EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of: )
the Los Esteros Critical Energy ) 03-AFC-02
Facility, Phase 2 )
(Los Esteros 2) )

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

THURSDAY, JUNE 30, 2005
9:00 a.m.

Reported by:
Christopher Loverro
Contract No. 170-04-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
COMMITTEE MEMBERS PRESENT
Jackalyne Pfannenstiel, Presiding Member
Joseph Desmond, Associate Member

HEARING OFFICER, ADVISORS PRESENT
Gary Fay, Hearing Officer
Scott Tomashefsky
Timothy Tutt

STAFF AND CONSULTANTS PRESENT
Robert Eller, Project Manager
Richard Ratliff, Senior Staff Counsel
Eileen Allen
Natasha Nelson
Gabriel Taylor

APPLICANT
Greggory L. Wheatland, Attorney
Ellison, Schneider and Harris, LLP
representing Calpine Corporation

Rick Tetzloff, Project Manager
Calpine Corporation

Douglas M. Davy
CH2MILL

Gary Rubenstein
Sierra Research

INTERVENOR
Robert Sarvey
Californians for Renewable Energy
ALSO PRESENT

Steven Hill
Bay Area Air Quality Management District

Richard Buikema
City of San Jose (via teleconference)

John Brazil (phonetic)
Department of Transportation
City of San Jose (via teleconference)

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PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
P R O C E E D I N G S

9:09 a.m.

PRESIDING MEMBER PFANNENSTIEL: This is the evidentiary hearing in the application for certification of the Los Esteros Critical Energy Facility Phase 2.

I am Commissioner Jackie Pfannenstiel; I'm the Presiding Commissioner on this proceeding. To my left is the Commission Chair, Joe Desmond, who is also on the Committee for this proceeding.

To my right is Hearing Officer Gary Fay who will conduct this proceeding. I'll turn it over to Gary.

HEARING OFFICER FAY: Thank you, Commissioner Pfannenstiel. If anybody has trouble hearing at anytime today, please raise a hand and I will direct whoever is speaking to speak up. We don't have any amplification. The microphones in front of you are solely for the purpose of the court reporter, and they will not amplify voices at all. Normally we're in Hearing Room A, but the blood drive had a better moral claim on the hearing room, so we graciously turned it over to them.

I'd like to begin by taking
introductions. Commissioner Pfannenstiel has introduced the Committee. Is the Public Adviser here or any representative from that office?

All right. If there is a member of the public please be aware that at the end of the hearing we'll take public comment. And if you would like to make a comment on any of the topics as we deal with them, please raise your hand, if you're a member of the public not represented by one of the official parties.

For the applicant, Mr. Wheatland.

MR. WHEATLAND: Yes, good morning. I'm Gregg Wheatland; I'm the attorney for the applicant. And it's a pleasure to be here.

I'd like to ask those that are sitting at the table here with me this morning to introduce themselves, please.

MR. TETZLOFF: I'm Rick Tetzloff of Calpine; I'm the Project Development Manager for Los Esteros.

MR. RUBENSTEIN: I'm Gary Rubenstein with Sierra Research. We're air quality consultants for the project.

DR. DAVY: I'm Doug Davy, consultant to Calpine; we prepared the application.
HEARING OFFICER FAY: Thank you. Mr. Ratliff for the staff.

MR. RATLIFF: Yeah, I'm Richard Ratliff, Staff Counsel. And with me is Bob Eller, the Project Manager who has replaced Mr. Worl, who is currently ill.

HEARING OFFICER FAY: Okay. Thank you. And is there a representative from CARE here? Mr. Sarvey? Not here? All right, I hear no indication so we'll move ahead. We were led to believe that CARE wanted to participate.

Anybody else who wishes to participate in today's hearing? You can just raise your hand and we'll be sure to get your name. Okay.

All right, by way of background, on March 16, 2005, the applicant, Calpine, received its recertification for the existing 180 megawatt Los Esteros Critical Energy Facility, Phase 1, of this application.

Phase 2 of the project is for a license to convert the Los Esteros facility from a single cycle to a combined cycle operation, increasing its output thereby by 140 megawatts, to a full generating capacity of 320 megawatts.

The Committee scheduled today's hearing
in a public notice that was issued June 17, 2005. As explained in the notice, we will receive evidence in all the relevant topic areas for this AFC. For the most part, we will take evidence in the sequence shown in the topic and witness schedule that is available on the back table. We've made this available to the parties, as well. The exception to the schedule will be the topic of air quality, which we will hear after completing all other topics, and after the witness from the Air District arrives.

Filings relevant to today's hearing are, of course, the applicant's AFC, the staff's final staff assessment dated May 26th, the notice of today's hearing. The applicant and the staff's prehearing conference. In the case of applicant's, there were two attachments, as well, one the witness qualifications and the other regarding testimony. And then CARE also submitted its evidentiary hearing statement. And we also perhaps will receive a final determination of compliance today and we'll hear more about that in a moment.

By way of preliminary matters, CARE has raised questions about bikepath issues, and we
will deal with those matters under the topic of land use.

Also under land use we'll discuss any required zoning changes for the project that are still pending.

We have air quality witnesses from Calpine and from staff, I understand?

MR. RATLIFF: Yes.

HEARING OFFICER FAY: And are there --

MR. RATLIFF: Staff has pledged to produce two witnesses, the air quality witness and the biological resources witness requested by Mr. Sarvey.

HEARING OFFICER FAY: Okay. And do you know if CARE plans to have an air quality witness?

MR. SARVEY: No, we won't.

HEARING OFFICER FAY: Okay. Could you introduce yourself, please?

MR. SARVEY: I'm Robert Sarvey representing CARE.

HEARING OFFICER FAY: Okay. Good morning, Mr. Sarvey. You may want to get a copy of the witness schedule so you can follow along and know what order we'll be taking things.

I understand Mr. Sarvey also wants to
cross-examine the staff biology witness. Is that still the case?

MR. RATLIFF: Yes.

HEARING OFFICER PAY: Okay. And I've gone over the handouts. What I'd like to do today, the parties have requested this and Commissioner Pfannenstiel agreed, is to at least initially try to conduct things a little less formally than we normally do, to give some flexibility to the parties, so we can have some give-and-take.

I think it will speed things along and make it more efficient. If it tends to break down or get confusing we will just go back to our more formal process. So it will require all the participants to respect the leeway we're offering here, and be cooperative so it doesn't get too confusing. Not only for us listening, but for the court reporter, as well. If the record has people talking over each other, it will be very hard to develop accurately.

Okay, any other preliminary matters before we begin? Mr. Wheatland.

MR. WHEATLAND: Just one question. It's our understanding that the City of San Jose was
going to join us on the telephone. Do we have the telephone connection?

HEARING OFFICER FAY: Do we have a representative from the City of San Jose on the phone?

MR. BRAZIL: Yes, John Brazil from the Department of Transportation.

HEARING OFFICER FAY: Welcome.

MR. BRAZIL: Thank you.

MR. BUIKEMA: Richard Buikema from the City of San Jose Planning Department.

HEARING OFFICER FAY: Richard, could you spell your last name, sir?

MR. BUIKEMA: B-u-i-k-e-m-a.

HEARING OFFICER FAY: Thank you. All right, you don't have the benefit of seeing our sequence schedule. Land use is rather far down on the list, but many of the topics will be having their evidence introduced by means of a declaration. So there really will be little or no discussion on those topics. So I don't think it will cause a serious delay.

Anything further? All right, let's begin. Does the applicant wish to introduce its project description testimony?
MR. WHEATLAND: Yes. We have prepared testimony describing the project; this is sponsored by Mr. Tetzloff. And in a preliminary discussion with the staff counsel there are going to be a number of items that we're going to be asking that you would accept this testimony in the form of the declarations that have been and with statements of qualification of the witnesses that have been prefiled.

And so for this first exhibit regarding project description we would so move.

HEARING OFFICER FAY: All right. Is there any objection? Hearing none, so moved.

The only thing I'd ask is whether or not either or both Committee members would like to hear a brief summary of the project description?

PRESIDING MEMBER PFANNENSTIEL: I don't need so, thank you.

CHAIRMAN DESMOND: No.

HEARING OFFICER FAY: Okay, fine, thank you. We'll turn to the staff, then. Anything in that area?

MR. RATLIFF: In the area of project description.

HEARING OFFICER FAY: Um-hum.
MR. RATLIFF: I think this testimony was actually prepared by Mr. Worl, not Mr. Eller. And we would move it.

HEARING OFFICER FAY: And there's a declaration supporting that?

MR. RATLIFF: Yes.

HEARING OFFICER FAY: Okay.

MR. RATLIFF: Staff has declarations for all of its testimony attached to --

HEARING OFFICER FAY: Okay, so you move that now?

MR. RATLIFF: Yes.

HEARING OFFICER FAY: Any objection?

All right, so moved.

Move to alternatives.

MR. WHEATLAND: The applicant's testimony on the subject of alternatives is sponsored by Mr. Tetzloff.

HEARING OFFICER FAY: And do you wish to move that at this time?

MR. WHEATLAND: Oh, I'm sorry, yes. And so I would wish to move its introduction into evidence.

HEARING OFFICER FAY: Any objection?

All right, hearing none we'll move to the staff.
Mr. Ratliff.

MR. RATLIFF: Staff's testimony was prepared by Mr. Worl. It's part of the FSA; we move that it be part of the evidence.

HEARING OFFICER FAY: And you're moving that at this time?

MR. RATLIFF: Yes.

HEARING OFFICER FAY: Any objection?

We'll receive that.

Mr. Sarvey, please feel free to jump in if I've passed over you. I'm aware that you may have testimony on air quality and regarding the bikepath issues, which we'll take up under land use. If you have testimony in any other areas or questions or anything like that, please speak up because we'll be moving quickly --

MR. SARVEY: Thank you.

HEARING OFFICER FAY: -- through the undisputed topics. Compliance.

MR. WHEATLAND: Compliance is sponsored by Mr. Tetzloff and Mr. Davy. And we would move that it be received into evidence.

HEARING OFFICER FAY: Any objection?

MR. RATLIFF: No.

HEARING OFFICER FAY: All right, so
moved. Staff?

MR. RATLIFF: The staff testimony was prepared by Mr. Shaw and Mr. Greenberg -- Dr. Greenberg. We would move that that be moved into evidence.

But if I can just suggest, Mr. Fay, I actually think that since the parties have all discussed, pursuant to your order, what their issues are in this proceeding, perhaps we could just move the entire list of evidence with certain exceptions that we identify.

I believe those areas that are disputed have been identified and we could move all of the uncontested evidence at once, rather than going sequentially, perhaps, just for the sake of efficiency.

HEARING OFFICER FAY: Do you have any objection to that, Mr. Wheatland?

MR. WHEATLAND: No.

HEARING OFFICER FAY: All right. Let's hear what your list is of contested areas and see if it agrees with ours. What are the areas that you'd like to just move?

MR. RATLIFF: Well, the staff and the applicant have not been able to reconcile their
positions with regard to certain issues regarding air quality, particularly ammonia slip, and the condition that staff proposed with that regard. So that I would say that we should withhold air quality from being submitted.

In addition, Mr. Sarvey has indicated that he would like to cross-examine the staff biology witness on the issue of nitrogen deposition, and how that might relate to the issue of ammonia slip. I believe that's correct, isn't it?

MR. SARVEY: That's correct.

MR. RATLIFF: And the only other issue besides those two issues are an issue which really finds no place in any of the testimony of any of the parties so far as I'm aware. And that is the issue of the bicycle trail which has been damaged in the construction of the four-month license power plant. It was damaged, we believe, two to three years ago during construction.

There's been a great deal of discussion of that with the City of San Jose and with parties. And that really doesn't have anything to do with the evidentiary exhibits that we're entering now. I think it's a discussion which has
no home, but is a side issue that we have to
discuss today, and for which the Committee has
suggested it may wish to adopt conditions.

HEARING OFFICER FAY: Okay. I just want
to correct you that there's a fair discussion of
this in your own testimony on page 4.5-4 under
land use. And that is our basis for putting it
under land use. And that's why we wish to bring
it up in that way, because staff did analyze some
of the impacts there.

Okay, any other areas that --

MR. RATLIFF: No, I believe those are
the only areas about which there are extant
issues.

HEARING OFFICER FAY: There are a couple
other areas that the Committee wants to just get
some clarification on, and one is the one we're on
now, compliance. And also worker safety, because
there were some last-minute compromises and we
just want to have that clear for the record.

So, is there any objection from the
parties to receiving, by means of declaration, all
of the testimony on facility design, reliability,
efficiency, transmission system engineering,
transmission line safety and nuisance, public
health, hazardous materials management, worker
safety and fire protection, cultural resources,
geology and paleontology, soil and water
resources, waste management, noise,
socioeconomics, traffic and transportation and
visual resources?

Mr. Wheatland, any objection?

MR. WHEATLAND: No objection.

HEARING OFFICER FAY: Mr. Ratliff?

MR. RATLIFF: No.

HEARING OFFICER FAY: Mr. Sarvey, do you have any objection at all?

MR. SARVEY: No objection.

HEARING OFFICER FAY: Okay, so all the represented parties have accepted that, and the testimony in all of those areas that I just listed will come in supported by the written declarations that are in the record.

Thank you, that's very efficient. And we move all that testimony in at this time.

Moving back to compliance, I just want to, for the benefit of the Committee, understand the agreement that you folks reached on condition Com-8 that is noted, I believe you attached a copy of that to the staff statement filed on June 23rd.
MR. ELLER: Com-8's revision that was included in our attachment B represents a modification to a condition that was used in the Roseville project, and were discussed in the concerns of the applicant. We believe that our proposed attachment B and the revised Com-8 addresses those concerns.

And so we would move this as our amendment to compliance testimony for Com-8.

HEARING OFFICER FAY: So this amends your FSA testimony --

MR. ELLER: Yes, it does.

HEARING OFFICER FAY: -- and is consistent with the Roseville project. Mr. Wheatland, the applicant agreed to this change, as well?

MR. WHEATLAND: Yes, we do.

HEARING OFFICER FAY: Okay, thank you.

All right, with that we'll accept the staff's motion to submit its compliance testimony with that modification.

Is there objection? All right, hearing none.

We'll move ahead, then, to the next thing in order, absent air quality, would be
biological resources. Mr. Wheatland, did you want to put on a witness on that, or just introduce it --

MR. WHEATLAND: Well, --

HEARING OFFICER FAY: -- by means of declaration?

MR. WHEATLAND: -- we have witnesses available to answer any questions that the Committee or other parties may have.

HEARING OFFICER FAY: Okay, for Mr. Sarvey's benefit, why don't we swear your witness and get that on the record; get your testimony introduced. And then we'll move to the staff and he can cross-examine any of the witnesses that he wishes.

MR. WHEATLAND: All right, so we have three witnesses here today. If we could have them all sworn at this time.

HEARING OFFICER FAY: Okay, will the witnesses please stand. Would the court reporter please swear the witnesses.

Whereupon,

RICK TETZLOFF, DOUGLAS DAVY and GARY RUBENSTEIN were called as witnesses herein, and after first having been duly sworn, were examined and
testified as follows:

    HEARING OFFICER FAY: Thank you. And

the declaration accompanies the testimony --

    MR. WHEATLAND: Yes, --

    HEARING OFFICER FAY: -- supporting it?

    MR. WHEATLAND: -- we have the

declarations of Mr. Tetzloff and Mr. Davy on the
subject of biological resources. Mr. Rubenstein
is also here to testify today on matters involving
air quality.

    So these three witnesses are available
to answer any questions that the parties or the
Committee may have.

    HEARING OFFICER FAY: Great, thank you.
Rather than have cross-examination at this time, I
think we'll move to the staff and then you can,
Mr. Sarvey, ask your questions of anybody you
wish.

    Mr. Ratliff.

    MR. RATLIFF: The staff witness for
biological resources is Natasha Nelson.

    HEARING OFFICER FAY: Ms. Nelson, could
you stand and be sworn, please. Please swear the
witness.

    //
Whereupon,

NATASHA NELSON

was called as a witness herein, and after first
having been duly sworn, was examined and testified
as follows:

HEARING OFFICER FAY: Thank you. And

you wish to move Ms. Nelson's testimony --

MR. RATLIFF: Yes, we would, --

HEARING OFFICER FAY: -- into evidence?

MR. RATLIFF: -- although --

HEARING OFFICER FAY: All right, any

objection? So moved.

We've moved the staff and the

applicant's testimony on biological resources in.

And the witnesses are now available for cross-

examination. Mr. Sarvey.

CROSS-EXAMINATION

BY MR. SARVEY:

Q I'd like to ask, I'm assuming it's Mr.

Rubenstein, about data request number 19 on page

10 of the application for certification data

requests 1 through 57.

MR. WHEATLAND: If we may have just a

moment we'll pull that data request up here so we

can find it. What page, please, Mr. Sarvey?
MR. SARVEY: Page 11, Mr. Wheatland.

MR. RUBENSTEIN: I have that in front of me.

MR. SARVEY: Okay. On the top of page 11 where you're discussing the nitrogen deposition from phase 2, you say that the nitrogen from NOx, the 99 tons of NOx will result in 30.2 tons a year of nitrogen from NOx, is that correct?

MR. RUBENSTEIN: That's correct.

MR. SARVEY: And then from the ammonia, nitrogen from ammonia, the 118 tons of ammonia, you conclude that 97.1 tons per year of nitrogen will occur from the ammonia, is that correct?

MR. RUBENSTEIN: That's correct.

MR. SARVEY: So, the ammonia is a much larger contributor to the nitrogen deposition than the NOx are, is that correct?

MR. RUBENSTEIN: The ammonia is a much larger contribution to the nitrogen emissions, yes.

MR. SARVEY: Okay. And could you conclude from that in your expert opinion that the ammonia, itself, is a much larger factor in the nitrogen deposition and possible impacts to endangered species?
MR. RUBENSTEIN: Not directly because the depositional characteristics are going to be a little bit different. For purposes of our analysis, though, we did assume that nitrogen from NOx and nitrogen from ammonia had an equivalent impact.

And so based on that the answer to your question is yes, with that assumption, the nitrogen from the ammonia represents a larger fraction of impact.

MR. SARVEY: Okay, that's all I have for Mr. Rubenstein. I'd like to ask staff's witness one question.

BY MR. SARVEY:

Q In your expert opinion are the ammonia emissions a much larger factor in the nitrogen deposition than the NOx emissions from the LECEF?

MS. NELSON: What I understand as the depositional product that's used in the model is actually HNO3. And both NOx and ammonia can form HNO3. So they are equally able to do that, and were equally assumed to have 100 percent conversion to that depositional product.

MR. SARVEY: And the U.S. Fish and Wildlife Service is concerned about impacts to
endangered species in that area, and therefore
they're requiring mitigation for the ammonia
emissions as well as the NOx emissions for this
project?

MS. NELSON: Yes, they asked that the
nitrogen deposition that causes a change in the
serpentine environment where the endangered
butterfly, Bay Checkerspot Butterfly, is be
mitigated.

MR. SARVEY: So, in their opinion the
ammonia emissions are a significant impact to the
endangered species in that area, as well as the
NOx emissions, is that correct?

MS. NELSON: Combined, they look at both
molecules as a source for HNO3.

MR. SARVEY: Thank you, that's all I
have.

HEARING OFFICER FAY: All right, any
redirect of any of the witnesses? Mr. Wheatland?

MR. WHEATLAND: No.

HEARING OFFICER FAY: Mr. Ratliff?

MR. RATLIFF: No.

HEARING OFFICER FAY: Okay. I'd just
like to ask Ms. Nelson if you believe that the
conditions of certification that the staff has
proposed fully address the concerns of the U.S. Fish and Wildlife Service?

MS. NELSON: The U.S. Fish and Wildlife Service has their own standard. They are trying to both recover and promote populations of Bay Checkerspot Butterfly. And my testimony eliminates the CEQA impacts to less than significance.

If the -- it would be -- there were -- could be proactive things beyond CEQA that the applicant could undertake to help meet the criteria the U.S. Fish and Wildlife Service has for its own agency in promoting and preserving the population of endangered species.

So I would say that I can't stand for them now. They've not made a decision on what would be necessary to meet their own criteria. They only have an application at this point.

HEARING OFFICER FAY: But in your experience, once the State of California addresses the CEQA level concerns, does U.S. Fish and Wildlife Service, as a federal agency, go on to impose additional requirements in areas of sensitive species like this? Particularly with nitrogen deposition?
MS. NELSON: I'm not involved in the Pico siting case, so I actually can't speak to that. That's a similar siting case that's under their review. And at that time they accepted the modeling which showed the amount of mitigation land that would be required. And also accepted ERCs, which are the emission reduction credits, as helping reduce nitrogen in the area.

But, I believe they looked at additional monitoring for the plant species.

Now we didn't particularly, for example, have a condition asking to monitor the plant species of the land. But for U.S. Fish and Wildlife Service, who's trying to track items, that would be above and beyond what we had in CEQA. We only get a copy of that just as a courtesy. We didn't require it.

So, as an example of going beyond CEQA, that's an example. Something that fulfills their statutory requirements to track populations.

HEARING OFFICER FAY: Have they commented on your final testimony?

MS. NELSON: No, they did not. The last letter we received from them it looks like was July 16, 2004. We did have a meeting in September
2004 with them and the applicant, their biologist was there, as well, to introduce the concept of what application might come to them.

HEARING OFFICER FAY: All right.

MR. RATLIFF: Mr. Fay, if I could just add, --

HEARING OFFICER FAY: Sure.

MR. RATLIFF: -- the U.S. Fish and Wildlife Service requested that Calpine apply for an incidental take permit. And Calpine has done so in this case. This follows the pattern that we saw in the Pico case, where the Pico project also applied for an incidental take permit with regard to the habitat of the Checkerspot Butterfly.

And so Calpine has done that. The last I heard both of those permits are in process.

HEARING OFFICER FAY: Okay. And that process can take place beyond and after our process, is that correct?

MR. RATLIFF: Yes.

HEARING OFFICER FAY: All right. Okay, thank you.

PRESIDING MEMBER PFANNENSTIEL: I think Mr. Sarvey had a followup --

HEARING OFFICER FAY: Yes, go ahead.
MR. SARVEY: I'd like to have a followup question --

HEARING OFFICER FAY: Sure.

MR. SARVEY: -- concerning mitigation.

CROSS-EXAMINATION - Resumed

BY MR. SARVEY:

Q In your analysis -- this is for staff -- in your analysis you required the applicant to provide NOx ERCs instead of VOCs to offset the nitrogen deposition impacts to the surrounding serpentine habitat, that's correct isn't it?

MS. NELSON: Yes, I believe that's condition of certification 21?

MR. SARVEY: 22.

MS. NELSON: 22, thank you.

MR. SARVEY: And in condition of certification 22 there is a NOx ERC from the Potrero Power Plant in San Francisco. And the original issue date of that ERC is 9/30/85.

Can you explain how that provides CEQA mitigation, the curtailment of emission in 1985, to offset a emission in 2007, or 2006/2007 when this second phase goes online, when, in fact, there's a period of over 20 years separating that ERC and this mitigation for this impact 20 years
MR. RATLIFF: I would like to suggest that that would be a question better posed to our air quality witness. The concept of offsets and the appropriateness of their use is one that I think, I can't say, I mean Ms. Nelson never ceases to impress me with how broad her knowledge is in this area, but I don't know if she's prepared to answer that question.

HEARING OFFICER FAY: Are you comfortable answering the question, Ms. Nelson?

MS. NELSON: I developed this mitigation in consultation with the air quality staff, who does have a broader knowledge of how the emission reduction credit market works. And I would defer to their analysis.

I would add that the purpose really was to differentiate that NOx credits would have more of a benefit than POC credits. And that's why it was emphasized in the measure. It was not to say that we have a perfect market system.

HEARING OFFICER FAY: Okay. Mr. Sarvey, if you're interested, you could direct that question to Mr. Rubenstein, who is here as an air quality expert, although for the applicant.
MR. SARVEY: I believe I'd rather speak to staff's witnesses. They sponsored the --

HEARING OFFICER FAY: Okay. Does staff have --

MR. SARVEY: -- sponsored the testimony.

HEARING OFFICER FAY: -- an air quality expert here?

MR. RATLIFF: Yes, we have an air quality witness.

HEARING OFFICER FAY: Did you want to direct your question to --

MR. SARVEY: Yeah, I would like to, please.

HEARING OFFICER FAY: Okay, let's --

MR. SARVEY: I have to --

HEARING OFFICER FAY: -- swear in the air quality witness.

MR. RATLIFF: Before we go there I would like to -- I think you're indulging the parties in something that's akin to informal hearing procedure here, so I thought I might take advantage of that to ask Ms. Nelson to clarify the nature of why we put this particular condition in the biological section. Because there was a specific purpose for requiring NOx offsets as
opposed to just -- and specifying that they be specifically NOx offsets in this instance. And I don't think that that has been made apparent either to the Committee or Mr. Sarvey.

HEARING OFFICER FAY: Okay.

MR. RATLIFF: So, Ms. Nelson, could you explain that?

MS. NELSON: I'd like to find the page in the FSA if I could just have one minute.

HEARING OFFICER FAY: Sure. Sure. But while you're looking I'll just say, I hope it's understood that this is not a forum to reexamine the Clean Air Act, or the efficacy of District rules, that sort of thing. We're pretty much bound by that type of regime, and --

MR. SARVEY: It's a CEQA question.

HEARING OFFICER FAY: Okay, go ahead.

PRESIDING MEMBER PFANNENSTIEL: Meanwhile, though, I have one followup question.

HEARING OFFICER FAY: Sure.

PRESIDING MEMBER PFANNENSTIEL: And I think I'll direct my question to Mr. Wheatland. I take it, then, from this discussion that Calpine has applied to the U.S. Fish and Wildlife Service for a permit? When do you expect that might be
issued?

MR. WHEATLAND: Well, that's correct, we have applied for a permit. We have submitted a habitat conservation plan.

As to the timing of it I'm going to ask Mr. Davy, who is helping to process that permit, and he would be able to help us know when we would expect a response.

DR. DAVY: The timing for the Fish and Wildlife Service's response to our request for an incidental take permit is somewhat unclear. And I'm basing that statement on my participation in the Pico Power project, which was a very similar case in Santa Clara, for which there were very similar issues regarding the Bay Checkerspot Butterfly.

And in that case the Pico Power project did apply for an incidental take permit, purchased conservation land, and really implemented their conservation plan. And really the goal was to obtain the incidental take permit before the start of operation, because that's when the effects would take place and the deposition would really start to happen.

Unfortunately the Pico project has not
yet received the incidental take permit. So with
the Fish and Wildlife Service in a consultation
under section 10 of the Endangered Species Act,
it's a fairly long and involved process that
involves many steps at the federal end.

And on the basis of our experience with
the Pico Power project, we're not necessarily
hopeful that we will obtain the incidental take
permit very quickly.

PRESIDING MEMBER PFANNENSTIEL: Do the
permits come unencumbered, or does it come with
some compliance requirements?

DR. DAVY: Well, the compliance
requirements are for mitigation. The compliance
requirements are that you follow the habitat
conservation plan that you provide. And the
habitat conservation plan and the mitigation land
management plan are really the heart of the
permit.

So, really the permit requires that you
purchase conservation easement, deeded in
perpetuity to a conservation organization. And
provide sufficient endowment for the management of
that land in perpetuity for conservation purposes.

That's what the City of Santa Clara had
done for the Pico project, and that's also what Calpine has done for the Los Esteros project.

So, in essence, our mitigation is in place, and is functioning.

PRESIDING MEMBER PFANNENSTIEL: So, it's unlikely that the Fish and Wildlife Service will ask or require Calpine to go further than is already in your plan?

DR. DAVY: I believe that's very unlikely. We have had some discussions with Fish and Wildlife Service. And, you know, their indications have been that they seem to accept the level of mitigation that Calpine has provided and the methods and techniques.

PRESIDING MEMBER PFANNENSTIEL: Thank you.

HEARING OFFICER FAY: Mr. Davy, to date how long has it been since Pico first applied for its incidental take permit to the U.S. Fish and Wildlife Service?

DR. DAVY: Let's see, good question. I believe Pico applied and had provided all of the documentation necessary about the time that Pico started construction. That's probably been 12 to 18 months, something like that.
HEARING OFFICER FAY: Thank you. Ms. Nelson, are you ready to respond?

MS. NELSON: Yes. In my final staff assessment on page 4.2-19 I explained that emission reduction credits are required in Bay Area Air Quality Management District because of their restrictions on ozone. And because both NOx and POCs, which are sometimes also called VOCs, can reduce ozone, there's a special rule called Air District Regulation 2-2302 that allows for these credits to be interchanged among themselves.

And in looking back at the simple cycle facility condition of certification, which I believe was adopted in 2001?

MR. RATLIFF: Yes, --

MS. NELSON: Yes, --

MR. RATLIFF: -- at the commissioning 2002, I believe.

MS. NELSON: -- the Committee had adopted --


MS. NELSON: -- all POC credits. And so in discussions during a staff workshop, which I discuss on page 4.2-19 to 4.2-20, the applicant agreed that the 27.945 tons per year that would be
an increase because of the combined cycle units, would be bought as NOx credits.

Because the air quality follows the Bay Area Air Quality Management District's FDOC, and they have no bias on whether it's NOx or POC, specifically we determined it would be best as a condition of certification in biology, because it really was addressing the biology concern of nitrogen deposition.

MR. RATLIFF: Could I ask a couple questions, just to try to clarify this?

MS. NELSON: Um-hum.

MR. RATLIFF: Your condition 22 basically goes to a provision of offsets that are required by the Air District's FDOC, is that correct?

MS. NELSON: Yes.

MR. RATLIFF: And the District FDOC would just require nitrogen offsets, or offsets for those emissions, and allow them to be either nitrogen or POC, is that correct?

MS. NELSON: Yes, it would be open to either.

MR. RATLIFF: And so what your condition does is to narrow that to one category, nitrogen?
MS. NELSON: Yes.

MR. RATLIFF: All right, so it's --

MS. NELSON: It is only limited to --

MR. RATLIFF: -- a (indiscernible) --

(Parties speaking simultaneously.)

MS. NELSON: -- nitrogen and specifically to the credits that were available in that Bay Area Air Quality Management District, not in another district, which the air districts would also allow you to buy credits in an adjoining district. So.

MR. RATLIFF: We know the District requires offsets, but the District requires offsets for nitrogen emissions. It allows those offsets to be interchanged, to be traded between nitrogen and POCs.

The purpose of this biological resources condition was to restrict the election of the applicant only to offsets for nitrogen offsets. They're not allowed to be POCs, which is because nitrogen is the problem that affects the habitat.

That's the clarification that I think you need.

HEARING OFFICER FAY: Thank you very much. Mr. Sarvey, anything further?
MR. SARVEY: Just a question for Mr. Taylor to follow up on the --

HEARING OFFICER FAY: Okay.

MR. SARVEY: I wanted to ask him --

HEARING OFFICER FAY: Wait, the witness needs to be sworn.

MR. SARVEY: Okay.

Whereupon,

GABRIEL TAYLOR was called as a witness herein, and after first having been duly sworn, was examined and testified as follows:

CROSS-EXAMINATION

BY MR. SARVEY:

Q I just wanted to ask Mr. Taylor what is the CEQA efficacy of a 1985 emission reduction credit? I mean, to offset emissions that are going to occur 20 years later?

Do you think that that's valuable in offsetting the nitrogen deposition that's going to occur from this phase of this project?

MR. TAYLOR: I do believe it is effective. And I believe that the ERC program in the District is a long-term effort. And that a ERC that is produced at a certain time and then
used at a later time continually drives the market to generate more ERCs as the market consumes ERCs.

So the date of reduction in this case is not a serious concern.

MR. SARVEY: How about --

MR. TAYLOR: It's a valid credit.

MR. SARVEY: How about the location, being in San Francisco from the Potrero Power Plant? I don't understand how that affects nitrogen deposition in Santa Clara.

MR. TAYLOR: Well, per the wind directions in the region, the San Francisco region would be generally upwind of the Los Esteros site.

MR. SARVEY: So the --

MR. TAYLOR: Regardless, it is within the same basin, and the air patterns in the region do show a mixing between those two regions.

MR. SARVEY: Okay, thank you.

HEARING OFFICER FAY: Okay, thank you, Mr. Sarvey.

MR. WHEATLAND: Mr. Fay.

HEARING OFFICER FAY: Yeah, Mr. Wheatland.

MR. WHEATLAND: Could Mr. Rubenstein briefly address that same question, please.
HEARING OFFICER FAY: Well, does the Committee need anything more on that?

PRESIDING MEMBER PFANNENSTIEL: I do not.

HEARING OFFICER FAY: Okay, we don't want to cut off the applicant, but --

MR. WHEATLAND: Okay, then that's fine, that's great. Thank you.

HEARING OFFICER FAY: -- this was Mr. Sarvey's cross-examination.

MR. WHEATLAND: That's very good, thank you.

MR. BUIKEMA: The City of San Jose would like to comment on that issue, if possible.

HEARING OFFICER FAY: All right.

MR. BUIKEMA: We share the concerns regarding the adequacy of the proposed mitigation for nitrogen deposition that's proposed in the FSA --

HEARING OFFICER FAY: Excuse me, who's speaking, please?

MR. BUIKEMA: This is Richard Buikema from the Planning Department.

HEARING OFFICER FAY: Um-hum.

MR. BUIKEMA: And we emailed Mr. Eller
our concerns on Tuesday. And I would hope that
those would be put into the record for
consideration of the Energy Commission.

HEARING OFFICER FAY: All right, thank
you, Mr. Buikema. Anything further?

MR. BUIKEMA: No.

HEARING OFFICER FAY: Okay. All right,
anything more on biology?

Okay, we will conclude taking evidence
on that, and receive the motion -- grant the
motion of both the staff and the applicant to move
their evidence into the record on declaration.
And we appreciate Ms. Nelson's and Mr. Taylor's
assistance on this.

I do need to go back to worker safety,
because I skipped over that. Mr. Sarvey, yes?

MR. SARVEY: Could I be provided with a
copy of the City of San Jose's comments on
biological mitigation?

HEARING OFFICER FAY: Mr. Eller, can you
be sure that Mr. Sarvey --

MR. ELLER: I believe we sent that to
proof of service, but I'll double check that, and
I'll get you a copy of that.

MR. SARVEY: Thank you.
HEARING OFFICER FAY: Great, thank you. Thanks very much. And those comments will definitely be docketed and be part of the record, just so San Jose knows.

Moving back to worker safety, Mr. Ratliff or Mr. Eller, can you just make sure we have, for our record, the location where the agreed-upon change for your worker safety condition is located?

Because I believe there was a change to the FSA that changed worker safety-3 and -4 to be consistent with the Roseville decision, is that correct?

MR. WHEATLAND: If I may, I believe --

HEARING OFFICER FAY: Mr. Wheatland.

MR. WHEATLAND: -- I believe the recommendation was to make that new worker safety-3 condition consistent with the condition that the Commission adopted on worker safety for the Inland Empire amendment that was adopted last week.

In adopting that decision the Commission adopted new worker safety-3 terms that were agreed to by the staff and the applicant. And I believe the recommendation in this proceeding is to adopt a worker safety-3 condition here that is the same
as that condition.

And worker safety-4, then, would not
be -- would be deleted.

MR. ELLER: And actually we point out in
our filing, prefiling, that that would be the same
language that's contained in Calpine's June 21st
letter to staff as attachment A.

And I've compared that to the adopted
language by the Commission last week; that's on
page 2 under worker safety of our 23rd filing.

HEARING OFFICER FAY: Where is
attachment A?

MR. ELLER: This is attachment A to
Calpine's --

HEARING OFFICER FAY: Oh, okay.

MR. ELLER: -- June 21st --

HEARING OFFICER FAY: Calpine's
attachment A, all right.

MR. ELLER: Right. And I compared that
to the condition that was adopted last week by the
Commission and it's verbatim.

HEARING OFFICER FAY: Okay, so we should
use the language in Calpine's attachment A to
modify the language in the FSA?

MR. ELLER: Yes.
HEARING OFFICER FAY: All right, thank you.

MR. WHEATLAND: And that would be in place of worker safety-3 and -4.

HEARING OFFICER FAY: Thank you for that clarification. Anything further on worker safety? Can I assume that both the staff and the applicant would like to move their worker safety testimony in --

MR. WHEATLAND: We would.

HEARING OFFICER FAY: -- on declaration?

MR. WHEATLAND: We would, yes.

MR. ELLER: Yes.

HEARING OFFICER FAY: Any objection?

All right, so moved. That concludes worker safety.

Let's move to land use. One question that I think perhaps can be disposed of quickly is what is the applicant's plan for correcting the current zoning noncompliance, just so we can know what the timetable is.

MR. WHEATLAND: We have submitted an application to the City of San Jose. That application has now been accepted by the City and they have commenced their review process. And
that review process is undertaken based on the
results of the final staff analysis that serves as
the underlying environmental documentation for
that analysis.

Once the City has completed its review
on this action, we would like to submit that to
the Commission, have that incorporated in the
record of this proceeding.

Mr. Buikema is on the phone and he can
advise you as to their specific timetable.

HEARING OFFICER FAY: Okay. Mr.
Buikema, did you hear the question?

MR. BUIKEMA: (indiscernible).

HEARING OFFICER FAY: Okay. The
question was since Calpine needs a zoning
modification for the project, and they have now
applied to the City of San Jose for that zoning
change, when might that change be finalized, just
so the Commission can know when to expect some
evidence of the change.

MR. BUIKEMA: Tentatively scheduled to
be taken before the City of San Jose's Planning
Commission in July, late July, I believe the 27th.
And would go to, hopefully go to the City Council
in August, mid August, I don't know the specific
date at this point.

That's contingent on getting some revised plans from the applicant that we have yet to receive. But that's how we're anticipating the schedule to be at this point.

HEARING OFFICER FAY: All right. Thank you. And can you give us any sense of how difficult or challenging or controversial this change is from the City's point of view?

MR. BUIKEMA: At this point we don't anticipate any trouble getting this zoning approval. We're still struggling with the CEQA compliance issue, which is always the case with the CEC projects, but anticipate it going through smoothly.

HEARING OFFICER FAY: Okay. Great. Thank you very much for that.

And in what form does the applicant anticipate submitting evidence that the zoning has been put into conformance with the project goals?

MR. WHEATLAND: Well, we wanted to submit to you evidence of the City Council's action. But if you'd like a further declaration or other authentication of that record we'd be happy to provide that.
HEARING OFFICER FAY: Okay, if you could get an official copy of the resolution, something that could just come into the record just on paper.

MR. WHEATLAND: Um-hum.

HEARING OFFICER FAY: And then whenever that comes in we'll be able to receive it.

MR. WHEATLAND: Very good.

PRESIDING MEMBER PFANNENSTIEL: Mr. Fay, I assume, though, that it's understood that this application cannot be -- certification cannot be approved by the full Commission until that is in, so --

MR. WHEATLAND: Oh, yes, we understand and agree to that.

PRESIDING MEMBER PFANNENSTIEL: -- we need to wait until then.

MR. WHEATLAND: Yes.

HEARING OFFICER FAY: Right. Just for everybody's understanding, to certify a power plant the Commission has to find that the project complies with all laws, ordinances, regulations, et cetera. And zoning is an important part of that. So this change will have to be in effect before the final license can be granted.
Anything further on the zoning change?

MR. WHEATLAND: No.

MR. BUIKEMA: Mr. Fay, can the City ask a question?

HEARING OFFICER FAY: Certainly.

MR. BUIKEMA: I was just curious where is the requirement of the applicant to obtain land use approval fall within the CEC's process. I don't see any conditions of certification requiring that zoning change.

HEARING OFFICER FAY: Well, it's understood that the project has to comply with all laws, ordinances, regulations and standards. And so it's implicit that if it doesn't, and in this case I understand that the zoning anticipated the current megawatt level of generation, but not the proposed.

So in order to be granted a license the zoning has to meet the proposal. So, basically one of the findings that the Commission is required to make, if you were looking at a list of things the applicant must submit, then perhaps you didn't find it there because it's implicit. But the Commission must make that finding in order to grant the license.
MR. BUIKEMA: Thank you.

HEARING OFFICER FAY: Certainly.

Anything further on land use, at least as to the zoning change?

Now, we'd like to address the bikepath question. And I just recall for the record that this did come up in March of this year at the Committee Conference. And I believe Commissioner Pfannenstiel encouraged the applicant to try to resolve this before we got to this phase of the process.

And Mr. Sarvey voiced concern that it has not been resolved to date. So, I guess, Commissioner, would you like to say anything first or just see what the applicant has --

PRESIDING MEMBER PFANNENSTIEL: Well, I would like to just say, I guess at the outset, that I was surprised that it hasn't been resolved since March. I see that there has been progress, and I'm hoping to discuss with the City of San Jose where they see this going next.

I'm surprised simply because I didn't think we needed to -- I didn't think this was something the Commission needed to see again. But, here it is.
I have my going-in question on this, and maybe I should direct this to the City, is really what the total cost is expected to be for this. I think that the issue has been who will pay and who takes responsibility. But before we get there I'd like an estimate of the numbers we're talking about.

So, perhaps Mr. Brazil, who sent in the letter to me on this, could give me that estimate?

MR. BRAZIL: Thank you, Vice Chair. This is John Brazil from the City of San Jose. And the City has been working with Calpine representatives to reach a solution on this issue.

We initially conducted a cost estimate and a survey of ownership along the corridor and (indiscernible). The initial estimate turned out to be much higher than anticipated. And we took a closer look and found that we could perform some more basic repairs in a more cost efficient method that would allow us to bring the facility back to what we consider in a usable, functional state for approximately $23,000.

PRESIDING MEMBER PFANNENSTIEL: Thank you very much. And I also understood from your letter that you really weren't sure how long it
would take, but you anticipate in the next six
months. Is that still your estimate?

MR. BRAZIL: That's correct.

PRESIDING MEMBER PFANNENSTIEL: Well, I
guess then the question goes back to Mr. Sarvey,
who is the one who did raise this on behalf of the
Bicycle Coalition. And does it seem like six
months is resolving this issue?

MR. SARVEY: The issue, itself, has gone
on for almost three years now. And we don't feel
comfortable with anything other than the Committee
or something in the decision requiring repair of
the bicycle path.

And having Calpine being reimbursed by
the other so-called parties who damaged this
bicycle path, I have provided some testimony here
from somebody who witnessed the destruction, who
also happens to be an expert in asphalt repair.
And I have provided his testimony. And I have a
declaration here, I don't know if this was
docketed. But he estimates the damage at 40,000.
We don't want to quibble over the amount.

We just would like to see the Committee
resolve it in the decision, because we're not
comfortable. It's gone on three years already,
and we're not comfortable with the parties -- and
no offense to San Jose or Calpine -- but we feel
that this is damage from a power plant, and
obviously the Commission has always taken care of
any damage that resulted from any project.

And we'd like to see a condition of
certification that requires Calpine to repair the
bicycle path and get reimbursement from other
parties, if necessary, but we would like to see it
as part of the decision. And that's our position.

PRESIDING MEMBER PFANNENSTIEL: Mr.
Wheatland, do you want to comment on that?

MR. WHEATLAND: Well, yes, I do.
Everybody in this room, and those on the
telephone, want to have this issue be resolved.
And we're not here today to quibble about who
caused the damage. We're not here today even to
quibble as to the cost or the method of
allocation.

The applicant is in the process of
reaching an agreement with the City of San Jose to
insure that these costs, these repairs will be
made.

The only thing the applicant can't do is
repair the path, itself, because it is a City of
San Jose facility, and because it is in a Caltrans right-of-way. The City of San Jose must ultimately be responsible for making those repairs.

So, before this decision by the Commission we will be able to provide you with an agreement between Calpine and the City, whereby Calpine will reach an agreement with the City for the repair.

But unfortunately, the applicant can't provide you a specific timetable of that. It's solely within the control of the City.

PRESIDING MEMBER PFANNENSTIEL: Mr. Brazil, is your work schedule on this, which is sort of an undefined time, but for, I'm sure, a really good reason, I assume that that is not contingent on the funding. That the funding is agreed to and it really is just a matter of getting the work completed, is that correct?

MR. BRAZIL: That is correct, Vice Chair.

PRESIDING MEMBER PFANNENSTIEL: All right. Thank you.

HEARING OFFICER FAY: Have the parties received the testimony that Mr. Sarvey referred
MR. WHEATLAND: We have not.

HEARING OFFICER FAY: Do you have copies.

MR. SARVEY: Yes, I do.

MR. RATLIFF: We have --

HEARING OFFICER FAY: You can give it to the staff -- staff has received it?

MR. RATLIFF: Yes.

MR. WHEATLAND: Oh, is it just, Bob, what was in the statement?

MR. SARVEY: Mr. Beatty.

HEARING OFFICER FAY: Statement from who?

MR. WHEATLAND: Oh, if it's in with the statement, we have it.

MR. SARVEY: Yeah -- well, I think it was included later. It was in another submission. It's on the internet, but let me provide you some copies.

HEARING OFFICER FAY: Mr. Tetzloff was shown as cc'd on that.

MR. SARVEY: Would you like copies?

HEARING OFFICER FAY: Thank you. Mr. Sarvey, did you want Mr. Beatty's statement
included as testimony received based on the
declaration?

MR. SARVEY: Yes, I do.

HEARING OFFICER FAY: Okay. Let's give
Mr. Wheatland a chance to review that. Staff has
reviewed that. Does staff have any objection?

MR. RATLIFF: No.

MR. BRAZIL: Excuse me, Mr. Fay, this is
John Brazil.

HEARING OFFICER FAY: Yes, Mr. Brazil.

MR. BRAZIL: I apologize, I have a 10:00
meeting. I was wondering if there were any
additional questions for me before I depart.

HEARING OFFICER FAY: Let's accommodate
Mr. Brazil and ask any questions we have at this
time. Mr. Eller?

MR. ELLER: I had one question on your
letter to the Vice Chair yesterday. You indicate
that the City of San Jose will identify additional
funding sources to complete these repairs. Are
you going to be able to complete this in six
months absent other contributions, or is this
Calpine's -- Calpine the sole contributor at this
point?

MR. BRAZIL: At this point Calpine has
verbally agreed that, and San Jose has verbally agreed that we'll continue to pursue contributions from other entities, including Pacific Gas and Electric and Silicon Valley Power.

In the event that they should be unable or unwilling to contribute, Calpine would be willing to contribute a maximum of $23,000, which would allow us to complete the basic repairs to bring the facility back to a usable condition.

Now, in the long term San Jose has plans to make additional improvements. But that's beyond the scope of our discussion, I believe.

MR. ELLER: So your six-month schedule is based upon what you know right now?

MR. BRAZIL: Yes.

MR. ELLER: Thank you.

HEARING OFFICER FAY: Anything further, Mr. Ratliff?

MR. RATLIFF: Could I ask Mr. Brazil what are the steps that are taken to actually get to the repair. I mean, what has to happen before you can actually repair the bike trail?

HEARING OFFICER FAY: Did you hear the question, Mr. Brazil?

MR. BRAZIL: Yes, sir, I did. I'll
provide information I have available, the actual person who would be project managing this is out of the office this week. He's our trails coordinator, (inaudible).

But my understanding is part of the work is completed already; a title search and then a rough cost estimate has been prepared. The cost estimate would need to be refined. And then we'd need to get it on our construction schedule. At the moment our crews are back up, I believe, four to six weeks.

So we really wanted to, when we said approximately six months, we wanted to make sure we didn't over-commit. But at this moment we expect to anticipate to complete the basic repairs within six months.

HEARING OFFICER FAY: Mr. Brazil, is there anything in the City's view that Calpine could do, or the Energy Commission could do, to facilitate getting this repair done?

MR. BRAZIL: They've been cooperative to this point. I do appreciate their continued dialogue with PG&E and Silicon Valley Power. The City has only made initial contact with those entities. We'll be making additional contact, but
it's appreciated that Calpine, you know, encourages those entities to participate. I understand Calpine cannot obligate those agencies.

HEARING OFFICER FAY: Okay. Mr. Wheatland, do you have anything further to add to this?

MR. WHEATLAND: No, nothing further.

HEARING OFFICER FAY: Okay. Mr. Ratliff?

MR. RATLIFF: No.

HEARING OFFICER FAY: Mr. Sarvey, did you have anything more on the bike path?

MR. SARVEY: Just to reiterate that we'd like to see a condition --

HEARING OFFICER FAY: I think -- I think -- I hope --

MR. SARVEY: -- that's, I think, --

HEARING OFFICER FAY: -- you're convinced that the Committee's taking it very seriously.

MR. SARVEY: Oh, yeah, I'm very convinced and I'm happy to see that. It's just these people have gone on with this bicycle path for over three years and --

HEARING OFFICER FAY: I understand your
frustration.

MR. SARVEY: -- even six months seems like an extended time to us, but we understand the constraints.

HEARING OFFICER FAY: I think the applicant can anticipate a requirement for periodic updates as the Commission moves forward. And certainly the full Commission will want to know where we are in this process at the time that they review the final decision.

PRESIDING MEMBER PFANNENSTIEL: Mr. Fay, I'd like to thank the City of San Jose, specifically Mr. Brazil, for working with us on this. I think it's really important that this is an issue we do want the site restored to as it was before the construction. And we want to make sure that all of the people in the area get to use the facilities as they did before the construction.

So, thank you very much for both your letter and for participating in this hearing with us.

MR. BRAZIL: You're welcome; thank you.

HEARING OFFICER FAY: Thank you, both, Mr. Brazil and Mr. Buikema. Unless there's additional concerns I think that concludes our
land use questions regarding either the zoning or
the bike path issues.

So, I thank both of the representatives
from San Jose. The only other matter we will be
taking up, and that'll be at a later time this
morning, will be air quality related subjects. So
you can make your decision as to whether you want
to stay on the line or not.

I believe that the hearing will be in
recess until a representative comes from the Air
District.

MR. WHEATLAND: Before we go off the
record, --

HEARING OFFICER FAY: Yes.

MR. WHEATLAND: -- we have just received
copies of the FDOC. And during the break we'd
like to distribute copies of the FDOC that's been
received.

HEARING OFFICER FAY: So we have a
timely delivery --

(Laughter.)

HEARING OFFICER FAY: -- of the FDOC,
which I have no doubt that the staff and applicant
have thoroughly digested, or will by the time we
come back.
Mr. Ratliff, do you know -- have you had an update on when to expect the witness from the District?

MR. RATLIFF: Not this morning, but when I spoke to Steve Hill he said he would be driving from Berkeley, leaving shortly after 9:00. And so he expected to be here around 10:30.

HEARING OFFICER FAY: Okay. Mr. Sarvey, you had something?

MR. SARVEY: I just wanted to move my testimony in from Mr. Beatty, if possible.

HEARING OFFICER FAY: Okay. Getting back to that. Mr. Wheatland, have you had a chance to look at the testimony, the statement?

MR. WHEATLAND: We have, with the declaration of someone who have a love of biking, we have no objection.

HEARING OFFICER FAY: Okay, there's no object. So we receive Mr. Beatty's statement and his testimony, as if read, at this point, in the record.

We will take a 30-minute break and ask people to come back at that time. And I hope that we can introduce you to Steve Hill at that time. If not, we'll have further details.
We're in recess.

(Brief recess.)

HEARING OFFICER FAY: We're back on the record. During our recess Steve Hill from the Bay Area Air Quality Management District has joined us. And I'd like the court reporter to swear Mr. Hill, please.

Whereupon,

STEVEN HILL

was called as a witness herein, and after first having been duly sworn, was examined and testified as follows:

HEARING OFFICER FAY: Thank you. Mr. Ratliff, do you want to introduce the subject of air quality by asking Mr. Hill our standard questions under 25523 of the Act.

MR. RATLIFF: Sure.

Mr. Hill, the Energy Commission has to make a finding concerning the identification of the air offsets, and we have to get the Air District to certify that the air quality offsets have been identified and will or would be obtained in advance of when they would be required to be obtained by the District's own rules.

And we're going to ask you to sort of
certify on behalf of the District that that is the case.

MR. HILL: Yes, I can certify that the applicant does have the, as I identified, the credits that will be used to offset this facility. They're identified in the FDOC.

HEARING OFFICER FAY: Thank you. And in your view this will fully offset the emissions from the facility?

MR. HILL: Yes, that is correct.

HEARING OFFICER FAY: All right, thank you.

We're going to continue with our informal format to the extent that it's possible. And I talked to counsel about this, and we think what might work is just to begin having the applicant's witness summarize their testimony, and we'll move that in. And then the staff's witness summarize his testimony and move that in.

And then be a little fluid in how the questions go and the answers, that sort of thing. Is that acceptable?

MR. WHEATLAND: Yes.

MR. RATLIFF: Yes.

HEARING OFFICER FAY: Give that a try.
Good. Okay, Mr. Wheatland.

MR. WHEATLAND: Okay. Mr. Rubenstein.

MR. RUBENSTEIN: I'm not sure I understand. Do you want me to summarize my entire testimony or just the issue of --

MR. WHEATLAND: Well, I think it would be appropriate to have a brief summary of your overall testimony, and then have some discussion of the issue that is still in contention.

HEARING OFFICER FAY: Yeah, more specificity on the matter at issue.

MR. RUBENSTEIN: Thank you --

MR. RATLIFF: Before Gary starts could I just -- I don't know to what extent you've discussed this with Mr. Fay, but I wanted to explain that under the APA we are allowed to do informal hearing procedure.

And that allows us to escape from the devices of direct examination and cross-examination, and to go to something that is more informal.

Unfortunately, the rules -- or maybe fortunately, the rules for this are not very clear. And they're basically whatever the Committee wants them to be. And we have not done...
that in Energy Commission siting hearings in the past.

We have suggested it for today. We hope that it will work. If it doesn't work, you can make us go back to the normal process. But what we'd anticipated, to give it some structure, would be to have the witnesses summarize their testimony.

We will have three sworn witnesses here, Mr. Rubenstein, Mr. Hill and Mr. Taylor. But the other people at the table, including you and Mr. Fay, intervenors and advisors to the Commissioners, can ask questions and participate in the discussion as well, even though what you say is not testimony and what I say is not testimony.

PRESIDING MEMBER PFANNENSTIEL: Thank you, Mr. Ratliff.

HEARING OFFICER FAY: Okay, Mr. Rubenstein.

Whereupon,

GARY RUBENSTEIN

was recalled as a witness herein, and having been previously duly sworn, was examined and testified further as follows:
MR. RUBENSTEIN: In my testimony I discussed both the regulatory aspects of air quality compliance for the Los Esteros facility, as well as additional issues that arise under CEQA.

The project that's before us today is the conversion of a simple cycle facility to a combined cycle operation. And regulatory issues that have to be addressed include best available control technology, emission offsets, ambient air quality impacts, and the screening health risk assessment.

With respect to best available control technology, I believe that the project is being controlled to satisfy that requirement. The project conducted an experiment last December to evaluate whether additional reductions in NOx emissions could be achieved, and under what circumstances, beyond what we had previously believed to be best available control technology.

And based on that field experiment where we actually did lower the NOx emissions from one of the units, we proposed to the District, and in the District's final determination of compliance, they have accepted this lower NOx level with
provisions for excursions comparable to other
facilities that have been approved by both the
District and the Energy Commission.

And in addition with that an increase in
the allowable limit for carbon monoxide,
recognizing the fairly unique nature of the
experiment and the actual data that we obtained
during that period.

With those changes we believe that the
project does comply with the District's best
available control technology requirements. And
that conclusion is confirmed in the final
determination of compliance that the District
issued yesterday.

Second, with respect to offsets, and as
Mr. Hill has just indicated, the project is
subject to emission offset requirements, and those
requirements have been satisfied. The FDOC
identifies specifically the credits and the
sources of the credits that will be used to
satisfy the District's regulatory requirements.

With respect to air quality impacts, we
performed an air quality impact analysis which
was, I believe, confirmed by the staff,
demonstrating that the project will not cause
violations of any state or federal ambient air
quality standards.

The project does, of course, contribute
to existing violations in the area. That
contribution is mitigated on a regulatory basis by
the provision of emission offsets in accordance
with the District rules.

Finally, a screening level health risk
assessment was performed for the project. And
that indicates that the worst case increased
cancer risk and the acute and chronic health risks
are all below the regulatory levels.

Based on that I believe that the project
does comply with all applicable laws, ordinances,
regulations and standards with respect to air
quality.

Beyond those regulatory issues, in
addition we did perform a cumulative air quality
impacts analysis and concluded that again the
project would contribute, in conjunction with
other sources, to existing violations of air
quality standards, but would not cause any new
violations of those standards.

To address concerns by the staff with
respect to the mitigation of particulate impacts,
we have agreed to provide additional funding for particulate mitigation programs, comparable to those that were -- excuse me, have agreed to provide additional emission reduction credits in the form of sulfur dioxide credits to mitigate the additional PM10 that is emitted by the project, but which is not mitigated under the District's regulatory program.

With that, I believe the only issue that remains is the issue that's in dispute in the air quality area, and that relates to the treatment of ammonia slip.

As the Committee's aware, the staff has proposed a condition, AQ-SC-11, which would require that the facility replace the selective reduction catalyst or SC -- selective catalytic reduction catalyst, the SCR catalyst within 12 months after a 5 ppm slip level is exceeded based on certain terms.

The staff, I believe, has proposed this in their mind as a compromise because they would really rather see, and they've indicated in other proceedings, that they would prefer to see a 5 ppm slip level. Consequently, I view this really as a surrogate for a 5 ppm requirement. A little bit
harder, a little bit softer, if you will, than a flat limit, but nonetheless it is, in effect, a requirement that the plant be designed for a 5 ppm slip limit.

I respectfully suggest that the Committee needs to make three findings before they could approve AQ-SC-11. First is that the ammonia emissions from the project will result in a significant unmitigated air quality impact. The second is that this particular condition, this mitigation measure, would, in fact, reduce the extent of that significant impact. And third, that the mitigation measure is, in fact, feasible.

Let me discuss each of those separately. First, with respect to the significance of the air quality impact, I don't believe that there's any evidence in the record to support the conclusion that ammonia emissions from this project constitute a significant unmitigated air quality impact.

The staff's argument really consists of two disconnected points. The first is that ammonia compounds form particulate matter; and second is that particulate levels in the Bay Area
exceed state air quality standards.

Those two do not, together, rise to the level of demonstrating a significant air quality impact in my opinion. The reason is that the formation of particulate compounds from ammonia is something that is a balance between different chemical compounds in the atmosphere.

Those are ammonia compounds, ammonia ions on the one hand; and either nitrate or sulfate ions on the other hand. It would be sheer coincidence if at any particular point in time there was an exact balance in which all of the ammonia would be consumed in a reaction. In fact, in most parts of California there is either a clear surplus of ammonia compounds or a clear surplus of nitrate and sulfate compounds.

Air quality agencies have evaluated this issue as part of their PM10, PM2.5 air quality planning efforts, and have reached different conclusions in different parts of the state.

And the staff does not reach any unique conclusions in their testimony on this issue. They simply say because ammonia can form particulates, and because the area already exceeds state standards, therefore you have to mitigate.
And the key step that's missing here is they have not identified a significant impact.

The second finding I think the Committee needs to make is that the mitigation measure will, in fact, reduce the impacts in some way. And this, in many respects, is related to the first issue.

The only technical analysis that's been done on this issue for the Bay Area, to the best of my knowledge, was done by the Bay Area Air Quality Management District.

And in my testimony at page 12 I include a quote from the Bay Area District's determination on this issue in the matter of the East Altamont Energy Center, where they specifically stated that in the Bay Area they believe that formation of ammonium nitrate particulate matter is driven by the amount of nitric acid which comes from ozone and oxides of nitrogen, and not by the concentration of ammonia in the atmosphere.

Consequently, they concluded in this area that the reactions are not ammonia limited. Consequently, I believe that a reduction in ammonia slip levels from 10 ppm to 5 ppm would not reduce particulate levels in the Bay Area.
This is a little bit complicated, because as I said, different conclusions are reached in different areas. The South Coast Air Quality Management District, for example, has analyzed this exact same issue. And based on meteorology and emission patterns in that area they've reached the opposite conclusion. And, in fact, they feel so strongly about it that the South Coast Air Quality Management District has established a BACT requirement, a regulatory requirement, limiting ammonia slip to 5 parts per million. That is not the case in the Bay Area.

The San Luis Obispo Air District, which was another of the areas cited by the staff, that was the Morro Bay siting case, also has a BACT requirement for ammonia slip.

And, again, the point I'm trying to make here, and if you take a look at table 1 in my testimony, page 13, I summarize the differences between the different districts. Many air districts, not all air districts, but many air districts specifically evaluate and regulate, under their BACT requirements, ammonia slip levels. The Bay Area District is one of the districts that does not, because of the conclusion
they made that particulate formation in the area is not limited by ammonia.

So, consequently I don't think that you can make the second finding that lowering the ammonia slip limit would mitigate PM10 impacts.

The third question that I think you have to address is whether mitigation is, in fact, feasible. This is a particularly difficult one. I've testified in enough proceedings before this Commission where this has been an issue. And I have a good enough recollection of what I've said that this will be the first time, I think, I've ever said that I am questioning the feasibility of meeting a 5 ppm slip level.

In many other proceedings the question has been put to me, and I've said unquestionably, it is feasible, but I didn't think it was necessary.

And in this case my concern really relates to the unique circumstances that we have here, not building a new power plant here. We have an existing facility with existing turbines. And when we did the experiment last December to see whether we could reduce NOx levels, I was frankly surprised at how quickly and how much the
carbon monoxide level increased, which is an
indication of what's happening with combustion in
the turbines.

We're pushing these units in order to
meet the 2 ppm NOx level that we've agreed to.
We're pushing these units far beyond what the
turbine manufacturer has designed them to do. And
I think it would simply be imprudent to assume
that while we're straining the turbine to reduce
NOx levels, and in addition we're going to have to
increase the performance of the SCR catalyst.
During experiments we had catalyst efficiencies of
84 to 85 percent, which are pretty typical -- to
meet a 2 ppm NOx level. In addition to dropping
the NOx from the water injection, we're also going
to have to get a 90 percent or better efficient
catalyst.

I am concerned that we're going to be
adding one constraint too many if, on top of all
of that, we have to reduce the ammonia slip level
because that, in turn, will restrict the operating
flexibility for the SCR system.

And I think when we put all of that
together the conclusion I come to is that AQ-SC-11
is inappropriate in this case because the staff
has not identified a significant air quality impact related to ammonia emissions.

Second, because the reduction in ammonia slip levels would not, in fact, mitigate any impact.

And third, because I think there are serious technical questions about the feasibility of achieving that level on a consistent basis at this site.

And that concludes the summary of my testimony.

HEARING OFFICER FAY: Okay. Why don't we move to the staff testimony, and then just allow the questions to go as people want.

Mr. Ratliff, do you want to introduce your testimony.

MR. RATLIFF: Staff witness is Gabriel Taylor.

Whereupon,

GABRIEL TAYLOR was recalled as a witness herein, and having been previously duly sworn, was examined and testified further as follows:

MR. TAYLOR: Good morning. My testimony was submitted in my final staff assessment. As
stated in the staff assessment I have not had a chance to review the District's final determination of compliance. And I would likely submit an addendum to my staff assessment at some point, depending on the information that I find in the final determination of compliance. That is not set in stone, but it is probable.

HEARING OFFICER FAY: Let me interrupt you, Mr. Taylor. When could we expect that addendum?

MR. TAYLOR: I would estimate at the outside within two weeks.

HEARING OFFICER FAY: Okay, good.

MR. TAYLOR: I would certainly try to accelerate that.

HEARING OFFICER FAY: Let’s say within two weeks. That way the parties can comment in their briefs.

MR. TAYLOR: Certainly.

MR. RATLIFF: We had hoped to have Mr. Hill also explain the FDOC and the differences between the FDOC, such as they area, and the PDOC.

HEARING OFFICER FAY: Look forward to that, yeah.

MR. TAYLOR: With that I'd like to move
on to the only issue that I believe is still in contention, which is the issue of ammonia slip.

Staff believes that -- or I believe that the PM generated from ammonia slip is a significant issue for numerous reasons. First of all, numerous scientific studies over the past few years have shown that particulate matter is increasingly of concern as far as human health is concerned.

In particular, the finer and ultrafine portions of particulate matter are of significant concern, and greater concern than the larger particulates.

Secondary PM, generated from ammonia reactions in the atmosphere are almost -- mostly the finer portions. So they are much more significant concern than the direct PM emissions from a facility, or any source.

I'd like to address Mr. Rubenstein's three points he said that the Committee needs to make these three findings. I think that as far as a significant impact, it is clear that the facility emits the ammonia, and the ammonia, basic atmospheric chemistry dictates that ammonia will react with atmospheric compounds of nitrogen and
sulfur to form particulates. This is not a point that is in contention.

I don't think that the applicant has provided any evidence to show that the ammonia emitted from this facility will be different from any other ammonia that's emitted into the atmosphere and will react with the compounds, the reactants that it comes in contact with to form these particulates.

The second point was to reduce the impact, or to mitigate this impact. I don't believe, if we could specify the exact impact that was generated from the facility from the ammonia emissions, we would require specific mitigation measures in order to counteract the impact. This would probably be in the form of particulate emission reduction credits.

However, in this case we cannot specify the exact impact. So in order to mitigate this impact we recommend a reduction, or at the best, possible reduction of the emissions, as opposed to a direct mitigation.

So we are not recommending mitigation, but rather minimizing the emissions from this facility. And this actually leads into the
feasibility issue.

Both EPA and ARB have on record stated that they believe that 5 ppm should be the correct ammonia slip level for well over five years. This has been an option on SCR catalysts for ammonia slip at or below 5 ppm, even as low as zero ppm really, for many many years.

The technology is capable of meeting this. Mr. Rubenstein has correctly stated that the applicant underwent an experiment on their turbine in order to determine whether or not this would be feasible in the behavior of the combustion system.

I think that's admirable to undergo this, have a real testing, however I would like to point out some problems that I see with that testing. First of all, this was conducted on a simple cycle turbine, not on the combined cycle turbine, which is what we are discussing today.

Second of all, I do believe that this is a high temperature catalyst; this is actually a different piece of equipment than what will be used on the combined cycle turbine.

The District's FDOC, and PDOC before this, has a more thorough discussion of the
difference between a high-temperature and low-
temperature catalyst.

In general, low-temperature catalysts are more efficient than high-temperature catalysts. And so, since it is an entirely new piece of equipment I believe that it will be designed to the necessary parameters in order to achieve what is required.

It's correct that for the past few years staff has been pushing, based on the EPA, based on the science, showing that PM is a significant health concern, and based on recommendations from both the federal and the state air experts, a 4 or 5 ppm slip. Staff has pushed this for at least two or three years now on most cases, if not all cases, with varying levels of results.

However, at this time we believe that the technology is able of meeting it. And that the significant concern is there from the particulate matter, so it should be done.

However, the applicant has understandably pointed out the difficulties with an existing piece of equipment. And before this time we have discussed this extensively. And we have agreed to essentially compromise by proposing
the same condition that was previously approved, recently approved for the Roseville Energy Center case, which is the condition that allows the ammonia slip to exceed the 5 ppm limit up to 12 months after, giving the project owner time to retrofit their facility.

We believe that that is a sufficient control because source testing has shown that new catalysts, or catalysts recently after retrofit, emit around approximately 1 ppm of ammonia. This is existing catalysts both for Los Esteros and for other facilities. And I have the source testing data from Los Esteros that shows approximately 1 ppm from the relatively new catalyst.

And as the catalyst degrades, that emissions increases. So we believe that this condition, this condition that was approved for Roseville, will allow the facility the flexibility to retrofit their catalyst after it violates that 5 ppm. But the average, long-term emissions from this facility of ammonia will be minimized.

Now, this is correct, we can't exactly calculate the emissions from this. So, mitigating it directly is difficult because we can't agree on the exact number. But minimizing this to the best
that technology is capable of, I think, is the right decision.

That's the summary of my testimony. I'm prepared to answer specific questions on the science.

HEARING OFFICER FAY: I wonder if it might not be best to get Mr. Hill to sponsor the FDOC. He can then -- we have those issues before us, as well, before we start questioning. Is that all right with you, Mr. Ratliff?

MR. RATLIFF: Yes.

HEARING OFFICER FAY: Okay.

MR. RATLIFF: Mr. Hill, was the FDOC, the final determination of compliance, prepared either by you or under your direction?

MR. HILL: Yes, it was.

MR. RATLIFF: And just for the Committee's benefit, can you explain -- have you been sworn in?

MR. HILL: Yes.

MR. RATLIFF: I thought you had.

MR. HILL: Yes.

MR. RATLIFF: For the Committee's benefit, can you explain what your duties and responsibilities are with the Bay District?
MR. HILL: Yes. I'm the Manager of the Permit Evaluation Section. That means that I am Supervisor and Manager of the air quality engineers who review industrial permit applications, applications for district permits within the Bay Area, all of the power plant permits are reviewed by staff who report to me.

MR. RATLIFF: And am I correct that the Bay District published the FDOC yesterday?

MR. HILL: Yes, that is correct.

MR. RATLIFF: Could you describe the differences between the final determination of compliance and the earlier preliminary determination of compliance, assuming there are some.

MR. HILL: This process has been unusual in that we have issued two preliminary determinations of compliance. The principal difference between the first and the second was in the second we evaluated -- we applied a best available control technology analysis to the proposed operation, and presented our conclusions in that.

The differences between the FDOC and the second PDOC are minimal. Basically we responded
to comments from various parties. We evaluated additional data sets that were brought to our attention. The conclusions in the FDOC are essentially the same as in the PDOC regarding best available control technology, offsets and the other issues.

So the differences between the FDOC and the PDOC is some additional analysis looking at some additional examples that were brought to our attention.

MR. RATLIFF: Does that include, for instance, carbon monoxide emissions --

MR. HILL: Yes.

MR. RATLIFF: -- that result from -- so there's further substantiation in view of the carbon monoxide levels -- BACT in this determination --

MR. HILL: Yes, that is correct.

MR. RATLIFF: I have no further questions, but perhaps the Committee does?

HEARING OFFICER FAY: Okay. Well, I think some questions may generate as we move around.

Mr. Wheatland, did you want to -- let you begin with some questions, although we're not
conducting formal cross-examination?

MR. WHEATLAND: Well, yes, in our informal mode I think perhaps we might also like to hear from Mr. Hill on this question of the ammonia slip.

HEARING OFFICER FAY: Certainly. Would you like to comment?

MR. HILL: Yeah, I can talk a little bit about what the District knows about the ammonia slip issue.

The District does have some regulatory authority over ammonia, but not a lot. The basis for our current regulatory authority over the ammonia slip essentially is direct impacts from health risk and from odors.

We limit, in the permit, the ammonia slip to the proposed levels of 10 parts per million because the risk screen was based on that assumed level. And so in order to enforce and protect the risk assessment, we limit the emissions to that level.

Regarding the secondary particulate formation, the District's current understanding is that in the Bay Area that the formation of secondary particulate from the reaction of nitric
acid and ammonia is limited by the presence of 
nitric acid in the air. That increased levels of 
ammonia do not result in increased levels of 
particulate.

There is an atmospheric chemical 
reaction of nitrogen oxides going to nitric acid. 
And that appears to be the rate-limiting step in 
the Bay Area. And therefore that reducing 
nitrogen oxides might contribute to reduced 
particulate, secondary particulate concentrations. 
But that reducing ammonia emissions will not.

This conclusion is based on a study that 
the District did about ten years ago. We did some 
monitoring and modeling in San Jose and in 
Livermore. And in both of those areas we 
determined that this nitrogen oxide to nitric acid 
conversion process was the rate-limiting step and 
controlled the production of particulates.

We've also done some statistical 
analysis of trends in the Bay Area of both ambient 
nitrogen oxides and ambient nitrate 
concentrations. And they both show a significant 
downturn over the last decade or so. And they 
seem to track each other. Now, correlation's not 
causation, but it certainly is evocative that the
nitrogen oxides and the nitrate concentrations seem, the trends are both going down and both seem to match each other fairly well.

MR. RATLIFF: Did you mean ammonia?

MR. HILL: No.

MR. RATLIFF: Is the ammonia trend down, or is it just --

MR. HILL: I don't know what the ammonia trend is. I just know about the NOx and the nitrate. I don't have information on ammonia.

MR. RUBENSTEIN: Steve, over the same period of time what would you estimate was the trend in ammonia emissions?

MR. HILL: I can't -- I don't -- I can't answer that question.

HEARING OFFICER FAY: Do you have any knowledge about during that period if there's a trend in particulate formation, especially fine particulates?

MR. HILL: My understanding is that that has been fairly stable, but, no, I can't answer that question for sure.

HEARING OFFICER FAY: And there's other sources of these, as well, aren't there?

MR. HILL: Yes, there are other sources.
There's --

HEARING OFFICER FAY: If you have 2.5 --

MR. HILL: -- the fine particulate

problem that has been alluded to in other
testimony is something that we are currently
actively, very actively looking at. We are in the
process of putting together a plan for reduction
of particulates in the Bay Area. It is an issue
that is of continuing and rising concern. The
more we know about it the more concerned we get
about the fine particulate concentration issues.

And so we're developing plans for
reduction of fine particulates. NOx emission
reductions will almost certainly be a component of
that effort.

There's also formation of sulfates.
There are direct emissions from combustion. There
are a number of sources of fine particulate. And
all of them will need to be addressed in order to
reduce the levels to acceptable.

HEARING OFFICER FAY: Is it fair to say
that you would agree with Mr. Taylor on the
importance of the need to reduce these fine
particulates in terms of health concerns?

MR. HILL: Yes. The District's position
is that reducing the fine particulates is necessary for the quality of life in the Bay Area, yes.

HEARING OFFICER FAY: But you believe that reducing ammonia is not the most direct way to accomplish that?

MR. HILL: With the current ratios of nitric acid and ammonia in the atmosphere, that reducing ammonia is not likely to reduce the fine particulate concentrations.

HEARING OFFICER FAY: And the fact that, I mean you obviously meet with your colleagues throughout the state from time to time. Have you had exchanges on this, discussions about why they have different standards, for instance in the South Coast District?

MR. HILL: Well, remember, the South Coast has actually a NOx problem. They have a NOx attainment problem. Their NOx concentrations are substantially higher than ours, and different from ours.

Their NOx concentrations may be high enough that they don't have an excess of ammonia. I have not discussed this particular issue in detail with them. But that's certainly a
plausible explanation as to why their atmospheric chemistry is different than ours. It's a different starting point.

HEARING OFFICER FAY: Mr. Rubenstein, the staff cites, or Mr. Taylor cites in his supplemental testimony on page 1, eight different projects issued by the Commission -- licenses issued by the Commission that he said required a 5 ppm ammonia slip in combination with a 2 ppm NOx limit.

So, why should the Commission now be comfortable veering away from that fairly substantial precedent in allowing a higher level of ammonia slip for this project?

MR. RUBENSTEIN: If you take a look at my testimony, in particular at table 1 on page 13, you will see a more complete list than just the eight projects that staff identified. And I do not see a trend of the Commission imposing a 5 ppm slip level.

Of the eight projects that Mr. Taylor identified, four of those are located in the South Coast Air District which, as I said, has a regulatory BACT requirement of 5 ppm. Morro Bay is in the San Luis Obispo County Air District,
which also has a regulatory requirement of BACT for ammonia. And in the other cases it's my understanding that the applicant proposed a 5 ppm level, not that it was imposed by the Commission.

With respect to recent decisions, if you take a look at the Cosumnes decision in 2003 in the Sacramento Valley Air Basin, the staff had proposed a 5 ppm slip level, and the Commission determined, with support from the Sacramento Air District, that a 10 ppm level was appropriate.

If you take a look at the Woodland 2 project for the San Joaquin Valley Energy Center, again you'll see 10 ppm slip levels that had been approved by the Commission.

I think that to date the Commission's trend has, in fact, been to support either an applicant's proposal, for whatever reasons, for lower ammonia slip levels; or alternatively, support a determination by the Air District.

I frankly haven't seen a trend where the Commission has been uniquely imposing a 5 ppm slip level on projects.

HEARING OFFICER FAY: Are you familiar with the Roseville case, the determination in that case?
MR. RUBENSTEIN: Generally I am, yes.

HEARING OFFICER FAY: If I recall correctly, the staff offered this flexibility to compromise, and it was accepted by the applicant, is that correct?

MR. TAYLOR: That's correct.

HEARING OFFICER FAY: Okay. And that was not required by Sacramento, was it? Or was it?

MR. TAYLOR: I believe that was the result of staff requesting 5 ppm and there were discussions similar to this one. The applicant in that case agreed to accept the equivalent to AQ-SC-11.

HEARING OFFICER FAY: Okay. Now, is this area, meaning the Sacramento area or the Roseville area, dramatically different in air quality components regarding, you know, the nitrogen load and the ammonia load?

MR. TAYLOR: I'm not sure if the Sacramento area would be classified as ammonia rich or ammonia poor. Probably among the (inaudible) but (inaudible).

HEARING OFFICER FAY: And if it's ammonia rich, let me understand which direction
that moves the equation.

MR. TAYLOR: That would put that region similar to the Bay Area.

HEARING OFFICER FAY: So even though upwind of the Bay Area is the ocean, what is it, the relative low NOx that makes it more ammonia rich than say the South Coast District?

MR. TAYLOR: That's correct. Although I would like to point out that I am skeptical of this term as ammonia rich versus ammonia poor. Since ammonia is a fairly active compound, and though there has been some discussion of limiting reactions here, that is -- while that's true in the laboratory where you actually have a reaction that precedes the completion wherein one reactant's completely consumed, I think that is an over-simplification of an air basin to look at it as a single beaker, so to speak.

There are numerous sources and sinks for both of these compounds. And so, for instance, plants both generate or emit ammonia depending on the ambient concentrations of ammonia, and NOx sources from mobile sources, or from any combustion source. It's a much more complex issue.
And this is the reason that staff did not do a calculation that specified a specific quantity of PM10 mitigation, but rather is continuing a long-term effort to push for a 5 ppm slip limit, which we believe is technologically feasible and the correct limit for environmental mitigation.

HEARING OFFICER FAY: But I gathered from --

MR. TAYLOR: So to get back to my issue -- go ahead, go ahead.

HEARING OFFICER FAY: Well, I gathered from Mr. Rubenstein's testimony that there's a logical reason that different Districts have pursued different requirements. And that's based on their different air quality regime within their basin.

Do you disagree with that?

MR. TAYLOR: I'm skeptical of that conclusion, yes. I believe that ammonia emitted into the atmosphere, it's a very reactive compound and it has a potential to combine with the reactants to form particulate.

I think that if you add a reactant, even if it's in excess to a reaction, it will
accelerate the reaction. And I believe that the particulate that's formed is no longer influencing that reaction.

And further, I believe that you'll have localized regions of one reactant being in excess or not in excess. For instance, you might have regions nearby combustion sources in the Bay Area which will be very rich in NOx or SOx, sulfur or nitrogen compounds. And the ammonia entering those regions will react with those compounds to form particulates.

So I think it's simply an over-simplification to say that the 118 tons approximately, 117 tons that the Los Esteros facility is permitted to emit will produce no particulate. I think that's incorrect and an over-simplification.

HEARING OFFICER FAY: Okay.

PRESIDING MEMBER PFANNENSTIEL: Mr. Rubenstein, back to the AQ-SC-11, I understand that you think that that is essentially unnecessary. You don't see a need for that because of everything else you talked about.

I'd like to, though, go to the feasibility question. Because if the Committee
and the Commission did find that it was necessary, then there's what looks like a compromise on the table. But you don't find that to be a technologically feasible solution in the long run? And I'm not sure I actually heard you say it that way. You talked about that reducing down to some level was not technologically feasible in the long run.

Does that apply also then to the proposed condition?

MR. RUBENSTEIN: It does. And perhaps I can explain a little bit more --

PRESIDING MEMBER PFANNENSTIEL: Yes, please.

MR. RUBENSTEIN: -- why that is. We have a fairly unique situation here with respect to existing turbines where we have explored what it would take to meet a 2 parts per million NOx level, which is pushing BACT beyond where it was when this plant was first built by quite a wide margin.

To do that the plant has to inject more steam into the combustion turbine than is recommended by the turbine manufacturer. That has a couple of side effects.
One is that it increases CO emissions, hence the request for the increase in CO level. Second, that decreases the plant's overall efficiency. And so for every megawatt hour there will be a little bit more fuel that's used. And third, it substantially increases wear and tear on the turbine combustors, themselves.

If you want to minimize CO emissions and minimize fuel consumption and minimize combustion wear, and still comply with all of your limits, given how far this unit has to be pushed, you would exercise the SCR catalyst to the maximum extent possible.

You might get a catalyst that's designed for 90 percent efficiency. As I indicated, the actual observed efficiency for the other units was 85 to 86 percent. I don't agree with Mr. Taylor's characterization about the difference between high and low temperature of units, but that's not the point here.

The best guarantees you can get for SCR performance are on the order of 92 to 93 percent. It's, if you will, going from 60 percent efficiency to 80 percent efficiency doubles the amount of catalyst; going from 80 percent to 90
percent doubles the amount of catalyst again.
You're on an exponential curve. Getting to about
92 percent is about the best you can do.

When a catalyst is new it might have an
efficiency as high as 95 percent. And it will
quickly taper off to something close to its
designed level.

At this plant if you want to minimize CO
emissions, minimize fuel consumption and minimize
combustor wear you will maximize ammonia injection
use within the allowable permit limit in order to
maximize the efficiency of the SCR system, take
advantage of that new catalyst efficiency, and
drive the NOx down that way.

As the catalyst efficiency degrades, if
you still want to minimize CO emissions, minimize
fuel consumption, minimize combustor wear, you
will increase the water injection rate in order to
keep everything in balance.

And if we had this limit, this condition
in place, it means that rather than optimizing
this unit to a slip level as high as 10 ppm, it
would have to be optimized to a level of only 5
parts per million.

This is not the way that I think any
other plant that you've seen before this
Commission is going to operate. And it's because
of the unique combination of the NOx limit, the CO
limit in the existing units.

Consequently, the 5 ppm limit in AQ-SC-11 for this plant will function as an effective
limit. And, in fact, the entire process control
system will have to be designed to meet that,
resulting in higher CO levels, higher fuel
consumption and more frequent combustor
maintenance on top of the fact that the SCR
catalyst, itself, will have to be replaced more
frequently.

So that's why I think technologically
this is somewhat of a unique situation.

PRESIDING MEMBER PFANNENSTIEL: May I
ask Mr. Taylor to respond to that. You talked
some then about the different kinds of catalysts,
the high temperature, low temperature, and that
the low temperature would be more efficient than
the one you assumed they had tested?

MR. TAYLOR: The current catalyst on the
facility is a high-temperature catalyst. And so
when they retrofit the facility to a combined
cycle they'll have to replace that with a more
appropriate catalyst. Presumably that catalyst would be designed to whatever permit limit that they're required to meet. And we believe that the technology is capable of achieving a 5 ppm.

Further, just to comment on this, the combination of NOx, CO and ammonia is definitely the three are related. The District, in their preliminary document, I believe, in the final document have addressed that, and have given the applicant the leniency of a 9 ppm carbon monoxide emissions rate.

That's higher than virtually, if you see in my supplemental testimony I listed all three pollutant emissions limits. And the highest of any of them is 4, I believe.

The Roseville case, again with the same condition, is at 2 ppm NOx, 4 ppm CO, and 5 ppm, a modified 5 ppm ammonia slip rate, which is a more stringent emissions rate effectively than the one that we are proposing -- that is being proposed, I should say, since we don't have control to specify the BACT for CO on a facility. But the District has set the BACT for CO at 9 ppm. So that gives them more flexibility to achieve this.

MR. RATLIFF: And is that an LM6000?
MR. TAYLOR: I believe it is, yes.

MR. RATLIFF: Okay.

MR. TAYLOR: Same type of turbine.

MR. RUBENSTEIN: Gabe, do you know if the Roseville unit uses dry low-NOx combustors?

MR. TAYLOR: I'm not sure what type of combustors it uses, no.

But again, while we are talking about existing equipment, we're also talking about a major retrofit of that existing equipment. So, the technology can meet this and --

PRESIDING MEMBER PFANNENSTIEL: Right, and that's what I wanted to ask, go back to Mr. Rubenstein, on the technology question.

MR. RUBENSTEIN: I'm sorry, Commissioner Pfannenstiel?

PRESIDING MEMBER PFANNENSTIEL: I wanted to go back on the technology question. Mr. Taylor believes that the new technology will allow you to do this, and you're saying that it really won't. That the new technology is not really going to make a difference in this.

MR. RUBENSTEIN: We have already, if you will, taken into account better catalyst efficiency in our agreement to use a 2 ppm NOx
level. During our experiment last December we did not achieve 2 parts per million NOx. The lowest we got, I think, was 2.7.

So we are counting on that higher efficiency catalyst on the order of 90 percent or 92 percent to enable us to meet a real NOx level of 1.8 parts per million, which then gives us a 10 percent compliance margin.

But part of the concern here, I think, comes from not just experience with this experiment, but Calpine's experience broader. Calpine has one of the largest fleets of engines in operation in California. And this has actually been an issue that we've discussed with the staff before.

Getting vendor guarantees isn't as good as real world experience. And while the statements that Mr. Taylor made earlier about how, well, typically an SCR system will have ammonia slip levels of 1 to 2 parts per million when the unit is new, that's exactly right. Except that at Sutter they were between 5 and 10 parts per million when the units were brand new. At Metcalf, it's my understanding, on very recent tests with a brand new plant, it's about 4.5 parts
There are a lot of other factors at play here, and the fact that you have a vendor guarantee saying, ah, yes, we're going to meet 5 parts per million doesn't assure you that in fact you're going to do it.

And Calpine, as an applicant, is, I think, perhaps more conservative than some other applicants who may agree to these conditions, having never built a modern plant. Simply because of their experience in seeing the relationship between what vendors might guarantee and what real world performance is.

That's why, when you take a look at the submission that we made in December, it wasn't just, gee, it was nice. It was, we need some real data. Last December we knew we could go to a vendor and get a guarantee for 5 ppm ammonia slip level and 2 ppm NOx. There's no question about that.

But that wasn't the issue. The issue was could we, in fact, meet that level and meet it day-in and day-out. And I think that's really the difference between what I'm presenting and what Mr. Taylor is presenting.
HEARING OFFICER FAY: Mr. Rubenstein,
are there any approachable modifications that
would make the staff approach more palatable? For
instance, if the window wasn't 12 months, but was
24 months, or something like that.

Does that make it more manageable from
an operator's point of view?

MR. RUBENSTEIN: I don't see that it
does because the issue wasn't the timing of how
long it would take to replace the catalyst. If
you, in fact, have a 5 ppm limit, than having 12
months to replace the catalyst is, I think,
technologically reasonable. Unless there's
another crunch where people are building several
hundred power plants, then it might take a little
longer.

But 12 months is pretty reasonable. The
problem is that that would change the plant's
entire control system for emissions to make sure
they're 5 ppm all the time. And that's where we
get into the other adverse impacts, the higher CO
level, the higher fuel consumption and the
increased combustor wear.

HEARING OFFICER FAY: And as the
Commission is looking at these various emissions,
is there some hierarchy of concern in terms of public health? I mean the District is focusing on NOx reduction as opposed to ammonia slip, it seems. Is that something the Commission should also share that point of view? Or is it region-specific?

MR. RUBENSTEIN: I think it is very much region-specific. And I think the Commission should share that point of view. I think that there is clearly a hierarchy.

In this case, again given the fairly unique circumstances, the Air District and I think most other air regulatory agencies have agreed that allowing the higher CO level is a reasonable tradeoff for getting NOx. And that's a big change. That's taking CO from 4 ppm up to 9, a 5 ppm increase, in exchange for a .5 parts per million drop in NOx. And the agencies concluded that that was a reasonable tradeoff.

With respect --

HEARING OFFICER FAY: Can I interrupt you there --

MR. RUBENSTEIN: Sure.

HEARING OFFICER FAY: -- just for a second. From a lay point of view, what you just
addressed was that allowing the higher CO level, and this is greenhouse gas contributing carbon monoxide, as I understand, --

MR. RUBENSTEIN: I don't think so.

HEARING OFFICER FAY: No? I'm --

MR. TAYLOR: The CO is controlled based on health impacts. CO2 is the greenhouse gas.

HEARING OFFICER FAY: Oh, okay. Sorry.

MR. TAYLOR: The CO is very reactive and it reacts to form CO2 --

HEARING OFFICER FAY: Wasn't a chemistry major. All right. So, it's a health impact in both cases.

But just because of the chemical soup in the Bay Area --

MR. RUBENSTEIN: That's right. And I think when you then ask the same question about NOx versus ammonia, I think the answer is the same because of the chemical soup in the Bay Area. And this is not a universal conclusion, but because of the chemical soup in the Bay Area, if you had to trade off between NOx and ammonia, it would be prudent to further reduce NOx because that is more clearly going to result in a reduction both in NO2 levels and in particulate levels than would a
reduction in ammonia.

And I think the staff's position is, well, let's get it all. And that's where I'm saying that while I don't doubt that we can get a guarantee for that, I'm not sure that, in fact, the plant can do that day-in and day-out without serious adverse consequences.

MR. RATLIFF: Did Calpine consider things other than water injection to try to reduce the NOx level to 2.0? In other words, did you -- your attempt to try to achieve the 2.0 was to change the way you operated the existing facility with an efficiency loss, water being injected.

If you had -- did you, for instance, consider a large catalyst instead? And if not, why not?

MR. RUBENSTEIN: Actually the design solution is both increasing water injection and a new catalyst.

MR. RATLIFF: You have to have a new catalyst, I know.

MR. RUBENSTEIN: Yes.

MR. RATLIFF: I mean that's required by the FDOC, but --

MR. RUBENSTEIN: And whether it's larger
or not is going to depend on what the catalyst vendor says will be necessary to get a 90 or 92 percent reduction in NOx emissions.

MR. RATLIFF: But can you not achieve this higher level of NOx removal and still have lower carbon monoxide levels than you have on -- of the larger catalyst than the one that you currently are planning to have?

MR. RUBENSTEIN: In order to achieve a stack NOx level of 1.8 parts per million, which I think is prudent to give them a 10 percent compliance margin, if you had a 92 percent efficient catalyst, which is the highest efficiency that I've ever seen, then you would have to have a NOx level coming out of the turbine of about 22 parts per million.

And so when the catalyst is new the steam injection rate could be backed off to a NOx level such that the SCR system picked up the slack, if you will, and got that down to 1.8 parts per million.

As the catalyst efficiency degrades, then you would have to increase the water injection rate to further reduce NOx emissions, doing as much as you can.
The other compliance alternative, which I think is the one that the staff is suggesting, is that you always have higher water injection rates. And only use the minimum amount of ammonia necessary to get the minimum SCR efficiency required, rather than the maximum. And use that as your basic control technique.

And physically that might be possible, but you'll be putting more water injection into the combustors for longer period of time, which again is in excess of the turbine manufacturer's recommendations. And you're going to wind up with, as a result, higher CO levels, higher fuel consumption and increased combustor wear.

It's just a tradeoff. And then the question becomes what are the air quality factors that play into that tradeoff. If we were in the South Coast Air Basin we wouldn't be having this argument. The air quality tradeoff would be real and clear. We would have to meet a 5 ppm slip level, and so we wouldn't have any choice.

MR. RATLIFF: And you're basing that on the presumed uniformity of what you call, or what has been termed an ammonia-rich environment, I take it, in the Bay Area?
For instance, your testimony discusses the complexity of the atmosphere in the Bay Area, and suggests that it isn't uniform actually, it isn't really like a beaker. And that in many areas you have different levels of contaminants.

And we have, it sounds like, from BAAQMD we have a ten-year old study that has two data points that describe an ammonia-rich environment.

But is that a basis for us to conclude that the entire Bay Area is ammonia rich, and that you don't have greater reactivity if you have greater amounts of nitrogen -- I mean greater amounts of ammonia emissions that is interactive with the available nitrogen?

MR. RUBENSTEIN: Mr. Hill's testimony on this is the only evidence that we have in this record. It's not the only analysis that's been done of the Bay Area.

We have done similar analyses asking the question as to whether the Bay Area is ammonia rich in other proceedings. And they've been to different parts of the Bay Area, and the conclusion has always been the same.

MR. RATLIFF: But based on the same study that's been done.
MR. RUBENSTEIN: No, no, based on more current data.

MR. RATLIFF: Well, do we -- there is more current data?

MR. RUBENSTEIN: Yes.

MR. RATLIFF: Oh. And who has performed that?

MR. RUBENSTEIN: I'm sorry, who's performed --

MR. RATLIFF: Who has performed the more -- where is the more current data?

MR. RUBENSTEIN: The more current data are available through the California Air Resources Board website where you can collect data on concentrations of NOx. And I'm trying to think if it's from the Bay Area or the ARB website, one of those two websites.

But you can also get data regarding ions, ammonia ions, nitrate ions, sulfate ions. And you can infer whether a region is ammonia rich or not by taking a look at the ratio of those three ions.

MR. TAYLOR: Do you mean daily NOx concentrations? I have those.

MR. RUBENSTEIN: I'm sorry?
MR. TAYLOR: Daily NOx concentrations, or maximum hourly NOx or SOx concentrations?

MR. RUBENSTEIN: You need to take a look at the combination of ammonia, nitrate and sulfate concentrations, not NOx. Because NOx is the upstream compound. You need to take a look at the reactive products. And by taking a look at the ratios of those, you can determine whether a region is ammonia rich or not.

In other proceedings before this Commission we have done that analysis and submitted that. We didn't do it in this case because the Bay Area District's position was quite clear, and we didn't see a reason to.

MR. RATLIFF: In terms of data that we do have available, that you're familiar with, would it be correct to say that there are always available ions of nitrate in the atmosphere in most parts of the Bay Area? I say available, I mean they exist, they're in the air and they could interact with ammonia.

MR. RUBENSTEIN: I think the way you've worded that question the answer is yes, that's true.

But the question is the relative
quantities of the different ions. I mean if you imagine a bar chart, if you will, where you have a certain quantity of ammonia ions, a certain quantity of nitrate and a certain quantity of sulfate, if the ammonia ion bar is high enough then it doesn't matter how much more you add. You're not going to generate any more particulate. That ammonia will remain free or will combine with moisture.

MR. TAYLOR: But that's only true if the reaction's allows to proceed to completion where all the product is consumed. If you increase the concentrations of reactant, even if it's in excess, it will accelerate the reaction, it will increase just on a kinetic standpoint, it will increase the likelihood that the molecules will encounter --

MR. RUBENSTEIN: But when you take a look at ambient air quality data you're not in a laboratory and you're taking a look at what's essentially steady state condition. You're looking at equilibrium.

MR. TAYLOR: I disagree that it's steady state, because you have localized regions that are different, just looking at the monitoring stations
around the Bay Area. Each monitoring station, at
a given hour, will show different values. It's
not steady state. It's constantly changing.

I did want to touch on some points that
you made a little bit earlier real quick. As far
as a tradeoff between the pollutants, the Bay Area
did a study about ten years ago. And also there's
the tradeoff between CO and NOx. I did want to
touch on particulates, since that's the pollutant
at issue here.

We have had an astounding number of
articles and scientific research that's been
published over only the past two or three years
showing the significance of particulate.
Especially the fine and the ultra fine, that's the
PM2.5 and the PM0.1 particulates.

They've shown that these particulates
can penetrate into the deepest parts of the lungs.
They can go right through the cell wall and into
the blood stream. And they can carry other toxins
in there. The actual mechanism is not very well
understood, and there's continuing research on
this.

But my point is that this is very
cutting edge, this is very new research. The
agencies that, the air quality community, the regulatory agencies have been aware of this issue and have been pushing for 5 ppm for over five years now.

And I think that this is -- it's an understandable situation, the applicant is resisting this. Because we are talking about a fairly -- a transition period. Not all facilities, some facilities are being permitted at a 5 ppm ammonia slip. Not all facilities are.

Obviously the facilities that have come in and talked to the Energy Commission and have chosen not to fight staff on this issue have accepted a 5 ppm limit, and they've been permitted at that 5 ppm limit.

In this case, this is one of the first facilities where we've really had really strong resistance from the applicant. And we've chosen to push this issue on this case partly because we've had so much time to review this case.

The initial Los Esteros came in and we've been looking at this facility for a number of years now. And chosen to really push this, because -- also because of, again, the research that's been done over the past two or three years.
that shows what a significant health impact these particulates are.

MR. RUBENSTEIN: Mr. Fay, --

MR. WHEATLAND: Gary, can I --

HEARING OFFICER FAY: Gregg, did you have something?

MR. WHEATLAND: I wanted just to step back from this discussion for just one moment to follow up on a question that you asked about how you prioritize these.

And the question to the staff is this: Generally when the Commission considers an application it shows considerable deference to the recommendation of the responsible agency, no matter what that agency is. It could be land use or biology or any area, the Commission's going to show great deference to it.

Here we have in the record the opinion of the responsible agency. It's an agency that's spent over a year studying this application. And it's an agency that cares as much about air quality as the staff. Certainly there's no doubt about that.

Why should the Commission override the recommendation of the Air District in this case?
Why do you think that they're not entitled to that deference in this instance?

MR. TAYLOR: As I discussed in my supplemental testimony, there is a respectful disagreement between the District and staff on PM10 in the Bay Area.

The Bay Area is in violation of both the state PM10 and the state PM2.5 standards. And staff feels that PM is a very significant pollutant in the Bay Area.

The Bay Area Air Quality Management District has a 100-ton threshold for mitigation of PM10. And as was done in both the original Los Esteros case and in the phase 1 Los Esteros case, staff recommended, and the Committee approved, additional PM10 mitigation, which the District, I think in those cases, supported but did not require because the rules did not require. They were correctly implementing the rules.

So, again, this is a significant health impact based on recent science that has been done. We've been pushing this, and other agencies have been pushing this for well over five years now. And this is our position, is it's a significant health impact. It needs to be minimized because...
the science is uncertain about the direct -- exact impacts; we can't mitigate it directly, but we can minimize it.

MR. RATLIFF: I'd like to ask Mr. Hill if the District has any objection to the staff's proposed condition.

HEARING OFFICER FAY: Mr. Hill?

MR. HILL: We are neutral on this position; it's not our call to make.

I've expressed the District's position on whether or not increased ammonia actually results in increased particulates. And your question, I answered your question about whether or not the District agrees that particulates are a significant health concern, which Mr. Taylor just forcefully restated. And we agree with that, that recent information shows that fine particulates is a significant health impact.

Where we disagree is whether or not increased ammonia from this facility will, in fact, increase fine particulate concentrations. I think that sort of summarizes the area of disagreement.

HEARING OFFICER FAY: And is that the reason why, even though the District's in
nonattainment for these fine particulates, that it has not lowered its ppm emission rate for ammonia?

MR. HILL: That is the reason. If we believed or if we come to believe that increased ammonia results in increased fine particulate, we will carry to our board regulatory changes to require more control of this source.

We are in the process, as I said, of developing plans. We will certainly revisit this issue. I've described our current understanding as has been stated in several places. Our current understanding is imperfect. But all we can do is take action, or recommendations based on our current understandings and where we anticipate things will go based on new information.

Our current position is that decreasing ammonia won't reduce the fine particulate, the secondary particulate formation. That decreasing NOx does. That's one of the reasons why NOx is -- also NOx has direct impact -- but that's one of the reasons why we focus on NOx rather than the ammonia.

So, that's -- but, direct answer to the question, if the CEC determines that this is an appropriate method or mitigation method, we're
neutral on that issue, and we don't oppose it, we
don't support it necessarily. But we don't oppose
it.

HEARING OFFICER FAY: Okay. Mr. Rubenstein.

MR. RUBENSTEIN: Thank you, Mr. Fay. A
couple of points. First, I've heard several times
this morning the notion that health effects
research related to fine particulates is
relatively recent. I respectfully disagree.

Most of the seminal studies on that,
epidemiological studies, were done in the mid
1990s. I'm painfully aware of that because those
all came out at the time that the Commission was
hearing the San Francisco Energy Center project.
And I was knee deep in those, and reviewing those
epidemiological studies at those times.

What's come out more recently has been
either repackaging or refinements of those
studies. But the relationship between fine
particulate levels and human health effects have
been known for quite some time. This is not a new
issue.

Second, Mr. Taylor indicated that this
was the first time that he's seen strong
resistance from an applicant on this ammonia slip issue. I think part of the problem here is that we have a number of people on the CEC Staff who deal with different siting cases. I can assure you that this issue was very hotly contested, both with respect to the East Altamont Energy Center, also in the Bay Area, and the Cosumnes Power Project in Sacramento. And in each of those cases the full Commission decided to defer to the judgment of the Air District in the conclusion that further reducing ammonia slip would not provide a meaningful air quality benefit.

And then lastly, and this is kind of an applicant's plea, if you will, we're feeling just a little bit whipsawed here. This issue arose last summer when the Commission Staff and the Air Resources Board concluded that even though the conversion of this plant from simple cycle to combined cycle did not trigger best available control technology requirements under the District's rules, that because of a provision that was inserted in the Commission's license in 2001, that this project had to have best available control technology reassessed whether or not we triggered that regulatory requirement.
That resulted in pressure on this project. We'd already proposed to drop the NOx level from 5 parts per million down to 2.5, as part of the combined cycle conversion. However, the agencies insisted that we had to drop further down to 2.0.

We did this experiment last December to see whether we could reach a compromise with the Air Districts based on the assumption that the ammonia slip level was 10 parts per million. Had we known at that time that the Commission might impose a 5 ppm slip level, even if the Air District did not, we would have run the experiment and measured ammonia at the same time. That may have, in fact, led us to the conclusion that meeting all of these limits, meeting in particular the 2 ppm NOx limit and the 5 ppm slip level, was not technically feasible for these units, and we may be still arguing with the Air District about what the NOx level was.

So, when we talk today about how the staff is offering a compromise, I think it's important to understand that we have already compromised in a fairly major way last December in agreeing to drop the NOx level down to 2 ppm based
on actual performance tests.

Again, if you take a look at my testimony in other proceedings I don't argue the technology on ammonia slip as a matter of course. I generally don't question it. I think it's a need issue. Here I am genuinely concerned about our ability to meet all of these NOx levels and ammonia levels and CO levels at the same time on a consistent basis.

HEARING OFFICER FAY: Okay. I want to be sure that Mr. Sarvey has a chance to ask any questions he may want to on this matter. But I also know that he's concerned about the 9 ppm CO limit in the final DOC.

So, why don't you ask your questions.

MR. SARVEY: Well, first I'll ask my questions about the ammonia slip, and then maybe we'll finish that discussion, if that's -- and then we'll go on to the CO afterwards.

Mr. Hill, is the nitrate limitation uniform throughout the Bay Area?

MR. HILL: We don't have information or data to make that clear. I doubt it's uniform because the Bay Area has a lot of little microclimates. And so the relative concentrations
are going to vary. They don't vary as much as the sulfate concentrations, which the sulfate formation issue is something that is very localized. The NOx levels are more uniform. It's more of a regional issue.

So the answer is no; they will vary, but I don't know how much.

MR. SARVEY: So there is a possibility that perhaps this area that we're discussing in general is not nitrate limited, is that correct?

MR. HILL: No. That's not likely.

MR. SARVEY: Okay. There's three power plants that have been sited in this area, all emitting quite a bit of NOx. Did the Bay Area consider that? Or did they do an analysis of the additional NOx that are emitted into the air?

I know the cumulative impact is pretty much the purveyance of the CEC. Did the Bay Area consider that at all in issuing this?

MR. HILL: In what sense?

MR. SARVEY: Well, that there might be an abundance of NOx from the three power plants in that area all emitting pretty much within, I think they're within six miles of each other, --

MR. HILL: Well, the --
MR. SARVEY: -- maybe six and a half.

MR. HILL: -- NOx emissions from power plants are dwarfed by NOx emissions from automobiles. And so even having three power plants in relatively close proximity, they still would be a small percentage of the total burden in that immediate area.

MR. SARVEY: Um-hum. And is there any consequences to the fact that the NOx and the ammonia are coming out of the stack in a plume, and there's already the potential there for the mixing? Doesn't seem that that would be a NOx-limited area with that ammonia. So I've never heard that discussed in my 15 or 16 conversations on this issue. So I was wondering if you could elaborate on that.

MR. HILL: I'm not sure I understand enough about the relative concentrations to people to answer that question. Actually, I'm sure I don't understand enough about the concentrations to people to answer that question.

As I understand your question, the relative NOx-to-ammonia concentrations in the plume immediately emitted are going to be different than they are in the environment. And
your question is whether or not those ratios would
affect this conclusion about --

MR. SARVEY: The formation of

(inaudible)

(Parties speaking simultaneously.)

MR. HILL: -- the formation -- yeah. I
can't answer that question.

MR. SARVEY: Okay. Earlier you said
that the Bay Area doesn't regulate ammonia
emissions; they only regulate it in terms of being
a hazardous air pollutant. They don't really
analyze the secondary particulate formation in
their analysis in the FDOC, is that correct?

MR. HILL: No. And the reason again is
because our general analysis is that as a region
we haven't ever seen the situation where the
ammonia would contribute to secondary particulate
formation. Therefore, we haven't considered it on
a specific case.

MR. SARVEY: Thank you, Mr. Hill, that's
all I have.

HEARING OFFICER FAY: Anything on CO?

MR. SARVEY: Yeah, I do have some
questions on CO.

HEARING OFFICER FAY: Okay, why don't
you go ahead.

    MR. SARVEY:  I've had a limited time to
look at this FDOC as everybody else has, but a few
things have popped out at me, and I'd like to hand
Mr. Hill this document from the Bay Area Air
Quality Management District and have him certify
that this actually does -- is part of their Bay
Area Air Quality Management BACT guidelines for
combined cycle plants.

    MR. HILL:  Yeah, this looks like a
printout from our website.

    MR. SARVEY:  Okay.  And the CO BACT
limitation achieved in practice according to your
guidelines is 4 ppm at 15 percent, and that's
correct?

    MR. HILL:  That's correct for 2.5 parts
per million Nox.

    MR. SARVEY:  It lists that achieved in
practices G and I, or G and L.

    MR. HILL:  G and I.  That's the Contra
Costa Power Plant.  Those are the footnotes --

    MR. SARVEY:  Okay, --

    MR. HILL:  -- referring to the
footnotes.

    MR. SARVEY:  -- I understand.  Okay, and
in the comments that the EPA made on the PDOC,
what was their recommendation for CO BACT?

MR. HILL: Sorry, could you repeat --

MR. SARVEY: In the comments that the EPA made on your PDOC, what was their recommendation for CO --

MR. HILL: They didn't make a recommendation. They suggested that we look at the Las Vegas dataset. Based on their analysis they thought that BACT for CO would be a lower level.

But they don't have the responsibility to make this determination, so they don't make this determination. I believe you'll see that it's worded that they aren't making a recommendation.

MR. SARVEY: Well, it says, based on this information we believe the Los Esteros should be able to meet its original commitment of 4 ppm CO.

MR. HILL: That's correct, that's --

MR. SARVEY: Is that correct --

MR. HILL: That's correct.

MR. SARVEY: -- that the --

MR. HILL: That's not a BACT
determination, --

MR. SARVEY: Well, --

MR. HILL: -- that is their

assessment --

MR. SARVEY: -- (inaudible) --

(Parties speaking simultaneously.)

MR. HILL: -- data --

MR. SARVEY: -- EPA's assessment. Have you heard anything from the EPA that would change your mind, or convince you that the EPA's changed their mind on that issue?

MR. HILL: Yes, I have actually. I've spoken with them and their position was that if the data, the Las Vegas data, did not show what they thought it showed, then their recommendation, their conclusion was not valid.

MR. SARVEY: Okay, your FDOC has concluded that that information that they were relying on is incorrect?

MR. HILL: That is correct.

MR. SARVEY: Okay. And then on page 20 of the FDOC it says, finally, the Pico Power Project uses similar equipment as permitted and a NOx limit of 2 ppm and a CO limit of 6 ppm.

And apparently -- when did that project
come online?

MR. HILL: Just recently, in the last few months, I'm not sure how long ago.

MR. SARVEY: Um-hum, and do you feel that this project could meet the 6 ppm CO?

MR. HILL: It hasn't been operating long enough to be able to make that determination.

MS. ALLEN: It was earlier this month. I'm Eileen Allen, the Siting Program Manager. The Pico Project began operating earlier this month.

MR. SARVEY: So at this point it's inconclusive. The Pico Power Project uses the LM6000, pretty much the same configuration?

MR. HILL: Pretty much, yes.

MR. SARVEY: So the jury's still out on that then?

MR. HILL: That is correct.

MR. SARVEY: Okay. I have one more question, I apologize, on the ammonia slip issue. You also list a project in Massachusetts, the Sith (phonetic) Mystic facility.

MR. HILL: Yes, that is correct.

MR. SARVEY: And it has a 2 ppm ammonia -- or 2 ppm NOx limit, 2 ppm CO limit, and a 2 ppm ammonia limit, is that correct?
MR. HILL: I believe that is correct, yes.

MR. SARVEY: Okay. So, it's possible that this project could achieve 2 ppm NOx and a 5 ppm ammonia?

MR. HILL: It's possible, but we have not -- well, it's plausible, let's say --

MR. SARVEY: It's feasible.

MR. HILL: -- it's plausible. No, I don't -- we don't have information that says that it's feasible.

MR. SARVEY: Okay.

MR. HILL: We just have information that would plausibly suggest that it might.

MR. SARVEY: What other projects have?

MR. HILL: No other project has, to my knowledge.

MR. SARVEY: The Sith Mystic facility has --

MR. HILL: The data does, first of all, the Sith data does not necessarily -- we haven't reviewed the data in detail to determine whether or not they complied with their limits.

MR. SARVEY: Um-hum.

MR. HILL: And the other is that
MR. SARVEY: Okay, I understand that. I'm just saying that -- it's your testimony here is that it has achieved that, so I was just questioning that, that's all.

MR. HILL: No, it's permitted at that level. Does the FDOC say -- if the FDOC says that it has achieved that level, then -- I don't believe --

MR. SARVEY: Have you ever seen a report from the Air Resources Board about NOx control technology?

MR. HILL: Yes, I have.

MR. SARVEY: And in that report they have a series of not only determinations, but test results. And in fact, have you seen the fact that they list this project as having met those levels?

MR. HILL: I'm not aware of that, no.

MR. SARVEY: That's all the questions I have for Mr. Hill, thank you.
HEARING OFFICER FAY: Mr. Rubenstein.

MR. RUBENSTEIN: I just wanted to add, and I'll be quiet after this. In talking about these other projects, the thing that is becoming clearer and clearer is that the other projects that are being identified that have 5 ppm slip levels all use dry low-NOx combustors.

I've now confirmed that that's the case for the Roseville Energy Park. Those are LM6000 turbines, the same turbines, but they use a different primary NOx control. They use dry low-NOx combustors and not water injection for the first stage of NOx control.

Pico Project that was discussed earlier has a 10 ppm ammonia slip limit. I know that was being brought up in the discussion of CO, but remember these are all interrelated.

The Sith Mystic project that Mr. Sarvey was just asking about uses Mitsubishi 501G combustion turbines. They're huge turbines; they're over 200 megawatts in size, with dry low-NOx combustors.

And if you take a look at my list in table 1, and there's only one that I'm still trying to confirm, which is Palomar, every other
facility that's either proposed or licensed with a 5 ppm ammonia slip level was designed or built using dry low-NOx combustors for the primary NOx control.

In terms of technological balance, and particularly the balance between these three pollutants, CO, NOx and ammonia, the difference between dry low-NOx combustion and water injection is like night and day. It's a fundamentally different problem.

And so I don't think that those other cases, to the extent that they're even precedence, are applicable here because of the difference.

HEARING OFFICER FAY: Can you help the lay listener understand the nature of the difference? Is it less dynamic with the dry combustors in terms of control?

MR. RUBENSTEIN: With dry low-NOx combustors, the reduction in NOx level -- let me start back a little bit of NOx-101. With both technologies, the way that you reduce NOx levels is by minimizing the peak combustion temperatures.

With dry low-NOx combustors you achieve that goal by mixing air and fuel in different ways in the combustor. You might consider like staged
combustion where you manage the air and fuel getting into the combustor in different ways so that you can run with ultimately very lean, fuel lean, high excess air mixtures, which gets you low-peak combustion temperatures. That's how you get very low NOx levels of dry low-NOx combustors.

With water injection using a conventional combustor, which would naturally have a NOx level of perhaps 125, 150 parts per million, and you use water to manage the temperature. You use water injected into the combustor in order to minimize the peak temperatures. And you reduce NOx levels in that way.

That has advantages and disadvantages. The water injected units are much more flexible. Dry low-NOx combustors have a relatively narrow operating range. Most of the larger plants that you've licensed, you remember, have a minimum load that may be 50 or 60 or 70 percent. What constrains that is the dry low-NOx combustors. Because the combustion becomes unstable at lower loads.

Water-injected systems, which are more commonly used for peakers, enable a much wider range of operation, perhaps down to 20 or 30
percent load. And so you got more operating flexibility.

Another difference is that with dry low-NOx combustors you tune them once to achieve a particular NOx level, and then the operator can't change that. The tuning is fixed so that you're only NOx control flexibility, if you will, under that scenario is the ammonia injection system in the SCR. The NOx level coming out of the turbine is absolutely flat.

With a water-injection system you can vary the amount of water, and therefore you can vary the NOx level from the turbine, as well as being able to vary the ammonia with the SCR system. And so you actually have two parameters you can play with to reduce NOx.

The advantage is that you can actually get, in the long term, generally better NOx performance except for the kind of extremely low levels we're talking about here, when BACT levels were 5 or 10 parts per million, the combination of water injection and SCR was very common and very flexible with a lot of advantages.

Getting down to this 2 ppm level, though, puts much more emphasis on the SCR system.
That, in turn, has made dry low-NOx combustors much more popular, particularly with the large units. These units were built with water injection principally because they were originally designed to be peakers and ultimately converted later on, and they wanted the operating flexibility that you get with the water-injection systems.

If that helps and doesn't make it more confusing.

HEARING OFFICER FAY: Yeah, thank you for that explanation.

Any other -- yeah?

MR. RATLIFF: Could I ask, is South Coast is the limit for ammonia slip also 5 ppm for peakers, or is it different?

MR. RUBENSTEIN: It is, but to the best of my recollection the NOx limit for peakers in the South Coast is still 5 parts per million.

MR. RATLIFF: So does that allow the use of low-NOx, or I should say water injection for peakers in the South Coast?

MR. RUBENSTEIN: I believe in the South Coast there are peakers that, some peakers have dry low-NOx combustors, and I think most have
water injection. Most of those units which were put in in 2001 and 2002 had trouble complying with the 5 ppm slip limit, and many of them were under variance for a year or two until they got it all worked out.

So that was meeting a 5 ppm NOx level and a 5 ppm CO level. And that was clearly a technological challenge for those units.

MR. RATLIFF: I also wanted to express agreement with Mr. Rubenstein with regard to the fact that a great deal of the underlying studies about the effect of fine particulates were done in the 1990s. And were actually cited in the San Francisco proceeding back in that period of time.

But I thought I would also add that since all of that research was conducted, or at least the underlying research, in the regulatory framework both the USEPA and CARB have moved to make much more stringent requirements. And have adopted, in fact, additional PM10 emissions limitations and required monitoring for fine particulates of PM2.5.

And the federal standards were adopted in 1998. They were much -- they were considered to be quite stringent at that time. But CARB has
adopted at least a annual average standard for the State of California, which I believe the Air District, and I'd like to ask Mr. Hill to confirm this, is not in compliance with, is that correct?

MR. HILL: The state standard? That is correct.

MR. RATLIFF: The new state —

MR. HILL: Yes, that is correct.

MR. RATLIFF: And is the Air District actually undertaking any efforts to try to attain compliance with that more stringent PM2.5 standard?

MR. HILL: As I believe I mentioned earlier, the District is in the process of doing fine particulate planning. I couldn't swear that compliance with the state standard is the goal. But progress towards it certainly is.

MR. RATLIFF: And what kind of measures will the District be taking to reduce fine particulates, or have they decided yet?

MR. HILL: We haven't decided. The plan is still being developed. It's really in a fairly preliminary stage of development. We're brainstorming ideas right now.

HEARING OFFICER FAY: All right. Is
there anything further then that the parties want to add?

        MR. SARVEY: I'd like to ask Mr. Taylor one question.

        HEARING OFFICER FAY: Sure, Mr. Sarvey, go ahead.

        MR. SARVEY: Mr. Taylor, earlier you indicated that the ammonia emissions, nitrogen deposition from the ammonia emissions was a significant impact. Do you feel that reason alone is a good reason to minimize ammonia emissions from this project?

        MR. TAYLOR: I can't address the biological mitigation specifically. But I can say that the best possible nitrogen deposition mitigation you could achieve would be to avoid emissions in the first place.

        MR. SARVEY: Thank you.

        HEARING OFFICER FAY: Is that it, then?

        MR. SARVEY: That's it, thank you.

        HEARING OFFICER FAY: Okay. Well, if there's nothing further on air quality matters, I want to thank everybody for being so cooperative in this informal format, because I think it may have worked very well. It helps.
I'd like to address, finally, the briefs that we would -- the Committee's going to order. They're due July 29th, by the close of business. You can expect transcripts probably within two weeks of today.

And as per Commission practice, we expect generous citation to the record to support your positions.

Obviously the primary issue is the question of ammonia slip. And we expect the parties to thoroughly brief that. And also concern about your CO questions.

I also think that we're going to need some proposed language from both the staff and the applicant on a reasonable condition to monitor the progress on the bike path restoration.

Is there anything further before I ask for public comment? Any questions about where we go from here in the proceeding?

The record will remain open for the purpose of receiving the City's change of the zoning. I'm not aware of any other evidence still pending.

Mr. Wheatland?

MR. WHEATLAND: The addendum to the
staff analysis in response to --

        HEARING OFFICER FAY: Oh, you're correct. Yes. So we will hold the record open to receive staff's addendum within two weeks of today. And expect that that will be addressed to the extent that the applicant and Mr. Sarvey feel the need to in their brief.

        MR. RATLIFF: I believe the staff is required to write verifications for each of the conditions that its incorporating from the Air District, is that correct?

        HEARING OFFICER FAY: And that would come in, --

        MR. RATLIFF: So that's something that we still have to do and submit to you.

        HEARING OFFICER FAY: Okay.

        MR. TAYLOR: My intention in the addendum is to incorporate a full set of clean conditions, so that those can be easily incorporated into, I assume, the PMPD.

        MR. RATLIFF: And I'm sure the applicant wants to see those, and perhaps respond to them.

        HEARING OFFICER FAY: Right, and I hope you figure some editorial way to call out the changes, or at least note where most of the
changes are.

MR. TAYLOR: Do you mean the changes between the District's revised PDOC and the District's final DOC?

HEARING OFFICER FAY: Well, actually I was thinking in terms of the staff's FSA. But whatever you think is the most informative.

MR. TAYLOR: The conditions in the staff's FSA are virtually identical to the conditions in the revised preliminary determination of compliance. The only changes to those conditions would be changes between the preliminary determination of compliance and the final determination of compliance. So I don't intend to call those out directly unless it's a request that I do so. Because those are documented in the final determination of compliance.

If there are any changes to staff's conditions, that's the AQ-SC conditions, I would certainly call those out specifically.

HEARING OFFICER FAY: Okay. Mr. Rubenstein.

MR. RUBENSTEIN: Mr. Fay, I think you were, in fact, asking for an evidentiary trail
from what's in the FSA to the final conditions, and because the changes are so minimal I don't think it would be that difficult to do and show it as a markup, if that's what you wish.

HEARING OFFICER FAY: So you're not concerned about --

MR. RUBENSTEIN: No, no, I think -- and we can work with staff to help present that in a clear way for you.

HEARING OFFICER FAY: Okay, yeah, --

MR. RUBENSTEIN: There are --

HEARING OFFICER FAY: -- we want that, I won't necessarily be drafting this section. We want a very clear record to help anybody who's assisting the Committee. So be self conscious of that, if you can, and just assume that whoever's reading it may be reading it for the first time and not acquainted with the changes that have occurred.

MR. RUBENSTEIN: Mr. Fay.

HEARING OFFICER FAY: Yes.

MR. RUBENSTEIN: There were a few other documents that we would, I think, request that you keep the record open for. And those are the Bay Area District's response letters to the Commission.
Staff, to CARE and to any other commenters on the FDOC. I only received one response letter, which was the letter addressed to me on behalf of the applicant. But we would like to see all of those response letters included in the record.

And I think we can commit to providing those to you certainly by Friday of this -- that would be tomorrow.

HEARING OFFICER FAY: Okay, fine. Anything else you anticipate coming in? No, okay.

Any further questions about the briefs or --

MR. RATLIFF: One question about the, I think you said a monitoring condition for the bike trail. Is that --

HEARING OFFICER FAY: Well, a condition of certification that would either -- or a combination of milestones and obviously it must be something that can be monitored, so we can determine if it has happened.

MR. RATLIFF: I wondered if it was an informational condition or involved some further obligation that we would be requiring Calpine to meet. Such as payment by --

HEARING OFFICER FAY: Well, I --
MR. RATLIFF: -- the occurrence of an event or something like that.

HEARING OFFICER FAY: Based on what we heard today, it sounds like the applicant has made this offer through the City.

MR. RATLIFF: Yes.

HEARING OFFICER FAY: So, I suppose one thing staff could consider is cranking that into a condition. But, we basically want recommended language on how to do as much as the Commission can do to encourage restoration of the bike path, you know, in a practical sense. To actually --

MR. RATLIFF: So this might be more of a reporting requirement then, that we come back --

HEARING OFFICER FAY: If that's what staff thinks would be the most useful. Okay, anything further?

MR. SARVEY: I'm a little uncomfortable about having an opportunity to review the FDOC, and ask Mr. Hill some questions. I don't know how procedurally we --

HEARING OFFICER FAY: Why don't we do this. Why don't we give you leave also to submit anything in the next, you know, within two weeks, --
MR. SARVEY: Okay.

HEARING OFFICER FAY: -- any further comments on the FDOC. And we'll take your comments under submission, as well.

MR. SARVEY: Thank you.

HEARING OFFICER FAY: Yeah, because I recognize it's a very short time. And, of course, Mr. Wheatland, Mr. Rubenstein, do the same, if you have any further comments to make on the FDOC.

Mr. Ratliff, I don't recall if we moved the FDOC into evidence.

MR. RATLIFF: I don't believe we have, no. We'd go ahead and so move that it be --

HEARING OFFICER FAY: Okay, staff has moved the FDOC prepared by the Air District. Any objection to receiving it?

I hear none. That will be the next exhibit in order.

And now I'd like to ask if there's anybody from the public that would like to make a comment about any of the matters we've discussed today. Anybody on the phone?

MR. BUIKEMA: Yes, Mr. Fay, this is Richard Buikema from the San Jose Planning Department. I have just a general legal question...
I'd like to address -- the evidentiary hearing.

HEARING OFFICER FAY: Okay.

MR. BUIKEMA: We want to get confirmation on the current position as to the adequacy of the final staff assessment as a GIR-equivalent document. We understand that there was an executive order by the former Governor requiring the use of the FSA by responsible agencies, but that expired in December of 2001. We were just wondering if, has the Commission, since that time, determined that another document is appropriate for use by responsible agencies for CEQA purposes, or is its final staff assessment still considered to serve that purpose in spite of its preliminary nature.

HEARING OFFICER FAY: I'm going to ask Mr. Ratliff, the attorney for the staff, to address that.

MR. RATLIFF: The position of the Office of Chief Counsel has been for many years that the final staff assessment can be used as the equivalent of the environmental document under section 25519. And that that position preceded the executive order. And there has been no change in
that position reported to anyone.

If there are any doubts about it I would suggest that the City contact the Chief Counsel and discuss it with the Chief Counsel. But that has always been the Chief Counsel's position.

MR. BUIKEMA: Okay, thank you for that clarification. We were just curious as to why there was a need for a Governor's action if that was always the case.

MR. RATLIFF: Well, I don't -- I'm not the person to tell you what motivated the Governor to issue the executive order. But, he did.

HEARING OFFICER FAY: Was this during the energy crisis?

MR. RATLIFF: This was during the energy crisis, it was one of a number of executive orders. And I think it was directed, you know, if there was any question about that issue, it was to clarify it.

HEARING OFFICER FAY: Okay, does that help, Mr. Buikema?

MR. BUIKEMA: Yes, I will follow that up with an email.

HEARING OFFICER FAY: Okay, thank you.

We have no indication of public comment. Any
further comments before we adjourn? Questions?

All right, I see no indication.

Thank you, all. We are adjourned.

(Whereupon, at 12:20 p.m., the hearing

was adjourned.)

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CERTIFICATE OF REPORTER

I, CHRISTOPHER LOVERRO, 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 outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of July, 2005.

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