

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 Plant)
Project)
_____)

COMMITTEE STATUS CONFERENCE

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

Thursday, February 18, 1999
10:15 a.m. to 12:40 p.m.

Reported and Transcribed by: Theresa Aguilar,
RPR, CSR No. 10498

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

CARYN J. HOUGH, Senior Staff Counsel

NANCEE MURRAY, Senior Staff Counsel

For the Applicant:

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

ALLAN THOMPSON, Law Office of Allan J. Thompson

TOM BARNETT, Vice-president of Constellation Power

For the Intervenors:

MARC D. JOSEPH and LIZANNE REYNOLDS, Adams Broadwell &
Joseph

On behalf of California Unions for Reliable Energy

ANDREW W. BETTWY, Assistant General Counsel

On behalf of Southwest Gas Corporation

I N D E X

	Page
Proceedings	4
Adjournment	101
Certification and Declaration of Transcriber	103

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
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P R O C E E D I N G S

THURSDAY, FEBRUARY 18, 1999 SACRAMENTO, CALIFORNIA

10:15 A.M.

COMMISSIONER SHARPLESS: Good morning.

Good morning, Applicant, Intervenors, Staff.

I know you've had a busy schedule. I know you've been meeting in workshops in responding to our order of December 16th. We'd like to find out today exactly what the order indicated, what the status is and how close we are in going to evidentiary hearings, and we will use the same type of schedule that we used in the past by allowing each party to state their positions and then have discussion.

I hope that we will be able to at the very latest, or perhaps we can be optimistic and get through earlier, but at 3:00 o'clock I have to catch a plane, so it means that we need to stay on point today and see if we can get through the schedule and hope that satisfies everybody here.

I'd like to start with introductions. Most of know who we are. We've been at this since December of '97. We're past our year statutory deadline, but we have adopted a scheduling process that allowed at the agreement the Applicant to skip the process because of the informational needs. So I4

1 will start the introductions.

2 I'm Jananne Sharpless. I'm the presiding
3 member of the High Desert Siting Committee. And to
4 my left is Commissioner Laurie, the second member.
5 And also to my left -- my most immediate left is Stan
6 Valkosky, who is the hearing officer. And to my
7 right is Rosella Shapiro, my adviser.

8 I'd like to allow the individuals at the
9 dyas or at the tables today to introduce themselves
10 so those in the audience, and those who don't know
11 one another can get to know one another.

12 Why don't we start with you, sir.

13 MR. BETTWY: Good morning. My name is Andy
14 Bettwy. I'm assistant general counsel for Southwest
15 Gas Corporation.

16 MR. WELCH: Andy Welch. I'm the project
17 director for the high Desert Project.

18 MR. THOMPSON: I'm Allan Thompson,
19 Licensing counsel. I guess you called me for the
20 High Desert Power Project. To my left is someone you
21 don't know yet, and I've asked him to say a few words
22 of introduction. His name is Tom Barnett with
23 Constellation.

24 COMMISSIONER SHARPLESS: Mr. Barnett, nice
25 to have you hear this morning.

26 MR. BARNETT: Thank you very much. It's a 5

1 pleasure to meet you all. I want to take just a
2 second to give a little more of lengthy introduction
3 to myself, since I'm brand new, certainly to you all.

4 My name is Tom Barnett. I'm a
5 vice-president with Constellation Power, which is the
6 parent company of the members of High Desert Power
7 Project, LLC. I'm also a vice-president with the LLC
8 itself and the project manager for the High Dessert
9 Power Project. I'm replacing Mr. Wolfinger, who I
10 think most of you met before, who is doing other
11 things in the east coast for Constellation, pursuing
12 other projects.

13 I'm actually relocating from Baltimore.
14 I've been with Constellation for 11 years, and I've
15 been involved in quite a number of their projects,
16 and taken them through the permitting and financing
17 stage to the beginning of construction, and I'm
18 relocating to Southern California.

19 I'm currently out here full time. My wife
20 isn't here yet, but hopefully will be soon. And I'm
21 full time on the project now, and have been for about
22 two months, and had an opportunity to get to know the
23 staff and attend the workshops, and I'm pretty much,
24 I think, in the thick of it now. So I'm looking
25 forward to working with you all and Staff to see this
26 through the completion.

1 COMMISSIONER SHARPLESS: We welcome you to
2 the process.

3 MR. BUELL: My name is Richard Buell. I'm
4 the Energy Commission staff's project manager.

5 MS. HOUGH: Caryn Hough, Staff counsel.

6 MR. JOSEPH: Marc Joseph here on behalf of
7 CURE.

8 MS. REYNOLDS: Lizanne Reynolds, also on
9 behalf of CURE.

10 COMMISSIONER SHARPLESS: Okay. Just a few
11 other items that probably deserve to be part of the
12 introduction. I'd also like to introduce our public
13 adviser, who you all know, I'm sure, by now.

14 MS. MENDONCA: It's Roberta Mendonca. We
15 have one possible Intervenor.

16 COMMISSIONER SHARPLESS: Yeah, I was going
17 to call you forward and allow you to make that
18 statement. The reason I hesitated was not that I
19 forgot your name, but looking from my papers
20 regarding the new request we have for intervening in
21 this case. We have -- I believe we have two, is that
22 right, at this point, and an uncertain.

23 And that is the issue that you were going
24 to bring to us is the uncertain member?

25 MS. MENDONCA: I've been having telephone
26 calls this morning, and I expect to have a certain 7

1 answer in about a half an hour, so I'm going back and
2 forth.

3 COMMISSIONER SHARPLESS: Okay. You've also
4 met Roberta because she's the woman with the blue
5 cards that helps us keep our meetings orderly, by
6 allowing us who in the public wishes to address the
7 committee regarding this project. So thank you,
8 Roberta.

9 The other items I'd like to bring up, we've
10 gotten a request from Southwest Gas Corporation, and
11 I believe that's you.

12 MR. BETTWY: Yes, ma'am, it is.

13 COMMISSIONER SHARPLESS: I believe -- Stan,
14 help me here. We just received the request?

15 JUDGE VALKOSKY: Yes, we received it today.

16 COMMISSIONER SHARPLESS: And formally under
17 our process, we receive the requests, and judges
18 them, and issues an order. We feel that the
19 statement made by Southwest Gas does, in fact, meet
20 the Intervenor requirements, and we would be sending
21 out an order, so that's why southwest is sitting at
22 the table at this time. Also, we have the Department
23 of Fish and Game. And Nancee Murray I know is in the
24 audience, because I have a blue card up here, and
25 she's senior staff counsel, and we welcome you,
26 Nancee.

1 Also we would be sending out an order
2 granting Intervenor status to the Department of Fish
3 and Game. Should we bring her up to the table?

4 If you could come up, and I'm sure we can
5 make room for you at the table as well. I'd also
6 like to be --

7 COMMISSIONER LAURIE: Madam chair?
8 Commissioner Sharpless, do I understand your comments
9 as indicating your intent to grant the motion to
10 intervene?

11 COMMISSIONER SHARPLESS: We have received
12 both petitions. One we received just in the last
13 day, and the other one we received as well, and we
14 are prepared to issue an order on it, yes,
15 Commissioner Laurie. I've talked to the hearing
16 officer and he's indicated that since we would be
17 issuing the order, that it's not inappropriate at
18 this time to offer those individuals a place at the
19 table. Are you raising concern?

20 COMMISSIONER LAURIE: I'm simply unaware of
21 an opportunity for discussion regarding the actual
22 decision to grant the motion.

23 COMMISSIONER SHARPLESS: Would you like to
24 have that discussion?

25 COMMISSIONER LAURIE: Not at this moment.

26 I have no objection to the party's sitting at the 9

1 table, however, I'm not prepared in this short notice
2 to indicate my position on a motion to intervene.

3 COMMISSIONER SHARPLESS: Okay. Fine. I
4 believe the administrative hearing officer has, in
5 fact, offered a constructive suggestion to allow the
6 intervenors to state the scope of their interest in
7 this project right now, that will help provide some
8 information. And I'll abide by your wishes,
9 Commissioner Laurie, that we will have an opportunity
10 after this hearing to discuss their intervening
11 status.

12 COMMISSIONER LAURIE: Thank you.

13 MR. BETTWY: Thank you. Is it okay to
14 remain seated?

15 COMMISSIONER SHARPLESS: As long as we can
16 get you recorded on the record, then -- I'll have to
17 ask our reporter if she can record you.

18 THE REPORTER: It's fine.

19 MR. BETTWY: Thank you very much,
20 Commissioners, Mr. Hearing officer. Southwest Gas
21 Corporation is potentially a provider of gas service
22 to the power plant that is under consideration.
23 Southwest Gas of course has been working with High
24 Desert for well over a year, and Southwest is
25 supportive of the project. We've been ambivalent
26 about seeking intervention status, and I would like 10

1 to explain briefly why we've made the decision to do
2 so. It's been within the last six months at least,
3 it's clear that there's a substantial interest in
4 aspects of the 32-mile pipeline that would proceed to
5 the north or from the plant to the north to the
6 Curran River transmission pipeline. And at the
7 interest that have been expressed relate to the
8 design, the siting, the construction and the
9 operation of that pipeline.

10 Additionally, it seems that as a practical
11 matter, if the matter proceeds to hearing, that
12 employees and other representatives of Southwest Gas
13 will be called or asked to be called as witnesses to
14 testify before you. Given those two reasons,
15 Southwest thought that -- I think it clearly has the
16 right to be here, but our decision wasn't based on
17 that. It was more should we or should we stay in the
18 wings like we have been, and we made the decision we
19 thought it would be more appropriate to have that
20 status.

21 And what I would envision, if I might
22 proceed, and let's assume the matter goes to hearing
23 and employees of Southwest were called. I would
24 propose to work with the Applicant to have those
25 witnesses called during the Applicant's case, but I
26 would be the one calling them and dealing with 11

1 cross-examination and whatever, related to the
2 testimony that they would give. If that would be a
3 satisfactory procedure, I guess I'd like to give you
4 a sort of heads up that we see ourselves as sort of
5 the Applicant's case as a practical matter, but
6 having the rights of an Intervenor go along with
7 having intervention status. So, if that's helpful...

8 COMMISSIONER SHARPLESS: Okay. And Nancee?

9 MS. MURRAY: The Department of Fish and
10 Game submitted it's petition yesterday, and we
11 believe that while we can and have been working well
12 with the Applicant, we wanted to submit this petition
13 to preserve our rights, should we later on need to
14 present evidence and cross-examination in that
15 evidentiary hearing. The department has trustee
16 responsibilities under the California Fish and Game
17 Code. We are the trustee agency for Fish and
18 Wildlife Resources. We have the authority to issue
19 endangered species acts incidental, take permits, and
20 the authority to issue extreme bed alteration
21 agreements.

22 We have been working with the Applicant for
23 over a year, and we believe that based on our
24 statutory responsibility, authority, and our interest
25 in the project in all of these workshops and meetings
26 and our continued participation, that we would

1 benefit from Intervenor status, and I hope that
2 answers your question.

3 COMMISSIONER SHARPLESS: Thank you.
4 Commissioner Laurie?

5 COMMISSIONER LAURIE: Thank you,
6 Commissioner Sharpless. It may very well be that
7 there is a proper practice and history to having
8 other state agencies intervene in individual
9 projects. I would appreciate your consideration,
10 take this matter under submission, and let me simply
11 offer a thought -- an initial thought: The process
12 we are going through is not a California Energy
13 Commission process. It's a State of California
14 process.

15 It is, thus, incumbent upon the energy
16 commission to work with its fellow state agencies in
17 providing appropriate evidence to go into these
18 proceedings. And I am just unsure at this point of
19 what that does to our relationship if, in fact, one
20 of those parties -- if in fact one of those agencies
21 suddenly becomes a party. How are we then free to
22 communicate through our own rules in order to resolve
23 procedural issues, for example? So I need to give
24 some thought to that, and I very much appreciate your
25 willingness to take the matter under submission if
26 even for a temporary basis.

1 COMMISSIONER SHARPLESS: Well, I certainly
2 appreciate the fact, Commissioner Laurie, that you
3 are looking at the entire process as a member of this
4 siting committee, that as we get involved in one more
5 case as these issues become more and more relevant.
6 I would only indicate that our own staff is a party
7 and as such, we deal within the same ex parte
8 communication rules that we would with any other
9 state agency. I understand what you mean by the
10 desire to have the State of California well
11 coordinated and working together, but the status of
12 Intervenor allows the opportunity for these
13 individuals to do their own cross-examining, and in
14 some cases, given the issues within this case, there
15 might be an advantage to that. And I think the
16 discussion between you and I is appropriate once we
17 complete our hearing here today.

18 COMMISSIONER LAURIE: Thank you.

19 COMMISSIONER SHARPLESS: Yes, Mr. Thompson.

20 MR. THOMPSON: Thank you. We don't
21 actively oppose either of these petitions to
22 intervene, but we would remind all parties that along
23 with the opportunity to become an Intervenor.

24 COMMISSIONER SHARPLESS: There are
25 responsibilities.

26 MR. THOMPSON: Duties and responsibilities 14

1 serviced on all parties. We would expect that
2 meetings between Staff and Intervenors to be noticed
3 and open to all, certainly members. Everybody is on
4 the service list, and all members of the public. The
5 duty not to reopen matters that have already been
6 settled. And indeed, Intervenors are subject to data
7 requests, and have the ability to make data requests.
8 And I'd like to remind everybody that there are
9 numerous responsibilities that go along with that
10 status.

11 COMMISSIONER SHARPLESS: I'm glad you did.
12 I agree with that. There's both a joy and a risk.

13 Okay. I'd like to also have an opportunity
14 to recognize any other state agencies or air
15 districts that might be in the audience so we know of
16 your presence. Would you stand and identify yourself
17 if you are from one of those agencies, please?

18 MR. EASTON: I'm Robert Easton, and I'm
19 from Mohave Desert.

20 MR. DeSALVIO: I'm Alan DeSalvio with the
21 Mohave Desert.

22 MR. SPARKS: I'm Robert Sparks from
23 California ISO.

24 COMMISSIONER SHARPLESS: Anyone else we
25 need to identify? Great. Fine.

26 I'd like to just begin with some opening 15

1 remarks and then we can get right to the individuals.
2 To just set the frame for today, this is a prehearing
3 conference, and we indicated that we'd have this
4 prehearing conference in a notice that we dated
5 December 16th, 1998. So the documents that are
6 pertinent to today's conference include the
7 January 21st, 1999 staff assessment, and the
8 February 9th prehearing conference statements from
9 the Applicant, the California Union for Reliable
10 Energy, the California ISO, the California Department
11 of Fish and Game, the Commission Staff, and an
12 Intervenor, Gary Ledford, and I fail to recognize
13 Mr. Ledford.

14 I apologize. He's not here. As explained
15 in the notice, the basic purposes of the prehearing
16 conference are to assess the parties readiness for
17 evidentiary hearings, to identify areas of agreement
18 and dispute, to discuss procedures which will assist
19 the committee in conducting this licensing process in
20 a timely manner as feasible. And in this latter
21 regard during your presentations, I'd like the
22 parties to discuss these matters as well as the
23 future filing dates for testimony and other
24 evidentiary documents, briefing and comment periods,
25 and other related items.

26 So, today we will proceed by providing each16

1 party an opportunity to summarize their position, and
2 I recognize you did so, also, in your preconference
3 hearing statements of February 9th. It's been going
4 quickly.

5 Each party should begin by indicating
6 whether it favors suspending the process or
7 proceeding to hearings on any or all of the technical
8 topic areas, and if the parties believe that topics
9 are not yet right for hearing, they should specify
10 which topics.

11 So as usual, I'd like to begin with the
12 Applicant, and if you'd like to start with your
13 statement.

14 MR. BARNETT: Thank you, Members of the
15 Committee and Judge Valkosky. I'd like to make some
16 very brief opening remarks. There's been a great
17 deal of written documentation submitted to you, and
18 obviously this process has been going on for quite
19 sometime. Most of it, unfortunately, before I was
20 present, but I think I've gotten up to speed, as I
21 said earlier. And I think that there's a possibility
22 that sort of the cold words that you see in black and
23 white don't necessarily reflect the most current
24 status of the project, and I'd like to make remarks
25 on behalf of the Applicant to the effect that I've
26 been involved in the project. I've seen personally 17

1 that I believe we've been making very good progress.
2 I think we've been responding well to all of the
3 Intervenors and the Staff. In particular, we had
4 workshops in Victorville a couple of weeks ago and
5 one here in Sacramento. And subsequent to that,
6 we've had at least one meeting, and I believe that
7 the issues that have been identified as still being
8 in contention are ones that we are making very good
9 progress on. I don't mean to imply that we have
10 reached a resolution yet, but we are certainly making
11 progress. I think that we are working well with the
12 Staff in that regard, and I, therefore, think that we
13 are in a position to move forward, more rapidly on
14 not just the issues of the agreement, but on the ones
15 that we identified as still being up in the air, and
16 perhaps might be provided by some written
17 documentation to proceed.

18 So I wanted to make sure you understood
19 that from our perspective and then myself
20 representing the Applicant, we feel that good
21 progress is being made. We don't feel that we are at
22 odds with the Staff, and that we're close to reaching
23 a resolution on any of the outstanding issues.

24 COMMISSIONER SHARPLESS: Thank you,
25 Mr. Barnett. What I would like to ask is of the
26 issues that you believe are remaining, even though I 18

1 think I know what they are, would you identify them
2 for the record?

3 MR. BARNETT: We believe that it's
4 essentially the air. There are several issues that
5 are related to our air quality management plan and to
6 our water supply plan. Those are the two critical
7 areas. Now, certainly tied up in that, there's a
8 biological impact that really relates to the water
9 issue in our view. So we believe if we solve the
10 water issue, which we're making excellent progress
11 on, that we'll actually resolve not just the water
12 issue, but the biological issues will be resolved
13 with that.

14 And we think that in the original Staff
15 assessment, cultural was identified as an area that
16 we have not reached an agreement, but we believe
17 subsequent workshops in Victorville have not
18 completely resolved that, but resolved it to a point
19 where it's not really an outstanding issue. And I
20 think that in the Staff's prehearing statement, they
21 identified hazard materials as an issue that they
22 needed to, sort of amplify their previous discussion
23 on, but in our view, that's not really an issue in
24 contention. There's probably some information being
25 provided on that, but it's not a serious matter. So
26 it really comes down to the air and water issues and 19

1 as they relate to the biological.

2 COMMISSIONER SHARPLESS: Let's take those
3 sort of one at a time. On the air quality issue,
4 what is your assessment and timing on that issue?
5 When do you think that the issues that have been
6 raised by USCP and ARB can be resolved, and where
7 would that put us in terms of being able to go into
8 an evidentiary hearing?

9 MR. BARNETT: Let me just make a brief
10 overview, and then I would like to turn it over to
11 the project director, Mr. Andy Welch, and let him
12 make some more specific comments. But in general as
13 I think the Staff has indicated, what's hung us up
14 there to a large extent is that there are issues that
15 can't be resolved at the CEC level, because they
16 involve the EPA's approval of things that are in the
17 air quality management districts, the termination of
18 the clients, as well as the issues of the California
19 Resources Board. So at our hearings or at our
20 workshops in Victorville, we'd hope to make some
21 substantial progress on those issues, but
22 unfortunately, the Environmental Protection Agency
23 did not attend those meetings, and we weren't able to
24 make progress that we had hoped. So we've had to
25 schedule a workshop with EPA at EPA's office in San
26 Francisco, and I believe that's scheduled for

1 March 2nd. And we believe that that meeting will be
2 a roll up your sleeves, let's get down to the few
3 issues that are remaining that EPA needs to buy off
4 on, and all the interested parties will be there.

5 We think that will go a long ways towards
6 resolving those issues. I don't expect that it will
7 resolve those issues at that meeting, but I believe
8 that it will layout a plan or a path that will show
9 exactly how to do it, and, therefore, the
10 documentation to follow to come very quickly.

11 COMMISSIONER SHARPLESS: With respect to
12 the remaining issues in the air quality area, which
13 issues are those?

14 MR. BARNETT: I'll let Andy Welch --

15 MR. WELCH: As you are probably aware, the
16 preliminary determination of compliance was issued,
17 which responses were made to that. Primarily, if you
18 separate those into two different categories, one
19 which was the back layer questions and the other
20 would be offsets. On the back layer, we indicated at
21 the workshops in Victorville that we would basically
22 go along with what those comments were, and look to
23 lower the emissions limits.

24 COMMISSIONER SHARPLESS: What are you going
25 to lower them to?

26 MR. WELCH: We're going to lower them to 21

1 where we were, which is you 2.5 parts per million,
2 but we agreed to the one-hour standard based upon
3 similarly done at Feather River with the
4 Cal-Pine/Sutter Project. And then the CO and the VOC
5 to exactly what they had asked us for -- that the EPA
6 had asked for, so we think we're on --

7 COMMISSIONER SHARPLESS: Is it the
8 interpollutant trade and the ERCs that are still at
9 issue here?

10 MR. WELCH: Right. The ERCs, a lot of the
11 questions were made up for the actual validity of
12 certain ones from South Coast. We have, since those
13 come out, provided copies of option agreements for
14 those, which is now in the record, and both have been
15 supplied to the EPA. So the interpollutant then
16 becomes the big issue.

17 We submitted protocol and there's been a
18 lot of work on that, but that's really what needs to
19 be ironed out.

20 COMMISSIONER SHARPLESS: Where are you on
21 the interpollutant trade in terms of your position?

22 MR. WELCH: Our position is that we've
23 demonstrated the proper ratio would actually be lower
24 than 1 to 1, so we have conservatively said 1 to 1
25 ratio, VOC would be the appropriate, and basically
26 there's just a matter of going through to determine 22

1 that the science behind what we've done is the
2 correct way to proceed.

3 The method that we used is one that were
4 advised to use by EPA in a premeeting back as early
5 as September.

6 COMMISSIONER SHARPLESS: So when do you
7 meet again with USCP?

8 MR. WELCH: The workshop is scheduled for
9 March the 2nd, and we're having it at EPA's offices
10 so that they will be there.

11 COMMISSIONER SHARPLESS: Is that when
12 you'll be able to resolve all issues on March 2nd?
13 Is that what I got from you, Mr. Barnett?

14 MR. BARNETT: I believe it would be overly
15 optimistic that we could resolve all issues, but I
16 believe at that workshop that we will reach agreement
17 on how to resolve all those issues, and our
18 anticipation at this point is that as a result of
19 that meeting, there would probably be one more round
20 of documentation that we will have to submit, that
21 addresses the path to resolution that was identified
22 at the meeting, and, therefore, I guess sort of to
23 cut ahead to the chase, but we believe that after
24 that meeting and after roughly a week for us to
25 submit some additional documentation, that when that
26 documentation is submitted, we should all

1 collectively be in position to say that we can go
2 forward on the evidentiary hearings on this area.

3 COMMISSIONER SHARPLESS: Would your
4 estimate be sometime in April?

5 MR. BARNETT: Our hope would be that we
6 would like to see it at the end of March, but
7 somewhere in that time frame.

8 COMMISSIONER SHARPLESS: If it leads to
9 another revision in the DOC -- good point -- I think
10 that there's a 30-day comment period, is there not?

11 MR. WELCH: Depending on the nature of
12 those revisions.

13 COMMISSIONER SHARPLESS: These are fairly
14 significant, aren't they? These are not what I would
15 call --

16 MR. WELCH: They are moving in the
17 direction of more control as compared to less.

18 COMMISSIONER SHARPLESS: But you still need
19 a 30-day comment period, I think. Of course, the air
20 district is here, and they would be able to give us
21 the answer.

22 Would you like to come forward and just
23 answer that question, or perhaps you are not ready to
24 answer the question, and I don't want to put you on
25 the spot, but I will.

26 MS. HOUGH: If I could just make one point, 24

1 EPA filed a letter that they indicated that they
2 expected a revised DOC, so I don't know what the
3 response is to that, but USEPA did indicate that they
4 would expect that.

5 COMMISSIONER SHARPLESS: The question is
6 does it require a 30-day?

7 MR. DeSALVIO: Well, it would require
8 another 30-day comment period. At this stage, we're
9 not prepared to say whether or not it's going to be a
10 revised DOC or simply go to a final. Our preference
11 is to go the final.

12 COMMISSIONER SHARPLESS: And what then
13 would be the difference between having a revised PDOC
14 and going directly to a final? Would you then cut
15 out the 30-day comment period?

16 MR. DeSALVIO: There would not be a comment
17 period on the final.

18 COMMISSIONER SHARPLESS: And it would have
19 to go to your board?

20 MR. DeSALVIO: No, it's acted on by the
21 executive officer.

22 COMMISSIONER SHARPLESS: Okay. And how
23 quickly could that happen?

24 MR. DeSALVIO: That's a good question.

25 COMMISSIONER SHARPLESS: Say they resolve
26 something by the end of March.

1 MR. DeSALVIO: We can do it within a week
2 or two, I would say, 'cause the critical issue in our
3 minds is EPA's approval of the interpollutant and
4 offset ratio. And we are still in-waiting mode
5 depending on the March 2nd meeting.

6 COMMISSIONER SHARPLESS: Okay. Perhaps we
7 can move on, Mr. Barnett, to the water issue and give
8 us the status of where you think water is.

9 MR. BARNETT: Again, we identified a lot of
10 the issues, in fact, there weren't that am, but we
11 identified pretty clearly at the workshops in
12 Victorville, and that was an area where all of the
13 parties were present, and we made good progress at
14 the workshops. We set up a meeting that was held on
15 this past Tuesday that involved all of the parties in
16 Victorville to try and identify a resolution of what
17 really came down to one major outstanding issue on
18 the water. And I think as a result of that meeting
19 there was identification again of how to resolve that
20 issue, some additional information that needed to be
21 submitted. Again, I would like to turn this over to
22 Andy, who was at that meeting and he can give you a
23 summary of where that stands right now.

24 COMMISSIONER SHARPLESS: Andy, also if you
25 could when you reference all parties, could you give
26 us an idea of what that means, who's included, who's 26

1 not.

2 MR. WELCH: Okay. At the workshop, we had
3 the CEC staff, the CURE, the Department of Fish and
4 Game, U.S. Fish and Wildlife service, Mohave Water
5 Agency, Victor Valley Water District and Mr. Gary
6 Ledford were all present.

7 We talked through the issues and we're
8 basically -- what we came out of there from a
9 suggestion of an approach that staff made that we
10 think looks very reasonable. We're trying to get the
11 actual numbers that go behind that, and we've
12 continued that meeting until or we renoticed it. I'm
13 not sure now --

14 MS. HOUGH: We did both just to make sure
15 we covered our basis.

16 MR. WELCH: -- for the 26th and we're
17 hopeful that we'll be able to reach a resolution on
18 that issue. The water plant that we put forward and
19 we've been working on for sometime now, which is the
20 injection into the ground for prebank storage to use
21 when the aqueduct is not available, basically ways to
22 determine that that is, in fact, still working to
23 make allowances for any water that would leak out of
24 the storage in the aquifer, and that we would not
25 only be refilling to makeup for the water that we
26 would actually pump out, but to makeup for water that27

1 is from our account due to leakage.

2 COMMISSIONER SHARPLESS: Are you also
3 agreeing to interruptability?

4 MR. WELCH: The plan is that we will not
5 withdraw water to be more than what is in our
6 account. This actually is a step that we made at
7 this last meeting, which I think makes it even
8 cleaner rather than yielding the downstream effects
9 and putting a stoppage on it. It's merely saying that
10 we're going to keep the amount of water in there, and
11 if we start to pull out water and we get to the
12 amount of our bank account, if we will not withdraw
13 any more water, which is the agreement we had with
14 Victorville Valley Water District the whole time. So
15 it would require under those circumstances, but it
16 allows us to be proactive so as not to create that
17 situation.

18 COMMISSIONER SHARPLESS: Who is doing the
19 dry cooling analysis? Is that Staff?

20 Okay. We'll get to Staff at Staff's turn.
21 So in your estimation, how long will it take to
22 resolve the remaining issues?

23 MR. WELCH: I think we're very close,
24 provided that, as expected, get the back up to the
25 approach of Staff, and Fish and Game jointly
26 suggested at the meeting, that we may be able to 28

1 resolve that at the next workshop.

2 COMMISSIONER SHARPLESS: Being the 26th of
3 February. If it is resolved, there seems to be some
4 other outstanding litigation issues regarding even
5 the allocations that currently exist. What is your
6 feeling about that?

7 MR. THOMPSON: It may have been Mr. Ledford
8 or another citizen who stood up at the workshop and
9 raised the issue of whether or not the adjudication
10 would withstand the scrutiny by a higher court. I'm
11 not in a position to second guess the California
12 Supreme Court. We don't know. This is an issue that
13 the Staff raised, so I think you better ask them
14 about this, if that was the issue.

15 MR. WELCH: There is something that we
16 discussed since the dealing with the Victorville
17 Valley Water District, that even in the event that
18 something would happen to overturn the adjudication,
19 if there's nothing that prevents us from the
20 agreements to operate with both the Victorville water
21 agency and Mohave water agency, under the terms that
22 were put forth in that adjudication. So even if it's
23 not the law of the land, we can still put ourselves
24 to that same district standard, which is what the
25 plan was. So I, at this point, and I believe at the
26 workshop this week, Mohave water agency also voiced 29

1 that they didn't think that that case would
2 necessarily have any impact on this project,
3 whatsoever. It would impact other things. It would
4 impact Mr. Ledford, but it would not impact our water
5 plant.

6 COMMISSIONER SHARPLESS: So your estimate
7 of -- this is be February 26th, right.

8 MR. WELCH: Right.

9 COMMISSIONER SHARPLESS: Your estimate
10 after, say, you've come to resolution after your
11 meeting on the 26th or a few days later, who needs to
12 do what in order to finalize that in terms of
13 bringing it forward to evidentiary hearings? Is
14 there any other steps that need to happen to
15 formalize the agreement, actions by Mohave, actions
16 by Victor Valley?

17 MR. WELCH: No, it would be, I believe,
18 Staff's completion of their assessment.

19 MR. THOMPSON: We're not sure whether or
20 not it would require an agreement with one of the
21 water agencies, but I don't think if we reach an
22 agreement there would be anything to preclude us from
23 going ahead with this process.

24 COMMISSIONER SHARPLESS: So you are saying
25 by early March, you think that the water issue will
26 be resolved? Okay. What about the pipeline issue? 30

1 What about the biological issue and the pipeline
2 issue? Where do you see that standing?

3 I understand that the BLM process is just
4 now beginning, that they are not going to complete
5 until the fall of '99. Am I correct, Mr. Barnett?

6 MR. BARNETT: That's essentially correct,
7 but I think it's important to understand that this is
8 somewhat of a chicken and the egg process, and that's
9 one of the reasons why we're very concerned about the
10 time line here and the state process. Because while
11 in fact there's a process that we're going through at
12 the BLM and the AIS is involved, I don't think it's
13 fair to characterize if it's just started, and we've
14 actually come a long ways down the road. A lot of
15 documentation has been submitted to BLM and Fish and
16 the Wildlife service, and we think that the review
17 process is well underway. The problem is as we
18 understand it, is that a key time line in this
19 process is the issuance of a formal draft EIS that
20 has public comment periods associated with it, et
21 cetera. And the federal agencies involved in this
22 case are relying heavily on the CEQA process to see
23 exactly what the -- to make sure that they've
24 ducktailed the EIS issues that are identified.

25 And the point of all this is that they want
26 to see the PMPD issued in order to be able to issue 31

1 the draft EIS. So it's a process where we can't
2 actually get that formal major step in a federal
3 permitting process underway until this process is
4 nearly completed. So they are very interrelated.

5 COMMISSIONER SHARPLESS: I'm going to allow
6 Commissioner Laurie in here since the pipeline is
7 considered to be part of this process, and the
8 decision that the presiding member -- a decision is
9 made on is the evidentiary record of the entire
10 project of which the pipeline would be a part.

11 Commissioner Laurie, would you like to make
12 any statements regarding this issue?

13 COMMISSIONER LAURIE: Thank you,
14 Commissioner Sharpless. I do have a concern. I
15 think it is a catch 22. I think it is a chicken and
16 an egg problem. I guess my legal or technical
17 concern would be how you take the Federal's analysis
18 and incorporate it into our project. For example,
19 and these are questions that I talked to Commissioner
20 Sharpless about and the hearing officer about. For
21 example, the Federal EIS will have mitigation
22 measures. Are those mitigation measures to be
23 incorporated into our project as a condition for
24 certification? If so, we cannot finalize our own
25 process until the Fed's finish theirs.

26 I do have an overall CEQA concern, and 32

1 maybe the parties would want to address this if it
2 becomes a problem, but obviously -- strike that. It
3 may not be obvious, but my understanding is that the
4 pipeline is a part of this project. And thus might
5 be in defensible to seek to segregate the true
6 project for environmental analysis purposes. It may
7 be dangerous to do so. Thus it seems that the two
8 processes we have to bring concurrent, because I
9 don't know how we complete our environmental analysis
10 until the Fed's complete theirs. My understanding
11 may be incorrect. I will be seeking additional
12 education about it, however, but that is my initial
13 concern today.

14 MR. BARNETT: I think I'm not in a position
15 today to discuss this in the kind of detail that it
16 deserves, obviously, but our understanding and we
17 have several counsel involved in looking at this
18 particular issue, is that the CDC and the CEQA
19 process should be able to go forward under CEQA
20 permit the pipeline with the expressed condition that
21 we wouldn't be able to actually do it unless we
22 received the requisite federal permits, and if that's
23 a proper way to go forward, that would allow this
24 process to go forward and then to continue to a point
25 we're not. And if some for some reason we were
26 unable to permit it, then your permit had said that 33

1 we wouldn't do it unless we got theirs.

2 COMMISSIONER LAURIE: If in fact that is a
3 legally valid means to proceed, then we may very well
4 say fine. And perhaps that question should be
5 briefed or discussed, and perhaps we can discuss
6 that. But again my initial concern is, as I sit here
7 today, is I don't know how we handle the federal
8 mitigation measures if such are to be incorporated as
9 conditions to this project, because mitigation
10 measures need to be incorporated as conditions of the
11 project. They can't just stand alone. It may be
12 that the mitigation measures for the pipeline can't
13 stand alone in the federal pipeline. And if that is
14 the case, and it is determined to be legally
15 defensible, I certainly don't have any desire
16 delaying this project because of needed federal
17 action if we can move independently.

18 So I would be most interested in having
19 some of your competent legal staff opine this to the
20 issue. Thank you.

21 COMMISSIONER SHARPLESS: I'm going to turn
22 to -- Commissioner Laurie, thank you. Do you have
23 any other comments for the Applicant? Okay.

24 Why don't you go through those.

25 JUDGE VALKOSKY: Thank you,

26 Ms. Commissioner.

1 Mr. Thompson I have some housekeeping
2 matters. I understand that you basically agree with
3 Staff on the hazardous materials handling, that there
4 is no outstanding issue?

5 MR. THOMPSON: We don't believe that
6 there's an outstanding issue. Our understanding is
7 that Staff has a little more investigation to satisfy
8 itself that we are on all forms, but we don't believe
9 that there's an issue.

10 JUDGE VALKOSKY: How about cultural
11 resources? You are going to submit additional
12 material actually on cultural resources and on
13 alternatives. When would you propose filing that?

14 MR. THOMPSON: Well, now that Southwest Gas
15 is an intervenor, I guess I should probably ask them,
16 but our anticipation is as early as next week, we
17 could file testimony which would reflect, A, the
18 construction procedures and maintenance procedures
19 that Southwest Gas follows on the pipeline that we
20 outlined Southwest Gas, and its consultants outlined
21 in our workshop in Victorville that seems to satisfy
22 cultural difficulties or questions regarding that
23 pipeline. So I think that the cultural issue is
24 awaiting only that additional material from Southwest
25 Gas, and I would urge Southwest Gas, that if we can
26 get that in next week, we should be able to do that. 35

1 The second is alternatives and how that
2 comes up is the alternatives analysis came out of the
3 Staff report, and that's the first time we saw it.
4 There's some answer testimony, and I think we can get
5 that in next week, kind of in the form of rebuttal,
6 or we can do it at a later date, but those are the
7 only two areas. And I'll let Southwest Gas talk
8 about their schedule, but I was hoping to get that in
9 next week.

10 JUDGE VALKOSKY: Very well. So the end of
11 next week which I believe is the 26th would be a
12 valid filing date for your alternatives?

13 MR. THOMPSON: Yes.

14 JUDGE VALKOSKY: Okay. Southwest Gas is
15 still talking.

16 MR. BETTWY: If I could have Joe Provenza,
17 who is the project manager in terms of the pipeline
18 project? He has relatively current information, and
19 can explain why one week is a little tight for us,
20 but he can speak to you.

21 MR. PROVENZA: Yes. I was present at a
22 workshop --

23 MS. SHAPIRO: Could you state your name for
24 the record, please?

25 MR. PROVENZA: Yes. My name is Joe
26 Provenza. I'm project manager for Southwest Gas. 36

1 COMMISSIONER SHARPLESS: Do you want to
2 spell that?

3 MR. PROVENZA: P-R-O-V, as in Victor,
4 E-N-Z-A. I was present at the BLM workshop
5 yesterday. Among other things discussed was the
6 status of the cultural work that's being done towards
7 the BLM permitting process. A lot of progress has
8 been made. I took some notes at the meeting. I'm
9 studying my notes right now. They have a couple of
10 sites that they need to still investigate. They
11 identify sites that needed to be avoided, and it will
12 take another study or two before they are at a point
13 where they can determine what are all the sites that
14 will be impacted, and how they will be impacted. So
15 I don't think it will take -- I think it will take
16 probably longer than a week or two, maybe a month, or
17 something like that.

18 JUDGE VALKOSKY: So could we say a month
19 from today? I'm just looking for a date so the
20 parties -- 'cause our staff, too, I'm sure will be
21 interested in this material. I'd like to have a date
22 certain by which the other parties can expect this,
23 and also that would influence the date the Committee
24 can conduct hearings on this topic.

25 MR. PROVENZA: I'd like to give you a date
26 certain. I'm not sure what their scheduling is to do37

1 this additional testing that has to be done in the
2 field. I can only surmise it will be about a month.
3 I don't know. There's no one here from the BLM.

4 JUDGE VALKOSKY: Is that something that you
5 can check on in a couple of days and get back to the
6 Committee on?

7 MR. PROVENZA: Certainly.

8 JUDGE VALKOSKY: Or is this by nature open
9 ended?

10 MR. PROVENZA: No, I don't think it's open
11 ended, or indefinite, or anything like that. I just
12 don't want to give a date that I'm not sure of.

13 JUDGE VALKOSKY: Okay. If you could by
14 Monday inform the Committee on the supplemental
15 cultural resources testimony or the cultural
16 resources material will be available, that would
17 certainly assist us.

18 MR. PROVENZA: Certainly. I can do that.

19 JUDGE VALKOSKY: Thank you very much.

20 MR. PROVENZA: You're welcome.

21 JUDGE VALKOSKY: Mr. Thompson, your
22 prehearing conference statement -- and again I'm just
23 trying to find out if in fact you have agreement --
24 you did mention the topic of the Staff assessment of
25 facility closure. Do you have any difficulties?

26 MR. THOMPSON: On facility closure? 38

1 JUDGE VALKOSKY: Yeah, basically the
2 compliance plan.

3 MR. THOMPSON: I don't believe so.

4 JUDGE VALKOSKY: Okay.

5 MR. WELCH: Should we?

6 JUDGE VALKOSKY: You never know when the
7 condition comes up. Also, Mr. Thompson, your
8 prehearing conference statement did not identify
9 specific witnesses contained resumÇs, or specified
10 exhibits that you would propose for future
11 evidentiary hearings.

12 How long do you need to do that?

13 MR. THOMPSON: I can get that in this
14 coming week. I have a witness list, but what I'd
15 like to do is to marry the witness list to a document
16 that has a list of exhibits and exhibit numbers on
17 it. I think putting all that into a single document
18 could be a good baseline.

19 JUDGE VALKOSKY: That would be helpful
20 because the Committee, when it issues its hearing
21 orders would like to have the witnesses identified
22 and a tentative exhibit list, rather than doing that
23 at the hearings.

24 MR. THOMPSON: I think I can have that in
25 by next Wednesday.

26 JUDGE VALKOSKY: The 24th?

1 MR. THOMPSON: Yes. And my apologies to
2 the Committee for not having that earlier. We've
3 been struggling.

4 JUDGE VALKOSKY: Now, also you have data
5 requests that have been submitted to you by one of
6 our recent intervenors, Mr. Ledford. When do you
7 intend to respond to those data requests?

8 MR. THOMPSON: Although they were not
9 addressed directly to the service list at all, we are
10 going to respond the initial 15 days within 15 days
11 of the date of the request, and we'll respond to the
12 statutory 30 days to the requests themselves. We
13 note in passing that we will be able to respond to
14 those questions directed to Mr. Buck Jones of Inland
15 and we take it upon the project to respond to those
16 as we think Mr. Ledford actually meant those for the
17 High Desert Power Project. There are other data
18 requests in the package that we received that go to
19 the water agency and others and we cannot -- there's
20 nothing we can do about those.

21 JUDGE VALKOSKY: I understand.

22 MR. THOMPSON: We will be responding.

23 JUDGE VALKOSKY: Okay. Within the
24 regulatorily permitted time?

25 MR. THOMPSON: Yes.

26 JUDGE VALKOSKY: For scheduling purposes, 40

1 one of the presumptions that we're going to bring
2 here today is if we started hearings about the 22nd
3 of March, which topics would be ready for hearings?
4 And it appears from discussions that we had earlier
5 that we would likely not be ready for air quality
6 water resources and biology; is that correct?

7 MR. THOMPSON: That's probably correct,
8 although we would hope that we could be very close if
9 not there on water and water salts biology. So we
10 will agree with you with the caveat that we may be
11 coming back saying that we're ready for water and
12 biology.

13 JUDGE VALKOSKY: Well, if you are coming
14 back one of the problems is that the Committee would
15 issue a hearing order and a notice of evidentiary
16 hearings by no later than March 2nd, and that would
17 be followed by pretrial testimony, and then the
18 hearings.

19 MR. THOMPSON: Right. My anticipation,
20 Mr. Valkosky, would be that if, for example, pick a
21 date March 15, it's all wrapped up, we would make a
22 filing to the complete saying we believe that this
23 one is ready for either adjudication or for hearing
24 with no contested issues outstanding. And then you
25 can issue whatever order on whatever dates for
26 hearing.

1 JUDGE VALKOSKY: So, what I'm getting is if
2 we started hearings about the 22nd of March, we would
3 not likely include the topics of air, Water, and
4 biology.

5 MR. THOMPSON: I think that's right.

6 JUDGE VALKOSKY: That would follow at some
7 point depending on the negotiations with the EPA,
8 with the district, with Fish and Game, with CURE, and
9 everybody else.

10 MR. THOMPSON: Right.

11 JUDGE VALKOSKY: Okay.

12 And presently it is uncertain how much
13 longer those hearings would be trailing; is that
14 correct?

15 MR. THOMPSON: That's correct, especially
16 if we don't know if there are contested issues.

17 JUDGE VALKOSKY: Right. I'm just saying
18 it's unknown at this time.

19 MR. THOMPSON: Right.

20 COMMISSIONER LAURIE: Mr. Hearing Officer,
21 there has been a request to bifurcate issues; is that
22 correct?

23 JUDGE VALKOSKY: There has not been. That
24 suggestion -- that recommendation is contained in the
25 Staff prehearing conference.

26 COMMISSIONER LAURIE: And the Committee has42

1 not indicated whether or not in fact to do that?

2 JUDGE VALKOSKY: That is correct,
3 Commissioner.

4 COMMISSIONER SHARPLESS: Okay. Thank you.
5 What news do you bring, Ms. Mendonca?

6 MS. MENDONCA: Roberta Mendonca, public
7 advisor. I've heard from the Los Angeles Water and
8 Power, and they would like to proceed with their
9 intervention. So I believe everybody has the
10 documents, and it would be up to the Committee's
11 decision.

12 COMMISSIONER SHARPLESS: Okay. Did they
13 indicate the scope of the issue that they are
14 interested in?

15 MS. MENDONCA: They were not able to be
16 here today, and they have been having ongoing
17 discussions with the technical staff, but they feel
18 that these discussions are not playing out exactly
19 the way they hoped, and so they feel the need to
20 intervene at this point, with the hope in mind they
21 can iron things out.

22 COMMISSIONER SHARPLESS: And this issue
23 would be in what area?

24 MS. MENDONCA: It's dealing with where the
25 water the power lines would be over their
26 transmission lines.

1 COMMISSIONER SHARPLESS: So it's a power
2 line transmission distribution issue?

3 MS. MENDONCA: It owns property adjacent to
4 the proposed project, and has concerns that the way
5 the interconnection might effect their transmission
6 and public safety.

7 COMMISSIONER SHARPLESS: Okay.

8 MR. THOMPSON: We actually welcome this
9 because what I just heard is there have been
10 conversations about our project that we don't know
11 about that have been going on between a utility and
12 the Commission, and now that they are intervenors,
13 we'll actually know what's going on with our project.

14 COMMISSIONER SHARPLESS: Okay. Well, Staff
15 will have an opportunity to comment in a minute. I'd
16 like to kind of go out of order and bring up the ISO,
17 since I think they are rather brief, and I'd hate to
18 have them sitting through lengthy testimony if they
19 can get theirs on the record, and get them out the
20 door.

21 COMMISSIONER LAURIE: Commissioner
22 Sharpless, I have something that is approaching the
23 bench. I'd like to ask a question.

24 COMMISSIONER SHARPLESS: To who?

25 COMMISSIONER LAURIE: Well, to you.

26 COMMISSIONER SHARPLESS: Sure.

1 COMMISSIONER LAURIE: And this goes to the
2 issue of intervention. Any person has a right as a
3 member of the public to participate in our public
4 hearing process. Any person has a right to make
5 requests of us, the Committee, for certain
6 information. For example, any person can say, "We
7 think it serves a public interest to get this
8 information from the Applicant. Will you please ask
9 for it?" They are free to. We are then free to ask
10 for it, I suppose.

11 Parties seek intervention for other reasons
12 so that they can assure themselves of those discovery
13 rights, that is given that any member of the public
14 can ask us to obtain information from any of the
15 parties.

16 COMMISSIONER SHARPLESS: I think it has
17 more to do with the ability to submit testimony and
18 to cross-examine, but since I believe we have
19 procedures and rules about intervenors, I would look
20 to Ms. Hough to answer Commissioner Laurie's
21 question, 'cause I don't makeup that whole cloth. It
22 is established.

23 MS. HOUGH: The section in the Commission's
24 regulations on obtaining information allows other
25 agencies to have the same rights as parties with
26 respect to obtaining information. Typically, parties45

1 intervene because, as Commissioner Sharpless pointed
2 out, they want to participate further in the
3 adjudicatory process. They may want to
4 cross-examine. They may want to put on witnesses and
5 write briefs and file motions. In order to do those
6 types of things, they need to become parties.

7 COMMISSIONER LAURIE: Any person can submit
8 testimony? Any member of the public can submit?

9 MS. HOUGH: They can submit public comment,
10 not necessarily submit testimony. I think
11 Mr. Valkosky is the person that should respond to
12 these questions.

13 JUDGE VALKOSKY: Public comment cannot
14 support finding, only testimony under oath or
15 affirmation can submit testimony. You must be a
16 party or an intervenor.

17 COMMISSIONER LAURIE: And is testimony
18 sworn?

19 JUDGE VALKOSKY: Testimony is sworn.

20 COMMISSIONER LAURIE: In our rules
21 regarding intervening status, there is no statutory
22 criteria; is that correct?

23 JUDGE VALKOSKY: The regulation essentially
24 provides that a party -- a person has a right to file
25 petition to intervene up to 30 days before the
26 commencement of evidentiary hearings. The Committee 46

1 then has the option of granting that petition to the
2 extent it deems reasonable and relevant. If a
3 petition is filed after the 30-day date, the
4 Committee has the discretion to bring up that
5 petition to the extent it deems reasonable and
6 relevant, if in its opinion good cause is shown for
7 late filing.

8 COMMISSIONER LAURIE: Thank you. Thank
9 you, Commissioner Sharpless.

10 COMMISSIONER SHARPLESS: We will then be
11 receiving LA Water and Power's petition?

12 MS. MENDONCA: Thank you.

13 COMMISSIONER SHARPLESS: Okay. There he
14 is.

15 MR. SPARKS: I'm Robert Sparks of the
16 California ISO. As we indicated in our --

17 COMMISSIONER SHARPLESS: You're tall and
18 the microphone is not. Thank you.

19 MR. SPARKS: As we indicated in our
20 prehearing conference statement, Cal-Iso believes
21 that the transmission energy portion for the High
22 Desert Power Project is ready for hearings, and the
23 California site Edson performed a California impact
24 study for the project, and we can use the study and
25 concur with finding, and we are ready to provide
26 testimony for the hearings.

1 COMMISSIONER SHARPLESS: Okay. And did you
2 indicate who would be the --

3 MR. SPARKS: We have Steve Mavis who is
4 listed -- who is my supervisor, and I have down that
5 it's not a great deal of trouble to perhaps
6 substitute for him, if I substituted for him.

7 COMMISSIONER SHARPLESS: All we need is a
8 resumç.

9 JUDGE VALKOSKY: Yeah, we would like a
10 resumç establishing your qualifications, basically,
11 your familiarity with the stipulated and I presume,
12 and correct me if I'm wrong, you would be offering as
13 an exhibit your October 8th, 1998 determination.

14 MR. SPARKS: Yes.

15 JUDGE VALKOSKY: And how long do you think
16 that would take you to prepare testimony, 'cause
17 typically what we do is have it filed between
18 somewhere between 7 and 10 days in advance of the
19 hearings.

20 MR. SPARKS: I think two to three weeks
21 would be sufficient, even with a decent workload.

22 JUDGE VALKOSKY: Okay.

23 COMMISSIONER SHARPLESS: I think that's it.
24 Thank you.

25 MR. THOMPSON: Applicant appreciates
26 Cal-ISO's offer including to place their material 48

1 into the record. I think it's very helpful.

2 COMMISSIONER SHARPLESS: Okay. We'll go
3 with Staff.

4 MR. BUELL: Good morning, Commissioners.
5 I'd like to turn your attention to Page 3 of Staff's
6 prehearing conference statements. On that page we
7 have identified 16 areas that we believe are ready to
8 go to hearing at this time.

9 I would like to note about that list that
10 we received pursuant to workshop discussions, CURE's
11 comments on our Staff assessment, and they've made a
12 comment on a number of areas, and Staff has not had a
13 complete opportunity to review all of CURE's
14 comments, but we do believe that in the most cases on
15 those areas they are commenting listed on Page 3 on
16 public health, for example, waste management, land
17 use, cultural resources, social economics, and
18 reliability, that staff would be able to prepare
19 errata that within two weeks and proceed on those
20 hearings on the topic areas, the 16 areas.

21 COMMISSIONER SHARPLESS: Would you go over
22 the errata list again?

23 MR. BUELL: The areas that we received
24 comments from CURE on, relative to those 16 areas are
25 the again: Public health, No. 2; waste management,
26 No. 5; land use No. 6; cultural resources, No. 10; 49

1 social economics, number 11; and reliability, No. 14.

2 COMMISSIONER SHARPLESS: Thank you. And
3 you are indicating a two to three week prepared?

4 MR. BUELL: I think we can do that in two
5 to three weeks, in the form of errata or supplemental
6 testimony.

7 COMMISSIONER SHARPLESS: Two weeks from
8 today?

9 MR. BUELL: Yes. And I also note that the
10 Applicant had promised to provide comments of a
11 similar nature, and we have not received those as of
12 yet. According to Mr. Allan Thompson, we should be
13 receiving those in a day or so. And hopefully they
14 are also in the nature of being able to respond in
15 the form of errata.

16 COMMISSIONER SHARPLESS: On the cultural
17 resources issue given the testimony from the
18 Applicant regarding the pipeline and the time needed,
19 how will staff deal with that issue?

20 MR. BUELL: I think that depends on exactly
21 when we'll be able to receive from Southwest Gas.

22 COMMISSIONER SHARPLESS: So does your two
23 weeks on cultural resources assume that you will or
24 won't have that information since we've heard that
25 you won't.

26 MR. BUELL: I think I haven't really 50

1 thought about cultural resources sufficiently.
2 Perhaps we ought to take that off the list for
3 evidentiary hearing, only because we haven't received
4 that information. It would be difficult for us to
5 anticipate how much work it would be to incorporate
6 that information at this time.

7 COMMISSIONER SHARPLESS: Okay.

8 MR. BUELL: There's two other areas that
9 I'd like to address that we will be providing errata
10 to, and those two areas are facility design and
11 transmission on engineering, but this has to do with
12 the assessment of the comments that we understand the
13 department -- that the gas will be providing relative
14 to their transmission lines will be crossed by the
15 projects, the transmission line, and the second
16 natural pipeline. So there's two other areas that
17 will be providing errata to, that's facility design
18 and transmission engineering, in response to LAPWs
19 comments.

20 COMMISSIONER SHARPLESS: When?

21 MR. BUELL: I believe we can do that within
22 two weeks again.

23 COMMISSIONER SHARPLESS: Okay.

24 Have they already submitted something in
25 writing?

26 MR. BUELL: I've seen that the public 51

1 advisor has a letter of intervention from LAWP. I
2 have no seen that yet, that's the extent of the
3 comments. Our Staff have talk to their staff, and as
4 of this morning, I thought we were in agreement on
5 what changes need to be made in order to address
6 their concerns, however, the LAWP does not apparently
7 agree with that.

8 COMMISSIONER SHARPLESS: So it's in been in
9 the form of conversations, and based on those
10 conversations you've come up with an estimate of two
11 weeks to address those issues, but since you now
12 heard that they want to be intervenors, perhaps that
13 estimate is in need of revision.

14 MR. BUELL: I think based on the nature of
15 their concerns, my experts have told me that it's a
16 simple fixture that they have an address to their
17 concerns. I would be surprised it took any longer
18 than two weeks to prepare an errata.

19 COMMISSIONER SHARPLESS: Does this need to
20 be noticed to other parties?

21 MR. BUELL: Certainly, Staff would provide.

22 COMMISSIONER SHARPLESS: Perhaps served.
23 Maybe I'm not using the right term. Does this need
24 to be served to the other parties, even before you do
25 the analysis?

26 MR. BUELL: Staff can prepare reports of 52

1 conversation that we had to LAWP, and we can file
2 those as soon as today, I presume.

3 COMMISSIONER SHARPLESS: Isn't that proper
4 procedure?

5 MR. BUELL: Yes.

6 COMMISSIONER SHARPLESS: Good. So your
7 estimate on the 16 issues, you say two weeks for
8 everything, but perhaps cultural resources, that
9 brings us to the beginning of March.

10 MR. BUELL: Yes, I believe so.

11 COMMISSIONER SHARPLESS: Okay. Why don't
12 you go to the next area.

13 MR. BUELL: There's two other areas that
14 we've discussed today that I'd like to add to those
15 lists of areas that we believe are ready to proceed
16 to hearings, and that is alternatives. Staff
17 believes that our testimony is complete as prepared,
18 and also the compliance plan that wasn't identified
19 in that list. And I don't believe any parties have
20 provided any comments on the compliance plan, so that
21 should be an uncontested area. Moving along to those
22 areas that we believe are essentially controversial
23 and will require additional time in order to reach a
24 conclusion. We believe those are the areas of air
25 quality, water supply, and water resources,
26 biological resources and hazardous material handling.53

1 I would note on hazardous material handling, we
2 received extensive comments from CURE this morning
3 regarding haz mat or hazardous material handling,
4 that we think will take more than two weeks to
5 prepare a response to. In our prehearing conference
6 statement, we identified that we thought it would
7 take two weeks to respond to those after seeing the
8 comments. We believe now it's more like a month,
9 given resource and staffing constraints and the
10 nature of the comments.

11 COMMISSIONER SHARPLESS: Is this to deal
12 with the transportation of hazardous materials?

13 MR. BUELL: Transportation of hazardous
14 material, specifically ammonia and also concerns
15 about ammonia releases as a result from the storage
16 tanks on site.

17 COMMISSIONER SHARPLESS: So what's your
18 estimate on that for the hazardous?

19 MR. BUELL: I believe we'll be able to
20 provide supplemental testimony in about a month from
21 one month up to from today.

22 Regarding air quality, we had identified in
23 our Staff assessment on Page 3, seven bullets
24 identifying the issues that we believe are associated
25 with air quality. And I will note that as with
26 Mr. Tom Barnett, that we had made areas to resolve 54

1 that. We can take three bullets off the list, but
2 there are still four areas under the topic of air
3 quality that still need be to be resolved.

4 Those areas are the determination of the
5 air pollutant offset ratio. We also not that South
6 Coast still needs to approve any basing process that
7 is part of this project, that USEPA also needs to
8 approve that. And there's an issue related to
9 reasonable, available control technology adjustment
10 of the emissions reduction credits that are being
11 provided for this project. That still needs to be
12 addressed. It might be a minor issue, but it still
13 needs to be addressed.

14 And lastly, there's a question regarding
15 the validity of ERCs or emissions reduction credits
16 from the George Air Force Base closure that needs to
17 be addressed. We have scheduled as Tom Barnett
18 indicated, a workshop on March 2nd to discuss with
19 USEPA, ARB and also district Staff on how to
20 primarily address the issue of interpollutant offset.
21 We're not sure at this time how long it might take to
22 actually resolve that issue. It is our understanding
23 that based on discussions with USEPA today that they
24 are in the process of preparing a recommendation on
25 how to address -- come up with an offset ratio for
26 interpollutant offsetting. That could lead to a 55

1 simple analysis. It could be done within a couple of
2 weeks to something that might take us a substantial
3 longer time. So we have no real estimate on when it
4 will be ready for hearings on the subject of air
5 quality. In addition, there's the other three issues
6 that still need to be addressed prior to reaching a
7 final recommendation on air quality on this project.

8 COMMISSIONER SHARPLESS: Before you go off
9 that, we heard the Applicant say that they felt as
10 though -- they thought they could resolve these
11 issues within a meeting on March 2nd with USEPA, so
12 they thought -- yeah, they thought at the end of the
13 month in order to carry out the processes. You
14 mentioned something about South Coast Air Quality
15 Base or South Coast Quality Air District meeting to
16 do something. Is this a board action? Is this an
17 administrative action? How much time does it take?

18 MR. BUELL: I believe it is a action that
19 their executive officer can perform, and their rules
20 require them to approve the use of interbasin offsets
21 that they are providing to another district. So they
22 would have to -- the executive officer would have to
23 make a recommendation of approving.

24 COMMISSIONER SHARPLESS: A recommendation
25 or just do the approval?

26 MR. BUELL: An approval.

1 COMMISSIONER SHARPLESS: Okay.

2 MR. BARNETT: I'm sorry to interrupt. Our
3 understanding is that that may require board action.
4 We're not sure that that has been delegated.

5 MS. HOUGH: The statement that that was
6 delegated was something from the last workshop, so
7 maybe it's been updated since then.

8 MR. BARNETT: Sorry.

9 COMMISSIONER SHARPLESS: So depending on
10 the outcome of interpollutant ratio and trade issues
11 and the type of analysis, you think it could take two
12 weeks -- what is the outside of what you think the
13 other end of it? Our staff would be doing it, right.

14 MR. BUELL: I think it would depend on a
15 number of different factors on exactly the type of
16 analysis this EPA would recommend. Certainly our
17 staff is willing to contribute their resources to
18 resolving this issue. It may require expertise
19 beyond the currently capabilities of Staff.

20 COMMISSIONER SHARPLESS: And where would we
21 get them?

22 MR. BUELL: Initially, rely on the Air
23 Resources Board and the USEPA to rely on that
24 expertise.

25 COMMISSIONER SHARPLESS: Okay.

26 MR. BARNETT: I would hope that the

1 district be included in that list.

2 COMMISSIONER SHARPLESS: Of providing
3 input?

4 MR. BARNETT: Right. I think these are
5 actually district issues.

6 COMMISSIONER SHARPLESS: Well, all of these
7 issues become CEC issues, whether they are being
8 handled by district interpollution trade, they become
9 the mitigation package. So what they do effects what
10 our judgements are on this case.

11 Okay. Now, water is the next one, I
12 believe.

13 MR. BUELL: Yes. Regarding water, we
14 believe that there's three outstanding issues on
15 water. I agree with Mr. Tom Barnett again that we
16 are making significant progress on how to deal with
17 some of these issues, but we're just now seeing the
18 tunnel -- not the light at the end of the tunnel, is
19 the way I refer to it. The three issues that need to
20 be addressed concerning the effectiveness of water
21 storing for the project -- ground water storing, that
22 is, that would be used to offset any ground water
23 impacts resulting from the project pumping ground
24 water.

25 The second issue deals with water quality
26 of that water to be injected. We believe that we can58

1 work with Mohave Water, Regional Water Quality
2 Control Board staff to prepare the conditions to
3 address that.

4 And the third issue has to do with the
5 availability of State water project water. We
6 believe that Staff needs to do additional analysis to
7 address that issue. And lastly, Staff has indicated
8 a desire to supplement our analysis on dry cooling
9 that would help address -- provide the community with
10 additional information on that option in order to
11 mitigate the project's impact.

12 COMMISSIONER SHARPLESS: Could you --
13 Mr. Buell, could you, on the issues that you've just
14 outlined, give us an idea of where we stand on each
15 one of these? I know that in your submittal to the
16 Committee, you are talking about the Staff doing the
17 analysis on the dry cooling issue. I'm looking for
18 what you indicated as the amount of time that it
19 would take to do that.

20 MR. BUELL: I believe that we could address
21 all three of the issues that we've identified on
22 water within two months of today's date. One of the
23 reasons why we don't -- aren't as optimistic as the
24 Applicant is whether or not we can resolve that at
25 the workshop if we continued to the 26th of this
26 month, is that we have not had an opportunity to

1 review all the information that the Applicant can
2 provide to this process. One of the things that's
3 outstanding at this point are known as pump tests
4 that the Applicant has conducted. On the wells in
5 the project area that would help define the aquifer,
6 and thereby help us to determine the appropriate
7 mitigation measure for the project. Without that
8 information and without having seen that information,
9 we're reluctant to say that it is a slam dunk to
10 resolve the issue.

11 COMMISSIONER SHARPLESS: I'm going to raise
12 another issue and that is under "write up." You
13 indicate that the La Hontan Regional Water Quality
14 Control Board initiated a review, but subsequently
15 decided to defer issuance of the decision until after
16 the Energy Commission decision on the AFC. What
17 problems does that pose for us?

18 MR. BUELL: I think this is a situation
19 that's similar for all the water agencies that are
20 involved on this project, is that in reality the
21 Mohave water agency and also the Victor Valley Water
22 District is reserving their final judgment on the
23 project until they see our CEQA documentation for the
24 project.

25 In the case of Mohave water agency and
26 Victor valley water agency, they've given us their 60

1 preliminary conditions that they would believe
2 appropriate to mitigate the project. The La Hontan
3 water agency has not done so. Staff believes that we
4 can prepare the conditions that would meet the La
5 Hontan requirements, and we don't believe that it's a
6 significant impediment to proceed with our analysis
7 at this point.

8 COMMISSIONER SHARPLESS: How do we do that,
9 by working with La Hontan?

10 MR. BUELL: Yes.

11 COMMISSIONER SHARPLESS: So while not
12 giving final approval of it, they will have a part in
13 guiding the mitigation of discussion?

14 MR. BUELL: Yes.

15 COMMISSIONER SHARPLESS: Commissioner
16 Laurie, any comment? Okay. So we have a slight
17 difference of opinion on how long water is going to
18 take at least from two parties. Biological
19 resources?

20 MR. BUELL: Again, there are two issues
21 that have to do with biological resources, although
22 the Applicant is correct that a substantial portion
23 of the biological issues associated that remain to be
24 resolved deal with the water supply for this project.
25 There are also issues that Staff believes that need
26 to go back and revise our conditions of certification61

1 to reflect documents that we received from various
2 comments on the SA at the Staff workshops, and so
3 there's more than just simply responding to the water
4 issues that needs to be done. And I think we have
5 identified that it would take --

6 COMMISSIONER SHARPLESS: You say an
7 additional one month?

8 MR. BUELL: Yes, that's correct.

9 COMMISSIONER SHARPLESS: You already
10 covered the hazardous materials management earlier
11 on, so now we're more or less into issues of witness
12 identification, exhibits and schedules. Stan?

13 JUDGE VALKOSKY: Mr. Buell, so that I can
14 be sure I have this, it's about a month for biology
15 before you can submit errata to this assessment?

16 MR. BUELL: That's correct to the extent
17 that there's water issues that we talked about also.

18 JUDGE VALKOSKY: Right. And a month for
19 hazardous material handling?

20 MR. BUELL: Yes.

21 JUDGE VALKOSKY: Supply supplemental
22 testimony on air quality?

23 MR. BUELL: Not at this time. I think we'd
24 be better to advise the Committee after the workshop
25 on the 2nd.

26 JUDGE VALKOSKY: And then your prehearing 62

1 conference statement you indicated about two months
2 for that? You would need to work out closed
3 conditions with La Hontan; is that correct?

4 MR. BUELL: Yeah.

5 JUDGE VALKOSKY: So that April 9th date is
6 still good?

7 MR. BUELL: Yes.

8 JUDGE VALKOSKY: Yes. And that you would
9 not know cultural resources until you received the
10 additional material from Southwest Gas, right?

11 MR. BUELL: That's correct.

12 JUDGE VALKOSKY: Mr. Thompson, I indicated
13 some areas before which did not appear ready for
14 hearing that were before the Commission too, is that
15 right around the 22nd? I guess I'd have to get
16 cultural resources to that pending the report from
17 Southwest Gas.

18 MR. THOMPSON: I think there's some
19 confusion probably brought about my misunderstanding
20 of where the cultural and Southwest Gas situation fit
21 in. Over my shoulder came, while I was sitting here,
22 a cultural resources assessment of the Southwest Gas
23 pipeline. This is going to be filed, I believe,
24 under confidentiality today, and hopefully this will
25 resolve the cultural issues that are outstanding. I
26 had previously thought that the cultural issues were 63

1 tied to the Southwest Gas testimony on operations,
2 but I have since been informed that I was incorrect,
3 that those are really more of biology type questions.

4 JUDGE VALKOSKY: Is this the cultural
5 material that Mr. Provenza was speaking about earlier
6 or not?

7 MR. PROVENZA: Shall I?

8 MR. THOMPSON: Yes. I'm clearly not
9 helping.

10 MR. PROVENZA: Yes, sir. And to add
11 further clarification, I also received a report of
12 that. As I said, I was at a meeting yesterday. I
13 had not had the chance to review it or was not aware
14 of the significance of the report as it pertains to
15 this conference that we're having today, and that is
16 what we would like to submit today.

17 JUDGE VALKOSKY: Okay. So there will not
18 be additional material coming in a month or so?

19 MR. PROVENZA: There will be some other
20 studies done, but it will not effect this report that
21 would be submitted today.

22 JUDGE VALKOSKY: Thank you.

23 MR. WELCH: I believe this is the
24 information that was talked about at the workshops
25 last week, and after those workshops is when Staff
26 listed cultural as being closed because they were 64

1 expecting this information.

2 JUDGE VALKOSKY: So cultural -- Staff will
3 receive it today. And how long Mr. Buell?

4 MR. BUELL: I believe that we can provide
5 any supplemental or errata to the cultural resource
6 testimony within two weeks, so I would again include
7 that in the issues ready for hearing.

8 JUDGE VALKOSKY: Thank you.

9 MR. WELCH: Just to add, Staff will be
10 receiving it tomorrow. We still have copies of it to
11 make.

12 JUDGE VALKOSKY: I'm sorry, tomorrow.
13 Mr. Buell, you indicated that there was some
14 difficulty with the working conditions out with the
15 La Hontan Water Port. Do we not have any memorandum
16 of understanding with the State Water Board?

17 MR. BUELL: Yes, I believe we do an MOU.

18 JUDGE VALKOSKY: Does this not specify
19 certain times and usage of documents by the
20 respective agencies?

21 MR. BUELL: I believe it does.

22 JUDGE VALKOSKY: Is this an indication that
23 that MOU is not working or is it an indication that
24 it is working?

25 MR. BUELL: I'm not familiar enough with
26 that one to say if it is or isn't working or exactly 65

1 what the nature of the problem is, in this case, to
2 comment on the MOU.

3 JUDGE VALKOSKY: Just wondering because
4 that may be something that certainly the siting
5 committee may be interested in if there's some
6 improvement to be made.

7 I would also note that when you submit your
8 testimony on water resources, at least your staff
9 assessment does not have a resuᄠ for Lou De Bond.

10 MR. BUELL: We'll correct it.

11 JUDGE VALKOSKY: Okay. Dry cooling
12 analysis. How long will that take? Is that also
13 expected by April 9th?

14 MR. BUELL: I believe all the issues under
15 the topic of water resources that we have identified,
16 we are prepared to provide testimony within two
17 months.

18 JUDGE VALKOSKY: April 9th. Thank you.

19 MS. HOUGH: Excuse me. I would just point
20 out that we didn't really resolve the question of
21 whether the supplemental testimony in haz mat, since
22 we're calling it supplemental testimony, I'm assuming
23 that it's got to be filed 14 days prior to hearing
24 consistent with the Commission's regulations. I just
25 raise that as an issue in terms of scheduling.

26 JUDGE VALKOSKY: Right.

1 MS. HOUGH: And that won't be available for
2 another month.

3 JUDGE VALKOSKY: Or apparently another
4 month.

5 MS. HOUGH: So you were starting to bump up
6 against your hearing dates?

7 JUDGE VALKOSKY: Exactly. So haz mat,
8 cultural, air quality water resources, and biology
9 are not, in Staff's opinion, ready to proceed to
10 hearings.

11 COMMISSIONER SHARPLESS: Okay. Why don't
12 we go to CURE. Yes, Mr. Barnett?

13 MR. BARNETT: I thought we were just
14 determining that cultural was ready to proceed? In
15 other words with the documentation they will receive
16 tomorrow, that they would only need two weeks.

17 COMMISSIONER SHARPLESS: Yeah, I think he
18 misspoke.

19 MR. BARNETT: Okay. I just wanted to make
20 sure.

21 COMMISSIONER LAURIE: Commissioner
22 Sharpless, if I may? Mr. Buell, can you take a
23 moment and describe to me your working relationship
24 with other state agencies such as Fish and Game? How
25 does that work?

26 MR. BUELL: Staff generally works with 67

1 other state agencies -- local agencies to work out
2 the details, understand the issues that they would
3 otherwise have addressed in lieu of the energy
4 commission staff or energy commission process.

5 Can I be more specific?

6 COMMISSIONER LAURIE: What I'm ultimately
7 trying to get to, and let me not refer to Fish and
8 Game, let me refer to state agency X, what can state
9 agency X practically do as a formal party that they
10 should not be able to do by working as a associate
11 agency with Staff, that is, if some state agency has
12 a series of issues and you're made aware of those
13 issues, is it not incumbent upon you to bring those
14 forward and seek resolution?

15 MR. BUELL: Yes, Staff would certainly
16 believe it would be appropriate for us to present
17 issues that other state agencies identified on the
18 project, and certainly we could call in our own
19 witnesses if we felt that was appropriate. However,
20 calling another state agency as a witness doesn't
21 necessarily provide that agency an opportunity to
22 pursue the issues on its own behalf.

23 COMMISSIONER LAURIE: No, not on its own
24 behalf, is the State's behalf, is it not?

25 MR. BUELL: Yes.

26 COMMISSIONER LAURIE: Thank you.

1 COMMISSIONER SHARPLESS: Why don't we move
2 down the line. Next, we'll go to CURE.

3 MR. JOSEPH: First, I wanted to welcome Tom
4 Barnett to California and I hope long term here is
5 long and fruitful.

6 COMMISSIONER SHARPLESS: Perhaps he would
7 like to be short and fruitful.

8 MR. JOSEPH: I heard he's buying a house.
9 First, I'd like to address the issues, which there
10 seems to be general consensus, and are not ready for
11 hearing at this time, at this point, starting with
12 air quality and the issue of offsets. These issues
13 fall into two categories. First, it's the
14 interpollutant offset process. We would be acquired
15 from the South Coast Air District. I think that
16 we're more inclined to agree with the Staff's
17 assessment that it's too soon to tell that on the
18 meeting on March 2nd that Mr. Barnett suggested, that
19 would lead to a path of resolution or not. This is a
20 brand new novel, never done before concept and as a
21 concept of interpollutant interbasin trading. It's
22 an important issue. It may set a precedence for many
23 other projects, and I know that EPA is concerned
24 about the precedent we will be setting, and there are
25 very nontrivial issues to determine the technical
26 justification for this sort of an offset protocol. 69

1 We submit it in our comments on the PDOC an analysis
2 by someone who I think is regarded by one of the
3 foremost experts in modeling this thing, and he
4 outlined the protocol which ought to be followed to
5 produce modeling which would technically justify one
6 ratio as another as the appropriate ratio, and at
7 this point we believe that that is the required
8 protocol that needs to be followed.

9 COMMISSIONER SHARPLESS: Who is this?

10 MR. JOSEPH: His name is Tom Tershy. And
11 he is referred to in our prehearing conference
12 statement. His resumÇ is there. He has worked
13 extensively with the Air Resources Board in the past.
14 So I think that's very much an open question as to
15 what the appropriate path will be to resolve that.
16 And then moving along that path will be the next
17 step.

18 Second, with regard to the question of the
19 South Coast Air District Board approval of these
20 offsets, within the last couple days we have talked
21 to the legal staff at the South Coast Air District.
22 They have confirmed this is, and actually is an
23 action has been taken by the board. It has not been
24 delegated to the executive officer and it does
25 require board action. It also requires an
26 application which they have not yet received, so 70

1 there is some time period required even when it's
2 determined what the quantity of offsets needs to be.

3 The second ERC issue of course is the
4 validity of the offsets from the disclosure of the
5 air force base. EPA, ARB and Staff, we have all
6 submitted comments saying that these offsets are not
7 valid to be used in the way they are proposed to be
8 used. And I don't even see at this point anything in
9 progress to resolve that issue. There's simply is
10 statements from all of the expert agencies commenting
11 on the PDOC saying these aren't valid.

12 Now to sort of wrap up on the air issue. I
13 think it's anybody's guess when and if these issues
14 will be resolved, and I fully sympathize with
15 Mr. Buell's estimate of when these will be given an
16 appropriate response. It's not possible to determine
17 whether this project will be able to acquire offsets
18 that EPA will approve which will allow the project to
19 go ahead, and as previous speakers have acknowledged,
20 these do require EPA's approval before the offsets
21 can be approved.

22 Moving on to water, we are also somewhat
23 less optimistic about a quick resolution to the water
24 supply issue. At the last workshop on Tuesday in
25 Victorville, Staff came up with a new idea on how to
26 deal with some of the issues having to do with

1 banking water. It is a new idea. It needs some
2 examination. We are currently thinking about it, and
3 our experts are reviewing that information, that
4 concept. It's not certain. I think it's premature
5 to conclude that this brand new idea solves the
6 problem. There are just a raft of issues dealing
7 with this water banking concept which aren't amenable
8 to quick solution. Even with best efforts, they are
9 technically difficult issues with the geology, and
10 the ability of the area to hold the water, the
11 ability to hold the interaction with the Mohave
12 River, and the effectiveness of conditions which it
13 require, Mr. Welch said that don't overdraw our
14 account. It's a difficult concept. Whether it can
15 be done is not yet certain.

16 Now, if I could, I'd like to move on to the
17 questions of biology specifically with regard to the
18 32-mile pipeline. Commissioner Laurie, we agree
19 entirely with your idea that this can't be -- in CEQA
20 terminology peacemeal -- from the project. This is
21 part of the project. I think we do disagree with the
22 characterization as this being a chicken and egg
23 problem. And the Committee -- I believe the last
24 time the committee met in the Victorville City Hall,
25 had the concept of EOM meeting to do it's -- to carry
26 out its obligations under NEPA came up, I said at 72

1 that time that the appropriate process was a joint
2 EIR/EIS process, which takes care of the chicken and
3 egg problem. You get both chicken and egg at the
4 same time, and we still believe that that is the
5 appropriate process to avoid this problem, and
6 creates certainty when you reach your decision that
7 your conditions of certification are the only
8 certification which will be required by all of the
9 effective agencies.

10 There's another important issue with regard
11 to the pipeline which has not yet been discussed
12 today, and that is EOM's legal authority to issue the
13 right of way permits. As you are probably aware,
14 CURE filed a 60-day notice to intent to sue BLM
15 because the plan under which they designated the
16 utility corridor as the utility corridor required
17 consultation under the endangered species act with
18 the Fish and Wildlife Service, and BLM has not done
19 that consultation. So it is at this moment beyond
20 the legal authority of BLM to issue permits under
21 that plan until that plan becomes a legal plan upon
22 which to rely.

23 We filed a 60-day notice in mid December.
24 Yesterday was the 60th day. Yesterday we received a
25 faxed letter from BLM responding to the 60-day
26 notice. They beat close of business by six hours. 73

1 So 59 days, 18 hours after the notice went out, we
2 got a response. We are still reviewing that
3 response. I do note that one of the statements in
4 their response is that they say under no
5 circumstances would we consider a right of way grant
6 before October 1999. So in terms of your scheduling,
7 that's what BLM says about their schedule.

8 COMMISSIONER LAURIE: How much time do you
9 have to file?

10 MR. JOSEPH: The 60 days is a prerequisite,
11 which we are not allowed to file. We can file after
12 the 60 days. We have not determined what we're going
13 to do.

14 COMMISSIONER LAURIE: So you don't have to
15 file the next day after the 60 days?

16 MR. JOSEPH: No. So that's the status of
17 that issue. Now, with respect to the hazardous
18 materials --

19 COMMISSIONER SHARPLESS: Maybe before you
20 pass me on that issue with respect to the BLM, given
21 the issue is on the table, is there any movement on
22 their part to consult with Fish and Wildlife Service
23 on the California Desert Conservation Plan?

24 MR. JOSEPH: There's actually a long and
25 tortured history of BLM's actions on this. And I
26 can't give you a full recitation on it. The plan has74

1 a variety of some parts which are in varying stages
2 of interaction and consultation. I've read their
3 response letter once now, and it's my understanding
4 after one reading is -- they are saying, "We don't
5 actually intend to complete the consultation because
6 we're doing something else instead." And I don't
7 quite understand what something else is at this
8 point.

9 COMMISSIONER SHARPLESS: Doing something
10 else regarding the project?

11 MR. JOSEPH: Regarding the plant. And they
12 are sort of saying that what I understand from this
13 letter is they don't intend to do the consultation,
14 because they are taking other actions that should
15 replace the need to consult. But they also cite
16 their resourceing constraints in being able to get to
17 the point of having a valid plan. So I can't make
18 any projection about when they would come into
19 compliance.

20 With respect to hazardous materials, we
21 appreciate the Staff's response. We are hopeful that
22 Staff's revisions to its testimony will fully satisfy
23 the issues that we raised, and I should say that from
24 a general manner, we hope to get to the point where
25 we have no testimony because we end up agreeing that
26 everything that Staff has. And on many issues that 75

1 clearly will be the case and on the unresolved issues
2 we have to see where that goes. And what we put in
3 our prehearing conference statement is where we would
4 be today. Now, with respect to the other issues, the
5 list of 16 which has both grown and shrunk a little
6 bit, for six of those issues, I think it is actually
7 premature to proceed to hearings on those because one
8 of the outstanding issues here is whether or not this
9 project will be required to implement dry cooling
10 rather than the water plant they are currently
11 pursuing. It is certainly possible that the
12 Commission will find that this project will cause
13 several significant water supply and water quality
14 impacts, which require mitigation. And that the
15 feasible mitigation measure which the Commission is
16 either obligated to or decides to select is dry
17 cooling. We have indicated that we believe that that
18 is a feasible mitigated measure both technically and
19 economically and we think it's, as well, it entirely
20 eliminates a great number of issues which resolve
21 ground water supply, and in particular, it also
22 addresses a cumulative water supply that this
23 Commission needs to be concerned with, given the
24 great number of power plants that are passing through
25 this building.

26 Given the fact that dry cooling is

1 certainly a live possibility at this point, if that
2 were to be adopted as a mitigation measure, that
3 would effect the analysis in several of the other
4 areas which are otherwise uncontested and resolved.
5 Now, I'm not suggesting that any of these areas would
6 ultimately be contested areas, but the analysis would
7 be different, and in most cases the project would
8 show that it has less impact. The switch to dry
9 cooling would affect the public health analysis, No.
10 2 on the Staff's list; waste management issues, No.
11 5; noise, No. 8; visual impacts, No. 9; and facility
12 design, reliability, and efficiency, 13, 14 and 15.
13 Most of those areas would be effected in a beneficial
14 way, but they would be a different analysis.

15 And finally -- it's a semi-housekeeping
16 matter -- we have sent to the Applicant requests
17 specifically regarding dry cooling, responses to
18 which are due March 15th.

19 Commissioner Laurie, you raised the
20 question whether or not a decision has been made to
21 bifurcate or not, and it hasn't been made to
22 bifurcate. Frankly, I don't see what's gained by
23 going through the exercise of having hearings on
24 areas for which there is no disputed issue and doing
25 that in advance. It seems to me that the hearing
26 time I'm at which ought to be relatively short, there77

1 is probably going to be no cross-examination. And
2 I'm not sure what is gained by gathering us all
3 together to go through that exercise when there are
4 still significant other areas which are unresolved
5 which effect the viability of the project and which
6 perhaps will result in taking the lion share of the
7 hearing time. I don't know what we will gain by
8 going through the exercises of any of the other
9 issues.

10 COMMISSIONER SHARPLESS: Staff may need the
11 proposal back. If we do go forward with the 16 or
12 now 15 taking out cultural resources -- Staff, would
13 you like to respond.

14 MR. BUELL: I think we agreed to put
15 cultural resources back in.

16 COMMISSIONER SHARPLESS: I'm sorry. I've
17 got it circled in my book. Okay. 16. The primary
18 issue is not cultural resources. The primary issue
19 is going forward on issues that seem to be resolved.

20 MR. BUELL: I'd also note that we added two
21 issues to that list of 16, and that's alternatives
22 and compliance.

23 COMMISSIONER SHARPLESS: Fine. Add to the
24 list, but answer the primary question, please,
25 Mr. Buell.

26 MR. BUELL: I will. I think the value of 78

1 going forward on these issues is that at some point
2 in these processes, that we will have to hear
3 evidence even if we came to a conclusion to recommend
4 denial on these projects. And that it would be
5 beneficial to get those issues out of the way, if you
6 will, at this point in time since we have in our
7 substantial agreement in those issues with the
8 Applicant, and for the most part with CURE on many
9 points. So we believe that there's a benefit in
10 going forward at this time.

11 COMMISSIONER SHARPLESS: What's the
12 latitude if we do go through and establish a record
13 that the analysis and the mitigation is appropriate
14 for this project, and then approve something like dry
15 cooling that would change the impacts? What is the
16 approach?

17 MR. BUELL: I would suspect that we -- and
18 Staff maybe required as other parties will be
19 required to file supplemental testimony at that point
20 in time to address that. There's probably one other
21 area that we identify that CURE didn't identify that
22 would have to be addressed and that's visual
23 resources.

24 COMMISSIONER SHARPLESS: They did.

25 MR. BUELL: Sorry. I missed that on the
26 checklist.

1 COMMISSIONER SHARPLESS: Would you like to
2 address the issue?

3
4 MR. THOMPSON: Thank you. I believe the
5 number is 18 areas of substantial agreement between
6 ourselves and staff. And I clearly believe that we
7 should go forward and hear those issues, and there
8 are a couple of reasons that I think are fairly
9 compelling. Number 1 is that in this calendar year,
10 you will see more applications, I suspect, then at
11 any time possibly in the history of the commission.
12 It makes sense to me to start the record and have
13 testimony sworn to and areas of testimony in close,
14 so the committee and ALJ Valkosky could have more
15 freedom of when to write, when should I sit down and
16 start going through this, rather than to wait until
17 all issues are resolved, or until we determine that
18 there are unresolved issues that we have to come in
19 front of you for adjudication. Seems to make sense.

20 Number 2, there are a number of parties who
21 are not sitting at the table right here that may or
22 may not agree with our analysis that areas have been
23 put to bed. There are intervenors such as
24 Mr. Ledford and Fish and Game that may indeed not
25 share the view of Staff and Applicant that these
26 issues are resolved. Scheduling hearings and

1 scheduling them early would flush that out and we
2 would see that if, indeed, all parties agree on those
3 areas. So I would recommend that we go forward.
4 With regard to other issues, it may well be that we
5 bring issues to this Committee. It would not
6 surprise me, for example, the union suggested this
7 Dr. Tershy's -- that we delay until Dr. Tershy's
8 material can be incorporated. We don't agree with
9 Dr. Tershy. He's a brilliant guy. He's done great
10 modeling, but the model we used is approved by South
11 Coast and ARB, and that's the one that we probably
12 think is the right one. That maybe the one issue we
13 bring for adjudication, whether or not you are going
14 to adopt CURE and have us remodel and have somebody
15 else model. There maybe issues like that.

16 I'd love to be able to tell you that every
17 issue is going to be resolved by the time we get
18 here, but I suspect that that may not be the case.
19 So I think the sooner we start on those areas, the
20 better off we are.

21 COMMISSIONER SHARPLESS: When you look at
22 some of the analysis that might occur after some of
23 these earlier issues might be discussed and records
24 built, and mitigations made and then new evidence
25 comes up that might change the analysis and
26 consequently the mitigation -- I'm just using this as81

1 an example, dry cooling -- might make the analysis
2 look better, and change the mitigations. What's your
3 feeling about opening items? You made a statement
4 earlier about closing items and sticking with the
5 approval. In this case, it could be that later --
6 issues that we put off until later effect the issues
7 that we have gone through other evidentiary hearings
8 on. What is your feeling about reopening those
9 issues?

10 MR. THOMPSON: I think when parties sit a
11 at this table and have no interest in seeing
12 resolution of issues and closure of issues, there is
13 always the possibility that new, quote, "issues," end
14 quote, are going to come up. I mean dry cooling is a
15 pretty good example I believe it was almost a year
16 ago that we submitted responses to data requests.
17 The union now has new data requests as follow up to
18 those responses of a year ago. This shows me that
19 there's less interest in interest resolution than
20 harassment, and that's something that I suspect that
21 the Committee may have to deal with.

22 We don't think dry cooling makes sense
23 economically. We don't think it's the right
24 geographical location for it. But I don't think we
25 should hold up hearing the issues based upon -- and I
26 guess this is styled as mitigation and not as an 82

1 alternative -- based upon something that staff or
2 some other party may think is the right idea for us.

3 COMMISSIONER SHARPLESS: See, the point is
4 not that one. The point is when you adjudicate or
5 have an evidentiary hearing that has all of the
6 issues that you can start with water and air and
7 biological issues, and let the rest fall out from
8 there because they would have an impact on it, and
9 it's not a question of whether somebody is trying to
10 harass. It's really a question of evaluating the
11 options, assessing the information. You may be a
12 hundred percent right, that might be the conclusion,
13 but then the rest of it follows. The rest of the
14 mitigations and the rest of the analysis follows.
15 When you do it in reverse, it's almost as though if
16 in fact dry cooling becomes an option in the record
17 that the Committee has to decide upon based on what's
18 in the record, the testimony, the expert witness
19 testimony, then we don't want to be foreclosed from
20 allowing the entire project to resemble what the
21 various elements are. So I can see your point
22 definitely about moving through the items that have
23 been agreed upon, but the problem is that the
24 major -- the big items have a great impact on the way
25 this facility is going to operate. So it really is
26 sort of a -- I think it's something that the

1 committee has to weigh. It has not made a decision
2 on this, that's why Commissioner Laurie keeps raising
3 the issue of whether the decision of bifurcation has
4 been made, and that's why he keeps raising it, and
5 that's the purpose for today -- part of the purpose
6 for today's preconference hearing is to get as much
7 input on these issues as we can so we can make an
8 intelligent decision on how to proceed. So I'm very
9 interested in what you have to say and other parties
10 have to say on this issue.

11 MR. THOMPSON: I don't know that we can
12 never say with any certainty that, No. 1, we will not
13 revisit areas that we thought we had resolved. But
14 similarly, I'm not so sure that we can ever say that
15 new issues are going to arise in the proceeding as we
16 head along the pathway. There may be issues raised
17 by certain parties that we thought we put to bed,
18 land use issues or noise issues which can turn around
19 and effect other issues that have been resolved or
20 unresolved. And I'm suggesting that because of the
21 interrelationships of many of the areas, when you
22 make a change in the project, that we No. 1, that we
23 start on the areas that we think we have resolved;
24 and No. 2, we're not so sure that we see the impacts
25 of the issues remaining to be resolved in the air and
26 the water and the biology areas, being those kinds of 84

1 issues that will effect other areas. If a party, for
2 example, disagrees with some aspect of the issues as
3 we see them, we think that that disagreement would
4 probably be confined to that area. If however,
5 something like an issue such as dry cooling is put in
6 front of you, you would have the evidence of
7 ourselves and the parties advocating that. If you
8 told us that we build our project with dry cooling or
9 not at all, we would assess that. And if we came
10 back and said, "We'll take the project with dry
11 cooling," we would anticipate that other areas would
12 have to be reopened, if you will to accept that, but
13 right now that is not our proposal.

14 COMMISSIONER SHARPLESS: Okay.

15 MR. BARNETT: I'd like to add something to
16 that. I've done it in a lot of other states. I'm
17 very concerned that there are a lot of projects that
18 have entered this process here in the latest process
19 of deregulation of California and no one has made it
20 through it yet, and there has to be a way --

21 COMMISSIONER SHARPLESS: I can speak to
22 that because there's one that's going to be coming to
23 the Commission very shortly. There are two others
24 that are proceeding along fairly well. This one
25 hasn't been doing so well for a variety of reasons
26 that we don't need to get into, but don't imply that 85

1 this is a system that is constipated and can't get
2 projects out, because that is simply not the truth.
3 It is an illustration that the better the information
4 is at the beginning of the process, the more complete
5 it is. And the response of the Applicant to issues
6 means that the application gets through a lot faster,
7 and we've been able to proceed on this one.

8 Commissioner Laurie, do you have anything
9 to say?

10 COMMISSIONER LAURIE: Well, I've managed to
11 count to 7 or 8 and that was adequate time to
12 determine that perhaps I should not make a comment in
13 response to the most recent comment. I would respond
14 in saying as you and I don't think that question is
15 relevant to this proceeding.

16 I am interested in hearing from F&G.

17 COMMISSIONER SHARPLESS: Yes, we haven't
18 forgot F&G. Stan has a question of CURE before we
19 proceed.

20 JUDGE VALKOSKY: Mr. Joseph, in your
21 prehearing conference statement, you indicated that
22 based on this present Staff assessment, you may or
23 may not have a dispute on public health.

24 MR. JOSEPH: Well, let me back up with some
25 facts. Just the last week I believe we received
26 revised analysis of the health risk from the

1 Applicant. Perhaps it was earlier than that, but in
2 any event we just completed reviewing that and it's
3 our position at this point, which we included in the
4 comments which we gave the Staff or will be giving to
5 Staff today, that there would be a significant health
6 risk as a result of sulfates generated from the wet
7 cooling towers.

8 JUDGE VALKOSKY: So, in other words --

9 MR. JOSEPH: Whether or not we have
10 disagreement, depends on whether Staff responses to
11 the comment.

12 JUDGE VALKOSKY: So the bottom line is you
13 don't know until you see Staff's.

14 COMMISSIONER SHARPLESS: I guess you are
15 doing one in public?

16 MS. HOUGH: We don't know yet. We'd have
17 to review these comments.

18 MR. JOSEPH: I don't mean to disagree with
19 anything that Staff has said, but I have to disagree
20 with one thing that Mr. Buell said. I don't think
21 that if you were to conclude that there were no valid
22 offsets for the project, that you'd have to hold
23 hearings on all the other issues. I think if you
24 can't meet your statutory obligation to find what the
25 emissions will be offset then that's an adequate
26 evidentiary basis to make a decision on.

1 COMMISSIONER SHARPLESS: Any comment by
2 Staff?

3 MS. HOUGH: I hope it doesn't get to this.

4 COMMISSIONER SHARPLESS: Fine. Great.
5 We'll be optimistic as the Applicants are, that
6 upcoming meetings will be fruitful. We continue to
7 desire that they are. We will continue to try to
8 work with you, and we want to be able to incite a
9 project that is both economical and one that meets
10 all of the environmental requirements.

11 Now, we need to go to Fish and Game or F&G.

12 MR. BUELL: If we might ask the Committee a
13 question?

14 MR. DeSALVIO: Do you anticipate that
15 you'll need the services of the district staff for
16 the remainder of the day?

17 COMMISSIONER SHARPLESS: I don't think so.
18 Any parties have any questions? Then I believe that
19 you'll be able to -- we only have a couple of
20 minutes, anyway.

21 MR. DeSALVIO: We'll have a better feeling
22 of where we are at on March 2nd.

23 COMMISSIONER SHARPLESS: Thank you for
24 coming here today. I know it's a long trip for you.
25 Okay let's proceed here. Ms. Murray?

26 MS. MURRAY: My name is Nancee Murray from 88

1 the Department of Fish and Game. First off, we
2 really don't have a submission on the 18 or 18 or so
3 issues that may or may not be ready to go to hearing
4 sooner rather than later. We have focused on just on
5 the biological resources and water resources. And as
6 to those two issues, we believe they are not ready
7 for evidentiary hearings. As an addition, I think it
8 might be procedurally easier to do all issues at once
9 rather than bifurcate, but that's certainly up to
10 you. And we agree with the Applicant's statement
11 early that the biological resources and water
12 resources are some way interrelated, especially as to
13 our issues with the red peering corridor and species
14 are potentially effected by the ground water pumping.
15 And there was a workshop earlier this week where we
16 are continuing to make progress.

17 There is a new idea and I spoke to our
18 consultant yesterday, and he is optimistic about that
19 new idea and is still looking at it, and can make no
20 comment or determination at this time as to the
21 efficacy of this new water idea rather than a more
22 complicated contour map and who is interfering where.
23 It sounds much simpler, but we really don't know at
24 this time if it will work.

25 COMMISSIONER SHARPLESS: So, are you also
26 looking forward to the -- is it the February 26th 89

1 meeting where these will be discussed?

2 MS. MURRAY: Right.

3 COMMISSIONER SHARPLESS: And you'll be a
4 full party.

5 MS. MURRAY: And we expect to make progress
6 at the 26th. And I would hesitate to say that we'll
7 have full resolution on the 26th, when it's all
8 happening at the pretty quick pace, but I do expect
9 that we would again make progress at the 26th
10 meeting.

11 COMMISSIONER SHARPLESS: So someone within
12 your department with what type of background is
13 looking at the new idea?

14 MS. MURRAY: We have both a biologist and a
15 hydrologist that were at the workshop two days ago
16 and will be there at the 26th. And our consultant is
17 a hydrologist with an engineering background.

18 COMMISSIONER SHARPLESS: I think you
19 actually wrote that in your statement, didn't you?
20 They were the two people, Rebecca Jones and
21 Mr. Bemhin?

22 MS. MURRAY: Right, and I spoke to both of
23 them yesterday and they were both cautiously
24 optimistic and felt that there would be further
25 progress on the 26th and were very open to this
26 process, but not exactly sure of coming to a

1 resolution in the immediate future.

2 COMMISSIONER SHARPLESS: Stan, do you have
3 any housekeeping --

4 MS. MURRAY: I would like to make a couple
5 other points. First, we need to develop the
6 mitigation, and then we need to develop an
7 effectiveness monitoring plan. This is a new
8 requirement under the endangered species act that
9 just came into effect January 1st. And we plan and
10 look forward to working with CEC Staff on developing
11 a monitoring plan in compliance with CEQA, and then
12 that would also take in this additional CESA
13 monitoring requirement, and having that all part of
14 the plan that is part of the permit.

15 COMMISSIONER SHARPLESS: The monitoring
16 plan depends on the resolution of some of these other
17 issues, right?

18 MS. MURRAY: Right. And the mitigation has
19 to come first and be resolved. And really we have
20 yet to finish an effectiveness monitoring plan
21 because the biologists say, "What did the legislature
22 mean by that? And we say, "Well, I guess we'll work
23 it out." So if something we're struggling with and
24 will work it out on a case-by-case basis.

25 COMMISSIONER SHARPLESS: What's your
26 estimate once the mitigation is resolved for putting 91

1 the effectiveness monitoring plan together?

2 MS. MURRAY: I have one more factor that
3 might go into the timing and I apologize for not
4 addressing this in the preconference statement. I
5 can only say that I've been so involved in doing the
6 research for the brief that I forgot to mention it
7 here, which is the Supreme Court case, the Mohave
8 Adjudication versus Al Elonto [sic]. Fish and game
9 was a party at the trial court and the court of
10 appeal participated in the court of appeal, we and we
11 are looking into the matter at the Supreme court
12 level. I believe it's the biggest water case in the
13 last 20 years, and certainly perspective ground water
14 and possibly water rights all together. The briefs
15 are due -- the final briefing -- the last brief will
16 be due the first week of March. We expect oral
17 argument either late spring or early summer and a
18 decision this year. That is an extremely abbreviated
19 time schedule for the Supreme Court, however, the
20 justice that wrote the opinion 20 years ago, that was
21 the last biggest ground water case, is still on the
22 court case and is thinking of leaving and still wants
23 to do this before he leaves. It's amazing.

24 COMMISSIONER SHARPLESS: How old is he?

25 MS. MURRAY: This was all rumor and I heard
26 he's still there and wants to do this before he

1 leaves, but I don't know. So that gives us the
2 reasoning for thinking that it will be -- it's on an
3 accelerated track. It has been. They granted review
4 within a month. I mean, that is unheard of timing.
5 So we believe that that -- how that decision resolves
6 itself at the Supreme Court could have an impact --
7 large impact on the Mohave River Basin and is
8 statewide. That's why we feel that it's a very
9 important state matter. And how that might effect
10 the High Desert Power Project, is that it might
11 effect Mohave's water agencies continued ability to
12 collect assessments to buy the state water to work on
13 their pipeline further for getting the state project
14 water to the Desert area. If this Supreme Court
15 agrees with the court of appeal, it could under mine
16 the current adjudication greatly.

17 COMMISSIONER SHARPLESS: Would that effect
18 old servers more than new customers?

19 MS. MURRAY: Well, it would effect everyone
20 and it would effect anyone who is not a farmer that
21 has property that he's pumping and serving to that
22 overlying property. So it would effect any
23 appropriate -- all cities, all areas that are
24 basically not farmers.

25 COMMISSIONER SHARPLESS: And what would be
26 the adverse outcome? Less water to be appropriated? 93

1 MS. MURRAY: The farmers would increase
2 their amount greatly and all others would take a
3 decrease.

4 COMMISSIONER SHARPLESS: Maybe you ought to
5 make your plant into a farm.

6 MR. BARNETT: Looks better and better all
7 the time.

8 COMMISSIONER SHARPLESS: Grow corn.

9 MS. MURRAY: So the department requests
10 that any hearing on the issues of biological
11 resources and water resources be delayed until the
12 fall to give us time to work on the mitigation, work
13 with Staff on the monitoring, and work with the
14 Applicant on the monitoring plan, and give us time to
15 have potentially have direction from the Supreme
16 Court. Also, we feel that dry cooling is an issue
17 that would be a good thing to look into and give us
18 and give Staff time to look into, and us to respond.

19 Lastly, I just want to mention -- touch
20 briefly on our petition to intervene. We did file it
21 yesterday and we wanted to file it prior to this
22 hearing today. And we wanted to file it prior to
23 this meeting today in part to make sure that you
24 understand that the petition is really a reservation
25 of rights. We have been working very closely with
26 the Applicant and have been very cooperative. It's 94

1 been a wonderful relationship and we're appreciative
2 of that, however, in the event that there's a
3 breakdown of that process or a disagreement that we
4 can't get beyond, we would like to reserve our right
5 to present that issue in the form of testimony that
6 could be relied on as a finding before this
7 Commission. And it is our experience in appearing
8 before the State Water Resource Control Board, the
9 Department, that state agencies have different
10 interests. For example, before the Water Board
11 today, the Department of Fish and Game and the
12 Department of Water Resources is within the same
13 agency, but we have different missions. Our mission
14 is to preserve and protect fish and wildlife
15 resources. The Department of Water Resources'
16 mission is to develop water, and so we have different
17 missions. And as I see your mission is to facilitate
18 energy projects, and to do that in compliance within
19 the laws, CESA/CEQA, however, there might be a point
20 where you believe a weighing and balancing goes one
21 way, and we believe a weighing and balancing goes
22 another way. Those judgements calls that we would
23 like to be able not only to cross-examine and ask
24 questions, but to state our opinions under,
25 specifically, CESA, the Fish and Game Code, but also
26 our opinion for the public trust resources of fish 95

1 and wildlife.

2 MR. BETTWY: Before you close.

3 COMMISSIONER SHARPLESS: I'm not going to
4 close. I'm going to recognize that I didn't call
5 upon you, and intended to give you an opportunity to
6 speak if you had anything to say.

7 COMMISSIONER LAURIE: Before you do that,
8 can I talk to Fish and Game for a minute?

9 COMMISSIONER SHARPLESS: You certainly may.

10 COMMISSIONER LAURIE: Thank you.

11 Ms. Murray, I appreciate all those comments and I
12 think I understand. If you are perhaps a hearing
13 officer, as a party, do you have a right to litigate
14 in this case?

15 MS. MURRAY: Yes, we would have a right to
16 appeal your decision.

17 COMMISSIONER LAURIE: Do you have a right
18 to litigate any other state agency, Department of
19 Fish and Game versus Department of Water Resources?

20 Stan, do you know?

21 JUDGE VALKOSKY: My impression is that
22 state agencies do get into a situation where they do
23 in fact sue each other.

24 COMMISSIONER SHARPLESS: I think that Stan
25 is right, but I think that under previous governors
26 it was frowned upon and such authorization was

1 usually not granted.

2 COMMISSIONER LAURIE: But we think there is
3 the legal ability to do so. What about Staff? Staff
4 is a party. Can Staff litigate against this project?

5 MS. HOUGH: Staff can take a position
6 recommending denial of the project. Staff cannot sue
7 the Energy Commission if they don't like the
8 decision.

9 COMMISSIONER SHARPLESS: Would you like to
10 allow them to?

11 COMMISSIONER LAURIE: Well, I was thinking
12 that Staff should not be a party, but I'm interested
13 in the differentiation if Staff is a party and
14 Persnay [sic] is a party, what rule distinguishes one
15 party from another.

16 JUDGE VALKOSKY: If I may, there's no rule
17 distinguishing the party. The purpose of the
18 intervention and the party status is to provide both
19 of your examples, those entities equal standing
20 before the committee and the commission of an
21 impartial decision maker. Those parties all have
22 equal status. They all have equal rights, equal
23 obligations.

24 COMMISSIONER LAURIE: That's fine. But I
25 see various parties and frankly as our processes goes
26 on, not only in this one but others, but there are 97

1 potential of large numbers of intervenors, all of
2 which as parties can litigate. Well, question, can
3 any member of the public who has participated in the
4 process, not a party, litigate?

5 COMMISSIONER SHARPLESS: I guess this gets
6 into the issue of what court it goes to.

7 JUDGE VALKOSKY: They would have -- if
8 someone had notice was afforded the opportunity to be
9 heard, chose not to be heard, fundamentally did not
10 follow the administrative process, I think they would
11 have a heck of time to establish a standing to take
12 us to court.

13 COMMISSIONER LAURIE: But if a neighbor
14 shows up and during the course of the public hearing
15 offers comment and that comment is part of the public
16 record, can they litigate on a manner relevant to
17 that comment.

18 JUDGE VALKOSKY: I think not. That is
19 public comment, that is not sworn testimony. They
20 didn't participate as a formal party to the
21 procedure.

22 COMMISSIONER LAURIE: So if in fact one
23 wants litigate status, they must intervene?

24 COMMISSIONER SHARPLESS: Well, I think the
25 issue of litigation -- Caryn, help me out here,
26 because I'm just drawing back in recall, but one of 98

1 the provisions of the law provided to the Energy
2 Commission because of our authority of establishing
3 need, is if these decisions appeal, they are appealed
4 to what level of court, and on what grounds Supreme
5 Court and on what grounds?

6 MS. HOUGH: Stan, do you want.

7 JUDGE VALKOSKY: Basically, that we have
8 violated our statute. Bottom line is we didn't have
9 substantial evidence to support our finding to
10 support a required finding.

11 COMMISSIONER SHARPLESS: So you don't go
12 through all levels of court. You go directly to the
13 Supreme court.

14 JUDGE VALKOSKY: Under the current statute,
15 that's correct.

16 MS. HOUGH: I don't want to drag this out
17 too long, but I think there's an important
18 distinction that we're getting lost in, and that's
19 litigating within the Energy Commission proceeding
20 versus litigating the Energy Commission's position.
21 Staff is a party in the Energy Commission's. In
22 order to ensure that the Staff's analysis is
23 impartial as possible, and represents the public
24 interest now, as Nancee point out, Fish and Game may
25 interpret the public's interest in fish and
26 wildlife's resources a little bit differently than 99

1 Staff does, and that's why they have the right to
2 participate within the Energy Commission's proceeding
3 on those substantive issues, but it's not the same
4 distinction once you get to a point where you are
5 appealing the Committee's decision. There's a
6 different rationale.

7 COMMISSIONER SHARPLESS: Now, we'll turn
8 back to you.

9 MR. BETTWY: Thank you, Commissioner. I
10 want you to know that Southwest Gas came here to be
11 informative, and not to litigate. I have just one
12 clarification question: Earlier we committed to
13 Mr. Valkosky to provide something by Monday, and that
14 was before the cultural report surfaced. Are we off
15 the hook now on that.

16 JUDGE VALKOSKY: If that's the only
17 cultural report whose status was unknown, then you
18 are off the hook.

19 MR. BETTWY: I thought the record might
20 better reflect it. And just one other matter, if I
21 might. I hate to volunteer, but we did not file a
22 prehearing conference statement. We were not a
23 party, of course, back on the eighth or ninth when it
24 was due. So one of the bits of information you do
25 not have from us that I would volunteer to make
26 available to the Committee by the 24th, which is the 100

1 same date that Mr. Thompson indicated that he would
2 provide a list of witnesses, we would provide that
3 similar information for the witnesses, that the
4 Applicant wants Southwest to appear as witnesses, if
5 that's all right. That's all I have. Thank you very
6 much.

7 COMMISSIONER SHARPLESS: Okay. Essentially
8 we have concluded our agenda for today. There might
9 be somebody out there in the audience, although I
10 doubt it, who wishes to come forward and address the
11 Committee on some item that we've either discussed or
12 overlooked or need to know about. No?

13 Okay. Offering the public an opportunity
14 to comment and hearing no desire for such public to
15 comment, I think we've come to the bottom of our
16 agenda. We've come to a conclusion of the meeting
17 and I guess the one last piece of information and
18 what the table might be looking at and the Committee
19 for -- Stan, help me out here, is when we might be
20 issuing some deliberation about process --

21 JUDGE VALKOSKY: I'd intend to recommend
22 the Committee to issue an order potentially also
23 including a notice of evidentiary hearing, if that's
24 what you decide after we get the reports back from
25 the parties, the last of which will be due
26 February 26th. So within the first week of March we 101

1 would issue an order.

2 COMMISSIONER SHARPLESS: So check your mail
3 box. Thank you very much. Thank you for your
4 patience. Thank you for your information.

5 MR. THOMPSON: If I may ask for two more
6 days. If the 26th is going to be that trigger date,
7 can I have two more days for my exhibits, witness
8 list and all that stuff.

9 COMMISSIONER SHARPLESS: What would that
10 make it?

11 MR. THOMPSON: I was going to go on
12 Wednesday. Everything would in on be Friday the
13 26th.

14 COMMISSIONER SHARPLESS: Okay. Fine. Got
15 it.

16 MR. THOMPSON: Thank you.

17 (Whereupon, the hearing was adjourned at 12:40 p.m.)

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CERTIFICATE OF TRANSCRIPT

I, Theresa Aguilar, as the Official
Transcriber, hereby certify that the attached
proceedings before Chief Hearing Officer Valkosky,
California Energy Commission,

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

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