

STATE OF CALIFORNIA
Energy Resources
Conservation and Development Commission

In the Matter of:

Docket No. 98-AFC-2

Prehearing Conference
for the La Paloma Generating Project

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1516 9th Street
Sacramento, California

Reporter's Transcript

March 16, 1999

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Reported By: Keli Rutherford, CSR No. 10084

1 APPEARANCES

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3 Commissioners Present:

4 Robert Laurie

5 David A. Rohy, Ph.D.

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7 Staff Present:

8 Stanley W. Valkosky, Hearing Officer

9

10 For the Staff of the Commission:

11 Marc S. Pryor

12 Jeff Ogata

13

14 For the Applicant:

15 Allan Thompson, Attorney at Law

16 Michael S. Hindus, Attorney at Law

17 Roger Garratt, U.S. Generating Company

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P R O C E E D I N G S

TUESDAY, MARCH 16, 1999 SACRAMENTO, CALIFORNIA 1:35 p.m.

COMMISSIONER LAURIE: Good afternoon. Welcome to the prehearing conference for the La Paloma Generating Project. My name is Robert Laurie. To my left is my associate commissioner on the committee, Dr. David Rohy, and to my right is the hearing officer, Mr. Stan Valkosky.

I think it would be helpful if we had some introductions of both the applicant and staff before further comments, so Mr. Thompson?

MR. THOMPSON: Thank you, Commissioner. My name is Allan Thompson, private counsel for La Paloma. To my right is Michael Hindus. He's a partner at the law firm of Cameron and McKenna, specializing in transmission ISO issues, and at his right, Roger Garrett, U.S. Generating Company's project manager. In the audience we have Bill Steiner, who is Woodward Klein, our environmental consultant's project manager, and Jim Filippi, who is with the U.S. Generating Company dealing with transmission issues.

COMMISSIONER LAURIE: Staff?

MR. OGATA: I'm Jeff Ogata. I'm the staff attorney for the Energy Commission.

MR. PRYOR: My name is Marc Pryor. I'm the project manager assigned to the case.

COMMISSIONER LAURIE: Thank you, gentleman.

1 filed by the applicant.

2 Mr. Valkosky, are you aware of any additional
3 documents that should be on everybody's table at this point?

4 HEARING OFFICER VALKOSKY: Commissioner Laurie, in
5 addition to the documents mentioned, we also have staff's
6 prehearing conference statement addendum, which is dated
7 yesterday and I believe was just received today right before
8 the hearing. There are copies of those documents for those
9 of you.

10 (Pause in proceeding.)

11 COMMISSIONER LAURIE: Before we proceed, I'd ask
12 Commissioner Rohy if he has any opening statements?

13 COMMISSIONER ROHY: I have no comments at this time,
14 no.

15 COMMISSIONER LAURIE: Mr. Valkosky?

16 HEARING OFFICER VALKOSKY: I would just like to
17 mention for those of you who may not have the documents that
18 were filed today, there should be copies at the table at the
19 other end of the room.

20 COMMISSIONER LAURIE: Are there any questions
21 regarding the purpose of the hearing, the procedure? The
22 public is always invited to comment. We have blue cards
23 that we will ask you to fill out. Anybody desiring to
24 comment during any point in this proceeding will be allowed
25 to do so.

26 The first order of business that the commission will

1 address is the issue of the petitions to intervene as
2 previously mentioned.

3 Mr. Valkosky, can you briefly summarize what those
4 petitions are, who the parties are, and exactly what the
5 requests consist of?

6 HEARING OFFICER VALKOSKY: We have before us three
7 pending petitions to intervene. One is filed by the West
8 Kern Water District, and according to their petition, they
9 are the water suppliers for the project. They would like to
10 intervene to make sure that their interests are met.

11 Is there a representative from West Kern present?

12 UNIDENTIFIED SPEAKER: Yes, I'm present,
13 Mr. Commissioner.

14 HEARING OFFICER VALKOSKY: Would you like to come up,
15 please, to the table?

16 COMMISSIONER LAURIE: Let's take a thirty-second
17 break here. Folks, can you get appropriate microphones for
18 witnesses put in place, please?

19 Ladies and gentlemen, we're going to take a
20 five-minute break until this is working.

21 The audience has a right to hear these proceedings.
22 We will take a five-minute break. We will solve the
23 problem, and we'll come back when we are in a position to
24 conduct business.

25 (A brief recess was taken.)

26 COMMISSIONER LAURIE: My apologies to the parties for

1 any inconvenience. The first order of business -- is
2 everybody here? Marc or Jeff, do we need to wait for
3 anybody?

4 The first order of business will be consideration of
5 the petitions to intervene as previously noted. If any of
6 the petitioners are present, and wish to offer comment at
7 this time, you are welcome to do so.

8 If so, please come to the microphone, state your name
9 and your agency and offer your comments, if any you have.

10 (Pause in proceeding.)

11 COMMISSIONER LAURIE: Yes, sir.

12 MR. MILLER: I'm sorry. I was just coming in.

13 Did you call for intervenor statements?

14 COMMISSIONER LAURIE: Yes.

15 MR. MILLER: That's me. I'm Taylor Miller. With
16 Downey, Brand, Seymour, and Rohwer in Sacramento
17 representing the Elk Hills Power Project. If it's
18 appropriate, I can present, briefly, on the basis of our
19 intervention petition.

20 COMMISSIONER LAURIE: That's fine.

21 MR. MILLER: We filed that petition on March 9 and to
22 avoid any delay of the prehearing process, we also filed our
23 prehearing statement on the same day. The application for
24 the Elk Hills Power Project was filed February 24th with the
25 commission by Elk Hills Power LLC.

26 And just for your information to make sure we're all

1 on the same geographical page, Elk Hills Power is about
2 seventy miles to the east of the La Paloma project and
3 roughly in the center of what used to be the Elk Hills Naval
4 Preserve until Occidental Petroleum bought the oil field
5 from the federal government in 1988.

6 The project would be planned to generate roughly five
7 hundred megawatts of power, which would be transmitted into
8 the same PG&E Midway Substation at Button Willow as would
9 the La Paloma project.

10 Because of the proximity of the projects in time and
11 location, as well as the common interconnection point at
12 PG&E's Midway Substation, the resolution of issues in one
13 proceedings may affect issues in another area.

14 In our petition we note in particular issues of
15 cumulative impacts, including impacts on the capacity at the
16 PG&E Midway Substation as matters of interest and concern,
17 so we would generally divide environmental impacts and also
18 impacts on that particular substation.

19 Our intervention is proposed to be limited to those
20 issues. They are not currently addressed in the Preliminary
21 Staff Assessment, though staff indicates that they will
22 likely be addressed in the Final Staff Assessment.

23 In summary, we would submit that in view of the
24 possible affects of decisions reached in this proceeding in
25 the Elk Hills project, that the project does meet the
26 requirements of Section 1207 of the commission's regulations

1 to establish reasonable interest in a proceeding to justify
2 intervention. We also believe that this would be well
3 within the types of interconnection done by assigned
4 committees by the commissions to justify intervention in
5 other cases.

6 As you -- Mr. Valkosky mentioned, there was an
7 additional document filed just today, which I only just saw
8 about half an hour ago, that it goes into great detail.
9 This is the document filed by Mr. Thompson on behalf of U.S.
10 Generation arguing that, in essence, the -- well, a number
11 of things, I guess, but I want to respond just briefly to a
12 couple of points.

13 I don't think this is the time to litigate this, but
14 first I would like to say that we have no intention of
15 delaying the proceeding, that we are ready to proceed and
16 would be willing to abide by the schedule as proposed by
17 staff.

18 We do believe that the Warren-Alquist Act does
19 proceed ample authority for the commission to address the
20 matters as noted in our petition.

21 The matters at stake in our petition, in addition to
22 the environmental cumulative impacts, which could easily
23 arise between the two projects, go to efficiency, cost of
24 power, barriers potentially to entry into the new market,
25 child welfare, facilities engineering, all things that in
26 the past have been clearly seen by the commission as within

1 their jurisdiction.

2 We would also note that it is within the first point
3 of interconnection which has been the traditional line
4 that's been drawn between the commission and the PUC.

5 I don't agree that the cumulative impacts of
6 interconnection are, in fact, covered by FERC protocol that
7 this just has to be applied and this will all go away and be
8 decided.

9 We don't feel that today is the time to present you
10 with full-blown arguments on that. That's an issue that we
11 have disagreements with with U.S. Generation. That's
12 something that we should address as time marches on in a
13 different forum, perhaps after a workshop, in our view.

14 I guess what I'm saying in summary is that we feel
15 that we present a clear interest in intervention. We're not
16 trying to gum up the works and slow up your schedule. We
17 are ready to proceed.

18 The staff themselves have indicated in the PSA,
19 Preliminary Staff Assessment, on page 35 that there is
20 insufficient data to evaluate the cumulative impacts on the
21 transmission system and that cumulative impacts of these
22 projects will not be understood, speaking of Sunrise in
23 particular of other projects, including ours, until staff
24 and CAL ISO has analyzed the interconnection studies of the
25 projects.

26 So we think there is simply a little more work to be

1 done. We think it can be done by staff and is ongoing now
2 by staff. We don't think a six- to twelve-month study
3 period is required, and so I guess, maybe that's enough said
4 at the moment.

5 We can -- as I say we're not thinking it's
6 appropriate to essentially litigate the issue of what should
7 be done in the guise of litigating the question of whether
8 we should be allowed to intervene on the scope of that
9 information.

10 COMMISSIONER LAURIE: Thank you. Commissioner Rohy,
11 do you have any questions?

12 COMMISSIONER ROHY: I do not.

13 COMMISSIONER LAURIE: Commissioner Valkosky?

14 HEARING OFFICER VALKOSKY: Yes, thank you,
15 Commissioner Laurie.

16 Mr. Miller, I would like to explore a little bit
17 further your statement that you believe there's a need for
18 additional cumulative impact analysis. I'd like to separate
19 this into two broad areas: Environmental and technical.

20 Are you proposing that staff do a cumulative impact
21 analysis of the environmental effects of any interconnection
22 of more than the La Paloma project at the Midway Substation?

23 MR. MILLER: We are saying that there's need for
24 additional cumulative impact analysis in a variety of
25 subject areas noted in the PSA as to be forthcoming: Water,
26 air, a number of areas such as that.

1 In addition to that we believe that there should be a
2 cumulative impacts analysis on impacts on public
3 infrastructure and facilities that have traditionally been
4 included among CEQA analysis done.

5 Now, whether you call that a CEQA analysis or call
6 that simply undertaking the authority and obligations of the
7 commission in the Warren-Alquist Act, one can argue, but we
8 believe that there's authority under one of those two.

9 HEARING OFFICER VALKOSKY: Just so if I may
10 paraphrase one, first point is it is your position that
11 staff should do a more encompassing cumulative impact
12 analysis of the traditional environmental disciplines that
13 would be contained in our process and the EIR?

14 MR. MILLER: I don't believe there's any disagreement
15 between staff and us on that in that the PSA culls that out
16 in a number of occasions.

17 HEARING OFFICER VALKOSKY: I'm just trying to clarify
18 that. Okay, now, second point from what I would term a
19 technical perspective, is it also your position that staff
20 should do a more expansive analysis of the technical and
21 economic effects of connecting more than the La Paloma plant
22 at the Midway Substation?

23 MR. MILLER: Yes.

24 HEARING OFFICER VALKOSKY: Thank you.

25 COMMISSIONER LAURIE: Mr. Thompson, do you have any
26 questions?

1 MR. THOMPSON: Thank you, commissioner.

2 Is this working?

3 MR. MILLER: Seems to be this is the only one --
4 would you like to --

5 MR. THOMPSON: We do not oppose intervention but
6 would like to make a couple comments on the substance. And
7 again, I would echo Elk Hills that this may or may not be
8 the time to get into it. Prehearing conferences are rarely
9 the time to get into the substance, and I would understand
10 if you cut me off.

11 However, having said that, we believe that our
12 response filed today appropriately and adequately addresses
13 the points that were brought out in Elk Hills' prehearing
14 conference statement.

15 We do not believe that, for many reasons, it is
16 appropriate to delay or hold back our application for a
17 cumulative analysis in an area that is governed by FERC and
18 the ISO, that is being asked by the staff to do what staff
19 has much more to do to involve a subject matter in our
20 application that is basically been put to bed, to be late
21 into the process.

22 And I would add, I think, that if the -- and I'm
23 quoting, that if the infrastructure has cumulative analysis
24 has traditionally been included in CEQA analysis, we wonder
25 why it was not included in the Elk Hills AFC.

26 Seems to me that if Elk Hills is making a pitch that

1 a cumulative analysis should include similarly situated
2 projects, they would have done that in their AFC.

3 I personally think their AFC is right and they are
4 wrong here. However, if you go the other way and say that
5 their AFC is wrong, then I suspect that there are project
6 implications that they may or may not like.

7 I think that counsel is wrong in the statement that
8 infrastructure, cumulative impacts, economic and technical
9 economic engineering have traditionally been included in
10 cumulative analysis under CEQA.

11 COMMISSIONER LAURIE: Thank you, Mr. Thompson.

12 Staff have any questions for Mr. Miller?

13 MR. OGATA: We have no questions.

14 COMMISSIONER LAURIE: Sir, your petition to intervene
15 stands submitted, and you will be so advised.

16 MR. MILLER: Thank you. If there's any need for
17 further response in briefing, we'd be happy to submit to
18 that request.

19 COMMISSIONER LAURIE: That may very well be. Thank
20 you so much.

21 Does Kern Water have any comments that you would like
22 to make at this time?

23 UNIDENTIFIED SPEAKER: No, Mr. Commissioner.

24 COMMISSIONER LAURIE: Mr. Thompson, any comments
25 regarding the petition to intervene filed by Kern?

26 MR. THOMPSON: No. Again, we do not oppose.

1 COMMISSIONER LAURIE: Staff?

2 MR. OGATA: We have no comments.

3 COMMISSIONER LAURIE: Any representatives from
4 Sunrise?

5 Any comments, Mr. Thompson?

6 MR. THOMPSON: Again, we do not oppose.

7 COMMISSIONER LAURIE: Staff?

8 MR. OGATA: No comments.

9 COMMISSIONER LAURIE: All the petitions to intervene
10 stand submitted, and the committee will issue an order
11 appropriately --

12 Ms. Edson, do you have a comment at this time.

13 MS. EDSON: Yes. Thank you, Commissioner Laurie,
14 Commissioner Rohy. My name is Karen Edson. I'm here
15 representing the Independent Energy Producers Association to
16 offer public comment in the proceeding. We're not asking to
17 intervene as a party.

18 I simply wanted to note that you are probably right.
19 He represents companies that own about twelve thousand
20 megawatts of generation in this state, and its members are
21 among those with filings before the CEC, IEP members total
22 over six thousand megawatts.

23 I'm here just to comment on the process that you may
24 be embarking on here with regard to the possible litigation
25 of issues that, from our point of view, are subject of FERC
26 jurisdiction. Those are the issues involved with the

1 interconnection, the transmission system, and the cost
2 allocation issues that are related to that.

3 From IEP's point of view, one of the biggest
4 potential hazards as the commission confronts the
5 restructured market and the scope of its review of these
6 cases is if it elects to relitigate those matters that are
7 the subject of FERC approved tariffs.

8 In this case, I just want to note too that
9 historically from my recollection, and Mr. Valkosky can
10 correct me if I'm wrong, but in my recollection the
11 commission does not examine cost allocation issues when they
12 have arisen with regard to the transmission system.

13 I'm aware of, for example, of the Victor Cramer line
14 that was not at the interconnection point but it was -- it
15 was a heavily litigated case that followed regarding how
16 costs should be allocated, and again those were subject of
17 the jurisdiction in that case of the Public Utilities
18 Commission.

19 We think that the Energy Commission as a general
20 rule, and I have to note here as well that IEP's members
21 don't necessarily all align with one side or the other in
22 terms of the outcome of this cost allocation dispute, but
23 they do align in the view that the commission should not be
24 relitigating these matters that are the subject of ISO and
25 FERC jurisdiction. Thank you.

26 MR. MILLER: Commissioner, may I briefly?

1 COMMISSIONER LAURIE: Mr. Miller, be aware, however,
2 that as Mr. Thompson had noted, we're prepared to cut off in
3 light of -- I anticipate -- the committee certainly
4 understands the import of these discussions, and no party
5 will be cut off from their opportunity to fully and
6 completely discuss the issues.

7 There may very well be additional briefing requested,
8 so feel free to comment at this point if you must. That is
9 not the issue at hand today.

10 MR. MILLER: Thank you. This is a one-minute-or-less
11 point, but it is a rather important one. I just wanted to
12 leave you with one point not responded to.

13 The issue of the scope of the Elk Hills AFC was
14 raised. Appendix I to that AFC does include a cumulative
15 analysis of the combined effects of Elk Hills and La Paloma
16 as to interconnection. There's also a more recent document
17 we just received this week from PG&E which we will docket
18 that includes those two projects and Sunrise, so that matter
19 is being addressed by us in our AFC process.

20 The other key point I wanted to make is that we are
21 distinct. We need to keep in mind the distinction between
22 FERC and ISO issues downstream of the first point of
23 interconnection, which we do not dispute are, in fact, in
24 their jurisdiction. This is not what we're talking about
25 here.

26 We're talking about an impact prior to that point,

1 and in our view, the FERC protocols do not address that
2 issue and it's not covered, so just we don't need -- so you
3 keep that distinction clear because when it comes to
4 describing the ISO and the FERC jurisdiction, we have a
5 violent agreement that those issues downstream of the first
6 point of interconnection are, in fact, properly dealt with
7 by those bodies. And that's the end of my --

8 COMMISSIONER LAURIE: Understand. Yes, sir, you are
9 free to comment. However, let me advise again: We are not
10 inputting on the substance of this question. We are hearing
11 it. We are certainly in a position to recollect it. That's
12 not the issue for today.

13 If you feel you must put something on the record,
14 then do so. I'll caution you that we have certain places
15 that we do have to go today and the substance of this issue
16 is not one of them.

17 MR. HINDUS: I understand, your Honor. I will keep
18 this very, very short.

19 COMMISSIONER LAURIE: Bob is fine.

20 MR. HINDUS: The FERC jurisdictional towers that
21 govern this area, I think, speak for themselves. They are
22 public documents. They've been accepted by FERC. The ISO
23 and the applicant has followed the end of the transmission
24 owner and all have followed the proper procedure.

25 If there is dispute as to -- if there is a dispute as
26 to whether these procedures are correct or whether or not

1 they've been followed, that dispute is certainly not going
2 to be heard here. That's what these documents provide for.
3 It's really the only point I want to emphasize at this
4 point. We can reserve more for --

5 COMMISSIONER LAURIE: Can you state your name for the
6 record?

7 MR. HINDUS: Yes. My name is Michael Hindus with the
8 law firm of Cameron and McKenna.

9 COMMISSIONER LAURIE: Thank you, sir.

10 At this point we'd like to go to the parties for
11 comment and the issues to be discussed include the various
12 parties' readiness for hearing, the areas to be identified
13 as those areas that are in agreement or that are in dispute,
14 the procedural issues that you deem could be relevant.

15 With that in mind, I would, with Mr. Valkosky's
16 consent, turn the matter over to Mr. Thompson for comment in
17 regards to the above.

18 MR. THOMPSON: Thank you, your Honor Bob.

19 COMMISSIONER LAURIE: If only I could get the same
20 respect from my wife.

21 MR. THOMPSON: Applicant filed a prehearing
22 conference statement that contained the list of subject
23 areas, the times that we believe should be allotted for
24 hearing, and the areas not ready for hearing. That has
25 changed somewhat in the intervening days, and I believe that
26 today I would rather speak, I think, to the proposed

1 schedule, which even has a change on it since 5:00 o'clock
2 this morning when I wrote that.

3 If you will note -- and for those members of the
4 public there's a stack of them out by the front door. I
5 apologize for not getting this out earlier.

6 The areas that we believe cannot be included in the
7 staff's FSA would be air quality. The reason for that is
8 that we have submitted more recent modeling data to the air
9 district and the air district is currently working on a
10 PDOC, Preliminary Determination of Compliance. We hope they
11 will get that out on March 25. There's a member of the
12 district here today so that you can ask him if that schedule
13 seems right.

14 And we recognize that there's a thirty-day comment
15 period that is attached to that, so we would hope that --
16 well, we recognize that air quality cannot be considered in
17 the April 7th FSA.

18 We are hopeful that it can be in a supplement on or
19 about the 23rd of April, which would give staff four weeks
20 or so to look at the PDOC before it comes out with its
21 testimony.

22 The second issue is the biology issue and the
23 biology, cultural, and paleo issues, with one minor
24 exception, all revolve around the data that will be filed
25 today on the transmission dogleg, the change that is coming
26 about to avoid state of California lands.

1 We again recognize that that material coming in: The
2 biology coming in today and the cultural and paleo coming in
3 on the last day of the month is not going to give staff
4 sufficient time to reevaluate it and write up their
5 sections, so we believe that those areas, again, probably
6 will not be ready by April 7th but could be available on or
7 about the 23rd.

8 There is a further issue that on the California Fish
9 and Game take permit; is that right? Did I say that right?
10 That is -- my understanding is that it is a procedural
11 glitch and is not substantive, and I think that the U.S.
12 Fish and Wildlife and staff, applicant and all interested
13 parties are trying to work that out. I'm confident that it
14 will get worked out. It is not substantive, so I would hope
15 the substantive biology issues could roll forward.

16 The transmission line engineering, I think, from what
17 I understand of the staff's supplemental filing that was
18 made yesterday, is an area that will be ready on April 7th
19 to be included in the staff's FSA.

20 And lastly, workers safety and fire: I asterisked
21 that in the proposed schedule that I put out because it was
22 unclear to me whether or not staff would be ready, and I
23 await staff to make that determination.

24 The bottom line of all this is that we are clearly
25 asking for a bifurcated proceeding, that an FSA be issued as
26 contemplated on April 7 for all areas that staff can make,

1 that we have the hearings that will allow the committee to
2 start wrestling with any issues that we have there, which
3 I'm not sure we have any disputed issues, and then have a
4 supplemental FSA on April 23rd and have hearings on that the
5 second week in May.

6 The dates on this document were mine, and I did this
7 without consultation with staff or any other parties. It
8 was intended to be a document that we could work from,
9 operating under my belief it was better to have something in
10 front of us that we can ink out, pencil out, pencil in
11 rather than start from scratch, so I think that's where we
12 stand with the issues and hope that the staff can add to
13 that.

14 Do you have any questions about where you think we
15 are?

16 COMMISSIONER ROHY: Mr. Thompson -- there it goes.
17 You and I have common calendars on another case.

18 MR. THOMPSON: We do.

19 COMMISSIONER ROHY: I was wondering: I was trying to
20 recall the exact evidentiary dates in the Pittsburgh case
21 and whether these conflict with those?

22 MR. THOMPSON: It was early in the morning when I did
23 this, and I think I checked Pittsburgh, at least I checked
24 my Daytimer, which isn't always right, but I think we'll be
25 okay.

26 COMMISSIONER ROHY: We're going to be seeing a lot of

1 each other.

2 MR. THOMPSON: We will. I'm sure that I'm going to
3 confuse the cases at some time, and I ask your forgiveness
4 in advance.

5 COMMISSIONER ROHY: I want to make sure that we keep
6 them separate from a date point of view because of location
7 --

8 MR. THOMPSON: I think this should be all right.

9 COMMISSIONER ROHY: Thank you.

10 HEARING OFFICER VALKOSKY: Thank you, Commissioner.

11 Mr. Thompson, I've got a couple conceptual set of
12 questions. The first will deal with your prehearing
13 conference statement that you filed on March 9th.

14 Now, at least in my copy I have no resumes for
15 Messrs. Garratt, Chilson, Filippi, Steiner, Hornsby, Smith
16 Keeler, and Silty. At the time we file testimony, if you
17 could make sure that they have resumes.

18 MR. THOMPSON: I will make sure of that. I'm not
19 sure all of those individuals will be witnesses.

20 HEARING OFFICER VALKOSKY: Okay. Well, maybe what we
21 need is a corrected statement, then, because I believe they
22 were represented as being witnesses.

23 MR. THOMPSON: Let me do that. Let me get out a
24 corrected statement. I have to meet with the client and
25 firm up who all is going to testimony.

26 HEARING OFFICER VALKOSKY: Just a head up on the

1 stuff we will need.

2 Now, I understand that the applicant will not be
3 using zero discharge system; is that correct?

4 MR. THOMPSON: I think that are you -- Roger, should
5 we get somebody who actually knows somebody up here?

6 HEARING OFFICER VALKOSKY: Right.

7 MR. GARRATT: We're continuing to maintain two
8 options: One being injection wells, and the second being
9 zero discharge system.

10 HEARING OFFICER VALKOSKY: When will you make the
11 decision which option you are going to utilize?

12 MR. GARRATT: It could be at the very end of the
13 case. What we were hoping for as part of this process was
14 to get a condition that zero discharge was acceptable and
15 that injection wells were acceptable conditioned upon
16 getting the proper EPA permits.

17 HEARING OFFICER VALKOSKY: So that the staff analysis
18 had best contain analysis of both options, at least in the
19 committee's respect.

20 When would you expect the EPA approval?

21 MR. GARRATT: We expect that in August.

22 HEARING OFFICER VALKOSKY: In August, okay.

23 MR. GARRATT: We also, through our consultant, had a
24 conversation today with the EPA, and what we could do, if it
25 would be helpful, is submit EPA permits for similar
26 injection wells. They have recently approved injection

1 wells for two other Cogen projects.

2 HEARING OFFICER VALKOSKY: So in your view that would
3 be a mechanism for the commission to ensure that our
4 conditions are likely to be substantially similar to the EPA
5 conditions?

6 MR. GARRATT: Hm-hmm.

7 HEARING OFFICER VALKOSKY: Thank you. You may or may
8 not be the right person to respond, but when would you
9 expect the EPA to complete their PSD review of the project?

10 MR. STEINER: Bill Steiner with Woodward Klein.

11 I talked with Erica Rule, who is the project manager
12 at this time at EPA Region Nine. My recollection -- this is
13 rough. I don't have my notes with me -- is that she was
14 thinking of by mid-May having the draft PSD permit out for
15 public notice, and I can't remember the federal rules --
16 maybe someone here does -- whether they have a thirty-day or
17 sixty-day public review period before they can go final.

18 HEARING OFFICER VALKOSKY: So if that came out in
19 mid-May, then we're looking at an approximate July time
20 frame for a final?

21 MR. STEINER: That would be my guess. We have no
22 significant issues that I know of on the permit right now.

23 HEARING OFFICER VALKOSKY: Thank you.

24 Mr. Thompson, is it your position or the applicant's
25 position that the committee may, A, proceed to hearing or
26 the commission may, B, proceed to decision without the blow

1 down -- the EPA blow down permit, the reinjection permit,
2 excuse me, and/or the PSD permit?

3 MR. THOMPSON: That's our position. Our position is
4 that we can do both: We can go to hearings and we can go to
5 a decision without those EPA decisions, although we will try
6 and give you an idea about what those will contain.

7 HEARING OFFICER VALKOSKY: Okay, understood.

8 Final question: Do you have any idea as to the time
9 impacts upon the issuance of the biological opinions from
10 Fish and Wildlife and California Fish and Game which will be
11 occasioned by the transmission rerouting?

12 MR. THOMPSON: We're searching the team here.

13 (Pause in proceeding.)

14 MR. THOMPSON: Yeah, I'm not really up to speed on
15 that right now, but I suspect that possibly staff might have
16 a feel for that right now.

17 HEARING OFFICER VALKOSKY: We'll ask staff that
18 question when I guess it will be their turn.

19 Mr. Thompson, same question as before but this time
20 insert biological opinion: Do you think the committee can
21 proceed to hearing and/or the commission can proceed to
22 decision without the biological opinions from the federal
23 and state agencies?

24 MR. THOMPSON: I think that the committee can go to
25 hearing and decision without the federal. I'm not so sure
26 that the committee can go to decision without the state.

1 Seems to me that they are mandated, the commission is, to
2 envelope all state permits, at least have a pretty good
3 handle on where they are.

4 HEARING OFFICER VALKOSKY: So that's basically a wild
5 card on your proposed schedule, then, since there's no date
6 for a submission of the biological opinion from California?

7 MR. THOMPSON: I think the issue we've all been
8 struggling with, and I think it's an issue of lapsed
9 regulations and nobody quite knowing how to resolve the
10 technical issue. It's kind of an administrative slash legal
11 catch-22.

12 I hope staff is closer to this than I am, but we are
13 kind of looking to others for help on this one because I'm
14 not sure there's much that we can do.

15 HEARING OFFICER VALKOSKY: Right. Again, I'm just
16 trying to get it from a scheduling perspective because you
17 just stated that the committee cannot go to hearing without
18 the biological opinion at least from the California
19 Department of Fish and Game.

20 You proposed the schedule we move forward, but this
21 is still a major missing part. I understand you may not
22 have the answer, but am I paraphrasing this correctly?

23 MR. THOMPSON: I think we can go to hearings because
24 I don't think this is an issue of biological significance.
25 I'm not sure you can go to decision without --

26 HEARING OFFICER VALKOSKY: So you would amend your

1 previous statement that we couldn't go to decision without
2 the Fish and Game biological opinion?

3 MR. THOMPSON: Or at least a weighted deal on that
4 issue.

5 HEARING OFFICER VALKOSKY: Okay. And I'll direct a
6 couple questions to your proposed schedule.

7 You indicate the first line that it would be a final
8 determination for California ISO submitted on March 16th.
9 My understanding is that we have a preliminary
10 determination, which I assume has recently been docketed, so
11 are you saying we need a final ISO?

12 MR. THOMPSON: This is probably a poor choice of
13 words from me. If there's somebody here from the ISO that
14 can help me, but it's my understanding that a preliminary
15 from the ISO is really close to a final in everybody else's
16 minds and the real final occurs before --

17 MR. HINDUS: Right before the project is ready to
18 deliver power to the system.

19 MR. THOMPSON: -- right before the project is ready
20 to deliver power to the system.

21 MR. HINDUS: I think Mr. Miller from the ISO may --

22 HEARING OFFICER VALKOSKY: When we get to the ISO,
23 we'll certainly have the ISO address that.

24 MR. THOMPSON: So it was my poor choice of words. I
25 think I wanted to type final, and I did.

26 HEARING OFFICER VALKOSKY: I'm just trying to clarify

1 things.

2 I believe the last compound question: If the
3 committee did proceed to hearing without the final
4 determination of compliance from the air district and the
5 final biological opinion from the Fish and Game, when would
6 you intend that those determinations be entered into the
7 evidentiary record.

8 I mean, are we talking about another evidentiary
9 hearing sometime down the line after the committee issued
10 its presiding members' proposed decision or some other
11 point?

12 MR. THOMPSON: I would hope that we do not have the
13 need for it, although I've had cases where we've had
14 hearings on commission drafts, so I that know it's possible
15 to supplement the record all the way up to a week or two
16 before the final decision.

17 My anticipation is that we would have an FDOC from
18 the district on or about May 10. I recognize that that
19 could slip. We have -- the district obviously hasn't seen
20 any comments. They haven't come out with their PDOC yet.
21 However, I think that we are well on the road to a PDOC
22 comments --

23 HEARING OFFICER VALKOSKY: Right but --

24 MR. THOMPSON: -- I would anticipate getting that in
25 May.

26 HEARING OFFICER VALKOSKY: No. And the reason for my

1 question is based on your schedule. You have the
2 supplemental hearings basically ending the day before the
3 district would issue the final DOC. Does that --

4 MR. THOMPSON: That doesn't make sense, does it?
5 It's probably a weekend to compound that. I think,
6 actually, the staff has some suggested dates in here, but I
7 think if you slip those hearings a couple days so that they
8 are the same time frame as the May 10 for FDOC.

9 HEARING OFFICER VALKOSKY: Just to make sure I
10 understand: So your intention would be that the hearings to
11 consider air quality would be based on the final DOC rather
12 than the preliminary DOC; is that correct?

13 MR. THOMPSON: I think that if we don't have any
14 issues with staff, then I think that's true because it's
15 only making sure that the record is complete.

16 If there are other air quality issues other than any
17 differences that may arise between the PDOC and the FDOC, we
18 can go to hearings and adjudication on any other issues that
19 may be there.

20 HEARING OFFICER VALKOSKY: But in any case, we
21 wouldn't know those prior to the issuance of the final DOC;
22 right?

23 MR. THOMPSON: Right.

24 HEARING OFFICER VALKOSKY: Okay. Thank you.

25 COMMISSIONER LAURIE: Does staff have any questions
26 for Mr. Thompson?

1 MR. OGATA: No, we have no questions.

2 COMMISSIONER LAURIE: Any further comments at this
3 time, Mr. Thompson?

4 MR. THOMPSON: No, thank you.

5 COMMISSIONER LAURIE: Mr. Ogata?

6 MR. OGATA: Thank you, Commissioner Laurie.

7 I believe Mr. Thompson has correctly characterized,
8 in our view, those areas that are ready to proceed and those
9 areas that are not. We've looked at his proposed schedule.
10 I'll ask Mr. Pryor to comment on some changes that we may
11 like to see in his proposed schedule, but I think by and
12 large we agree with that, the scheduling he's proposed to
13 us.

14 The issue, I guess, in terms of scheduling kind of
15 comes down the a couple things. The staff will be prepared
16 to issue an FSA on seventeen technical areas on April 7th.
17 The areas that Mr. Thompson outlined are those areas that
18 are outstanding. And we probably can file FSA sections on
19 those at a later time as he's proposed.

20 Biology at this point, like he said, is an unknown,
21 and I could have Mr. York, if you would like, our staff
22 biologist to come up and give us a status of where we are on
23 that issue. Unfortunately, as Mr. Thompson said, it's not a
24 pretty picture, just because of not substantive issues but
25 some procedural problems at Fish and Game.

26 So we are working -- staff is working on trying to

1 pull together a proposal that we can take to Fish and Game
2 to help them help us get through this process.

3 But to be absolutely brutally candid, we don't have a
4 clue when we will get something from Fish and Game on this,
5 which is why our statement is basically proposed that within
6 a month after we get the documents from Fish and Game we
7 will be prepared to file our staff assessment.

8 We're asking for a month, but clearly we believe we
9 know enough about this that we don't think we'll need all
10 that time, unless Fish and Game comes out with something
11 that we aren't aware of. But we do believe that what's
12 being proposed is going to be adequate. It is going to be
13 appropriate so that there shouldn't be any surprises, but
14 again, we really can't speak for Fish and Game in terms of
15 the timing of the biological opinion.

16 COMMISSIONER LAURIE: What relationship to the Fish
17 and Game procedural issues are there, if any, to the
18 amendment regarding rerouting of the transmission lines?

19 MR. OGATA: We don't think that that's a huge
20 problem, frankly. We're aware of the situation out there.
21 When we get the information, we will be in a better position
22 to make that determination, but from what we know, we don't
23 think that is going to be a problem.

24 The problem revolves around the fact that there is an
25 endangered species out there that the state has to deal
26 with. They have to figure out a way to allow La Paloma to

1 build and figure out a way that there won't be any impact to
2 this species.

3 Unfortunately, with the change in the law, there are
4 no deregulations that will allow Fish and Game to issue take
5 permits. Currently the law is they are not allowed to take
6 any of these little guys, so we need to figure out a way
7 that La Paloma can construct and not violate the law and
8 that, frankly, is why we're stuck right now, and we have to
9 talk to Fish and Game and figure out what they propose to
10 do.

11 The applicant has made some attempts in terms of
12 alternatives, but Fish and Game hasn't approved those
13 alternatives, so we're kind of searching for a way, as I
14 said, help Fish and Game help us.

15 COMMISSIONER LAURIE: Can you speak briefly about --
16 and I'll ask staff to do this. If the applicant has a
17 problem with it, then weigh in: Can you briefly describe
18 the transmission amendment, the rerouting amendment?

19 MR. OGATA: Well, I guess the applicant can do it
20 better than I can. Generally, the proposed line was going
21 to go over Fish and Game ecological preserve. It turns out
22 that there is regulations that prohibit any new lines going
23 in over this preserve.

24 So La Paloma is being forced to reroute their line
25 around Fish and Game property, so instead of having one
26 tower, they are going to have to construct four or five

1 additional structures that will make it six-tenths of a mile
2 longer around this property so --

3 COMMISSIONER LAURIE: So six-tenths of a mile longer
4 additional line? That's what I was looking for.

5 Mr. Pryor, do you have any comments?

6 MR. PRYOR: No, I do not, unless schedule -- I'm
7 sorry. I appreciate Mr. Thompson providing the schedule.
8 It gave us something to match with what we were coming up
9 with.

10 First concern I have is the date of March 25th for
11 the expected PDOC. If that happens, I believe it would
12 work, except that thirty-day comment period would take us
13 down to the -- around the 23rd. I believe the 26th would
14 work better because then we would have a weekend to at least
15 look at anything that CAR or EPA may come up with at the
16 last minute on comments, so if we could have three days
17 more.

18 MR. THOMPSON: Change April 23 to 26th?

19 MR. PRYOR: Yes.

20 HEARING OFFICER VALKOSKY: Sorry. That's for filing
21 the supplemental FSA?

22 MR. PRYOR: Yes, on air quality.

23 Mr. Ogata mentioned we don't know anything about
24 biology at this point. Cultural and paleo and fire, I would
25 also like to have on the 26th of April for the supplemental
26 FSA.

1 In addition, I would like to have water resources so
2 that we can address the supply options that we're looking
3 at, alternative supply options for processed water. He has
4 the 7th through the 9th for the evidentiary hearings. That
5 is a Friday, Saturday, and Sunday.

6 MR. THOMPSON: No rest. He does the same thing to
7 Emily.

8 MR. PRYOR: I think I have Coast Guard duty that
9 weekend anyway. So we would like to move that to the 10th,
10 10th through 14th for the hearings. That would be the
11 supplemental hearing. And if the FDOC came in on the 10th,
12 then we could address that during those hearings in the open
13 forum. Those are the only changes I have.

14 COMMISSIONER LAURIE: Thank you.

15 Commissioner Rohy, do you have any questions?

16 COMMISSIONER ROHY: I have no questions.

17 COMMISSIONER LAURIE: Commissioner Valkosky?

18 HEARING OFFICER VALKOSKY: Thank you, Commissioner
19 Laurie.

20 Mr. Pryor, again, so I can make sure I'm
21 understanding it: Your supplemental FSA would include air
22 quality, cultural, paleontological, workers' safety and fire
23 protection, and water?

24 MR. PRYOR: Yes.

25 HEARING OFFICER VALKOSKY: That would be the only
26 topics?

1 MR. PRYOR: If we had biology, then we would include
2 that.

3 HEARING OFFICER VALKOSKY: And if we do not have a
4 biological opinion from Fish and Game, then we will be what?
5 Just awaiting testimony on biology?

6 MR. PRYOR: Yes.

7 HEARING OFFICER VALKOSKY: So that we still couldn't
8 achieve a complete evidentiary record; is that correct?

9 MR. PRYOR: That's correct.

10 HEARING OFFICER VALKOSKY: Now we've got some
11 questions on your prehearing conference statement and the
12 contents of the PSA.

13 Mr. Ogata, you asked Mr. Thompson his opinion on
14 whether the committee, and eventually the commission, needed
15 EPA reinjection permit, a PSD permit, and a biological
16 opinion from the respective control agencies before we can,
17 A, either commence to hearing or, B, render a decision.

18 What's staff's position on those?

19 MR. OGATA: Mr. Valkosky, staff's position is that
20 staff believes that we will have seen drafts of all those
21 things and that we will be comfortable with proceeding to
22 hearing on those items.

23 Certainly, because federal agencies have a different
24 relationship with this commission, you probably could
25 proceed through to decision as well, and of course, what the
26 feds say later may end of changing that, but because we're

1 in coordination mode, we certainly would hope that we're
2 able to see those final documents before the final decision
3 is reached. But our staff is comfortable looking at the
4 drafts of those documents and giving testimony based on
5 those drafts.

6 HEARING OFFICER VALKOSKY: So the drafts are needed
7 for hearing but the finals are not needed for either hearing
8 or decision; is that correct?

9 MR. OGATA: Correct.

10 HEARING OFFICER VALKOSKY: How about the California
11 Department of Fish and Game biological opinion?

12 MR. OGATA: I think it's clear we can't have a
13 decision without a biological opinion, and staff would be
14 very reluctant to file testimony without a biological
15 opinion from the trusting agencies of the state of
16 California.

17 HEARING OFFICER VALKOSKY: Yeah. So no hearing, no
18 decision without the biological opinion?

19 What is the extent of the planned cumulative impact
20 analysis you will be coming out with in your Final Staff
21 Assessment?

22 MR. OGATA: The overall environmental impacts?

23 HEARING OFFICER VALKOSKY: Yes.

24 MR. OGATA: I think --

25 HEARING OFFICER VALKOSKY: Let me be more precise:
26 Will you cover all of the traditional environmental areas

1 that, you know, past practices indicated are covered in a
2 staff analysis?

3 MR. OGATA: Yes, we intend to.

4 HEARING OFFICER VALKOSKY: How about the technical
5 areas as I characterized them in our conversation with
6 Mr. Miller earlier?

7 Are you going to be to do any sort of analysis,
8 either environmental or technical, of connecting more than
9 the La Paloma project at the Midway Substation?

10 MR. OGATA: We intend to do the best analysis we can
11 with the information we have available, given the time frame
12 we're supposed to prepare this analysis.

13 What that means currently is we do not believe that
14 we have enough information to come out with a cumulative
15 impacts analysis for La Paloma. In fact, we -- our current
16 belief is that the La Paloma case is probably going to have
17 to go through without a detailed cumulative analysis simply
18 because we don't have enough information.

19 But having said that, staff is currently working on
20 cumulative analysis because we do understand the importance
21 of the situation out there. And so, again, it's a question
22 of timing. If for some reason this was to be delayed for
23 several months, staff might be in a position to have some
24 testimony ready by that time.

25 But if we're going to proceed on this schedule we
26 have in front of us, staff will probably -- the conclusion

1 that we reach for La Paloma probably we don't have enough
2 information to do a cumulative analysis.

3 HEARING OFFICER VALKOSKY: Concerning the technical
4 and economic aspects?

5 MR. OGATA: Talking about transmission line
6 specifically.

7 HEARING OFFICER VALKOSKY: Yes. Is it staff's
8 opinion that the connection at the substation is within the
9 commission's jurisdiction as being the first point of
10 interconnection or as applicant and IEP has stated, that
11 connect -- that any changes and cost apportionment at the
12 Midway Substation are more properly within the jurisdiction
13 of FERC and the California ISO?

14 MR. OGATA: I think I'd agree with Ms. Edson that
15 cost allocation is not something that the commission has
16 done or will probably do, but we'll review the Midway
17 Substation equipment there for cumulative impact.

18 HEARING OFFICER VALKOSKY: And I assume that would
19 contain any recommendation whether another transformer back
20 or something like that has to be added or not?

21 MR. OGATA: I would assume so. If there's some
22 mitigation we can figure out, we'd put it in our testimony.

23 HEARING OFFICER VALKOSKY: And that would be done
24 within -- let's deal with Mr. Thompson's schedule -- within
25 that proposed schedule, or would that require additional
26 time?

1 MR. OGATA: That analysis will not be ready for La
2 Paloma.

3 HEARING OFFICER VALKOSKY: That will be not be ready
4 for La Paloma.

5 MR. OGATA: That's my understanding today.

6 HEARING OFFICER VALKOSKY: I take it, then, also it's
7 your position that a final determination from the CAL ISO is
8 not needed before the commission could reach a decision on
9 this project?

10 MR. OGATA: That's correct.

11 HEARING OFFICER VALKOSKY: Okay. What is staff's
12 view of requiring the FDOC before hearings or before
13 decision?

14 MR. OGATA: Our past practice is we certainly like to
15 see an FDOC before we go to hearings so we can fine tune
16 whatever it is we need to do, but generally speaking we
17 haven't had any surprises or any problems that have caused
18 us to total revamp our analysis.

19 So we believe when we see the PDOC and we're able to
20 see what comments are offered by the public and other
21 agencies, that we can probably go to hearing on that. It
22 would be nice to have a couple days before the hearing so
23 our staff had an opportunity to take a look, but if the FDOC
24 comes out right around the time we're having the hearings,
25 we can probably handle that.

26 HEARING OFFICER VALKOSKY: If it came out the 10th

1 and we're in hearings sometime during that week, that would
2 be sufficient for staff?

3 MR. OGATA: Staff would like to have more time, but
4 we can probably handle that.

5 HEARING OFFICER VALKOSKY: You indicate in your PSA
6 that you are doing a dry cooling analysis, and the way I
7 read that, that's because the analysis is required by the
8 state water board.

9 Can you explain that a little bit further to me,
10 please?

11 MR. OGATA: The state Water Resource Control Board
12 has had a policy since 1975 that for most of the use of
13 alternative sources of water as opposed to using fresh water
14 for cooling purposes for power plants, so as part of that
15 part of our duties, we take a look at what other options
16 there are to using fresh water for running power plants.

17 In this particular case we're going to take a look at
18 dry cooling and we're going to take a look at using other
19 water that may be available out there in the oil fields.

20 HEARING OFFICER VALKOSKY: That analysis has not yet
21 been seen by applicant or other parties to this case?

22 MR. OGATA: That's correct.

23 HEARING OFFICER VALKOSKY: Is it also correct that
24 staff would recommend that dry cooling be used in this
25 project?

26 MR. PRYOR: I suppose it's possible.

1 MR. OGATA: Having said that I don't know what we're
2 going to say. I haven't seen the testimony.

3 HEARING OFFICER VALKOSKY: But that is within the
4 realm of possibility. So at this point we don't know
5 whether water will be a mitigated issue or have potential to
6 be a mitigated issue?

7 MR. OGATA: It has the potential. To be honest, I
8 don't think we're going to come out and say that, but again,
9 I'm not writing it and I haven't seen it. I don't know.

10 HEARING OFFICER VALKOSKY: Mr. Ogata, I certainly
11 understand that.

12 As part of the air quality analysis in the FSA, are
13 you going to include cumulative public health awareness as
14 well?

15 When I say "cumulative," I mean La Paloma in
16 conjunction with other reasonably expected projects such as
17 Sunrise and Elk Hills.

18 MR. OGATA: I would hope we would do so. That's our
19 standard, you know, direction to staff is that they
20 understand what their responsibilities are. So to the
21 extent it's not in there now, I would expect that it would
22 be included in the FSA.

23 HEARING OFFICER VALKOSKY: I would notice that for
24 certain of the discipline, but I think, although you specify
25 you are going to do a cumulative on things like
26 socioeconomics and transportation and other

1 infrastructure-related disciplines, something like public
2 health is not specifically called out, so I would just
3 mention that for your consideration.

4 In your PSA on transmission line safety and nuisance,
5 you contain an analysis on the route.

6 Now, is this the new route that the applicant has
7 proposed? The revised route, or is this one of the earlier
8 alternatives?

9 MR. PRYOR: In the PSA it does not address anywhere
10 the new route. That was just received in dockets and things
11 last week. No, it would be today, this afternoon.

12 HEARING OFFICER VALKOSKY: So that the PSA will
13 require revisions as appropriate to reflect that new route;
14 okay?

15 MR. PRYOR: Yes.

16 HEARING OFFICER VALKOSKY: So then you are talking
17 about the Final Staff Assessment will contain or can contain
18 supplemental analysis of more than the four or five areas
19 that you specified before; is that correct?

20 I mean, you are going to have to make certain
21 revisions, I presume, to reflect the new route?

22 MR. PRYOR: Yes.

23 HEARING OFFICER VALKOSKY: So are you contending that
24 you can still do all that by April 26th?

25 MR. PRYOR: Yes, I believe we can do that before.

26 HEARING OFFICER VALKOSKY: That's fine. In the PSA

1 at page 84, I believe, referring to the ammonia storage
2 facility, it's characterized as being in a, quote, "nebulous
3 state." This is for the hazardous materials handling.

4 Is that still the state, or have we made progress on
5 that?

6 MR. PRYOR: We've made a lot of progress on that, and
7 I expect to have that in the April 7th.

8 HEARING OFFICER VALKOSKY: In the April 7th, okay.

9 Referring to water in the PSA, page 280 indicates
10 that staff is still evaluating circumstances. On page 284
11 you mention certain things such as the waste discharge
12 requirements, the proposed turn -- may require, DWR
13 approval, and groundwater concerns.

14 Are those issues likely to be addressed by your
15 supplemental filing on April 26th?

16 MR. PRYOR: Yes, they are.

17 HEARING OFFICER VALKOSKY: And lastly -- well, almost
18 lastly: I take it the FSA will include the resumes for all
19 the staff witnesses?

20 MR. PRYOR: Yes, they will.

21 HEARING OFFICER VALKOSKY: And I also include all the
22 prehearing conference statement indicates you wouldn't offer
23 any exhibits.

24 I would expect you would offer the FSA and any
25 supplements as staff exhibits during the evidentiary
26 hearing?

1 MR. OGATA: Yes, that's correct.

2 HEARING OFFICER VALKOSKY: Thank you.

3 COMMISSIONER LAURIE: Mr. Thompson, do you have any
4 questions of staff?

5 MR. THOMPSON: No.

6 COMMISSIONER LAURIE: Let me ask any member of the
7 audience, whether you filled out a blue card or not, if
8 anybody has any questions or comments, please feel free to
9 address us at this time.

10 MS. POOL: Good afternoon, Kay Pool for CURE.

11 We did file a prehearing conference statement and
12 raised some of the same issues that have been raised here.
13 Essentially that air quality, biology, and water resources
14 may not be ready to proceed to hearing by the proposed
15 schedule because of other agency decisions that had to be
16 made. I think we've touched on all of those here.

17 One issue that we raised in our prehearing conference
18 statement has disappeared, the CDFG approval for crossing
19 the state ecological preserve. That issues been dealt with
20 by the rerouting of the transmission line.

21 At the workshop last Thursday it was my understanding
22 that the Fish and Wildlife Service said that their
23 biological opinion would not be held up by the rerouting of
24 the transmission line and that that was expected, I believe,
25 in early April.

26 MR. PRYOR: Yes.

1 MS. POOL: And I think that's all I have to add,
2 unless there's any questions.

3 COMMISSIONER LAURIE: Thank you very much.

4 HEARING OFFICER VALKOSKY: Ms. Pool, before you
5 leave, do you -- you indicated that Fish and Wildlife
6 Service biological opinion is expected in early April.

7 Do you have any indication of when the California
8 Fish and Game biological opinion will be available?

9 MS. POOL: Unfortunately Fish and Game was not at
10 this workshop, so I haven't had any direct contact with
11 them. I understood that they thought that most of their
12 take authorizations for state list species could be given
13 about a month after the federal biological opinion was
14 issued.

15 There is this one species which is fully protected,
16 which Fish and Game is scrambling with internally how to
17 deal with, so --

18 HEARING OFFICER VALKOSKY: Which species is that?

19 MS. POOL: The blunt-nosed leopard lizard.

20 MR. THOMPSON: What is there, seven of them?

21 HEARING OFFICER VALKOSKY: In curious opinions, I
22 really want to get everybody's opinion on the same set of
23 questions: Can the commission -- or can the committee
24 proceed to hearing and/or the commission proceed to decision
25 without the EPA injection permit, the PSD permit, the
26 federal biological opinion, and the state biological

1 opinion?

2 MS. POOL: Let me take the EPA injection permit
3 first. There are a couple alternatives that the applicants
4 identify for dealing with their waste water: One is
5 injection that requires an EPA permit. The other is zero
6 discharge. We believe zero discharge can be analyzed now
7 and can proceed to hearing.

8 I don't think that the injection well option can be
9 finalized -- the parties can finalize testimony on that
10 option without seeing the EPA's permit.

11 HEARING OFFICER VALKOSKY: So the applicant indicated
12 earlier that in its opinion the staff analysis should
13 contain an analysis of both the zero discharge and the
14 injection well and that the applicant was likely to submit
15 conditions similar -- injection well conditions that had
16 been used in other instances similar.

17 And correct me if I'm wrong: What you are saying is
18 that you agree if we consider water in the hearings, zero
19 discharge aspects would not be likely to be litigated, but
20 that if we proceeded to water without the EPA injection
21 permit that you would likely to be -- you would be likely to
22 litigate that topic; is that correct?

23 MS. POOL: Litigate the injection well option?

24 HEARING OFFICER VALKOSKY: Well, yes. Or the -- or
25 contend that the record was incomplete, preventing the
26 commission from reaching a decision or the commission to

1 proceed without having the EPA injection well permit; is
2 that correct?

3 MS. POOL: I think both options can be analyzed. I
4 don't think that final testimony in this area or any areas
5 can be submitted until these other agencies' final permits
6 are obtained by the commission.

7 HEARING OFFICER VALKOSKY: So basically, then, the
8 committee or the commission can't reach a final decision
9 without having the federal EPA injection permit, if that is
10 the method chosen by the applicant?

11 MS. POOL: I think that's correct.

12 HEARING OFFICER VALKOSKY: How about the PSD permit?

13 MS. POOL: Again, the conditions contained in the
14 final PSD permit will determine certain air quality impacts
15 and air quality conditions that simply won't be known until
16 that final permit comes out. We may be able to get an idea
17 of what those conditions might be through a draft permit and
18 it may be in this case that those conditions won't change
19 significantly between a draft and final. I don't think we
20 know that at this point.

21 HEARING OFFICER VALKOSKY: Okay. And the applicant
22 indicated that they expected a draft PSD permit
23 approximately mid-May, so is it CURE's opinion that we could
24 not proceed to hearing on air quality before EPA issued the
25 draft PSD permit?

26 MS. POOL: At the earliest. Somebody in my office

1 also spoke with Erica Rule last week. The information that
2 we obtained from her, that's the EPA person working on the
3 permit, was that they expected to complete their review of
4 the PSD application by late April or early May.

5 HEARING OFFICER VALKOSKY: That's essentially the
6 time frame the applicant was talking about.

7 MS. POOL: I guess so, yeah.

8 HEARING OFFICER VALKOSKY: Let's just take April 1st
9 for the draft PSD permit decisions.

10 So I take it your position, then, would be that we
11 couldn't proceed to air quality hearings, assuming that
12 permit is issued on May 1st for how long a period of time?
13 Ten days? Two weeks? What do you view as reasonable to
14 review that permit?

15 MS. POOL: Well, let me clarify. Our position is as
16 we've stated in other cases as well, is that testimony can't
17 be finalized and hearings can't go forward until the final
18 permit is issued.

19 HEARING OFFICER VALKOSKY: And right now that would
20 be approximately the July/August time frame?

21 MS. POOL: I'm also uncertain about what the EPA
22 comment period is. That may be correct.

23 HEARING OFFICER VALKOSKY: So, all right. Well,
24 thank you for that clarification. So we could not even go
25 to hearings until the final PSD permit was issued, which
26 again, would be midsummer sometime, I guess, under the best

1 estimates.

2 How about your position on the federal and state
3 biological opinions, insofar as proceeding to hearing or
4 proceeding to decision is concerned?

5 MS. POOL: Again, I think we need to have those final
6 take authorizations before testimony can be finalized and
7 hearings can be held.

8 HEARING OFFICER VALKOSKY: That's just before hearing
9 then?

10 MS. POOL: We do believe, in this case, as we've
11 stated in the prehearing conference statement, that we can
12 bifurcate the hearings because we don't anticipate that any
13 of these issues threaten the viability of the project.

14 HEARING OFFICER VALKOSKY: But again, I mean,
15 bifurcate or not, if the timing as we have discussed today,
16 the unknown timing on the Fish and Game biological opinion
17 and the -- I'm just going to use midsummer referring to the
18 July/August time frame on the PSD permit.

19 If the committee were to accept that we cannot
20 proceed to hearings before those are available, even
21 bifurcation, would that prevent us from running over the
22 August 25th date; right? August 25th is the date under the
23 twelve-month schedule?

24 MS. POOL: That's correct.

25 HEARING OFFICER VALKOSKY: Does CURE have an opinion
26 as to the extent of the cumulative impact analysis which

1 should be contained in the record of this proceeding,
2 insofar as the connection -- the transmission connection at
3 the Midway Substation is concerned?

4 MS. POOL: Simply to note that Elk Hills in
5 particular filed a notice and application for an exception
6 back in October, I believe, and I would guess had a pretty
7 good idea of its interconnection alternatives at that point
8 and are raising this issue somewhat late, we think, and so
9 we don't think that the capacity issues should delay this
10 proceeding.

11 HEARING OFFICER VALKOSKY: Is it your opinion that
12 evaluation of the technical and/or economic apportionment
13 allocation, whatever term you want, of affecting connection
14 of multiple projects at the Midway Substation is a matter
15 properly within the jurisdiction of the Energy Commission?

16 MS. POOL: I simply can't answer that. I would have
17 to research this FERC issue some more.

18 HEARING OFFICER VALKOSKY: That's fine. Thank you
19 very much.

20 COMMISSIONER LAURIE: Thank you.

21 Mr. Thompson, do you have any questions?

22 MR. THOMPSON: No.

23 COMMISSIONER LAURIE: Jeff? Let me ask at this point
24 whether ISO has any comments at this time?

25 MR. DORAN: Good afternoon. I'm Jeff Doran with the
26 California ISO.

1 The only question I heard come up concerning the ISO
2 deals with what is a preliminary and final approval. If you
3 would like me to, I'd be glad to clarify that.

4 COMMISSIONER LAURIE: Would you take a minute and do
5 that.

6 MR. DORAN: Officially, if you look through our
7 documentation, you won't find anything that occurs to
8 preliminary finding approval. We invented the preliminary
9 approval concept to enable this project and potentially
10 others to go forward based upon what we felt was an adequate
11 demonstration that the project meet certain liability
12 standards.

13 Now, why -- if we can say that why do we need a final
14 approval after. In a sense that's a natural question, so
15 let me explain a little bit about the process we have set up
16 for generation projects.

17 The first thing that happens is the generation's over
18 and the transmission owner they wish to connect to conduct a
19 study. This is a mathematical engineering analysis that
20 models the system and tests the system with the project
21 added to make sure that the project won't negatively impact
22 their liability.

23 They look at the system under normal conditions.
24 They look at single line outages, and they look at it under
25 potentially more severe outages, such as double line
26 outages.

1 PG&E did conduct that study. They looked at the
2 system under normal conditions. They looked at it under
3 single line outages and a few select double line outages,
4 but not all the ones that are required under the national
5 standards.

6 For the ISO to approve the project, since the ISO is
7 committed under state law and under the tariff we had filed
8 with the regulatory commission, we're responsible for
9 ensuring that the project will meet FERC, national
10 standards, and the studies did not include all the outages
11 that were necessary to demonstrate that.

12 The type of outages that were included were fairly
13 extreme outages, very unlikely outages, outages that could
14 be, if it were found to cause a reliability problem, the
15 reliability problems could be corrected without the addition
16 of facilities that would require environmental analysis and
17 the type of full-spectrum analysis that we're involved in
18 here.

19 So we felt, and agree with staff's position, that the
20 studies that PG&E had conducted for this project were
21 adequate for the purposes to proceed.

22 Are there any other questions for the ISO?

23 COMMISSIONER LAURIE: Mr. Valkosky?

24 HEARING OFFICER VALKOSKY: Thank you, Commissioner.

25 You've heard the discussion about connection of not
26 only the La Paloma project but also at least the Sunrise and

1 the Elk Hills project at the Midway Substation.

2 In the existing analysis that the ISO has performed,
3 which of those projects does the analysis cover?

4 MR. DORAN: The ISO hasn't performed any analysis.
5 We depend on PG&E to do the analysis for all these projects.

6 Traditionally, the way it's been looked at is the
7 project that comes in first studies the project by itself.
8 The next project comes in, it would look at its impact in
9 addition to the prior project. There's no written law or
10 rule that requires that, but that's the way it's been
11 handled.

12 In particular in this case we see an awful lot of
13 interest in a specific area, and the question naturally
14 comes to mind, I heard it mentioned many times this morning,
15 is what's the cumulative impact of all these projects?
16 Maybe there's synergies between them that might make you
17 want to switch from one interconnection arrangement to
18 another or maybe there's some larger projects that would be
19 required downstream on the interconnection.

20 It does make sense to do that type of a study, and we
21 would plan to request that PG&E conduct that type of
22 analysis. I'm not sure it's your judgment, but in our
23 opinion, I don't think it's fair to necessarily force the
24 generation provider to conduct that analysis at their cost.
25 What we plan to do is ask PG&E to do it as part of their
26 planning process.

1 HEARING OFFICER VALKOSKY: What would be the time
2 frame for that?

3 MR. DORAN: PG&E would have to answer that. We have
4 no ability to force them to perform within a certain period
5 of time. We would ask them to do it and ask them to do it
6 within the constraints that we're aware of, but we have no
7 way of ensuring that it will be done within a certain time
8 frame. I can tell you typically that type of analysis would
9 take several months to complete.

10 HEARING OFFICER VALKOSKY: "Several" meaning?

11 MR. DORAN: Two to three months. You can do it more
12 quickly if you put the resources and energy into it.

13 HEARING OFFICER VALKOSKY: But the ISO cannot force
14 PG&E to do it, so the question would really come down to
15 whether PG&E has the resources and the will to do it within
16 a specific time?

17 MR. DORAN: Yes.

18 COMMISSIONER LAURIE: But the responsibility is
19 ISO's?

20 MR. DORAN: Our responsibility with generation
21 interconnections is to look at the proposed interconnection
22 and determine whether or not it meets the reliability
23 standards and provides sufficient operation flexibility.

24 COMMISSIONER LAURIE: And you need to rely on the
25 input from the utilities to accomplish that?

26 MR. DORAN: The utility is responsible to perform the

1 studies necessary to demonstrate that, so it could be --
2 excuse me.

3 HEARING OFFICER VALKOSKY: Sorry.

4 MR. DORAN: -- it could be possible down the road if
5 some of these projects were able to interconnect with Midway
6 and another one came in, in order to demonstrate conformance
7 with reliability standards, they may have to conduct the
8 studies showing the prior project's already in place.

9 HEARING OFFICER VALKOSKY: So again, it's my
10 understanding of this: When you perform the existing
11 determination that assumed existing situation at Midway plus
12 the connection of La Paloma, that's correct; right?

13 MR. DORAN: Right.

14 HEARING OFFICER VALKOSKY: When you do that, say
15 Sunrise is the next one; okay? That will then include La
16 Paloma as well as whatever impacts Sunrise or whatever the
17 next project is?

18 MR. DORAN: That's why I use the word traditionally
19 you study the prior projects in place. There's no law or
20 requirement or guideline that would force them, necessarily,
21 to study the prior projects being in place.

22 And the question naturally comes about "Well, how
23 does this cue work? How come Sunrise has to account on La
24 Paloma? What if La Paloma slips? How do these projects
25 interrelate to each other," and that's the question ISO is
26 wrestling with. What kind of project should we have so

1 there's a proper cuing of projects so that projects that are
2 coming after other projects are properly recognized the
3 prior projects and the impacts they have on the system?
4 Right now there's no formal process for that.

5 HEARING OFFICER VALKOSKY: Do you have any rough idea
6 of when that formal process will be created?

7 MR. DORAN: No. The overall planning process is
8 being revamped. I don't have a time for you when that will
9 be complete. It's been highlighted as a major issue and a
10 number of issued papers that the ISO produced in the last
11 year.

12 The ISO board is wrestling with this, as well as the
13 state legislature in looking at the future role of the ISO
14 and planning and how the ISO coordinates with transmission
15 owners.

16 What we're trying to do on the sidelines while all
17 that is going on is trying to develop a workable process
18 with the transmission owner so that we can facilitate the
19 addition of these plants to the grid without impeding them
20 and come up with something that ensures that we will have a
21 reliable system at the same time meets the needs of the
22 generation developers and transmission owners and the ISO.

23 HEARING OFFICER VALKOSKY: When you say you base your
24 determination on generators which are in place, how do you
25 define "in place?"

26 Does that mean that the project has been built and is

1 ready to connect up their wires or that it's approved by the
2 Energy Commission or what?

3 MR. DORAN: Right now for the cuing issue is what
4 we've been calling it, all that we have in place is what
5 PG&E had in place prior to the ISO, and there they have a
6 window two months after they complete their final facility
7 study where they guarantee that the interconnection
8 requirements for that generation project will not change and
9 a lot of the generation developers say it's not adequate, so
10 working on reviewing that, but that's all that's in place to
11 guarantee a generation provider that the facilities they
12 identified in their studies are all that's required.

13 HEARING OFFICER VALKOSKY: In the ISO's view, who's
14 responsible for making the allocation of either the
15 economical allocation or the allocation of costs impacts for
16 connecting to the, in this case, Midway Substation?

17 Is that something that's handled in the ISO tariffs
18 and eventually approved by FERC as the applicant seems to
19 have said, or is it something that the Energy Commission
20 should be involved in as is the Elk Hills position?

21 MR. DORAN: There is language in the ISO tariff
22 specifying that for transmission projects the ISO has the
23 ability to identify the beneficiaries of certain projects
24 and assign the costs accordingly. That was really
25 envisioned to be used more for major transmission upgrades
26 like major new -- tied to another region that was really

1 focused on that whether a generation interconnection, but I
2 don't see any reason why it can't be used for generation
3 interconnection. At this point it has not been tested, it
4 has not been used.

5 HEARING OFFICER VALKOSKY: And the ISO doesn't have a
6 firm policy on this?

7 MR. DORAN: No, there's no firm policy or procedure.
8 And I'm not going to take the next step and suggest what the
9 Energy Commission's perspective should be.

10 HEARING OFFICER VALKOSKY: What happens when -- I
11 mean, again, it's a practical matter: What happens if La
12 Paloma comes in there, uses up the available capacity at the
13 substation, just the physical interconnect, and then Elk
14 Hills comes in or Sunrise or whoever else is there, and
15 there's no room for them at the inn.

16 Who has to pay to increase the size of the substation
17 or do whatever mitigation is required?

18 MR. DORAN: Traditionally it would be the next
19 generator would pay to keep the prior system whole. That
20 may be thrown out. There's a major discussion going on at
21 the ISO right now. It's supposed to go before the board.

22 COMMISSIONER LAURIE: Is this all the subject of your
23 March 25th board meeting?

24 MR. DORAN: It deals with exactly what are the
25 responsibilities of a new generator when they come to a
26 system, are they responsible for keeping whole all the prior

1 generators?

2 In other words, when they come in do they have to add
3 facilities to make sure all the other generators that were
4 there before could do what they did before, or do they just
5 have to connect onto the system and whoever has the lowest
6 price happens to be the one that gets the transmission
7 system?

8 That's the gist of the two proposals that are before
9 the ISO board right now, and it should be decided next week.
10 I can't suggest how that's going to come down. It's a very
11 difficult decision.

12 HEARING OFFICER VALKOSKY: There's likely to be a
13 decision at the March 25th meeting?

14 MR. DORAN: It is. However, the ISO board has seen
15 this. They are all aware of the issue. It's the first time
16 it's gone before the full board. I would not be surprised,
17 given the significance of the issue, if they wanted more
18 time to think about it and may delay it to the next meeting.

19 HEARING OFFICER VALKOSKY: And the next meeting,
20 monthly meeting or --

21 MR. DORAN: I don't believe there's one in April, so
22 it would be May.

23 HEARING OFFICER VALKOSKY: Okay. So possibly be a
24 late May meeting if it were delayed?

25 MR. DORAN: Yes.

26 HEARING OFFICER VALKOSKY: Does the ISO -- will the

1 ISO present testimony concerning the transmission
2 engineering aspects of the La Paloma project at future
3 Energy Commission hearings?

4 MR. DORAN: Yes, we would be glad.

5 HEARING OFFICER VALKOSKY: How long do you require to
6 prepare that testimony?

7 MR. DORAN: A few weeks is ample time.

8 HEARING OFFICER VALKOSKY: Two- or three-week time
9 frame?

10 MR. DORAN: That would be fine.

11 HEARING OFFICER VALKOSKY: Great. Okay. Thank you.

12 MR. HINDUS: Mr. Doran, based on your understanding
13 of current time frames in the ISO tariffs, the transmission
14 owners tariffs, and the transmission control agreement, did
15 the applicant and transmission owner follow all the relevant
16 provisions relating to major connection that are currently
17 taking place?

18 MR. DORAN: Yes.

19 MR. HINDUS: And if the ISO board were to change
20 their procedure along the lines of the discussion that
21 you've just summarized, upon such change, would they have to
22 go and seek approval of that change at FERC as part of the
23 ISO tariff?

24 MR. DORAN: Potentially, depending upon which
25 proposal they adopt. One of them is a bit contrary to some
26 of the language in the tariff and would require tariff

1 provision.

2 MR. HINDUS: Thank you.

3 HEARING OFFICER VALKOSKY: Which one?

4 MR. DORAN: The one that would -- what's been termed
5 "grandfathered." Prior projects is really the traditional
6 way the project's been planned where the new generator is
7 obligated to construct enough facilities to keep everybody
8 whole that was there before.

9 HEARING OFFICER VALKOSKY: And if FERC approval were
10 required, is there a ballpark along that?

11 MR. DORAN: We spent tariff revisions quarterly. It
12 would go in and quarterly filing. The earliest we could
13 expect it to be acted on is sixty days.

14 HEARING OFFICER VALKOSKY: Okay. Thank you.

15 COMMISSIONER LAURIE: Thank you very much.

16 We'll convene at --

17 (A brief recess was taken.)

18 COMMISSIONER LAURIE: Ladies and gentlemen, if you
19 can take your seats, please. Both Commissioner Rohy and I
20 have a meeting that starts at 4:00 o'clock, so we really
21 need to terminate this meeting.

22 Would like to call the air district forward, please.

23 Sir, if you could identify yourself, please.

24 MR. SCANDERA: My name is Leonard Scandera. I'm with
25 the San Joaquin Valley Air District. I would like to make a
26 brief comment on the La Paloma proposed schedule with

1 regards to the PDOC issuance.

2 They've stated on here that March 25th is the
3 anticipated date of the PDOC, and we feel we can probably
4 make that. It's going to be kind of tight, but that's our
5 -- kind of like our best estimate as to when we can make
6 that.

7 As Mr. Thompson stated, we have a thirty-day public
8 notice period required in our rules, then we have up to
9 thirty days after that period is over to consider all
10 comments, so the final DOC could potentially be pushed back
11 to May 25th as opposed to May 10th as noted on the schedule
12 here.

13 Whether we'll need that whole thirty-day period or
14 not depends on the nature of the comments that we receive,
15 particularly from the oversight agencies.

16 COMMISSIONER LAURIE: Mr. Valkosky?

17 HEARING OFFICER VALKOSKY: Yes. Do you generally --
18 let me back up.

19 When you refer to the oversight agencies, you are
20 referring to U.S. EPA and California Air Resources Board?

21 MR. SCANDERA: Yes.

22 HEARING OFFICER VALKOSKY: Do you normally get
23 comments from those agencies within the comment period?

24 MR. SCANDERA: Generally, yes. If it's some approval
25 that the oversight agency feels that is controversial, they
26 will comment on it.

1 HEARING OFFICER VALKOSKY: In your opinion, will
2 there likely to be anything controversial in the preliminary
3 DOC?

4 MR. SCANDERA: There may be an add issue with regard
5 to the BACT requirements for carbon monoxide. It's really
6 hard to say what you are going to get from EPA.

7 HEARING OFFICER VALKOSKY: The BACT requirements that
8 you are looking at are what, 4ppm or not?

9 MR. SCANDERA: The district is -- has determined or
10 will determine that 10ppm for CM will be our BACT
11 requirement. EPA has had some comments on some other
12 projects that BACT should be lower than that, around 4ppm,
13 but I've heard informally that those other projects that
14 were permanent at that level subsequently couldn't meet that
15 on an ongoing basis, so the belief that 4ppm is something
16 achievable may be flawed, so that may be an argument that
17 EPA could use to back off that 4ppm BACT requirement.

18 HEARING OFFICER VALKOSKY: And what -- you indicated
19 some reservations about the final DOC on the 10th of May.

20 Give me, please, your best realistic estimate of when
21 the final DOC is likely to come up.

22 MR. SCANDERA: Probably mid-May.

23 HEARING OFFICER VALKOSKY: "Mid-May" being defined as
24 the 15th to the 20th?

25 MR. SCANDERA: Whatever date that ends of being on.
26 Not a weekend.

1 HEARING OFFICER VALKOSKY: Right. Right. We've I
2 think we're all in agreement there, but it's likely to be
3 somewhat later, then the latest date would be the 25th?

4 MR. SCANDERA: Would be the 25th, that's right.

5 HEARING OFFICER VALKOSKY: Thank you.

6 COMMISSIONER LAURIE: Mr. Thompson?

7 MR. THOMPSON: Apologize for not being pessimistic
8 but being optimistic.

9 COMMISSIONER LAURIE: Do you have any questions of
10 the district?

11 MR. THOMPSON: No, I do not. I do appreciate the
12 ISO, CURE, and the district and others for coming here
13 today.

14 COMMISSIONER LAURIE: Staff have any questions?

15 MR. OGATA: We have no questions.

16 HEARING OFFICER VALKOSKY: Mr. Scandera, you
17 indicated also that you are looking at sixty days after you
18 issue the PDOC tentatively on the 25th of this month.

19 I take it that we can just assume there's a
20 day-to-day slip if you can't get the PDOC out on the 25th of
21 March?

22 MR. SCANDERA: Yes, that's correct.

23 COMMISSIONER LAURIE: Ms. Jubien, did you want to
24 come forward at this time?

25 MS. JUBIEN: Yes, I would.

26 COMMISSIONER LAURIE: Sir, please stay at the

1 microphone for a moment.

2 Could you identify yourself?

3 MS. JUBIEN: My name is Sidney Jubien. I'm staff
4 attorney with the California Electricity Oversight Board.

5 My comments are related to the cumulative reliability
6 transmission studies as opposed to air quality.

7 COMMISSIONER LAURIE: Then let me take one moment and
8 finish off with air quality.

9 Any more questions from any of the parties regarding
10 air quality? Any more comments or questions from the
11 district?

12 MR. SCANDERA: No.

13 COMMISSIONER LAURIE: Thank you, sir, very much.

14 Miss Jubien?

15 MS. JUBIEN: Thank you. My first point I wanted to
16 clarify the exact proposal that the California ISO will be
17 considering. That relates to downstream congestion
18 potentially caused by new generation. It doesn't
19 necessarily deal with reliability improvements at the first
20 point of interconnection at the substation level.

21 They are both related issues. They both veer on what
22 responsibility a new generator has to pay for upgrading
23 facilities and whether there is a sort of a first-to-market
24 approach that if you are luckily enough to be first in the
25 cue, you don't have to pay for any improvements to the
26 system, but if you are downstream a little bit, you will

1 have to pay for all the cost associated with the reliability
2 of the system and/or downstream congestion in the event that
3 that proceeds.

4 As a policy matter, the oversight board staff has
5 recommended to the board and to the legislature that all
6 projects in the -- that are being considered for a
7 particular area bear the cost of reliability improvements
8 and that the first-to-market approach doesn't make sense in
9 a restructured environment.

10 We also think that California entities are in the
11 best position to make that decision and bear the cumulative
12 impacts of the transmission and reliability issues.

13 COMMISSIONER LAURIE: Have you communicated that to
14 ISO at this point?

15 MS. JUBIEN: The CEC and ISO both in its look at
16 local reliability impacts as well as the transmission owners
17 of transmission studies.

18 COMMISSIONER LAURIE: Let me restate my question.

19 They have -- ISO has a board meeting coming up on the
20 25th, and have you formally stated your position to the ISO
21 board?

22 MS. JUBIEN: Yes. We formally stated our position to
23 the ISO board on the downstream mitigation congestion
24 proposal, and we have weighed in on behalf of the no
25 grandfather proposal; that is, available transmission
26 capacity does not go to the lucky first entity in line for

1 it but that existing congestion management protocols be used
2 to mitigate congestion.

3 COMMISSIONER LAURIE: Thank you very much, Sidney.

4 HEARING OFFICER VALKOSKY: Just again, just tell me:
5 Talking about downstream congestion in this particular case,
6 would your recommendation cover any improvements that have
7 to be done at the Midway Substation itself?

8 MS. JUBIEN: I think the Midway Substation is more
9 along the lines of what is needed to reliably interconnect
10 the various proposed projects and is something that they --
11 may be a gray area between what's needed for reliability
12 improvements versus what's needed to mitigate downstream
13 congestion.

14 We do think there's a responsibility on behalf of
15 generation applicants to ensure that they can reliably
16 interconnect to the system, but whether those costs should
17 be shared in the event there are a number of projects
18 planning to locate in the same area, we do not think that a
19 new generator should have responsibility to mitigate
20 downstream congestion for existing ISO congestion management
21 protocols to deal with resolving local congestion and
22 interzonal congestion and hopefully market incentives for
23 market participants to pay for a facility upgrades when
24 appropriate.

25 And if they do invest in those facility operations,
26 they would receive preferential right to use those

1 facilities. I think that was the ISO provision -- that a
2 party -- transmission upgrades receiving the benefits from
3 that investment.

4 HEARING OFFICER VALKOSKY: Now, in terms of
5 jurisdiction over mitigating impacts and potentially
6 apportioning costs, is it your opinion that the Energy
7 Commission or the ISO, possibly the oversight board --

8 MS. JUBIEN: Anyone else?

9 HEARING OFFICER VALKOSKY: Yeah, right. Anyone else
10 you can think of should delve into the matter concerning the
11 Midway Substation itself?

12 MS. JUBIEN: You are asking the cost allocation
13 question?

14 HEARING OFFICER VALKOSKY: Yeah.

15 MS. JUBIEN: I don't have a legal opinion about the
16 cost allocation question. I don't think it falls squarely
17 within any one jurisdiction. I think it's a new issue where
18 we have several projects coming to the planning process at
19 the same time.

20 The ISO tariff provisions are really themselves
21 silent about costs. They just say ISO approvals. Existing
22 federal law does have provision for dealing with cost
23 disputes typically between an applicant -- power plant
24 applicant and the transmission owner when they fail to come
25 to an agreement about interconnection.

26 What we have here is numerous potential generators, a

1 lot of market issues, a lot of potential market barriers to
2 new entrants coming in and trying to -- it's a cost issue
3 among this set of generators and not a cost issue between
4 the transmission owner and an applicant. Of course, a
5 transmission owner will have to be made whole for any
6 improvements.

7 HEARING OFFICER VALKOSKY: Right. I guess my
8 question is: Who's the referees on those cost issues among
9 the generators?

10 MS. JUBIEN: I don't know the answer to that, and I
11 don't have a legal opinion on that, and I think it's very
12 unclear.

13 HEARING OFFICER VALKOSKY: Okay. Thank you.

14 COMMISSIONER LAURIE: Identify yourself for the
15 record.

16 MR. HEATH: Gary Heath, director for the oversight
17 board. Just to add onto Miss Jubien's points that if
18 California is not the arbitrator in those costs and if they,
19 in fact, are exclusively under the jurisdiction of the FERC,
20 then it would be the oversight board would take the
21 California's position to the FERC and argue on behalf of the
22 people of California the state's position.

23 Our intent would be to try to resolve those issues
24 within the borders of California and go to FERC with a
25 consolidated view of what those cost allocations should be
26 if, in fact, they should exist at all.

1 HEARING OFFICER VALKOSKY: Mr. Heath, which entity in
2 California?

3 MR. HEATH: Which entity in California?

4 HEARING OFFICER VALKOSKY: Yes. You said California
5 should arbitrate the costs. That's a big place.

6 Could you break that down a little bit? Basically,
7 should the Energy Commission do it in your --

8 MR. HEATH: Somewhere between San Francisco and
9 Sacramento perhaps.

10 HEARING OFFICER VALKOSKY: Should the ISO do it?

11 MR. HEATH: I don't think it's an ISO question that
12 the ISO should do that. I think these are issues that go
13 beyond -- go into issues of public policy and issues dealing
14 with ultimate costs to parties, as well as to making sure
15 that those barriers are broken down for entry into the
16 market.

17 Ultimately consumers will pay for that one way or the
18 other, and so I can't give you who that entity is today, but
19 as Ms. Jubien said, I think we are in some gray area here.
20 The issues are not clear, and maybe this is one we need to
21 do a little additional homework on and come back to the
22 committee with a recommendation after we've looked into it
23 from the legal side.

24 COMMISSIONER LAURIE: Thank you. I would like
25 closing comments at this time.

26 Anybody in the audience feel a real need to express

1 themselves?

2 Mr. Miller?

3 MR. MILLER: A very quick need, Commissioner. I just
4 want to make another point of argument but one of
5 information.

6 We will be filing tomorrow some additional documents
7 received from PG&E that do provide some further analysis of
8 the cumulative effects of interconnection between Sunrise,
9 Elk Hills, and La Paloma, so that I just wanted to make that
10 point since staff indicated earlier I don't think they are
11 were aware earlier it would be hard for them to finish the
12 analysis by the FSA, and we might have some information that
13 would facilitate that.

14 COMMISSIONER LAURIE: It's the committee's
15 responsibility to ensure that that doesn't occur.

16 MR. MILLER: We will do our best to adhere to that
17 philosophy. Thank you.

18 COMMISSIONER LAURIE: Is there any representative
19 here from Fish and Game?

20 Mr. Thompson, any closing comments?

21 MR. THOMPSON: Not much. I won't even take all
22 twelve minutes.

23 COMMISSIONER LAURIE: That's a presumption that is
24 correct, Mr. Thompson.

25 MR. THOMPSON: I think the substantive issues of the
26 tie-in at Midway are both relative issues and analysis that

1 shows two or three plants may be sufficient. You have Elk
2 Hills, which has not yet done an adequate. We've heard
3 Midway Sunset is going to come in, what do you do with them?

4 I guess what I would reiterate is that we are so far
5 along in the process that when you weigh the equities of
6 trying to pull us back and include us in this maelstrom and
7 by doing that buzz through our one-year CEC review time, I
8 don't think that's an equitable result.

9 I think you've heard from a lot of people today. I
10 suspect most of them, if I read their tea leaves correctly,
11 most of them come down and say the same thing as I, with the
12 exception of Elk Hills.

13 I do appreciate your attention today. I think we are
14 well on the road. I think we have made progress on the
15 schedule, and I believe we and the staff continue to make
16 progress on those issues out there.

17 I heard after lunch that we may be making further
18 progress on the Fish and Game issue, so even while we are
19 meeting here, we're making progress on those issues, and I
20 want to thank you.

21 COMMISSIONER LAURIE: Staff have any closing?

22 MR. OGATA: I just want to thank the committee for
23 the needs in terms of our schedule. We're pretty much in
24 agreement with the schedule proposed by Mr. Thompson with
25 the changes Mr. Pryor indicated and to let you know we're
26 still working on the biology issue and hope to have it done

1 in a timely way so that it doesn't push the envelope.

2 COMMISSIONER LAURIE: Commissioner Rohy?

3 COMMISSIONER ROHY: No comments. Thank you in
4 helping to enlighten me today on the scheduling issues.

5 COMMISSIONER LAURIE: Mr. Valkosky?

6 HEARING OFFICER VALKOSKY: No commissioner.

7 COMMISSIONER LAURIE: As a closing comment in regards
8 to the schedule, we heard a lot of discussion today
9 regarding parameters of dates under which certain
10 information may be submitted, may not be submitted.

11 There is a degree of certainty and that degree of
12 certainty is that the Energy Commission will issue its final
13 decision on this project on August 25th. In order to have
14 that occur, evidentiary hearings must be held by a specific
15 date. Those hearings will be held by that date.

16 Now, to the extent that those hearings may be held
17 with an incomplete record, so be it. We know that there are
18 alternatives, parties may request extensions, but we will
19 meet our responsibilities.

20 We will also meet our responsibilities in attempting
21 to accommodate all parties in seeking cooperation from all
22 state and other agencies, unless it's impossible. We will
23 also do all of the above consistent with the law, and that
24 is our goal. We're looking for further participation.
25 Thank you gentleman very much, ladies and gentlemen.

26 ///

1 (Whereupon the hearing
2 concluded at 3:49 p.m.)
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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

I, KELI RUTHERDALE, a Certified Shorthand Reporter licensed by the State of California, and empowered to administer oaths and affirmations pursuant to Section 2093(b) of the Code of Civil Procedure, do hereby certify:

That the said proceedings were recorded stenographically by me and were thereafter transcribed by me via computer-assisted transcription;

That the foregoing transcript is a true record of the proceedings which then and there took place;

That I am a disinterested person to said action.

IN WITNESS WHEREOF, I have subscribed my name on March 30, 1999.

KELI RUTHERDALE
Certified Shorthand Reporter #10084