

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:) Docket No. 97-AFC-1
)
Application for Certification)
for the High Desert Power Project)
_____)

SECOND COMMITTEE STATUS CONFERENCE

California Energy Commission
1516 Ninth Street
First Floor Hearing Room A
Sacramento, California 95814

Tuesday, April 28, 1998
10:00 a.m. to 4:12 p.m.

Reported and Transcribed by: Ramona Cota

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(916) 967-6811

A P P E A R A N C E S

Commissioners Present:

JANANNE SHARPLESS, Presiding Member

ROBERT A. LAURIE

Staff Present:

STANLEY W. VALKOSKY, Chief Hearing Officer

ROSELLA SHAPIRO, Advisor to Commissioner Sharpless

For the Staff of the Commission:

RICHARD K. BUELL, Siting Project Manager

KEITH GOLDEN

CARYN J. HOUGH, Senior Staff Counsel

AL McCUEN

JOE O'HAGAN

MICHAEL RINGER

ELLEN TOWNSEND-SMITH

GARY WALKER

For the Applicant:

MICHAEL J. CARROLL, Latham & Watkins

SARA J. HEAD, QEP, ENSR

JEANINE KELLY, Enviro-Serv

ALLAN J. THOMPSON, Law Office of Allan J. Thompson

ANDREW C. WELCH, P.E., High Desert Power Project LLC

R.L. (RICK) WOLFINGER, High Desert Power Project LLC

A P P E A R A N C E S (C O N T I N U E D)

For the Intervenor:

MARC D. JOSEPH, Adams Broadwell & Joseph
On behalf of California Unions for Reliable Energy (CURE)

For the Public:

MARK ABRAMOWITZ, Community Environmental Resources
Also on behalf of Goal Line Environmental Technologies

OSCAR HELLRICH, Mojave Desert Air Quality Management District

RON KELLER, California Independent System Operator (ISO)

GARY L. SCHOONYAN, Southern California Edison

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1 MR. CARROLL: Caryn Hough, Staff Counsel.

2 MR. JOSEPH: Marc Joseph representing CURE.

3 COMMISSIONER SHARPLESS: Welcome and thank you for
4 all coming. We may have some other interested parties in the
5 audience who I will call up as we get to the topic areas of
6 interest to them so we will note that. I don't know, Stan,
7 did we have blue cards today or are we in a more informal
8 process?

9 HEARING OFFICER VALKOSKY: No, no blue cards.

10 COMMISSIONER SHARPLESS: No blue cards, okay. So
11 we'll go topic by topic and as we start the discussion we'll
12 call for interested parties to come up at that time.

13 The Committee scheduled this Public Conference in a
14 Notice dated April 9, 1998. Today's conference will provide
15 each party an opportunity to inform the Committee on the
16 status of the High Desert case, including any potential
17 delays that might occur; address other parties' comments
18 contained in the second status report which was filed March
19 25th of this year and in a third status report which was
20 filed last week, April 24th; and third, to discuss any other
21 matters relevant to this proceeding, including the schedule
22 for the release of the Preliminary Staff Assessment, which at
23 this moment is at May 15th, I believe, and the degree to
24 which the Preliminary Staff Assessment will encompass all of
25 the issues in this proceeding.

1 I'd like to cover the procedure a bit since we
2 don't have an agenda out there for the parties. The way we
3 would like to proceed today is to go topic area by topic
4 area. We have -- let's see, one, two, three -- four listed
5 -- No, Stan? Oh, there are more on the other page. Four,
6 five, six topic areas. We will start with Air Quality then
7 Transmission then Water, Other Topics that hit in the other
8 critical areas such as Land Use and Visibility, the FAA
9 permit, the Department of Toxic Substance Control Permit.
10 Following that we will deal with the gas line issue and then
11 at the end we will talk about the schedule and options and
12 content that we might expect to see in the Preliminary Staff
13 Assessment.

14 The status reports indicate that there is a
15 disagreement, apparently, over the level and the timeliness
16 of the information thus far provided by the applicant in
17 several areas. The applicant has also recently proposed the
18 addition of a new 26 mile gas pipeline to the project.
19 Therefore, the Committee would prefer that the applicant go
20 first in the discussion of the topics and then staff and then
21 CURE, summarize their concerns in each individual topic area,
22 then the applicant will have an opportunity to respond after
23 we go through all of the various comments. Each party should
24 also address the comments of the other parties contained in
25 the second and third status reports as appropriate.

1 a committee-sponsored workshop in the areas of air and water.
2 In our opinion these are the two most critical issues, not
3 only for the application but also for the timing of the
4 Commission's Decision, the Committee's Determination and
5 backing further the Final Staff Assessment and even parts of
6 the Preliminary Staff Assessment. We think that such an
7 exchange -- We would suggest here in Sacramento so that you
8 all could be briefed basically on the intricacies of both the
9 water plan and our air plan would be beneficial. And we
10 recognize that there is a 14 day requirement but would
11 suggest that the Committee seriously consider that request.

12 Along with that I might add that as far as schedule
13 is concerned, we will revisit this issue at the end of
14 today's session but preliminarily we think that there is some
15 merit in having the staff issue its PSA in the areas that
16 they are comfortable with and then after this Committee-
17 sponsored workshop determine what the schedule would be for
18 air and water which again are the two most critical issues.
19 So having that said as an introduction let me turn it over to
20 Sara.

21 MS. HEAD: Okay. I guess basically we just walk
22 through the issues as they are presented in the Status Report
23 Number Three would probably be the easiest for everyone. The
24 first issue here is on the Mojave Desert AQMD Determination
25 of Compliance. Basically the issue here is just a delay in

1 the schedule of delivery of the DOC.

2 Basically for health reasons the staff at the
3 Mojave Desert, they're not going to be able to meet their
4 date and so they've indicated that they're going to need an
5 additional two to three weeks to deliver the preliminary
6 determination of compliance. They have indicated that it is
7 through no fault or lack of data from the applicant, that
8 it's strictly that they haven't had the staff that they need
9 to put together that document.

10 COMMISSIONER SHARPLESS: So this is the preliminary
11 DOC?

12 MS. HEAD: Yes.

13 COMMISSIONER SHARPLESS: And that move that date
14 from? What is it, originally?

15 MS. HEAD: Originally I believe it was either April
16 19th or 20th.

17 COMMISSIONER SHARPLESS: And that would move it to
18 what?

19 MS. HEAD: They said two to three weeks and I
20 believe that that would move it to May 11th.

21 COMMISSIONER SHARPLESS: Which of course is like
22 three days away from the due date for the PSA.

23 MS. HEAD: Exactly.

24 COMMISSIONER SHARPLESS: Okay.

25 MS. HEAD: I think that it's worth mentioning that

1 there is another issue related to the DOC. Originally the
2 District's staff, you know, they're trying to decide how they
3 are going to work with the three configurations that the High
4 Desert Power Project has proposed. Their preliminary
5 proposal was that they would issue one permit and then have
6 the other two configurations stay open with application
7 numbers.

8 We did identify those issues at the April 14th
9 workshop that we had for this project that that leaves a
10 major amount of uncertainty in the project and so we've asked
11 them to reconsider that proposal. And it is my understanding
12 that they are reconsidering the format of which they're going
13 to issue the DOC to. We're hopeful that we'll be able to
14 issue a final permit for all three configurations as kind of
15 alternate operating scenario-type situations.

16 COMMISSIONER SHARPLESS: Are these going to be
17 analyzed with the same detail level?

18 MS. HEAD: Yes, it's always Mojave Desert's
19 intention as far as we understand it to thoroughly analyze
20 all three configurations. It's just, you know, again, more
21 of the administrative form of how they issue that in the
22 permit. And they had said that they intended in their
23 preliminary DOC document to fully analyze all three scenarios
24 and have that information available.

25 COMMISSIONER SHARPLESS: So I'm still not clear

1 exactly what you're asking the district to -- in the final
2 analysis what kind of certification to provide you. Is it a
3 certification that would cover all the configurations?

4 MS. HEAD: It would be an actual -- They would
5 issue the equivalent of their authority to construct permit
6 and that all three configurations would be permitted. They
7 have a permit condition that would specify only one of them
8 could be built but that that would be taken through in a
9 format such that all three were considered officially
10 permitted.

11 COMMISSIONER SHARPLESS: So each would have the
12 same amount of detailed analysis, each would look at the
13 offsets required and identify what offsets were needed. Each
14 during the CEQA process would look at the alternatives to
15 those and do an analysis of the alternatives as well.

16 MS. HEAD: I don't believe that in the Mojave
17 Desert permitting that they necessarily do that CEQA
18 analysis. I believe that they're relying on --

19 COMMISSIONER SHARPLESS: Us.

20 MS. HEAD: -- the CEC process, right, to do that,
21 that type of analysis.

22 COMMISSIONER SHARPLESS: Which introduces the
23 subject of why the detail is so important to us, it's the
24 fact that CEQA does require us to do the alternative. So in
25 my read of the comments I have seen a strong concern being

1 raised, and I appreciate that Mr. Thompson has said at the
2 beginning of this conference that we're going to run into a
3 problem with how the CEC is going to fulfill its obligations
4 if we don't get the kind of data that we think we need in
5 order to do that type of analysis. So we'll keep that in
6 mind as we listen to the issues today.

7 MS. HEAD: Sure.

8 COMMISSIONER SHARPLESS: Thank you.

9 MR. JOSEPH: Yes, that comes up more under the
10 other topics but --

11 COMMISSIONER SHARPLESS: Given what you have just
12 said does that still fall within their time frame of May
13 11th?

14 MS. HEAD: Yes, I believe so.

15 COMMISSIONER SHARPLESS: They haven't yet made that
16 decision but they're making the commitment that whether they
17 make a decision one way or the other they can do whatever
18 they're going to do by May 11th.

19 MS. HEAD: That is my understanding. I don't know,
20 is Oscar here? I believe that -- I guess not.

21 COMMISSIONER SHARPLESS: Not yet. Maybe he's on
22 his --

23 MS. HEAD: I believe he was planning to attend
24 today so maybe he's held up a little bit at the airport.

25 COMMISSIONER SHARPLESS: Okay. Well, if he comes

1 in we'll be able to probe that issue.

2 MS. HEAD: Yes, right. My understanding is that
3 they are fairly well along in their analysis parts of the
4 permit, and again, that this is somewhat of an administrative
5 decision in terms of how they are going to issue it. So it
6 didn't appear to me that they felt that it was, you know, a
7 long schedule issue that they could deal with in a fairly
8 short amount of time.

9 MR. WOLFINGER: I don't mean to play tag team here
10 but --

11 COMMISSIONER SHARPLESS: All right.

12 MR. WOLFINGER: We're talking about a specific
13 issue and I have an attorney with me, Michael Carroll.

14 MR. THOMPSON: Another attorney.

15 MR. WOLFINGER: Another attorney, who is our air
16 permitting attorney as we started getting more into things
17 and he had a direct conversation with the attorney of the
18 Mojave Desert Air Quality Management District and maybe he
19 could shed some light on the specifics of that.

20 COMMISSIONER SHARPLESS: And your name is?

21 MR. CARROLL: It's Mike Carroll, I'm with Latham
22 and Watkins on behalf of the High Desert Power Project and I
23 just wanted to clarify a point. Sara was accurate in her
24 description but since I had the conversation most recently
25 with counsel at the Mojave Desert I thought I would just

1 clarify. As Sara pointed out, they are intending to analyze
2 all three configurations in terms of the technical aspects
3 and the same level of detail and have been intending to do
4 that all along. So in terms of the time for issuing the
5 permit, including all three doesn't appear as though it's
6 going to result in any delays. It's just a question of
7 hammering out exactly what the permit language is that makes
8 it clear that these are three alternatives and you can only
9 move forward with one of the three configurations.

10 So the time-consuming part which is the technical
11 analysis which you have indicated you need was intended to be
12 done all along. So the concept of including all three
13 configurations in the permit doesn't really add a substantial
14 amount of time, it's just sitting down. And what I have
15 discussed with district counsel is that we would put together
16 a proposal on how you would craft the permit conditions. And
17 we had a very similar discussion with EPA Region 9 yesterday
18 and they have indicated that they are amenable to setting up
19 a similar structure in the PSD permit for this facility so we
20 would be working both with the Mojave District and the Region
21 9 just to figure out administratively what are the words that
22 we put on the page to make this concept work.

23 COMMISSIONER SHARPLESS: Let me ask somebody again
24 just so that I keep the schedule straight in my mind. If in
25 fact we're talking about May 11th for the preliminary DOC,

1 there is how many days in which the US EPA and the California
2 Air Resources Board has to comment on that? What are we
3 talking about?

4 MR. BUELL: There is a 30 day review period that
5 the district's rules require.

6 COMMISSIONER SHARPLESS: So now we're talking about
7 at the outside June 11th.

8 MR. BUELL: For receiving their comments, yes.

9 COMMISSIONER SHARPLESS: For receiving their
10 comments. And then once staff gets the preliminary DOC and
11 the comments it would take you how much longer?

12 MR. BUELL: Normally we would expect the district
13 to revise their DOC based on the comments that they receive
14 from US EPA, ARB, staff, any other party that may want to
15 comment on the DOC and reissue a Final DOC and we would act
16 on that final DOC. The district had initially indicated that
17 they would need another week to ten days after the close of
18 the comment period to finalize their DOC.

19 COMMISSIONER SHARPLESS: So a week to ten days.
20 We're looking at what, June 17th?

21 MR. BUELL: Approximately.

22 COMMISSIONER SHARPLESS: June 17th to June 20th.

23 MR. BUELL: Yes.

24 COMMISSIONER SHARPLESS: To finalize their DOC.

25 MR. BUELL: Yes.

1 COMMISSIONER SHARPLESS: So it will be an FDOC.

2 MR. BUELL: Right.

3 COMMISSIONER SHARPLESS: We're looking at around,
4 say June 20th if all goes well.

5 MR. BUELL: Right.

6 COMMISSIONER SHARPLESS: And then you get it and
7 how much longer does it take for you to do your analysis and
8 look at alternatives and all of the things that the CEQA
9 requirements require us to do?

10 MR. BUELL: Our analysis of the CEQA alternatives
11 will be ongoing during the period when the district is
12 issuing its preliminary and final DOC, or at least that is
13 our intent. I think our status report would identify that we
14 would need 14 days normally to incorporate the final DOC
15 conditions, recommendations and findings in our Final Staff
16 Assessment.

17 COMMISSIONER SHARPLESS: So you're what, in July,
18 around July 10th?

19 MR. BUELL: I'd have to look at my schedules.

20 COMMISSIONER SHARPLESS: July 4th? July 4th. So
21 this is obviously beyond the time of the Preliminary Staff
22 Assessment, way beyond.

23 MR. BUELL: When you are talking for a Final Staff
24 Assessment July 24th.

25 COMMISSIONER SHARPLESS: July 24th. Okay, I just

1 wanted to frame the times in my mind so please go ahead.

2 MS. HEAD: Do you want me to continue on through
3 the issues or do you want a chance for staff and others to --

4 COMMISSIONER SHARPLESS: No, I'd like you to -- I'm
5 sorry I interrupted you but I wanted to make sure in your
6 conversation --

7 MS. HEAD: Sure.

8 COMMISSIONER SHARPLESS: -- I understood what we
9 were talking about in terms of the schedule. So why don't
10 you continue.

11 MS. HEAD: Okay. The next topic in the staff
12 report is on the turbine manufacture data. And I guess that
13 what the project has always tried to do is that we believe
14 that turbines are continually improving and that we've seen
15 that we'd expect in a couple of years from now that turbines,
16 because of increases in efficiency and other developments
17 that are taking place that we expect that there is going to
18 be new and better turbines out there.

19 So the High Desert Power Project's concept here is
20 that we'll take available turbine data and that we'll scale
21 it up to try to account for these improvements in efficiency
22 that we expect to happen. So our concept of what is needed
23 is that if we, you know, we had Fluor-Daniel do this work to
24 scale up the emissions that would be associated with the
25 increase in turbine efficiency that if we, you know, make

1 this scale-up and determine that worst case emissions and
2 then we provide actual turbine manufacture data that shows
3 that the data within that envelope, that that's what we'd
4 like analyzed. This is the worst case envelope demonstrating
5 that turbine manufacturers are within this.

6 I think that staff have indicated that they want to
7 see, you know, all of the specific turbine manufacturers'
8 data to prove that that's within the envelope. And I think
9 that the project is endeavoring to provide original data but
10 we wanted to make the point that because we have accounted
11 for the scale-up and improvement in efficiency that no
12 specific turbine manufacturer is going to match that. And we
13 want to make sure that that's clear.

14 That basically, you know, again, we'll provide the
15 other turbine data to show that that's within in but, again,
16 we don't necessarily think that we need to provide every
17 turbine that ever could be considered by the project. That
18 again, we want the flexibility to, you know, to pick a
19 turbine that is within that envelope. And as long as we've
20 analyzed those impacts and shown that the impacts are at an
21 acceptable level that we believe that should provide us the
22 flexibility to choose a turbine data within that envelope
23 rather than saying that we're precluded from using a turbine
24 that wasn't specifically submitted, specific data.

25 So I believe that's the issue. And where there's,

1 you know, a little bit of difference in opinion in terms of
2 what specific data needs to be provided versus what our
3 concept is to try to account for this expected increase in
4 efficiency.

5 COMMISSIONER SHARPLESS: Your expertise is in what
6 area? Is it on turbine and engineering?

7 MS. HEAD: My particular expertise is not, my
8 expertise is in air quality. So actually it's probably
9 better to let either Rick Wolfinger or Andy Welch talk on
10 that subject.

11 MR. WOLFINGER: I worked for Westinghouse Electric
12 Corporation in the gas turbine manufacturing area for several
13 years and was the sales manager for them. The turbines
14 expand quite rapidly. In fact, we presented a paper, I
15 believe it was part of this latest one. They are continually
16 growing very rapidly and the concept is the permitting
17 process takes a rather long time and that in a competitive
18 marketplace you want to have a permit that's issued for the
19 turbine that might be available at that point in time to buy.

20 So we scaled these turbines up based on 1996 data
21 to where we thought the turbines are going to be in 1999.
22 But not to specific manufacturers, we just did these classes.
23 So that MAR, in fact they have already scaled up at least
24 once since 1996 when we started this original process with
25 the data. And we have every -- There is every expectation

1 they're going to continue to grow. And the idea is to have a
2 permit that allows you to buy the model that people are
3 selling in 1999.

4 COMMISSIONER SHARPLESS: When you talk about
5 scaling up are you talking about the technology improving as
6 far as becoming more efficient and having lower emissions?

7 MR. WOLFINGER: Not so much lower emissions as the
8 output. Because we need to make sure -- It will get larger,
9 so maybe ten percent larger, which means that the tons per
10 year that it will emit will be higher. It may be still the
11 same parts per million --

12 COMMISSIONER SHARPLESS: Right.

13 MR. WOLFINGER: -- at 4 ppm. In other words, the
14 parts per million of emitting may be the same but the tons
15 will be ten percent higher. And if you're looking at the
16 impact you want to make sure you're looking at the tons that
17 will be putting out of the plant, not at some lower level and
18 I have to come back and say, these turbines that are out
19 there now are ten percent bigger than they were before and
20 therefore we have to go through the process again of asking
21 for a modification for the certificate.

22 COMMISSIONER SHARPLESS: So are you telling me that
23 you are looking for a certification from the Air Quality
24 District and from us that will actually size the technology
25 to be larger than what is commercially available and

1 therefore you're going to assume how this technology that
2 isn't commercialized yet will run in actual operation. And
3 somehow with that abstract data we are supposed to do a model
4 run to determine what the impacts are on the air quality in
5 that district.

6 MR. WOLFINGER: That's exactly. Not only that but
7 we presented a paper to that effect and that's in everybody's
8 -- That's exactly right. Because they do go up and you can
9 tell how they're going to go.

10 COMMISSIONER SHARPLESS: Well, I can only imagine
11 the difficulty that one would -- And I'm sure that Latham and
12 Watkins can very much appreciate this since I know that their
13 organization has been very active in the reclaim program down
14 in Southern California. But I can only imagine that permits
15 based on that kind of supposition or that kind of abstract
16 are going to make air quality conditions very difficult to
17 assure that we're getting -- that we're getting the emission
18 reductions that we think we're getting from the mitigation
19 measures from either the offsets -- If we don't have some
20 fairly clear data, I think, about how the technology is going
21 to operate in use then I don't know on what we're going to
22 base our decision.

23 MR. WOLFINGER: I think maybe --

24 COMMISSIONER SHARPLESS: You know, an engineering
25 abstract doesn't give us a very high level of comfort, I

1 don't think.

2 MR. WOLFINGER: Well, maybe I --

3 COMMISSIONER SHARPLESS: But I will let staff
4 respond because they have, you know, they have their own
5 comments.

6 MR. WOLFINGER: Let me explain.

7 COMMISSIONER SHARPLESS: This is just my comments
8 from being the Chairwoman of the California Air Resources
9 Board for a number of years.

10 MR. WOLFINGER: What I'm saying is the plant, we
11 believe the plants will be ten percent bigger than they were
12 in 1996. So instead of asking and going for 450 tons of NO_x
13 offsets we said, let's go in for 495 tons of NO_x offsets. So
14 that when in fact we build the plant in 1999 and the plant in
15 fact is ten percent bigger than it was in 1996 we've already
16 studied the impacts of 495 tons of NO_x offsets. That that is
17 the latest technology.

18 That the ratepayer -- That the citizens of
19 California get the latest and best technology at the lowest
20 possible price instead of my permitting a plant for 450 tons
21 of NO_x offsets and then having to come back in here in 1999
22 and say, Commissioner Sharpless, the plant is now ten percent
23 bigger, we'd like you to look at the impact of 495 tons of NO_x
24 offsets. We're trying to stop a step that has been happening
25 for 10, 15 -- has been happening ever since gas turbines have

1 been done. It's that they grow and they grow significantly
2 in size and the idea is to permit something that allows us
3 the growth without having to come back in and re-look at it.

4 It's not the absoluteness of the emissions per
5 kilowatt generated, it's how big the machines will get. If
6 they don't get to 495 tons of NO_x and it's only at 485, and
7 that's the size, then we've studied it. We've studied the
8 impact of 495. I've shown how I'm going to have emission
9 offsets for 495 tons a year but I'm building a machine that
10 only emits --

11 COMMISSIONER SHARPLESS: Are you going to actually
12 buy the offsets for 495?

13 MR. WOLFINGER: Absolutely, yes.

14 COMMISSIONER SHARPLESS: And so if you don't use
15 them that's X amount of offsets that the economic base can't
16 use because --

17 MR. WOLFINGER: Well, I would be --

18 COMMISSIONER SHARPLESS: -- because they would be
19 held in a company that doesn't intend to use them.

20 MR. WOLFINGER: Well, anymore than I would go out
21 and try to sell them. I mean, I would --

22 MS. HEAD: Yes, they could be released back to the
23 bank.

24 COMMISSIONER SHARPLESS: That's sort of like
25 cornering the market. Go out and buy them when they're cheap

1 then hold on to them and sell them when they're high.

2 MR. WOLFINGER: By the way, anybody could do that
3 now anyway.

4 COMMISSIONER SHARPLESS: Buy low, sell high.

5 MR. WOLFINGER: But we're talking small amounts,
6 we're only talking one, two, three, four, five percent. So I
7 mean it's not -- I'm not trying to corner the market. I have
8 no intention of buying more than I need.

9 COMMISSIONER SHARPLESS: I don't intend to debate
10 the issue today, I'm more interested in just where we are and
11 what the issues are and where that might put us in the
12 schedule. And I know that there's a lot of views around this
13 table so I don't want to just continue this debate. What I
14 really wanted to understand, what it was that you were
15 saying, what your expectation was, what you were expecting
16 from the air district and from the CEC.

17 MR. WOLFINGER: And they are looking at -- The air
18 district is looking at turbines, classes of turbines that are
19 larger than what is available in the marketplace right now.
20 With the offsets available for that because of the growths
21 that we expect are going to happen. And some of that growth
22 has already happened.

23 COMMISSIONER SHARPLESS: We could also then look at
24 turbines that are, that have better emission factors to them,
25 lower emissions. Not just bigger turbines but lower

1 emissions.

2 MR. WOLFINGER: Well, that's BACT, right, and LAER.

3 And that turbine is --

4 COMMISSIONER SHARPLESS: But you seem -- You seem
5 less -- Based on what I read in your comments you seem sort
6 of less anxious to get the lower emission than you do getting
7 the higher output rate of the turbine.

8 MR. WOLFINGER: It turns out that they are separate
9 issues. The amount of emissions put out per kilowatt of
10 reduction is not the same as the size of the machine. For an
11 example -- Well, and that's just -- It's two separate things,
12 it really is. But we have to show that at least there is a
13 turbine manufacturer out there that can meet the emission
14 limits. And in fact there's a lot of new things coming out.
15 In fact, the emission levels have gone down since we set the
16 design criteria of this plant back in 1996.

17 COMMISSIONER SHARPLESS: But you are talking about
18 technology that has not yet been commercialized, are you not?

19 MR. WOLFINGER: In what sense? You mean in the
20 size of the machine?

21 COMMISSIONER SHARPLESS: In the size.

22 MR. WOLFINGER: Well --

23 MS. HEAD: It's technology that is currently under
24 development.

25 COMMISSIONER SHARPLESS: Is that not the same thing

1 as not yet being commercialized? Not yet being sold in the
2 marketplace. Okay, next issue.

3 MR. CARROLL: If I could just add one point on this
4 issue from the air quality perspective. I think what we're
5 talking about is taking a prudent long-term view to ensure
6 that we don't underestimate what the emissions are. We're
7 not talking about going out and cornering the market in
8 available offsets but ensuring that we've given ourselves a
9 margin of compliance. Which you mentioned the reclaim
10 program, for example. In that program no one goes out and
11 buys exactly the amount of credits they think they're going
12 to need to cover themselves, they buy a little bit extra to
13 make that at the end of the day you haven't underestimated
14 your emissions and then have it result in negative impacts.

15 COMMISSIONER SHARPLESS: But those are existing --
16 Those are existing facilities, are they not?

17 MR. CARROLL: For the most part, although there can
18 be new reclaim facilities as well. But I think we're just
19 talking about --

20 COMMISSIONER SHARPLESS: Okay, but it's just a
21 number of public policy issues that I think we're dealing
22 with. We're recognizing the fact that we're in a new
23 environment with the independent generators coming in, what
24 are called merchant facilities. And I think we're trying
25 very hard to recognize that fact in this process and be as

1 flexible as we possibly can. But there's other public policy
2 issues that I think are really important that we must weigh
3 and balance as we, as we go down this road. So perhaps you
4 can go to your next point.

5 MS. HEAD: Am I allowed to make one last point?

6 COMMISSIONER SHARPLESS: Sure.

7 MS. HEAD: You said you thought it would be
8 difficult to write the conditions for the conceptual turbine.
9 And just to let you know, at the workshop we did talk about
10 this with Mojave Desert and they don't think that they need a
11 particular turbine model, that they did feel comfortable with
12 just specifying an emission limit and an offset requirement.
13 That they feel that those are the conditions that will be
14 needed to permit this plant. And again, we did submit an
15 engineering analysis to support this scale-up in terms of how
16 those numbers are derived. So it didn't appear from Mojave
17 Desert's purposes that they had a problem with dealing with
18 this issue on a conceptual turbine basis.

19 COMMISSIONER SHARPLESS: Okay. Of course, they
20 don't have the CEQA aspect of this process either.

21 MS. HEAD: Well again, we're looking at, you know.
22 We're looking at impacts from a particular emission level.
23 So again we feel that if we, you know, look at the worst that
24 we think it could be and we analyze for those impacts we
25 believe that CEQA should be able to deal with that as well as

1 long as we're not projecting a significant impact and/or we
2 have mitigation such as offsets to cover that impact.

3 COMMISSIONER SHARPLESS: Okay, you've laid the
4 issue, that issue on the table.

5 COMMISSIONER LAURIE: Commissioner Sharpless.

6 COMMISSIONER SHARPLESS: Yes.

7 COMMISSIONER LAURIE: Before we move on let me ask
8 a question of our General Counsel's Office. We have the
9 issue of CEQA and the proposal. And I'm going to make this
10 statement and you're free to tell me you disagree or that I'm
11 wrong. CEQA requires identification of an impact and
12 mitigation for that impact. In your legal/professional views
13 of staff, I don't want to deal with the policy issue of
14 whether you think it's the best way to go, but why doesn't a
15 worst-case scenario setting parameters meet the legal
16 requisites of a CEQA analysis?

17 MS. HOUGH: I think there are two answers to that
18 question. The first is that CEQA doesn't require agencies to
19 do worst-case analyses, in fact, what it requires agencies to
20 do is to estimate likely impacts. What is likely to occur,
21 what is reasonably likely to happen. And if you focus on a
22 worst-case analysis you miss that part of the analysis.
23 Secondly and more importantly I think it fits right into the
24 discussion we've been having about what the district does
25 vis-à-vis what the Energy Commission does in it's CEQA role.

1 What the Energy Commission has a responsibility to do is to
2 look at alternatives.

3 So for example, if you have significant differences
4 in the impacts or emissions of various turbines that is
5 important information that you as a decision-maker need to
6 consider in making your decision on this project. What the
7 district does is issue a set of permit requirements for a
8 specific proposal. What the staff is proposing to do is to
9 look at the specific data for all the available alternatives
10 to help you determine whether or not one of those
11 alternatives has a significantly different effect than the
12 others so that you can use that information in your decision.

13 COMMISSIONER LAURIE: Okay, let me talk about that
14 for a second and please help educate me. My understanding
15 regarding alternatives analysis under CEQA -- I understand I
16 may be way off on this. To me, the alternatives analysis has
17 always been a confusing element of CEQA as set forth in the
18 guidelines and also under court decision.

19 But my understanding is that the analysis talks
20 about defining alternatives to the project as a whole as
21 opposed to breaking the project down into specific
22 ingredients of the project and having to define alternatives
23 to each of those ingredients. Such as, do we have to talk
24 about, does there have to be an alternatives analysis for
25 which turbines are going to be used or is it sufficient to

1 talk about alternatives to the project as defined and look at
2 the sum total of impacts and then determine under which of
3 those alternatives there are lesser impacts.

4 MS. HOUGH: You're correct, you're drawing a
5 distinction that I wasn't drawing and should have drawn. I
6 was speaking about alternative mitigation measures. Project
7 alternatives are in fact different proposals, whether it's
8 different technology, different location, different size, and
9 those typically get looked at in a lesser level of detail
10 than does the project itself. But once you've got an area
11 within the project for which there is a potentially
12 significant effect, such as the effect from air emissions
13 from a very large source such as this one, the Commission is
14 required to look at mitigation measures.

15 And what staff is proposing to do is to provide you
16 with information about different kinds of mitigation measures
17 for that impact. One is the provision of offsets, another
18 might be eliminating certain turbines from consideration or
19 potentially saying that only a certain number of turbines
20 should be available because staff's analysis or somebody
21 else's analysis shows that the impacts, the air emission
22 impacts from those turbines are considerably less.

23 One of the principles that is behind CEQA is impact
24 avoidance and what we want to do is to be able to present you
25 with information to determine whether in addition to offsets

1 which may mitigate an impact once it has occurred whether
2 there is a possibility in this case of having what I would
3 call impact avoidance. Is there information that would
4 indicate that some of the turbines will have a different
5 impact or a lesser impact than some of the other turbines.
6 And that is information that we think is useful to you in
7 weighing and balancing the facts in this case and making a
8 decision.

9 COMMISSIONER LAURIE: Okay.

10 COMMISSIONER SHARPLESS: Commissioner? Okay.

11 MR. WOLFINGER: We would disagree with that
12 concept.

13 COMMISSIONER SHARPLESS: Okay, but can we --

14 MR. WOLFINGER: But that's all right.

15 COMMISSIONER SHARPLESS: Can we continue with the
16 issues identification, please. You went through turbine
17 manufacturers, in case you've lost your place.

18 MS. HEAD: Right. I guess the next issue mentioned
19 in the staff report is the potential contribution to
20 violation of the one-hour --

21 COMMISSIONER SHARPLESS: NO_x.

22 MS. HEAD: NO_x standard. And actually this is a
23 very good case in point for what we were just discussing,
24 that this is probably the one area that is a good example of
25 where we might have some difference in impact for the

1 different turbine manufacturers. So it's a good one to talk
2 about next.

3 Basically what the issue is is that during start-up
4 of these various turbines you don't necessarily bring the
5 control device on-line at the beginning and so you have
6 basically an uncontrolled emission. It is also true that the
7 various models of turbines have different start-up profiles.
8 This is an area that we believe that we do need to do some
9 work in in terms of, you know, showing that the other turbine
10 data is within the envelope that we've analyzed and/or
11 broaden our analysis so we are, you know, looking at that
12 right now and we will be providing staff some more
13 information on this shortly.

14 COMMISSIONER SHARPLESS: I think staff in their
15 status report asked for some information to be supplied and
16 you intend to do that?

17 MS. HEAD: That's correct.

18 COMMISSIONER SHARPLESS: Okay.

19 MS. HEAD: And I guess the other issue was that in
20 the staff's analysis that they did find some --

21 COMMISSIONER SHARPLESS: Exceedances.

22 MS. HEAD: Some exceedances, whereas our analysis
23 we had not. We re-looked at that and part of the problem was
24 that there were some errors in our terrain data. We have
25 already fixed that and supplied that to staff so we, you

1 know, we hope that that's correct. And I understand that
2 they received that but haven't had a real chance to look at
3 it yet.

4 That was one of the issues is that some of the
5 terrain datas weren't matching up and it just had to do with
6 the way the computer file was being read into the model, so
7 we believe that that's taken care of. And in fact, with the
8 corrected terrain data the annual impacts and the health risk
9 assessment are actually, the impacts are reduced so we
10 appreciate the staff pointing out a way that we could reduce
11 our impacts.

12 But then in terms of the one-hour standard, we're
13 continuing to look at that. Staff felt that it was necessary
14 to look at some additional data from another project and to
15 do some additional modeling analysis. So we're also
16 undertaking the same analysis. We're going to be looking at
17 that to hopefully match up our results with staff's and then
18 solve the problem. Staff in the April 14th workshop did
19 mention that there's some possible mitigation measures that,
20 you know, could solve this problem and they mentioned one in
21 particular which was to do --

22 Basically in two of our configurations one has
23 three turbines and one has two, it's the one with the
24 combined cycle case with three turbines that currently is
25 showing the exceedance. And they said, well, for possible

1 mitigation you could do a phased start-up where you just
2 start up one of these at a time. That is a possibility.
3 We'd like to look at it as an overlap start-up, not
4 necessarily sequential.

5 But there's other options that we are looking into
6 that we feel would be acceptable mitigation. And of course,
7 you know, we understand that you can't show an exceedance of
8 a standard so that's a given but we feel that there's lots of
9 potential ways to mitigate that. And so again, when we're
10 looking at the different turbine manufacturers we will look
11 to see, you know, if there's differences but the end result
12 will all be that we'll show compliance with the one-hour
13 standard.

14 So, you know, again going back to the question of
15 alternatives and CEQA. You know, again, I think that if you
16 show that, you know, all of the options are acceptable that
17 there, you know, shouldn't necessarily be a hard decision put
18 before you where you have to say, you can't use this turbine
19 because these are, these are better.

20 COMMISSIONER SHARPLESS: Okay.

21 MS. HEAD: Okay.

22 COMMISSIONER SHARPLESS: There was one statement on
23 page four of your status report, subsection C, second
24 paragraph. And I think you just touched on this about how
25 you were going to deal with the, perhaps the one-hour

1 exceedance. And one of the things you listed was additional
2 modeling techniques or less-conservative modeling
3 assumptions. Could you explain a little bit what you mean by
4 less-conservative modeling assumptions.

5 MS. HEAD: Sure. Basically what we had originally
6 done with the one-hour NO_x analysis is that we modeled it and
7 we just looked at kind if an annual percentage of the
8 conversion of NO_x to NO₂ and came up with the generalized 61
9 percent. Well, staff in their analysis did find using a
10 higher emission number that they had from another project
11 that they were -- that they needed to go to the next step of
12 less-conservative modeling which is the ozone-limiting
13 method. What they did is the ran the ozone-limiting method
14 and then applied a kind of a single worst-case NO_x background,
15 added that in and compared it to the standard.

16 What we would propose to do as the next step is
17 instead of using that one maximum one hour NO_x value that has
18 been observed for the last six years would instead be to
19 apply the ozone-limiting model but match it up with the hour-
20 by-hour NO_x background that was observed at the time of the
21 run. So that's I guess what our current idea is at this
22 point. I believe that our modeler talked that over with the
23 staff modeler and, you know, of course he didn't have a real
24 opinion at the moment. So it's just something that we're
25 proceeding --

1 COMMISSIONER SHARPLESS: So you're doing the model
2 runs now based on adjustments in your model?

3 MS. HEAD: That is correct.

4 COMMISSIONER SHARPLESS: Okay, fine, I understand.
5 I guess the next issue is Best Available Control Technology.

6 MS. HEAD: That is correct.

7 COMMISSIONER SHARPLESS: LAER.

8 MS. HEAD: And basically this is, you know, been an
9 even more evolutionary issue as we've gone through this
10 project than the turbines have been. That we have been
11 looking throughout this project at some, at the SCONO_x
12 technology which is new technology that has become available.
13 We have some issues with that particular technology that we
14 don't -- We have concerns about with this project which we've
15 documented. And then through the South Coast process there's
16 been some recent information become available and some recent
17 permits issued that SCR technology is also able to get lower
18 emissions levels.

19 And we're certainly looking at that but I guess
20 we're not prepared at this time to say, you know, exactly
21 where we think we come in with respect to that new
22 information. And I think that what our expectation is now,
23 since again Mojave Desert has indicated that they've all but
24 completed their analysis and they're just going through the
25 final review stages of their PDOC that we believe that

1 actually they are the proper agency to make this
2 determination of what is BACT/LAER for this project. That
3 they are the correct air agency.

4 So we're -- Kind of our intention at this point is
5 to go ahead and let them release their preliminary DOC and
6 then we fully expect the other air agencies and other
7 interested parties to submit comments on that. And we feel
8 we're best able to deal with it as we see what all the
9 comments are and what different pieces of information are
10 provided and then we would work very closely with the
11 district to finalize what our NO_x control levels would be at
12 that point for that site. I guess --

13 COMMISSIONER SHARPLESS: Do you know where they are
14 headed in terms of the BACT determination?

15 MS. HEAD: I believe that they are headed towards
16 sticking with us on our 4 ppm proposed, that would be my
17 expectation. Oscar -- Oh, here he is. Oscar Hellrich is
18 here now.

19 COMMISSIONER SHARPLESS: Thank you, sir, for making
20 the trip up to Sacramento.

21 MR. HELLRICH: Good morning. I'm Oscar Hellrich,
22 engineer with the Mojave Desert Air Quality Management
23 District. Unfortunately I just acquired this project two
24 weeks ago. I was given a two-foot stack of paper to look at
25 and have not finally made a determination as to where we

1 stand with BACT. I would say in the interest of time that we
2 as a district will probably reflect the application, as Sara
3 had mentioned so we will try to submit a document as soon as
4 possible. I don't care to be an alarmist here but I have
5 seen very little of our document on paper yet so we have a
6 job ahead of us.

7 COMMISSIONER SHARPLESS: I definitely appreciate
8 you being here. We were talking a little bit earlier and you
9 had not yet arrived.

10 MR. HELLRICH: Yes, Southwest was running late
11 first thing in the morning.

12 COMMISSIONER SHARPLESS: Darn, and they have that
13 image of being on time. We'll call you up after we get
14 through this and you can provide us with whatever information
15 you'd like to provide us on this.

16 MR. HELLRICH: Thank you.

17 COMMISSIONER SHARPLESS: We appreciate you being
18 here, thank you. Okay?

19 MS. HEAD: Okay.

20 COMMISSIONER SHARPLESS: Air emission credits.

21 MS. HEAD: Emission reduction credits. I guess
22 that kind of what became known at the April 14th workshop was
23 that there was a fairly substantial misunderstanding
24 regarding our offset plan, was that staff and others were
25 under the impression that some of the offsets that we're

1 proposing to use in Mojave Desert were being created for this
2 project and that's not the case.

3 Basically what we have here is that Mojave Desert
4 has a banking rule and that several people, Mitsubishi
5 Cement, PG&E, So-Cal Gas and George Air Force Base all
6 submitted applications in the past to them to receive
7 emission reduction credits from the bank. Just because
8 nobody else -- You know, you were talking about cornering the
9 market but in the years since they submitted those
10 applications nobody has needed those credits in the Mojave
11 Desert. And because they had resource constraints the
12 district just hasn't been able to process those applications.

13 We've been viewing those offsets as banked emission
14 credits and as a result we think that they should be analyzed
15 on that basis. That they should be analyzed as though we're
16 just pulling credits out of the bank rather than looking at
17 them as a secondary impact to the project where you have to
18 do, you know, a lot of analysis of associated emissions, you
19 know, work with the project. So we think that that's kind of
20 a major difference in our impression of how much analysis is
21 needed to be done with the exhaust hits.

22 I guess the staff report also to our mind implies
23 that we haven't submitted data and I guess that again that's
24 just maybe a misunderstanding of the level of detail that's
25 needed or what specifically was needed. We did feel that we

1 were being responsive and that we were providing data that,
2 you know. We think that we've done a good job in identifying
3 that there is more than sufficient offsets available in our
4 offset plan. I believe that the numbers are like 300 percent
5 of the NO_x offsets are available and that we're getting BOC
6 down from the South Coast bank. And we've only listed like
7 the top ten sources that we're looking at and those top ten
8 sources have more than 500 percent of what's available.

9 So we believe that, you know, we've provided
10 sufficient data to show that there's a lot of offsets
11 available and that, you know, some of the issues that we had
12 earlier in the project about whether or not the project would
13 be able to obtain offsets in a timely manner, which for the
14 CEC a timely manner is in such time that you'd have the
15 information in time to process and then license the project.

16 You know, there just seems to be some difference of
17 opinion between the staff and the High Desert Power Project
18 in terms of the sufficiency of the data that's been
19 submitted. So again, we have an interest in providing the
20 data but we do have a difference in opinion of what data is
21 needed and what constitutes a secondary impact.

22 COMMISSIONER SHARPLESS: Well yes, this issue has
23 been an issue from the get-go. I guess we have quite a
24 record in public testimony of what our expectation was and
25 whether there was a miscommunication. It's kind of

1 surprising at this point in time to learn that there might be
2 a miscommunication since I thought that people's expectations
3 were very, very clear. But having said that I would really
4 prefer to let all of the parties speak, the Committee is
5 going to have to grapple with this issue. So that takes you
6 to your emission credit.

7 MR. CARROLL: May I just interject a point?

8 COMMISSIONER SHARPLESS: Yes.

9 MR. CARROLL: I just wanted it clarified and I
10 don't want to be overly legalistic here. But the question
11 that is before you is whether or not this facility has
12 complied with all the applicable air quality regulations.
13 And to that extent it is perfectly legitimate to inquire as
14 to whether or not they have obtained valid emission offsets
15 on a timely basis of a sufficient quantity to offset the
16 emissions they have.

17 The process of how those credits were created,
18 however, is to a large extent outside of this process. It
19 involves a different applicant that is not before you, it
20 involves a different application process that is well-
21 established under federal, state and local law. It involves
22 opportunities for public review and input to that process so
23 it's not as though there is no public scrutiny of the
24 creation of those credits. There is in large part a
25 separate, in fact almost exclusively a separate process from

1 the permitting of this facility.

2 And that sort of has been our perspective on this.
3 Now that having been said, we are perfectly willing to
4 provide as much information as we can possibly obtain about
5 that other process, but I think where the miscommunication
6 has been or the misunderstanding has been is that it's a
7 separate process which we don't control, it involves a
8 different party. So our ability to get that data and to
9 provide it to you is more limited than in an area which is
10 within our control and within this process. So I think we
11 have been endeavoring to obtain as much information as we
12 can, to provide it to you, but it really is a separate
13 process.

14 COMMISSIONER SHARPLESS: Mr. Carroll, I understand
15 that issue, there is another issue, though. This is probably
16 the only permitting process in the state of California where
17 you have a one-stop shop. We have our own administrative
18 rules and regulations that applicants understand they must
19 meet in order to go through our process. The issue that you
20 raise is to what level of detail you get into in analyzing
21 the actual ERCs in this project is one issue.

22 The other issue is the identification, the actual
23 in-hand, these are the ERCs that we're going to use so that
24 we can put that into the analysis and have it as part of an
25 analysis, not just, we've got 150 percent of the ERCs that we

1 need in a bank and when the time comes we'll buy those ERCs
2 and those will offset adequately, those will mitigate
3 adequately all of the emissions that we've identified in this
4 project. I think if you will read our rules it is quite
5 clear that we have asked for the identification of those ERCs.
6 Not candidates but identification of the ERCs, which is a
7 different issue than what you're talking about.

8 But there is the issue you are talking about as
9 well, that parties have raised and we will talk about today
10 and we will listen about the different perspectives. But I
11 just want to make it clear that my comments were on the issue
12 of the expectation of this commission in getting identified
13 ERCs that we could put in the Preliminary Staff Assessment.

14 MR. CARROLL: And I appreciate that and maybe I
15 wasn't clear. We are endeavoring to try to do that and to do
16 that as soon as possible. All I was pointing out is that
17 it's not completely within our control. To do that involves
18 their application process, it involves negotiations with a
19 third party who is outside of this process so our ability to
20 provide the information that is requested within the time
21 frames that you would like is limited to some extent and by
22 factors outside our control.

23 That having been said, we understand your desires
24 and are doing everything we can to comply with those. But to
25 the extent we're not able to always comply with those

1 requests on a timely basis it is not because we don't want to
2 do it, it's because it involves a different process.

3 COMMISSIONER SHARPLESS: And I appreciate that.
4 There was a great deal of discussion about this in December
5 about whether or not they would be able to be identified
6 within the 120 day period. If you go back and read the
7 record there are areas of testimony that have talked about if
8 they are not identified there will be a slippage in the
9 schedule. Those remarks were in fact made by the applicant.
10 So having said that.

11 COMMISSIONER LAURIE: Question.

12 COMMISSIONER SHARPLESS: Commissioner Laurie.

13 COMMISSIONER LAURIE: Education again.
14 Identification of the source of the ERCs. Is it your view,
15 referring to staff, that identification is necessary because
16 the source of the ERCs may determine different impacts,
17 secondary impacts that in your view under CEQA must be
18 analyzed? Is that your explanation and is that your
19 rationale?

20 MS. HOUGH: There's three reasons why we require
21 identification of offsets for purposes of our analysis.
22 First of all, as you're aware, the Warren-Alquist Act
23 requires that the offsets be obtained prior to the Commission
24 license. As we invest more and more public resources in this
25 process I'd like to have an assurance that that's going to

1 happen and we're not spending resources on a project which
2 isn't ready to go forward to meet that requirement yet.

3 COMMISSIONER LAURIE: Okay, but --

4 MS. HOUGH: That's one reason. One reason is the
5 fact that we like to make sure that that finding is a
6 possibility and this is a situation where we've got a bank
7 with nothing in it so that's a concern for us. The second
8 reason is that staff has in the past and would presumably do
9 so in this case, when there are different possibilities for
10 obtaining offsets, particularly for large projects like this
11 which have large impacts, we like to see whether or not it's
12 feasible to obtain offsets upwind of the project so that
13 there is some connection between the mitigation that is
14 provided and the actual impact of the project.

15 There are cases where that is possible but it is
16 one of those -- one of the issues that we like to investigate
17 in our analysis. Can we pick a mitigation within the
18 district's rules, within the offset process that actually
19 provides some real reductions in the same general area as the
20 project impacts.

21 And then the third reason is that if the creation
22 of offsets or the creation of the mitigation itself creates
23 secondary impacts we believe that the Commission has a
24 responsibility to look at those impacts in its analysis and
25 take those impacts into consideration in its final decision.

1 So those are really the three basic reasons why we look at
2 offsets.

3 COMMISSIONER LAURIE: Thank you.

4 COMMISSIONER SHARPLESS: Mr. Valkosky.

5 HEARING OFFICER VALKOSKY: Ms. Hough, on your last
6 point about creation of the offsets. Is your position the
7 same if in fact an applicant were to purchase offsets from a
8 bank that had already -- offsets which had already been
9 approved and put in a bank?

10 MS. HOUGH: Well, I guess it would depend on
11 whether or not the district had looked at those secondary
12 impacts when they approved the offsets. I think that the
13 process that is contemplated in CEQA is that the district
14 does this approval of offsets and lets them go into the bank
15 and when it does that it's taking, it's making a decision
16 that is subject to the requirements of CEQA and it should be
17 looking at those secondary impacts at that time.

18 This is a situation where that process hasn't
19 happened yet and I do not know whether or not the district is
20 going to be looking at those impacts in making its decision.

21 HEARING OFFICER VALKOSKY: I understand that
22 process hasn't happened yet and I understand that's creating
23 some difficulty. But again, assuming that it is a legitimate
24 process, which I assume.

25 MS. HOUGH: Yes.

1 HEARING OFFICER VALKOSKY: Which has to be a
2 presumption, right. Once the district completes the analysis
3 and completes the placement of the offsets in the bank is
4 that in your view the end of the secondary impact
5 investigation?

6 MS. HOUGH: It is if the district has looked at the
7 secondary impacts in making its decision.

8 HEARING OFFICER VALKOSKY: Okay, and how do you
9 determine that?

10 MS. HOUGH: You look at the record of the
11 district's decision.

12 HEARING OFFICER VALKOSKY: Okay, so in a sense you
13 would be going behind the district's process?

14 MS. HOUGH: No, I would be looking at it, I would
15 be looking at what the public record is of the decision. And
16 I think that there would be an argument you could make that
17 if the district didn't do that and they should have that our
18 ability to go back, the Commission's ability to go back and
19 reevaluate for the first time those impacts might be limited,
20 particularly if it was a long time ago. It's one of those --
21 I think it's a situation where there is no bright line as to
22 where the Commission's responsibility would pick up if a
23 district had not fulfilled its CEQA responsibilities in
24 looking at those impacts.

25 But again, what we are trying to do is to collect

1 the facts in this case so that we can present them to you so
2 that you can take them into consideration.

3 HEARING OFFICER VALKOSKY: Thank you.

4 COMMISSIONER SHARPLESS: Okay, let's see, ERCs.
5 Does that bring us down to the bottom of your list on air
6 quality issues?

7 MS. HEAD: Yes, I believe so.

8 COMMISSIONER SHARPLESS: Okay. Well, thank you
9 very much for your forthrightness in laying the issues out on
10 the table from your perspective. Staff, would you like to
11 review for us your comments and your issues.

12 MR. BUELL: Yes. I would like first to respond to
13 Allan Thompson's opening statement. Staff concurs with the
14 applicant that it appears as though we have a problem of
15 miscommunication between staff and applicant. That we think
16 we're saying this is the information that we need and the
17 applicant is hearing something different or telling us
18 something different and we're not listening.

19 Certainly this is the first merchant plant to be
20 certified by the Commission and it presents a unique
21 challenge to staff, particularly the envelope concept that
22 the applicant originally had proposed for this case as well
23 as the multiple configurations. It's a challenge and we
24 would like to work with the applicant to try to resolve these
25 issues.

1 We would note we've already scheduled a workshop
2 for this Thursday to talk about the water plan as well as the
3 natural gas pipeline as well as issues on cultural and paleo
4 and land use issues. So for the need for a Committee-
5 sponsored workshop, at least on those topics, is in the
6 staff's opinion already taking place although that workshop
7 will take place in Victorville. Staff generally has a
8 preference for workshops in the vicinity of the project site,
9 particularly on environmental issues. The primary reason for
10 that is to ensure that the public as well as local agencies
11 have an opportunity to participate. That is not always as
12 easy when we're here in Sacramento. We do appreciate Oscar
13 Hellrich for showing up today, with that note.

14 I'd like to turn to the Determination of
15 Compliance. Our notes are very much similar to what Sara
16 Head had summarized. At the April 14th workshop the district
17 indicated that they would be approximately three weeks late
18 on their Determination of Compliance, the Preliminary
19 Determination of Compliance. I noticed that Oscar today
20 said, as soon as possible. I'm not sure what *as soon as*
21 *possible* means, if that means within the next three weeks or
22 if that means there will be some longer delay that may occur.
23 And I would turn to Oscar to provide any clarification on
24 that if he is available to do that at this time.

25 The other issue that I'd like to talk about is

1 staff's concern, as Sara had identified, that they would view
2 an opportunity to review the DOC once it comes out and
3 comment on BACT issues. We understand there's other issues
4 that EPA as well as ARB or staff want to raise on the
5 Preliminary Determination of Compliance and the district's
6 schedule for providing a Final Staff Assessment, excuse me, a
7 Final Determination of Compliance is optimistic. And we're
8 concerned about the possibility that the district will
9 actually be able to perform as they have indicated.

10 This is just one problem though that we have in
11 terms of scheduling, producing our FSA, our Final Staff
12 Assessment for this project. There are other data problems
13 that also cause us concern which we'll elaborate on Air
14 Quality as well as other topics today that raise concerns
15 about us being able to file a complete Final Determination --
16 Excuse me, I've got the things backwards.

17 COMMISSIONER SHARPLESS: PSA.

18 MR. BUELL: I'm talking too fast. Our Final Staff
19 Assessment.

20 COMMISSIONER SHARPLESS: Right.

21 MR. BUELL: On schedule. One other note here --

22 MS. HOUGH: Would the Committee like us to go
23 through the same topics in the order that the applicant
24 went through them?

25 COMMISSIONER SHARPLESS: Yes, I would like --

1 MS. HOUGH: Would that be helpful for purposes of
2 notes?

3 COMMISSIONER SHARPLESS: Yes, just to get sort of
4 the other parties' perspectives on these issues.

5 MS. HOUGH: I think the next one was the turbine
6 data.

7 MR. BUELL: Yes. Regarding turbine data. It is
8 our normal practice to utilize turbine manufacturer data,
9 guarantees and evaluating proposals before the Energy
10 Commission. We understand here from the applicant that
11 things are changing dynamically as we speak on what turbines
12 are actually available. Nevertheless we feel it necessary to
13 have something to base our opinion on what the emissions are
14 likely to be from this project for the various configurations
15 that the applicant is considering.

16 The information that we have identified thus far
17 that was provided in the Sutter case shows a different
18 emission rate than the applicant has identified. It is not a
19 matter of scale-up, it is the matter that the applicant
20 appears to be claiming a lower emission rate than is being
21 claimed by the turbine manufacturers currently. The
22 applicant has identified that they have information that
23 would lead them to believe that lower rates are achievable;
24 staff would like to see that information and share that
25 information.

1 We initially issued data requests on December the
2 17th requesting information to document the turbine
3 manufacturers' emission claims. The applicant has not, in
4 staff's opinion, responded to those. Their response was at
5 that time that they thought that that information would not
6 be available until such time as they actually decided to
7 purchase a turbine, which would probably be post-
8 certification in this case.

9 COMMISSIONER LAURIE: Question, Madam Chair.

10 COMMISSIONER SHARPLESS: Yes, Commissioner Laurie.

11 COMMISSIONER LAURIE: Mr. Buell, then is it your
12 statement that if a determination was made to go ahead with
13 worst-case scenario that you don't even have the data today
14 to create a worst-case scenario?

15 MR. BUELL: We do not have data to substantiate the
16 applicant's worst case emissions.

17 COMMISSIONER LAURIE: Okay. I don't know how you
18 would define it. Is this data that the applicant has given
19 to you applicant's data or does it make reference to a third
20 party's data?

21 MR. BUELL: At this point in time we believe it to
22 be applicant's data.

23 MS. HEAD: I'd like to add a little clarification
24 here. I think that there is a little confusion that I
25 believe that our operational numbers are worst-case. I think

1 that upon re-looking at the numbers that the issue here is
2 the start-up period. And so, you know, we do believe that we
3 need to supply more information on the start-up to justify
4 the worst-case emissions.

5 So I think that that's maybe where some of the
6 confusion has been coming from. That, you know, we thought
7 we were answering the question adequately looking at the
8 long-term operation and it was only fairly recently that we
9 identified that it was actually the start-up data that's
10 driving this one-hour NO_x issue that may not be as worst-case
11 as we'd like it to be. So we are -- We are definitely
12 looking at that issue and endeavoring to provide staff with
13 some more information. But again, from what we have seen the
14 problem is solvable and again, you know, we will not go
15 forward proposing any turbines that are not, you know, able
16 to show compliance with that standard.

17 MR. BUELL: One additional point of clarification.
18 It's not just the emission rates that are important, it is
19 also the stack parameters, the temperature of the flue gas,
20 the volumetric flow rate that is important. What we have
21 here is a very difficult situation if I have to mix and match
22 emission rates. In one case one turbine may have a higher
23 emission rate for NO_x than another turbine but in contrast the
24 other turbine has a higher PM-10 emission rate.

25 And I end up mixing and matching and it gets to a

1 point where I'm not sure that the staff can actually perform
2 the analysis because what stack parameters do I assume to be
3 worst case. It becomes a mess. It becomes far more easier
4 just simply to take the actual data for each turbine and
5 model it. It gives you the answer that you need and it's
6 more informative to the decision-maker. The last point I'd
7 like to make -- Yes.

8 COMMISSIONER LAURIE: But what happens if when they
9 go to construct they want to use a different turbine because
10 due to great research and development technologies that
11 perhaps we partnered in there is a tremendous new opportunity
12 but that particular turbine is not the manufacturer's model
13 that we've utilized, but upon examination its impacts would
14 be well within the parameters of what our environmental
15 documents have analyzed.

16 MR. BUELL: That's very simple. They would come to
17 the Commission, petition for a change in their permit
18 condition allowing that new turbine. And if the impacts are
19 well, the emissions are well within the estimates that we
20 analyzed during the process there would be no -- A slam-dunk
21 if you will, to approve that amendment.

22 MS. HOUGH: You know, in our mind the question is,
23 if you believe that there are going to be advances and
24 changes in turbines, improvements in turbines, to what extent
25 do you want to compromise staff's ability to analyze real

1 data to determine real impacts in order to accommodate that.
2 And that is the concern we have, where does the balance get
3 drawn. And as Rick has said, we believe that there is data
4 out there on the available turbines, it is data we could use.
5 It's easiest and it's simplest and it's probably the most
6 informative for us to be able to obtain that data and do our
7 modeling based on that.

8 MS. HEAD: Although Caryn also mentioned that she
9 thought CEQA should analyze *most likely impacts* and I guess
10 at this point we do fully expect the improvements in
11 efficiency and so we think that those are the most likely
12 numbers. That we're calling worst-case but we really think
13 are realistic and have been derived, you know, using
14 assumptions that we can share with the staff, which we have
15 shared with the staff on the operations and we will endeavor
16 to share with the staff on --

17 MS. HOUGH: We'd love to be able to validate that.

18 COMMISSIONER SHARPLESS: There are five apparently.
19 In the staff's April 24th status report on page five there
20 are five areas that staff is suggesting they need in order to
21 --45 days prior to issuing the Final Staff Assessment--that
22 they need in order to do their Final Staff Assessment.
23 Staff, are these the five that you feel you need?

24 MR. BUELL: Yes. We'd also note that that includes
25 steady-state emissions, number two. The reason I included

1 that is because I wasn't sure that we actually had that data.

2 COMMISSIONER SHARPLESS: And you feel that without
3 this you will not be able to do an adequate review?

4 MR. BUELL: Yes, we will not be able to do an
5 adequate review.

6 COMMISSIONER SHARPLESS: Okay. We'll get back to
7 the applicant on this issue.

8 COMMISSIONER LAURIE: Let me ask one more question
9 for clarification if I may.

10 COMMISSIONER SHARPLESS: Commissioner Laurie.

11 COMMISSIONER LAURIE: A question to staff. Is it
12 your understanding of the applicant's concern -- Is it, A,
13 that the applicant doesn't want to be locked in to a
14 particular manufacturer, which according to your testimony
15 would thus necessitate an amendment or change to the permit,
16 to the certificate when issued; or two, the data is not
17 available. What is your understanding of their concerns,
18 non-availability of data or a desire not to be locked in?

19 MR. BUELL: I don't know how to answer that, I
20 cannot speak for what the applicant's motivation is.

21 COMMISSIONER LAURIE: I'm not asking you to
22 speculate, what is your understanding? Have they discussed
23 with you?

24 MR. BUELL: The applicant on more than one occasion
25 has identified a desire to have flexibility in choosing a

1 turbine manufacturer, up to as late in the process as they
2 would like to do that. Staff is examining ways that we could
3 actually allow that to happen. Certainly if we found that
4 all the impacts from all four turbine manufacturers that the
5 applicant wants to consider are acceptable to us then we have
6 no preference in any one of those four turbines. We could
7 write a condition of certification that would allow the
8 choice of any four of those.

9 COMMISSIONER LAURIE: Okay, and has the applicant
10 indicated to you that that data is, A, either not available,
11 or B, they are unwilling to deliver it?

12 MR. BUELL: They have said that that data is not
13 available until they actually make a decision on which
14 turbine manufacturer they want to purchase.

15 COMMISSIONER LAURIE: And do you disagree with that
16 statement?

17 MR. BUELL: I believe that there is reason to
18 believe that they can obtain that information. In the Sutter
19 case -- I hate to raise that as an example unnecessarily but
20 it is something that is at hand. The applicant in that case
21 has provided the turbine manufacturer data which we are
22 prepared to use for our analysis in this case. They have
23 also indicated that they are also aware of recent
24 improvements in gas turbines and they are in the process of
25 providing data, it is my understanding, to the CEC that in

1 terms of source test data, would document those improvements.
2 So yes, I think that data is available.

3 COMMISSIONER LAURIE: Further clarification of the
4 applicant. Is it your view that the data is available or is
5 not available?

6 MR. WOLFINGER: We believe it is available. And in
7 the white paper, we call it a white paper when we talk about
8 how we made these turbines five or ten percent bigger than
9 they were, we provided both General Electric and Westinghouse
10 data in that paper showing how we used baseline data and then
11 scaled these machines up so they were larger. Because
12 exactly what has happened at Sutter is exactly what we
13 anticipated to happen as a matter of fact over time. The
14 turbines are getting bigger and they have to come back in and
15 redo it. We believe it is there.

16 We have not provided the data on the four turbine
17 manufacturers that we've talked about and in fact there may
18 be more turbine manufacturers in the future that are not even
19 on that list that may be coming into the United States to
20 sell turbines too. So I mean, you can't even limit yourself
21 to the four that are here now, there may be more. I guess
22 what we're trying to do is look at a size and I have to meet
23 the conditions of a permit. That it can only emit so much,
24 that it can be -- start-up and those type of things. So we
25 believe that that is available, we believe we supplied some

1 of the data but not for all of them.

2 MS. HEAD: And like I say, again, you know, it was
3 really only fairly recently that we, you know, understood
4 what staff was requesting and so we are endeavoring to
5 provide that. I think that Mr. Buell referred to our January
6 15th data response where, you know, again we pointed out what
7 data we had supplied and our concept, tried to clarify that.
8 It wasn't, you know, necessarily that there was any saying
9 that we couldn't get that data or that it wasn't available,
10 it was just, again, a better understanding now of what the
11 needs are and what the purpose is. So at this point we are
12 attempting to provide more data.

13 COMMISSIONER LAURIE: Thank you.

14 COMMISSIONER SHARPLESS: But again, are you
15 providing one through five on page five of the staff's
16 report?

17 MS. HEAD: Yeah. In some cases I think this is
18 data we've already provided, particularly the steady-state
19 emissions estimates, and I guess we would work with the
20 staff. But I think it is our intention to provide this data.

21 COMMISSIONER SHARPLESS: Is that news to staff or
22 is staff aware that they were going to provide certain data
23 but you still have concern that they won't be providing you
24 with all the data?

25 MR. BUELL: Today is the first I've heard that the

1 applicant is -- That's not correct, I think Mr. Wolfinger at
2 the workshop on the 14th did indicate that they were willing
3 to provide information on the two missing turbines for start-
4 up. Staff was confused at the discussion at the workshop
5 because it appeared as though Mr. Wolfinger was referring to
6 two turbines that weren't available to operate and we were
7 concerned about what information would be provided. But
8 today is the first I've really heard a commitment from Sara
9 on when -- that the applicant would provide the information.
10 The question I have at this point is, when will they provide
11 that information?

12 COMMISSIONER SHARPLESS: Can the applicant respond
13 to when?

14 MR. WOLFINGER: No, not at this time. One of our
15 problems is we have not received the Siemens data at this
16 point in time. We have asked them for it and we have not
17 received the Siemens. And I have to say also, I want to make
18 sure that we will supply this information but it does not
19 limit, we don't believe it limits the turbine manufacturers
20 or the models we would like to have the ability to buy. At
21 this point in time we're going to supply four but like I
22 said, there may be additional turbines. And more than likely
23 the models that we supply will not necessarily be available
24 for sale in 1999 when we go to buy these or will be the ones
25 shipped in 2001. They'll get bigger, better.

1 COMMISSIONER SHARPLESS: When are you building this
2 facility?

3 MR. WOLFINGER: It will be on-line in 2001. The
4 data you're receiving now --

5 COMMISSIONER SHARPLESS: So you're going to go into
6 construction in 1999?

7 MR. WOLFINGER: Right. We already have information
8 right now as a matter of fact that at least one of the
9 manufacturers that I know of is already contemplating a
10 significant upgrade. So that the model information I give
11 you now is not going to be what he is offering in '99. Well,
12 he may still be offering the older model but he's going to
13 offer an updated model. But he is not willing to go out and
14 commit that in the way of hard, firm data into the
15 marketplace. These are our problems that we're wrestling
16 with.

17 COMMISSIONER LAURIE: But let me ask staff how they
18 plan to approach the problem so that if this project is
19 approved -- And part of the project description is an
20 identification of particular turbine models and manufacturer
21 numbers. Applicant then comes in and says, no, we're going
22 to use this other turbine and you do an analysis and you
23 determine that that turbine is pretty darn close as far as
24 similar impacts. Then are you able to make your own finding
25 that use of that turbine is in substantial compliance with

1 permitting terms and conditions and project description and
2 in fact we need not do anything further? Or will you always
3 require some amendment to the permit, to our certification
4 process, once a particular turbine is identified? I guess
5 what I'm asking --

6 COMMISSIONER SHARPLESS: You're asking staff?

7 COMMISSIONER LAURIE: Yes.

8 MS. HOUGH: It would depend upon whether or not the
9 turbine was specified in the Decision. That's one of the
10 issues here.

11 COMMISSIONER SHARPLESS: I also think it's
12 interesting that there will be compliance requirements on
13 this and that when this thing is up and running and it's
14 monitored on a quarterly or however the conditions are, and
15 if they don't meet the permits then this applicant has got a
16 real problem. Either he's going to change the operation of
17 his facility big time and put pressure on Mojave now saying
18 that we're in the marketplace and you're making us uneconomic
19 and we're going to have uneconomic assets. And it comes down
20 to the regulatory agency making the applicant lose billions
21 and billions of dollars or we do this thing right in the
22 first place. I'd have to have us come up against a
23 compliance issue because we didn't license and certify this
24 facility correctly to meet conditions.

25 MR. BUELL: There's a couple of things that I'd

1 like to point out. This is indeed a unique situation. I
2 don't think the Commission has ever run into a situation
3 where the applicant has not made a decision on a turbine or
4 at least a group of turbines. I think there was one other
5 case where we've dealt with multiple turbines. Normally the
6 lead time for purchasing a turbine is on the order of years.
7 And if the applicant is truly intent on bringing this project
8 into operation in 2001 then that decision to purchase which
9 turbine has to be made in the near future or relatively near
10 future.

11 So we do appreciate the applicant's desire to get
12 the best machine that they can so they can compete in the
13 marketplace, we also are stymied by trying to figure out how
14 to deal with this animal. Certainly, to answer Commissioner
15 Laurie's question, if it were a simple slam-dunk in terms of
16 saying there's no net environmental consequence from a change
17 in turbine manufacturers that staff could as part of our
18 process make it a simple analysis that would come before the
19 Commission. It wouldn't be a detailed, CEQA-type of an
20 analysis that would be required.

21 MS. HOUGH: There's a section in the Commission's
22 regulations that deal with post-certification amendments and
23 changes and there's several tiers laid out. One in which
24 staff takes a quick look at it and concludes that there is no
25 possibility that there could be an environmental effect and

1 they file something to that effect and people can respond to
2 that, contest that, and then bring it before the business
3 meeting. If nobody does that I believe it becomes, the
4 amendment will become part of the Decision without a hearing.
5 Typically what happens is staff does do an analysis and it
6 goes on the consent calendar.

7 COMMISSIONER LAURIE: So if I'm the applicant then
8 why aren't I saying, okay, I'm going to pick today to get
9 around the worst-case scenario analysis issue. Why don't I
10 pick today the turbine that I believe has the greatest
11 impacts and I am going to say to the Commission, that is my
12 baby, that's what I am going to use, you guys analyze the
13 impacts from that turbine and that ends up being synonymous
14 with the worst-case scenario.

15 I change my mind. I come in and according to their
16 best guess the impacts are going to be less. So you're going
17 to do your analysis and you're going to say, well, we don't
18 have to change anything because we determined that the
19 impacts are less so either we'll say you're in substantial
20 compliance, go for it, or we'll bring them back to a business
21 meeting with a recommendation that it be approved because the
22 impacts are less.

23 MS. HOUGH: That's precisely why we're trying to
24 get it right now. That's precisely why we're trying to get
25 the data, so we can determine whether or not there are

1 significant differences between turbine impacts. And it has
2 to do with not just the emission rates. If the applicant
3 were to come and propose a turbine that had significantly
4 higher impacts than any other turbines that were available
5 staff would present that information to you in its FSA and
6 say, we recommend that the Committee consider requiring a
7 different turbine because of the level of impacts associated
8 with the one that the applicant has selected. It's the same
9 with cooling technologies, control technologies, a whole host
10 of other issues that the Committee considers in its Decision.

11 MR. WOLFINGER: Can I --

12 MR. BUELL: If I might? I'm sorry, Rick. One last
13 point regarding the turbines that staff would like to make
14 and that's regarding our recollection of what Bob Zeller said
15 at the workshop on April 14th.

16 (Thereupon, tape 1 was changed
17 to tape 2.)

18 It is my recollection that the district identified
19 that they had a desire at some point in the process to
20 actually specify a turbine. And I can't recall off the top
21 of my head whether they said that was for the DOC or Final
22 DOC that they would need that.

23 MS. HEAD: They said it was upon issuance of a
24 permit to operate.

25 MR. WOLFINGER: Permit to operate after it's been

1 constructed, as a matter of fact.

2 MS. HEAD: Quite a ways -- Oscar, is that correct?

3 MR. HELLRICH: That's true.

4 MR. WOLFINGER: Not every application is --

5 MR. BUELL: One --

6 MR. WOLFINGER: I'm sorry.

7 MR. BUELL: I'm sorry, Rick. We're both thinking
8 too fast today. One other thought regarding the information
9 that the district has. It is our understanding that the
10 district has only been supplied with two turbine manufacturer
11 data and not three different turbines unless the applicant
12 has provided data that we're not aware of at this point in
13 time. And we're concerned, again, that the district's
14 analysis may only address the emissions or consequences from
15 those, compliance with those two turbines. Therefore, it
16 would not necessarily provide the flexibility that the
17 applicant desires in any case, regardless of what actions the
18 Commission takes. With that I apologize, Rick, it's your
19 turn.

20 MR. WOLFINGER: The point is we're not asking for
21 you to only qualify two turbines, we're asking you to qualify
22 a limit. Nor do I think every application that's come in
23 front of the CEC has had every possible turbine manufacturer
24 that the CEC has looked at. For an example, in the Sutter
25 project right off the bat. I mean, if you're going to make

1 that you just say, well, then we want to see Siemens data and
2 ABB data because they may have lower impacts than GE and
3 Westinghouse and therefore they are not doing their job
4 unless they do that. I don't think that's ever been required
5 to be done.

6 COMMISSIONER LAURIE: Let me ask. Have they come
7 in with a singular identified turbine as you've indicated has
8 occurred in basically our history what would you then have
9 asked them to do?

10 MR. BUELL: I'm not sure I understand the question.
11 Normally we get one turbine manufacturer that is identified
12 and we require them to provide data that would substantiate,
13 from the turbine manufacturer that would substantiate --

14 COMMISSIONER LAURIE: Let's say they went into a
15 back room and they said, okay, we're going to use
16 Westinghouse and here's the data, okay. Then what more would
17 you require them to do?

18 MR. BUELL: Traditionally we had not, we would not
19 have analyzed. Caryn.

20 MS. HOUGH: I'm trying to recollect so I'm speaking
21 off the top of my head. But I recollect that perhaps as part
22 of the project alternatives part of staff's analysis which we
23 were distinguishing, we were distinguishing that before
24 between that and mitigation measures. Staff has looked at
25 the issue of whether or not there were advanced gas turbines

1 that were available, other kinds of technologies to lower
2 emissions.

3 One of the things that has happened as a result of
4 this case is that we have become aware that there in fact may
5 be differences between impacts associated with different
6 turbines and those differences may be more significant than
7 we had believed in the past. So while I don't believe we
8 have included in our analysis multiple turbines when the
9 applicant hasn't requested so in the past the preliminary
10 work we've done in this case indicates that maybe it's
11 something we ought to be looking at because there may be
12 differences in impacts.

13 Now again we have to get to the questions of
14 feasibility and the Commission has to balance how much
15 flexibility it wishes to give the applicant versus the
16 likelihood of certain impacts occurring. We're not at the
17 point yet where we're saying that we would recommend that the
18 Commission specify any specific turbine or any specific group
19 of turbines. We're just trying to get the data to find out
20 whether or not there are significant differences using the
21 different turbines so that we can put that in our analysis
22 for you to consider.

23 MR. WOLFINGER: I wanted to make one more point and
24 that is, instead of a combined cycle plant if we had a
25 thermal steam plant where we had a boiler we would come in

1 and ask for a certain flow rate of the steam, a certain
2 amount of emissions, and we would have basically the universe
3 of boiler manufacturers to buy from. We could buy from
4 Combustion Engineering, from Foster-Wheeler, from BMW.

5 I don't -- I don't think it necessarily says that
6 therefore that gas turbines, if I'm asking for a flow rate,
7 an emission level, a limit, that I should then be saying,
8 well, only then two of those boiler manufacturers or two of
9 the turbine manufacturers are acceptable. If in fact I have
10 a limit on a boiler that gives me a flow rate and a limit I
11 should have the ability to buy anybody that meets that level.
12 And it is incumbent on me, number one, to prove that at the
13 time that the one I purchased is correct that it meets the
14 level, and that when it goes to operate I meet those
15 permitted levels. And I'm not sure I understand the
16 distinction.

17 COMMISSIONER SHARPLESS: Well, I think the staff is
18 being very clear, I think you're being very clear, and
19 obviously there is a difference.

20 MR. WOLFINGER: That's right.

21 COMMISSIONER SHARPLESS: That statement has been
22 probably one of the clearest ones we've had this morning.
23 Staff, could you cover any additional?

24 MR. BUELL: Yes.

25 COMMISSIONER SHARPLESS: I think you're now down to

1 -- Have you covered the one-hour exceedance?

2 MR. BUELL: Not yet. I just wanted to add that we
3 look forward to seeing the analysis that Sara has identified
4 that she intends to provide. We would like to ask Sara when,
5 again, we could expect to see that revised impact assessment
6 which she spoke of.

7 MS. HEAD: Again it has to do with getting the
8 Siemens data and looking at that to compare it to all the
9 manufacturers.

10 MR. WOLFINGER: No, just the one-hour, the one-hour
11 data. Are we going to do that too?

12 MS. HEAD: Well yeah, I mean, that's exactly right
13 because we have identified that it is the difference in
14 profiles from the different turbine manufacturers that we
15 want to understand how they fit within the envelope. So as
16 soon as we have all the turbine data then we will hopefully
17 quickly be able to turn around the revised ozone-limiting
18 method analysis.

19 So, I mean, we've done preliminary runs so we're
20 fairly set up, it's just a matter of, again, you know, we
21 don't want to go through this again so we want to be very
22 sure that we're comfortable with the turbine data we have and
23 our understanding of the probable -- You know if we do have
24 to apply additional mitigations beyond just the refined
25 modeling we want to make sure that we, you know, understand

1 what our best options are and how that fit in. So we think
2 soon.

3 MR. BUELL: One other thing is I would acknowledge
4 that our staff received via e-mail a revised map data that
5 you identified.

6 MS. HEAD: Terrain data.

7 MR. BUELL: Terrain data, right. I would recommend
8 that the applicant docket that information --

9 MS. HEAD: Okay.

10 MR. BUELL: -- so that all parties would have
11 access to it.

12 MS. HEAD: Just a comment on that. We originally
13 submitted it with e-mail so I guess we were just thinking
14 that we could revise it with e-mail, but I have no problem
15 with docketing it officially.

16 MR. BUELL: I believe it was originally submitted
17 on disk but there was an error in the disk which was
18 corrected via e-mail.

19 MS. HEAD: Okay, okay.

20 MR. BUELL: Regarding the best available control
21 technology, which is our next topic that we have identified
22 in our report.

23 COMMISSIONER SHARPLESS: Okay.

24 MR. BUELL: This is primarily -- We had entered
25 this in as a status report to identify the status of various

1 agencies, findings regarding BACT. One additional note that
2 I'd like to make is to thank Mr. Mark Abramowitz who provided
3 the summary of the workshop of the 14th. I hope I didn't
4 mispronounce his name too badly today but it was appreciated
5 that he was available to provide that information.

6 One other thing is in terms of BACT and looking at
7 secondary impacts. Normally we will not look at alternative
8 mitigations when we believe the impacts from technology have
9 been addressed adequately. And in this case at this point in
10 time we believe the ammonia emissions from the SCR that the
11 applicant has proposed will be mitigated as demonstrated by
12 the applicant's modeling analysis that they provided.

13 As Caryn indicated earlier though, avoidance is
14 another issue. Is, if we could look at the technology such
15 as the SCONO_x technology that would actually avoid the impact
16 altogether or reduce secondary emissions of PM-10 then that
17 is an issue that staff thinks it ought to be considering in
18 its analysis. At this point in time we look to the
19 Commission on what recommendations they would have on us
20 looking at those issues. Moving right along to --

21 COMMISSIONER SHARPLESS: Issues or issue?

22 MR. BUELL: Issue.

23 COMMISSIONER SHARPLESS: The ammonia avoidance
24 mitigation measure?

25 MR. BUELL: Right.

1 COMMISSIONER SHARPLESS: If the Committee were to
2 send out an order prior to your PSA saying, look at it. That
3 is what you're saying, that you'll wait for the Committee to
4 tell staff what to do on that issue?

5 MR. BUELL: We would look to you for guidance
6 although I think we would be unable to provide a response by
7 our PSA, we certainly could do so by our FSA

8 COMMISSIONER SHARPLESS: Okay. I note on your best
9 available control technology section that you end your
10 section with staff believing that the applicant should
11 consider lower emission control levels as a means for
12 reducing air emission reduction credit liability. So you're
13 seeing a balance between the lower your emission rates are
14 the less emission credits you need to go out and get.

15 MR. BUELL: Right. There's always been a balance
16 between the cost of lower BACT and the cost of offsets. And
17 certainly in a situation where an applicant is having
18 difficulty obtaining offsets that is certainly an option that
19 they ought to consider to give themselves more leverage in
20 the marketplace.

21 COMMISSIONER SHARPLESS: Do you think the applicant
22 is having difficulty getting offsets? They have said they
23 are awash in potential offsets even though they are not in
24 the bank.

25 MR. BUELL: Staff notes that we do not have any

1 contracts securing offsets, no option contracts securing
2 offsets and no letters of intent that would indicate that
3 parties are willing to negotiate with the applicant for the
4 sale of offsets except for perhaps a letter from Mitsubishi
5 which most parties would not agree is a letter of intent. So
6 my characterization --

7 COMMISSIONER SHARPLESS: To what do you say though,
8 Rick, if these, if the district is considering -- And I don't
9 know how many applications they have. I know they had the
10 Mitsubishi application, I don't know if they have other
11 applications, they are considering the South Coast offsets.
12 But are you just purely basing that statement on what is and
13 isn't banked in the Mojave district bank or are you making
14 that a broader statement in credits banked anywhere?

15 MR. BUELL: I think it's a broader statement.
16 Certainly we are on to the next topic that staff has
17 addressed, the topic of air quality. I believe that the
18 applicant is having difficulty in securing offsets from any
19 source. Perhaps they would like to correct me if I'm wrong.

20 I would note that perhaps -- To better answer your
21 question, staff thinks it has made itself clear on what
22 information it is requiring on offsets. I refer to our
23 Executive Director's letter of November 25th prior to data
24 adequacy in which we identified the applicant needs to

25 " Identify the specific sources for which

1 it plans to obtain offsets before the district
2 or staff can begin their analysis of the
3 offset proposal. In addition, substantial
4 information about those sources, the methods
5 of offsetting, is required before the district
6 and staff can complete their evaluations of
7 the applicant's proposal. That information
8 includes a description of the specific
9 sources, source components, location,
10 quantities of the offsets, methods of emission
11 reductions and emission sources test
12 information and emission reduction
13 calculations, letters of intent or other
14 binding agreements to secure offsets."

15 We made that point clear at the business meeting, I'm correct
16 and the record would show, on December 3rd as an information
17 staff believed that it needed. And at that time what we
18 believed the district needed to conduct their analysis on
19 this case. On December 17th of last year we issued a data
20 request requesting this information, data requests 13 through
21 18. The applicant to my knowledge has not objected to
22 staff's data requests.

23 The first that we have really understood that the
24 applicant objected to providing this information or was
25 unable to provide this information or felt it was a hardship

1 for them to provide this information was at the workshop on
2 April 14th. We feel as though we've lost four months in this
3 process, four or five months in this process, and we have yet
4 to understand exactly what information or why we cannot
5 obtain this information in a timely manner. Where is your
6 list?

7 MS. HOUGH: I think the last issue we had talked
8 about in our status report had to do with the violation, the
9 NO₂ violation.

10 COMMISSIONER LAURIE: Let me ask a question before
11 you move on, Madam Chair, if I may.

12 COMMISSIONER SHARPLESS: Commissioner Laurie.

13 COMMISSIONER LAURIE: Is the data sought consistent
14 with our history?

15 MS. HOUGH: No, it is not in the sense that we
16 typically have required it, it is for data adequacy purposes.
17 So we had asked for it after we had usually asked for it in
18 the past.

19 COMMISSIONER SHARPLESS: You could have answered
20 that, yes, only we haven't received it.

21 COMMISSIONER LAURIE: Okay, well that was the
22 answer that I sought. So historically in our permitting
23 processing we have sought the same data that we are seeking
24 now.

25 MR. BUELL: Yes.

1 COMMISSIONER LAURIE: Okay. I can understand where
2 disclosure of potential sources might place any applicant at
3 a negotiating disadvantage when in fact sources have not as
4 yet been locked up if anybody is interested in looking at
5 that kind of information. Has this concern ever in the past
6 proven to be a barrier to achieving success?

7 MR. BUELL: Staff is also aware that offsets, the
8 need to purchase offsets has often been a stumbling block for
9 applicants, particularly after the case has started.

10 There has been a number of cases before the Energy
11 Commission that have run into the very problem that I think
12 you have identified and one of which that I can think of is
13 the Irwindale project located in South Coast. It was an MSW
14 or municipal solid waste facility that needed to obtain
15 offsets and because of the logistics of trying to obtain
16 offsets during the process ran into significant problems,
17 scheduling problems to obtain those offsets. That case
18 eventually failed. Another case that I can recall, I was the
19 project manager on, was the Santa Maria Aggregate Project
20 which was located in Santa Barbara County. Where the
21 applicant had reached tentative agreement with a utility to
22 supply the offsets for the project and eventually that deal
23 fell through.

24 COMMISSIONER LAURIE: Explain to me what the law
25 requires us to do regarding the status of offsets at the time

1 we make a decision.

2 MS. HOUGH: The law requires you, before you can
3 issue an affirmative decision in a siting case, to have a
4 certification from the air pollution control officer that the
5 offsets have been obtained.

6 COMMISSIONER LAURIE: Okay. Now is it your view
7 that the sources must be disclosed so you can identify
8 secondary environmental impacts? Is that your position?

9 MS. HOUGH: Well, this gets back to the question
10 that we talked about earlier this morning. There's basically
11 three reasons why staff looks at this. One is a resource
12 issue in terms of being able to make that finding and whether
13 or not it's worth the public resources that get devoted to a
14 case if it looks as though the Commission's ability to make
15 that finding that is required from an affirmative decision
16 has been jeopardized.

17 A second has to do with secondary impacts and a
18 third has to do with the fact that staff likes to consider
19 whether or not it is feasible within the banking system or
20 within, if they are obtaining offsets from a non-bank source
21 such as road paving, is it feasible to structure that in such
22 a way that the actual emission reductions occur upwind of the
23 project impacts so that there is some correlation between the
24 reductions that are being provided and the actual impacts
25 from the project. So those are kind of the three reasons why

1 we, why we look at location.

2 COMMISSIONER LAURIE: Madam Chair, I apologize for
3 the redundancy of questioning but this education is very
4 helpful.

5 COMMISSIONER SHARPLESS: No, I am very appreciative
6 that you are asking these questions.

7 MS. HOUGH: I would also just like to point out
8 that perhaps -- Sara Head has referred to a misunderstanding
9 about what we thought was going to be provided. In part we
10 may have contributed to some of that because there are
11 references in the district rules to requiring real,
12 permanent, enforceable surplus and quantifiable offsets
13 during this DOC process. And so I think perhaps we had just
14 assumed that that would be --

15 COMMISSIONER SHARPLESS: That would happen.

16 MS. HOUGH: That would happen.

17 COMMISSIONER SHARPLESS: Right. And I would also
18 point out, Commissioner Laurie, particularly I think this is
19 good since you are the Presiding Member on the Siting
20 Committee, that we have our own rules that govern these
21 cases. I think that Rick's reading of the Executive
22 Officer's letter at the time of the application when we were
23 considering whether or not to deem this application complete
24 references our own rules as to what we consider when we
25 consider data adequacy.

1 And we have -- I think this is a question where we
2 have been flexible. Flexible with the applicant and trying
3 to work with the applicant and trying to work within the
4 system and trying to do this sensitive balancing act at the
5 same time. We're getting sort of down to the wire. And the
6 longer that we lack certain data sets, the longer it takes
7 for us to get detailed information, the greater difficulty it
8 puts the Committee in. And the greater difficulty it puts
9 the Commission in the greater difficulty it puts the
10 interested parties in who have their own individual concerns.

11 Because we all rely on the analysis of the staff to
12 make judgements and determinations. If we don't have good
13 staff analysis on the impacts of this project we are not
14 going to have an adequate record on which to make a decision
15 and we may come down to a very difficult decision. Having
16 not adequate information on record we will be left with
17 either leaving ourselves open to suit or rejecting the
18 application. And both of those seem very untenable to me, I
19 don't want to be put in that position.

20 MR. WOLFINGER: Commissioners.

21 COMMISSIONER LAURIE: Madam Chair, thank you.

22 One more question of staff. The legal requisite
23 for the identification, the legal reference for the rule that
24 says offsets must be in hand, is that Warren-Alquist or is
25 that our own siting regs?

1 MS. HOUGH: There is a section in our siting
2 regulations that requires identification of offset sources
3 for data adequacy purposes. I don't have the language in
4 front of me. The requirement that applies to you is in
5 25523, Section 25523 of the Public Resources Code.

6 COMMISSIONER SHARPLESS: Thank you.

7 COMMISSIONER LAURIE: Thank you very much.

8 MR. JOSEPH: Commissioner Laurie, I can give you
9 the citing in your regulations if you would like.

10 COMMISSIONER LAURIE: Okay.

11 MR. JOSEPH: It's in Appendix B, section B(8)(J).

12 MR. CARROLL: If I could just interject on behalf
13 of the applicant on this issue in terms of our perspective.
14 Our belief is that we will not have difficulties attaining
15 the necessary offsets. We are also expending substantial
16 resources in this process and we would not be proceeding if
17 we thought that that was a possibility at the end of the day,
18 that we would not be able to obtain those. Based on the
19 information from the applications that have been submitted
20 the district -- the Mojave District's preliminary assessment
21 that those appear to be valid credits that once passed
22 through the process will be certified and banked in
23 quantities more than sufficient to address what we need.

24 COMMISSIONER SHARPLESS: Having worked so closely
25 with it do you have any indication of when those applications

1 actually will wind up in a bank? Do you have a good fix on
2 that?

3 MR. CARROLL: I don't. I think the district is
4 probably better capable. Expeditiously is sort of what we
5 have been told by the district and of course we want it to
6 happen as soon as everybody else does. But again, based on
7 what we know today we don't have concerns that the credits
8 will be there. We would like them to be issued and banked
9 today and the sooner the better, just like everybody else
10 would. But we would not be proceeding down this path if we
11 thought that that was a concern.

12 COMMISSIONER SHARPLESS: But you realize that we
13 probably will run into a gigantic problem if we don't have
14 those credits identified 45 days before the Final Staff
15 Assessment.

16 MR. CARROLL: Absolutely.

17 COMMISSIONER SHARPLESS: You recognize that. Okay,
18 fine.

19 MR. WOLFINGER: Can I make a comment? On the
20 December 3rd meeting where I asked to be -- to approve data
21 adequate you were very specific in what you wanted and you
22 were most concerned about two issues. Number one, that we
23 would not get interbasin trading by March 19th, which was the
24 120 days after we had submitted our application to Mojave
25 Desert Air Quality Management District which was on November

1 the 19th; and two is, that we could not meet the requirements
2 of the Mojave Desert Air Quality Management District to have
3 identified 150 percent of the necessary offsets that people
4 were willing to sell and in the market to sell. We believe
5 we have answered both of those questions and in fact the
6 district has agreed to that.

7 COMMISSIONER SHARPLESS: No, I think the
8 specificity in the record is much more specific than just
9 identification. And you'd have to go back to the testimony
10 and look directly at that.

11 MR. WOLFINGER: I reviewed it and that's what it --

12 COMMISSIONER SHARPLESS: Well.

13 MR. WOLFINGER: I believe that's what it said.

14 COMMISSIONER SHARPLESS: But did you read the
15 Executive Officer's letter? Do you believe your comments
16 come --

17 MR. WOLFINGER: I don't remember.

18 COMMISSIONER SHARPLESS: Okay. Well, that was read
19 into the record and that was the basis on which we were
20 commenting. That was our understanding of what we would get
21 in the 120 day period.

22 MR. WOLFINGER: We've also identified four sources
23 that were recommended to us by the Mojave Desert Air Quality
24 Management District to buy offsets from. We may buy from all
25 four of those specific sources.

1 COMMISSIONER SHARPLESS: Now let me quote you:

2 "And we feel comfortable that we will
3 comply with the district's requirement of
4 showing that there is 150 percent of the
5 offsets required, that we've got letters of
6 intent."

7 MR. WOLFINGER: Or? Next sentence?

8 COMMISSIONER SHARPLESS: "Or some sort of thing."

9 MR. WOLFINGER: That's it.

10 COMMISSIONER SHARPLESS: But your *some sort of*
11 *thing* and what we're requiring, Mr. Wolfinger. You know, we
12 still -- You have the burden to provide the information that
13 we need and *some sort of thing* isn't just a fuzzy indication
14 that there will be offset credits in a bank when they are not
15 there right now and it is already past 120 days. It is
16 already past 120 days.

17 MR. WOLFINGER: It is modifying the district's
18 requirements. On the record it says, the district said in
19 the April 14th meeting we have met all the requirements.
20 That we have identified the sources and they feel comfortable
21 that they can be done. We have met exactly what that
22 sentence said, exactly the statement I made it says it. It
23 says, we'll get letters of intent or some sort of thing to
24 meet --

25 COMMISSIONER SHARPLESS: What is the some sort of

1 thing you've got, again?

2 MR. WOLFINGER: Well, what we have is, is we have a
3 letter from Mitsubishi saying they are willing to enter into
4 negotiations with us to sell it, we went to Cantor-
5 Fitzgerald, one of the premier people for doing emission
6 offsets. We've identified the sources. We have identified
7 the sources we're going to buy from. The NO_x is areas where
8 in fact the district had asked us to go to look at it because
9 they know -- they've got applications and they believe
10 they're valid. Furthermore, we also went and looked at roads
11 where they have identified and saying, this is where you can
12 go pave roads.

13 COMMISSIONER SHARPLESS: Yes.

14 MR. WOLFINGER: We have met -- If you look at that
15 sentence it says, we will meet the district's regulations.

16 COMMISSIONER SHARPLESS: Mr. Wolfinger.

17 MR. WOLFINGER: Well, I'm just saying that we don't
18 believe that we're -- Now I'm not sure we've met yours.

19 COMMISSIONER SHARPLESS: You're using your words
20 and you're not listening to the words I'm using. You
21 basically are arguing --

22 MR. WOLFINGER: No, I agree that I am not --

23 COMMISSIONER SHARPLESS: -- with what I think we
24 need to do to build the record. Do you understand that
25 that's what you're doing?

1 MR. WOLFINGER: I understand, right.

2 COMMISSIONER SHARPLESS: Okay. So since that is
3 not going to get us to closure on this issue, I don't think
4 -- And what I would like to -- Since it's five after twelve I
5 would like to at least get through the air quality section
6 before, you know, the brain cells totally shut down. I'm
7 going to ask staff, staff, have you completed the air quality
8 section as far as your comments?

9 MS. HOUGH: There was a brief discussion about the
10 NO₂ violation. I don't know if Rick wants to go into that in
11 any further detail, I think we covered it earlier this
12 morning. The potential NO₂ violation.

13 MR. BUELL: I don't think I have anything
14 additional to add at this point.

15 COMMISSIONER SHARPLESS: Okay, fine.

16 MR. CARROLL: May I just make one comment? And
17 I'll keep it brief to put closure on this issue in terms of
18 what you've asked us to do in the way of identifying credits.
19 We think that we have identified the credits in terms of
20 letters of intent of willingness to negotiate with us. We
21 can seek to formalize that to a greater extent if that is the
22 desire of the Commission. I can assure you that they are all
23 willing to negotiate with us. They are creating these
24 credits for the purposes of selling them so they are willing
25 to negotiate and talk to virtually any buyer.

1 Commissioner Laurie I think was referencing a point
2 earlier. I guess I would just ask for your understanding
3 that we are trying to negotiate a business transaction with
4 them. Our leverage to do that is greatly diminished to the
5 extent that they believe that they have been locked up as the
6 source to which we must go to for credits. So we're treading
7 a line between trying to provide certainty and information to
8 you while at the same time trying to negotiate a business
9 transaction with a party that is outside of the process.

10 COMMISSIONER SHARPLESS: I understand, but at some
11 point in time you have to make those decisions.

12 MR. CARROLL: We understand that.

13 COMMISSIONER SHARPLESS: At some point in time, and
14 this is the point in time. The air district needs to have
15 that information, we need to have that information. At some
16 point in time you need to have that information and this is
17 the point in time. This is like a moving target, you know.
18 I don't know if this project is really going to be built in
19 2001. The way, you know, that I'm hearing the testimony I
20 don't know, it may be 2002. It's such a loosely, undefined
21 project that it is very difficult to deal with from our
22 process and what the laws require us to do. That is the
23 message I'm giving you. As somebody who is going to have to
24 make a decision on the record I need something in the record
25 on which to make a decision.

1 MR. CARROLL: And we understand that. I may
2 disagree with you that this is the point in time because
3 we're still waiting for the credits to be certified. To some
4 extent the commodity that we are going to buy has not yet
5 been created. But I understand your point that at some point
6 in time, the sooner the better. And we share that
7 perspective. We need to identify those sources and here is
8 the purchase and sale agreement and it's locked up and done.

9 COMMISSIONER SHARPLESS: Yes, I think -- I feel
10 like we're just going around. Yes, we need to wait for the
11 air district but, you know, you're negotiating with them.
12 But you've got to wait for the air district, you know, but
13 you've identified things that haven't even gone through the
14 bank of the air district. It's just around and around.

15 I'm going to turn now to CURE and give you an
16 opportunity to cover. We've covered a lot of area here so if
17 you could just hit the fine points, please.

18 MR. JOSEPH: We have covered a lot of area and I
19 recognize the current state of everyone's brain cells. And I
20 agree with a great deal of what staff has said and I'm not
21 going to repeat anything they said.

22 First, on the question of the determination of
23 compliance. If approximately May 11th is the expected date,
24 and perhaps we'll hear more about that, but if May 11th is
25 the expected date for the preliminary determination of

1 compliance. Right in the very beginning you went through a
2 little calculation of where does that take us. Part of that
3 calculation was the time after the 30 day comment period on
4 the preliminary determination of compliance and the district
5 issuing a final DOC. The amount of time that was talked
6 about in that schedule was seven to ten days. I think that
7 is tremendously unrealistic. If there were no comments on
8 the preliminary DOC, you know, seven to ten days might be
9 realistic.

10 In this case, and this treads a little bit into the
11 BACT discussion that we had, the expectation is the district
12 will be proposing a NO_x emission rate of 4 parts per million.
13 That emission rate is not tenable, it will almost certainly
14 be changed. You've got another applicant before the
15 Commission proposing to you 3.5 ppm, I've got a project which
16 was recently permitted in Nevada at 3.7 ppm. We've got a
17 number of other pieces of information, other plants source
18 tested at substantially lower numbers, and all of that is
19 aside from whatever SCONO_x can deliver.

20 So I think it is totally unrealistic to build into
21 our schedule only seven to ten days for the district to be
22 able to respond to the comments on the preliminary DOC. And
23 they're going to have to rewrite the permit, they're going to
24 have to rewrite the analysis, seven to ten days is not going
25 to do it.

1 COMMISSIONER SHARPLESS: Okay.

2 MR. JOSEPH: Second, on turbine data. It actually
3 sounds like things were pretty close by the time we got to
4 the end of this discussion. It sounds like the applicant
5 agrees that data exists for other turbines, that it hasn't
6 been provided and that it will be provided at a time not yet
7 specified.

8 We heard the staff saying, look -- and they didn't
9 quite put it in these words -- but look, we have to provide
10 you with sworn testimony. That has to be based on something
11 we consider reliable. And for us to give you testimony that
12 we are willing to put in front of you as sworn testimony we
13 need documentation for our environmental review. And the
14 staff said, if one turbine is substantially worse than
15 another turbine for one aspect of its operations we want to
16 put before you the choices.

17 We have heard a lot about how this is a merchant
18 plant, the world is different. One of the things that is
19 different now is that there is a substantial possibility that
20 unlike past plants which had a QF contract with the utility
21 with must-take generation and they just ran flat out unless
22 they needed maintenance. This is a plant which very likely
23 will go through a number of start-up cycles and so when we
24 have -- as the market price varies. It is very reasonable to
25 think it will be cycling up and down and up and down

1 following the market price. It will be on when the price is
2 high and off when the price is below their operating costs.

3 This makes it more important now in this scenario
4 to look at things which staff might not have looked at in the
5 past, and that specifically is the start-up emission data.

6 And I think staff recognizes that it needs to have that
7 information. It may be that we have agreement to provide it.

8 Next, with respect to the offsets. Rick Buell laid
9 out to you several cases in the past which have failed to get
10 through the process because they couldn't get their offsets.
11 And that's why you have your data adequacy regulations which
12 require that up front.

13 The Commission was extremely flexible with the
14 applicant in essentially allowing an extra 120 days to come
15 up with that information. The applicant asked for that on
16 December 3rd and they said, we'll buy the emission reduction
17 credits and we'll present a binding commitment. I think
18 that's what *some other thing* means. Some kind of binding
19 commitment within 120 days to show that we've got these
20 offsets. I think they even said they had a meeting the next
21 day to negotiate.

22 But here we are on April 28th and the applicant is
23 asking the Commission to continue processing this
24 application. They say they are going to buy these emission
25 reduction credits and they are going to present to you a

1 binding commitment before licensing; they say they are
2 negotiating. But what have we learned in the last five
3 months? We still have no offsets secured. There perhaps are
4 offsets out there to buy but none of them have been bought.

5 We have also learned the air district has a bank
6 which has precisely zero offsets in it. There is going to be
7 some period of time before there are any offsets in there.
8 We have also learned that the only NO_x source that they are
9 actually talking to created the NO_x offsets by burning tires.

10 MS. HEAD: That's incorrect, we are talking to all
11 four.

12 MR. JOSEPH: At the April 14th workshop the
13 statement was made, the one we are talking to is Mitsubishi.
14 If that is not correct, okay, so they're talking to more.
15 But still the basic fact is unchanged, on December 3rd they
16 said, in 120 days we'll have offsets secured. Here we are on
17 April 28th, five months have gone by, no offsets have been
18 secured.

19 But to add to your discussion about, well, this is
20 partly out of our control because we can't control the
21 district's process. You know, they've got these
22 applications, they're sitting there, the district has to
23 actually put them in the bank, we have every expectation they
24 will be in the bank. That's no excuse for not having bought
25 the offsets. They could very easily enter into a contract

1 with any one of these sellers that allows them, that secures
2 their right to those offsets when they are put in the bank.
3 I think, Commissioner Sharpless, you're right, this is the
4 time. and in fact I think we may be past the time, we're
5 certainly past the time that the Commission set on December
6 3rd. If that wasn't it, this is it.

7 Lastly, I want to raise one other issue and that is
8 the question of the secondary impacts, which has been talked
9 about several times here. We've got a package. If it turns
10 out that Mitsubishi is the seller, assuming a deal is ever
11 made. But if it turns out that a deal is made with
12 Mitsubishi to buy the NO_x offsets you have a package that
13 comes with that. You have a reduction in NO_x emissions and,
14 at least arguably, an increase in toxic emissions.

15 Now the applicant said in its status report,
16 several different ways including on page seven, made a very
17 clear statement and the statement was repeated again today:
18 The creation of the offsets are not part of this project.
19 Suppose that that's true. Well that means this package of --
20 And the reason they're obviously saying that is because they
21 don't want any liability for the increase in toxics that goes
22 along with it. If that is true that the increase in toxics
23 is not part of this then the reduction in NO_x emissions is not
24 part of this either for purposes of CEQA.

25 We heard for the first time, this was a bit of

1 miscommunication, but we heard for the first time on April
2 14th that Mitsubishi in fact switched and started burning
3 tires three or four years ago and the NO_x emissions were
4 reduced then, the toxics that resulted from that took place
5 then, and perhaps there is an argument that the toxic
6 emissions are not part of this project because they are part
7 of the baseline environmental condition, they conditions that
8 exist today.

9 If that is the case then it is also the case that
10 reduced NO_x emissions are part of the baseline and don't
11 mitigate the impacts from this project. It's a package, you
12 can't pick and choose. Either reduced NO_x and increased
13 toxics are part of this project or they are not, and that's
14 something that the Commission is going to have to grapple
15 with.

16 MR. CARROLL: May I respond to that?

17 COMMISSIONER SHARPLESS: Just a second. Does that
18 conclude your comments?

19 MR. JOSEPH: Yes, yes it does.

20 COMMISSIONER SHARPLESS: Okay, you may.

21 MR. CARROLL: I want to respond to a couple of
22 things but I'll take the last point first. Mr. Joseph has
23 just created a very elegant argument that is all premised on
24 the assumption that burning tires results in a toxic impact.
25 There has been no evidence submitted that I am aware of that

1 that's true. In fact, we have submitted a letter from the
2 Air Resources Board which indicates that there is no increase
3 in risk associated with moving to the burning of tires. So
4 it is an interesting point. It assumes facts that are not in
5 evidence and in fact facts that are contrary to the facts
6 that are in evidence.

7 The only other thing that I wanted to respond to in
8 terms of, it is no excuse that we haven't entered into an
9 agreement to purchase the credits, that they haven't been
10 created yet. I'm skeptical that Mr. Joseph would be
11 satisfied that we had entered into an agreement to purchase
12 offsets that hadn't been verified by the district as
13 legitimate, quantifiable surplus, real offsets. So I
14 question a little bit about whether that make sense for us to
15 buy something that hasn't gone through this public process
16 and had been verified and scrutinized and subject to public
17 review beforehand. So I'm not sure that he would be
18 satisfied if we said we agreed to buy these offsets before
19 they've really gone through that scrutiny.

20 COMMISSIONER SHARPLESS: Well.

21 MR. JOSEPH: May I respond to those two points
22 briefly?

23 COMMISSIONER SHARPLESS: Yes.

24 MR. JOSEPH: I'll take the lead and start with the
25 last point first. You're right, that would not end the story

1 but it would be a lot more indication that these offsets
2 would be available for this project if there were a contract
3 that said, when they're in the bank we get to buy them for X
4 dollars. That would not be fully satisfactory but it would
5 certainly be a lot more than we have today.

6 With respect to evidence about toxic emissions.
7 First of all, I did say, arguably increased toxic emissions.
8 There is no evidence in this case on anything yet, we haven't
9 had any evidentiary hearings. I would point out that in our
10 March 24th status report we cited a number of recent
11 scholarly publications and reputable journals which do
12 precisely provide evidence of increased emissions of a
13 variety of toxics.

14 COMMISSIONER SHARPLESS: What was that, the
15 scientific what?

16 MR. JOSEPH: It would be papers and scientific
17 journals.

18 COMMISSIONER SHARPLESS: Oh, scientific journals,
19 okay.

20 COMMISSIONER LAURIE: Question, Madam Chair.

21 COMMISSIONER SHARPLESS: Yes, Commissioner Laurie.

22 COMMISSIONER LAURIE: A question of the staff
23 regarding offsets. Evidently both Warren-Alquist and our
24 regs -- And I'm looking at the staff report which cites
25 25523. When we make a decision we have to have in our hands

1 the certification from an appropriate agency that offsets
2 have been identified or will be obtained. When the
3 appropriate agencies make that certification is it understood
4 that they would have gone through an appropriate
5 environmental analysis in making that certification?

6 MS. HOUGH: I'm not certain I understand your
7 question. Are you asking me whether or not districts do an
8 environmental analysis when they make a certification that
9 offsets have been obtained?

10 COMMISSIONER LAURIE: Yes.

11 MS. HOUGH: I don't believe they do, I believe they
12 typically rely on the Energy Commission's analysis.

13 COMMISSIONER SHARPLESS: If they were lead agent,
14 if they were a lead agency on this project they would have to
15 by law do that but since they are, what do you call it, a
16 participating party.

17 MS. HOUGH: A responsible agency.

18 COMMISSIONER SHARPLESS: A responsible agency then
19 their input is their piece, right?

20 MS. HOUGH: That's correct.

21 MR. BUELL: In lieu of the Energy Commission
22 process the district would normally rely on the local entity
23 who is lead agency.

24 MS. HOUGH: In some instances the district is lead
25 agency, in many other instances it is typically the county or

1 the city, the local government.

2 MR. BUELL: Right.

3 MS. HOUGH: And they would prepare -- And they
4 would prepare an EIR in that case.

5 COMMISSIONER LAURIE: Okay. Do they have -- Do the
6 other agencies have our environmental analysis in their hands
7 when they certify or do they simply not make, do they not
8 examine?

9 MS. HOUGH: I don't believe that the determinations
10 -- and perhaps Mr. Valkosky can answer this question better
11 than I can. But I don't recollect the certifications from
12 air pollution control officers specifically referencing our
13 environmental analysis, although I think I have seen them
14 reference our process in the Commission's decision.

15 HEARING OFFICER VALKOSKY: That's correct, the APCO
16 -- The district determinations do not reference ours. Our
17 environmental document includes the conditions in most cases
18 proposed by the air district.

19 MS. HOUGH: We have an MOU with the Air Resources
20 Board and CAPCOA, I believe, that covers the relationship
21 between the roles and how the Energy Commission incorporates
22 findings and determinations and certifications of the
23 district in its process. We can provide that to you if you'd
24 like a copy of it.

25 MR. CARROLL: Could I have a point of

1 clarification. I either misunderstood the question or I
2 disagree vehemently with the response. It was a question
3 related to the certification of credits?

4 COMMISSIONER SHARPLESS: No.

5 MR. CARROLL: Okay, then I misunderstood it.

6 COMMISSIONER SHARPLESS: I don't believe so.

7 MR. CARROLL: Okay, then I misunderstood the
8 question.

9 HEARING OFFICER VALKOSKY: The incorporation of the
10 air district conditions.

11 MR. CARROLL: Okay.

12 COMMISSIONER SHARPLESS: Actually, we're speaking
13 as though the district isn't here but the district is very
14 capable of speaking for itself and we are very appreciative
15 that they have made the trip up here to Sacramento to help us
16 understand where they are right now and what issues they see
17 in timing. Having had the benefit of some of the dialogue
18 this morning, Mr. Heidrich (sic), if that --

19 MR. HELLRICH: Hellrich.

20 COMMISSIONER SHARPLESS: Excuse me?

21 MR. HELLRICH: Hellrich.

22 COMMISSIONER SHARPLESS: Oh, Hellrich. Okay, I'm
23 sorry, Hellrich. Would you like to come up. I know that you
24 are still in your process but perhaps you could cover a
25 couple of issues for us. And perhaps you will be giving us

1 your -- Since you've just inherited this project and have a
2 stack of papers yet to review you'll give us some of your
3 preliminary understanding of where you're going to go on
4 this.

5 As you know the issues that we've been talking
6 about are the timing of the preliminary DOC and then the
7 final DOC. Some other issues we've talked about, and you may
8 or may not want to react or comment to what you've heard have
9 to do with the turbine, the configurations that you'll be
10 considering in your preliminary DOC, your final DOC and how
11 you intend to deal with that issue.

12 Another issue has to do with the modeling and
13 whether or not -- I don't know whether you've modeled it yet.
14 Whether or not you in fact have also done some modeling and
15 find exceedances based on the information. What rating,
16 emission rate the district may consider as BACT and much
17 dialogue about the ERCs and the applications that the
18 district currently has and when you might think those
19 applications might be finally complete and banked and
20 available for negotiation by our friends over here, the
21 applicants. So start anywhere.

22 MR. HELLRICH: Thank you, Madam Chair.

23 COMMISSIONER SHARPLESS: All of the above, none of
24 the above, some of the above.

25 MR. HELLRICH: Committee Members, Oscar Hellrich

1 with the Mojave Desert Air Quality Management District here.
2 With respect to timing we are furiously working to issue a
3 document, a preliminary DOC. I would expect at this point in
4 time that the document would reflect the applicant's
5 application to us. And any issues that have been raised or
6 discussed this morning such as lowering the NO_x levels or
7 changing the specific configuration of the turbines
8 presumably would, we would have a continuing dialogue with
9 your staff and the applicant and make any changes in the
10 interim between the preliminary DOC and the final DOC.

11 Again, the timing of, the length of those
12 discussions and how it will delay the final DOC, again, is
13 something that I can't predict at this point in time. But we
14 will make every effort to keep things moving along, relying
15 heavily on your staff at this point.

16 COMMISSIONER SHARPLESS: Before you arrived this
17 morning we were talking a little bit about the schedule and
18 perhaps you can kind of react to this. Originally we were
19 looking at a preliminary DOC by April 19th or 20th. The
20 applicant has said that in talking to the district--and that
21 may not have been you, that could have been somebody else--
22 they recognized that just because of certain circumstances
23 you would need approximately three weeks beyond April 19th or
24 20th which would put us like in the June 11th period. And
25 then there would be a comment period, which is 30 days, which

1 would put us into the July period. And then based on those
2 comments --

3 MR. HELLRICH: The July period for a final DOC?

4 COMMISSIONER SHARPLESS: No. Yes, yes, yes.

5 MS. HEAD: It was May 11th for the three week
6 delay.

7 COMMISSIONER SHARPLESS: May 11th to June.

8 MS. HEAD: And then the 30 days was to June 11th.

9 COMMISSIONER SHARPLESS: Right, right, June 11th to
10 July 11th would be the 30 day comment period. And then that
11 it would come back to you on July 11th and then you would
12 need X amount of time before you got to the final DOC. Do
13 you have any feelings about that schedule?

14 MR. HELLRICH: Off the top of my head I really
15 cannot pinpoint that but it's, it's a reasonable goal to work
16 off of at this present time.

17 COMMISSIONER SHARPLESS: Okay.

18 MS. SHAPIRO: Jan, the 30 days goes from May to
19 June. So it isn't that he would have his final in July, he
20 would have his final in June.

21 MS. HEAD: No, he'd have his comments back in June.

22 MS. SHAPIRO: Right, June.

23 MS. HEAD: And then the final would be the July.

24 MS. SHAPIRO: Two weeks later?

25 COMMISSIONER SHARPLESS: July.

1 MS. SHAPIRO: That isn't what we said this morning.

2 COMMISSIONER SHARPLESS: Well, hold that thought,
3 hold that thought.

4 MS. SHAPIRO: Okay.

5 COMMISSIONER SHARPLESS: We are talking about --

6 MS. HEAD: I guess it's relevant to point out that
7 district rules do have a 180 period for deeming the
8 application complete until the target for issuing the final
9 determination of compliance and that 180 days I believe is up
10 sometime around July. So what it does by delaying issuance
11 of the preliminary DOC, it does squeeze them in terms of
12 their time that they can turn around in response to the
13 comments. Whether or not that is going to be achievable I
14 guess is in my mind the question.

15 COMMISSIONER SHARPLESS: Okay, and there's two
16 other dates here that you may or may not be aware of that are
17 important as far as our process so I'll just lay them out so
18 you can frame that in your own mind. We have something
19 called a Preliminary Staff Assessment and the Preliminary
20 Staff Assessment is really the staff's first analysis of the
21 entire project. So when we don't have certain really
22 critical path issues to put in the Preliminary Staff
23 Assessment it means that when we go into our adjudicatory
24 hearings we are having discussions on an incomplete record.
25 Stop if I'm wrong anywhere along here. Am I right so far?

1 MR. BUELL: We normally don't have hearings on the
2 Preliminary Staff Assessment, staff uses that as a discussion
3 basis for workshops prior to the prehearing conference. At
4 which time we would identify what issues --

5 COMMISSIONER SHARPLESS: And when is the prehearing
6 conference, Rick?

7 MR. BUELL: Approximately July 10th.

8 COMMISSIONER SHARPLESS: Okay. And that's when we
9 begin to thresh out some of the issues and where the
10 Commission might be going or at least where the staff would
11 recommend that the Commissioners go in terms of a final
12 document, is it not? So the more issues that we have
13 outstanding that wait until the Final Staff Assessment the
14 more we compress our time period in here. And so the more
15 that we can work with you and the more that we can get
16 information that is a common basis for the two of our
17 analyses the better. So by looking at something in July are
18 we talking -- How many days are we talking about before the
19 Final Staff Assessment, Rick? Because you're talking about
20 needing 45 days before the Final Staff Assessment. What date
21 would that be?

22 MR. BUELL: I would like to make a correction about
23 something I said earlier today. Looking at the schedule that
24 we had on page 17 as an example, table 1.

25 COMMISSIONER SHARPLESS: Okay.

1 MR. BUELL: We have the preliminary DOC on May 11th
2 and I'm showing a final DOC on July 11th. July 10th, excuse
3 me, the same date as the prehearing conference. That implies
4 more than 30 days and a week of review for the district to
5 incorporate any comments it has received so I think staff
6 mischaracterized the time between those.

7 With the prehearing conference and final DOC on
8 July 11th we have scheduled filing of the FSA or Final Staff
9 Assessment on July 24th, two weeks later. That is tight but
10 we --

11 COMMISSIONER SHARPLESS: So if you needed 45 days
12 to do your air quality analysis what would be the date that
13 we would be looking at?

14 MR. BUELL: Staff does not believe it needs 45 days
15 for the final DOC, to incorporate the final DOC. We believe
16 we need 14 days to incorporate the final DOC. The reason
17 being is that --

18 COMMISSIONER SHARPLESS: So what is the date, 14
19 days?

20 MR. BUELL: Fourteen days is July 24th.

21 COMMISSIONER SHARPLESS: And they would -- If all
22 the stars lined up in the right order you're looking, I mean
23 at best are we looking at July 11th?

24 MR. BUELL: For which?

25 COMMISSIONER SHARPLESS: For our friends from

1 Mojave Air Quality District.

2 MR. BUELL: July 10th.

3 COMMISSIONER SHARPLESS: July 10th.

4 MR. BUELL: Yes.

5 COMMISSIONER SHARPLESS: So is that 14 days if
6 everything goes right?

7 MR. BUELL: That's 14 days if everything goes
8 right, the DOC is absolutely clear and the staff has no
9 problems incorporating the findings of the DOC in its
10 analysis.

11 COMMISSIONER SHARPLESS: Okay, just so we all
12 understand what we're dealing with here. I think that will
13 give you some idea as to where our schedules are and what
14 we're working with. We realize that you're working under
15 tremendous pressure as well. Do you have any comments that
16 you would like to make on the ERCs, the emission reduction
17 credits, on when the applications that are currently before
18 the district board might be banked, considered and banked?

19 MR. HELLRICH: We have in-house several
20 applications and we are compiling a list of those that we
21 believe are valid and are available. At this point in time I
22 would agree that the emissions are available if they
23 applicant wishes to contract for them. We have openly
24 discussed those and recommended whom we have emission
25 applications from for ERC credits.

1 COMMISSIONER SHARPLESS: So even though they are
2 not banked you consider them available because you think that
3 they are fairly certain that they are going to be banked.

4 MR. HELLRICH: We have substantial source testing
5 that verify that all of these NO_x emission credits, the BOC
6 credits, are above and beyond what our rules require, yes.

7 COMMISSIONER SHARPLESS: Okay. And --

8 MR. HELLRICH: That list is being compiled
9 momentarily and should be out within the next couple of
10 weeks. The official list that we had available.

11 COMMISSIONER SHARPLESS: Does the board need to
12 take any action on those banked credits?

13 MR. HELLRICH: No.

14 COMMISSIONER SHARPLESS: So it's purely an
15 administrative thing?

16 MR. HELLRICH: Yes.

17 COMMISSIONER SHARPLESS: Okay. On the Mitsubishi
18 plant, just to sort of clear up an issue on that. When they
19 have switched their fuel sources from --

20 MR. HELLRICH: Coal.

21 COMMISSIONER SHARPLESS: Thank you, from coal to
22 tires.

23 MR. HELLRICH: Yes.

24 COMMISSIONER SHARPLESS: Have you done a permit
25 modification that has looked at the other fuel source and

1 perhaps the other air quality emissions or toxics emissions
2 and modified the permit based on that?

3 MR. HELLRICH: To the best of my knowledge there
4 had been extensive source testing done for all criteria
5 pollutants and a long series of toxic emissions.

6 COMMISSIONER SHARPLESS: And that is available?
7 Can staff look at that record?

8 MR. HELLRICH: Yes, it's available. We have those
9 -- We have that source test data in-house.

10 COMMISSIONER SHARPLESS: Okay. If there were in
11 fact toxics emissions beyond what you had when you were
12 burning coal what would the district do about it?

13 MR. HELLRICH: To the best of my knowledge there
14 were none.

15 COMMISSIONER SHARPLESS: Okay. So you're --

16 MR. HELLRICH: There were no increases in any toxic
17 emissions by switching to the burning of tires. The company
18 there is also burning biosolids, which is sludge from waste
19 treatment plants. And that also has lowered NO_x emissions
20 tremendously.

21 MS. HEAD: I guess I'd like to make one
22 clarification just to be sure that -- Other analyses that
23 I've seen do show that there are increases and decreases in
24 individual compounds. So just to lay a little caution that I
25 don't necessarily think we'd want to make the statement that

1 no individual compound has increased in emissions due to tire
2 burning. What studies by the California Integrated Waste
3 Management Board have found is that these increases and
4 decreases balance out and that there is no significant
5 difference in health risk associated with tire burning.

6 MR. HELLRICH: Are you talking specifically about
7 the Mitsubishi?

8 MS. HEAD: I'm not talking specifically about the
9 Mitsubishi but I will say that the Mitsubishi plant was
10 included in the study by the California Integrated Waste
11 Management Board. So I feel that --

12 COMMISSIONER SHARPLESS: Okay.

13 MS. HEAD: You know, it has been looked at.

14 COMMISSIONER SHARPLESS: Let me ask staff. Have
15 you reviewed that information? Do you have that information?

16 MR. BUELL: Staff has reviewed just partially the
17 information the district has referred to and has identified
18 that there is an increase in some toxic pollutants.

19 MS. HEAD: And that's why I wanted to make that
20 clarification. And I think that you will find that, that
21 there are individual increases. But again --

22 COMMISSIONER SHARPLESS: Not to a level that --

23 MS. HEAD: That has significantly increased the
24 health risks associated with that change.

25 COMMISSIONER SHARPLESS: Okay. Are there any other

1 issues that you would like to bring to the Committee's
2 attention here? Anything you've heard in the last couple of
3 hours that you would like to comment on?

4 MR. HELLRICH: My only comment is that, again, at
5 this point in time there will be ongoing dialogue as to what
6 the level of NO_x emissions that we will set. Possibly even in
7 the preliminary DOC unless, you know, there's some strong
8 reason to just go with the 4 at the moment and leave the
9 other questions as to what improvements can be made from that
10 level for the final DOC.

11 MS. HOUGH: Commissioner Sharpless?

12 COMMISSIONER SHARPLESS: Yes.

13 MS. HOUGH: I have one question. I don't have all
14 of your rules in front of me. Do either the ARB or the EPA
15 have the opportunity to review your approval of a banking
16 application? You said it was a ministerial act and it
17 happened and that was it and I'm questioning whether or not
18 there is an opportunity for EPA or ARB review of that.

19 MR. CARROLL: If I may, there is, it's a 30 day
20 review period by the Air Resources Board and the
21 Environmental Protection Agency. I don't have the rule cite
22 here but I can get it.

23 MS. HOUGH: My helpful project manager has provided
24 it to me, it's in rule 1402.

25 COMMISSIONER SHARPLESS: And that's the district

1 rule, right?

2 MS. HOUGH: Right.

3 COMMISSIONER SHARPLESS: 1402? Okay, thank you
4 very much, Oscar. I'd like to --

5 MR. BUELL: Can we ask one additional question of
6 the district? I apologize.

7 MR. HELLRICH: No problem.

8 MR. BUELL: Keith had a question about what
9 turbines the district was examining in their determination of
10 compliance. And the question is?

11 MR. GOLDEN: Basically, what model turbines, Oscar,
12 were you specifically evaluating in your DOC and how will
13 that be reflected in permit conditions based upon the turbine
14 data that you have?

15 MR. HELLRICH: The only information we have is the
16 submittal that was made in January, I believe, that lists
17 Westinghouse and GE, we have no information beyond that. If
18 additional information comes in, obviously there will be a
19 review prior to the final DOC.

20 MR. GOLDEN: So could the district in their permit
21 process be able to issue a determination of compliance that
22 could encompass turbines beyond the GE and the Westinghouse
23 to the other models available or would it be only specific to
24 those two models?

25 MR. HELLRICH: We would issue a DOC on the basis of

1 the information we have available. A modification to the DOC
2 would have to be made if additional information came in
3 beyond that point.

4 MS. HEAD: And again, we did discuss this at the
5 April 14th. That, again, you would do your analysis based on
6 an emissions level, not necessarily a specific turbine or
7 turbine model.

8 MR. HELLRICH: At this point in time. Once we got
9 down to the short strokes and had to issue specific permits
10 for the facility we would have to know a specific of what
11 model you were going to be putting in. We would not issue a
12 permit unless we knew exactly what you were going to be
13 putting in. We would make the final determination as to what
14 emission level would be required at that point in time that
15 we would find acceptable.

16 MS. HEAD: And that's the permit to operate?

17 MR. HELLRICH: The permit to --

18 MS. HEAD: Thank you.

19 MR. HELLRICH: Well, authority to construct. Well,
20 the authority to construct would have the information in it
21 that we had at this point in time. The permit to operate --
22 This happens in many, many facilities, large cement plants
23 and such, when in fact the applicant could not purchase the
24 specific equipment that they were given an authority to
25 construct for but the district deemed equivalency or some

1 improvement that gave us no reason not to permit in a permit
2 to operate something different than was in the authority to
3 construct. Those changes are made.

4 MS. HOUGH: Will the DOC specify turbine models?

5 MR. HELLRICH: The DOC will specify that the
6 analysis was done on the basis of these turbine models.

7 MS. HOUGH: The two turbines.

8 MR. HELLRICH: Yes.

9 MS. HOUGH: Thank you.

10 MR. WOLFINGER: But it won't specify that those are
11 the only two we can buy from.

12 MR. HELLRICH: I would agree with that, yes.

13 MR. WOLFINGER: Okay.

14 COMMISSIONER SHARPLESS: Okay, thank you for that
15 clarification. I'm going to ask, are there any other
16 individuals here that aren't sitting at the table that want
17 to discuss the air quality? Mr. Abramowitz, do you want to
18 come forward? Again, can you hit the high points for us.

19 MR. ABRAMOWITZ: Thank you, I'll certainly try to.
20 Commissioner Sharpless, Commissioner Laurie, Mr. Valkosky, my
21 name is Mark Abramowitz, and again as last time, I'm
22 president of Community Environmental Services. This time I'm
23 also here representing Goal Line Environmental Technologies,
24 which is the manufacturer of SCONO_x. They must have heard
25 Mr. Wolfinger's comments last time where he asked if I was

1 working for them and thought it was a pretty good idea.

2 (Laughter). Thank you, I owe you lunch.

3 COMMISSIONER SHARPLESS: Did you send them a
4 letter?

5 MR. WOLFINGER: Hey, I get a cut.

6 MR. ABRAMOWITZ: Well, for that we'll help you cut
7 the cost of your project significantly and reduce your
8 emissions and we'll make you quite happy.

9 This seems to be -- The major issues around this
10 are surrounding BACT, offsets, exceedance of standards.
11 We're concerned about those issues and those issues can in
12 great part go away with the applicant providing information
13 which shows an appropriate BACT level. It really all is
14 around the BACT level. Now you've got -- As you've seen you
15 have facilities, you have other applicants which are
16 submitting BACT at 3.5 ppm NO_x, there are facilities in
17 operation which are meeting other levels including 2.5 ppm of
18 NO_x without SCONO_x, using SCR, and you've got EPA saying that
19 achieved in practice commercially available is SCONO_x at 2.0
20 ppm.

21 SCONO_x is willing to guarantee and warranty its
22 control technology based upon 2.0 ppm; SCONO_x also has the
23 advantage of not requiring any ammonia. And we may agree or
24 disagree with staff about the amount of impact of the ammonia
25 and the potential for hazardous spills and the type of

1 evacuation plans that may be necessary, but staff is correct
2 when they talk about impact avoidance and SCONO_x actually
3 allows that sort of impact avoidance. We think that that's
4 the direction that you should be going in.

5 It is inconceivable to us that this project will
6 ever be permitted based upon 4.0 ppm. Getting back to the
7 information requirements that we've all been talking about.
8 Let's start doing the analysis based upon the lower levels
9 that you may be seeing, that you will be seeing in terms of
10 any requirements for this facility.

11 So any PSA should really be evaluating not only the
12 4.0 that the applicant is still hanging on to right now but
13 also lower levels going down to 2.0. Based upon your own
14 requirements you need to assure that federal requirements,
15 other federal environmental requirements are being met. And
16 while the district is doing its own analysis you have the
17 responsibility to ensure that federal LAER requirements are
18 being met, whether or not the district does its job properly
19 or not, and you should be asking for and requiring that sort
20 of analysis here.

21 You also ought to be asking for the type of impact
22 avoidance alternatives analysis, whether as a mitigation
23 alternative, but perhaps as an all-encompassing alternative
24 that avoids the use of ammonia. The avoidance of the use of
25 ammonia with SCONO_x gets rid of a lot of these other problems.

1 With respect to the possible exceedance of the ambient air
2 quality standard for NO₂ here in California, SCONO_x provides
3 the added benefit that on start-up it doesn't suffer the sort
4 of degradation in emissions that you will get with SCR.

5 I had a number of other concerns I wanted to raise.
6 I'll hold those, really. I just wanted to make just one or
7 two other short points. One is that there is a facility in
8 South Coast where South Coast had decided they did not want
9 to listen to EPA's advice regarding what LAER was. South
10 Coast went ahead and permitted the source and EPA upon --
11 after the source was constructed EPA has started issuing
12 notices of violation to the site. Apparently this facility
13 is going to have to go back and start just a huge rebuild and
14 run into major problems, as you indicated that you were
15 concerned about, Commissioner Sharpless.

16 So I would urge you to very carefully at least
17 collect the information and start doing the analyses up
18 front, direct that these other alternatives be looked at, and
19 as staff recommended, the no ammonia alternative. I think
20 that this should go in a PSA also. You can't issue one
21 without all the air quality data but it ought to be part of
22 the overall strategy.

23 One other point I want to mention. You'll see in
24 the docket the BACT analysis submitted by the applicant and
25 they talk about cost of SCONO_x and they talk about other data

1 with respect to the SCONO_x. And I don't know if it's
2 misleading to you but you should be aware that Goal Line has
3 offered on a number of occasions to provide quotes for this
4 particular project to the applicant and each of those
5 requests has been rebuffed by the applicant. Our data is
6 showing that this project will be more cost effective, will
7 reduce NO_x at a lower cost than SCR, and will have a
8 tremendous amount of added benefits to everybody. Thank you.

9 COMMISSIONER SHARPLESS: Thank you, thank you very
10 much, Mark. Any more comments by anybody?

11 MS. HEAD: I'd just like to make a couple of
12 comments about what Mr. Abramowitz said. He implied that all
13 three of our issues would go away with SCONO_x and that is not
14 correct because obviously, whether we have to get 500 tons of
15 offsets or, you know, 400 tons of offsets the main issue is
16 the availability and the status of those offsets. So we will
17 still need to get offsets if we go with SCONO_x so that doesn't
18 make that issue go away at all.

19 On the second issue of the standard violation.
20 Again, it's debatable about what SCONO_x will or will not do
21 during start-up. But in terms of staff's needing to see
22 actual data, there isn't any data on what the actual
23 emissions levels would be during start-up for the size of
24 turbine available that we're aware of at all. So I think
25 that those are issues and --

1 COMMISSIONER SHARPLESS: Mr. Abramowitz probably
2 needs to get you that information.

3 MR. ABRAMOWITZ: Well, the information is out
4 there, we know that they do have that start-up information
5 based upon actually operating data. Unlike these new
6 turbines that we're talking about SCONO_x is commercially
7 available, the data is there.

8 MS. HEAD: The data may be available for a very
9 small turbine that we have made several statements we don't
10 think is -- is necessarily at all relevant to our size of
11 turbine.

12 MR. ABRAMOWITZ: This technology --

13 COMMISSIONER SHARPLESS: Remember, Mark.

14 MR. ABRAMOWITZ: Yes.

15 COMMISSIONER SHARPLESS: We're not in here trying
16 to sell this technology.

17 MR. ABRAMOWITZ: Right.

18 COMMISSIONER SHARPLESS: You've heard what the
19 applicant has said regarding the technology. If you have
20 data that is persuasive to them then I recommend that you
21 provide that data to them and spare us the sales pitch.

22 MR. ABRAMOWITZ: I will.

23 COMMISSIONER SHARPLESS: I think your points are
24 very well taken in the context of a technology and that is
25 how I'm receiving it. Not as a sales pitch for the

1 technology but the issues with which you have delivered your
2 presentation here this morning, this afternoon.

3 MR. ABRAMOWITZ: Thank you. This is only one of
4 two technologies that will meet lower levels. Yes, she is
5 right, it doesn't get rid of the offset problem, it cuts it
6 in half. That's I think a big help. But it also does
7 another thing, it protects the economic base of the area and
8 prevents the air quality from being deteriorated and prevents
9 it from stopping future growth. Thanks.

10 COMMISSIONER SHARPLESS: Thank you, points well
11 taken. Mr. Wolfinger, do you want to make a Westinghouse
12 advertisement now?

13 MR. WOLFINGER: No, no, no. The point that I
14 wanted to make is that we tend not to buy components, we buy
15 an entire facility. We buy what is called a turnkey project
16 where the entire project is built. The turbine, the heat
17 recovery unit, the emission control, the steam turbine,
18 boilers, everything. And it is not for me to decide, quite
19 frankly, whether a component in there is good, bad or
20 indifferent, I need to look at the turnkey plant suppliers
21 because I buy a total plant.

22 Similar to you buying an entire car, you expect to
23 have every piece of it from GM. GM may in fact source the
24 catalytic converter from Englehart, but they're not going to
25 put that catalytic converter on there unless they can

1 guarantee you the emissions.

2 The same thing is true with me. I am going to buy
3 an entire package, whether it's an SCR or SCONO_x or whatever.
4 I can't buy a package. I can't buy a Chevrolet with a SCONO_x
5 on it. I can't buy a Westinghouse turnkey package or a
6 Bechtel. And that's really a fundamental problem, okay.
7 Nobody will sell me that package. Nobody will sell me that
8 total car with the wraparound guarantee and the warranty.
9 And that's a fundamental issue. Without that I can't buy the
10 car because the bank won't finance it.

11 COMMISSIONER SHARPLESS: I think that's a good
12 point to keep in mind, certainly one that we need to keep in
13 mind. And I'm so glad you brought up cars because I do have
14 a GM zero emission vehicle. Thank you. Mindful of the time,
15 in case that everybody is extremely worried about our
16 timetable today because we have spent so much time on the air
17 quality and we have a number of really important issues yet
18 to discuss, I think it was important to do this level of
19 discussion with the air quality issue.

20 I know that staff has said that there's going to be
21 more on April 30th, two days from now, on water quality. We
22 will touch on those. We will talk about the issues but
23 hopefully not go quite into the depth, speaking of water,
24 deep water, alligators. Anyway, we won't go quite into the
25 depth but we will want to cover those. We'll want to look at

1 the issues and we'll want to consider what it means in terms
2 of the time schedule.

3 Having deliberated up here with my illustrious
4 colleague, Commissioner Laurie, we would like to be able to
5 adjourn by four. Hopefully that will work with your
6 timetable as well. Having said that and keeping that in mind
7 I would like to do like a half hour break. But I think that
8 if we do that we might just be able to make the schedule by
9 four o'clock, if that is satisfactory with everybody else.
10 Does anybody have a time problem that that doesn't consider?
11 Southwest leaves here frequently. Okay, thank you very much,
12 we'll see you back here at 1:30.

13 (Thereupon, the luncheon recess
14 was taken off the record.)

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A F T E R N O O N S E S S I O N

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COMMISSIONER SHARPLESS: Mr. Valkosky has some wrap-up questions to the last segment that he will do briefly and then we'll go on to the transmission issue.

HEARING OFFICER VALKOSKY: Yes, I just have a couple of follow-up questions. Mr. Joseph, your concerns over the secondary environmental impacts of mitigation measures still apply if the applicant obtains its emission credits from a bank?

MR. JOSEPH: The key question is whether the reduction in NO_x emissions and associated arguable increase in toxic emissions is mitigation for this project or not. If the NO_x emission reductions are mitigation for this project then the secondary effects of increased toxic emissions are part of this project and have to be evaluated. If on the other hand the decreased NO_x emissions are not part of this project, that is they happened a number of years ago and they are part of the existing environmental baseline, then both the decreased NO_x emissions and the arguable increased toxic emissions are part of the environmental baseline and would not be part of the Commission's CEQA analysis.

HEARING OFFICER VALKOSKY: Right, but I guess you could proceed on that line of reasoning and challenge the whole banking system in general. That's not really what I'm getting at. As I understand applicant' position, legally

1 that if they purchase an approved credit that is in the bank
2 -- it's not in the bank yet but if they purchase it from a
3 bank they are just buying a commodity that is out there. And
4 my question to you is, if they do that do you still have the
5 concerns that you voiced about the secondary impacts?

6 MR. JOSEPH: I think the distinction I'm trying to
7 draw is the distinction between the applicant's obligations
8 under the air district's rules, which would be satisfied by
9 buying something from a bank and applying it to the project,
10 and the Commission's obligations under CEQA.

11 A number of air districts including the South Coast
12 Air District and the Bay Area Air Quality Management District
13 have long held the position that for purposes of CEQA to
14 mitigate an increase in emissions you need a contemporaneous
15 decrease in emissions. That is, what is in a bank, what's
16 been sitting in a bank for a while, is part of the current
17 environment and what you need for CEQA purposes separate from
18 the air district rules is contemporaneous emission
19 reductions. This has been a consistent position of the air
20 districts which have been the leaders in banking. When they
21 are lead agencies, or sometimes responsible agencies for a
22 project, their position is banking is fine for air district
23 rules but for CEQA purposes you need contemporaneous emission
24 reductions.

25 HEARING OFFICER VALKOSKY: Okay, thank you. I

1 didn't want to explore it, I just wanted to get an answer.

2 MS. HEAD: Are we allowed to make a comment on
3 that?

4 HEARING OFFICER VALKOSKY: Certainly, go ahead.

5 MS. HEAD: I guess my understanding of Mr. Joseph's
6 statement is that there is some differences in South Coast
7 and what they'll allow for CEQA. And my understanding of the
8 issue is not necessarily whether it's contemporaneous or not
9 but whether it addresses a local impact. And my
10 understanding is that they require mitigation for things like
11 NO_x and CO to be mitigation in the local area to account for
12 changes in emissions in the local area because they are non-
13 attainment for NO_x and CO. And so in that case they want to
14 address the local non-attainment issue and so for that reason
15 that that's why sometimes they don't always accept banked
16 offsets as mitigation under CEQA.

17 In our case Mojave Desert is attainment for NO_x and
18 CO, they are only non-attainment for ozone and PM-10. In our
19 case we feel that buying banked offsets is a typical and
20 well-accepted mitigation for ozone impacts under CEQA. And
21 we think that, again, that there shouldn't be any difference
22 in buying offsets from the Mojave bank as there is from the
23 South Coast bank. That if you're going to analyze one of
24 those things as secondary impacts that you'd have to look at
25 all of the banked offsets in South Coast for the same kinds

1 of issues and we don't believe that that's an appropriate
2 analysis. On the other case, PM, which is non-attainment, we
3 are looking at localized impacts.

4 MR. CARROLL: And I would just add two points.
5 First of all, there is nothing in CEQA that requires
6 elimination of all impacts. It requires identification of
7 impacts and identification of feasible mitigation measures
8 but CEQA does not require that all impacts be eliminated so
9 that's sort of a starting point.

10 The other point that I would like to make is that
11 the CEQA guidelines in Section 15064(I) state specifically
12 that compliance with existing air quality standards leads to
13 a presumption that the air emissions will not result in a
14 significant effect. And in this case we are complying with
15 the applicable air quality regulations that require you to
16 acquire offsets for your new emissions.

17 HEARING OFFICER VALKOSKY: Okay, thank you, I think
18 that's all.

19 COMMISSIONER LAURIE: Wait a minute, I have a
20 question. Here we go with my education process again. The
21 statement was, CEQA doesn't require impact to be mitigated.

22 MR. CARROLL: Eliminated.

23 COMMISSIONER LAURIE: I'm sorry, you used the word
24 *eliminated* as opposed to *mitigated*?

25 MR. CARROLL: It requires you to mitigate to the

1 maximum extent possible your impacts but it doesn't say that
2 a project cannot be approved without significant, unmitigated
3 impacts.

4 COMMISSIONER SHARPLESS: Right. And to circle
5 back. What our process requires is that we meet all federal,
6 state and local ordinances. So taken within the context of
7 what CEQA requires and the fact that we are a state
8 permitting agency for a permit, the one and only exclusive,
9 that without our certification a project cannot go forward.
10 We have to follow all federal, state and local ordinances in
11 addition to what CEQA requires.

12 So to the extent that air quality rules, depending
13 on the type of air quality problems they have, whether they
14 are moderate, serious or severe, that will dictate the level
15 to which we have to mitigate those impacts.

16 COMMISSIONER LAURIE: Madam Chair, I was sort of
17 under the impression, I don't know where I got this idea
18 from, I was sort of under the impression that the only way to
19 approve a project where you do not provide mitigation for
20 impacts is to do overrides.

21 COMMISSIONER SHARPLESS: If you find a significant
22 impact, if you find a significant environmental impact and
23 you do not mitigate it but you know, you can override
24 mitigating that significant impact by making the overriding
25 determination.

1 COMMISSIONER LAURIE: Well, that is certainly
2 consistent with my understanding. So if that is consistent
3 with General Counsel's understanding is there anything about
4 this project that is going to require overrides and will we
5 be in a position to provide proposed statements of override
6 when we consider the project? And excuse me, this is a
7 question to my staff. No, not my staff in this case but
8 staff.

9 MS. HOUGH: I think it's premature to talk about
10 whether or not we would be in a situation of an override.
11 It's kind of a complicated question when you're dealing with
12 federal law because of course the Commission doesn't have the
13 ability to override federal requirements.

14 There is a second option as well for the Commission
15 if it were to find that there is a significant adverse impact
16 aside from an override and that is to find that there is
17 mitigation that is available that is within the jurisdiction
18 of another agency and that other agency can and will impose
19 that mitigation. So the override is the one that we
20 typically refer to but there is a second alternative that is
21 available as a matter of law as well.

22 And since we're talking about legal issues I
23 perhaps shouldn't do this but I cannot let an incomplete
24 citation go past. When counsel from Latham and Watkins was
25 referring to presumptions under the California Environmental

1 Quality Act the citation was not complete. It is true that
2 the Energy Commission does have the discretion to presume
3 that an emission that meets standards, doesn't create a
4 significant impact; however, if there is other information
5 that is available that suggests that there may be significant
6 impact we are required to evaluate it.

7 COMMISSIONER SHARPLESS: Okay.

8 MR. JOSEPH: May I just add one little footnote?

9 COMMISSIONER SHARPLESS: Sure.

10 MR. JOSEPH: Commissioner Laurie, your statement,
11 Commissioner Sharpless, your statement of your understanding
12 of the obligation to mitigate was correct with this footnote.
13 And that is: You do not simply have a choice of deciding
14 whether to mitigate or whether to make a finding overriding
15 considerations, you must mitigate if there is feasible
16 mitigation available. And you only have the option of making
17 a finding of overriding considerations if have already found
18 that there is no feasible mitigation.

19 COMMISSIONER LAURIE: I understand that, I was just
20 trying to make sure that my understanding of Mr. Carroll's
21 comments was correct.

22 COMMISSIONER SHARPLESS: Eliminate versus mitigate.

23 MR. CARROLL: Right. And by the way, I'm not
24 suggesting that we're going to have remaining adverse impacts
25 in air quality that will require an override. I just get a

1 little nervous when I hear someone say, CEQA requires you to
2 eliminate all impacts, because that is not accurate. And
3 that's the point that I wanted to make.

4 COMMISSIONER SHARPLESS: Negates.

5 COMMISSIONER LAURIE: And I'm sure I haven't heard
6 anybody say that.

7 MR. CARROLL: I thought I had.

8 COMMISSIONER SHARPLESS: Okay, now that we have a
9 clear understanding. Yes. Be sensitive though, Stan, that
10 we've got about an hour and a half, okay.

11 HEARING OFFICER VALKOSKY: I will.

12 COMMISSIONER SHARPLESS: Okay.

13 HEARING OFFICER VALKOSKY: Okay. The next
14 question, and a brief answer, please. Mr. Wolfinger,
15 Mr. Buell indicated that it takes approximately two to three
16 years between the order and delivery time on a turbine. You
17 indicated you want the project on line in 2001. When do you
18 intend to order the turbine?

19 MR. WOLFINGER: Well, the way manufacturers
20 manufacture turbines is that they have slots in their
21 schedule. Depending upon whether they have orders for all
22 those slots you can get a turbine in six months or you can
23 get one in a year and a half. Most of the delivery times are
24 somewhere in the neighborhood of a year to 18 months. You
25 can get them earlier or you can get them later.

1 The decision of when to order the turbines will be
2 based basically on whether the market conditions after I
3 receive a permit are such that I decide to go ahead with the
4 project and build it in the commodity marketplace. Our
5 intent is in fact to, after I receive this permit is probably
6 about six months later in the middle of '99 to probably go to
7 financial closing and order the equipment at that point in
8 time. That is our intent at this point in time.

9 HEARING OFFICER VALKOSKY: Okay, but that would be
10 dependant upon your evaluation of when the project should go
11 on-line ultimately.

12 MR. WOLFINGER: That's correct.

13 HEARING OFFICER VALKOSKY: Okay, thank you.
14 Ms. Head, I thought I heard closure on the items specified in
15 the staff papers on page five, the five items regarding the
16 turbine data. Did I understand that the applicant was going
17 to provide this information to the staff?

18 MS. HEAD: Yes, with the two caveats that, again,
19 we'll provide the turbine data that we're looking at now with
20 somewhat of the understanding that if we had other models
21 that we're not precluded from looking at that later. And the
22 second is that we have already provided, at least for the
23 Westinghouse and GE, the steady-state and we will endeavor to
24 explain that to staff or clear up any confusion.

25 (Thereupon, tape 2 was changed)

1 to tape 3.)

2 HEARING OFFICER VALKOSKY: Okay. Do you have any
3 date by when you anticipate completing this?

4 MS. HEAD: The problem is is that we haven't
5 received one of the manufacturer's data yet.

6 HEARING OFFICER VALKOSKY: Okay. So --

7 MS. HEAD: The Siemens data. So that's why we're
8 being somewhat uncertain. But it is our -- You know, we've
9 been pushing really hard for that data and it is our
10 expectation to have it soon so we would hope to have it in
11 early May.

12 HEARING OFFICER VALKOSKY: Okay. And is that early
13 May sometime, the 10th or earlier, I suppose? Or by May
14 10th, another way to look at it.

15 MR. WOLFINGER: I'd have to say we took some
16 liberty with Siemens. We said that their turbine wouldn't be
17 considered if they didn't supply us the data and that seemed
18 to have got them working on it. That is not our position but
19 we did use that.

20 HEARING OFFICER VALKOSKY: And I realize this is
21 tentative but could we say by May 10th?

22 MR. WOLFINGER: Yes.

23 HEARING OFFICER VALKOSKY: Is that realistic?
24 Okay, last question. Mr. Carroll, you indicated -- When
25 Commissioner Sharpless said earlier that she believes now is

1 the time for producing letters of intent or other methods of
2 specifying the emission reduction credits you indicated that
3 you're working on it. Do you have any idea when that process
4 may be completed and when we could see some specification on
5 the ERCs?

6 MR. CARROLL: Let me clarify the question and then
7 I will probably defer to the business folks to answer it.
8 Are you asking when you will see some written evidence of
9 their willingness to negotiate with us or some written
10 evidence of the acquisition of the credits?

11 HEARING OFFICER VALKOSKY: Okay, let's --

12 COMMISSIONER SHARPLESS: Acquisition.

13 HEARING OFFICER VALKOSKY: Acquisition.

14 MR. WOLFINGER: I would say that would be in the
15 third quarter of this year, the actual acquisition.

16 COMMISSIONER SHARPLESS: So that's after the final
17 staff assessment?

18 MS. HOUGH: I believe it's after the hearings.

19 HEARING OFFICER VALKOSKY: How about the --

20 COMMISSIONER SHARPLESS: After the hearings? That
21 doesn't kind of comport with the Warren-Alquist requirements,
22 I don't think.

23 MR. WOLFINGER: My understanding is you have to
24 have them before you make a determination.

25 HEARING OFFICER VALKOSKY: Let's back it up. How

1 about letters of intent? The staff did indicate in their
2 paper that letters of intent would suffice for purposes of
3 the PSA; isn't that correct, Ms. Hough?

4 MS. HOUGH: Right, both with respect to the data
5 adequacy information that we filed in November just before
6 the December hearing and in the initial data request. Again,
7 we were in part looking at the district rules which talk
8 about permanent, enforceable real-serve-plus and quantifiable
9 offsets being provided during the DOC process. And those
10 terms to me and to other people who are familiar with the
11 federal Clean Air Act mean actual offsets. Now it turns out
12 that the district isn't in fact going to be requiring that so
13 that presents us -- We were in part relying on that section
14 of the district's rules thinking that we would get that at
15 some point prior to our FSA.

16 COMMISSIONER SHARPLESS: But the federal government
17 in reviewing the preliminary DOC might say that that's a
18 requirement of the district.

19 MS. HOUGH: They may or they may not. It's written
20 into the district rules the district -- I don't know if
21 Mr. Hellrich is still here.

22 COMMISSIONER SHARPLESS: No, I think he's gone.

23 MS. HOUGH: I had a discussion with district
24 counsel at the last workshop and they said that they don't
25 require the offsets to be obtained or they won't require them

1 to be obtained during this part of the process. So --

2 COMMISSIONER SHARPLESS: But that wasn't really my
3 point. My point was that once you have a preliminary DOC and
4 it goes out to comment to the US EPA, under US EPA
5 requirements might it be possible that US EPA might require
6 before they go to final DOC to have those credits in hand?

7 MS. HOUGH: What the district counsel said to me
8 was that EPA has at times in the past and has not at times in
9 the past. And I don't know what their criteria are for --

10 COMMISSIONER SHARPLESS: Okay.

11 MS. HOUGH: For that decision. But I would defer
12 to Rick in terms of the specification about what level of
13 certainty we need for the FSA. I just know that we were
14 thinking that at some point during the DOC process we were
15 going to actually get offsets.

16 MR. BUELL: Right. To answer Stan's question more
17 directly, he was correct when he said that staff thought that
18 we could deal with letters of intent for the purposes of our
19 Final Staff Assessment and contractual, more firm contractual
20 agreements that secure, that actually secure the offset prior
21 to the decision. That's been the case in other cases before
22 the Commission, I believe that was the case in Crockett where
23 we did not actually obtain letters, excuse me, option
24 contracts until shortly before the decision.

25 Regarding Commissioner Sharpless's question about

1 EPA action. Certainly it is within their discretion to
2 comment on the DOC. They may make a comment that they would
3 like to see evidence that these are real and quantifiable and
4 permanent emission reductions prior to the district issuing
5 its final determination of compliance. That's their
6 discretion on what comments they make on the DOC at this
7 point in time.

8 HEARING OFFICER VALKOSKY: Okay. Assuming that, at
9 least at present letters of intent or other firm indications
10 would suffice for as far as we've gotten. The question still
11 stands and we look forward to getting those.

12 MR. WOLFINGER: I think I mentioned the third
13 quarter.

14 HEARING OFFICER VALKOSKY: That was the acquisition
15 of the specific offsets as I understood it.

16 MR. WOLFINGER: What is a letter of intent? Is it
17 a willingness of a person to sell them or is it the fact that
18 we have basically entered into the business structure of the
19 price terms? Option agreement, prices and those. It depends
20 upon what --

21 COMMISSIONER SHARPLESS: It's a term of art that is
22 being used by the staff, I would like the staff to answer
23 that question.

24 MS. HOUGH: Typically a letter of intent--I'm sure
25 we could bring down samples of them from past cases--is a

1 letter that indicates that a particular seller has a certain
2 amount of offsets available and that they're willing to
3 consider negotiating with this particular buyer for their
4 purchase. There's usually terms that are used and I can't
5 recite them off the top of my head that are used to indicate
6 the seriousness of the intent to enter into the negotiations.

7 So again, we can provide samples of what letters of
8 intent are. They typically are more than indications of
9 intent to the world at large that somebody has offsets that
10 they might be willing to consider selling at some point.

11 COMMISSIONER LAURIE: I think it's clearly, we will
12 recognize a letter of intent when we see one. (Laughter).
13 The terms and conditions are generally substantial and
14 generally specific. The parties identify, however, an intent
15 not to be bound by the letter.

16 MS. HOUGH: That's correct.

17 COMMISSIONER LAURIE: Which means that there is no
18 legal commitment. But by reading the letter one understands
19 the nature and intentions of the parties.

20 HEARING OFFICER VALKOSKY: Okay, thus qualified.

21 MR. WOLFINGER: Under that level I would say that
22 they probably are pretty close to the same time.

23 COMMISSIONER LAURIE: If we're using the words
24 *letter of intent*, that's what a letter of intent is. If
25 we're talking about something less then it is not a letter of

1 intent and we have to use some other term. So that's
2 certainly my understanding of the letter of intent.

3 HEARING OFFICER VALKOSKY: So, Mr. Wolfinger,
4 you're saying as far as you're concerned we couldn't even get
5 a letter of intent until the third quarter?

6 MR. WOLFINGER: Well, if the letter of intent is a
7 serious willingness of somebody like Mitsubishi to negotiate
8 to sell them and in fact they have made us an offer with
9 terms and conditions and prices, okay. As so has So-Cal Gas
10 for an example has given us terms and conditions and prices
11 to sell. We have not accepted those, okay.

12 But that says a willingness of somebody willing to
13 sell them at a price and we know what it is. If that is
14 enough information to know that in fact there are people
15 willing and that there's a price there, that's one issue.
16 The other issue is that we have agreed on what that price is
17 and under what terms we would buy. Although it is not
18 binding, then that's another level. I'm still stymied to
19 understand at what level the people know. I mean --

20 COMMISSIONER SHARPLESS: Well, this gets back --

21 MR. WOLFINGER: Say that GM, I think it's GM with
22 the Van Nuys plant. Cantor-Fitzgerald is the agent for
23 selling those and they are negotiating with me right now to
24 sell those VOCs to me.

25 COMMISSIONER SHARPLESS: This gets back to the

1 level of information that the staff requires. So I would
2 again ask staff what level of information do you need in
3 order to do your analysis?

4 MS. HOUGH: We would like to see a letter similar
5 to what Commissioner Laurie described for the potential
6 offset sources that are being identified by the applicant.
7 We don't have such a letter for any of the offset sources.

8 MR. CARROLL: Let me make a suggestion. What I'm
9 hearing is something not extremely specific, it's basically a
10 willingness to negotiate in good faith between the two
11 parties. Perhaps if staff could provide us a sample of a
12 letter that they think is satisfactory that would be very
13 helpful. Because we seem to be having a problem here on
14 exactly what we mean by a letter of intent. Maybe if we just
15 saw what the staff wanted it may be that that's something we
16 can do fairly quickly.

17 HEARING OFFICER VALKOSKY: That could be a very
18 constructive suggestion. Will staff do that?

19 MR. JOSEPH: I have to disagree with the idea that
20 this is just an agreement to negotiate, I think a letter of
21 intent is something more than that. We need to know just
22 what the offsets are going to be here. What is it we're
23 supposed to analyze? What offsets are we supposed to
24 analyze? We don't have any idea and it sounds like we're not
25 going to have any idea until the third quarter.

1 MS. HOUGH: I think it would be helpful -- I'm
2 happy to provide letters of intent that have been filed in
3 past Commission cases but I think that Mr. Joseph's point is
4 a good one. What we're looking for is some degree of
5 certainty about what offsets are going to be provided in
6 order to support the three parts of the staff analysis that
7 I've referenced several times earlier this morning. Without
8 some indication of where the potential offset sources are
9 going to be, what the method of control is going to be, what
10 the amount, we can't do those things.

11 MS. HEAD: And I guess I'd beg to differ a little
12 bit. I mean, just looking at the South Coast bank. We've
13 provided a list of maybe ten options. And I guess I'm still
14 having a hard time seeing materially, you know, what the
15 difference if we take a South Coast bank offset from GM
16 versus another source is in terms of answering these
17 questions. So I think that that's, you know, what --

18 COMMISSIONER SHARPLESS: Well, it has to do with
19 location. I know that in two other siting cases that I was
20 involved in when we -- In those cases we knew what the
21 emission reduction credits were.

22 MS. HEAD: Okay.

23 COMMISSIONER SHARPLESS: Not having this problem.
24 Apparently people didn't feel like they were jeopardizing
25 their project by being forthright, having negotiated and

1 having obtained them. But there was an issue about location.
2 Where these offsets occurred and how it mitigated the impacts
3 where the actual air quality effects would occur with the
4 project. That is the issue about identifying emission
5 reduction credits. I don't understand why that is difficult
6 to understand. I understand the negotiation issue but at
7 some point you have to start making negotiations on -- making
8 decisions on this project, otherwise I don't know how you'd
9 get your financing.

10 MR. WOLFINGER: Well we don't even know what the
11 BACT is. I mean, everybody tells me my BACT is going to be
12 -- If I bought emission levels at 4 ppm for NO_x and I pay \$4
13 million for it, all of a sudden to find that my BACT is going
14 to be reduced, I certainly would have wasted a lot of money,
15 wouldn't I.

16 HEARING OFFICER VALKOSKY: Yes, but didn't you --

17 MR. JOSEPH: As he said, he could sell them.

18 HEARING OFFICER VALKOSKY: But didn't you also say
19 that you can't determine BACT until after the FDOC is --

20 MS. HEAD: No.

21 HEARING OFFICER VALKOSKY: No? I thought that was
22 in your --

23 COMMISSIONER SHARPLESS: No, They are going to --
24 They are going to allow this deliberation to go on through
25 the air district. They are going to see what happens through

1 the process and they are going to rely on that process, being
2 very much active in that process. The district is going to
3 make this determination. Then everybody else has a shot at
4 the preliminary DOC. And it may be lower depending on where
5 it comes out. It's a whole package.

6 I'll go back to Mr. Wolfinger, it's a whole
7 package. Your BACT and your emission credits are a whole
8 package and the district should in fact make that part of
9 their PDOC, definitely part of their final DOC. And I can't
10 figure out how that they can issue a certification. You
11 know, I haven't gotten down to the nitty-gritty of their
12 rules but I can't figure out how they can do a final DOC
13 without making that kind of determination.

14 I can't figure out how they model the effects of
15 the project without knowing where the location of the ERCs
16 are and whether you're going to need a 1.3 to 1 ratio if
17 there is a distance involved or whether, you know, whether
18 they're mitigating impacts closer to the project area.
19 Without that information, you know, what are we going on
20 here? We don't know the level of mitigation. We could
21 mitigate down to various severe limits but I don't know what
22 we're actually gaining by doing that because it doesn't
23 necessarily mean that it's going to meet all of the
24 mitigation requirements of that project area.

25 MR. CARROLL: If I could respond to that question.

1 When a district is permitting a project they do not do any
2 analysis as to where the emission reduction credits come
3 from. As long as they are within that district or
4 legitimately transferred from another district the location
5 of where those credits came from in a standard permitting
6 process that just happens at the district level is
7 irrelevant. Now I understand what you were saying is that
8 you go beyond that and you want to know where those credits
9 are coming from and that's fine.

10 MS. HEAD: And again, we're mitigating a regional
11 issue, a regional issue being ozone impacts.

12 MR. CARROLL: That's right, they're regional.

13 MS. HEAD: And again, location is pretty irrelevant
14 in terms of --

15 COMMISSIONER SHARPLESS: Yes, but you're not
16 telling me that district rules don't have a distance ratio in
17 them, even for ozone. Upwind/downwind ratio. If you buy
18 emission reduction credits in a downwind area when your
19 emissions are coming from the upwind area you're not going to
20 tell me that the district is going to do a 1 to 1 credit for
21 that ERC, they do do a distance ratio.

22 MS. HEAD: They do a ratio which is consistent with
23 the requirements of the Clean Air Act.

24 COMMISSIONER SHARPLESS: Right.

25 MS. HEAD: In this case because Mojave Desert is a

1 severe non-attainment they've adopted the offset ratio of 1.3
2 to 1 in the Clean Air Act. Within that number, within Mojave
3 District they do not have a separate distance ratio. I know
4 other districts do, Mojave Desert does not have a separate
5 distance ratio. They've just adopted the required ratio by
6 the Clean Air Act to show a net air quality benefit. They've
7 done an analysis that they feel that that ratio is more than
8 sufficient to -- just to prove a net air quality benefit even
9 if offsets are obtained from South Coast.

10 COMMISSIONER SHARPLESS: Okay. Well, I don't think
11 we're here to try to resolve this air quality issue. This is
12 a status conference, but I think it points out the fact that
13 the air quality issue is going to be a difficult one to deal
14 with. Our real concern here today is information. What we
15 need, what we need to do an analysis for and how long it's
16 going to take. Not to try to figure out whether or not, you
17 know, you've got the right mix of things going.

18 So again, even though we keep getting into these
19 debates I want to bring us back to the fact that this is a
20 Committee conference and we're really here -- But what's
21 before the Committee today is to make a determination of
22 where this project is and whether we're on schedule and what
23 we need to do about it. Okay?

24 MR. JOSEPH: Commissioner Sharpless, I think we can
25 boil it down really to a very simple proposition. For

1 purposes of CEQA you'd issue a document that complies with
2 CEQA. You'd have to specify what emissions are going up
3 where and what emissions are going down where. And you can't
4 have a document which accurately describes what is going on
5 without those two pieces of information.

6 MS. HEAD: I beg to disagree.

7 MR. CARROLL: I disagree.

8 COMMISSIONER SHARPLESS: All right.

9 MR. CARROLL: Just so I understand what the steps
10 are. Are we in agreement that the staff will provide us a
11 sample of a letter that they would find acceptable?

12 MR. BUELL: Staff is willing to dig through our
13 archives and find what might represent a letter of intent. I
14 think I'd agree with what Caryn said earlier, it's basically
15 what Commissioner Laurie had identified. It's a statement by
16 a party that they are willing to negotiate to sell a
17 specified amount of emission reductions that are obtained
18 through some method and that describes that method of
19 emission reduction and it specifies that they are willing to
20 negotiate over what period of time. And it also could
21 include information on what price is being negotiated. Staff
22 is not interested in that cost information, in fact we would
23 think it would be to the applicant's detriment to actually
24 provide that information to the staff. They could if that's
25 what they desire.

1 HEARING OFFICER VALKOSKY: How quickly can you
2 provide this to applicant?

3 MR. BUELL: How about by Friday?

4 COMMISSIONER SHARPLESS: Well, how about by
5 Thursday? You've got an April 30th, isn't that Thursday?

6 MR. BUELL: Yes. That's why I suggested Friday,
7 because I'd be out of the office on Thursday.

8 MS. HOUGH: Again, what we're looking for is
9 something that gives us a firm indication of where the offset
10 sources are likely to be and what the method of control is.
11 You know, if they wanted to do it with some other method than
12 a letter of intent that's -- but we don't have that.

13 COMMISSIONER SHARPLESS: You don't have a name for
14 it.

15 HEARING OFFICER VALKOSKY: Okay. Limiting it to
16 those two factors, identification and method of control.

17 MS. HOUGH: No, I think we also talked about a
18 serious, indication in the letter of a serious willingness to
19 negotiate with this particular applicant for a certain amount
20 that is sufficient to cover the offset liability of the
21 project.

22 HEARING OFFICER VALKOSKY: I think that's inherent
23 in it.

24 MS. HOUGH: That's more than the two.

25 HEARING OFFICER VALKOSKY: I'm still looking for an

1 answer to the original question. When could the Committee
2 and the parties expect to see this level of information?

3 MR. WOLFINGER: Let me simply defer and I'll have
4 to get back to you, Stan. I just -- I want to think about --

5 HEARING OFFICER VALKOSKY: Okay.

6 MR. WOLFINGER: I've got proposals for all of it
7 but that's not really the intent. So I have proposals, but
8 they may not be the ones I'm going to buy.

9 HEARING OFFICER VALKOSKY: Okay, how about --

10 MR. WOLFINGER: I mean, that doesn't make any
11 sense. I mean, what you want is some -- You want some not
12 only general intent, not legally binding, but you also want
13 me to buy from those people. I mean, and that's -- I mean, I
14 have firm proposals with prices and --

15 HEARING OFFICER VALKOSKY: You may be reading
16 things into there, Mr. Wolfinger. You know, the problem I
17 think that certainly the Committee is having is that
18 everybody wants to try to keep on track. This is a major
19 roadblock, frankly, to keeping on any sort of scheduling
20 track. Staff, can you provide a letter to him tomorrow? How
21 much of an effort is it to get it to him? We've discussed
22 this enough today. And then I would like, Mr. Wolfinger, if
23 you got the letter tomorrow could you respond by Friday?

24 MR. WOLFINGER: I think the real key is I need to
25 sit down with some of the people I'm talking to and find out

1 how fast they're willing to come to a business decision. I
2 mean, that's really -- It really is not my -- I have a
3 willingness to negotiate. For example, Mitsubishi. They
4 were down for a month or two months trying to get their kiln
5 up and they simply didn't want to talk to us. I mean, we
6 lost six weeks or seven weeks. They just didn't want to talk
7 to us. I mean, to an extent, Stan, I would like to do it
8 but, I mean, I need to go back and circle back to find out if
9 I can get a timetable from the participants that I'm talking
10 to to when they would be -- when they think they could also
11 come to a business decision.

12 HEARING OFFICER VALKOSKY: So when do you think you
13 can complete that process?

14 MR. WOLFINGER: Well, I think I can -- Sometime
15 next week I can have completed the process through what I
16 think are the four or five most likely sources we're going to
17 talk to and give you a firm date as to when the business --

18 HEARING OFFICER VALKOSKY: Okay.

19 MR. WOLFINGER: -- the other person, the other side
20 of this transaction is willing to not just make me offers but
21 sit down and start negotiating.

22 HEARING OFFICER VALKOSKY: All right. So sometime
23 next week being the 6th or 7th, which I guess would be a
24 Wednesday or a Thursday.

25 MR. WOLFINGER: Right.

1 MS. HOUGH: Can we clarify exactly what's going to
2 be provided next week.

3 MR. WOLFINGER: A date. When I'm going to have
4 them. I need to talk to the people so then --

5 HEARING OFFICER VALKOSKY: Right.

6 MR. WOLFINGER: You know, if they're willing to
7 negotiate.

8 COMMISSIONER SHARPLESS: The answer of when he
9 might be able to have them.

10 HEARING OFFICER VALKOSKY: Right.

11 COMMISSIONER SHARPLESS: I think.

12 HEARING OFFICER VALKOSKY: Yes, that's right.

13 MR. BUELL: To answer Stan's question earlier about
14 can staff do something by tomorrow. My only concern about
15 providing an actual letter of intent is trying to find one
16 that is not confidential.

17 HEARING OFFICER VALKOSKY: Yes, I don't know how
18 much of an effort that is.

19 MR. BUELL: So we will either provide --

20 COMMISSIONER SHARPLESS: He is not looking for the
21 letter of intent, he is looking for the form of the letter of
22 intent.

23 HEARING OFFICER VALKOSKY: Right.

24 MR. BUELL: We will provide the form.

25 COMMISSIONER SHARPLESS: So you can take the guts

1 out.

2 MR. BUELL: Yes.

3 COMMISSIONER SHARPLESS: He just wants to know what
4 the blanks are.

5 MR. BUELL: Yes, we can do that by tomorrow.

6 COMMISSIONER SHARPLESS: And a description of those
7 blanks.

8 HEARING OFFICER VALKOSKY: Okay, you do that
9 tomorrow.

10 MR. BUELL: Yes.

11 HEARING OFFICER VALKOSKY: By tomorrow. And then
12 Rick, by the 7th, which I believe is next Thursday.

13 MR. WOLFINGER: Right.

14 HEARING OFFICER VALKOSKY: We'll hear back from you
15 as to when you can actually specifically identify those,
16 okay?

17 MR. WOLFINGER: Right.

18 HEARING OFFICER VALKOSKY: Thank you.

19 **TRANSMISSION**

20 COMMISSIONER SHARPLESS: Okay, now to the easy
21 issue of transmission. The applicant has a very brief
22 statement here on the transmission system engineering study.
23 Mr. Thompson, are you covering this?

24 MR. THOMPSON: If I can find it, yes.

25 COMMISSIONER SHARPLESS: It's on page eight.

1 MR. WOLFINGER: No, that's it.

2 COMMISSIONER SHARPLESS: You just want to give us
3 the status of where you are.

4 MR. THOMPSON: And in fact, I think this is the
5 status. I've been informed that we don't have any
6 information that has occurred since the filing of our report.

7 COMMISSIONER SHARPLESS: Okay. Staff, do you want
8 to?

9 MR. BUELL: I'm going to make it short and sweet.
10 We understand that the interconnect study will be delayed.
11 We believe that the ISO will not delay its review of the
12 interconnect study more than a week beyond May 15th. In our
13 staff status report we also included responses to comments
14 raised by CURE in their second status report pursuant to the
15 Committee's Order.

16 The only thing that I would like to add is that
17 there is one significant typo on page number two. As we at
18 the Commission sometimes say, this is a Buellism, because
19 Buell apparently occasionally forgets to put suffixes and
20 prefixes on words. So I'm referring to page two the third
21 paragraph where it says: "It is likely that the location of
22 the High Desert Project will cause the need for downstream
23 facilities." That should read *unlikely* not *likely*.

24 COMMISSIONER SHARPLESS: On page two of what
25 document?

1 MS. HOUGH: The appendix to the status report. If
2 you look at --

3 COMMISSIONER SHARPLESS: Okay, the amendment, yes.

4 MS. HOUGH: Attachment A.

5 MR. BUELL: Lastly, staff would like to say that
6 the transmission line is a complicated area. That we would
7 do well to wait until we have actually seen the interconnect
8 study and we could better address the concerns that have been
9 raised by CURE in a workshop forum. We would suggest that we
10 do that once we received probably both the interconnect study
11 and the ISO's comments on the interconnect study since that
12 would be after May 15th. That would seem like an appropriate
13 time frame for that workshop. Other than that I have nothing
14 else to add on the transmission line at this time.

15 COMMISSIONER SHARPLESS: Okay.

16 MR. JOSEPH: We concur with the staff's suggestion.

17 COMMISSIONER SHARPLESS: Okay. That was a
18 workshop?

19 MR. JOSEPH: Yes.

20 COMMISSIONER SHARPLESS: When is the workshop
21 again?

22 MR. BUELL: It would be after May 15th or after the
23 ISO has completed its review.

24 HEARING OFFICER VALKOSKY: Would that be after May
25 15th or after May 22nd?

1 MR. BUELL: May 22nd.

2 HEARING OFFICER VALKOSKY: May 22nd, okay.

3 COMMISSIONER SHARPLESS: May 22nd.

4 HEARING OFFICER VALKOSKY: And that's a relatively
5 firm date for the ISO completing their review, May 22nd is?

6 MR.ISO: That's correct.

7 HEARING OFFICER VALKOSKY: Okay. Could you
8 identify yourself, please.

9 MR. KELLER: Yes, Ron Keller with the California
10 ISO, I'm representing Steve Mavis and Robert Sparks.

11 HEARING OFFICER VALKOSKY: Thank you. So you have
12 no problems holding to the May 22nd date?

13 MR. KELLER: No.

14 HEARING OFFICER VALKOSKY: Okay, thank you.

15 COMMISSIONER SHARPLESS: How about Mr. Schoonyan?
16 Would you like to come forward and grace us with your
17 knowledge.

18 MR. SCHOONYAN: Real quickly. Gary Schoonyan,
19 Southern California Edison Company. Basically, we would
20 comply with the schedule as indicated, basically May 6, 7 or
21 8, thereabouts. There has been a slight delay in getting
22 some of the information but not enough so to push anything
23 beyond the end of that first week in May. Which pretty much
24 complies with the schedule and I think would facilitate the
25 ISO providing its report no later than May 22nd.

1 COMMISSIONER SHARPLESS: And how many
2 configurations are you analyzing?

3 MR. SCHOONYAN: Well, primarily looking at the
4 worst-case configuration but running sensitivities on the
5 extremes.

6 COMMISSIONER SHARPLESS: Worst-case and running
7 sensitivities on the extremes?

8 MR. SCHOONYAN: Basically I think the --

9 COMMISSIONER SHARPLESS: Isn't that the same thing?
10 Is an extreme worse than a worst-case?

11 MR. SCHOONYAN: Well, pardon me. We're looking at
12 832 --

13 COMMISSIONER SHARPLESS: You must be talking
14 transmission language here.

15 MR. SCHOONYAN: No. In simple terms, 832 megawatts
16 is what is being looked at but there will be sensitivities
17 that look throughout the range of the project sizes that have
18 been identified.

19 COMMISSIONER SHARPLESS: Okay.

20 MR. SCHOONYAN: Which gets down to I believe 678.

21 COMMISSIONER SHARPLESS: Okay. And are you also
22 looking at the 115 kilowatt system reliability? I don't mean
23 kilowatt, I'm sorry. Voltage, the kV system reliability
24 issue.

25 MR. SCHOONYAN: I believe we are. I would have to

1 get back to you on responding to that. Basically the study
2 agreement, we're looking at the 230 kV system. And I would
3 assume that the 115 is integrated within that system and
4 that's being looked at locally. But unfortunately I'm not
5 the one that is actually running the study, per se.

6 COMMISSIONER SHARPLESS: Okay. You are getting the
7 comments on this from all of the parties aren't you?

8 MR. SCHOONYAN: Yes, we are.

9 COMMISSIONER SHARPLESS: So that you're aware of
10 what issues are bubbling up and around.

11 MR. SCHOONYAN: Correct.

12 COMMISSIONER SHARPLESS: Okay, fine. Thank you.
13 Are there any other comments anybody wants to make on the
14 transmission? Yes, Mr. Valkosky.

15 HEARING OFFICER VALKOSKY: Mr. Buell, in previous
16 cases staff has performed an environmental analysis in the
17 transmission engineering area because of the associated
18 losses, the losses which may be associated with the line or
19 project. Do you intend to do a similar type of analysis in
20 this?

21 MR. BUELL: Al McCuen who is our staff person on
22 this I'm going to ask to speak on that topic.

23 MR. McCUEN: Al McCuen, CEC staff, Transmission
24 Planning. Staff has evaluated the losses for the outlet line
25 configurations and we will have that in our PSA. We do not

1 believe that a system loss analysis similar to what has been
2 done before would be appropriate for High Desert. Basically
3 what we wanted to do is look at it with High Desert on-line
4 and with it off-line. And as I've indicated here, one of the
5 reasons for that is that the Cal-ISO has a very rigorous
6 method of accounting for losses, which we believe sends the
7 proper CEQA or energy conservation signal.

8 HEARING OFFICER VALKOSKY: Okay, thank you,
9 Mr. McCuen.

10 COMMISSIONER SHARPLESS: Could I just -- I just
11 need to follow up on one point on the transmission.
12 Mr. Buell, Mr. Buell, how do the studies on the transmission
13 issue affect our schedule?

14 MR. BUELL: At this point staff doesn't believe it
15 should affect our schedule given the other limiting factors.
16 This delay of a week or more is not likely to cause any
17 significant consequences. The PSA we had originally
18 envisioned to be more extensive, including a preliminary
19 summary of the interconnect study. That is not going to
20 happen. Consequently as a result of this delay we will
21 include an analysis in the FSA.

22 COMMISSIONER SHARPLESS: And what is the workshop
23 supposed to cover? So the transmission issue is not going to
24 be covered in the PSA?

25 MR. BUELL: The workshop would cover topics that

1 have been raised by various parties, staff, the ISO, CURE.
2 Issues about the system design, assumptions in the study,
3 whether or not we've addressed all the appropriate mitigation
4 measures that might be analyzed. The second part of that
5 question I'm not sure I recall exactly. You said something
6 about the PSA being late.

7 COMMISSIONER SHARPLESS: It won't be in the PSA?

8 MR. BUELL: It will not be in the PSA.

9 COMMISSIONER SHARPLESS: Okay. Any comment along
10 those lines, anybody?

11 **WATER**

12 Okay, let's move along to Water then. Now again I
13 recognize, Mr. Buell, that you said that there is an April
14 3rd staff workshop. Is that what you're calling it?

15 MR. BUELL: April 30th, yes.

16 COMMISSIONER SHARPLESS: I meant April 30th, I'm
17 sorry, the 30th. And it is going to cover the water study
18 that was done by the applicant?

19 MR. BUELL: Yes.

20 COMMISSIONER SHARPLESS: Okay, why don't we ask the
21 applicant to briefly discuss. We don't want to really do
22 what you're going to do on April 30th but give us a sense of
23 things, if you could.

24 MR. WOLFINGER: Basically the study was to
25 determine the impact of groundwater withdrawal from the High

1 Desert area when water was not available from the aqueduct
2 that was serving it. And the analysis was done -- The worst-
3 case analysis was done, if we couldn't get aqueduct water for
4 three full years. And we projected where wells would be
5 drilled in the High Desert area and then what the effect
6 would be on surrounding wells. It turns out the impact is
7 relatively small, in the neighborhood of three to eight feet
8 it would draw down for three consecutive years. The other
9 thing we asked Bookman --

10 COMMISSIONER SHARPLESS: That's assuming what,
11 Mr. Wolfinger?

12 MR. WOLFINGER: There is no -- That there's no --
13 We don't have any --

14 COMMISSIONER SHARPLESS: State water, there is no
15 state water project?

16 MR. WOLFINGER: There is no state water for three
17 years that we can get.

18 COMMISSIONER SHARPLESS: And you would draw down on
19 the groundwater?

20 MR. WOLFINGER: On the aquifer, right, the
21 groundwater. We then asked Bookman Edmundson to take a look
22 at what is the likelihood that that would ever occur and it
23 turns out that the water usage that the MWA is using right
24 now, that's the Mojave Water Agency, that would never happen.
25 It has never happened since 1922. If they doubled their

1 demand it might happen two years, not consecutive years, in
2 that whole time. So actually it turns out I think our
3 analysis was probably very, very conservative and had we done
4 some other work we probably wouldn't have done it quite so
5 conservatively.

6 It appears that probably what will happen is that
7 the most logical and that history has said is that we will
8 draw groundwater for one month a year when the aqueduct is
9 down for repair and we'll probably draw out somewhere in the
10 neighborhood of 300 to 400 acre/feet of water in an area that
11 draws 100,000 acre/feet of water right now one month out of
12 the year and that water will be replenished through
13 percolation when the aqueduct comes up. We may put it in
14 earlier but I'm not so sure that makes any sense now if we're
15 not --

16 COMMISSIONER SHARPLESS: You're not going to --
17 Originally I remember that --

18 MR. WOLFINGER: We were going to think about
19 putting a lot of water in the ground but now it looks as
20 though there is --

21 COMMISSIONER SHARPLESS: Yes, you were talking
22 about --

23 MR. WOLFINGER: In this additional analysis it
24 doesn't look as though -- The likelihood of that ever
25 happening is so low that I'm not sure.

1 COMMISSIONER SHARPLESS: Okay.

2 MR. WOLFINGER: You know, maybe we can put in two
3 months or something but -- We were surprised, we were
4 pleasantly surprised.

5 COMMISSIONER SHARPLESS: Now you have a detailed
6 study, I understand.

7 MR. WOLFINGER: Yes, we have a --

8 COMMISSIONER SHARPLESS: It came in on April 20th?

9 MR. WOLFINGER: Right, right.

10 COMMISSIONER SHARPLESS: Okay. Because I saw some
11 of the work that your consultants provided. It didn't come
12 down on how you were actually, which approaches you were
13 actually going to use and so there was an issue about what
14 the approach finally would be. What you thought you were
15 going to do. So now that's what the workshop is going to be
16 about.

17 MR. WOLFINGER: Right, and we'll talk about those
18 sensitivities and explain all that.

19 COMMISSIONER SHARPLESS: Okay.

20 MR. WOLFINGER: And have the other, hopefully the
21 other water agencies will be there to talk about it.

22 COMMISSIONER SHARPLESS: Okay. Staff, do you have
23 anything you want to add?

24 MR. BUELL: Just that we have only begun our review
25 of the water plan. We received it on April 20th. I think,

1 as you have found, Commissioner Sharpless, we also find it
2 incomplete on exactly what the applicant is proposing at this
3 point in time. We note that the applicant has identified an
4 alternative source of water from out of the city of Adelanto
5 and we're not sure as to whether additional wells would be
6 required from the city of Adelanto and what the environmental
7 implications of those wells would be or where they would be
8 located or what analysis needs to be provided on those.

9 There is also a new storage tank that is identified
10 in the water plan that identifies a short-term backup supply
11 of water for the project. It is not clear where that tank
12 would be located, what the environmental consequences are or
13 who would own it, etcetera, etcetera. The last thing is
14 this: Rick Wolfinger just mentioned that at one point in
15 time they had talked about groundwater recharging as a
16 mitigation measure for this project. The plan does not
17 address that; staff was unclear as to whether that is still
18 part of the proposal.

19 And lastly, we do have a workshop scheduled for
20 Thursday of this week and we would hope that we would address
21 many of these issues. This does require additional analysis
22 by staff, we've begun an analysis. It will not be included
23 in our PSA in any great depth. We will attempt to do that in
24 our FSA.

25 COMMISSIONER SHARPLESS: Along those lines, again

1 this is -- How much time do you need to have all the details
2 that you need to do an analysis of? How much time before the
3 FSA is scheduled to come out?

4 MR. BUELL: We believe we need 45 days prior to
5 issuing our FSA to have all the information. In this case
6 because we've just received the water plan we're not, I'm not
7 sure we can identify every piece of information that we need
8 today for you.

9 COMMISSIONER SHARPLESS: Today, but you could on
10 April 30th?

11 MR. BUELL: Hopefully after that we'll have a much
12 better picture of what information is needed. Joe O'Hagan
13 wants to speak.

14 MR. O'HAGAN: Just to make the point. The proposal
15 as I understand it is possibly groundwater obtained from the
16 city of Adelanto but also it would be most likely obtained
17 from Victor Valley Water District. And the proposal is that
18 the seven wells that the applicant would construct would be
19 integrated into the Victor Valley Water District's system, or
20 if new wells are required for Adelanto, into their system.

21 So I think it's very important to reflect in the
22 staff analysis the concerns of the districts, or the city of
23 Adelanto in that case, to take on this requirement. Victor
24 Valley Water District has attended some of our earlier
25 workshops and they have expressed concern about providing

1 groundwater to the project. Those may be worked out but I
2 think the details are important to reflect in at least the
3 Final Staff Assessment.

4 COMMISSIONER SHARPLESS: Do those districts have to
5 issue permits?

6 MR. O'HAGAN: Yes, they would have to approve to
7 provide water.

8 COMMISSIONER SHARPLESS: And what is the timing of
9 their issuing permits?

10 MR. O'HAGAN: I'm not sure. There has not been an
11 application to either Adelanto, Victor Valley or the Mojave
12 Water Agency. Victor Valley has just gotten the water plan
13 provided and they'll start evaluations.

14 COMMISSIONER SHARPLESS: Do we need the permits
15 before we do the Final Staff Assessment?

16 MR. O'HAGAN: Generally we have not required a
17 final permit prior to the FSA but we would want a will-serve
18 letter, if you will, that they can provide the water and what
19 would be required to provide the service.

20 COMMISSIONER SHARPLESS: Okay. Because we want to
21 put those conditions in and we want to make it part of the
22 analysis to show any mitigation, right?

23 MR. O'HAGAN: That is correct.

24 COMMISSIONER SHARPLESS: So are we counting on
25 those districts to come up with whatever mitigation

1 conditions might be required?

2 MR. O'HAGAN: Well, I certainly would hold out the
3 option that I may as part of my CEQA evaluation recommend
4 conditions that they don't. But yes, I would certainly want
5 to see their requirements. Mr. Wolfinger mentioned that
6 maybe doing some groundwater recharge would not be necessary,
7 Victor Valley has expressed concern.

8 Generally you find in the Mojave River area that
9 residential/agriculture using groundwater, about half of that
10 water is recharged to the aquifer. The proposed project
11 would be 100 percent consumption. So if you're using, you
12 know, 360 acre/feet per agriculture at least, you know, 180
13 is going back to the groundwater where here it is completely
14 gone. So there's some things like that where Victor Valley
15 is concerned about how much is recharged.

16 COMMISSIONER SHARPLESS: Which would be part of the
17 discussion on the 30th, right?

18 MR. O'HAGAN: Absolutely.

19 MR. WOLFINGER: The point was is we were planning
20 on potentially buying 4,000 or 8,000 acre/feet of water one
21 or two years prior or while we were in construction to like
22 have a bank of water. I'm not sure that makes any sense at
23 this point in time. We would certainly -- I think I
24 mentioned -- We would certainly, any water we use we're going
25 to have to replenish. Whether we replenish 400 acre/feet a

1 year before or we do it after the fact we are going to
2 replenish all the water.

3 Our concern was at one point in time we thought
4 that we would end up buying literally thousands and thousands
5 of acre/feet to kind of like build up the supply so instead
6 of drawing it down and then filling it up we'd do it at --
7 I'm not sure that makes a lot of sense at this point in time
8 based on what the expected usage is going to be.

9 COMMISSIONER SHARPLESS: So you're recognizing
10 also, Mr. Wolfinger, that the report that you submitted to
11 the parties and to this agency that has been docketed as your
12 water proposal still has some informational gaps in it? Does
13 it?

14 MR. WOLFINGER: Well, that's -- Yes, I found out in
15 the last nine minutes.

16 COMMISSIONER SHARPLESS: Okay, there's some --

17 MR. WOLFINGER: You know, I mean, that's the
18 purpose and that's the purpose of trying to work some of
19 these things out and to try to have the meetings.

20 COMMISSIONER SHARPLESS: Okay, okay. One last
21 question then on the information needed for the Final Staff
22 Assessment. The 45 days again. Tell me when, what day, the
23 date that would be required to meet the current Final FSA
24 deadline. What is your calendar date for that?

25 MR. BUELL: Well, it would depend upon which of the

1 two schedules staff would recommend here. If you were to --
2 Let's see.

3 HEARING OFFICER VALKOSKY: The current schedule,
4 Rick.

5 COMMISSIONER SHARPLESS: Just based on the current
6 schedule. Make it easy.

7 MR. BUELL: I'm trying to figure this out.

8 MS. HOUGH: June 1st? Forty-five days before July
9 15th. Isn't that right? Is that correct? Forty-five days
10 before July 15th is June 1st.

11 MR. BUELL: I think that's wrong, I think it's May
12 15th.

13 COMMISSIONER SHARPLESS: May 15th?

14 MR. BUELL: Yes.

15 COMMISSIONER SHARPLESS: Forty-five days before the
16 FSA?

17 MR. BUELL: If we're trying to publish the FSA on
18 the traditional schedule that's June 15th. Back up 45 days
19 is May 1st. No.

20 HEARING OFFICER VALKOSKY: No, Rick, Rick.

21 MR. BUELL: July 15th, excuse me.

22 HEARING OFFICER VALKOSKY: Yes, okay. June 1st,
23 yes.

24 MR. BUELL: Okay. June 1st, sorry.

25 MS. HOUGH: So we'd need to have all of the

1 information by June 1st.

2 HEARING OFFICER VALKOSKY: And how long after
3 Thursday's workshop will you let applicant know which
4 information you believe you need? Will you do that at the
5 workshop or will it be done within a day or two?

6 MS. HOUGH: Well, I think given the fact that -- It
7 is my understanding that we don't even have a -- Since the
8 proposal is presented in the alternative, maybe Victor
9 Valley, maybe the city of Adelanto, there is not even wells
10 identified for the city of Adelanto. It may well depend on
11 which option they pick. It may also depend on what the
12 agencies themselves come in and ask for information about. I
13 don't know how soon Joe was planning to have some -- I know
14 you were planning to have some discussion at the workshop. I
15 don't know if you have a date after which that you could
16 provide a complete list of information.

17 MR. O'HAGAN: Once again it depends on what the
18 firm proposal is. If it is going to be the city of Adelanto
19 there is going to be quite a laundry list of information
20 requirements; if it's Victor Valley then not very much.

21 HEARING OFFICER VALKOSKY: Okay. Mr. Wolfinger,
22 when are you going to come up with a firm proposal then?

23 MR. WOLFINGER: Let me just say that --

24 HEARING OFFICER VALKOSKY: Or is this something
25 you're going to discuss at the workshop?

1 MR. WOLFINGER: We're now at 13 minutes into this
2 conversation. I mean, I think the purpose of the April 30th
3 is to make sure that the -- that our understanding of our
4 plant and what the CEC staff's understanding of what our plan
5 is, and what other plan to do, we meld out and figure out
6 what we have and what we don't have. I'm not sure where the
7 gaps are. I mean, you're hearing things but unless we have
8 -- I mean, that's the purpose of the workshop is to spend a
9 few hours and to work these things out.

10 COMMISSIONER SHARPLESS: Okay.

11 MR. WOLFINGER: I'm not real cognizant of the
12 issues and so I --

13 COMMISSIONER SHARPLESS: But I think what we're
14 going to be interested is how much information will you need
15 after you have this discussion and whether you will be able
16 to meet the June 1st date.

17 MR. WOLFINGER: I think it will depend upon what
18 comes out of the April 30th meeting.

19 COMMISSIONER SHARPLESS: Yes, right. But as you
20 have the April 30th meeting maybe you can keep that in mind.

21 MS. HOUGH: We need a proposal.

22 COMMISSIONER SHARPLESS: Right, okay. Well, they
23 say they have given you a proposal and they are trying to
24 find out whether or not you have data gaps.

25 MR. O'HAGAN: Well, the applicant has identified

1 that the Victor Valley Economic Development Agency will
2 actually apply for the water, both the groundwater and the
3 surface water, through the Mojave Water Agency. The
4 groundwater either through the city of Adelanto or the Victor
5 Valley Water District. Discussions with the staff for VVEDA,
6 John Roberts who is the public works director for
7 Victorville, is that he feels that the city of Adelanto is a
8 potential source of water, groundwater for the project and
9 that it would in fact require a new well field for Adelanto
10 to provide that water.

11 COMMISSIONER SHARPLESS: So is it John Roberts that
12 is writing this plan?

13 MR. O'HAGAN: Well no, I believe the applicant
14 wrote the plan but they have explained to us that it is VVEDA
15 that is actually applying for the water.

16 COMMISSIONER SHARPLESS: Is VVEDA writing the plan
17 for --

18 MR. WOLFINGER: There's a difference in what the --
19 I think one of the -- And this is what the 30th meeting is
20 all about, okay. I think there is a misunderstanding. Is
21 the water for the power project and the water for the entire
22 airport area. I think they're going to -- It's two different
23 issues. I think they are going to go to Adelanto to get
24 water for the entire air base. I don't think they're looking
25 at necessarily getting water for the power project.

1 MR. O'HAGAN: No, I was very clear about the
2 difference.

3 MR. WOLFINGER: And so -- I think that's where we
4 need to work out something. I'm not sure we're getting any
5 water from Adelanto but I think the base is getting it. But
6 that's not our water. So that's --

7 MR. O'HAGAN: Well once again I'd say the plan --

8 MR. WOLFINGER: That's the purpose --

9 MR. O'HAGAN: The plan discusses Adelanto providing
10 water and that's specifically for the power plant.

11 COMMISSIONER SHARPLESS: Okay.

12 MR. JOSEPH: If I could get a word in edgewise
13 here. We too are in the process of evaluating the substance
14 of this proposal and don't have anything to say on that,
15 we'll participate in the workshop on Thursday. But the very
16 last paragraph on the last page I think is a process issue
17 which affects --

18 COMMISSIONER SHARPLESS: The last paragraph on the
19 last page of what?

20 MR. JOSEPH: Of the water plan.

21 COMMISSIONER SHARPLESS: Okay, the water plan.

22 MR. JOSEPH: Of the document identified as
23 Evaluation of Alternative Water Supplies For The High Desert
24 Power Project dated April 1998.

25 COMMISSIONER SHARPLESS: Okay.

1 MR. JOSEPH: The very last paragraph, which is in
2 the Recommendations section, is the process paragraph which
3 is most important. And that says that the applicant should
4 convey the findings of the study to the Victor Valley Water
5 District and begin negotiations with respect to development
6 of a final HDPP water system improvement plan and possible
7 integration of the needed system improvements with the Victor
8 Valley Water District water system. Also, HDPP needs to
9 ascertain all Victor Valley Water District requirements and
10 conditions for water service. These requirements are most
11 likely subject to negotiation.

12 So I think what this is saying is there is some
13 negotiation that has to go on before the questions that staff
14 has identified can be answered. So I want to be sure that we
15 don't overlook the fact that there is an interim step. We
16 can't just jump right to the answers, there's negotiations.
17 Because the water district has an important role in this and
18 they have not yet been heard.

19 COMMISSIONER SHARPLESS: Well, okay. I don't know
20 why, you know, it's taken this long I guess to get to the
21 point of hearing from the water districts on the plan but it
22 puts us in a situation where I'm looking at a June 1st date
23 and I don't hear the information yet today. And I appreciate
24 Mr. Wolfinger saying, you know, that's what April 30th is
25 about but I think the Committee is going to need to get some

1 feedback fairly closely after April 30th on this issue so we
2 can also consider that as we look at the time frames.

3 So I guess I would be suggesting some type of
4 process. Maybe Mr. Valkosky can help me out here. Some type
5 of process that will allow the Committee to get information
6 on the water plan issue so that we can look at this in the
7 context of the schedule as we're considering where we might
8 be going with it. Do you have any suggestions, Stan?

9 HEARING OFFICER VALKOSKY: Off the top of my head,
10 Commissioner, there are two things that could certainly
11 happen. One, we could have -- We could just have written
12 reports coming back in the nature of a status report. We can
13 set a date for that covering the things we discussed today.
14 That is certainly one option.

15 Another option, and just to kind of build on Mr.
16 Thompson's suggestion earlier this morning, we may want to in
17 the very near future schedule another status conference, and
18 I would suggest within a couple of weeks, so that the
19 Committee could be apprised of what is happening in basically
20 a lot of the same topic areas we've covered today. So really
21 what it's coming down to is would you prefer a written report
22 and then make up your mind as to whether you need a
23 conference or would you --

24 COMMISSIONER SHARPLESS: I would prefer --

25 HEARING OFFICER VALKOSKY: -- just proceed to a

1 conference?

2 COMMISSIONER SHARPLESS: Well, I'm really focused
3 on this issue in the context of what we do in terms of
4 response to Mr. Thompson about a committee workshop or
5 whatever. I'd like to have as soon as possible the
6 information on the water issue because that's what they're
7 going to be doing on April 30th. Then we can look at that in
8 the context of the other issue and decide how best to
9 proceed.

10 HEARING OFFICER VALKOSKY: Okay, if that is the
11 immediate need then I'd suggest we just set a report-back
12 date a week or so after April 30th, it could be essentially
13 May 7th, instructing the parties specify any progress that
14 had been made at the workshop as well as identifying to the
15 extent possible on the part of staff and certainly CURE any
16 steps they believe need to be taken in the way of information
17 being provided.

18 COMMISSIONER SHARPLESS: I'm really focusing on the
19 water issue at this point.

20 HEARING OFFICER VALKOSKY: Okay, yes.

21 COMMISSIONER SHARPLESS: Because there are other
22 issues as well.

23 HEARING OFFICER VALKOSKY: And I would limit it
24 just to the water.

25 COMMISSIONER SHARPLESS: Commissioner Laurie, I am

1 not sure when you came back in so I'm not sure how much of
2 this you heard but do you have a feeling, a suggestion? This
3 is on the water issue.

4 COMMISSIONER LAURIE: No, I understand, I
5 understand the issue. I also understand that source of water
6 is a critical element in the project description. As I was
7 saying, Madam Chair.

8 COMMISSIONER SHARPLESS: I'm sorry, Commissioner
9 Laurie.

10 COMMISSIONER LAURIE: It just seems to me that
11 water source is a critical element. Where the water comes
12 from will have environmental implications. We can't study
13 the impacts until we know the source, the source of the water
14 has to be identified. That line is really pretty clear to me
15 and that -- It's not the kind of deal where I feel I'm free
16 to say, we've got to give these guys flexibility. To me it's
17 the kind of deal where the law mandates us to examine the
18 impact. In order to do that we've got to know the source and
19 so they have to go work out their water deal. I don't know
20 what alternatives we have.

21 COMMISSIONER SHARPLESS: Mr. Wolfinger, what --

22 MR. WOLFINGER: The source of the water is whether
23 -- It's all the same aquifer. we had one thing where we
24 punched seven well in. The effect on the aquifer is the
25 same. Whether Adelanto does it or we do it it's all in the

1 same local area. I mean, this is a matter of a well a mile
2 away or where it is. I mean, the effect is very localized
3 and we've tried to identify what the localized effect is. I
4 don't think it's --

5 COMMISSIONER SHARPLESS: I think the part,
6 Mr. Wolfinger, if I may kind of cut to the chase is that
7 you're going to have to do some negotiations, I guess, with
8 the folks down there and we don't have the details of those
9 negotiations yet. I understand what you're saying. So what
10 we need and what we can't deal with today is what comes out
11 of the April 30th meeting and to what degree the detail comes
12 out and we know what actually is going to happen in the water
13 area.

14 What I would like to see before we get too much
15 further down the line is exactly where we stand after April
16 30th so that the Committee has a better idea. I appreciate
17 entirely what you're saying. I just am trying to get a
18 better idea of where we are after you all have that
19 conversation and whether or not you're going to need to do
20 some more negotiations. If in fact you are, how much more
21 time that might take and where we might see those time
22 schedules taking us beyond, say, the June 1st deadline if in
23 fact it does go beyond the June 1st deadline.

24 So that's really what I'm trying to get at so I can
25 assess what issues we have remaining that we really need to

1 focus on if in fact we have a workshop such as you're
2 suggesting.

3 MR. THOMPSON: Let me reiterate my suggestion, it
4 seems to me to be an opportune time. I made mention early
5 today that I would suggest that the staff go ahead with the
6 PSA in sections so that they would feel comfortable going
7 ahead with, that's May 15. One way to look at this is to
8 drop back a day. If May 14 is a convenient date to have
9 another session we can do that. At the end of that session I
10 suspect that we will have a lot more information on the air
11 and water areas, what I consider to be the two most important
12 areas here going forward.

13 So that at the time the PSA comes out then we can,
14 or you can construct the schedule from that point on. We can
15 do an interim report on May 7 if you'd like but we will
16 certainly take the information that we gather on Thursday and
17 work with it. My suspicion is that if we had a similar
18 session on May 14 it could be very productive.

19 COMMISSIONER SHARPLESS: Well, May 14th I'm not in
20 state so that's problematic.

21 MR. THOMPSON: That's better than lying in state.
22 (Laughter).

23 COMMISSIONER SHARPLESS: Lying in state, right.
24 This project may do that to me, though.

25 So I'm still trying to assess what we would do in

1 that workshop and how it fits in to facilitating this
2 process, that's really what I'm trying to assess. If in fact
3 a lot comes out on Thursday on the water plan, people are all
4 on the same track, they all understand what people are saying
5 and the negotiations look like they're going to be smooth and
6 you're not going to run into any problems and staff can get
7 the information they need to pump it into the analysis then,
8 you know, that's the best of all outcomes.

9 If, however, we hit some bumps in the road on the
10 30th that this Committee needs to know then I'd like to
11 factor that in too if in fact we had a workshop. What our
12 expectations for the workshop would be and how that fits into
13 the schedule and how it fits in the PSA and the FSA and all
14 of it. It's clear to me that we can't go any further on
15 water today. We're about as far into the water as we can
16 get.

17 MR. WOLFINGER: I'd like to make a point. I think
18 one of our problems is is I'd like to try to set us up on
19 some sort of a two week circle around and keep talking and
20 talking. Because what I find is that we have some of these
21 meetings, we go away, we think we all know what we want and
22 then we don't know what we want. And so I think -- We're at
23 a pretty critical stage of this thing, of this process. And
24 I think it would be very productive, even if it's only an
25 hour or two, to keep on circling on a two week --

1 COMMISSIONER SHARPLESS: Oh, you dream. You dream,
2 Mr. Wolfinger. (Laughter).

3 MR. WOLFINGER: I don't, and it's a whole day, but
4 I would like to really see a process that we end up circling
5 around these issues every two weeks to make sure that we know
6 what we want. Because I think that part of our problem has
7 been is that we kind of go away with some ideas of what's
8 needed and then it isn't what's needed. I think we can ill
9 afford lapses of time.

10 As an applicant I'm willing and desirous of some
11 sort of a two week cycle where we just over the next six
12 weeks or so we have three meetings just to make sure. And if
13 it turns out we don't need one we'll cancel it but I'm really
14 -- I think we need to really get together and communicate and
15 make sure that we aren't looking, you know, that we really
16 have the right things we're talking about.

17 COMMISSIONER SHARPLESS: Okay. Okay. I appreciate
18 what you're saying. Even with that concept out there I think
19 it would still be a good idea to get feedback to the
20 Committee --

21 MR. WOLFINGER: Absolutely.

22 COMMISSIONER SHARPLESS: -- on what happens on
23 April 30th.

24 MR. JOSEPH: Could I make a suggestion along those
25 lines?

1 COMMISSIONER SHARPLESS: Yes.

2 MR. JOSEPH: I would propose that the staff report
3 to you on May 7th, one week after the workshop.

4 COMMISSIONER SHARPLESS: Right.

5 MR. JOSEPH: It is my experience that staff reports
6 are pretty thorough and pretty accurate. I would just give
7 the other parties an opportunity on May 11th, the following
8 Monday, to respond to a staff report if they find anything in
9 the staff report that they think is not an accurate
10 reflection of the state of the world.

11 COMMISSIONER SHARPLESS: Okay. Actually, we were
12 talking about May 7th. What we do on May 11th is still kind
13 of up in the air. We, along with what you have been talking
14 about, have thought, although I haven't checked with
15 Commissioner Laurie so I don't know what his time frame is
16 but we had thought about perhaps putting a conference in on
17 the 11th.

18 MR. JOSEPH: I was actually referring to a written
19 filing.

20 COMMISSIONER SHARPLESS: I know you were, I heard
21 you say that. In light of the difficulties that we seem to
22 have in writing we may want to stick in another conference to
23 see how we're doing. It's very close to the PSA. I can see
24 staff just groaning because they probably want every minute
25 of the time that they can to work on their PSA and other

1 issues that may still be wandering around. So we don't want
2 to get in the way of important analyses but we need to figure
3 out how we can deal with these issues and move them along.
4 That's really what we're seeking here. So we'll come to some
5 accommodation. We've heard all points of view and the
6 Committee will diligently try to come up with some type of
7 accommodation.

8 MR. JOSEPH: If you're thinking of an in-person
9 session I would simply put in a schedule request that it be
10 May 12 rather than May 11th, I'm scheduled before the PUC on
11 May 11th.

12 COMMISSIONER SHARPLESS: Lucky you, okay. I don't
13 know. Commissioner Laurie is down there, I know he's got
14 stuff going.

15 COMMISSIONER LAURIE: I'm out of town the week of
16 the 4th; I'm grading PEER (phonetic) applications on Monday
17 the 11th. On the other hand, we are not going to have this
18 project fail to meet, we're not going to fail to meet our
19 time obligations because of lack of communication. We're not
20 going to let that happen. So to the extent that an
21 additional Committee Conference is necessary I will
22 accommodate my schedule to yours, Madam Chairman.

23 COMMISSIONER SHARPLESS: Thank you. I will just
24 recognize for those of you who don't know who or what PEER
25 is. There is 178 grant applications out that Commissioner

1 Laurie has to do in what, three days?

2 COMMISSIONER LAURIE: Yes.

3 COMMISSIONER SHARPLESS: And treat them all fairly.
4 So in case you think he is talking easy, easy talk here, it's
5 not. So his accommodation is well taken and I appreciate it.
6 We'll see what we can do along those lines. It certainly
7 won't be an all-dayer. Hopefully we can -- Mr. Wolfinger has
8 made a challenge of a two hour Committee Conference. We
9 might just be able to do it if we're very well focused and if
10 we know exactly what we're trying to accomplish in that
11 workshop or conference.

12 MR. JOSEPH: Could I make a fall-back schedule
13 request then?

14 COMMISSIONER SHARPLESS: Right.

15 MR. JOSEPH: I'm at the PUC at 1:30, if we're done
16 by 11:30 that's just fine. Could we start at 9 instead of
17 10?

18 COMMISSIONER SHARPLESS: Sure. I don't know about
19 the rest of the world but --

20 MR. WOLFINGER: I'd prefer not to fly on Mother's
21 Day. And I think most of us in order to start at 9 would be
22 flying up here on Mother's Day and spending the night here.

23 COMMISSIONER SHARPLESS: I really appreciate that.
24 I almost want to approve his project right now. (Laughter).

25 MR. THOMPSON: We will agree to that.

1 MR. WOLFINGER: You can handle it outside of this
2 process if you'd like. I mean, I didn't really, quite
3 frankly, anticipate you would actually meld this one into
4 this, that you would handle it as if I'd come to you after
5 I'd been certified and asked you for a change. So I'm not
6 sure --

7 COMMISSIONER LAURIE: I don't think we can do that
8 having been put on notice of what your intentions are. I
9 think staff is going to tell us that we cannot bifurcate the
10 issues and we have to look at it now. Is that a --

11 MS. HOUGH: That's correct, it's part of the
12 project for purposes of CEQA and I believe the Commission is
13 also going to be licensing the gas pipeline as an appurtenant
14 or related facility, whichever term you care to use.

15 MR. THOMPSON: The dilemma that we had, of course,
16 is that when we had an opportunity through Southwest Gas to
17 arbitrage off different gas areas and, you know, we started
18 appealing. We don't want to hide this, clearly.

19 COMMISSIONER LAURIE: I don't think anybody is
20 faulting your action in seeking the addendum to the
21 application. It's just clearly that it has ramifications
22 that we have to deal with it.

23 MR. THOMPSON: It is on -- I think that -- Well,
24 let me say this: This week the spring surveys are being
25 done, we wanted to get those folks out in the field right

1 away. We are hopeful that we will have a report mid-May that
2 will be pretty conclusive or at least inclusive. I believe
3 that the preferred pipeline route is our road the whole
4 distance, I think that right. So we are hoping that the work
5 that we are doing will be in the staff's hands by mid-May.
6 Plus the configuration of this totally buried natural gas
7 pipeline will make it so that we can meld it into the process
8 without too much difficulty.

9 HEARING OFFICER VALKOSKY: I have got one question
10 for staff. And I don't mean to suggest that this would be a
11 preferable way but in the SMUD case we considered the SMUD
12 gas pipeline separately from the power plant and we
13 essentially had two AFC proceedings going. The tracks were
14 close in time but they were two separate, distinct
15 proceedings. Could that be done in this case?

16 MS. HOUGH: There is a provision in the Commission
17 siting regulations that allows either consolidation or
18 severance, it's Section 1719. My recollection in the SMUD
19 case was that prior to severance there was a process set up
20 so that the environmental effects that were related from the
21 gas pipeline and the project were considered all at the same
22 time so that you avoided the problem under CEQA of separating
23 the project and considering the impacts separately. We could
24 go back and look at the SMUD case to see exactly how that
25 consideration took place. You'd clearly have to do the same

1 kind of thing in this case so that, for example, you couldn't
2 consider the biological resources impacts of the gas pipeline
3 separately from the biological resource impacts of the power
4 plant.

5 HEARING OFFICER VALKOSKY: No, I understand that.

6 MS. HOUGH: I think it's theoretically possible but
7 I'd want the same kind of mechanism in place that we had in
8 the SMUD case.

9 HEARING OFFICER VALKOSKY: Right. I'm not talking
10 about segmenting the project, I'm basically talking about
11 setting up two different time lines if possible so that
12 the --

13 MS. HOUGH: Well --

14 HEARING OFFICER VALKOSKY: Again, assuming
15 approval, so that approval of one could proceed in advance of
16 the other as was the case in the SMUD projects.

17 MS. HOUGH: But the point I'm perhaps not making
18 very clearly is that at some point there has to be some
19 analysis of all of -- for example, because it comes to mind,
20 the biological resource implications of the project, which is
21 both the power plant and the gas pipeline. So you're already
22 on a separate time frame because the spring surveys for the
23 power plant were done at a different time then they are
24 obviously being done for the gas pipeline.

25 The question in my mind is, how do we set up a

1 process where we have a consideration of the project as a
2 whole, both in the staff analysis and in the Commission
3 deliberation process. I think the FSA is the logical place
4 to have that and if Mr. Thompson is confident that the
5 information can be provided I don't see a reason to do
6 anything differently. I just don't know whether that is
7 going to be possible or not.

8 HEARING OFFICER VALKOSKY: Right. Is this one of
9 the possibilities that will be discussed on Thursday? That's
10 all. Or whatever form of certification you're going to
11 propose.

12 MS. HOUGH: Well, I think that -- We don't have a
13 plan at this point to consider the gas pipeline separately
14 from the rest of the project consideration and the FSA.

15 HEARING OFFICER VALKOSKY: Okay. Okay. All right.

16 COMMISSIONER LAURIE: Okay. My understanding of
17 the question is that there is a possibility that we can treat
18 it as a separate application; however, that is something
19 different than not addressing the environmental implications
20 of the application for the environmental applications of the
21 pipeline as part of this application. Is that right?

22 MS. HOUGH: I think that you're practically, in
23 practical terms you're talking about the same thing. The
24 consideration of the environmental effects of the gas
25 pipeline are already on a separate time frame, whether you

1 call it -- whether you give it a label that says that or not,
2 because they proposed it late in the process. What's
3 happened when we have done severance proceedings before is
4 that there is at the end a consideration of all of the
5 impacts of the project together. I don't see much point in
6 going through some sort of a formal process to confirm the
7 fact that we're already on a different time frame for
8 collecting the information on the gas pipeline.

9 COMMISSIONER LAURIE: Okay. I understand you're
10 going to discuss it on the 30th so the question I'd be
11 interested in is can we complete an environmental analysis on
12 the pipeline in sufficient time to act on this project in a
13 timely manner. That's the question that I'd like --

14 MR. BUELL: Staff believes that once it receives
15 all the information on the gas pipeline that we could perform
16 an analysis in 45 days, once again, and provide it in our
17 FSA. We had identified a performance date of June 1st, the
18 applicant has said that they'd provide the information by
19 mid-May. That sounds consistent at this time. We would also
20 note for the record that the applicant at times has promised
21 data and we have once again found ourselves --

22 COMMISSIONER LAURIE: That's speculative.

23 MR. BUELL: Yes.

24 COMMISSIONER LAURIE: And that's fine. What you're
25 telling me though is when it's discussed on the 30th, your

1 view today is that you feel that it's possible to complete
2 the analysis of this 26 mile pipeline in sufficient time to
3 approve this project.

4 MR. BUELL: Right, that would require inherently a
5 delay of the FSA that we've talked about earlier today.

6 COMMISSIONER SHARPLESS: Wait, right led to the
7 wrong conclusion. Right would mean you wouldn't need a delay
8 of the FSA. You're saying no, you couldn't do the analysis
9 without delaying the FSA. Isn't that what you mean?

10 MR. BUELL: I think the question was, and correct
11 me if I'm wrong, whether or not we could do our analysis such
12 that the Commission could reach a decision in 12 months. And
13 the answer is yes, I think that's the case but we would have
14 to delay the staff's analysis. That would eat into the
15 Committee's ability to produce a decision on this case so
16 that it's not without cost.

17 COMMISSIONER SHARPLESS: Okay, so it would delay
18 the FSA but we'd have to -- In order to stay on the 12 month
19 clock we'd have to make that delay up within the Committee
20 Hearing process, right?

21 MR. BUELL: Correct.

22 MR. WOLFINGER: I think one of the things we want
23 to accomplish on the 30th, and I think Rick Buell understands
24 it, we want to ensure we know what all the data is that's
25 needed.

1 COMMISSIONER SHARPLESS: Yes.

2 MR. WOLFINGER: We keep on saying, staff has all
3 the data. I think it's very important. And that's part of
4 the meeting on Thursday is to make sure we know what all of
5 it is that we need. And I'm sure we're going to be talking
6 about that. That's a big part of it, that's really critical.

7 COMMISSIONER SHARPLESS: Staff, perhaps in addition
8 then to the water plan, determining whether or not you're
9 going to have the information and the negotiations in time
10 for your June 1st deadline. Perhaps you could also indicate
11 what you think the timing will be on the gas pipeline issue
12 given what information you get and when you think you might
13 get additional information that you might need so we'll be
14 able to factor that in.

15 MR. BUELL: Okay.

16 COMMISSIONER SHARPLESS: If you can. Commissioner
17 Laurie.

18 COMMISSIONER LAURIE: Question, Madam Chair.

19 When the environmental analysis is done on the
20 pipeline even though the Committee isn't taking action on the
21 pipeline project, when that environmental analysis is
22 incorporated into or creates mitigation measures that result
23 in conditions on this project, when the pipeline project
24 separately comes up for decision is there a separate
25 environmental analysis or will a decision be made that

1 environmental analysis has already been conducted?

2 MS. HOUGH: It is our belief based on the
3 information that we have right now that the gas pipeline is
4 part of this project. The Commission would be licensing the
5 gas pipeline.

6 COMMISSIONER SHARPLESS: At the same time as
7 the whole project.

8 MS. HOUGH: It's part of the same project, right.
9 It's what is referred to in the Commission statute as an
10 appurtenant facility, which is something that we have
11 licensing jurisdiction over. There are also facilities which
12 we don't license that we look at as part of the project for
13 CEQA purposes. You've probably heard us talk about that with
14 respect to transmission facilities that may be needed as a
15 result of system impacts. This is not -- This is not that
16 kind of a thing. This is something that the Commission has
17 licensing jurisdiction over as an appurtenant facility. So
18 the licensing decision is the Commission's decision on the
19 project.

20 COMMISSIONER LAURIE: Not being very familiar with
21 where the pipeline is going to go, is there an issue
22 regarding notice to hundreds of individuals?

23 MS. HOUGH: Yes.

24 COMMISSIONER LAURIE: Or thousands of individuals?
25 I don't know who is out there and --

1 MS. HOUGH: We've had some preliminary discussions
2 about notifying adjacent landowners and Rick can probably --

3 MR. BUELL: Yes.

4 COMMISSIONER LAURIE: Don't do it now, Rick.

5 MR. BUELL: Okay.

6 COMMISSIONER LAURIE: I just wanted to --

7 COMMISSIONER SHARPLESS: He was going to name every
8 one.

9 COMMISSIONER LAURIE: I just want to acquaint
10 myself as to the issues and I want to determine whether or
11 not this deal is possible to do. I'm concerned about that so
12 I'd like to be able to talk about that.

13 MR. BUELL: There is one issue regarding landowners
14 that I think that we should be cognizant of, I'm not sure
15 what the answer is. Part of the pipeline will cross BLM land
16 and we'll have to negotiate how our process will fit in with
17 their process for approval of a gas pipeline. So that is an
18 area of consideration. Hopefully we can discuss that on the
19 30th, I'm not sure we'll have a final answer on that date.
20 But certainly by the Committee's conference on the 11th we'd
21 be in a better position to try to help clarify that issue.

22 MR. THOMPSON: But BLM has been notified and is
23 coordinating on the surveys that are going on this week so
24 you should be prepared for that as well.

25 COMMISSIONER SHARPLESS: Great. Okay, any other

1 comment on the gas pipeline? Mr. Joseph?

2 MR. JOSEPH: No.

3 MR. THOMPSON: By the way, those of you that are
4 familiar with the solar projects, this is the road that goes
5 up from Helendale where we had our hearings right on up to
6 the Harper Lake interchange. That's the road.

7 **OTHER TOPICS**

8 COMMISSIONER SHARPLESS: Okay, we're almost there.
9 Under the Other Topics area applicant may want to cover other
10 remaining issues that we haven't touched on today,
11 Visibility, Land Use, FAA or Department of Toxic Substance
12 Control Permit.

13 MR. WOLFINGER: Andy, do you want to talk about the
14 FAA, where we stand on that. This is Andy Welch, our Project
15 Director.

16 MR. WELCH: It will be very simple and quite brief.
17 Andy Welch, I'm the Project Director. With the FAA -- We've
18 submitted all the information to the FAA that they required.
19 We put that in through the airport manager; the airport
20 manager first approved it all before it went in. We got one
21 initial letter from them which has been docketed. We
22 understand verbally that they looked at our additional
23 analysis of the thermal plumes and determined that that also,
24 we would have no impact. We're waiting for that to be issued
25 in writing now. We expect it shortly and we'll submit it to

1 be docketed at that point.

2 There were some additional questions about that
3 were submitted to the FAA about the interpretation, whether
4 the FAA had correctly interpreted their rules about the
5 horizontal plane being 150 feet about the established airport
6 elevation. The FAA, I don't know if they are going to come
7 back with a response other than they have told us, as has the
8 airport manager, that they have in fact, they did correctly
9 interpret their rules in the first place, that it is 150
10 above the highest point on the runway and not the lowest
11 point as was asked in some of the subsequent letters.

12 COMMISSIONER SHARPLESS: Okay.

13 HEARING OFFICER VALKOSKY: And when are you
14 expecting this response?

15 MR. WELCH: Shortly. I expected to have it by now
16 but I think they're just a little slow on issuing the
17 paperwork. They view that they have already issued the
18 official approval in their previous letter, this would just
19 be a response to the additional requests that were made to
20 them by other parties.

21 COMMISSIONER SHARPLESS: Okay. Other issues?

22 MR. WOLFINGER: Do we want to talk about the visual
23 side?

24 COMMISSIONER SHARPLESS: Only if you want to. Do
25 you have any issues?

1 MR. WOLFINGER: Well, I don't have any particular
2 -- We hear what you're saying but I don't know what we're
3 going to --

4 MR. THOMPSON: This may be an issue that does not
5 get settled and it may be an issue that comes before you for
6 adjudication. We think we located it correctly, we looked at
7 the staff's comments, and aside from the staff apparently not
8 wanting to issue a PSA until we agree with them, which we
9 disagree with, we're not sure there is much we can add.
10 We'll go back and check the placement and check with the City
11 but this may just be something that we dump in your lap.

12 COMMISSIONER SHARPLESS: Okay, fine, we'll let them
13 respond to that. There is also -- I think the other issue
14 that I saw raised was the one concerning the recirculation of
15 water and the crystallizer and the Department of Toxic
16 Substance Control permit.

17 MR. WOLFINGER: That's really an issue that was
18 brought up by CURE.

19 COMMISSIONER SHARPLESS: Do you want to make any
20 comment on that at this point?

21 MR. WOLFINGER: Sure. Jeanine, you want to come up
22 and talk.

23 MS. KELLY: We reviewed the analysis --

24 MR. WOLFINGER: Say who you are.

25 MS. KELLY: Jeanine Kelly with the project. We

1 basically think that you have looked at the waste as an
2 intermediate rather than as a final waste stream and we think
3 that when the staff consults with the other regulatory
4 experts you'll come to the same conclusion but would point
5 out that the analysis has looked now at what is entering the
6 crystallizer rather than the actual waste exiting the
7 crystallizer. I'm not sure why that analysis would have been
8 done because under the rules you would not look at
9 intermediate steps, you would look at your final waste, and
10 that's what our analysis initially did. And we'll respond in
11 writing as well. I expect you guys to find the same answer
12 when you consult your other regulatory agencies but we'll
13 respond in writing as well.

14 COMMISSIONER SHARPLESS: And your response in
15 writing will be immediate?

16 MR. WOLFINGER: A few days.

17 COMMISSIONER SHARPLESS: A few days?

18 MR. WOLFINGER: Really, you've heard our response
19 which is, it's an intermediate and it's an inappropriate way
20 to analyze the process.

21 COMMISSIONER SHARPLESS: But it will be docketed
22 and it will be in the record and that's something that staff
23 will be able to refer to. So I think those are probably the
24 other issues. Can you think of any other issues on this
25 project that you might want to bring up in general before we

1 take it over to the staff for comment?

2 HEARING OFFICER VALKOSKY: Mr. Thompson, on your
3 second status report you indicated that you had filed a Corps
4 of Engineer Jurisdictional Determination.

5 MR. WOLFINGER: Yes.

6 HEARING OFFICER VALKOSKY: What was that for?

7 MR. WOLFINGER: Wetland delineation.

8 HEARING OFFICER VALKOSKY: Okay, fine.

9 MR. WOLFINGER: That's been docketed.

10 HEARING OFFICER VALKOSKY: It has been docketed,
11 okay, I have not seen that. Okay. And the result was?

12 MR. WOLFINGER: They came out and we agreed on what
13 it is. It's just agreement between the Corps and ourselves
14 as to what is of the whatever they call it, what's wetlands
15 and what isn't and that's basically it. We go in and say,
16 this is what we think is wetlands, they come back. And I
17 think actually there was a modification of it and that's been
18 resubmitted. We basically came to agreement on the areas.
19 What is, you know, wetland and what isn't.

20 COMMISSIONER SHARPLESS: Okay, so that information
21 is in to the staff and can be part of staff's analysis? I
22 think that's where that is. Staff?

23 MR. BUELL: Yes. On Other Topics, I assume that's
24 where we are.

25 COMMISSIONER SHARPLESS: Yes, that's where we are.

1 MR. BUELL: Regarding Land Use we have been in
2 contact with the FAA regarding the issues that Mr. Welch
3 described, i.e. the thermal plume and also regarding the
4 stack heights and whether or not they violate the FAA
5 criteria. We have requested that the FAA respond to these
6 issues, provide clarification by April 30th. I'm hoping that
7 we actually receive that and if we do we will likely include
8 that in our Final Staff Assessment.

9 Moving right along if there is no questions on that
10 to Visual Resources. Again I think -- I just want to make
11 one thing perfectly clear: Staff is not postponing its PSA
12 until such time as we reach agreement with the applicant on
13 this topic. We intend to publish a PSA in detail that
14 describes our position on May 15th. The topic of Visual
15 Resources identifies the nature of the impact that we have
16 identified and possible mitigation measures that we will
17 consider. I think it's a substantive issue; I don't think it
18 will delay the schedule at this point in time.

19 Regarding Waste Management. Staff is indeed in
20 contact with the Department of Toxic Substance Control and
21 they are in the process of trying to understand what
22 regulations, criteria and permits would be required for this
23 facility. It is likely that the waste stream from the
24 crystallizer will be determined to be hazardous and will be
25 subject or regulation review. At this point in time we don't

1 believe we'll be able to address this issue fully in our PSA
2 but we'll be able to in our FSA.

3 MR. WOLFINGER: Say that again. Could you repeat
4 what you said?

5 MR. BUELL: The whole thing or?

6 MR. WOLFINGER: No, just what you believe. What is
7 it you said you believe it is going to be?

8 MR. BUELL: We believe that the waste stream from
9 the crystallizer will be hazardous.

10 MS. KELLY: Will it help with meeting your schedule
11 on the PSA if we could submit analysis in writing beforehand
12 that explains why it won't be?

13 MR. BUELL: Staff would take longer than that time
14 to review. Frankly, if I don't have the information, staff
15 doesn't have the information and be able to analyze it,
16 contact agencies, by this Friday then it will not be in the
17 PSA. And I trust that your letter would be sincere and
18 accurate and truthful and whatnot but staff will want to do
19 more research than simply rely on the applicant's conclusions
20 at this point in time. We would like to consult with the
21 regulatory agencies that are responsible.

22 COMMISSIONER SHARPLESS: Mr. Buell, can you tell me
23 what contact you've had with the Department of Toxic
24 Substance Control to this point?

25 MR. BUELL: Can I ask Mr. Joe O'Hagan to come

1 forward and perhaps -- He was party to the communication.

2 MS. HOUGH: He's left.

3 COMMISSIONER SHARPLESS: There is no Joe.

4 HEARING OFFICER VALKOSKY: Joe is gone.

5 COMMISSIONER SHARPLESS: He left just in time.

6 MR. BUELL: All of them left, by the way. There
7 was three of them that were party to the communication and
8 every one of them left. Poor timing, I apologize. We have
9 had one phone conversation with the Department and discussed
10 the letter that we had received from CURE that identified the
11 concern. There is more detail that we can provide if the
12 staff return in a timely manner. I could characterize it
13 that based upon our staff's preliminary review we do not
14 think it is as significant an issue as CURE may have
15 identified in their letter but it's still something that
16 needs to be addressed in this process.

17 COMMISSIONER SHARPLESS: Okay.

18 MR. WOLFINGER: Is it appropriate for you to
19 communicate that to me? This is the first time we've heard
20 that you've had that concern. I presume this is not one that
21 was -- You say it was brought up by CURE but you must have
22 had this concern for a while?

23 MR. BUELL: I would have to defer to our technical
24 staff on that. It may have been something that was an
25 oversight of staff and I can only apologize that we have not

1 identified that earlier.

2 MR. WOLFINGER: I guess you have to wait for them
3 to come back but I guess we'd like the comments certainly
4 before, if we could before May 15th. Maybe that's the
5 earliest you can get us some --

6 MR. BUELL: We have a workshop --

7 MR. WOLFINGER: And I understand that what the
8 issues are so that we can work on it ourselves.

9 MR. BUELL: The workshop on the 30th is, Caryn will
10 correct me if I'm wrong, is scheduled to talk about
11 environmental issues. I believe we could talk about this
12 issue under the guise of a water resources issue.

13 MR. WOLFINGER: Great.

14 MR. BUELL: Let's assume we can do that. Try to be
15 prepared about it on the 30th.

16 MR. WOLFINGER: Great, great.

17 HEARING OFFICER VALKOSKY: Mr. Buell, do you have
18 any idea when you'll complete your consultation with DTSC?

19 MR. BUELL: Not at this time. It will not be in
20 time for the PSA.

21 HEARING OFFICER VALKOSKY: Okay, there is no end
22 date. Thank you.

23 MR. JOSEPH: Can I ask for a clarification on one
24 of the things Rick said?

25 COMMISSIONER SHARPLESS: Sure.

1 MR. JOSEPH: You said that you believe it's not as
2 significant as CURE identified. Were you referring to the
3 impact on the schedule?

4 MR. BUELL: Pardon, I have too many distractions.
5 What was the question?

6 MR. JOSEPH: When you said that you did not think
7 the impact would be as significant as CURE identified were
8 you referring to the impact on the schedule?

9 (Thereupon, tape 3 was changed
10 to tape 4.)

11 MR. BUELL: Yes.

12 MR. JOSEPH: Okay.

13 COMMISSIONER SHARPLESS: I think some staff are
14 here that might help you out.

15 MR. BUELL: Staff are here. Which staff wants to
16 volunteer? Mr. Ringer and Ms. Ellen Townsend-Smith, would
17 you -- I apologize, Gary, but we have a number of questions
18 from the Committee. Perhaps you could give us a brief
19 indication of the nature of the consultation that has taken
20 place with the Department of Toxic Substance Control.

21 MS. TOWNSEND-SMITH: Ellen Townsend-Smith,
22 California Energy Commission, Waste Analysis. We had a
23 conference call with DTSC and the Regional Waste Quality
24 Control Board -- Water Quality Control Board on Friday. And
25 what they are suggesting is that the applicant talk to the

1 waste evaluation unit in terms of backtracking once there is,
2 I guess some definite answers into what the water source will
3 be so that they can actually do an analysis to find out if--a
4 paper analysis--if they can figure out if the waste is
5 hazardous or not. They have a consultative division, I
6 guess, that actually would sit down with the applicant, look
7 at all the sources, backtrack and do the analysis for the
8 applicant to actually see if it's going to be a hazardous
9 waste or not.

10 MR. RINGER: Mike Ringer, CEC Staff. There's a
11 couple of questions here. The first question is -- Of course
12 the source of the water will dictate pretty much the
13 characteristic of the final waste treatment due to the
14 concentration process involved.

15 The applicant was talking about the final waste
16 product coming out of the crystallizer. That in and of
17 itself is not problematic because that would be either
18 hazardous or non-hazardous and it would be dealt with in
19 either case by going either to a hazardous or a non-hazardous
20 landfill. The question that CURE brought up and the question
21 that we have to deal with with DTSC is the product going into
22 the crystallizer. If that is a hazardous waste then it could
23 be deemed to be a hazardous waste treatment unit.

24 One thing that the applicant has brought up today
25 is that is an intermediate step. Now I'm not sure exactly

1 whether that would be just from a federal standpoint only.
2 The intermediate step is of importance if it's a RCRA
3 hazardous waste that is federal only or whether it's a state
4 hazardous waste because there's two different regulatory
5 methods there. If it's a state hazardous waste for this type
6 of treatment the state has got a couple of different tiers of
7 permits available and that would be probably one of the lower
8 tiers, one of the simplified permitting tiers that this could
9 go into.

10 But I think what we have to do is find out first
11 what the water source is going to be so that we can give to
12 DTSC what the likely constituents of the water is so that
13 they can go through the concentration calculations and see
14 what the intermediate waste stream would be. Then determine
15 whether it would be RCRA or non-RCRA and determine whether or
16 not this would indeed be an intermediate waste stream, then
17 we'd go from there.

18 COMMISSIONER SHARPLESS: Okay. Given what has just
19 been stated do you still intend to discuss this on the 30th
20 to kind of explore or does this give you some foundation on
21 which to take a few steps? Where does this leave us?
22 Perhaps I should ask that question.

23 MS. KELLY: I think what might need to be evaluated
24 is just exactly what you pointed out, state-only hazardous
25 waste. Because under the federal standards this is

1 in-process and you don't look at intermediate points in the
2 process. You'd have a lot of manufacturing processes that
3 would be generating and then treating hazardous waste if you
4 looked at intermediate steps and that's precisely why the
5 feds don't look at that. So I think it would be, the
6 consultation would be a good idea and see if maybe we can
7 explain more about the process to show why you wouldn't look
8 at this as a waste.

9 COMMISSIONER SHARPLESS: Do you have a name at the
10 Department of Toxic Substance Control?

11 MS. TOWNSEND-SMITH: I had just got on the phone.
12 I was just getting ready to get on the phone with the person
13 when I was called back down.

14 MR. BUELL: And their name is?

15 MS. TOWNSEND-SMITH: Noel, that's all I got, and
16 they said, come back downstairs. I have a name and number
17 when I go back to answer my phone, my voice mail.

18 COMMISSIONER SHARPLESS: Maybe you can provide that
19 too, okay.

20 MR. WOLFINGER: I think we probably are going to
21 have enough, we don't need any more on April 30th.

22 MS. KELLY: Well, if we can have those discussions
23 before then we'll see what happens.

24 COMMISSIONER SHARPLESS: Yes, you have a couple of
25 days. Yes, how are you going to deal with the water source

1 issue though, if that is one of their questions?

2 MR. WOLFINGER: The process is fairly quick. In
3 other words, we have water coming from the aqueduct and we
4 have that analysis of what that water is. We have water from
5 the groundwater. We're going to use both of those at one
6 time or the other so we have to analyze both of those cases.
7 I mean, it's a process that takes maybe six hours. So I mean
8 -- In other words, we have to analyze both of those sources
9 of water, both of them will be used. So I don't know if
10 that's a particular issue in that, you know, which one we're
11 using when. It's either we're going to generate it or we're
12 not going to generate it and we have to look at both streams,
13 whether we generate it for one month or we generate it for 11
14 months.

15 COMMISSIONER SHARPLESS: Of course, we had that
16 information when you had that discussion with the Department
17 of Toxic Substance Control. Did you tell them that they
18 would be using both water sources at the time or did you have
19 knowledge of the fact that they would have to use, maybe they
20 were going to use mainly state water project water but on
21 occasion they would have to use groundwater? Did you give
22 that information to them?

23 MS. TOWNSEND-SMITH: No, actually what I started
24 talking about was the process. I would have had to have
25 faxed over the information and didn't have that much time to

1 actually fax over the information for them to look at.

2 COMMISSIONER SHARPLESS: Okay, fine. Well, I think
3 we have some things we can do to help resolve this issue or
4 at least identify and analyze it. Mr. Jacobs (sic).

5 MR. JOSEPH: I can't let an opportunity go by to
6 actually agree with Rick Wolfinger. Since they're going to
7 be using both sources --

8 COMMISSIONER SHARPLESS: Because of Mother's Day?

9 MR. JOSEPH: All of us do have mothers. Because
10 they will be using water from both sources the selection of
11 the water source doesn't effect the outcome or the result.
12 It could affect --

13 COMMISSIONER SHARPLESS: The levels.

14 MR. JOSEPH: The levels and the specific analysis
15 and the type of permit required but both do have to be
16 analyzed because both will be used at one time or another.
17 And we did in the letter we wrote analyze both different
18 sources using several different data sets, both from the ASC
19 and directly from Department of Water Resources and separate
20 data that we obtained on the groundwater so that we're not
21 reliant on a single source of data for the analysis.

22 This is not the appropriate time to debate before
23 you the interpretation of federal and state law about whether
24 this is an intermediate product or not. We clearly
25 considered that issue and we disagree with it. And we had

1 those discussions with DTSC before we submitted this letter
2 because we wanted to be sure that we were on solid ground and
3 that the agency agreed with us.

4 I'm not sure exactly what Rick Buell was referring
5 to about not having the same concerns about the schedule
6 because we didn't, as far as I know, make any representations
7 about the affect on the schedule other than the fact that the
8 permitting process has not even been started. There are a
9 number of different types of permits with DTSC issues
10 requiring different levels of analysis and time. At this
11 point we don't have an opinion as to which type of permit is
12 the appropriate type of permit.

13 So at this point we're not prepared to make any
14 representations to you about exactly how long this process
15 will take. But like any other permit the Commission does
16 have to include in the Final Staff Assessment and in the
17 documents, the Presiding Member's Report and Final Decision
18 whatever conditions DTSC would impose.

19 HEARING OFFICER VALKOSKY: Do you have any idea of
20 the range in the time for the different permitting processes?

21 MR. JOSEPH: Actually, I think we do and I think
22 it's near the end of the letter. Actually, it's not. We do
23 list the different types of permits that are granted but not
24 the time frames. I think the difference is numbers of
25 months, from a few months to a larger number of months.

1 COMMISSIONER SHARPLESS: Clearly, we can't even
2 begin to get to that level of detail until we have a little
3 bit more in the way of discussion and know what we're doing.
4 Since we're contemplating--and I don't know whether this
5 would be possible to put in a May 7th document--but if we're
6 contemplating another step/conference, we need another step
7 in here with another conference, it is very likely that this
8 could be one of the issues that we schedule just so we find
9 out exactly what we're doing with it since we can't deal with
10 it today, obviously.

11 But the issue has been identified and I think we
12 know what we need to do in order to try to get to some facts
13 and then from there what we do about -- Does anybody, perhaps
14 Rick Buell, do you have any thoughts about adding this to the
15 May 7th response? So far we've got water and we've got --
16 What was the other issue besides water? Oh, the pipeline,
17 that's right. Water and the pipeline.

18 MR. BUELL: Staff is not scheduled to --

19 COMMISSIONER SHARPLESS: That's right, on May --
20 That's the applicant that was going to on the air quality
21 stuff. Yes.

22 MR. BUELL: Certainly we'll attempt to discuss this
23 issue at our workshop this week and if we have anything new
24 to report we'll do so.

25 COMMISSIONER SHARPLESS: Well at least you can tell

1 us where you are in the process.

2 MR. BUELL: Yes.

3 COMMISSIONER SHARPLESS: So we have that. Okay.
4 Any more issues that you wanted to deal with that basically
5 deal with the toxics?

6 MR. THOMPSON: Not on the toxics.

7 MR. JOSEPH: That's it. There's a both legal and
8 substantive issue out there.

9 COMMISSIONER SHARPLESS: Okay. Mr. Thompson.

10 MR. THOMPSON: No, I wanted to apologize to the
11 staff. I mentioned that I thought the Visual section was not
12 getting put in and I mis-spoke.

13 COMMISSIONER SHARPLESS: Okay, fine. Staff?

14 MR. BUELL: Speaking of Visual, staff has one
15 question they would like to ask on the topic of Visual. And
16 if Mr. Walker would do so quickly because we are pressed for
17 time.

18 MR. WALKER: I'm Gary Walker, Commission staff for
19 Visual Resources. There was a February 4th, I think it was,
20 letter from FAA to John Roberts concerning lighting for the
21 project, hazard lighting. Are you aware of that?

22 MR. WOLFINGER: I think it said that they were
23 thinking about putting hazardous lights on.

24 MR. WALKER: And it didn't say *thinking*, it said
25 they would be required --

1 MR. WOLFINGER: Yes.

2 MR. WALKER: -- on the exhaust stacks and on the
3 transmission towers on the SCIA property. Have you had any
4 further consultation with them or have you interpreted what
5 that means? Exactly what kind of lighting that means,
6 obviously it's hazard lighting. The point being, it has an
7 effect on the visual analysis of what kind of lighting you're
8 going to be required to put on those transmission towers and
9 stacks. Like strobe lights or bright white lights or red
10 flashing lights or whatever else it is that is in effect.

11 MR. WOLFINGER: I don't think we've -- We haven't.

12 MR. BUELL: Can you get back to us on what you
13 might find in a week or so?

14 MR. WOLFINGER: We'll certainly call and ask them.
15 I mean --

16 MR. BUELL: Okay.

17 MR. WOLFINGER: We'll bring it up with them, what
18 kind of lights. We just kind of look at the fact we need
19 lights and we'll put lights up. Eventually that detail would
20 have been -- But I understand your point your making, Gary.

21 MR. WALKER: I'd like to put it in the PSA.

22 MR. WOLFINGER: To understand exactly what kind of
23 lights because they might have different effects, obviously.

24 MR. WALKER: Right.

25 MR. WOLFINGER: What they are. Okay, sure.

1 MR. WALKER: Because in general we're trying to
2 minimize the lighting out there, as applicant's application
3 tries to do for the power plant, it tries to minimize any
4 off-site lighting. If this is required we'd like to know
5 what it consists of. I'm particularly concerned because it
6 appears that if an alternative route for the transmission
7 line is used that doesn't follow El Evado Road it would get
8 off the airport property and wouldn't have to require those
9 lights.

10 COMMISSIONER SHARPLESS: Okay. Okay, I think --

11 MR. WOLFINGER: If we could just ask a question.
12 Did you interpret -- I remember reading that. Did you
13 interpret that they were going to require lights along the
14 entire transmission line? Probably just --

15 MR. WALKER: On the airport property.

16 MR. WOLFINGER: Yeah.

17 MR. WALKER: It said, on the property.

18 MR. WOLFINGER: I think we'll probably go back and
19 ask them that anyway because I think it's probably -- You
20 know the contour of that too. I mean, if -- There are a lot
21 of places that it's very low, in fact below the level of
22 where it goes down. So I think we would probably have gone
23 back and asked them if it was really that's what they meant
24 or they want it up by the substation. My impression was
25 probably they were going to ask for it up on the high plateau

1 area. But as it starts to go down they're probably not going
2 to ask for it. But I didn't focus on it. We will focus on
3 it more and answer that question for you.

4 MR. WALKER: Okay, and just what type of lights
5 too.

6 MR. WOLFINGER: Right, right. The kind of lights
7 and if they really want the whole thing or they were saying,
8 you're going to need some near the station because that's
9 near the runway.

10 MR. WALKER: Okay.

11 MR. WOLFINGER: Okay, we'll check that out.

12 MR. WALKER: Thanks.

13 COMMISSIONER SHARPLESS: Commissioner Laurie.

14 COMMISSIONER LAURIE: No, I'm anxious to hear from
15 Mr. Joseph.

16 COMMISSIONER SHARPLESS: Mr. Joseph on lights?

17 MR. JOSEPH: No.

18 COMMISSIONER LAURIE: I'm sorry, I thought you had
19 some final comment.

20 **SCHEDULE**

21 COMMISSIONER SHARPLESS: No, I think we're going to
22 move to the schedule now. And at this point I'd like to turn
23 it to Stan. Stan, if you could help us work through the --
24 Thank you, Commissioner Laurie. If you will help us. In
25 light of the discussion that we've had here trying to work

1 through the impacts on the PSA and what may or may not be in
2 the PSA and getting information to us to adequately do an FSA
3 and the fact that we're talking about possibly having another
4 conference, mini-conference, why don't we talk about
5 potential delay and scheduling options.

6 HEARING OFFICER VALKOSKY: Okay. First, I would
7 like first the staff and then the applicant and then CURE to
8 address the merits and the usefulness of releasing a PSA on
9 May 15th. Which will, to my understanding, not include Air
10 Quality Alternatives, Land Use, Public Health, Transmission
11 Line Engineering, Waste Management, Water Resources as well
12 as the Gas Pipeline.

13 COMMISSIONER SHARPLESS: This is the PSA, right?

14 HEARING OFFICER VALKOSKY: This is the PSA, yes.

15 COMMISSIONER SHARPLESS: Fine.

16 HEARING OFFICER VALKOSKY: Okay. Mr. Buell, you
17 indicated --

18 COMMISSIONER SHARPLESS: Would it be easier to say
19 what it will include?

20 HEARING OFFICER VALKOSKY: I think we're at that
21 fine balance point, yes. Mr. Buell, what do you view as the
22 benefits of releasing such a document on the 15th?

23 MS. HOUGH: Compliance with your Order.

24 MR. BUELL: First off, staff believes that it is an
25 important document. The PSA is a useful tool to use as the

1 basis for discussing issues between the parties on many
2 topics. We believe that we'll have a complete, a relatively
3 complete analysis in what I would call *many areas* and those
4 would include--if I can find my list--Safety and Fire
5 Protections, Hazardous Material Handling, Traffic, Noise,
6 Visual Resources, Socioeconomic, Facility Design, Reliability
7 and Efficiency. Those that would not be complete at this
8 point in time of course would be Air Quality Alternatives,
9 Land Use, Public Health, Transmission Line Engineering, Waste
10 Management, Water Resources. Does that provide sufficient
11 response?

12 HEARING OFFICER VALKOSKY: Again, it's so -- Let me
13 approach it this way. You would intend, I suppose, that if
14 you issued the PSA on May 15th that that would serve as a
15 vehicle for productive discussion of the topics that are
16 included in it. Under your one proposal you would then
17 reissue the PSA at a later point in time; isn't that correct?

18 MR. BUELL: That's correct.

19 HEARING OFFICER VALKOSKY: Okay. So by reissuing
20 the PSA I assume the reissued PSA would then contain the
21 missing areas.

22 MR. BUELL: Correct.

23 HEARING OFFICER VALKOSKY: Okay. And the non-
24 controversial areas would appear in two PSA's, right? Two
25 versions of the PSA, essentially.

1 MR. BUELL: Correct, although we could refine those
2 PSA sections as necessary in the interim.

3 HEARING OFFICER VALKOSKY: Okay. I guess that
4 being so I wonder about one of your potential schedules. It
5 seems to me you want about the same amount of time to prepare
6 the FSA for either one PSA or the reissued PSA when the
7 reissued PSA, at least half of it would have already been
8 considered, been reviewed.

9 MR. BUELL: And your question is, why do we need
10 that same amount of time?

11 HEARING OFFICER VALKOSKY: Right, yes.

12 MR. BUELL: Primarily because those are the
13 contentious issues and we feel that it will take that amount
14 of time to reach or attempt to reach concurrence with the
15 applicant on as many issues and narrow the scope of the
16 evidentiary hearings. The normal time between a PSA and an
17 FSA is 60 days. We've cut it back to 45 to try to expedite
18 things in this case.

19 HEARING OFFICER VALKOSKY: Okay. And you do think
20 that that would expedite things in this case?

21 MR. BUELL: Yes.

22 HEARING OFFICER VALKOSKY: Okay. Mr. Thompson, you
23 indicated you saw benefit in releasing the partial PSA on May
24 15th, can you explain it to me.

25 MR. THOMPSON: Yes, I do. I think that the areas

1 that staff will have in its PSA are areas that we can
2 fruitfully take to the next level. And what occurs between
3 that PSA and FSA on our side of the table is that we have the
4 ability to sit down with staff with their preliminary
5 analysis and start hammering out conditions of certification
6 and verification of those conditions. Not only does that
7 take resource time for the specialists within the area but it
8 also takes staff management review time. To the extent that
9 we can get started on those areas, put them to bed so to
10 speak, I think it will be easier to handle the admittedly
11 more difficult air and water sections when they become
12 sufficiently far along for the staff to include them in
13 either a second PSA or a reissued PSA.

14 HEARING OFFICER VALKOSKY: Okay. So you would be
15 supporting staff's reissued PSA then, correct?

16 MR. THOMPSON: Yes.

17 HEARING OFFICER VALKOSKY: Okay, but now would you
18 also be supporting staff's proposal for a 45 day schedule
19 extension, because I believe that's part and parcel of their
20 proposal for the reissued PSA.

21 MR. THOMPSON: Well, I'm not sure I can go that far
22 yet. I think that there's a tremendous amount that hopefully
23 will get accomplished, even in the next few weeks. I would
24 suggest that staff issue its PSA on the areas that they're
25 comfortable issuing them. And that if we have a conference

1 sometime around the issuance of that PSA, sometime around May
2 15, we can see where we are and set a schedule at that time.
3 I don't know that it's necessary to come up with a schedule
4 following PSA issuance now.

5 And frankly, I'm hoping that there are a number of
6 these areas that we can make a sufficient amount of progress
7 in so that we'll be better informed with regard to future
8 schedule in two and a half weeks or so.

9 HEARING OFFICER VALKOSKY: Okay. So your bottom
10 line is that it's premature at this point, right?

11 MR. THOMPSON: Yes.

12 HEARING OFFICER VALKOSKY: Mr. Joseph, I believe
13 you supported bifurcating the processes as one of your -- I'm
14 sorry, bifurcating the PSA as one of your options.

15 MR. JOSEPH: That's right. I think the important
16 principle here is that at some point there is a complete PSA
17 which is issued so that the issues can be narrowed for
18 hearing so that the Final Staff Assessment can reflect an
19 interactive process between a complete PSA and an FSA. It
20 sounds to me as though there is some merit in issuing a PSA
21 in those areas where it can be issued reliably at this point.
22 I don't see any harm in doing so, so long as that doesn't
23 replace, you know, a complete PSA at some point.

24 HEARING OFFICER VALKOSKY: Okay. And you think
25 there has to be a complete PSA, meaning one document,

1 including all, or can a PSA be issued in two parts?

2 MR. JOSEPH: It can be issued in two parts.

3 HEARING OFFICER VALKOSKY: Okay.

4 MR. JOSEPH: What I mean is that each section of
5 the PSA get issued at some point.

6 HEARING OFFICER VALKOSKY: Okay, right. And will
7 everyone agree with me that a PSA is not required, legally?

8 MS. HOUGH: Yes.

9 MR. THOMPSON: Yes, Staff Analysis only.

10 HEARING OFFICER VALKOSKY: So that the Final Staff
11 Analysis is essentially the operative document. Mr. Buell.

12 MR. BUELL: One point that I want to make clear to
13 all the parties so that they aren't surprised when we publish
14 the PSA, and that is that the PSA will contain a section for
15 every technical area the staff intends to deal with in this
16 project. It will have as much information on air quality,
17 for example, as staff is able to put together at this point
18 in time. That's likely to be a discussion of the setting in
19 LORS, Laws, Ordinances and Standings that would govern review
20 of the project, and it would hopefully identify the
21 information that staff believes is necessary and the fact
22 that staff is unable to recommend approval of the project at
23 this time on the topic of air quality.

24 MR. WOLFINGER: But you'll talk about all the
25 issues then. Is that what I'm understanding? You'll

1 actually hit them. You'll actually talk about them but your
2 assessment won't be done yet.

3 MR. BUELL: Correct. And I can't say that we'll
4 discuss every issue because the assessment isn't complete at
5 that point in time but there will be an attempt.

6 MR. WOLFINGER: That would be good. I'm anxious to
7 get some feedback.

8 MR. BUELL: The second point that the staff wanted
9 to raise is although the applicant is not -- would like to
10 postpone the balance of the schedule beyond the PSA is that
11 we must recognize at this point in time that if we reissue
12 the PSA at some point the Schedule C that staff is
13 recommending, the schedule, we cannot reach a decision in 12
14 months. That is staff's belief, unless the Committee is
15 willing to do things on an extraordinary time schedule.

16 MS. HOUGH: Right. In other words, we can't have
17 both a complete PSA and keep to the one year schedule.

18 HEARING OFFICER VALKOSKY: Willingness and ability
19 are two different things, let's keep that separate. And that
20 is because of what specific instance, Mr. Buell, that would
21 lead to extension of the schedule?

22 MR. BUELL: Well, if we keep with the schedule that
23 staff has outlined we would postpone -- the reissue of the
24 PSA would come out approximately the time that we had
25 identified the Final Staff Assessment. So your 45 days into

1 pushing everything back beyond that point to allow the
2 Committee the same amount of time we would have in Schedule
3 B. I'm referring to page 15.

4 HEARING OFFICER VALKOSKY: Okay, all right.

5 COMMISSIONER SHARPLESS: So under your plan, under
6 the bifurcated system where you have an initial PSA and then
7 a complete PSA, you would, by going that direction have a
8 delay of about 45 days.

9 MR. BUELL: That's correct. That's our assessment
10 at this point in time unless we can shorten the time between
11 the PSA and the FSA or find time somehow.

12 COMMISSIONER SHARPLESS: Talk to me about that time
13 period and help me appreciate what happens between. If you
14 do a full PSA what happens between the full and the FSA? So
15 that I can appreciate what the timing issue is.

16 MR. BUELL: Traditionally what we've used -- As we
17 say in our staff report, we use that PSA as a vehicle for
18 resolving issues. And that may be whether or not we consider
19 an impact significant. We may spend workshops, days perhaps,
20 discussing whether the waste from the crystallizer is
21 hazardous and sharing information and discussing that. We
22 may spend days discussing in workshop forums the conditions
23 of certification, ensuring that what we are proposing is
24 something that the applicant is willing to live with, it's
25 something that they feel is an appropriate negotiation.

1 COMMISSIONER SHARPLESS: So between the full PSA
2 and the final PSA is an opportunity to further narrow the
3 issues so that when we go to the adjudicatory process you are
4 dealing with rather a narrower set of issues than a broader
5 set of issues.

6 MS. HOUGH: You both narrow the --

7 COMMISSIONER SHARPLESS: What is the likely outcome
8 if you don't narrow those set of issues? Then what are we
9 dealing with in terms of timing on the other end? If we just
10 say, oh, the heck with it, you know, we're just going to
11 adjudicate everything and we let all that stuff happen in the
12 Final Staff Assessment. What does that do in terms of
13 timing?

14 MS. HOUGH: It makes your hearing process much more
15 cumbersome. You end up with many more days of hearings
16 because you're resolving issues in hearings that could have
17 been resolved in workshops between the issuance of the PSA
18 and the FSA. The FSA is staff's testimony that goes to
19 hearings, it's what people respond to. It's what the
20 applicant will respond to, it's what CURE will respond to,
21 it's what other agencies will respond to.

22 If we get a chance to get a draft out of that first
23 we may end up adjudicating the same issues but the
24 adjudication is likely to be much more focused and it's also
25 likely to be much neater in terms of the arguments. Things

1 will be much more clearly laid out for the Committee as a
2 result of having put out the PSA first and having had a
3 chance to get comments and to have workshops on it.

4 MR. JOSEPH: I think there is more than a one-to-
5 one benefit in time between the PSA and the FSA in terms of
6 the balance between those days and hearing days. The
7 informal setting is more productive than the formal setting
8 in resolving issues.

9 HEARING OFFICER VALKOSKY: Commissioner, I would
10 have to agree with that because the PSA as it's evolved over
11 the last 15 years of practice at the Commission has proved
12 its usefulness. Just to reiterate what Ms. Hough said, it's
13 certainly -- A good PSA leading to an FSA, a good FSA,
14 focuses the evidentiary hearings, limits their scope, limits
15 their days and also when the Committee is deliberating it
16 actually limits the number of items in most cases that the
17 Committee actually has to spend extensive time deliberating.
18 So it's a way that if it works well it saves time.

19 COMMISSIONER SHARPLESS: Does the applicant have
20 any thoughts?

21 MR. THOMPSON: Yes. I don't think it's -- I don't
22 think it's an either/or proposition. I've had cases in this
23 Commission where we did have one staff analysis and there
24 were issues that were able to be resolved after the staff
25 analysis came out. I'm not suggesting that for this case.

1 But what I'm suggesting is that the time limit for
2 issue resolution does not start on a day certain after
3 issuance of the PSA and end on a date certain before the FSA.
4 I think it's a continual effort on the part of the parties to
5 try and sharpen and resolve issues before we come to you for
6 hearings. And indeed in cases that I've been in that has
7 occurred after hearings, after the Presiding Member's Report
8 has come out, and in one case that I'd like to forget, I
9 think, occurred after the Draft Decision came out. So issue
10 resolution is not something that we have a start date and end
11 date. This is something that when we get the go-ahead, which
12 has often been the PSA, we start those discussions with staff
13 and other interested parties and will continue them until we
14 can reach resolution or items come to you.

15 COMMISSIONER SHARPLESS: Having said that, and I
16 certainly think that that is probably very much the case, I
17 trust what you're saying, it still gets down to, I think, the
18 issue that we find ourselves currently in, which is to keep
19 the process going, move the issues along where they have the
20 analysis and there's something that you can start the process
21 on rather than delay the PSA for May 15th.

22 But obviously there's going to be a lot of critical
23 path issues that won't be in that PSA so then the issue
24 becomes, given that, the staff is recommending a second PSA
25 which allows for that analysis to occur with the critical

1 path issues. That then, if I understand what staff is saying
2 and Stan Valkosky, is that that helps to then focus the
3 issues for the Final Staff Assessment. And I think that's
4 really where I'm trying to prompt some response from you, the
5 value of that. And if in fact you feel that that value
6 exists then there is a time element involved in it.

7 MR. THOMPSON: That's exactly right. I don't know
8 that it matters to me whether or not staff comes out with a
9 two-part PSA or a revised PSA with the initial resolved items
10 in it, I'm not sure that I have an opinion on that. But I do
11 think that the critical analysis that the staff is undergoing
12 right now in all of the areas is a necessary exercise on
13 their part, the product of which is the staff analysis, P or
14 F. And it's that staff analysis that is critical to our
15 commencing our discussions for the resolution of issues.

16 So I'm not sure I'm still answering your question
17 but number one, I would advocate issuance of the PSA on May
18 15 or whatever appropriate date with whatever sections they
19 have in it. Number two, I would advocate issuing a PSA, I
20 think, on the areas that are unresolved at a date when staff
21 can issue it and we will take the time after those two
22 documents hit the street to resolve issues.

23 HEARING OFFICER VALKOSKY: Okay. But Mr. Thompson,
24 and I think this is, you know, actually, in my view it's the
25 root of the problem. Whether or not you have a PSA, okay,

1 depends on when you get the information in. Because we all
2 agree that the Final Staff Assessment, that document
3 containing the testimony, is the one which we're all going to
4 legally react to, okay. Now, to have an advanced version of
5 that, having a PSA -- And again, staff is prepared to release
6 it on half of the areas and is not prepared to release it on
7 the other half of the areas. Their response to that is
8 because they don't yet have enough information to release it
9 on the second half of the areas, you know.

10 So you've got a timing question here which of
11 course is a scheduling question, ultimately. Because
12 depending on when they get the information to prepare their
13 PSA that is then going to have another effect on when the FSA
14 comes out, which is the document that we actually need. So I
15 think, you know, when it really comes down to it you can call
16 these documents anything you want, you can stage them any way
17 you want, what it really comes down to is when can they get
18 the information that they need, you know. Not only to do a
19 PSA but, you know, ultimately to do an FSA.

20 MR. THOMPSON: I absolutely agree.

21 HEARING OFFICER VALKOSKY: That's it.

22 MR. THOMPSON: And part of the reason I was
23 advocating delaying the schedule beyond the PSA for two or
24 two and a half weeks is because I am hopeful that a number of
25 the outstanding data deficiencies, positions, whatever, we

1 can provide in that time and we'll have a better idea of
2 schedule in two and a half weeks or so.

3 HEARING OFFICER VALKOSKY: Okay. Does the staff
4 share those concerns? Does the staff share Mr. Thompson's
5 optimism?

6 MS. HOUGH: No.

7 HEARING OFFICER VALKOSKY: No?

8 MS. HOUGH: We've had trouble getting data. And
9 whether we want to call it trouble communicating or trouble
10 getting the information, so far it's been a pretty arduous
11 process. I'd like to think it's going to be changed but if
12 you had to ask me if I had confidence that it's going to
13 change tomorrow I can't say yes.

14 HEARING OFFICER VALKOSKY: Well, I think we had a
15 -- not a tomorrow date but we had a period of two and a half
16 weeks in there, I believe. From my point of view do you
17 think, based on the discussions you've had today and based on
18 some of the information that's supposed to come in, certainly
19 no later than May 7, do you think that will --

20 Is there a reasonable possibility that it will
21 change your mind as to the rest of the schedule if the
22 Committee were to defer issuing any sort of schedule in its
23 next Order and rather first held a conference to discuss
24 that? If we come back here in two weeks or two and a half
25 weeks are we going to get different answers? Are we going to

1 get answers showing more progress or are we going to be in
2 the same place? That's, I think, what I really want to know.

3 MR. BUELL: I would have to concur with Caryn's
4 assessment that we're likely to be in the same place. With
5 all due respect to the applicant I would hope that next
6 Thursday we'll sit down, we'll have progress made and we'll
7 resolve a lot of issues but there's a lot of issues to be
8 resolved. I think we're going to end up on May 11th, which
9 was the tentative day I think for the conference the
10 Committee was talking about, in a situation that's very
11 similar to where we are now, talking about a PSA in four days
12 that's not going to be complete on most areas. Excuse me, on
13 some areas.

14 HEARING OFFICER VALKOSKY: Mr. Joseph, your
15 impressions?

16 MR. JOSEPH: I think perhaps the way to crack this
17 nut is to take staff's suggestion in their status report
18 which I thought was very, very good and that's a performance-
19 based schedule. Don't decide up front how likely
20 Mr. Thompson's prediction is. Come up with a list of things
21 which have to be provided and then start the clock from when
22 they're provided.

23 HEARING OFFICER VALKOSKY: Right, and I'm just --

24 MR. JOSEPH: Then it's in the applicant's hands.

25 HEARING OFFICER VALKOSKY: I understand that but it

1 seems to me that after today's discussion we have a little
2 more identification of some of those items yet, okay. We
3 don't know for sure, for example, what the DTSC process is,
4 let alone how long it's going to take. Mr. Wolfinger has
5 until May 7th to tell us when he thinks he'll be able to
6 identify the offsets. You know, things like that.

7 I'm not ruling out the concept of a performance-
8 based schedule, I just wonder if it is still yet premature to
9 specify the items for which performance will be expected.
10 That's all. You know, if we wait another two and a half
11 weeks will we make progress toward identifying those items or
12 actually having some -- possibly supply some of them. That's
13 what it comes down to in my mind.

14 MR. JOSEPH: The answer to your question truthfully
15 is, I don't know.

16 HEARING OFFICER VALKOSKY: Yes.

17 MR. JOSEPH: And I would expect if we have a
18 conference in two and a half weeks, I would expect to come in
19 here with a list of the items which have to be obtained, you
20 know, the performance items which have to be obtained. Rick
21 Buell has got an excellent start in here with his list of
22 eight items which cause them concern.

23 HEARING OFFICER VALKOSKY: Yes, page 14, page 15.

24 MR. JOSEPH: Right, page 14. And I think, you
25 know, I would start with that list. And the list may be

1 complete, maybe there's one or two things which we can cross
2 off, maybe the FAA issue will be taken care of very quickly.
3 But I think that would be the framework for deciding
4 specifically what items need to be produced in order to start
5 the clock.

6 HEARING OFFICER VALKOSKY: Mr. Thompson, how do you
7 feel about the concept of a performance schedule? Not
8 necessarily including the items set forth in Mr. Buell's
9 document but the basic concept. In other words, we could
10 establish a schedule based upon the expectation that certain
11 data would be submitted by a time certain and we could then
12 subsequently schedule it.

13 MR. THOMPSON: My only difficulty with that is that
14 it would tend to, or it could take some of the pressure off
15 the communications that I believe are absolutely necessary
16 between the staff and ourselves. We have had difficulty
17 trying to reach accord on what is required of us and today is
18 probably the best day that we have had as far as getting
19 information from the staff on what we need. That's why I
20 would advocate more days like today. If it is all on our
21 side of the table I think that we fall into the issue of
22 continuing again to see eye-to-eye with the staff in
23 resolving those information difficulties.

24 And frankly, among the eight issues here there are
25 some that are not anywhere on our side of the table. If the

1 staff wants to go to a federal agency and question the
2 calculation that the federal agency uses, I'm not so sure
3 that those kinds of things should be on our side of the
4 table. That we should --

5 HEARING OFFICER VALKOSKY: I understand that and I
6 said, don't, you know. Don't fixate on the items that staff
7 has specified, I'm just asking about the concept of a
8 performance schedule. In other words, the Committee is going
9 to at some point realize that it needs certain data and that
10 for the rest of the process to flow, either on this time line
11 or an extended time line that this information has to be in
12 at a certain time. As you well know, we get farther down our
13 process, there are time periods that are set by statute and
14 regulation the Committee has no control over. So, you know,
15 that's got to be factored in. So what I'm asking is the
16 basic concept of it.

17 MR. THOMPSON: I don't think we have any problem
18 with the basic concept. We'd like to obviously work on the
19 delineation of the issues and -- I'm sounding like a broken
20 record but no one knows what a record is anymore, I'm
21 sounding like a broken CD. But if we had another couple
22 weeks, not only to work on that but on the information
23 requirements we'd be better off, I think.

24 HEARING OFFICER VALKOSKY: Okay, so then if the
25 Committee were to find it possible to schedule a conference

1 in a couple of weeks that would be one of the things that in
2 your view would be appropriate to discuss?

3 MR. THOMPSON: Yes, we could come prepared to
4 talk --

5 HEARING OFFICER VALKOSKY: The specific items of a
6 performance schedule?

7 MR. THOMPSON: Yes. Yes.

8 MR. BUELL: Stan, if I might make one response to
9 the applicant. I think the record speaks for itself, I won't
10 belabor this point. Staff believes it has attempted on every
11 occasion that it has come before us to identify the
12 informational requirements, the outstanding information to
13 the applicant. I think the record speaks for itself and I
14 will say no more.

15 MR. WOLFINGER: I'd like to just say that we would
16 like to have meetings every two weeks, we have a direct face-
17 to-face with the staff to communicate better. I'm requesting
18 that as the applicant, that somehow it get set up and that we
19 can do that.

20 COMMISSIONER SHARPLESS: Every two weeks with
21 staff?

22 MR. WOLFINGER: With staff. Preferably here. If
23 they want to hold more meetings down in Victorville that's
24 fine but so that if there are issues we can call somebody and
25 actually talk about it when there are not time constraints

1 and issues like that. We think that would be very good. The
2 other thing is that there are two pretty big open items where
3 we still don't know what's needed and that's the water and
4 the gas pipeline. And I think that -- You know, that's part
5 of what we're going to work on on April 30th so --

6 HEARING OFFICER VALKOSKY: Thursday. Thursday,
7 right?

8 MR. WOLFINGER: Yes, Thursday. So I mean, let's go
9 also -- I think when we talk about the schedule and how it
10 works, I mean, who knows, it may be even longer, you know. I
11 think there's still a couple of issues out here that we're
12 not even sure how broad it is and I think it would be good to
13 have something in the middle of May and have some of these
14 things, have the water and at least the pipeline to
15 understand if there are bigger issues out here that we --

16 HEARING OFFICER VALKOSKY: And some of the data
17 requirements on that I assume logically --

18 MR. WOLFINGER: Then we'll have the other ones.

19 HEARING OFFICER VALKOSKY: -- could logically
20 become part of any sort of performance schedule that was --

21 MR. WOLFINGER: Right.

22 COMMISSIONER SHARPLESS: Again, when was the
23 workshop for the transmission study? I'm sorry, I know I
24 asked you that before but I've lost where I wrote it.

25 MR. BUELL: We have not scheduled that workshop yet

1 and the tentative date would be May 22nd.

2 COMMISSIONER SHARPLESS: Okay.

3 MR. JOSEPH: After May 22nd.

4 COMMISSIONER SHARPLESS: After May 22nd because the
5 22nd is the date of the ISO; is that it?

6 MR. BUELL: You're right, thank you.

7 COMMISSIONER SHARPLESS: Great, okay. I really want
8 to thank the applicant and staff and CURE and other parties
9 for their patience with the Committee today in walking us
10 through and discussing these issues. We will of course look
11 forward to what we receive as a result of your deliberations
12 on Thursday, it will give the Committee an opportunity to
13 further define what it is that we think we -- how we need to
14 proceed. We are looking at the possibility of another
15 conference sometime in May, we'll see how that works and what
16 the proper timing is. I think the Committee will be coming
17 out with a written statement -- Do we call them Orders, Stan?

18 HEARING OFFICER VALKOSKY: Let's see. If the
19 Committee decides to schedule a conference we'll fill out a
20 Notice and an Order.

21 COMMISSIONER SHARPLESS: Right, okay. Anyway, stay
22 tuned. Again, I hope you can catch your planes back to where
23 you're going and thank you very much, we are adjourned.

24 (Thereupon the conference concluded at 4:12 p.m.)

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CERTIFICATE OF TRANSCRIPT

I, Ramona Cota, as the Official Transcriber, hereby certify that the attached proceedings before Chief Hearing Officer Valkosky, California Energy Commission,

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)	
Application for Certification)	
for the High Desert Power Project)	
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were held as herein appears and that this is the original transcript thereof and that the statements that appear in this transcript were transcribed by me to the best of my ability.

I further certify that this transcript is a true, complete, and accurate record of the proceeding.

 Ramona Cota
 May 7, 1998
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