Manager is
7 located in Colorado, too, I should say. He's not
8 here in California.

9 HEARING OFFICER WILLIAMS: Okay. Long-
10 arm jurisdiction.

11 (Laughter.)

12 HEARING OFFICER WILLIAMS: All right. I
13 think that about does it, unless anyone -- thank
14 you, phone callers, for your participation. Do
15 you have anything? Anyone left on the phone?

16 MR. SWEENEY: Nothing further.

17 HEARING OFFICER WILLIAMS: Okay. All
18 right.

19 PRESIDING MEMBER KEESE: Thank you.
20 Optimism is rewarded. It's 12:28 and we're out of
21 here. Thank you.

22 (Whereupon, at 12:28 p.m., the
23 Conference was concluded.)

24 --o0o--

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of January, 2002.

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