

PUBLIC HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for the Humboldt Bay) 06-AFC-7
Repowering Project by Pacific)
Gas and Electric Company)

)

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

MONDAY, JUNE 4, 2007

3:00 p.m.

Reported by:
Ramona Cota
Contract No. 170-04-001

COMMITTEE MEMBERS PRESENT

John L. Geesman, Presiding Member

Jeffrey D. Byron, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Gary Fay, Hearing Officer

GABRIEL Taylor, Advisor to Commissioner Byron

STAFF AND CONSULTANTS PRESENT

Lisa DeCarlo, Staff Counsel

John Kessler

Eileen Allen

APPLICANT

Scott Galati, Attorney
Galati and Beck

Greg Lamberg
Pacific Gas & Electric Company

Gary Rubenstein
Sierra Research

ALSO PRESENT

Kitty Howard, California Air Resources Board

Tom Luster, California Coastal Commission

Rick Martin, North Coast Air Quality Management
District

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P R O C E E D I N G S

3:10 p.m.

HEARING OFFICER FAY: Is there any objection with the parties dispensing with introductions, formal introductions?

MR. GALATI: No objection.

MS. DeCARLO: No objection.

HEARING OFFICER FAY: We've got a Committee here of Commissioner Geesman to my left and Commissioner Byron to my right. I am Gary Fay, the Hearing Officer. Represented is PG&E, the staff of the Energy Commission, the California Coastal Commission, The North Coast Air Pollution Control District and the California Air Resources Board.

On May 11 the staff issued its third status report for this case, which alleged that the project could result in significant air quality and public health impacts. PG&E disputes the staff position and on May 18 filed its petition asking that the case be bifurcated and that a revised schedule order be issued. The PG&E petition asked for the order to direct staff to move forward on all issues except for air quality, public health and visual resources.

1 The Committee later on May 18 issued a
2 notice directing the staff to respond and setting
3 a time and place for this hearing. What I would
4 like to do is go forward as follows: First we'll
5 hear from PG&E, then -- I understand that there is
6 a time constraint on some of the people who phoned
7 in so depending on what time we finish with PG&E
8 and any questions from the Committee we'll either
9 go to the staff or go directly to the agencies for
10 their response to PG&E, then move to the staff.
11 We're going to reserve some time for a PG&E
12 rebuttal and then public comment at the end if
13 there are any members of the public here.

14 Are there preliminary matters before we
15 start?

16 MR. GALATI: None.

17 MR. MARTIN: Hi, this is Rick Martin
18 with North Coast. I apologize but you were really
19 breaking up and we can barely hear what you're
20 saying.

21 HEARING OFFICER FAY: All right.

22 PRESIDING MEMBER GEESMAN: Let's try it
23 again then.

24 HEARING OFFICER FAY: I apologize for
25 that. What I indicated is that we will first hear

1 from PG&E. That we hear some of the agencies have
2 a time constraint so we'll hear the agencies'
3 responses to PG&E, then we'll hear from the Energy
4 Commission staff. Then we'll reserve time for a
5 PG&E rebuttal and then public comment at the end.

6 Now let's go ahead with PG&E,

7 MR. GALATI: Thank you.

8 HEARING OFFICER FAY: Mr. Galati.

9 MR. GALATI: Thank you very much for
10 allowing us to bring this motion. We believe that
11 this motion is very helpful to us; we hope that
12 you grant bifurcation. Let me tell you why we've
13 asked for this. First and foremost we did ask
14 staff and staff disagreed. We could not come to
15 an agreement that would allow bifurcation or to be
16 processed.

17 We were served with letters, you know,
18 and we were a little bit surprised by the
19 conclusions. We knew that there were issues
20 revolving around air quality. We honestly thought
21 we were going to get a letter that was a data
22 request or in some letter format about what
23 additional modeling needed to be done and in what
24 form so that we could go forward.

25 So we were surprised that staff had made

1 a conclusion that basically the project is not
2 viable or doomed and therefore needs to be
3 reconfigured. That was quite a blow to us.

4 I just want to again remind you how
5 important this project is to PG&E. This project
6 will be built. This project is going to replace
7 existing Units number 1 and 2 and the mobile
8 emission power plants that are up there.

9 In addition not only to replacing those
10 inefficient units we basically, this project would
11 allow the eventual demolition of Unit 3 and
12 followed thereafter by Units 1 and 2. The project
13 is air-cooled and will eliminate ocean water
14 cooling. And more importantly, it probably makes
15 more gas available because it is more efficient to
16 that very gas-constrained area.

17 I'd like to start by staff had set forth
18 a standard of review on why and what the
19 Commission should be looking at, what the
20 Committee should be looking at whether to grant
21 bifurcation. And I'll start with there is not a
22 lot of guidance out there very specifically
23 because the Committee, I can't think of very many
24 motions that have been brought in this format. I
25 personally believe it is because staff can often

1 agree to bifurcate and staff has bifurcated in the
2 past.

3 Now they bifurcated in two ways. One,
4 there is a formal bifurcation that you often see
5 in the FSA, the second I think is an informal one.
6 Often you will see a PSA that says, we can't
7 complete the section because we don't have the
8 information. We are missing pieces from this
9 section. We'll pick it up in the FSA. We believe
10 that that's akin to bifurcation and staff often
11 does that for several reasons.

12 We looked back at the history of the
13 Energy Commission cases in which this happened, we
14 also looked back at a State Auditor's report and
15 looked at where the Commission was actually very
16 much commended for moving projects along. And it
17 seemed that air quality was one of the issues that
18 is consistently in a delaying mode and that the
19 Energy Commission was praised for continuing to
20 move things along. We believe that is a direct
21 reference to bifurcation.

22 When you look at those other cases
23 basically what you come up with is, will a
24 bifurcation keep the project moving along? Are
25 the issues for bifurcation, are they distinct and

1 associated with a few technical areas. Many times
2 bifurcation is allowed when there is agency
3 comment required and that agency comment or
4 document is being delayed. And last, if there is
5 any additional information for resolution.

6 In applying that standard the reason we
7 think that this helps move the case along is we
8 think that allows things to move in parallel
9 rather than serial. Let me given you an example.

10 If part one of the PSA, and just again
11 just to refresh your memory, part two we're asking
12 to be limited to air quality, public health and
13 visual resources in the off chance that we have to
14 raise the stats. Part one would have all other
15 technical areas.

16 In our opinion there is no reason for us
17 not to get a PSA on those issues which are very
18 clean, which we have had very few data requests
19 about. We have had very few data resolution
20 workshops on those issues.

21 We are in a position where we are
22 sitting with the core approval of the verification
23 of our wetlands delineation, which is very far
24 advanced in the project. We are hoping to be able
25 to go through, if there are any issues because we

1 haven't seen staff's analysis. We're anticipating
2 that we could work those out very quickly while
3 air quality continues to work on its own schedule.

4 Again, the issues are air quality
5 driven. They are that we lack a PDOC at this
6 time. And the air quality, the issues first and
7 foremost, some of the issues we just flat-out have
8 a disagreement with staff. And we believe that
9 those disagreements are proper for the Committee
10 as opposed to a staff decision that the project is
11 not viable. They can certainly make their
12 recommendation to you but we are without a forum
13 at this stage to have that dialogue and that
14 discussion.

15 Second of all I wanted to let you know
16 that we don't think we have done anything wrong
17 with our remodeling, okay. But we are willing to
18 go ahead and remodel and work cooperatively with
19 the agencies to try to cooperate. If we're unable
20 to cooperate and we're unable to get --

21 We believe that the modeling techniques
22 that we have used in our AFC support a finding
23 here at the Commission of no impacts and
24 compliance with LORS. But however we have redone
25 our modeling protocol. We are working with ARB

1 who is assisting the District in preparing the
2 PDOC. And we think that we are going to have some
3 successful resolution.

4 Our issue isn't one of resolution, our
5 issue is one of timing. We don't have any control
6 over how long that process will take. If I could
7 tell you that 30 days from now we'd have a PDOC I
8 wouldn't be asking you for bifurcation. But this
9 is a project that has continually been delayed in
10 this particular area of air quality. And it's
11 ironic that two days from now is when the final
12 staff assessment was due.

13 So we are at a situation where we have
14 lost time. We believe the only way to recover
15 that time is if you allow us to bifurcate and we
16 can move quickly through these other issues, which
17 we believe puts less burden on the Committee at a
18 later date when they come to put their decision
19 together. In addition we have more time to work
20 on issues should they crop up in these other
21 areas.

22 The other issue in public health is just
23 a flat-out disagreement about what is the
24 appropriate case to be analyzed for CEQA purposes.
25 And rather than litigate that here we'll wait and

1 have that at another time. We also believe,
2 though, that our remodeling might actually help
3 that effort and help that dialogue.

4 So we have an agency that we are waiting
5 on information from. We are working cooperatively
6 with that agency to get the PDOC. That is the
7 type of case when bifurcation has been allowed.
8 We are providing additional information. It's
9 finite to air quality. We think that supports
10 bifurcation.

11 In addition we believe the project can
12 and will move forward quickly on these other
13 technical areas, which is another reason to
14 support bifurcation.

15 And last, we don't believe the
16 appropriate standard is the standard set forth by
17 staff in their opposition to the motion. We don't
18 believe we are in a litigation mode, we don't
19 believe the civil code and the case law dealing
20 with parties that are in a lawsuit is the
21 appropriate way to look at this. This is a
22 project that is being processed. We are far from
23 a place where we have irreconcilable differences
24 that we need to bring to the Committee.

25 So we hope that you give us an

1 opportunity to continue to work with staff to
2 bring this very important resource to PG&E.
3 Guaranteed a project is delayed if you don't have
4 bifurcation, and if you agree to bifurcation, we
5 have a chance -- not saying we guarantee it, but
6 we have a chance to recover some of that time.

7 PRESIDING MEMBER GEESMAN: Are you aware
8 of any case at this point in its disposition that
9 the Commission has bifurcated before?

10 MR. GALATI: No. I am aware of, for
11 example, let me take Blythe 1 and Blythe 2.
12 Blythe 2, staff issued a preliminary staff
13 assessment that was incomplete in six technical
14 areas and asked for 35 additional pieces of
15 information, including coordination with US Fish
16 and Wildlife, including additional biological
17 assessments, including additional transmission
18 system impact studies.

19 Staff routinely issues PSAs that are
20 incomplete. Rather than ask them to do that why
21 don't we hold off on those pieces that will be
22 incomplete until we resolve them. While
23 bifurcation is often granted at the FSA we are
24 foreseeing ahead of time that we can make a lot of
25 headway while the PDOC is being prepared.

1 For the exact same reasons that staff,
2 you know, I'll point out the Sunrise Project. The
3 Sunrise Project they issued the PSA even though
4 they got the PDOC late. And it was silent and
5 said, can't finish air quality because I haven't
6 had time to review the PSA -- excuse me, the PDOC.
7 That is exactly what we are trying to avoid. We
8 think, let's just admit that we're going to
9 bifurcate rather than hold all these other
10 sections up and then get to the same point.

11 PRESIDING MEMBER GEESMAN: Now you said
12 that your changes were apt to be finite to air
13 quality but the staff claims there is an impact on
14 noise and on visual impact and on land use.

15 MR. GALATI: Yes.

16 PRESIDING MEMBER GEESMAN: How do you
17 respond to that?

18 MR. GALATI: Well, I have asked for
19 bifurcation to include the visual issue as well.
20 We do recognize if the stacks were to raise we
21 would have to take a look differently on how the
22 visual impacts are so we absolutely concede that.

23 With respect to noise, when the stacks
24 raise -- First and foremost, staff doesn't do any
25 independent noise modeling. We do the noise

1 modeling. And basically what we do is we commit
2 to a number. We would commit to the same number.
3 There isn't a bunch of analysis that needs to go
4 in. Either that number that we are committing to
5 not be greater than.

6 And again, we have stack silencers. If
7 that number is not greater than, it doesn't cause
8 any impacts or comply with LORS it would be good
9 for the project as designed or good for the
10 project if the stacks were higher. So we don't
11 think that that's a significant analysis issue.

12 With respect to land use, first and
13 foremost we are in the coastal zone under the
14 jurisdiction -- in an area under the jurisdiction
15 of the California Coastal Commission. While the
16 stacks go up, worst case scenario we need a
17 variance. It sounds like the analysis is done.
18 Very simple to write a condition in there that if
19 the stacks were to raise over X we need a variance
20 or we need to coordinate with the California
21 Coastal Commission for that issue. It's certainly
22 not a rewrite of the land use section.

23 The important thing, I think, that I
24 want to leave you with: We are not going to
25 reconfigure this project to swap out these

1 machines for turbines. We are not going to
2 propose an alternative pipeline connection that is
3 several tens of miles away.

4 We went through a PUC process, arrived
5 at this decision. We started that in 2004. We
6 filed in 2006. If we were to make such drastic
7 changes like that then we would need to sort of
8 restart. We believe that we have a disagreement
9 with staff. We hope to be able to work it out.

10 I'll give you an idea. On the air
11 quality issue, again it's an issue of timing. On
12 the technical issues we haven't talked about all
13 the other possible outcomes to reconfigure it. We
14 haven't talked about whether our remodeling
15 actually might show what staff is looking for.

16 In addition we haven't talked about
17 mitigation. In addition we haven't talked about
18 operating restrictions. We haven't talked about
19 any of the other potential ways to resolve these
20 issues. And part of the reason is we have staff's
21 conclusions and not their methodology. So it is
22 difficult for us to solve the problem unless we
23 know we're on the same page. And at this stage in
24 the game without that information I can't propose
25 to you how to mitigate that.

1 So once again we'll work with the
2 District, get the District to get the PDOC out.
3 Meanwhile we continue to have momentum with the
4 project. We get parts of these sections off the
5 plate of staff. I mean, the PSA was supposed to
6 be out in April. While I understand the PDOC is
7 delayed all the other sections should be pretty
8 darn close to go. We're not asking for a
9 significant burden for staff to finish the
10 sections that they should have already been
11 working on, that's all.

12 HEARING OFFICER FAY: Any questions from
13 the Committee?

14 ASSOCIATE MEMBER BYRON: Just one. I
15 believe there were a number of reasons given in
16 the application for bifurcation but am I to
17 understand, Mr. Galati, based on your comments,
18 that the primary reason is to try and salvage the
19 schedule for the project?

20 MR. GALATI: That is it, that's the
21 primary reason. We wouldn't ask for additional
22 resources unless we are at that stage. We have a
23 hard date to start construction in March. We
24 filed with what we thought was enough time to get
25 us there and now we're, now we're having

1 difficulty.

2 ASSOCIATE MEMBER BYRON: Okay.

3 HEARING OFFICER FAY: Commissioner
4 Geesman.

5 PRESIDING MEMBER GEESMAN: I guess if I
6 could paraphrase the staff's position, bifurcation
7 and the risk that that raises, that they will
8 engage in redundant work or work that needs to be
9 changed after you get your PDOC and if you get
10 your PDOC. That doesn't come free.

11 And while it may help you accelerate the
12 schedule for your project, in a time when we have
13 a heavier caseload than we have in any point in
14 the five years that I have been here, it
15 potentially comes at the cost of some other
16 project. And I believe staff would infer, some
17 other project that may have more viability to it
18 than your project without a PDOC.

19 That's probably an unfair paraphrasing
20 but how do you respond to that?

21 MR. GALATI: Without being too
22 confrontational, we just think they're flat wrong.

23 PRESIDING MEMBER GEESMAN: Okay.

24 MR. GALATI: Okay. That is not a
25 possible outcome. The possible outcome that incur

1 that would be PG&E withdraws, go back to drawing
2 board and comes here two years from now.

3 PRESIDING MEMBER GEESMAN: Okay.

4 MR. GALATI: Once again, staff should
5 have a lot of this PSA written, the sections I'm
6 talking about. They are not related to the PDOC,
7 they were due any day, 30 days after the PDOC came
8 out. The PDOC was moved sort of in limbo, it
9 wasn't just hey, we can't do it. It was moved,
10 hey, maybe we need another 30 days, maybe we need
11 another 30 days. For good reason. I'm not making
12 light of the complexity of this new technology.

13 But I think we've gotten ourselves
14 comfortable with it and would like to continue the
15 opportunity to get the District and staff -- And I
16 think that there's different issues between staff
17 and the District. So we're --

18 PRESIDING MEMBER GEESMAN: Different air
19 quality-related issues.

20 MR. GALATI: Yes. Some are overlap but
21 some are different. For example the public health
22 issue, as we understand it, is solely associated
23 with the Energy Commission.

24 HEARING OFFICER FAY: Mr. Galati, if the
25 non-contested areas are pretty clean they could be

1 handled pretty quickly by the Committee. What
2 would the time savings be?

3 MR. GALATI: We haven't seen a PSA.
4 While I'm anticipating them to be clean I think
5 there is always opportunity to work on condition
6 language, there is always opportunity for more
7 information to get rid of a condition. That
8 allows us to see staff's assessment and see if it
9 is as clean as we think. We were a little bit
10 surprised on air quality, don't want to be
11 surprised in these other areas. But we do have
12 plenty of time.

13 We don't believe that it places an
14 additional burden on the staff. Again, we're
15 dealing with one set of documents and basically
16 three sections left out and three -- I mean, there
17 is probably some additional copying time and
18 binding time and things like that. But we don't
19 see it as a huge burden on staff to do what they
20 already have been working on.

21 HEARING OFFICER FAY: And also could you
22 lay out your view of what the risk to -- from a
23 public perspective what the risk is in having a
24 delay on the time that this project goes on-line.

25 MR. GALATI: You know, right now the

1 project has great public support. You know, one
2 thing that the people of Humboldt know is that's
3 where their power comes from, okay. They know
4 that they are curtailed during times of natural
5 gas shortage. They know that the facility is old.
6 So from our perspective is, we have a hard date
7 with a contract in it. We made that date so that
8 we could get this facility on line as soon as we
9 could and continue to provide reliable power in
10 that area with less emissions.

11 That's another thing that really hasn't
12 been factored into this yet, even in the air
13 quality arena, is we haven't really taken into
14 account that this replaces the old projects. And
15 these are real-time offsets that come from this
16 project. And how that is going to factor into the
17 analysis, you know, we're hoping to learn as we
18 go.

19 HEARING OFFICER FAY: So basically in
20 terms of the public up there you're saying the new
21 project would produce the same amount of power
22 with lower emissions.

23 MR. GALATI: That's right, lower
24 emissions and more efficiently.

25 HEARING OFFICER FAY: Any other --

1 ADVISOR TAYLOR: Scott --

2 HEARING OFFICER FAY: Sorry. Any other
3 effects, really, to the people up there?

4 MR. GALATI: Well --

5 HEARING OFFICER FAY: I mean, aside from
6 construction jobs and that kind of thing. Talking
7 about the either/or, what the alternative is.

8 MR. LAMBERG: It is lower, it is lower
9 emissions. It is 30 percent more efficient so it
10 does, in essence create more gas in a constrained
11 pipeline due to the additional efficiency. We are
12 eliminating the use of two billion gallons a month
13 of ocean cooling, which is very desirous by the
14 local community.

15 And the thing I think we have kind of
16 lost sight of is the existing facility is 50 years
17 old. And to the extent our schedule becomes
18 really in jeopardy -- We think summer peak in
19 California. The north coast is a winter peak.
20 That's why we'd like to have this facility on line
21 by the end of September 2009, to serve the winter
22 peak on the north coast.

23 To the extent that we don't believe
24 we'll be able to serve that peak with this new
25 facility we could be looking at tens of millions

1 of dollars of additional maintenance and upgrades
2 into an existing facility that will eventually be
3 taken off-line.

4 MR. GALATI: You know, we have the
5 ISFSI, which is the dry cask storage facility
6 which is underway right now. And eventually, as
7 we've described in our application, the demolition
8 of Unit 3, a lot of the demolition of Unit 3 is
9 connected. There are common facilities with Units
10 1 and 2. So once again, this facility does help
11 the eventual demolition and decommissioning of 3,
12 and then eventually Units 1 and 2 go.

13 ADVISOR TAYLOR: Is the existing
14 facility operating under a variance or is it fully
15 offset?

16 MR. GALATI: I do not know. Gary, do
17 you answer to that question?

18 MR. RUBENSTEIN: The current facility is
19 not operating under variance, it is operating in
20 compliance with all of its permit conditions. Was
21 that the question?

22 MR. GALATI: Yes.

23 MR. RUBENSTEIN: One other thing if I
24 might, while I have a microphone. Just to
25 indicate that the emission reductions that we're

1 talking about in terms of the old plant versus the
2 new plant are not insubstantial. Looking at NOx
3 emissions, which is the biggest pollutant from the
4 existing plant, we're talking about 65 tons of NOx
5 per month. Not per year but per month, for every
6 month that the new project is delayed.

7 HEARING OFFICER FAY: That was 65 tons
8 per month reduction?

9 MR. RUBENSTEIN: That's correct. A lot
10 of that is used to participate in mitigating the
11 impacts of other pollutants. You know, there is a
12 substantial reduction associated with this
13 project, it's not just roughly break even.

14 HEARING OFFICER FAY: All right, thank
15 you. To be sure that we can accommodate the time
16 constraints of the agencies I'd like to now go to
17 the comments of the various agencies. Perhaps
18 Mr. Luster, you might want to go first.

19 MR. LUSTER: Sure, thank you,
20 Commissioner. We provided a letter to the docket
21 last week so I'll just summarize the main points
22 in that letter.

23 Our main comment is that we think the
24 efforts of all the parties should be focused on
25 resolving the current disagreements about air

1 quality and public health. We plan to submit the
2 report from the Coastal Commission as soon as
3 we've got all the necessary information, which
4 requires that those issues be resolved along with
5 all the others.

6 It appears that the best way to keep
7 that focus on resolving the issues is to maintain
8 the current schedule. However, if the Committee
9 prefers to bifurcate the PSA the Coastal
10 Commission staff can work with that approach.

11 If the Committee does choose that route
12 we would request that just the PSA be bifurcated
13 rather than have a partial PSA and a partial FSA.
14 Keeping the schedule as is or bifurcating just the
15 PSA would probably allow us to submit the Coastal
16 Commission report sometime between issuance of the
17 PSA and the FSA. But if the FSA is bifurcated
18 that would probably delay our report until after
19 the final PSA is out.

20 Basically we're hoping that your
21 decision meets the most efficient review period
22 and workload and we anticipate providing you with
23 a single, comprehensive report from the Coastal
24 Commission. But we'll be able to provide that
25 only after we've got the relatively final proposed

1 version of the project on which to base our
2 report.

3 So with that I'd be happy to answer any
4 questions.

5 PRESIDING MEMBER GEESMAN: I think
6 you've made that pretty clear, Tom, thanks.

7 MR. LUSTER: Okay.

8 HEARING OFFICER FAY: Thank you. The
9 various agencies, did the North Coast want to go
10 ahead. Do you have any comments?

11 MR. MARTIN: We really don't have any
12 comment at this time. The only comment I suppose
13 that I would make is that we are working with PG&E
14 on this particular issue. They have submitted
15 additional modeling protocols which are currently
16 under review and we have been in discussion with
17 PG&E.

18 HEARING OFFICER FAY: Okay. Anything
19 from the ARB?

20 MS. HOWARD: We concur with the
21 District's comments and we don't really have an
22 opinion one way or the other on the bifurcation.

23 Just one real quick comment.
24 Mr. Rubenstein mentioned that the NOx emissions
25 were going to be reduced as a result of the

1 facility and I didn't hear -- That was NOx. I
2 didn't hear what the reduction was going to be in
3 PM.

4 PRESIDING MEMBER GEESMAN:

5 Mr. Rubenstein, you want to address that?

6 MR. RUBENSTEIN: Yes. What I had
7 indicated was that there was a substantial
8 reduction in NOx emissions. And I indicated that
9 a portion of that NOx reduction would go to
10 mitigate other pollutants, which includes PM. But
11 that even when you take that into account there is
12 still a substantial reduction in emissions
13 associated with the project.

14 HEARING OFFICER FAY: Thank you. Okay.
15 Then let's move to the staff.

16 MS. DeCARLO: Lisa DeCarlo, staff
17 counsel.

18 Bifurcation is not the solution to the
19 timing concerns expressed by the applicant. This
20 is not an instance where this is solely staff
21 disagreeing with the applicant. Several agencies
22 have expressed concerns about the project as
23 proposed. Those agencies along with staff are
24 trying to work through these issues and are doing
25 so.

1 Bifurcating the project at this point in
2 time I don't believe gets us any closer to a final
3 decision, does not speed things up. And the
4 applicant hasn't identified in concrete terms how
5 exactly bifurcation would end up with a final
6 Commission decision any earlier than proceeding on
7 the course that we are currently on.

8 The applicant identified that they are
9 not aware of any project that has been bifurcated
10 so early in the process without the PSA or the
11 PDOC. I think for such a significant departure
12 from standard Commission practice there should be
13 a very good showing that there will be benefits to
14 such bifurcation. I don't think the applicant has
15 provided that.

16 And the changes are not finite to air
17 quality as the applicant claims. They are clearly
18 anticipating at least one structural change.
19 We've identified that. That involves at least
20 five subject areas, technical areas that would
21 have to address that, and there is no telling how
22 many others would be involved until we actually
23 see what that proposed change would be. And staff
24 believes that even more significant changes will
25 be necessary in order to resolve these air quality

1 concerns.

2 So I think it is premature at this point
3 to go forward on these other potentially non-
4 controversial issues because we don't know exactly
5 what the final project is going to look like. If
6 we end up going forward with these, you know,
7 quote/unquote non-controversial items there's a
8 good likelihood that we're going to have to go
9 back once we do get a final project and readdress.

10 We can't just identify conditions of
11 certification and say, well, you know, you just
12 meet these and not have to do the analysis to
13 support those. We have to identify that those
14 conditions of certification are feasible and that
15 they will mitigate the project impact.

16 So I think it's disingenuous to claim
17 that potential modifications necessary to meet air
18 quality impacts are only finite to the air quality
19 technical section.

20 And we have, staff has been working
21 actively with the applicant to resolve these
22 issues. We've had several air quality workshops.
23 We only sent out the letter identifying our
24 concerns and echoing the concerns expressed by the
25 Air District and CARB to give the applicant a

1 heads-up saying, we still don't think the project
2 as proposed will satisfy the requirements and we'd
3 like you at this point to take a look. We think
4 you might be interested in taking a look at
5 alternatives at better modeling approaches.

6 So that wasn't an attempt to avoid any
7 concrete analysis, it's just an attempt to move
8 things along, give the applicant a heads-up and
9 then try to get things going.

10 So we're definitely not trying to delay
11 things, we are trying to work through them. And I
12 don't believe that bifurcation at this time solves
13 anything. And I do think there are serious
14 potential problems with the bifurcation, including
15 the potential impact it has to the ability of
16 public participants to actively follow the case
17 and participate.

18 PRESIDING MEMBER GEESMAN: Would you
19 elaborate on that point a bit.

20 MS. DeCARLO: The biggest complaint we
21 often get from members of the public is the
22 technical difficulty it is to follow projects, the
23 scientific terminology we use. That it's hard
24 enough when they receive the project as proposed
25 in one document that they could read from cover to

1 cover.

2 When we've bifurcated projects those
3 complaints go up. We get complaints that the
4 project is constantly shifting, that the analysis
5 isn't cohesive. So I think any time you have
6 several different documents coming out at
7 different times it just makes it more difficult
8 for lay members of the public to keep track of
9 what is really going on and when they should
10 participate.

11 I don't believe that the quote/unquote
12 benefits the applicant has identified outweigh the
13 potential risk to public involvement.

14 PRESIDING MEMBER GEESMAN: Would anyone
15 care to venture an estimate as to how much of a
16 difference in time we're talking about?

17 MR. GALATI: I think it could
18 potentially save us a couple of months. I'd be
19 more than happy to tell you exactly how I think
20 that would occur.

21 PRESIDING MEMBER GEESMAN: Go ahead.

22 MR. GALATI: Okay. I'm going to take
23 projects where there was bifurcation.

24 PRESIDING MEMBER GEESMAN: Well the
25 problem there, Scott, is that you don't have

1 anything that's been bifurcated this early in a
2 case.

3 MR. GALATI: Okay.

4 PRESIDING MEMBER GEESMAN: So I am not
5 certain how much you can argue by analogy.

6 MR. GALATI: We believe that the FSA,
7 either part one or part two or combined, that the
8 FSA will be much cleaner and easier to agree with
9 if we had good, fair, easy participation in the
10 areas in a great public workshop. What I am
11 asking is, we would have a PSA part one workshop,
12 be able to resolve any issues, know exactly -- the
13 staff could go back and work their FSA and we are
14 basically waiting for air quality only.

15 So we believe that staff could then
16 prepare its -- I mean, oftentimes PSA and FSAs are
17 delayed beyond the 30 days amount of time and I
18 think it's because there is quite a bit of
19 management review of a lot of different technical
20 sections. If they continue to work on the PSA and
21 then eventually move to an FSA while we're still
22 resolving air quality issues that management
23 review can be done, okay. That's number one.

24 Number two, we believe that when an FSA
25 comes out that has been fully worked out and

1 negotiated, such as many of the projects I've
2 worked on, it really substantially reduces
3 evidentiary hearing time. So we think the more
4 time you could have to work those issues out the
5 easier it is for us to go to the Committee with
6 one or two disputes instead of six or eight
7 disputes. So we think that will help.

8 In addition we believe, as was the case
9 in cases where the FSA was bifurcated, that when
10 there were filings by the applicant that said, we
11 agree with the terms of the FSA, it allows the
12 Committee to get working on the decision on those
13 areas. Which we also think -- As opposed to
14 everything stacking up waiting until the last key
15 to the puzzle is done. That's when I think that
16 committee decisions take a long time to write.

17 PRESIDING MEMBER GEESMAN: Have you had
18 a coastal case in front of this Commission?

19 PRESIDING MEMBER GEESMAN: No, I have
20 not had a coastal case. But if I could address
21 that. And I think Tom Luster would agree. I
22 think that we have been working very closely with
23 the Coastal Commission. We have our wetlands
24 issues, we have met with Coastal Commission
25 biologists. I think we're very far along on the

1 Coastal Commission area. We foresee being able to
2 get a very good, clean, 304.13D report.

3 PRESIDING MEMBER GEESMAN: But I heard
4 him say that if we bifurcate the FSA you're
5 potentially going to get hung up from a delay
6 standpoint with their submittal of their report to
7 us.

8 MR. GALATI: This is where I was a
9 little confused on that point. And Tom, if I
10 don't if I could ask you a question but I thought
11 that initially were going to use the PSA and try
12 to provide your report to the staff to use in
13 their FSA.

14 MR. LUSTER: Yes, that's been what we
15 have anticipated all along. That could still
16 happen. Part of the issue for us is just the
17 amount of workload and review time. If we have a
18 PSA part one followed by an FSA part one followed
19 by a PSA part two it wouldn't be until that point,
20 and probably FSA part two, that we would be able
21 to produce our report.

22 And frankly we've anticipated having,
23 you know, one workshop, you know, one document to
24 review, that sort of thing. So as the workshops
25 or documents start to go beyond that they may not

1 have the review time that I'd like to for multiple
2 documents. If it could be focused into a single
3 workshop and single PSA or, you know, PSA/FSA,
4 that would be best just from the workload
5 perspective. And then the Commission report
6 wouldn't come until after the issues are resolved
7 anyway.

8 MR. GALATI: Well one of the things that
9 I wanted to make absolutely clear is we certainly
10 didn't think that the Coastal Commission would
11 take part one of the PSA and do something with it.
12 We thought that you would wait until part two,
13 simply take both documents both documents
14 together.

15 MR. LUSTER: Um-hmm.

16 MR. GALATI: There is nothing that stops
17 us from having a workshop on the part two PSA,
18 cover any Coastal Commission issues so you could
19 participate in one workshop as opposed to two.

20 But again, in the proposed schedule that
21 I put forth I had to put the PSA and FSA
22 somewhere. But there is no -- I am not asking the
23 Commission to ensure that an FSA for part one come
24 out before a PSA for part two -- for part one.
25 Yes, excuse me, a PSA for part two.

1 We hope that we'd be able to resolve
2 those issues. It does take -- You have 30 day
3 review comment for the PSA and then we have a
4 workshop and then 30 days after is the FSA. We
5 hope to be at a point where we have a PSA part two
6 out in that time frame.

7 HEARING OFFICER FAY: Ms. DeCarlo, I
8 have some questions.

9 MS. DeCARLO: Sure.

10 HEARING OFFICER FAY: It sounded to me
11 that PG&E thinks that the redesign process such as
12 suggested by the staff, because of the RFO
13 process, would through a combination of
14 engineering and regulator review, add two years
15 delay. Do you want to respond to that?

16 MS. DeCARLO: Well I have no expertise
17 on that. But to this point that isn't even really
18 the issue. We're not saying that staff isn't
19 going to release a PSA until all our concerns have
20 been met. We're saying at this point we can't
21 release a PSA until at least the PDOC has been
22 released.

23 So I don't even think we really need to
24 address how long it could take. Obviously the
25 staff believes that there are substantial changes

1 that need to be made. But at this point all we're
2 asking for is the PDOC to go forward. And we
3 think that --

4 HEARING OFFICER FAY: That's all you're
5 asking. But in your letter you suggested that in
6 order to get there it would require PG&E to step
7 back and do some redesign.

8 MS. DeCARLO: Well that's our worst case
9 concern and that's why we believe it is necessary
10 to hold off bifurcation until we get a better
11 understanding of what is actually going to be
12 required.

13 The applicant is currently proposing a
14 different modeling protocol that they have
15 submitted to the air district and the ARB and will
16 be submitting to staff. Based on that modeling
17 protocol, if the air districts agree and staff as
18 well, the applicant will be remodeling the project
19 with presumably the heightened stacks that they
20 believe will solve at least the PM2.5 issue.

21 So I do believe it is early at this
22 point, because there are so many moving parts that
23 are still up in the air, to even discuss
24 bifurcation.

25 MR. KESSLER: If I might add, our letter

1 was really intended as a heads-up. Our analysis
2 as summarized in the letter was a level of
3 analysis as we would prepare for the PSA as the
4 project was proposed. Air mod runs, it took days
5 of CPU time and health risk assessment. Running
6 several scenarios in order to get to our
7 preliminary indications as to what the effects of
8 the project might be.

9 It is our belief that it is PG&E's
10 prerogative how they choose to accept our
11 suggestions at this point. And once the PDOC is
12 in hand we're willing to move full steam ahead
13 with the PSA.

14 HEARING OFFICER FAY: But what I gather
15 is that's a complete unknown. I mean, staff isn't
16 saying, give us an extra month so that we can get
17 a PDOC. Nobody has suggested when a PDOC might be
18 available. Do you know? Do you even have an
19 opinion?

20 MS. DeCARLO: No, we don't know and
21 that's half the issue as well. We go forward with
22 all these -- spending staff time, valuable staff
23 time on all these other non-controversial issues,
24 we may never even see a PDOC.

25 The air districts may ultimately decide

1 that this project cannot comply with the federal
2 PM2.5 emissions limit and then where do we stand?
3 We have expenditure of staff time on these
4 quote/unquote non-controversial issues and we're
5 no closer to a final determination.

6 HEARING OFFICER FAY: Another question I
7 had is, you were concerned about multiple
8 documents confusing the public. But since under
9 any scenario the Committee would produce a single
10 Presiding Member's Proposed Decision wouldn't that
11 be an opportunity to pull things together?

12 MS. DeCARLO: Right, except that that's
13 fairly late in the process. Staff values public
14 participation. As we are drafting conditions of
15 certification we rely on the public oftentimes to
16 have an in-depth knowledge of the area and
17 identify issues that staff may not have otherwise
18 thought of because we are not familiar with that
19 locality. So it's really important for us to have
20 public participation throughout the drafting of
21 PSA, FSA, the identification of mitigation
22 measures, before it gets to the evidentiary and
23 final decision stage.

24 MR. KESSLER: Just to give the Committee
25 a measure as to where we are in having draft PSA

1 sections in hand. We have all but six of those in
2 hand at this point in time. And of those that we
3 do have in hand there are really no significant
4 issues to be mitigated.

5 The conditions of certification, in my
6 opinion, are basically just the standard language
7 and requirements. The only one issue is not
8 really an issue, it's just an opinion of staff
9 that with respect to cultural resources of the
10 existing power plant that it should be reviewed
11 from a district perspectives and not as individual
12 facilities.

13 So we would propose a condition that
14 PG&E carry out their analysis to that and document
15 it accordingly. It is not something that is, you
16 know, undoable or creates any roadblocks for them
17 to proceed. It's something they can do in
18 parallel to proceeding in this case without
19 causing any delays.

20 HEARING OFFICER FAY: What are the six
21 areas that are still incomplete?

22 MR. KESSLER: Those would include the
23 air quality and public health, visual, traffic and
24 transportation, cultural resources and soil and
25 water.

1 HEARING OFFICER FAY: But you voiced
2 concern about land use and noise.

3 MR. KESSLER: We have a land use in hand
4 as well as a noise and those were provided before
5 we understood --

6 HEARING OFFICER FAY: The potential to
7 raise the stacks.

8 MR. KESSLER: -- potential direction of
9 this case.

10 HEARING OFFICER FAY: Okay. And did I
11 understand correctly that cultural, which you gave
12 as an example of having, if I may, a little bit of
13 loose ends, could be addressed with conditions?

14 MR. KESSLER: Yes.

15 HEARING OFFICER FAY: Okay, all right.
16 And then I'd like your response to my impression
17 that by throwing this out to the applicant with
18 the attendant delays, some of which are not under
19 your control in terms of waiting on the PDOC but
20 asking for redesign, isn't the staff essentially
21 putting the case in suspension without the
22 Committee's permission?

23 MS. DeCARLO: Not at all, that was
24 certainly not the intent. We were actually trying
25 to get the case moving at a quicker pace. We

1 simply wanted to identify what we see as potential
2 major roadblocks and get the applicant to try and
3 start the analysis for potential alternative fuel
4 sources, potential alternative locations for the
5 storage of additional natural gas, potential
6 redesign of the project.

7 We were simply trying to jump start them
8 looking at alternatives without having to wait for
9 our PSA when it eventually came along. And we
10 framed the letter, I believe, in that respect. We
11 simply identified it as things you should
12 consider. We didn't identify them as data
13 requests. We did not indicate that we would be
14 withholding any further analysis until we received
15 a response from them. We simply wanted to
16 identify how we were thinking about the project
17 and what we thought were some avenues for further
18 consideration that might help move things along.

19 ASSOCIATE MEMBER BYRON: As I understand
20 it, I believe Mr. Galati said no turbines and no
21 pipelines are going to be built. Does that also
22 mean no propane or natural gas storage will be
23 considered as well?

24 MR. GALATI: Yes. We have already
25 considered that and we are not proposing that and

1 we don't believe that we need to. And once again,
2 if I could just take a step back. We are not sure
3 what all the issues are but when you read the
4 staff's letter it is impossible to investigate
5 every alternative without ditching the W„rtsil
6 machines and coming up with something different.

7 Because they say the issue is not just
8 related to diesel. Because if it was just related
9 to diesel we could be talking about a condition
10 that limited its use. That's where we would be.
11 That is not just the issue. There are issues that
12 staff has raised with these machines firing on
13 natural gas. So it's that -- I haven't made a big
14 leap here to try to say, staff has presented us
15 with a bunch of alternatives that do involve
16 moving and switching out machines. And that is
17 what we find troublesome.

18 PRESIDING MEMBER GEESMAN: Yes, we're
19 not here to get into the merits of whatever
20 disputes may exist between the staff and the
21 applicant. I think the critical question is, is
22 there any rationale to bifurcate before we have a
23 PDOC and is there anybody willing to venture an
24 opinion as to when we'll have a PDOC?

25 MR. GALATI: Well I do know that once

1 the modeling protocol is approved it takes three
2 to four weeks to run the computer model runs from
3 our perspective to where we can get data in front
4 of somebody. Is that right, Gary, or did I
5 shorten your schedule?

6 MR. RUBENSTEIN: No, that is correct.

7 MR. GALATI: Then however long it takes
8 for those to be reviewed. Probably it's the kind
9 of thing I imagine a possible workshop on. So,
10 you know, we would hope we would get the PDOC
11 shortly thereafter.

12 But again, it is because of that
13 uncertainty, Commissioner, that I am asking for
14 bifurcation. The one issue -- Actually I'll wait
15 until it is my turn to rebut, I apologize.

16 HEARING OFFICER FAY: Anything further,
17 Ms. DeCarlo?

18 MS. DeCARLO: I'd like to reiterate
19 staff's believe that bifurcation does not solve
20 the real concern here. I think that concern is
21 only resolved when we have a PDOC in hand.

22 HEARING OFFICER FAY: Any more questions
23 from the Committee of the staff?

24 Okay, why don't you take a little time
25 for rebuttal.

1 MR. GALATI: The first thing I'd like to
2 talk about is, once again, it is normal to
3 bifurcate at the FSA but let's think differently.
4 Bifurcating at the PSA actually involves more
5 public participation, the exact opposite of what
6 staff thinks is going to happen, that somehow this
7 will be confusing.

8 The criticism that I have witnessed of
9 when issues come out different from the PSA to the
10 FSA is that their only opportunity for the public
11 to participate in a final staff assessment we
12 often don't have workshops on is at evidentiary
13 hearing, which can be very intimidating. So at a
14 PSA we can have two workshops. We don't mind if
15 they carry over issues to involve more public
16 participation. But from our perspectives we want
17 to see what staff is saying.

18 And I understand and appreciate what
19 Mr. Kessler has said that they are standard
20 conditions but if they were standard conditions
21 we'd never have anything to talk about. The
22 conditions change slightly or sometimes they don't
23 apply to a particular project or we need tweaks
24 because of this reason or that reason. It is
25 often the case that is the great progress that you

1 make in a PSA workshop and it's the exact
2 opportunity I am asking you to give us.

3 While we have had workshops on air
4 quality the workshops have never come to a
5 consensus. So I don't want to leave you the
6 impression that both parties and the agencies
7 aren't participating. It's the workshops we're
8 often identifying issues, asking questions about
9 why did you do your modeling this way. Not hey,
10 your modeling is wrong and you should do it this
11 way.

12 While it was raised early on about
13 alternatives we actually got into a discussion
14 about modeling. How many -- At that point in time
15 we were only talking about the number of hours of
16 diesel. We got into a lot of discussions around
17 that but we never actually got to resolution of
18 the issues. So once again we think that we are
19 not there. We haven't talked about mitigation, we
20 haven't talked about operating restrictions.

21 And when we raised the issue of possible
22 stacks being raised, we don't anticipate it. We
23 don't want to raise the stacks. I just wanted to
24 be open with you that it is a possibility so I
25 wouldn't ask for visual to be done and have to be

1 redone. This idea that we are committed to
2 raising the stacks, I apologize if I have given
3 anyone in this room that impression. We don't
4 believe the stacks need to be raised. But should
5 they, it would affect visual only. That's the
6 only change we can anticipate.

7 HEARING OFFICER FAY: Does the PUC
8 require that this facility be available for
9 service even under a constraint because of the
10 weather where the facility could not burn natural
11 gas because it was diverted to the residences? Is
12 there some PUC directive that under a worst case
13 weather situation PG&E would be required to burn
14 diesel for a longer period of time?

15 MR. GALATI: I don't believe that I am
16 knowledgeable enough to answer it fully.

17 HEARING OFFICER FAY: Okay.

18 MR. GALATI: But I think --

19 HEARING OFFICER FAY: But the reason I
20 ask it is, is it possible to even consider a cap
21 on burning diesel other than a worst case
22 scenario, bad weather situation?

23 MR. GALATI: We've already proposed a
24 cap and it's that cap that is the question.
25 Whether it should be lower. Or in some cases as

1 staff says, maybe not at all. We have a lot of
2 discussion to do about that particular issue.

3 But I can tell you that there is a
4 tariff, Rule number 14, which talks about
5 curtailment. We do have a permit now. The mobile
6 emission power plants burn diesel now. So it's
7 not anything new for that area. And we're talking
8 about burning less, not more.

9 PRESIDING MEMBER GEESMAN: In view of
10 that, why don't you have a PDOC?

11 MR. GALATI: I think there's some
12 disagreements in the way in which we did our
13 modeling. I think there are -- And Gary, I'm
14 going to let you address that question if you need
15 any additional technical background.

16 MR. RUBENSTEIN: This is Gary
17 Rubenstein. The reason we don't have a PDOC is
18 because the analysis is dealing with a fairly
19 unusual air quality situation where we have PM2.5
20 air quality that is virtually at the air quality
21 standard depending on which data of record you
22 look at, whether you look at EPA or ARB data.

23 We are also trying to find a way between
24 modeling guidance that has been issued by the
25 District and California Air Resources Board on the

1 one hand, some written EPA policies on the other
2 and then the CEC staff on a third. So the reason
3 quite simply comes down to an extremely
4 complicated situation with respect to dispersion
5 modeling. Probably the most complicated I have
6 come across in all my years of practicing before
7 the Commission.

8 And that is what is causing the delay.
9 I am not aware of any other substantive issues
10 holding up the PDOC other than the modeling issue.

11 MR. MARTIN: This is Rick Martin with
12 North Coast. I'd like to add to that a bit. We
13 have some specific rules up here in the North
14 Coast that perhaps are a little different than
15 what the applicant is used to in some of the other
16 areas of California and perhaps may be interpreted
17 as being a little bit more stringent depending on
18 your point of view.

19 We are awaiting some additional
20 information from the federal land manager and the
21 National Parks Service on some visibility issues.
22 We have not heard back from that and that affects
23 the ATC that we issue. The ATC itself is tied to
24 the PDOC based on our interpretation of our rules.
25 So there's a little bit of a complex nature in how

1 all the pieces tie together as well.

2 ASSOCIATE MEMBER BYRON: Excuse me, you
3 referred to an ACC, is that correct?

4 MR. MARTIN: I'm sorry, ATC, authority
5 to construct.

6 ASSOCIATE MEMBER BYRON: Thank you.

7 HEARING OFFICER FAY: Anything further,
8 Mr. Galati, on rebuttal?

9 MR. GALATI: Yes. The last thing I can
10 say is that we think and we feel very confident
11 that we're going to get there and we're going to
12 get there with this technology with diesel as a
13 backup fuel. Staff may eventually disagree from a
14 CEQA perspective whether we have either mitigated
15 our impacts or whether or not we have done the
16 right modeling. That's the time for us to make a
17 decision.

18 Once again, we believe we have a chance
19 to help recover some of our schedule by granting a
20 bifurcation. We believe it does not burden either
21 the public or the staff and we once again urge you
22 to grant bifurcation in this case.

23 PRESIDING MEMBER GEESMAN: We'll issue a
24 written ruling as soon as we can.

25 MR. GALATI: Thank you for your time and

1 consideration.

2 HEARING OFFICER FAY: Is there any
3 member of the public that would like to make a
4 comment at this time?

5 Okay, I hear no and see no indication so
6 thank you all, we are adjourned.

7 (Whereupon, at 4:06 p.m., the
8 Public Hearing was adjourned.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of June, 2007.

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