

COMMITTEE INFORMATIONAL HEARING
AND SITE VISIT
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Los Esteros Critical) Docket No.
Energy Facility) 01-AFC-12
)
_____)

ALVISO YACHT CLUB
1491 HOPE STREET
ALVISO, CALIFORNIA

MONDAY, NOVEMBER 5, 2001
4:25 p.m.

Reported By:
James Ramos
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William J. Keese, Chairman, Presiding Member

Mike Smith, Commissioner Advisor

Major Williams, Jr., Hearing Officer

STAFF PRESENT

Paul Richins

Dick Ratliff

Bob Worl

Gabriel Behymer

APPLICANT

Jane Luckhardt
Downey, Brand, Seymour & Rohwer LLP

Todd Stewart, Calpine

INTERVENORS

Sky C. Stanfield, CURE
Adams, Broadwell, Joseph & Cardozo

Gayatri Margaret Schilberg
Ratepayer Coalition

William Garbett
T.H.E. P.U.B.L.I.C.

PUBLIC ADVISER

Roberta Mendonca

I N D E X

	Page
Proceedings	1
Introductions	1
Site Visit	7
Hearing Reconvened	7
Public Comment	
Jim Cuneen San Jose/Silicon Valley Chamber of Commerce	8
Dean Baird, Alviso	10
Public Adviser Mendonca	12
Opening Comments	19
Presentation by Applicant	23
Questions and Comments	28
Presentation by Staff	30
Questions and Comments	41
Public Comment	
Richard Santos	43
Grant Sedgwick, U.S. DataPort	44
Stephen Strauss	45
Esther Alday	46
Hilbert Morales	47
Bob Gross	48
Statement of Ratepayer Coalition	49
Questions and Comments	49

I N D E X

	Page
Discussion of Four-Month Process	60
Statement of Ratepayer Coalition	72
Closing Comments	82
Adjournment	86
Certificate of Reporter	87

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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

2 CHAIRMAN KEESE: Good afternoon. This
3 is a Committee Informational Hearing by a
4 Committee of the California Energy Commission, on
5 the proposed Los Esteros Critical Energy Facility,
6 Docket Number 01-AFC-12.

7 I'm Bill Keese, I'm the Presiding
8 Member. On my right is my advisor, Mike Smith.
9 We will be joined in this process by Commissioner
10 Michal Moore, who is not here at the present time.
11 Major Williams will be our Hearing Officer, and
12 conducting a good portion of the proceedings here.

13 Our Public Adviser, Roberta Mendonca, is
14 present, with her hand up, in the middle of the
15 audience. If anyone has questions about the
16 process today and the purpose of the Informational
17 Hearing, you can contact Roberta and pose your
18 question to her.

19 This part of our hearing is devoted to
20 introductions only, after which we will take the
21 bus tour, a site visit. After we return from that
22 we will have snacks here, supplied to us. And
23 then we will reconvene the hearing as promptly
24 after that as possible. We've got two times
25 listed, 5:30 and 6:00. We do understand that some

1 -- there's a City Council hearing today that
2 requires the presence of some people who are here.
3 So what we're going to try to do is accommodate
4 that schedule in the process.

5 After we come back, Staff and Applicant
6 will make presentations on the proposed project.
7 After the presentations by Staff and Applicant,
8 the Committee has reserved a portion of the agenda
9 to take evidence on the question of the proposed
10 project's continuing eligibility for expedited
11 review under a four-month process, set forth in
12 Public Resources Code 25552.

13 We will today deal with that part of the
14 Informational Hearing after Staff and Applicant
15 make their traditional Informational Hearing
16 presentations on the proposed project. But before
17 we begin in this phase, we're going to do
18 introductions. Major, would you like to lead us
19 through that.

20 HEARING OFFICER WILLIAMS: Thank you,
21 Chairman Keese.

22 We're going to begin on my left, and
23 we'll just go around the table and ask the parties
24 to introduce themselves, and state their
25 affiliation.

1 MR. RATLIFF: Dick Ratliff, Counsel for
2 the Staff.

3 MR. GARBETT: I'm William Garbett, an
4 agent for The P.U.B.L.I.C.

5 MS. STANFIELD: I'm Sky Stanfield, here
6 representing the California Unions for Reliable
7 Energy.

8 MS. SCHILBERG: I'm Gayatri Schilberg,
9 representing a coalition of ratepayer and
10 environmental groups.

11 MR. WHITNELL: Patrick Whitnell,
12 representing the City of Milpitas.

13 MS. TOLBERT: Vilma Tolbert, Spanish
14 interpreter.

15 MR. STEWART: Todd Stewart, Development
16 Manager for Calpine.

17 MS. LUCKHARDT: Jane Luckhardt, Downey,
18 Brand, Seymour and Rohwer, Counsel for Calpine.

19 MR. WORL: I'm Bob Worl. I'm the
20 Project Manager for the Energy Commission on the
21 Los Esteros Project.

22 CHAIRMAN KEESE: Bob, we're going to
23 have to have you go near one of these mics so we
24 get you on the record.

25 MR. WORL: Bob Worl, with the California

1 Energy Commission. I'm the Project Manager for
2 the Los Esteros Project.

3 CHAIRMAN KEESE: That -- we'll try to do
4 that during this proceeding. We have amplifying
5 mics, and we have recording mics, so when you're
6 -- you come forward, we're going to have to get
7 you on both. And I'm wondering about this -- the
8 one that's up here.

9 HEARING OFFICER WILLIAMS: Okay. I'd
10 like to have -- we do have an interpreter here.
11 Ms. Tolbert, would you introduce yourself for the
12 record, as well?

13 MS. TOLBERT: Okay. My name is Vilma
14 Tolbert, with Berlitz Interpretation Services.

15 HEARING OFFICER WILLIAMS: Yes. If,
16 when we come back from the tour, if we have
17 members of the public who would like to speak on
18 the project who need an interpreter, then Ms.
19 Tolbert will handle that part of the process.

20 For the coalition, ma'am, could you
21 state for the record the members of the coalition,
22 and tell us whether you're here in a
23 representative capacity for the entire coalition?

24 MS. STANFIELD: Yes. I am here on
25 behalf of a ratepayer group named The Utility

1 Reform Network, with headquarters in San
2 Francisco. Also the environmental group,
3 Environmental Defense. Also the environmental
4 group Sierra Club.

5 HEARING OFFICER WILLIAMS: And the City
6 of Milpitas. Sir, could you state whether or not
7 you're affiliated with the Meyers Nave firm?

8 MR. WHITNELL: Yes, that's correct,
9 Meyers Nave. We serve as City Attorney for the
10 City of Milpitas. I'm Assistant City Attorney.

11 HEARING OFFICER WILLIAMS: Okay. I
12 would also ask for all the participants, if you
13 have business cards, please give the reporter your
14 business card so that we make sure we get the
15 proper spelling on all the names, and what have
16 you. And that goes for the public members, also,
17 if you will be speaking for or against the
18 project, if you do have a business card or
19 something with your name on it, we'd appreciate it
20 if you could give it to the court reporter to
21 ensure that we get all the spellings of names, and
22 that sort of thing, for the record.

23 Before we adjourn to take the tour, are
24 there any other governmental representatives here,
25 City of San Jose, any agencies? If you're here,

1 please come to the mic and introduce yourselves.
2 And if you have a business card, please give the
3 court reporter your business card.

4 CHAIRMAN KEESE: Right where the
5 interpreter is, that'd be a good spot, please.

6 MR. ENSLIE: My name is Steve Enslie.
7 I'm Deputy Director responsible for planning
8 implementation in the Planning, Building and Code
9 Enforcement Department.

10 HEARING OFFICER WILLIAMS: Thank you,
11 sir.

12 All governmental agency representatives,
13 please come forward at this time. I thought I saw
14 some other hands --

15 MR. ENSLIE; There are several of our
16 staff --

17 CHAIRMAN KEESE: Okay, that's fine.

18 HEARING OFFICER WILLIAMS: That's fine.
19 That's fine. Any other governmental agencies,
20 city agencies here who would like to identify
21 themselves for the record?

22 Well, I guess the next question we need
23 to know is are the buses here?

24 Okay. Then at this time we'll adjourn
25 and get on the buses and go out to the site.

1 (Thereupon, the hearing was
2 adjourned at 4:35 p.m. for
3 the site visit.)

4 CHAIRMAN KEESE: Okay. Major, would you
5 get us started again?

6 HEARING OFFICER WILLIAMS: Yes. We're
7 going to reconvene the hearing at this point. The
8 record should reflect that all parties who were
9 present before we went on the site visit are again
10 present.

11 Before we get into our presentations, we
12 understand that there are several people who have
13 previous engagements, members of the public.
14 Members of the public will have various
15 opportunities tonight to speak in our process.
16 But I understand that we need to take a couple
17 people out of order who have previous engagements.
18 We're going to ask those folks, then, to come
19 forward, and they're going to be limited to a
20 couple of minutes in their presentations, so that
21 we can get -- get back on our schedule.

22 So I understand it's Mr. Cuneen, and --

23 CHAIRMAN KEESE: If you -- yes, if
24 you'll -- we need the recording mic, also. That
25 works, so --

1 HEARING OFFICER WILLIAMS: Okay, sir.

2 If you --

3 MR. CUNEEN: Thank you very much. I'm
4 Jim Cuneen, I'm the President and CEO of the San
5 Jose/Silicon Valley Chamber of Commerce. I
6 appreciate the accommodation. I've been summoned
7 to City Hall at 7:00 o'clock, and yet felt it was
8 very important that I be here to convey our
9 group's strong support that this, I'm told the
10 term of art is data adequate project being
11 considered by you on the short review process.
12 We view it as essential.

13 The policy question to us is that U.S.
14 DataPort has been an approved land use by the City
15 of San Jose, frankly, on terms less favorable to
16 the environment, so we're very pleased to see in
17 this proposal here a couple of advantages.

18 One, alleviating demand on the power
19 grid itself by being self-sufficient. Two, as a
20 peaking capacity device to add power to the grid
21 from time to time. And three, done in an
22 environmentally sensitive way. The fact is it was
23 approved at the city with a 49 megawatt gas
24 turbine, and then up to 80 or 90 diesels that we
25 think would do far more harm to the environment.

1 Going to solely gas turbine facilities, we think
2 is a -- a far better approach.

3 Finally, not related exactly, but I
4 think again environmentally sensitive, built in to
5 the U.S. DataPort proposal is some dedication of
6 open space between the energy facility itself and
7 some of the natural environment that we all care
8 about deeply.

9 So, you know, we view this as a key
10 economic issue for our members and for our region
11 competitively. Our chamber represents 2,000
12 businesses representing up to 300,000 employees,
13 before the layoffs. We'd like to see it get back
14 up there. We think U.S. DataPort is a facility
15 that needs to be expedited, that we need to turn
16 this region back into a job creation region, and
17 we think this would be -- your affirmative
18 response tonight would be a step in the right
19 direction.

20 So, thank you for indulging me early,
21 and I appreciate the chance to make these remarks
22 on behalf of the San Jose/Silicon Valley Chamber
23 of Commerce.

24 CHAIRMAN KEESE: Thank you.

25 HEARING OFFICER WILLIAMS: We also have

1 another person that we need to take out of order.
2 I think -- Dean Baird, is it?

3 MR. BAIRD: Yes. Thank you for this
4 opportunity to speak. My name is Dean Baird, I'm
5 the Adult Services Librarian in Alviso. I've been
6 here for about three years.

7 I'm vitally concerned about what goes on
8 in this community and the welfare of this
9 community, and in terms of development I think
10 this one, the Los Esteros Critical Energy, has
11 very many positives for it, many more positives
12 than negatives. I think the bus ride tonight,
13 going over there and touring the site so that the
14 people here can see what the location is, and that
15 it will not really impact the community and the
16 people of Alviso in a negative way, such as some
17 of the other developments that have been proposed
18 for here, as opposed to Cisco, for example, that
19 wanted 8800 employees in Alviso, 7700 parking
20 spaces, and that definitely would be a disruptive
21 thing from the point of view of traffic, and from
22 the community itself, just stabilizing the
23 community.

24 So I think this is not only a quiet
25 place that's off -- off the -- out of the center

1 part of this town, that would be a very good
2 situation for this community to have that kind of
3 a program here that would enhance the power supply
4 to the community, and provide a good economic base
5 in terms of the U.S. DataPort's operations here.
6 And they will have a few number of employees, a
7 small amount of parking that will be over there,
8 and they've already indicated a very strong intent
9 to work with the community throughout so -- for
10 local improvements here.

11 So in my -- in terms of what I see in
12 this community, we would welcome that kind of an
13 opportunity to have that -- have that corporation
14 move in here. And I'm not speaking for the City
15 of San Jose, I'm not speaking for the library, I'm
16 speaking as an individual citizen and a member of
17 the Rotary Club, who is concerned about service to
18 this community and the welfare of this community.

19 So I thank you for that opportunity, and
20 I do -- I talked fast because I need to go back to
21 work now.

22 Thank you so much.

23 CHAIRMAN KEESE: Thank you.

24 HEARING OFFICER WILLIAMS: Thank you.

25 At this time we're going to have Roberta

1 Mendonca come forward, she is the Energy
2 Commission's Public Adviser, and give her report.

3 PUBLIC ADVISER MENDONCA: I want to use
4 the overheads, and the microphone's not there.
5 Maybe somebody could help me by flipping the
6 overheads?

7 Okay, these'll work. Thank you.

8 While we're moving that, my name is
9 Roberta Mendonca, and I am here as the Energy
10 Commission's Public Adviser. Let me just take a
11 minute and explain what the Public Adviser does
12 and how the public can participate in our process,
13 and then I would like to very briefly talk about
14 what we've done to facilitate outreach for
15 tonight's meeting.

16 (Inaudible asides.)

17 PUBLIC ADVISER MENDONCA: Yes, thank you
18 very much.

19 The Energy Commission is probably one of
20 the more unique state agencies in that they openly
21 and freely encourage the public to participate in
22 each and every step of the process. So when the
23 Applicant filed their Application for
24 Certification, the Public Adviser made sure that
25 it got to the local libraries, and for your

1 information those are the local libraries where
2 they're available in this community. We also tell
3 you the hours that the library is open, and that
4 there is a computer available for those of you
5 that don't have your own Internet, so that you can
6 access information from the Energy Commission
7 about this project.

8 In addition to your local library, a
9 copy of the Application for Certification is
10 available in Sacramento, and also the Energy
11 Commission Web site is www.energy.ca.gov. That'll
12 get you to our opening page. If you add the slash
13 siting cases, that will get you to information
14 about all of the siting cases in California, and
15 if you add Los Esteros, that will take you to the
16 information specifically about this project.

17 As documents are filed in the case, they
18 go into like a big filing cabinet called the
19 docket. You can access the docket on our Internet
20 at the Los Esteros Project Site. Should you want
21 items that are not downloadable, you can contact
22 the Public Adviser and I would be happy to assist
23 you in getting those documents.

24 Also, this evening we have a translator
25 here who can translate in Spanish. That's one of

1 the things that the Public Adviser is aiming to
2 do, is to assist people. Do we have anybody this
3 evening that needs to have comments in Spanish?
4 Okay, thank you.

5 One of the harder parts of getting used
6 to the Energy Commission process is knowing what
7 kind of a meeting it is. Tonight, we're having a
8 hearing, and the Commissioners are here. The
9 Commissioners are the decision-makers in the case.
10 We also have other types of meetings. The Staff
11 -- the Commissioners are the decision-makers. The
12 Staff at the Energy Commission performs an
13 independent analysis, and in order to take a look
14 at what's being proposed and to gather
15 information, they hold lots of workshops. And
16 I've listed for you the types of workshops that
17 the Staff holds.

18 Every meeting, whether it's the
19 Commissioners' meeting or the Staff's meeting, are
20 publicly noticed. And for that reason, you're
21 going to want to sign up on the sign-in sheet,
22 provide me with your address or your e-mail
23 address, then we will make sure that you get on
24 our list to receive notice of all of our meetings.

25 During the early part of the case, which

1 is the early part, we are essentially doing
2 discovery. But as we get further into the case,
3 you'll see more of the Commissioners because we'll
4 be getting into the decision-making phase. And
5 those meetings are often called conferences and
6 formal hearings, formal evidentiary hearings.

7 You've already heard the word intervenor
8 come up this evening, so let me just talk very
9 briefly about the types of participation.

10 You can participate informally at the
11 Energy Commission just like tonight. You show up,
12 you say hello, you come to the microphone during
13 public comment, you make the comment, it gets on
14 the record because the Commissioners' meetings are
15 transcribed. The Staff's workshops are not.

16 You can also send in written comments to
17 the docket, which is what I mentioned, and they
18 become a part of the record, as well.

19 Also available at the Energy Commission
20 is the process of intervention. And we have four
21 parties this evening that have intervened.
22 Intervention allows you to become a party to the
23 case, and you sit as the other parties, the Staff
24 and the Applicant. Intervention doesn't require
25 that you have any special characteristics, just an

1 interest in the project, usually local people,
2 local groups, people that care about what happens
3 and how this project develops. The best time to
4 intervene is early, so that you can be a part of
5 all of the document exchange and a part of all of
6 the discovery.

7 And in this process, which is basically
8 a four-month process, you need to be an intervenor
9 at least 30 days before the formal hearing is set.
10 There'll be a schedule issued by the Committee,
11 and you can check that out. But again, I
12 encourage you, if you leave this meeting tonight
13 thinking you want to be a participant and you want
14 to know more about this project, I encourage you
15 to intervene right away.

16 Intervenors do have certain
17 responsibilities. They are parties. And I'll go
18 over that when I talk about the benefits of
19 intervention.

20 Underneath the chandelier is a petition
21 to intervene. And that is basically as
22 complicated as it gets. It's a one-page request
23 that simply states who you are and why you want to
24 become a party. That is submitted to the
25 Committee. My office can assist you with forms

1 and help you fill those out, if that's your
2 interest.

3 The benefits of intervention -- well,
4 the first bullet, it's no different than if you're
5 just a member of the public. Basically, you get
6 to receive all of the documents that are filed in
7 the case. If you're a member of the public you
8 can get those by going to the docket or accessing
9 them on the docket. You can receive all the
10 notices of hearings and workshops, and that's the
11 same if you're a member of the public. Just get
12 on our mail list.

13 However, if you're an intervenor, you
14 can fully participate in the process of discovery,
15 which is a part of data requests and data
16 exchange. Members of the public can come to the
17 mic and ask their questions, but intervenors can
18 put those in writing and through the process get
19 written responses to their questions.

20 Filing documents relevant, such as
21 motions, briefs, petitions, objections, those are
22 privileges of parties, and are not available to
23 public participants. The intervenors can also
24 present evidence at our formal hearings and can
25 cross examine witnesses. Once again, the public

1 can come to the mic at a formal hearing and ask
2 the question, but there is no ability to cross
3 examine.

4 This is how you find me in Sacramento,
5 and I'm going to leave that up while I go into the
6 second part of my presentation, which was lost.
7 My office attempted to get the word out to make
8 sure that people knew about what was going on in
9 this case. We did a one-page flyer, which was
10 written in English and Spanish, and it was
11 distributed through the San Jose Mercury-News to
12 12,000 in zip codes adjacent to the project. In
13 addition, we did 600 flyers that went into the
14 newspaper La -- the gentleman is here, where's the
15 plug for your newspaper? La --

16 (Comment from the audience.)

17 PUBLIC ADVISER MENDONCA: -- and he has
18 samples of his paper in the back. It's a Spanish
19 local paper.

20 We, in addition, sent 500 flyers home
21 with the school children at the Mayville School,
22 and we also had a contact with Councilman Reed's
23 office, who distributed 600 e-mail project
24 descriptions.

25 So, again, the Public Adviser is here as

1 a person to assist your participation. If you
2 have questions I encourage you to buttonhole me,
3 and I'll be glad to answer. This is how you reach
4 me by e-mail. If you want to make a comment
5 tonight, fill out a blue card, I'll collect them
6 and take them to the front.

7 Thank you very much.

8 HEARING OFFICER WILLIAMS: Thank you,
9 Roberta.

10 CHAIRMAN KEESE: This informational
11 hearing is the first public event conducted by
12 this Committee as part of the licensing proceeding
13 on the Los Esteros Critical Energy Facility. As
14 Roberta indicated, notice of today's hearing was
15 posted on the Commission Web site, and sent to all
16 parties, adjoining landowners, interested
17 governmental agencies, and other individuals, on
18 October 9th, 2001. In addition, notices of
19 today's event was published in a local newspaper
20 of general circulation, the San Jose Mercury-News,
21 on November 1st. In addition, notice of today's
22 event was published in the Spanish newspaper, El
23 Observador, on October 25th.

24 Documents pertinent to today's hearing
25 include a statement by the coalition in opposition

1 to the four-month AFC for the Los Esteros
2 Facility, dated October 17th, 2001; Staff's Issues
3 Identification Report, filed October 18th, 2001;
4 the Committee's ruling on eligibility for
5 expedited review, filed October 19th, 2001;
6 Applicant's recommendation that the Los Esteros
7 remain eligible for the four-month process, filed
8 October 23rd, 2001; and Staff's recommendation on
9 Los Esteros eligibility for the four-month
10 process, filed October 30th, 2001.

11 The purpose of today's hearing is to
12 provide a public forum to discuss the proposed Los
13 Esteros project, to describe the Energy
14 Commission's review process, and to identify the
15 opportunities for public participation in this
16 process.

17 The electrical energy produced by this
18 proposed merchant power plant would be sold in
19 California's competitive deregulated marketplace.
20 A merchant plant is built with private funding,
21 without creating any direct financial liability
22 for electricity consumers. Applicant's plan is to
23 complete construction and start operation at Los
24 Esteros in June of 2002.

25 Major, do you want to handle the

1 schedule?

2 HEARING OFFICER WILLIAMS: Yes. Today's
3 event is the first in a series of formal hearings
4 which will extend over the coming months. The
5 Commissioners conducting this proceeding will
6 eventually issue a Proposed Decision containing
7 the recommendations on the proposed power plant.
8 It is important to note that by law, the Proposed
9 Decision must base its recommendations solely on
10 the evidence contained in the public record. To
11 ensure that this happens, and to preserve the
12 integrity of the Commissioners' licensing process,
13 Commission regulations and the California
14 Administrative Procedures Act expressly prohibit
15 off the record contacts between the participants
16 in the proceeding and the Commissioners, their
17 advisors, and the Hearing Officer. This is known
18 as the ex parte rule.

19 This means that all contacts between a
20 party to this proceeding and Commissioners Keese
21 and Moore, and their staff, concerning a
22 substantive matter, must occur in the context of a
23 public discussion, such as will occur today, or in
24 the form of a written communication distributed to
25 all the parties. The purpose of this rule is to

1 provide full disclosure to all participants of all
2 information which may be used as the basis for the
3 public decision.

4 Today we will have presentations first
5 by the Applicant, then by Staff. After those
6 presentations are concluded, and any questions
7 presented by participants are addressed, we will
8 take comments from the public.

9 During the course of the hearing we will
10 proceed in the following manner. Applicant will
11 describe the proposed project and explain plans
12 for developing the project site. Commission Staff
13 will provide an overview of the Commission's
14 licensing process and its role as an independent
15 party in reviewing the proposed project. Upon
16 completion of each of these presentations,
17 interested agencies and members of the public may
18 ask questions.

19 Following these presentations, we will
20 turn to a discussion of the project's continued
21 eligibility for the four-month review process, as
22 set out in Public Resources Code Section 25552.

23 We will now begin with the presentations
24 on the project. In the interest of time, please
25 hold your questions until the end of the

1 presentations.

2 Applicant, are you ready?

3 MR. STEWART: Yes, thank you.

4 Thank you, Commissioner Keese, Hearing
5 Officer Williams, Energy Commission Staff, and
6 welcome, members of the general public.

7 My name is Todd Stewart. I'm the
8 Development Manager, or Project Manager for the
9 Los Esteros Critical Energy Facility, and I'd like
10 to take just the next few minutes to describe to
11 you our project.

12 The Los Esteros Critical Energy Facility
13 is and always has been, up to now, a joint project
14 with U.S. DataPort and the Calpine Corporation.
15 For those of you that -- for those of you that may
16 not know, Calpine is a San Jose based company.
17 Calpine is one of the largest independent power
18 producers in the world, and Calpine has a special
19 focus on renewable energy, being the largest
20 producer of renewable energy here in the State of
21 California, as is evidenced by its Geysers
22 project.

23 Some of this is going to be some -- some
24 rehash for those of you that went out to the site.
25 The project is located on approximately 18 acres

1 out -- that will be encompassed by the planned
2 Internet campus. The total output from the
3 facility will be 180 megawatts, approximately
4 enough to supply electricity for 175,000 homes.
5 This will be done by installing four state of the
6 art GE LM6000 gas turbine units. Each one is 45
7 megawatts. And one of the unique features of this
8 particular power plant is that we will be using
9 recycled water not only for process, but for
10 cooling and for firefighting.

11 Out at the site you couldn't really get
12 a feel for where we were at. This -- this
13 particular rendering is taken from the -- a
14 location adjacent the water pollution control
15 plant, and back over on this side, behind this
16 building, would be Highway 237. Behind the
17 buildings on this side would be where Coyote Creek
18 is, and you can see that the facility itself will
19 be encompassed by Data Center.

20 Timeline for the -- the facility, as you
21 can imagine, putting together the information and
22 the documents and the reports, and doing the
23 design is -- it's a tremendous effort, and it
24 requires collection of a lot of data. When --
25 when we put all this together in the form of an

1 application to the Energy Commission, the Energy
2 Commission reviewed it very thoroughly, and on
3 September 25th deemed us data adequate.

4 The next key -- and that was data
5 adequate for the expedited four-month process
6 review. The next key dates are, obviously, today.
7 Today is our first informational hearing. And
8 then we have two public workshops scheduled, one
9 for tomorrow, and one at a time and place to be
10 named, which will occur in December. Then, if the
11 process moves along as we hope it does, we would
12 be expecting the Commission to render its decision
13 on January 23rd of 2002, at which time we would
14 begin construction, and go operational sometime in
15 June of 2002.

16 Key issues for the community, as we
17 understand them, and we have been talking with the
18 community, so we've identified noise, air, visual,
19 and then a community benefits program.

20 For noise, background noise levels were
21 assessed. As you -- as you -- as you saw out at
22 the site, the major noise source is obviously
23 Highway 237. So we -- we took into consideration
24 all of the noise coming from that area. We looked
25 at the sensitive locations and extensively modeled

1 those areas, such as the riparian corridor. Major
2 noise sources from our facility are all enclosed,
3 noise sources such as gas turbines, such as the
4 water treatment equipment, such as the gas
5 compressors.

6 Those equipment that cannot be enclosed,
7 such as the fans and the motors for the cooling
8 towers, we used the low noise options for that.

9 On air emissions, we used the best
10 available control technology, and we will be fully
11 compliant with all state, local and federal laws
12 and ordinances. And the emissions from the
13 facility, when it is initially permitted, will be
14 limited to just five parts per million of nitrous
15 oxides in the simple cycle.

16 Visual issues. As you can see, we're
17 already in the process of removing the dilapidated
18 greenhouse facility.

19 The Energy Center itself will be a low
20 profile design. The exhaust stacks will be only
21 90 feet high. And the Data Center, when it goes
22 through the full build-out, will screen the
23 facility almost entirely.

24 The board behind me, you can see that
25 the buildings along 237, along the corridor, and

1 on this side virtually enclose the Energy
2 Facility. One of the other things -- excuse me.
3 One of the other -- one of the other things that
4 you may note is that on the -- the board here, is
5 the amount of space devoted to open space. A
6 large area here, setbacks along the entire
7 corridor, and where the Bay Trails are going to be
8 here on the north and the south. And then all of
9 this area in the access road will be -- will be
10 open space.

11 Community benefits. First and foremost.
12 The plant as configured today eliminates 89 diesel
13 generators. The original plan was to have a small
14 power plant, less than 50 megawatts, and all of
15 the emergency backup generation would be handled
16 by diesel generators with the -- with the heavy
17 particulates that come out from them. Building
18 the power plant now eliminates -- excuse me, not
19 eliminates -- alleviates the strain on the power
20 grid in just the near term. The North San Jose
21 area is an area that is severely transmission
22 constrained. And in the long term, when the Data
23 Center is built out, the Data Center will be
24 energy self-sufficient, so it will not be a burden
25 on the already overtaxed transmission systems.

1 We also have a community benefits
2 program that is under development, and we have
3 made a commitment to support local businesses and
4 organizations. I think at this point it might be
5 wise for us to say a big thank you to Maria
6 Elena's, who has catered tonight's dinner, an
7 Alviso business. And the location that we're in,
8 the Alviso Yacht Club -- or, excuse me, the South
9 Bay Yacht club right here in Alviso.

10 And with that, I would like to conclude.

11 Thank you.

12 HEARING OFFICER WILLIAMS: Does anyone
13 have any questions at this point?

14 Yes, sir.

15 MR. MORALES: What's the employment
16 level projects once it's in operation, and how
17 many of those bodies will be local or locally
18 trained?

19 MR. STEWART: The -- the question is how
20 many people will the facility employ when it's
21 operational, and how many of those will be local.
22 The facility will employ a total of approximately
23 30 individuals, but they will not all be on site
24 at the same time. This is a 24-hour a day
25 operation. Typically, you'll have two to three

1 operators there on back shift, and during the
2 daytime you'll have a small maintenance crew and a
3 small administration staff that is also devoted to
4 operating the power plant.

5 As for the locally trained and locally
6 employed, we'd be willing to work with the local
7 community to find qualified candidates to work at
8 the facility.

9 HEARING OFFICER WILLIAMS: Excuse me. I
10 think what we're going to do, to try to speed
11 things along, is we're going to have Staff go
12 ahead with it's presentation. We're going to ask
13 you to hold your questions, because a lot of those
14 questions may be addressed by the Staff. And
15 after Staff makes its presentation, then we'll
16 come back and we'll take the questions that you
17 may have.

18 Okay. And again, when -- if you do have
19 a question after Staff makes its presentation,
20 you're going to have to come forward to a
21 microphone so that your comments or questions may
22 be picked up by the court reporter and placed in
23 -- in the record. And there was a taller mic over
24 there now. But we'll have a mic --

25 CHAIRMAN KEESE: Yeah. We'll ask you to

1 try to be here so we can get both mics. And I'll
2 just mention one other thing. This is -- this
3 hearing is a very formal process at times, but we
4 attempt as much as possible to keep it reasonably
5 informal. And -- and this is -- this is our
6 informal period of time.

7 If you're uncomfortable with asking a
8 question but you want to see the question
9 answered, you can write it on a blue card and I'll
10 ask the question. So feel -- feel free, whichever
11 you want. We'll welcome you to come to the
12 microphone and ask the question, but if -- if
13 you'd like to write it out and have us ask it,
14 that's available, also.

15 Staff.

16 MR. WORL: Good evening. My name is Bob
17 Worl, I'm the Project Manager for the Los Esteros
18 facility, that's been -- the application that's
19 before us right now.

20 I'm just going to run through very
21 quickly some materials on the process that we go
22 through. There are copies, I believe, still over
23 here that you can take away if you want to use
24 them to develop questions later.

25 Also, if you're blind like me, these

1 visuals are very -- you get close up.

2 The purpose of the process is to ensure
3 reliable supply of energy is maintained at a level
4 consistent with the need for such energy for
5 protection of the public health and safety, for
6 the promotion of the general welfare, and for the
7 environmental quality protection. And this is out
8 of the Public Resources Code.

9 The Energy Commission permitting
10 authority, we have authority over all plants 50
11 megawatts or greater, and the related facilities,
12 transmission lines, water supply systems, natural
13 gas pipelines, waste disposal facilities, and
14 access roads, which helps explain some of the
15 presentation that you already had today at the
16 site.

17 We act as the lead agency for a full
18 CEQA, California Environmental Quality Act,
19 review. And the second one is the Western Power
20 Authority is the lead facility agency for the
21 National Environmental Policy Act, known as NEPA.

22 As Todd mentioned, the project was
23 deemed data adequate in the -- for the four-month
24 process, which means that it not only met the data
25 adequacy requirements for a 12-month review, but

1 some additional requirements which we will go over
2 at a later point. It involves discovery process
3 and analysis, data requests, workshops, Staff
4 assessments. There will be evidentiary hearings
5 that the Committee before you will hear, and
6 they'll make the final decision.

7 The Committee holds these hearings after
8 we produce a Staff Assessment and recommendation,
9 and then the Committee produces a Proposed
10 Decision, and it then goes before the full
11 Commission, five Commissioners, who will make the
12 final determination as to whether or not the
13 project is approved.

14 As mentioned previously, Public
15 Resources Code 25552 includes provisions to modify
16 the procedural requirements relating to the
17 timeframes for notices and hearings in the Warren
18 Alquist Act for thermal power plants. This is
19 what gives us the opportunity to review projects
20 in the four and six-month time period, as well as
21 the 12-month standard timeframe.

22 The Calpine c* Power project has
23 requested review under this provision as a four-
24 month project.

25 This is a depiction, I'm not going to

1 spend a lot of time on it. Roberta has covered
2 it, as well as Major Williams. This basically
3 shows the Staff as being central, doing the review
4 in a number of resource areas, approximately 25
5 areas. And there's also Intervenors and the
6 public, the Applicant, and local, state and
7 federal agencies, all -- both provide input and
8 also each -- each of these parties is able to act
9 independently of the others.

10 The evidentiary hearing and decision
11 process -- excuse me. You'll see that the
12 Committee now is the central focus here. And
13 finally, the full Commission for a final decision.
14 And the arrows and the bubbles, if you will,
15 basically indicate the component parties.
16 Intervenors, public comments, Applicant testimony,
17 agencies, as well as the Staff.

18 Staff's analysis is predicated on -- its
19 purpose is to determine if the proposal complies
20 with laws, ordinances, regulations and standards.
21 We refer to it as LORS. Conduct the engineering
22 and environmental analysis; identify issues that
23 arise, evaluate alternatives; identify mitigation
24 measures, which deal with issues and problems that
25 are demonstrated through the review process; and

1 then finally recommend conditions of certification
2 which the Applicant must comply with. And these
3 conditions of certification are to ensure that all
4 of the above LORS are -- are dealt with, as well
5 as public health and welfare.

6 Staff works closely with local, state
7 and federal agencies, and currently we're working
8 with the City of San Jose. We've been contacting
9 Santa Clara County; the Bay Area Air Quality
10 Management District; state agencies; the Santa
11 Clara Valley Water District, I mentioned; the Air
12 Resources Board; California Department of Fish and
13 Game; and we have also been in contact with the
14 U.S. Fish and Wildlife Service.

15 The Committee, which is the two
16 Commissioners that are a part of this, along with
17 the -- let's see, Mr. Keese, I believe, is the
18 Presiding Member, and he's with us tonight, and
19 Mr. Moore was unable to attend. Basically, the
20 environmental impacts, public health, engineering,
21 and project compliance with LORS are all areas of
22 consideration in the proposed -- the Presiding
23 Member's Proposed Decision. They also would adopt
24 or suggest conditions of certification, recommend
25 whether or not to approve the project. And then

1 the full Commission makes the decision based on
2 the review of more evidentiary testimony, if they
3 so desire, and they determine whether or not the
4 project is actually approved.

5 The CEC, the Energy Commission, monitors
6 compliance throughout the construction, operation,
7 and even the decommissioning of the project, if
8 it's approved. And that is why we have that
9 certification for the life of the project line in
10 here.

11 The process, as has been noted, is a
12 public process. It's open. All workshops and
13 hearings are noticed in advance. Documents are
14 available, and that's been covered quite well by
15 Roberta Mendonca. And certainly anybody can call
16 and ask for anything that you might have
17 difficulty accessing.

18 We've already covered, again, the ways
19 to participate. Submit written comments or
20 statements to the Commission; provide oral
21 comments at the public meetings; become a formal
22 intervenor -- we have our Intervenors with us
23 today -- and provide written comments on the
24 Proposed and Final Staff Assessment.

25 Again, the contacts for this particular

1 project. Myself, Robert Worl. My phone numbers
2 and how to contact me by e-mail. Major Williams,
3 who is the -- excuse me, what do you -- what's the
4 --

5 CHAIRMAN KEESE: Hearing Officer.

6 MR. WORL: Hearing Officer. And then
7 Roberta Mendonca -- Mendonca, the Public Adviser.
8 And Todd Stewart, here with Calpine c* Power. And
9 the handout has all this written down so there's
10 no need to break your pencil leads right now.

11 The Staff will issue an Identification
12 Report. The purpose is to inform participants of
13 potential issues, provide an early focus for the
14 Applicant and for our own Staff. And the criteria
15 are that we look for impacts that may be difficult
16 to mitigate, non-compliance problems with laws,
17 ordinances, regulations and standards.
18 Potentially contentious issues, and issues which
19 may impact the schedule for completing the process
20 within the four-month timeframe.

21 Currently, the areas that we have
22 identified to the Applicant that have issues are
23 air quality, land use, visual resources, and
24 transmission system. And the workshop tomorrow
25 will be discussing these in more detail.

1 The Bay Area Air Quality Management
2 District must issue a document called a
3 Preliminary Determination of Compliance by
4 November 10th for -- to stay on track for the
5 four-month review. An acceptable emission offset
6 package needs to be submitted, and my
7 understanding is that has been done. The PG&E
8 interconnection study needs to be supplied to the
9 Staff, again by November 5th. My understanding
10 from our Staff is that they have the information
11 that they need. They're waiting on the final
12 documents, and that's not an Applicant's -- not in
13 the Applicant's control. That's with PG&E, and
14 the California Independent System Operator.

15 Cal-ISO review supplied to Staff by
16 November 5. Cal-ISO, again, their verbal
17 assurances to our technical staff that there will
18 be no downstream impacts from this project has
19 been given, but nevertheless we must wait for the
20 actual written documentation of that.

21 U.S. Fish and Wildlife Service, if they
22 were to require a formal consultation at the first
23 phase of this project, it would extend the
24 project. That would make it very difficult to
25 stay within the four-month timeframe.

1 All data requests which we gave to the
2 Applicant last month are to be in by November 1.
3 And preliminary data requests have been filed and
4 docketed. And there are a few, I believe,
5 outstanding issues, but there again they're visual
6 components that need to be provided to Staff.

7 A final issue is the City of San Jose
8 rezone. We require that it be complete by the
9 evidentiary hearings in order to ensure that, in
10 fact, the project is suitably zoned and is in
11 compliance with all the City of San Jose's LORS.
12 And that is on track, as well, as we speak.

13 Do you want me to go through these other
14 -- the schedule, or do you want to save that for
15 the other part of the hearing?

16 HEARING OFFICER WILLIAMS: I think we'll
17 save it for the other part of the hearing.

18 MR. WORL: Okay. Well, that -- that
19 pretty much sums up our presentation of the
20 Staff's participation in the process. And I just
21 wanted to assure you that the public and agencies,
22 as well as the Intervenors, do have an important
23 role providing us with insights and information,
24 as well as providing us some balance for our
25 review.

1 Thank you very much for your time.

2 HEARING OFFICER WILLIAMS: Before you
3 leave the mic, I have just a couple of questions.

4 The first is it's my understanding that
5 Western, the federal authority, is not involved in
6 this project?

7 MR. WORL: They -- no, they have not
8 contacted us and indicated that they are involved
9 in this project in any way.

10 HEARING OFFICER WILLIAMS: Okay. The
11 second question I have is on the workshop
12 tomorrow.

13 MR. WORL: Yes.

14 HEARING OFFICER WILLIAMS: Could you
15 explain exactly what that is, and the -- where it
16 is, and the -- the opportunity for public
17 participation in that?

18 MR. WORL: Certainly. Tomorrow there
19 will be a workshop. It'll be at the Airport Inn
20 International, at 1355 North Fourth Street, not
21 too terribly far from here, unless you're in
22 traffic. Then it's -- you can't get there from
23 here. We'll be starting about 9:00 o'clock in the
24 morning, and we will hopefully -- hopefully be
25 able to finish by dinner time. We'll see.

1 The process -- the purpose of the
2 workshop is for the Applicant, the Staff of the
3 CEC, and for the public as well as the
4 Intervenors, principally to go over those items
5 which were covered by data requests from Staff,
6 and to go over issues that are identified. And
7 our goal at these is to if not resolve or find --
8 find that issues are resolved, and that
9 information is adequately provided. If not that,
10 develop a timeframe for the delivery of that
11 information and a means of getting it in a timely
12 fashion. And that becomes critical for the
13 Committee to continue the project through the
14 four-month process.

15 And the -- the workshop, again, is a
16 means of finding a path to resolution for issues,
17 or for any identified problems. It's also a way
18 to identify information that is still needed, and
19 also to take into consideration comments from
20 agencies, Intervenors, and the public.

21 So if you're so inclined, please feel
22 free to come. We'd appreciate your attendance,
23 and -- and also your input.

24 HEARING OFFICER WILLIAMS: Thank you.

25 CHAIRMAN KEESE: Thank you. We're going

1 to -- do we have any questions from the
2 participants over here? Mr. Garbett.

3 MR. GARBETT: Yes. Does this project
4 have an automatic override built in to it by the
5 Commission at the beginning of the proceedings?

6 CHAIRMAN KEESE: This project?

7 MR. GARBETT: I'm saying is it
8 predisposed towards having an override by the
9 Commission of LORS?

10 CHAIRMAN KEESE: You have to first find
11 -- you'd have to first get to the point where
12 there was a problem. And there's been no
13 identification of a problem.

14 MR. GARBETT: Thank you for the handouts
15 tonight, because as an Intervenor, these are the
16 first documents I've seen on this.

17 CHAIRMAN KEESE: Any other questions
18 regarding the presentation? What we're talking
19 about is clarification of the presentations that
20 the parties have made here. I'm not sure that the
21 Intervenors will have any, but -- you get the
22 first shot.

23 MR. WHITNELL: Actually, I just have
24 one.

25 CHAIRMAN KEESE: Sure.

1 MR. WHITNELL: It's a quick question for
2 Mr. Stewart.

3 If I understood your slide correctly,
4 you're looking at a five-month construction
5 schedule for this project, after Commission
6 approval?

7 MR. STEWART: That is correct.

8 MR. WHITNELL: You can build this
9 project in five months? That's -- seems
10 incredibly short, to me. Does that include any
11 pre-construction or pre-approval construction?

12 MR. STEWART: What -- what it does is it
13 includes quite a bit of off site prefabrication.
14 It doesn't include pre-construction on the site,
15 though.

16 MR. WHITNELL: Okay.

17 MR. STEWART: Did that answer your
18 question?

19 MR. WHITNELL: Yes, it did. Thank you.

20 CHAIRMAN KEESE: Okay. Any other
21 jurisdictions in the audience that have questions?

22 Well, I've got six blue cards, so that's
23 where we'll start. And then anybody else who
24 wants to submit another question is welcome to.
25 I'll say, as we start here, that I'm very pleased

1 to see the attendance we have here. We want to
2 get the message out here. We don't want people
3 showing up at the last hearing. We'd like you to
4 be here, tell us what your concerns are, and we'll
5 face them.

6 I have a comment from Mr. Richard
7 Santos, who says he supports the Calpine project.
8 And at this time he indicated no interest in
9 speaking. So -- on the record.

10 I have a --

11 MR. SANTOS: No, I want to speak --

12 CHAIRMAN KEESE: Okay. Well, then let
13 me dispose of the other one first, here, because
14 Robert W. Gross, businessman, he's in full support
15 of the proposed project, and he indicated he
16 didn't want to speak.

17 And now, Mr. Santos, since I went to
18 you, I'll let you take the mic. And we'll ask you
19 again to -- you can use this one. That's fine.

20 MR. SANTOS: Yeah. I'm Richard Santos,
21 born and raised here in Alviso, and retired
22 firefighter of 33 years. And a member of the
23 Board of Directors of the -- our water district.

24 Prior to all this, I met numerous times
25 with U.S. DataPort staff and their executives, and

1 worked with the environmental groups and the --
2 and went through this whole project with the
3 councilperson in San Jose, Chuck Reed, and I saw
4 the work they did. And we met with many people
5 here in the community. Also, when Calpine got
6 involved, they came out and had numerous meetings
7 with the community.

8 I'm very pleased with the project. I
9 support it, and I welcome them as shareholders in
10 our community. They're going to do a good job.
11 It's far away from the community, but yet it cuts
12 down the traffic, does -- I believe there's some
13 jobs at stake here, and so on. But so far,
14 they've been people of their word, and I'm very
15 pleased with it.

16 CHAIRMAN KEESE: Thank you.

17 Mr. Grant Sedgwick.

18 MR. SEDGWICK: Mr. Chairman and members
19 of the audience, my company, U.S. DataPort, is in
20 -- was the initial sponsor of the project, and
21 obviously joins with Calpine in urging your
22 approval. I really wouldn't want to -- you can
23 imagine that I'm in support of the project, and
24 I'm more letting you know that I'm here to answer
25 questions about the Data Center component of the

1 project, were there to be any such questions.

2 So I'm here in the audience, and thank
3 you very much.

4 CHAIRMAN KEESE: Good. Thank you.
5 We'll take -- we may take you up on that offer in
6 a moment.

7 Mr. Stephen Strauss.

8 MR. STRAUSS: I'm Stephen Strauss, I'm
9 president-elect of the Alviso Rotary Club. And I
10 just wanted to mention that our club is
11 overwhelmingly in support of this project. The
12 Calpine and U.S. DataPort people have been to our
13 meetings on several occasions, and answered all
14 of our questions.

15 I had one concern about fog from the
16 cooling towers, and that was addressed that they
17 will have some technology available that there
18 won't be any fog or -- from this project. Calpine
19 does have some very well recognized technology.

20 Thank you.

21 CHAIRMAN KEESE: And I'm sure -- well,
22 I'm aware that that will be a subject of the
23 workshop, and that will probably be a subject of
24 our hearings, as we get down the road.

25 Lourdes Rivera-Murphy.

1 PUBLIC ADVISER MENDONCA: Mr. Chairman,
2 she had to leave, and left me her comment, which
3 was as a resident of Alviso, I am for Calpine, and
4 feel that they are willing to work with the Alviso
5 community and with any concerns.

6 CHAIRMAN KEESE: Thank you.

7 And Esther Alday. Esther Aiday. We
8 don't have much light up here, so -- pencil
9 doesn't get me too far.

10 MS. ALDAY: Hi. My name's Esther Alday.
11 I am also a resident of Alviso.

12 I'm not at this point for the -- the
13 project. I'm kind of concerned. This is actually
14 the second meeting I've -- that I've been aware
15 of, so I don't know how this information is being
16 sent out that other people are aware of these
17 meetings and they've been attending. So I -- I'm
18 not for it, I'm pretty skeptical about how this is
19 going to impact the residents and the traffic, and
20 a lot of issues that I still don't have any -- or
21 haven't heard a lot of answers to, are still very
22 concerned about.

23 So I'm still not -- I guess my main
24 concern is the traffic, and a lot of -- still
25 other issues. But at this point, I'm not for the

1 project.

2 CHAIRMAN KEESE: Thank you. And let me
3 -- let me explain where I am. You see, this is my
4 first meeting on this project, too. So I'm going
5 to have to be the judge before this is over, and
6 I'm not for or against this project. We're going
7 to hear the evidence, when we get to the
8 evidentiary hearings. And we're going to hear
9 your comments as we move through it. And that's
10 the input that will lead to our eventual decision.

11 So we're -- you're not alone here.
12 We're starting at the same point. But they're
13 going to have to lay it out in front of us.

14 Hilbert --

15 MR. MORALES: Morales.

16 CHAIRMAN KEESE: -- Morales. All right.

17 MR. MORALES: I'm Hilbert Morales. Some
18 years ago, I was a member of the board of the
19 Family Health Foundation Alviso, which is here in
20 Alviso. And there was a major flood because the
21 Coyote Creek overflowed. So my major concern at
22 this point is as a consequence of land subsidence
23 because we have pumped out the aquifer below this
24 area, and the land has dropped about eight feet,
25 what is the danger of a major flood disabling this

1 facility?

2 CHAIRMAN KEESE: Well --

3 MR. MORALES: By a major flood, there's
4 one that occurs every 75 to 100 years. It's
5 really a whopper.

6 CHAIRMAN KEESE: Thank you. Does
7 anybody -- is anybody prepared to handle that at
8 this time?

9 We may have a -- a volunteer.

10 DR. GROSS: I'd be happy to do that.
11 For the record --

12 CHAIRMAN KEESE: Well, wait until you --
13 wait until you get to the microphone.

14 DR. GROSS: Okay. I'm the guy in the
15 back of the room that couldn't see the light, too.

16 CHAIRMAN KEESE: Okay.

17 DR. GROSS: For the record, I'm Dr. Bob
18 Gross. I was on the Board of Directors for 20
19 years, Santa Clara Valley Water District.

20 We spent considerable funds in Lower
21 Coyote, building bypass channels and so forth, and
22 that Coyote has been engineered for a 100 year
23 flood. I hope that answers the question.

24 CHAIRMAN KEESE: Thank you.

25 DR. GROSS: And if I can while I'm at

1 the mic, Mr. Chairman, one thing that excites me,
2 I spent 20 years in the industry, and the use of
3 water recycling, to me, is probably one of the
4 most positive things that private industry can do
5 today. And I'm glad to see they're taking that
6 role.

7 CHAIRMAN KEESE: Thank you.

8 HEARING OFFICER WILLIAMS: If you have a
9 business card, also --

10 CHAIRMAN KEESE: Yeah, if you would --
11 if you wouldn't mind filling out a card, just
12 briefly. That'll help our reporter here.

13 DR. GROSS: I'd be happy to do that.

14 CHAIRMAN KEESE: Okay.

15 Does that answer your question
16 informally? You're certainly welcome, during the
17 formal part of this proceeding, if you -- if you'd
18 like, the Applicant and the Staff will be pleased
19 to answer your question in a formal way. I think
20 that probably is a good -- I think we should see
21 that we get an answer to that. That sounds like a
22 question that may come up again.

23 Do we have anyone else in the audience
24 interested in any -- anymore questions here?

25 All right.

1 MS. SCHILBERG: I'm Gayatri Schilberg,
2 representing the coalition of ratepayers and
3 environmental groups.

4 I'd like to ask the gentleman from U.S.
5 DataPort a few questions, actually, if he's
6 available.

7 CHAIRMAN KEESE: I think he volunteered,
8 so, sure.

9 MS. SCHILBERG: My first question is
10 what is your current estimate of when you would be
11 going online, and if you're likely to have further
12 delays due to the economic situation and/or
13 oversupply of server farms already in this area?

14 MR. SEDGWICK: Excuse me, Mr. Chairman,
15 through you. My answer is that we have suffered
16 some delays already, as you can imagine, because
17 of those very economic conditions you've talked
18 about.

19 I can't predict the construction start
20 on the first Data Center. I can tell you we have
21 four proposals out to tenants, customers, proposed
22 customers. I would judge that two of those are
23 likely serious, and perhaps the other two are not
24 going to result in an immediate requirement being
25 fulfilled. We would like to believe we'll be

1 under construction in 2002.

2 Sort of by way of partial response to
3 the other gentleman's question, our construction
4 schedule is a little longer. There's not much
5 prefabrication opportunity. We'd be about eight
6 months from making a commitment to start
7 construction, and ahead of that some three or four
8 months for permitting, and so on. So our -- our
9 build cycle is about 12 months following a
10 commitment from a tenant who needs this kind of
11 Data Center space.

12 CHAIRMAN KEESE: Okay. Any other
13 questions?

14 MS. SCHILBERG: Yes.

15 CHAIRMAN KEESE: I do, too, so go ahead.

16 MS. SCHILBERG: Yes. So essentially,
17 you will not actually undertake construction until
18 you have tenants.

19 MR. SEDGWICK: That's correct.

20 MS. SCHILBERG: And did you speak to the
21 oversupply of server farms in this area?

22 MR. SEDGWICK: I didn't, only to
23 acknowledge that nationally there is clearly an
24 oversupply. It's -- it's less so in the Silicon
25 Valley, but -- but the economic conditions and the

1 capital market's conditions that affect people in
2 this industry are national. There has been almost
3 no leasing activity of this kind of special
4 purpose data center critical -- operations
5 critical kind of space in -- in almost the entire
6 seven months, six or seven months, since the city
7 approved the project.

8 So there is an oversupply. There is
9 also an undersupply of capital to serve this
10 industry, and as a result there hasn't been much
11 leasing activity. We're fairly optimistic that
12 with 2002, if there's a general economic recovery,
13 there will be a recovery of demand. And a -- a
14 sort of back to normal, we hope, business climate
15 that characterizes this industry.

16 MS. SCHILBERG: So if things turn around
17 the way you hope, then what would be your
18 projected online date, do you think?

19 MR. SEDGWICK: Well, if we're -- be the
20 most optimistic, we could -- and saw some recovery
21 in the first or second quarter of 2002, just
22 adding up the months I mentioned, you are probably
23 ten months at least before we could have the first
24 building online. I -- I think we've talked in the
25 past about a building schedule that will take four

1 or five years overall, and assuming that was
2 uniformly -- represented some -- some form of
3 uniform absorption, we'd be building three or
4 400,000, or perhaps 500,000 square feet in a year,
5 in a year -- each year's time. That's our hope.
6 That's our plan.

7 MS. SCHILBERG: And I notice that the
8 contract for the adjoining property that is going
9 to be occupied by U.S. DataPort is not yet tied
10 up. Do you want to give a probability of how
11 probable you think you are going to be able to tie
12 that up, or what happens if you can't?

13 MR. SEDGWICK: That's not exactly true.
14 Actually, there is a representative of the owner
15 of the property here in the audience. We still
16 have a contract. We are, in truth, modifying the
17 contract to -- to reflect the delays I've just
18 been talking about. But we actually do have a
19 contract to purchase the property.

20 As you -- as you may know, since you're
21 informed about this, about half the project --
22 half the site, Mr. Chairman, has already been
23 acquired by Calpine, or by Calpine c* Power. And
24 the other half is the subject of the real estate
25 contract the lady was asking about. And it is

1 going through a process of renegotiation, to be
2 sure, but we are still in contract.

3 MS. SCHILBERG: So then I have another
4 question for Calpine.

5 MR. SEDGWICK: If that's all for me,
6 I'll sit down.

7 CHAIRMAN KEESE: Just let me --

8 MS. SCHILBERG: Yeah, go ahead.

9 CHAIRMAN KEESE: -- slip one question in
10 here. Do you have -- I'm sure tenants get
11 choices, but do you have a plan for development,
12 and where would you start around that, and -- and
13 where would you most likely start construction?

14 MR. SEDGWICK: We'd most likely start in
15 the most visible, most accessible part of the
16 site. I mean, you've just said it exactly, Mr.
17 Chairman. The -- the tenants make the choice, so
18 I would assume the southern part of the site
19 adjoining 237 would be most favored, although it
20 was -- there's an interesting differentiator in
21 this business, that these are mission critical
22 facilities, as you'd call them, and some companies
23 that operate these kinds of facilities actually
24 don't want any identification. So it isn't
25 inconceivable that a first user might actually

1 want the least visible.

2 But I'm going to assume that the -- I
3 don't know how to word this -- I'm not a technical
4 person. I would think that probably these would
5 be the most desirable locations for the -- for the
6 majority of the tenant prospects we have. And
7 then we'd build around the site, sort of, to suit
8 the market.

9 CHAIRMAN KEESE: Are you -- and this may
10 be a joint question for Calpine, also. Is the
11 assumption that as you build these buildings, that
12 in addition to the generating unit we're speaking
13 of here there will be additional reliability
14 measures taken for your power?

15 MR. SEDGWICK: Todd probably should
16 answer that, but it's my understanding that there
17 would be, in addition to chilled water facilities,
18 the ability to capture waste heat, for example,
19 and in other -- otherwise transforms all the
20 centers into chilled water.

21 Our Data Center buildings will have an
22 enormous cooling requirement as well as an
23 electrical load, matching, actually, as you would
24 guess. And so that the idea is to in a very
25 efficient, a very reliable way, produce chilled

1 water as a part of the plant, as well. But I
2 don't want to say anymore because this is kind of
3 Todd's area of engineering expertise.

4 CHAIRMAN KEESE: Okay. Well, do you
5 mind if I get that? Let's -- let's get an answer.

6 MR. SEDGWICK: I'll just sit down here.

7 CHAIRMAN KEESE: Sure.

8 MR. STEWART: Yes, the facility is
9 designed with extra reliability and redundancy
10 built in. For example, the fuel -- on the fuel
11 supply for the facility, we are connecting into
12 two separate high pressure PG&E transmission lines
13 that run along the front of the property, so in
14 the event that PG&E loses one line, we're still
15 okay.

16 For the -- the gas compressors, which
17 increase the pressure of the gas from PG&E so that
18 it can be fed into the -- the turbines themselves,
19 we have three 50 percent capacity gas compressors
20 on site so that if one is down, we can still
21 accomplish full on site generation. The
22 switchyard itself is built in a -- what's called a
23 breaker and a half design, and don't ask me to
24 explain that, but I -- because I can't, but it is
25 a much more reliable design than the -- than a

1 standard switchyard.

2 Also, we are -- we are keeping on site a
3 measure of processed water and an extra measure of
4 cooling water to assure reliability in the event
5 of -- of a interruption in our water supply. And
6 then, when -- when the DataPort is built, or is
7 beginning to be built, that's when we bring in
8 city water, a potable water system, which will
9 then further augment our ability to keep processed
10 water there at the site, as well as the processed
11 water that's required for the DataPort.

12 CHAIRMAN KEESE: Thank you.

13 MS. SCHILBERG: So now I have a few
14 questions for Todd.

15 If U.S. DataPort does not materialize,
16 do you want to go ahead with this project?

17 MR. STEWART: Our position is that the
18 -- the DataPort project is -- is a real project,
19 and it is a -- it is going to go ahead. So we're
20 -- we're not really taking the position that we're
21 building a simple peaker merchant plant. This
22 plant is designed with a lot of redundancy built
23 in that makes it ideal for a Data Center host.
24 And if DataPort doesn't build it, we -- we
25 certainly expect that we'll encourage others to --

1 to move in and do the same.

2 MS. SCHILBERG: Can you tell me a bit
3 about the component structure. It sounds like
4 DataPort is probably going to be incrementally
5 adding tenants, and therefore I expect it only
6 needs a portion of your power in the early years.
7 Would it make more sense for you then to build
8 your project incrementally, also?

9 MR. STEWART: Actually, no. The -- this
10 is really a unique opportunity for the North San
11 Jose area, and then -- the -- the area is severely
12 transmission constrained, and according to PG&E,
13 it requires additional generation in the area in
14 order to help the reliability. So having our
15 power plant up and online and able to put
16 megawatts into the grid in the North San Jose area
17 should help the reliability in the North San
18 Jose/Alviso area.

19 CHAIRMAN KEESE: Okay. Mr. Garbett.

20 MR. GARBETT: Yes. Todd, isn't it true
21 that the sewage plant power load by itself, for
22 the city, is equal to about the generating
23 capacity of your project?

24 MR. STEWART: I don't know the answer to
25 that question.

1 MR. GARBETT: I think there's a similar
2 requirement.

3 MR. STEWART: Jerry, do you know that?

4 CHAIRMAN KEESE: Can we get -- anybody
5 want to give a -- I can't -- you're talking about
6 135 megawatts?

7 MR. GARBETT: I think they use 535.

8 CHAIRMAN KEESE: Megawatts?

9 MR. GARBETT: Yeah.

10 MR. SEDGWICK: Mr. Chairman -- and it's
11 not an area of expertise, but there is -- my
12 information, something under 15 megawatts, so 10
13 to 15 megawatts.

14 CHAIRMAN KEESE: Yeah.

15 MR. SEDGWICK: And this came to my
16 attention out of some discussion that involved the
17 potential of sharing or backing up their electric
18 power supply. But I am pretty sure it's in that
19 range.

20 CHAIRMAN KEESE: That -- that would be
21 -- that would be my -- had you asked me to guess,
22 I would've guessed from two standpoints. That's
23 -- that's a -- that's a more rational number of
24 how much demand there would be there, and that's
25 what it looked like the infrastructure was that I

1 saw as we drove by it today. So -- so I am -- I'm
2 going to say that it looks like it's --

3 MR. GARBETT: There's two points of view
4 on what their capacity is. The peak requirements
5 and the average requirements are dramatically
6 different.

7 CHAIRMAN KEESE: Well, that's a good --
8 that question is on the table. Anything that's
9 said here is on the record, and we'll get an
10 answer to it. So we'll get you an answer. Not --
11 not tonight, obviously. But we will have an
12 answer for you.

13 All right. Are we -- we're on the verge
14 of going, going, gone on this issue. We have
15 another issue that's going to take us some time
16 here. It's going to get a little more technical.
17 Any other questions on the project before we move
18 into the -- the timing of the -- of our process?

19 Okay. Do you have anything to close
20 this part up, Major?

21 HEARING OFFICER WILLIAMS: No, I think
22 if there are no more -- seeing no more questions,
23 I think we'll just move into the second portion of
24 our agenda today, which is whether or not the
25 project should remain in the expedited four-month

1 process.

2 Staff discussed that issue in its
3 presentation, in the first part of our agenda.
4 But I think that probably is the appropriate place
5 to start again. Staff did identify some factors
6 in its Issue Identification Report that relate
7 directly to the question of whether this project
8 should remain in expedited -- in the expedited
9 four-month process. So I would ask Staff to take
10 the mic again, and let's deal with those questions
11 one by one, if you will, and allow the
12 participants and the public to ask any questions
13 that they may have with respect to -- to this
14 particular issue.

15 And Staff, you enumerated some seven
16 items on page six of your Issue Identification
17 Report, in terms of whether the project continues
18 to qualify for the four-month process.

19 The first enumerated requirement is that
20 the Bay Area Air Quality Management District must
21 have a -- must have the PDOC completed by November
22 5. What is your assessment there, sir?

23 MR. WORL: The PDOC, today is the 5th,
24 the PDOC is not complete. However, my
25 understanding is, and if Gabriel -- are you here?

1 Gabriel might have some more recent information
2 about the availability of the PDOC and the current
3 status. Gabriel Behymer is our air quality Staff
4 engineer.

5 MR. BEHYMER: Hello. My name is Gabriel
6 Behymer. I'm the air quality expert for the CEC.

7 My understanding from the district is
8 that the PDOC should be issued on the 12th of
9 November. The representative of the district will
10 be available at the meeting tomorrow to comment on
11 this fact, though.

12 CHAIRMAN KEESE: Are there any
13 questions?

14 When you say will be issued, you're --
15 you're saying there are no surprises, and this is
16 -- what are the -- do you have a hint of what
17 they're going to issue?

18 MR. BEHYMER: I believe that the
19 district has no major issues with the project.
20 They do have a concern with the -- with Calpine's
21 compliance with regard to their other power plants
22 right now, and they have a regulation that
23 prevents them from issuing a Final Determination
24 of Compliance. However, it's not been determined
25 whether or not they'll be able to issue the PDOC.

1 However, we believe they will be able to issue it
2 next week.

3 CHAIRMAN KEESE: Thank you.

4 Do we --

5 MS. LUCKHARDT: That is consistent with
6 our understanding, as well, and we also have
7 completed the final ERC package and that has been
8 accepted also by the district, so that's
9 consistent with our --

10 CHAIRMAN KEESE: Okay. I'm going to --
11 let's try to -- there's two ways to handle this.
12 One is issue by issue, and one is party by party.
13 And generally speaking, what I'd like to do, I
14 think, is have the Staff go and then the Applicant
15 go, and then the Intervenors, if that's
16 acceptable. If there's particular points that you
17 want to try to bring -- I think, for consistency
18 of your presentation, that would probably work
19 better.

20 Okay. Let's go down the list.

21 MR. WORL: Jane Luckhardt just mentioned
22 the emission reduction credit package, and I just
23 received an e-mail this morning from Dick Wocasek,
24 of the Bay Area Air Quality Management District,
25 saying exactly that. They're very happy with the

1 emission package that Calpine submitted.

2 CHAIRMAN KEESE: Okay.

3 MR. WORL: The next one on the list the
4 PG&E interconnection study supplied to the Staff,
5 November 5. And also, the Cal-Independent System
6 Operator review supplied to Staff by November 5.

7 Again, I just talked with Al McCuen and
8 Mark Hesters this morning regarding the status of
9 those studies, and they say that they have the
10 verbal assurances, and the information -- the
11 predominance of information that they have
12 received to date indicate no downstream problems,
13 and that it's a matter of, again, a matter of an
14 extra week or so before PG&E and Cal-ISO complete
15 submission of the package to our Staff.

16 And again, our dates were specified so
17 that our Staff would have the information
18 available to them so that they can do their Staff
19 Assessment analysis. Both Cal-ISO and PG&E have
20 been in contact, as has the Applicant, with our
21 electrical transmission Staff, and the Staff
22 indicates to me that, you know, again, without
23 having the written documents, that they're happy
24 to date with the information they're receiving.

25 HEARING OFFICER WILLIAMS: Now, I have a

1 question. You -- in the information issue
2 identification report, you projected that the
3 Staff would have its preliminary report filed on
4 -- I think it was November 22nd.

5 MR. WORL: Yes.

6 HEARING OFFICER WILLIAMS: How -- what
7 kind of delays in receiving the information that
8 we've talked about so far will you have gotten
9 assurances from various agencies that they, in
10 fact, will be either producing the document or --
11 or are satisfied with the information that they
12 have, how is that going to impact your preliminary
13 report on -- issuance on November 22nd?

14 MR. WORL: The bulk of the Staff
15 Assessment we have the -- have or are getting the
16 information that's required. These up here as
17 potential issues specifically for this reason, and
18 I -- I would think that it's safe to say that we
19 would probably request almost a day for day delay
20 of the Staff Assessment to assure that our Staff
21 have the information in writing from the agencies
22 involved, and also that they have enough time to
23 do the analysis that's required to produce an
24 adequate Staff Assessment.

25 They -- our Staff have been in touch

1 with the Air Quality District and have been
2 staying on top of that. Our transmission system
3 people have been in -- a couple of times a week in
4 touch with both Cal-ISO and PG&E, and have a great
5 deal of the preliminary information that'll be
6 contained in the final reports. And Al McCuen
7 told me that if they -- if they do get the
8 information as the company has assured them, that
9 they will be able to make an assessment, again
10 with that day for day delay. And --

11 CHAIRMAN KEESE: Day for day, starting
12 when, November 12th?

13 MR. WORL: Those are -- November 12th is
14 the day that the district says that they will
15 release the PDOC.

16 CHAIRMAN KEESE: And -- and are you
17 saying that you can still meet the 22nd date with
18 the 12th?

19 MR. WORL: If it comes in on the 12th, I
20 would say that the 22nd would be -- would probably
21 be delayed maybe five days.

22 CHAIRMAN KEESE: Well --

23 MR. WORL: That depends on our Staff,
24 again, having the information and being able to do
25 the Staff Assessment in time that we can put

1 together a document.

2 HEARING OFFICER WILLIAMS: Well, I think
3 it's important that we have the Applicant's
4 understanding that when we speak about a day for
5 day slip in the schedule, it not only means the
6 time from which the report was originally due, but
7 it also will impact the time that Staff needs to
8 have to assimilate that information in its report.

9 Applicant, are you -- you willing to
10 accept that -- that sort of understanding?

11 MR. STEWART: Well, as the Applicant,
12 obviously we are trying to avoid any kind of
13 delay, and we'll work with Commission Staff as --
14 as is required to avoid any delay. But, yes, I
15 understand the -- the process that you're talking
16 about.

17 CHAIRMAN KEESE: Okay. Let's hear about
18 mitigation for downstream impacts on transmission
19 line upgrades.

20 MR. WORL: Again, and part -- part of
21 the Cal-ISO review and the PG&E study,
22 interconnection study, is to provide information
23 regarding any downstream impacts that need to be
24 mitigated on the line by the Applicant. My
25 understanding, again based on verbal assurances

1 from the Cal-ISO and PG&E to Al McCuen and Mark
2 Hesters, of our Staff, is that there are to be no
3 -- that there appear to be no downstream impacts
4 requiring mitigation by the Applicant, that
5 everything can be handled either on site or within
6 -- within any substation to which they
7 interconnect.

8 CHAIRMAN KEESE: Okay. And I would
9 gather, if that's the answer, that doesn't delay
10 anything.

11 MR. WORL: That does not delay anything.
12 The reason that this is a critical issue, just to
13 clarify for anybody in the audience, is that if
14 downstream impacts are identified and must be
15 mitigated, then all of a sudden the additional
16 transmission line becomes part of the linear
17 structures that need to be reviewed by a number of
18 resource areas, and would be an extreme delay in
19 the project.

20 CHAIRMAN KEESE: Okay. No U.S. Fish and
21 Wildlife Service --

22 MR. WORL: Yes.

23 CHAIRMAN KEESE: -- consultation
24 required.

25 MR. WORL: Right. And this refers to a

1 nitrogen deposition issue that has been identified
2 in the area, affecting serpentine soils, and the
3 primary impact would be on the beige underspot
4 butterfly listed species. To date, U.S. Fish and
5 Wildlife has been in contact with our Staff and
6 the Applicant's Staff. The Applicant has proposed
7 mitigation, even though they feel they can show no
8 impact. They propose mitigation for potential
9 impacts, and have, in fact, gone beyond that and
10 have actually, I believe, optioned property that
11 can be used for off site mitigation, and so that
12 basically the Applicant has proceeded as if there
13 would be impacts. Fish and Wildlife Service has
14 made no overtures to us about formal -- formal
15 proceeding.

16 CHAIRMAN KEESE: Did I -- did I
17 understand that there might be before Phase 2?

18 MR. WORL: What we're suggesting is that
19 Phase 2, which would be the combined cycle phase
20 of this project, an application or an amendment
21 would be submitted upon licensure, or very very
22 close to it, and -- by the Applicant, and that at
23 that time with the information that they currently
24 have, would probably enter into more substantive
25 negotiations with Fish and Wildlife Service on the

1 issue at hand.

2 CHAIRMAN KEESE: Is there -- is there a
3 greater impact from Phase 2 than Phase 1?

4 MR. WORL: I would defer to the
5 biological Staff of either the Applicant or
6 ourselves, who are here, or to our air quality
7 people.

8 MR. RATLIFF: I think the difference is
9 that a federal permit is required under Phase 2.
10 So there --

11 CHAIRMAN KEESE: For Phase 2 there is
12 a --

13 MR. RATLIFF: So there's a possibility
14 of consultation.

15 CHAIRMAN KEESE: Okay. Fine.

16 MR. WORL: What better than a lawyer to
17 answer that question.

18 CHAIRMAN KEESE: Well, the issue was
19 raised in the filing, so I was looking for an
20 answer. All right.

21 MR. WORL: The right one.

22 CHAIRMAN KEESE: Response to data
23 requests.

24 MR. WORL: Response to data requests,
25 predominantly in. Those things which the

1 Applicant still has outstanding will be discussed
2 thoroughly tomorrow in the workshop, and my
3 understanding is the principal problem right now
4 is a production problem with a -- with a
5 subcontractor. And that they're working, and have
6 been working for some time to supply the necessary
7 information. We will explore that tomorrow, and
8 determine a timeline for the provision.

9 CHAIRMAN KEESE: Okay, thank you.

10 Applicant, I think probably the easiest
11 way is do you concur, or is there something you'd
12 like to add to the seven points that we've just
13 covered here? I mean, we can go --

14 MS. LUCKHARDT: Yeah. I think we can
15 basically concur. The information that Staff has
16 presented is consistent with the information that
17 we've received from the other agencies, and so I
18 think we're -- Mr. Worl's assessment is -- is
19 accurate.

20 CHAIRMAN KEESE: Okay. I think it would
21 probably be just -- probably the best way to go is
22 just to ask the coalition to make their
23 presentation at this time.

24 MS. SCHILBERG: Thank you. In addition
25 to the previous statement in opposition to the

1 four-month AFC that we filed on October 18th, I'm
2 circulating a -- an additional statement that I
3 docketed today, and I understand that a number of
4 you may not have received it. So I'm making it
5 available at this point, and there are also copies
6 for the public if you're interested.

7 The coalition of ratepayer and
8 environmental groups is against the four-month AFC
9 for the following reasons. There is no
10 alternative to project presented to this project.
11 Remember the project that we're dealing with right
12 now is not the U.S. DataPort project. The project
13 that's on the table is only this four simple cycle
14 turbines. There may be intentions to do
15 subsequent phases and intentions to support
16 DataPort, but at the moment the only project that
17 we're dealing with is the four simple cycle
18 turbines.

19 And the problem with this is that there
20 are -- I'm sure there are a lot of possible
21 alternatives to providing this peaking -- this
22 power during peak periods that would be more cost
23 effective than the existing Calpine project as
24 proposed. Calpine has said that this has a lot of
25 redundancy, a lot of extra switches, a lot of

1 extra things that make it more expensive, and we
2 submit that perhaps delaying this first portion is
3 a more appropriate way to approach this.

4 Alternatives should be examined, such as
5 conservation, energy efficiency, and renewables
6 that can provide less expensive power during peak
7 periods, and can also be tailored to whether the
8 need is there or not. The energy situation has
9 changed a lot since we first started having an
10 emergency, and we feel that there is not the need
11 that there was thought to be 12 months ago, in
12 terms of extra demand that needs to be filled.

13 So we aren't even clear that there is a
14 requirement for this power. And, as a matter of
15 fact, I attached a letter from the Department of
16 Water Resources to David Freeman, of the Consumer
17 Power and Conservation Financing Authority, that
18 says specifically we do not want more peakers.

19 CHAIRMAN KEESE: The Department of Water
20 Resources signed a contract for this power, from
21 this plant?

22 MS. SCHILBERG: Yes.

23 CHAIRMAN KEESE: Well, I --

24 MS. SCHILBERG: And that same --

25 CHAIRMAN KEESE: -- I would gather,

1 then, their statement that they don't want more
2 peakers means more peakers other than this one.

3 MS. SCHILBERG: But I think, as you'll
4 read in the letter, Mr. Hannigan is saying that
5 since we signed all these contracts we're finding
6 that the forecast is smaller than we thought.

7 So, in conclusion, we find the -- one
8 deficiency that there is no assessment of
9 alternatives, because if what we're being
10 presented at this point is pure simple cycle
11 turbines that are going to cost a lot of money to
12 ratepayers, we should instead be looking at other
13 cost effective alternatives to that very expensive
14 power, if, indeed, we still really need them -- we
15 really need that power on peak.

16 CEQA requires an examination of
17 alternatives, and the benefits and risks of the
18 project at hand, so we feel that that examination
19 would require more than the four months.

20 CHAIRMAN KEESE: Are -- are you
21 suggesting that the -- that we would have to do a
22 12-month process to include an alternatives
23 analysis, or -- and that a four-month process
24 would not require an alternatives analysis? Is
25 that what --

1 MS. SCHILBERG: No. I think all
2 analyses, all -- all AFCs require a -- an
3 alternatives analysis, is my understanding.

4 CHAIRMAN KEESE: And -- and I guess I'd
5 have to ask the question, what is the relevance of
6 that point to whether this should be a four-month
7 or a 12-month process?

8 MS. SCHILBERG: The fact that the
9 Applicant didn't include alternative means that by
10 the time alternatives are analyzed, it probably
11 will be more than four months.

12 CHAIRMAN KEESE: Okay.

13 MR. RICHINS: Commissioner, if I may.

14 CHAIRMAN KEESE: Yes. We're going to
15 have both the Staff and the Applicant respond to
16 that, or -- are you finished with the --

17 MS. SCHILBERG: Yes, that's --

18 CHAIRMAN KEESE: Okay.

19 MS. SCHILBERG: Thank you.

20 CHAIRMAN KEESE: We'll --

21 MR. RICHINS: CEQA requires an
22 alternatives analysis for projects that may have a
23 significant impact on the environment. In other
24 words, that have that potential. Negative
25 declarations are frequently issue with no

1 alternatives analysis, for the very reason that
2 you cannot issue a negative declaration for
3 projects that would have an unmitigated
4 significant impact.

5 The nature of the statutory provisions
6 that you have with regard to the four-month
7 projects is that they cannot have significant
8 unmitigated negative impacts to be licensed, and
9 you have to make specific and express findings
10 that they do not have such impacts to provide a
11 license for a four-month project. Which would put
12 the decision that you make on a four-month project
13 much more akin to a decision made in a negative
14 declaration process.

15 So I don't believe that there would be a
16 requirement under CEQA that you have an
17 alternatives analysis. I think, nevertheless,
18 that Staff has contemplated one, and we haven't
19 fully discussed it, but we may -- at least for the
20 no project alternative.

21 CHAIRMAN KEESE: Thank you. I will just
22 say that I think personally, and perhaps as
23 speaking for Commissioners, if there is an
24 unmitigable impact, the -- the case does not
25 continue in the four-month -- it is highly

1 unlikely that the case would continue in the four-
2 month process. If there is an unmitigable impact,
3 it probably is obligated to switch to the 12-month
4 process.

5 Now, that said, the -- the depth of the
6 environmental review, the standards by which we
7 make a decision, are the same in both cases. And
8 if you followed last week's Commission hearing, we
9 considered approving a case under a four-month
10 process and declined to do that, but approved it
11 at the same hearing under the 12-month process.
12 So a 12-month process does not mandate a 12-month
13 process.

14 I think counsel has indicated that the
15 Staff is going to take a run at the -- the no
16 project alternative, and some alternatives
17 analysis here. And the rules of the four-month
18 process are no significant unmitigable impacts.

19 Counsel, do you have anymore to add for
20 Applicant?

21 MS. LUCKHARDT: I think I'd just like to
22 add that the Application for Certification did
23 contain an analysis of alternative technologies,
24 of alternative locations, and the no project
25 alternative, so there is alternative analysis in

1 the application itself.

2 CHAIRMAN KEESE: Thank you.

3 MS. SCHILBERG: I was not aware in the
4 Staff issues report that it said anything about
5 the no project alternative. Is that something in
6 addition? Is that an intention that's in addition
7 to what's in the Staff report, or is that an
8 intention that's been discarded?

9 MR. RICHINS: The question's being
10 addressed to me? I don't -- I don't know the
11 answer as to what exactly we said, or -- or why we
12 said it. But again, I would say we're still --
13 we're still discussing among ourselves what, if
14 any, alternatives analysis we would have, and we
15 haven't really reached a conclusion on that yet.

16 MS. SCHILBERG: Because I would submit
17 that one alternative is delay, because if -- it
18 would be less expensive and less environmentally
19 damaging.

20 CHAIRMAN KEESE: The -- you're going to
21 -- I've read your filings, and I will definitely
22 read this one, also, on the airplane that leaves
23 in about ten hours. But the -- the nature of the
24 four-month process is that we're responding to an
25 emergency declared by our governor that has not

1 been undone by contracts that were signed by the
2 Department of Water Resources to meet that crisis,
3 and to executive orders ordering us to assist in
4 expediting towards the supply needs of next year.

5 And it -- the analyses that the Energy
6 Commission has taken so far indicate that in a
7 worst case scenario, we have blackouts next year
8 when we will not be prepared with enough
9 generation to -- to defend ourselves from
10 blackouts, even if we get the conservation and
11 demand responsiveness that we've gotten this year.

12 So, you know, I'm -- delay for
13 alternatives is a hard nut to swallow with those
14 facts coming in here. Recognizing that the Energy
15 Commission is doing absolutely everything it can
16 to put renewables out into the marketplace, and
17 having -- we just have had great success, we think
18 our renewable percentage will go from 11 percent
19 today to 17 percent in five years. We're -- we're
20 moving actively on that, but we need demand
21 responsiveness. We need conservation. We need
22 alternatives. And next year we still do need some
23 additional generation to handle the situation.

24 I don't -- I don't know that just
25 suggesting a delay is a -- is a -- just suggesting

1 delay, I'm not sure meets the criteria of what our
2 instructions are.

3 MS. SCHILBERG: So your official
4 position is that we still need more. Is that it?

5 CHAIRMAN KEESE: That is the official
6 position of the California Energy Commission, and
7 that was -- it was put to a vote two weeks ago,
8 ten days ago, whenever. And the issue was raised,
9 and the issue was determined, it was a three to
10 two vote for a number of reasons, but that was a
11 vote of the Energy Commission.

12 We will -- we will take this under
13 submission, and we'll review your documents here.

14 MS. SCHILBERG: I appreciate that.
15 Thank you.

16 CHAIRMAN KEESE: And I will assure you
17 that as the Committee, Chair of this Committee,
18 should we find an unmitigable impact, this will go
19 into the 12-month process.

20 MR. GARBETT: A fact that is not on the
21 docket -- in the docket yet is on the Los Esteros
22 substation. Well, the Public Utilities Commission
23 and PG&E have done a couple of EIRs on that, and
24 as one of the options, shall we say like a no
25 build project, was actually that they would not

1 need more generation passed if they had about a --
2 a mile or so, mile and a quarter of interconnect
3 along Montague Expressway, interconnecting one
4 major high line in this area with one that ran
5 just a short distance towards the foothills. And
6 by this interconnection they could go and feed
7 forward and back power. And basically, by being
8 able to deliver power to the areas around on a
9 demand type basis, they would not have a need for
10 Los Esteros or any generating capacity in this
11 area.

12 And that was one of the options that was
13 considered in the EIR process of the Los Esteros
14 substation, by the PUC. And it may be where you
15 need to have a review of that process, because
16 these --

17 CHAIRMAN KEESE: That -- that's --

18 MR. GARBETT: -- that's already in
19 evidence elsewhere.

20 CHAIRMAN KEESE: And I think that's
21 appropriate. I'm not sure that it's relevant to
22 the four-month -- to our -- the issue that's here
23 is a very -- is a somewhat technical issue, and
24 that is can we stay in the four-month process, or
25 must we move to the 12-month process. We have a

1 filing, and we have an obligation as a Committee
2 to make a finding that this should stay in the
3 four-month process. That's one -- one of the --
4 just for the audience, one of the steps. We -- we
5 accept these cases more rapidly than we accept
6 most cases, with a subsequent finding that it
7 belongs properly in the four-month process. And
8 that's a decision the Committee has to make
9 immediately, so --

10 MR. GARBETT: My comment was to try to
11 move you up to where you can be on schedule by
12 stuff that has already previously been done.

13 CHAIRMAN KEESE: Thank you.

14 Any final comments? Mr. Ratliff, any
15 other comment on this?

16 MR. RATLIFF: No.

17 CHAIRMAN KEESE: Applicant?

18 Thank you. We'll take that under
19 submission.

20 Major, anything else to --

21 HEARING OFFICER WILLIAMS: I just have
22 one thing. I would ask the parties if -- if the
23 parties are willing to participate, as well. Are
24 you willing to agree that we -- we do some kind of
25 electronic filing in this case? Should -- should

1 the Committee rule that we stay in the four-month
2 process, it might considerably shorten some time
3 that we have to review documents, and that sort of
4 thing. So if the participants are willing to do
5 so, I would ask that you e-mail me and let me know
6 what your e-mail address is, and where filings
7 should be sent.

8 Now, if you're not willing to do it,
9 because you don't have access to a computer or a
10 Internet provider, then we certainly can -- can
11 accommodate you, for example, by the regular
12 mailings. But I think it's -- it's something that
13 we do do in some cases, and I wanted to address it
14 tonight to see if the parties would be willing to
15 -- to agree that -- that we do electronic filings
16 for those who are willing to participate that way,
17 and then we make accommodations for other people
18 who are not willing.

19 So those that -- could those that agree
20 to it let me know by e-mail. And, Mr. Garbett, I
21 take it that you're not willing to --

22 MR. GARBETT: I certainly would love to
23 go and be moved to the right side of the digital
24 divide.

25 HEARING OFFICER WILLIAMS: So -- so we

1 already know that we're going to have to make an
2 accommodation to Mr. Garbett. But certainly the
3 parties that will agree to it, then we'll put you
4 on a proof of service list, and we will --
5 electronic proof of service list, and the filings
6 will go out to you as they go to the docket unit,
7 and you will at least get a few days lead time on
8 -- on the mail system. The snail mail system.

9 MS. LUCKHARDT: I think that's
10 acceptable to us. We just ask, and we'll do the
11 same to everyone else, that you follow up with
12 hard copies, since sometimes there are documents,
13 just like the attachments that Ms. Schilberg sent
14 out today, that couldn't come electronically, and
15 there are some figures and -- and pictures and
16 things that may be large files that we may not
17 want to send electronically, as well.

18 So we will follow up with hard copies,
19 and if others would be willing to do the same,
20 then we'll know for sure that we have a complete
21 file. So, but that's acceptable.

22 HEARING OFFICER WILLIAMS: Okay. Well,
23 I would recommend that the parties e-mail me with
24 their e-mail address. I'll put together a server
25 list, and we'll try to iron out the process in

1 case we do move along in a four-month process, or
2 even staying in the 12-month process, for that
3 matter, just to see how it works, and to give
4 folks as much lead time as we can.

5 CHAIRMAN KEESE: Thank you. And we'll
6 issue our order promptly. We -- I believe we have
7 15 days to do it, but we'll try to be more prompt
8 about our order as soon as I get together with
9 Commissioner Moore, and we discuss the issue, and
10 issue a ruling here.

11 Thank you everybody for your
12 participation. Thank you for staying --

13 PUBLIC ADVISER MENDONCA: Chairman
14 Keese, could we once again have the location of
15 tomorrow's workshop? There were a couple of
16 people that asked where it was going to be
17 tomorrow.

18 CHAIRMAN KEESE: All right. One more --
19 one more description of where --

20 PUBLIC ADVISER MENDONCA: Tomorrow's
21 workshop --

22 CHAIRMAN KEESE: -- the workshop is
23 tomorrow. Workshops are a much more informal
24 process. They're off the record, meant to bring
25 all the questions out very easily.

1 MR. WORL: The workshop will be
2 beginning at 9:00 o'clock, at the Airport
3 International Inn, 1355 North Fourth Street, San
4 Jose.

5 CHAIRMAN KEESE: Okay.

6 MS. LUCKHARDT: It's starting at 9:30.

7 MR. WORL: Yeah, we were going to try
8 and --

9 CHAIRMAN KEESE: Thank you everyone.
10 (Thereupon, the hearing was concluded
11 at 8:55 p.m.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of November, 2001.

JAMES RAMOS

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