

PREHEARING CONFERENCE
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 A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 28, 2008

2:00 p.m.

Reported by:
Ramona Cota
Contract No. 170-07-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Karen Douglas, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Gary Fay, Hearing Officer

Panama Bartholomy

Kristy Chew

STAFF AND CONSULTANTS PRESENT

Lisa De Carlo, Staff Counsel

John Kessler

Maggie Read

APPLICANT

Scott Galati, Attorney
Galati|Beck

Greg Lamberg
Pacific Gas & Electric Company

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

2 2:07 p.m.

3 HEARING OFFICER FAY: Good afternoon,
4 can we come to order, please.

5 This is the prehearing conference for
6 the Application for Certification proceeding for
7 the Humboldt Bay Repowering Project, Docket number
8 06-AFC-7.

9 We sent out a notice for this event on
10 May 2 and asked the parties to come prepared to
11 tell us what matters are ready to go to hearings,
12 what matters have been resolved, et cetera.

13 The parties filed prehearing conference
14 statements in advance and we have those before us
15 since May 21.

16 So I will take any introductory comments
17 that either PG&E or the staff would like to make
18 at this time.

19 MR. GALATI: None, just identify. Scott
20 Galati for PG&E on the Humboldt Project and to my
21 right is the project manager and development
22 director, Mr. Greg Lamberg.

23 HEARING OFFICER FAY: I left out the
24 most important part of the proceeding. To my left
25 is the Presiding Member, Commissioner Douglas. I

1 mean the second member rather, Commissioner
2 Douglas.

3 ASSOCIATE MEMBER DOUGLAS: The second
4 member.

5 HEARING OFFICER FAY: Commissioner Byron
6 could not be here today because of a conflict in
7 his schedule but he does intend to attend the
8 evidentiary hearings.

9 MS. De CARLO: Good afternoon, Hearing
10 Officer Fay, Commissioner Douglas. Lisa De Carlo,
11 senior staff counsel. To my right is John
12 Kessler, the Energy Commission project manager for
13 this project.

14 HEARING OFFICER FAY: Thank you. Before
15 we started Mr. Galati said something about needing
16 a little time to discuss some matters with the
17 staff. Is that correct?

18 MR. GALATI: Actually, yes. We would
19 prefer, and I think we jointly agree, that we
20 could benefit from a little discussion. We
21 submitted several language changes in areas that
22 we don't think are controversial, to staff. We
23 understand that some of those have been accepted
24 as well as we have gotten a counter proposal on
25 two of our conditions that I think we could work

1 out right away. So if we could have -- I don't
2 know. How much time, Lisa, 15, 20 minutes?

3 MS. De CARLO: Twenty minutes, half an
4 hour perhaps to get through everything, at the
5 maximum.

6 HEARING OFFICER FAY: All right. We
7 will ask the parties to get in touch with me in my
8 office. I will expect to hear from you in 20
9 minutes to half an hour. Okay, we are in recess
10 until that time.

11 MR. GALATI: Thank you.

12 MS. De CARLO: Thank you.

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

15 HEARING OFFICER FAY: Okay, we would
16 like to go back on the record. I understand the
17 parties have had an opportunity to go through some
18 of their differences and hopefully reached
19 agreement on some language.

20 What I would like to do is, and I have
21 spoken to both attorneys about this, is just using
22 as a reference point, as a list, a checklist,
23 Applicant's Table 1 in the back of their
24 prehearing conference statement. And just quickly
25 go through the issues and get just an update on

1 the status of agreement or disagreement and
2 whether it is ready to go to hearing. Then the
3 things that are still problematic we will go back
4 and talk a little bit more about. But I would
5 just like a real terse run-through.

6 And before we do that, do we have
7 anybody on the phone?

8 MS. READ: I have four people listening,
9 Dan Petri, Kenneth Horn, Richard Marshall and
10 Laurie Ten Hope. I also have Rick Martin with the
11 North Coast Unified Air Quality Management
12 District. He may want to speak on air quality
13 issues.

14 HEARING OFFICER FAY: For all the folks
15 on the phone, I'm sorry you had to keep waiting.
16 But to the extent the parties can resolve their
17 differences it means less time in the evidentiary
18 hearing up in Eureka and that is probably more
19 efficient for everybody. We will give you a
20 chance to comment at a little later time.

21 So Mr. Galati, are you comfortable just
22 kind of going through the list. I assume that if
23 Ms. De Carlo doesn't object or raise some concern
24 then she agrees with your characterization.

25 MR. GALATI: Okay, great. The first

1 topic on the list is project description and
2 compliance. Our purpose of having a little bit of
3 time there is just to fill in the Committee about
4 what our project is, why we're doing it.

5 HEARING OFFICER FAY: Okay. And what I
6 would like to do, if Staff has no objection, is
7 just leave it to the Applicant and that's it. We
8 will let Applicant describe then we move on and
9 leave that subject except for, you know, taking
10 anything that needs to come in on declaration.

11 MS. De CARLO: Yes, we don't anticipate
12 the need to cross examine or provide our own
13 testimony on that subject matter.

14 HEARING OFFICER FAY: Okay, good. All
15 right.

16 MR. GALATI: Great. With air quality we
17 had some minor condition modifications and we have
18 agreed to language. So we are not going to have a
19 dispute on air quality and we propose to submit it
20 by declaration.

21 HEARING OFFICER FAY: Great.

22 MS. De CARLO: And do you want the
23 language change now or would you prefer something
24 in writing?

25 HEARING OFFICER FAY: I would prefer

1 something in writing.

2 MS. De CARLO: Okay.

3 HEARING OFFICER FAY: In fact, I think
4 if you folks could make a joint filing following
5 up today so we have something that everybody has
6 received and docketed, in writing, in the next few
7 days, that would be most helpful.

8 MR. GALATI: Okay. We have --

9 HEARING OFFICER FAY: Oh, excuse me. I
10 will note that Mr. Galati gave me a revised
11 exhibit list that he has filed. I just want to
12 make note of that so we are sure not to lose track
13 of that. It is labeled Table 2 but the bottom of
14 the title it says, revised as of today, I believe.
15 Today's date?

16 MR. GALATI: Yes, today's date.

17 HEARING OFFICER FAY: Okay. All right,
18 so that is air quality.

19 MR. GALATI: Alternatives by
20 declaration.

21 Biological resources. Staff has agreed
22 to our proposed changes in the prehearing
23 statement with one modification. We used, I
24 think, VCR instead of VHS to describe the media on
25 which we would do our training.

1 We will do that by declaration. I am
2 assuming we will include that in our stipulation
3 on language agreements.

4 We'll skip over cultural.

5 HEARING OFFICER FAY: Because? Right.

6 MR. GALATI: We still have a dispute.

7 HEARING OFFICER FAY: It's still
8 problematic, yes.

9 MR. GALATI: Facility design, efficiency
10 and reliability are all by declaration.

11 Geology and paleontology. We proposed
12 one change, one language change in our prehearing
13 conference statement that Staff has agreed so that
14 will go on declaration now. It has been resolved
15 and we will include that in our joint filing.

16 Hazardous materials. We had some
17 discussion. We understand the mechanism and how
18 the condition will be implemented so we are no
19 longer requesting any time to discuss that. We
20 accept staff's condition as HAZ-6. So that will
21 be by declaration as well and that is resolved.

22 Land use. We proposed a language change
23 in our prehearing conference statement that staff
24 has agreed so we no longer have a dispute there.
25 That will be on declaration and we will include

1 that in our joint filing.

2 Noise and vibration we will do by
3 declaration. We don't have any disputes.

4 Public health. We had, I think, a very
5 productive discussion. I guess the best way that
6 I would put it is I think we have come up with a
7 good framework whereby we think we might be able
8 to resolve some of our discrepancies on the
9 language with Public Health number 1.

10 We were able to come up with language.
11 And staff has agreed to consider some of our ideas
12 and we agreed to consider some of theirs. We have
13 a staff workshop on the 16th, which is the day
14 before our evidentiary hearing. We hope to be
15 able to exchange some language and then maybe
16 resolve that.

17 I remain confident that we could resolve
18 it, or at least narrow the dispute to which
19 language is better. So I would like to reserve
20 the right to have some time set aside for direct
21 and cross examination but I still don't believe
22 that it would be more than 30 minutes.

23 HEARING OFFICER FAY: Okay.

24 MR. GALATI: Is that a fair enough
25 characterization?

1 MS. De CARLO: Yes. We are actively
2 trying to resolve this issue. The staff would, in
3 the event that we do end up having a remaining
4 dispute, I believe we requested some time for
5 direct and cross.

6 MR. GALATI: Socioeconomics would be on
7 declaration.

8 On Traffic and Transportation we
9 submitted some language changes. Staff, I think
10 improved upon our language changes, and provided
11 some language which we saw today and we agree with
12 that. So we will be going on declaration for the
13 Traffic and Transportation and that language will
14 be included in our joint filing.

15 Transmission Line Safety and Nuisance
16 and Transmission System Engineering. Those are on
17 declaration, we didn't request any changes.

18 Waste Management. We, I think, provided
19 a framework for resolution as well. The issue on
20 Waste Management has to do with doing site
21 remediation but still allowing, to the extent
22 feasible, some activities to occur on the site.
23 So it is not sequential and the staff witness
24 would consider once we make a proposal of the
25 kinds of things we want to be able to do and why.

1 So this is one of those I will put in
2 the category with Public Health that I feel very
3 comfortable that we will be able to come up with a
4 language that is acceptable. But we'd reserve --
5 Again, I still think that I only need a little bit
6 of time there to describe the dispute. I would
7 ask to modify my list and have ten minutes of
8 direct and ten minutes of cross examination should
9 we not be able to come to resolution.

10 HEARING OFFICER FAY: Mr. Galati, am I
11 correct, that the Waste Management condition
12 involves disturbance of soil subject to
13 remediation?

14 MR. GALATI: Yes. This is a condition
15 that says, prior to site mobilization all
16 remediation needs to be completed. And we have
17 identified some discrete activities that we would
18 like to be able to do while we are doing
19 remediation, or sometimes even prior, like an
20 access road.

21 HEARING OFFICER FAY: This is Waste 7?

22 MR. GALATI: Yes.

23 HEARING OFFICER FAY: My concern was
24 both the Staff and the Applicant's proposal left
25 in reference to areas, activities completed in the

1 areas. And perhaps I just need to be informed on
2 this. I understand Applicant's approach and it
3 seems to make sense except if you had soil of
4 concern that was not in the area where work was
5 being done but was upwind of the area where work
6 was being done is there any sort of risk to
7 personnel. And if the focus of the condition is
8 to protect personnel on site that was a concern.
9 So perhaps just be sure to address that as you
10 wrap this up.

11 MS. De CARLO: Okay.

12 HEARING OFFICER FAY: I understand
13 Applicant wants to be as efficient as possible and
14 try to make up for lost time. And rather than
15 lock down the entire site they want to just
16 address parts of the site that are actually
17 matters of concern. But I just had this thought
18 about the soil.

19 MS. De CARLO: Right, and we are
20 definitely concerned about public health on this
21 issue as well as environmental impacts and are
22 willing to entertain the idea of potentially
23 allowing a limited activity on certain sites. And
24 that's why we are agreeing to further discuss it.
25 But we would not agree to anything that could

1 potentially result in any endangerment.

2 HEARING OFFICER FAY: Sure. And my
3 concern arose because of the, sort of the broad
4 use of the term areas.

5 MS. De CARLO: Okay. So you would like
6 more specificity.

7 HEARING OFFICER FAY: Really tell me
8 whether that is right next to where the people are
9 working, or whether it's far enough away that it
10 just doesn't affect them.

11 MR. GALATI: I think that your concern
12 was pointed out by staff and they have asked us to
13 identify discrete work activities that we would
14 like to do prior to or during remediation, which
15 we are now going to do, and have discussions on
16 the 16th. And hopefully we can come up with a
17 list of activities and those will be based on
18 technical data of why they should be allowed or
19 why they can be allowed.

20 HEARING OFFICER FAY: Sure.

21 MR. GALATI: Soil and Water Resources is
22 the next issue. We had proposed two
23 modifications. And I apologize for one of them
24 being left out of our prehearing conference
25 statement and subsequently e-mailed around. Soil

1 and Water 1 and Soil and Water 4.

2 Staff agreed to Soil and Water 4 and
3 proposed different language for Soil and Water 1,
4 which is acceptable to us. So we believe we have
5 resolved Soil and Water 1 and Soil and Water 4 so
6 that we can proceed on declaration.

7 HEARING OFFICER FAY: So that whole
8 subject area has been addressed and will be
9 received on declaration.

10 MR. GALATI: Will be declaration. And
11 the additional language that we have agreed to
12 will be in our joint filing.

13 Worker safety and fire protection that
14 already were on declaration. I think -- I
15 apologize, I said we had some minor condition
16 modifications and we didn't. We are prepared to
17 go to hearing on that on declaration, no need for
18 live witnesses.

19 And then Visual Resources. We proposed
20 some changes and staff has agreed to them. So we
21 believe the Visual Resources is resolved and we
22 can go on declaration.

23 So that leaves, from our perspective,
24 the possibility of Waste and the possibility of
25 Public Health should we not be successful on the

1 16th in resolving those, and Cultural.

2 HEARING OFFICER FAY: Okay. And if I
3 could just go over it to be sure I captured all
4 this in my notes. So we expect a follow-up filing
5 from the Staff and Applicant that will have
6 modified language in the areas of Air Quality,
7 Biological Resource, Geology and Paleontology,
8 Land Use, Traffic and Transportation, Soil and
9 Water Resources and Visual Resources?

10 MS. De CARLO: Yes.

11 MR. GALATI: That's correct.

12 HEARING OFFICER FAY: Okay. I didn't
13 leave anything out?

14 MS. De CARLO: No.

15 MR. GALATI: No.

16 HEARING OFFICER FAY: Okay, good. And
17 everything else has been agreed to as filed in the
18 FSA.

19 MS. De CARLO: No.

20 MR. GALATI: No.

21 HEARING OFFICER FAY: Okay, good. And
22 everything else has been agreed to as filed in the
23 FSA.

24 MR. GALATI: That's correct. Well,
25 except Public Health and Waste.

1 HEARING OFFICER FAY: Right, right.

2 MS. De CARLO: The three areas.

3 HEARING OFFICER FAY: With the exception
4 of the ones that are going to be, at least at this
5 point we assume, will be heard at the evidentiary
6 hearing. But you do have that workshop the day
7 before and hopefully you can narrow or eliminate
8 issues in those areas.

9 Okay, excellent, good progress. I am
10 not sure I have any additional questions. So we
11 have got a revised exhibit list from the Applicant
12 and we will be getting a revision of language in
13 the areas we just recited. Anything further you
14 would like to add?

15 MR. GALATI: Well I would like to
16 describe for the Committee what I believe to be
17 the Cultural dispute. And the reason I would like
18 to describe it to the Committee, I think it has a
19 legal component as well as a factual component.

20 The factual component deals with whether
21 or not the Applicant and Staff agree on the
22 significance or the scope of a historic district.
23 So we are prepared to go to evidentiary hearing to
24 describe what we think about that. We think that
25 is a factual, maybe a factual dispute, a

1 conclusion, a technical expert disagreement.

2 The legal one has to do with CEQA and
3 whether something is deemed to be an indirect
4 impact or whether it is deemed to be a foreseeable
5 project and therefore a possible cumulative
6 impact.

7 I wanted to get some guidance from the
8 Committee about whether prehearing briefs or how
9 we can get some guidance from the Committee on
10 which of those apply. Because you end up with
11 very different results.

12 MS. De CARLO: I disagree that there is
13 a legal issue here. I believe we have identified
14 an indirect impact. I believe CEQA is clear that
15 the lead agency has to identify and analyze any
16 direct and indirect impacts and identify
17 mitigation if significant impacts are identified.

18 So I don't think that any prehearing
19 briefs are going to resolve the issue. And I
20 would prefer to do briefs all at one time, to have
21 the factual and legal arguments presented in one
22 piece. So we would prefer any briefing to be done
23 after evidentiary hearings.

24 HEARING OFFICER FAY: And staff's
25 position is that the demolition of Units 1 and 2

1 is an indirect impact of the project?

2 MS. De CARLO: Yes. That the whole
3 site, the existing facility, is a significant
4 historical district. And that demolition of the
5 two units would result in a significant impact to
6 the historic district warranting mitigation. We
7 have identified mitigation that we believe is
8 feasible, easily done.

9 HEARING OFFICER FAY: And are you
10 defining the issue in terms of the entire district
11 as opposed to the hardware at Units 1 and 2?

12 MS. De CARLO: I'm sorry, I don't
13 understand the question.

14 HEARING OFFICER FAY: In other words, is
15 the entire configuration of the district the
16 subject of Staff's concern about historic
17 preservation, versus the physical entity of Unit 1
18 and Unit 2?

19 MS. De CARLO: We are concerned about
20 the entire district. We acknowledge that Unit 3
21 is outside, that there is no indirect impact to
22 Unit 3 because it was already intended to be dealt
23 with. The construction of HBRP would not, does
24 not make Unit 3 then unnecessary, it's already
25 been decommissioned. So our focus really is on 1

1 and 2 for this as well as a couple of the other
2 direct impacts we identified, the rail spur, the
3 transmission tower and the storage building.

4 HEARING OFFICER FAY: And will staff be
5 prepared to put this in context of prior power
6 plant cases where there was more at the project
7 site than just the proposed power plant that was
8 the subject of the AFC?

9 MS. De CARLO: Yes.

10 HEARING OFFICER FAY: Because we'd
11 actually want to know, is this kind of a new idea
12 or something that we have done consistently in the
13 past?

14 MS. De CARLO: And we believe we are
15 handling this consistent to what we have done in
16 the past. I believe we had a similar situation
17 with Morro Bay with the identification of a
18 significant cultural resources impact.

19 HEARING OFFICER FAY: And in that case
20 did the applicant include other facilities on site
21 in their application proposal?

22 MS. De CARLO: I'm sorry, I am not
23 intimately familiar with that case but I believe
24 not. I believe it was just the proposed project.
25 And the applicant agreed to record, do the HAER

1 recordation for other areas.

2 HEARING OFFICER FAY: Okay. Subject to
3 check my recollection is that it was a three-phase
4 project that included the demolition of on-site
5 tanks and that that was set before the Energy
6 Commission at the initiation of the applicant.
7 They chose not to permit that locally.

8 MS. De CARLO: Okay.

9 HEARING OFFICER FAY: So there might be
10 a distinction there.

11 MR. GALATI: Mr. Fay, the reason that I
12 believe that this is a legal issue and not a
13 factual issue is I could envision at a hearing a
14 lot of line of questioning to staff witnesses
15 about what the agency's responsibility is under
16 CEQA.

17 And I am not sure that it is the
18 cultural resources staff's call on what the
19 agency's responsibility is under CEQA. It is more
20 of a legal question. And that is why I thought
21 the ability to brief might allow us to be focused
22 at the hearing and not get into several objections
23 of whether somebody is qualified to determine what
24 is the agency's responsibility, as opposed to what
25 their own opinion is.

1 From our perspective we have -- Anything
2 that we will demolish to make way for HBRP we have
3 agreed to Staff's cultural conditions 8 and 9,
4 which requires that HAER recordation, even though
5 we don't believe that those facilities contribute
6 to the significance of 3. It's not that once a
7 site is significant everything on it is, it's
8 whether or not those things contribute. So we
9 have agreed to that.

10 The legal issue is one in which an
11 indirect impact is one that results in a physical
12 change in the environment. The best thing that
13 can be said about the HBRP is that 1 and 2 turn
14 off and maybe become obsolete. The reason 1 and 2
15 will be demolished is because they are associated
16 with 3, they share common facilities, and that is
17 all set forth in the AFC. And the demolition of 1
18 and 2 is subject to a coastal development permit
19 and that coastal development permit by the Coastal
20 Commission, a CEQA-certified regulatory agency.
21 We couldn't demolish 1 and 2 without that permit.

22 So what we tried to propose was a
23 compromise, which staff accepted in Cul-12, where
24 we would do certain photographs and we would -- I
25 apologize. We would archive documents that we

1 could and make them available to historians
2 without a determination of significance. Our
3 issue isn't whether or not staff's mitigation is
4 reasonable. Our issue is, is it the right agency
5 to be implementing it.

6 And that is a pure legal question. It
7 is not a factual question. Staff in the FSA does
8 not dispute that we do not have to take 1 and 2
9 down to build HBRP. And that the things we are
10 taking down we are subject to Cul-8 and Cul-9,
11 which is the recordation.

12 I also wanted to raise to the Committee
13 that our only dispute with Cul-8 and Cul-9 is it
14 calls out a piece of equipment which has been
15 demolished, which is the 115 kV transmission line.
16 And we have -- It's the tower, excuse me. For
17 safety reasons, which we filed two separate
18 documents explaining why that needed to be done
19 and why it was done for safety reasons.

20 We have done the HAER documentation of
21 that, primarily because it was associated with 3.
22 And whether or not it may or may not contribute to
23 its significance we did that documentation so that
24 when we go to both the NRC and the CDP. We have
25 already done that.

1 But again, for me it is a pure legal
2 issue, not a factual dispute.

3 MS. De CARLO: But if the legal issue is
4 resolved in favor of Energy Commission
5 jurisdiction and responsibility to analyze the
6 impact then we must discuss the evidentiary
7 determination of a significant impact. And I
8 don't know that there is enough time to provide
9 briefs and get a ruling from the Committee on this
10 issue before we have evidentiary hearings. We
11 need to use staff time to prepare for that.

12 Additionally, I don't know that we can
13 really analyze the legal arguments in a vacuum. I
14 think we do need to get into the factual
15 circumstances to put it in context. And I agree
16 that either witness should not be responsible for
17 addressing legal issues. I believe that should
18 solely be a briefing discussion.

19 HEARING OFFICER FAY: Right. And the
20 staff of the Energy Commission and its consultants
21 don't determine the jurisdiction of the agency.
22 That is up to the Commission based on the factors
23 that it chooses to take into account. Hold on
24 just a minute.

25 MR. GALATI: Mr. Fay.

1 HEARING OFFICER FAY: Yes.

2 MR. GALATI: If the Committee is -- If
3 the Committee rules in favor that staff was
4 appropriate in evaluating it as an indirect impact
5 and has jurisdiction for imposing mitigation the
6 hearing then becomes solely about whether it is
7 significant or not.

8 If, however, the Committee were to rule
9 that the Energy Commission went beyond its
10 boundaries in looking at that there would be
11 hearing. There would be no factual dispute.
12 Because we would not be resolving whether or not
13 it is significant. We are already treating the
14 pieces that we are taking down as if they were.

15 HEARING OFFICER FAY: I understand. But
16 we are, we are concerned about the factors that
17 Ms. De Carlo raises. And that is that without
18 really being able to full breadth of the argument,
19 if we just submit this to briefing ahead of the
20 hearing and presumably reach a decision before
21 that time, we kind of foreclose the scope. So the
22 Committee wants to go ahead and have the witnesses
23 available.

24 We will be very aware of the arguments
25 made by Applicant about the appropriateness of a

1 staff member's opinion about scope and put
2 everybody on notice that it is the Committee and
3 the Commission that is going to decide the legal
4 scope. We may, at worst, hear some factual
5 evidence that could end up being irrelevant if we
6 rule in Applicant's favor on the legal issue. But
7 we want to keep the option open of considering
8 both the facts and the law on this.

9 MR. GALATI: Can I suggest one other
10 thing that might be helpful.

11 HEARING OFFICER FAY: Go ahead.

12 MR. GALATI: We have 20 days between now
13 and the evidentiary hearing. Can we bring a
14 motion to be like a motion in limine that you
15 often hear at the beginning of a trial to
16 determine the relevancy of evidence. Staff has
17 time to brief this issue. I have time to brief
18 this issue. We could give it to the Committee a
19 day before. And if the Committee had time to look
20 at it maybe that would be an appropriate time to
21 have a ruling before we go forward and have a long
22 hearing on the significance.

23 HEARING OFFICER FAY: I don't want to
24 foreclose your opportunity to file a motion in
25 limine if that is what you would like to do.

1 MS. De CARLO: And we would obviously
2 object to the motion to try and discuss the legal
3 issues before we have the facts in evidence.

4 HEARING OFFICER FAY: And your objection
5 is noted.

6 MS. De CARLO: I do want to identify one
7 potential point I would like to call to your
8 attention. Our expert witness in Cultural
9 Resources, we might need to identify an alternate
10 witness. The testimony would be the same. There
11 are just some health issues that might cause
12 travel to Humboldt to be infeasible.

13 HEARING OFFICER FAY: Sure.

14 MS. De CARLO: And so the testimony
15 would be the same. It would be another staff
16 cultural resources witness who --

17 HEARING OFFICER FAY: As long as the
18 witness is familiar with the, with the written
19 testimony --

20 MS. De CARLO: Okay. And we haven't
21 made a determination yet.

22 HEARING OFFICER FAY: -- and is prepared
23 to respond to cross examination.

24 MS. De CARLO: But as soon as such a
25 determination is made that an alternate is

1 necessary we will submit the witness's r, sum,,
2 qualifications, and make that notification to all
3 the parties.

4 HEARING OFFICER FAY: I think Mr. Galati
5 will need that, what, a week in advance at least?

6 MR. GALATI: Yes. Our testimony and who
7 is testifying and their qualifications is due on
8 the 4th of June. I would like to have some time.
9 I am assuming it is the new cultural resources
10 person that I don't know so I would like to
11 understand a little bit more about his background.

12 HEARING OFFICER FAY: Of course.

13 MR. GALATI: Because I don't know.

14 HEARING OFFICER FAY: Is that
15 sufficient, a couple of weeks?

16 MR. GALATI: Yes. If you give me a week
17 that would be great.

18 HEARING OFFICER FAY: Okay.

19 MS. De CARLO: Okay. One week before
20 evidentiary hearings we will make our submittal if
21 we do need an alternate.

22 HEARING OFFICER FAY: Right, right. And
23 so I think we can assume if nothing is filed by
24 close of business on that day you will be planning
25 on going forward with your primary witness.

1 MS. De CARLO: Yes.

2 HEARING OFFICER FAY: Okay. Any other,
3 any other preliminary matters?

4 MR. GALATI: No. Absent the dispute in
5 cultural resources I think that this project has
6 come a long way to resolving a lot of issues. We
7 are thankful and happy with the staff and we think
8 both parties have worked hard. So we hope --

9 HEARING OFFICER FAY: Mr. Galati, there
10 is one other thing. And this isn't meant to be a
11 soft pitch but just to help the Committee
12 understand your position. And I don't know if the
13 dispute about cultural resources get to this but
14 what do you see as the effect, either locally or
15 system-wise, of the inability to go forward on
16 your schedule for the Humboldt facility?

17 MR. GALATI: Boy, I don't know if I am
18 the right person to answer that question. I can
19 tell you that the turbines that are running now
20 are things that major repairs are going to need to
21 be made, that haven't been because this project is
22 going to come on-line.

23 I can tell you, and maybe Greg can help
24 here. The project has such a benefit to
25 conserving natural gas because of its efficiency

1 that we think that the net benefit to the system
2 will be a lot less curtailments.

3 So our real problem now is being able to
4 start and work during the rainy season, which is
5 significant in that part of the world. And it is
6 the kind of thing that delay of the project, it
7 could delay a year as opposed to a day for day
8 slip, and that is something that we are really
9 struggling with. As you know from our filings,
10 there are a lot of activities taking place on-site
11 and the coordination of those is miraculous.

12 I think that is the only thing I can add
13 from that perspective. But we can certainly
14 address that in our project description, in our
15 testimony on the 4th, the need for the project.
16 And, Greg, if you have something to add.

17 HEARING OFFICER FAY: Sure, I think that
18 would be helpful. And I certainly wasn't asking
19 for testimony, just an overall concept of your
20 view on that. That's fine, thank you.

21 Commissioner Douglas, do you have
22 anything you want to add?

23 ASSOCIATE MEMBER DOUGLAS: No.

24 HEARING OFFICER FAY: I want to thank
25 the parties for rolling up your sleeves and

1 working on this. I wish you the very best of luck
2 at the workshop on the 16th.

3 Ms. De Carlo.

4 MS. De CARLO: My project manager is
5 telling me that the Air District is on-line and we
6 don't know if the Committee would like to give
7 them a chance to comment or if they have anything
8 to say.

9 HEARING OFFICER FAY: Sure, I certainly
10 would. Is that Mr. Martin?

11 MS. READ: He has disconnected already.

12 HEARING OFFICER FAY: He has
13 disconnected.

14 MS. De CARLO: Okay.

15 HEARING OFFICER FAY: Okay. Is there
16 anybody on-line who would like to make a comment
17 today or has any questions about they have heard?

18 (Teleconference operator inquiring
19 if any listeners have questions.)

20 HEARING OFFICER FAY: Do we still have
21 somebody on the line, Maggie?

22 MS. READ: Yes, he is going to ask
23 Mr. Horn if he wants to speak. He is the only one
24 that's left.

25 No, he doesn't have any questions.

1 MR. GALATI: For the record, Mr. Horn is
2 one of our project team members.

3 HEARING OFFICER FAY: Okay. Well let me
4 ask the audience then if anybody who is present
5 here in the hearing room would like to make a
6 comment or has any questions before we adjourn?

7 Okay, I see no indication.

8 So I thank you all for coming and I
9 especially thank the parties for their
10 conscientious efforts. And again, best of luck at
11 the workshop on June 16. We are adjourned.

12 MS. De CARLO: Thank you.

13 MR. GALATI: Thank you.

14 (Whereupon, at 3:45 p.m., the
15 Prehearing Conference was
16 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 Prehearing Conference; that it was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of June, 2008.

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